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

West Fargo Planning and Zoning Commission
April 9, 2018 at 7:00 P.M.
West Fargo City Hall

Members Present: Scott Diamond
Joe Kolb
Shane LeBahn
Tom McDougall
April Walker

Members Absent: David Gust, Jana Reinke

Others Present: Larry Weil, Tim Solberg, Lisa Sankey, Mike Thorstad, Nate Vollmuth, Nasser Hammami, Terry Welle, Brittney Taplin, Jared Olson, Matt Marshall, Bernie Dardis, Chris Olson, Kristy VanBeek

The meeting was called to order by Chair McDougall.

Commissioner Kolb made a motion to approve the March 12, 2018 meeting minutes as printed. Commissioner Diamond seconded the motion. No opposition. Motion carried.

Chair McDougall opened public hearing A18-13 Zoning Ordinance Amendment to Section 4-0407.4C of West Fargo City Ordinances to provide for removal of the 13th Avenue Tree Planting Plan.

Tim reviewed the following:

Staff is proposing a text amendment to Section 4-0407 Public Sites and Uses at the request of the City Forestry Committee. The specific sections with proposed changes include the following:

4-0407.4C Preservation of Natural Features and Amenities - 13th Avenue Corridor. Remove the requirements with regard to the 13th Avenue Corridor.

The purpose of the amendment is to remove reference to the specific plan completed in 1986. Removing the requirements of the 13th Avenue Tree Planting Plan will allow the City Forestry department to develop planting plans along 13th Avenue that may be more successful. Individual properties would still be required to meet 4-0407.4B Boulevard Trees and Section 4-449-A. Landscaping Standard.

Tim referred to a letter from the Forestry Committee which indicated the 1986 plan doesn't follow current landscaping standards, doesn't allow boulevard/median trees and includes several species the City no longer allows to be planted.

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

Commissioner Kolb made a motion to approve the ordinance amendment based on staff recommendations. Commissioner Walker seconded the motion. No opposition. Motion carried.

Chair McDougall opened public hearing A18-14 Rezoning from C-OP: Commercial Office Park to C: Light Commercial property at 2630 Sheyenne Street (Lot 3, Block 1 of Eaglewood 2nd Addition), City of West Fargo, North Dakota.

Tim reviewed the following:

The applicant intends to develop the property as a veterinary clinic, which is not provided for in the C-OP: Commercial Office Park zoning district. Under the proposed C District, Veterinary Clinics without overnight facilities are allowed as a permitted

use and with overnight facilities as Conditionally Permitted Uses.

The property was zoned C-OP in April 2013 and was based on the 2008 Comprehensive Plan. C: Light Commercial and C-OP: Commercial Office Park are required to provide for the same buffer requirements under Section 4-449-A: Landscaping Standards of City Ordinances. The adjacent medium density townhome development to the west has the minimal setback and may have conflicts with increased development; however, the existing zoning would allow for similar development patterns.

The City's proposed Comprehensive Plan would not restrict the use on the property nor would it require a land use plan amendment. Since the Comprehensive Plan is under consideration, staff is not recommending a land use plan amendment to the current plan to accommodate the proposed rezoning and would find it consistent with the City's new Comprehensive Plan.

Staff recommends the City approve the proposed application on the basis that it is consistent with City plans under consideration and City ordinances.

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

Chair McDougall asked for clarification, if overnight facilities were proposed. Tim indicated no. If requested, a conditional use permit would be required; however, it's not applicable in this case. Commissioner Diamond asked if veterinary clinics were allowed in the office park district. Tim indicated no, they were not permitted at all.

Commissioner Diamond made a motion for approval of the application on the basis it is consistent with City plans under consideration and City Ordinances. Commissioner Kolb seconded the motion. No opposition. Motion carried.

Chair McDougall opened public hearing A18-15 Planned Unit Development Amendment for outdoor patio attached to existing bar in a retail center at 1405 Prairie Parkway (Lot 6, Block 1 of Pioneer Center 1st Addition), City of West Fargo, North Dakota.

Tim reviewed the following:

The applicant intends to construct an outdoor patio along the west side of the building. In June 2016 the previous owner submitted a similar request, which was reviewed as a Minor PUD Modification. At the time staff did not believe the intensity or density was being increased. Due to opposition from adjacent neighbors at that time the Planning and Zoning Commission recommended the applicant go through the amendment process to provide for a public hearing and consideration by the City Commission.

The bar has since changed hands in ownership and the new owner wishes to pursue the application again. The applicant has indicated they would not have speakers on the patio. Final design of an outdoor patio will require approval through the City's Liquor License review process; however, the Planning Commission may add conditions deemed appropriate through the PUD Amendment process.

Property owners within 150' were notified. A letter was received from a property owner to the south with regard to existing noise complaints and concern for increased noise and disruption to residential properties from the proposed patio.

The proposed PUD Amendment is consistent with the City's Land Use Plan, which depicts the area developing as General Commercial. Staff recommends the City approve the proposed application on the basis that it is consistent with City plans and ordinances with recommended conditions of approval as follows:

1. Consideration to concerns of the neighborhood be provided. If conditions may provide for increased compatibility or a reduction to disruption of the neighborhood they could be required prior to consideration by the City Commission.
2. A signed PUD Agreement is received which would outline any conditions determined by the Commission.

Since it's a PUD, additional conditions can be added to the recommendations for approval and PUD Agreement. The planning commission also has the option to deny the request and the applicant can appeal to the City Commission.

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

Commissioner Diamond asked if the proposed location was along the side or the back of the building. Tim pointed to the aerial photo showing it to be located along the west side of the building. Commissioner LeBahn asked who owns the road. Tim indicated it's a private drive.

Discussion was held regarding the noise concerns and dumpster location. Chair McDougall indicated Mr. Haugen's letter discussed how it gets loud with people out back during breaks, but as he reviewed it, wondered if the applicant would agree to keep the noise down and limit the hours of use for the patio.

Applicant Nasser Hammami indicated he would agree to conditions. He stated that in terms of noise from garbage being thrown into the dumpster, this is unacceptable. He just purchased the business last month and he will take care of it.

Commissioner Kolb asked why it was denied previously. Tim stated that it was reviewed as a minor modification as it was viewed as not increasing the density or intensity and therefore would not go on to the City Commission for review. Due to concerns from area property owners, the Planning Commission recommended the applicant go through the amendment process to provide for a public hearing and consideration by the City Commission. The owner at the time decided not to do so.

Chair McDougall asked if any neighbors were present. There were not.

Commissioner Diamond stated that he does have concerns with it increasing the intensity with people outside talking, as well as the patio being located 6' from the roadway. Being that close to the road, there should be some type of buffering.

Mr. Hammami indicated there are currently garage doors on the west side of the building, which they plan to open up during the summer. The fence will stop people from accessing the street.

Discussion was held regarding fence location. Mr. Hammami indicated he would fence from the edge of the building, up to the road.

Commissioner Walker asked if this was not a PUD, what residential standards would apply. Tim stated no additional requirements other than review through the City's liquor license review process.

Chair McDougall asked what the patio will be used for. Mr. Hammami stated that they're just trying to survive, he has over 16 employees. In the summer everyone else has a patio. It's just for the summer months, less than 50 days a year, the noise factor is low. They're open from 4 pm to 2 am. They plan to have patio furniture so people can enjoy the sun, if the commission wants to restrict the hours, he will consider it. They won't have any speakers and no bands because the area is too small.

Commissioner LeBahn asked about the overhead garage doors and about the potential of smokers using the patio. Mr. Hammami stated that the doors were installed last year. As for the smoking, they wouldn't have the distance to meet North Dakota laws and the smoke would drift inside and bother patrons.

Tim stated that the City does have a noise ordinance regarding decibel levels that can be dealt with under the nuisance ordinance.

Commissioner Diamond indicated he'd like to see more of a plan. Mr. Hammami stated that he wanted to get approval before designing. Discussion was held regarding type of fencing. Mr. Hammami stated he would prefer iron instead of solid fencing for airflow.

Commissioner Walker stated conditions should be attached regarding buffering. Possibly get the owner to plant trees. Tim indicated that when the area was first developed, buffering was required and lack of a proper buffer violates the conditions of the PUD.

Chair McDougall indicated he was inclined to let the details work out. Commissioner Diamond stated he was still concerned with proximity to the road. Based on the safety concerns with the patio, Commissioner Diamond made a motion to deny the request. Commissioner Walker seconded the motion. Commissioners Diamond and Walker voted to deny. Commissioners Kolb, LeBahn and McDougall voted nay. Motion failed 2-3.

Commissioner Kolb made a motion to approve the request subject to the following two conditions listed in the staff report:

1. Consideration to concerns of the neighborhood be provided. If conditions may provide for increased compatibility or a reduction to disruption of the neighborhood they could be required prior to consideration by the City Commission.
2. A signed PUD Agreement is received which would outline any conditions determined by the Commission.

As well as:

3. Final design of the outdoor patio meet all the requirements of the City's liquor license review process.
4. Consideration of landscaping buffer between the residential and commercial area.
5. Safety concerns be taken into account regarding design and location of the fence as approved by the City Engineer.

Chair McDougall indicated the motion could die for lack of a second. Commissioner LeBahn stated he would like to see a more detailed plan, possibly a sound buffer. If approved it'll still be reviewed by the City Commission. Mr. Hammami stated that he's willing to add trees.

Commissioner LeBahn seconded the motion. Commissioners Kolb, LeBahn and McDougall voted in favor of the request. Commissioners Walker and Diamond voted against. Motion carried 3-2.

Chair McDougall strongly encouraged Mr. Hammami to talk with the building owner regarding buffering.

Chair McDougall opened public hearing A17-29 Harper Heights 1st Addition, Replat and Rezoning from C: Light Commercial to PUD: Planned Unit Development Lots 1-4, Block 7 of Sukut's Estates and a portion of the publicly dedicated alley west of said lots also known as Sukut Street, City of West Fargo, North Dakota and Detailed Development Plans for a Senior Housing Project.

Tim reviewed the following:

Since the Planning and Zoning Commission approved the concept in July, the applicant has purchased an additional lot (Lot 4) to the east. The purpose of the public hearing is to include the additional lot. The overall footprint is not likely to change; however, may shift or increase/decrease depending upon final building design. The additional lot is intended to be used for storm water retention, green space and additional parking. The applicant has also changed the name from Dakota Heights to Harper Heights.

The applicant has provided an updated plat, site plan, floor plan and building elevations. There have not been any major changes to what was previously provided. The applicant continues to communicate with the School District on any updates required to their parking lot if Sukut Street is to be vacated. A meeting was held between the developer and a representative of the school district who have come to an agreement regarding the vacation of Sukut Street.

In regards to the vacation of Sukut Street, staff received call indicating protest to the vacation of Sukut due to needs related to exiting with truck traffic for a business along 1st Ave W. The caller also submitted a letter listing his concerns, which was placed in front of commissioners this evening. Vacation of the road would need to be done by petition of the plat. Vacation will require a 2/3 majority vote of the City Commission. If approved, any aggrieved person may file an appeal to district court within fifteen days following the publication of a resolution to vacate.

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

1. Parking requirements are further refined and if necessary shared parking agreements are provided and included in a resolution for reduction in parking by the City Commission.
2. Consideration be given to the vacation of Sukut Street. If it is determined that Sukut Street should not be vacated, the applicant shall move the proposed building to the east to allow the continued operation of Sukut Street.
3. If Sukut Street is to be vacated, that consideration is to be given to costs associated with driving aisle changes for the Leidal Center parking lot.
4. Development will be subject, but not limited to 4-440 Supplementary District Regulations, 4-450 Off-Street Parking and Loading Requirements, and 4-460 Sign Regulations.
5. A signed Subdivision/PUD Agreement is received.
6. An Attorney Title Opinion to the City of West Fargo is received.
7. A drainage plan is received and approved by the City Engineer.
8. A signed Final Plat is received with any necessary easements.
9. A certificate is received showing taxes are current.

Tim stated that the developer has similar projects and typically meet the parking requirements and don't use all of the parking spaces due to age of residents. The City has purchased the property west of the fire hall.

Brittany Taplin, 114 1st Ave West, stated that her husband Joe Karvonen wrote the letter. Their main concern is with the

removal of Sukut Street and access being cut off. They run a business with semis, which would have no way to exit. They'd have to back out onto 1st Avenue. They're also concerned with parking. With the purchase of Lot 4, they believe the developer could easily move over the building and keep Sukut Street.

Jared Olson, 119 Sukut Street, stated that he lives on the corner of 2nd Avenue and Sukut Street and the only way he can get to his garage is by coming in from the north. He's also concerned about snow removal.

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

Commissioner Kolb asked why they wouldn't move over the building. Terry Welle stated that they're trying to keep some greenspace and because of setbacks, they'd lose 4 parking spaces. They'd also use the greenspace for snow storage.

Discussion was held regarding Mr. Olson's garage, as well as alley snow removal. Mr. Olson stated he wasn't opposed to the project, just the vacation of Sukut Street. In terms of snow removal, the street floods every year and he feels this adds to it.

Commissioner Walker stated that oftentimes in the City of Fargo, developers were required to pave alleys. Commissioner Kolb referred to the drainage plan requirement (#7) under recommended conditions for approval.

Commissioner Walker made a motion for approval without the vacation of Sukut Street, subject to the remaining 8 conditions for approval. Commissioner Kolb seconded the motion. No opposition. Motion carried.

The next item on the agenda was Amendment to the West Fargo General Plan for Urban Renewal and Urban Development by expanding the Urban Development Areas.

Larry referred Part C on Page 8 of the proposed plan:

The proposed urban renewal/urban development area for consideration with the proposed amendment to the General Plan for Urban Renewal and Urban Development consists of the core area of the community which was developed in the early to mid-1900s. Properties have been platted and zoned for commercial uses along Sheyenne Street and Main Avenue, which is considered the downtown. Also, a significant area of residential development is in place which has supported the downtown businesses. A number of homes owned by low and moderate income families were rehabilitated about 20-30 years ago through the use of federal grants, however federal funds for housing rehab have been difficult to access over the last two decades. Several studies have been completed which focus on revitalization of the area, as most of the structures are old and some of the property not utilized to its economic potential. Several blocks have been the impetus for establishing the Renaissance Zone, which provides tax incentives to improve the properties. Though some properties have taken advantage of this incentive, there are financial limitations for most homeowners so the program is more effective for commercial or rental property. To adequately address the redevelopment needs, additional incentive programs are needed.

The core area of the community has infrastructure which has been in place since the area was developed, and it is beginning to fail. The City is currently studying the infrastructure deficiencies and timing for replacement based on the condition. Along with sewer and water line replacement, it will necessitate installing storm sewer and reconstructing streets. The City is attempting to understand the financial capacity of the residents to determine strategies for assisting them.

The urban renewal/urban development area designation would enable the City to approve a Tax Increment Financing District as part of an urban development and/or urban renewal plan for the area if viewed as the most effective tool for project implementation. The City will develop urban development or urban renewal plans for any projects proposed within the urban renewal/urban development area. Projects will need to be consistent with the General Plan for Urban Renewal and Urban Development, as well as with the City's comprehensive plan. The City will consider incentives and financial assistance to lessen the burden on property owners and help revitalize the area, which will provide better living conditions in addition to increasing the tax base. The Planning and Zoning Commission is to review urban renewal plans and/or urban development plans for their consistency with the comprehensive plan. Review by the Planning Commission is optional if the project involves commercial or industrial property, unless it is not consistent with the comprehensive plan. The Planning and Zoning Commission would need to carefully consider plans that are not consistent with the City's comprehensive plan. Public hearings will then be held before the City Commission for urban renewal and/or urban development projects.

In the past the City has used the tool of Tax Increment Financing as an economic development incentive to help businesses grow or locate into one of the urban development areas where otherwise the growth or relocation would not have taken place, or certainly not to the significance that was desired. The City has the ability to purchase land, install infrastructure, and address

drainage problems. These costs could be paid off through the incremental increase in property taxes over a period of time. The incentive provides necessary financial resources and/or infrastructure to encourage additional development, which increases the City's tax base.

Staff recommends following review by the Planning and Zoning Commission for consistency with the comprehensive plan, provide comments and recommendations to the City Commission for consideration following a public hearing.

Commissioner Walker made a motion for approval based on consistency with the Comprehensive Plan. Commissioner LeBahn seconded the motion. No opposition. Motion carried.

The next item on the agenda was Continued Public Hearing A18-10 Update to the West Fargo Comprehensive Plan. Tim stated at the last meeting there was not the 2/3 majority of the Planning and Zoning Commission to adopt the Comprehensive Plan by resolution. Comments received have been added including the Home Builders Association goals regarding housing and subdivision design. As well as staff concerns regarding the Conservation Land Sector.

Per the North Dakota Century Code, following a public hearing the comprehensive plan is adopted by resolution by the Planning and Zoning Commission with 2/3 voting in the affirmative. The plan is then adopted by the City Commission following a public hearing, and is adopted by ordinance with 2/3 voting in the affirmative according to the North Dakota Century Code and City Code of Ordinances.

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

Tim stated that there should be an editable version available shortly.

Commissioner Kolb made a motion to recommend approval of the amendment of the Comprehensive Plan to the City Commission and formal adoption of the plan through resolution. Commissioner LeBahn seconded the motion. No opposition. Motion carried.

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

Tim stated that the public hearing is still open as staff has not received any detailed development plans or district standards which address the proposed setbacks and roadway design, and regulations which are consistent with the intent of the C-OP: Commercial Office Park zoning district. He encouraged the Commission to continue this until the next meeting.

Chris Olson, 138 West Beaton Drive, stated that the Oakwood Bend Homeowners Association has not had any discussions with the developer. He stated concern as this backs up to about 5 homes. Tim stated that he will notify the property owner that information needs to be received at least 21 days to allow staff and area property owners the opportunity to review. Mr. Olson stated that they would really like to get together with the developer.

The next item on the agenda was Continued - Public Hearing – A17-36 The Wilds 10th Addition, Subdivision, Rezoning from A: Agricultural to R-1SM: Mixed One & Two Family Dwellings and R-2: Limited Multiple Dwellings and Land Use Plan Amendment to establish area for low and medium density residential development of property in the SE¼ NW¼ and NE¼ SW¼ of Section 6, T138N, R49W and Replat of Lot 33 & Lot 42 of Block 3 of the Wilds 9th Addition, City of West Fargo, North Dakota.

Tim indicated that the applicant is proposing to remove the residential lots in order to plat just the roads to provide access to more than just one arterial roadway as per agreements for The Wilds 8th and The Wilds 9th Additions.

Staff is recommending approval of the plat with the following recommended conditions:

1. Land remain zoned A: Agricultural.
2. A subdivision agreement is received.
3. Land dedication agreement is received.
4. A drainage plan is received and approved by the City Engineer.
5. Final Plat is received with any necessary easements.
6. A certificate is received showing taxes are current.

Chair McDougall asked about Block 2. Is it intended for housing or retention? Tim stated it's intended for housing and assumes the plat will be amended.

Kristy VanBeek, stated she lives in Grey Hawk Subdivision in Horace directly to the east. She asked if a drainage plan had been submitted. Tim stated it has not been received and can certainly forward it on when it's received.

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

Tim stated that currently there is an inventory of serviceable lots in West Fargo for about 4 years.

Commissioner Diamond made a motion for approval based on the 6 conditions listed in the staff report. Commissioner LeBahn seconded the motion. No opposition. Motion carried.

The next item on the agenda was discussion on meeting times and dates.

Tim stated that one commissioner indicated being unable to attend meetings on Monday. The City Attorney and other staff have indicated an interest in attending meetings if earlier. Commissioners Kolb and McDougall indicated Tuesdays make it more challenging with work and travel. Commissioner Walker indicated she was unable to attend earlier on Mondays.

Commissioners indicated it would be more challenging to meet at 5:30 pm on the 2nd Tuesday of the month, but they would give it a shot.

Larry indicated the bylaws would need to be changed to reflect change in in meeting date, as well wording regarding a member of City staff maintain minutes of each meeting.

Commissioner Diamond made a motion to change the rules of conduct to reflect the changes in meeting times and days as well as wording that a member of City Staff will maintain meeting minutes rather than Assistant Planner. Commissioner Kolb seconded the motion. No opposition. Motion carried.

Commissioner Kolb made a motion to adjourn. Commissioner Walker seconded the motion. No opposition. Motion carried.