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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
May 11, 2015 at 7:00 P.M.
West Fargo City Hall

Members Present: Jerry Beck
Tom McDougall
Scott Diamond
LeRoy Johnson
Joe Kolb
David Zupi

Members Absent: Eddie Sheeley, Connie Carlsrud

Others Present: Larry Weil, Lisa Sankey, Tim Solberg, Matt Welle, Matthew Kirkwood, Ash Jensen, Lavonne Lyberg, Daniel Loegering

The meeting was called to order by Chair McDougall.

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

Chair McDougall opened public hearing A15-23 Conditional Use Permit to allow farm animals at 2120 Ann Street, West Fargo, ND (Lot 6, Block 2 of Woodland Estates Subdivision, Cass County, North Dakota).

Tim reviewed the following information from the staff report:

The applicant is proposing to have farm animals on the property, which requires a conditional use permit. Farm animals may be permitted as a conditional use with the R-1E: Rural Estate zoning district provided the property is a minimum of two acres. One animal is allowed for two acres, plus one additional animal is allowed for each additional acre.

Farm animals are defined in the Zoning Ordinance as Animals generally raised on a farm which are either pastured or kept in pens, including but not limited to beef or dairy animals, horses, mules, sheep, goats, swine, llamas, ostrich and poultry. All animals except poultry are counted individually, whereas poultry are counted in groups of five as one animal unit.

The applicant submitted a site plan pointing to the location which he proposes to contain the animals. Originally the applicant did not indicate in the application what type of animal(s) he is proposing to keep, but rather that flexibility in animal type is considered as his family is active in 4-H and the hobby of animal keeping; however, has since indicated a willingness to narrow the application to only birds.

The property is situated along the Sheyenne River with neighbors on the north and south of the property which are also zoned R-1E: Rural Estate. The area which the applicant is showing as the animal containment area is susceptible to flooding and is on the wet-side of a small berm along the Sheyenne River. The applicant has indicated that the area of containment is on a raised deck which is above the flood level, for which staff has not had adequate time to research. Staff has asked that the applicant provide photographs of the deck for review and would like to have the floodplain administrator make a determination for elevation and any other applicable floodplain regulations. The animal containment area would be directly adjacent to rear yards of the adjacent homeowners.

Woodland Estates is less than one-half mile north of current West Fargo City Limits and is on the unprotected side of the Sheyenne Diversion.

Tim indicated that this area is in the City of West Fargo's Extraterritorial Zoning jurisdiction, and the City exercises

territorial authority of zoning regulations within this area. He then reviewed the statement of intent of the R-1E District.

This district is intended to provide low-density, limited-growth residential areas. It is designed to accommodate residential development opportunities for those who desire low-density or estate living and are willing to live in more remote locations such as in the City's extraterritorial jurisdiction, and to assume the costs of providing many of their own services and amenities.

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

- The economic, noise, glare, or odor effect of the proposed use on adjoining properties generally in the district appears to be a potential issue. Although the lot is 2.17 acres, the lot width is approximately 163' wide. Neighboring homes may be less than 200' from the proposed animal containment area. The wooded area of the animal containment area; however, may provide adequate buffer to mitigate the issue.
- Refuse and service areas and utilities do not appear to be problematic. The applicant has noted that waste is composted and has stated there are no odor issues.
- It would appear by the provided site plan that the area which is proposed to be the animal containment area is wooded and would provide adequate screening.

Notices were sent to adjacent property owners, Cass County Planning and Reed Township for review and comment. Comments have been received from neighboring property owners via phone and email with concerns over the existing animals on the property and proximity of the proposed use to other homes within the neighborhood. Written correspondence was included in the staff reports.

Staff recommends the following:

It is recommended to deny the application on the basis that it is not consistent with City Plans and Ordinances as it does not meet the intent of the Rural Estate District to accommodate residential development opportunities for those who desire low-density or estate living.

OR

If the Planning & Zoning Commission finds that the proposed application is not a nuisance and would be compatible within Woodland Estates Subdivision and the Rural Estate District it is recommended to approve the application on the basis that it is consistent with City Plans and Ordinances with recommended conditions as follows:

1. Neighborhood concerns are duly considered and conditions such as animal types, noise, odor, and containment placement are considered and prepared for use in a recordable conditional use permit.
2. That the floodplain administrator reviews the proposed deck for elevation and floodplain regulations and make a recommendation to the City Commission.
3. A sunset provision be applied that would allow the conditional use permit to be revisited if annexation of the subdivision occurs.

Tim stated that there is the separate issue of the birds, which are not considered poultry – macaws, hawks, falcons... There are separate animal control/nuisance regulations under Cass County's jurisdiction. The City has zoning jurisdiction, but cannot enforce municipal ordinances. Should there be concerns, complaints from the property owners regarding nuisances, they need to contact the county.

Ash Jensen, 2112 Ann Street, asked what constitutes farm animals. What does poultry include? How many animals are allowed?

Tim reviewed the following definition: *FARM ANIMALS: Animals generally raised on a farm which are either pastured or kept in pens, including but not limited to beef or dairy animals, horses, mules, sheep, goats, swine, llamas, ostrich and poultry. All animals except poultry are counted individually, whereas poultry are counted in groups of five as one animal unit.*

He stated that with 2.17 acres, he's allowed one animal for the first two acres, plus one additional animal for each additional acre of lot area. So he can have one animal unit. Mr. Jensen stated for clarification, so the applicant can have 5 poultry. Tim stated yes.

Discussion was held regarding the definition of poultry. Mr. Jensen stated that peacocks could be considered poultry if their eggs are sold and eaten.

Mr. Jensen asked how violations are regulated and who handles them. Tim stated that with violations to the zoning code, they can be cited by the City of West Fargo, given the opportunity to appeal, address the issues... The issue in this case would be if a complaint was received regarding exceeding the number of allowable poultry. If there were more than 5 non-poultry birds, the City would not issue a complaint as that would be handled by the County. Mr. Jensen asked what zoning laws would oversee non-farm animals. What if he wanted to keep monkeys?

Larry stated that in the City code there are definitions of animals, nuisances --- birds of feather, birds of prey, snakes... He wasn't sure on county definitions. Tim stated that the nuisance codes for the City don't apply in the extraterritorial area. Cass County has an animal control ordinance. He referred to the county webpage for the policy manual and reviewed the following under Public Nuisance:

- A. Any animal which interferes with a passerby or a passing vehicle.
- B. Any animal which attacks another animal or person.
- C. Any animal which trespasses on school grounds.
- D. Any animal which runs at large or unrestrained.
- E. Any animal which damages private or public property.
- F. Any animal which barks, whines, howls or makes other sounds common to its species in an excessive or continuous manner.
- G. Any owner that causes foul or noxious odors resulting from the accumulation of excrement or other waste materials from an animal and which is offensive to surrounding residents.
- H. Dangerous Animal

Lavonne Lyberg, 406 Woodland Place, stated that she lives across the street. She stated that Mr. Kirkwood has a bunch of dogs and as many birds as he wants. She asked when are birds considered a nuisance? Tim stated that nuisances are on a complaint basis. Ms. Lyberg stated that he can have as many birds until they complain.

Commissioner Diamond asked about limitations for farm animals. Tim stated in terms of poultry, they'd be defined as turkey, geese, ducks, chickens... Larry stated farm animals are those that can be domesticated and or used as a food source.

Ms. Lyberg stated that currently there are caged animals making noise. Tim stated that the City zoning ordinance doesn't offer the remedy she's looking for. The county handles nuisances.

Chair McDougall stated that the question before the commission is not if macaws are allowed, but to allow farm animals on this parcel. Is there precedence in the area? He stated that one can't have dogs chasing cars. He knows of people who've gotten fines. He assumes there's a similar nuisance regarding noise. Tim stated that as part of the recommendations, they could try to work out some buffering, which would also help with the other animals.

Dan Loegering, 2301 Ann Street, asked if theirs is anywhere in the application that describes what kind of animal. Tim stated that the applicant narrowed it down to just birds.

Mr. Kirkwood stated that when he was looking at the property, he noticed there were animals across the river, horses to the north. He'd spoken to residents about his birds, including the ones to the north, who didn't have issues. Based on recent complaints, he addressed issues regarding a rooster. The neighbors all have dogs, too. Most of his birds are rare, endangered, which are eventually released into the wild. He has federal and state permits for them. As for the birds making noise, he originally had 10 macaws – endangered breeding pairs. He doesn't intend to have swine or other animals; he plans to stick with birds.

Chair McDougall asked where the macaws are currently being kept. Mr. Kirkwood stated he's got a 5 car garage, where he keeps them inside. He had several birds that were killed by the neighbors' dogs.

Commissioner Diamond asked what types of birds did he intend to keep. Mr. Kirkwood stated that according to his attorney, peacocks are not considered poultry. He'll probably just have chickens for 4-H projects.

Mr. Kirkwood referred to a building to the south along 19th Avenue, which was part of a commercial poultry operation. He stated that when he looked for houses, his realtor said birds were allowed. The closest house to him is about 200'.

Discussion was held regarding types of birds that could be considered as poultry --- chickens, guineas, ducks, geese... Commissioner Zupi asked Mr. Kirkwood how many birds --- falcons, macaws, peacocks he currently had. Tim stated that the City has no jurisdiction regarding those types of birds. If neighbors are concerned, they can contact the County. Mr. Kirkwood stated it fluctuates, but he has 8 macaws, 6 falcons...

Mr. Kirkwood stated that neighbors to the west across the river and to the north and south have horses. Commissioner Johnson stated that they have the acreage. Tim also stated that those properties are zoned agricultural and have been in existence for quite some time. Currently the commission has only dealt with animals in the Rural Residential District and not the R-1E District.

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

Chair McDougall stated that the recommendations are either to say no to the poultry (conditional use permit) and he can still continue to have other birds or allow the conditional use and limit the number of poultry and include a sunset provision.

Tim stated that conditional use permit can be approved with conditions and asked what the concerns are? Is there too much noise, does there need to be a buffer, can they take some of the birds indoors, do they need to decrease odor? Commissioner Kolb stated that the only thing the Planning and Zoning Commission can determine is regarding whether to allow 5 chickens for 4-H purposes.

Commissioner Johnson stated that the application is for farm animals. Chair McDougall stated that the request was amended by the applicant for just poultry. He asked Mr. Jensen about his concerns. Mr. Jensen stated primarily noise from the macaws. There was a rooster crowing early in the morning, but he spoke with Mr. Kirkwood and he got rid of it, only to get another. His request if approved would be to limit to 5 quiet hens, no roosters.

Commissioner Johnson asked how many are loose. Mr. Kirkwood stated none and they won't have any loose chickens either due to issues with neighborhood dogs. Commissioner Beck asked if they could limit the noise by limiting the gender of chickens to hens. Larry stated that they can control the number of farm animals, but the ordinance doesn't address gender. If there is crowing, the neighbors could ask the county to address it as a nuisance.

Commissioner Johnson made a motion for approval based on the three staff recommendations, with the first condition clarified to state that the applicant request be limited to only poultry. Commissioner Beck seconded the motion. No opposition. Motion carried.

Tim stated that if approved by the City Commission, a document will be prepared by staff and signed by the applicant. The document will be recorded at the Cass County register of deeds.

The next item on the agenda was Discussion on Potential Ordinance Amendments.

Larry stated that plans are to bring forward ordinance amendments to the next meeting and schedule a hearing thereafter. Topics include:

Cash-in-lieu for park dedication. There are issues regarding land value and unless an appraisal is done there are questions if the amount is legitimate. The ordinance would establish a reasonable value each year, which the City Commission would approve annually.

Daycares. Looking at Fargo's standards. They don't count children and grandchildren. Currently West Fargo counts the provider's own children and grandchildren. We have a provisional use permit for 8-12 children, which is reviewed by staff. Then a conditional use permit for 13-18 children. Fargo doesn't allow more than 12 children, but excludes their own children.

Assisted Living vs. Nursing Care. Office Park is the only zoning classification where assisted living is specifically listed. West Fargo's definitions are outdated, so language should reflect state definitions.

Accessory Building Heights. Limiting to 15' is fine for single family, but not for garages for apartments.
Outdoor/Portable Displays in the Corridor Overlay Districts. Is a swimming pool considered a display or storage?

Landscape Clarifications.

Parking. Building Inspections doesn't require a permit for parking lots, but the zoning ordinance has design standards/requirements in terms of islands, setbacks, stall and aisle widths...

Sign Ordinance Clarifications.

Temporary Uses/Structures and permits.

Under non-agenda, Chair McDougall asked about recent applications which were approved, by the Planning and Zoning Commission and denied by the City Commission. The fence around the daycare and the assisted living centers. Is there something that needs to be done differently?

Tim stated that the Planning and Zoning Commission needs to be more judicial, whereas the City Commission is lobbied and is in a better position to make judgement calls. Larry also stated that with the assisted living centers, there were two competing goals – the need for senior housing vs. taking away commercial land. Tim stated that the staff also plans to update the Comprehensive Plan.

Larry stated that in terms of the daycare fence, it was discussed at length as staff. There are several daycares along the corridor, which placed fencing in the side and rear yards.

Chair McDougall introduced Joe Kolb as the newest Planning and Zoning Commissioner, who replaced Terry Potter.

Commissioner Johnson made a motion to adjourn. Commissioner Zupi seconded the motion. Meeting adjourned.