

SPECIAL MEETING

CITY OF MITCHELL CITY PLANNING COMMISSION AGENDA CITY COUNCIL CHAMBERS, CITY HALL 612 N MAIN ST FEBRUARY 3, 2022 @ 12:00P.M. (NOON)

- 1. Call To Order:**
- 2. Roll Call:**
- 3. Declaration Of Conflicts Of Interests**
- 4. Approve Agenda:**
- 5. Approval Of Previous Minutes 1-10-22**

Documents:

[PLANNING COMMISSION UNSIGNED MINUTES 1-10-22.PDF](#)

- 6. Schedule Next Meeting-February 14, 2022 @ 12:00 P.M.**
- 7. Plat: Lots 25 And 26 Of The Island First Addition, A Subdivision Of The SE 1/4 Of Section 31, T 104 N, R 60 W Of The 5th P.M., City Of Mitchell, Davison County, South Dakota; As Requested By Maui Farms Inc.**

Documents:

[MAUI FARMS INC-PLAT.PDF](#)
[MAUI FARMS INC-GIS.PDF](#)

- 8. Hearing And Recommendation: Ordinance #2022-02, Repealing, Readopting And Amending Zoning Regulations For Cannabis Establishments.**

Documents:

[ORDINANCE O2022-01 AMENDING ZONING REGULATIONS FOR CANNABIS ESTABLISHMENTS.PDF](#)
[ORDINANCE O2022-01 AMENDING ZONING REGULATIONS FOR CANNABIS ESTABLISHMENTS-NOH.PDF](#)
[CANNABIS ESTABLISHMENTS ZONING MAPS.PDF](#)

- 9. Other Business:**
- 10. Public Input: If You Need To Address The City Planning Commission On An Item That Was Not On The Agenda, Excluding Personnel Items, Please Come Forward To The Podium And State Your Name And Your Concern. Presentations Are Limited To Three Minutes. Items Will Be Considered But No Action Will Be Taken At This Time.**
- 11. Adjournment:**

"The City of Mitchell invites all interested parties to give oral or written comments. If special accommodations are required, please notify the Public Works Department at 605-995-8433 at least 24 hour prior to the scheduled meeting."

CITY OF MITCHELL
CITY PLANNING COMMISSION MINUTES
January 10, 2022

NOT APPROVED

1. Vice-Chairperson Molumby called the January 10, 2022 City Planning Commission Meeting to order at 12:00 P.M. noon in the Council Chambers, City Hall, 612 N Main Street.
2. Roll Call-quorum is met, simple majority vote required for all items.
Present: Larson (telephonically), Molumby, Osterloo, Penney, Genzlinger, Jirsa (telephonically), Allen (City Council liaison due to Doescher being ill).
Absent: Sonne.
Staff Present: Jenniges, Schroeder, T Johnson, J Johnson, Hegg, Sandoval.
3. Declare conflicts of interest-None
4. Approval of proposed agenda: Motion by Genzlinger, seconded by Osterloo, to approve the proposed agenda. Roll call vote: Larson – aye, Molumby – aye, Jirsa –aye, Osterloo – aye, Genzlinger – aye, Sonne –absent, Penney– aye. 6 aye, 0 nay, 1 absent, motion carried.
5. Approval of proposed minutes: Motion by Osterloo, seconded by Genzlinger, to approve the minutes of the December 13, 2021 Planning Commission meeting. Roll call vote: Larson – aye, Molumby – aye, Jirsa –aye, Osterloo – aye, Genzlinger – aye, Sonne –absent, Penney– aye. 6 aye, 0 nay, 1 absent, motion carried.
6. Schedule next meeting: Motion by Penney, seconded by Osterloo, to schedule the next meeting for January 24, 2022. Roll call vote: Larson – aye, Molumby – aye, Jirsa –aye, Osterloo – aye, Genzlinger – aye, Sonne –absent, Penney– aye. 6 aye, 0 nay, 1 absent, motion carried..
7. Plat: Plat of Lot 1 of Plains Addition, in Section 23, Township 103, Range 60 West of the 5th P.M. to the City of Mitchell, Davison County, South Dakota; as requested by Plains Commerce Bank. The applicant was not present to answer questions.

Jenniges noted the applicant has purchased the land and is cleaning up the legal for future development, the existing parcels will be vacated. An elevation certificate will be required prior to a building permit being issued. Any future development will come back to Planning Commission for Plan Approval.

Motion by Genzlinger, seconded by Larson, to approve the Plat. Roll call vote: Larson – aye, Molumby – aye, Jirsa –aye, Osterloo – aye, Genzlinger – aye, Sonne –absent, Penney– aye. 6 aye, 0 nay, 1 absent, motion carried.

8. Plat: Plat of Lot 5, Block 1 of Woodland Heights First Addition, a subdivision of Lot 2, Crane's Addition in the SE ¼ of Section 24, T 103 N, R 60 W of the 5th P.M., City of Mitchell, Davison County, South Dakota; as requested by Ethan Lumber. The applicant was not present to answer questions.

Jenniges explained this follows the master plan for the area. An elevation certificate is being worked on.

Motion by Genzlinger, seconded by Penney, to approve the Plat. Roll call vote: Larson – aye, Molumby – aye, Jirsa – aye, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 6 aye, 0 nay, 1 absent, motion carried.

9. Variance: FSST Pharms LLC d/b/a Native Nations Cannabis has applied for a variance of approximately 16 feet vs 300 feet as required to be from an educational institution and a variance of approximately 950 feet vs 1,000 feet as required to be from another medical cannabis dispensary located at 1620 S Burr St, Suite #5, legally described as Lot 4 of AMOCO Irregular Tract located in the SE ¼ of Section 27, T 103 N, R 60 W of the 5th P.M., City of Mitchell, Davison County, South Dakota. The said real property is zoned HB, Highway Business District. The applicant was present to answer questions. Notices were sent out to the neighbors and it was published in the official newspaper with one response for and one against.

Jenniges explained there is approximately 1,525' from MTC property line to property line of FSST Pharms LLC location, only 16' of that 1,525' is not in the ROW. The ordinance calls for 300' from an educational facility not including ROW. FSST Farms LLC is approximately 1,016' from an approved medical cannabis dispensary to the property line of FSST Pharms LLC location, 950' of that is not in the ROW. The ordinance calls for 1,000' from an existing medical cannabis dispensary. The applicant did not know about the other dispensary at the time of the application and the other dispensary was approved first than in turn creates a trickle down effect to this location for being too close.

Genzlinger believes there is a difference between the letter of the ordinance and the spirit of the ordinance. He thinks this is meeting the spirit of the ordinance from an educational facility because the ROW is Interstate 90 and so wide is far enough away. Osterloo agreed but was concerned about setting precedence.

Jirsa believes medical cannabis dispensaries are destination businesses and location is very important to them. Larson agreed and thinks there are plenty of other locations for them.

Tre Gillaspie representing FSST Pharms LLC believes the spirit of the ordinance is to not be over restrictive.

Nick Moser representing DLJ LLC, an applicant later on the agenda, believes that if a new map were drawn with the restrictions and the existing dispensaries there will be no

room for the five approved licenses within the City of Mitchell. Variances will have to be granted for all of them.

Allen questioned why the ROW was not included in distances. J Johnson responded that when the ordinance was created they took parts from the state and parts from other City of Mitchell zoning ordinances and combined them and ROW are not included in other ordinances so it was done to keep consistent.

Schoeder also noted that most ROW's within the city are 66', there are some wider ones around the highways or old highway ROW's and I90.

Motion by Genzlinger, seconded by Osterloo, to approve the Variance. Roll call vote: Larson – nay, Molumby – aye, Jirsa – nay, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 4 aye, 2 nay, 1 absent, motion carried.

10. Plan Approval: FSST Pharms LLC d/b/a Native Nations Cannabis is proposing to open a Medical Cannabis Dispensary Facility located at 1620 S Burr St, Suite #5. This is currently zoned HB Highway Business District. The applicant was present to answer questions.

Jenniges explained GIS and site-layout. They are not changing any ingress or egress to the parking lots or changing the overall footprint of the existing building. There are currently 65 parking spaces plus an addition 4 handicap spaces for the entire building. The overall parking, ingress/egress and drainage would have been approved when the original building was approved. All interior modifications and regulations will be addressed with the building permit, Suite #5 has never had any tenants in it so no construction in there has ever been completed and therefore a change of use to that suite which facilitates needing a plan approval.

Motion by Genzlinger, seconded by Osterloo, to approve the Plan. Roll call vote: Larson – aye, Molumby – aye, Jirsa – aye, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 6 aye, 0 nay, 1 absent, motion carried.

11. Variance: DLJ LLC has applied for a variance of approximately 448 feet vs 1,000 feet as required to be from another medical cannabis dispensary, located at 501 E Juniper Ave, legally described as Lot S-3A Ex E 63' in the Replat of Lot S in the NW ¼ of Section 27, T 103 N, R 60 W of the 5th P.M., City of Mitchell, Davison County, South Dakota. The said real property is zoned HB, Highway Business District. The applicant was present to answer questions. Notices were sent out to the neighbors and it was published in the official newspaper with one response in favor and two opposed.

Jenniges explained there is approximately 867' from an approved medical cannabis dispensary to the property line of DLJ LLC's location, 448' of that is not in the ROW. The ordinance calls for 1,000' from an existing medical cannabis dispensary. The applicant did not know about the other dispensary at the time of the application and the other dispensary was approved first than in turn creates a trickle-down effect to this

location for being too close.

Larson questioned the distance to the church to the north, which is over the 300' required.

Nick Moser representing DLJ LLC stated they will be closed on Sundays and have heard no objections from the church at the time.

Doug Daily representing Lori Kummer (owner of land to the west) and Phillip Lee (owner of the business on Kummer's land, formally TK Electric) stated the ordinance is to prevent concentration of dispensaries. This proposed location isn't even 1,000' from the other dispensary including the ROW. They have concerns about safety and criminal activity in the area with this dispensary. The approach is split down the middle but they still have concerns about parking and they plan to put up a fence if the variance and license is approved. They do not believe a hardship has been established, the applicant missed the original deadline for submitting an application and by doing so became next in line instead of ahead of the approved dispensary they are requesting a variance from.

Nick Moser representing DLJ LLC stated the City of Mitchell's intent is to have five medical cannabis dispensaries and this is where the zoning allows it to be. Cannot see the other dispensary from this location. This is a new industry and people will have concerns about safety but this will be a secure site. The Department of Health will be able to look at the cameras at all times.

Osterloo has concerns that it's under 1,000' even with the ROW included.

Motion by Osterloo, seconded by Jirsa, to deny the Variance. Roll call vote: Larson – aye, Molumby – aye, Jirsa – aye, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 6 aye, 0 nay, 1 absent, motion carried.

12. Plan Approval: DLJ LLC is proposing to open a Medical Cannabis Dispensary Facility located at 501 E Juniper Ave. This is currently zoned HB. The applicant was present to answer questions.

Jenniges explained GIS and site layout. Neighbors to the west have concerns with the amount of parking or lack thereof and ingress/egress. The applicant would rent approximately 2,160 square feet so 4 to 5 parking spaces are required, plus 1 per two employees working. All interior modifications and regulations will be addressed with the building permit.

Motion by Genzlinger, seconded by Osterloo, to Table the Plan Approval until after BOA hears the variance. Roll call vote: Larson – aye, Molumby – aye, Jirsa – aye, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 6 aye, 0 nay, 1 absent, motion carried.

13. Conditional Use Permit: Genesis Farms LLC has applied for a Conditional Use Permit for a medical cannabis dispensary at 106 W 5th Ave, legally described as Lots 11 and 12,

Block 12, Rowley's 1st Addition, City of Mitchell, South Dakota. The said real property is zoned CB Central Business District. The applicant was present to answer questions. Notices were sent out to the neighbors and it was published in the official newspaper with the two responses against.

Jenniges explained GIS and site layout. Per ordinance medical cannabis dispensaries are a Conditional Use Permit in Central Business.

J Johnson reminded the board to keep discussion separate from the Conditional Use Permit and the Variance Permit.

Brenda Wiesser, a neighbor to the west, stated there are other empty buildings in town this can located at. Big Friend/Little Friend is in the same building and she doesn't think they should be located that close.

Emmett Reistoffer is part of Genesis Farms LLC and is already established in Box Elder, SD. They plan to have 15 sites across SD and be a seed to sale. He went door to door downtown and most were in favor with a few disagreeing with it. He picked 5th and Main because it is centrally located in town walkable to the Corn Palace or the post office and other business downtown. This is the only dispensary north of Havens, all other locations are by Burr and I90. He is not for pitting neighbors against eachother. He stated studies have shown no increase or actually reduction in crime when dispensaries are established.

Osterloo questioned if this was the only location he had looked at. Reistoffer stated he had looked at some other locations but other beat him to leasing. Not every land lord wants them as a tenant. He has known the land lord for 10 years at this location.

Bill Parks is the pastor at 5th and Main and they have been open for over 25 years and doesn't believe a dispensary should be located that close.

Genzlinger questioned if the city wanted medical cannabis downtown.

J Johnson reiterated to the board to keep the CUP and Variance separate but a church can still have an opinion on a business even without the variance.

Motion by Larson, seconded by Jirsa, to deny the Conditional Use Permit. Roll call vote: Larson – aye, Molumby – nay, Jirsa – aye, Osterloo – nay, Genzlinger – nay, Sonne – absent, Penney – aye. 4 aye, 2 nay, 1 absent, motion denied.

Motion by Genzlinger, seconded by Penney, to approve the Conditional Use Permit. Roll call vote: Larson – nay, Molumby – aye, Jirsa – nay, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 4 aye, 2 nay, 1 absent, motion carried.

14. Variance: Genesis Farms LLC has applied for a variance of 0 feet vs 300 feet as required to be from religious institution, located at 106 W 5th Ave, legally described as Lots 11 and 12, Block 12, Rowley's 1st Addition, City of Mitchell, South Dakota. The said real property is zoned CB, Central Business District. The applicant was present to answer questions. Notices were sent out to the neighbors and it was published in the official newspaper with two responses received against.

Jenniges explained there is approximately 101' from Word of Life Christian property line to property line of Genesis Farms LLC, 0' of that 101' is not in the ROW. The ordinance calls for 300' from a religious facility not including ROW.

Genzlinger stated the spirit of the ordinance doesn't fit since the church has been there for 25 years. Penney agreed.

Emmett Reistoffer is part of Genesis Farms LLC and stated they will be closed on Sundays and by 8 P.M. on other nights of the week. For the first 6 months they might be open by appointment only. He would be up to having a trial run of 6 to 12 months. There will be no marketing on the exterior of the building and no one will even know they are there.

Nathan Weber stated he is not opposed to the applicant but to the location, the ordinance was put in place for a reason. There are teens at Word of Life Church and Big Friend/Little Friend is right next door.

Terra Volesky owner of the building stated you can go to the grocery store with kids to get prescriptions and liquor. You will need a prescription to even be able to enter the building and the Department of Health will be able to see the cameras at all times. It will be the best security in town. She has received calls from veterans hoping it passes.

John Weisser has no problem with Genesis Farms LLC just believes it does not belong on Main St. Mitchell is a family town with the Corn Palace on Main St.

Motion by Genzlinger, seconded by Larson, to deny the Variance. Roll call vote: Larson – aye, Molumby – aye, Jirsa – aye, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 6 aye, 0 nay, 1 absent, motion carried.

15. Other Business-None.

16. Public Comment-None.

17. Vice-Chairman Molumby adjourned the meeting at 1:09 P.M.

Doug Molumby
Planning Commission Vice-Chairperson



LEGEND

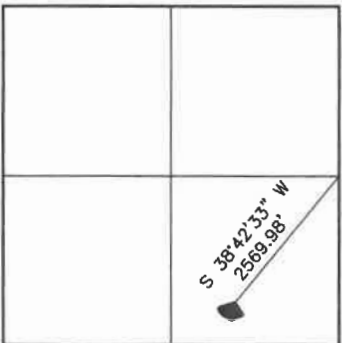
- = FOUND IRON MONUMENT
- = SET 5/8" X 18" REBAR WITH PLASTIC CAP NO. 6702
- 100' (P) = PLATTED BEARING OR DISTANCE
- 100' = MEASURED BEARING OR DISTANCE

PREPARED BY: PAUL J. REILAND, R.L.S.
2100 NORTH SANBORN BLVD. - P.O. BOX 398
MITCHELL, SOUTH DAKOTA 57301
PHONE: (605) 996-7761

BEARINGS ARE BASED ON AN ASSUMED COORDINATE SYSTEM USING GPS GRID BEARINGS/GROUND DISTANCES

NOTE: THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT OR TITLE COMMITMENT. EASEMENTS OF RECORD WERE NOT RESEARCHED AND ARE NOT SHOWN UNLESS OTHERWISE NOTED.

SEC. 31, T 104 N, R 60 W

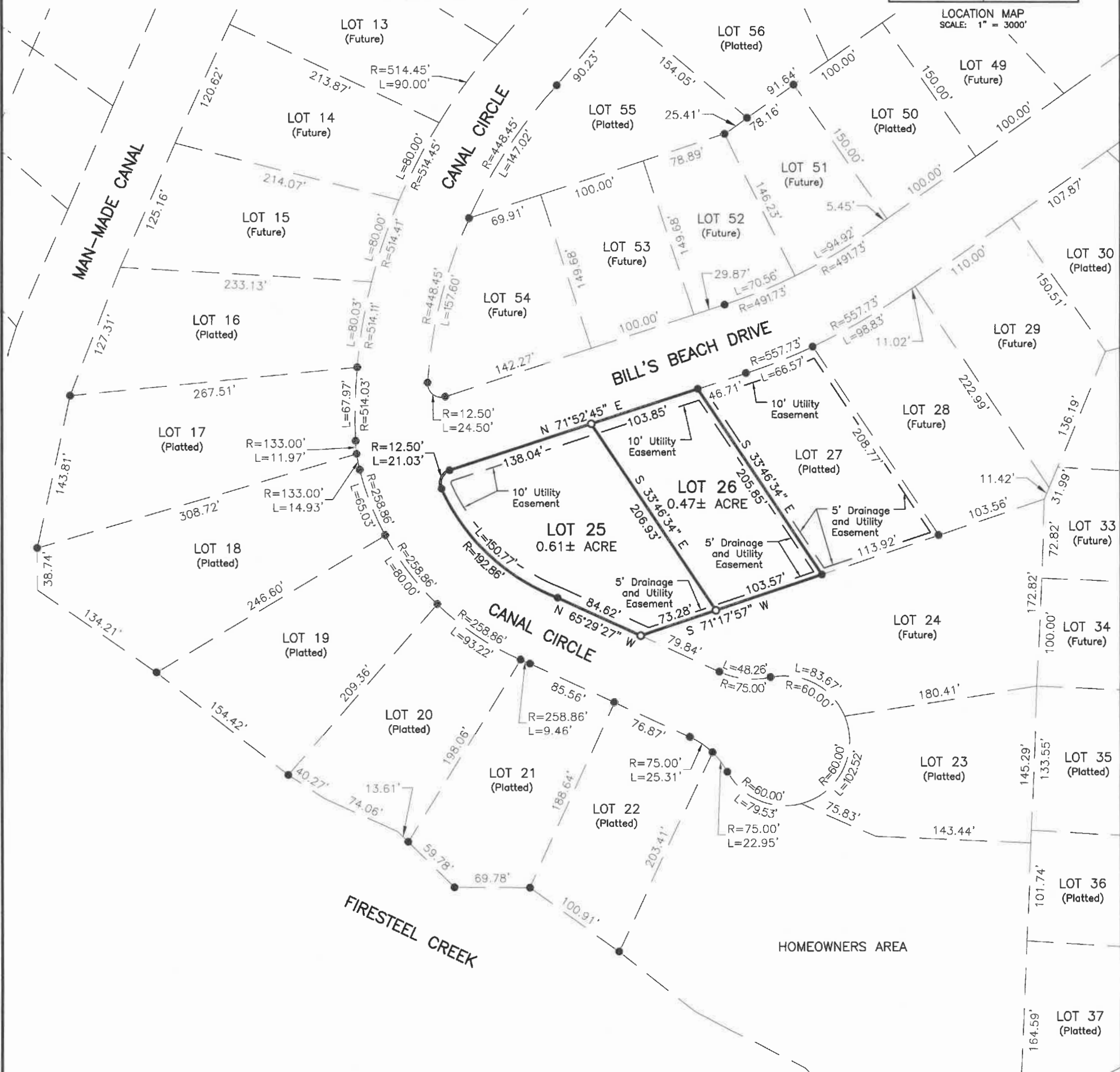


LOCATION MAP
SCALE: 1" = 3000'

1 Inch = 100 Feet

Easements Dedicated by this Plat

Lot 25 Rear = 5' Drainage and Utility Easement
Lots 25 and 26 along Bill's Beach Drive and Canal Circle = 10' Utility Easement
Lot 26 East Side and Rear = 5' Drainage and Utility Easement



A PLAT OF LOTS 25 AND 26 OF THE ISLAND FIRST ADDITION, A SUBDIVISION OF THE SE 1/4 OF SECTION 31, T 104 N, R 60 W OF THE 5TH P.M., CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA

SURVEYOR'S CERTIFICATE

I, Paul J. Reiland, the undersigned, do hereby certify that I am a Registered Land Surveyor in and for the State of South Dakota. At the request of Maui Farms Inc., a South Dakota corporation, as owner, and under its direction for purposes indicated therein, I did on or prior to January 17, 2022, survey those parcels of land described as follows: LOTS 25 AND 26 OF THE ISLAND FIRST ADDITION, A SUBDIVISION OF THE SE 1/4 OF SECTION 31, T 104 N, R 60 W OF THE 5TH P.M., CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA.

In my professional opinion and to the best of my knowledge, information and belief, the within and foregoing plat is true and correct.
Dated this _____ day of _____, 2022.

Registered Land Surveyor #SD6702

SPN

& Associates
Engineers, Planners and Surveyors
2100 North Sanborn Blvd. - P.O. Box 398 Mitchell, South Dakota 57301
Phone: (605) 996-7761 Fax: (605) 996-0015



A circular seal for a Registered Professional Land Surveyor. The outer ring contains the text "REGISTERED PROFESSIONAL LAND SURVEYOR" in a circular arrangement. Inside this ring, the text "REG. NO." is at the top, "6702" is in the center, "PAUL J. REILAND" is below the number, and "SOUTH DAKOTA" is at the bottom.

REGISTERED PROFESSIONAL LAND SURVEYOR
REG. NO. 6702
PAUL J. REILAND
SOUTH DAKOTA



ORDINANCE O2022-01

AN ORDINANCE REPEALING, READOPTING, AND AMENDING THE ZONING REGULATIONS FOR CANNABIS ESTABLISHMENTS IN THE CITY OF MITCHELL.

WHEREAS, the City of Mitchell previously adopted zoning regulations pursuant to Ordinance O2021-06 on June 2nd, 2021, which implemented a full chapter of zoning regulations for cannabis establishments; and

WHEREAS, such chapter as adopted incorrectly listed the Zoning Regulations title of the Mitchell City Code as Title 9 instead of Title 10, and all sections of said adopted chapter incorrectly referenced Title 9 of the Mitchell City Code instead of Title 10, resulting in the ordinance being incorrectly codified according to the erroneous number instead of the correct Zoning Regulations title. The original intention was for the chapter and subsections to be codified under the Zoning Regulations title (Title 10) and not the Building Regulations title (Title 9); and

WHEREAS, in addition, staff has discovered that the language relating to buffer zones for cannabis dispensaries is impractical in application and/or ambiguous and requires clarification.

WHEREAS, notice for this proposed ordinance was published on January 22nd, 2022, January 26, 2022 and February 2, 2022 listing dates of February 3rd, 2022 for hearing with Planning and Zoning Commission, February 7th, 2022 for hearing and first reading with city council, and February 14th, 2022 for 2nd reading and adoption with council.

BE IT ORDAINED BY THE CITY OF MITCHELL, SOUTH DAKOTA AS FOLLOWS:

Section 1.

That in order to ensure that the City's cannabis zoning regulations are codified in the appropriate location of the Mitchell City Code, the existing Chapter 9-15 of the Mitchell City Code is hereby REPEALED and RE-ADOPTED in its entirety as Chapter 15 of Title 10 to read as follows:

“Chapter 15 – Cannabis Establishments

10-15-1: Intent:

In order to minimize the negative effects cannabis establishments have on adjacent land uses, and to promote the public health, safety and general welfare of the city, the city council adopts the following regulations, recognizing that it has a great interest in the present and future character of the city's residential and commercial neighborhoods. Adoption of these regulations is not intended to unreasonably restrict the opportunity of

cannabis establishments to locate in the city, but is for the purpose of preventing a concentration of certain cannabis establishments in any one area.

10-15-2: Definitions:

Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for cannabis related terms which are defined by SDCL 34-20G-1.

BLIGHTED AREA: an area characterized by traits such as dilapidation, overcrowding, deterioration, dangerous structures, unsanitary, inadequate infrastructure, nuisance, or other factors which inhibit the growth and development of an area.

CANNABIS (or MARIJUANA): all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

CANNABIS CULTIVATION FACILITY: a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

CANNABIS DISPENSARY: a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

CANNABIS PRODUCT MANUFACTURING FACILITY: a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

CANNABIS TESTING FACILITY: a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

CANNABIS ESTABLISHMENT: a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

MENTAL HEALTH FACILITY: an entity engaged in diagnosing, treating, caring for, or counseling people requiring mental health services, including substance abuse disorders, but which does not regularly provide other types of personal health services.

NON-LICENSED CANNABIS ESTABLISHMENT: an entity which would otherwise meet the definition of a cannabis establishment but which is not legally licensed.

10-15-3: Regulations Relating to Cannabis Cultivation Facilities:

No cannabis cultivation facility shall be owned or operated at a location within the city's zoning jurisdiction except as provided by this section. A cannabis cultivation facility shall be considered a permitted use in the following districts: HB highway oriented business district; TWC transportation, warehousing, and commercial district; and I industrial district. A cannabis cultivation facility shall be considered a conditional use in the following districts: CB central business district.

10-15-4: Regulations Relating to Cannabis Testing Facilities:

No cannabis testing facility shall be owned or operated at a location within the city's zoning jurisdiction except as provided by this section. A cannabis testing facility shall be considered a permitted use in the following districts: HB highway oriented business district; TWC transportation, warehousing, and commercial district; and I industrial district. A cannabis testing facility shall be considered a conditional use in the following districts: CB central business district.

10-15-5: Regulations Relating to Cannabis Product Manufacturing Facilities:

No cannabis product manufacturing facility shall be owned or operated at a location within the city's zoning jurisdiction except as provided by this section. A cannabis product manufacturing facility shall be considered a permitted use in the following districts: HB highway oriented business district; TWC transportation, warehousing, and commercial district; and I industrial district. A cannabis product manufacturing facility shall be considered a conditional use in the following districts: CB central business district.

10-15-6: Regulations Relating to Cannabis Dispensaries:

A. No cannabis dispensary shall be owned or operated at a location within the city's zoning jurisdiction except as provided by this section. A cannabis dispensary shall be considered a permitted use in the following districts: HB highway oriented business district; TWC transportation, warehousing, and commercial district; and I industrial district. A cannabis dispensary shall be considered a conditional use in the following districts: CB central business district.

B. No cannabis dispensary shall operate within three hundred feet (300') of an educational institution, religious institution, childcare center (excluding family residential childcare), preschool, nursery, detention facility, or mental health facility. No cannabis dispensary shall operate within one thousand feet (1,000') of another cannabis dispensary. Distances shall be measured from the closest point of the property lines but excluding public rights of way. Such buffer distance requirements may be waived via the variance process so long as the zoning district for the proposed location would be allowed if the applicable buffer distance requirement were waived.

10-15-7: Additional Variance and Conditional Use Factors for Cannabis Establishments:

In addition to any other factor which may be properly considered in the grant or denial of a variance or conditional use permit, the following factors shall be relevant for variance and conditional use requests relating to cannabis establishments:

1. That the proposed land use is consistent with the intent of this chapter and will not be contrary to public interest or injurious to nearby properties.
2. That the proposed land use will not cause or contribute to the formation or expansion of blighted area.
3. That all applicable ordinances and regulations will be observed.

10-15-8: Prohibited Districts for Cannabis Establishments:

A. All types of cannabis establishments are prohibited in the following districts: all R residential districts, NS neighborhood shopping, PL public lands and institutions district, CN conservation district, UD urban development district, and all PUD planned unit development districts.

B. All non-licensed cannabis establishments are prohibited in all zoning districts.”

Section 2.

That Section 10-15-6(B) as listed above (previously codified as Section 9-15-6(B)) be further AMENDED by removing the words “but excluding public rights of way” so as to read as follows:

B. No cannabis dispensary shall operate within three hundred feet (300') of an educational institution, religious institution, childcare center (excluding family residential childcare), preschool, nursery, detention facility, or mental health facility. No cannabis dispensary shall operate within one thousand feet (1,000') of another cannabis dispensary. Distances shall be measured from the closest point of the property lines. Such buffer distance requirements may be waived via the variance process so long as the zoning district for the proposed location would be allowed if the applicable buffer distance requirement were waived.

Section 3.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4.

The City Finance Officer shall cause notice of adoption of this ordinance to be published in the official newspaper and twenty (20) days after the completed publication, unless the referendum is invoked, this ordinance shall become effective.

Adopted by majority vote of the Mitchell SD City Council in regular session this ____ day of _____, 2022.

Robert B. Everson, Jr. – Mayor

Attest:

(seal)

Michelle Bathke – City Finance Officer

First Reading: _____

Second Reading: _____

Adoption: _____

Published: _____

NOTICE OF HEARING

TO: The City of Mitchell Planning Commission, City Council of the City of Mitchell, and the General Public.

You are hereby notified that the following proposed ordinance will be heard and considered by the City Planning Commission on Thursday, February 3, 2022 at 12:00 pm (Noon) and the City Council will consider first reading of the proposed ordinance on Monday, February 7, 2022 at 6:00 pm and consider second reading and final adoption on Monday, February 14, 2022 at 5:00 pm. All meetings will held in the Council Chambers, City Hall, 612 N Main St, Mitchell, South Dakota. All interested parties may attend the hearings and provide testimony.

ORDINANCE O2022-01

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WHEREAS, such chapter as adopted incorrectly listed the Zoning Regulations title of the Mitchell City Code as Title 9 instead of Title 10, and all sections of said adopted chapter incorrectly referenced Title 9 of the Mitchell City Code instead of Title 10, resulting in the ordinance being incorrectly codified according to the erroneous number instead of the correct Zoning Regulations title. The original intention was for the chapter and subsections to be codified under the Zoning Regulations title (Title 10) and not the Building Regulations title (Title 9); and

WHEREAS, in addition, staff has discovered that the language relating to buffer zones for cannabis dispensaries is impractical in application and/or ambiguous and requires clarification.

WHEREAS, notice for this proposed ordinance was published on January 22nd, 2022, January 26, 2022 and February 2, 2022 listing dates of February 3rd, 2022 for hearing with Planning and Zoning Commission, February 7th, 2022 for hearing and first reading with city council, and February 14th, 2022 for 2nd reading and adoption with council.

BE IT ORDAINED BY THE CITY OF MITCHELL, SOUTH DAKOTA AS FOLLOWS:

Section 1.

That in order to ensure that the City's cannabis zoning regulations are codified in the appropriate location of the Mitchell City Code, the existing Chapter 9-15 of the Mitchell

City Code is hereby REPEALED and RE-ADOPTED in its entirety as Chapter 15 of Title 10 to read as follows:

“Chapter 15 – Cannabis Establishments

10-15-1: Intent:

In order to minimize the negative effects cannabis establishments have on adjacent land uses, and to promote the public health, safety and general welfare of the city, the city council adopts the following regulations, recognizing that it has a great interest in the present and future character of the city's residential and commercial neighborhoods. Adoption of these regulations is not intended to unreasonably restrict the opportunity of cannabis establishments to locate in the city, but is for the purpose of preventing a concentration of certain cannabis establishments in any one area.

10-15-2: Definitions:

Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for cannabis related terms which are defined by SDCL 34-20G-1.

BLIGHTED AREA: an area characterized by traits such as dilapidation, overcrowding, deterioration, dangerous structures, unsanitary, inadequate infrastructure, nuisance, or other factors which inhibit the growth and development of an area.

CANNABIS (or MARIJUANA): all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

CANNABIS CULTIVATION FACILITY: a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

CANNABIS DISPENSARY: a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

CANNABIS PRODUCT MANUFACTURING FACILITY: a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

CANNABIS TESTING FACILITY: a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

CANNABIS ESTABLISHMENT: a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

MENTAL HEALTH FACILITY: an entity engaged in diagnosing, treating, caring for, or counseling people requiring mental health services, including substance abuse disorders, but which does not regularly provide other types of personal health services.

NON-LICENSED CANNABIS ESTABLISHMENT: an entity which would otherwise meet the definition of a cannabis establishment but which is not legally licensed.

10-15-3: Regulations Relating to Cannabis Cultivation Facilities:

No cannabis cultivation facility shall be owned or operated at a location within the city's zoning jurisdiction except as provided by this section. A cannabis cultivation facility shall be considered a permitted use in the following districts: HB highway oriented business district; TWC transportation, warehousing, and commercial district; and I industrial district. A cannabis cultivation facility shall be considered a conditional use in the following districts: CB central business district.

10-15-4: Regulations Relating to Cannabis Testing Facilities:

No cannabis testing facility shall be owned or operated at a location within the city's zoning jurisdiction except as provided by this section. A cannabis testing facility shall be considered a permitted use in the following districts: HB highway oriented business district; TWC transportation, warehousing, and commercial district; and I industrial district. A cannabis testing facility shall be considered a conditional use in the following districts: CB central business district.

10-15-5: Regulations Relating to Cannabis Product Manufacturing Facilities:

No cannabis product manufacturing facility shall be owned or operated at a location within the city's zoning jurisdiction except as provided by this section. A cannabis product manufacturing facility shall be considered a permitted use in the following districts: HB highway oriented business district; TWC transportation, warehousing, and commercial district; and I industrial district. A cannabis product manufacturing facility shall be considered a conditional use in the following districts: CB central business district.

10-15-6: Regulations Relating to Cannabis Dispensaries:

A. No cannabis dispensary shall be owned or operated at a location within the city's zoning jurisdiction except as provided by this section. A cannabis dispensary shall be considered a permitted use in the following districts: HB highway oriented business

district; TWC transportation, warehousing, and commercial district; and I industrial district. A cannabis dispensary shall be considered a conditional use in the following districts: CB central business district.

B. No cannabis dispensary shall operate within three hundred feet (300') of an educational institution, religious institution, childcare center (excluding family residential childcare), preschool, nursery, detention facility, or mental health facility. No cannabis dispensary shall operate within one thousand feet (1,000') of another cannabis dispensary. Distances shall be measured from the closest point of the property lines but excluding public rights of way. Such buffer distance requirements may be waived via the variance process so long as the zoning district for the proposed location would be allowed if the applicable buffer distance requirement were waived.

10-15-7: Additional Variance and Conditional Use Factors for Cannabis Establishments:

In addition to any other factor which may be properly considered in the grant or denial of a variance or conditional use permit, the following factors shall be relevant for variance and conditional use requests relating to cannabis establishments:

1. That the proposed land use is consistent with the intent of this chapter and will not be contrary to public interest or injurious to nearby properties.
2. That the proposed land use will not cause or contribute to the formation or expansion of blighted area.
3. That all applicable ordinances and regulations will be observed.

10-15-8: Prohibited Districts for Cannabis Establishments:

A. All types of cannabis establishments are prohibited in the following districts: all R residential districts, NS neighborhood shopping, PL public lands and institutions district, CN conservation district, UD urban development district, and all PUD planned unit development districts.

B. All non-licensed cannabis establishments are prohibited in all zoning districts.”

Section 2.

That Section 10-15-6(B) as listed above (previously codified as Section 9-15-6(B)) be further AMENDED by removing the words “but excluding public rights of way” so as to read as follows:

B. No cannabis dispensary shall operate within three hundred feet (300') of an educational institution, religious institution, childcare center (excluding family residential childcare), preschool, nursery, detention facility, or mental health facility. No cannabis dispensary shall operate within one thousand feet (1,000') of another cannabis dispensary. Distances shall be measured from the closest point of the property lines. Such buffer

distance requirements may be waived via the variance process so long as the zoning district for the proposed location would be allowed if the applicable buffer distance requirement were waived.

Section 3.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4.

The City Finance Officer shall cause notice of adoption of this ordinance to be published in the official newspaper and twenty (20) days after the completed publication, unless the referendum is invoked, this ordinance shall become effective.

Adopted by majority vote of the Mitchell SD City Council in regular session this ____ day of _____, 2022.

Robert B. Everson, Jr. – Mayor

Attest:

(seal)

Michelle Bathke – City Finance Officer

First Reading: _____

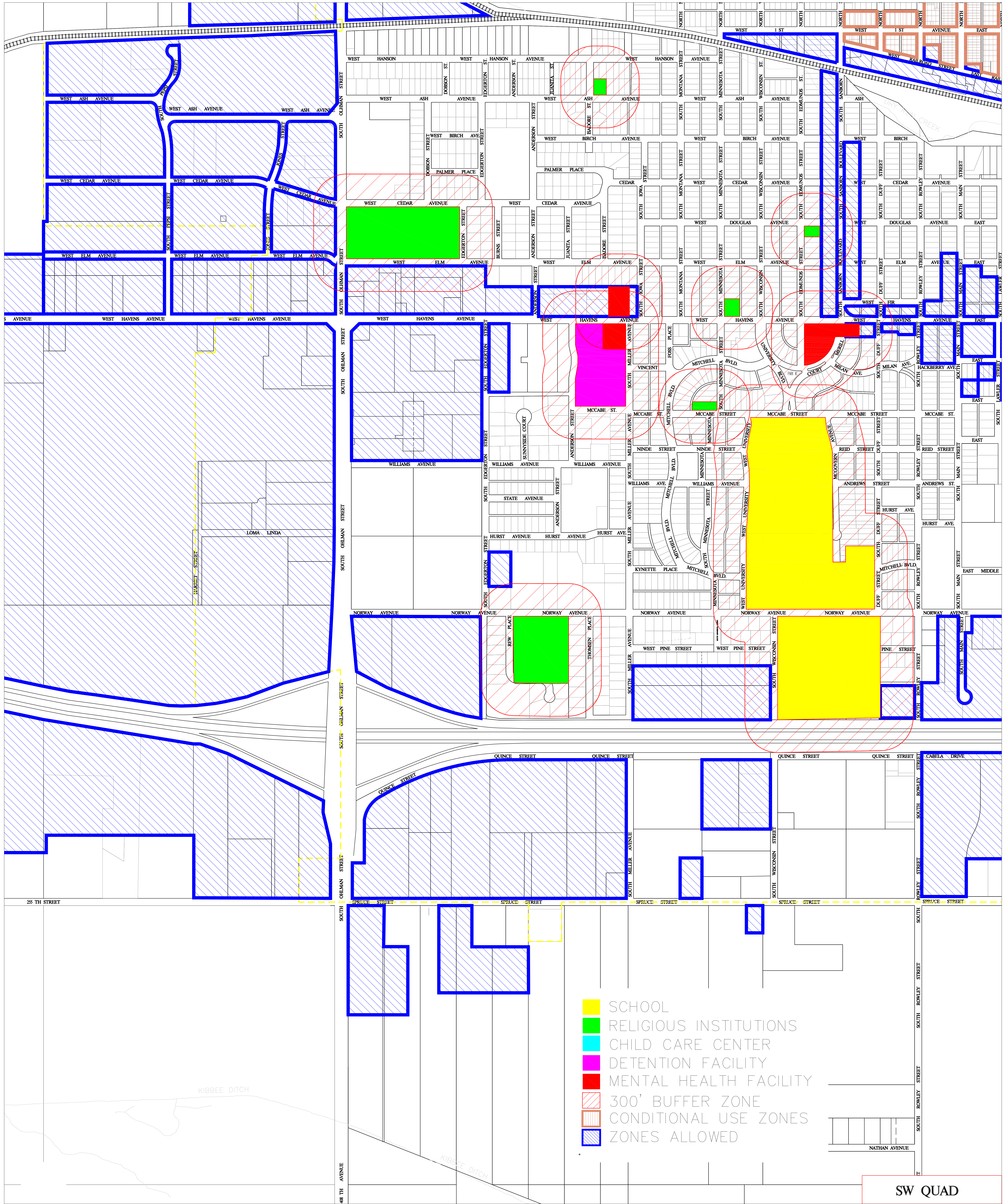
Second Reading: _____

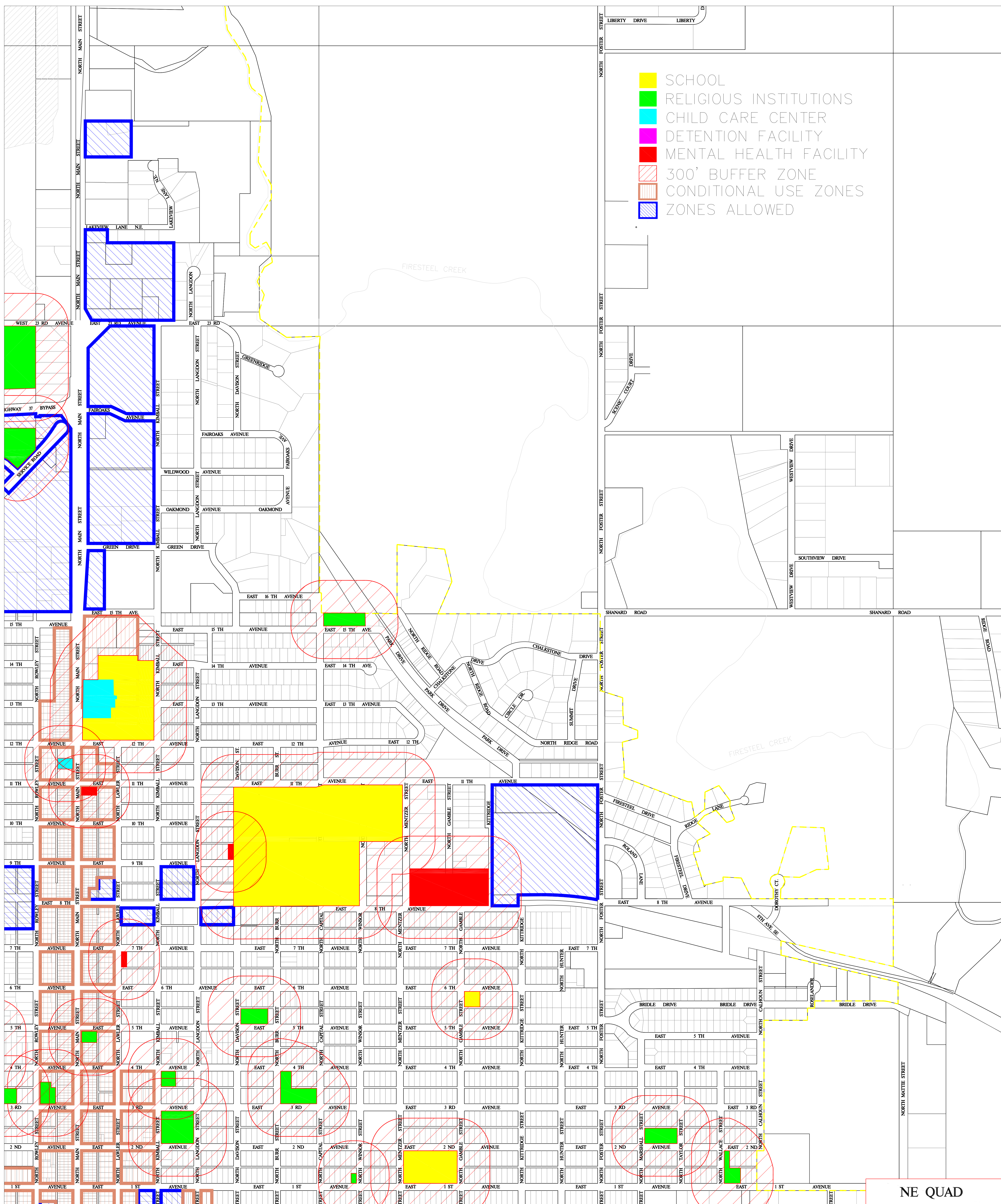
Adoption: _____

Published: _____

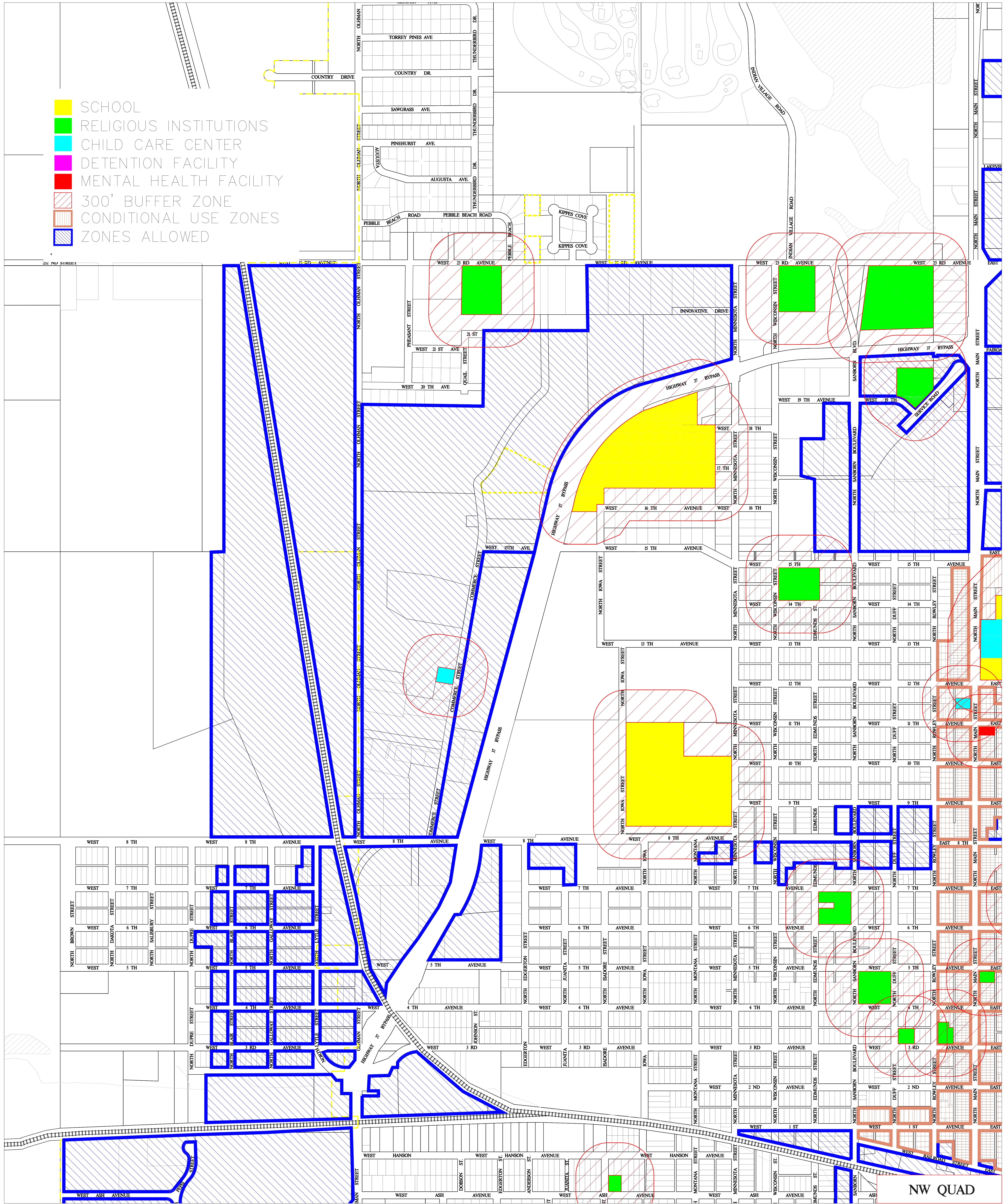
Publish three times: Saturday January 22, 2022, Wednesday January 26, 2022 and Wednesday February 2, 2022

Approximate Costs:



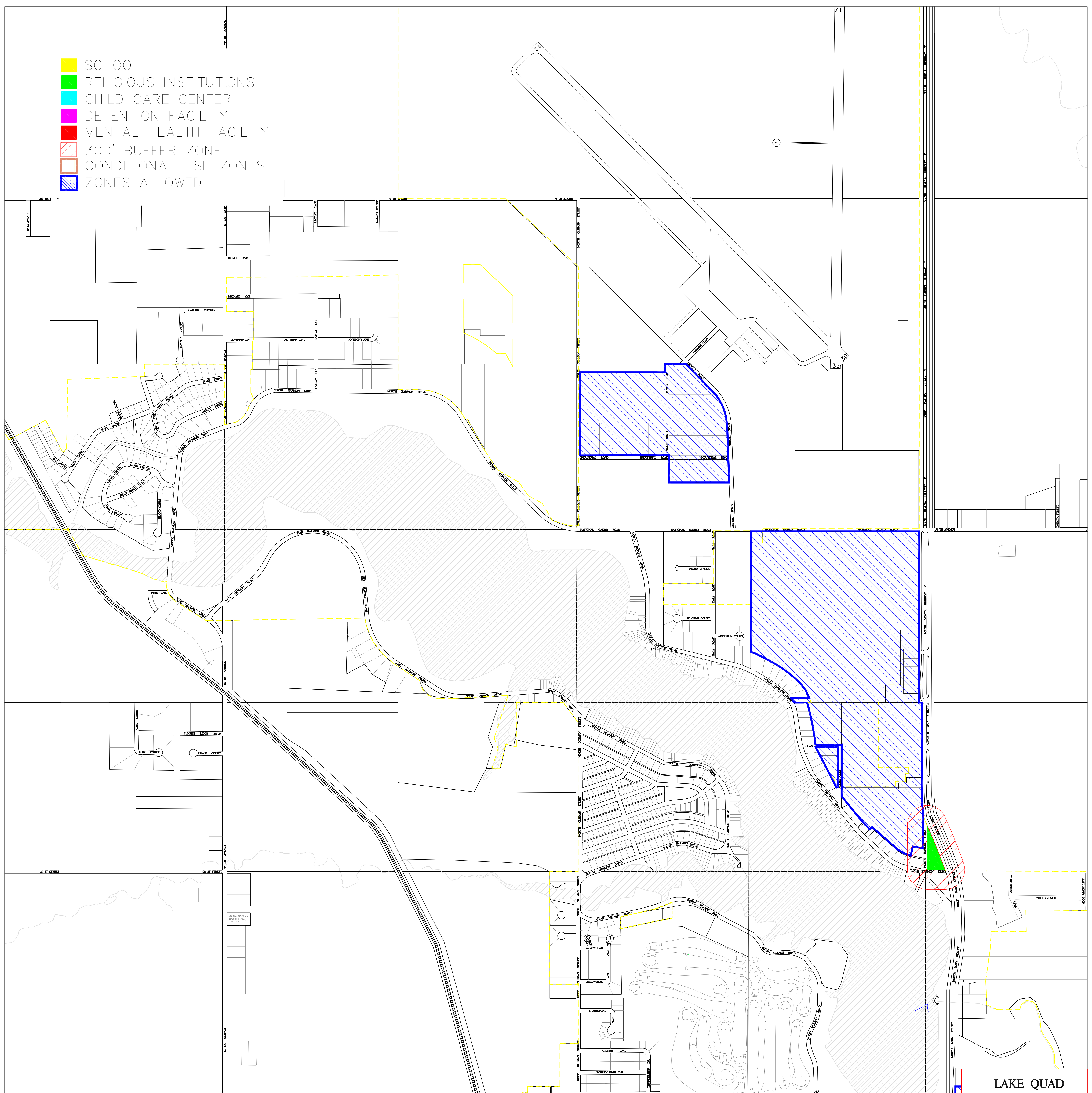


- SCHOOL
- RELIGIOUS INSTITUTIONS
- CHILD CARE CENTER
- DETENTION FACILITY
- MENTAL HEALTH FACILITY
- 300' BUFFER ZONE
- CONDITIONAL USE ZONES
- ZONES ALLOWED



NW QUAD

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LAKE QUAD