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Dorinda Anderson, Business Development Director  
Jim Brownlee, CPA, City Administrator

West Fargo Planning and Zoning Commission  
October 9, 2006 at 7:00 P.M.  
West Fargo City Hall

Members Present: Frank Lenzmeier  
Jason Gustofson  
Wayne Nelson  
Terry Potter  
Ross Holzmer  
Harriet Smedshammer  
Kim Keller

Others Present: Larry Weil, Lisa Sankey, Steven Zimmer, Mike Sells, Wayne Welle, Eric Binstock Brock Storrusten, Michael Syvertson, Lynn Johnson, Malory and Deb Olson, Mike Swancy, Jon & Jodie Cole, Travis Voegele, Shannon Jopp, Shanda Cossette, David Weiss, Rod Schober, Brady Wood

The meeting was called to order by Chair Lenzmeier.

Commissioner Smedshammer made a motion to approve the September 11, 2006 meeting minutes. Commissioner Potter seconded the motion. No opposition. Motion Carried.

A06-57 Tehar 2<sup>nd</sup> Addition, replat and rezoning from A: Agricultural to C-OP: Commercial Office Park of Tehar Subdivision and parcel in the SE¼ of Section 18, T139N, R49W, City of West Fargo, North Dakota was withdrawn by the applicant.

Chair Lenzmeier opened public hearing A06-58 Burlington 4<sup>th</sup> Addition, Replat and Planned Unit Development Amendment of Lots 13-18, Block 1 of Burlington Addition, City of West Fargo, North Dakota.

Steven Zimmer reviewed the following information from the staff report:

The property is located east of 9<sup>th</sup> Street East on the south side of 19<sup>th</sup> Avenue East in an area predominantly developed with single family dwellings. The area to the west is developed with apartment buildings and townhouse-style apartments. The applicant is applying to replat 6 single-family lots into 8 smaller twin-home lots. Property abuts interstate berm to the north. Use is consistent with city's plans.

The applicant has submitted a Preliminary Plat and revised Detailed Development Plans for the project. The preliminary plat shows 8 lots for the twin home units. Lots 1 and 8 are 10,260 ft<sup>2</sup>. Lots 2-7 are 11,520 ft<sup>2</sup>. The buildings are 1,630 ft<sup>2</sup> structures with attached double garages with access from Burlington Drive. Lot coverage for lots 1 and 8 is 16 percent and is 14 percent for lots 2-7.

Because these lots abut Interstate ROW there is a 100' setback as well as berming and buffering with trees to minimize the noise affect of Interstate traffic. The trees on the berm have all died and the landscaping not completed, so erosion has taken place. The developer will be required to repair the berm and install trees and landscaping according to the approved plans. The proposed development meets the Interstate setback requirements. Front yard setbacks are 25'. Interior side-yard setbacks are 14', which equals 28' between buildings. Exterior side-yards are 7'. The Detailed Development Plans consist of site, utility, elevation and floor plans. Floor plans show 2 bedroom, 2 bathroom units. Elevation plans show horizontal siding. We have not received a landscape plan for this development. The developer should provide a boulevard planting plan which should be submitted to the Planning Office and reviewed and approved by the City Forester.

According to Engineering there will need to be two additional water and sewer connections, possible relocation of hydrant and inlet adjustment. These will need to be addressed prior to construction.

Notices and maps were sent out to area property owners and City Departments. We have received comments from one of the area property owners who had concerns about the twin-homes being compatible with the surrounding development.

Staff recommends approval with the following conditions:

1. An Attorney Title Opinion is received.
2. A certificate is received showing taxes are current.
3. A Final Plat is received with any necessary easements.
4. The City Planning Department receives a boulevard planting plan for Burlington Drive which is to be reviewed and approved by the City Forester.
5. The drainage and utility plan is reviewed and approved by the City Engineer.
6. Address water, sewer, and other issues with City Engineer.
7. A mailbox plan is approved by the Post Office.
8. A Planned Unit Development agreement is received where the developer agrees to repair the berm and install trees and landscaping according to the originally approved plans.

Michael Syvertson, 1973 Burlington Drive, stated that he purchased a lot about 3 years ago and received covenants at the time that wouldn't allow this type of development. He asked what they as homeowners can do about this.

Steven indicated that restrictive covenants are put in place by the developer and go above and beyond city ordinances. He explained that covenants can be enforced by individual property owners.

Mr. Syvertson expressed concern with the use changing. Larry stated that these are still single family dwellings – attached vs. detached. Mr. Syvertson also expressed concerns with on-street parking.

Travis Voegele, 1997 Burlington Drive, stated that they were sold their property under the interpretation of a single family – one house per lot, specified to a certain square footage, setbacks. He wouldn't have built if he'd known twin homes were going in. There's not a lot of parking along the road. There are twin homes to the east in Fargo and it's very dense, with a lot of cars. They'll have to take legal action if twin homes continue. They're concerned with traffic, increased density and increased speeding. What's the next process? A petition? What do we need to do to prevent this?

Commissioner Nelson asked what the build out on the whole development around the lake would be. Larry stated 46 lots total, there are 7 lots currently built on.

Lynn Johnson, 1977 Burlington Drive, stated that he bought the first house. He thought it was all going to be single family. Had no idea twin homes were planned and is opposed to this.

Shannon Jopp, 1911 Burlington Lane, stated that they were sold their homes under the impression it would all be single family. This would decrease property values. We have covenants and no one asked our opinion prior to this.

A resident at 1903 Burlington Lane stated that they just closed on their home and they oppose this. It will become a privacy issue with the homes being in such close proximity.

Applicant Wayne Welle stated that they've built these same homes in Moorhead. They are predominately for seniors, not families. When he purchased the property in 2003, they were told by the developer they could build twin homes. With the 100' easement along I-94, it's almost impossible to build a single family home. The intent is for retirees. With the earthen berm there is no backyard, they'd be restricted. He showed commissioners photos of the Moorhead project.

Chair Lenzmeier asked if the structures would meet the covenants. Mr. Welle stated that the size wise – structures will be 1,600 ft<sup>2</sup>. He stated that the covenants were changed by the developer when he purchased the property. These would be in the \$210,000 price range.

Shanda Cossette, 1993 Burlington Drive, stated that they built their home last summer and heard nothing about covenants changing or that there would be twin homes.

David Weiss, Rangeline Capital, stated that he's from St. Louis, MO and they took over several lots. They did reduce the price on a couple of lots because there were families looking for specific lots and they wanted to stimulate activity. They aren't going to dramatically reduce the prices, there isn't going to be a wholesale reduction in order to sell lots. Qualities of the homes are very important to them. They want to see more activity and he feels this project would help everyone. As far as the covenant change, he found out about it earlier today. It's specific to those lots.

Commissioner Nelson asked about range of values on Mr. Weiss' homes. Mr. Weiss indicated low end is \$200,000 and upper is mid \$300,000. Only half the lakefront lots have been sold. The smallest lots have been sold. He stated that they have masonry foundations and square footage requirements for their lots.

Mr. Syvertson indicated that he was all set to purchase one of the first lots – had put down earnest money, only to find out the lot was included in the ones Mr. Welle purchased while they were trying to arrange financing. He stated concern that once the twin homes are started, they will continue. He thought once covenants were designed they couldn't be changed.

Larry stated that he believes that once a covenant is approved, any changes must be signed off by property owners. A resident indicated that this was the first they've heard of it. Larry stated that the City has no legal rights regarding covenants.

Mr. Weiss stated that the modification was just the covenants for the lots involved.

Mr. Welle stated that when he purchased 17 lots in 2003, it was with the understanding that this could be changed. He saw problems back then with the lots along I-94.

Mr. Syvertson stated that he's concerned with housing prices. If Mr. Welle builds \$300,000 homes and it increases the value of their home, no problem. But if prices are \$150,000, he'd be concerned.

The public hearing was closed

Discussion was held regarding the restrictive covenants and the square footage requirement. Larry stated against State law for the City to enforce restrictive covenants. He stated that this project is consistent with the Comprehensive Plan. The density is mixed use – 10 units per acre max and has developed at about 6 units per acre.

Commissioner Holzmer stated that the City has nothing to do with restrictive covenants. They can only go by the City Ordinance. The City Commission can look at other issues.

Commissioner Nelson stated that if the development went from \$200,000 to \$350,000, they'd all be single family residences. The least expensive homes would be along the interstate, more expensive around the lake. This is a reasonable option for the land.

Because of residents' concerns with on-street parking, Commissioner Keller asked Mr. Welle about number of parking spaces provided. Mr. Welle indicated there would be a two-stall garage and two-stall driveway – 4 spaces total. Parking hasn't been an issue in Moorhead because these are retirees, not families. He also stated that he owns all the lots across the street along the pond, so he's very conscious of what goes in here.

Commissioner Gustofson asked who owned the other lots along the interstate. Mr. Weiss stated he owns the two to the east and two to the west and he's not planning to change anything. According to the restrictive covenants, the single story square footage is 1,500, Split Levels are 2,200, and some are 1,800 depending upon certain areas. It's on a lot by lot basis.

Commissioner Nelson made a motion for approval based on staff recommendations. Commissioner Keller seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A06-59 Conditional Use Permit for expansion of a landscaping and nursery use on Lots 1- 4, Block 1 of Selberg's 3<sup>rd</sup> Subdivision (Reed Township), Cass County, North Dakota.

Steven reviewed the following information from the staff report:

The property is located south of 32<sup>nd</sup> Avenue NW and east of the Sheyenne River. Applicant has previously applied and received two Conditional Use Permits, one each in 1999 and 2002. In 1999 he applied for, and received, a CUP to allow

operation of a landscaping business in an Agricultural Zoning District, on what is now Lot 1 Block 1 Selberg's Third Addition. In 2002 he applied for, and received, a CUP to construct a storage 40'x60' building for the landscaping business on Lot 2 Block 1 of Selberg's Third Addition.

Landscaping Businesses are a conditionally approved use in the Agricultural Zoning District and any expansion to a property not previously approved requires a separate CUP. The applicant is now requesting that he be allowed to expand his business to use Lots 3 and 4 of Selberg's Third Addition.

The Land Use Plan shows the area around applicant's property developing as rural residential (single family on large lots). It is important that the proposed use be conducted in a manner which will not have detrimental effects on area residential development. Additional storage area would increase the affect it has on surrounding properties. The staff does have some concern on the extent of outdoor storage that is currently on the properties, particularly if there is will be any additional impact on adjoining properties. The storage of timbers, rocks, equipment and others items should be well-screened from adjoining properties and public view from the north. The earlier application required screening of the materials which were to be located to the south on Lot 1. Currently materials are also stored on Lots 3 and 4 and a dirt screening operation is being conducted on these lots as well, which has not been approved by the City.

The intent of the Agricultural District is to allow people to use their property for primarily agricultural uses. Conditional Uses allowed in this district are intended to allow additional and/or supplementary use along with the primary agricultural use. In this case the primary use could be considered heavy commercial in nature. Supplementary uses for a landscaping business would include such things as a tree farm, garden plots, fruit trees and bushes, seed producing, etc.

With reference to the criteria for granting conditional uses, the following is noted:

- Screening and buffering would be appropriate for any outdoor storage areas where landscaping materials are stored. A heavy shelter belt is in place along the east side of the property and continuing north to 32<sup>nd</sup> Avenue NW. The shelter belt is an excellent screen from the rest of the rural residential lots in the Selberg's Third Subdivision. Some additional screening may be necessary to screen areas where equipment and landscaping materials are stored if the storage can be viewed by adjoining properties or from the street to the north.
- The structure does not appear to be affected by soil conditions as they relate to water supply, basement excavating, road construction and related land use. The structure is affected by the 100-Year Flood plain. Therefore, the City will need to determine what flood proofing measures are required. This will be completed during the building permit process.
- The proposed use is viewed as generally compatible with adjacent properties and other property in the district as per the scale and proposed manner of operation of the use. The expanded use is likely to create some additional traffic in the area.

Notices were sent to adjacent property owners and township officials for review. A phone call was received from an area resident with concerns regarding the intensity of use and concerns of the business expansion.

Staff believes there are two possible choices the Planning and Zoning Commission should consider, and they are:

- 1) Conditional Approval – staff believes there needs to be a condition put on any expansion of this landscaping business to restrict the additional area of Lots 3 and 4 to agricultural type landscape uses, such as growing trees for transplant, etc. The dirt filtering operation should be relocated to Lot 1 and be properly screened.
- 2) Denial – based on the fact that this business is located directly adjacent to a residential neighborhood and has generated complaints about the operation of the business.

Brady Wood, 3108 5<sup>th</sup> Street NW, stated that his backyard is up against this property. He is concerned with increased noise, increased traffic, bigger trucks, the use of skid steers and equipment in the evening.

Mike Sells stated that he lives to the north and his property is pretty much screened from the dust from the dump trucks driving along 32<sup>nd</sup> Avenue North; however, the loaders and dump boxes create a noise similar to a sonic boom early Saturday mornings. He is also concerned with increased traffic, increased road maintenance. It's posted at 15 mph to keep the dust down, but with speeding there is an increase in dust and dirt. He stated that this is a commercial use in a residential area.

Rod Schober, 617 Martin Drive, stated that he was at the meeting when this was originally approved and was told 7-10 trucks per week. He counted that many in about 15 minutes. They use his driveway to turn around and his wife and daughter have

almost been run off the road by dump trucks. Some of his neighbors have lived in this area for 30 years.

Gerald Noble, 3116 5<sup>th</sup> Street NW, stated that he's not opposed to this as long as there are trees buffering and screening the property. He doesn't notice the traffic, etc., however, he isn't there during the day.

Wade Altenberg, 2118 5<sup>th</sup> Street NW, stated that he received the information, but it didn't appear the business was going to increase in size. He stated that the new office will increase the aesthetic value. He doesn't want the traffic or business to increase, but is in favor of this.

Applicant Eric Binstock stated that he faxed Steven information on traffic – number of trucks per day is 7-10. He stated that his clientele is mostly 5-10 landscaping companies who purchase from his wholesale nursery. He stated that the traffic will decrease when he moves the screen plant for soil. Dirt sales have decreased, so the operations will cease. He stated that he received a letter from a neighbor, Christina O'Hara, who has no problem with the request.

Mr. Binstock stated that the nursery stock adds to the screen, the increased traffic is seasonal. He stated that he is not trying to impact the area. He is not opposed to speed bumps. He also stated that it's just not him causing traffic problems. This is the same use since 1999.

Mr. Noble asked about the gap in the shelter belt and would like more trees. Mr. Binstock indicated he didn't have a problem with planting trees there. They had a waterline/well problem in that location. Discussion was held regarding the shelterbelt.

Mr. Binstock stated that when he bought the property, he left two lots zoned as Ag. With the river eroding his road, he isn't sure what the use will be for the two remaining lots. Probably not residential if he needs to rebuild his road.

The public hearing was closed.

Commissioner Gustofson asked if something couldn't be done to reduce the dust. Mr. Binstock stated that he could try to chloride the road. Steven indicated that this is a rural residential road and residents choose to have a gravel road, choose to live along the gravel road. Discussion was held regarding 32<sup>nd</sup> Avenue road maintenance issues. Commissioner Smedhammer indicated there was a Reed Township meeting on Tuesday evening at 7.

Mr. Sells asked about the business and noise on nights and weekends. Mr. Binstock indicated that his business is open from 7:30 a.m. to 4:30 p.m. He has a sign which says no pickups after business hours; however, sometimes a truck shows up late in the afternoon and is being unloaded until 9-10 at night. He also stated that he was moving dirt on Saturday mornings. The trucks associated with that use will decrease. He stated that he has 13 acres and a pond, so he uses his own personal equipment on weekends and evenings to maintain it.

Commissioner Gustofson made a motion to approve the request with the conditions that the screening plant has to go and to replace the plantings along the east side of the property where there is a gap. Commissioner Holzmer seconded the motion. No opposition. Motion carried.

The next item on the agenda was 6. Continued - Request for Vacation of Pedestrian Access Easement Between 3506 & 3514 8th Street West.

Steven stated that at the last meeting there wasn't adequate time to review the information. Since the last meeting he has spoken to the City Administrator, Assistant City Engineer and Traffic Engineer, who recommend denying the request. He stated that there is financing to put in the sidewalk yet this year.

Commissioner Gustofson asked who would pay for it – would it be assessed? Steven stated the City has money to install it.

Commissioner Holzmer made a motion to deny the Vacation of Easement. Commissioner Gustofson seconded the motion.

Jon Cole stated that the sidewalk goes nowhere. They've lived at this location for 1 year and 9 months and this is the first they've heard about this.

Mr. Swancy stated that at the last meeting he was told that in order to put in a sidewalk, it had to meet the setbacks of a corner

lot. Larry stated that no, the sidewalk needs to stay within the easement area. The side yard setbacks for the houses are 6' and you can't build over an easement.

Mrs. Swancy stated that if it was so important, then why didn't Larry know about it until she showed it to him. They will need to put up a fence if this goes in and they won't even be able to put their downspouts down. Larry stated that when he checked the plat, it showed the easement.

Commissioner Nelson stated that it is not the Commission's fault. They have to enforce what is there. The easement should show up on any deed. He empathizes with the property owners, but this isn't a planning and zoning issue. The developer and realtor should have informed the residents about it. Larry stated that the developer for Eagle Run identified where the easements should be placed. He agreed and signed for them on the plat.

Commissioner Nelson stated that it is unfortunate property owners found out after the fact; however, the developer and realtor should have disclosed this information, as it would have been reflected in the title opinion. Assistant City Engineer Brock Storrusten stated that this is a Title Company issue.

Mrs. Cole stated that it wasn't there. How could so many people have missed it? We chose our lot and if we had known it was going to be there, we never would've purchased it.

Steven stated that it's identified on the plat. There's money to install the sidewalk. He stated that they have the option of contacting the City Commission, they may have a different opinion.

Mr. Cole asked who is responsible for tearing up their sprinklers. Brock indicated it was a homeowner issue. They shouldn't have been placed in the easement.

The commissioner then voted on the motion on the floor to deny the request. No opposition. Motion carried.

The next item on the agenda was a special meeting on October 23<sup>rd</sup>. Larry stated that there are a couple of conditional use permit requests, simple lot split and possibly a kick off of the Comprehensive Plan updates.

Under non-agenda Malory and Deb Olson asked about a request for an approach/access onto Sheyenne Street.

Larry stated that a request for a curb cut requires Planning & Zoning and City Commission review and he hasn't had a chance to review the information. A copy of the site plan and aerial photo were dropped off this afternoon. It appears the majority of the existing shared driveway is located on the Olson's property. Mr. Olson stated it was 50/50.

Mrs. Olson stated that she was shocked to hear this hadn't been reviewed. Last spring they got approval with the building permit. The concrete was already being poured. Mr. Olson stated that the garage was redesigned so as to be on the north side of the lot.

Mr. Olson stated that the current driveway is shared equally. The intent was to allow the neighbor to continue using it for 5 years or with the stipulation that should it deteriorate or Sheyenne Street be reconstructed. They're moving the driveway from the south property line to the north property line. The adjacent property owner still has adequate room to access his garage. Mr. Olson stated that his neighbor has lots of visitors and a lot of people who park on the grass.

Mrs. Olson stated that she thought it was approved as per Kevin Buchholz.

Discussion was held regarding the existing driveway and limiting access onto major streets.

Chair Lenzmeier asked what could be done to help the Olsons. Larry stated there may be issues, such as easements that need to be addressed. Mrs. Olson stated that this was reviewed by their attorney. Larry stated that we don't want two driveways. The existing one should either be removed or timeframes put in place for removal.

Larry reviewed the site plan and aerial photo with commissioners.

Commissioner Nelson made a motion for approval to create a driveway approach on the north side of Lot 10 with the

understanding that the existing driveway be eliminated. Commissioner Holzmer seconded the motion.

Discussion was held regarding timeframes. Commissioner Keller stated concern with the neighbors selling their house and the new owners thinking the driveway is theirs. Larry clarified that this is dealing with the approach and driveway within the right-of-way.

Commissioners then voted on the motion on the floor. No opposition. Motion carried.

Commissioner Gustofson asked Brock why sidewalks aren't stubbed out right away, so as to avoid issues such as the one in Eagle Run. Brock stated that they're doing so now.

Under Non-agenda, Chair Lenzmeier referred to the Workforce Housing study presented last month. He stated that he was very disappointed nothing looked at income, a livable wage. They should look at all those aspects – provide jobs to making housing affordable.

Meeting Adjourned.