

MANDAN PLANNING AND ZONING COMMISSION  
MANDAN CITY HALL  
June 22, 2020

The Planning and Zoning Commission of Mandan duly met in session in the meeting room of the Mandan City Hall on June 22, 2020, at 5:30 p.m. CDT. Due to the coronavirus situation, this meeting was held virtually on Zoom.

**OTHER BUSINESS**

**1. Park Board and School Board appointees.**

Other business is addressed first. Miles Mehlhoff joins the commission as the Park Board representative taking Commissioner Knoll's place. Commissioner Mehlhoff has served on Planning & Zoning in the past. The School Board has yet to appoint their representative and their rep should be in place by the next Planning & Zoning meeting.

**ROLL CALL**

Commissioners Present: Klein, Helbling, Liepitz, Renner, Frank, Camisa, Vayda, Mehlhoff, Robinson

Commissioners Absent: Boehm, Klemisch, Leingang

*Commissioner Camisa motions to approve the May 27, 2020 minutes. Commissioner Renner seconds. Upon vote, the motion passes unanimously.*

**PUBLIC HEARINGS**

**1. A request from Andrew Lee & Kalli Swenson for approval of a minor plat named Andy's Addition. Said property is Lots 3 & 4, Block 1, Helmsworth & McLean's Addition in Section 26, Township 139N, Range 81W.**

**A. Staff report**

John Van Dyke, City Planner, presents.

The attached minor plat, which typically does not require Planning and Zoning review, is being presented for approval due to its proposed primary alleyway access for one of the lots (See Exhibit 1). The subdivision ordinance requires non-street access to be presented to and approved by P&Z.

The property is located in the DF-Downtown Fringe District

There are obvious concerns with alleyway access such as:

- Addressing for emergency services
- Adequate onsite parking

- Access to the alley from the street-fronting property for waste disposal pick-up purposes
- Access to the street-fronting property for emergency service providers, as needed

The new dwelling would obtain water/sewer services through the existing residence. This is allowed in the code subject to a shared use agreement being established.

Staff, including Shawn Ouradnik, Building Official, Fire Chief Nardello, and Planning is supportive of this request subject to the following:

- Share use agreement for water/sewer and any other utilities, as necessary is established
- The proposed dwelling be a minimum of 22' setback from the alleyway property line to allow adequate spacing for parking (To be included in a recorded DA)
- Addressing should be visible, discernable, and illuminated (downward/inward facing) from both the street side and alleyway side
- Joint access easement to be created to allow seamless movement between properties for the purpose of waste disposal pick-up and emergency services, if needed

There are several other lots in the DF-Fringe that rely on alleyway access. Staff is supportive when the concerns can be mitigated as is the case with this application. This also provides opportunities for higher density in areas where existing services are available and the character of the neighborhood will remain unchanged.

Engineering and Planning recommend approval of the minor plat in Exhibit 1 subject to addressing the items contained in Exhibit 2.

Commissioner Frank says she has seen many of these around Mandan and the hiccups that occur with them. She is concerned about shared utility services. Why not build it as a granny flat? Would like to hear what Commissioner Camisa has to say about these kinds of dwellings and the sale transactions.

Commissioner Camisa says the transactions are messy, but doable. As long as the alley is there, there is legal access.

It is intended to be used as a dwelling.

### **B. Open public hearing**

Harvey Schneider, Toman Engineering, and the applicant, Andy Lee, are present via zoom. Andy wants to split the lot with the intent of building a double garage on the main floor with living quarters on the upper level.

Andy says the existing house is a rental. The new building will be a double garage with living quarters above. He intends to live in that. He owns both lots now, but wants the ability to separate them down the road.

### **C. Close public hearing**

Commissioner Renner asks John if this is a type of shop use that has been discussed in the past. John says a dwelling with garage is not commercial use. The shops that have been discussed were used for commercial uses.

Commissioner Renner asks if it has to be so far from the current garage. Shawn Ouradnik, Building Assessor, says there is not a setback from the current garage, but they would have to install a firewall. The building could be built up to the property line.

Commissioner Frank asks if adjacent property owners have been notified. John says no. Minor plats don't require a public hearing. John says this item is subject to Planning & Zoning for the alley access and not the minor plat. The structure still has to meet building code.

Commissioner Frank asks John when the last time a dwelling like this was built, facing an alley. John says there is no way of him knowing that on the fly.

Mayor Helbling says there is one behind NAPA and it was remodeled about 15 years ago. It is very close to the alley.

#### **D. Commission action.**

*Commissioner Liepitz motions to approve the proposed alleyway access for the minor plat as shown in Exhibit 1 subject to meeting the requirements in Exhibit 2. Commissioner Renner seconds. Upon vote, the motion passes unanimously.*

**2. A request from Dr. Eric Belanger for approval of a zone change from A (Agricultural) to RM (Multi-Family Residential) and a preliminary plat named Sunset AveNew 1<sup>st</sup> Addition. Said property is part of the north half of the SE ¼ of Section 16, Township 139N, Range 81W, City of Mandan, Morton County, North Dakota.**

#### **C. Staff report**

John Van Dyke, City Planner, presents.

Dr. Belanger requests a zone change from A-Agricultural to RM-Multi-family and a preliminary plat as presented in Exhibit 2.

The previous version of the preliminary plat showed the entirety of Sunset Ave. 1<sup>st</sup> upon build-out. Marathon Petroleum has a pipeline through this area and required a 100' easement. This has substantially changed the nature of the development and the applicant is attempting to accommodate the needs of Marathon Petroleum and still progress with their plans for development of this area. The applicant seeks to plat 8 residential for the initial phase of this area and dedicate the appropriate right-of-way along 8<sup>th</sup> Ave. NW, 31<sup>st</sup> St. NW, and 12<sup>th</sup> Ave. NW, as well as the local road to serve the connection between 8<sup>th</sup> Ave. NW and 12<sup>th</sup> Ave. NW. Lot 9, Block 1 and Lots 1 and 2, Block 2 would be reserved for future redevelopment.

Lot 2, Block 2 is presently a super block to be further developed through nine (9) phases and approximately fifty-four (54) lots.

Lot 1, Block 2 will be a stand-alone lot and yet to be determined if it will be further subdivided.

Exhibit 3 provides a phasing plan where each color represents a similarly sized enlargement of the development, with roughly 8 lots per phase. In total, there are 11 phases.

At this time per Exhibit 3, build-out of Lot 2, Block 2 and Lots 1-9, Block 1 will create 79 residential units across 12.26 acres, or 6.44 units per acre. This aligns with the recently adopted amendment to the Mandan Land Use and Transportation Plan designation of Medium Density Residential.

The local road is a slightly smaller width than is typically permitted. Generally, sixty-six (66) feet is required for local roads. The applicant is seeking a sixty (60) foot right-of-way. Limiting parking on one side of the street will accommodate this request and is supported by Engineering and Planning. Bismarck has recently committed to allowing reduced right-of-way widths in certain instances, as it is less expensive to maintain due to less pavement to repair and less snow to be plowed in the winter.

Staff does have concerns regarding the proximity of driveways to one-another for the first eight residential lots. This can be remedied by shared access driveway easements to provide the necessary amount of space between driveways for placement of snow in the winter. This may include non-access lines in conjunction with the shared access easements. Staff is recommending this as a condition of approval.

Staff also has concerns that Lot 9, Block 1 does not specify the area to be utilized for a storm water detention pond, as was previously done in the original application. Staff is recommending splitting Lot 9, Block 1 into two lots – one dedicated for future redevelopment and one dedicated for the storm water detention pond. In addition, the newly created lot dedicated to storm water detention would be required to be held in undivided interest with all lots within the development so as to ensure that the City does not become owner and responsible for maintenance in the future.

Staff also recommends the creation of a non-access line along the east side of 12<sup>th</sup> Ave. NW and north side of 31<sup>st</sup> St. NW except for a 36' width along the farthest northwest and farthest southeast boundary of Lot 1, Block 2. This will place the approach for the lot from the public street furthest away from the intersection of 31<sup>st</sup> St. NW and 12<sup>th</sup> Ave. NW.

Fire Chief Nardello requires a temporary turnaround to be established for the first phase on the easterly end of the proposed local road.

These recommended changes to the preliminary plat prior to presentation to the Board of City Commissioners is included in Exhibit 4.

Finally, given that the first phase of the development showing large lots and blocks does not presently conform to the Mandan Land Use and Transportation Plan AND the developer has indicated that upon build-out as shown in Exhibit 3 via future phases that it can and will conform with the plan, staff is recommending a development agreement tied to this development (See Exhibit 5). This provides the developer with the ability to initiate construction for the first phase and address the details of future phases at a subsequent time

and ensure the City develops in an orderly manner. The development agreement is only a DRAFT and may change.

The DA revolves around a density range for the entirety of the development, triggering event for the construction of 8<sup>th</sup> Ave. NW, how specials will be handled, and addresses minor landscaping and pedestrian connectivity requirements.

Morton County Recorder's Office indicated that the name may be commonly misspelled and create confusion when recording documents.

Cole Higlin, Director of Mandan Parks District indicated that this version did not include a shared use path and joint effort with the Parks and the City for a regional storm water retention pond that a previous version included.

Malcolm Brown, City Attorney commented that the plat should indicate that the street(s) where appropriate are subject to the MRO contract (and include the instrument number of the contract for simple reference).

Natalie Pierce, Morton County Planning and Zoning Director continues to have concerns regarding the use of private infrastructure.

MDU requests a 10' wide easement area be platted along the south and east property boundaries of Lot 9, Block 1. Also, MDU requests that a 7' to 10' wide easement be platted along the north property boundaries of Lots 1-9, Block 1.

Engineering/Planning comments are contained within this staff report. Principal Planner John Van Dyke shares Natalie Pierce's concerns with the use of private infrastructure but understands there is no policy on the use of private infrastructure at this time. This should be evaluated independently in the short-term apart from this application.

Engineering and Planning recommend approval of rezone from A-Agriculture to RM Multi-family and the preliminary plat subject to the changes noted in Exhibit 4 and entering into a Development Agreement similar to the one outlined in Exhibit 5.

Commissioner Camisa agrees with the County Recorder's Office suggestion of renaming the plat. He asks John how we go about enforcing the developing agreement. John says the applicant will have incentive to follow the agreement if he wants to proceed to the next phase. Camisa thinks lots could be transferred in the future without adherence to the developer's agreement. Some counties put a lien on the lot until the conditions are met and the lien can be released so the lot can be sold. It is something to think about. Camisa also thinks we should try to limit special assessments going forward in the future. John says the developer agreement will be tied to the property and not the applicant specifically. John says the agreement he has on the screen right now is a master agreement. There will also be other agreements such as private roads, utilities, and Terra Vallee lift station agreements.

Commissioner Renner asks for confirmation that the first phase is the white area on the map and that 12<sup>th</sup> Avenue on the map does not exist right now. John says the white area is the first phase and 12<sup>th</sup> Avenue does not exist right now. Renner asks who is going to incur

the costs of developing 12<sup>th</sup> Avenue to get to the first phase. He also points out #10 in the developer's agreement that says private roads and utilities to be maintained by lot owners. Who is responsible for moving snow off those streets? John says the private roads does mean they will be responsible for snow removal. Renner asks if the cost of developing 12<sup>th</sup> Avenue going to be the responsibility of the applicant or shared cost with the city? John says he understands that will be incurred by the applicant. The dead line for special assessments this year is past, so he would not be able to special assess the road. John says the applicant can probably speak more to that. Renner asks if the costs of upgrading the Terra Vallee lift station will also be the responsibility of the applicant. John says those details are still being discussed. Renner says if he was a nearby property owner he would have a hard time accepting assessments on roads being built to the north of him that he would not use.

Commissioner Camisa would like to see special assessments limited as much as possible.

#### **D. Open public hearing**

Dr. Belanger, applicant, "Thank you for consideration of this project. I just want to clarify a few points. First of all, 12<sup>th</sup> Street and the street that will be along my lot will all be fund directly by me. So there is no special assessment will go there. I own property on both sides and I'm paying for all of those roads. One other concern we do have is connecting to Terra Vallee. We did our own work. Moore Engineering has done research and this lift station is currently used at 45% only. Basically, research has been done by an engineering firm and there is plenty of capacity to connect to that lift station. We're working with Jim Neubauer and the city where we will be charged to connect to this lift station and as we move forward more than likely the cost will increase as soon as we bring in more phases. The area in the southwest corner of the property, the purple one there, is something that gives me a little bit of a headache because of the easement for the pipeline and the road access. The preliminary plat we did the plan to have the same amount of the same structure there...twin house, row house, something like that. But with the Marathon easement, I don't know if we are going to be able to make it work. At some point also the development need to make sense business wise and we're going to need to reassess that corner to see if it's gonna work. I agree with John that it would be nice to have an access in the upper corner, but Marathon does not want us to build any structure, no road that could encroach their easement as much as possible. So John may want it there, Marathon may not want it there. At some point, we're all going to have to sit down and decide what will work best with that area. This is why we have elected to leave the corner blank for now as it's going to require more discussion to make that part of the development workable for the city and for us and for the people there. All of those private roads, sewer, water are extremely expensive and if we end up where we can just use a little corner, it's just makes to have to sell those lots so high that it's not going to be economically feasible for other people to buy those lots. This is why this corner is less blank. We will work on some arrangement, some structure that will be able to fit there and when we get back to you for approval when this negotiation has been fruitful with the city and Marathon. Another area of concern of the team and that is 8<sup>th</sup> Street, of course. I agree what was said that the portion of 8<sup>th</sup> Street that is adjacent to the lot should definitely be special assessed, if it turned out to be special assessed to my own development. That part is absolutely not a problem. There is an area of 8<sup>th</sup> Street that will be a little bit more difficult and this is where John's pointing now. Basically, there is three hundred feet of road just adjacent to Cascade Apartment that do not belong to my property. All of that area and that's a cost of probably

around \$150,000 to build that area and this we will have to discuss with special assessment district to see who should pay for the road, the asphalt on property that I don't own. I'm not sure if the answer to that question should be the people that will buy the house from me. I think usually it is the adjacent owner on both side of the street who pay for their lot. For their asphalt. If we can reach a deal with the city for a fair assessment of that road, I think the development of that area will go faster. Is there any other questions? One other thing. That development agreement is the first time I saw that agreement just a few minutes ago. There is a portion there that say I waive my right to protest for a street in that development. I don't know what you guys think of having me waive my right when I don't even know what we made a deal. I don't know how the special assessment district will be. I don't know which share will be. I'm asked from the city to indefinitely waive my right and waive the right of anybody that could buy a lot from me. I think if the special assessment district will be clarified, from the get go in the developer agreement then we can look at it and says it's fair and waive the right for a protest, but otherwise I waive my right to protest something that nobody knows what it's going to be. I'm not sure how you guys feel about that part of your clause there."

John says if he were to initiate a special district, it would follow the special assessment policy, which would include the Cascade Apartment property owners as part of the benefitting property. It wouldn't be until the adjacency of it that it would apply to yours. The way that it's structured is if there's another developer that wants to take advantage of 8<sup>th</sup>, maybe that's called primary access, they would be a part of that special improvement district. It still wouldn't be applied to your property as the special assessment policy is currently laid out. Even though this is thought of as a future collector, we know it will probably be developed as a rural segment. So, it's going to apply to the adjacent properties. What we don't want to happen is for that rural segment to just fall on immediate adjacent property owners rather that the entirety of the development.

Commissioner Renner asks if another developer pass costs on extensions of these roads to Dr. Belanger if he waives all his rights on the assessments. He understands where the Dr. is coming from.

**E. Close public hearing**

**F. Commission action.**

*Commissioner Liepitz motions to approve the rezone from A-Agriculture to RM Multi-family and the preliminary plat subject to the changes noted in Exhibit 4 and entering into a Development Agreement similar to the one outlined in Exhibit 5. Commissioner Camisa seconds. Upon vote, the motion passes unanimously with the exception of Commission Mehlhoff who sustains himself from the vote because he is an employee of Moore Engineering.*

*Commissioner Camisa motions to adjourn. Commissioner Frank seconds. Vote passes unanimously.*

*The meeting adjourns at 6:52 p.m.*