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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
June 9, 2014 at 7:00 P.M.
West Fargo City Hall

Members Present: Eddie Sheeley
Tom McDougall
Connie Carlsrud
Terry Potter
Scott Diamond
David Zupi

Members Absent: LeRoy Johnson
Jerry Beck

Others Present: Larry Weil, Lisa Sankey, Tim Solberg, Dustin Scott, Tom Isern, Nathan & Jenny Gomke, Kurtis Karn, Jeremy Kuntz, Brandyn Ehliis, Clay Dietrich, Bill Campbell, John Ault, Jenny Schuster

The meeting was called to order by Chair McDougall.

Commissioner Potter made a motion to approve the May 12, 2014 meeting minutes as written. Commissioner Diamond seconded the motion. No opposition. Motion carried.

Chair McDougall opened public hearing A14-31 Charleswood River Estates 10th Addition, a replat of Lots 1-8, Block 1 of Charleswood River Estates 9th Addition, City of West Fargo, North Dakota.

Larry reviewed the following information from the staff report:

The proposed subdivision is located on a peninsula along the Sheyenne River, west of Charleswood River Estates 2nd-6th Additions and northwest of the Oakwood Bend development. This development would be accessed off of the west end of 20th Ave E via a private drive. The proposed use (single family) is consistent with the City's Future Land Use Plan and is in conformance with the Approved Area Plan.

The Preliminary Plat shows 7 lots. Preliminary plans are for single family homes with a private drive. Last fall the developer replatted the property to allow for 8 single family lots. He is now proposing wider lots. The property is zoned PUD: Planned Unit Development to allow for greater flexibility in design. These lots are proposed to be developed with environmental sensitivity as a priority, i.e. keeping trees, minimal soil disturbance, minimal run-off, etc.

The City requires a building control line established on the plat when subdivisions are along the Sheyenne River. The building control line is to be established 100 feet from the riverbank per the Subdivision Ordinance. With the approval of the previous subdivision plat, the City Commission approved a variance to allow the building control line at 75 feet from the established riverbank, but added a condition that a geotechnical study be completed for each lot prior to permitting. Detailed development plans approved for the development included lot and yard requirements for the lots which will remain the same.

Park dedication requirements for the Charleswood development were satisfied a number of years ago. The developer and subsequent owners will be responsible for maintaining existing trees and natural grasses to the extent possible according to the Sheyenne River Corridor Overlay District and City's Landscape Standard.

Notices were sent out to utility companies, SE Cass Water Resource District, Park District, West Fargo Post Office and City departments for review. The Police Department has indicated the need to ensure access of emergency responders. Previously the Post Office indicated the development would be serviced with cluster box delivery. SE Cass Water Resource District encourages the City to adopt Cass County river setback criteria for the platting of lots adjacent to the Sheyenne

River, as the geotechnical instability of river banks adjacent to the Sheyenne River is a known hazard and is further exacerbated in river oxbow areas such as that proposed by this development.

It is recommended to conditionally approve the application on the basis that the request is consistent with City plans and ordinances. The conditions of approval are as follows:

1. An Attorney Title Opinion is received.
2. A certificate showing taxes being current is received.
3. The City receives an approved drainage and municipal services plan.
4. A mailbox plan is submitted by the developer for consideration.
5. Any necessary easements are placed on the Final Plat.
6. Any revised restrictive covenants are filed with the Final Plat.
7. An outline is received for the anticipated schedule and sequence of construction for all improvements.
8. A Subdivision/PUD Agreement is received.
9. A geotechnical study is provided for each lot prior to permitting demonstrating that the property can support the structure(s).
10. Water and sewer lines will be installed in accordance with City standards, and inspected and approved by the City Engineer, and the City will own, operate and maintain such water and sewer lines and appurtenances including gate valves and hydrants. Subsequent property owners will be responsible for installing and maintaining sewer injector pumps for sewage from each residential structure into the sewer main.

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

Commissioner Diamond asked about Cass County's riverbank setback criteria. Tim indicated that for major rivers, such as the Red it's 450' with a minimum of 350'. He described the way it is calculated taking the base level of the river with an 8:1 ratio and an additional 150'; however, the caveat being the Geotechnical review. The opinion of the engineer is given precedence. Larry stated that when this was first adopted by the City, they reviewed data utilized by the Sheyenne Diversion which looked at stability. Commissioner Sheeley asked about the Geotech results. Larry stated that it was a general study, which is why it is more appropriate this be reviewed on a lot by lot basis. Tim stated that each home will be evaluated prior to issuance of a building permit.

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

Chair McDougall opened public hearing – A14-32 Conditional Use Permit to allow for an addition onto a single family home in an Agricultural District at 3803 Willow Road (Lot 20, Block 1 of Corrected Plat of Willow Creek Subdivision, Cass County, North Dakota), West Fargo, ND.

Tim reviewed the following information from the staff report:

The home has been in existence for some time and is considered a conditional use within the Agricultural District. The property has been developed as a rural residential use for a number of years. The Agricultural Preservation designation for the area promotes the use of agricultural property for agricultural purposes and discourages other uses because of the high flood potential. Existing residential properties in the area should be rezoned at some point for the residential use if the subdivision can be adequately protected from flooding.

A site plan was submitted showing the existing property with a proposed 24' x 26' (624 square foot) addition onto the home. The property meets the minimum lot size of one acre under the Agricultural Zoning District for existing properties. The addition does not affect side or front yard setbacks. Rear yard is minimally affected as the lot is approximately 423' deep.

It appears part of the property is within the designated 100-Year Flood Plain. Generally properties within the 100-Year Flood Plain are allowed to make improvements if structures are adequately raised and protected or if the improvements are less than 50% of the value of the structure; however, if properties are in a designated floodway they are not allowed to make improvements. The location of the proposed garage and addition will need to be reviewed more closely by the City's Building Administrator during the permitting process to determine if the structure is out of the flood plain, or if flood proofing measures are required. Certain procedures as set forth by FEMA and State need to be followed by the City when

reviewing building permits.

Notices were sent to adjacent property owners, City departments, Cass County Planning and Mapleton Township for review and comment. No comments have been received.

Staff recommends conditional approval on the basis that with set conditions below the application would be consistent with City plans and ordinances. The proposed conditions are as follows:

1. The applicant is to meet all Federal, State and local requirements for improvements to the site and structure relating to flood plain management.

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

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

Chair McDougall opened public hearing A14-33 Planned Unit Development Amendment to allow for conversion of a residential unit to office space and the expansion of a daycare facility at 2360 7th Avenue East (Lot 3, Block 1 of Meadow Ridge 15th Addition), City of West Fargo, North Dakota.

Tim reviewed the following information from the staff report:

The property was approved platted and zoned in 1995 for a 4-unit condominium. A Planned Unit Development (PUD) was approved for a property to the north in April 2005 for a group home and credit services office. A minor PUD Modification was approved in March 2013 for one of the units to allow for a group child care facility for up to 12 children. The applicant is requesting an amendment to the PUD to allow a change in the development allowing for conversion of one of the residential units to a one unit office space and expansion of the daycare facility to allow for 15 children and a helper.

The applicant is the administrator for the Perry Center to the north, which also owns most of the condominium units. They would like the option to convert the structure into offices and daycare. Unit #1 houses Christian Family Life Services offices and staff for the adoption program. Unit #2 is owned by a private party who gave Perry Center a verbal agreement they will sell to them. Unit #3 is owned by the Perry Center and houses the Tenderheart day care. Unit #4, which has been rented out for the past 8 years, is owned by the founder of the Perry Center and is intended to be used for Perry Center offices and staff.

The specific proposal for each unit is as follows:

- Unit #1 currently owned by the Perry Center, Inc.: Currently houses Perry Center office. They propose to house an adoption program office for Christian Family Life Services, Inc. with 2-3 employees. Most work is said to be done out of the office with employees meeting at homes of their clients. Parking is to be in driveway and garage.
- Unit #2 currently owned privately: have signed agreement with the proposed PUD and intend to sell to Perry Center in the future.
- Unit #3 currently owned by The Perry Center, Inc.: Currently houses an approved 12 child daycare for Tenderhearts Daycare. Tenderhearts has renovated the garage into a play area and is seeking to expand to 15 children with hopes in the future to expand into Unit #2
- Unit #4 currently owned by The Perry Center founder: Previously had been rented out. Applicant intends to move Perry Center offices to this location.

If the applicant were to convert Unit #2 in the future another amendment would need to be applied for. The applicant does not intend to expand the footprint of the property in any way; however, does intend in the future to place a small/medium yard sign and install some landscaping.

The Building Administrator should review the application and proposed uses of the residential condo structure for building code compliance.

Property Owners within 150 feet were notified about the request. No comments have been received.

Staff recommends conditional approval on the basis that with set conditions below that the application would be consistent with City plans and ordinances; the proposed conditions are as follows:

1. Applicant demonstrates parking is appropriate for daycare and for office, or supplies an agreement and site plan showing parking is available at adjacent Perry Center property to meet parking requirements for daycare and for office space.
2. The uses of the residential condo structure are in compliance with building codes.

Tim indicated he spoke with the building administrator today who indicated he'd need to do a change of use permit.

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

Chair McDougall asked about the residential use. Tim stated that it's pretty much high density surrounded by commercial. The area was developed as a mix of uses under a PUD and included a group home and credit services office to the north on the corner of Meadow Ridge Parkway and 45th Street, and a 4-unit condo to the south on the corner of 7th Avenue East and 45th Street. To the south and east in Fargo are commercial uses. The Perry Center owned the group home and credit services office since the property was developed, and the administrator purchased one of the condo units. The other condo units were sold to other families.

Tim stated that because it's zoned PUD, it would have to remain however it's approved today and if any changes are proposed, they would need to go through a PUD Amendment.

Commissioner Sheeley asked about parking. Tim stated that daycare has 3 spaces including the area in front of the Perry Center's garage. With the office space, there may be people coming and going, so the applicant will need to provide adequate parking for each specific use which may require agreements be in place with the adjacent property (Perry Center/Family Life Credit). The daycare should have 1 space per 10 students for drop off and pick up and one space per employee. The office space is typically required to have 1 space per 250 square feet plus 1 space per employee. Given the unique nature of this proposed use it may be appropriate for the applicant to provide a justification for the amount of parking they require for this site.

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

Chair McDougall opened public hearing A14-34 Rezoning from R-3: Multiple Dwellings to PUD: Planned Unit Development of Lot 2, Block 1 of Shadow Wood 6th Addition, City of West Fargo, North Dakota.

Larry reviewed the following information from the staff report:

The property is south of 32nd Avenue, along the west side of Veteran's Boulevard, and on the south side of 34th Avenue East. The area was annexed into the City in 2005 and was platted & zoned in fall of 2009 to R-3: Multiple Dwellings for apartment buildings. In October of 2011, this property was replatted into 2 lots to facilitate financing and Lot 2 is now under different ownership.

The proposed development is shown in the City's Land Use Plan as High Density Residential. With a mix of 1-3 bedroom units at a density of 22 units per acre the proposed development meets the density requirements of High Density Residential as well lot size requirements of R-3 zoning. The developer is asking to rezone the property to allow for greater flexibility in setbacks.

The City Land Use Plan of the 2000 Comprehensive Plan designated the area along Veteran's Boulevard as mixed use development. This was prior to the justification study for an interchange at I-94 and 9th Street East/Veteran's Boulevard. Following the Interchange Justification Study and its approval, as well as the planned commercial development in Fargo east of Veteran's Boulevard, the City considered several Land Use Plan options for the area south of I-94 to be proactive and get ahead of anticipated development. In 2005 the City amended the 2000 Land Use Plan of the Comprehensive Plan designating the property along Veteran's Boulevard as High Density Residential. Property north of 34th Avenue East was designated as Commercial. Much of the property south of I-94 was annexed into the City in December 2005.

The first Shadow Wood subdivision was approved in 2007 which was west of the High Density Residential designated

property and on property designated as Low Density Residential. The multiple family property was platted and zoned to R-3: Multiple Dwellings in 2010 as one large lot. A submitted conceptual site plan showed 80 units on the south part of the lot and 140 units on the north part of the lot. The large lot was subdivided into two lots in 2011.

Three 36 unit apartment buildings with garage structures were constructed on the lot to the south in 2010. The Zoning Ordinance was amended in 2012 with a number of amendments which included landscape and buffer standards, and also increased side yard setback requirements for multiple family structures with multiple floors. The setback was increased by 20 feet for each floor above the ground floor when multiple family structures are located adjacent to one and two-family properties. When the property was replatted in 2011, the lot being developed now did not have a side street (34th Avenue East) so it was considered an interior lot, and a 30-foot rear yard is all that would have been required; however, when Oak Ridge 3rd Addition was platted, 34th Avenue East was included which made the lot being developed a corner lot having only front and side yards, and requiring additional buffering from the single family properties.

The applicant submitted plans for a building permit for four 45-unit structures which did not meet the side yard setback requirements from the single family properties to the apartment building (52 feet). The applicant has revised the site plan to meet the ordinance requirements by increasing the setback for the apartment building and placing the parking lot west of the building, and the building permit has been issued. The applicant has started construction on the apartment buildings which are closer to Veteran's Boulevard.

The City's Landscape Standard requires a 10 foot buffer yard, four foot screen (fence) and small evergreens to meet the architectural buffer or 20 foot buffer yard, small evergreen trees and one row of evergreen shrubs to meet the vegetative buffer. The applicant would prefer to place the parking lot on the east side of the two west apartment buildings and place the buildings within 25 feet of the property line. The applicant believes there would be less impact to the single family structures with this design, and has indicated a willingness to do additional buffering. To accomplish this, the applicant is requesting a rezoning to Planned Unit Development which provides the flexibility to negotiate revised setbacks.

The applicant has submitted a copy of the site plan approved with the building permit, as well as a site plan for the proposed PUD rezoning. The alternative site plan allows for increased parking which is important as there is no off-street parking available in the area for overflow. The alternative site plan allows the developer to keep parking and traffic areas confined to the interior of the site to avoid conflict with the adjacent low density residential development.

When this property was replatted staff urged the developer to arrange the buildings so that a number of them are parallel to Veteran's Boulevard for a cleaner look and to allow privacy for the buildings off of Veteran's Boulevard.

The access to Veteran's Boulevard as shown was reviewed by Engineering and Public Works and discussed with Fargo Engineering prior to construction; however, the access review did not follow proper procedures which require Planning and Zoning Commission and City Commission approval. Also, there is an agreement signed by both West Fargo and Fargo which does not allow the access at this location, as the minimum spacing between accesses on Veteran's Boulevard is 660 feet. The agreement was initially established when Veteran's was a two lane street and was amended in 2012 prior to the reconstruction of the four lane divided roadway. It would be appropriate to approve the access, subject to the two cities amending their agreement. Following traffic analysis given the existing median, it was determined that the access would not adversely affect traffic on Veteran's boulevard. An access at this location would also provide for better traffic circulation for emergency responders and residents.

Notices were sent to area property owners, City departments, Park District, Post Office, Utility Companies, SE Cass Water Resource District and Fargo Planning Office. Objections to the rezoning have been received from area property owners, some of whom were under the impression this area was zoned commercial. Three communications have been provided to the commission this evening indicating that a sign was placed by the former owner advertising commercial on the property. The planning staff has never received an application for commercial uses, not did the owner discuss this.

Staff recommends conditional approval of the rezoning on the basis that the application would be consistent with City plans and ordinances with the following conditions for approval.

1. Due consideration be given to neighboring property owner concerns regarding setbacks and landscaping/buffering.
2. The access onto Veteran's Boulevard is approved subject to the West Fargo and Fargo City Commissions amending the joint agreement.

Chair McDougall asked that when addressing the commission, members of the public give their names and addresses. Regarding the letters received, he stated that the property is currently zoned for apartments. The hearing tonight is to determine if it should remain R-3 or rezoned to PUD to provide a different layout for the proposed apartments.

Kurtis Karn, 772 35th Avenue East, asked about high density residential vs. twin homes. Larry stated that twin homes would be considered low density with a maximum 10 units per acre, whereas high density is 22 units per acre. Mr. Karn asked why they weren't notified when the current buildings were permitted. Larry stated that property owners were notified because of the request to rezone from R-3: Multiple Dwellings to PUD: Planned Unit Development.

Chair McDougall reviewed original site plan for the R-3 zoning which showed parking on the west side of the lot vs. the request for PUD with the parking lot moved to the east.

Tim indicated that currently the property allows for apartments. The original property owner rezoned it from Ag to R-3 in 2010. Mr. Karn stated that he was concerned with the lack of communication. He bought his lot in 2013 and was told it would be either commercial or twin homes. Chair McDougall stated that he'd heard this as well; however, this was a lack of communication by the builders or developers as this area has been zoned for apartments for a number of years.

Jeremy Kuntz 3523 8th Street East stated that he circulated a petition. He's concerned with the splash park along 4th Street and that people will cut through his yard from the apartments. He asked who should be given the petition. Tim indicated that he could accept it and it would be added to the record. Mr. Kuntz stated that he'd like a 6' privacy fence down the length of the properties along 8th Street East to the bike path. He stated that the commission needs to think about situations like this in the future when apartments are proposed next to homes.

John Ault, 740 35th Avenue East, stated that the developer was deceptive with the commercial sign. He stated that in other areas, signs are placed indicating "future Arterial Street" and suggested similar signs saying "future high density development".

Larry stated that it was the intent of the City since at least 2005 that this area be zoned in the future as high density. This information via the Comprehensive Plan which includes the land use map showing this area as high density residential as well as the zoning map showing the area being zoned R-3 has been on the City's website for a number of years.

Realtor Jenny Schuster, 929 Westwynd Drive, stated that in terms of miscommunication, the developer told her personally this would be light commercial and twin homes. Tim stated that the Planning Department never received an application and was never told by the developer that it was his intent.

Nathan Gomke, 3517 8th street East, stated that he has a trampoline and sandbox in his backyard. He doesn't want to look out and have people looking into his yard. He's also concerned with property values decreasing. He referred to a vacant lot which probably won't develop and is always full of weeds along 8th Street.

Discussion was held regarding what meets ordinance setbacks vs. what the developer is requesting --- 52' with the parking lot on the west side under the R-3 zoning or 27' with parking to the east of the buildings as per the developer. Mr. Gomke stated that he'd prefer the increased setback with the parking lot and a 6' fence. Chair McDougall stated that if the developer chooses to go forward with his approved R-3 zoned plan, staff can't make him install anything beyond City ordinance requirements. Mr. Karn asked if a condition could be added that the developer meet with residents.

Developer Bill Campbell stated that he's just trying to be proactive. He's new to this. They just purchased the land that was already zoned for apartments. His largest concern was to not have all the traffic in their backyards. He's permitted to build apartments along Veteran's Blvd. provided he follows the R-3 regulations. This has always been zoned for what they are doing. He recognizes what they're saying about the splash park and potential of people cutting through yards. They're trying to work out a compromise. Fences are very expensive and he's considering a 6' fence. He doesn't want to cause issues and had no idea people were misled.

Ms. Schuster asked if the buildings could be turned so the windows don't face the backyards of the homes along 8th Street. Builder Clayton Dietrich, Dietrich Construction, stated that this is a complex property as garages aren't allowed along Veteran's Blvd. so the buildings would need to be parallel due to the Corridor Overlay District and the garage would end up being along the homes. There are also issues with 34th Avenue. He stated that they've built a number of apartments over the

years and they strive to make sure vehicular traffic doesn't impact the homes in adjacent developments. A fence is a considerable investment. They also intend to line up plantings with the windows and patio doors to screen the properties.

Mr. Campbell stated that they're not big bully developers, just farmers from up north who want to build some apartments. He understands where residents are coming from and is willing to take an extra step; however, they don't have to do this – meet with residents, they could build tomorrow by meeting the R-3 regulations. Nothing was changed it has always been zoned for apartments.

Ms. Schuster asked if these are high end/luxury units and rental costs. Mr. Dietrich stated they'll run about \$950-975/month with granite countertops, maple cabinets, laminate flooring, security and recessed patios similar to structures in Urban Plains development north of Scheels arena. Ms. Schuster stated they'd get a lot more rent if underground parking was installed. Mr. Dietrich stated that would also add an additional 4th story to the structures.

Jenny Gomke, 3517 8th Street East, stated that she's concerned with a crane falling onto her house, similar to the accident to the north with the funeral home under construction.

Ms. Schuster referred to the 2011 minutes requiring a non-see through fence for the buildings to the south and asked why there wasn't one located there. How can they be assured that this developer will follow through?

Mr. Dietrich stated that the City won't grant a certificate of occupancy unless they meet the conditions. Mr. Kuntz asked for a guarantee. Larry stated that they can get a copy of the PUD Agreement the developer will sign. Mr. Kuntz asked how they know it'll be a 6' fence vs. a 4' one. Larry stated that if it's a condition for approval then it will be in the agreement. Larry stated that they won't have the ability to fence all the way to the bikeway because they don't own the property to the south.

Mr. Ault stated that siding is falling off the apartments to the south and nothing can be done. Larry stated that unless it's a health and safety issue the City cannot cite individuals for issues regarding aesthetics – painting or siding. Discussion was held on upkeep of the fence. Larry stated that it would also be included in the PUD Agreement.

Brandyn Ehlis, 3529 8th Street East, stated that he's currently building a home and should've known why the lot was so cheap. He asked about specials. Dustin stated that depending upon the project, state statute requires specials be spread either based on square footage or a front foot basis. Mr. Dietrich stated that in addition to specials, the multiple family developer has to pay for interior infrastructure --- water, sewer, underground, driveways.

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

Commissioner Zupi stated that the developer is willing to meet with the residents. This is a reminder for individuals to do their due diligence. The City does a great job of putting the information out there with the land use plan and zoning map. Commissioner Diamond stated that it seems to make more sense to have the driveway through the middle rather than through the backyards.

Mr. Campbell asked residents if someone would be willing to be the go-to person to organize a neighborhood meeting. Mr. Karn stated that he appreciated the developer giving them the opportunity. Mr. Kuntz indicated he'd volunteer.

Larry stated that should this move forward a public hearing would be scheduled for July 7th, so the residents and developer would need to meet within the next week or so. Mr. Campbell stated that if they could get P&Z approval they'd be willing to replace the hedge with a 6' fence. Mr. Dietrich asked if a motion to include a 6' fence would move this forward. Mr. Kuntz stated that it's a good compromise as long as it's a 6' fence.

Commissioner Sheeley made a motion for approval based on staff recommendations 1-2 with an additional condition that the developer install a 6' privacy fence along the west side. Commissioner Zupi seconded the motion. No opposition. Motion carried.

The next item on the agenda was Minor Planned Unit Development Modification for Assisted Living Center on Lot 1, Block 2 of Oak Ridge 5th Addition, City of West Fargo, North Dakota.

Tim reviewed the following information from the fact sheet:

The applicant has requested a minor revision to the Detailed Development Plans as previously approved for Oak Ridge 5th Addition and has submitted elevation plans for the structure, revised site plan, landscape plan and revised floor plans.

Minor changes may be considered by the Planning and Zoning Commission if the density or intensity of the development has not been increased. Minor changes may be approved by the Planning and Zoning Commission, whereas PUD amendments require a public hearing and approval by both the Planning and Zoning Commission and City Commission.

The applicant has submitted elevation drawings, a site plan, and floor plans. The request is to modify the PUD by changing building floor plans which reduce the size and change the configuration of the structure. Also, the site plan has been revised to add parking spaces while maintaining appropriate setbacks. Finally elevation plans and renderings have been submitted for the proposed assisted living facility.

Notices have been sent out to neighboring properties and we have not received any comments

Staff has reviewed these changes and recommends approval as a Minor PUD Modification.

Mr. Ault asked what had changed. Tim reviewed the site plan showing changes to the landscaping and driveway.

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

Commissioner Potter made a motion to adjourn. Commissioner Zupi seconded the motion. No opposition. Meeting adjourned.