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April 24, 2014

Planning Commissioners
Winona, Minnesota 55987

Dear Commissioner:

The next meeting of the Planning Commission will be held on **Monday, April 28, 2014, at 4:30 p.m. in the Council Chambers** of the Winona City Hall.

1. Call to Order
2. Minutes – April 7, 2014
3. Public Hearing – Rezone Request R-1 to B-3
4. Discussion – Draft CUP Ordinance Amendments
5. Air Quality Monitoring for Silica Sand Operations
6. Other Business
7. Adjournment

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Moeller".

Mark Moeller
City Planner

PLANNING COMMISSION MINUTES

DATE: April 7, 2014

TIME: 4:30 p.m.

PRESENT: Chairperson Porter, Commissioners Boettcher, Ballard, Davis, Buelow, Fritz, Hahn, and L. Olson

ABSENT: Commissioner M. Olson

STAFF PRESENT: City Planner, Mark Moeller and Assistant City Planner, Carlos Espinosa

The meeting was called to order at 4:30 p.m.

Approval of Minutes – March 10, 2014

The minutes from the Commission's meeting of March 10, 2014 were reviewed. Following a motion duly made and seconded, the minutes were approved as submitted.

Public Hearing – Rezone Request R-1 to R-1.5

Chairman Porter introduced this item and concluded by calling on the applicant, or his representative, to present the petition.

Mike Rivers, 80 Forest Oaks Court, noted that he was the developer of the Valley Oaks Subdivision. He explained that following preliminary plat approval of the total development in 1986, six final plats, representing various parts of the development, have been approved since that time. Given this development, 195 housing units presently exist within the development. Along with home sites, the development included two parks, both of which have fully developed since that time. Additionally, his company had constructed an entrance sign into the development.

Mr. Rivers explained that all of the various final plats for the development included restrictive covenants laying out expected developer performance standards (beyond City zoning) within each phase. He further explained that the intent and purpose of the full development was to provide a mix of housing. Given this, initial zoning of the development included R-1, R-1.5, and R-3 classifications. Of these, R-3 zoning was applied at the immediate entrance into the development while R-1.5 sites were located near the center of the development on the west and east sides of Valley Oaks Drive. Of these, the R-1.5 district that was located at the westerly side of Valley Oaks Drive has since been rezoned R-1, and includes single family detached homes.

A seventh final plat, including 39 single family detached homes, was approved in 2003. Although this was to be the last platted development within Valley Oaks, the plat was

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not recorded. Including 21.57 acres and following recent re-evaluation, he has been working with a LaCrosse developer in proposing that the use strategy of this area be revised to include twin homes rather than single family detached structures. Although the revised plat for a twin home development has not yet been prepared, he envisioned that the maximum number of units would be increased to 76.

At this point, Mr. Rivers called on Dick Barbour, the proposed developer of the project from LaCrosse, to provide additional comment.

Mr. Barbour noted that he has been in business within the area of LaCrosse for over 32 years, and has significant experience in twin home development. He stated that this housing style is a desired option to single family detached homes by baby boomers.

As outlined by Mr. Rivers, the intent of this request is to facilitate twin home development within the Valley Oaks Seventh Addition. He stated that on March 15th, he and Mr. Rivers had hosted an open house for Valley Oaks residents to explain the purpose of the request and to outline project scope. From that, he understood that neighbors did have concerns of potential increased traffic flows, storm water drainage, and property values.

In defining the revised project, he noted that streets throughout would have standard widths similar to what currently exists within Valley Oaks and that sidewalks would be constructed to serve all lots.

In describing proposed units, he envisioned that each would have a minimum of two bedrooms and baths while some may have basements. Of these, some may be finished, while others may be customized based upon ownership. He stressed that in terms of curb appeal, each would be designed to look differently from the street. For those concerned of the impact on property values, he encouraged a visit to the Waterford Subdivision which currently has a blend of twin home and single family detached housing. Within that development, he felt this mix worked quite well.

Mr. Barbour emphasized that he and Mr. Rivers had made contacts to local realtors and citizens throughout the community. From those discussions, it was apparent that there was a strong interest in this style of housing. He further noted that the development would be subject to specific covenants and bylaws. All that would be enforced by an appointed/elected committee of the homeowner's association, created for the development. He further stress that the subsequent final plat for the development will meet all City standards.

Mr. Barbour concluded by noting that, if approved, the development would provide new tax base to the City, and given a semi retired focus, will not add pressure to the existing school system. He stated that he would like to begin the project this summer. He further added that the first two lots into the Seventh Addition would be retained for single family detached purposes. With this, the "transition" to the twin home concept would occur within the development.

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Chairman Porter then called for Commission questions of the developer.

Commissioner Boettcher asked if the development would include single family homes. Mr. Barbour replied that although such use would be permitted within the R-1.5 District, that concept would be up to Mr. Rivers.

In response to a question from Commissioner Davis, Mr. Rivers replied that he and Mr. Barbour are not, at this point, looking at restricting age limits to 55 and over. Although this is the age group which would typically take advantage of such housing, it would be open to any age group.

Commissioner Fritz asked for clarification of the notice that was provided of the meeting. Carlos Espinosa, Assistant City Planner, responded that as with all rezone public hearing issues, notice was provided to property owners within 350 feet of the site. This notice, along with that required to the newspaper, had been provided.

In response to a question, Mr. Barbour noted that although public transit would not serve the area, the homeowners association could assist those that need that kind of service.

Chairman Porter clarified that the first lots within the development would be set aside for single family detached purposes. Mr. Barbour said that this was so. Additionally, he noted that Outlot A on the approved final plat would continue to be used for its intended purpose, that being storm water management. In addition to this, he envisioned that the storm water management system would include rain gardens throughout.

Chairman Porter stated that he is aware of similar developments throughout the area that are currently struggling. Mr. Barbour replied that he felt the need was very strong in Winona for this type of housing, and was confident it would go over quite well. In response to a question by Commissioner Davis, Mr. Barbour again replied that the intent with visual quality of units was to create various types of front yards. In part, that will include locating garages so that not all face the street. At this point, he referenced a number of pictures of current units he has developed showing this form of concept.

Commissioner Hahn asked how, given demographic data and economic research, quickly Mr. Barbour anticipated units to be absorbed. In response, Mr. Barbour noted that he and Mr. Rivers have received a fairly extensive amount of interest in this development. Given this, it was his opinion that full build out would occur quickly.

Chairman Porter asked Mr. Barbour for his opinion on the anticipated impact on existing homes within the development. Mr. Barbour replied that, although a stated concern of the neighborhood, he did not feel that the construction of twin homes would compromise property values. Commissioner Davis concurred with this generalization.

Mr. Barbour further noted that covenants would require the planting of trees within boulevards throughout the development.

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Chairman Porter stated that Mr. Barbour had made a reference to the County Planner in his notes. Mr. Barbour explained that he has worked with Jason Gilman extensively in the past in the Onalaska area.

Mr. Rivers stated that it was very important that proposed twin home units look visually different. He fully supported this and emphasized that this is an item that would be included within covenants for the development. He further noted that the area which now includes Shady Oak Court was originally slated to be a multiple family structure phase within the development. He also emphasized that the mix of housing styles within the Waterford development does not appear to have been a problem to property values in that area. He further felt that future residents would upgrade to higher quality finishes in units. These units would be of high quality.

There being no further questions of the developers, Chairman Porter called on Mr. Espinosa, Assistant City Planner, to provide a summary of the staff report. Mr. Espinosa then summarized the staff report as found on Exhibit A of the permanent minutes. In concluding, the report found that:

1. There was no error or oversight in the original R-1 zoning or the rezoning of the parcels in question.
2. Adjacent land uses have not changed significantly since the original zoning.
3. Potential uses of the R-1.5 zoning would not impose "undue hardship" on surrounding properties.
4. In addition to the petitioner, the proposed rezoning benefits the subdivision's housing diversity in conformance with original plans for the area.
5. Because the Comprehensive Plan generally supports the request, the proposed rezoning should not be construed as spot zoning.

Given the previous, Mr. Espinosa outlined the following options to the Commission:

1. Recommend approval of the request, as submitted.
2. Recommend denial of the request. If denial is recommended, specific reasons should be given. These reasons should pertain to the potential uses of the proposed zone.
3. Recommend modification of the request.
4. Table the item to allow staff time to answer additional questions.

In response to a question from Chairman Porter, Mr. Espinosa noted that although the Comprehensive Plan has designated this area "limited residential", given the staff analysis, it was felt that the proposed R-1.5 district would fit in with the intent and purpose of low density characteristics of the Comprehensive Plan. As such, it had been concluded that the R-1.5 District would be consistent with the Comprehensive Plan. Commissioner Buelow stated that the initial environmental assessment worksheet for this project had called for a total density of 350. As of now, 195 dwelling units had been constructed.

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In response to a question, Mr. Espinosa explained that the Commission's meeting this afternoon was an off meeting. Although it would have been conceivable to hold off until next week to meet, the City may have run into problems with the 60 day rule in doing this.

At this point, Chairman Porter opened the public hearing and called for anyone who wished to speak to present first their name and address.

Ben and Gayle Goetzman, 22076 East Burns Valley Road, stated that although they had no objection to the development as proposed, they were concerned of potential storm water issues that may evolve from additional development upstream of their property. They explained that they are currently located at the intersection of Valley Oaks Drive and East Burns Valley Road and, historically, have experienced significant storm water issues resulting from the development. Although problems have been corrected, their intent this afternoon was to encourage that if development occurs, consideration be given to how that development may impact storm water drainage. It was noted by Chairman Porter that if the rezoning is to be approved, the next step in the development process would be the submittal of a final plat for the development. He presumed that such a plat would include a number of things, one being a comprehensive storm water management plan. Mr. Espinosa responded that this was true.

Tom Wynn, 279 Valley Oaks Drive, noted the following concerns:

- He asked how it was possible to have a public hearing this afternoon when no one knew the hearing was occurring. He did not feel that most neighbors knew the hearing was proceeding this afternoon.
- Although the developer referenced a homeowner association, no such housing association currently exists within the remainder of Valley Oaks. As a result, it was his feeling that restrictive covenants are not being enforced as they should be.

Jim Stier, 53 Oak Wood Court, stated that although a new sidewalk would be built within the limits of the seventh addition, those would not be extended to current sidewalk locations. He asked how these extensions would occur. Mr. Espinosa stated that given discussion with the City Engineer this afternoon, individual property owners would be responsible for this action. Estimate costs pertaining to a sidewalk would be \$27 per lineal foot. Mr. Stier further noted that although utilities in the area appear to be acceptable, he had concerns with storm water drainage and traffic increases.

Steve Kohner, 84 Forest Oaks Court, stated that both he and his wife may be interested in downsizing their home in the near future. Given this, and given that they like the Valley Oaks area; they were fully supportive of the proposal.

Jill Schmidt, 238 Oak Leaf Drive, stated that she too favors the concept and encourages approval of the rezoning.

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Mrs. Wynn, 279 Valley Oaks Drive, questioned the homeowner's association concept in relation to other subdivisions within Valley Oaks. She noted that although the concept appears to be a great idea, it would take a lot of work and persistence in making it happen.

Mrs. John Ayoub, 75 Shady Oaks Court, concurred with the previous comments and noted that a single homeowner's association should provide consistent guidance and enforcement to the entire valley. She further noted that her issue with the development does pertain to storm water management.

There being no further comments from the public, Chairman Porter closed the public hearing.

In response to a question from Commissioner Buelow, Mr. Rivers felt that the dam, that is currently located above the development, would be retained. Again, in addressing storm water management concerns that had been raised this afternoon, additional planning will be undertaken with final plat preparation.

At this point, Commissioner Davis recommended approval of the request to rezone the Valley Oaks Seventh Addition from R-1 to R-1.5. This motion was seconded by Commissioner Olson. Upon discussion, Commissioner Hahn stated that he has significant concerns of the lack of transparency regarding hearing notice. Chairman Porter stated that although he understood this concern, he also understood that the City is, by law, required to provide notice to certain people. If deviations occur, the problem to staff is where these end in that they may never go far enough. Commissioner Fritz stated that he too had concerns with the fact that notice did not extend to others within the valley. He suggested tabling the matter in order to allow additional resident feedback.

Chairman Porter stated that the change could impact many. Many current residents of the valley purchased their lots on an assumption that this area would be developed for single family detached purposes. Given that reliance, he was concerned that that trust would be compromised. He further noted that, in his mind, not all concerns had been properly addressed. When the question was called, the vote of the Commission was as follows: ayes; Commissioners Boettcher, Ballard, Davis, Buelow, and L. Olson; naves; Chairman Porter, Commissioners Fritz, and Hahn; abstaining none.

Chairman Porter declared the motion adopted and referenced the fact that the next step in the process would be submittal to Council for an additional hearing. He thanked those who had taken the time to come this afternoon.

CEQC Meeting

Chairman Porter called on Mr. Espinosa to provide a summary of the most recent Citizen's Environmental Quality Committee meeting. Mr. Espinosa noted that during the Committee's last meeting of February 25th, it had decided to meet on April 8th for its next

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meeting which would be tomorrow. He emphasized that on March 19th, the Environmental Quality Board had approved a final draft of the document entitled "Tools to Assist Local Government in Planning for and Regulating Silica Sand Projects". This document recommends air quality monitoring at silica sand facilities. Given this information, the purpose of the Committee's meeting tomorrow would be to review these recommendations and to provide guidance as to how they may be implemented by the City. Commissioner L. Olson stated that he felt current regulations were adequate and that there was no further need to adopt more local rules of this issue.

Following brief discussion, it was suggested that the next time that the Committee provides recommendation to the Planning Commission; Committee representatives should appear in person.

Commission Bylaws

Mark Moeller, City Planner, explained that the only reason this item had been included on the agenda was that it had been requested by the Chair during the last meeting. No further action of it is needed.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned.

Mark Moeller
City Planner

PLANNING COMMISSION

AGENDA ITEM: 3. Public Hearing – Zone Change Request R-1 to B-3

PREPARED BY: Mark Moeller

DATE: April 28, 2014

BASE DATA

- Petitioner:** Andrew Dahl, on behalf of Automotive Enterprises
- Property Owner:** Cornerstone Community Church
- Location:** Exhibit A. Generally, the church property includes two lots that are located southerly of Highway 14/61, northerly of Lake Boulevard, westerly of the Automotive Enterprises Toyota Dealership, and easterly of the Johnstone's Addition residential subdivision.
- (Note: In accordance with City policy, if re-zoning of the church property is granted, approved site zoning will extend to the center lines of abutting Highway 61 and Lake Boulevard right-of-way. This concept is reflected on Exhibit A.)
- Area:** The church property encompasses approximately 3.43 acres of land while impacted abutting street right-of-way totals approximately 1.2 acres.
- Existing Zoning:** R-1 (One Family Residence)
- Existing Uses:** The easterly lot (1201 Service Drive) includes a church structure (1978), along with associated parking lots and accessory buildings. The westerly lot (1221 Service Drive) is presently vacant.
- Surrounding Land Use/Zoning:** **North:** Highway 61 right-of-way / R-1
South: Lake Boulevard right-of-way/R-1
East: Auto Dealership/B-3
West: One Family Residence/R-1

Requested Zoning:

As requested, the applicant seeks B-3 (General Commercial) Zoning of 1201 and 1221 Service Drive, the present church property, to facilitate westerly expansion of the present auto dealership property.

Neighborhood Zoning History:

The site has been zoned R-1 since adoption of the City's original (1960) zoning plan. Since 1960, although church lands and the Johnstone's residential development (west-platted 1948) have continued to maintain this classification, certain changes in neighborhood zoning/use patterns have occurred. These include:

Northerly of Highway 61

1960-1965 – R-1 to B-2 (facilitated development of what is now the Winona Mall. Sugarloaf Ford dealer and K-Mart properties).

1968 – R-1 to B-2 (Tires Plus)

Actual development of the previous rezoning sites occurred between the 1965-1996 timeframe. Other changes to this area included Vila Street construction in 1992-93, with the traffic light at 61 being added in 1996. This controlled intersection also connects to Service Drive south of Highway 61, providing primary access to the rezoned site.

Southerly of Highway 61

1981 – R-1 to R-2 (One to Four Family Residential) land encompassing what is now the Toyota dealership and townhouse development to the east. A subsequent request to return zoning of this area to R-1 was denied in 1981.

1988 – R-2 to B-3 (Toyota Dealership property) Property initially developed in 1989-1990. The easterly "body shop" structure was added in 2002.

2003 – R-1 to R-3 – affecting 1221 Service Drive (the westerly lot of the current rezoning site). This request, relating to a new funeral home site, was ultimately denied.

2001-2006 – Development of Lakeview Townhome
Subdivision, east of auto dealership site.

Site Description

- Site Topography: As referenced on Exhibit B, the rezoning site slopes downward from Lake Boulevard to Service Drive. The steepest slopes are adjacent to Lake Boulevard right-of-way, with grades averaging 35%. For the remainder of the site, grades moderate to an average of 6%. Exhibit B also shows that, given historic land disturbance activities for adjoining east/west development, the majority of rezoning site surface drainage, including that from adjacent development, is directed through the center of the site, to a low spot at the northwest corner of 1201 Service Drive. At this point, surface drainage is picked up by a storm water catch basin where it is directed to the Highway 61 ditch.

Note: As a side to this discussion, City Code Chapter 68 (Stormwater Management) would require that any “increase” in surface drainage occurring from future development/redevelopment of the site, be managed “on-site” by appropriate stormwater systems. Examples of such systems include holding ponds, rain gardens, or underground retention facilities. These would be certified through the preparation of an overall Stormwater Management Plan that is submitted to the City Engineer for approval with site grading/excavation plans, and prior to site grading activities.

- Vegetation: Although a buffer of trees occupies the slope abutting Lake Boulevard, the remainder of the site would generally be classified as a lawn.
- Soil Classification: Pursuant to the Winona County Soil Survey, land located between Highway 61 and Lake Boulevard, easterly of Johnstone’s Addition, is characterized by the Marshan silt loom soil type. In combination with observed springs within the area, properties of this soil type include a high organic matter, leading to a high moisture content, and poor drainage. Given these constraints construction limitations for most uses are classified as severe. However, as reflected in present development of the immediate area (i.e.: dealership site to the east) development, symptoms of this soil type may be overcome with proper engineering and planning.
- Access: Primary access to the rezoning site is provided by Service Drive flowing from the controlled intersection at Highway 14-61 and Vila Street. This access is adequate to serve any form of development occurring on the site. Along with this access point, a “secondary” point “presently” exists by way of an access/utility easement (reference Exhibit C) flowing from the Parkview Avenue/Johnstone Street intersection to the easterly line of 1221 Service Drive.

Note: Side notes to this discussion include:

1. If present R-1 zoning was retained, the existing utility/access easement through 1221 Service Drive could legally continue to provide free access between Johnstone's Addition and the rezoning site. However, code section 43.37 (b) reads as follows:

"Easements of access or access drives to a use in a nonresident district shall not be located within a residential district."

Under this language, should the rezoning be approved, as requested, the easement "could" continue to provide free access between the rezoning site and Johnstone's Addition. If this action is not desired, the arrangement could be terminated by retaining R-1 zoning of some westerly part of the easement. With this, the previous "restriction" would apply. Along with this, some form of visual barrier could be constructed to prevent inadvertent access between the two points. This system could be designed to provide for access by emergency vehicles, if needed.

2. Given 1988 rezoning approval of the present Toyota dealership site (east), the adopted ordinance included a restriction preventing access between the site and Lake Boulevard to the south.
- Utilities: Current utilities serving the immediate neighborhood are reflected on Exhibit C. As noted, all are covered by appropriate "easements". Sewer and water mains shown are of adequate size to serve future development or redevelopment of the rezoning site. For reference, the sewer easement flowing along the westerly side of 1221 Service Drive has a width of 20 feet. Since the purpose of easements is to protect both the integrity of, and accessibility to underlying utilities, structural encroachments onto these areas would not be permitted. Although nonstructural encroachments (landscaping, lawns, parking areas, etc.) would be permitted, in the event of a utility problem, these features may need to be disturbed to correct the problem.

Current vs. Requested Zoning

Permitted Uses of "present" R-1 site zoning include the following:

- One family dwelling.
- Religious/educational facilities (not less than 40 feet from lot lines.
- Parks (local to national)
- Emergency service, municipal, county, state, and federal administrative buildings (60 feet from lot lines – excluding storage yards and warehouses.

R-1 District Conditional Uses (requiring Board/Commission approvals) include:

- Land alterations (when not accessory to construction of a permitted use).
- Regional pipelines, power transmission lines, transmission towers (subject to section 43.21-regulating use setbacks and heights)
- Residential Retreat Centers
- Bed and Breakfast Homes (max. of three guest rooms)
- Two family dwellings located on lots abutting, or within 100 feet from a less restrictive district (direct access to a primary/secondary thorough fare)
- Hospitals, religious, and charitable institutions (minimum 40,000 square foot lot and 50 feet from lot lines)

Permitted Uses of "requested" B-3 (General Business District) zoning include:

- General retail/service (virtually any type)
- Wholesale, warehousing, and storage
- Automotive services – for sale, display, and repair, including sales lots, repair garages, etc. (no part within 50 feet of an R – residential district)
- Animal hospitals, kennels, boarding (200 feet from any residential district)
- Small animal, veterinary clinics (50 feet from residential district)
- Building and related trades – including carpenter, electrical, or heating shops (100 feet from R-S and R-1 residential districts)
- Printing (100 feet from R-S and R-1 residential districts)
- Bottling works/wholesale bakeries (200 feet from R-S or R-1 districts)
- Miscellaneous trades, including sheet metal or welding shops (100 feet from R-S or R-1 districts)
- Contractors yards (building – 50 feet from any residential district, enclosed storage yards – 200 feet from any residential district)
- Small breweries (100 feet from any residential district)
- Residential use (1-4 family structures – subject to R-2 district standards)

In addition to the previous, as the City's "least restrictive" commercial district, the B-3 classification would permit uses of more restrictive B-1, and B-2 districts. Permitted Uses of these generally include:

- General retail/service – grocery, barbershops, laundrys, etc.
- Offices
- Restaurants
- Service stations with minor repair (50 feet from residential districts)
- Outdoor Advertising
- Motels/Hotels
- Banks
- Trade or Business Schools

- Newspaper Publishing
- Commercial Recreation (200 feet from residential districts)

Note: All B-3 uses are subject to standards requiring that such uses not be objectionable by reason of “odor, dust, smoke, cinders, fumes, noise, vibration, refuse matter, or water carried waste,” and that uses be conducted within buildings except for the incidental display of merchandise, loading/unloading, parking and the outdoor display or storage of vehicles.

ANALYSIS

1. Was there an error or oversight in approval of original (1959) zoning of the site?

No, current R1 zoning was applied to the site in accordance with appropriate State and local enabling laws, existing in 1959. Additionally, this classification was consistent with recommendations of the 1959 Comprehensive Plan calling for “medium density” residential use of the current rezoning site and surrounding area.

2. Have there been changes in area development patterns, since original 1959 zoning that may serve to support rezoning?

As reflected under the Base Data Section (Neighborhood Zoning History), land use patterns immediately adjacent to the site, at its north (Highway 14-61), south (Lake Boulevard), and west (Johnstone’s residential development) sides have remained stable since 1959, while property to the east has been rezoned/developed for an auto dealership. Beyond this immediate neighborhood, land northerly of Highway 14-61 has transformed from a (1959) planned median density residential area, to a highway oriented commercial center.

In addition to the previous, the site, given its relationship to Highway 14-61, has been indirectly impacted by changes occurring within the Highway corridor. The more notable of these including:

- A significant rise in vehicular traffic flow. Given most recent (2011) MnDOT data, the stretch of highway adjacent to the rezoning site, generated an average daily count of 18,300 vehicles per day. This compares with vehicle totals of 3590 in 1958 and 16,800 in 1999.
- As noted under the Base Data Section, the construction of the Vila Street (signalized) intersection in the early to mid 90s, does promote a certain level of “stop and go” traffic noise between it and controlled intersections to the west.

Again, although these factors may be “secondary” to the rezoning request, they may be considered as part of its evaluation.

3. Would potential uses of requested B-3 zoning impose “undue hardship” (relating to noise, odors, etc.) on neighboring properties?

A summary of uses, permitted under current R-1, and requested B-3 zoning was presented under the Base Data Section. As noted from this, requested B-3 zoning would permit an auto dealership use if “any part” of the use is separated from a residential zoning district by a minimum 50 foot wide buffer. Presuming approval of this request, such a buffer would be applicable to the west and south sides. Outside of the buffer requirement, code is silent as to how it should be treated to mitigate incidental (light, noise, and visual) impacts resulting from the dealership use. However, this detail is one that may, along with other specific site development issues, be “better addressed” during the projects site plan review process. It is noted that although the site plan review process is typically administrative, the Commission could request its own formal review in order to ensure that issue details are addressed.

Although this request does relate to a specific/desired use for the rezoning site, the Commission is “traditionally” advised to consider potential impacts of all other uses that may be permitted under requested zoning. In part, this advice is based upon the fact that once property is rezoned, any use permitted under the new zoning class would be possible on the property. As applied to this case, the transition from R-1 to B-3 zoning is significant. As the City’s least restrictive commercial class, the B-3 district would permit any commercial use imaginable, with all bringing varying levels of “impact”. Although staff generally feels that the majority of impacts, resulting from most of these uses, may be mitigated, it cannot guarantee that some unforeseen (permitted) use may surface that generates unreasonable (undue) impacts. With that uncertainty, denial of the request could be warranted.

As an option to a blanket denial, following discussion with the City Attorney, staff is suggesting that the Commission (City) could base its analysis solely on the applicants intended use for the site. Following this analysis, if it was concluded that the use could reasonably be designed to “fit in” with the neighborhood, “contingent approval” of the request could be granted. Under this approach, the effective date of the rezoning approval could be tied to the applicants closing date for property acquisition. The concept might further include a restriction requiring that if a building permit, specifically for, an auto dealership use, is not secured within a twelve month period, zoning would revert to the R-1 district. In this discussion, the Commission might also suggest/recommend various strategies that would serve to mitigate anticipated neighborhood concerns

pertaining to the use. Again, these strategies could be certified during subsequent site plan review.

4. Would the public interest be better served if rezoning was considered within another area?

In part, the purpose of zoning is to achieve the highest and best use of land. If this can be accomplished without compromising neighborhood characteristics, overall positive values (needed land and tax base) result. In this case, the request has been submitted by an auto dealer whose dealership is being displaced by the Winona Bridge Project. Given the sites orientation towards a major highway, limited supplies of commercial land for auto dealer uses, and that it abuts land, owned by the petitioner, (already used for auto dealership purposes) the selection of this site, for auto dealer expansion, and is completely logical. Again, if issues and concerns resulting from the commercial/residential “relationship” along the sites west side can be reasonably addressed, an increased tax base from this church owned property is expected.

5. Could the rezoning be construed as being spot zoning?

Spot zoning occurs if one of the following tests are met:

A. The rezoning action results in benefits that are only realized by the petitioner.

As previously noted, this request relates to the petitioners need to find an alternative site for their GM auto dealership. Again, this use is being forced to relocate because of the Winona Bridge Project. Approval of the request would certainly benefit the petitioner. At the same time, it would serve to retain an established/viable business within the City and leading to expanded employment and tax base opportunities, benefitting all citizens.

B. The rezoning is considered to be arbitrary, capricious, or unreasonable.

Given that the rezoning site would serve to expand existing auto dealership use to the east, and is oriented towards with direct access to, Highway 14-61 to the north, the request is not unreasonable.

C. Rezoning is not consistent with goals and objectives of the 2007 Comprehensive Plan.

Although limits of Comprehensive Plan land use classifications are a bit abstract, as applied to this area, the plan appears to define “General Commercial” use for the easterly two thirds of the rezoning site, and a small buffer of residential between this area and current development within the Johnstone’s Addition. Given plan recommendations, it appears to suggest a buffer arrangement between future commercial, and the

established residential use. Such an arrangement would be achieved with buffering required of the auto dealership use while approval of the concept could be certified through the contingent rezoning idea presented under question 3.

RECOMMENDATION

In summary, the analysis has concluded that:

1. No error or oversight was made in original 1959 zoning of the site.
2. Since original zoning, changes in neighborhood zoning, and land use patterns, have occurred.
3. Approval of the rezoning could open the site to virtually any commercial use. Although all may offer varying degrees of potential neighborhood impacts, the analysis made no firm determination that some of these uses could result in impacts classified as “undue”.
4. Consideration of the rezoning site for the proposed use is not an unreasonable idea.
5. Spot zoning is not evident.

Given the previous, staff recommends approval of this request subject to the “contingent rezoning” process defined under Part 3 of the analysis, and subject to a modification of rezoning limits to exclude the approximate 60 easterly feet of 1221 Service Drive. In short, the purpose of this exclusion would be to address/restrict vehicular traffic flow between the Johnstone's Addition and rezoning site, as was discussed under the Base Data Access section. Per City Code Section 43.37 (b), the retention of this area of R-1 zoning would prohibit free traffic flow between residential and commercial lands. Further, “physical barriers” could also be required to prevent incidental vehicle use. Options for barrier construction could be further discussed during site plan review.

In summarizing the “contingent rezoning” process, should both the Commission and Council concur with this recommendation, the adopting ordinance would become effective with property acquisition closure between the applicant and church, while the petitioner would have a period of 1 year in which to secure building permits needed to construct the auto dealership. If that does not happen, the property would revert back to R-1 zoning.

Optional actions to the previous include:

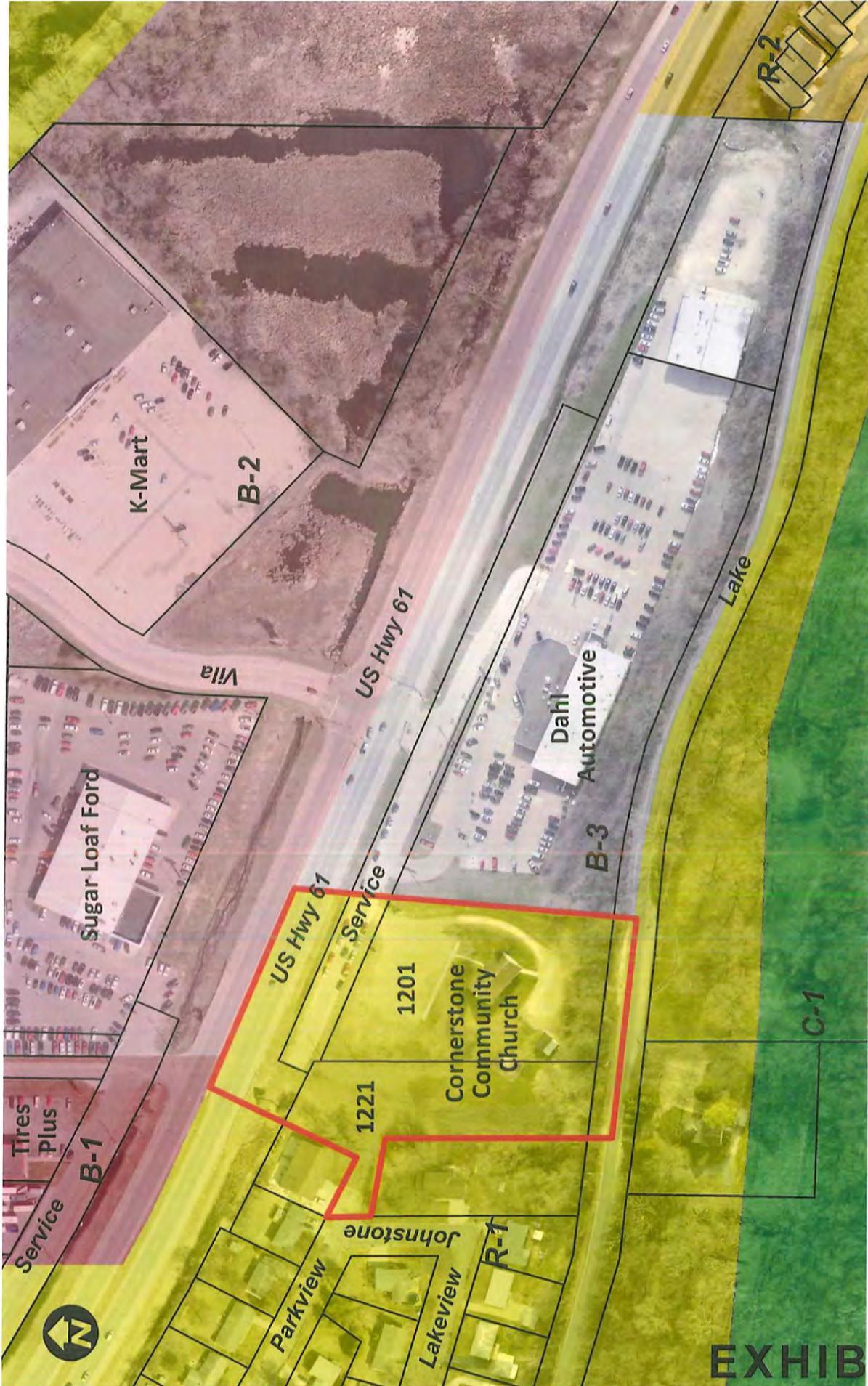
- A. Deny the request (with stated reasons).
- B. Modify the request (this option would generally equal denial).
- C. Table the request for further information.

In closing, it is noted that should the zone change be approved, the petitioner's next formal submittal would include a site plan for the project. Should the Commission desire, once received, staff will refer the plan to it for review, comment, and approval.

Notice of this meeting will be given to the immediate neighborhood in accordance with code requirements.

Attachments

Proposed Rezoning Site, R-1 to B-3



This map was compiled from a variety of sources. This information is provided with the understanding that conclusions drawn from such information are solely the responsibility of the user. The GIS data is not a legal representation of any of the features depicted, and any assumptions of the legal status of this map is hereby disclaimed.

April 22, 2014

EXHIBIT A

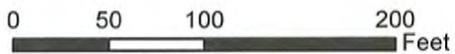
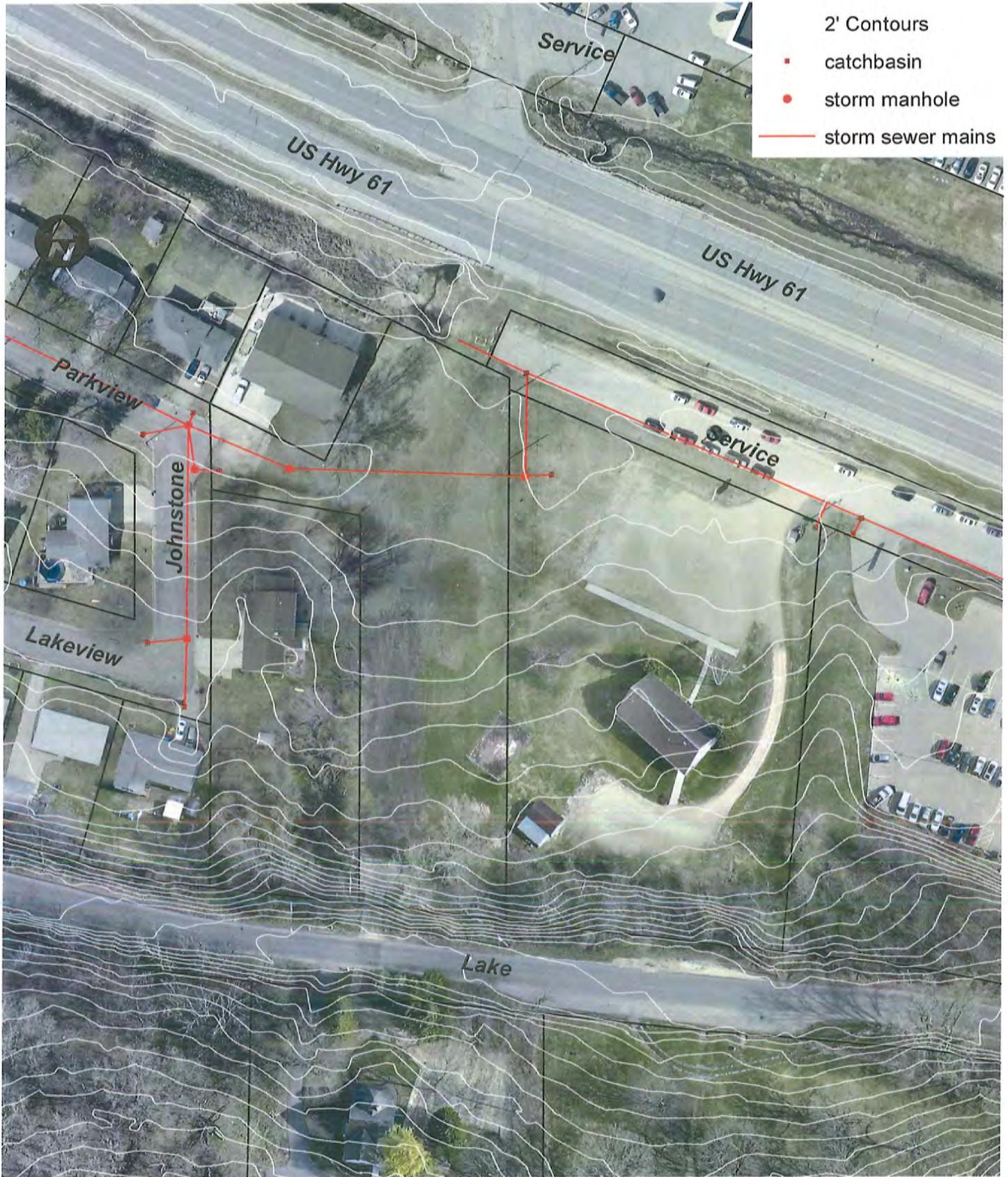


EXHIBIT B

This map was compiled from a variety of sources. This information is provided with the understanding that conclusions drawn from such information are solely the responsibility of the user. The GIS data is not a legal representation of any of the features depicted, and any assumptions of the legal status of this map is hereby disclaimed.

April 22, 2014



EXHIBIT C

This map was compiled from a variety of sources. This information is provided for informational purposes only and is not a legal representation of any of the features depicted and any assumptions of the legal status of the map is hereby disclaimed.

Land Retained as R-1 Zoning District



EXHIBIT D



- Area Retained as R-1 Zoning District
- Existing R-1 Zoning District

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PLANNING COMMISSION

AGENDA ITEM: 4. Discussion – Draft CUP Ordinance Amendments

PREPARED BY: Carlos Espinosa

DATE: April 28, 2014

At the Planning Commission meeting on February 24th, Commissioners discussed amendments to address general Conditional Use Permit (CUP) standards in the City Code. Attached is a draft ordinance based on that meeting. Highlights of the draft ordinance include:

1. New general CUP standards - These standards would apply to all CUP applications. They are in addition to the specific standards for each conditional use.
2. Planning Commission review of CUPs – Currently CUPs are reviewed by the Board of Adjustment.
3. Detail on CUP amendment procedure – Minor amendments to CUPs may be approved by staff. Staff notifies Commission of minor amendment approval. More significant amendments which may affect neighborhood compatibility or public health, safety, and welfare must be approved by the Planning Commission through the full CUP process.
4. CUP time limits – CUPs must be put to use within one year of approval or receive an extension by the City Council.

Staff is seeking Commissioner's input on the draft ordinance. Should Commissioners desire to forward the ordinance to a public hearing, a motion to do so would be in order.

Attachment:

- 1) Draft CUP Ordinance

AN ORDINANCE TO AMEND
THE CODE OF THE CITY OF
WINONA, MINNESOTA
1979

The City of Winona does ordain:

Section 1. That Article II of Chapter 43 of the City Code of Winona, Minnesota, 1979, which Article is entitled "Enforcement of Chapter" be amended by adding thereto the following:

DIVISION 4. CONDITIONAL USE PERMITS

43.31.1 CONDITIONAL USE PERMITS.

- (a) Purpose of Conditional Use Permits. Conditional uses are specific land use designations that are allowed in particular zoning districts under certain conditions and provided certain general and specific standards and criteria as contained in City ordinance pertaining to the conditional use are observed. A conditional use permit (CUP) is a zoning permit a City issues because of unique characteristics, hazards inherent in the conditional use, or special problems the proposed location of the conditional use may present, provided the general and specific standards and criteria contained in this Chapter have been met by the applicant.
- (b) Conditional Use Permit Required. It is unlawful for any person to engage in a conditional use without having first obtained a conditional use permit therefore.
- (c) Application. An application for a CUP shall be made in writing signed by the owner of the property for which the conditional use permit is sought on a form provided by the City. The application shall be filed with the City and shall address each of the general requirements in this section and the specific criteria listed under a specific conditional use within a zoning district, as applicable. Following receipt of a CUP application, City staff will provide written notification to the applicant within 15 business days if the application for a CUP is determined to be incomplete and telling the applicant what information is missing. An application determined to be incomplete by City staff, following the above written notice procedure shall not be forwarded to the Planning Commission for consideration until it is resubmitted with the missing information. If an application is determined incomplete by City staff because it that does not contain all required information, the 60-day review period applicable under Minnesota

Statutes, section 15.99 shall not restart until an application is resubmitted in the same manner as the original incomplete application.

The process for the Planning Commission to consider an application for a CUP is contained in Section 41.01 (e).

- (d) General Requirements for All Conditional Use Permits. In addition to meeting all conditions listed under a specific use within a zoning district, as applicable, the general standards and criteria, which must be met for all CUPs, are as follows:
- (1) The extent, location and intensity of the conditional use will be in substantial compliance with the Winona Comprehensive Plan.
 - (2) The conditional use will conform to all applicable zoning regulations for the district in which the property is located.
 - (3) Considering existing circumstances and potential uses under existing zoning, the conditional use will not substantially impair the use and enjoyment of other property in the neighborhood and will not substantially diminish the value of such property.
 - (4) The conditional use will not impede the normal and orderly development and improvement of the surrounding property.
 - (5) Considering existing circumstances and potential uses under existing zoning, the conditional use will not be detrimental to the existing character of the development in the immediate neighborhood or be incompatible with or endanger the public health, safety and general welfare.
 - (6) The conditional use will not create an excessive burden on existing parks, schools, streets/roads and other public facilities, which serve or are proposed to serve the area.
 - (7) The conditional use will adversely affect neighboring property and dwellings because of excessive traffic generation, glare, noise or other nuisance characteristics.
 - (8) A conditional use located on property having significant historical and architectural resources shall preserve such resources, and a conditional use shall not substantially diminish other neighboring property having significant historical and architectural resources.
 - (9) The conditional use shall either preserve or not significantly negatively affect natural and environmental resources.

- (10) The conditional use will comply with other applicable city, state, and federal regulations, as applicable.
- (e) Additional Conditions. In addition to the general standards and criteria, the Planning Commission or the City Council, as applicable, may impose such other additional conditions on conditional uses as it deems reasonable and necessary; (i) to ensure compliance with the comprehensive plan, this Chapter, the general standards contained herein, and the specific criteria listed under a specific conditional use in a zoning district; and (ii) to protect the health, safety, morals, and general welfare of the public.
- (f) Amendments to Approved Conditional Use Permits. Approved conditional use permits may be amended as follows:
- (1) Minor Amendments. Minor amendments shall include changes in the site design of the applicable property that do not affect neighborhood compatibility or the public health, safety or welfare and that do not violate any of the approved conditions of the CUP. The City Planner may review and make a decision on a minor amendment. The City Planner shall notify the Planning Commission of the minor amendment approval.
- (2) Major Amendments. Major amendments shall include all changes that are not classified as minor amendments above and shall be subject to Planning Commission approval under the same procedure as the original CUP.
- (3) Accessory Uses to a Conditional Use. Uses and structures that are accessory to a conditional use shall be allowed without requiring a CUP amendment unless specifically required as a condition of CUP approval.
- (g) Re-submitting Denied Applications. No application which has been denied wholly or in part may be resubmitted for at least one year from the date of its denial, unless substantial changes have been made which warrant reconsideration, as determined by the City Planner.
- (h) Enforcement and Revocation. Failure to comply with any condition set forth in a CUP shall constitute sufficient cause for termination of the CUP by the City Council following a public hearing. Written notification of the public hearing shall be mailed at least ten days prior to the hearing to the current holder of the CUP. The notice shall outline the violation(s) considered by the City to be grounds for revocation and inform the current holder of the CUP of the opportunity to be heard at the public hearing,

- (i) Cancellation of Conditional Use Permits. The following conditions shall be part of every CUP unless otherwise specified by the Planning Commission or City Council at the time a CUP is granted:
- (1) In instances where a building permit is required for the conditional use that is the subject of the CUP, but subject to an extension of time granted by the City Council, an approved CUP shall expire and become null and void unless a building permit is issued by the City for the conditional use for which the CUP was granted within twelve (12) months of the date of final approval of the CUP.
 - (2) In instances where a building permit is NOT required for the conditional use that is the subject of the CUP, but subject to an extension of time granted by the City Council, an approved CUP shall expire and become null and void unless the property is put to the conditional use for which the CUP was granted and in compliance with all CUP conditions, within twelve (12) months of the date of final approval of the CUP.
 - (3) Where a CUP has been granted and the conditional use for which the CUP was approved is discontinued or abandoned for any reason for a period of one (1) year or more, the CUP shall expire and become null and void provided there is a preponderance of evidence demonstrating discontinuance or abandonment of the conditional use.
 - (4) Where a CUP has been granted and a conditional use has been changed to a permitted use or to any other conditional use, the CUP shall expire and become null and void.

(j) Applicability. The provisions of this ordinance shall apply to all new, pending and existing Conditional Use Permits.

Section 2. That all references to "Board of Adjustment" and "the board" be amended to read "Planning Commission" and all references to "Section 22.21 of this code" be amended to read "Section 41.01 of this code" in the following sections of the Code:

- 43.30 – Performance Standards Procedure
- 43.48 – Extraction Pits
- 43.55 – R-S Residential Suburban District
- 43.56 – R-1 One-Family Residence District

- 43.56.1 – R-1.5 One to Four Family Medium Density Residential
- 43.57 – R-2 One to Four Family Residence District
- 43.58 – R-3 Multi-Family Residence District
- 43.58.2 – R-R – Rural Residential District
- 43.59 – B-1 Neighborhood Business District
- 43.60 – B-2 Central Business District
- 43.60.1 – Mixed Use Business District
- 43.63 – M-2 General Manufacturing District
- 43.65 – Conservancy District
- 43.65.1 – Ag – Agricultural District
- 3.86 – WSU Campus Overlay (Main)

Section 3. That Section 41.01 of the Code, which section is entitled "Planning Commission" be amended by adding thereto the following:

- (e) Conditional Use Permits (CUP).
 - (1) Application. An application for a CUP shall be made in writing signed by the owner of the property for which the conditional use permit is sought on a form provided by the City. An application for a CUP determined to be complete by City staff shall be transmitted to the Planning Commission for consideration. The application shall address each of the general requirements and standards and criteria set forth in Section 43.31.1 and the specific criteria listed under a specific conditional use within a zoning district, as applicable, and shall be accompanied by the fee as set forth in Section 51.01. Following receipt of a CUP application, City staff will provide notification to the applicant within 15 business days if the application for a CUP is determined to be incomplete. An application determined to be incomplete by City staff shall not be forwarded to the Planning Commission for consideration.
 - (2) Public Hearing. Upon receipt of a completed application, the Planning Commission shall hold a public hearing. The consideration of the CUP application shall be made by the Planning Commission in accordance with the provisions of Minnesota Statutes, Section 15.99. Notice of the time, place and purpose of the hearing shall be published in the official newspaper and be mailed to the applicant and owners of all real property situated wholly or partly within 350 feet of the subject property at least ten (10) days prior to the hearing. If the application pertains to land within a Flood Plain District, a copy of the application and notice of hearing shall be provided to the DNR. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

- (3) Planning Commission Consideration. Upon the conclusion of the public hearing, the Planning Commission shall either grant the CUP, grant the CUP subject to amended or additional conditions, table further consideration of the CUP pending receipt of additional information necessary to consider the application, or deny the CUP. If the Planning Commission tables consideration, City staff shall provide notice to the applicant of the information needed and the reasons for the extension of the original 60-day review period, which extension may not exceed 60 days unless approved by the applicant.
- (4) Findings. The Planning Commission shall make findings supporting its decision following the close of the public hearing and its deliberations and adopt the same at the meeting or directing City staff to come back to the Planning Commission with recommended findings at a subsequent meeting. In granting a CUP, the Planning Commission or the City Council, as applicable, may impose such conditions and require such guarantees on conditional uses as it deems reasonable and necessary; (i) to ensure compliance with the comprehensive plan, this Chapter, the general standards contained herein, and the specific criteria listed under a specific conditional use in a zoning district; and (ii) to protect the health, safety, morals, and general welfare of the public. If a CUP is granted and the CUP pertains to land within a Flood Plain District, a copy of the CUP shall be provided to the DNR. The decision may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.
- (5) Appeal. Any party in interest aggrieved by a decision of the Planning Commission may appeal to the City Council by filing a written notice of appeal with the City Clerk within ten (10) days after the date of the decision of the Planning Commission accompanied by the filing fee as set forth in Section 51.01.
- (6) City Council Action on Appeal. The City Council shall hear and decide the appeal not more than 30 days after it is filed with the City Clerk, unless in the judgment of the City Council a good and sufficient reason exists for postponement of the hearing or decision or both, in which case a postponement may be made. The City Clerk shall cause notice of the appeal hearing to be published in the official newspaper and be mailed to the appellant. At the appeal hearing, the appellant, and his or her agent or attorney, shall be given an opportunity to be heard and to show why the decision of the Planning Commission should be overruled or amended; a representative of the Planning Commission and Planning Commission City staff shall be given an equal opportunity to be heard. After the close of the appeal hearing, the City Council

shall deliberate and may make motion and take action adopting findings and an order affirming, amending or overruling the decision of the Planning Commission, or defer a decision on the matter to a subsequent meeting. A copy of the findings and order shall be served on the appellant, and his or her agent or attorney, by mail by the City Clerk. If a CUP is granted and the CUP pertains to land within a Flood Plain District, a copy of the CUP shall be provided to the DNR. The decision may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

Section 4. That Section 51.01 of said Code, which section sets forth the fees and charges to be charged by the City, be amended by adding thereto the following:

"Conditional Use Permit application: \$191.00; Appeal of Decision of Planning Commission: \$191.00"

Section 5. That this ordinance shall take effect upon its publication.

Dated this _____ day of _____, 2014.

Mayor

Attested By:

City Clerk

PLANNING COMMISSION

AGENDA ITEM: 5. Air Quality Monitoring for Silica Sand Operations

PREPARED BY: Carlos Espinosa

DATE: April 28, 2014

As noted at the last Planning Commission meeting, the EQB formalized their recommendations for air quality monitoring at silica sand facilities on March 19th. The CEQC met on April 8th and made the recommendations below to the Planning Commission. Representatives from the CEQC will be at the meeting to discuss the recommendations with the Commission and help answer questions.

CEQC April 8, 2014 Recommendations

1. Interim monitoring at facilities should commence as soon as possible.
2. Contingent upon the results of the monitoring at the YMCA, the City of Winona should make a formal request to the MPCA for an Air Emissions Risk Analysis and a Community Air Improvement Project.
3. The EQB/MPCA recommendations for air monitoring in the document entitled "Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects" should be formalized as ordinance amendments to the City Code, thus requiring air monitoring at silica sand facilities in Winona.

The EQB/MPCA recommendations for air monitoring are provided in Attachment A. According to the "Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects" document, these recommendations are for consideration by local governments, they are not requirements. The state is working on new *requirements* for silica sand operations through its rulemaking process. An advisory panel has been assembled to work with the MPCA and the DNR on this endeavor. More information on the advisory panel and rulemaking process are available at <http://silicasand.mn.gov/>. It is anticipated that this process will result in new state requirements pertaining to silica sand and air quality. According to an excerpt from an MPCA request for comments on the rulemaking process, "*The Agency may amend Chapters 7011 (standards of performance for specific types of facilities), 7001 (water permitting), 7007 (air permitting), 7009 (air standards), 7017 (air testing), 7050 (water standards), or other related and affected chapters.*"

Attachment:

- A) "Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects," Pages 33-34. March 19, 2014.

c. Recommendations, Standards, Criteria, Considerations

The proposed standards, criteria, and considerations are informed by both the processes within the proposed silica sand project and the geographic location of the project. The monitoring plan for a silica sand project should include the following:

What to monitor:

- Every silica sand project involving a mine of any size should conduct monitoring for Total Suspended Particulate, PM₄-silica, and meteorological data.
- Every silica sand project involving processing should monitor for PM₁₀, PM₄-silica, and meteorological data; the term 'processing' means washing, cleaning, screening, crushing, filtering, sorting, stockpiling, and storing silica sand.
- Every silica sand project involving over-the-road transportation should monitor for PM_{2.5}, PM₄-silica, and meteorological data at each site where silica sand is either loaded or unloaded from a transportation carrier (e.g. truck, rail, barge).

Note that if a silica sand project involves one or more of the above activities, then the monitoring plan should reflect all of the indicated monitors (e.g. a project that encompasses a mine, processing facility, and over-the-road transportation should monitor for TSP, PM₁₀, PM_{2.5}, and PM₄-silica).

When to monitor:

- All silica sand projects should conduct ambient monitoring prior to startup of the project. The pre-construction monitoring period should continue until at least one year of valid data is collected.
- All silica sand projects should conduct ambient monitoring after startup of the project. The post-construction monitoring period should continue until at least three (3) years of valid data are collected.

How often to monitor:

- Each TSP sampler should run for a 24-hour midnight-to-midnight period once every six days on the schedule found here: <http://www.epa.gov/ttnamti1/calendar.html>
- Each PM₁₀ analyzer should run on a semi continuous (hourly) basis
- Each PM_{2.5} analyzer should run on a semi continuous (hourly) basis
- Each PM₄ sampler should run for a 24-hour midnight-to-midnight period once every six days on the schedule found here: <http://www.epa.gov/ttnamti1/calendar.html>

Which monitor and test method should be used:

- Each TSP, PM₁₀, and PM_{2.5} monitor should be one that has been designated as a Federal Reference Method (FRM) or as a Federal Equivalent Method (FEM); an electronic list of monitors that hold this designation is available at <http://www.epa.gov/ttnamtl1/files/ambient/criteria/reference-equivalent-methods-list.pdf>
- Each PM₄ monitor should be approved by the MPCA on a case-by-case basis. The silica test method should be NIOSH 7500.

Monitor Siting

- Historical wind patterns (direction, intensity) from nearby meteorological stations and the on-site meteorological station should be compiled to inform the siting conditions in order to construct 'upwind / downwind' monitor placement. The monitors should be placed as close to the facility as possible while remaining in ambient air. This is typically the fence line of the facility.
- Monitor sites should meet criteria laid out at 40 CFR pt. 58, Appendix E. This appendix contains information such as vertical and horizontal placement, spacing, distance from obstructions, and more.

Data Reporting

- All data should be sent to the MPCA and the LGU
- TSP, PM₁₀, PM_{2.5}, and Crystalline Silica data should be reported on a quarterly basis no later than one month following the end of each quarter.
- Data may be provided in a written report but must also be provided in an electronic format that can be directly read into a spreadsheet or database
- For parameters that are measured hourly or sub-hourly, electronic data submissions should include hourly averaged data
- The silica sand project proposer should notify both the MPCA and the LGU within 24 hours of receiving sample results exceeding ambient standards. The notification should include the date of the exceedance, the concentration of the sample, and a summary of the measures taken by the proposer to reduce emissions at the silica sand project.

A.2. DUST CONTROL & CONTAINMENT OF SAND

a. Description of Silica Sand Project Concerns

Virtually all stages of silica sand mining, processing, and transportation may emit particulate matter, which is commonly known as dust. The control strategies share a common feature: they