



*Aaron Nelson, AICP Director of Planning and Zoning
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West Fargo Planning & Zoning Commission Agenda
Monday, April 8, 2024 - 5:30 p.m.

- A. Call to Order
- B. Approval of Order of Agenda
- C. Approval of Minutes- March 12th, 2024
- D. Regular Agenda
 - 1. Public Hearing-A24-7 Zoning Ordinance Amendments to Title IV relating to nonconformities- McGillivray-Rivas
 - 2. Public Hearing- A24-8 Zoning Ordinance Amendments relating to temporary signs- Sankey
 - 3. A23-29 Nelson Acres 5th Addition, a request for access modification to a controlled access street at 225 40th Ave W (Lot 1, Block 1 of Nelson Acres 5th Addition)- McGillivray-Rivas
- E. Non-Agenda Items
- F. Adjourn from Regular Agenda
- G. Discussion Agenda
 - 1. Proposed revisions to Title IV Ordinances regarding the Planned Unit Development (PUD) zoning district.
- H. Adjourn from Discussion Agenda



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West Fargo Planning & Zoning Commission Meeting Minutes
Tuesday, March 12, 2024 - 5:30 p.m.

Members Present: Joe Kolb, Eric Dodds, Mike Thorstad, Kathi Schwan, Aleyna Leibfried, Dave Gust

Members Absent:

Others Present: Aaron Nelson, Lisa Sankey, Leslie McGillivray-Rivas, Kat McNamara, Breanna Siegler

Minutes Submitted by: Breanna Siegler, Office Manager

Meeting was called to order by Chair Kolb at 5:30pm. Commissioner Dodds motioned to approve the order of the agenda, Commissioner Leibfried seconded. No opposition. Motion passed.

Commissioner Leibfried moved and Commissioner Schwan seconded a motion to approve the minutes from February 13, 2024. No opposition. Motion passed.

Chair Kolb opened a public hearing for A24-1 Dakota Territory 14th Addition, a request for a Planned Unit Development at 1018 17 St E. to build townhouse style apartments (Lot 1, Block 1 of Dakota Territory 14th Addition) a continuation from February 13, 2024. City staff recommended approval of application subject to the conditions outlined in the staff report. Chair Kolb opened the floor for public comment. No public comment was brought forth. Chair Kolb closed the public hearing. Commissioner Gust motioned to approve with the 8 conditions listed by staff. Commissioner Thorstad seconded. No opposition. Motion passed.

Chair Kolb opened a public hearing for A24-4 Zoning Ordinance Amendments to Title IV relating to off-street parking. Chair Kolb asked for public comment. No public comment was brought forth. Chair Kolb closed the public hearing. Discussion held. Commissioner Dodds motioned and Commissioner Leibfried seconded to approve. No opposition. Motion passed.

Chair Kolb opened a public hearing for A24-5- Zoning Ordinance Amendments to Title IV relating to pool fencing. Chair Kolb asked for public comment. None was brought forth. Chair Kolb closed the public hearing. Commissioner Leibfried motioned to approve. Commissioner Gust seconded. No opposition. Motion passed.

Chair Kolb opened a public hearing for A24-6 Zoning Ordinance Amendments to Title IV relating to backyard chickens. Information regarding the chicken ordinance (Title XI) and a draft of the chicken permit was included in the agenda packet. Chair Kolb asked for public comment. None was brought forth; Chair Kolb closed the public hearing. Discussion held. Commissioner Dodds motioned to approve the proposed chicken ordinance amendments. Commissioner Gust seconded. No opposition. Motion passed.

Chair Kolb opened the floor for non-agenda items. None were brought forth. Commissioner Leibfried moved and Commissioner Dodds seconded adjournment from the regular agenda. No opposition. Motion passed and the regular agenda was adjourned 6:02at pm.

Chair Kolb opened the discussion agenda. Planning Director Nelson brought forth proposed revisions to Title IV Ordinances regarding general subdivision provisions, nonconformities, and temporary signs.

Chair Kolb adjourned from discussion agenda at 6:47pm.

STAFF REPORT

A24-7 Zoning Ordinance Amendments	
Zoning Ordinance Amendment 4-470 Nonconformities	
Applicant: City of West Fargo	Staff Contact: Leslie McGillivray-Rivas
Planning & Zoning Commission Introduction:	March 12, 2024
Planning & Zoning Commission Public Hearing:	April 8, 2024
City Commission Public Hearing & 1 st Reading	
City Commission 2 nd Reading	

PURPOSE:

Amendments to Chapter IV Zoning Ordinance specific to Nonconformities

DISCUSSION AND OBSERVATIONS:

- The primary reason for amending the nonconformities provisions of the zoning ordinance is to address homeowner concerns regarding the current inability to rebuild a nonconforming home if destroyed.
- The current restriction on reconstructing a nonconforming home which exists within the Sheyenne Corridor 100' building control line has been found to be a barrier for individuals to secure mortgage financing and, consequently, has created issues for individuals looking to buy or sell a nonconforming home (structure).
- The proposed amendment would create a new classification of nonconforming residential structure—called a "Compliant Structure"—which could be reconstructed if destroyed but would not be allowed to expand the nonconformity beyond what was existing.
- Given that there are known soil stability issues along the Sheyenne River Corridor, additional language has been added within the "Compliant Structure" section requiring that a soil analysis be conducted by a qualified professional engineer to demonstrate that the soils can accommodate the type of structure to be reconstructed within the 100' building control area.
- Lastly, the overall organization and text proposed in the proposed amendments section greatly improve readability with concise language for focus on intent and execution.

NOTICES:

Sent to: Notice in the newspaper and to City Departments

Comments Received:

- None Received

CONSISTENCY WITH COMPREHENSIVE PLAN AND OTHER APPLICABLE CITY PLANS AND ORDINANCES:

- The proposed amendments do not make major substantive changes to the existing ordinances and are consistent with the comprehensive plan.

RECOMMENDATIONS:

It is recommended that the City approve the proposed amendment.

STAFF REPORT

Attachments:

- Draft of the proposed updates to §4-470
- Current regulations for §4-470

4-470 Nonconformities

4-471 Intent

The intent of this Chapter 4-470 is to regulate the continued existence of lots, structures, and uses of land that came into existence legally, but owing to the adoption of this Ordinance and subsequent amendments, or to previously applicable ordinances, no longer comply with one or more requirements of this Title. All such situations are collectively referred to in this Chapter as “nonconformities.” It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. Nonconformities may continue until they are removed, and in some cases as described in this section, may be restored or replaced subsequent to damage or destruction.

This Chapter addresses the following types of nonconformities:

A. Nonconforming Lots

Nonconforming lots are lots that were legally created in accordance with zoning district minimum lot size and dimensional standards in effect at the time of their creation, but which, because of amendments to the zoning regulations, no longer comply with the minimum lot size or other dimensional standards of the zoning district.

B. Nonconforming Structures

Nonconforming structures are buildings or structures, other than compliant structures, that were established in accordance with all zoning regulations in effect at the time of their establishment, but which, because of amendments to the zoning regulations, no longer comply with the dimensional standards of the underlying zoning district.

C. Compliant Structures

Compliant structures are single-family and two-family residential structures (including single-family townhomes on individual lots) that were established in accordance with all zoning regulations in effect at the time of their establishment, but which, because of amendments to the zoning regulations, no longer comply with the dimensional standards of the underlying zoning district(s).

D. Nonconforming Uses

Nonconforming uses are uses that were established in accordance with zoning regulations in effect at the time of their establishment, but which, because of amendments to the zoning regulations, no longer comply with the use regulations of the underlying zoning district.

4-472 Regulations Applicable to All Nonconformities

A. Authority to Continue

Nonconformities shall be allowed to continue in accordance with the regulations of this Chapter.

B. Determination of Nonconforming Status

The owner of the property containing the nonconformity shall bear the burden of demonstrating that the lot, structure, use, or site feature was lawfully established.

C. Minor Repairs and Maintenance

1. Minor repairs and maintenance of nonconformities are permitted and encouraged, provided that such repairs and maintenance are in compliance with this Code and that no repair or maintenance work shall increase the extent of nonconformity.
2. If a nonconformity becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district(s) in which it is located. However, nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

D. Change of Ownership or Tenancy

Changes in ownership, tenancy, or management of property with an existing nonconformity may occur, but such nonconformities shall continue to be subject to the standards of this Chapter 4-470.

4-473 Nonconforming Lots

A nonconforming lot may be used or continue in use so long as it remains otherwise lawful, subject to the following provisions. This includes compliance with applicable yard dimensions and requirements unrelated to lot area or lot width, which shall only be adjusted by means of a variance approval obtained from the Board of Adjustment.

4-473.1 Lot with Buildings or Structures

An existing building or structure on a nonconforming lot may be expanded provided that any such expansion does not increase the existing nonconformity, and any expansion or new construction shall be in full compliance with all applicable zoning district and dimensional standards of this Ordinance.

4-473.2 Lot Merger

- A. If two or more lots or combinations of lots and portions of lots with continuous frontage under single ownership are of record upon the adoption date or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width, then the lots involved shall be considered as one undivided parcel for the purposes of this Ordinance.
- B. No portion of such a parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any parcel be divided in a manner that creates a lot with width or area below the requirements stated in this Ordinance.

4-474 Nonconforming Structures

A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No such nonconforming structure may be enlarged or altered in any way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
- B. Should such nonconforming structure or nonconforming portion of structure be damaged or destroyed by any means to the extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.
- C. Nonconforming structures may not be moved for any reason for any distance whatever unless the move or relocation will bring the structure into compliance with all applicable zoning district regulations.

4-475 Compliant Structures

- A. Notwithstanding the nonconforming structures provisions of Section 4-474, single-family and two-family residential structures (including single-family townhomes on individual lots) that were established in accordance with all zoning regulations in effect at the time of their establishment, but which, because of amendments to the zoning regulations, no longer comply with the dimensional standards of the underlying zoning district(s) shall be deemed compliant Structures, provided the structures do comply with all other applicable zoning regulations.
- B. Should a compliant structure be damaged or destroyed by any means, it may be replaced or rebuilt to occupy the same location on the lot and the same building footprint it occupied prior to the damage or destruction, provided that the City may require geotechnical analysis prior to issuing a building permit for the reconstruction of a compliance structure to determine if the property upon which the structure is located is stable and can support such structure.
- C. Existing compliant structures may be enlarged or expanded, provided the alteration is in compliance with all applicable zoning standards and does not increase the nature of the nonconformity. The determination of whether a proposed expansion is in compliance with all applicable zoning standards shall be made by the Planning Director.

4-476 Nonconforming Uses

4-476.1 Nonconforming Uses Conducted Within a Building or Structure

A nonconforming use conducted within a building or structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. An existing structure that houses a nonconforming use shall not be enlarged, extended, constructed, reconstructed, moved, or structurally altered, unless the use in the structures changes to one that is permitted in the district in which it is located.
- B. A nonconforming use may be expanded throughout any parts of an existing building that were manifestly arranged or designed to be occupied by the use at the time of adoption or amendment of this Ordinance; however, the use shall not be extended to occupy any land outside such building.

- C. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may request from the City Commission conditional use approval to be changed to another nonconforming use, provided that the City Commission finds, either by general rule or through findings in the specific case, that the proposed use is equally appropriate or more appropriate in the district than the existing nonconforming use. In permitting such change, the City Commission may require appropriate conditions and safeguards in accord with the provisions of this Ordinance.
- D. Once a permitted use replaces a nonconforming use in any structure, or structures and land in combination, all uses thereafter shall conform to the regulations for the district, and no nonconforming use may thereafter be resumed.
- E. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months, or for 18 months during any three-year period (except when government action impedes access to the premises), the nonconforming use shall not be resumed, and the structure, or structure and premises in combination, shall thereafter be used in conformity with the regulations of the district in which it is located.
- F. Should a structure containing a nonconforming use be damaged or destroyed by any means to the extent of more than 50 percent of its replacement cost at time of destruction, the destruction shall eliminate the nonconforming status of the use. Upon reconstruction, any use established in the structure shall thereafter be in conformity with the regulations of the district in which it is located.

4-476.2 Nonconforming Uses Conducted Outside Buildings or Structures

A nonconforming use of land conducted outside buildings or structures may be continued so long as it remains otherwise lawful, provided that the nonconforming use shall not:

- A. Be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of this Ordinance.
- B. Be moved or relocated in whole or in part to any portion of the lot or parcel other than that which the use occupied upon the effective date of this Ordinance.
- C. Cease operation for any reason for a period of six consecutive months, or for 18 months during any three-year period (except when government action impedes access to the premises) or more. If the use does cease for a period of six consecutive months, or for 18 months during any three-year period, it shall be considered permanently discontinued, and any subsequent use shall be in conformity with the regulations of the district in which it is located.
- D. Cause to be constructed or erected on the same lot occupied by the nonconforming use any new or additional structure that does not conform to all applicable requirements of this Ordinance.

4-476.3 Exception for Conditional Uses

Any use which is allowed in a specific district as a conditional use shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.

4-470. NONCONFORMING LOTS, USES OF LAND, STRUCTURES, AND USES OF STRUCTURES.

Subsections:

- 4-471. Intent.
- 4-472. Nonconforming Lots of Record.
- 4-473. Nonconforming Uses of Land (or Land with Minor Structures Only).
- 4-474. Nonconforming Structures.
- 4-475. Nonconforming Uses of Structures or of Structures and Premises in Combination.
- 4-476. Repairs and Maintenance.
- 4-477. Uses Allowed as Conditional Uses Not Nonconforming Uses.

4-471. INTENT. Within the districts established by this Ordinance or amendments that may later be adopted there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

4-472. NONCONFORMING LOTS OF RECORD. In any district in which single-family dwellings are permitted, a single-family

dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained through action of the Board of Adjustment. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width and the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this Ordinance.

4-473. NONCONFORMING USES OF LAND (OR LAND WITH MINOR STRUCTURES ONLY). Where at the time of passage of this Ordinance lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, and where such use involves no individual structure with a replacement cost exceeding \$1,000, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
2. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
3. If any such nonconforming use of land ceases for any reason for a period of more than 30 days, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located;
4. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

4-474. NONCONFORMING STRUCTURES. Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the

structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in any way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to the extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

4-475. NONCONFORMING USES OF STRUCTURES OR OF STRUCTURES AND PREMISES IN COMBINATION. If lawful use involving individual structures with a replacement cost of \$1,000 or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be allowed in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located. However, accessory buildings to residential uses may be enlarged, extended, constructed, reconstructed, moved or structurally altered provided that these improvements shall meet the yard and lot coverage requirements of the residential district, or in the case of accessory buildings located in commercial or industrial districts the lot coverage may not exceed fifty percent (50%) for buildings and may not exceed seventy-five percent (75%) impervious surfaces. Setback and building height requirements for accessory buildings located in commercial or industrial districts will follow the requirement of the C: Light Commercial District.

Source: Ord. 934, Sec. 1 (2012)

2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may as a conditional use be changed to another nonconforming use provided that the City Commission, either by general rule

or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate in the district than the existing nonconforming use. In permitting such change, the City Commission may require appropriate conditions and safeguards in accord with the provisions of this Ordinance;

4. Any structure, or structures and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;
5. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months or for 18 months during any three-year period (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located;
6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50 percent of the replacement cost at the time of destruction.

Source: Ord. 501, Sec. 12 (1996).

4-476. REPAIRS AND MAINTENANCE. On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding 25 percent of the current replacement cost of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

4-477. USES ALLOWED AS CONDITIONAL USES NOT NONCONFORMING USES. Any use which is allowed in a specific district as a conditional use shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.

CITY OF WEST FARGO PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT

A23-23 ZONING ORDINANCE AMENDMENTS	
Zoning Ordinance Amendment to Title IV of the City Ordinances (Zoning Regulations)	
Applicant: City of West Fargo	Staff Contact: Lisa Sankey
Planning and Zoning Commission Public Hearing:	04-08-2024
City Commission Public Hearing & 1 st Reading:	
2 nd Reading:	

PURPOSE:

The purpose of the proposed amendment is to clarify language regarding temporary signs

DISCUSSION AND OBSERVATIONS:

- The West Fargo City Commission has directed the City Attorney and staff to amend the sign code regulations to better regulate the use of semi-truck trailers as temporary signs. The proposed amendments seek to prohibit the use of equipment/vehicles/trailers as signage unless approved and permitted as a Portable Sign or High Impact Sign.
- The amendments also seek to clarify standards for temporary signs.
- The ordinance would clarify timeframes for placement of temporary signs. Four month period commencing on the first day the sign is erected.
- Clarification that temporary signs are restricted to less than 12 square feet in area. This size restriction already exists in the definition section of the ordinance regarding temporary signs.
- Additional language regarding Holiday signs conforming to all requirements of the ordinance.
- Clarifying language under prohibited signs regarding signs attached to equipment or motor vehicles.
- Discussion during the last Planning Commission meeting on March 12, 2024, related to trailers being used on job sites for storage. While some job sites may contain trailers with contractor or business logos affixed for storage of equipment and materials during construction, the purpose of the text amendment relates to using trailers for the sole purpose of off premise advertising on lots not approved for that use, nor for standalone storage.
- Specific text amendments are attached to this staff report.

NOTICES:

Sent to: Notice in the newspaper and to City Departments.

Comments Received:

- None to date.

CONSISTENCY WITH COMPREHENSIVE PLAN AND OTHER APPLICABLE CITY PLANS AND ORDINANCES:

- The proposed amendments do not make major substantive changes to the existing ordinances and are consistent with the Comprehensive Plan. The proposed amendments are consistent with the Comprehensive Plan.

STAFF REPORT

RECOMMENDATION:

It is recommended that the City approve the proposed amendments on the basis that they are consistent with City plans and ordinances.

Attachments

- Proposed text amendment regarding temporary signs (updated ordinance 1240)

ORDINANCE NO. 1240

AN ORDINANCE TO AMEND AND REENACT SECTION 4-460.3, SUBSECTION 8 OF SECTION 4-460.7, AND SECTION 4-460.8 OF THE REVISED ORDINANCES OF 1990 OF THE CITY OF WEST FARGO RELATING TO TEMPORARY SIGNS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WEST FARGO, NORTH DAKOTA:

SECTION 1. Section 4-460.3 of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, is hereby amended and reenacted by amending the definition of “Banners” to read as follows:

BANNERS. Attention getting devices which resemble flags and are of a paper, cloth, or plastic-like consistency, or similar material.

SECTION 2. Subsection 8 of Section 4-460.7 of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, is hereby amended and reenacted to read as follows:

4-460.7. GENERAL SIGN PROVISIONS.

* * *

8. The use of ~~Temporary~~ Signs such as banners, inflatable signs, tethered balloons and/or similar devices may be erected on the premises of an establishment for special events, provided that such signs may not be displayed for more than thirty (30) calendar days within any four (4) month period. Said four (4) month period shall commence on the first day that the temporary sign is erected. ~~Violations for temporary signs must be corrected within seven (7) days of written notification.~~ Banners may be considered permanent signs provided they are constructed of canvass or other durable fabric enclosed within a cabinet or frame which is permanently and entirely mounted on the wall of a building and comply with the sign regulations set forth herein. Temporary signs are restricted to less than twelve (12) square feet in area.

SECTION 3. Section 4-460.8 of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, is hereby amended and reenacted to read as follows:

4-460.8. SIGNS NOT REQUIRING PERMIT AND PROHIBITED SIGNS.

1. Permitted Signs. The following signs are allowed without a permit; however are included within the allowable sign area, unless otherwise indicated.

- a. Public Signs. Signs of a public, noncommercial nature, including safety signs, directional signs to public facilities, trespassing signs, traffic signs, signs indicating scenic or historical points of interest, memorial plaques and the like, when erected by or on behalf of a public official or employee in the performance of official duty.
- b. Identification Signs. Identification signs not exceeding one (1) square foot for single and two-family structures and sixteen (16) square feet for multiple family structures.
- c. Informational Signs. Informational Signs not exceeding twenty-four (24) square feet. One informational sign shall be allowed for each business and is not included within the allowable sign area, provided it does not exceed twenty-four (24) square feet and is fastened to an existing sign structure or building, or is a menu board for a restaurant.
- d. Directional Signs.
 - (1) On-Premise Signs. Shall not be larger than four (4) square feet. The number of signs shall not exceed four (4) unless approved by the Planning and Zoning Commission, and shall not be included within the allowable signage.
 - (2) Off-Premise Signs. Shall be limited to situations where access is confusing and traffic safety could be jeopardized or traffic could be inappropriately routed through residential streets. The size of the sign shall be approved by the City Commission and shall contain no advertising.
- e. Integral Signs. Integral signs shall not be included within the allowable sign area.
- f. Campaign Signs. Campaign signs not exceeding thirty-two (32) square feet for any one sign, or for all signs on any lot. The sign must contain the name and address of the person responsible for such sign, and that person is responsible for its removal.
- g. Flags and Insignia. Flags and insignia of any government except when displayed in connection with commercial promotion.
- h. Holiday Signs. Signs or displays which contain or depict a message pertaining to a religious, national, state or local holiday and no other matter, and which are displayed for a period not to exceed forty-five (45) days in any calendar year, provided that the type of sign conforms to all requirements of this Ordinance.
- i. Construction/Development Signs. A non-illuminated construction or development sign confined to the site of the construction, alteration, repair

or development. Such sign must be removed within two (2) years of the date of issuance of the first building permit on the site or when the particular project is completed, whichever is sooner, unless said sign is intended to be a permanent identification sign for the development and is approved as a conditional use. One sign shall be permitted for each street the project abuts. No sign may exceed thirty-two (32) square feet in the R-1E, R-1A, R-1, R-4 and R-5 Districts, or sixty-four (64) square feet in the A, R-2, R-3, C, EMU, DMU, HC, LI and M districts unless otherwise approved as a conditional use.

- j. Roadside Market Signs. Signs advertising produce grown and sold on the premises on which they are located, provided such signs shall not exceed thirty-two (32) square feet in area or be displayed for a period exceeding six (6) months of any calendar year.
- k. “For Sale” and “To Rent” Signs. “For Sale” and “To Rent” signs shall be permitted subject to the following regulations:
 - (1) Six (6) or Less Residential Dwelling Units. The following applies to the for sale or for rent of a single family residence or where six (6) or less dwelling units (or lots for residential development) are for sale or rent: No more than one such sign per lot, except on a corner lot (2) signs, one facing each street, shall be permitted. No such signs shall exceed sixteen (16) square feet in area, or be illuminated. Each such sign must be devoted solely to the sale or rental of the property being offered and must be removed immediately upon the sale or rental of the property. Each sign must be placed only upon the property offered for sale or rent.
 - (2) Seven (7) or More Residential Dwelling Units. Where more than six (6) dwelling units (or lots for residential development purposes) are offered for sale or rental by the same party, signs advertising such sale or rental may be constructed therefore in any district. There shall be permitted one sign facing each public street providing access to the property being offered. Each such sign shall not exceed twenty-four (24) square feet in area; shall be located at least one hundred (100) feet from any preexisting home; and shall be removed within one year from the date of building permit issuance, or when less than six (6) units remain for sale or rent, whichever is less. Said sign shall fully comply with the setback requirement for the zoning district in which the property is located.
 - (3) Industrial or Commercial Property. In the event of an industrial or commercial sale or rental of real property, there shall be permitted one sign facing each public street providing access to the property being offered. Each sign shall not exceed thirty-two (32) square feet in area for signs located within fifty (50) feet of the front property line, or sixty-four (64) square feet in area if located fifty (50) or more

feet from the front property line and must be devoted solely to the sale and rental of the property being offered and must be removed immediately upon the sale or rental of the last property offered at that location. Said sign may not be located closer to the property line than fifty (50) percent of the setback required within the particular zoning district in which the property is located.

- l. Rummage (Garage) Sale Signs. Rummage sale signs shall not be posted until one day before the date of the sale and shall be removed within one (1) day after the end of the sale and shall not exceed six (6) square feet. Rummage sale signs shall not be located in any public right-of-way, or on utility poles or equipment.
 - m. Signs relating to official local, state or federal government agencies and City entrance signs.
 - n. Window Signs. Window signs shall not exceed fifty (50) percent of the total glass area of the face of the building on which the window in which they are displayed and shall not be included within the allowable sign area.
 - o. Small Signs. Small signs which do not exceed one (1) square foot in area shall not be counted as part of the allowable sign area, provided the signs are not part of a larger sign scheme for the building or property.
 - p. Pennants. Pennants may be erected on the premises of an establishment in commercial and industrial zoning districts which are not in the "Corridor Overlay District. Pennant displays must be properly maintained as to not create a safety hazard, nor shall they detract from the character of adjacent properties and other property in the district. The rope, wire or string used to display the pennants must be fastened securely and remain taut.
2. Prohibited Signs. The following signs are prohibited:
 - a. Off-Premise Advertising Signs with the following exceptions:
 - (1) Approved signs within a commercial or industrial planned unit development, advertising businesses within the PUD.
 - (2) Signs as provided for in the district provisions.
 - b. ~~Advertising or business signs~~ Signs on or attached to equipment such as semi-truck trailers or motor vehicles (other than High Impact Signs and Portable Signs, as regulated by this Ordinance) where signing is a principal use of the equipment on either a temporary or permanent basis, unless otherwise approved as a permanent sign. ~~Such signs may be used for special events on site and may not be displayed for more than fourteen (14) calendar days within any four (4) month period.~~

- c. Beacon, motion and flashing signs, except reader boards, time and temperature signs and barber poles.
- d. Roof Signs. Except that a business sign may be placed on the fascia or marquee of a building, provided it does not extend above the highest elevation of the building, excluding chimneys.
- e. Business signs which advertise an activity, business, product or service no longer produced or conducted on the premises upon which the sign is located. Where the owner or lessor of the premises is seeking a new tenant, such signs may remain in place for not more than thirty (30) days from the date of vacancy.
- f. Portable signs, banners, inflatable signs, tethered balloons and similar devices except as provided in this chapter.
- g. Signs which are tacked on bridges, fire hydrants, official public signs, trees, fences, utility poles or in any portion of a public right-of-way; temporary signs fastened to sign structures, parking lot light poles or other structures; and temporary signs secured by wires, stakes or weights.
- h. Bench signs except by special permit of the City Commission.
- i. Home occupation signs except as part of an identification sign for the residence, which does not exceed one (1) square foot in area and is mounted flush against the buildings.
- j. Pennants within the "Corridor Overlay District."

SECTION 2. Effective Date. This ordinance shall be in full force and effect from and after the date of its final passage and publication.

President of Board of City Commissioners
of the City of West Fargo, North Dakota

ATTEST:

City Auditor

Date of First Reading:

Date of Second Reading:

Date of Publication:

DRAFT STAFF REPORT

A23-29		Access Request
Nelson Acres 5 th Addition (SheyWest Garden Center)		
Legal Description: Block 1, Lot 1 Nelson Acres 5th		
Applicant: Jodi Kallias		Staff Contact: Leslie McGillivray-Rivas
Planning & Zoning Commission:		April 8, 2024
City Commission:		

PURPOSE:

Requested right of way modification for access from a controlled access street. Review of two conceptual traffic design amendments within the 40th Avenue W. Right of Way

STATEMENTS OF FACT:

Land Use Classification:	G-2 Sub-Urban-Growth Sector
Existing Land Use:	Planned Unit Development
Current Zoning District(s):	Planned Unit Development
Zoning Overlay District(s):	CO: Corridor Overlay District
Total area size:	2.25 Acres
Adjacent Zoning Districts:	North – R1A: Single Family Dwelling South – R-R: Rural Residential East – R-1E: Rural Estate West – R-R: Rural Residential
Adjacent street(s):	40 th Avenue West (Arterial): North Sheyenne Street (Arterial): East
Adjacent Bike/Pedestrian Facilities:	Multi-Use Path along 40 th Avenue West
Available Parks/Trail Facilities:	Eagle Run Park on North Side of 40 th Avenue West

DISCUSSION AND OBSERVATIONS:

- Section 2-0119 of the City Ordinances requires City Commission approval upon recommendation of the Planning & Zoning Commission for access to arterial and collector roadways. This includes modifications to such access.
- The applicant is requesting such approval in order to modify 40th Avenue West to accommodate vehicular U-turns in proximity to the 4th Street intersection, thereby allowing additional means of access to the property, specifically for westbound traffic.
- SheyWest garden center's business operations began in 2020. The approved entrance to the site is in the Northwest corner of the property, accessing the eastbound lane of 40th Avenue West.
- 40th Avenue West is an arterial road containing two divided lanes, turn lanes and a separation created by a raised median. There currently is no legal means for westbound traffic to directly enter SheyWest from 40th Avenue West.
- SheyWest customers have been observed by the applicant and others attempting illegal and otherwise ill-advised turning movements from surrounding city streets (4th Avenue West/Sheyenne Street) and through city owned property.

DRAFT STAFF REPORT

- On March 18, 2024, the City Commission determined that no means of access will be granted to SheyWest through lands owned by the City of West Fargo.
- Two conceptually illustrated traffic access modifications to 40th Avenue West accompany this application, the design of which occur only within the public right of way.
- The applicant seeks the endorsement of the Planning & Zoning Commission to recommend that an engineering study be completed by a qualified traffic engineer. Components of the study could include, but not be limited to evaluation of the use of U-Turns as a means of access to SheyWest, recommended signage, any alterations/relocation of the multiuse trail, relocation of lighting fixtures and stormwater inlets along with review of potential traffic conflicts/safety concerns.
- Based on the study outcome, it is anticipated that SheyWest could petition the City Commission for a Traffic Improvement District to be created and approved.

CONSISTENCY WITH COMPREHENSIVE PLAN AND OTHER APPLICABLE CITY PLANS AND ORDINANCES:

- The 03-02-2020 approval of the Planned Unit Development notes the following: The application is a mix of commercial for the neighborhood and section that is otherwise completely developed with residential and therefore the application would be strongly supported by the Comprehensive Plan by providing a mix of uses.
- The 2045 Metropolitan Transportation Plan (MTP) adopted by the Metropolitan Council of Governments (Metro COG) provides goals that are consistent with the comprehensive plan, West Fargo 2.0. Specific applicable goals include: 01. Maintain the existing transportation system, 05. Provide safe and secure transportation, 06. Support economic vitality.

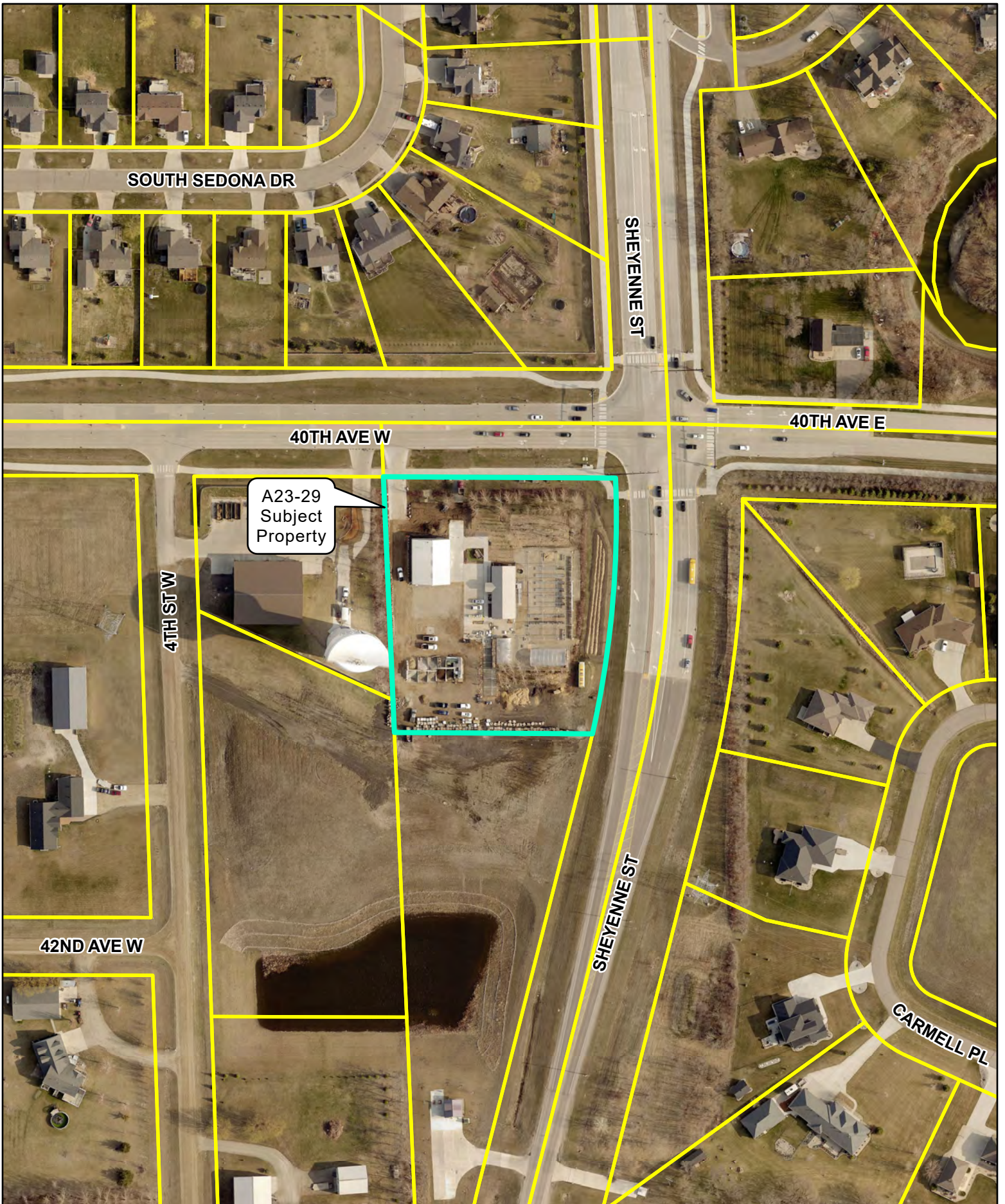
RECOMMENDATIONS:

It is recommended that the City approve the proposed modification 40th Avenue W in concept with the following conditions:

1. Traffic modifications will be determined based on the results of an engineering study.
2. The applicant shall be responsible for all costs associated with the study and any improvements to be constructed as a result.

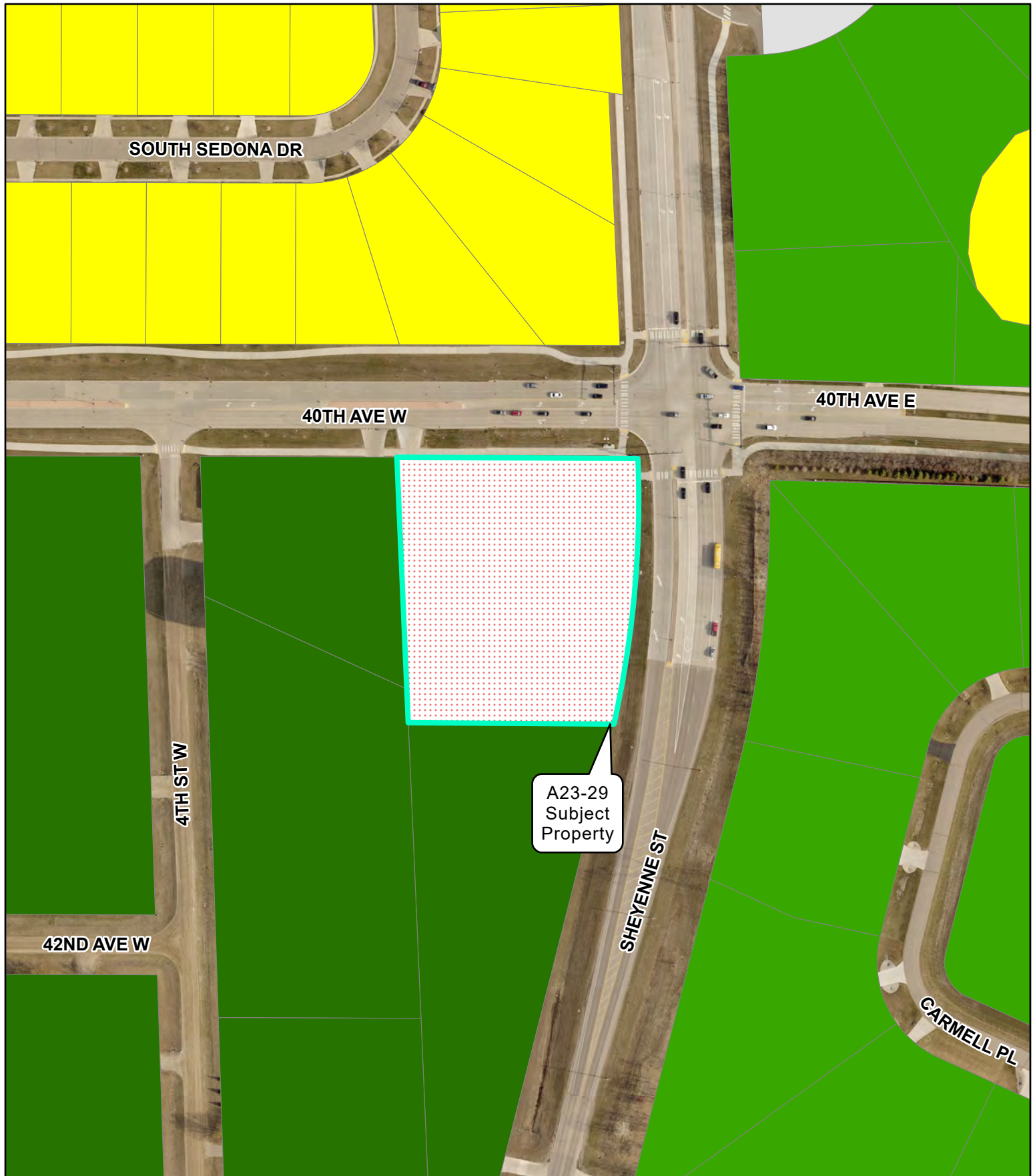
Attachments:

- Location Map
- Zoning Map
- Application/Request
- Conceptual Traffic Modification Alternatives 1 & 2



Features

 Agenda Zone  Lots



A23-29
Subject
Property



West Fargo Zoning

- A: Agricultural
- C: Light Commercial
- C-OP: Commercial Office Park
- DMU: Downtown Mixed Use
- EMU: Entertainment Mixed Use
- HC: Heavy Commercial

- LI: Light Industrial
- M: Heavy Industrial
- P: Public
- PUD: Planned Unit Development
- R-L1A: Large Lot Single Family Dwelling
- R-1A: Single Family Dwelling
- R-1: One and Two Family Dwelling

- R-1SM: Mixed One and Two Family Dwelling
- R-2: Limited Multiple Dwelling
- R-3: Multiple Dwelling
- R-4: Mobile Home
- R-5: Manufactured Home Subdivision
- R-1E: Rural Estate
- R-R: Rural Residential



0

150

300

US Feet



PLANNING AND ZONING APPLICATION

Please complete the form and send with required documents to:
West Fargo City Hall, Attn: Planning
800 4th Avenue East Ste 1, West Fargo ND 58078

☒ Administrative Review (Staff, P&Z, City Commission)
☐ Conditional Use Permit
☐ Planned Unit Development (PUD)
☐ Provisional Use Permit
☐ PUD Amendment
☐ Minor PUD Modification
☐ Re tracement Plat

☐ Rezoning
☐ Right-of-Way Dedication
☐ Right-of-Way Vacation
☐ Simple Lot Split
☐ Site Plan Review
☐ Subdivision (Original)
☐ Subdivision (Replat)

☐ Subdivision Amendment
☐ Variance (Subdivision)
☐ Variance (Zoning)
☐ Zoning Amendment (Map)
☐ Zoning Amendment (Ord)

Fee: _____ Fee Paid ☐ Application #: _____ Date: _____

Applicant: SheyWest, LLC	Email: accounting@sheywest.com	Phone: (701)929-5643
Owner: Jodi Kallias	Email: jodi@sheywest.com	Phone: (701)566-2757
Address: 225 40th Ave W, West Fargo, ND 58078		

Legal Property Description: LOT 1 BLK 1 NELSON ACRES 5TH

Present Zoning Classification: PUD

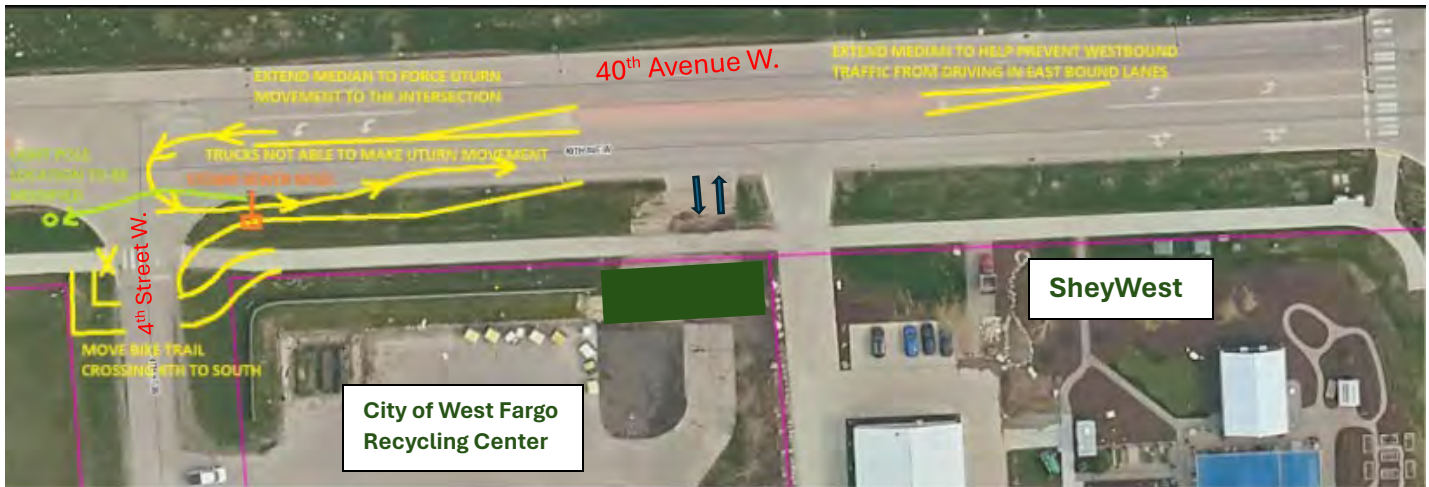
Existing Use: Garden Center

Briefly describe the reasons for the request: We are looking to have the median on 40th Ave W modified to allow a u-turn west of our intersection and at or east of the intersection with 4th St W. This might require a bulb into the boulevard or also a dedicated turn lane into our facility if the u-turn option is not favorable. We appreciate the consideration to help make the entrance safer for our store traffic.

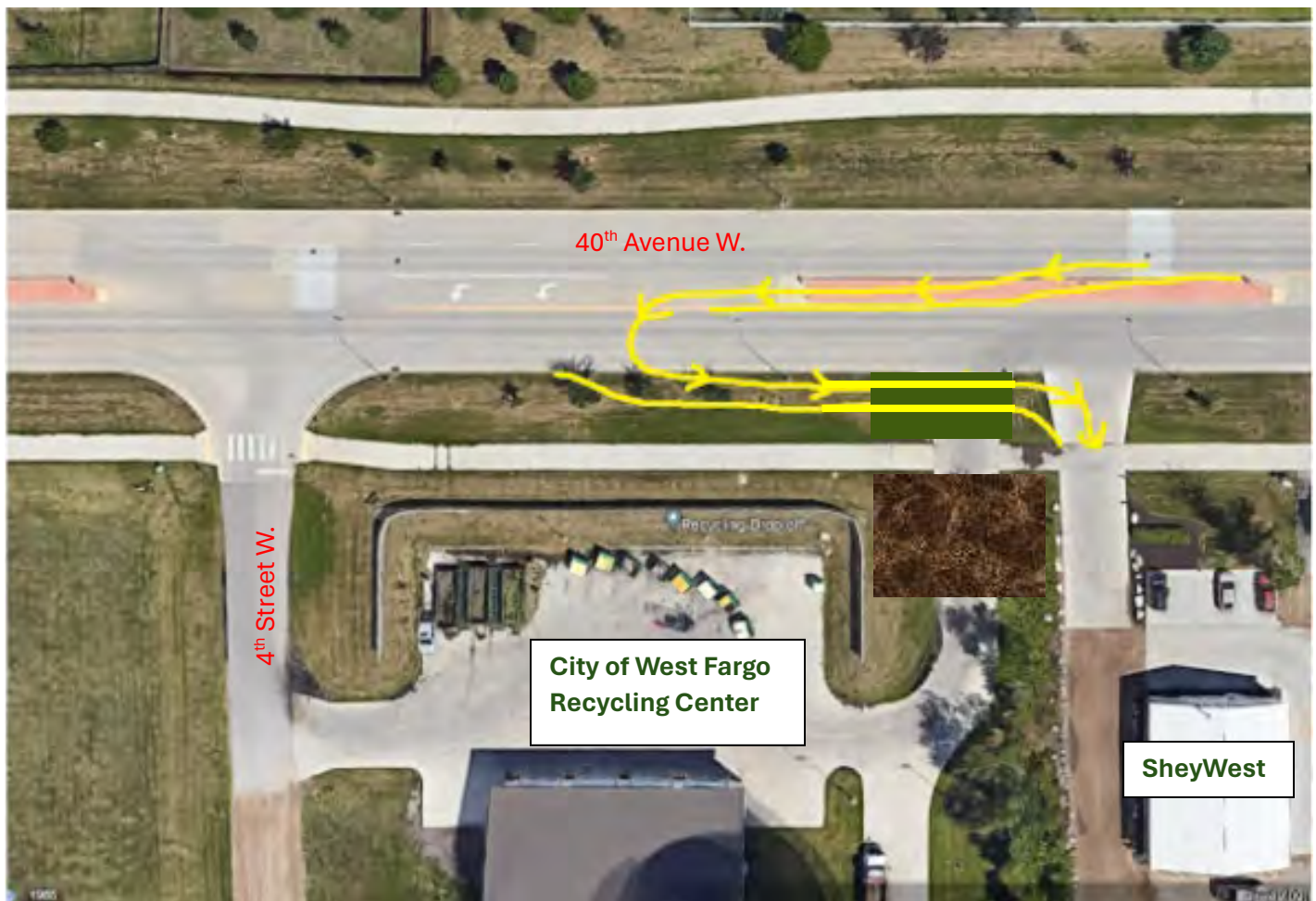
SIGN HERE: Jodi Kallias

NOTE: If the applicant is not the same as the owner, the owner should sign the application or submit a letter authorizing the applicant to proceed with the application.

Access Alternative 1



Access Alternative 2



MEMORANDUM

TO: West Fargo Planning & Zoning Commission
FROM: Aaron Nelson, Planning Director *AN*
DATE: April 5, 2024
SUBJECT: Discussion on Proposed Revisions to Title IV Ordinances Regarding Planned Unit Development (PUD)

Targeted text amendments to Title IV zoning & subdivision ordinances were identified as a short-term project need within the West Fargo Planning Needs Assessment Action Plan in 2023. Staff is continuing to work on a series of proposed Title IV ordinance amendments which will first be brought forth for introduction and discussion purposes at least one month prior to inclusion on the regular Planning & Zoning Commission agenda as an actionable item.

At the April 8 meeting, staff will provide an overview of proposed text amendments to the Planned Unit Development (PUD) zoning district.

The Planned Unit Development (PUD) is unique in that it is both a zoning district as well as a type of development plan. PUD zoning districts are inextricably linked to corresponding PUD development plans (i.e., “Concept Plans” and “Detailed Development Plans”) in that no rights of development apply to a PUD district other than those expressly included in of the approved PUD development plans.

While the overall intent and purpose of the PUD remains the same, staff is proposing modification in order to emphasize justification for PUD proposals, streamline the manner in which they are reviewed and approved, and clarify the standards and documentation which establish and constitute an approved PUD.

In summary, proposed amendments include:

- Reclassification of the PUD from a *base* zoning district to an *overlay* zoning district.
- Modification of approval process.
- Require applicants to demonstrate public benefit of proposed PUD
- Specification of standards eligible for modification by PUD
- Addition of criteria of approval for PUD Detailed Development Plan.
- Clarify how phased PUDs and amendments are handled.

Attachments

- Proposed amended §4-432 – PUD District Standards
- Existing §4-432 – PUD District Standards



Contents

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4-432 "PUD" – Planned Unit Development Overlay

4-432.1 Overview & Intent

- A. The Planned Unit Development (PUD) Overlay is both an overlay zoning district as well as a development plan. PUD Overlay districts are inextricably linked to PUD development plans (Concept Plans and Detailed Development Plans) in that no rights of development apply to a PUD Overlay district other than those expressly included in the approved PUD development plans.
- B. The Planned Unit Development (PUD) Overlay is established to allow greater development design flexibility than would otherwise be allowed through strict application and interpretation of the standards and requirements of this Title IV. This flexibility is offered to:
 - 1. Promote innovative development that achieves higher standards of site and building design;
 - 2. Encourage sustainable development that conserves energy, materials, and makes efficient use of land;
 - 3. Preserves and enhances desirable site characteristics such as natural topography, scenic features and open spaces;
 - 4. Provide the developer reasonable assurance of project approval before extensive expenditure on project design costs, while providing City officials with assurances that the project will retain the character envisioned at the time of approval.
- C. The benefits offered to the city in exchange for the flexibility allowed by approval of a PUD are intended to be significant enough to justify the modifications of the standards required under base district regulations. These benefits may include but are not limited to:
 - 1. Implementation of City goals or initiatives as identified within the Comprehensive Plan.
 - 2. Efficient use of public services and infrastructure.
 - 3. High-quality site and/or building design, that features best practices for such things as on-site storm water management, green building materials, or enhanced water and/or energy efficiency;
 - 4. Development that features a high-quality mix of housing types to promote enhanced housing choice and affordability;
 - 5. Preservation and/or protection of areas of significant natural resources (wetlands, bird habitat, stands of mature trees), beyond the requirements of the base zoning regulations;
 - 6. A mix of uses that supports a complete neighborhood, and features compact design to enable walkability;
 - 7. Enhanced amenities, such as community gathering areas, open space, parkland, connections to/provision of walking and biking trails;

4-432.2 General Provisions

A. Applicability

A PUD Overlay may be requested on any parcel that meets the minimum land area requirement described in subsection 4-432.2.C below, where particular design, dimensional, or use combinations cannot be accommodated by any of the City's

conventional base zoning districts. A PUD Overlay shall not be used to pursue a site-specific solution for a single issue that can be resolved through an administrative procedure authorized under this title, such as a rezoning, CUP, or subdivision.

B. Authority to Initiate Application

A PUD Overlay application may only be filed in the name(s) of the recorded owner(s) of property included in the development, or by holder(s) of an equitable interest in the property. However, before approval of a PUD Overlay can be obtained, the applicant must show evidence of full ownership interest in the land (legal title or the execution of a binding sales agreement). The entire project must be under single ownership in order for the final development plan to be approved.

C. Minimum Land Area Required

The tract of land for which a PUD Overlay is proposed shall be a minimum of 2 acres. Areas of less than 2 acres may be considered if the applicant can show that waiving the minimum land area requirement is in the public interest, and that at least one of the following conditions is met:

1. Unusual physical features of the site or the surrounding neighborhood are such that development under a standard zoning district would not conserve the unique physical features of the site or would not allow functional or environmental compatibility with the surrounding neighborhood.
2. The site is adjacent to an area which has been developed under the provisions of a PUD District or Overlay, and will contribute to the amenities and functionality of the neighborhood.
3. The site is part of an urban redevelopment and/or spot renewal program, provided it does not conflict with the nature of the surrounding neighborhood.

D. Designation of Base Zoning District

A PUD Overlay application must specify a base zoning district. Additionally, the Overlay shall specify each instance in which a variation from the base district standards is proposed, along with the type or extent of variation being requested. Where a request to vary from a standard is not specifically included in the PUD Overlay application, the base district standard shall apply.

E. Variations to Standards

A PUD may be used to request variations to the following standards:

1. Permitted Uses
Any use which is permitted by this ordinance within the residential, commercial, or industrial districts may be requested permitted within the PUD, even when it would not be allowed in the base zoning district.
2. Dimensional Standards
Any dimensional standard, or combination of dimensional standards, including minimum lot size, setbacks, lot coverage limits, and maximum height.

3. Development and Design Standards

Building design requirements, or development standards including amount of parking, and landscaping.

4. Limitations

A PUD Overlay may not be used:

- a. For the sole purpose of increasing the allowed density of the base zoning district. In such a case, a rezoning shall be required.
- b. To request exemption from providing required public improvements such as streets, sidewalks, and stormwater management infrastructure.
- c. To request exemption from providing required application information, or to vary from compliance with standard application procedures.

4-432.3 Review and Approval Procedure

The PUD Overlay shall be processed in two stages. The first stage includes approval of the PUD Concept Develop Plan in conjunction with approval of a rezoning to PUD Overlay zoning district. The second stage includes approval of the PUD Detailed Development Plan. No rights of development are conveyed by the PUD Overlay until both of these stages are complete, as outlined by this ordinance.

A. **Approval of PUD Concept Plan and Zoning Overlay District**

The applicant shall submit to the City Planner an application for a PUD Overlay, along with proposed PUD Concept Plan, associated designs, sketches, basic site information, and an explanation of how the proposal contributes to general development objectives for the area and its relation to the policies of the City. The Planning and Zoning Commission shall review the PUD Overlay application and the Concept Plan for the total area of the proposed PUD Overlay, prior to final approval by the City Commission. In addition to the approval process outlined below, the standards of §4-540 also apply in relation to the establishment of the PUD Overlay zoning district.

1. **Application Submittal for PUD Concept Plan and Zoning Overlay District**

- a. The PUD application form shall be established by the City Planner and shall include at a minimum the following items:
 - (1.) A statement specifying the base zoning district proposed for the project, and a list of all standards of the base district that the PUD proposes to vary, along with a description of the extent of variation that is being requested.
 - (2.) A comprehensive description of the community benefit(s) the development will provide in exchange for flexibility from base zoning district standards.
- b. The Concept Plan shall include:

- (1.) A legal description of the property.
 - (2.) A narrative statement describing the general character of the intended development.
 - (3.) An accurate map of the project area showing the site and its proposed land uses, and the adjacent properties and their present or projected land uses.
 - (4.) The pattern of proposed land uses including the shape, size, and arrangement of proposed use areas, density, and environmental character.
 - (5.) The pattern of public and/or private streets.
 - (6.) Proposed open space and public sites.
 - (7.) Preliminary number, size, and concept of the proposed structures within each area.
 - (8.) A preliminary schedule of the anticipated sequence of sub-area development for the entire site area included in the PUD Overlay. See §432.3.C below for phased development requirements.
- c. Where applicable, a written statement outlining the ownership and maintenance responsibility of the common open spaces, access streets, roads, shared utilities and recreation areas and documentation of this responsibility. This may include a written agreement with the City of West Fargo providing that should the improvements set forth in the Concept Development Plan fail to be completed within eighteen (18) months after the initiation of construction, then and in that event the City of West Fargo shall be authorized to provide for the installation of the required improvements. The installation of improvements shall be paid for by utilization of and the levy of special assessment process, and as part of the agreement, the developer and any associated parties waive any rights to protest the special assessment.
- d. Coordination with Other Regulations:
- (1.) The PUD Overlay application constitutes an application for rezoning to the PUD Overlay zoning district. If the applicant proposes to modify or amend the base zoning district, however, a separate rezoning application will need to be submitted in addition to the PUD Overlay application. Such rezoning applications for the base zoning district may be reviewed concurrently with the PUD Overlay application.
 - (2.) If the PUD request applies to a parcel that has not been subdivided, subdivision review shall be carried out simultaneously with the review of a PUD Overlay application. Development plans submitted under this article shall be in a form which will satisfy the requirements of the subdivision regulations for preliminary and final plats.

2. **Staff Review**

Upon receipt of a complete application, the City Planner and applicable review agencies shall review the application. The City Planner shall prepare a staff report that reviews the application in relation to the Comprehensive Plan, the standards of and purpose of this Ordinance, and all other applicable requirements.

3. Planning and Zoning Commission Review

a. Public Hearing

A public hearing shall be held before the Planning and Zoning Commission after notice of the time and place has been published in the City's official newspaper for two consecutive weeks prior to the date of the public hearing.

b. Planning and Zoning Commission Recommendation

Following a public hearing, the Planning and Zoning Commission shall recommend to the City Commission approval, approval with conditions, or denial of the application upon consideration of the Comprehensive Plan, the standards of and purpose of this Ordinance, and all other applicable requirements.

4. City Commission Review

a. Public Hearing

A public hearing shall be held before the City Commission after notice of the time and place has been published in the City's official newspaper for two consecutive weeks prior to the date of the public hearing.

b. City Commission Decision

The City Commission shall approve or deny the application upon consideration of the Comprehensive Plan, the standards of and purpose of this Ordinance, and all other applicable requirements.

5. Effect of Approval of PUD Concept Plan

- a. City Commission approval of the PUD Concept Plan and Overlay zoning district shall establish the basic right to use the area in conformity with the application and Concept Plan as approved. However, this right is conditioned upon final approval of the accompanying Detailed Development Plan by the Planning & Zoning Commission, and shall not make permissible any of the requested variations from standards prior to that Commission's formal approval of the Detailed Development Plan.

B. Approval of PUD Detailed Development Plan

The Planning & Zoning Commission shall give final approval to the PUD Detailed Development Plan for overall site development, or for sub-areas of a phased PUD development.

1. Application Submittal for Detailed Development Plan

In order to secure final approval and designation as a PUD for a proposed site, the applicant shall submit to the City Planner:

- a. The PUD Detailed Development Plan application.
- b. A Detailed Development Plan of the entire site or for any area/sub-areas that will be developed upon approval of the Detailed Development Plan, which shall include:

- (1.) A copy of the development's approved subdivision plat including lot lines, easements, public rights-of-way, etc.
- (2.) Detailed site plan(s) and construction documents illustrating:
 - (a) Size, location, and arrangement of buildings including lot size, building spacing, setbacks, yards, etc.
 - (b) Parking areas, private and public streets, sidewalks, and other transportation facilities, including specification of pavement materials.
 - (c) Landscaping, screening, and final ground contours.
 - (d) Common open spaces and/or recreation areas.
 - (e) Sewer, water, and other utility lines.
 - (f) Garbage, dumpster, or refuse collection locations.
 - (g) Proposed signage.
 - (h) Building elevations.

2. PUD Detailed Development Plan Review Criteria

A PUD Detailed Development Plan may be approved by the Planning & Zoning Commission if it is determined by the Commission to be in substantial compliance with the approved PUD Concept Plan. The PUD Detailed Development Plan may be deemed to be in substantial compliance with the PUD Concept Plan so long as, when compared with the PUD Concept Plan, it does not result in:

- a. An increase in project density or intensity, including the number of housing units per acre or the amount of nonresidential floor area per acre;
- b. A change in the mix of housing types or the amount of land area devoted to nonresidential uses;
- c. A reduction in the amount of open space;
- d. Any change to the vehicular system that results in a significant change in the amount or location of streets, common parking areas, and access to the PUD;
- e. Any change determined by the Planning & Zoning Commission to represent an increase in development intensity; or
- f. A substantial change in the layout of buildings.

3. Staff Review

Upon receipt of a complete application, the City Planner and applicable review agencies shall review the application. The City Planner shall prepare a staff report that reviews the application in relation to the PUD Detailed Development Plan review criteria and all other applicable development standards.

4. Planning & Zoning Commission Review

The Planning & Zoning Commission shall approve or deny the application upon consideration of the PUD Detailed Development Plan review criteria and all other applicable development standards.

5. Effect of Approval & Expiration of Approval

Approval of a PUD Detailed Development Plan shall confer upon the applicant the right to develop the subject property in accordance with the approved PUD Detailed Development Plan. The right to develop in accordance with an

approved PUD Detailed Development Plan shall lapse and be of no further effect if construction of the PUD does not start within two (2) years of the effective date of approval of the PUD Detailed Development Plan or within the time-frame established by the City Commission during approval of the PUD Concept Plan, whichever is greater. In the event of such lapse of approval, the PUD Detailed Development Plan and PUD Overlay zoning classification shall be of no effect, and the property shall be developed solely in accordance with the underlying base zoning classification. In the event of lapse of approval pursuant to this subsection, the Planning and Zoning Commission may initiate action to remove the land from the PUD Overlay zoning district.

6. Appeal of Decision

Upon denial of an application for PUD Detailed Development Plan by the Planning & Zoning Commission, an applicant may appeal the decision to the Board of Adjustment in accordance with §4-560. Such appeal shall be made by the applicant within 10 days of denial by the Planning & Zoning Commission.

C. Phased Development Plans

Large or complex PUD projects may be proposed in phases over a period of time, or when a development consists of multiple properties that are initially under different ownership prior to development. In such an event, the applicant may seek approval for the entire project based on a Concept Plan, then follow up with a Detailed Development Plan for each subsequent sub-area at a later date, according to the following procedures.

1. The applicant shall initially submit to the Planning and Zoning Commission a PUD Overlay application, and Concept Plan that includes the entire final area of the project.
2. The application shall state that the Concept Plan is associated with a phased development, and that Detailed Development Plans will be submitted sequentially, according to the proposed preliminary schedule of sub-area development for the entire site area.
3. The PUD Overlay application and Concept Plan shall be reviewed and approved according to the procedure described in §4-432.3.A, Approval of PUD Concept Plan and Zoning Overlay District.
4. Each successive phase of development shall then submit and receive approval of a Detailed Development Plan, according to the procedure described in §4-432.3.B, Approval of PUD Detailed Development Plan, prior to proceeding with construction.

4-432.4 Amendments

Amendments to approved PUD Concept Plans, Detailed Development Plans, and PUD Overlays, may be approved in the same manner as provided for in §4-432.4.

4-432. "PUD" DISTRICT FOR PLANNED UNIT DEVELOPMENT DISTRICT

4-432.1. Statement of Intent. The provisions of the PUD District are established to provide comprehensive procedures and standards designed to allow greater flexibility, uniqueness, innovative design and energy conservation in the development or redevelopment of areas of the community by developing adjacent to, or by incorporating within a mixture of densities/intensities or use types. The benefits of the PUD are intended to be significant as to warrant modifications of the standards required under other district regulations. These provisions are further intended to promote conservation and more efficient use of land, higher standards of site and building design and the preservation and enhancement of desirable site characteristics such as natural topography, scenic features and open spaces. It is also intended that these provisions will give the developer reasonable assurance of ultimate approval before expending complete design monies while providing City officials with assurances that the project will retain the character envisioned at the time of concurrence.

Source: Ord. 476, Sec. 1 (1994).

4-432.2. Permitted Uses. Any use which is permitted by this ordinance within the residential, commercial or industrial districts shall be considered as potentially allowable within a PUD District.

Source: Ord. 476, Sec. 2 (1994).

4-432.3. Who May Apply--Ownership Requirements. An application for approval of a PUD shall be filed in the name(s) of the recorded owner(s) of property included in the development. However, the application may be filed by holder(s) of an equitable interest in such property. Before approval of a plan can be obtained, the applicant must show evidence of full ownership interest in the land (legal title or the execution of a binding sales agreement). The entire project must be in single ownership by the time the final development plan can be approved.

4-432.4. Minimum Areas Generally Required. The tract of land for which a PUD project is proposed shall be a minimum of 2 acres. Areas of less than 2 acres may qualify as a PUD project if the applicant can show that the waiving of this requirement is in the public interest and that at least one of the following conditions is met:

- a. Unusual physical features of the site or the surrounding neighborhood are such that development under a different zoning district would not conserve the unique physical features of the site or would not allow functional or environmental compatibility with the surrounding neighborhood.
- b. The site is adjacent to an area which has been developed under the provisions of a Planned Unit Development

District and will contribute to the amenity and functionality of the neighborhood.

- c. The site is part of an urban redevelopment and/or spot renewal program, provided it does not conflict with the nature of the surrounding neighborhood.

4-432.5. Coordination with Subdivision Regulations. It is the intent of this article that subdivision review be carried out simultaneously with the review of a Planned Unit Development and that the development plans submitted under this article be submitted in a form which will satisfy the requirements of the subdivision control regulations for preliminary and final plats.

4-432.6. Administrative Procedure. Administrative approval is to be obtained for a PUD project at two stages: (1) the Planning and Zoning Commission is to review and give preliminary approval to a Concept Development Plan for the total area of the proposed PUD District; and, (2) final approval is to be given to a Detailed Development Plan by the Planning and Zoning Commission and the City Commission for the total site development or for sub-areas of the proposed PUD District. Prior to these two steps, the prospective applicant should submit to the Planning and Zoning Commission and its staff, preliminary plans and sketches and basic site information for consideration and advise as to the relation of the proposal to general development objectives to be attained in the area and as to the policies of the Commission with reference thereto.

A. Preliminary Approval of a Planned Unit Development Project

1. The proponents of a PUD project shall submit a Concept Development Plan to the Planning and Zoning Commission.
2. The Concept Development Plan shall consist of the following:
 - a. A legal description of the property.
 - b. A statement describing the general character of the intended development.
 - c. An accurate map of the project area showing the proposed site and its proposed land uses, and the adjacent properties and their present urban or projected land uses.
 - d. The pattern of proposed land uses including the shape, size and arrangement of proposed use areas, density, and environmental character.
 - e. The pattern of public and/or private streets.

- f. Proposed open space and public sites.
- g. Preliminary number, size and concept of the proposed structures within each area.
- h. An outline for the anticipated schedule and sequence of development in terms of sub-areas for the total PUD District.
- i. Preliminary Subdivision plat.

3. Referral and Hearing

- a. On receipt of the application and the Concept Development Plan, the Planning Commission and its staff shall study the proposal to determine conformity with the City's Comprehensive Plan and the above requirements. This shall be done at the first regularly scheduled meeting of the Planning Commission.
- b. In reviewing the plan, the Planning Commission shall determine if the proposed development is consistent with the intended purposes of the PUD District, with the Comprehensive Plan, and with the overall development of the City of West Fargo. The design may provide for the modification of yards, setbacks, and height requirements, but the density, intensity of use, and lot coverage requirements for residential developments for the district as a whole shall not be reduced below that required in the R-3 District.
- c. The Planning Commission will hold a public hearing on the Concept Development Plan, after notification of the surrounding property owners, and will notify the applicant of its decision to approve, approve with modifications, or disapprove the plan.
- d. Approval of the rezoning and the related Concept Development Plan shall establish the basic right to use the area in conformity with the plan as approved, and shall be recorded as an integral component of the district regulations, but such plan is conditioned upon approval of a Detailed Development Plan, and shall not make permissible any of the uses as proposed until a Detailed Development Plan is submitted and approved for all or a portion of the Concept Development Plan.

B. Final Approval of a Planned Unit Development Project

1. In order to secure final approval and designation as a PUD District for a proposed site, the applicant will submit to the City Planning Commission a Detailed Development Plan of any or all of the agreed to site sub-areas.
2. The Detailed Development Plan for any or all PUD District shall consist of the following:
 - a. A final subdivision plat including lot lines, easements, public rights-of-way, etc.
 - b. A map of the site illustrating the following:
 - (1) Size, location and arrangement of buildings including building spacing, setbacks, yards, etc.
 - (2) Parking areas, private and public streets, sidewalks, and other transportation facilities.
 - (3) Landscaping, screening and final ground contours,
 - (4) Common open spaces and/or recreation areas.
 - (5) Sewer, water, and other utility lines.
 - c. Where applicable, a written statement outlining the ownership and maintenance responsibility of the common open spaces and recreation areas and documentation of this responsibility.
 - d. A written agreement with the City of West Fargo providing that should the improvements set forth in the illustration above fail to be completed within 18 months after the initiation of construction, as provided for in Subsection 5 below, then and in that event the City of West Fargo shall be authorized to provide for the installation of said improvements. The installation of said improvements shall be paid for by utilization of the special assessment process, for such cases made, and the developer so involved shall, as a part of the agreement waive any rights s/he might otherwise have to protest said special assessments.

3. The proponents of the PUD project shall secure the final approval for the designated section of the PUD area from the Planning Commission and the City Commission.
 4. Upon approval of the Planning Commission and the City Commission, the Detailed Development Plan is attached to and is part of the ordinance establishing the zoning designation of the land. The Detailed Development Plan is the document on which building permits and other City development approvals are issued. The City Building Inspectorate is not authorized to issue permits for improvements which are not indicated on the approved plan.
 5. Construction of the PUD shall be started within 2 years from the effective date of approval of the plan by the City Commission. Failure to begin the development within 2 years shall automatically void the development plan and another detailed development plan must be submitted and approved prior to any development of the property.
- C. Establishing Zoning in Advance of Development Plans: Circumstances may arise where the planned development may be proposed in phases over a longer period of time, or the development consists of multiple properties which may be owned separately or may be sold to another party prior to development. In such an event, the proponent(s) of a PUD may seek to rezone the property initially to PUD with the consideration of the Detailed Development Plan at a later date according to the following procedures.
1. The proponents of a PUD development shall initially submit a Concept Development Plan to the Planning and Zoning Commission as outlined previously.
 2. The Planning and Zoning Commission shall hold a hearing on the proposed Concept Development Plan after notification of the surrounding property owner, and will notify the applicant of its decision to approve, approve with modifications, or disapprove the plan. Following a public hearing before and consideration by the Planning and Zoning Commission, the Commission shall submit in writing its recommendations on the proposed zoning ordinance amendment, supplement, change or modification to the City Commission within sixty (60) days after receipt thereof. Said recommendations shall include approval, disapproval or other suggestions and the reasons thereof, and a discussion of the effect of each amendment, supplement, change or modification on the

Comprehensive Plan. Said recommendations shall be of an advisory nature only.

3. After receipt of the recommendation on any zoning ordinance amendment from the Planning and Zoning Commission, or in any event of the failure of the Planning and Zoning Commission to so report, within ninety (90) days from the time of referral of the proposed amendment to the Planning and Zoning Commission, the Board of City Commissioners shall hold a public hearing, after which the proposed amendment may be passed. If a protest against a change, supplement, modification, amendment, or repeal is signed by the owners of twenty per cent or more:
 - a. Of the area of the lots included in such proposed change; or
 - b. Of the area adjacent, extending one hundred fifty feet (45.72 meters) from the area to be changed, excluding the width of streets or other public right-of-way, the amendment shall not become effective except by the favorable vote of three-fourths of all the members of the City Commission. All protests must be filed with the City Auditor, in writing, prior to the time set for the hearing.
 - c. Upon establishment of any regulation, restriction, or boundary hereunder the governing body of West Fargo shall file a certified copy thereof with the City Auditor and shall cause notice of the same to be published in the official newspaper of the City. Said notice shall describe the nature, scope, and purpose of the regulation, restriction, or boundary, and shall state the times at which it will be available to the public for inspection and copying at the Office of the City Auditor.
4. PUD Amendment: Prior to any building permit for development within the PUD, the proponent of a project shall submit to the Planning and Zoning Commission an application and Detailed Development Plans for the property as outlined previously, which will be considered a PUD Amendment. The Planning and Zoning Commission shall hold a hearing on the proposed PUD Amendment after notification of the surrounding property owners, and will notify the applicant of its decision to approve, approve with modifications, or disapprove the plan. The PUD Amendment shall be reviewed for consistency with the Comprehensive Plan and for compatibility

with characteristics of other uses within the designated PUD area and other uses in the adjoining areas. Following a public hearing before and consideration by the Planning and Zoning Commission, the Commission shall submit in writing its recommendations on the proposed PUD Amendment to the City Commission. Said recommendations shall include approval, disapproval or other suggestions and the reasons thereof, and a discussion of the effect of the PUD Amendment on the Comprehensive Plan. Said recommendations shall be of an advisory nature only.

5. After receipt of the recommendation from the Planning and Zoning Commission, the City Commission shall review the Detailed Development Plan for the PUD Amendment and approve, approve with modifications or conditions, or deny the request. The Detailed Development Plan is attached to and is part of the Zoning designation of the property. The Detailed Development Plan is the document on which building permits and other City development approvals are issued. The City Building Inspector is not authorized to issue permits for improvements which are not indicated on the approved plan.
 6. A written agreement as outlined previously shall be signed, which includes terms and conditions for the development and provides for installation of improvements as outlined previously.
- D. Amendments: Any change in the Detailed Development Plan shall first be submitted for approval to the City Planning Commission, and if, in the opinion of the Planning Commission, such change constitutes substantial alteration of the original plan, especially with regards to a change in land use or an increase in development density or intensity, the procedure provided in Sections C.4-C.6 above shall be required.

Source: Ord, 916, Sec. 41 (2012)