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Larry M. Weil, Planning and Community Development Director  
Tim Solberg, Senior Planner  
Lisa Sankey, Assistant Planner

West Fargo Planning and Zoning Commission  
August 10, 2015 at 7:00 P.M.  
West Fargo City Hall

Members Present:            Connie Carlsrud  
                                     Scott Diamond  
                                     David Gust  
                                     LeRoy Johnson  
                                     Joe Kolb  
                                     Tom McDougall  
                                     Eddie Sheeley  
                                     David Zupi

Others Present:    Larry Weil, Lisa Sankey, Tim Solberg, Dustin Scott, Luke Champa, Harold and Sharon Odegaard, Todd Novaczyk, Dell Sprecher, Aaron Greterman

The meeting was called to order by Chair McDougall.

Commissioner Zupi made a motion to approve the July 13, 2015 meeting minutes as written. Commissioner Johnson seconded the motion. No opposition. Motion carried.

Chair McDougall opened public hearing A15-36 Odegaard Preserve Subdivision, Subdivision, Conditional Use Permit for Accessory Building larger than 1,600 ft<sup>2</sup>, Rezoning from Ag to R-R: Rural Residential & Land Use Plan Amendment from Ag Preservation to Rural Residential for property in SW¼ of Section 23, T139N, R50W, Cass County, North Dakota.

Tim reviewed the following information from the staff report:

The property is in the City's extraterritorial area about 3 miles south of I-94 and 2 miles west of the Sheyenne Diversion. The properties were platted using metes and bounds descriptions and have been lots of record in Cass County prior to being included into the City's jurisdiction. The property contains a number of buildings and one residential property.

One of the applicants currently reside on the property and plan to build a new home on a portion of the property which has been raised and received a letter of map revision based on fill (LOMR-F) from the Federal Emergency Management Agency (FEMA). To develop the property for the proposed use a Land Use Plan amendment would be required to take the land out of Agricultural Preservation and place it in a Rural Residential designation. The property could then be platted and rezoned for large-lot single family residential.

Specific zoning provisions have been adopted which increased the minimum lot requirements to promote the preservation of agricultural lands identified on the Land Use Plan. Pre-existing parcels that were established prior to zoning ordinances would be allowed to be developed without being split, but would however require platting. The applicant is proposing to split the existing lots which require a land use plan amendment and rezoning in order to accommodate.

The Preliminary Plat shows 4 lots ranging in size from 2.75 to 5.2 acres. The subdivision is bordered by 32<sup>nd</sup> Avenue West which is classified as an Arterial Street. The preliminary plat shows 75' of right-of-way provided, which is adequate under the City arterial requirements. 32<sup>nd</sup> is currently a township section line road which is statutorily provided for to the public and maintained by the Township. If the City were to expand this far, additional right of way would be necessary and would be a result of development. There are currently 3 access points from the subdivision onto 32<sup>nd</sup> Avenue West which may be limited in the future if the road is improved.

There are 2 larger buildings existing that would remain on the proposed Lot 4. These buildings are approximately 6,000 ft<sup>2</sup> and 2,400 ft<sup>2</sup> and would require a conditional use permit within the proposed Rural Residential zoning district. It would be

appropriate to add as a condition of approval that the buildings would remain accessory to a primary residential use and could not be sold for storage or commercial uses. Any new buildings proposed in the plat will need to be reviewed more closely by the City's Building Administrator during the permitting process. Certain procedures as set forth by FEMA and the State need to be followed by the City when reviewing building permits in the Special Flood Hazard Area

Notices were sent to adjacent property owners, county and township officials, and City departments for review and comment. No comments have been received to date.

Park dedication is required for undeveloped lots within the subdivision. The Corridor Overlay District requires a landscape plan be submitted along 32<sup>nd</sup> Avenue West with platting. The applicant has planted tree rows along the corridor which are more than adequate for the foreseeable future as no plans for improving 32<sup>nd</sup> Avenue are in place. It may be appropriate to write into a developer agreement the requirement of a buffer if improvements to 32<sup>nd</sup> Avenue are made in the future.

Should the Commission agree to the Land Use Plan Amendment it is recommended the application be conditionally approved on the basis that with set conditions it would be consistent with City plans and ordinances. The proposed conditions are as follows:

1. The Land Use Plan is amended from Agricultural Preservation to Rural Residential for the subdivision area.
2. That the buildings on Lot 4, Block 1 would remain accessory to a primary residential use and could not be sold for storage or commercial uses.
3. All residential structures constructed meet National Flood Insurance Program standards.
4. A subdivision agreement and park dedication agreement are received.
5. An Attorney Title Opinion is received.
6. A certificate is received showing taxes are current.
7. A drainage plan is received and approved by the City Engineer.
8. Any necessary easements are placed on the Final Plat.

There were no comments from the public. The hearing was closed.

Chair McDougall asked why park dedication was required for a property outside the City limits. Tim indicated it's an ordinance requirement and it would be cash-in-lieu, not land. Chair McDougall and Commissioner Johnson stated it's ridiculous.

Commissioner Gust asked if deed restrictions weren't required. Tim indicated it's a 15 acre parcel and is already a farmstead. While the property is designated Ag Preservation, it wouldn't be taking crop land away. Commissioner Gust stated concern with water draining onto adjacent properties. Tim indicated a drainage plan is required.

Commissioner Kolb asked how condition #2 would work. Tim stated that there is a conditional use permit form which the applicant signs and is recorded. Specific conditions will be laid out in the document.

Larry stated that the ordinance provision dealing with park dedication is general across the board zoning and does not distinguish between rural and City limits. It does speak to if a property is developed. Only vacant or newly created lots would require park dedication. Commissioner Kolb asked how much. Tim stated \$343, or 10% of the assessed value of land for a 2 acre lot. Tim stated the point is if we get a subdivision with 100 lots, they'd have to go back and see if park dedication was required. So consistency within the ordinance.

Applicant Sharon Odegaard stated that they have no objection. Her grandchildren use West Fargo Park facilities and she herself is a West Fargo Park Board member. They want to preserve the Odegaard property, thus the name of the subdivision. Her kids need a bigger home. They've paid for a LOMR and continue to put money into the property for future development. The whole point of the extra lot is just in case the property is annexed and the kids need to sell off the lot to help pay for special assessments. They will keep the Morton building for storage of personal vehicles and equipment.

Commissioner Kolb made a motion for approval subject to the 8 conditions listed in the staff report. Commissioner Johnson seconded the motion. No opposition. Motion carried.

Chair McDougall opened public hearing A15-38 Planned Unit Development (PUD) Amendment to replace underground parking with parking garage for an approved assisted living facility at 645 33<sup>rd</sup> Avenue East (Lot 1, Block 2 of Oak Ridge 5<sup>th</sup> Addition), City of West Fargo, North Dakota.

Tim reviewed the following information:

The property was platted and zoned in November of 2013 to PUD: Planned Unit Development for an assisted living facility. A PUD Minor Modification was approved on June 9, 2014 which revised the building, site, and landscaping plans due to a new architectural plan which reduced the size of the originally approved PUD.

The applicant proposes amending the approved PUD plans by removing the underground parking and replacing it with an aboveground parking garage. The proposed parking garage is a one-story structure that will hold 33 stalls and is proposed to be setback from the rear property line 35'. The parking garage is proposed to be constructed of like materials and sided in fiber cement siding consistent with the primary buildings. Setbacks within the C-OP: Commercial Office Park zoning district for rear yards is 35', setbacks within the R-3 Multiple Dwelling district for rear yards is 25'.

The original plans building and off-street parking setbacks have remained unchanged, however the plans have been further refined with detail on interior courtyard, addition of a storm water pond in the rear of the building's east side, and the addition of a small greenhouse within the rear yard adjacent to the main building. The applicant has used the requirements of the C-OP: Commercial Office Park designation for required setbacks. At time of permitting, staff would review plans based on the provided detailed development plans and requirements of the C-OP district.

The addition of the parking garage decreases the amount of buffer yard space that was present in previous plans. Buffer yard requirements for R-3 development adjacent to R-1 would require a 4' architectural screen, 10' buffer yard and small evergreen trees or a 20' buffer yard with small evergreen trees and one row of evergreen shrubs. Buffer yard requirements for C-OP development adjacent to R-1 would require a 6' architectural screen, 25' buffer yard, and large and small evergreen trees or a 50' buffer yard, large evergreen trees, small evergreen trees and a row of evergreen shrubs.

The applicant is providing a 35' buffer yard utilizing the existing mature tree row and adding a mix of large evergreen trees adjacent to the new parking garage. Adjacent to the access drive the applicant is providing a 20' buffer yard with existing trees, evergreen, and two other sets of trees to provide a continuous row of vegetation. The landscape provisions do not offer guidance on buffer requirements for a development such as this. This is a Planned Unit Development approved under the office park land use designation; however, the main function is as a multiple dwelling structure. It would be appropriate to consider if the applicant is sufficiently providing the adequate buffer considering the requirements of similar developments. Concerns noted at previous meetings and similar situations have been of single family residential properties concern of headlights and taillights shining into adjacent single family homes.

Notification was sent to adjacent property owners within 150'. No comments have been received to date.

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

1. Due consideration be given to neighboring property owners regarding the buffer requirements in the rear yard adjacent to the R-1: One and Two Family development.
2. Property meet yard and open space requirements of R-3 and C-OP district regulations at time of permitting.

There were no comments from the public. The hearing was closed.

Chair McDougall stated he was surprised nobody from the single family homes to the south were here. Commissioner Kolb indicated a couple houses had sold since this was last reviewed.

Chair McDougall asked about the height of the existing trees. Commissioner Kolb stated 40', but they are poplars. He stated he lives further to the west along 35<sup>th</sup> Avenue and noted the one thing which property owners were satisfied with was the setback and greenspace. Commissioner Sheeley stated that the biggest opposition was to a 3-story structure and potential for people looking into their homes from above. Shouldn't be a concern with a single story structure.

Commissioner Sheeley made a motion for approval based on the two conditions listed in the staff report. Commissioner Zupi seconded the motion. No opposition. Motion carried.

Chair McDougall opened public hearing A15-37 Zoning Ordinance Amendment to Create a Heavy Commercial and a Light Industrial Zoning District.

Larry reviewed the following information:

At the July Planning and Zoning Commission meeting, when considering an amendment to remove limitations on aboveground fuel tanks as conditional uses in the CM: Heavy Commercial/Light Industrial District, the Planning and Zoning Commission directed the staff to study the CM District to determine if there was a more appropriate means of addressing bulk fuel facilities. A possible alternative was to create two zoning districts which would separate less compatible or more impactful uses from each other. This would potentially remove the possibility of bulk fuel facilities locating near residential areas or areas where there may be uses with high concentrations of people. The Planning and Zoning Commission scheduled a public hearing for a Heavy Commercial District and a Light Industrial District in light of time considerations, should that be the most appropriate alternative.

The Planning staff has spent much time over the past month studying the CM District, as well as the uses currently in place on properties within the CM District. A link to an interactive map showing the various land uses was emailed to Planning and Zoning Commissioners. Following this effort the staff recommends the district be split into two with a Heavy Commercial District and a Light Industrial District. It appears by creating two districts, incompatible uses can be separated and by adopting a zoning district map for these uses, careful consideration given that will protect adjacent zoning district uses from the more industrial uses within the Light Industrial District.

The staff has prepared the proposed text language for the Heavy Commercial District and the Light Industrial District, as well as a proposed zoning map with the intended parcels within the districts. If the ordinance change is adopted, the CM: Heavy Commercial/Light Industrial District would be repealed.

Following the public hearing and obtaining public comments, consider recommending the repeal of the CM: Heavy Commercial/Light Industrial District and establish the Heavy Commercial District and Light Industrial District, as well as the proposed Zoning Map Districts. The basis for the approval would be providing for better categorization of land uses to separate out incompatible uses.

There were no comments from the public. The hearing was closed.

Tim stated that Dell Sprecher with the Fire Department was available to answer any questions.

Chair McDougall asked about changes to the M: Heavy Industrial District. Larry stated that the only change is to the language, which refers to the CM district. Chair McDougall asked if individual property owners were notified.

Larry stated that with an amendment to a district it's hard to address every impact to every property. Some communities have a light or retail commercial and a general commercial district. The CM district was a bit of a catch all for a variety of uses, so there may not be as much flexibility or properties may be grandfathered in. He stated that being city-wide, there are quite a few properties. Notice was published in the official paper. Tim indicated over 400 properties were affected. He then reviewed the map of the proposed HC and LI areas.

Commissioner Zupi referred to paragraph #12 in the LI district pertaining to propane and the amount of gallons being left blank. Larry stated that the City hasn't regulated propane in the past, the fire code does in some cases, so it may be more of an issue than regular fuel.

Chief Fire Inspector Dell Sprecher stated they have rules in the fire code regarding size of tanks, materials, distance requirements. Chair McDougall asked if what was being proposed is appropriate and what about overall safety.

Dell stated that Petro will have distance requirements and needs to submit a worst case scenario/action plan. He stated that this takes tanks away from more congested areas and if this will take the tanks away from the Dan's Oil site, he'll feel much more comfortable. He stated that they can provide Planning and Zoning with a list of sizes.

Commissioner Sheeley stated concern in the future when a business may want to expand. Will there be due consideration? Larry stated that it may be an issue if it's more of a heavier manufacturing use. He stated that the M District is intended for uses which have more of an intensive impact on the area. Tim stated that in the CM district, some of the manufacturing uses are Conditionally Permitted. He stated that when looking at a business in the HC district, does it meet the listed uses, does it meet the land use inventory, does it meet the statement of intent?

Commissioner Kolb asked for clarification about the blank regarding propane tank size. If that's due to the fire code. Larry

stated that prior to the City Commission meeting, they will see what comfort level the fire department has in terms of tank size.

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

The next item on the agenda was continued public hearing A15-30 Zoning Ordinance Amendment to Section 4-428.2(A).4 of the CM: Heavy Commercial/Light Industrial District Regulations to remove size limitations for aboveground fuel tanks as a conditionally permitted use and Conditional Use Permit for aboveground gas & diesel fuel tanks at 1772 W. Main Ave. (Lot 5 Block 1 of Petro Serve 1st Addition), City of West Fargo North Dakota.

Larry reviewed the following:

With the previous public hearing regarding changes to the ordinances; repealing the CM District and adding an HC and LI District, the applicant could continue with the Conditional Use Permit process and forgo zoning ordinance amendments to the CM District.

The property intended to be used for the above-ground Class 1 and 2 liquid storage tanks and propane fuel tanks meets the distance from other properties not owned by the applicant; however, the applicant owns property adjacent to the tanks without adequate setback, so it is recommended the properties are replatted should the zoning ordinance amendments and conditional use permit be approved.

With regards to the criteria for granting conditional uses should the zoning ordinance amendment be approved there shouldn't be any issues.

As per discussion with the previous public hearing, it is recommended to repeal the CM: Heavy Commercial/Light Industrial Zoning District and establish the Heavy Commercial District and Light Industrial District, along with the Zoning Map Districts, on the basis the proposed changes provide for better categorization of land uses to separate out incompatible uses. With the establishing of the 2 zoning districts, it is recommended to conditionally approve the application for the bulk fuel facility for the 10, 20,000 gallon aboveground fuel tanks and the 3, 60,000 gallon LP tanks. The conditions of approval are as follows:

1. A minimum distance of 75' is maintained between the tanks and property lines.
2. The bulk fuel facility as proposed is reviewed and approved by the Fire Department for the quantities and separation from other lots of record and buildings.
3. The applicant's properties are replatted to comply with the ordinance standards and minimize the potential impacts of the bulk fuel facility on other properties.

Discussion was held regarding replatting. Larry stated that the property owner intends to continue owning the lots, which were platted separately so each lot could potentially have a renaissance zone project. If they had platted everything into one lot, they wouldn't be able to apply for future renaissance zone projects. The company has taken a different direction, since the property was originally platted.

There were no comments from the public. The hearing was closed.

Tim reviewed the site plan showing the containment areas.

Commissioner Zupi made a motion for approval based on the 3 conditions listed in the staff report, with an additional condition there be a landscaping row of trees to the south of the fuel tanks. Commissioner Gust seconded the motion. No opposition. Motion carried.

The next item on the agenda was Continued Public Hearing – A15-32 Zoning Ordinance Amendments to the following: Sections 4-0406.3, street right of way requirements; 4-0407, fee-in-lieu for land dedication; 4-100, definitions, language for retirement/nursing care, home child care facilities, uses in Commercial Office Park, and Heavy Commercial/Light Industrial districts, language for stockpiling within Heavy Industrial district, language within corridor overlay district regarding designated streets, building construction standards related to orientation & materials, revisions to permitted uses in Main Avenue overlay district, and consideration of changing medical & dental facilities, such as clinics, hospitals, nursing or convalescent homes to be changed from permitted uses within C, CO-S, & CO-M to conditionally permitted uses; 4-449.A,

revisions to landscaping provisions and screening requirements; 4-450, procedures related to permitting and to reduction in required parking; 4-460, revisions to clarify review of reader board signs; and 4-530, create clear procedures for temporary use & structure permitting.

Tim reviewed the following:

Staff has had an opportunity to meet with developers and affected agencies related to the proposed amendments. Changes to the recommended revisions have been made after these discussions.

4-0407 related to subdivision exactions, it was agreed upon with developers and the Park District that it would be preferable to create annually by resolution a value to be used to determine the fee in lieu of land dedication. It was further agreed to that the current process of determining fair market value may be considered if the developer can justify a lesser value is the fair market value as agreed to by the City.

The proposed changes include the following:

1. The City and the developer may establish by resolution of the City Commission annually the acceptable value for residential, commercial and industrial designated land for consideration as the agree as to the fair market value; or
2. The developer may submit a copy of the purchase agreement for which the City will take into account any and all concessions made and any improvements to said property to arrive upon an agreed upon fair market value at the time of approval of plat; or

4-100 related to the permitted uses within the C: Light Commercial Uses and the C-OP: Commercial Office Park. A permitted use within the C-OP district was added to the C district for “commercial and professional office buildings, single or multi-tenant”, and a language for a permitted use in the C district of “Business services, such as banks, and other financial institutions, and professional offices” was used to replace the language in the C-OP district of “Banks, Savings and Loans, and Credit Unions”.

4-100 related to the recommended change for medical and dental facilities, such as clinics, hospitals, nursing or convalescent homes from a permitted use to a conditional use is being updated to leave medical and dental facilities as a permitted use, and require drug treatment facilities as a conditionally permitted use.

Tim stated that a developer doesn’t agree with where assisted living is placed in the ordinances, specifically when dealing with the C District. The City Attorney is clarifying language. In order for it to be an assisted living facility, it can’t just be multiple family, there needs to be employees and services on-site.

He stated they are also looking at building orientation in the CO District and gave the example of the Taco Bell lot along Veteran’s Boulevard.

Developer Aaron Greterman asked if they are proposing breaking down each district or approving changes as a whole. He’s trying to get an assisted living facility approved and cities are having a tough time figuring out where to place them. He stated in talking with the City Attorney, he’s looking at putting a definition on types of care. He would like to give information to the City Attorney to show what other cities are doing.

Tim stated that the City Attorney is looking at allowing assisted living as a conditionally permitted use in other districts. Currently it’s only allowed in the C-OP District as a conditionally permitted use with employees and onsite services.

Mr. Greterman stated that he could go two blocks to the east and build in a C District in Fargo, but he wants to build in West Fargo for people with disabilities as well as senior citizens. He reviewed definitions of disabilities. Minneapolis has different qualifications for assisted living.

Chair McDougall asked if there was any ordinance language prepared on assisted living facilities. Tim stated the City Attorney is still working on the opiate clinic language and assisted living.

Commissioner Kolb asked if the language on dedication will change. Larry stated that there may be changes, but what we have is what was worked out with developers.

Chair McDougall stated that options include approval with proposed changes as written knowing the City Commission will review at their public hearing or continuing.

Tim stated if the commission doesn't feel comfortable with the ordinances, it can be continued. Larry stated that there is a separate ordinance in place regarding drug treatment/opiate facilities.

Commissioner Gust indicated the assisted living issue is new. Chair McDougall stated that there has been discussion on assisted living facilities for the past three years. There isn't a designated area for it, just conditionally permit in the C-OP District. Tim stated that the question is whether it's an assisted living facility, or apartment.

Commission Zupi asked what they can approve? Larry stated that the only time sensitive item is the opiate clinic.

Tim asked Commissioners about assisted living facilities.

Mr. Greterman stated it's not just an apartment setup. Chair McDougall asked what makes it an assisted living facility. Mr. Greterman indicated the State of North Dakota really doesn't define it --- common space, meals, congregate housing vs. apartment like setting with arrangements for services --- meals, employees, bathing, cleaning, medications... The state has a moratorium on beds for nursing homes. Discussion was held regarding types of services and facilities. Commissioner Gust asked if someone needs to certify whether care is needed.

Commissioner Sheeley stated he would lean more toward conditionally permitted uses.

Larry stated that if they want to see the language come back to the Planning and Zoning Commission, then they should continue it.

Commissioner Johnson made a motion to table this item until the September 14<sup>th</sup> meeting. Commissioner Kolb seconded the motion. No opposition. Motion carried.

Larry reminded commissioners of the NDPA meeting on Thursday, September 24<sup>th</sup>, in conjunction with the North Dakota League of Cities in Fargo. Information will be sent out to commissioners. The planning department will cover the cost of registration if anyone is interested.

Commissioner Gust made a motion to adjourn. Commissioner Carlsrud seconded the motion. Meeting adjourned.