

**PUBLIC ZONING HEARING – Monday, January 11, 2021, 7:00 pm.**

**Plevna Community Center**

Mayor Benner called the meeting to order at 7:01 p.m.

Councilmen present were Jordan Hoffman, Kyle Vennes, Alba Higgins, and Gary Thielen.

Also present: Krista Nemitz, Clerk/Treasurer Julie Straub, Human Resources  
Corrine Sander, Wastewater Operator Mary Grube, Fallon Co. Planning

Members of the public present: Shawn Sander, Nick Schumacher, Justin Moser (4), Lois Geving

- Mary Grube provided the Councilmen with a new staff report from the Plevna Zoning Commission(attached).
- The Plevna Zoning Commission recommends changing the zoning for the property owned by 4J Well Service.
- Mayor Benner called for public comment, there was none. Public comment was closed at 7:23 p.m.
- Councilman Hoffman made a motion, seconded by Councilman Vennes, to take into consideration the Town of Plevna Zoning Commission, the Staff Report #TPZ-0111121, and public testimony to change the Original Townsite, Section 30, Township 08, Range 58E, Block 11, Lot 6, 7, 8, in the Town of Plevna, County of Fallon, State of Montana.


**Aye: 4      Nay:0      Absent: 0      Abstain: 0      Carried: 4:0**

- Councilman Higgins made a motion, seconded by Councilman Hoffman, to adopt an ordinance at the next Town Council Meeting to make the Zone Change from R-1 to C-2 and that the Town of Plevna Zone Map be amended to reflect the change.

**Aye: 4      Nay:0      Absent: 0      Abstain: 0      Carried: 4:0**

Having no further business Mayor Benner adjourned the meeting at 7:27 p.m.

  
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Town Clerk – Krista Nemitz

  
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Mayor – William E. Benner

**STAFF REPORT #TPZ-011121**

**Town of Plevna Zone Change Request**

**November 13, 2020**

**Applicant's Name:** 4J Well Service, Inc.  
PO Box 72  
Baker, MT 59313

**Legal Description:** The Original Townsite, block 11, Lots 6,7,8,9,10 located on North 3<sup>rd</sup> Street in The Town of Plevna, County of Fallon, State of Montana

**Existing Zone:** R1

**Proposed Zone:** C2 Commercial District

**BACKGROUND:**

The Town of Plevna is a political subdivision of the County of Fallon with powers established by State Law. The power and processes for the Town of Plevna to establish or amend zoning regulations is found in 576-2-303 et. Seq. M.C.A.

On July 28, 2020, 4J Representative, Justin Moser, submitted an application requesting a zone change for his property located on North 3<sup>rd</sup> Street, Plevna, Montana. The purpose of this zone change is to place an RV storage Building on the property.

This report and recommendation of the Town of Plevna Zoning Commission are being submitted to the Town of Plevna Council for consideration, public hearing and recommendation to the Town of Plevna Council as provided in 576-2-307 et. Seq. M.C.A.

**PROCESS:**

- The Planning Staff for the Town of Plevna prepared this report for consideration by the Town of Plevna Zoning Commission.
- The Town of Plevna Zoning Commission gave a recommendation of approval to the Town of Plevna Council to change the Zone from R1 to C2.
- The Town of Plevna Zoning Commission conducted a duly noticed Public Hearing on the proposed Zone Change Request on Monday, November 16, 2020.
- The Town of Plevna Council will conduct a duly noticed Public Hearing on the Town of Plevna Zoning Commission's recommendation on Monday, January 11, 2021 at 7:00 p.m.

- Following the Public Hearing conducted by the City council, they could adopt a resolution to amend the Town of Plevna Zoning Regulations to reflect the requested Zone Change or the Town Council could decide against adopting a resolution to amend the Town of Plevna Zoning regulations to reflect the requested Zone Change provided in 76-3-303 M.C.A.

**RECOMMENDED ZONE CHANGE:**

The Town of Plevna Zoning Commission considered and recommended the following zone change:

- Change from Residential (R-1) Zone to Central Business District Zone (C-1)

**RATIONAL BASIS OF ZONING:**

In the State of Montana, all jurisdictions proposing to zone or rezone property or to adopt or revise their zoning regulations must issue findings of fact on a twelve point test that constitute the rational nexus/legal basis for the adoption of a zoning district, zoning regulations or changes to zoning or zoning regulations. This rational nexus is called the "Lowe test."

1. Is the zoning in accordance with the growth policy?
  - Page 74, Town of Plevna, Future Commercial Development should occur at the intersection of Highway 12 and Main Street and along both corridors . . . other potential commercial sites include the parcels on the southwest corner of Highway 12 and Main Street.
  - Page 25 and 26 in Economic Development states: Increase overall economic activity in the County. Coordinate multi-faceted development efforts that promote small business start-ups and business recruitment, retention and expansion. Enhance the quality of life in the community as a way to stimulate private investment. Chapter 3, Page 28: Implementation (Use the Growth Policy goals and objectives as a guide for decision-making).

**Finding:** Although Economic Development is encouraged, zoning allows for the orderly development of businesses. Part of Mr. Moser's property is zoned C-2. The Zoning Ordinance does not specifically refer to RV storage, it does allow for RV parks that are Conditionally approved. Permitted uses allow for parking garages and retail sales and services. Therefore, it is in accordance with the Growth Policy and it is contiguous to the C2 Zoning.

2. Is the zoning designed to lesson congestion in Streets?
  - At present part of the property Zoned R-1 (Residential). The purpose and intent of the R-1 Zoning District is to provide for low density, single-household residential development. The other part of the property is Zoned C-2. Currently the property that is zoned C-2 is being used for private storage, as a storage building sets on the property. The property is located close to the school and could have an effect on traffic. However, with the RV park across from the school, it should not be adverse.

**Finding:** It should not have an adverse effect on traffic.

3. Is the zone change designed to secure safety from fire, panic, and other dangers?

- Consideration of all future uses for the property in a C-2 district should be considered. However, due to Commercial Building Codes, a fire hazard should not be of concern as the building inspector conducts inspections of all new commercial uses.

**Finding:** In light of the use, it should not be a concern.

4. Is the Zone change designed to promote health and general welfare?
  - The change is contiguous to C-2 and is next to a Residential Zone. It is close to both the school and the RV Campground.

**Finding:** Applicant is requesting the zone change to place an RV storage on his property. There should be no concern regarding the health and general welfare of the citizens.

5. Is the Zone change designed to provide adequate light and air?
  - This would depend on the design of the building that is being placed for RV storage. Because of the Zoning Ordinance adopted by the Town of Plevna, this will be addressed with a zoning compliance permit.

**Finding:** Staff finds that the zone change would probably not have any impact on light and air.

6. Is the Zone change designed to prevent overcrowding of land?
  - Change to C-2 would not overcrowd of the land, as it would be for commercial use.

**Finding:** The zone change would not overcrowd the land.

7. Is the zone change designed to avoid undue concentration of population?
  - The zone change would not overcrowd the land with population, as the intended use is for RV storage.

**Finding:** There will not be undue concentration of population should the zone change.

8. Is the proposed zone change designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements?
  - The property is located where all provisions of water and sewerage are met.
  - The property has Conser Street and 3<sup>rd</sup> Street on either side of it. It does not have a road on the North side of the property next to Happy Camper RV Park.

**Finding:** The lots are located in an area that can receive adequate water and sewerage, and public provisions.

9. Does the zone change give reasonable consideration to the character of the district and its peculiar suitability for peculiar uses?
  - The proposed zone change is contiguous to C-2 and an RV park.

**Finding:** The Zone change gives reasonable consideration to the character of the proposed district.

10. Does the proposed zone change for the property give reasonable consideration to the peculiar suitability of the property for peculiar uses?
- All uses should be considered in the C-2 district. The proposed change does give reasonable consideration to the peculiar uses because it is contiguous to the RV park C-2 district and will fit in with the proposed use.

**Finding:** The property does give reasonable consideration to the character of the surrounding property. The property zone change is one entire block which would run contiguous with the RV park.

11. Will the zone change from R-1 to C-2 conserve the value of buildings?
- The property values should be enhanced as it would run with the RV/C-2 next to it.

**Finding:** Staff finds it would conserve the value of the buildings due to its location.

12. Will the change encourage the most appropriate use of land throughout the municipality?
- The Zone change will add additional C-2 property. This is consistent with the property to the north which is zoned C-2.

**Finding:** The change of the property from R-1 to C-2 encourages the most appropriate use of the land throughout the municipality.

### **SUMMARY OF FINDINGS**

- The Montana Supreme Court adopted a twelve-point “Lowe” test for Zoning and Rezoning. Staff has used this Lowe Test in regards to the rezoning request submitted by Justin Moser to change it from R-1 to C-2 to place an RV Storage facility on property. In conducting the Lowe Test it is important to look at the property and not the proposed business that is wanted to be placed on the property, but the overall possibility of the C-2 Zoning in the Commercial District. In conducting the 12-Point Lowe Test staff finds that the Growth Policy encourages economic growth. Staff finds that the change would not have an adverse or unfavorable impact on surrounding properties because of the location of the property. All potential uses should be considered in the zone change should the property change ownership and property use. However, according to the Town of Plevna Zoning it does not appear to be an issue. 11.1.30 through 11.1.32 states *The purposes and intent of this Zoning Ordinance or to promote the health, safety, and general welfare of the citizens of Plevna; and implement the policies, goals and strategies of the Plevna Growth Policy.* 11.7.10 *the purpose and intent of the C-1 Zoning District is to be the central focus of the Town’s business, government, service, and cultural activities. Room should be provided in appropriate areas for the logical and planned expansion of the present district. The land uses in the district should preserve the historic integrity of the district while still allowing redevelopment to bolster the Town’s core. The area should be developed as an attractive and pleasant environment cognizant of its importance to the community and its historical heritage.*
- Staff did not find that there would be a possibility of overcrowding of land. Staff looked at the school being across from this Zone, however, this Zone

already exists across from the school, so no potential for adverse effects are noted.

- The Montana Supreme Court adopted a three-part test regarding spot zoning. The three questions to consider are whether the requested use is significantly different from the prevailing use in the area. The prevailing use is residential and C-2/RV. Staff does not find the use to be significantly different. Whether the area in which the requested use is to apply is small, although not solely in physical size. An important inquiry under this factor is how many separate landowners will benefit from the zone classification. Many landowners could benefit from this zone change, as it will be development in a Town that is lacking new development. The landowner's property values could go up, and the RV park would benefit from having storage located next to the property. Under the third factor for spot zoning, the inquiry should also involve whether the requested use in accordance with a comprehensive plan or growth policy. This property, is in fact in accordance with the growth policy in the fact that it encourages economic development to the Town of Plevna. The Growth Policy encourages growth on Highway 12, however with this Zone being so close to the C-2/RV Zone, this does not cause an issue for the amount of developmental land in the Town of Plevna. This property has a lot that is already zoned C-2 contiguous to the property zoned Residential. (*12-point Lowe Test for Zoning and rezoning as required by the Montana State Supreme Court in Lowe v. City of Missoula, 165 Mon. 38, 525 P.2d 551 (1974) and Little v. Board of County commissioners, 183 Mont. 334, 631 P.2d 1262 for spot zoning changes.*)

Staff requests the Town of Plevna to Adopt the Staff Report Zone Request #TPZ-011121. The Zoning Commission makes the recommendation to the Town of Plevna is making a recommendation to the Town of Plevna to approve the change from R-1 to C-2 (Commercial) as this runs contiguously with the Happy Camper Campground. This recommendation is based on the fact that C-2 Property allows for sales and retail and parking garages, and the applicant plans on placing an RV storage garage there, for the possibility of 5 bays. The Zoning Commission understand that the zone change would allow for any C-2 uses to be placed on this property for future landowners. The Zoning Commission is requesting the Town Council take into consideration the need to change and sign the zone map and create a resolution to amend the zoning in the Town of Plevna to include.

Suggested Form of Motion:

I move to take into consideration the Town of Plevna Zoning Commission, the Staff Report #TPZ-011121, and public testimony to change the Original Townsite, Section 30, Township 08, Range 58E, Block 11, Lot 6, 7, 8, in the Town of Plevna, County of Fallon, State of Montana, and I move a resolution be adopted at the next Town Council Meeting to make the Zone Change from R-1 to C-2 and the Town of Plevna Zone Map be amended to reflect the change.

Respectfully Submitted;

Mary Grube  
Zoning Commission Executive Secretary  
Fallon County Planning Department