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Larry M. Weil, Planning Director
Steven Zimmer, Senior Planner
Lisa Sankey, Assistant Planner

West Fargo Planning and Zoning Commission
March 12, 2012 at 7:00 P.M.
West Fargo City Hall

Members Present: Jason Gustofson
Connie Carlsrud
Frank Lenzmeier
Terry Potter
Tom McDougall

Members Absent: Edward Sheeley, Jerry Beck

Others Present: Larry Weil, Lisa Sankey, Steven Zimmer, Eric Binstock, Paul Woitzel, Albert Frisinger, Dave Staska, Ralph Johnson, Melanie and Glen Klinkhammer, Todd and Tammy Clemens, Ron Loberg, Cliff Watson

The meeting was called to order by Chair Lenzmeier.

Commissioner Potter made a motion to approve the February 13, 2012 meeting minutes as printed. Commissioner Carlsrud seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A12-8 Extraterritorial Extension and Zoning Transition.

Steen stated that the City is looking at extending the extraterritorial jurisdiction 4 miles, with 2 miles being exclusive and 2 being under joint jurisdiction.

Larry reviewed the following information from the staff report:

The City has realized considerable growth over the years, and a fair amount of development has also occurred outside the City. Development within areas which may be impacted from flooding requires much coordination and review by various entities. Additional planning and coordination is needed as flood protection alternatives for the area are considered. Issues have surfaced with existing developments/subdivisions which require additional review and coordination. As a result of these issues, the City would like to pursue extending the extraterritorial area.

Over the past few months the city has been discussing the extension of extraterritorial boundaries for planning and zoning purposes for the City of West Fargo as is currently provided for in Chapter 40-47 and 40-48 of the North Dakota Century Code. Under State statutes the City can extend its extraterritorial jurisdiction four (4) miles outside its corporate city limits. However, the outer two (2) miles is considered joint jurisdiction with the townships for zoning issues and with Cass County for subdivision matters. Within the joint authority area, the City acts in a review capacity as the authority rests with the townships and county, unless the City has previously approved plats or site plans for a given area.

Prior to 2010 the City had a population of less than 25,000 so the extent of extraterritorial area was two (2) miles with the outer one (1) mile being under joint jurisdiction. The City exercised the two-mile extraterritorial area in 1998 which was complete authority until 2009 when the joint jurisdiction statute was adopted. Historically the City has sent extraterritorial applications to townships and county for review and comment.

The city proposes to extend its extraterritorial boundaries to the north and west. The jurisdictions that would be affected include Mapleton, Raymond, Reed and Warren Townships for zoning authority and Cass County for subdivision authority. The staff has communicated with the affected townships and county to coordinate zoning classifications for existing uses and existing subdivisions. We have also contacted the cities of Horace and Fargo to notify them of our intentions.

The proposed zoning for the North 950' of the NW¼ of Section 10; The North 950' of the West 1100' of the NE¼ of Section 10; and Lot 2, Block 1 of Leo's Subdivision All Located in Mapleton Township (T139N, R50W) is CM: Heavy Commercial/Light Industrial District.

The proposed zoning for Jason Subdivision in Raymond Township (T140N, R50W) is RR: Rural Residential District. The proposed zoning for Selberg's Second Subdivision and Riverview Estates Subdivision in Reed Township (T140N, R49W) is R-1E: Rural Estate District. The proposed zoning for all other areas is Agricultural.

Much of the proposed extraterritorial extension area is subject to periodic flooding and is located within the FEMA designated flood plain. As such it is appropriate that the Agricultural zoned areas are also designated as Agricultural Preservation on the City's Land Use Plan which would be compatible with neighboring areas already identified on the plan.

Eric Binstock, 605 32nd Avenue NW and Reed Township Supervisor, asked why this was being requested now and if there are any plans to bring areas into the City limits. He stated that a lot of the areas don't fit into the City zoning and with large lots, the specials would be excessive, City wouldn't be able to provide City Services... He asked why the City would want full control, especially if there are no development plans due to flood plain issues.

Mr. Binstock stated that he owns a 23 acre tract north of the railroad tracks that he's been told is limited to Ag Preservation and he's unable to do anything with. He also asked if letters were sent out to individual property owners.

Larry stated that the intent was to show the same zoning that was previously established on the existing land use map where the uses were already in place. Some areas are more appropriate zoned Agricultural. It doesn't mean that nothing can be done with it, as the land use plan can be amended and zoning applied. If an area becomes protected, it can be evaluated and change. The intent for the proposed Joint ET area is simply being suggested to allow the City to work with the township to coordinate. The Township still retains the authority and the County would still control all subdivision development.

Steven stated that in the exclusive ET (blue) area, the City has full ET jurisdiction as per State Law. The Township has the final say in the proposed joint (red) area.

Discussion was held regarding the proposed Reed Township Joint ET extension area.

Paul Woitzel, 3581 166th Ave. SE, Mapleton, ND (Raymond Township) stated that he submitted a letter protesting this, indicating that the Comp Plan says nothing about developing outside the diversion. He stated that State law says we can have organized constructive growth, but it doesn't mean the City should be able to levy taxes & fees. Permits equal fees.

Mr. Woitzel stated that if the City would ever incorporate Sections 33 and 34 of Raymond Township, they would end up with the sewage lagoons in the City proper. He does not support the extension.

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

Commissioner McDougall stated that last month they heard from another township that they were looking for help. Not to take over, but for help. Commissioner Gustofson asked what changes other than building permits would there be.

Mr. Binstock stated that it means having to go through the township, then the City. It's a way for the City to control areas. Reed Township doesn't need help or input.

Steven stated that if one looks at doing a subdivision, the County has control and no flexibility. The thought that West Fargo is going to take over really isn't the truth.

Mr. Woitzel asked about benefits. Steven stated that over the past few years there have been numerous calls from a certain subdivision in Raymond Township that was parceled out years ago by metes and bounds descriptions and there has been conflict among the residents regarding access and streets being blocked off. Mr. Woitzel stated that there is nothing wrong with the layout there.

Steven stated that County Planner Tim Solberg was unable to attend the meeting; however submitted the following email:

I'd just like to re-iterate that our concern lies mainly with developments that are approved that would not likely become part of the City. I'd point to developments such as Selberg's or Woodland Estates that have gravel streets with open ditches and on-site septic as opposed to public sewer. Major subdivisions like these per Cass County Subdivision Ordinance regulations would be required to provide urban-style infrastructure including public sewer and water and paved roads in hopes they would easily transition to annexation.

I support the expansion of the West Fargo extraterritorial boundary and would I'd like to see Cass County work with the City and townships to carefully consider our regulations so that we are working together to best manage the growth in the County. I'd further encourage the City to work cooperatively with the County and townships on floodplain administration as the County is the primary source of assistance in the extraterritorial jurisdiction; however recognize we are not the regulating authority.

Commissioner McDougall asked about the permitting process and if the fees are substantially higher. Commissioner Gustofson asked about the inspection process. Reed Township resident Albert Frisinger stated that the fees are higher as they require an engineer. They just require State plumbing and electrical inspections. Chair Lenzmeier stated that the other township didn't feel they had the staff to review permits. He stated that the intent is for orderly planning for future growth.

Steven stated that he spoke with the building inspector and when dealing in an area where flooding occurs, there is an exemption program with a review process and the ability to exempt certain aspects of the project. The Townships are not eligible and therefore have to meet more stringent standards. Mr. Woitzel disagreed. Larry reviewed the differences between a flood proofing certificate vs. flood proofing exemption, which is an agreement between FEMA and the City. The latter gives the City flexibility.

Discussion was held regarding the differences between the joint and exclusive jurisdictions. Steven stated that in the exclusive jurisdiction they would have to go through the City's permitting process; however, in the joint jurisdiction, they township would have control over it.

Commissioner Gustofson asked how the townships were notified, because at the last meeting everything was okay and now at this meeting there is opposition. Mr. Frisinger stated that he didn't know about the previous meeting. Larry stated that all the jurisdictions were notified – the townships were notified and feedback was requested.

Mr. Frisinger stated that they can manage themselves and don't need the City's assistance. Larry stated that anything in the "red" zone would rest with the township and the only way for joint jurisdiction would be if agreements were put into place spelling that out.

Chair Lenzmeier asked about the differences in permitting fees. Mr. Frisinger stated that they hadn't changed for many years and Reed Township found they were very low, so they're trying to bring the fees up. Chair Lenzmeier asked how much more were the fees. Larry stated that the City's fee structure is based on the building codes, time it takes for the inspections, type of structure – based on actual costs. Mr. Woitzel stated that he calls it a tax.

Commissioner Gustofson asked where they get their permits. Mr. Binstock stated that if he were to build a \$300,000 home the permitting fees thru the City would be \$1,100. Going through Reed Township to build a pole barn would cost \$50. Mr. Binstock stated that he has more flexibility to do what he wants with an Ag parcel. He asked if there was something in between, possibly an agreement for those who want assistance.

Commissioner Gustofson asked what their options were. Larry stated that they could maintain the ET area exactly the way it is today, more forward to what as advertised. Ultimately the City Commission makes the final decision. He stated that if the blue area is approved, agreements are not required. Areas in the red would need agreements in place. The highest impacted level is where people want to build, so the Township, County and City can cooperatively address those issues. Larry stated that if Fargo chooses to move forward, they could do so as well.

Commissioner McDougall made a motion to move this forward by approving as proposed. Commissioner Gustofson seconded the motion.

Larry stated that a public hearing will be scheduled at the City Commission to review this on April 2nd with possible 2nd Reading & Final Approval on April 16th.

The Commission then voted on the motion on the floor. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A12-10 Shiloh 2nd Addition, replat of Lot 1, Block 1 of Shiloh 1st Subdivision, City of West Fargo, North Dakota and a Conditional Use Permit for Assisted Living Facility on part of Lot 1, Block 1 of Shiloh 1st Subdivision, City of West Fargo, North Dakota.

Steven reviewed the following information from the staff report:

The property is located along the south side of Interstate 94, east of Sheyenne Street on the corner of Shiloh Street and 23rd Ave W. The property is zoned R-1E: Rural Estate Dwelling District. The applicant has submitted an application for a subdivision plat and a request for a conditional use permit for an assisted living facility. The applicant proposes to replat for sale and development. The proposed use is generally consistent with City Plans and Ordinances.

The applicant proposes to subdivide the property for sale and development of an assisted living facility. The applicant has submitted an Area Plan, Preliminary Plat and a preliminary site plan.

The Preliminary plat is for 2 lots. Lot 1, will remain Church property and is 310,135 ft². Lot 2, which is intended for the assisted living facility, is 73,482 ft². The site plan shows a total of two buildings when fully developed. Initially the applicant is planning on only building the west building and parking area.

A drainage plan is required for this development. Park dedication is required for the undeveloped area of this plat. All subdivisions developed south of I-94 which benefit from the major sewer extension services installed through City financing are required to pay a utility hook up fee. Arrangements for payment need to be made prior to the subdivision plat being recorded.

With regards to the criteria for granting a conditional use, the following is noted:

- Ingress and egress to the property is shown off of 23rd Ave E. The site plan shows two buildings, one to be built now and one in the future.
- Off-street parking and loading facilities are contained within the property. Parking requirements were calculated for the building and site plans as developed.
- Refuse and service areas appear to be adequately located with reference to ingress, egress, and parking areas. Garbage dumpsters are shown on the site plan on the south side of the detached garage and are fence from view.
- Utilities will need to be supplied to this site. Engineering will work with applicant to plan water and sewer service.
- Screening and buffering for this use is not required, but the site plan shows trees on the west and south sides of the property.
- The proposed use would appear to be generally compatible with adjacent property and other property in the district.

The building is 6,568 ft² with an attached two stall garage. There is also a 1,400 ft² detached 4-stall garage shown to the east of the parking area. The proposed use is an assisted living facility with ten beds in each structure.

Property owners within 350' were notified regarding the proposed conditional use permit. City Departments, Park District, SE Cass Water Resource District, utility companies and Post Office were also notified. Staff received one phone call in reference to this application who said they did not have any major concerns about this use, but hoped it would be developed as single family.

It is recommended to conditionally approve the proposed subdivision and conditional use on the basis that it is consistent with City plans and ordinances. The conditions of approval are as follows:

1. A Title Opinion is received.
2. Arrangement for payment of sewer hook-up fees is received.
3. A Final Plat is received with necessary easements.
4. A Drainage Plan is received.
5. A Landscape Plan is received.
6. A Park Dedication Agreement is received.
7. A Certificate is received showing taxes are current.

8. A Subdivision Improvement Agreement is received.

Ralph Johnson, 141 23rd Avenue East stated that he's against this. He didn't expect to have to look at an apartment building.

Dave Staska, 177 32nd Avenue East, asked who in their subdivision indicated they approved this. Steven stated that he got a call from Kevin Babcock.

Mr. Staska stated that they have covenants and were originally told there'd be a playground and softball diamonds here. They're not allowed to have fences, yet a fence is shown around the dumpster. A retention pond will create a lake. Traffic is bad enough and the road is never graveled or maintained. This is a residential area and they don't want to see a glorified apartment building.

Todd Clemens, 117 23rd Avenue East, stated that he lives across from the dumpster and spoke with Larry about this. They have concerns and would prefer to have a house across the street. They'd hate to see more garbage, they've had to deal with the Dubois disaster and previously mini-storage was proposed. They're fed up. They have a tight knit community and would like to see it remain residential rather than having their picture window face a dumpster.

Melanie Klinkhammer, Owner of Kinder Car, stated that this is in-home care for the elderly. It's a \$1million project, with 10-12 elderly people, gardens... They can put the dumpster elsewhere; they want it to look beautiful.

Tammy Clemens, 117 23rd Avenue East, stated that if they'd reconsider moving the dumpster, why couldn't the driveway be along Shiloh Street with access closer to the church. She also asked if the area could be amended to allow senior housing, why the area to the west couldn't be amended to allow homes all the way to Sheyenne Street instead of hotels or storage.

Commissioner Gustofson stated that the Commission can only look at what is brought before them.

Ron Loberg, 708 Main Avenue, Erie, ND, stated that he owns the property to the west and half of it has already been sold for commercial development. He stated that this project would be a good buffer from the commercial.

Glen Klinkhammer stated that this will be a 1 level, 6,500 square foot house. It'll be a good buffer. He stated that they can move the dumpster to the north side. Commissioner Gustofson asked if the driveway could be shifted. Mr. Klinkhammer stated that the builder said it would cause issues. Steven stated that they're going to request sewer service be stubbed in to Shiloh and the grade is easier to maintain, so this access point works best.

Mr. Klinkhammer stated that in terms of traffic, they're talking 10-12 elderly individuals who don't drive and maybe visitors and employees.

Mr. Staska stated that they're turning a residential area in to a commercial venture on a gravel road. He stated that they're always the last to ever get plowed. We have a nice development and don't want this business venture.

Cliff Watson, Shiloh Evangelical Free Church, stated that they want to be a good neighbor, but they can't maintain ownership. They need to sell this property due to expenses, taxes, specials. They've had the property listed for two years and nobody has been interested except the developers. They lowered the price. They feel that the Klinkhammer's will have a nice facility. It looks residential and is nicely designed.

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

Larry stated that the property has been listed for awhile and in speaking with realtors about it, they feel the highest and best use would be twin homes. He indicated there could be 10 twins on 50' lots, series of driveways increasing traffic to the area. Twin homes are considered low density and the City wouldn't have a leg to stand on to refuse.

Steven responded to a number of comments made. In terms of restrictive covenants, the City has no legal ability to enforce them. The retention pond will be 8" deep, so a lake will not happen.

He stated that the reason for a conditional use permit is for review. The City is not trying to push anything on anybody. The developer and people who own the property have a right to ask and City staff guides them through the process. He stated that the property to the west is zoned for commercial and commercial uses are permitted.

Discussion was held regarding paving the road and installing sewer services to the property.

Mr. and Mrs. Clemens indicated that they don't want to look out and see a parking lot. They suggested redesigning the site so the patio and landscaping faces 23rd Avenue.

Commissioner Gustofson suggested providing an elevation so the residents could see what it would look like.

Commissioner Gustofson made a motion for approval based on the staff recommendations 1-8, with an additional condition that an elevation be provided with an opportunity for review by the residents prior to City Commission review. Commissioner McDougall seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A12-9 Amendments to Chapter 4-04 of the City Code (Subdivision Regulations) and to Chapters 4-200 and 4-400 of the City Code (Zoning Ordinance).

Larry reviewed the following information from the staff report:

One of the more significant changes includes establishing an overlay district along the Sheyenne River for all property. Improvements on developed property within the overlay area would be restricted unless the soils can support them. Also, two downtown overlay districts are being established, one for Sheyenne Street and another for Main Avenue, following the recommendations of the recently approved Downtown Study. Additionally, standards for development of wind energy systems and new standards for landscaping of boulevards and private property are being proposed. Also, proposed is a requirement for improving all new and existing unimproved driveways and parking lots accessing paved streets and alleys. The driveways and parking lots would need to be improved with concrete or bituminous surface. Existing unimproved driveways and parking lots would have a period of three years to comply. Driveways and parking lots which access streets or alleys which are not paved would not be required to be improved. A number of less significant changes are proposed, as well as revised language to better clarify the existing provisions.

Staff recommends approval.

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

Commissioner Gustofson asked about the paving requirement included existing lots. Larry stated that when a parking lot has access to a paved street or alley, the requirement would be for paving the lot or a portion of it within 3 years. He gave the example of a business along 12th Avenue NW and issues with mud along the roadway.

Commissioner Gustofson asked about the 100' riverbank setback. Larry stated that if someone is looking at doing an expansion, then they would need to maintain the 100' setback or have a soil analysis conducted.

Commissioner Gustofson asked about no exposed steel along the Main Avenue Corridor. Steven stated that there would be an architectural review committee and that this condition refers to the front part of a new building.

Commissioner McDougall asked what developers have said about the landscaping plan. Larry stated that the only comments received regarding the amendments was from a siding company with concerns about the percentage of steel on building in C and CM districts. He stated that section of the ordinance has been around for years. He stated that the Homebuilders Association went over the ordinances as well and didn't seem to have any concerns.

Steven stated that most of the feedback regarding the landscaping plan has been positive. Gives them flexibility and they're happy to know things up front. Currently if anyone wants to develop along 13th Avenue, they have to follow a tree planting plan that was done in 1983 that lists specific trees at specific locations. This gives them flexibility.

Commissioner McDougall made a motion for approval. Commissioner Potter seconded the motion. No opposition. Motion carried.

Commissioner Gustofson made a motion for adjournment. Meeting adjourned.