



**PLAINVIEW PLANNING COMMISSION
SPECIAL MEETING
AGENDA**

Tuesday, August 5, 2019, at 5:00 P.M.

- 1. Call to Order**
- 2. Approval of Agenda**
- 3. Approve June 18, 2019 Meeting Minutes**
- 4. Public Hearings**
 - a. Conditional Use Permit – Feils Oil Co./Kraig Wurst
- 5. Updates / Discussion**
- 6. Adjourn**

CITY OF PLAINVIEW PLANNING COMMISSION

**June 18, 2019
Meeting Minutes**

The June 18, 2019, meeting of the City of Plainview Planning Commission was called to order at 6:00 P.M. by Commissioner Ziebell due to absence of the Chair. Members present were: Roger Ziebell, Dave Walkes, Jim Walkes, Tom Wiener and Roger Durgin. Absent: Jim Severson. Staff present included City Administrator Clarissa Hadler, Chief of Police Tim Schneider, and EDA Director Judith Jordan.

Motion by Durgin and second by D. Walkes to elect Roger Ziebell as Acting Chair. 6/0. Carried.

Motion by J. Walkes and second by Roger Durgin to approve the agenda. 6/0. Carried.

Motion by Ziebell and second by D. Walkes to approve the March 27, 2019, minutes with the correction of the year. 6/0. Carried.

Discussion – Accessory Dwelling Units

EDA Director Jordan gave a brief introduction to the concept of Accessory Dwelling Units (ADU), which are separate smaller dwellings on residential lots. Jordan is recommending that the City add zoning regulations to allow for accessory dwelling units in the city. This would allow homeowners to add an additional small dwelling on their property as a rental or family member unit, increasing the supply of affordable housing in the city, and allowing homeowners to increase their income.

Commissioner Durgin expressed concerns that people would start moving trailer homes onto their property. Commissioner Ziebell clarified that manufactured homes have to be on a permanent foundation. City Administrator Hadler explained the use of performance standards to dictate the types of structures that are allowed.

Jordan discussed some of the points of the draft ordinance, such as number of ADUs allowed, owner on site requirements, licensing, size requirement, etc.

Commissioners and staff discussed issues around parking, property taxes, whether rentals would be appropriate, etc.

City Administrator Hadler inquired if this is something the Planning Commission would like to proceed, and if maybe a joint meeting with Council/EDA would be warranted. Commissioner Ziebell has reservations. Commissioner Wiener stated he had one in Rochester and liked it. Commissioner J. Walkes stated the town could use it as long as there were good regulations around it.

Public Hearing – Variance Request from Doug Heins

City Administrator Hadler gave an overview of the variance request of Doug Heins, who is rebuilding an old garage at the rear of the property. The variance is required as the total square footage of accessory units will exceed the square footage of the primary dwelling. However, the dwelling is extremely small.

Acting Chair Ziebell open the public hearing. No speakers came forward.

Motion by D. Walkes, second by J. Walkes to close the public hearing. 6/0. Carried.

Motion by J. Walkes, second by D. Walkes to recommend approval of resolution approving variance at 120 1st Ave. SE. 6/0. Carried.

Public Hearing- Zoning Code Amendment – Garage Setback Exception

City Administrator Hadler explained the request for a change in the zoning code. Many homes in town have single-car garages without room for adding a two-car garage given the existing 5 ft. setback. Variances would not be appropriate in most cases, but a smaller setback may allow quite a few homeowners to enlarge their garage.

Commissioner Wiener expressed concern over drainage, as most residential lots are not engineered. Hadler explained plans would be reviewed for drainage issues.

Acting Chair Ziebell stated he thinks we should leave it at 5 feet. Commissioner Durgin brought up another example of a building that was built too close to the property line. Other commissioners generally agreed to with Chair Ziebell's statement.

Commissioner Wiener inquired what the actual issue is that the commissioners are disagreeing with. He asked for clarification. Commissioners mentioned access and drainage.

A public hearing was not held on the issue.

Updates/Discussion

City Administrator Hadler gave an update on the Corridor Study/Master Plan. Commissioner Ziebell gave information on the future TAP grant application.

City Administrator Hadler updated Planning Commission on her review of the Comprehensive Plan and invited commissioners to weigh in on things they think are most important. Commissioner Wiener stated he felt the Code Review was very important. Hadler recommended budgeting for a consultant in 2020 to handle this time-consuming process.

Motion by Ziebell and second by D. Walkes to adjourn at 6:15 pm. Carried.

Respectfully submitted,

Clarissa Hadler
City Administrator

PLAINVIEW PLANNING COMMISSION



Executive Summary

Planning Commission Regular Meeting: August 5, 2019

AGENDA ITEM: Conditional Use Application – Feils Oil	
PREPARED BY: Clarissa Hadler, City Administrator	AGENDA NO. 4
ATTACHMENTS: Draft Resolution, Application, Property Images, LMC Land Use CUP Article, Public Hearing Notice	
RECOMMENDED ACTION: Motion to recommend the City Council approve the Conditional Use Permit for the property at 800 2 nd Ave. SW in Plainview, subject to all conditions listed in the permit.	

BACKGROUND

Feils Oil has applied for a Conditional Use Permit (CUP) for a property they wish to purchase at 800 2nd Ave. SW in Plainview. The property is located in the Transitional Zoning District. The only permitted use within the Transitional District is “Any accessory use of an existing conforming and/or approved conditional use.” All other uses require a Conditional Use Permit.

At this point, it is unclear whether there is an existing conditional use permit on the property, and because Feils wishes to expand the use, staff recommended obtaining the CUP to make sure the property is deemed “legal conforming”. Feils could theoretically skip the CUP and simply use the property in the exact same way as the current owner.

The property’s current use listed on the application is for “vehicle storage and maintenance, inside truck parking, inside bus storage”. The requested use includes the existing uses, and adds “may include outside storage of propane tanks that would be empty and not be any larger than 1000 gal. May rent existing outbuildings for storage. Possible future office space.”

There are a number of considerations that the Planning Commission and City Council should use to determine whether issuance of the CUP is appropriate.

City Code 615.1 states the following;

Intent And Purpose: There are some areas of the community that, by their very nature and location, are destined to be underutilized if placed in a traditional dominant use district. The T - Transition District has been established to accommodate these areas where there exist conflicting uses, and the continuance of the use mixture is desirable for the community welfare. By their very nature, uses allowed in this district will have both positive and negative impacts on one another. It is the purpose of this District to minimize or eliminate those conflicts.

City Code 608.6.2 states the following;

In granting a conditional use permit, the City Council shall consider the advice and recommendations of the Planning and Zoning Commission and the effect of the proposed use on the comprehensive plan and upon the health, safety, and general welfare of occupants of surrounding lands. Among other things, the City Council shall make the following findings where applicable:

1. The use will not create an excessive burden on existing parks, schools, streets, and other public facilities and utilities which serve or are proposed to serve the area.
2. The use will be sufficiently compatible or separated by distance or screening from adjacent residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.
3. The structure and site shall have an appearance that will not have an adverse effect upon adjacent residential properties.
4. The use, in the opinion of the City Council, is reasonably related to the overall needs of the city and to the existing land use.
5. The use is consistent with the purposes of the zoning ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use.
6. The use is not in conflict with the comprehensive plan of the city.
7. Adequate utilities, access roads, drainage and necessary facilities have been or will be provided.

Other the addition of the outside storage of tanks, the uses are very similar to the existing use. However, the addition of fuel tank storage does add some level of change to the neighborhood, and more specifically a certain level of fear (rational or not), to neighboring homeowners. Below is an example of fuel tanks stored near the street.



Staff recommends limiting the area on which tanks can be stored, as well as adding some very minor screening to the front of the property. Zoning requirements in the C-2 (Commercial Service) and I (Industrial) require landscaping in the front yard of each lot of at least 1,000 square feet. It seems appropriate to request something similar in this case, even though this is the Transition District, as the property is being used in a similar manner as those other districts. Installation of a grass buffer along the front property line for 8 ft into the property plus roughly 7 feet of right of way would create a 15 ft. buffer, approximately 1000 square feet of which would be on the property. A few trees installed in that buffer would assist with screening. The grass buffer would also help to decrease the gravel run-off from the large parking area. An alternative would be to request that the

applicant provide a landscape plan for Council, City Administrator or Public Works Director to approve.

Front of Property



Below are some of the conditions that staff is recommending be added to the permit;

- Vehicle Maintenance and Storage shall be the primary use. All other uses of the property shall remain secondary and incidental to the primary use.
- Vehicle repairs shall include only service on autos owned by the property owner and shall be conducted away from the public view, inside a screened or enclosed structure. All storage of auto-related waste products shall be located away from the public view within a structure.
- Exterior vehicle parking and storage shall be for functional and licensed vehicles only.
- Outside storage of empty fuel tanks no larger than 1000 gallons is permitted. Outdoor storage of fuel tanks shall not project further than the south face of the primary building.
- No outside storage of fuels or chemicals is permitted.
- No other outdoor storage of goods or equipment is permitted.
- Installation of a 15-foot grass buffer along south curb adjacent to 2nd Avenue SW, except at the location of existing drive-over curbing, in order to decrease run-off of gravel into storm drain.
- Planting of at least 2 deciduous and 4 bushes in above-mentioned grass buffer, either in or out of the City right-of-way. Trees placed in the right-of-way require approval of the Public Works Director.

Application Timing and Content

The current application was submitted on July 11, 2019. The City must approve, deny or extend the application within 60 days. Staff has reviewed the application in detail and feels it meets the requirements of both City Code and state statute.

RECOMMENDATION

Staff has outlined below the procedure to open and close the public hearing, and then to make a motion to recommend approval of the CUP.

Public Hearing Procedure:

- Chair: “We will now open the Public Hearing. If anyone would like to speak regarding the Conditional Use Permit Application, you may do so at this time. Please come to the podium, state your name and address, and keep your comments to 3 minutes.”
- Allow 3 minutes per statement.
- When all have had a chance to speak once, Chair may ask for a motion to close the public hearing.
- Commissioner _____, “Motion to close the public hearing.”
- Commissioner _____, “Second.”
- Chair: “All in favor?”
- Ayes
- Chair: “Motion passes. The public hearing is now closed.”
- Chair: “Are there any further comments or discussion from the Commission?”
- Commissioner _____,
“I make a Motion to recommend the City Council approve the Conditional Use Permit for Lots 6 and 7, Block 2, in the City of Plainview, subject to conditions and contingencies in the permit, and based on the findings therein”
- Commissioner _____, Second.
- Chair: “We have a motion and a second. Roll call, please.”
- Clerk
 - “Wiener”
 - “Walkes”
 - “Durgin”
 - “Walkes”
 - “Severson”
 - “Ziebell”
- Aye / Nay as your name is called.
- Chair: “Motion passes _____ to _____.”
- Continue to next item.

**CITY OF PLAINVIEW
STATE OF MINNESOTA**

RESOLUTION 2019 - ____

**APPROVING A CONDITIONAL USE PERMIT (CUP) FOR AN AUTOMOBILE
MAINTENANCE AND STORAGE AND OFFICE USE IN THE TRANSITION
DISTRICT**

WHEREAS, the City of Plainview received an application for a Conditional Use Permit (CUP) from Feils Oil Co. and Kraig Wurst;

WHEREAS, the Planning Commission held a public hearing, on August 5, 2019, to receive public comment on the permit;

WHEREAS, all required publications and notices for the public hearing were completed according to Minnesota Statute and Plainview City Code;

WHEREAS, the Planning Commission recommends approval of permit; and

WHEREAS, on August 13, 2019, the City Council of the City of Plainview reviewed the Planning Commission's recommendation and the CUP application.

NOW THEREFORE, BE IT RESOLVED, the City Council of the City of Plainview hereby grants a Conditional Use Permit for an Automobile Service and Storage and Office use in the Transition District at the property at 800 2nd Ave. SW, further described as "Section 08 Township 108 Range 011 Thompson's Addition East 20' of S 200' of Out Lot 13 & E 90' of North 100', All of East 274' of Out Lot 13, County of Wabasha, State of Minnesota" subject to the following conditions;

- Vehicle Maintenance and Storage shall be the primary use. All other uses of the property shall remain secondary and incidental to the primary use.
- Vehicle repairs shall include only service on autos owned by the property owner and shall be conducted away from the public view, inside a screened or enclosed structure. All storage of auto-related waste products shall be located away from the public view within a structure.
- Exterior vehicle parking and storage shall be for functional and licensed vehicles only.
- Outside storage of empty fuel tanks no larger than 1000 gallons is permitted. Outdoor storage of fuel tanks shall not project further than the south face of the primary building.
- No outside storage of fuels or chemicals is permitted.
- No other outdoor storage of goods or equipment is permitted.
- Installation of a 15-foot grass buffer along south curb adjacent to 2nd Avenue SW, except at the location of existing drive-over curbing, in order to decrease run-off of gravel into storm drain.
- Planting of at least three deciduous or evergreen trees in above-mentioned grass buffer, either in or out of the City right-of-way. Trees placed in the right-of-way require approval of the Public Works Director.

ADOPTED by the City Council of the City of Plainview, this 13th day of August, 2019.

Roger Ziebell, Mayor

MariClair Schneider, Clerk/Treasurer

DRAFT



PUBLIC HEARING NOTICE

Notice is hereby given that the Planning Commission will hold public hearings starting at **5:00 PM, Monday, August 5, 2019**, at Plainview City Hall, 241 West Broadway.

The Commission will hold a Public Hearing and consider the application of property owner Kraig Wurst and applicant Feils Oil Company for a Conditional Use Permit to allow for the following use(s); vehicle storage and maintenance, outside vehicle storage, outdoor storage of empty propane tanks, at the property at 800 2nd Avenue SW in Plainview, further identified as "Thompson's Addition Ex E 20' of S 200' of Outlot 13 and Ex E 90' of N 100', all of E 274' of Outlot 13".

Citizens are invited to attend and participate in the public hearings. Additional information regarding the application or amendment may be obtained from City Hall or by calling 507-710-4327.

Dated July 25, 2019.

Clarissa Hadler, City Administrator

615 ZONING AND LAND MANAGEMENT, T, TRANSITION DISTRICT

615.1 Intent And Purpose: There are some areas of the community that, by their very nature and location, are destined to be underutilized if placed in a traditional dominant use district. The T Transition District has been established to accommodate these areas where there exist conflicting uses, and the continuance of the use mixture *is* desirable for the community welfare. By their very nature, uses allowed in this district will have both positive and negative impacts on one another. It is the purpose of this District to minimize or eliminate those conflicts.

615.2 Permitted Uses:

- 1 Any accessory use of an existing conforming and/or approved conditional use.

615.3 Conditional Uses:

- 1 Single family dwellings,
- 2 Two family dwellings/units,
- 3 Multi-family dwellings/units,
- 4 Automotive sales, service, and storage,
- 5 Retail sales,
- 6 Personal services,
- 7 Home improvement services and trades,
- 8 Repair shops,
- 9 Offices,
- 10 Home occupations, and
- 11 Any permitted or conditional use allowed in a district if that district has an adjoining boundary line with the Transitional District. (For example, if a C-2 District is adjacent to the Transitional District, offices (which are a permitted use in the C-2 District) could be considered under this Conditional Use definition.)

615.4 Lot Area, Frontage, And Yard Requirements:

Use	Lot Area (sq. ft.)	Lot Frontage	Rear Yard/ Front Yard	Side Yards	
				Any Side	Sum of Both Sides
Single Family Dwellings	6,000	60 ft.	15 ft.	5 ft.	15 ft.
Two Family Dwellings/Units	8,000	60 ft.	15 ft.	5 ft.	15 ft.
Multi-Family Dwelling/Unit	3,000	60 ft.	15 ft.	5 ft.	15 ft.
Non-Residential	7,500	60 ft.	15 ft.	10 ft.	20 ft.

615.5 Requirements Reduced: Where the proposed use involves the utilization of an existing structure built prior to the adoption of this ordinance, the City Council may reduce the lot area, frontage, and yard requirements, but new additions or new construction are to comply with this provision.



INFORMATION MEMO

Land Use Conditional Use Permits

Learn the basics of conditional use permits (CUPs) in administering the city's land use ordinances. Define conditional use permits, for what purposes they may be granted; learn who grants them and procedural considerations for public hearings and the role of neighborhood opinion. Understand expiration dates, time limits and revocation of CUPs.

RELEVANT LINKS:

[Minn. Stat. § 462.3595.](#)

I. Conditional use

A conditional use is a land use designated in a zoning ordinance that is specifically allowed in a zoning district so long as certain standards are met. The zoning ordinance typically detail both general standards that apply to all conditional uses, as well as specific standards that apply to a particular conditional use in a given zoning district.

A use is typically designated in a zoning ordinance as conditional because of hazards inherent in the use itself or because of special problems that its proposed location may present. For example, uses that generate traffic such as family childcare, service stations, convenience stores, or drive-thrus are often designated as conditional uses.

II. Conditional use permit (CUP)

A conditional use permit is a document a city issues to grant a conditional use when the general and specific ordinance standards have been met by the applicant. The use is allowed by permit only if the special concerns are addressed as set forth in the zoning ordinance. Conditional use permits are authorized under state law.

A. General CUP standards

A zoning ordinance will typically detail general standards that apply to all conditional uses. For example, some zoning ordinances provide that all conditional uses must conform to the comprehensive land use plan of the community, be compatible with the adjoining properties, and be served by adequate roads and public utilities.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

See Section IV, Public hearings.

[Minn. Stat. § 15.99.](#)

B. Specific CUP standards

In addition to general CUP standards, many zoning ordinances will detail specific standards that apply to a particular conditional use, such as those made for businesses operating a drive-thru. Conditions for such uses may include specific standards regarding things like off-street parking and loading areas, landscaping and site plan, and hours of business operation.

III. Granting conditional use permits

Generally, CUPs are granted only for uses specifically listed in the zoning ordinance as conditional uses in a particular zoning district. If a use is not designated as a conditional use in a zoning district, then arguably the city has no ability to issue a CUP without first amending the zoning ordinance to provide for the conditional use. This would of course allow other applicants to apply for a conditional use permit under the same standards.

A. Who grants

A CUP is typically approved by the city council. Planning commissions often first consider the CUP application and make recommendations to the city council. State statute allows the city council to designate its CUP approval to another authority, and some cities have designated the planning commission as the approving body. In any event, the city council is generally makes the final decision on CUPs.

B. Required approval

If a proposed conditional use satisfies both the general and specific standards set forth in the zoning ordinance, the applicant is entitled to the conditional use permit. Importantly, if the applicant meets the general and specific ordinance standards, the city usually has no legal basis for denying the CUP.

C. Time limits

A written request for a CUP is subject to Minnesota's 60-day rule, and must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is considered an approval.

RELEVANT LINKS:

Minn. Stat. § 462.3595, subd. 3.
A.G. Op. 59-A-32 (February 27, 1990) .

Minn. Stat. § 462.3597.

Minn. Stat. § 462.3595, subd. 2.
Minn. Stat. § 462.357, subd. 3.

LMC information memo,
Zoning Guide for Cities,
Section V-C-2-b on
conducting public hearings.

D. Other conditions on permits

1. Permitted

Reasonable conditions relating to the ordinance standards may be attached to a CUP based upon factual evidence contained in public record. For example, if a zoning ordinance provides that a conditional use should not have adverse visual or noise impacts on any adjacent property, a city might require specific screening and landscaping conditions to address any potential impacts established in the record.

2. Not permitted

State statute provides that a CUP remains in effect as long as the conditions agreed upon are observed. The attorney general has found that time limits such as sunset provisions or automatic annual review are not consistent with state law, explaining that cities may not enact or enforce provisions that allow a city to terminate CUPs without regard to whether or not the conditions agreed upon are observed.

If a city wishes to place time constraints on particular uses, then the appropriate zoning tool is an interim use permit, rather than a conditional use permit. State law authorizes interim use permits for a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.

IV. Public hearings

A proposed conditional use is allowed only after a statutorily required public hearing. The city must provide published notice of the time, place, and purpose of the hearing on a proposed CUP at least 10 days prior to the day of the hearing. If the decision affects an area of five acres or less, the city may need to mail notice to property owners within a 350-foot radius of the land in question. The purpose of the public hearing is to help develop a factual record as to whether the applicant meets the relevant ordinance standards such that the CUP should be granted.

A. City role in hearing

A city exercises so-called “quasi-judicial” authority when considering a CUP application. This means that the city’s role is limited to applying the standards in the ordinance to the facts presented by the application. The city acts like a judge in evaluating the facts against the standards. If the applicant meets the standards, then the CUP should be granted. In contrast, when the city in zoning ordinance designates certain uses as conditional, the city is exercising “legislative” authority and has much broader discretion.

RELEVANT LINKS:

See LMC information memo,
*Taking the Mystery out of
Findings of Fact.*

[Minn. Stat. § 462.3595, subd.
3.](#)

[Minn. Stat. § 462.3595, subd.
4.](#)

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[League of Minnesota Cities.](#)

B. Role of neighborhood opinion

Neighborhood opinion alone is not a valid basis for granting or denying a CUP. While city officials may feel their decision should reflect the overall preferences of residents, their task is limited to evaluating how the CUP application meets the ordinance standards. Residents can often provide important facts to help the city address whether the application meets the standards, but unsubstantiated opinions and reactions to an application do not form a legitimate basis for a CUP decision. If neighborhood opinion serves as the sole basis of the decision, it could be overturned by a court if challenged.

C. Documentation of hearing

Whatever the decision, a city should create a record that will support it. If a city denies a CUP application, the 60-day rule requires the reasons for the denial be put in writing. Even if a city approves a CUP, a written statement explaining the decision is advisable. The written statement explaining the decision should address the general and specific ordinance standards, and explain the relevant facts and conclusions.

V. Conditional use permit after issuance

A conditional use permit is a property right that “runs with the land” so it attaches to and benefits the land and is not limited to a particular landowner. State statute requires that CUPs be recorded with the county recorder’s office. When the property is sold, the new landowner will have the continued right to the CUP so long as the conditions are met.

A city can revoke a conditional use permit if there is not substantial compliance with conditions, so long as the revocation is based upon factual evidence, after appropriate notice and hearing. Because a CUP is a property right, a city should work closely with the city attorney if considering a CUP revocation.

VI. Further assistance

LMCIT offers land use consultations, training and information to members. Contact the League’s Loss Control Land Use Attorney for assistance. You can also learn more about land use issues in the land use section of the League’s website.