

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL
Monday, August 24, 2020

The Planning and Zoning Commission of Mandan duly met in session in the meeting room of the Mandan City Hall on August 24, 2020, at 5:30 p.m. CST. Due to the coronavirus situation, this meeting was held virtually on Zoom.

ROLL CALL

Introduction of Darren Haugen, School Board Representative, to the Planning & Zoning Commission.

Commissioners Present: Boehm, Klein, Mehlhoff, Haugen, Liepitz, Renner, Frank, Camisa, Vayda, Leingang, Robinson. Commissioners Absent: Helbling.

Commissioner Camisa motioned to approve the July 27, 2020 minutes as presented. Commissioner Vayda seconded the motion. Upon vote, the motion passed unanimously.

PUBLIC HEARINGS

1. A request from Terrance Wetch for a zone change from R7 (Single-Family Residential) to CB (Commercial). Said property is Lot A of Lots 3 & 4 of Auditor's Lot E of the SW ¼ of Section 29, Township 139N, Range 81W; in the City of Mandan, Morton County, North Dakota.

A. Staff report

John Van Dyke, City Planner, presented.

Mr. Wetch desires to rezone his property from R7 Residential to CB Commercial. The property is located west on Main past the Lower Heart River crossing (See Exhibit 2). The properties future land use designation is Commercial as seen in Exhibit 2.

Mr. Wetch is currently in discussions with the neighboring property owner, Victor Fleck who owns the property to the west that is zoned CB Commercial, to purchase the subject property. Mr. Fleck's property was rezoned to CB Commercial in 2011. Mr. Fleck would like the same zoning designation as his current land for expansion of his business operations at some point in the future. The property to the northeast and owned by Rodney Aman is zoned MA Industrial. The property has historically been used as a commercial auto repair shop. This property was rezoned in 1987. Other property to the east is zoned R7 and is rural residential in nature. Given the adjacent commercial zoning and uses coupled with the alignment with the future land use designation and direct road access, staff is recommending approval. These findings are included in Exhibit 4.

Planner Van Dyke stated that at the time of writing this staff report, no public comments were received. However, that changed today (September 24, 2020) wherein comments and inquiries were received. He provided an exhibit prepared of one written comment that was received. Planner Van Dyke presented a map showing residents in favor (outlined in green) and four in opposition (red dots) to the rezone.

Planner Van Dyke stated that the general zoning is rural Residential in nature and it should stay that way and Mr. Fleck's operations, if moved closer to the east, would be rural Residential in that area. He said that there are property owners present to speak to the application and also to their concerns.

Chair Robinson stated there are seven (7) documented neighbors in opposition with no real theme listed. Planner Van Dyke stated that he received a late exhibit and he requested that the commentator present it rather than him, when it's time for the public hearing.

Engineering and Planning Department recommended approval of the rezone from R7 Residential to CB Commercial for the reasons specified in the findings in Exhibit 4.

Commissioner Mehlhoff requested information as to what the proposed use would be under the new zoning and what other allowed uses would be included in that commercial zoning.

Planner Van Dyke explained that Victor Fleck owns a trucking and excavation business and his intentions for this property if purchased would be to construct a commercial building where he would work on and house and park the trucks when they are not being used. They are primarily used offsite.

Commissioner Renner said that the future land use map indicates high density residential for the area. Currently, present zoning for the west future land use the request is to change it to high density residential. If the city will allow changing this zoning from R7 Residential to Commercial now, which is what the future would be, how would it switch from a CD Commercial to a high density residential in the future? It seems like this is going back and forth by switching from one then back to the original.

Planner Van Dyke replied if there was some development proposal on Victor Fleck's property, which is not the discussion for today, but to answer the question, they would have to come back in for a future land use map amendment and make sure it aligns with their intended land use. The plan and intentions of the property owner would have to align and that's how it would be facilitated by the city. Otherwise, we would expect high density residency development in that particular location. At this point, the application is for commercial, and it resides entirely in a commercial designation on the Mandan Use and Transportation Plan.

Chair Robinson inquired if there were any other comments or questions from the Commission. Hearing none, the meeting was opened for public comment. He invited anyone present or calling in to come forward to comment or ask questions.

B. Open public hearing

Lois Clement, stated that her husband's name is Jim Clement and they have owned a residence at the adjoining property for 45 years. She stated: "The land that is being proposed to change is currently being used as a corn field and has been for a number of years. I'd like to read a letter I dropped off this morning. In regards to the request of Terry Wetch for a zoning change to commercial, for his land along Sunny Road south just west of Mandan. A large commercial zoning area in the midst of an agricultural and residential area seems very inappropriate. The requested change lies smack in the middle of probably 15-20 residences and agricultural land areas. The property values would be greatly undermined by the proposed increase in commercial activity. More immediately, the quality of our lives here

would quickly deteriorate. We and those in our neighborhood are accustomed to school buses, people walking to their mailboxes, families on horseback and bicycles, people walking dogs and pushing strollers and the sounds of young people playing basketball in the evening. Our dogs wander over to play with the neighbor's dogs. Pheasant, turkeys and dove call from the edges of our yards. They wander by and stop to browse and flocks of Canadian geese fly in and out of that corn field to eat and bed down. My backyard feeder list includes probably 18 varieties of song birds and we are still able to capture a fairly good night sky despite our proximity to the likes of town. The existing commercial property even as it is has changed things. Night lights that seem as bright as those at a ball diamond. Clanking trucks unloading at odd hours, mounds of rock and rubble, dust and big quantities of assorted equipment, trucks and portable metal buildings moving in and out of storage there. It is very concerning that this commercial impact would grow even larger in an area surrounded by residences. Please consider at length the precedent this would set for the multiple property owners here. Many of us longtime residents. You would be satisfying the request of one individual at a big financial and lifestyle cost to a great number of families. I would just as well ask you to drive by the property and/or look at an ariel view and you will see that there are multiple houses on all sides, well on two sides, east and west, of that property and it would clearly not be desirable in that."

Larry Kaul came forward to speak and stated he resides east of the property being discussed and is a lifelong resident of that area. He stated: "I am concerned about the extra truck traffic. It's lightly paved now and if we get more big machinery and big trucks on that road that will deteriorate that road. There are times I go by at whatever time of day and there is a lady pushing her 2 little kids in a stroller with 2 dogs she hangs on to. I've talked to her and she said she feels safe walking along that road. I'm afraid that will all change if this comes about. I agree with Lois Clement about the wildlife in the area. I only found out about this matter this morning and I presented a list of names. If I had more time, I could have gotten 15-20 more people on that list that are opposed to it, and since I did not know about this meeting until this morning, that is only a limited list. I know Victor personally and I know Terry personally and I have nothing against either one of them. Victor has his trucks and equipment on the one part that is zoned commercial and he has a lot of asphalt piles that he runs through the crusher. You can hear him crushing late into the night with that crusher going. That would just increase the problems, it stirs up the whole neighborhood. I, as Larry Kaul, speak for a lot of people around."

Terry Wetch called in to the meeting. He stated: "I was trying to get this into Commercial. I originally thought back in 1987 when Sharon Schaefer was mayor this was all taken care of. In fact, in my abstract with the land description at that time because I've only re-platted this as of January 10, of 1918 through Toman Engineering. At that time, I still thought it was Commercial. I only found out about this matter over the last month and a half that it was still R7 Residential. I have always understood that it is Commercial up until a month and a half ago. That's the reason for this application. I need it to be commercially re-zoned. After I found it in my abstract, I felt that the City was taking it away from me. I know Sharon Schaefer is no longer with us so I can't ask her but I always thought it was commercial. I need it to be commercial. And that's the reason I applied."

Commissioner Mehlhoff commented that he found it odd that there was one Commercial lot in the middle of all these residential and does not understand how that happened with that land. This is a tough one here and he said he can see both sides.

Commissioner Leingang inquired of Planner Van Dyke why he is crushing black top and concrete on that lot. That isn't zoned commercial, that is zoned industrial, isn't it?

Planner Van Dyke stated that the subject property is part of the application and doesn't have anything to do with the property, but that activity may be a zoning violation if that is going on. He stated that he has talked with Victor Fleck and noticed that the piles and the crushing going on is not allowed in a commercial zoning designation, however that's not the subject property. What's being evaluated is the appropriateness of Terry Wetch's property that is commercial, regardless. You could sell it off as a different use and purpose, He said he would like to not focus on Victor Fleck because that is a separate issue but to focus on Terry Wetch's property because that is the subject of this application.

Brian Zuroff stated: "To provide clarification to Commissioner Mehlhoff's question, I was involved about a year ago, in a rezoning application for Leonard Storm, Alex Bowman and Raymond Schaff. In conversations with these three previous applicants who came before the Planning and Zoning Commission with a similar request because Storm, Schaff and Bowman were all running essentially industrial operations on their property, and had been for years. Schaff has a good wealth of knowledge regarding that from the past. The housing division was, from my understanding from Schaff and Storm, and a couple others, was that this was originally put in as a development so that a resident could work and live there. There are a lot of truck drivers out there that had trucking facilities or mechanic shops and auto body. You drive along that business loop and you can still see that out there and my great uncle had property out there at one time where he was running an autobody shop in his back yard. When that subdivision was put in, in the 60's and 70's, that was the intent so you could live and work there. At that time, when it was done, it was more of a hand-shake type of agreement and not so much worrying about what Planning and Zoning had to do with it. To your question, Commissioner Mehlhoff, that is how this all came about and that also includes the salvage yard north of Main Street. This is provided for clarification and I have no further comments."

C. Close public hearing

Chair Robinson asked if there were any other comments. Hearing none, the public hearing was closed.

Commissioner Renner inquired if someone would be able to address the comment Mr. Wetch made stating that he thought he seen on his abstract that it was zoned Commercial? He said that he did not remember seeing anything on the abstract that pertained to zoning.

Planner Van Dyke explained that was part of the confusion. That in 1987 it was zoned MA Industrial re-zone. That's the only instance that he seen on file and it did have a similar legal description to the abstract that Terry Wetch has. However, in the application as far as the acreage of the property, it was somewhere between 1 and 2 acres and that was the Aman Subdivision, zoned as MA Industrial and that piece of property is 1 acre. There are maps that also provide context surrounding that. The legal description for the re-zone and the Ordinance that approved it, is not tight and this would help clarify and bring it back to what Terry Wetch thought he had. However, the application contained restrictives to the north of MA Industrial.

Commissioner Liepitz stated that it does seem like it's a very aggressive transition from Commercial to single family housing. If this committee approves this, we are just continuing

that aggressive transition although moving the line east, closer to the existing residences, I know we have to consider the application as it is and cannot push alternatives but from a planning perspective, in your opinion, is it appropriate to carry this commercial further east? Or, in my mind it might be more appropriate to have something in more of a transitional zoning giving it more intense than single family, but not all the way to Commercial?

Planner Van Dyke pulled up the future land use map and to focus on this area. He said that's probably something that needs to happen in the future because it's a very unique area and intermixed together. He stated that consideration should be given that this commercial and residential zoning should be changed ultimately to industrial zoning since it is all within the same access road in close proximity to one another. He pointed out that anytime there is an application for change we will get the same response with those zone requests. The difference here is that the future land use is the plan adopted by the community does support a commercial designation. The change to commercial zoning designation coupled with commercial use, although light industrial is the only designation property to the northeast, those are the reasons along with direct road frontage. Any development will have to get a plat potentially at that time and would be required in the zoning standards, there would have to be some type of head-row or fence. That would be another application. I don't think there is any easy simple answer in this case. This area has always been a mesh of different uses and we here are today trying to move forward and then, there's conflict."

Commissioner Liepitz commented that the current status is uncomfortable from a planning perspective. I don't think you would draw it up this way if you were to start fresh but that's not the question. Do we extend the problem further east is the challenge, closer to residential?"

Planner Van Dyke stated that he is not sure that he sees it as a problem moving east, rather, it's fair. Commercial uses have just as much property rights as the rest of the area and the plan for the area is commercial. When you have commercial adjacent to residential, again, just going solely off the plan for the area - that's what the Planning and Zoning Commission is to take into consideration. He said that he did not have the public comments when he wrote this, however, there are some strong feelings in opposition that came forward.

Commissioner Liepitz stated that the comments and explanations given were well-taken.

Commissioner Renner inquired of Exhibit 2, future land use, how far does that commercial area go to, to the east?"

Planner Van Dyke stated that it goes to the lower Heart, the dead Heart, then to the east."

Commissioner Renner inquired if that is all now zoned as residential?

Planner Van Dyke stated that is correct. There is some further to the east. There is a large animal veterinary clinic further down the road.

Terry Wetch stated: "You said my property goes to the dead Heart? It does not."

Planner Van Dyke clarified that was the future land use commercial zoning that goes up but he did not know how far that goes. We're not talking about your (Wetch) property.

Planner Van Dyke inquired if there were any more questions for staff at this time?

Chair Robinson inquired if the Commissioners had any more questions.

Planner Van Dyke clarified that with regard to the process before the Commission - this is a recommendation from Planning and Zoning Commission and there will be another public hearing so this is not the end of this discussion. This will then be presented to the City Commissioners who will also hear concerns.

D. Commission action.

Commissioner Frank motioned to recommend approval of the rezone from R7 Residential to CB Commercial as presented for the reasons specified in the findings in Exhibit 4. Commissioner Mehlhoff seconded the motion.

Commissioner Mehlhoff commented that he has reviewed the uses of the CB Commercial and its hotels, motels, churches, those entities that are not high impact businesses. Planner Van Dyke was alluding to the process, that the P & Z is not approving this or saying this is going to be changed to an Industrial lot. When you look at the service groups that are zoned commercial is, it lends itself to the buffer that Commissioner Liepitz was asking for between the residential zoning and whatever use is currently going on out there. He said that with that in mind, is why he seconded the motion.

Upon vote, the motion failed with 4 ayes and 7 nays as follows: Boehm-nay, Klein-nay, Mehlhoff-aye, Haugen-aye, Liepitz-nay, Renner-nay, Frank-aye, Camisa-aye, Vayda-nay, Leingang-nay, Robinson-nay.

Planner Van Dyke stated that since the motion failed, there will be no recommendation from P & Z Commission regarding this matter.

Commissioner Liepitz motioned to recommend denial of the application of the rezone from R7 Residential to CB Commercial. Commissioner Leingang seconded the motion. Upon vote, the motion passed with 7 ayes and 4 nays as follows: Boehm-aye, Klein-aye, Mehlhoff-nay, Haugen-nay, Liepitz-aye, Renner-aye, Frank-nay, Camisa-nay, Vayda-aye, Leingang-aye, Robinson-aye.

2. A request from Bismarck ND SU RE, LLC, for consideration of a preliminary plat, final plat, and zone change. Proposed name of plat is Foundation Addition. Said property is Lots 24-27, Block 2, Pioneer Industrial Park 1st Addition in the NW ¼ of Section 22, Township 139N, Range 81W; in the City of Mandan, Morton County, North Dakota.

A. Staff report

John Van Dyke, City Planner, presented.

The applicant seeks to combine four (4) lots into one (1) and rezone the property for the purposes of commercial automotive sales (See Exhibits 1 and 2 showing the preliminary and final plats). The property is located on the east side of 8th Ave. NW and north of I-94. The development abuts 8th Ave. NW, a collector road, and Old Red Trail NW, an arterial road. The future land use for the property is commercial and the CB Commercial zoning sought conforms to the land use plan for the area. The adjacent property zoning is MC Industrial and CC Commercial. He reported that staff is supportive of the preliminary and final plats,

along with the rezone from RM Residential and MC Industrial to CB Commercial based on the findings in Exhibit 4.

The Engineering and Planning Department recommended approval of the preliminary and final plats, along with the rezone from RM Residential and MC industrial to CB Commercial based on the findings in Exhibit 4.

Commissioner Renner inquired as to where are they going to get access to that property - off 8th? Or off Old Red Trail?" Planner Van Dyke clarified that they will be coming off 8th and the plans were provided to the Architectural Review Commission. He showed the plat again and stated there is a 30 ft. wide access easement and pointed out on the map the area they will be using.

Commissioner Camisa stated that when looking at the original plat of Pioneer Industrial Park, the land directly to the left boundary, Lot 44, it looks like it is owned by Montana Dakota Utilities. He said that when trying to figure that out from examining public records of that lot, he didn't see any particular easement of record. When trying to figure out access if coming off 8th for that lot, where that comes from? Looking at the original plat for Lot 44 it does mention an easement on the plat but when looking at the plat there is no dedication. He said it's not clear if that access is dedicated and what the easement is for the lot. Down the road if the City at some point has to impose a no access line along Old Red Trail, it seems, going forward with these major roads, they may required to have an access point that they don't have, and that could be a problem.

Planner Van Dyke acknowledged that being pointed out and stated that he wants the applicant to be aware of Commissioner Camisa's concerns regarding that access noting the possible lack of language on the previously platted property that had access to this property. He said he is not sure if the applicant is on line, but did take note of that and recommended double-checking on that. If they want it to interfere it may cause issues with the business.

Brian Zuroff stated that he is with Mountain Plain Consulting, the consultant representing the applicant. He said they are aware of the current issues with that access in the easement and they are working with WDI and MDU Resources to resolve any of that. They do not have any real issues with utilizing that easement but it's more so that main WDI transmission line. He said they are working with them to assure that there is a structural component to the access or whatever that cross is over the utility infrastructure. They're okay with us utilizing it, it's just they want to make sure that the infrastructure is designed appropriately. He said they have the go-ahead from them to use the easement.

Chair Robinson inquired if there were any other questions for staff at this time?

Planner Van Dyke said that when looking at Lot 28, he does not think there is a tower on this property rather, the tower is further to the east.

Brian Zuroff inquired if the water tower still exist anymore? There is an abandoned tower currently standing on Lot 28, about 15 ft. north of the property line about where that bearing is, that tower sits north of the property line for that, and that tower is not in use anymore. He said that when discussing this with Public Works Director Bitz, he said that was the old system for the water tower and has been abandoned since that tower was removed.

Commissioner Camisa inquired about water run off and would like to know where the water is going to flow.

Brian Zuroff explained that the site right now currently splits where the water drains off about where the house previously sat. It drained to the east from that point then west, the highpoint of the hill. They are in the process of removing the house. The overall plan is to maintain the same area for that. The area to the east side has an underground detention system for all the drainage on the east side where there is rate control underground piping to hold the detained water back to pre-existing conditions. On the west side of this property there will be a storm detention pond with a rate control structure in it to detain all storm water. He said that he has submitted a storm water management plan with the City and that all of the post construction of the design does meet the pre-construction conditions as required by the city.

Commissioner Camisa stated that compared to the current water run off there is quite a bit of water that is already heading towards 1806. How much more do you think we are going to be adding in water flow going in that direction? There is a lot of land in that area that is saturated so the concern is how much more will we be adding? That detention pond that was mentioned and flows to the east, is there going to be an opportunity for the water to flow beyond that?

Brian Zuroff stated that there will be no additional flow of storm water to the east or to the west of that area. The rate and flow structure were designed as such so that the post construction flows are equal to or less than the pre-construction flows. Basically, what that means is that we are not adding any additional storm water flows off site. When a big area like that is paved there is an increase internally with those flows with the run off because of eliminating the grass area and putting pavement in there. With the construction of the underground infrastructure on the east side and the pond on the west side, those flows have been taken into consideration. All the surface drainage has been designed to meet a 500-year event. That means if something would plug up or the system would be overburdened by a 500-year event, there is curb and gutter surrounding the entire site to be capturing that in addition to the underground detention on the site. Essentially there should not be any additional flow leaving the site.

Chair Robinson inquired if there were any other comments or questions from the Commission. Hearing none, the meeting was opened for public comment. He invited anyone present or calling in to comment or ask questions.

B. Open public hearing

Chair Robinson asked if anyone had any questions or comment. A second announcement was made for anyone to come forward to ask questions or comments. Hearing none, the public hearing was closed.

C. Close public hearing

D. Commission action.

Commissioner Mehlhoff motioned to recommend approval of the preliminary and final plat of Foundation Addition along with a zone change from RM Residential and MC Industrial to

CB Commercial based on the findings in Exhibit 4. Commissioner Frank seconded the motion. Upon vote, the motion passed unanimously.

3. A request from Eric Belanger for consideration of a final plat to be named Rockwood First Addition (previously called Sunset Ave New First Addition). Said property is part of the N1/2 of the SE1/4 of Section 16, Township 139N, Range 81W.

A. Staff Report

John Van Dyke, City Planner, presented. He stated that this matter has been before the commission several times and it is now ready to be finalized.

Dr. Eric Belanger and Wendy McNichols have submitted the final plat application that contains 8 residential building lots (Lots 1 through 8, Block 1), three lots to be further subdivided (Lot 9, Block 1 and Lots 1 & 2, Block 2), and one lot to be held in undivided interest for the purposes of storm water retention (Lot 10, Block 1) (See Exhibit 1). The preliminary plat was presented to Planning and Zoning Commission (P&Z) on June 22, 2020 and approved by the Board of City Commissioners on July 21, 2020. At that meeting, several changes were required for approval and have been included in Exhibit 2. Red text indicates those that are still need to be addressed prior to presentation to the Board of City Commissioners on September 15, 2020. All can be easily accommodated prior to September 15, 2020 and staff will work with the applicant to make these changes. A development agreement is also required and discussions have been ongoing with the applicant to make any necessary adjustments amenable to the applicant and the City (See Exhibit 3). This will be finalized and presented to City Commission on September 15, 2020 for approval.

Planner Van Dyke stated that staff is recommending approval of the final plat subject to the changes outlined in Exhibit 2 and Development Agreement similar to the one provided in Exhibit 3. He stood for questions.

WBI indicated that they would like the applicant to be aware of an existing pipeline just east of the 8th Ave. NW right-of-way. Moore Engineering will reach out to them directly and work with Director Froseth, Engineering and Planning Dept., to place utilities appropriately.

Engineering/Planning recommend approval of the final plat subject to requirements in Exhibit 2 and entering into a development agreement similar to the one provided in Exhibit 3.

Commissioner Mehlhoff inquired if there any discussion or plans for using storm water for any recreational park uses? Planner Van Dyke replied that this is specific to the surrounding area neighborhood for that subdivision. He said he was not aware of any plans for any recreational use.

Chair Robinson inquired if there were any other comments or questions from the Commission. Hearing none, the meeting was opened for public comment. He invited anyone present or calling in to come forward to comment or ask questions.

B. Open public hearing

Chair Robinson asked if anyone had any questions or comments. He invited anyone present or calling in to comment or ask questions. A second announcement was made for anyone to come forward to ask questions or comment. Hearing none, the public hearing was closed.

C. Close public hearing

D. Commission action.

Commissioner Camisa motioned to recommend approval of the final plat subject to requirements in Exhibit 2 and entering into a development agreement similar to the one provided in Exhibit 3. Commissioner Vayda seconded the motion. Upon vote, the motion passed unanimously.

4. A request from Val Renner for consideration of a special use permit for multi-use shops. Said property is Lot 3, Block 1, Evergreen Heights 3rd Addition in Section 35, Township 139N, Range 81W. Property is located north of 19th St. SW and west of Highway 1806 S.

A. Staff Report

John Van Dyke, City Planner, presented. He stated that Val Renner seeks to construct multi-use shops for commercial purposes related to residential contractor businesses and others as allowed by Ordinance 1313 Section 3 Subsection 2. (See Exhibit 2). The multi-use shop structure will include six (6) units as shown in the application documents included in Exhibit 1. Ordinance 1337, adopted by the Board of City Commissioners on April 21, 2020 requires a special use permit for multi-use shops. The use standards are provided in Exhibit 3. This will address many issues presented by these structures.

Per 105-1-13 (d) (6), in order to provide a favorable recommendation, the Planning and Zoning Commission or a final decision by the Board of City Commissioners should consider eight (8) items provided for in Exhibit 4 for reference. In evaluating these criteria, staff finds the following:

- The proposed use is in harmony with the purpose and intent of this chapter subject to the restrictions included in Ordinance 1313.
- The proposed use is in conflict with the future land use map of the City; however, this deviation was evaluated by Planning and Zoning Commission and the Board of City Commissioners in late 2019 within Ordinance 1313.
- The proposed use will adversely affect the health, safety, and general welfare of the public and the workers and residents in the area without additional conditions as provided below:
 - External, structural illumination shall be downward and inward facing so as to avoid glare into the adjacent residential properties. Onsite property lighting shall be downward facing for the same reason.
 - Noise-producing business-related activities, other than those of an office or clerical nature, are limited to between 6:00 am and 10:00 pm so as to avoid creating a nuisance for adjacent residential properties. Nothing in this condition permits exceeding the requirements of the MCO pertaining to noise nuisances.

- The proposed use will not be detrimental to the use or development of adjacent properties or of the surrounding neighborhood if the additional restrictions are included as noted in the previous bullet point.
- The proposed use will not result in the destruction, loss or damage of a natural, scenic, or historic feature of importance to the community.
- The proposed use includes adequate screening or buffering to compensate for any departure that the proposed use has from existing adjacent uses.
- The proposed use includes adequate provisions for those individuals who are mobility impaired. The Building Code will address any issues related to mobility and accessibility.

The applicant has been approved by the Mandan Architectural Review Commission for the landscaping, layout, and façade elements of the project.

Staff Recommendation

Planner Van Dyke stated that the previous evaluation of the use at this property through the zoning and platting of the property was finalized in November 2019 and that City staff has a few concerns regarding the appropriateness of the use at this location. Noise and lighting should be mitigated to the fullest extent possible due to the abutting residential neighborhood and restrictions to this effect are included in the special use permit provided in Exhibit 6. The noise restrictions align with information provided by the applicant in Exhibit 1.

Planner Van Dyke recommended approval of the special use permit for a multi-use shop as provided in Exhibit 6 based on the findings in Exhibit 5. Engineering and Planning recommended approval of the special use permit for a multi-use shop as provided in Exhibit 6 based on the findings in Exhibit 5.

Commissioner Renner pointed out that in the engineering plans, on Sheet 3 of 5, @ No. 2, it states that the owner will submit a storm water Management Plan to the City of Bismarck. He questioned if that relates to this matter. Planner Van Dyke stated that it may take some time to get approved and stated that the City of Mandan has received one.

Chair Robinson inquired if there were any other comments or questions from the Commission. Hearing none, the meeting was opened for public comment. He invited anyone present or calling in to come forward to comment or ask questions.

B. Open public hearing

Chair Robinson invited anyone present or calling in to comment or ask questions. A second announcement was made for anyone to come forward to ask questions or comment. Hearing none, the public hearing was closed.

C. Close public hearing

D. Commission action.

Commissioner Camisa motioned to recommend approval of the special use permit for a multi-use shop as provided in Exhibit 6 based on the findings in Exhibit 5. Commissioner

Klein seconded the motion. Upon vote, the motion passed with 9 ayes, 1 nay, 1 abstained, as follows: Boehm-aye, Klein-aye, Mehlhoff-aye, Haugen-aye, Liepitz-aye, Renner-abstained, Frank-aye, Camisa-aye, Vayda-aye, Leingang-nay, Robinson-aye.

5. A request from Kennedy Grensteiner, A Child's Garden, for consideration of a special use permit to operate a daycare at 1710 E Main Street. Said property is the East 105' of Lot 1 (less N. 146') and all of Lot 2, Block 1, Eastwood Acres 4th Addition of Section 26, Township 139N, Range 81W.

A. Staff Report

John Van Dyke, City Planner, presented the following:

Kennedy Grensteiner (operator) seeks a special use permit for a daycare center located at 1710 East Main Street, located east of Culver's in Mandan. The request for a special use permit occurred after-the-fact, as the operator opened at this new location in Spring 2020. The operator did not know that a special use permit was required.

Background

The property owners (separate from the operator) received funding toward a remodel of the structure in 2019 via the Storefront Improvement Program. All commercial development in the City is subject to architectural review by the Mandan Architectural Review Commission (MARC). At the February 12, 2019 MARC meeting, the applicants had noted a number of possible uses such as daycare center and general office space. It was not clear at that time what the space would be specifically used for. At that time, Principal Planner Van Dyke contacted the property owner to call and discuss with the Planning Department to make sure that a daycare (or any other business) at this location would be allowed. The Planning Department was not contacted subsequently to determine whether or not this was an allowed use at this location.

The property owners applied for and ultimately obtained a building permit on December 31, 2019 for the remodel of a portion of the building to accommodate a daycare center. A certificate of occupancy was issued on April 4, 2020. The daycare center operator was issued a state license for a daycare center for up to 118 children on April 6, 2020 following the necessary fire and health department inspections (See Exhibit 1). The daycare center opened shortly thereafter.

In mid-June, 2020, the City received a complaint of noise coming from the daycare. That is when the Planning Department was notified of the use and spoke with the daycare operator and complainant. An application was received in late June, 2020, missing the deadline for the July 2020 Planning and Zoning Commission (See Exhibit 2). As part of the state licensing process, the Department of Human Services advises each applicant to inquire with the City to determine if any permits are required (See e-mail thread involving applicant, staff, and Department of Human Services in Exhibit 3). The Planning Department was not contacted or involved in any discussions with the applicant or applicant representative.

Public and Department Comments

Planner Van Dyke stated that at the time of writing this report, staff received four public comments and one department comment. Public comments and a corresponding map are

included in Exhibit 4 and a comment and evidence of community need for daycare services is provided by Ellen Huber, Business and Communications Director (See Exhibit 5).

The two property owners noted the primary concern as noise coming from the daycare. One additional public comment that was received (address not provided in commenter's e-mail) noted concerns regarding potential safety issues as the kids are escorted from the daycare to Teamsters Park with no benefit of a sidewalk. One property owner indicated support of the daycare facility, noting the noise is preferential to other commercial noise in the vicinity.

Ellen Huber, Business and Communications Director indicated the need for daycare services in Morton County and provided evidence via the 2019 Child Care Profile produced by the Child Care Aware® of North Dakota program, which shows a potential demand of nearly 4,500 additional child care spaces. Director Huber also indicated support for Mandan businesses and its workforce by providing sufficient childcare services.

Planner Van Dyke stated that with regard to the lack of sidewalk on Shady Lane, he said that Engineering and Planning Director Froseth indicated that the City of Mandan is continuously identifying gaps in the pedestrian system and they are working on filling these gaps as they are identified and determined to be necessary. He said that Director Froseth does not believe the special use permit should be contingent on the installation of a sidewalk.

Evaluative Criteria

Per 105-1-13 (d) (6), in order to provide a favorable recommendation, the Planning and Zoning Commission or a final decision by the Board of City Commissioners should consider eight (8) items provided for in Exhibit 6 for reference. In evaluating these criteria, City staff determined the following:

The proposed use is not in conflict with the adopted plan of the city. A daycare with up to 118 children is a commercial use and aligns with the commercial designation per the future land use plan for this property.

The proposed use is in harmony with this chapter contingent on meeting the minimum use standards as provided in Exhibit 7. In particular, daycares are not just allowed in commercial or residential areas or industrial. They are not restricted to a certain zone. Any daycare over twelve (12) requires a fire special use permit. Typically, home-based daycares are limited up to twelve (12).

Additional operational restrictions are required in order to not adversely affect the health, safety, and general welfare of the public and workers and residents in the area related to mitigating noise produced by the outdoor play area. Staff recommended the following additional operational restrictions:

- No more than fifteen (15) children to be outside utilizing the onsite play area at any one time to mitigate noise.
- The play area is required to be utilized no earlier than 9:30 am and no later than 7:00 pm to mitigate noise.
- A ten (10) foot buffer is required along the east and west property boundary of the play area that adjoins the residentially used properties to mitigate noise.

- Without the additional operational restrictions, the use will be detrimental to the use or development of adjacent properties or of the surrounding neighborhood.

The proposed use meets all appropriate regulations for the district in which it will be located.

The proposed use will not result in the destruction, loss or damage of a natural, scenic, or historic feature of importance to the community.

The proposed use should include a ten (10) foot buffer to the east and west sides of the play area to compensate for the departure that the proposed use has from existing residential adjacent uses.

The proposed use includes adequate provisions for those individuals who are mobility impaired.

Staff Recommendation

Planner Van Dyke reviewed the use standards in Exhibit 7. These are required to be met at a minimum to obtain a special use permit and are included in the Special Use Permit for Daycare Center provided in Exhibit 8. Staff also recommended:

- No more than fifteen (15) children to be outside utilizing the onsite play area at any one time to mitigate noise. Planner Van Dyke stated that Kennedy Grensteiner (Operator) contacted him regarding the threshold and requested that it be relaxed to twenty (20), the largest class size, the largest allowable ratio is twenty (20). The size of fifteen (15) would mean they would have to double up on that particular room. So, operationally it would be somewhat difficult. She reported that she has had upwards of thirty (30) children outside at one time, but this would ensure that at most, it would be twenty (20). The plan would be to split the classrooms to assure there would not be over the maximum of twenty (20) out there at any given time.
- The play area is required to be utilized no earlier than 9:30 am and no later than 7:00 pm to mitigate noise.
- A ten (10) foot buffer is required along the east and west property boundary of the play area that adjoins the residentially used properties to mitigate noise.

Planner Van Dyke recommended approval of the special use permit and corresponding conditions of approval as provided in Exhibit 8 based on the findings in Exhibit 9. He stated that he supports the use permit as presented subject to mitigating the issues related to size. All staff comments are included as exhibits and referenced within the staff report.

Engineering and Planning recommended approval of the special use permit for a daycare center with conditions as provided in Exhibit 8 based on the findings in Exhibit 9.

Commissioner Renner inquired about the noise and the number of children that could be outside and what recourse do the neighbors have if the number is limited to twenty (20) and the City still receives complaints of noise?

Planner Van Dyke replied that the City of Mandan has a Noise Ordinance and that the Ordinance is being re-evaluated by the City Prosecutor and the Police Department in order to update it to one that is more enforceable due to having issues in enforcement in other cases. Regardless, the Noise Ordinance will apply to the daycare.

Commissioner Camisa requested information pertaining to that area on Main Street in regards to the homes, as to when that area was designated as commercial or residential, or vice-versa?

Planner Van Dyke reviewed the zoning map to check to find the date when it was zoned or rezoned and indicated that information was not available, but reviewed to see what plat preceded one another. That may be a question for the property owners to review their abstracts of title to find out when their properties were permitted. Based on the plat reviewed, many of the commercial structures pre-ceded the plat of 1973. He said that it is clear on the map, that the structures in this area have been used for commercial purposes for a long time.

Chair Robinson inquired if there were any other comments or questions from the Commission. Hearing none, the meeting was opened for public comment. He invited anyone present or calling in to come forward to comment or ask questions.

B. Open public hearing

Chair Robinson invited anyone present or calling in to comment or ask questions.

Tim Krueger a resident at 105 Shady Lane, came forward and stated: “My wife and I have resided in our home for about 20 years. I sent Mr. Van Dyke a letter with some pictures of our patio and stuff that we built for our retirement. Also, I had an older fence there and when Kennedy started this daycare, I figured that I would put a new fence in. It’s not the kids I’m complaining about and I’m not a curmudgeon but when one kid starts screaming, another one starts screaming that it gets to the point we can’t even open our windows. I checked it out and seen that it was commercial, at 65 decibels, which I think is a little low. I even bought a meter and it’s spiked at 90. It’s usually 75, 80 or 85. He presented pictures of his new fence that has marks on it and gauges. I caught one little kid hitting it with branches. So I tried to get him to stop and to get the attention of an attendant. The attendant said ‘It’s hard to keep an eye on this many.’ They have little carts that run into the fence. The worst, she called the cops on me a couple times because I holler across the fence and said to please knock off the screaming. Sunday, I went out there because it was time to seal and stain the fence. I walked over and looked down the fence, they took crayons and chalk and they drew on my fence. I don’t understand how people can let that go without stopping them. It’s a 60 ft. fence and there are some of them this big and they’re just like marks all the way down. I hope it gets cleaned up. There’s more damage. There are more pictures on my wife’s phone. I called the Police Department and Officer McKinley took pictures of all this mess and he also spotted some more gauges on it. I don’t want her to move someplace else but the noise has to be taken care of. I’m not a curmudgeon and I don’t want to move someplace else, but the noise has to be taken care of, and they need to keep away from my fence. They use to have two big plastic playhouses and there are pictures of them too. We’re in the center of the lot and now they drug them right next to my fence so the kids can play there. I don’t understand that. Those big ones right there. They aren’t in the middle anymore, they’re right next to my fence. That’s all I have. Thank you.”

Tracy Bower, came forward and stated: “I’m neighbors with Tim and Terry Krueger and I live at 103 Shady Lane. For the most part, I’m gone during the day but I was working from home in March and the noise is loud. There are children out there and they are screaming very loud. I know he mentioned about having a buffer fence 10 ft on each side but that will not leave very much play area for the kids. Besides that, who will take care of the yard between the two fences? There are lots of trees and leaves and branches that fall all the time. Is anyone going to take care of that area? If not, garbage, rodents, bugs will accumulate in that area in between the fences. We already have an alley way because we are by the southside of the building. My husband has gone over there several times and seen where they laid wood up against our fence. There are toys sitting there that they haven’t utilized. When they moved in they left them sitting there. That’s a reflection on our property. I am thankful they did something with the building, it looks great, but there is still a lot of stuff there that doesn’t look great. They poured concrete and they have not finished it. The boulevard is still torn up from where they did the parking lot and maybe that has nothing to do with the daycare business, it’s the property owner who has to take care of that. Something definitely needs to be done in that area. It can’t stay that way and should be cleaned up and finished. Somebody is going to be responsible for that buffer area, because we can’t be.”

Kennedy Grensteiner came forward to speak and stated: “I am the daycare owner. I have no intentions of making their life harder. I’ve cooperated with everything. When I moved in there, I picked up leaves and cleaned up the play area. It took me a day and a half and I did it because I didn’t want to cause any problems. I have also told the police officers that I can limit the amount of kids that go outside. The kids play. The girls scream. Every time they do, we ask them to stop. We try our hardest and they are children. I will limit the times they go outside. I have two playschool rooms to let them play in. My largest class is 20 so if I bring 15 out it will leave whoever is outside over the 15 ratio and I can’t do that either. I am trying to provide a good daycare for the community and we’ve had a 5-star rating for almost 5 years and it’s a great service for the community. There’s preschool, there’s learning time for all the children. I’m willing to work with whoever I need to work with to be able to make sure everyone is content as they were before we moved in. My intention is not to have it be a bad thing for the community. That’s not what I’m trying to do. I’m trying to offer a great daycare facility for Mandan because we don’t have any other than two smaller daycares. Parent and kids need a good daycare. You don’t find that a lot.”

Chair Robinson inquired of Ms. Grensteiner if she is at full capacity. Ms. Grensteiner replied: “No, I’m at about 75%”.

Lloyd Derringer came forward and stated: “I’m one of the workers for PK Holdings. To your point, I didn’t get your name. To the point of items along the fence and the right of ways and the boulevards, yes, that is work in progress. As we all know, summer construction, no excuses, but it took 3 weeks longer to get the concrete done only because you want to spend more money for concrete, rather than putting down asphalt. To make the building and the parking lot look nicer and professional, since long term concrete will stand up longer. We, the owners of the property, are trying to do what everybody wants. We want to make something better and an improvement for Mandan. I never met Kennedy before she started the daycare, but I admire her enthusiasm and her youth, energy and ambition and I also hear and understand the complaints of the neighbors with the loudness heard when children are playing. I don’t think anyone is trying to purposely make things worse or difficult for anyone. It’s discouraging when people have to resort to calling on the police to take care of these types of matters. We have some work to done the property. We have some

metal posts to be installed. We have greenery to put in the corner and we have to get the boulevards and street access landscaped in order for the water to run off for the greenery space to be done. We are taking care of the grass but there is still some work to be done where the concrete was poured. We are trying to do the best we can to improve Mandan and to get businesses here. Everyone has to agree that driving in to town and seeing the building and the concrete there and the lighting installed. MDU put another light in the corner that will have to be adjusted so it does not shine directly into one of the neighbor's bedrooms."

AJ Renner, a Mandan resident, called in and stated: "My kids attend that daycare. We've been with Kennedy for 5 or 6 years. From where she started, on the west side of Mandan, in the old hospital, which was right across from housing as well. She's worked her way up and done a great job and a new building is amazing. We love the classrooms that are very nice and new. The parking lot is new and everything about the daycare we enjoy. Mandan has very little daycare facilities available. There is very little daycare besides private daycares. Trying to shut this down is going to affect a lot of parents. Mandan could use more daycares. There are a lot of kids and the schools are growing. We are short daycares. It was difficult when we lost our private daycare the first time the first year, to try to find someone and we were fortunate to find Kennedy. We've had very good luck and we enjoy the place."

Tim Krueger came back to the podium and stated: "I'm not here to oppose this thing. It's a good thing. What I would like to see is something to be done with the noise and something to be done with my fence. It's marked up now and I can clean it up before I start staining it. I am not opposing this daycare. They do a good thing and we need them. If you could just limit the kids and the noise and clean my fence up. Thank you."

Chair Robinson asked if there were any other comments or any questions or comments from the Commission.

Commissioner Camisa inquired with regards to the special use permit recommendations from staff - were there any issues raised when moving the limit to twenty (20)? And with regard to the buffer, are there any State of North Dakota Health Department requirements for play yards? That would even be open to some kind of natural buffer that might be allowed by the Health Department to create that buffer? Then we don't have the issue of having fences on no man's land, to be created between them, and that might even be changed by the property owned by the daycare.

Planner Van Dyke stated that as far as raising the limits of the children permitted at the daycare, there will be a higher likelihood there will be more noise. In discussions with Kennedy, there could be 25-30 kids on the play yard at one time. There is a maximum of 35 children in an outdoor play area at one time and that's what they are permitted for. The west property boundary already has a 10 ft. buffer, a fence with a shed or some other delineation preventing the kids from going over. On the east side, that buffer could be anything such as a hedge row or a 4 ft. fence that is an obstacle to prevent the children from interacting within that 10 ft. buffer. But not to create the no man's land is not the intention. There is already a similar 10 ft. buffer with a fence but they are still occupying and putting other equipment in a shed as outdoor storage. He wanted to provide the flexibility to the operator as to what her layout is and how she can rearrange and accommodate that requirement that clearly the purpose is to exclude the kids from that 10 ft. play area. So however she needs to accomplish that is the goal. The purpose of this is to put some restrictions on and to mitigate on how to keep the area activity from flowing into the neighboring property. It's not to be punitive for the operator, rather, it's to have some harmony with those in this area. The max of 20, he

said that he is not opposed to, noting it is hard to determine the noise level, because all it takes is one or two kids to be problematic. It can be up to the operator to ensure compliance and for the kids to not be out of control. This is an operational activity and the City will have to regulate the quantity. With the 10 ft. buffer, it can be permitted up to 35 children for that play area, but still have room for 20 kids. Planner Van Dyke stated that he does not anticipate problems with meeting those outdoor requirements as required by the Department of Human Services.

Commissioner Camisa commented that daycare services are needed in Mandan and the testimony heard supports that. He stated we need to be able to find some compromise in between and he thinks that by reducing the yard by @ one-third will help with the noise and a buffer along the side should help mitigate some of that noise. Going forward, he stated he would be open to approving a special use permit for the daycare with a restriction of 20 students/kids. That will provide some flexibility to operations and with the flexibility with the boundaries that is an acceptable compromise. Is anyone thinking of anything to the contrary of what has just been recommended? This appears to be a reasonable solution. This is a service Mandan really does need. He extended a thank you to Kennedy for opening her business and accommodating the parents and cooperating with the property owners nearby.

A second announcement was made for anyone to come forward or has anyone dialed in who would like to ask questions or comment. Hearing none, the public hearing was closed.

C. Close public hearing

D. Commission action.

Commissioner Camisa motioned to recommend approval of the special use permit for a daycare center with conditions as provided in Exhibit 8 based on the findings in Exhibit 9 and to change the maximum number of students/children from 15 to no more than twenty (20) children. Commissioner Klein seconded the motion.

Commissioner Renner inquired, referencing Exhibit 7, where it talks about daycare center use standards, under No. 3, it says that for a facility catering to children, a fenced outdoor play area of not less than 75 sq. ft. per child shall be provided that is located no closer than 10 ft. to an adjoining residential lot. Is the daycare center basically using the Krueger's fence as their fence? And, who sets this standard? If this follows state regulations and if the state looked at this how did this get approved for daycare when there should actually be a fence there? Regarding what Commissioner Camisa said about the no man's land area of 10 feet, Commissioner Renner stated that if there was a fence the daycare provider is suppose to be providing anyway, that would possibly help eliminate some of the problems experienced now.

Planner Van Dyke explained that the square footage is what aligns with state law. No closer than 10 feet to adjoining a residential lot. He said that he doesn't think it is included in state law rather it is from the Mandan Code of Ordinances.

Commissioner Renner inquired if the Krueger fence actually is on the lot line? Should there be another fence, 10 feet away from Krueger's fence? Planner Van Dyke stated he believes the Krueger fence is on the lot line and actually serves as a shared fence right now but the Krueger's put the fence on their side of the property to create the buffer.

Commissioner Renner stated that according to the standards, there is supposed to be a fence there. The other item he brought forward, the way the ordinance is written seems to be an after the fact, already having the daycare up and running before the special use permit was in place. He inquired how this happened. Is there something that the City erred? Or was the information not submitted to the City properly to apply for this? How did that happen?

Planner Van Dyke pointed that out in the background when presented in that it was a shared failure and that everyone in this room can accept some responsibility. The point being, we are all here trying to figure this out and move forward. Commissioner Renner inquired if it was something the City should have done differently? Planner Van Dyke directed attention to the Background information provided and it is clear that operationally there were things that the City can change. There are some improvements to be made by the operator and the property owner that did not occur as well. It was a number of misses from multiple parties. The City could change its processes to assure more communication between departments.

Tim Krueger commented: "A fence, definitely a fence. A hedge row thing. I don't know if that would absorb noise. We can look into something for that buffer area."

Chair Robinson inquired if there were any further questions regarding this matter from the Commissioners or from the public.

Chair Robinson announced that the public hearing was closed at this time. He said there is a motion and second on the table to recommend approval of the special use permit for a daycare center with conditions as provided in Exhibit 8 based on the findings in Exhibit 9, modifying the number of maximum students/children at 15 to no more than twenty (20) children. Upon vote, the motion passed unanimously.

Other Business

1. Brief update on the zoning ordinance rewrite.

Planner Van Dyke reported that within the last couple days he sent out a crosswalk from a zoning work group that Commissioner Frank and Commissioner Camisa has been working on as well as several department staff to evaluate how adjustments can be made to the Zoning Code for it to be more efficient. He sent out articles that were 60-70 pages to be reviewed and approved and he also submitted a cross walk for restructuring and reorganization of the Code. He explained that there is lack of logical placement of certain components and this will help clean it up. That is work in progress and comments were received to accommodate the work group to make those changes. This is merely an update to inform you that the City Code is being worked on. There are three other articles that will need to be changed in the restructuring. An update will be provided when it is available.

Chair Robinson asked if there were any comments or questions from the Commission.

Commissioner Camisa motioned to adjourn the meeting. Commissioner Vayda seconded the motion. The motion passed unanimously.

The meeting adjourns at 7:40 p.m.