

**PLANNING COMMISSION REGULAR MEETING MINUTES  
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**I. Regular Meeting**

Call to Order:

Pursuant to due call and notice thereof, the Regular Meeting of the Planning Commission was held on Tuesday, January 24, 2017. Chair Kenninger called the meeting to order at 6:30 p.m. with Commissioners VanderWiel, Freeman, Clements, Mele, Henrie, and Forster. Also in attendance were Community Development Director Lindquist, Senior Planner Klatt, Planner Nemcek, Project Engineer Hatcher, and Recording Secretary Roudebush.

The Pledge of Allegiance was said.

**Additions to Agenda:** None

**Audience Input:** None

**Consent Agenda:**

- a. Approval of the December 13, 2016 Work Session Meeting Minutes.
- b. Approval of the December 19, 2016 Meeting Minutes

**MOTION** by VanderWiel.

**Second** by Forster.

Ayes: 7. Nays: 0.

**Public Hearing:**

**5.a. Request by SKB Environmental for an Amendment to their 2016 Annual Mining Permit Considered an Interim Use Permit. (17-04-IUP)**

Community Development Director Lindquist gave a brief summary of the staff report.

Commissioner VanderWiel inquired about the surety total amount. Staff deferred the question to the applicant.

Chair Kenninger inquired about the wording of active mining since there is no mining happening at this time.

The public hearing opened at 6:38 pm.

Public comments:

Ryan O’Gara, SKB Environmental representative, was on hand for any questions. He stated that he would need to get back to the Commission on the surety amount, but he thinks around \$50,000.

**MOTION** by VanderWiel to close the public hearing.

**Second** by Clements.

Ayes: 7. Nays: 0. Motion Passes.

The public hearing closed at 6:40 pm.

**Additional Comments:**

**Motion** by Forster to Approve the Amended 2016 SKB Environmental Small Scale Extraction Permit

**Second** by Mele.

Ayes: 7. Nays: 0. Motion Passes.

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**5.b.i. Request by Wayne Transport for a Comprehensive Guide Plan Amendment (17-01-CPA)**

Senior Planner Klatt gave a brief summary of the staff report.

Community Development Director Lindquist added that the Official Map was approved with the understanding that the County would take the entire site. Since that time, it became clear the County didn't want to acquire the full site.

Commissioner Clements inquired when the County would acquire the site. Lindquist stated that the portion needed for the reconstruction has been acquired. Clements also asked for an explanation of what regional commercial would look like. Klatt stated that it could be a shopping center or offices.

Chair Kenninger inquired about the future land use map and why the portion east of Conley Ave has been changed to Business Park. Klatt stated that this map is from the current future land use map. The light pink is Business Park that extends all the way down the 42 corridor. The light grey is Light Industrial and the dark grey is General Industry.

Commissioner Mele confirmed that if the Planning Commission doesn't approve the Comprehensive Plan change then the applicant would be required to remove the gravel parking lot. Klatt confirmed that is correct, staff would work with the applicant to bring the site into compliance with the ordinances.

Chair Kenninger inquired if there is anything that can be done to allow the applicant to use the site as is until a commercial use comes along. Klatt stated that only uses specifically listed in a particular zoning district are permitted, and that the parking of semi-trailers is not an allowable interim use.

Commissioner Clements confirmed that the interim improvements from the County are concurrent with the City bringing sewer to east side of Hwy 52.

Commissioner Forester inquired if the Comprehensive Plan doesn't change is there sympathy based on the use, i.e. large truck parking versus other uses that would require the minimum building size of 10% of the property. Klatt stated staff is sympathetic but there is a need to follow the comp plan. Forester also questioned if the remaining acreage after County acquisition is large enough to be marketable. Klatt stated that based on comparisons with other commercial sites in the City, the lot size after County acquisition would be favorable for commercial development.

Lindquist explained that the 10% requirement is an ordinance created by the previous council. They felt the tax base was low with trucking firms or other uses with small buildings and a lot of outside parking; the solution was the 10% building requirement ordinance.

Public Hearing opened at 7:41 pm.

Public Hearing comments:

Joe Lauder, Attorney representing Wayne Transport/CCM Properties, feels that all issues should be looked at together not individually. Mr. Lauder stated that the only reason the applicant proposed the change in the Comprehensive Guide Plan is so they can get their variance request passed. They would like to continue using the property as it is currently zoned. He spoke on the two exceptions that they think apply to their application. The first exception is the need to generate a reasonable rate of return from the property. They do not think that a reasonable rate of return can be generated without variances. The second exception is the government's right to acquire property and restrict the use of private property. Mr. Lauder's stated that they believe that both exceptions apply to their applications. He does not think that their proposed plan will interfere with future land use. He stated there are three facts that are key to understanding their application. The first is that the government intends to construct a clover leaf on Wayne's property at some point in the future. The second is that the County has expressed the need to acquire the original taking area or possibly the entire property for the cloverleaf project. The third is that the entire property remains officially mapped and restricted for building. Mr. Lauder's went on to explain how their variance is supported because there would be job loss if their site plan is not approved, and parking is a reasonable use of the property.

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Carl Vedders, President of Wayne Transports, spoke about how his business would be affected by the denial of the applications. He has been a member of Rosemount for 36 years, he employs about 250 employees at the Rosemount facility and would add an additional 100 high paying jobs with the expansion. Mr. Vedders stated that they need a place to park trucks to expand their business. They do not necessarily need to expand their office and shop space.

Chair Kenninger asked if the applicant is still in conversations with the County. Mr. Lauder stated that the most recent conversation was in regard to the condemnation process. Since the County acquired the property they need for now, they have not spoken about any additional land acquisitions.

Commissioner Henrie inquired why the applicant didn't get the required permits to construct the parking lots. Mr. Vedders stated that the County wanted to purchase property and Wayne wanted to use the property until the County knew how much they were going to take but didn't want to put a lot of money into the project. After being contacted by the City, Wayne Transports developed multiple plans for the property, but did not submit these plans due to uncertainty concerning the County's future land acquisitions.

Commissioner Clements clarified that Wayne Transport still did the improvements during the whole process without the necessary permits. Mr. Vedders confirmed that was true.

Commissioner Mele inquired when the official map was created and if they would have known of the County wanting to take a piece of their property when Wayne Transport purchased the site. Lindquist stated the original map was from 2006 before Wayne Transport purchased the land. Mele also thanked Wayne for being an employer and job maker in the city.

Commissioner VanderWiel inquired if there could be conditional variances approved or other middle ground to appease both sides. Mr. Lauder was unsure if there are any conditions that could work.

Commissioner Mele supported the comments by Commissioner VanderWiel. He also feels like there has to be a middle ground, and does not want to kick them off the property. Klatt stated the city has a right to guide land uses and deny uses that are not conforming. There is an existing use on the property and the use isn't being taken away from the applicant. The zoning also has not changed and will not change until it is requested by the landowner or the City initiates an amendment. The applicant has requested a use that is not consistent with the comprehensive guide plan. Lindquist noted that the county won't be acquiring any more than what they have already acquired at this time. She is also concerned about what the triggers would be in place to have the variance expire since it could be 30 years or more. The County would have acquired land now if there were plans to take more than what has been proposed. The City wants a commercial use on the site to service new jobs and growth east of Hwy 52.

Commissioner VanderWiel inquired about the amount of money spent on the gravel parking lot and if the parking lot could remain as is. Lindquist stated that gravel isn't allowed and there are non-local regulations which are not being met under the current situation. Lindquist also asked what happens when other developers seek similar treatment and ask to install parking areas without curb and gutter. Others won't know this is a temporary use. VanderWiel asked if we can look at this from an IUP standpoint but within a set time it has to be removed. She noted that the applicant would have to assume certain risk and that he was aware of the restrictions on the property when he acquired the land. Lindquist stated that if the Commission wanted to permit the use on a temporary basis, the ordinance should be changed to allow an IUP for a parking lot rather than using variances to permit the use.

Mr. Vedders stated that he feels the remaining property after future County acquisition is undesirable because of the shape and resulting lack of access. The real issue is jobs or tax base.

Commissioner Clements confirmed that the assumption that Conley Ave wouldn't be rerouted.

Commissioner Forster inquired if there is a limit in GI districts for impervious surfaces. Klatt stated that there is and that it is a relatively high amount.

Commissioner Clements asked what will happen if the applications aren't approved. Mr. Vedders stated he hasn't looked into that yet, and that he is still trying to find a solution to the current problem. The current location is convenient to their current customers.

Chair Kenninger how much the necessary improvements would cost to bring the site into conformance with the Zoning Ordinance. Mr. Vedders stated between \$300,000 to \$500,000.

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Commissioner Clements asked if the applicant would have sold to the County for the right price. Mr. Lauder stated that is correct. Commissioner Clements inquired if the County had done an appraisal of the property and if they had used that for their proposed number. Mr. Lauder stated they had numbers for the original taking area but wasn't sure if that included the entire property. Mr. Vedders clarified that if they had agreed on a price he would have sold. He stated that he was concerned about what the city would require before he could make an agreement with the County.

**MOTION** by Clements to close the public hearing.

**Second** by Freeman.

Ayes: 7. Nays: 0. Motion Passes.

The public hearing closed at 8:39 pm.

## **Additional Comments:**

Chair Kenninger does not feel comfortable regarding the site as it will make it harder to make it commercial in the future.

Commissioner Forester stated he agrees with staff's recommendation regarding the regarding conclusion.

Commissioner Henrie asked for clarification on how the future designation of Commercial affects the current zoning of General Industrial. Senior Planner Klatt stated that the owner may continue the previous use of the property as a contractor's office and shop. Klatt indicated that the City most likely retained the General Industrial zoning to recognize the existing use and to allow it to continue as a conforming use.

Commissioner VanderWiel agrees that the point of the Comprehensive Plan is to avoid issues like this.

Commissioner Henrie questioned if the applicant could apply for an IUP. Klatt stated that the Zoning Ordinance does not identify truck storage as a permitted interim use. Henrie also asked for clarification on what could remain if the comprehensive plan amendment is not approved. Klatt stated the 10,000 sq. ft. building, access and parking lot could stay. Continued use of the gravel parking area north of the building is questionable. Additional research as to whether that area is a legal non-conforming use would need to be made.

Commissioner Freeman also agrees that changing the comprehensive plan is not preferable and she does not want to deter future commercial development.

Commissioner Henrie stated he would be voting against motion one, not to deny it. He feels that there needs to be an allowed use for this site. Lindquist clarified that the property has a use and value; there is an existing building and parking lot. Henrie feels it greatly reduces the use and future use.

**Motion** by VanderWiel to recommend the City Council deny a Comprehensive Plan Amendment to change the future land use designation of Lot 1, Block 1 and Outlot B of Rich Valley Industrial Park from RC – Regional Commercial to GI – General Industrial based on the findings documented in the “Conclusions and Decision” section of the staff report.

**Second** by Clements.

Ayes: 6. Nays: 1-Henrie. Motion Passes.

## **RECESS REGULAR PLANNING COMMISSION MEETING AND OPEN BOARD OF APPEALS AND ADJUSTMENTS MEETING**

**MOTION** by Clements to recess Planning Commission meeting and open Board of Appeals and Adjustments meeting.

**Second** by Freeman.

Ayes: 7. Nays: 0.

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**5.b.ii. Request by Wayne Transport for a Variance (17-02-V)**

Public Comment opened at 8:56 pm.

Public comments:

Joe Lauder, Attorney representing Wayne Transport/CCM Properties, noted that his comments from the previous hearing would also apply to this hearing.

Chair Kenninger confirmed that, based upon the applicant's comments, the only variance really needed is the building variance and that they could work around the parking setback variance. Mr. Lauder confirmed that this was correct.

Paul Cherne, Pioneer Engineer, stated that they thought the side yard setback was 25 feet from Conley but staff report noted a 40-foot setback requirement. He said that there would be no problem meeting the required setback.

Commissioner Clements asked for confirmation that Wayne Transports could join the subject property with their parcel immediately to the north. Mr. Cherne stated they would need to discuss with staff to determine any ramifications first.

Commissioner Forester inquired about the area of impervious surface. Mr. Cherne did not know off hand, but guessed that the plan is approximately 50% hard surface when the requirement is 75%.

**MOTION** by Forester to close the public hearing.

**Second** by Henrie.

Ayes: 7. Nays: 0. Motion Passes.

The public hearing closed at 9:01 pm.

**Additional Comments:**

Commissioner Clements is concerned about the precedent that other companies would want to be allowed the same sort of variances. He questioned whether the industrial look and shape will not meld with future residential development in the area.

Commissioner VanderWiel supported the comments from Clements.

Chair Kenninger feels that even with removing the setback variances, there are still concerns or issues that prevent continuation of future desired uses.

Commissioner Forester feels there should be a happy medium. There are many unique characteristics associated with the property and if the applicant wants to risk investing on the property for a possible short-term use then that is a risk they should be allowed to take. He stated his intent to vote against the denial.

Commissioners discussed possible future outcomes of voting in favor or against the variances.

Commissioner Mele feels there are no unique circumstances, and indicated that the property owner had made a mistake by improving the site without proper permits. He noted that the City does not have an obligation to appease them.

Commissioner Henrie stated that he does have a problem with the applicant not obtaining permits but disagrees and feels that the property is in fact unique. There is a right of way and there have been negotiations about purchasing parts of the property.

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Commissioner Clements also has problems with not obtaining necessary permits and he could understand if this had snuck up on them. But this was in place before they purchased the property and they should have known about the restrictions. He has a shed on his property but followed the rules so he didn't need a permit. But when he put up his fence he knew the rules and he needed to obtain a permit.

Commissioner VanderWiel stated she has sympathy for the applicant but if we give into that sympathy it could last for decades and not just for this one property owner.

Chair Kenninger agrees with VanderWiel.

**Motion** by VanderWiel for the Board of Appeals and Adjustment to adopt Resolution BA2017-01 denying variances for parking setback standards and minimum building size requirements as required in the GI – General Industrial Zoning District standards based on the findings documented in the “Conclusions and Decision” section of the staff report.

**Second** by Freeman.

Ayes: 5. Nays: 2: Henrie and Forester. Motion Passes.

**MOTION** by Clements to recess board of appeals and adjustments meeting and reopen the planning commission meeting.

**Second** by Mele

Ayes: 7. Nays: 0.

**CONTINUE REGULAR PLANNING COMMISSION MEETING AND CLOSE BOARD OF APPEALS AND ADJUSTMENTS MEETING**

**5.b.iii. Request by Wayne Transport for a Site Plan Review (17-03-SP)**

Public Comment opened at 9:16 pm.

Public comments:

Joe Lauder, representing Wayne Transport, asked the Commission to consider his earlier comments as well. He asked the Commission to consider that the site plan application also includes the mapping request and that the application be approved as an exception to the official mapping requirements.

**MOTION** by Clements to close the public hearing.

**Second** by Freeman

Ayes: 7. Nays: 0. Motion Passes.

The public hearing closed at 9:18 pm.

**Additional Comments:**

**Motion** by Clements to deny the site plan review for Wayne Transports to allow the expansion of a truck trailer parking area on Lot 1, Block 1 and Outlot B of Rich Valley Industrial Park based on the findings documented in the “Conclusions and Decision” section of the staff report.

**Second** by VanderWiel.

Ayes: 7. Nays: 0. Motion Passes.

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**5.c.i. Request by Flint Hills Resources for landscaping and setback requirements. (17-05-V, 17-06-V)**

Planner Nemcek gave a brief summary of the staff report.

Commissioner Clements inquired about ingress and egress to the site and any concerns about truck traffic. Nemcek stated access is located on Pine Bend Trail. Hatcher stated they did look at stacking on Hwy 52, and after discussions with the applicant, it is not an issue.

**RECESS REGULAR PLANNING COMMISSION MEETING AND OPEN BOARD OF APPEALS AND ADJUSTMENTS MEETING**

**MOTION** by Forester to recess planning commission meeting and open board of appeals and adjustments meeting.

**Second** by Mele

Ayes: 7. Nays: 0.

Public Comment opened at 9:42 pm.

Public comments:

Don Kern, Flint Hills Resources, described the project to the commissioners.

**MOTION** by Freeman to close the public hearing.

**Second** by Clements.

Ayes: 7. Nays: 0. Motion Passes.

The public hearing closed at 9:44 pm.

**Additional Comments: None**

**Motion** by Mele for the Board of Appeals and Adjustments to approve a variance from the Landscaping Ordinance requirements for required plantings with the following conditions:

1. Payment of \$25,500 in lieu of planting 85 trees.
2. Planting of 85 trees on the berm being created on the western boundary of Flint Hills Resources' property.

**Second** by Forester.

Ayes: 7. Nays: 0. Motion Passes.

**Motion** by VanderWiel for the Board of Appeals and Adjustments to approve a variance from the Zoning Ordinance setback requirements.

**Second** by Clements.

Ayes: 7. Nays: 0. Motion Passes.

**MOTION** by Clements to recess board of appeals and adjustments meeting and reopen the planning commission meeting.

**Second** by Freeman

Ayes: 7. Nays: 0.

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**CONTINUE REGULAR PLANNING COMMISSION MEETING AND CLOSE BOARD OF APPEALS  
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**5.c.ii. Request by Flint Hills Resources for a Site plan review of an Ammonium Thiosulfate (ATS) Storage and Load Out Facility (17-07-SP)**

Planner Nemcek gave a brief summary of the staff report.

Public Comment opened at 9:24 pm.

Public comments:

Don Kern and Chris Brown from Flint Hills Resources were on hand to answer any questions.

Commissioner Forester inquired if the other tanks will come down. Mr. Brown stated they would take down 4 large and 4 small tanks on the edge of Hwy 52.

Chair Kenninger asked if the other tanks would be removed in future. Mr. Brown is unsure.

**MOTION** by Freeman to close the public hearing.

**Second** by Clements.

Ayes: 7. Nays: 0. Motion Passes.

The public hearing closed at 9:49 pm.

**Additional Comments: None**

**Motion** by VanderWiel to recommend that the City Council approve the site plan for Flint Hills Resources to allow construction of an Ammonium Thiosulfate (ATS) Storage and Loadout Terminal at 12895 Courthouse Boulevard, subject to conditions:

1. Issuance of a building permit.
2. Submission of a landscape security equal to one hundred and ten percent (110%) of the total cost of the required plantings.
3. All trash containers shall be stored within a building or an enclosure consistent with the standards in Section 5-1-3.
4. Conformance with all conditions of the City Engineer as outlined in the memo dated January 24, 2016

**Second** by Clements.

Ayes: 7. Nays: 0. Motion Passes.

**5.d. Request by Flint Hills Resources for Conditional Use Permit to approve a structure taller than 250 feet for a Coker Derrick (16-55-CUP)**

Planner Nemcek gave a brief summary of the staff report.

Chair Kenninger inquired about the current zoning of heavy industrial but the Comprehensive Guide Plan says general industrial. Lindquist clarified that General Industrial can be zoned either Heavy or Light Industrial. She also asked about the rendering provided by the applicant showing the proposed structure and how close the nearest home would be. Nemcek stated it is near Greystone III.

Commissioner Forester inquired about the size of the footprint and if this will be the tallest structure at the facility. Nemcek deferred the questions to the applicant.

The public hearing opened at 9:57 pm.



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Public comments:

Don Kern, Flint Hills Resources, explained their technology and efficiency initiative as well as how this will help them achieve that goal. He also explained the coker process. He stated the footprint is roughly 100 ft. x 75 ft and the flair stacks are higher than the new cokers.

Commissioner Henrie asked about the project timeline. Jake Rients, from Flint Hills Resources stated it will start in 2017 and end in 2020.

**MOTION** by Clements to close the public hearing.

**Second** by Mele.

Ayes: 7. Nays: 0. Motion Passes.

The public hearing closed at 10:02 pm.

**Motion** by Henrie to recommend that the City Council to approve the Conditional Use Permit for a 346 foot tall Coker Derrick with a minimum setback of 2,000 feet, subject to the following conditions:

1. Compliance with FAA lighting standards for structures taller than 200 feet.
2. Issuance of all required building permits.
3. Compliance with all applicable state and federal air emission standards.

**Second** by Forester.

Ayes: 7. Nays: 0. Motion Passes.

**5.e. Request by Flint Hills Resources for barge dock ramp improvements within the FP-Floodplain Zoning District and site plan approval for a project within the Mississippi River Critical Area overlay district (16-57-CUP)**

Planner Nemcek gave a brief summary of the staff report.

Commissioner Mele inquired about the width of the road; Nemcek stated about 12 feet wide.

Commissioner Freeman inquired what will happen to the dock after the coker project. Nemcek stated it will be permanent structure and will use it for future projects.

Commissioner Clements confirmed that only Flint Hills has access to the dock.

Commissioner Forester asked about road reinforced. Hatcher stated that MnDot would determine that what is needed to accommodate the load.

The public hearing opened at 10:08 pm.

Public comments:

Don Kern, Flint Hills Resources, stated that the access road can currently handle two way traffic. They will use special trucks to transport the coker and will need to obtain special permits from MnDot to transport the coker to the site. They also plan to use the dock for future projects.

**MOTION** by Clements to close the public hearing.

**Second** by Freeman.

Ayes: 7. Nays: 0. Motion Passes.

The public hearing closed at 10:12 pm.

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**Motion** by Clements to recommend that the City Council approve a Conditional Use Permit and Site Plan Review for Barge Dock Improvements at Flint Hills Refinery, subject to the following conditions:

1. Issuance of a grading permit to ensure appropriate erosion control procedures are in place and to monitor timing of the project.
2. The applicant must comply with all state and federal regulations covering projects located within the Mississippi River corridor.
3. All applicable permits, including DNR and Corps of Engineers permits, shall be properly secured before starting work.

**Second** by Freeman.  
Ayes: 7. Nays: 0. Motion Passes.

**Old Business:** None.

**New Business:** None

**Reports:** None

**Adjournment:** There being no further business to come before this Commission, Chair Kenninger adjourned the meeting at 8:59 p.m.

Respectfully submitted,

Amy Roudebush, Recording Secretary

**II. Work Session-Comprehensive Plan Update**

The work session was delayed to future date due to the length of the regular meeting.