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*Larry M. Weil, Community Development Director
Tim Solberg, AICP, Director of Planning and Zoning
Lisa Sankey, Planner*

West Fargo Planning and Zoning Commission
June 12, 2018 at 5:30pm
West Fargo City Hall

Members Present: Joe Kolb
Shane LeBahn
Eric Dodds
Scott Diamond
Tom McDougall
Jana Reinke
Dave Gust
Scott Diamond

Members Absent: April Walker

Others Present: Larry Weil, Tim Solberg, Lisa Sankey, Matt Marshall, John Shockley, Tina Fisk, Nate Vollmuth

The meeting was called to order by Chair McDougall at 5:30pm.

Commissioner Gust made a motion to approve the May 8, 2018 meeting minutes as printed and mailed. Commissioner Kolb seconded the motion. No opposition. Motion carried.

Chair McDougall opened Public Hearing A18-21 Conditional Use Permit for aboveground fuel tanks for a business at 1551 8th Avenue NW (Lot 2, Block 1 of West Fargo 4th Addition), City of West Fargo, North Dakota.

Tim reviewed the following:

The property is currently developed with concrete/excavating business. The applicant is requesting aboveground diesel and gasoline tanks for fueling vehicles and equipment. Aboveground class 1 (gasoline) and class 2 (diesel) liquid storage tanks are provided for as a conditionally permitted use in the M: Heavy Industrial zoning district without added conditions as are similar in more restrictive zoning districts. Due to the nature of the surrounding development it is recommended to simply provide conditions as may be recommended from the West Fargo Fire Department

A conditional use permit agreement is required to be signed prior to issuance of a building permit and may include conditions deemed appropriate by the Commission.

With regards to planning issues dealing with aboveground storage tanks the staff does not have concern; however, the applicant must comply with all requirements set forth in the International Fire Code, which will be enforced by the West Fargo Fire Department

It is recommended that the City approve the proposed application on the basis that it is consistent with City plans and ordinances with recommended conditions of approval as follows:

1. The West Fargo Fire Department inspects and approves finished project prior to filling and operating fuel tanks.
2. A Signed Conditional Use Permit Agreement is received.

There was no Public Comment. The Public Hearing was closed.

Commissioner Diamond asked if there were any environmental concerns from the city. Tim responded that the West Fargo Fire Department will address concerns and enforce the fire code.

Tim also stated that the project has also been reviewed by Fargo Cass Public Health.

Commissioner Diamond moved and Commissioner Kolb seconded to approve the application with the recommendations listed in the staff report. No opposition. Motion carried.

Chair McDougall opened Public Hearing – A18-22 Oak Ridge 15th Addition, Replat of Lots 1 & 2, Block 1 of Oak Ridge 13th Addition, City of West Fargo, North Dakota.

Tim reviewed the following:

The applicant has submitted an application, preliminary plat, and site plan. The replat is necessary to make some minor lot line adjustments to accommodate development of existing lots. The new lots will meet the current zoning district requirements. The proposed replat does not affect any public easements or right of ways.

It is recommended that the City approve the proposed application on the basis that it is consistent with City plans and ordinances with recommended conditions of approval as follows:

1. An updated drainage plan is approved by the City Engineer.
2. An Attorney Title Opinion to the City of West Fargo is received.
3. Signed Final Plat is received with any necessary easements.
4. A certificate is received showing taxes are current.

There was no Public Comment. The Public Hearing was closed.

Commissioner Reinke asked if this replat had been a part of other plats; Tim stated it was a final correction of adjustments.

Commissioner Gust moved and Commission LeBahn seconded to approve the application with the four recommendations listed in the staff report. No opposition. Motion carried.

Chair McDougall opened Public Hearing A18-23 Oak Ridge 16th Addition, Replat of Lots 4-6, Block 1 of Oak Ridge 6th Addition, City of West Fargo, North Dakota.

Tim reviewed the following:

The purpose of this application is to replat three lots to adjust lot lines. The applicant has submitted a preliminary plat and site plan. The replat is necessary to make some minor lot line adjustments to accommodate development of existing lots. The new lots will meet the current zoning district requirements. The proposed replat does not affect any public easements or right of ways.

It is recommended that the City approve the proposed application on the basis that it is consistent with City plans and ordinances with recommended conditions of approval as follows:

1. An updated drainage plan is approved by the City Engineer.
2. An Attorney Title Opinion to the City of West Fargo is received.
3. Signed Final Plat is received with any necessary easements.
4. A certificate is received showing taxes are current.

There was no Public Comment. The Public Hearing was closed.

There was no discussion.

Commissioner LeBahn moved and Commissioner Diamond seconded to approve the application with the four recommendations listed in the staff report. No opposition. Motion carried.

Chair McDougall opened Public Hearing A18-24 Tevye Addition & Rezoning from A: Agricultural to R-1A: Single Family Dwellings, property at 5048 Sheyenne Street (parcel in the SE¼ of Section 31, T139N, R49W), City of West Fargo, North Dakota.

Tim reviewed the following:

The purpose of this application is platting and zoning in order to construct a new single family dwelling on the property. The applicant has submitted an application, area plan, and preliminary plat. A preliminary site plan shows a proposed single family dwelling to the north, existing accessory building and single family dwelling to the south.

Section 4-444 of City Ordinances provides that more than one principal structure is allowed on a lot in any district provided that each structure if subdivided could meet the district requirements. In this preliminary site plan staff has determined the structures would meet district requirements.

The existing accessory dwelling would be a nonconforming structure due to its size being greater than 1,000 ft²; however, it can be accepted as "legal non-conforming" under section 4-474 of City Ordinances subject to the following provisions:

- No such nonconforming structure may be enlarged or altered in any way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
- Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to the extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.
- Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

There is one existing approach onto Sheyenne Street for the development. As part of the plat, this access should be shifted north slightly to align with the existing 50th Ave E on the east side of Sheyenne St. as it has been proposed in the Sheyenne Street Corridor Study and approved per the requirements of Section 2-0119 of City Ordinances. Preliminary site plans indicate this is the intention of the applicant and this could be relayed onto the plat if necessary to avoid future review.

The applicant is providing 75' of right of way dedication on the plat which would accommodate the City's requirement of up to 150' on arterial roadways. The Sheyenne Street Corridor Study does not propose improvements that would require additional right of way beyond 150'.

Public and/or park dedication is not required for the development because there are no increase in intensity from one lot residential to one lot residential. Staff would suggest as part of the platting procedure that if the Park District provides any comments related to park needs that they be considered. If future re-subdivision is to occur to increase the density, land dedication may be required at that time.

A sewer hook-up fee for all development south of Interstate 94 is required for the subdivision and will need to be addressed within a subdivision improvement agreement.

The proposed application is neither opposed or supported by the City's Comprehensive Plan and is consistent with the Sheyenne Street Corridor Study and City Ordinances. Increased development would necessitate additional requirements; however, the proposed plat does not change the intensity of the existing property.

It is recommended that the City approve the proposed application on the basis that it is consistent with City plans and ordinances with recommended conditions of approval as follows:

1. The City accept the existing accessory building as a legal non-conforming structure subject to the provisions of Section 4-474 of City Ordinances.
2. Access location be included on the final plat and approved by the City Commission with a recommendation for approval by Planning and Zoning Commission.
3. A Signed Subdivision agreement is received and sewer hook-up fee is provided and/or accommodated within the agreement.
4. A drainage plan is received and approved by the City Engineer.
5. An Attorney Title Opinion to the City of West Fargo is received.
6. Final Plat is received with any necessary easements.
7. A certificate is received showing taxes are current.

Nate Vollmuth appeared before the Planning & Zoning Commission as the owner of the lot to the north of the proposed project. Vollmuth stated there is no issue with the rezone, but has a few questions. Vollmuth asked if there was a contract to sell the property to the north for a single family residence and if it was a requirement for rezone if Agricultural. Tim stated that the applicant would need a conditional use permit and would be required to plat if there was any intention of tearing down the building.

There was no other Public Comment. The Public Hearing was closed.

Commissioner Gust asked how specials would be assessed to the property; Tim stated that the land would be assessed for the benefits of the property.

Commissioner LeBahn asked if there are density goals for the project; Tim stated that the current Comprehensive Plan does not state land use or density goals.

Commissioner Reinke moved and Commissioner Gust seconded to approve the application with the seven recommendations listed in the staff report. No opposition. Motion carried.

Chair McDougall opened Public Hearing – A18-25 Eagle Run 22nd Addition, Replat of part of Lot 2 and all of Lot 3, Block 3 of Eagle Run 8th Addition, City of West Fargo, North Dakota.

Tim reviewed the following:

The purpose of this application is a replat to reconfigure lots affected by Sheyenne Street right-of-way needs.

The City is proposing to split a previously subdivided lot into two lots, as well as combine an existing City owned lot into the subdivision in order to accommodate design of the reconstruction of Sheyenne Street. There is an existing office building on proposed Lot 1. Proposed Lot 2, includes vacant land south of the office building, which is zoned PUD and a residentially zoned City owned lot. Access to proposed Lot 1 is an existing approach onto 34th Avenue West; access to Lot 2 would be via 36th Avenue West.

The proposed application is consistent with the City plans and ordinances with the exception of proposed Lot 2 having two separate zoning designations.

It is recommended that the City approve the proposed application on the basis that it is consistent with City plans and ordinances with recommended conditions of approval as follows:

1. Proposed Lot 2 be rezoned, or split into two lots to avoid one lot with two zoning districts.
2. A revised drainage plan is received and approved by the City Engineer.
3. An Attorney Title Opinion to the City of West Fargo is received.
4. Signed Final Plat is received with any necessary easements.
5. A certificate is received showing taxes are current.

Commissioner McDougall asked who gets the right-of-way; City Attorney John Shockley stated that the City is entering into a Purchase agreement for the whole parcel.

There was no Public Comment. The Public Hearing was closed.

There was no other discussion.

Commissioner Gust moved and Commissioner LeBahn seconded to approve the application with the five recommendations listed in the staff report. No opposition. Motion carried.

Chair McDougall opened Public Hearing – A18-26 Text Amendment to Sections 4-01 Planning and Zoning Commission, 4-02 Comprehensive Plan and 4-302 Replacement of Official Zoning Map; And Zoning Transition Meeting Regarding Extraterritorial Jurisdiction.

Tim reviewed the following:

The purpose of the Zoning Ordinance Amendments is to address changes to the West Fargo Extraterritorial (ET) Jurisdiction. Staff is proposing text amendments to Section 4-01, 4-02 and 4-302. The specific sections with proposed changes highlighted in red are attached to the staff report for reference.

4-01. Planning Commission - Zoning Commission

- Proposed edits to 4-0107 would amend the date referring to the “Official Zoning Map of the City of West Fargo”

4-02. Comprehensive Plan

- Proposed edits to 4-0202 changing language to now refer to the 2018 Comprehensive Plan (also referred to as West Fargo 2.0) adopted by the City Commission with appropriate date to include the new areas coming into the City’s extraterritorial jurisdiction.

4-302. Replacement of Official Zoning Map

- Proposed edits to 4-302 changing dates and ordinance number for new “Official Zoning Map”
- Included in the adoption of the Official Zoning Map, the City adopts its extraterritorial jurisdiction as part of the ordinance.

The City of West Fargo and City of Fargo have come to an agreement to swap land which is in each other’s extraterritorial jurisdiction. In exchange for releasing extraterritorial zoning authority of the E ½ of the NW ¼ and the NE ¼, Section 32, T140N, R49W to the City of Fargo, the City of West Fargo will be gaining the extraterritorial zoning authority of the W ½, of both Section 29 and Section 20, T140N, R49W. As part of this process, North Dakota Century Code requires the city to hold a zoning transition meeting to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. All of the land to which the City is to be including in its jurisdiction is currently zoned AG (Agricultural) district. Staff is recommending that the City zone this property A: Agricultural under West Fargo City Ordinances Section 4-421.

None of the property which is proposed to come into the City of West Fargo's jurisdiction has been developed or subdivided.

Staff has reviewed the City of Fargo's AG district standards in comparison to the City of West Fargo's A: Agricultural district standards and has determined that there appears to be no effect to the current development pattern of this land in question if it is to transition to the City of West Fargo's planning and zoning jurisdiction.

Notice in the newspaper and City Departments. Official notice provided to the City of Fargo per North Dakota Century Code 40-47-01.1 subdivision 5, 14 days prior to the scheduled zoning transition meeting to be held at June 12, 2018 Planning and Zoning Commission meeting. Property owners affected by the ET swap were notified by mail.

Following the public hearing and obtaining public comments, consider recommending approval of the proposed ordinance amendments.

Tim stated that the Comprehensive Plan would have to be re-adopted upon approval of the text amendments.

There was no Public Comment. The Public Hearing was closed.

Tim stated that a Zoning Transition Meeting would be required to be held during the current meeting. Commissioner Kolb asked if it had to be kept open for a period of time, to which Tim stated it was only required during the current portion of the meeting.

Tim stated the proposed text amendments would have to go through the City Commission, with the final approval taking place at a July meeting.

Commissioner Gust asked if Fargo has authority of the north section of land, to which Tim stated there is zoning authority within two miles of city limits.

Commissioner Reinke asked if there will be an effect on the land going to Fargo. Tim stated there is not much development on that land, therefore there will not be any significant impact.

Commissioner McDougall asked if each text amendment needed to be voted upon separately, to which City Attorney John Shockley stated they could be approved with one motion. Tim stated the Zoning Transition Meeting could be closed.

Commissioner Kolb moved and Commissioner Diamond seconded to approve the text amendments with the recommendations listed in the staff report. No opposition. Motion carried.

Chair McDougall opened a Discussion Regarding Ordinance Amendment to A: Agricultural District.

Commissioner Gust stated there has been a request received to split off a ¼ parcel in the West Fargo Extraterritorial zone, from a grandmother wanting to give land to her granddaughter. The

West Fargo Zoning Ordinance requires that a person owns 40 acres before development of the land. The County requires deed restriction.

Commissioner Gust suggested that the West Fargo ordinance should be more in line with the County ordinance.

Tim stated there should be a minimum lot size, which avoids a “leapfrog” development because there is no municipal help for services. The proposed solution would be to propose an AG District amendment to transfer development rights through deed restriction.

Tim stated the applicant would have to have a plat and sign a deed restriction describing the rest of the section.

Commissioner McDougall asked if they have 40 acres, can they be split into 10 acre lots, to which Tim answered no.

Commissioner McDougall voiced concern about the clarity of the description in the current ordinance, to which Commissioner Gust suggested to give City Attorney John Shockley time to respond, to go through the current ordinance and clarity of the ordinance to come up with language to pursue making a deed restriction possible. Commissioner McDougall asked if the location was outside of the ET Zone, to which Tim stated it is inside the ET Zone, but there are no platted roads.

Commissioner Gust and Director of Planning & Zoning Tim Solberg asked the Commission to further discuss the matter and direct staff if they decide to move forward with the request.

The discussion was closed. No motion was needed of the Commission.

Chair McDougall opened Public Hearing – A18-2 Tehar 2nd Addition, Replat of Lot 1, Block 1 of Tehar Subdivision, Subdivision property in the SE¼ of Section 18, T139N, R49W, City of West Fargo, North Dakota and Rezoning from A: Agricultural to PUD: Planned Unit Development.

Commissioner McDougall moved and Commissioner Gust seconded to continue this agenda item. No opposition. Motion carried.

There were no Non-Agenda items.

Commissioner Gust made a motion to adjourn, and Commissioner Reinke seconded the motion. No opposition. Meeting adjourned.