

**REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION WAS HELD ON March 21, 2016 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, Boyeff, Maristuen

**MEMBERS ABSENT:** Aafedt, Haugen, Long

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

**DISPOSITION OF MINUTES:**

- Minutes were approved for February 16, 2016 regular meeting.  
MOTION BY CHRISTENSEN, SECOND BY HANSEN. CARRIED ON VOICE CALL.

**COMMUNICATION:**

- A. Recommendation to City Commission of Planning Commissioner(s) representation for Ad Hoc Committee regarding crew camp removal - Staff

Maristuen introduced this item of communication (as above) and asked Planning Director Jarcik to present. Jarcik stated that Planning Commissioners as well as City Commissioners have mentioned the interest to consider two items:

1. The public critical infrastructure temporary type RV camps, this item was also brought up at the Ad Hoc discussing the 1037 and 1038 proposals. Commissioner Boyeff, discussed at the Planning Commission meeting the need for this item to be discussed by the City Commission.
2. The removal of the closed structures upon the Ordinance 1026 closure date of July 1<sup>st</sup>. Discussion if more time beyond the current deadline of September 1<sup>st</sup> should be given to disassemble, remove and restore the site.

The Planning Department is proposing an Ad Hoc Committee to discuss further consideration of the above two items. Jarcik stated that staff would recommend the following participants:

City Commissioners: Howard Klug and Deanette Piesik

Planning Commissioners: Jon Maristuen (Vice Chair), Glenn Boyeff (2<sup>nd</sup> Vice Chair); Donna Hansen (who volunteered to be on the committee)

Staff: Jordon Evert, Bill Tracy, Chief Catrambone, Donald Kress, Bob Hanson, David Tuan, Kent Jarcik

In discussion with City Attorney Jordon Evert, he recommended a formal committee be appointed by the City Commission for this discussion. Jarcik stated that the Commission could just reaffirm the list proposed or make other appointments but in either case Evert's recommendation is that the committee be directed and appointed by the City Commission. Evert recommended the matter of this Ad Hoc Committee be presented to the Planning and Zoning Commission for their recommendation to the City Commission; presentation to City Commission will happen at their regular meeting on March 22, 2016.

The City Commission could then provide direction for any action on this item and confirm the committee.

Jarcik concluded his presentation and reminded that the Planning and Zoning Commission can confirm the list of representation from the Planning and Zoning Commission or discuss for further recommendation.

MOTION BY BOYEFF, SECOND BY CHRISTENSON to recommend to the City Commission approval of the Ad Hoc Committee members as presented. CARRIED ON VOICE CALL

- Planning article of the month, "Design Ideas for Strengthening Downtowns", was presented by Senior Planner Rachel Laqua.

## **PUBLIC HEARINGS:**

### **A. Pherrin Township, re-zone of properties within the extra-territorial jurisdiction – Staff**

Maristuen first explained to the public how the mailing lists for the re-zone notices are compiled. He stated that all the information available to the City staff is obtained through the County Assessor's tax mailing list and that in the case there are two or more addresses listed for an owner that a mailing is sent to all addresses. Maristuen said that while staff makes every effort to get notice out to the public, mail does get returned as undeliverable; it is not the City's intention to keep information from the public.

Maristuen introduced Item A of Public Hearings and asked Kress to present. Kress reminded the Commission that the City has jurisdiction over planning, zoning, subdivision, stormwater management ordinances, building codes, and crew camp regulations within the ETJ. As the City has different zoning designations than the County, properties within the ETJ are being rezoned to match the City zoning. Kress stated for the audience that the City is not rezoning property for future developments

The proposed City zone on each property is evaluated based on the existing legal use on the property. For residential lots, lot size was also considered. Rezoning properties in the ETJ is also guided by the Comprehensive Land Use Plan, which projects City's long term growth. Kress stated that the staff had meet with the Pherrin Township board earlier in the month. Kress turned the rest of the presentation over to Staff Planner, Josephine Ching.

Ching stated that there are four proposed zones in Pherrin Township – A: Agricultural, M-2: Heavy Industrial, M-1: Light Industrial, and R-1A: Rural Residential. Ching explained the Zoning, as follows, and directed the Commission to those proposed areas on the map.

#### **A: Agricultural**

Intended to protect and preserve lands which are presently rural or agricultural in character and use; not presently required for urban development but will accommodate residential development opportunities; intended to protect and preserve areas of prime agricultural soils as identified in the Williston Development Guide for continued agricultural and agriculturally-oriented uses.

This district is also intended to allow development of mineral resources including oil and gas, coal, potash, sand, gravel, scoria, and the like in a manner that does not adversely impact the natural environment and adjoining land uses.

**M-2: Heavy Industrial**

Intended for industrial development, including heavy manufacturing, shipping terminals, natural resources extraction; and other processes or operations which involve a large number of workers, heavy truck traffic, significant environmental effects, or large-volume public water or sewer service.

**M-1: Light Industrial**

Intended for light industrial development, including light manufacturing, processing, storage, wholesale, and distribution operations, and other and operations which do not require large numbers of workers; do not generate heavy truck traffic, do not emit significant amounts of noise, smoke, dust or glare; and do not require large volumes of public water or sewer. Limited commercial use is allowed in this district to serve the uses for which the district is primarily intended.

**R-1A: Rural Residential**

Intended to include areas where community sewer and water are not planned in the near future, but where other public services may be available and topography and soil conditions allow development at a low population density that can rely on on-site water supply and waste disposal systems without creating public health hazards. Intended primarily for areas devoted to large-lot suburban residential use, adjacent to existing or planned urban development. The regulations and restrictions in this district are intended to protect the residential character of these areas and conserve their environmental resources.

Ching explained that there are some uses within Pherrin Township that are permitted through a Conditional Use Permit (CUP) granted to the property by Williams County; these CUPs would carry through to the City. When these CUP's expire, the use will have to come into compliance with the current City zoning. These CUPs are as follows:

<b>Property Legal Description</b>	<b>Current Use</b>
Sublot 6 in E2NE, Section 31, T155N R100W	Maintenance Shop
Sublot 3 in NENE, Section 31, T155N R100W	Maintenance Shop
SWNW, Section 32, T155N R100W	Storage Yard and Equipment Storage
NENE, Section 30, T155N R100W	Crew Camp
W2SW SWNW, Section 20, T155N R100W	Crew Camp

Ching stated that the City proposes to grant certain properties a special permitted use (SPU) where the current uses on those properties do not conform to the proposed zone. By granting the SPU, it will allow the owner to continue their operations until the use ends. Ching added that any new uses must conform to the zoning once the existing use has moved out or ceases operations.

<b>Property Legal Description</b>	<b>Current Use</b>
SE EX DD PTS, Sec 30, T155N R100W (Qualley)	Gravel Pit
W2NE, SENE EX SO 8', and NENE, Sec 30, T155N R100W (Northern Improvement)	Gravel Pit
W2SW SWNW, Section 20, T155N R100W (Knife River)	Gravel Pit

Ching concluded her presentation and Maristuen opened the public hearing and called for any public input.

Ray Pacheco, a resident in the Blackwood Estates, state that he knows that some County C.U.P's were issued as temporary and asked if the City would make them permanent Kress that County C.U.P's would end on the dated indicated from the original County permitting. Pacheco then asked for

clarification that since the City is not annexing these properties that their taxes will not be affected; Maristuen told him no, taxes will not change. Kress added that the County Assessor has said that property taxes are based on use not on zone so there is no change in taxes based on the City re-zone of properties in the ETJ.

Steve Lynde stated that he owns 10 acres that was zoned Commercial by the County many years ago. His land is located next to the Qually gravel pit and Blackwood Estates. He is concerned that the City is looking to zone this property Agriculture. The Lyndes have in the past, and would like to in the future, have a kennel business. Kress explained that the information that was received from Williams County was that Mr. Lynde's property was zoned Agriculture in the County so the City was making it the same. Kress gave Mr. Lynde his card and they agreed to work together with the County to determine if there had been some issue with miscommunication of past zoning.

Maristuen called twice more for public input, hearing none he closed the public hearing and asked for the wishes of the Commission.

MOTION BY BOYEFF, SECOND BY CHRISTENSEN, to recommend approval to the City Commission the proposed zone change map, contingent on addressing all staff and Ad Hoc comments. AYES: Christensen, Hansen, Boyeff. NAYS: Maristuen. ABSENT/NOT VOTING: Aafedt, Haugen, Long. ABSTAINED: None.

\*\*DISCUSSION: Boyeff asked how the SPUs would be handled. Kress stated he believed that the approval of the SPU's was in conjunction with the approval of the zone change(s). City Attorney Evert said he would feel more comfortable with a separate motion for the SPUs; all SPUs could be generally approved in one motion and would all be contingent on City Commission approval of the zone changes.

MOTION BY BOYEFF, SECOND BY HANSEN, to approve the special permitted uses (SPUs) as presented contingent on the City Commission approval of the corresponding zone changes. AYES: Christensen, Hansen, Boyeff. NAYS: Maristuen. ABSENT/NOT VOTING: Aafedt, Haugen, Long. ABSTAINED: None.

- B. Stony Creek Township re-zone of Blocks 1 and 2, Twin Bin Subdivision and portions of Sections 8 and 17, T154N, R100W (Ellis Olson properties), in the extra-territorial jurisdiction (ETJ) - Staff

Maristuen introduced Item B of Public Hearings and asked Kress to present. Kress stated that these properties, referred to collectively as the "Ellis/Olson Property," were included in the rezoning of the City's one-mile extra-territorial jurisdiction (ETJ) in Stony Creek Township. This property was zoned "Industrial" by Williams County in 2012. Based on the fact that an approved use on much of this property is an inert landfill, planning staff proposed rezoning this property to M-2: Heavy Industrial, as landfills are only allowed in M-2 zones.

Kress said that at the February 16, 2016 Planning Commission meeting, a neighbor noted that the area on the west side of County 9 is a residential area and was concerned that the M-2: Heavy Industrial zoning of this property could have dangerous effects on the residents. The neighbor was also concerned about truck traffic and access; there is currently only one access to the Ellis/Olson property from County 9. He noted there is a difference between a landfill and manufacturing. Planning staff explained the reason for the proposed M-2 zoning, and also noted that the M-1: Light Industrial zone still allows oil-field related businesses and businesses with trucks, and also that hazardous materials in both M-1 and M-2 zones require a special permitted use. Kress reminded that the Commission directed staff to review the uses on this property and talk with the property owner to propose a less intensive

zoning for the portion of property along County 9, and report back to the Planning Commission at the March 21, 2016 meeting.

Kress explained that one of the existing uses on a large portion of the Ellis/Olson property is a surface mine owned by Leonardite. This mine has been in operation for several years. On March 4, 2016, planning staff met with the owner of Leonardite to discuss the scope and projected timeline of future mining on this property. This mining is conducted at a low intensity, with usually only two trucks removing material from the site at a time. These trucks use the current entrance to the Ellis/Olson property onto County 9, though as the mining moves northward, the trucks will exit the property to the north onto 53<sup>rd</sup> Lane NW. Mining operations are conducted mainly in the summer and occur during daytime hours, not 24 hour operation. The mining and reclamation operations are closely regulated by the North Dakota Public Service Commission and federal regulatory agencies.

Discussion at the March 7, 2016 Ad Hoc included:

**PROPERTY HISTORY:** The property owners stated they had originally proposed to have residential development on this property, but the city engineer at the time (in 2011) preferred not to have residential development near the City landfill (adjacent to the south of this property) so the property owners opted for industrial development in order to be more compatible with the landfill.

**REZONING TO A: AGRICULTURAL:** The property owners were opposed to zoning any of the property to A: Agricultural, due to the fact that they felt they had "jumped through a lot of hoops" to get the property zoned to industrial and felt that once the property was rezoned to A: Agricultural, it would never be able to be rezoned to an industrial zoning again. Also, the property owners stated that it was unlikely there would ever be any agricultural activity on this property.

**PROPERTY ACCESS:** At this time, the only access to the property is from the existing road connecting to County 9. This is a gravel road. Lots 1, 2, and 3 of the Twin Bin Subdivision north of this road do not have any access from this road due to the mining operations. When those mining operations are complete and the land reclaimed, the property owners will provide an easement to access these properties along their east side.

**ACCESS TO CITY LANDFILL:** The property owners stated that the City has granted an easement over City property adjacent to the south of the Ellis/Olson property to provide access to the City landfill, so trucks going from the recycling center to the landfill will not have to go out onto County 9.

**LIMITATIONS TO DEVELOPMENT:** Development of the portion of the property along County 9 is limited by steep topography, deep coulees, and existing old coal mines.

**USE OF SPECIAL PERMITTED USE (SPU) TO ALLOW EXISTING LEGAL USES TO CONTINUE IN THE M-1 ZONE:** The city attorney recommended that all existing uses as specified in the chart below be included in an SPU at this time. Draft findings for the SPU are attached below for your Commission's consideration.

**FUTURE CITY LANDFILL EXPANSION:** The committee agreed that portions of the Ellis/Olson property adjacent to the city landfill should be zoned to M-2: Heavy Industrial to allow for future expansion of that landfill.

**PROPOSED ZONING:** The committee recommended the zoning of the individual lots in the Ellis/Olson property as shown in the chart below.

<b>Block and Lot</b>	<b>Existing Use</b>	<b>Proposed Zoning</b>
SW1/4NW1/4, Sec. 8	Leonardite mine; approved for inert landfill	M-1: Light Industrial with an SPU to allow legal existing uses of Leonardite mine and inert landfill to continue as conforming uses in the M-1 zone
Lots 1, 2, 3, Block 1, Twin Bin Subdivision	Leonardite mine	M-1: Light Industrial with an SPU to allow legal existing uses of Leonardite mine and inert landfill to continue as conforming uses in the M-1 zone
Lot 1, Block 2, Twin Bin Subdivision	Drilling pad	M-1: Light Industrial with an SPU to allow a drilling pad for three oil wells to continue as a conforming use in the M-1 zone
SW1/4SW1/4 EX DD Parts, Sec. 8	Not developed	M-1: Light Industrial
Lot 2, Block 2, Twin Bin Subdivision	Recycling Center	M-2: Heavy Industrial
SE1/4 Sec. 8	Not developed	M-2: Heavy Industrial
N1/2NE1/4 Sec. 17	Not developed	M-2: Heavy Industrial

Maristuen opened the public hearing and asked for any public input. After a second call for public input, Cherie Harms, President of Leonardite, approached the Commission. Ms. Harms stated that they have been mining in this area since 2006. Leonardite mines only 3 -4 months out of the year and only during daylight hours. They run only small dump trucks and at a maximum would run 22 truck-loads a day from these pits (6 a.m. to 10 p.m.). She said it is their hope to have these pits fully mined out by 2020. Leonardite is heavily supervised and regulated by the State reclamation division and the BLM.

After a third call for public input and hearing none, Maristuen closed the public hearing and reminded the Commission that there are three items to consider and would require three motions.

**MOTION BY BOYEFF, SECOND BY CHRISTENSEN**, to recommend approval to the City Commission of the zone change from County Industrial to City M-1: Light Industrial for SW1/4SW1/4 Ex DD Parts, Sec. 8, T154N R100W. **AYES:** Christensen, Hansen, Boyeff. **NAYS:** Maristuen. **ABSENT/NOT VOTING:** Aafedt, Haugen, Long. **ABSTAINED:** None.

**MOTION BY CHRISTENSEN, SECOND BY HANSEN**, to recommend approval to the City Commission of the zone change from County Industrial to City M-1: Light Industrial with a special permitted use to allow exiting uses of Leonardite mine and inter landfill to continue as conforming uses in the M-1 zone for Lots 1, 2, and 3, Block 1 and Lot1, Block 2 of the Twin Bin Subdivision and the SW1/4NW1/4, Sec. 8, T154N R100W. **AYES:** Christensen, Hansen, Boyeff. **NAYS:** Maristuen. **ABSENT/NOT VOTING:** Aafedt, Haugen, Long. **ABSTAINED:** None.

**MOTION BY BOYEFF, SECOND BY HANSEN**, to recommend approval to the City Commission of the zone change from County Industrial to City M-2: Heavy Industrial for Lot 2, Block 2, Twin Bin Subdivision; SE1/4, Sec. 8, T154N R100W; and N1/2NE1/2, Sec. 17, T154N, R100. **AYES:** Christensen, Hansen, Boyeff. **NAYS:** Maristuen. **ABSENT/NOT VOTING:** Aafedt, Haugen, Long. **ABSTAINED:** None

MOTION BY BOYEFF, SECOND BY CHRISTENSEN, special permitted uses for M-1: Light Industrial and M-2: Heavy Industrial for the Leonardite mines and inert landfill are approved contingent on City Commission approval of the zone change. AYES: Christensen, Hansen, Boyeff. NAYS: Maristuen. ABSENT/NOT VOTING: Aafedt, Haugen, Long. ABSTAINED: None

Kress stated that the SPUs would record as individual SPUs and told the Commission that these items would go in front of the City Commission on April 12, 2016.

C. Preliminary Plat for a rearrangement of Lots 1-22, Block 8, Hawkeye Village Subdivision, City of Williston – Hawkeye Village LLC/Wenck Associates

Maristuen introduced Item C of Public Hearings and asked Ching to present. Ching said that this item is a request for a rearrangement of Lots 1 through 22, Block 8 of the Hawkeye Village Subdivision. The approval of this rearrangement would create 20 lots, increasing each lot size by about 1,000 square feet.

All lots are zoned R-2: Single Family, Twinhome, and Duplex Residential and meet the minimum lot requirement for the R-2 zone.

Lots 12 through 19 would take access from 19<sup>th</sup> St W and Lots 2 through 9 would take access from Buford Circle. Lots 1 and 20 would take access from 37<sup>th</sup> Ave W; Lots 10 and 11 would take access from 39<sup>th</sup> Ave W. City water and sewer are available from surrounding streets.

Ching said that as this is a rearrangement of the Hawkeye Village Subdivision, all the requirements of that subdivision including the development agreement, general performance lien, and applicable plat notes would carry through; specifically plat note 3 that says "lots contained Block 5 through 12 are to be developed as single family detached, regardless of size and without exception".

Discussion at the March 7, 2016 Ad Hoc Committee meeting included:

Temporary Construction Easement/Utility Easement: There were discussions on the location of the utility easement and whether or not there should be a temporary construction easement. Planning staff and City Engineer both agree that the temporary construction is not needed, since it has not been needed in the past. The applicant will have to sign off with MDU if they can have the utilities in the back of the houses. City Engineer noted that normally there is a 10 foot wide utility easement located along the front yard in other subdivisions.

Tree line: Public Works Director noted that from the aerial map that there is a tree line along the back side of the houses and asked if the applicant is intending to save some of the trees. The applicant responded that there is a possibility of saving the trees but the grading will be a concern since they are unsure if trees can survive in such low grading.

**STAFF COMMENTS:**

CITY ENGINEER:

1. City Engineer recommended not to include temporary construction easement due to if the developer decided to build the homes all at once then the temporary construction easement will not be needed.

CITY PLANNING:

1. Plat comments will be sent to the applicant.
2. Planning staff also agreed with City Engineer not to include temporary construction easement since it has not been needed in the past.

3. Planning staff will create a short Development Agreement to note the Hawkeye Development Agreement and Hawkeye Village Subdivision plat note 3 will be part of this rearrangement plat.
4. Applicant will have to provide a revised phasing plan to show the south side of Block 8 to have paved streets on: 36th Ave W, 37th Ave W, 39th Ave W, 40th Ave W, 19th St W, and Buford Cir.
5. Applicant will have to provide a product layout diagram showing the footprint of the residences, driveway locations, and distances between driveways.

Maristuen opened the public hearing and asked if there was any comment from the audience. George Kropinski of Hawkeye Village, LLC spoke and stated that they have been in contact with MDU (Montana Dakota Utility) and it is their preference to serve the houses in the rear of the lots; can run one line and serve all houses that way rather than one line in front of the houses on each block. Boyeff verified with Kropinski that the utility easement was in discussion with MDU. Kropinski said that is true and they would likely follow the suggestion of MDU. Kress stated that running the utility line in the rear of the houses could create a utility easement rather than a construction easement. Staff and applicant will have to continue working with the Building and Public Works departments and look at subdivision ordinances regarding this item.

**MOTION BY CHRISTENSEN, SECOND BY BOYEFF** to recommend to the City Commission approval of the preliminary plat for a rearrangement of Lots 1-22, Block 8, Hawkeye Village Subdivision, City of Williston, contingent on addressing all staff and Ad Hoc Committee comments. **AYES:** Christensen, Hansen, Boyeff, Maristuen. **NAYS:** None. **ABSENT/NOT VOTING:** Aafedt, Haugen, Long. **ABSTAINED:** None.

D. Short Plat to rearrange Lots 4, 5, 6 & 7, Block 9, Williston Park Subdivision, City of Williston  
– Thomas Weiss/Ulteig Engineers

Maristuen introduced Item D of Public Hearings and asked Neill to present. Neill explained that this was a request for a short plat to combine Lots 4, 5, 6, and 7, Block 9, of the Williston Park Subdivision into one lot. A residential house occupies Lots 4 and 5 while Lots 6 and 7 remain vacant. All lots are zoned Agricultural. The approval of this short plat would create one lot that is approximately 1 acre.

These properties are below the minimum size requirement for Agricultural zones but since the applicant is not creating a new lot the removal of these lot lines does not trigger zoning acreage requirements. This subdivision was annexed into City limits as A:Agricultural zoning and has not been otherwise re-zoned. The City Attorney has noted that since this is a removal of lot lines and the applicant will not be altering the zoning of the properties, the short plat can be considered.

Neill stated that the new lot would take access through an existing driveway from 46<sup>th</sup> St W and is served by City water and sewer.

Neill said that this matter was discussed at the March 7th, 2016 Ad Hoc Committee meeting. The only discussion was from the City Engineering who noted that combining 4 lots will not reduce the assessment liabilities that will be levied against the property. Neill concluded her presentation.

Maristuen opened the public hearing and asked for public input. After calling three times for public comment and hearing none he closed the public hearing and asked for the wishes of the Commission.

**MOTION BY BOYEFF, SECOND BY HANSEN**, to approve the short plat for Lots 4, 5, 6 and 7, Block 9, Williston Park Subdivision, City of Williston, contingent on addressing all Ad Hoc and staff comments. **AYES:** Christensen, Hansen, Boyeff, Maristuen. **NAYS:** None. **ABSENT/NOT VOTING:** Aafedt, Haugen, Long. **ABSTAINED:** None.



E. Short Plat to remove the lot line between Lots 3 & 4, Block 2, Briarwood Amended Subdivision, City of Williston – Steve and Marvene Larvick/49th Latitude Land Survey

Maristuen introduced Item E of Public Hearings (as above) and asked Ching to present. Ching stated that the applicant requests a short plat for rearrangement of Lots 3 and 4, Block 2 of Briarwood Amended Subdivision. Lots are currently undeveloped and are zoned R-1: Single Family Residential. The approval of this short plat would remove the lot line between two lots to create one lot which would meet the minimum lot area requirement for R-1: Single Family Residential zone.

Ching stated that the new lot would take access from 23<sup>rd</sup> Terrace East. Water and sewer is available on 23<sup>rd</sup> Terrace East.

This item was discussed at the March 7, 2016 Ad Hoc Committee meeting and the Ad Hoc Committee had no comments or concerns.

Maristuen opened the public hearing and asked for public input. After calling three times for public comment and hearing none he closed the public hearing and asked for the wishes of the Commission.

MOTION BY BOYEFF, SECOND BY HANSEN, to approve the short plat to remove the lot line between Lots 3 & 4, Block 2, Briarwood Amended Subdivision, City of Williston, contingent on addressing all staff and Ad Hoc comments. AYES: Hansen, Boyeff, Christensen, Maristuen. NAYS: NONE. ABSENT/NOT VOTING: Aafedt, Haugen, Long. ABSTAINED: None.

F. Short Plat to create two lots in Sublot 3, Section 29, T154N, R101W in the extra-territorial jurisdiction to the City of Williston - one lot to be for railroad right-of-way for BNSF Railroad - Steven Everson/BNSF – Houston Engineering

Maristuen introduced Item F of Public Hearings and asked Neill to present. Neill explained that a short plat was approved by Planning Commission in October, 2015 for this property but was not recorded. Neill stated that this short plat is coming back before the Commission due to the applicant's request to bring more land into the subplot for the railroad right-of-way expansion.

The application requests a Short Plat for the rearrangement of subplot 3 in the SW ¼ of the SE ¼ of Section 29. This lot is zoned A: Agriculture and is located in the Extra-Territorial Jurisdiction. The existing Lot 3 is a total of 11 acres. The approval of this short plat would create two lots; 8.389 acres would be retained by Mr. Stephen Everson and the other 2.906 acre lot would be owned by Burlington Northern Santa Fe Railroad (BNSF).

The subplot that would be owned by BNSF is to be used for railroad and maintenance purposes only. The BNSF subplot would be smaller than the minimum 10 acre lot size required in agricultural zones. BNSF plans to expand the existing railroad track to three rails but in order to do this they must acquire approximately 50 sublots along the railroad to allow for room to perform maintenance when necessary.

Neill said that although the proposed Sublot 3, owned by Mr. Everson, would be non-conforming development (due to being less than 10 acres), it would still have to meet all the development standards of the zone at time of development.

Proposed Sublot 4 (owned by BNSF) will only have access from the railroad. It will not be accessed from a public street because it will only be used for railroad maintenance purposes.

This land cannot be added to the existing BNSF right-of-way due to a title issue that is associated with railroad right-of-way. Neill explained that the railroad owns a right-of-way to construct and operate the rail line, however, it does not own the area occupied by the right-of-way in fee simple.

It will be noted on the plat that Sublot 4 will only be used for railroad purposes.

At the Ad Hoc Committee meeting held on March 7<sup>th</sup>, 2016 the committee had no comment on this plat and recommended approval by the Planning and Zoning Commission.

Neill concluded her presentation. Maristuen opened the public hearing and asked for public input. After calling three times for public comment and hearing none he closed the public hearing and asked for the wishes of the Commission.

Boyeff said he believed from the original presentation of this project in the fall of 2015 that the Commission had required a plat noted stating that the lot dedicated to BNSF was for railroad maintenance use only and could not be developed. Kress and Neill stated that was a staff comment and that condition would be required as a plat note.

MOTION BY BOYEFF, SECOND BY CHRISTENSEN, to approve the Short Plat for Lot 3 in the SW1/4 of the SE1/4 of Section 29 contingent on addressing all staff and Ad Hoc Committee comments. AYES: Hansen, Christensen, Boyeff, Maristuen. NAYS: None. ABSENT/NOT VOTING: Aafedt, Haugen, Long. ABSTAINED: None.

\*\*DISCUSSION: Boyeff wondered if the motion should have specifically included the lots that will be created as the approval is on based on the newest plat presented.

AMENDED MOTION BY BOYEFF, SECOND BY CHRISTENSEN, to approve the Short Plat for Lot 3, to create Sublots 3 & 4, in the SW1/4 of the SE1/4 of Section 29, contingent on addressing all staff and Ad Hoc Committee comments. AYES: Hansen, Christensen, Boyeff, Maristuen. NAYS: None. ABSENT/NOT VOTING: Aafedt, Haugen, Long. ABSTAINED: None.

- G. Short Plat to create two lots, Lot 60, West Acres Subdivision in the S1/2 SW1/4, Section 29, T154N, R101W in the extra-territorial jurisdiction to the City of Williston - one lot to be for railroad right-of-way for BNSF Railroad – West Acres Development Corp./ Cinnabar Southwest or BNSF/ Houston Engineering

Maristuen introduced Item G of Public Hearings (as above) and asked Ching to present. Ching stated that as with the previous item, a short plat for this property was approved by Planning Commission in November of 2015 but was not recorded. The short plat is coming back before the Planning and Zoning Commission due to the applicants request to bring more land into the subplot for the railroad right-of-way expansion. Minor changes are the width of the subplot (from 55 feet to 65 feet) and the length of the subplot.

This lot is zoned Residential by the County and is located in the City's one mile extra-territorial jurisdiction.

The approval of this short plat would create two lots; 35.608 acres to be retained by owner West Acres Development Corporation and the other 1.206 acres lot would be owned by Burlington Northern Santa Fe Railroad (BNSF).

The subplot that would be owned by BNSF will be for railroad purposes only. The proposed BNSF lot would only have access from the railroad. It will not be accessed from a public street because it will only be used for railroad maintenance purposes.

There is an oil pad located north of the proposed subplot; no reciprocal access will be allowed.

This land cannot be added to the existing BNSF right-of-way due to a title issue that is associated with rail road right-of-way.

Ching said that it will be noted on the plat that this subplot will only be used for railroad purposes and concluded her presentation. Maristuen opened the public hearing and asked for any input from the audience.

Robert Kemp approached the Commission and asked just to be sure that Lot 60 is being subdivided but not developed and that there is absolutely no sewer or water there. Kress assured him that was the case; Kemp had no further concerns.

MOTION BY CHRISTENSEN, SECOND BY BOYEFF, to approve the Short Plat for Lots 60, to create Lots 1R and 2R, in the SW1/4 of Section 29, contingent on addressing all staff comments. AYES: Christensen, Hansen, Boyeff, Maristuen. NAYS: NONE. ABSENT/NOT VOTING: Aafedt, Haugen, Long. ABSTAINED: None.

H. Zone Change request from M-2:Heavy Industrial to R-3:Lowrise Multi-family for approximately 2.3 acres Lot 2, Block 1, North Bakken Industrial Park Subdivision, City of Williston – Love's Travel Stops & Country Stores, Inc.

Maristuen introduced Item G of Public Hearings (as above) and asked Neill to present. Neill stated that this application requests to rezone 2.34 acres of Lot 2, Block 1, of the North Bakken Industrial Park Subdivision from M-2: Heavy Industrial to R-3: Low-rise Multifamily and Townhouse. The applicant is not platting this land but is only rezoning a section of the lot to R-3.

Neill said that this rezone from M-2 to R-3 would allow the applicant to re-purpose the existing temporary housing structures into an apartment building. An apartment building is not a permitted use in M-2 zones but is a permitted use in R-3 zones.

A Certificate of Occupancy issued by the City was given to the existing workforce housing building on November 16<sup>th</sup>, 2012. This building was inspected and met all residential building requirements. A sprinkler system is provided in the building that has 24 beds and 12 rooms. The applicant will not need to make any structural changes to the building for it to comply with apartment building standards.

This lot takes access from 57<sup>th</sup> St NW and the lot is connected to City water and sewer.

Neill explained that with the building's proximity to a fueling station the National Fire Protection Association (NFPA) 30A requires a setback going from 10 feet from the lot line to 60 feet from a fixed gasoline dispensing site to the building. Fire Inspector, Robert Kiser, went to the property and says it appears to be in compliance with setback distances set in NFPA code.

The applicant would be required to install shrubs on the east side of the zoned area. Street trees will also need to be provided on the north end of zoned area; applicant has been given the landscape ordinance. Based on parking calculations they are required to provide 2 parking spaces per 1 dwelling unit (2x12=24). Currently the area has 43 parking spaces.

The existing building in the proposed rezone area meets the R-3 standards for density, lot coverage, and impervious surface coverages. The proposed area of R-3 is along a highway and is not in the middle of an otherwise industrial-zoned area.

Discussion at the March 7, 2016 Ad Hoc meeting included:

If the rezone is approved the area being rezoned (2.3 acres) must meet all requirements of an R-3 zone. Distance from the gas pump to the apartments was discussed. Applicant is not planning on adding additional apartments onto the proposed zoned area. The applicant stated that this apartment building will be a long-term facility.

**Staff Comments:**  
CITY PLANNING

1. Applicant must provide staff with a survey plat of the property in addition to the legal description prior to the time the zone change is approved by City Commission.

Neill concluded her presentation. Maristuen opened the public hearing and asked for any public input.

Kym VanDyke from Love's Travel Stops and Country Stores addressed the Commission. He asked Neill if staff had received the requested legal description and Neill stated that they had. VanDyke thanked the Commission for this consideration, stated he was available for any questions and added that they have already put out for bids on the landscaping requirements.

Bill Glen spoke from the audience and asked about the land to the west of the proposed apartment building and Hwy 2/85 believing that land was a DOT right-of-way. Maristuen stated that was correct. Jarcik added that land was allocated in the original Baaken Industrial Subdivision plat. City Engineer Hanson confirmed that and stated that the land was reserved for a future interchange.

Boyeff addressed the oil well pad to the south of the lot in question and asked if it were zoned commercial. Kress clarified the location and stated that it was actually in an M-2:Heavy Industrial zone.

Maristuen called twice more for public comment and hearing none closed the public hearing and asked for the wishes of the Commission.

Boyeff stated for the record that the SPU for this building as temporary workforce housing was originally denied by the Planning and Zoning Commission because of its proximity to Industrial zone and use. The SPU was approved later by the City Commission.

**MOTION BY CHRISTENSEN, SECOND BY HANSEN, to recommend to the City Commission approval of the zone change from M-2:Heavy Industrial to R-3:Low-rise Multi-family for 2.34 acres, consistent with the legal description provided to staff, located in Lot 2, Block 1, of the North Bakken Industrial Subdivision, City of Williston, contingent on addressing all staff comments. AYES: Christensen, Hansen, Boyeff, Maristuen. NAYS: NONE. ABSENT/NOT VOTING: Aafedt, Haugen, Long. 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 asked if City Engineer Hanson if he had any update on this item. Hanson stated that the issue is the location of a ¼ section line. There is communication that the subdividing surveyor was incorrect to begin with. Hanson is inclined to think AE2S is right on that but there have been no definite answers at this time and may require another independent survey.

Commissioner Hansen asked what issue that creates? City Engineer Hanson stated that it creates issues with future road connectivity and would actually mean that the current car wash is built in the road right-of-way. Hanson would like to hold any further action on this item until this matter is resolved.

MOTION BY HANSEN, SECOND BY CHRISTENSEN, to table this item until for a future Planning Commission Meeting. CARRIED ON VOICE CALL

## NEW BUSINESS:

- A. Special Permitted Use request to allow explosives up to 50 lb. in an ATF approved magazine on Lots 5 – 10, block 5, Wegley Addition Rearrangement, City of Williston – Go Wireline LLC

Maristuen introduced Item A of New Business (as above) and asked Neill to present. Neill stated that the applicant, GO Wireline, requests a special permitted use (SPU) for the storage of industrial explosives in the M-1: Light Industrial zone in their building located at 921 East Broadway.

Storage of industrial explosives up to 50 pounds in the M-1 zone is allowed by special permitted use (SPU) pursuant to section 22(E)(3) of the Williston Zoning Ordinance. This SPU application covers 1.3 and 1.4 explosive units in a Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) approved magazine. The total weight of the explosives being stored is 50 pounds.

An SPU for storage of explosives was granted in April, 2014 in another building located on the same block (815 East Broadway). GO Wireline is transferring these explosives to the building at 921 E Broadway. GO Wireline owns the entire Block 5 in this subdivision.

Access onto this property is from 4<sup>th</sup> St E, 10<sup>th</sup> Ave E, and E Broadway.

Paul Marsolek, Industry Operations Investigator (BATFE) confirmed that GO Wireline's High Explosives Permit is not due to expire until 2017. He also noted that GO Wireline has been inspected and is in good standing with ATF and set to conduct business with Explosive Materials.

There are no residences within 200 feet of the proposed explosives storage location.

Discussion at the March 7, 2016, Ad Hoc committee meeting included:

**Staff Comments:**  
**CITY PLANNING**

1. Applicant to provide copy of BATFE approval of these explosive storage containers; otherwise, this SPU, if approved by the Planning Commission, will not become effective until such approval is received from the BATFE.

Neill concluded her presentation and asked if there were any questions from the Commission.

Commissioner Boyeff asked if the Fire Chief had been at the Ad Hoc meeting for this item. Neill stated that he had not been but that he had reviewed it and given his ok.

Commissioner Hansen asked if there was any for moving the explosives. Kress deferred to the applicant, Mark Gjovig. Gjovig stated that the NDDOT actually regulates transportation of explosives. Storage is regulated by BATFE.

MOTION BY CHRISTENSEN, SECOND BY BOYEFF, to approve the special permitted use (SPU) for storage of special industrial explosives up to 50 pounds in the M-1 zone at Lots 5-10, Bock 5, Wegley Addition, contingent on BATFE approval and addressing all staff and Ad Hoc comments. AYES: Christensen, Hansen, Boyeff, Maristuen. NAYS: NONE. ABSENT/NOT VOTING: Aafedt, Haugen, Long. ABSTAINED: None.

Gjovig stated that a High Explosive Type 33 Permit, that they currently have for the existing explosives storage, only requires that they give BATFE notice of any move. Gjovig stated that it is unlikely that BATFE will inspect the site and give a new letter of approval. Kress asked Gjovig to make sure that the Planning Dept. got a copy of his communication with BATFE concerning the move and staff would follow up with BATFE to be sure that everything is good and finalize the SPU then at that time.

B. Special Permitted Use request to allow an office use in an M-1 Zone, Lots 1-4, block 11, Wittmeier 2<sup>nd</sup> Addition, City of Williston – Connie Crosby

Maristuen introduced Item B of New Business (as above) and asked Neill to present. Neill stated that this application requests a special permitted use (SPU) for office space in an M-1:Light Industrial zone for Investment and Retirement Advisors, Inc. This type of commercial business is allowed in the M-1 zone with an SPU.

Currently, a commercial service business, Nexus Security Solutions, occupies half of the building. The Security Solutions business is an acceptable use in an M-1 zone. The SPU would only be for 1,008 square feet, or the remaining space that will be used for the Investment and Retirement Advisors offices.

The lot takes access off of 2<sup>nd</sup> Street W. There is a vacated easement for access off of 2<sup>nd</sup> onto 11<sup>th</sup> Ave.

There is enough paved parking to support the existing business (Nexus Security Solutions) and the proposed offices.

At the March 7, 2016 Ad Hoc Committee meeting staff confirmed with applicant that there was an existing access easement onto their property. Ad Hoc Committee had no other concern.

Commissioner Boyeff asked if this SPU should be granted specifically for the Retirement Advisors, Inc. rather than for the building (as and SPU generally goes with the property) so that if that business leaves any other similar business would have to apply for their own SPU in the future. Kress agreed that would be a good idea so that there can be some control of what is happening in that area. City Attorney Evert added that if the Commission wishes to limit the SPU to the specific business it needs to be made clear in the motion.

MOTION BY BOYEFF, SECOND BY CHRISTENSEN, to approve the special permitted use (SPU) for the Investment & Retirement Advisors, Inc., to have offices in an M-1:Light Industrial zone located at 1105 2<sup>nd</sup> St. W, City of Williston, contingent on addressing all staff and Ad Hoc comments. AYES: Christensen, Hansen, Boyeff, Maristuen. NAYS: NONE. ABSENT/NOT VOTING: Aafedt, Haugen, Long. ABSTAINED: None.

C. Final plat for a rearrangement of Lot 1R and 2R, Block 1 Roseland Subdivision to create nine smaller lots (Badlands Center) – Triland Holdings, LLC/Sanderson Stewart

Maristuen introduced Item C of New Business (as above) and asked Neill to present. Neill stated that this is a final plat for a rearrangement of Lots 1R and 2R, Block 1, Roseland Subdivision, also known as Badlands Town Center. The City Commission approved this preliminary plat on July 28<sup>th</sup>, 2015 for approximately 5.563 acres to create nine lots for the Roseland Subdivision.

The applicant, who owns all buildings on this property, wants to split these parcels (both buildings and parking lots) for the possibility of individual sale.

Neill stated that the parking lots will continue to be owned and maintained by Triland Holdings if this plat is approved. The Wells Fargo ATM will also be included in the shared parking agreement. The lease will be to Triland Holdings and when the parcel is sold the lease will go with the parcel.

There are currently utilities that run into every building on the lot and the future buildings. The complete site plan has already been approved by Planning and Zoning staff.

Triland Holdings will need to provide a shared parking agreement that will be recorded with the plat. CC&R's, a title opinion, and a warranty deed have been provided to staff by the applicant.

**STAFF COMMENTS:**  
**CITY PLANNING**

- Development Agreement:  
No public improvements are required. However a development agreement with the following special provisions is required:
  1. Prior to the release of the general performance lien on any phase, including release of the lien to escrow recordation of the final plat, the developer shall submit to the City conditions, covenants and restrictions (CC&Rs) for review to confirm that City required wording is included in the CC&R; The approved CC&Rs shall be recorded with the final plat.

CC&Rs for the HOA must state that:

2. Membership in the HOA is mandatory for all property owners in this subdivision;
3. The HOA owns the detention basin lots and is empowered to assess the members of the HOA for the cost of maintenance of the detention basins and property taxes on the detention basin lots.
4. If the HOA dissolved. The City of Williston can access the property owners for the cost of maintenance of the detention basins and property taxes for the detention basin lots.

Prior to the release of the general performance lien on any phase, including release of the lien to escrow, the developer shall submit to the City documentation from the North Dakota Secretary of State's office verifying the establishment of the HOA as an entity in this state.

- A shared parking agreement will need to be created.
- CC&Rs will have to be recorded with the plat.
- All technical comments will be sent to the applicant.

CITY ENGINEER:

Incomplete site improvements would include the following:

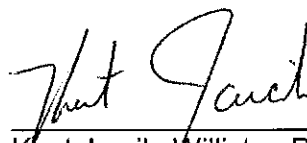
- a. Seeding and re-vegetation of the southern storm water detention pond. A fair amount of erosion in the southern storm water detention pond needs to be repaired and any silt deposits need to be removed.
- b. The ADA sidewalk curb ramp at the intersection of 9<sup>th</sup> Ave. W and 42<sup>nd</sup> St. has yet to be installed.
- c. There remain three undeveloped lots in this development. These lots should be dressed up, leveled and seeded.

Neill concluded her presentation and stated that should this Commission approve this final plat, it would move forward to the City Commission for final approval on March 22, 2016. Maristuen opened this item for Commission discussion or direction.

**MOTION BY BOYEFF, SECOND BY HANSEN**, to recommend to the City Commission approval of the Roseland Subdivision, a subdivision of 5.563 acres to create 9 lots contingent on addressing all staff and Ad Hoc Committee comments. **AYES:** Christensen, Hansen, Boyeff, Maristuen. **NAYS:** NONE. **ABSENT/NOT VOTING:** Aafedt, Haugen, Long. **ABSTAINED:** None.

**DATE OF NEXT REGULAR MEETING:** April 18, 2016

**MEETING ADJOURNED.**



Kent Jarcik, Williston Planning Director



## **APPENDIX**

to the

### **March 21, 2016, PLANNING AND ZONING COMISSION MINUTES**

- A. Special Permitted Use request to allow explosives up to 50 lb. in an ATF approved magazine on Lots 5 – 10, block 5, Wegley Addition Rearrangement, City of Williston – Go Wireline LLC
  
- B. Special Permitted Use request to allow an office use in an M-1 Zone, Lots 1-4, block 11, Wittmeier 2<sup>nd</sup> Addition, City of Williston – Connie Crosby