



AGENDA
MANDAN PLANNING & ZONING COMMISSION
COMMISSION ROOM 5:30 P.M.
MONDAY, SEPTEMBER 28, 2020

Due to ongoing public health concerns related to COVID-19, the City of Mandan is encouraging citizens to provide their comments for agenda items via email to info@cityofmandan.com. Please provide your comments before noon on the day of the meeting. Comments will be forwarded to the Planning & Zoning Commissioners prior to the meeting.

City Hall will be open for this meeting. If you would prefer to appear via video or audio link, please provide your contact information to info@cityofmandan.com. Many Planning & Zoning Commissioners may be attending this meeting remotely.

The public may access the LIVE meeting by **WEB**: Please go to the following link to join the webinar:

<https://us02web.zoom.us/j/89024087093> or by **TELEPHONE**: Dial: 1 346 248 7799 Webinar ID: 890 2408 7093

Roll Call, Reading and Approval of the August 24, 2020, minutes.

PUBLIC HEARINGS

1. A zone change request initiated by the city. Rezone from R7 (Single-Family) to Agricultural. Said property is Lots 1 & 2, Block 1, Schaff Estates lying in Section 7, Township 139N, Range 81W, Morton County, North Dakota.

A. Staff report B. Open for public comment C. Close public comment D. Commission action

Staff Recommendation: Engineering and Planning recommends approval of the zoning map amendment as presented in Exhibit 3.

2. A request to consider recommending approval of an ordinance amending Section 105-2-3 (6) and 105-2-3 (7) of the Mandan Code of Ordinances related to Interpretation of District Boundaries.

A. Staff report B. Open for public comment C. Close public comment D. Commission action

Staff Recommendation: Engineering and Planning recommend approval of the DRAFT ordinance as provided in Exhibit 1.

3. A request from Arthur, Craig, and Susan Rask for consideration of approval for a variance to the rear setback of 20' to 5.4' for 708 6th Avenue NW and a variance to the front setback of 50' to 5.9' on 706 6th Avenue NW. Said property is Lots 10 & 11, Block 83, Northern Pacific 1st Addition in Section 27, Township 139N, Range 81W, City of Mandan, Morton County, North Dakota.

A. Staff report B. Open for public comment C. Close public comment D. Commission action

Staff Recommendation: Engineering and Planning recommends approval of the variance as illustrated in Exhibit 2 based on the findings in Exhibit 3.

4. A request from Victor Goncharov for consideration of approval for a special use permit for a two-unit multi-use shop. Said property is Lot 2, Block 1, Replat of Big Sky Estates 3rd Addition, lying in the SW ¼ of Section 16, Township 139N, Range 81W, in the City of Mandan, Morton County, North Dakota.

A. Staff report B. Open for public comment C. Close public comment D. Commission action

Staff Recommendation: Engineering/Planning recommend approval of the special use permit for a two-unit multi-use shop as provided in Exhibit 7 based on the findings in Exhibit 6.

5. A request from Jason Frank for consideration of annexation, a zone change from AG (Agriculture) to R7 (Single-Family Residential), and a preliminary plat to be named Sloane's Addition. Said property is part of the SW ¼ of the NE ¼ of Section 3, Township 138N, Range 81W, Morton County, North Dakota.

A. Staff report B. Open for public comment C. Close public comment D. Commission action

Staff Recommendation:

If the applicant is amenable to addressing the concerns with regard to future development of the property into typical city-sized lots, the Engineering and Planning Department recommend the Planning and Zoning Commission require this information prior to making a decision and table the item to the October Planning and Zoning meeting.

If the applicant is not amenable to addressing the concerns with regard to future development of the property into typical city-sized lots, the Engineering and Planning Department recommend denial based on the reasons provided in Exhibit 5.

ADJOURN

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL
Monday, August 24, 2020

The Planning and Zoning Commission of Mandan duly met in session in the meeting room of the Mandan City Hall on August 24, 2020, at 5:30 p.m. CST. Due to the coronavirus situation, this meeting was held virtually on Zoom.

ROLL CALL

Introduction of Darren Haugen, School Board Representative, to the Planning & Zoning Commission.

Commissioners Present: Boehm, Klein, Mehlhoff, Haugen, Liepitz, Renner, Frank, Camisa, Vayda, Leingang, Robinson. Commissioners Absent: Helbling.

Commissioner Camisa motioned to approve the July 27, 2020 minutes as presented. Commissioner Vayda seconded the motion. Upon vote, the motion passed unanimously.

PUBLIC HEARINGS

1. A request from Terrance Wetch for a zone change from R7 (Single-Family Residential) to CB (Commercial). Said property is Lot A of Lots 3 & 4 of Auditor's Lot E of the SW ¼ of Section 29, Township 139N, Range 81W; in the City of Mandan, Morton County, North Dakota.

A. Staff report

John Van Dyke, City Planner, presented.

Mr. Wetch desires to rezone his property from R7 Residential to CB Commercial. The property is located west on Main past the Lower Heart River crossing (See Exhibit 2). The properties future land use designation is Commercial as seen in Exhibit 2.

Mr. Wetch is currently in discussions with the neighboring property owner, Victor Fleck who owns the property to the west that is zoned CB Commercial, to purchase the subject property. Mr. Fleck's property was rezoned to CB Commercial in 2011. Mr. Fleck would like the same zoning designation as his current land for expansion of his business operations at some point in the future. The property to the northeast and owned by Rodney Aman is zoned MA Industrial. The property has historically been used as a commercial auto repair shop. This property was rezoned in 1987. Other property to the east is zoned R7 and is rural residential in nature. Given the adjacent commercial zoning and uses coupled with the alignment with the future land use designation and direct road access, staff is recommending approval. These findings are included in Exhibit 4.

Planner Van Dyke stated that at the time of writing this staff report, no public comments were received. However, that changed today (September 24, 2020) wherein comments and inquiries were received. He provided an exhibit prepared of one written comment that was received. Planner Van Dyke presented a map showing residents in favor (outlined in green) and four in opposition (red dots) to the rezone.

Planner Van Dyke stated that the general zoning is rural Residential in nature and it should stay that way and Mr. Fleck's operations, if moved closer to the east, would be rural Residential in that area. He said that there are property owners present to speak to the application and also to their concerns.

Chair Robinson stated there are seven (7) documented neighbors in opposition with no real theme listed. Planner Van Dyke stated that he received a late exhibit and he requested that the commentator present it rather than him, when it's time for the public hearing.

Engineering and Planning Department recommended approval of the rezone from R7 Residential to CB Commercial for the reasons specified in the findings in Exhibit 4.

Commissioner Mehlhoff requested information as to what the proposed use would be under the new zoning and what other allowed uses would be included in that commercial zoning.

Planner Van Dyke explained that Victor Fleck owns a trucking and excavation business and his intentions for this property if purchased would be to construct a commercial building where he would work on and house and park the trucks when they are not being used. They are primarily used offsite.

Commissioner Renner said that the future land use map indicates high density residential for the area. Currently, present zoning for the west future land use the request is to change it to high density residential. If the city will allow changing this zoning from R7 Residential to Commercial now, which is what the future would be, how would it switch from a CD Commercial to a high density residential in the future? It seems like this is going back and forth by switching from one then back to the original.

Planner Van Dyke replied if there was some development proposal on Victor Fleck's property, which is not the discussion for today, but to answer the question, they would have to come back in for a future land use map amendment and make sure it aligns with their intended land use. The plan and intentions of the property owner would have to align and that's how it would be facilitated by the city. Otherwise, we would expect high density residency development in that particular location. At this point, the application is for commercial, and it resides entirely in a commercial designation on the Mandan Use and Transportation Plan.

Chair Robinson inquired if there were any other comments or questions from the Commission. Hearing none, the meeting was opened for public comment. He invited anyone present or calling in to come forward to comment or ask questions.

B. Open public hearing

Lois Clement, stated that her husband's name is Jim Clement and they have owned a residence at the adjoining property for 45 years. She stated: "The land that is being proposed to change is currently being used as a corn field and has been for a number of years. I'd like to read a letter I dropped off this morning. In regards to the request of Terry Wetch for a zoning change to commercial, for his land along Sunny Road south just west of Mandan. A large commercial zoning area in the midst of an agricultural and residential area seems very inappropriate. The requested change lies smack in the middle of probably 15-20 residences and agricultural land areas. The property values would be greatly undermined by the proposed increase in commercial activity. More immediately, the quality of our lives here

would quickly deteriorate. We and those in our neighborhood are accustomed to school buses, people walking to their mailboxes, families on horseback and bicycles, people walking dogs and pushing strollers and the sounds of young people playing basketball in the evening. Our dogs wander over to play with the neighbor's dogs. Pheasant, turkeys and dove call from the edges of our yards. They wander by and stop to browse and flocks of Canadian geese fly in and out of that corn field to eat and bed down. My backyard feeder list includes probably 18 varieties of song birds and we are still able to capture a fairly good night sky despite our proximity to the likes of town. The existing commercial property even as it is has changed things. Night lights that seem as bright as those at a ball diamond. Clanking trucks unloading at odd hours, mounds of rock and rubble, dust and big quantities of assorted equipment, trucks and portable metal buildings moving in and out of storage there. It is very concerning that this commercial impact would grow even larger in an area surrounded by residences. Please consider at length the precedent this would set for the multiple property owners here. Many of us longtime residents. You would be satisfying the request of one individual at a big financial and lifestyle cost to a great number of families. I would just as well ask you to drive by the property and/or look at an ariel view and you will see that there are multiple houses on all sides, well on two sides, east and west, of that property and it would clearly not be desirable in that."

Larry Kaul came forward to speak and stated he resides east of the property being discussed and is a lifelong resident of that area. He stated: "I am concerned about the extra truck traffic. It's lightly paved now and if we get more big machinery and big trucks on that road that will deteriorate that road. There are times I go by at whatever time of day and there is a lady pushing her 2 little kids in a stroller with 2 dogs she hangs on to. I've talked to her and she said she feels safe walking along that road. I'm afraid that will all change if this comes about. I agree with Lois Clement about the wildlife in the area. I only found out about this matter this morning and I presented a list of names. If I had more time, I could have gotten 15-20 more people on that list that are opposed to it, and since I did not know about this meeting until this morning, that is only a limited list. I know Victor personally and I know Terry personally and I have nothing against either one of them. Victor has his trucks and equipment on the one part that is zoned commercial and he has a lot of asphalt piles that he runs through the crusher. You can hear him crushing late into the night with that crusher going. That would just increase the problems, it stirs up the whole neighborhood. I, as Larry Kaul, speak for a lot of people around."

Terry Wetch called in to the meeting. He stated: "I was trying to get this into Commercial. I originally thought back in 1987 when Sharon Schaefer was mayor this was all taken care of. In fact, in my abstract with the land description at that time because I've only re-platted this as of January 10, of 1918 through Toman Engineering. At that time, I still thought it was Commercial. I only found out about this matter over the last month and a half that it was still R7 Residential. I have always understood that it is Commercial up until a month and a half ago. That's the reason for this application. I need it to be commercially re-zoned. After I found it in my abstract, I felt that the City was taking it away from me. I know Sharon Schaefer is no longer with us so I can't ask her but I always thought it was commercial. I need it to be commercial. And that's the reason I applied."

Commissioner Mehlhoff commented that he found it odd that there was one Commercial lot in the middle of all these residential and does not understand how that happened with that land. This is a tough one here and he said he can see both sides.

Commissioner Leingang inquired of Planner Van Dyke why he is crushing black top and concrete on that lot. That isn't zoned commercial, that is zoned industrial, isn't it?

Planner Van Dyke stated that the subject property is part of the application and doesn't have anything to do with the property, but that activity may be a zoning violation if that is going on. He stated that he has talked with Victor Fleck and noticed that the piles and the crushing going on is not allowed in a commercial zoning designation, however that's not the subject property. What's being evaluated is the appropriateness of Terry Wetch's property that is commercial, regardless. You could sell it off as a different use and purpose, He said he would like to not focus on Victor Fleck because that is a separate issue but to focus on Terry Wetch's property because that is the subject of this application.

Brian Zuroff stated: "To provide clarification to Commissioner Mehlhoff's question, I was involved about a year ago, in a rezoning application for Leonard Storm, Alex Bowman and Raymond Schaff. In conversations with these three previous applicants who came before the Planning and Zoning Commission with a similar request because Storm, Schaff and Bowman were all running essentially industrial operations on their property, and had been for years. Schaff has a good wealth of knowledge regarding that from the past. The housing division was, from my understanding from Schaff and Storm, and a couple others, was that this was originally put in as a development so that a resident could work and live there. There are a lot of truck drivers out there that had trucking facilities or mechanic shops and auto body. You drive along that business loop and you can still see that out there and my great uncle had property out there at one time where he was running an autobody shop in his back yard. When that subdivision was put in, in the 60's and 70's, that was the intent so you could live and work there. At that time, when it was done, it was more of a hand-shake type of agreement and not so much worrying about what Planning and Zoning had to do with it. To your question, Commissioner Mehlhoff, that is how this all came about and that also includes the salvage yard north of Main Street. This is provided for clarification and I have no further comments."

C. Close public hearing

Chair Robinson asked if there were any other comments. Hearing none, the public hearing was closed.

Commissioner Renner inquired if someone would be able to address the comment Mr. Wetch made stating that he thought he seen on his abstract that it was zoned Commercial? He said that he did not remember seeing anything on the abstract that pertained to zoning.

Planner Van Dyke explained that was part of the confusion. That in 1987 it was zoned MA Industrial re-zone. That's the only instance that he seen on file and it did have a similar legal description to the abstract that Terry Wetch has. However, in the application as far as the acreage of the property, it was somewhere between 1 and 2 acres and that was the Aman Subdivision, zoned as MA Industrial and that piece of property is 1 acre. There are maps that also provide context surrounding that. The legal description for the re-zone and the Ordinance that approved it, is not tight and this would help clarify and bring it back to what Terry Wetch thought he had. However, the application contained restrictives to the north of MA Industrial.

Commissioner Liepitz stated that it does seem like it's a very aggressive transition from Commercial to single family housing. If this committee approves this, we are just continuing

that aggressive transition although moving the line east, closer to the existing residences, I know we have to consider the application as it is and cannot push alternatives but from a planning perspective, in your opinion, is it appropriate to carry this commercial further east? Or, in my mind it might be more appropriate to have something in more of a transitional zoning giving it more intense than single family, but not all the way to Commercial?

Planner Van Dyke pulled up the future land use map and to focus on this area. He said that's probably something that needs to happen in the future because it's a very unique area and intermixed together. He stated that consideration should be given that this commercial and residential zoning should be changed ultimately to industrial zoning since it is all within the same access road in close proximity to one another. He pointed out that anytime there is an application for change we will get the same response with those zone requests. The difference here is that the future land use is the plan adopted by the community does support a commercial designation. The change to commercial zoning designation coupled with commercial use, although light industrial is the only designation property to the northeast, those are the reasons along with direct road frontage. Any development will have to get a plat potentially at that time and would be required in the zoning standards, there would have to be some type of head-row or fence. That would be another application. I don't think there is any easy simple answer in this case. This area has always been a mesh of different uses and we here are today trying to move forward and then, there's conflict."

Commissioner Liepitz commented that the current status is uncomfortable from a planning perspective. I don't think you would draw it up this way if you were to start fresh but that's not the question. Do we extend the problem further east is the challenge, closer to residential?"

Planner Van Dyke stated that he is not sure that he sees it as a problem moving east, rather, it's fair. Commercial uses have just as much property rights as the rest of the area and the plan for the area is commercial. When you have commercial adjacent to residential, again, just going solely off the plan for the area - that's what the Planning and Zoning Commission is to take into consideration. He said that he did not have the public comments when he wrote this, however, there are some strong feelings in opposition that came forward.

Commissioner Liepitz stated that the comments and explanations given were well-taken.

Commissioner Renner inquired of Exhibit 2, future land use, how far does that commercial area go to, to the east?"

Planner Van Dyke stated that it goes to the lower Heart, the dead Heart, then to the east."

Commissioner Renner inquired if that is all now zoned as residential?

Planner Van Dyke stated that is correct. There is some further to the east. There is a large animal veterinary clinic further down the road.

Terry Wetch stated: "You said my property goes to the dead Heart? It does not."

Planner Van Dyke clarified that was the future land use commercial zoning that goes up but he did not know how far that goes. We're not talking about your (Wetch) property.

Planner Van Dyke inquired if there were any more questions for staff at this time?

Chair Robinson inquired if the Commissioners had any more questions.

Planner Van Dyke clarified that with regard to the process before the Commission - this is a recommendation from Planning and Zoning Commission and there will be another public hearing so this is not the end of this discussion. This will then be presented to the City Commissioners who will also hear concerns.

D. Commission action.

Commissioner Frank motioned to recommend approval of the rezone from R7 Residential to CB Commercial as presented for the reasons specified in the findings in Exhibit 4. Commissioner Mehlhoff seconded the motion.

Commissioner Mehlhoff commented that he has reviewed the uses of the CB Commercial and its hotels, motels, churches, those entities that are not high impact businesses. Planner Van Dyke was alluding to the process, that the P & Z is not approving this or saying this is going to be changed to an Industrial lot. When you look at the service groups that are zoned commercial is, it lends itself to the buffer that Commissioner Liepitz was asking for between the residential zoning and whatever use is currently going on out there. He said that with that in mind, is why he seconded the motion.

Upon vote, the motion failed with 4 ayes and 7 nays as follows: Boehm-nay, Klein-nay, Mehlhoff-aye, Haugen-aye, Liepitz-nay, Renner-nay, Frank-aye, Camisa-aye, Vayda-nay, Leingang-nay, Robinson-nay.

Planner Van Dyke stated that since the motion failed, there will be no recommendation from P & Z Commission regarding this matter.

Commissioner Liepitz motioned to recommend denial of the application of the rezone from R7 Residential to CB Commercial. Commissioner Leingang seconded the motion. Upon vote, the motion passed with 7 ayes and 4 nays as follows: Boehm-aye, Klein-aye, Mehlhoff-nay, Haugen-nay, Liepitz-aye, Renner-aye, Frank-nay, Camisa-nay, Vayda-aye, Leingang-aye, Robinson-aye.

2. A request from Bismarck ND SU RE, LLC, for consideration of a preliminary plat, final plat, and zone change. Proposed name of plat is Foundation Addition. Said property is Lots 24-27, Block 2, Pioneer Industrial Park 1st Addition in the NW ¼ of Section 22, Township 139N, Range 81W; in the City of Mandan, Morton County, North Dakota.

A. Staff report

John Van Dyke, City Planner, presented.

The applicant seeks to combine four (4) lots into one (1) and rezone the property for the purposes of commercial automotive sales (See Exhibits 1 and 2 showing the preliminary and final plats). The property is located on the east side of 8th Ave. NW and north of I-94. The development abuts 8th Ave. NW, a collector road, and Old Red Trail NW, an arterial road. The future land use for the property is commercial and the CB Commercial zoning sought conforms to the land use plan for the area. The adjacent property zoning is MC Industrial and CC Commercial. He reported that staff is supportive of the preliminary and final plats,

along with the rezone from RM Residential and MC Industrial to CB Commercial based on the findings in Exhibit 4.

The Engineering and Planning Department recommended approval of the preliminary and final plats, along with the rezone from RM Residential and MC industrial to CB Commercial based on the findings in Exhibit 4.

Commissioner Renner inquired as to where are they going to get access to that property - off 8th? Or off Old Red Trail?" Planner Van Dyke clarified that they will be coming off 8th and the plans were provided to the Architectural Review Commission. He showed the plat again and stated there is a 30 ft. wide access easement and pointed out on the map the area they will be using.

Commissioner Camisa stated that when looking at the original plat of Pioneer Industrial Park, the land directly to the left boundary, Lot 44, it looks like it is owned by Montana Dakota Utilities. He said that when trying to figure that out from examining public records of that lot, he didn't see any particular easement of record. When trying to figure out access if coming off 8th for that lot, where that comes from? Looking at the original plat for Lot 44 it does mention an easement on the plat but when looking at the plat there is no dedication. He said it's not clear if that access is dedicated and what the easement is for the lot. Down the road if the City at some point has to impose a no access line along Old Red Trail, it seems, going forward with these major roads, they may required to have an access point that they don't have, and that could be a problem.

Planner Van Dyke acknowledged that being pointed out and stated that he wants the applicant to be aware of Commissioner Camisa's concerns regarding that access noting the possible lack of language on the previously platted property that had access to this property. He said he is not sure if the applicant is on line, but did take note of that and recommended double-checking on that. If they want it to interfere it may cause issues with the business.

Brian Zuroff stated that he is with Mountain Plain Consulting, the consultant representing the applicant. He said they are aware of the current issues with that access in the easement and they are working with WDI and MDU Resources to resolve any of that. They do not have any real issues with utilizing that easement but it's more so that main WDI transmission line. He said they are working with them to assure that there is a structural component to the access or whatever that cross is over the utility infrastructure. They're okay with us utilizing it, it's just they want to make sure that the infrastructure is designed appropriately. He said they have the go-ahead from them to use the easement.

Chair Robinson inquired if there were any other questions for staff at this time?

Planner Van Dyke said that when looking at Lot 28, he does not think there is a tower on this property rather, the tower is further to the east.

Brian Zuroff inquired if the water tower still exist anymore? There is an abandoned tower currently standing on Lot 28, about 15 ft. north of the property line about where that bearing is, that tower sits north of the property line for that, and that tower is not in use anymore. He said that when discussing this with Public Works Director Bitz, he said that was the old system for the water tower and has been abandoned since that tower was removed.

Commissioner Camisa inquired about water run off and would like to know where the water is going to flow.

Brian Zuroff explained that the site right now currently splits where the water drains off about where the house previously sat. It drained to the east from that point then west, the highpoint of the hill. They are in the process of removing the house. The overall plan is to maintain the same area for that. The area to the east side has an underground detention system for all the drainage on the east side where there is rate control underground piping to hold the detained water back to pre-existing conditions. On the west side of this property there will be a storm detention pond with a rate control structure in it to detain all storm water. He said that he has submitted a storm water management plan with the City and that all of the post construction of the design does meet the pre-construction conditions as required by the city.

Commissioner Camisa stated that compared to the current water run off there is quite a bit of water that is already heading towards 1806. How much more do you think we are going to be adding in water flow going in that direction? There is a lot of land in that area that is saturated so the concern is how much more will we be adding? That detention pond that was mentioned and flows to the east, is there going to be an opportunity for the water to flow beyond that?

Brian Zuroff stated that there will be no additional flow of storm water to the east or to the west of that area. The rate and flow structure were designed as such so that the post construction flows are equal to or less than the pre-construction flows. Basically, what that means is that we are not adding any additional storm water flows off site. When a big area like that is paved there is an increase internally with those flows with the run off because of eliminating the grass area and putting pavement in there. With the construction of the underground infrastructure on the east side and the pond on the west side, those flows have been taken into consideration. All the surface drainage has been designed to meet a 500-year event. That means if something would plug up or the system would be overburdened by a 500-year event, there is curb and gutter surrounding the entire site to be capturing that in addition to the underground detention on the site. Essentially there should not be any additional flow leaving the site.

Chair Robinson inquired if there were any other comments or questions from the Commission. Hearing none, the meeting was opened for public comment. He invited anyone present or calling in to comment or ask questions.

B. Open public hearing

Chair Robinson asked if anyone had any questions or comment. A second announcement was made for anyone to come forward to ask questions or comments. Hearing none, the public hearing was closed.

C. Close public hearing

D. Commission action.

Commissioner Mehlhoff motioned to recommend approval of the preliminary and final plat of Foundation Addition along with a zone change from RM Residential and MC Industrial to

CB Commercial based on the findings in Exhibit 4. Commissioner Frank seconded the motion. Upon vote, the motion passed unanimously.

3. A request from Eric Belanger for consideration of a final plat to be named Rockwood First Addition (previously called Sunset Ave New First Addition). Said property is part of the N1/2 of the SE1/4 of Section 16, Township 139N, Range 81W.

A. Staff Report

John Van Dyke, City Planner, presented. He stated that this matter has been before the commission several times and it is now ready to be finalized.

Dr. Eric Belanger and Wendy McNichols have submitted the final plat application that contains 8 residential building lots (Lots 1 through 8, Block 1), three lots to be further subdivided (Lot 9, Block 1 and Lots 1 & 2, Block 2), and one lot to be held in undivided interest for the purposes of storm water retention (Lot 10, Block 1) (See Exhibit 1). The preliminary plat was presented to Planning and Zoning Commission (P&Z) on June 22, 2020 and approved by the Board of City Commissioners on July 21, 2020. At that meeting, several changes were required for approval and have been included in Exhibit 2. Red text indicates those that are still need to be addressed prior to presentation to the Board of City Commissioners on September 15, 2020. All can be easily accommodated prior to September 15, 2020 and staff will work with the applicant to make these changes. A development agreement is also required and discussions have been ongoing with the applicant to make any necessary adjustments amenable to the applicant and the City (See Exhibit 3). This will be finalized and presented to City Commission on September 15, 2020 for approval.

Planner Van Dyke stated that staff is recommending approval of the final plat subject to the changes outlined in Exhibit 2 and Development Agreement similar to the one provided in Exhibit 3. He stood for questions.

WBI indicated that they would like the applicant to be aware of an existing pipeline just east of the 8th Ave. NW right-of-way. Moore Engineering will reach out to them directly and work with Director Froseth, Engineering and Planning Dept., to place utilities appropriately.

Engineering/Planning recommend approval of the final plat subject to requirements in Exhibit 2 and entering into a development agreement similar to the one provided in Exhibit 3.

Commissioner Mehlhoff inquired if there any discussion or plans for using storm water for any recreational park uses? Planner Van Dyke replied that this is specific to the surrounding area neighborhood for that subdivision. He said he was not aware of any plans for any recreational use.

Chair Robinson inquired if there were any other comments or questions from the Commission. Hearing none, the meeting was opened for public comment. He invited anyone present or calling in to come forward to comment or ask questions.

B. Open public hearing

Chair Robinson asked if anyone had any questions or comments. He invited anyone present or calling in to comment or ask questions. A second announcement was made for anyone to come forward to ask questions or comment. Hearing none, the public hearing was closed.

C. Close public hearing

D. Commission action.

Commissioner Camisa motioned to recommend approval of the final plat subject to requirements in Exhibit 2 and entering into a development agreement similar to the one provided in Exhibit 3. Commissioner Vayda seconded the motion. Upon vote, the motion passed unanimously.

4. A request from Val Renner for consideration of a special use permit for multi-use shops. Said property is Lot 3, Block 1, Evergreen Heights 3rd Addition in Section 35, Township 139N, Range 81W. Property is located north of 19th St. SW and west of Highway 1806 S.

A. Staff Report

John Van Dyke, City Planner, presented. He stated that Val Renner seeks to construct multi-use shops for commercial purposes related to residential contractor businesses and others as allowed by Ordinance 1313 Section 3 Subsection 2. (See Exhibit 2). The multi-use shop structure will include six (6) units as shown in the application documents included in Exhibit 1. Ordinance 1337, adopted by the Board of City Commissioners on April 21, 2020 requires a special use permit for multi-use shops. The use standards are provided in Exhibit 3. This will address many issues presented by these structures.

Per 105-1-13 (d) (6), in order to provide a favorable recommendation, the Planning and Zoning Commission or a final decision by the Board of City Commissioners should consider eight (8) items provided for in Exhibit 4 for reference. In evaluating these criteria, staff finds the following:

- The proposed use is in harmony with the purpose and intent of this chapter subject to the restrictions included in Ordinance 1313.
- The proposed use is in conflict with the future land use map of the City; however, this deviation was evaluated by Planning and Zoning Commission and the Board of City Commissioners in late 2019 within Ordinance 1313.
- The proposed use will adversely affect the health, safety, and general welfare of the public and the workers and residents in the area without additional conditions as provided below:
 - External, structural illumination shall be downward and inward facing so as to avoid glare into the adjacent residential properties. Onsite property lighting shall be downward facing for the same reason.
 - Noise-producing business-related activities, other than those of an office or clerical nature, are limited to between 6:00 am and 10:00 pm so as to avoid creating a nuisance for adjacent residential properties. Nothing in this condition permits exceeding the requirements of the MCO pertaining to noise nuisances.

- The proposed use will not be detrimental to the use or development of adjacent properties or of the surrounding neighborhood if the additional restrictions are included as noted in the previous bullet point.
- The proposed use will not result in the destruction, loss or damage of a natural, scenic, or historic feature of importance to the community.
- The proposed use includes adequate screening or buffering to compensate for any departure that the proposed use has from existing adjacent uses.
- The proposed use includes adequate provisions for those individuals who are mobility impaired. The Building Code will address any issues related to mobility and accessibility.

The applicant has been approved by the Mandan Architectural Review Commission for the landscaping, layout, and façade elements of the project.

Staff Recommendation

Planner Van Dyke stated that the previous evaluation of the use at this property through the zoning and platting of the property was finalized in November 2019 and that City staff has a few concerns regarding the appropriateness of the use at this location. Noise and lighting should be mitigated to the fullest extent possible due to the abutting residential neighborhood and restrictions to this effect are included in the special use permit provided in Exhibit 6. The noise restrictions align with information provided by the applicant in Exhibit 1.

Planner Van Dyke recommended approval of the special use permit for a multi-use shop as provided in Exhibit 6 based on the findings in Exhibit 5. Engineering and Planning recommended approval of the special use permit for a multi-use shop as provided in Exhibit 6 based on the findings in Exhibit 5.

Commissioner Renner pointed out that in the engineering plans, on Sheet 3 of 5, @ No. 2, it states that the owner will submit a storm water Management Plan to the City of Bismarck. He questioned if that relates to this matter. Planner Van Dyke stated that it may take some time to get approved and stated that the City of Mandan has received one.

Chair Robinson inquired if there were any other comments or questions from the Commission. Hearing none, the meeting was opened for public comment. He invited anyone present or calling in to come forward to comment or ask questions.

B. Open public hearing

Chair Robinson invited anyone present or calling in to comment or ask questions. A second announcement was made for anyone to come forward to ask questions or comment. Hearing none, the public hearing was closed.

C. Close public hearing

D. Commission action.

Commissioner Camisa motioned to recommend approval of the special use permit for a multi-use shop as provided in Exhibit 6 based on the findings in Exhibit 5. Commissioner

Klein seconded the motion. Upon vote, the motion passed with 9 ayes, 1 nay, 1 abstained, as follows: Boehm-aye, Klein-aye, Mehlhoff-aye, Haugen-aye, Liepitz-aye, Renner-abstained, Frank-aye, Camisa-aye, Vayda-aye, Leingang-nay, Robinson-aye.

5. A request from Kennedy Grensteiner, A Child's Garden, for consideration of a special use permit to operate a daycare at 1710 E Main Street. Said property is the East 105' of Lot 1 (less N. 146') and all of Lot 2, Block 1, Eastwood Acres 4th Addition of Section 26, Township 139N, Range 81W.

A. Staff Report

John Van Dyke, City Planner, presented the following:

Kennedy Grensteiner (operator) seeks a special use permit for a daycare center located at 1710 East Main Street, located east of Culver's in Mandan. The request for a special use permit occurred after-the-fact, as the operator opened at this new location in Spring 2020. The operator did not know that a special use permit was required.

Background

The property owners (separate from the operator) received funding toward a remodel of the structure in 2019 via the Storefront Improvement Program. All commercial development in the City is subject to architectural review by the Mandan Architectural Review Commission (MARC). At the February 12, 2019 MARC meeting, the applicants had noted a number of possible uses such as daycare center and general office space. It was not clear at that time what the space would be specifically used for. At that time, Principal Planner Van Dyke contacted the property owner to call and discuss with the Planning Department to make sure that a daycare (or any other business) at this location would be allowed. The Planning Department was not contacted subsequently to determine whether or not this was an allowed use at this location.

The property owners applied for and ultimately obtained a building permit on December 31, 2019 for the remodel of a portion of the building to accommodate a daycare center. A certificate of occupancy was issued on April 4, 2020. The daycare center operator was issued a state license for a daycare center for up to 118 children on April 6, 2020 following the necessary fire and health department inspections (See Exhibit 1). The daycare center opened shortly thereafter.

In mid-June, 2020, the City received a complaint of noise coming from the daycare. That is when the Planning Department was notified of the use and spoke with the daycare operator and complainant. An application was received in late June, 2020, missing the deadline for the July 2020 Planning and Zoning Commission (See Exhibit 2). As part of the state licensing process, the Department of Human Services advises each applicant to inquire with the City to determine if any permits are required (See e-mail thread involving applicant, staff, and Department of Human Services in Exhibit 3). The Planning Department was not contacted or involved in any discussions with the applicant or applicant representative.

Public and Department Comments

Planner Van Dyke stated that at the time of writing this report, staff received four public comments and one department comment. Public comments and a corresponding map are

included in Exhibit 4 and a comment and evidence of community need for daycare services is provided by Ellen Huber, Business and Communications Director (See Exhibit 5).

The two property owners noted the primary concern as noise coming from the daycare. One additional public comment that was received (address not provided in commenter's e-mail) noted concerns regarding potential safety issues as the kids are escorted from the daycare to Teamsters Park with no benefit of a sidewalk. One property owner indicated support of the daycare facility, noting the noise is preferential to other commercial noise in the vicinity.

Ellen Huber, Business and Communications Director indicated the need for daycare services in Morton County and provided evidence via the 2019 Child Care Profile produced by the Child Care Aware® of North Dakota program, which shows a potential demand of nearly 4,500 additional child care spaces. Director Huber also indicated support for Mandan businesses and its workforce by providing sufficient childcare services.

Planner Van Dyke stated that with regard to the lack of sidewalk on Shady Lane, he said that Engineering and Planning Director Froseth indicated that the City of Mandan is continuously identifying gaps in the pedestrian system and they are working on filling these gaps as they are identified and determined to be necessary. He said that Director Froseth does not believe the special use permit should be contingent on the installation of a sidewalk.

Evaluative Criteria

Per 105-1-13 (d) (6), in order to provide a favorable recommendation, the Planning and Zoning Commission or a final decision by the Board of City Commissioners should consider eight (8) items provided for in Exhibit 6 for reference. In evaluating these criteria, City staff determined the following:

The proposed use is not in conflict with the adopted plan of the city. A daycare with up to 118 children is a commercial use and aligns with the commercial designation per the future land use plan for this property.

The proposed use is in harmony with this chapter contingent on meeting the minimum use standards as provided in Exhibit 7. In particular, daycares are not just allowed in commercial or residential areas or industrial. They are not restricted to a certain zone. Any daycare over twelve (12) requires a fire special use permit. Typically, home-based daycares are limited up to twelve (12).

Additional operational restrictions are required in order to not adversely affect the health, safety, and general welfare of the public and workers and residents in the area related to mitigating noise produced by the outdoor play area. Staff recommended the following additional operational restrictions:

- No more than fifteen (15) children to be outside utilizing the onsite play area at any one time to mitigate noise.
- The play area is required to be utilized no earlier than 9:30 am and no later than 7:00 pm to mitigate noise.
- A ten (10) foot buffer is required along the east and west property boundary of the play area that adjoins the residentially used properties to mitigate noise.

- Without the additional operational restrictions, the use will be detrimental to the use or development of adjacent properties or of the surrounding neighborhood.

The proposed use meets all appropriate regulations for the district in which it will be located.

The proposed use will not result in the destruction, loss or damage of a natural, scenic, or historic feature of importance to the community.

The proposed use should include a ten (10) foot buffer to the east and west sides of the play area to compensate for the departure that the proposed use has from existing residential adjacent uses.

The proposed use includes adequate provisions for those individuals who are mobility impaired.

Staff Recommendation

Planner Van Dyke reviewed the use standards in Exhibit 7. These are required to be met at a minimum to obtain a special use permit and are included in the Special Use Permit for Daycare Center provided in Exhibit 8. Staff also recommended:

- No more than fifteen (15) children to be outside utilizing the onsite play area at any one time to mitigate noise. Planner Van Dyke stated that Kennedy Grensteiner (Operator) contacted him regarding the threshold and requested that it be relaxed to twenty (20), the largest class size, the largest allowable ratio is twenty (20). The size of fifteen (15) would mean they would have to double up on that particular room. So, operationally it would be somewhat difficult. She reported that she has had upwards of thirty (30) children outside at one time, but this would ensure that at most, it would be twenty (20). The plan would be to split the classrooms to assure there would not be over the maximum of twenty (20) out there at any given time.
- The play area is required to be utilized no earlier than 9:30 am and no later than 7:00 pm to mitigate noise.
- A ten (10) foot buffer is required along the east and west property boundary of the play area that adjoins the residentially used properties to mitigate noise.

Planner Van Dyke recommended approval of the special use permit and corresponding conditions of approval as provided in Exhibit 8 based on the findings in Exhibit 9. He stated that he supports the use permit as presented subject to mitigating the issues related to size. All staff comments are included as exhibits and referenced within the staff report.

Engineering and Planning recommended approval of the special use permit for a daycare center with conditions as provided in Exhibit 8 based on the findings in Exhibit 9.

Commissioner Renner inquired about the noise and the number of children that could be outside and what recourse do the neighbors have if the number is limited to twenty (20) and the City still receives complaints of noise?

Planner Van Dyke replied that the City of Mandan has a Noise Ordinance and that the Ordinance is being re-evaluated by the City Prosecutor and the Police Department in order to update it to one that is more enforceable due to having issues in enforcement in other cases. Regardless, the Noise Ordinance will apply to the daycare.

Commissioner Camisa requested information pertaining to that area on Main Street in regards to the homes, as to when that area was designated as commercial or residential, or vice-versa?

Planner Van Dyke reviewed the zoning map to check to find the date when it was zoned or rezoned and indicated that information was not available, but reviewed to see what plat preceded one another. That may be a question for the property owners to review their abstracts of title to find out when their properties were permitted. Based on the plat reviewed, many of the commercial structures pre-ceded the plat of 1973. He said that it is clear on the map, that the structures in this area have been used for commercial purposes for a long time.

Chair Robinson inquired if there were any other comments or questions from the Commission. Hearing none, the meeting was opened for public comment. He invited anyone present or calling in to come forward to comment or ask questions.

B. Open public hearing

Chair Robinson invited anyone present or calling in to comment or ask questions.

Tim Krueger a resident at 105 Shady Lane, came forward and stated: “My wife and I have resided in our home for about 20 years. I sent Mr. Van Dyke a letter with some pictures of our patio and stuff that we built for our retirement. Also, I had an older fence there and when Kennedy started this daycare, I figured that I would put a new fence in. It’s not the kids I’m complaining about and I’m not a curmudgeon but when one kid starts screaming, another one starts screaming that it gets to the point we can’t even open our windows. I checked it out and seen that it was commercial, at 65 decibels, which I think is a little low. I even bought a meter and it’s spiked at 90. It’s usually 75, 80 or 85. He presented pictures of his new fence that has marks on it and gauges. I caught one little kid hitting it with branches. So I tried to get him to stop and to get the attention of an attendant. The attendant said ‘It’s hard to keep an eye on this many.’ They have little carts that run into the fence. The worst, she called the cops on me a couple times because I holler across the fence and said to please knock off the screaming. Sunday, I went out there because it was time to seal and stain the fence. I walked over and looked down the fence, they took crayons and chalk and they drew on my fence. I don’t understand how people can let that go without stopping them. It’s a 60 ft. fence and there are some of them this big and they’re just like marks all the way down. I hope it gets cleaned up. There’s more damage. There are more pictures on my wife’s phone. I called the Police Department and Officer McKinley took pictures of all this mess and he also spotted some more gauges on it. I don’t want her to move someplace else but the noise has to be taken care of. I’m not a curmudgeon and I don’t want to move someplace else, but the noise has to be taken care of, and they need to keep away from my fence. They use to have two big plastic playhouses and there are pictures of them too. We’re in the center of the lot and now they drug them right next to my fence so the kids can play there. I don’t understand that. Those big ones right there. They aren’t in the middle anymore, they’re right next to my fence. That’s all I have. Thank you.”

Tracy Bower, came forward and stated: “I’m neighbors with Tim and Terry Krueger and I live at 103 Shady Lane. For the most part, I’m gone during the day but I was working from home in March and the noise is loud. There are children out there and they are screaming very loud. I know he mentioned about having a buffer fence 10 ft on each side but that will not leave very much play area for the kids. Besides that, who will take care of the yard between the two fences? There are lots of trees and leaves and branches that fall all the time. Is anyone going to take care of that area? If not, garbage, rodents, bugs will accumulate in that area in between the fences. We already have an alley way because we are by the southside of the building. My husband has gone over there several times and seen where they laid wood up against our fence. There are toys sitting there that they haven’t utilized. When they moved in they left them sitting there. That’s a reflection on our property. I am thankful they did something with the building, it looks great, but there is still a lot of stuff there that doesn’t look great. They poured concrete and they have not finished it. The boulevard is still torn up from where they did the parking lot and maybe that has nothing to do with the daycare business, it’s the property owner who has to take care of that. Something definitely needs to be done in that area. It can’t stay that way and should be cleaned up and finished. Somebody is going to be responsible for that buffer area, because we can’t be.”

Kennedy Grensteiner came forward to speak and stated: “I am the daycare owner. I have no intentions of making their life harder. I’ve cooperated with everything. When I moved in there, I picked up leaves and cleaned up the play area. It took me a day and a half and I did it because I didn’t want to cause any problems. I have also told the police officers that I can limit the amount of kids that go outside. The kids play. The girls scream. Every time they do, we ask them to stop. We try our hardest and they are children. I will limit the times they go outside. I have two playschool rooms to let them play in. My largest class is 20 so if I bring 15 out it will leave whoever is outside over the 15 ratio and I can’t do that either. I am trying to provide a good daycare for the community and we’ve had a 5-star rating for almost 5 years and it’s a great service for the community. There’s preschool, there’s learning time for all the children. I’m willing to work with whoever I need to work with to be able to make sure everyone is content as they were before we moved in. My intention is not to have it be a bad thing for the community. That’s not what I’m trying to do. I’m trying to offer a great daycare facility for Mandan because we don’t have any other than two smaller daycares. Parent and kids need a good daycare. You don’t find that a lot.”

Chair Robinson inquired of Ms. Grensteiner if she is at full capacity. Ms. Grensteiner replied: “No, I’m at about 75%”.

Lloyd Derringer came forward and stated: “I’m one of the workers for PK Holdings. To your point, I didn’t get your name. To the point of items along the fence and the right of ways and the boulevards, yes, that is work in progress. As we all know, summer construction, no excuses, but it took 3 weeks longer to get the concrete done only because you want to spend more money for concrete, rather than putting down asphalt. To make the building and the parking lot look nicer and professional, since long term concrete will stand up longer. We, the owners of the property, are trying to do what everybody wants. We want to make something better and an improvement for Mandan. I never met Kennedy before she started the daycare, but I admire her enthusiasm and her youth, energy and ambition and I also hear and understand the complaints of the neighbors with the loudness heard when children are playing. I don’t think anyone is trying to purposely make things worse or difficult for anyone. It’s discouraging when people have to resort to calling on the police to take care of these types of matters. We have some work to done the property. We have some

metal posts to be installed. We have greenery to put in the corner and we have to get the boulevards and street access landscaped in order for the water to run off for the greenery space to be done. We are taking care of the grass but there is still some work to be done where the concrete was poured. We are trying to do the best we can to improve Mandan and to get businesses here. Everyone has to agree that driving in to town and seeing the building and the concrete there and the lighting installed. MDU put another light in the corner that will have to be adjusted so it does not shine directly into one of the neighbor's bedrooms."

AJ Renner, a Mandan resident, called in and stated: "My kids attend that daycare. We've been with Kennedy for 5 or 6 years. From where she started, on the west side of Mandan, in the old hospital, which was right across from housing as well. She's worked her way up and done a great job and a new building is amazing. We love the classrooms that are very nice and new. The parking lot is new and everything about the daycare we enjoy. Mandan has very little daycare facilities available. There is very little daycare besides private daycares. Trying to shut this down is going to affect a lot of parents. Mandan could use more daycares. There are a lot of kids and the schools are growing. We are short daycares. It was difficult when we lost our private daycare the first time the first year, to try to find someone and we were fortunate to find Kennedy. We've had very good luck and we enjoy the place."

Tim Krueger came back to the podium and stated: "I'm not here to oppose this thing. It's a good thing. What I would like to see is something to be done with the noise and something to be done with my fence. It's marked up now and I can clean it up before I start staining it. I am not opposing this daycare. They do a good thing and we need them. If you could just limit the kids and the noise and clean my fence up. Thank you."

Chair Robinson asked if there were any other comments or any questions or comments from the Commission.

Commissioner Camisa inquired with regards to the special use permit recommendations from staff - were there any issues raised when moving the limit to twenty (20)? And with regard to the buffer, are there any State of North Dakota Health Department requirements for play yards? That would even be open to some kind of natural buffer that might be allowed by the Health Department to create that buffer? Then we don't have the issue of having fences on no man's land, to be created between them, and that might even be changed by the property owned by the daycare.

Planner Van Dyke stated that as far as raising the limits of the children permitted at the daycare, there will be a higher likelihood there will be more noise. In discussions with Kennedy, there could be 25-30 kids on the play yard at one time. There is a maximum of 35 children in an outdoor play area at one time and that's what they are permitted for. The west property boundary already has a 10 ft. buffer, a fence with a shed or some other delineation preventing the kids from going over. On the east side, that buffer could be anything such as a hedge row or a 4 ft. fence that is an obstacle to prevent the children from interacting within that 10 ft. buffer. But not to create the no man's land is not the intention. There is already a similar 10 ft. buffer with a fence but they are still occupying and putting other equipment in a shed as outdoor storage. He wanted to provide the flexibility to the operator as to what her layout is and how she can rearrange and accommodate that requirement that clearly the purpose is to exclude the kids from that 10 ft. play area. So however she needs to accomplish that is the goal. The purpose of this is to put some restrictions on and to mitigate on how to keep the area activity from flowing into the neighboring property. It's not to be punitive for the operator, rather, it's to have some harmony with those in this area. The max of 20, he

said that he is not opposed to, noting it is hard to determine the noise level, because all it takes is one or two kids to be problematic. It can be up to the operator to ensure compliance and for the kids to not be out of control. This is an operational activity and the City will have to regulate the quantity. With the 10 ft. buffer, it can be permitted up to 35 children for that play area, but still have room for 20 kids. Planner Van Dyke stated that he does not anticipate problems with meeting those outdoor requirements as required by the Department of Human Services.

Commissioner Camisa commented that daycare services are needed in Mandan and the testimony heard supports that. He stated we need to be able to find some compromise in between and he thinks that by reducing the yard by @ one-third will help with the noise and a buffer along the side should help mitigate some of that noise. Going forward, he stated he would be open to approving a special use permit for the daycare with a restriction of 20 students/kids. That will provide some flexibility to operations and with the flexibility with the boundaries that is an acceptable compromise. Is anyone thinking of anything to the contrary of what has just been recommended? This appears to be a reasonable solution. This is a service Mandan really does need. He extended a thank you to Kennedy for opening her business and accommodating the parents and cooperating with the property owners nearby.

A second announcement was made for anyone to come forward or has anyone dialed in who would like to ask questions or comment. Hearing none, the public hearing was closed.

C. Close public hearing

D. Commission action.

Commissioner Camisa motioned to recommend approval of the special use permit for a daycare center with conditions as provided in Exhibit 8 based on the findings in Exhibit 9 and to change the maximum number of students/children from 15 to no more than twenty (20) children. Commissioner Klein seconded the motion.

Commissioner Renner inquired, referencing Exhibit 7, where it talks about daycare center use standards, under No. 3, it says that for a facility catering to children, a fenced outdoor play area of not less than 75 sq. ft. per child shall be provided that is located no closer than 10 ft. to an adjoining residential lot. Is the daycare center basically using the Krueger's fence as their fence? And, who sets this standard? If this follows state regulations and if the state looked at this how did this get approved for daycare when there should actually be a fence there? Regarding what Commissioner Camisa said about the no man's land area of 10 feet, Commissioner Renner stated that if there was a fence the daycare provider is suppose to be providing anyway, that would possibly help eliminate some of the problems experienced now.

Planner Van Dyke explained that the square footage is what aligns with state law. No closer than 10 feet to adjoining a residential lot. He said that he doesn't think it is included in state law rather it is from the Mandan Code of Ordinances.

Commissioner Renner inquired if the Krueger fence actually is on the lot line? Should there be another fence, 10 feet away from Krueger's fence? Planner Van Dyke stated he believes the Krueger fence is on the lot line and actually serves as a shared fence right now but the Krueger's put the fence on their side of the property to create the buffer.

Commissioner Renner stated that according to the standards, there is supposed to be a fence there. The other item he brought forward, the way the ordinance is written seems to be an after the fact, already having the daycare up and running before the special use permit was in place. He inquired how this happened. Is there something that the City erred? Or was the information not submitted to the City properly to apply for this? How did that happen?

Planner Van Dyke pointed that out in the background when presented in that it was a shared failure and that everyone in this room can accept some responsibility. The point being, we are all here trying to figure this out and move forward. Commissioner Renner inquired if it was something the City should have done differently? Planner Van Dyke directed attention to the Background information provided and it is clear that operationally there were things that the City can change. There are some improvements to be made by the operator and the property owner that did not occur as well. It was a number of misses from multiple parties. The City could change its processes to assure more communication between departments.

Tim Krueger commented: "A fence, definitely a fence. A hedge row thing. I don't know if that would absorb noise. We can look into something for that buffer area."

Chair Robinson inquired if there were any further questions regarding this matter from the Commissioners or from the public.

Chair Robinson announced that the public hearing was closed at this time. He said there is a motion and second on the table to recommend approval of the special use permit for a daycare center with conditions as provided in Exhibit 8 based on the findings in Exhibit 9, modifying the number of maximum students/children at 15 to no more than twenty (20) children. Upon vote, the motion passed unanimously.

Other Business

1. Brief update on the zoning ordinance rewrite.

Planner Van Dyke reported that within the last couple days he sent out a crosswalk from a zoning work group that Commissioner Frank and Commissioner Camisa has been working on as well as several department staff to evaluate how adjustments can be made to the Zoning Code for it to be more efficient. He sent out articles that were 60-70 pages to be reviewed and approved and he also submitted a cross walk for restructuring and reorganization of the Code. He explained that there is lack of logical placement of certain components and this will help clean it up. That is work in progress and comments were received to accommodate the work group to make those changes. This is merely an update to inform you that the City Code is being worked on. There are three other articles that will need to be changed in the restructuring. An update will be provided when it is available.

Chair Robinson asked if there were any comments or questions from the Commission.

Commissioner Camisa motioned to adjourn the meeting. Commissioner Vayda seconded the motion. The motion passed unanimously.

The meeting adjourns at 7:40 p.m.

PUBLIC HEARING # 1

PUBLIC HEARING # 1

Mandan Planning and Zoning Commission Agenda Item PH1
 For Meeting on September 28, 2020
 Mandan Engineering and Planning Office Report
Schaff Estates
 Requested Action
Zoning Map Amendment

Application Details				
Applicant	Owner	Subdivision	Legal Description	
City of Mandan	JB Land, LLC	Schaff Estates	Lots 1 & 2, Block 1, Schaff Estates to the City of Mandan, Morton County, North Dakota	
Location Approximately 1,800 ft. from Roughriders Estates		Proposed Land Use Vacant	Parcel Size 17.00 ac	Number of Lots 2
Existing Land Use Bare Land	Adjacent Land Uses Bare Land/Rural Residential	Current Zoning R7 Residential	Proposed Zoning A Agriculture	Adjacent Zoning Agriculture
Fees N/a	Date Paid N/a	Adjacent Property Notification Sent September 11, 2020	Legal Notices Published September 18 & 25	

Project Description
<p>Schaff Estates was established upon platting in early June. The intention of the plat was to create two lots, each for residential construction and remain in the A Agricultural zoning district.</p> <p>Through the platting process, the zone automatically reverted to R7 Residential per Section 105-2-3 (7). This was not the intention of the City or the applicant. The owners of the lots were contacted and indicated their desire to have their property zoned as A Agriculture.</p> <p>Notices were sent to the owners of the subject property and those of adjacent property in line with noticing requirements.</p> <p>At the time of writing this staff report, no comments were received.</p> <p>Staff is recommending approval of the zoning amendment as presented in Exhibit 3.</p>
<p style="text-align: center;">Agency & Other Department Comments</p> <p>No comments were received regarding this application.</p>
<p style="text-align: center;">Engineering & Planning Staff Comments</p> <p>N/a</p>
<p style="text-align: center;">Engineering & Planning Recommendation</p> <p>Engineering and Planning recommends approval of the zoning map amendment as presented in Exhibit 3.</p>
<p style="text-align: center;">Proposed Motion</p> <p>I move to recommend approval of the zoning map amendment as shown in Exhibit 3 to correct the inadvertent rezoning of Schaff Estates.</p>

List of Exhibits:

Exhibit 1 – Schaff Estates Final Plat for reference

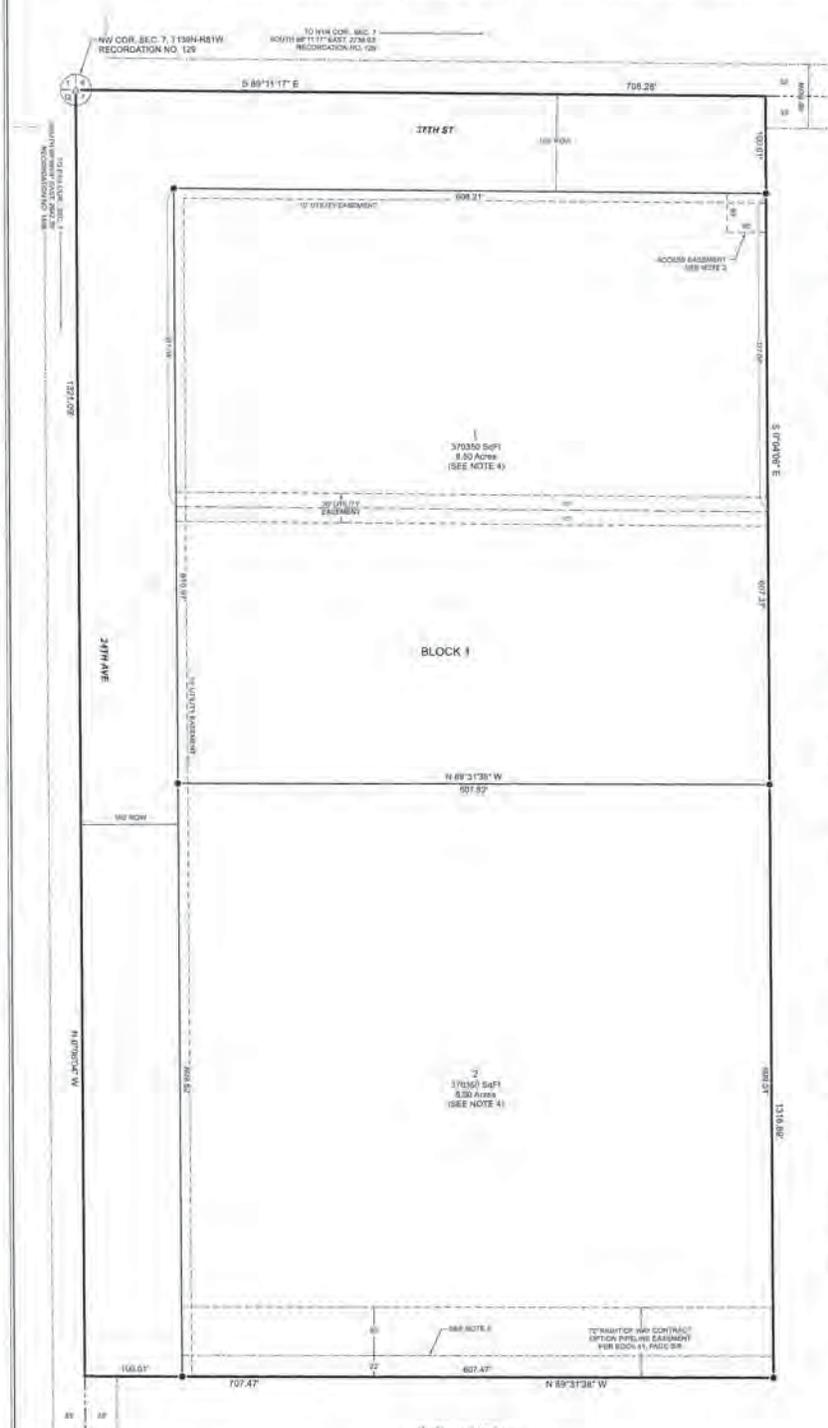
Exhibit 2 – Area Map

Exhibit 3 – DRAFT Ordinance

SCHAFF ESTATES

EXHIBIT 1

TO THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA
 ALL OF THE W1/2 OF GOVERNMENT LOT 1, SECTION 7, T139N-R81W OF MORTON COUNTY, NORTH DAKOTA
 LYING WITHIN THE 1-MILE EXTRATERRITORIAL JURISDICTION OF THE CITY OF MANDAN



Survey Registration Information: 495714
 Land Use Information: 495714



DESCRIPTION OF PROPERTY:

ALL OF THE W1/2 OF GOVERNMENT LOT 1, SECTION 7, TOWNSHIP 139 NORTH, RANGE 81 WEST OF THE 5TH PRINCIPAL MERIDIAN, MORTON COUNTY, NORTH DAKOTA, SAID TRACT OF LAND CONTAINING 21.43 ACRES, MORE OR LESS.

SURVEYOR'S CERTIFICATE:

I, ANDREA L. MARQUARDT, NORTH DAKOTA REGISTERED LAND SURVEYOR NO. 4629, HEREBY CERTIFY THAT I HAVE CAUSED TO BE SURVEYED BY MY FORCE(S) UNDER MY SUPERVISION THE PROPERTY DESCRIBED HEREON AND I HAVE PREPARED THE ACCOMPANYING PLAT, FURTHER, THAT DISTANCES INDICATED HEREON ARE IN FEET AND HUNDRETHS THEREOF, AND BEARINGS ARE INDICATED IN QUADRANTS AND DEGREES, MINUTES AND SECONDS THEREOF. FURTHER, THAT SAID PLAT DOES TRULY SHOW THE SURVEY TO THE BEST OF MY KNOWLEDGE AND BELIEF.



OWNER'S CERTIFICATE OF DEDICATION:

WE, THE UNDERSIGNED, BEING THE SOLE OWNERS OF THE LAND PLATTED HEREON, DO HEREBY VOLUNTARILY CONSENT TO THE EXECUTION OF SAID PLAT AND DO DEDICATE ALL THE STREETS, ALLEYS, PARKS, AND PUBLIC GROUNDS AS SHOWN HEREON, INCLUDING ALL SEWERS, CULVERTS, BRIDGES, WATER LINES, SIDEWALKS AND OTHER IMPROVEMENTS ON OR UNDER SUCH STREETS, ALLEYS OR OTHER PUBLIC GROUNDS, WHETHER SUCH IMPROVEMENTS ARE SHOWN HEREON OR NOT TO PUBLIC USE FOREVER. WE ALSO DEDICATE EASEMENTS TO RUN WITH THE LANDS FOR WATER, SEWER, GAS, ELECTRICITY, TELEPHONE, OR OTHER PUBLIC UTILITY LINES OF SERVICES UNDER, ON OR OVER THESE CERTAIN STRIPS OF LAND DESIGNATED AS "UTILITY EASEMENTS".

WE ALSO DEDICATE EASEMENTS LABELED AS "ACCESS EASEMENTS" TO RUN WITH THE LAND FOR USE BY ALL LAND OWNING PARTIES INDICATED IN NOTE 2, THEIR TENANTS, VISITORS AND LICENSEES, AND FOR THE USE OF ANY GOVERNMENTAL SUBDIVISION, ITS OFFICERS AND EMPLOYEES FOR EMERGENCY SERVICES AND ANY OTHER GOVERNMENTAL USE OR USES, PROVIDED THAT MAINTENANCE AND CLEARANCE OF THE EASEMENT IS THE RESPONSIBILITY OF THE LAND OWNING PARTIES AND THE CITY SHALL NOT BE RESPONSIBLE IN ANY WAY TO FURNISH ANY CITY SERVICES IF SUCH ACCESS EASEMENTS ARE NOT PROPERLY MAINTAINED OR ARE DESTROYED BY THE OWNERS OF PROPERTY IN THE SUBDIVISION.

WE FURTHER GRANT ANY OTHER EASEMENTS OR SERVITUDES AS SHOWN AND THOSE THAT ARE RECORDED BUT NOT SHOWN.

Jerry Schaff
 JERRY SCHAFF, PRESIDENT
 JB LAND LLC

SUBSCRIBED AND SWORN BEFORE ME, A NOTARY PUBLIC, THIS 16TH DAY OF OCTOBER, 2020.



Harvey Schneider
 HARVEY SCHNEIDER, NOTARY PUBLIC
 STATE OF NORTH DAKOTA
 MY COMMISSION EXPIRES 1-14-2022

PLANNING COMMISSION APPROVAL:

THE SUBDIVISION SHOWN HEREON HAS BEEN APPROVED BY THE PLANNING COMMISSION OF THE CITY OF MANDAN ON THIS 11TH DAY OF MAY, 2020, IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH DAKOTA, ORDINANCES OF SAID CITY OF MANDAN, AND REGULATIONS ADOPTED BY THE PLANNING COMMISSION OF SAID CITY, IN WITNESS WHEREOF ARE SET THE HANDS OF THE CHAIRMAN AND THE SECRETARY OF THE PLANNING COMMISSION OF THE CITY OF MANDAN, NORTH DAKOTA.

Bill Robinson CHAIRMAN *Nancy Moore* SECRETARY

APPROVAL OF BOARD OF CITY COMMISSIONERS:

THE BOARD OF CITY COMMISSIONERS OF THE CITY OF MANDAN, NORTH DAKOTA, HAS APPROVED THE SUBDIVISION OF LAND SHOWN HEREON, HAS ACCEPTED THE DEDICATION OF ALL STREETS, ALLEYS, AND PUBLIC WAYS SHOWN HEREON LYING WITHIN THE CORPORATE LIMITS OF THE CITY OF MANDAN, HAS ACCEPTED THE DEDICATION OF ALL PARKS AND PUBLIC GROUNDS SHOWN HEREON, FURTHERMORE, SAID BOARD OF CITY COMMISSIONERS HAS APPROVED THE STREETS, ALLEYS, AND OTHER PUBLIC WAYS AND GROUNDS SHOWN HEREON AS AN AMENDMENT TO THE MASTER STREET PLAN OF THE CITY OF MANDAN, THE FOREGOING ACTION BY THE BOARD OF CITY COMMISSIONERS OF MANDAN, NORTH DAKOTA, HAS TAKEN BY RESOLUTION THIS 11TH DAY OF MAY, 2020.

Tom Helbing CITY ADMINISTRATOR *Tom Helbing* PRESIDENT OF THE BOARD OF CITY COMMISSIONERS

I, JUSTIN FROST, CITY ENGINEER FOR THE CITY OF MANDAN, NORTH DAKOTA HEREBY APPROVES "SCHAFF ESTATES" OF THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA AS SHOWN ON THE ANNEXED PLAT.



Justin Frost
 JUSTIN FROST, PE



- LEGEND:**
- ▲ FOUND SECTION/QUARTER CORNER
 - FOUND REBAR MONUMENT
 - SET REBAR MONUMENT

OWNER:
 JB LAND LLC
 1836 SCHAFF DR
 MANDAN, ND 58554

BASE OF BEARINGS:
 NORTH BOUNDARY LINE NW1/4 SEC. 7
 NORTH 89° 31' 18" EAST

NOTES:

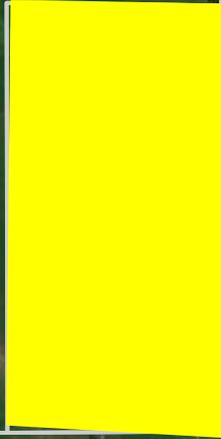
1. BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS DOCUMENTS OF RECORD DUE TO DIFFERENT METHODS OF FIELD MEASUREMENT.
2. THE ACCESS EASEMENT SHOWN HEREON IS FOR JOINT USE, AND TO THE BENEFIT OF LOT 1, SCHAFF ESTATES AND THE E1/2 OF GOVERNMENT LOT 1, EQUALLY.
3. APPROXIMATE LOCATION OF A MARATHON UNDERGROUND PIPELINE (SEE PARTICULARS IN BOOK 41, PAGE 509) MARKED AND LOCATED ON D319/2020, AND PER NW ONE CALL TICKET NO. 20201054.
4. LOTS 1 AND 2 OF THIS PLAT IS SUBJECT TO A DEVELOPMENT AGREEMENT RECORDED AS DOCUMENT NO. 4955.217.
5. LOT AREA: 17.00 ACRES
6. ROW AREA: 4.43 ACRES
7. TOTAL AREA: 21.43 ACRES

EXHIBIT 2



37th ST

24th AVE



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

EXHIBIT 3

ORDINANCE NO. 13XX

AN ORDINANCE TO AMEND THE ZONING MAP OF THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA.

WHEREAS, The City of Mandan inadvertently changed the zoning district for Schaff Estates upon replatting the property in June 2020 per Section 105-2-3 (7); and

WHEREAS, It was not the intention of the City nor desire of the applicant to include the subject property in the R7 Residential District.

BE IT ORDAINED By the Board of City Commissioners of the City of Mandan, Morton County, North Dakota, as follows:

The Zoning Map of the City of Mandan, North Dakota, as referenced in Section 105-2-2 of the Mandan Code of Ordinances, is amended as follows:

Lots 1 & 2, Block 1, Schaff Estates to the City of Mandan, Morton County, North Dakota, containing seventeen (17.00) acres more or less shall be removed from the R7 Residential District and included in the A Agriculture District.

The city principal planner is authorized and directed to make the necessary changes upon the official zoning map of the city in accordance with this Ordinance.

Tim Helbling, President
Board of City Commissioners

Attest:

Jim Neubauer
City Administrator

Planning and Zoning Commission:
First Consideration:
Second Consideration and Final Passage:
Recording Date:

September 28, 2020
October 20, 2020
November 3, 2020

PUBLIC HEARING #2

PUBLIC HEARING #2

Mandan Planning and Zoning Commission Agenda Item PH2
 For Meeting on September 28, 2020
 Mandan Engineering and Planning Office Report
City of Mandan
 Requested Action
Zoning Text Amendment

Application Details				
Applicant City of Mandan	Owner N/a	Subdivision N/a	Legal Description N/a	
Location N/a		Proposed Land Use N/a	Parcel Size N/a	Number of Lots N/a
Existing Land Use N/a	Adjacent Land Uses N/a		Current Zoning N/a	Proposed Zoning N/a
Fees N/a	Date Paid N/a	Adjacent Property Notification Sent N/a	Legal Notices Published September 18 & 25	

Project Description
<p>Section 105-2-3 (6) & (7) related to automatic triggers for zoning map amendments when property is annexed or platted.</p> <p>Both North Dakota Century Code and the City of Mandan have procedures to effect a zoning map amendment which requires a public hearing and adoption of an ordinance. The changes would bring the existing practice of automatically rezoning a property into conformance with state and local procedural requirements.</p> <p>Further, by facilitating zoning amendments through this means, there is no paper trail that is left behind designating a property as a particular zoning district. Staff is left to search for something that doesn't exist and only as a last resort rely on the potential that a property was rezoned along with annexation and/or platting. Changes to property owners' bundle of rights warrants its own public hearing and corresponding documentation that is recorded with the county recorder.</p>
<p style="text-align: center;">Agency & Other Department Comments</p> <p>Planners from Morton County, Williston, Fargo, and Bismarck indicated that their jurisdiction does not have a provision that automatically assigns a property a zoning district upon platting and/or annexation.</p>
<p style="text-align: center;">Engineering & Planning Staff Comments</p> <p>N/a</p>
<p style="text-align: center;">Engineering & Planning Recommendation</p> <p>Engineering and Planning recommend approval of the DRAFT ordinance as provided in Exhibit 1.</p>
<p style="text-align: center;">Proposed Motion</p> <p>I move to recommend approval of the DRAFT ordinance as provided in Exhibit 1.</p>

List of Exhibits:
 Exhibit 1 – DRAFT Ordinance

EXHIBIT 1

ORDINANCE NO. XXXX

An Ordinance to Amend and Re-enact Section 105-2-3 (6) & (7) of the Mandan Code of Ordinances Relating to Interpretation of District Boundaries

WHEREAS, it is recognized that the Mandan Code of Ordinances and State of North Dakota Century Code require a public hearing to be conducted to facilitate a zoning amendment; and

WHEREAS, it is recognized that the Mandan Code of Ordinances and State of North Dakota Century Code outline the process for zoning amendments and, where approved, are adopted by ordinance and subsequently recorded; and

WHEREAS, the historical record is lacking by solely relying on processing a zoning amendment via the platting process where it may or may not be specifically addressed at the public hearing, included in the resulting minutes, or otherwise not formally addressed and recorded; and

WHEREAS, the lack of historical record creates additional work for staff researching a property's zoning district and corresponding allowable uses and regulatory standards which apply.

NOW, THEREFORE, BE IT ORDAINED by the Board of City Commissioners of the City of Mandan, Morton County, North Dakota, as follows:

Section 1. Amended and Re-enacted. Section 105-2-3 (6) & (7) is hereby amended and re-enacted as follows:

(6) All land and/or territory not specifically included within a district or which is annexed to the city after the date of adoption of this chapter shall follow the zoning map amendment procedures as adopted by the City at the time of application if a zoning amendment is desired. ~~automatically be classed as lying and being in the R7 Residential District and the zoning map shall thereupon be amended to indicate such land or territory in the R7 Residential District without additional procedure until such classification shall have been changed by amendment to the zoning ordinance as provided by law.~~ Where uncertainty exists as to the existing zoning classification of the subject property to be annexed, ~~to be indicated on the map,~~ the property shall be required to follow the zoning map amendment procedures as adopted by the City at the time of application to determine proper zoning. ~~such zoning shall be determined by the board of adjustment by written decision.~~

(7) Historical practice by the City allowed zoning map amendments to be facilitated by plat, which would automatically class any unplatted land lying in an A Agricultural District as R7 Residential upon platting. This process is no longer in place, and all properties shall follow the zoning map amendment procedures as adopted by the City at the time of application. ~~All unplatted land or territory lying in an A Agricultural District of the city, upon being platted, shall automatically be classed as lying and being in the R7 Residential District and the zoning map shall thereupon be amended to indicate such land or territory in the R7 Residential District without additional procedure, until such classification be changed by amendment to the zoning ordinance~~

| ~~as provided by law.~~

By: _____
Tim Helbling, President, Board of
City Commissioners

Attest:

James Neubauer, City Administrator

Planning and Zoning Commission:
First Consideration:
Second Consideration and Final Passage:

September 28, 2020
October 20, 2020
November 3, 2020

PUBLIC HEARING #3

PUBLIC HEARING #3

Mandan Planning and Zoning Commission Agenda Item PH3
 For Meeting on September 28, 2020
 Mandan Engineering and Planning Office Report
706 & 708 6th Ave. NW
 Requested Action
Rear and Front Setback Variance

Application Details				
Applicant	Owner	Subdivision	Legal Description	
Craig and Susan Rask	Arthur, Craig, and Susan Rask	Northern Pacific 1 st Addition	Lots 10 and 11, Block 83 Northern Pacific 1 st Addition, in Section 27, Township 139N, Range 81W, Morton County, North Dakota	
Location		Proposed Land Use	Parcel Size	Number of Lots
Southeast of the intersection of 7 th St. NW and 6 th Ave. NW		Residential	0.16 (706 6 th Ave. NW) & 0.16 (708 6 th Ave. NW)	2
Existing Land Use	Adjacent Land Uses		Current Zoning	Proposed Zoning
Residential	Residential		R3.2 Residential	R3.2 Residential (Unchanged)
Adjacent Zoning		Adjacent Zoning		
R3.2 Residential/ DF Downtown Fringe		R3.2 Residential/ DF Downtown Fringe		
Fees	Date Paid	Adjacent Property Notification Sent	Legal Notices Published	
\$400	August 24, 2020	September 11, 2020	September 18, 2020	

Project Description

Arthur L Rask and Craig and Susan Rask for approval for a variance to the rear setback of 20' to 5.4' for 708 6th Ave. NW and a variance to the front setback of 50' to 5.9' on 706 6th Ave. NW.

The setback variance application is a product of a proposed shift in the property line that currently bisects the existing garage shared by both properties. The shift in property line will create a conflict with setback requirements as illustrated in Exhibit 2.

Variance may be granted upon finding per Sec. 105-1-13 (e) (6) that:

- a. There are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this chapter, whether in violation of the provisions of the chapter, or not;

The garage was permitted to be constructed across the property boundary based on previous practice. The garage is shared between the two homes and the applicants foresee selling one of the homes in the future. The granting of a variance will bring the two properties closer to conformity with the side setback requirements for each property and at the same time create conflict with the front and rear setback requirements. This is a unique circumstance which applies to the building located on both properties and did not result from the actions of the owners subsequent to the adoption of Chapter 105 – District Regulations.

- b. For reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of said land or building, and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant; and

Findings are provided in Exhibit 3 and the variance requested is the minimum that will accomplish relief sought by the applicant.

- c. The grant of the variance will be in harmony with the general purposes and intent of this chapter, and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The grant of the variance will be in harmony with the general purposes and intent of this chapter and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Agency & Other Department Comments

No comments have been received.

Engineering & Planning Staff Comments

N/a

Engineering & Planning Recommendation

Engineering and Planning recommends approval of the variance as illustrated in Exhibit 2 based on the findings in Exhibit 3.

Proposed Motion

I move to recommend approval of the variance as illustrated in Exhibit 2 based on the findings in Exhibit 3.

List of Exhibits:

Exhibit 1 – Application

Exhibit 2 – Survey Drawing

Exhibit 3 - Findings

EXHIBIT 1

CITY OF MANDAN	
Development Review Application	
<input type="checkbox"/> Minor Plat (\$300)	<input type="checkbox"/> Zone Change (\$600)
<input type="checkbox"/> Preliminary Plat up to 20 acres (\$400)	<input type="checkbox"/> Planned Unit Development (\$700)
<input type="checkbox"/> Preliminary Plat more than 20 acres (\$450)	<input type="checkbox"/> Land Use and Transportation Plan Amendment (\$1,000)
<input type="checkbox"/> Final Plat up to 20 lots (\$400)	<input type="checkbox"/> Vacation (\$500)
<input type="checkbox"/> Final Plat 21 to 40 lots (\$550)	<input checked="" type="checkbox"/> Variance (\$400)
<input type="checkbox"/> Final Plat more than 40 lots (\$700)	<input type="checkbox"/> Special Use Permit (\$450)
<input type="checkbox"/> Annexation (\$450)	<input type="checkbox"/> Stormwater submittal (\$300)
<input type="checkbox"/> Masterplanned Subdivision (not accepted without preliminary plat) (\$250)	<input type="checkbox"/> Stormwater 2 nd & subsequent resubmittal (\$50)
<input type="checkbox"/> Appeals to Administrative Denials (Variance to Non-zoning/Non-subdivision regulations) (\$250)	
Summary of Request (Add separate sheet(s) as necessary)	

Engineer/Surveyor			Property Owner or Applicant		
Name Mark Isaacs/Toman Engineering Co			Name Arthur L (lot 11) & Craig & Susan Rask (lot10)		
Address 501 1st St NW			Address 706 7 708 6th Ave NW		
<small>City</small> Mandan	<small>State</small> ND	<small>Zip</small> 58554	<small>City</small> Mandan	<small>State</small> ND	<small>Zip</small> 58554
<small>email</small> mark@tomanengineering.com			<small>email</small> ndcraig@bis.midco.net		
<small>Phone</small> 701-663-6483		<small>Fax</small> 701-663-0923	<small>Phone</small> 701-400-7946		<small>Fax</small>
If the applicant is not the current owner, the current owner must submit a notarized statement authorizing the applicant to proceed with the request.					

Location		Type		Existing Zone	Proposed Zone	Project Name	
<input type="checkbox"/> City	<input checked="" type="checkbox"/> ETA	<input type="checkbox"/> New	<input checked="" type="checkbox"/> Addition	R3.2	No Change	Rask Addition	
Property Address				Legal Description			
706 7 708 6th Ave NW				All of Lots 10 & 11, Block 83			
Current Use				Proposed Use			
Residential				1st Northern Pacific Addition			
Residential				Section 27	Township 139	Range 81	
<small>Parcel Size</small> .32Ac	<small>Building Footprint</small>	<small>Stories</small>	<small>Building SF</small>	<small>Required Parking</small>		<small>Provided Parking</small>	

<small>Print Name</small> Craig & Susan Rask	<small>Signature</small> 	<small>Date</small> 8-24-20
---	------------------------------	--------------------------------

Office Use Only			
<small>Date Received:</small>	<small>Initials:</small> Ymm	<small>Fees Paid:</small> \$400	<small>Date</small> 8/24/2020
<small>Notice in paper</small>		<small>Mailed to neighbors</small>	
<input type="checkbox"/> Approved	<small>Approved with conditions:</small>		
<input type="checkbox"/> Denied			

CITY OF MANDAN	
Development Review Application	
Minor Plat (\$300)	Zone Change (\$600)
Preliminary Plat up to 20 acres (\$400)	Planned Unit Development (\$700)
Preliminary Plat more than 20 acres (\$450)	Land Use and Transportation Plan Amendment (\$1,000)
Final Plat up to 20 lots (\$400)	Vacation (\$500)
Final Plat 21 to 40 lots (\$550)	<input checked="" type="checkbox"/> Variance (\$400)
Final Plat more than 40 lots (\$700)	Special Use Permit (\$450)
Annexation (\$450)	Stormwater submittal (\$300)
Masterplanned Subdivision (not accepted without preliminary plat) (\$250)	Stormwater 2 nd & subsequent resubmittal (\$50)
Appeals to Administrative Denials (Variance to Non-zoning/Non-subdivision regulations) (\$250)	
Summary of Request (Add separate sheet(s) as necessary)	

Engineer/Surveyor			Property Owner or Applicant		
Name Mark Isaacs/Toman Engineering Co			Name Arthur L (lot 11) & Craig & Susan Rask (lot10)		
Address 501 1st St NW			Address 706 7 708 6th Ave NW		
City Mandan	State ND	Zip 58554	City Mandan	State ND	Zip 58554
email mark@tomanengineering.com			email ndcraig@bis.midco.net		
Phone 701-663-6483	Fax 701-663-0923		Phone 701-400-7946	Fax	
If the applicant is not the current owner, the current owner must submit a notarized statement authorizing the applicant to proceed with the request.					

Location		Type		Existing Zone	Proposed Zone	Project Name	
City	<input checked="" type="checkbox"/> ETA	New	<input checked="" type="checkbox"/> Addition	R3.2	No Change	Rask Addition	
Property Address				Legal Description			
706 7 708 6th Ave NW				All of Lots 10 & 11, Block 83			
Current Use							
Residential				1st Northern Pacific Addition			
Proposed Use							
Residential				Section	Township	Range	
Parcel Size	Building Footprint	Stories	Building SF	Required Parking		Provided Parking	
.32Ac							

Print Name Arthur L. Rask	Signature Craig A. Rask POA	Date 8-24-2020
------------------------------	--------------------------------	-------------------

Office Use Only			
Date Received:	Initials: <i>nm</i>	Fees Paid: \$ 400	Date 8/24/2020
Notice in paper	Mailed to neighbors	P&Z meeting	
Approved	Approved with conditions:		
Denied			

Additional Submittals

Variance

A zoning variance application shall include a detailed statement with the following information:

1. The circumstances or conditions applying to the land or buildings for which the variance is sought

Properties are family owned, with garage built by former property owner. Wish to sell Arthur Rask's home and lot without the existing shared garage.

2. How the applicant is deprived of a reasonable use of said land or building;

Original property line runs down the middle of the garage on lot 10. Do not wish to share with a new owner

3. How the grant of a variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

This existing garage has been on site for over 50 years. Off street parking will be provided in alley upon sale.

4. The minimum variance that will accomplish the relief sought.

Minimum offset between existing garage and house on lot 11

The zoning map may be used to view the subject property and surrounding property's zoning and view property lines overlaid on an aerial. The zoning map may be found on the City's website at CityofMandan.com and selecting Departments → Engineering and Planning → Maps → Zoning Map or by clicking [here](#) if viewing this document digitally.

DURABLE POWER OF ATTORNEY

I, ARTHUR RASK, of 708 6th Avenue NW, Mandan, ND 58554, hereby appoint CRAIG RASK, of 706 6th Avenue NW, Mandan, ND 58554, as my Attorney-in-Fact.

I intend to create a Durable Power of Attorney pursuant to Chapter 30.1-30, North Dakota Century Code.

1. GENERAL GRANT OF POWERS

A. I give to my Attorney-in-Fact the following powers. These powers are to be used for my benefit and on my behalf and are to be exercised only in a fiduciary capacity. It is my intention by granting the following powers to give my Attorney-in-Fact the broadest possible powers to represent my interests in all dealings involving me or my property. My Attorney-in-Fact shall have the right to seek appropriate court orders which my Attorney-in-Fact may decide are necessary to carry out the intent of this instrument, including actions against third parties for refusal to comply with actions authorized by my Attorney-in-Fact on my behalf.

2. POWERS GRANTED RELATING TO MONEY MATTERS

A. Collect Money. To collect and receive all sums of money due me, such as debts, interest, dividends, Medicare benefits, Social Security payments, retirement checks from any source, and any other money payable to me. My Attorney-in-Fact is authorized to apply for any retirement benefits to which I may be entitled and to represent me in all dealings with government agencies.

B. Safe-deposit Boxes. To rent, close, have access to, and remove the contents from, any safe-deposit boxes rented in my name.

C. Financial and Retirement Accounts. To open, close, change ownership, deposit into, or withdraw from, any retirement account including IRAs and any account with any financial institution such as a commercial bank, savings bank, savings and loan, or credit union. Accounts shall include: checking, savings, passbook, certificates of deposit, money market, retirement including IRAs, and any other type of accounts offered by the financial institution. In addition, I specifically authorize my Attorney-in-Fact to sign checks and withdrawal forms, and to endorse any checks or drafts payable to me including U.S. Treasury checks. My Attorney-in-Fact is also authorized to purchase, cash in, redeem or negotiate U.S. Treasury Bonds, Notes and U.S. Savings Bonds.

amount as my Attorney-in-Fact shall determine to be necessary to protect myself or my assets against any hazard, and to claim any benefits or proceeds from insurance policies on my behalf. Insurance shall include: liability, casualty, life, accident, disability or health obtained for me or for a dependent of mine.

B. Options. To exercise any right to elect benefits or payment options, or to terminate, to change beneficiaries or ownership, to assign, or to surrender for cash value any:

- (1) Life insurance policy;
- (2) Annuity policy or dividend investment plan;
- (3) Mutual fund or dividend investment plan;
- (4) Retirement, profit sharing, or employee plan.

5. POWERS AND LIMITATIONS RELATING TO ESTATES AND ESTATE PLANNING

A. To make contributions to charitable organizations if it has been my practice to do so prior to the time my Attorney-in-Fact actually starts managing my affairs. To make gifts of cash or property, or the income therefrom, in trust or outright, to family members, spouse, friends and natural objects of my bounty.

B. My Attorney-in-Fact shall not have the power to use my assets to pay for his legal obligations.

C. My Attorney-in-Fact shall not have the power to exercise any powers as trustee under an irrevocable trust of which he is the trustor, grantor, or settlor and of which I am the trustee.

D. My Attorney-in-Fact shall not have the power to exercise any incident of ownership over any life insurance policy that I own which insures the life of my Attorney-in-Fact.

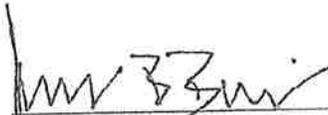
E. My Attorney-in-Fact shall not have the power to make or revoke a will on my behalf, nor may he revoke my will or codicil.

F. This restriction shall not be construed to limit the power of my Attorney-in-Fact to create and fund a living trust so long as dispositive provisions of such trust respect and are consistent with dispositive terms as set forth in my existing will, if any.

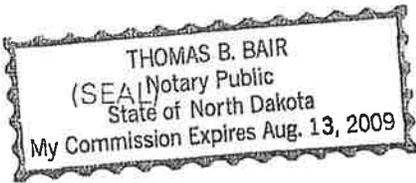
G. My Attorney-in-Fact shall not have the power to marry, divorce, or adopt, or to make any other similar, personal decisions on my behalf.

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF MORTON)

The foregoing instrument was acknowledged before me this 28th day of November, 2006, by ARTHUR RASK.



Notary Public
State of North Dakota
My commission expires:



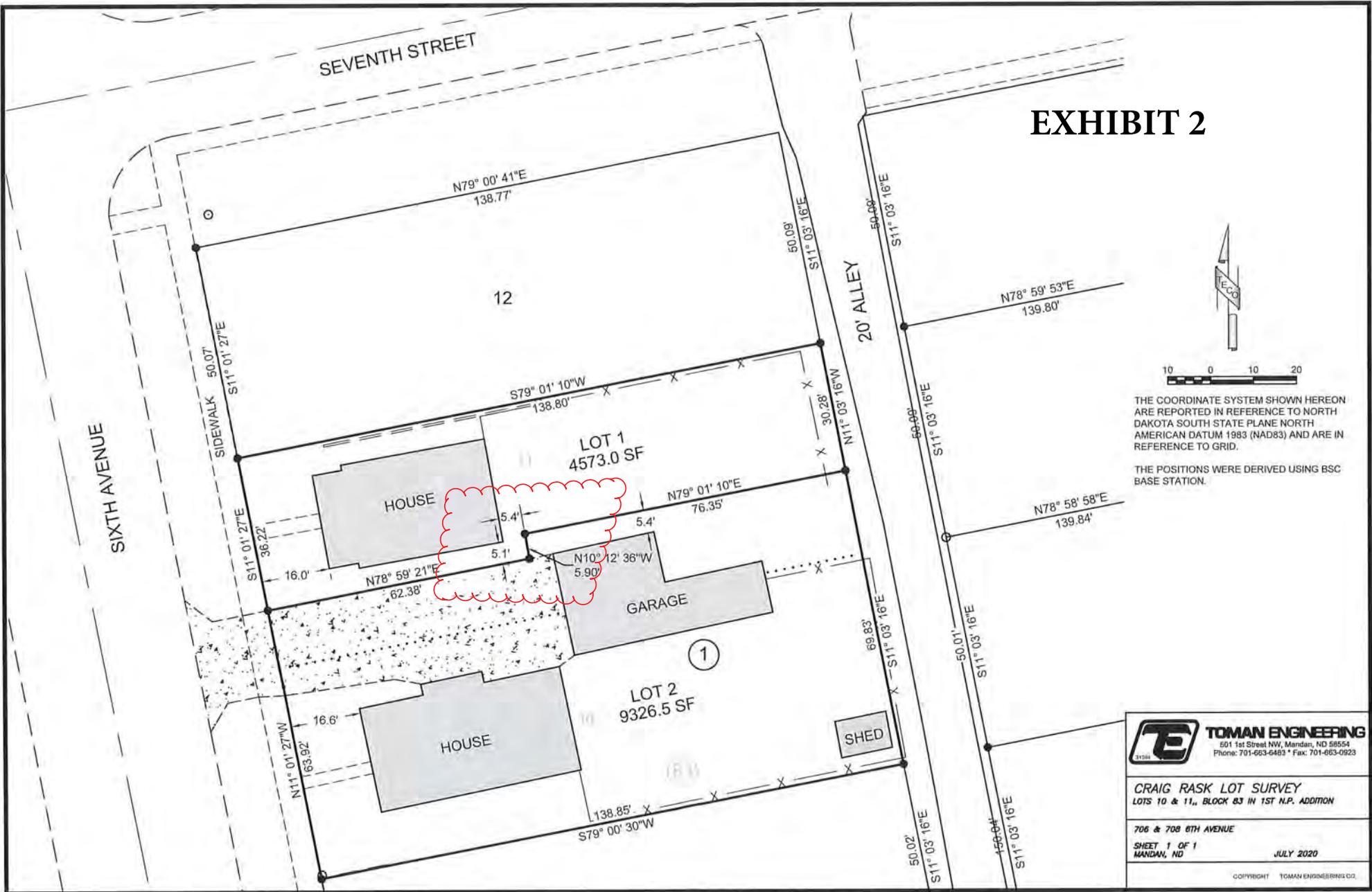


EXHIBIT 2



THE COORDINATE SYSTEM SHOWN HEREON ARE REPORTED IN REFERENCE TO NORTH DAKOTA SOUTH STATE PLANE NORTH AMERICAN DATUM 1983 (NAD83) AND ARE IN REFERENCE TO GRID.

THE POSITIONS WERE DERIVED USING BSC BASE STATION.

TOMAN ENGINEERING
 501 1st Street NW, Mandan, ND 58554
 Phone: 701-663-6463 • Fax: 701-663-0923

CRAIG RASK LOT SURVEY
 LOTS 10 & 11, BLOCK 83 IN 1ST N.P. ADDITION

706 & 708 6TH AVENUE
 SHEET 1 OF 1
 MANDAN, ND JULY 2020

Exhibit 3 – Findings of Support to Grant Variance

- The garage was constructed across the shared property boundary under previously adopted practice and the garage is considered a legal nonconforming structure.
- Accessory structures and single-family dwellings are not permitted to be constructed across property lines by today's standards.
- The strict application of the Code would continue the nonconformity with regard to the side setback.
- The variance to the front and rear setbacks is preferred to leaving the structure bisected by the shared property boundary.
- The variance to the rear setback of 20' to 5.4' for 708 6th Ave. NW and a variance to the front setback of 50' to 5.9' on 706 6th Ave. NW is the minimum variance that will accomplish the relief sought by the applicant.
- The grant of the variance will be in harmony with the general purposes and intent of this chapter and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

PUBLIC HEARING #4

PUBLIC HEARING #4

Mandan Planning and Zoning Commission Agenda Item PH4
 For Meeting on September 28, 2020
 Mandan Engineering and Planning Office Report
Lot 2, Block 1, Replat of Big Sky Estates 3rd Addition
 Requested Action
Special Use Permit – Multi-use Shops

Application Details				
Applicant	Owner	Subdivision	Legal Description	
Victor Goncharov	Victor Goncharov	Replat of Big Sky Estates 3rd Addition	Lot 2, Block 1, Replat of Big Sky Estates 3rd Addition	
Location		Proposed Land Use	Parcel Size	Number of Lots
North of Old Red Trail and Sunset Ave. Intersection, West on 27 th St. NW to Jude Ln.		Commercial	0.55 Acres	1
Existing Land Use	Adjacent Land Uses		Current Zoning	Proposed Zoning
Bare Land	Commercial/Storage		CB Commercial w/Restrictions	CB Commercial
			Adjacent Zoning	CB Commercial/R7 Residential
Fees	Date Paid	Adjacent Property Notification Sent	Legal Notices Published	
\$450	August 19, 2020	September 11, 2020	September 18	

Project Description
<p>Victor Goncharov seeks to construct a two-unit multi-use shop for commercial purposes on Lot 2, Block 1, Big Sky Estates. A location map and site plan/elevation rendering are provided in Exhibits 1 and 2 respectively. The property is zoned CB Commercial with restrictions. The allowable commercial uses are provided in Exhibit 3.</p>
<p>The applicant received approval from the Mandan Architectural Review Commission for landscaping, layout, and façade elements of the project.</p>
<p>Per 105-1-13 (d) (6), in order to provide a favorable recommendation, the Planning and Zoning Commission or a final decision by the Board of City Commissioners should consider eight (8) items provided for in Exhibit 5 for reference. In evaluating these criteria, staff finds the following:</p> <ul style="list-style-type: none"> • The proposed use is in harmony with the purpose and intent of this chapter subject to the restrictions included in Ordinance 1190. • The proposed use is in conflict with the future land use map of the City originally adopted in the summer of 2015; however, the present zoning district was adopted in the fall of 2014. The east side of Jude Ln. and several lots along the southwest were zoned CB Commercial with restrictions to act as a buffer between the heavier intensity CB Commercial district without restrictions to the east along Sunset Ave. NW and along Old Red Trail NW. • The proposed use will not adversely affect the health, safety, and general welfare of the public and the workers and residents in the area. • The proposed use will not be detrimental to the use or development of adjacent properties or of the surrounding neighborhood. . • The proposed use will not result in the destruction, loss or damage of a natural, scenic, or historic feature of importance to the community.

- The proposed use includes adequate screening or buffering to compensate for any departure that the proposed use has from existing adjacent uses.
- The proposed use includes adequate provisions for those individuals who are mobility impaired.

Staff recommends approval of the special use permit for a multi-use shop as provided in Exhibit 7 based on the findings in Exhibit 6.

Agency & Other Department Comments

N/a

Engineering & Planning Staff Comments

N/a

Engineering & Planning Recommendation

Engineering/Planning recommend approval of the special use permit for a two-unit multi-use shop as provided in Exhibit 7 based on the findings in Exhibit 6.

Proposed Motion

I move to approve the special use permit for a two-unit multi-use shop as provided in Exhibit 7 based on the findings in Exhibit 6.

List of Exhibits:

- Exhibit 1 – Location Map
- Exhibit 2 – Site Plan and Elevation Photo
- Exhibit 3 – Ordinance 1190 showing allowable commercial uses
- Exhibit 4 – Multi-use Shop Use Standards
- Exhibit 5 – Evaluative Criteria
- Exhibit 6 – Findings
- Exhibit 7 – Special Use Permit for Multi-Use Shops w/Conditions

EXHIBIT 1



JUDELN NW



27th ST NW

SUNSET DR NW

OLD RED TRL NW

ON RAMP

94 W

94 E

OFF RAMP

1806 N

94 E

94 W

6

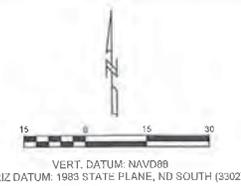
1806 S



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

EXHIBIT 2



LEGEND

- 1810 PROPOSED CONTOUR
- PROPOSED CURB & GUTTER
- PARKING STALL COUNT
- PROPOSED CONCRETE PAVEMENT
- PROPOSED CONCRETE SIDEWALK

LEGAL DESCRIPTION:
 LOT 2, BLOCK 1,
 BIG SKY 3RD ADDITION REPLAT
 LOT AREA: 79,363 SF

ZONING:
 CB-RESTRICTED ORD. # 1190

OWNER:
 F & S PROPERTIES, LLC
 2501 ANGUS DRIVE
 BISMARCK, ND 58504

SETBACKS:
 FRONT: 0'
 SIDE: 0'
 REAR: 10'

BUILDING CONSTRUCTION STEEL FRAME
 TYPE: STEEL FRAME

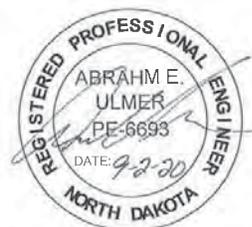
NUMBER OF STORIES: 2 LEVELS

FIRE SUPPRESSION SYSTEM: NO

TOTAL BUILDING AREA: 3,000 SF PER FLOOR, 6,000 SF TOTAL

REQUIRED PARKING: UPPER FLOOR: 3000 SF @ $\frac{1}{15}$ SF = 8 SPACES
 LOWER FLOOR: 3000 SF @ $\frac{1}{15}$ SF = 8 SPACES

TOTAL REQUIRED PARKING: 16 SPACES SPACES PROVIDED = 16



TOMAN ENGINEERING
 501 1st Street NW, Mandan, ND 58554
 Phone: 701-663-6463 * Fax: 701-663-0923

HUGO HOME IMPROVEMENT, LLC
 2903 JUDE LANE
 MANDAN, NORTH DAKOTA

LOT 2, BLOCK 1,
 BIG SKY ESTATES 3RD ADDITION REPLAT
 MANDAN, NORTH DAKOTA
 SHEET 1 OF 1 SEPTEMBER, 2020

CAUTION
 UTILITY LOCATIONS ARE APPROXIMATE.
 CONTRACTOR IS RESPONSIBLE FOR
 VERIFYING LOCATION PRIOR TO
 EXCAVATION

PROPOSED CONDITIONS



EXHIBIT 3

ORDINANCE NO. 1190

AN ORDINANCE TO AMEND AND REENACT SECTION 21-03-02 OF THE MANDAN CODE OF ORDINANCES RELATING TO DISTRICT BOUNDARIES AND ZONING MAP.

BE IT ORDAINED By the Board of City Commissioners of the City of Mandan, Morton County, North Dakota, as follows:

SECTION 1. AMENDMENT. Section 21-03-02 of the Mandan Code of Ordinances is amended to read as follows:

1. Certain lots within the Big Sky Estates subdivision located within the City of Mandan, Morton County, North Dakota shall be excluded from the R7 (residential) zoning and shall be included in other zones as follows:

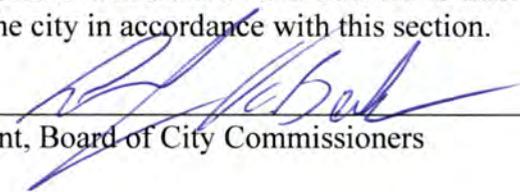
- a. Lots 1 & 2, Block 1 Big Sky Estates 3rd Addition Replat changed to CB Restricted;
- b. Lots 1 & 2, Block 2 Big Sky Estates 3rd Addition Replat changed to CB Restricted;
- c. Lots 1 - 3, Block 1 Big Sky Estates 5th Addition changed to CB Restricted;
- d. Lots 9 - 13, Block 4 Big Sky Estates 3rd Addition changed to RM Restricted;
- e. Lots 4 & 5, Block 1 Big Sky Estates 3rd Addition changed to R3.2 Restricted;
- f. Lots 1 - 4, Block 2 Big Sky Estates 3rd Addition changed to R3.2 Restricted;
- g. Lots 7 & 8, Block 2 Big Sky Estates 3rd Addition changed to R3.2 Restricted; and
- h. Lots 1 - 4, Block 1 Big Sky Estates 4th Addition changed to R3.2 Restricted.

2. The uses allowed on lots zoned R3.2 shall be limited to 1 and 2 dwelling unit structures.

3. Structures on RM zoned lots shall be limited to 30 feet in height above existing grade.

4. The uses allowed on lots zoned CB shall be limited to multi-family residential and those in Retail Group A, Service Group A and Office-bank Group as listed in Appendix A.

SECTION 2. RE-ENACTMENT. Section 21-03-02 of the Mandan Code of Ordinances is hereby re-enacted as amended. The city principal planner is authorized and directed to make the necessary changes upon the official zoning map of the city in accordance with this section.



President, Board of City Commissioners

Attest:



City Administrator

Public Hearing:

August 19, 2014

First Consideration:

August 19, 2014

Second Consideration and Final Reading:

September 2, 2014

Publication Date:

September 26, 2014

Recording Date:

Return to:
CITY OF MANDAN
205 2ND AVE NW
MANDAN ND 58554

County Recorder **459414**
Morton County
Mandan ND 58554
Page 1 of 4



Restrictions

R3.2 - Restricted to:

- duplexes & twin homes
- single-family

RM -

- height limited to 30'

CB Restricted -

- no retail group B

Vacated Roadway
2014
Doc # 458455

CB
Restricted

	CB
	RM
	R3.2



Appendix A to Ordinance 1190 rezoning lots in Big Sky Estates

The following uses are declared to be in retail group A:

- (1) Antique store,
- (2) Appliance, radio, television store,
- (3) Auto accessory store,
- (4) Book, magazine, newspaper store,
- (5) Butcher shop,
- (6) Camera shop, art supply store,
- (7) Candy store,
- (8) Clothing, clothing accessories store,
- (9) Delicatessen,
- (10) Department store,
- (11) Drugstore,
- (12) Five and ten cent store,
- (13) Flower shop,
- (14) Furniture, office equipment store,
- (15) Gift shop,
- (16) Grocery store,
- (17) Hardware store,
- (18) Hobby, toy store,
- (19) Ice cream parlor,
- (20) Jewelry store,
- (21) Music store,
- (22) Notion, variety store,
- (23) Office supply, stationery store,
- (24) Package liquor store,
- (25) Photographic studio,
- (26) Shoe store,
- (27) Sporting goods store,
- (28) Bakery, in which nothing is baked except for retail sale on the premises.

The following uses are declared to be in service group A:

- (1) Barber shop,
- (2) Beauty shop,
- (3) Refrigerated cold storage lockers,
- (4) Dressmaker, tailor,
- (5) Dry cleaning pickup agency,
- (6) Furniture repair, upholstery,
- (7) Laundry pickup agency,
- (8) Laundry, self-service,
- (9) Milliner,
- (10) Radio, appliance repair,
- (11) Restaurant,
- (12) Shoe repair,
- (13) Soda fountain,
- (14) Watch, jewelry, camera repair,
- (15) Animal clinic,
- (16) Pet store.

(17) Pet Grooming Commercial facility

The following uses are declared to be in the office-bank group:

- (1) Bank,
- (2) General office,
- (3) Governmental office,
- (4) Insurance office,
- (5) Personal loan agency,
- (6) Professional office,
- (7) Real estate office,
- (8) Taxicab office,
- (9) Telephone exchange,
- (10) Utility office



COUNTY RECORDER, MORTON COUNTY, ND **459414**
 I certify that this instrument was filed and recorded.
 Carrole Schaner, County Recorder Fee \$29.00
 By *[Signature]* September 4, 2014 10:06:51 A

County Recorder **459414**
 Morton County
 Mandan ND 58554

Auditor's Office Morton Co., ND
 TRANSFER ACCEPTED

9-4-2014

DAWN R. RHONE, County Auditor
 By *[Signature]* Deputy

EXHIBIT 4

Multi-use Shop Use Standards

- (k) Multi-use shops. Each multi-use shop development may be permitted as a special use subject to the following minimum standards:
- (1) Each individual unit within the structure shall have an open space/yard or public way on no more than three sides.
 - (2) Each individual unit within the structure shall have its own separate means of egress.
 - (3) Such units shall only contain group business, factory, mercantile, or storage occupancy classifications as set forth by Section 3 of the North Dakota State Building Code.
 - (4) Uses, whether commercial or accessory to residential, shall be declared at the time of the conditional use permit issuance. No change in use may be conducted unless reevaluated through the special use permitting process and the structure meets all building code requirements for the desired change of use.
 - (5) Traditional mixed-use (residential and commercial combined) multi-use shops shall not be permitted. The declaration of either commercial or accessory to residential shall apply to all units within the structure and the structure will be constructed according to the minimum standards of the building code for the declared use.
 - (6) Minimum off-street parking requirements shall be planned and provided for based on the declared uses. Any inadequate provision of parking within the development for a combination of uses may result in the revocation of the special use permit.
 - (7) Each structure shall be limited to one curb stop accessible by city staff.
 - (8) The declaration of commercial or accessory to residential shall in no way affect the way valuation, special assessments, utility rates, and other city fees are determined. These shall remain determined by separate city policy.
 - (9) Covenants, conditions, and restrictions (CC&Rs) or another form of recorded agreement approved by the city attorney shall set out, at a minimum, provisions for access and responsibility for costs of inspections related to the fire suppression system, if any.
 - (10) For the city's utility billing purposes, a recorded development association or another form of recorded agreement approved by the city attorney is required if any of the individual units within the development are not owned by the same owner of the development. The recorded development association or recorded agreement shall set out, at a minimum, the allocation of costs and statement of understanding of the collective responsibility of owners for payment of city utilities. If a recorded development association or another form of recorded agreement approved by the city attorney is in place, the city will issue one utility bill per month to one owner or representative of the structure for the entire structure's base charges and consumption or usage. The monthly utility bill will not be sent to each individual owner within the structure. If ownership is divided after a special use permit has been obtained, the property owner shall furnish a copy of said recorded agreement to the city showing it meets this provision.

EXHIBIT 5

Special Use Permit Evaluative Criteria

- a. The proposed use is in harmony with the purpose and intent of this chapter;
- b. The proposed use is not in conflict with the adopted comprehensive plan of the city;
- c. The proposed use will not adversely affect the health, safety, and general welfare of the public and the workers and residents in the area;
- d. The proposed use will not be detrimental to the use or development of adjacent properties or of the surrounding neighborhood;
- e. The proposed use meets all appropriate regulations for the district in which it will be located;
- f. The proposed use will not result in the destruction, loss or damage of a natural, scenic, or historic feature of importance to the community;
- g. The proposed use includes adequate screening or buffering to compensate for any departure that the proposed use has from existing adjacent uses; and
- h. The proposed use includes adequate provisions for those individuals who are mobility impaired.

EXHIBIT 6

Findings

- The proposed use is in harmony with the purpose and intent of this chapter subject to the restrictions included in Ordinance 1190.
- The proposed use is in conflict with the future land use map of the City originally adopted in the summer of 2015; however, the present zoning district was adopted in the fall of 2014 and provide a buffer to residential properties further north and west from the unrestricted CB Commercial uses to the east along Sunset Ave. NW and along Old Red Trail NW.
- The proposed use will not adversely affect the health, safety, and general welfare of the public and the workers and residents in the area.
- The proposed use will not be detrimental to the use or development of adjacent properties or of the surrounding neighborhood.
- The proposed use will not result in the destruction, loss or damage of a natural, scenic, or historic feature of importance to the community.
- The proposed use includes adequate screening or buffering to compensate for any departure that the proposed use has from existing adjacent uses.
- The proposed use includes adequate provisions for those individuals who are mobility impaired.



EXHIBIT 7

SPECIAL USE PERMIT

For

Multi-use Shop

The property owner(s) of Lot 2, Block 1, Replat of Big Sky 3rd Addition are granted a special use permit for a multi-use shop structure containing two (2) units as defined in Section 101-1-3 of the Mandan Code of Ordinances (MCO) subject to the following conditions:

1. Each individual unit within the structure shall have an open space/yard or public way on no more than three sides.
2. Each individual unit within the structure shall have its own separate means of egress.
3. Such units shall only contain group business, factory, mercantile, or storage occupancy classifications as set forth by Section 3 of the North Dakota State Building Code.
4. The structure is limited to commercial uses and restricted to those commercial uses allowed by Ordinance 1190.
5. The structure will be constructed according to the minimum standards of the building code for the declared use(s).
6. Minimum off-street parking requirements shall be planned and provided for based on the declared uses. Any inadequate provision of parking within the development for a combination of uses may result in the revocation of this special use permit.
7. The structure shall be limited to one curb stop accessible by city staff.
8. The declaration of commercial or accessory to residential shall in no way affect the way valuation, special assessments, utility rates, and other city fees are determined. These shall remain determined by separate city policy.
9. Covenants, conditions, and restrictions (CC&Rs) or another form of recorded agreement approved by the city attorney shall set out, at a minimum, provisions for access and responsibility for costs of inspections related to the fire suppression system, if any.
10. If the property owner should choose to condo plat the structure for the purpose of selling individual units they are required to abide by the following requirement:
 - a. For the city's utility billing purposes, a recorded development association or another form of recorded agreement approved by the city attorney is required if any of the individual units within the development are not owned by the same owner of the development. The recorded development association or recorded agreement shall set out, at a minimum, the allocation of costs and statement of understanding of the collective responsibility of owners for payment of city utilities. If a recorded development association or another form of recorded agreement approved by the city attorney is in place, the city will issue one utility bill per month to one owner or representative of the structure for the entire structure's base charges and consumption or usage. The monthly utility bill will not be sent to each individual owner within the structure. If ownership is divided after a special use permit has been obtained, the property owner shall furnish a copy of said recorded agreement to the city showing it meets this provision.

Dated this 28th day of September 2020

President, Planning and Zoning Commission

ATTEST:

Planning and Zoning Secretary

Ratified by the Board of City Commissioners on _____.

PUBLIC HEARING #5

PUBLIC HEARING #5

Mandan Planning and Zoning Commission Agenda Item PH5
 For Meeting on September 28, 2020
 Mandan Engineering and Planning Office Report
Sloane's Addition
 Requested Action
Annexation, Preliminary Plat, and Zoning Map Amendment

Application Details				
Applicant	Owner	Subdivision	Legal Description	
Jason Frank	Jason Frank	Sloane's Addition (proposed)	Part of the SW ¼ of the NE ¼, Section 3, Township 138, Range 81	
Location Off of 19th Street SE south of Macedonia Ave SE.		Proposed Land Use Residential	Parcel Size Approx. 20-acres	Number of Lots 2
Existing Land Use Ag/Single-family Residential	Adjacent Land Uses Residential/Agriculture	Current Zoning Agriculture	Proposed Zoning R3.2 Residential/R7 Residential/Agriculture	Adjacent Zoning Agriculture
Fees \$1,450	Date Paid August 28, 2020	Adjacent Property Notification Sent September 11, 2020	Legal Notices Published September 18 & 25	

Project Description

Jason Frank has submitted an application for annexation, a zoning map amendment, and preliminary plat for Sloane's Addition (See Exhibit 1). The property is approximately twenty (20) acres south of the termini of Macedonia Ave. SE. A copy of the preliminary plat, proposed area of annexation, proposed zoning map amendment, and future development concept are provided in Exhibit 2.

The application as submitted does not align with the future land use map of the City which designates the property as Low Density Residential (See Exhibit 3). This may be addressed through a development agreement similar in nature to Schaff's Estates that designated a build area tied to a proof of concept that showed how the land could be further redeveloped in the future to align with future land use map (See Exhibit 4 for reference).

The concept provided in the application (bottom left corner denoted as "Future Development") creates a landlocked parcel to the south. More effort could be directed toward illustrating how the development could be redeveloped in a manner more typical of city-sized lots. Section 109-3-2 (2) affords the Planning and Zoning Commission the ability to require this information:

*"Lot dimensions shall comply with the minimum standards of the zoning ordinance. **Where lots are more than double the minimum required area for the zoning district, the planning and zoning commission may require that such lots be arranged so as to allow further subdivision and the opening of future streets where they would be necessary to serve such potential lots, all in compliance with the zoning ordinance and this chapter.** In general, side lot lines shall be at right angles to street lines, or radial to curving street lines, unless a variation from this rule will give a better street or lot plan. Dimensions of corner lots shall be large enough to allow for erection of buildings, observing the front yard setback from both street exposures."*

Further, staff has concerns regarding the provision of services to the property with regard to future development. Water and sewer terminate at the south end of Macedonia Ave. SE. Tying directly into this termination point will preclude the extension of the service line to support additional development.

Section 109-1-3 (2) regarding the purpose of the Land Subdivision chapter states, "To guide the orderly future growth and development of the city, and promote proper land use density." Without illustrating how the property can be further developed in the future and a development agreement to address any issues which may arise from a plat with atypically large lots adjacent to city limits, staff would recommend denial at this time. An alternative is to allow the applicant a chance to revise their application and resubmit showing how the property may be further developed in the future with typical city-sized lots similar to those in the immediate area that have developed historically.

Agency & Other Department Comments

Mitch Bitz, Public Works Director has concerns regarding adequate right-of-way to provide services to future development.

Engineering & Planning Staff Comments

Annexation

A property immediately adjacent to the City which is choosing to develop should annex. Morton County emergency services must travel through the City (19thSt. SE/Macedonia Ave. SE) to provide services to proposed Lot 2, Block 1 of Sloane's Addition. This creates confusion for first responders as to which jurisdiction is responsible and contributes to delays in service. This is a matter of health and safety. The application should be amended to include the entirety of the development or staff would recommend denial for this reason.

Engineering & Planning Recommendation

If the applicant is amenable to addressing the concerns with regard to future development of the property into typical city-sized lots, the Engineering and Planning Department recommend the Planning and Zoning Commission require this information prior to making a decision and table the item to the October Planning and Zoning meeting.

If the applicant is not amenable to addressing the concerns with regard to future development of the property into typical city-sized lots, the Engineering and Planning Department recommend denial based on the reasons provided in Exhibit 5.

Proposed Motion

I move to require the applicant arrange the lots so as to allow further subdivision and the opening of future streets where they would be necessary to serve such potential lots and table the item to the October Planning and Zoning meeting.

OR

I move to recommend denial of the annexation and zoning map amendment and deny the preliminary plat for the reasons in Exhibit 5.

List of Exhibits:

Exhibit 1 – Development Application

Exhibit 2 - Sloane's Addition Preliminary Plat, Annexation, and Zoning Amendment Depiction, and Future Development Depiction

Exhibit 3 – Zoning and Future Land Use of the Subject Property

Exhibit 4 – Schaff Estates Development Agreement signed

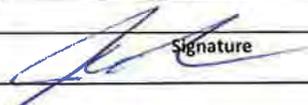
Exhibit 5 – Reasons for Denial

EXHIBIT 1

CITY OF MANDAN			
Development Review Application			
<input type="checkbox"/>	Minor Plat (\$300)	<input checked="" type="checkbox"/>	Zone Change (\$600)
<input checked="" type="checkbox"/>	Preliminary Plat up to 20 acres (\$400)	<input type="checkbox"/>	Planned Unit Development (\$700)
<input type="checkbox"/>	Preliminary Plat more than 20 acres (\$450)	<input type="checkbox"/>	Land Use and Transportation Plan Amendment (\$1,000)
<input type="checkbox"/>	Final Plat up to 20 lots (\$400)	<input type="checkbox"/>	Vacation (\$500)
<input type="checkbox"/>	Final Plat 21 to 40 lots (\$550)	<input type="checkbox"/>	Variance (\$400)
<input type="checkbox"/>	Final Plat more than 40 lots (\$700)	<input type="checkbox"/>	Special Use Permit (\$450)
<input checked="" type="checkbox"/>	Annexation (\$450)	<input type="checkbox"/>	Stormwater submittal (\$300)
<input type="checkbox"/>	Masterplanned Subdivision (not accepted without preliminary plat) (\$250)	<input type="checkbox"/>	Stormwater 2 nd & subsequent resubmittal (\$50)
<input type="checkbox"/>	Appeals to Administrative Denials (Variance to Non-zoning/Non-subdivision regulations) (\$250)	<input type="checkbox"/>	
Summary of Request (Add separate sheet(s) as necessary)			
Plat residential/ag lots, annex a portion for city services, provide access easement for further development.			

Engineer/Surveyor			Property Owner or Applicant		
Name Swenson Hagen & co			Name Jason Frank/Diversity Homes		
Address 909 Basin Ave			Address 2101 46th Ave SE		
City Bismarck	State ND	Zip 58504	City Mandan	State NDd	Zip 58554
email Iniemiller@swensonhagen.com			email jason@diversityhomesnd.com		
Phone 701 223 2600	Fax		Phone 701 751 3999	Fax	
If the applicant is not the current owner, the current owner must submit a notarized statement authorizing the applicant to proceed with the request.					

Location		Type		Existing Zone	Proposed Zone	Project Name
<input type="checkbox"/> City	<input checked="" type="checkbox"/> ETA	<input type="checkbox"/> New	<input type="checkbox"/> Addition			Sloane's Addition
Property Address				Legal Description		
115 19th St S.				Part of the SW 1/4 of the NE 1/4		
Current Use						
Ag						
Proposed Use						
Single family dwelling/Ag				Section 3	Township 138	Range 81
Parcel Size 20 AC	Building Footprint	Stories	Building SF	Required Parking	Provided Parking	

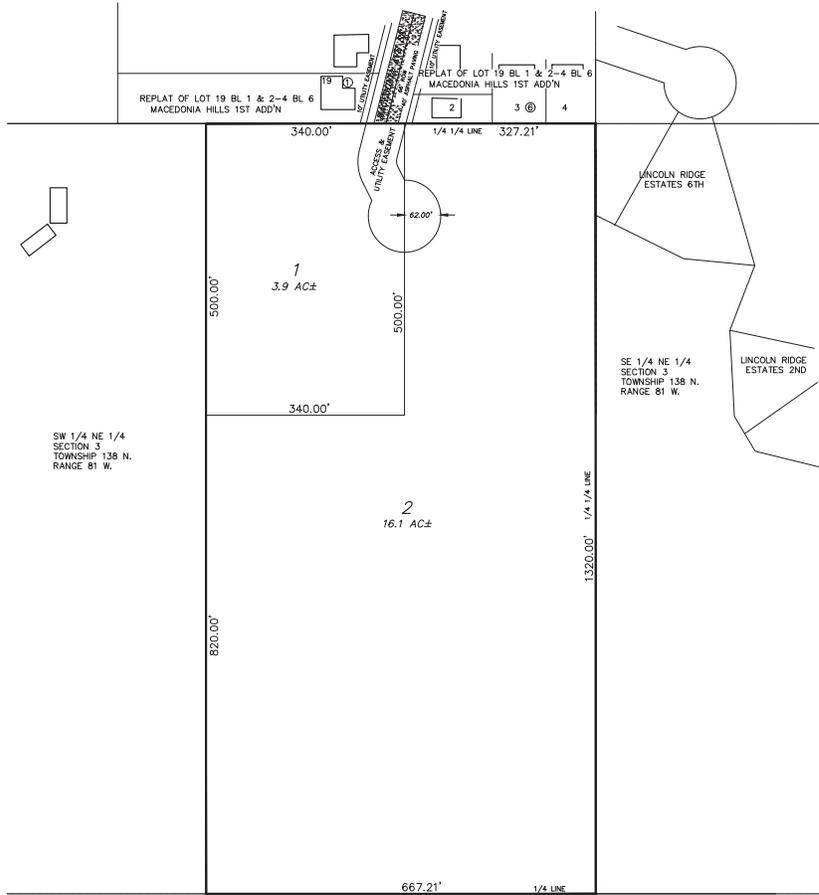
Print Name Jason Frank	Signature 	Date 8/27/20
----------------------------------	---	------------------------

Office Use Only			
Date Received:	Initials: ym	Fees Paid: \$1450	Date: 8-28-2020
Notice in paper	Mailed to neighbors	P&Z meeting	
<input type="checkbox"/> Approved	Approved with conditions:		
<input type="checkbox"/> Denied			

SLOANE'S ADDITION

EXHIBIT 2

PART OF THE SW 1/4 OF THE NE 1/4 OF
SECTION 3, TOWNSHIP 138 NORTH, RANGE 81 WEST
TO THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA
PRELIMINARY PLAT



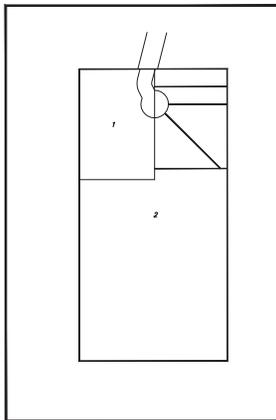
SCALE: 1"=100'
AUGUST 26, 2020

OWNER:
JASON FRANK
DIVERSITY HOMES
2101 46TH AVE SE
MANDAN, ND 58554

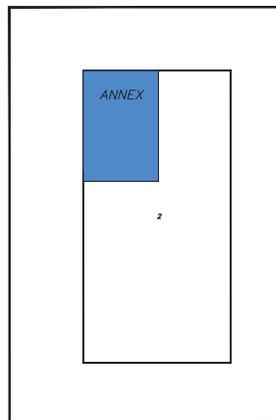
SURVEYOR:
SWENSON HAGEN & CO
909 BASIN AVE.
BISMARCK, ND 58504

EXISTING ZONING: AG
PROPOSED ZONING: R7 & AG
ANNEX LOT 1 BLOCK 1

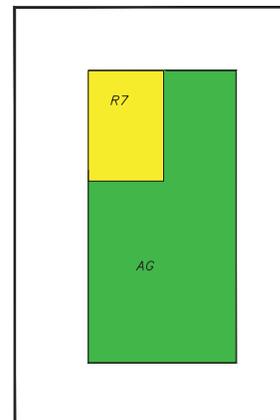
NW 1/4 SE 1/4
SECTION 3
TOWNSHIP 138 N.
RANGE 81 W.



FUTURE DEVELOPMENT



ANNEXATION MAP



ZONING MAP



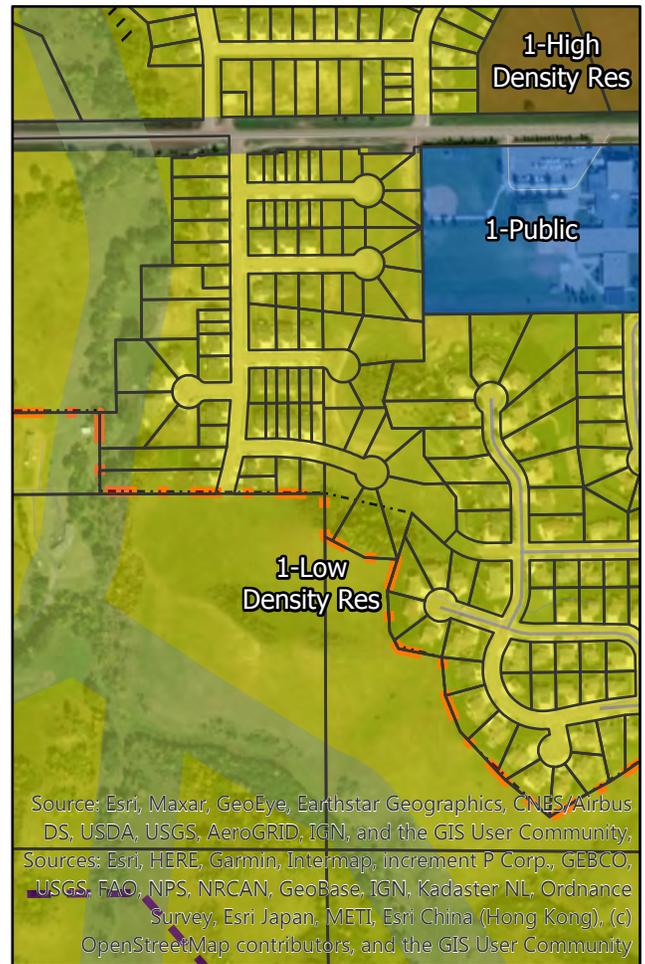
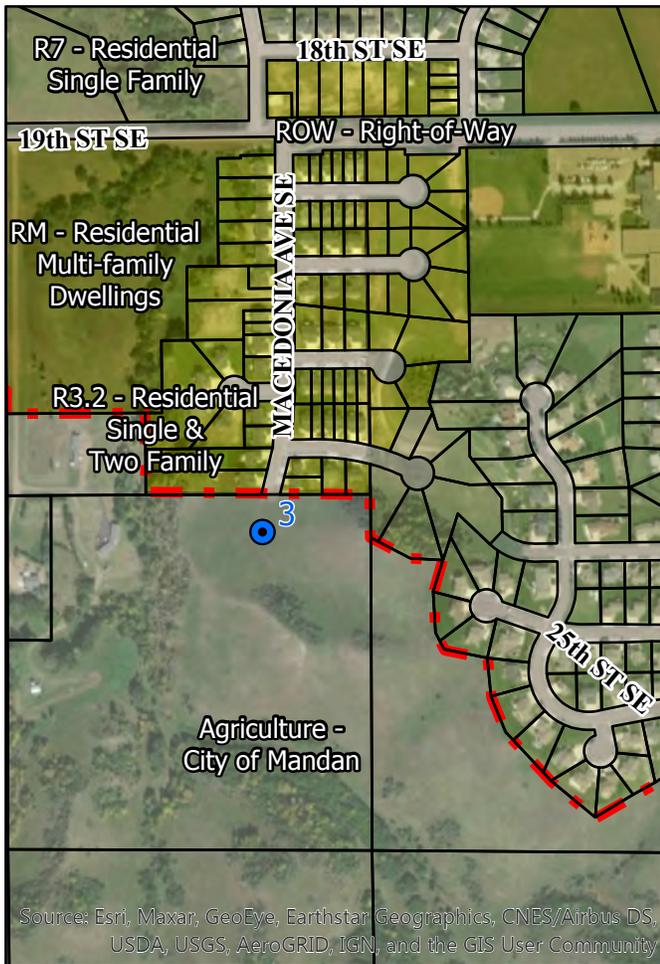
SWENSON, HAGEN & COMPANY P.C.

909 Basin Avenue
Bismarck, North Dakota 58504
shc@swensonhagen.com
Phone (701) 223 - 2600
Fax (701) 223 - 2606

Surveying
Hydrology
Land Planning
Civil Engineering
Landscape & Site Design
Construction Management

Part of the SW 1/4 of the NE 1/4 of Section 3, Township 138 North, Range 81 West

EXHIBIT 3



Present Zoning = A Agriculture

Future Land Use = LD Residential

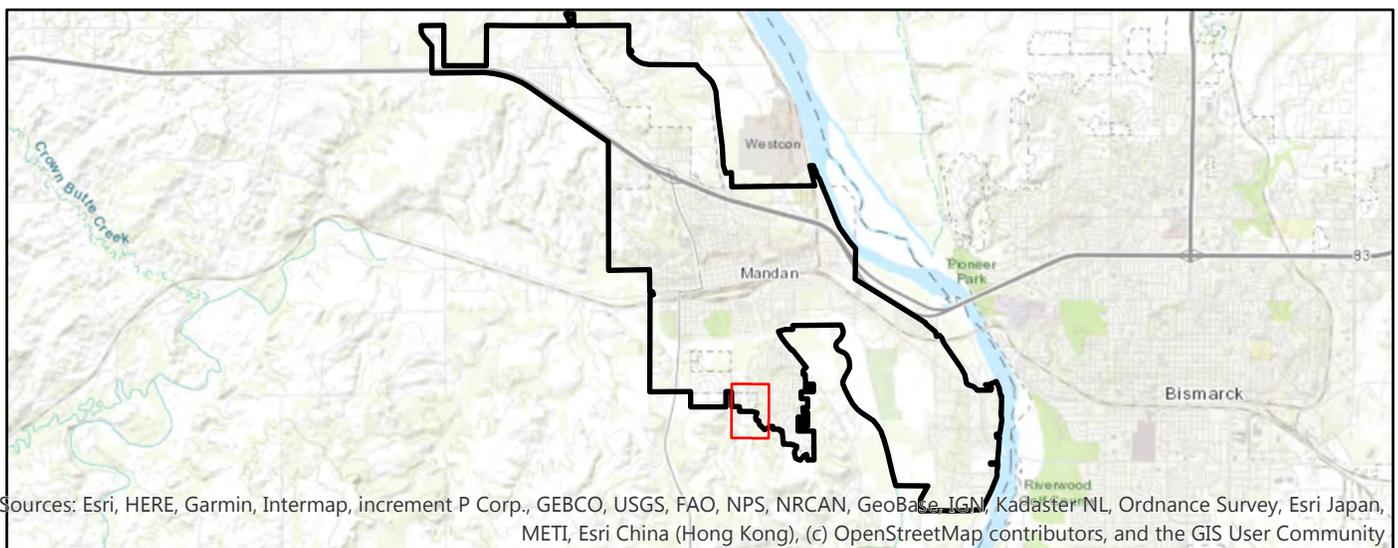


EXHIBIT 4

Development Agreement

Schaff Estates

This Agreement is made and entered into on the 19th day of May, 2020, (hereinafter the “effective date”) by and between the City of Mandan (hereinafter referred to as the “City”) and JB Land, LLC (hereinafter referred to as the “Developer”). The address for the City of Mandan is 205 2nd Avenue NW, Mandan, North Dakota 58554. The address of Developer is 1806 Schaff Dr., Mandan, ND 58554. This agreement is a covenant running with the Property and binding upon any and all future owners of the Property.

WHEREAS, the Developer is the owner of property whose legal description is the W1/2 of Government Lot 1, Section 7, Township 139N, Range 81W of Morton County, North Dakota (hereinafter referred to as the “Property”); and

WHEREAS, the Developer wishes to develop the approximate twenty-one and one-half (21.5) acre Property into a development named Schaff Estates (hereinafter referred to as the “Development”); and

WHEREAS, said Development is currently planned to include two (2) single-family lots of approximately equal acreage; and

WHEREAS, the Development, without this agreement, could create disorder in future development, raising costs of public infrastructure and private development for the surrounding lands; and

WHEREAS, the agreement provides the Developer a means to achieve the desired outcome of the Development of two (2) single-family lots and preserve the remaining land for future development to its highest and best use; and

WHEREAS, said agreement utilizes for reference a document (hereinafter referred to as “Ghost Plat”) showing future right-of-way and additional lots as a proof of concept for future development to align with the present average lot size of the future land uses for the Property as presently denoted on the Mandan Future Land Use and Transportation Plan (originally adopted June 2015 and hereinafter referred to as the “Plan”); and

WHEREAS, nothing in this agreement prohibits the Developer from revising the layout of the lots of the Ghost Plat subject to the necessary jurisdictional approvals including Mandan Planning and Zoning Commission and the Mandan Board of City Commissioners; and

WHEREAS, nothing in this agreement prohibits the City from adopting alternative land uses through a new land use plan or amendment to the Plan affecting the Property as prescribed by State

law and the Mandan Code of Ordinances and requiring any future development to align with said plan.

NOW THEREFORE, it is agreed between the parties as follows:

1. The Development is restricted to one buildable area on each lot as shown in the attached Ghost Plat illustrated by hashed lines on each respective lot in the Development.
2. Any improvements, whether permitted or otherwise, whether above or below ground such as a septic system and land designated for a secondary septic system, are to be contained within the buildable area boundaries.
3. At the request of the Mandan Building Official, a building permit application will denote the boundaries of the buildable area to ensure the location of any structure is contained within the buildable area.
4. Access to Lot 1 of the Development will be restricted to the existing approach located in the northeast corner.
5. Access to Lot 2 of the Development will be restricted to the depicted right-of-way immediately north of the buildable area.
6. Upon future development of the Property outside the buildable areas of the respective lot, the Developer will vacate the corresponding approach for the construction of a public road or access easement intended to provide access to future lots and utilize said public road or access easement in lieu of the existing private driveway or approach.
7. The Developer will not be required to improve the road 24th Ave. or 37th St. to a standard urban section including paving, curb, and gutter, for the purposes of obtaining a single-family residential building permit or related accessory structure(s) within the buildable area on each lot of the Property.
8. Future development on the Property will align with the adopted land use and transportation plan of the City of Mandan at the time of application unless approved by the Board of City Commissioners.



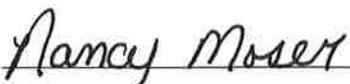
Mayor Tim Helbling
City of Mandan

Attest:


Jim Neubauer
City Manager



Jerry L. Schaff, President
JB Land, LLC

Attest:


Nancy Moser

EXHIBIT 5

Reasons for Denial

- The annexation, if approved without the plat and accompanying access easement, would create a city parcel and a County parcel. The County parcel would be land-locked.
- The annexation, if approved with the plat and accompanying access easement, would create jurisdictional confusion surrounding the provision of emergency services for Lot 2, Block 1. The delay in response times stemming from this confusion is a matter of health and safety and can be remedied by annexing the entire property.
- The plat would create two parcels of a size that do not align with the future land use plan for the area of low density residential.
- Other city developments in close proximity have managed to develop into lots that are one-acre or less where the terrain is exceptionally problematic and it is unclear how the terrain is drastically different than the terrain of nearby subdivisions prior to their development.
- The access and utility easement is insufficient to explain how services could be provided to lots if subdivided to typical city-sized lots.
- The application, as presented and without changes, does not fulfill the purpose of the Land Subdivision chapter as provided in Section 109-1-3 (2).