

**REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION WAS HELD ON AUGUST 19TH, 2019, AT WILLISTON CITY HALL, 22 E. BROADWAY, WILLISTON, ND.**

Chairman Aafedt called the meeting to order at 5:30pm. Roll Call was taken. A Quorum **was present**.

**MEMBERS PRESENT:** Bondy, Hansen, Eynon, Christensen, Gjovig, Aafedt

**MEMBERS ABSENT:** Bauer

**OTHERS PRESENT:** Kent Jarcik, Planning Director; Rachel Laqua, Principal Planner; Jeremy Miller, Staff Planner; Bob Hanson, City Engineering; Mark Schneider, Development Services Director; Jordon Evert, City Attorney; Kelly Soto, Planning & Zoning Administrative Assistant

**DISPOSITION OF MINUTES:**

A. Approval of minutes of the July 15<sup>TH</sup>, 2019, Planning Commission Meeting

**MOTION BY CHRISTENSEN, SECOND BY GJOVIG** to approve the July 15th, 2019 minutes, with corrections. **CARRIED ON VOICE CALL.**

**COMMUNICATIONS:**

A. Planning Article of the Month

Chairman Aafedt stated the Planning Article of the month was about Zoning Practices and asked the other Commissioners to read it when they could.

B. ND Planning Conference- Planning Commissioner training

Rachel Laqua stated the North Dakota Planning Conference is on September 19<sup>th</sup>, 2019 in Bismarck, ND. There will be Commissioner training from 3:50-6:00 p.m. It is free if the Commissioners only want to attend the Commissioner training. The NDPA board is doing this as a service to all Planning Commissioners across the state. They will be covering a variety of items which are in the provided packet. This includes, covering the role of the Planning Commissioner, roles of Staff, decision making with legal backgrounds, and ethics and lessons that have been learned around the state. The board highly encourages that the Commissioners attend. Rachel Laqua and Donald Kress will be some of the instructors and two other people from the board will be there.

Commissioner Eynon asked if this was the first year they have offered this training. Rachel Laqua said they have offered it on an irregular basis, as people request it. In this case, it has been a while since they have done one in an individual community. Bismarck asked that we do one, so it made sense to do it with the NDPA conference this year.

**PUBLIC HEARING:**

- A. Proposed Subdivision located at the Rearrangement of Lot 5, Block 29, a Rearrangement of Lot 1, Block 23, NE ¼, Sec. 9, T154N, T101W- Parkridge Townhomes, LLC
  
- B. Proposed Variance located at the Rearrangement of Lot 5, Block 29, a Rearrangement of Lot 1, Block 23, NE ¼, Sec. 9, T154N, T101W- Parkridge Townhomes, LLC

Rachel Laqua explained that this application is items 5A and 5B so she will be presenting them at the same time. This application is for a plat and variance located at 3905 37<sup>TH</sup> St. West, Lot 5 in Block 29, HARVEST HILLS SUBDIVISION, T154N, R101W. It is a 2-acre piece of property. The road that leads to the high school. The property is zoned R-3, and currently operates as a large apartment lot. The buildings are built in the style of townhomes.

The preliminary plat application requests to plat the lot into 23 lots. 22 of the lots would become fee-simple townhome lots, with lot lines between each individual building. The remaining lot would remain an apartment lot with 14 units split between two buildings.

The plat itself does not meet all of the requirements of what we require for R-3 plats to meet for the purpose of townhomes. They are also applying for a variance for impervious surface requirements and setback requirements. All lots meet the required size for townhome lots, but most (16) do not meet the impervious surface requirements. Impervious surface is required to be no more than 70% of the lot. The 16 lots are all between 71% and 86% impervious surface. Mostly because of the large parking and drive way area behind the townhomes. They do meet lot coverage (amount of lot covered by buildings). Lot 14, a townhome lot and Lot 23, the apartment lot, do not meet setback requirements on the north sides of the lot. There is only a 2.3 feet setback from the lot line, while the PUD requires 5 feet.

This property was originally platted as part of the Harvest Hills Phase 2 rearrangement. The developer notes that it was intended to be able to be split, but the final product does not meet those requirements. The zoning and overall density of the property does not change with either application.

Each building – NOT each lot – has their own water and sewer line. Each building shares this line between its 7 or 8 units. The development review committee discussed this item at length at two separate meetings. This is something that we have allowed in duplex units splitting to twinhome lots with one water and sewer line between the two. In those cases, we have required a strict maintenance and access easement agreement signed by the owners of both sides of the twinhome.

However, the concern in this case is that 7 or 8 units would all be connected to the same lines without an overarching apartment complex and property manager to oversee or pay for any fixes or coordinate repairs.

The Development Review Committee examined policy in this instance, they had a larger conversation regarding policy for other types of projects like this. There are about 18 other condominiumized or apartment townhome style projects in Williston, each of which could potentially request a similar application. This could cause great impact to homeowners down the line. The committee recognized this and noted that generally they did not feel that this would be a desirable outcome.

However, in this case, the applicant was told by the Development Review Committee that a variance may be an option, because of the financing behind the project. The financing in this case is dependent on a Housing Incentive Fund grant. That HIF money helps fund 18 essential worker units within this development. The Developer is present to go into more details regarding that and how it effects the project.

This would not change the current access or public rights of way in the area. This would not change the current stormwater requirements although there is a common detention area that will need to be shared with a common agreement.

The building department has reviewed this project and has confirmed that the structures could be split into fee-simple lots without additional construction.

The Fire Department has reviewed this as a multifamily project but will no longer be able to do inspections of the fee-simple lots, if the plat were to go through. They would continue to do a yearly inspection of the two remaining apartment buildings.

The plat has minor redline edits to be completed. The plat approval must be contingent on the variance. The plat is a full subdivision, so will go to Planning & Zoning Commission twice and City Commission twice.

The plat must add a reciprocal access easement across all rear driveways and lots.

Rachel Laqua read the section of the Code which addresses variances found below:

*To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship.*

a. *A variance from the terms of this ordinance shall not be granted by the Board of Adjustments unless and until a written application for a variance is submitted demonstrating:*

- i. *The special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.*
- ii. *That literal interpretation of the provision of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.*

- iii. *That the special conditions and circumstances do not result from the actions of the applicant.*
- iv. *That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.*

\*Please note Rachel Laqua did not read the following aloud but it was included in the Commissioners packet:

*b. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.*

*The procedure by which a variance shall be considered is as follows:*

- i. *Notice of Public Hearing shall be given by the Planning and Zoning Commission. Notice of said Public Hearing shall be published once a week for 2 successive weeks prior to the time set for said hearing in the official paper of the City of Williston.*
- ii. *The Public Hearing shall be held by the Planning and Zoning Commission. Any part may appear in person, or by agent, or by attorney.*
- iii. *The Planning and Zoning Commission shall make written findings that the requirements of Section 28.B.2. have been met by the applicant for a variance.*
- iv. *The Planning and Zoning Commission shall further make a written finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.*
- v. *The Planning and Zoning Commission shall further make written findings that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.*
- vi. *Upon receipt of the written findings of the Planning and Zoning Commission, or in the event of the failure of the Planning and Zoning Commission to so report within 90 days after receipt of the written application for the variance, the Board of Adjustments shall hold a hearing to decide the variance. Any party may appear at the hearing in person, by agent, or by attorney. If the decision of the Board should differ from the findings of the Planning and Zoning Commission, the Board of Adjustments shall prepare a written report stating the findings on which their decision was made.*

*c. In granting any variance, the Board of Adjustments may prescribe the appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Section 26.F. of this ordinance. Under no circumstances shall the Board of*

*Adjustments grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implications prohibited by the terms of this ordinance in said district.*

In this case, the variance application is tied to the HIF units – the HIF units are the only thing which distinguishes this property from any other. Their letter explains their financial position, but essentially, selling 18 units would allow them to maintain the other 18 as HIF essential worker rental units. 14 of those would be in the remaining two apartment buildings while the other 4 would be on fee-simple lots that would be maintained in the developer's ownership.

During these discussions at Development Review Committee, the topic of the difficulty of selling condominiums was brought up. It appears most financing institutions require a 20% down payment for most condominium units, which limits the buyer pool. Because this is not a problem which is unique to this development, it is not something that would qualify the property for a variance to development standards.

The Development Review Committee felt that the short supply of affordable housing meant that the HIF units and required essential worker housing was something that would potentially qualify the property for a variance. Allowing a variance for development standards will allow for those HIF units to be maintained. The developer/owner has noted that if they cannot sell 18 fee-simple lots, they will essentially be forced to sell the entire project, which would remove the 18 essential worker units as well.

There are a number of items that both the plat and variance, if granted, should be contingent on:

1. A water valve and meter must be placed in each individual unit. *The developer has determined that the individual owners will pay the HOA as part of their HOA fee and then the HOA will pay the water bill at one time.*
2. There will need to be a reciprocal access and utility maintenance agreement that spans all parking areas as well as the storm water management facility.
3. The HOA documents must:
  - a. Give the city the right to access all properties in the event of a water or sewer concern
  - b. Require penalties to be paid by the HOA if the City ends up running the HOA
  - c. Prior to recordation of the final plat, the developer shall submit to the City conditions, covenants, and restrictions (CC&R's) for review to confirm that City-required wording is included in the CC&R's. The approved CC&R's shall be recorded with the final plat.
  - d. The CC&R's for the HOA must state that:
    - i. Membership in the HOA is mandatory for all property owners in this subdivision;
    - ii. The governing documents shall designate a liaison from the HOA for the City to contact for the purpose of resolving any conflicts of the property performance on adjacent or impacted public infrastructure, utilities and maintenance. It is the HOA's responsibility to provide the liaison contact information and update of that information to the City Public Works Department for their files.

- iii. The HOA is empowered to assess the members of the HOA for the cost of maintenance of driveways, water lines, and sewer lines, including pavement repair, snow removal and to maintain all HOA maintained utilities in clean, orderly and weed free fashion. Pushing dirt or snow into the adjacent public right of way is prohibited.
- iv. If the HOA dissolves, the City of Williston may assume the duties of the HOA and can assess the property owners for the cost maintenance for the site utilities.
- v. The developer shall submit to the City documentation from the North Dakota Secretary of State's office verifying the establishment of the HOA as an entity in this state.
- e. Require that the HOA be tied to the owner of the apartment lot, requiring the apartment lot owner to be president of the board and maintain a full board which consists of the additional SF attached townhouse owners. *The developer has noted that they would like the HOA president to be a representative of their company, rather than the owner of the company, and that they would like their presidential board duties to expire after 3-5 years, allowing for an election at that point.*
  - i. *At the Development Review Committee meeting, it was determined that the HOA chairman term would be 3 years. There will be a multiple signature requirement only for larger checks, such as over \$5,000.*
- f. Require multiple signatures on any HOA expenditures from members of the board.
- g. Give the HOA the ability to place a lien on a property which has not paid its HOA fees.
- h. Set up a reserve fund to establish the HOA, with the amount to be determined in coordination with the City. *The developer has determined that they will set aside \$2,000 per fee-simple lot, for a total reserve fund to start of \$36,000.*

The HOA documents have not been received or reviewed by City staff yet.

A Development Review Committee meeting was held on August 5<sup>th</sup>, 2019, attended by:  
 City Staff: Kent Jarcik, Bob Hanson, David Wicke, Rachel Laqua, Jeremy Miller, Jordon Evert, Mark Schneider, and Kelly Soto  
 Planning and Zoning Commissioners: Cindy Aafedt and Kaylyn Bondy  
 City Commissioners: Howard Klug  
 Applicant: Don Sterhan, Ed Rintamaki

Attachments in the Commissioner's Packet

1. Application- Plat
2. Letter- Variance
3. Plat
4. Locator map

Completion/Recordation Requirements:

1. Public Hearing of Variance at Board of Adjustments and Review of Plat at City Commission
2. Final Plat review at Planning and Zoning Commission and City Commission
3. Individual water valves and meters

4. Easement and Access Agreements
5. HOA documents and CC&Rs

The Development Review Committee looked at this application twice. At the last meeting their recommendation was to recommend approval of the preliminary plat and variance from impervious surface coverage and setback requirements for Parkridge Townhomes. These will need two separate motions, one for the preliminary plat and one for the variance.

Chairman Aafedt asked if the plat would have the HOA requirements on it. Rachel Laqua explained that the recordation and completion requirements will be attached to both applications.

Commissioner Eynon wanted to respond to the fire department comment, that they review it as a multifamily project but are no longer able to do the inspections because they are now fee simple. There is not any additional construction. They are going to continue to inspect the two that are remaining. He said he assumes the reason that they can't inspect the changed property is because it is a fee simple instead of an apartment building.

Chairman Aafedt said she wonders if it is that they can't or they do not have to do the inspections. Rachel Laqua said she does not want to speak for the fire chief, so she will look into this before the final plat. Her understanding is that they have the ability to do multifamily inspections. They do not have the ability to do individual single-family home inspections, unless it is specifically requested or there is a reason for it.

Commissioner Eynon said he wanted to make a point that he does not see a change in the building that necessitates or says they no longer need an inspection. He is asking if they could make the HOA agree to an inspection. Rachel Laqua believed they could do that, but she will check with both the Attorney and Fire Department.

Chairman Aafedt said there is a right to do it but that does not mean there is a need to do it. She asked if there are any other buildings that are like this because they have never worried about it before. Rachel Laqua said she is not certain if she knows the answer to that. It all depends on how they are set up and built. The Fire Department has their specific regulations about what they do and don't inspect on a yearly basis. She is not sure where that line is drawn between inviting them in to do an inspection versus it being part of a multifamily building, so it has to be inspected every year.

Chairman Aafedt asked if the Fire Chief had any concern losing that ability. Rachel Laqua said he only mentioned that they would lose the ability. She will check with him on his comfort level with it and whether or not it can be allowed specifically through the HOA. Bob Hanson asked if this comes back to the Planning and Zoning Commission. She said yes, for the final plat. They will also have the answer to this before this goes to the City Commission meeting for the variance.

Chairman Aafedt open the floor for comments for the public hearing. Don Sterhan approached the Commissioners. He stated he is from Billings, Montana and the president of the Mountain Equity Group. They are the sponsor and the principle owner of ParkRidge Townhomes, LLC.

Chairman Aafedt stated that one of the things that was important to her was the price points of the units that he will be selling. Don Sterhan explained, as it sits today there are currently 36 townhomes. 18 of those are financed by the Housing Incentive Fund (HIF). Those 18 units have rent and income restrictions. The other 18 are at market rate, so they are open to the general public without restrictions. Their thought is to put the 18 market rate units up for sale as individual townhome units. In visiting with local representatives and realtors about the market place, what they would like to offer these units at an affordable price. From their knowledge, that price range is somewhere from \$195,000 to \$215,000. Their target will be around \$200,000. They all have two bedrooms, except five units are three bedrooms.

Chairman Aafedt said she understands the HIF part is very important to the community. She is very excited about having 18 homes in that price range on the market in Williston.

Chairman Aafedt asked if there were any questions for Don Sterhan. Commissioner Eynon stated he trusts the work of the Development Review Committee and he only has concerns about the fire inspection. He said, it is referred to apartment buildings (in the fact sheet) but if they don't need to inspect those then he does not see why they need to inspect the remaining two. He thinks they should all be treated the same for a fire inspection.

Commissioner Eynon said it was important to him to treat them all the same. Chairman Aafedt said, they won't be the same. Commissioner Eynon said the ownership is the only thing different so if we can get the HOA to agree to a fire inspection then we should.

Chairman Aafedt said it would be interesting to see how you're going to talk 18 people into letting you in. She's not sure if the Fire Chief would want to do that. She wants to see what the Fire Chief says about this because she feels that if our Fire Chief thought it needed to be done then he would have already said so. She would like the Fire Chief to attend the next meeting.

Commissioner Eynon said if the ownership is the only thing that is changing, then he feels they should all be treated the same. If we can agree to get them all inspected that would be fine, if we can't then that is fine too.

Rachel Laqua said the Fire Chief will also be at the Board of Adjustments meeting for the variance so we can have him address it at that time. She will bring his answer back to this board when they go through the final plat process.

Chairman Aafedt called for a public hearing for a second and third time. There were none so she closed the public hearing and asked for discussion or a motion from the Commission.

**MOTION BY GOVIG, SECOND BY CRISTENSEN**, to approve the preliminary plat for ParkRidge Townhomes, contingent on the completion and recordation requirements as listed above. as presented, contingent on recordation of the suggested findings and speaking with the Fire Chief about fire inspections.

**AYES:** Gjovig, Bondy, Christensen, Hansen, Eynon and Aafedt

**NAYS:** None.

**ABSENT/NOT VOTING:** Bauer



**ABSTAINED:** None

**CARRIES:** 6-0

**MOTION BY GJOVIG, SECOND BY CRISTENSEN,** to approve the variance for ParkRidge Townhomes, contingent on the completion and recordation requirements as listed above. as presented, contingent on recordation of the suggested findings and speaking with the Fire Chief regarding a fire Inspection.

**AYES:** Bondy, Christensen, Hansen, Eynon, Gjovig and Aafedt

**NAYS:** None.

**ABSENT/NOT VOTING:** Bauer

**ABSTAINED:** None

**CARRIES:** 6-0

Chairman Aafedt asked what happens next with this application. Rachel Laqua explained it will be on the next City Commission consent agenda to schedule the Board of Adjustments meeting on September 10<sup>th</sup>. The Board Adjustments hearing, and the review of the plat will be at that meeting. Then it will come back to this board for review of the final plat and then will go back to City Commission for review of the final plat, after this board has seen it. She will speak with the Fire Chief tomorrow.

**COMMITTEE REPORTS:**

A. None

**UNFINISHED BUSINESS:**

- A. Proposed Special Use Permit located at Lots 1, 2, & 3 Hoffelt Addition & L3, 4, 5, 6, 7, 8, & Vac. Alley, Block 1 WISE 1<sup>ST</sup> Addition, Block 1 of the Hoffelt Addition, T154N, R101W- Home of Economy

Jeremy Miller presented, stating this application was tabled at the July 15<sup>th</sup>, 2019 Planning & Zoning Commission meeting. The Commission had questions and concerns that could not be addressed at the meeting because there were no representatives present for this application to address those concerns.

These questions and concerns included the snow removal along 1<sup>st</sup> Ave West, protection of the gas meter along 1<sup>st</sup> Ave West, repairing the large hole off the side of the second access point along 2<sup>nd</sup> Ave West. After the Planning & Zoning Commission meeting, one Commissioner noted that they would like to see a sidewalk installed on the south side of Home of Economy, along 20<sup>th</sup> St West.

Jeremy Miller stated he had contact with Tim Vodden, of Home of Economy, regarding these items and he has provided the following information.

Regarding the snow removal along 1<sup>st</sup> Ave West, they have been in contact with their current snow removal contractor and they assured him that they would be able to remove the snow

along 1st Ave West. The Home of Economy employees will be able to move these vehicles, if need be, so that the snow can be removed.

Regarding the protection of the gas meter along 1<sup>st</sup> Ave West, the Planning & Zoning Staff has been in contact with MDU and they have informed us that bollards will need to be installed. MDU has marked on the pavement where they would need to install bollards. Jeremy Miller stated they will work to get the applicant in contact with MDU to get the specifications for the bollards and how they need to be installed.

Regarding repairing the large hole and having the sidewalk installed along 20<sup>th</sup> St West, Tim Vodden has had these projects out for bid and has received bids to have the hole repaired and sidewalk installed.

This application was briefly discussed at the August 5<sup>th</sup> Development Review Committee meeting. There was a discussion regarding parking the larger trucks (22'-26') behind Home of Economy along 1<sup>st</sup> Ave West.

Mark Schneider had gone out to the property and had taken measurements and believes that they could fit two of the larger trucks along 1<sup>st</sup> Ave West. There is 110' between the light pole and the stairs, as Jeremy Miller shown on the overhead exhibit. There is also a dumpster located there that could be moved to another location if needed. The committee expressed concerns over people possibly hitting Home of Economy, while trying to park the larger trucks along 1<sup>st</sup> Ave West.

Mayor Klug suggested that they be allowed to park their equipment, including the larger units, in the southeast and southwest corners on the parking lot. This would alleviate any concerns or issues with people hitting Home of Economy.

The Committee also discussed the ability to place a restriction that this SPU would be reviewed in a year. This would allow this commission to evaluate how this use has functioned and address any additional concerns or issues with this use over the past year.

\*Please note the following Special Use Permit considerations were not spoken aloud by Jeremy Miller.

As part of the review for a Special Use Permit, the following items are required to be considered:

1. *Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.* This property takes access from 2<sup>nd</sup> Ave West and 1<sup>st</sup> Ave West. The semi-trucks with the home of Economy's merchandise must arrive at off-peak hours (i.e 9pm), to more easily navigate the new loading dock which will interrupt traffic flow if unloading occurs at peak hours.

2. *Off-street parking and loading areas where required, with particular attention to the items in "1" above and the economic, noise, glare, or odor effects of the special permitted use on adjoining properties and properties generally in the district.* Off-street parking is provided by 130 parking spaces. This is the number of parking spaces that was approved as part of a parking reduction granted in February 2013. Loading docks will need to be accommodated as mentioned above.
3. *Refuse and service areas, with particular reference to the items in "1" and "2" above.* There is currently a trash container located in the rear of the building along 1<sup>st</sup> Ave West. This use will not affect the current refuse and service areas.
4. *Utilities, with reference to locations, availability, and compatibility.* This property utilizes City water/sewer and trash pick-up services.
5. *Screening and buffering with reference to type, dimensions, and character.* The proper street trees must to be installed along 20<sup>th</sup> St W and 2<sup>nd</sup> Ave West. Ground cover must be installed in the boulevards.
6. *Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.* The designated parking areas for the moving equipment and drop-off areas will need to be properly signed.
7. *Required yards and other open spaces.* No yards or open spaces are required by the zoning ordinance.
8. *General compatibility with adjacent properties and other property in the district.* The properties along the east side of 2<sup>nd</sup> Ave W are used for commercial businesses.
9. *Use shall not impose a hazard to health or property.* This SPU will not impose and hazards to health or property.

Development Review meeting was held on July 1<sup>st</sup>, 2019, attended by:

City Staff: Kent Jarcik, Bob Hanson, Rachel Laqua, Jeremy Miller, Jordon Evert, and Mark Schneider

Planning and Zoning Commissioners: Cindy Aafedt, Kevin Christensen, and Kaylyn Bondy

City Commissioners: Howard Klug and Tate Cymbaluk

Applicant: Garret Hoffner and Tim Vodden (via phone)

Development Review was held on August 5<sup>th</sup>, 2019, attended by:

City Staff: Kent Jarcik, Jeremy Miller, Mark Schneider, Bob Hanson, David Wicke, Jordon Evert and Kelly Soto

Planning and Zoning Commissioners: Cyndy Aafedt and Kaylyn Bondy

City Commissioners: Howard Klug

Applicant was not present as it was a follow up discussion.

Attachments in the Commissioner's Packet:

1. Application

2. Previous Parking Plan
3. Draft SPU Findings
4. Locator Map
5. Site Plan
6. Gas Meter Protection

Completion/Recordation Requirements:

1. Recordation of Findings as attached.
2. Installation of approved street trees and ground cover along 20<sup>th</sup> St West and 2<sup>nd</sup> Ave West.

The Development Review Committee recommendation was to present the proposal to the full Planning & Zoning Commission without a recommendation.

Tim Vodden and Garret Hoffner were on the phone. Chairman Aafedt asked that given there has already been a parking reduction on the property, will they continue to allow the other temporary uses if the Penske Truck rentals are allowed. The temporary uses included, a fruit sales truck, Blondies Catering truck, and she also saw a vehicle for sale over the weekend.

Tim Vodden stated the philosophy of Home of Economy is they like having businesses on their property to build traffic. For example, in their Grand Forks store they have a vegetable truck that is allowed in their parking lot. They would not allow a three-ring circus, with dunk tanks or anything of that sort. If there are any issues that arise that would affect their parking, they would ask the temporary uses or Penske Truck rentals to leave. He stated that the area is not as busy as it used to be in 2014, our infrastructure has improved significantly. He feels this would be an asset to the community, good for Penske Rentals and good for Home of Economy.

Chairman Aafedt asked if the truck rentals would be rented by the general public. Tim Vodden stated that was correct.

Chairman Aafedt asked Rachel Laqua if someone is allowed to have more than one food truck in a parking lot at the same time. She responded, you can have more than one food truck in your parking lot if they have Food Truck Park license, which is different than a Food Truck License.

Commissioner Eynon stated he is a Home of Economy customer. He has driven by the property multiple times and feels there is ample parking for the seven Penske units as well as for the temporary uses, such as food vendors and the Boy Scouts selling potatoes soon. Home of Economy has a substantial investment in our community and has been in business here for many years. He stated, he does not see any potential negative impact with allowing the seven Penske units on their lot. Home of Economy would work with their neighbors and make it work. There have not been any issues with their operations thus far.

Commissioner Eynon has reservations about telling them where to park those rental units. He noticed when he drove by there today, that in the southeast corner there were only seven cars parked there, not knowing if those were for employee parking. The customers seem to park predominately in the southeast and southwest area of the parking lot. He feels the market will determine where the best spot for the Penske Truck rental parking should be. He

also has reservations about being on 1<sup>st</sup> Avenue west. He wouldn't support that plan because he sees a lot of pedestrians walking in that area. If the intent is to have the customer return the vehicle in that area, it would be extremely difficult to do, as there is not an access to get into the store. Those are emergency exits in the back.

Chairman Aafedt asked if the number of units were tied to the motion. Rachel Laqua felt that the Commissioners have always stated they would like to see only seven units for a year. Garret Hoffner asked if the seven units included the towing equipment. Rachel Laqua stated that when the Special Permitted Use was presented by Garret Hoffner in the Development Review Committee Meeting, the seven units meant everything, including the towing equipment. Chairman Aafedt asked for clarification of what the towing equipment was. Garret Hoffner stated they have a four-wheel car carrier and a small two-wheel tow dolly for auto transporting. Vice-Chairman Gjovig stated he would prefer that the seven units included the towing equipment.

Commissioner Eynon read off what was on page 3 in the fact sheet regarding this, *"Garret Hoffner, a representative of Penske, is proposing to store 2-3 smaller trucks (12-16'), 1-2 larger trucks (22-26'), and 1-2 automobile transportation towing trailers at any given time on the property."*

Chairman Aafedt stated the seven units were including everything and if the applicant has any issues with that, they will need to address it at this time. Tim Vodden stated that he did not have any issues and agreed the seven units will include the towing equipment.

Commissioner Christensen stated that he supports Commissioner Eynon's opinion about being on 1<sup>st</sup> Avenue W, as there is too much traffic on that road. Chairman Aafedt agreed. Commissioner Christensen disagreed with Commissioner Eynon about not designating the parking. He feels that there should be a designated area, so the trucks are not scattered throughout the parking lot.

Commissioner Eynon said, based on Commissioner Christensen's comments he proposes the designated rental area be at the second row of parking, north of the lot. Vice-Chairman Gjovig stated he felt the same as Commissioner Eynon as he struggles limiting them where to park because, depending on what the business ends up looking like, they might need that flexibility to change as needed. Having the one-year review will also require them to maintain and keep it organized themselves, which would mean they would not have to tell them where to park.

Chairman Aafedt stated she has a problem with it since there already has been a parking reduction on this property. She wanted Rachel Laqua to explain the parking ordinance since there has already been a parking reduction and the other temporary uses are allowed on this lot.

Rachel Laqua explained, our parking ordinance is intended to address retail uses. In certain situations, such as this, there is a very large area of space that is used for very large things and is not necessarily typical retail. They have been talking about the parking ordinance and looking at some of the things with the UDC that they are still working on. There are movements across the country to reduce parking by significant amounts. However, that might not be something that is realistic to do in this area, given the number of people that

drive and are driving very large vehicles. The parking reduction itself on a lot of our larger retail stores, such as Menards and Home Depot. We have done parking reductions for them because the stores themselves are not the traditional retail, as 1:250. We can verify and see that Home of Economy is not using all of their parking. The parking reduction was done in 2013 when the traffic that was in their store was very different than what it is today.

Chairman Aafedt asked how they would say no to the next applicant with the similar request if we allow Home of Economy to do this because of the parking ordinance? How do we do this, so it is fair for every other business? Rachel Laqua stated that in certain circumstances there are very clear requirements for parking and they observe the available parking. That is how we do coffee kiosks vs food trucks, for example. One is a semi-permanent use that is in a parking lot at all times, so we do it based off of required parking. Food Trucks are based off of available parking.

Jordon Evert said, our parking ordinance sets the floor of what you want their parking to be. They can present the information to the Commission to state the standard is too high and they should be able to reduce their parking. The applicant provides competent information establishing a just cause to reduce parking. That option is available for everyone. Planning and Zoning and City Commission gets frustrated with parking reductions because for a while they were very frequent. At least it gives you the flexibility to have the necessary parking spaces as the ordinance is written now, as 1:250. If they need to reduce it, they can show the legitimate justifications for it, giving the Commission that flexibility to allow them to reduce their parking.

Chairman Aafedt asked Tim Vodden if he knew where the employee parking specifically was. Tim Vodden stated it has been about a year and a half since he has visited this store, but he thought it was the lot by 20<sup>th</sup> street west.

Tony Watterud approached the Commission. He is a representative of the First International Bank & Trust and an agent of the owner and trustees, that owns the building north of Home of Economy. Their primary concern is that their area is becoming very congested because of the tenants that they have in their building. The only onsite parking that they have is to the south side of their building. On the north side of their building, parking is very limited on the street. The tenant on the west side is the Opportunity Foundation that has a lot of special needs individuals that are dropped off and picked up. It is especially congested during the winter months because of the snow piled up in that northwest corner by Home of Economy. On the east end of the building, there is a dance studio that has a lot drop off/pick up of children. They have a congested problem with that intersection, so they try to encourage their tenants to have their primary access off the south side of their building. They propose that Home of Economy would not store the Penske Rental units on the northern most eight parking spots. He drew a line on the aerial map and stated anything south of that line they would feel is acceptable. Tim Vodden stated he would be accommodating to their neighbor and would not use that area for the rental units.

**MOTION BY GJOVIG, SECOND BY HANSEN,** to approve the SPU to allow for the storage of 7-units of moving equipment with the Planning & Zoning Department to review the SPU in a year to ensure that parking is not being impacted located on Lots 1-3, Block 1 of the Hoffelt Addition and Lots 3-8, Block 1 of the Wise 1<sup>st</sup> Addition, contingent on recordation of the suggested findings.

Chairman Aafedt asked if there was discussion. Commissioner Christensen asked Commissioner Gjovig if that was including allowing parking on 1<sup>st</sup> Avenue West. Commissioner Gjovig said that would technically include any legal parking because he did not say not to.

Commissioner Eynon said, on #6 of the Special Use Permit considerations states "*The designated parking areas for the moving equipment and drop-off areas will need to be properly signed.*" Commissioner Gjovig stated, we could change the findings.

Jordon Evert stated that if they adopt the motion as is, the findings will have to follow the motion. So that portion of section 6 of the findings will reflect if this motion approves with what the motion is.

Commission Gjovig stated that as he understands it, the motion remains unchanged and we are at roll call. He asked if that was everyone else's understanding. He asked if the City Attorney understands it as so. Jordon Evert stated yes, unless there are other discussions they want to entertain.

**AYES:** Hansen, Eynon, Gjovig and Bondy

**NAYS:** Christensen and Aafedt

**ABSENT/NOT VOTING:** Bauer

**ABSTAINED:** None

**CARRIES:** 4-2

- B. Proposed Subdivision to rearrange Lots 1-10 of Block 2, Lots 1-10 of Block 3, and Lots 1-25 of Block 4 of the Hawkeye Subdivision, T154N, R101W into one large lot.  
- Hawkeye Village LLC
- C. Proposed Special Permit Use, rearrange Lots 1-10 of Block 2, Lots 1-10 of Block 3, Lots 1-25 of Block 4, Hawkeye Village Subdivision, T154N, R101W for District 1 School Site. - Hawkeye Village LLC

Chairman Aafedt explained there is an email in the packet from Hawkeye Village LLC to remove them from the agenda. She asked for a motion to remove the Hawkeye Village LLC 7B and 7C under Unfinished Business.

Commissioner Eynon said they did mention they wanted it removed from the agenda without terminating the application. Chairman Aafedt said they have a year after it is removed from the agenda. Rachel Laqua said that is how we do all applications - if there is no action within a year, the application is closed and terminated. They will have to restart from the beginning. If they bring it back within that year, they are allowed to begin where they were at in the process.

**MOTION BY GJOVIG, SECOND BY CHRISTENSEN,** to remove these items from the agenda per Hawkeye Village LLC developer's request.

**AYES:** Gjovig, Bondy, Christensen, Hansen, Eynon and Aafedt

**NAYS:** None.  
**ABSENT/NOT VOTING:** Bauer  
**ABSTAINED:** None  
**CARRIES:** 6-0

**NEW BUSINESS:**

- A. Final Plat and Zone Change Permit located at W 396' in SWNE of Section 22, T154N, R101W- MSR, LLC

Rachel Laqua presented this application for the Reiger 2<sup>nd</sup> subdivision located north of Reiger Drive to the west of Culvers. The preliminary plat and zone change for Lot 1 to C-2: General Commercial were approved by the City Commission on August 13, 2019.

A requirement of this subdivision is that a Development Agreement and deed restriction be signed noting that Lot 2 may not be developed or rezoned until access to the west is determined. A non-protest agreement must also be signed, waiving the right to protest future improvements to the west or south. Easement agreements will need to be signed for maintenance and access of these water and sewer lines, as well as the parking area. An access easement will also need to be shown on the plat. Those agreements are with the Attorney at the moment.

The final plat still has several redlines to be corrected but they are minor.

Attachments in the Commissioner's Packet:

1. Application
2. Final Plat
3. Locator map

Completion/Recordation Requirements:

1. Final Plat review City Commission
2. Development Agreement
3. Deed Restriction
4. Easement and Access Agreements
5. Waiver of protest of future improvements to the west and south

The recommendation is to approve of the final plat for the Reiger 2<sup>nd</sup> Subdivision, contingent on the completion and recordation requirements as listed above.

**MOTION BY CRISTENSEN, SECOND BY BONDY,** the final plat for the Reiger 2<sup>nd</sup> Subdivision, contingent on the completion and recordation requirements as listed above.

**AYES:** Eynon, Gjovig, Bondy, Christensen, Hansen, and Aafedt  
**NAYS:** None  
**ABSENT/NOT VOTING:** Bauer  
**ABSTAINED:** None  
**CARRIES:** 6-0



**B. Proposed Vacation located at Lot 1, Block 22 & W. 3021 Sq. Ft. of Vacated St. Right of Way, Harvest Hills Sub., T154N, R101W- Jon and Theresa Scully**

Jeremy Miller presented the applicant, Scully Design Build, Inc. They are requesting to vacate 1,800 square feet of access and utilities easements on the east side of Lot 1 & the west 3,021 SF of Vacated Road, Block 22 of the Harvest Hills Subdivision.

When this property was originally platted, as part of Harvest Hills Phase 1, there was a 60-foot right-of-way (Sleepy Ridge Avenue) that was planned to continue through into Phase 2 on the east side of their property. Due to this planned street on the east side of their property, a 10-foot wide utility easement was reserved along the east street frontage.

When Harvest Hills Phase 2 & 3 were platted, Sleepy Ridge Ave was no longer going to continue through along the east side of their property. In 2013, the City vacated this section of Sleepy Ridge Ave and this property incorporated 30-feet of the vacated road. This 30-foot was to be reserved as an access and utility easement. This lead to a 40-feet of easements on the east side if this property.

The applicant has submitted an Administrative Review plat to split this property into two lots and intends to construct single family homes. However, the newly created eastern lot (Lot 1R) will be unbillable due to the easements.

Staff had contact with utility companies and the only entity that needs to retain this area for an easement is the City. The City will need to retain the eastern most 20-feet of the property for a water and sewer easement.

This vacation will have a public hearing at the Sep 24<sup>th</sup> City Commission meeting.

The Development Review did not give a recommendation on this vacation as there was no application for this vacation submitted at the time of the August 5<sup>th</sup> Development Review Committee and it was not on the agenda.

Chairman Aafedt asked if there were any questions for the Scully's or if anyone had a motion.

**MOTION BY GJOVIG, SECOND BY HANSEN**, to recommend approval of the vacation of a 10- foot wide utility easement on the east side of Lot 1, Block 22 of the Harvest Hills Subdivision and the west 10-feet except the south 10-feet of a 30-foot access and utility easement on the west 3,021 SF of Vacated Road, Block 22 of the Harvest Hills Subdivision contingent on the completion and recordation requirements as listed.

**AYES:** Eynon, Gjovig, Bondy, Christensen, Hansen, and Aafedt

**NAYS:** None

**ABSENT/NOT VOTING:** Bauer

**ABSTAINED:** None

**CARRIES:** 6-0

The date of the next meeting is September 16<sup>th</sup>, 2019.

**MEETING ADJOURNED**

  
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Kent Jarcik  
Planning & Zoning Director

# APPENDIX TO THE AUGUST 19<sup>TH</sup>, 2019, PLANNING AND ZONING COMMISSION MEETING

- A. Proposed Special Use Permit located at Lots 1, 2, & 3 Hoffelt Addition & L3, 4, 5, 6, 7, 8, & Vac. Alley, Block 1 WISE 1<sup>ST</sup> Addition, Block 1 of the Hoffelt Addition, T154N, R101W- Home of Economy