



STAFF REPORT

Planning Commission

CASE #Z-616-95-21

PC Date:	December 1, 2020	Case Planner:	Stacy Wasinger
CC Date:	January 4, 2021		
Location:	9940 Havana Street, Henderson, CO 80640		
Applicant:	Scannell Properties	Owner:	Timothy McManus
Address:	100 Fillmore Street Suite 500 Denver, CO 80206	Address:	1650 Fillmore St. No 1907 Denver, CO 80206

Case Summary

Request:	Zone Change to remove conditions and zone a portion from I-2 to Public
Project Description:	Scannell Properties on behalf of Timothy McManus is requesting to rezone approx. 28 acres to remove zoning conditions on property at 9940 Havana Street currently and proposed to remain zoned I-2 (Medium Intensity Industrial) and to rezone approx. 1.87 acres north of the O'Brian Canal to PUBLIC zone
Issues/Concerns:	Plat required to designate Tract A, proposed to be zoned Public Future development will meet I-2 and LDC requirements
Key Approval Criteria:	<ul style="list-style-type: none">Comprehensive Plan and conformance with the Future Land Use MapLand Development Code (LDC) requirements
Staff Recommendation:	Approval
Current Zone District:	I-2 (Medium Intensity Industrial District) with conditions
Comp Plan Designation:	Open Space and Industrial/Distribution

Attachments for Review: *Checked if applicable to case.*

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|---|--|
| <input checked="" type="checkbox"/> Applicant's Narrative Summary | <input checked="" type="checkbox"/> Vicinity Map |
| <input checked="" type="checkbox"/> Proposed Site Plan and Elevations | <input checked="" type="checkbox"/> Neighborhood Meeting Summary |
| <input checked="" type="checkbox"/> Draft Traffic Study | |

Background Information

Site Information

Site Size:	28.47 acres total
Current Conditions:	Vacant
Existing Right-of-Way:	Havana Street to the west
Neighborhood:	Cast Transportation Subdivision
Existing Buildings:	N/A
Buildings to Remain?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Site in Floodplain	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Only approx. 1.87 acres described as Tract A)

Surrounding Properties

<u>Existing Land Use</u>		<u>Occupant</u>	<u>Zoning</u>
North	Residential	Richard Neal - owner	AG
South	Industrial	Cast Transportation	I-2
East	Industrial	Havana Street, Trailer Storage/Rental	PUD
West	Public/Utility	Burlington Northern Santa Fe Railroad, Highway 2	I-1

Case History

The property was zoned Agricultural (AG) with its annexation into the City in 1985. In July 1995, the property was rezoned from AG to Medium Intensity Industrial (I-2) with 4 conditions:

- A. The site plan and the written text for the property and the Development Plan for Lots 1 and 2 are approved as modified to show a buffer of up to 25 feet along the entire eastern property line, as needed, considering existing conditions and specific planned uses. Before issuance of any building permits for the property, a detailed buffering plan shall be submitted to and approved by the Department of Community Development.
- B. Lots 3 and 4 shall not be used for any purpose until Development Plan(s) are reviewed by the Planning Commission and approved by the City Council.
- C. The property (Lots 1-4) shall be developed in conformance with the Development Plans approved by the City Council. Any changes shall be reviewed by the Planning Commission and approved by the City Council.
- D. The applicant shall begin development of the property within 6 months of City Council approval of the rezoning and shall complete development of the property within 18 months of City Council approval of the rezoning request.

The property was subdivided into the existing four (4) lots under case S-206-95-96. Lots 1-3 have been retained by Cast Transportation, the original applicant for the rezone and subdivision. Lot 2 was developed in accordance with the site specific development plan approved by City Council in 1995; Lots 3 and 4 were not developed and no development plan was approved for them at that time. Lot 4, the subject property of this rezone request, is under separate ownership. A proposal for the development of Lot 4 was submitted and reviewed in 1999, but it was denied due to concerns regarding proposed outdoor storage and dust from dirt piles. No development plan for Lot 4 has been reviewed and approved by Planning Commission and City Council per the zoning conditions. As no site specific development plans were reviewed by Planning Commission and approved by City Council with vested property rights for Lot 4, Lot 4 remains undeveloped.

<u>Case</u>	<u>Date</u>	<u>Request</u>	<u>Action</u>
Z-616-95	July 1995	Zone from AG to I-2 with conditions	Approval with Conditions
S-206-95-96	February 1996	Subdivide into existing 4 lots	Approval with Conditions
Z-616-95-99	December 1999	Development Plan for contractor's yard	Denial

Applicant's Request

The current request is to remove the zoning conditions from the approximately 28 acre property and rezone the approximately 1.87 acre portion north of the O'Brian Canal that is floodplain to Public. The rest of the property is proposed to remain zone I-2 (Medium Intensity Industrial) without conditions.

The applicant believes that with the proposed *"zone change benefits the community by removing the undesirable uses from the CAST Transportation Zoning conditions. The proposed I-2 zoning district allows for wide range of uses enabling for a mix of development types in the immediate and surrounding area. As previously indicated, Tract A is immediately adjacent to the First Creek Dog Park and by rezoning to Public, this is compatible with the surrounding community."* The narrative further states that there will be no impact on services or surrounding uses and that all infrastructure is adequate to serve the proposed warehousing and distribution uses.

The concurrent development plan and subdivision applications propose three (3) industrial multi-tenant warehouse buildings, each on its own lot, totaling approximately 302,500 square feet of building space. Primary access is proposed to Havana Street, with an access drive and easement serving Lots 2 and 3. Tract A, which is in the floodplain and is proposed to be zoned Public, is not proposed to be developed under this development plan. All landscaping and site development will comply with City standards for the proposed I-2 zone district.

Development Review Team Analysis

The Development Review Team (DRT) reviewed the request to change the zoning by removing conditions from I-2 (but retaining the I-2 designation) and zoning a portion of the property to PUBLIC against the goals found in the City's Comprehensive Plan. That analysis is provided below:

Comprehensive Plan

The DRT recommendation for this case is supported by the following Comprehensive Plan Goals:

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Land Use	LU 1a	Future Land Use Plan as Guide: Use the Future Land Use Plan (FLUP) to guide development patterns and mix of uses and amendments to the Land Development Code (LDC).
<u>Analysis:</u>	The rezoning aligns the property with the Future Land Use Plan, including the Open Space designation north of the O'Brian Canal. The Public zone will bring this property into conformance with the FLUP. Zoning conditions such as those requested to be removed were common conditions which City Council placed upon speculative rezonings at the time. These conditions were added at a time when the city was smaller, less complex, and did not have all of the processes and standards in place to ensure a high level of development.	

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Land Use	LU 4	Retain Existing Industrial Areas and Land for Future Jobs
<u>Analysis:</u>	By removing the zoning conditions but retaining the underlying I-2 zone on the majority of the property, the proposed rezone will facilitate this land use goal to provide industrial uses.	

DRT Analysis

There are a mix of uses in the area, primarily commercial and industrial with residential uses to the east across Highway 2. At the time the property was zoned in 1995 and the conditions included, there was more uncertainty regarding how the surrounding areas would develop and the First Creek alignment. At this time, most of the surrounding areas have been developed and the proposed I-2 zone would be compatible with these uses. The Future Land Use Plan also designates much of the surrounding area to be industrial in nature, except areas to the north of the O'Brian Canal which are designated Open Space or Parks. That area is First Creek floodplain area and as such is more suitable to those Future Land Use categories than industrial. The applicant would like the zoning conditions removed because it creates unnecessary confusion and lengthens the planning and building permit process for future development. Any change or modification to the development plan would require future Planning Commission review and City Council approval, for even minor alterations. There is no request to change the underlying I-2 zoning of the property, only to remove the supplementary conditions. There are now policies in place from other planning processes to help direct and regulate development other than zoning conditions.

The zoning conditions were placed upon the property in July 1995 and were common conditions which City Council placed upon speculative rezonings at the time. These conditions were added at a time when the city was smaller, less complex, and did not have all of the processes and standards in place to ensure a high level of development. There was also more uncertainty about how the surrounding area would develop at that time. The Development Review Team has reviewed the original and existing conditions for the property and provides the following analysis for the Planning Commission:

The property is currently zoned I-2 with 4 conditions:

- A. The site plan and the written text for the property and the Development Plan for Lots 1 and 2 are approved as modified to show a buffer of up to 25 feet along the entire eastern property line, as needed, considering existing conditions and specific planned uses. Before issuance of any building permits for the property, a detailed buffering plan shall be submitted to and approved by the Department of Community Development.

Staff Analysis: This condition primarily applies to Lots 1 and 2; since Lot 4 never received a site specific development plan approval from City Council, this condition would be reviewed with any such development plan. The buffer required for Lots 1 and 2 was implemented in part to screen outdoor storage uses from Highway 2. The concurrent proposed use does not include outdoor storage but is subject to landscaping requirements in the LDC as a new development. If outdoor storage were proposed, it would be required to meet the screening in LDC Sec. 21-5254, including a solid fence. The required buffering and screening in the current regulations makes this original buffer requirement unnecessary.

- B. Lots 3 and 4 shall not be used for any purpose until Development Plan(s) are reviewed by the Planning Commission and approved by the City Council.

Staff Analysis: The City now has effective, City Council approved processes and standards in place that provide for high quality development, including industrial design standards, landscape standards, and parking standards, which can be administratively approved. By requiring city council approval for every

building permit or change in use on this property, this condition imposes a lengthy, uncertain review that is a detriment for future development of this property.

- C. The property (Lots 1-4) shall be developed in conformance with the Development Plans approved by the City Council. Any changes shall be reviewed by the Planning Commission and approved by the City Council.

Staff Analysis: This condition is a supplement to Condition B. The processes and procedures now in place for development plan amendments would apply to any changes to approved development plans in the future.

- D. The applicant shall begin development of the property within 6 months of City Council approval of the rezoning and shall complete development of the property within 18 months of City Council approval of the rezoning request.

Staff Analysis: The Land Development Code Section 21-3200 contains specific lapse periods for development plans or any other approvals. This condition is unnecessary and may create confusion with any contradictions to LDC requirements.

Figure 1: Site Aerial



The proposed site development is currently under review in cases #D-469-21 and S-783-21. The applicant is proposing to build three (3), approximately 30 foot tall, single-story buildings on three (3) proposed lots. Building 1 is proposed to be an approximately 99,000 square foot building on an

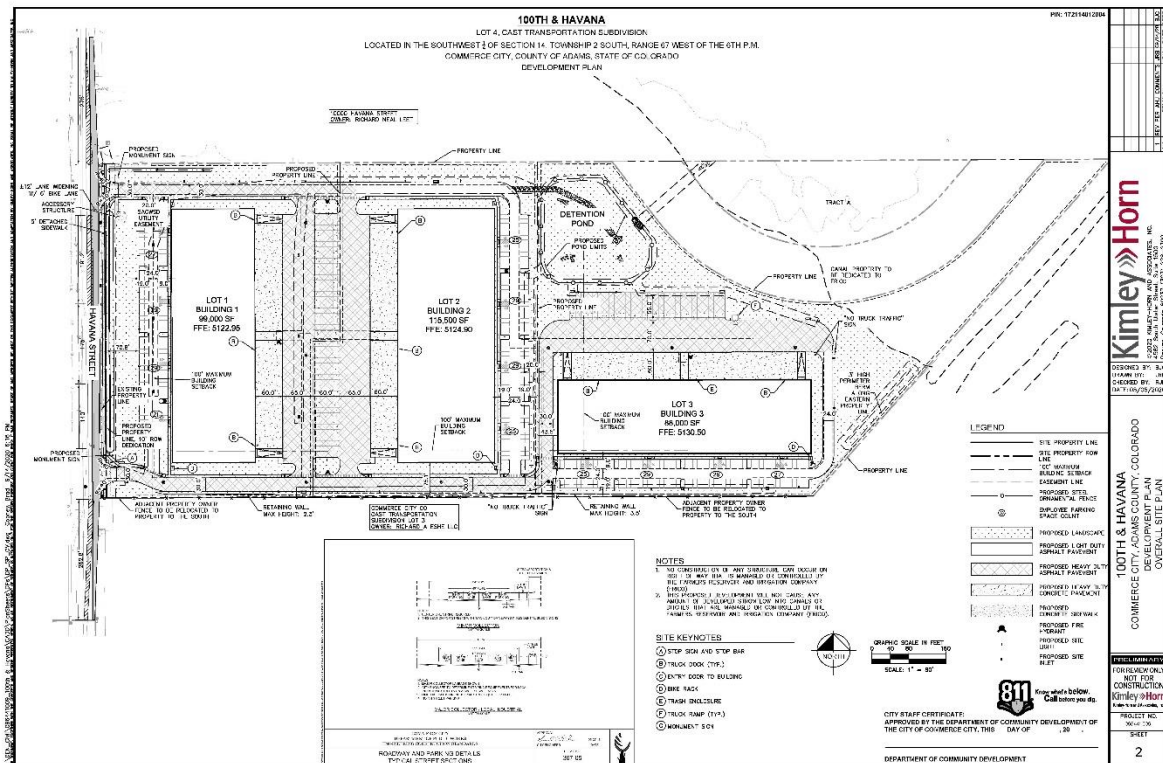
approximately 7.98 acre lot. Building 2 is proposed to be an approximately 115,500 square foot building on an approximately 7.61 acre lot. Building 3 is proposed to be an approximately 88,000 square foot building on an approximately 10.84 acre lot. Tract A, an area separated from the rest of the site by the O'Brian Canal, is an approximately 1.87 acre tract not proposed to be developed at this time, other than for drainage, utilities, and open space. The area to the north of the O'Brian Canal, including Tract A and area north of it, is in the First Creek floodplain. Much of this area to the north the O'Brian Canal is proposed to be a park in the City's Parks Master Plan. There is not a current parks project in this area, other than the existing dog park, but it is likely this area will remain open space and park in the future. The PUBLIC zone designation for Tract A will meet the Future Land Use Plan and be compatible with the likely future use of the rest of the area to the north of the O'Brian Canal.

The proposed development will meet all code requirements, including 10' ROW dedication on the west side of the property for Havana Street and improvements. The proposed buildings are speculative buildings, without specifically identified users at this time. Only uses permitted by right would be allowed to be established in these buildings without further development applications. Any required conditional use permit for a use in these buildings would require separate application and review and approval by City Council. The access for the site will be to Havana Street; no direct access to Highway 2 is proposed or permitted. Traffic from the site, per the submitted traffic study, is primarily expected to travel from Havana Street to 96th Avenue to the south or 104th Avenue to the north. From there, traffic may access Highway 2. Overall, the use is expected to generate approximately 1,020 weekday daily trips. The associated plat is needed to subdivide the non-contiguous tract that is floodplain and not proposed to be developed, as well as ensuring that all LDC requirements are met for each building and lot that is proposed.

In the surrounding area, Eagle Creek residential is to the east, just across Highway 2. The development of this property will have some impact on these neighbors in terms of visual sightlines and the development of the property to an industrial use. However, the majority of the proposed use is warehousing and inside structure; higher impact uses such as outdoor storage that might create dust and noise concerns, are not proposed. There are also two lots to the north of the property that are currently zoned Agricultural (AG). One of these lots is currently used industrially and all of the area is designated in the Future Land Use Plan to transition to industrial.

The applicant held a neighborhood meeting on October 12, 2020 (meeting summary attached). One neighbor attended, a resident of Eagle Creek to the east across Highway 2. The primary concern expressed was regarding the height of the buildings blocking views of the mountain. Under the current I-2 zoning with conditions, the maximum height for buildings would be 50 feet; this will not change with the removal of the zoning conditions. The applicant does not propose a maximum height building, but instead approximately 30 feet.

Figure 2: Proposed Site Plan (Draft)



This analysis shows the proposal meets the rezone criteria that “*proposed zone district and allowed uses are consistent with the policies and goals of the comprehensive plan, any applicable adopted area plan, or community plan of the city.*” Therefore, the DRT has concluded that the zone change request meets the approval criteria. The proposed use and zone change are in accordance with the Comprehensive Plan, and will match the character of the surrounding area.

Criteria Met?	Sec. 21-3232. Rezoning or Zone Changes	Rationale
<input type="checkbox"/>	The zone change corrects a technical mistake on the part of the city in classifying a parcel within a specific zoning district;	N/A
	<i>OR</i>	
<input checked="" type="checkbox"/>	The proposed zone district and allowed uses are consistent with the policies and goals of the comprehensive plan, any applicable adopted area plan, or community plan of the city;	The change is consistent with the goals and policies of the Comprehensive Plan, including rezoning the area designated as Open Space in the Future Land Use Plan to PUBLIC, which is more compatible with that land use designation than the existing I-2 zone.

Criteria Met?	Sec. 21-3232. Rezoning or Zone Changes	Rationale
<input checked="" type="checkbox"/>	The proposed zone district and allowed uses are compatible with proposed development, surrounding land uses and the natural environment;	The proposed zone change will allow an I-2 by right use to be established, which is compatible with the predominantly commercial and industrial uses surrounding the site. The zone change to PUBLIC for proposed Tract A is more compatible with the floodplain and natural environment in that area.
<input checked="" type="checkbox"/>	The proposed zone district will have, or future development can provide, efficient and adequate provision of public services, including but not limited to, water, sewerage, streets, and drainage;	Adequate infrastructure and public services are available for the proposed zone change and development.
<input checked="" type="checkbox"/>	The proposed zone district will have, or future development can provide, efficient and adequate provision of public uses including but not limited to, parks, schools, and open space;	This rezone is expected to have no impact on public uses or parks, except complying with the Open Space area designation to the north of the O'Brian Canal.
<input checked="" type="checkbox"/>	There is a community need for the zoning district in the proposed location, given need to provide or maintain a proper mix of uses both within the city and the immediate area of the proposed use; and	The proposed rezone will allow for the development of the property to an I-2 use, compatible with the industrial/distribution future land use and the surrounding mix of industrial and commercial uses.
<input checked="" type="checkbox"/>	The area for which zone change is requested has changed or is changing to such a degree that it is in the public interest to allow a new use or density.	The area has developed and changed to be more compatible with industrial uses. The proposed removal of conditions will not change the character of the underlying I-2 zone on the property but will allow for the property to be developed to current I-2 and LDC standards.

Development Review Team Recommendation

Based upon the analysis above, the Development Review Team believes that the application meets the criteria for a Zone Change set forth in the Land Development Code and recommends that the Planning Commission forward the Zone Change request to the City Council with a favorable recommendation

Recommended Motion

To recommend approval:

I move that the Planning Commission enter a finding that, subject to certain conditions, the requested Zone Change for the property located at **9940 Havana Street** contained in case **Z-616-95-21** meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the Zone Change.

Alternative Motions

To recommend approval, subject to condition(s):

I move that the Planning Commission enter a finding that the requested Zone Change for the property located at **9940 Havana Street** contained in case **Z-616-95-21** meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the Zone Change, subject to the following condition(s):

A. Insert condition(s)

To recommend denial:

I move that the Planning Commission enter a finding that the requested Zone Change for the property located at **9940 Havana Street** contained in case **Z-616-95-21** fails to meet the following criteria of the Land Development Code:

List the criteria not met

I further move that, based upon this finding, the Planning Commission recommend that the City Council deny the Zone Change.

To continue the case:

I move that the Planning Commission continue the requested Zone Change for the property located at 9940 Havana Street contained in case Z-616-95-21 to a future Planning Commission agenda.