

REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION WAS HELD ON AUGUST 18, 2014 IN THE COMMISSION ROOM AT CITY HALL IN WILLISTON, NORTH DAKOTA.

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

MEMBERS PRESENT: Maristuen, Aafedt, Haugen, Long, Christensen, Fleck, Boyeff.

MEMBERS ABSENT: None

OTHERS PRESENT: Kent Jarcik, Planning Director; Donald Kress, Principal Planner; Rachel Ressler, Staff Planner; Samantha Neil, Staff Planner; Nick Vasuthasuwat, Code Compliance; Kelsey Vlamis, Code Compliance Intern; Christine Edwards (Administrative Assistant); Bob Hanson, Engineering; Jordon Evert, Assist. City Attorney; Kelly Aberly, Building Dept.

DISPOSITION OF MINUTES:

- Minutes were approved for July 21, 2014 regular meeting. MOTION BY LONG SECOND BY MARISTUEN. MOTION CARRIED ON VOICE VOTE.

COMMUNICATION:

Boyeff requests two additions to the agenda and requested to add a discussion about the StatOil road agreement to Communications, Item D, and a discussion about the Cook Subdivision, owned by Damian Butterfield, to Unfinished Business, Item A.

MARISTUEN made a MOTION to accept and add both proposed changes, CHRISTENSEN Seconded the Motion; it was carried on VOICE CALL.

Boyeff asks Kress to discuss the items of Communications:

1. Kress tells Commission that three of the applicants for this month asked to be removed from the agenda after the ad hoc meeting. They are as follows:
 - a) Division of Lot 10, Block 14, Fairhills Subdivision into Lots 1R – 4R, Darrell Dyer/Ames Engineering. The applicant asked to slightly revise his plat based on ad hoc comments and re-present it in September 2014.
 - b) Zone Change, Lots 1-9 and 16 of the Williston Park Subdivision, Kyle Hexom. The applicant asked remove this item based on ad hoc comments and plans to re-submit in Sept. or Oct. 2014.
 - c) Zone Change, Lot 1, Block 6, Fairhills Subdivision, to be known as The Bluffs. This will be brought back in the spring of 2015.

Kress adds that each of these items will come back before an ad hoc appropriate for the month they would be on the Planning Commission Agenda.

2. Kress informs the Commission that StatOil had signed a road damage agreement regarding the oil pad site approved in July, 2014 south of 56th St. and west of Hwy 2/85, City of Williston. Kress reminds that one of the contingencies of the approval was that StatOil maintain the road and assist in upgrading the pavement to a 105,500 pound load capacity for heavy duty use. Upgrade to the paving of 56th Street to a 105,500 pound

load capacity will be reimbursed by StatOil, based on the City Engineer's figures, to the North Star development to the north of 56th St. as that development proceeds and as 56th St. is built out.

PUBLIC HEARINGS:

- a) Administrative Review of a lot line adjustment for Lots 8 and 9 of Block 2, Williston Park Subdivision, City of Williston – Darrell Dyer/Ames Engineering

Boyeff introduces the first public hearing (as above) and asks Ressler to present. Ressler says that these properties are on just north of 49th St. and west of 16th Ave. East; zoned agricultural and surrounded on three sides by other single-family homes with apartment building on the fourth side. Ressler states that this property has been proposed for a lot line adjustment, in order to correct property lines, as a house on Lot 9 has been built about 3 feet into Lot 8. Both lots can only be accessed by 49th St W. The proposed lot line will jog slightly in order to allow both lots to retain their current square footage. The current proposed site plan shows a new garage in front of the house on Lot 8, which will need to be rearranged. Both lots will take access from the water lines just to the east of the proposed site. Currently, the house on Lot 9 is served by a well and septic tank. This will be accommodated either through water and sewer being installed on 49th St W potentially in 2015, or through a potential easement through Lot 8. However, the City Engineer states there will be no water and sewer provided north of lot 8 in this subdivision without some serious changes to the area.

At the ad hoc committee meeting on August 4, 2014, discussion focused on water and sewer access for the lots, and whether 49th St would be fully constructed in the near future, as discussed above. Other staff comments were of minor issues and stated in the Commissioner packet.

Boyeff makes his first call for public input. Hearing none he addresses City Engineer Hanson with question about sewer and water to which Hanson states that he is in receipt of a petition of a sufficient number of property owners in this subdivision to install those city services. Hanson explains that is being looked at with 8" lines being installed along the north and along 49th St. Boyeff called a second time for public input. Haugen expresses concern with the proposed garage on Lot. 8 and no sidewalk currently constructed but street and sidewalk improvements to come; there may not be enough room for required set back. Ressler addresses that by stating that street and sidewalk ROW would be installed outside the property lines so that setbacks would not be altered.

Boyeff makes one final call for public input and hearing none closes this public hearing and asks for the wishes of the Commission.

MOTION BY MARISTUEN, SECOND BY HAUGEN, to approve the Administrative Review of a lot line adjustment for Lots 8 and 9 of Block 2, Williston Park Subdivision, City of Williston, contingent upon addressing all staff and plat comments. AYES: Maristuen, Haugen, Long, Aafedt, Fleck, Christensen, Boyeff. NAYS: ABSENT/NOT VOTING: ABSTAINED: None.

- b) Unplatted parcel in Section 2, T154R, R101W, at 7.7 acre Tract in Lot 4, City of Williston – Dennis and Kimberly Visser/Vantata Design

Boyeff introduces the second item on the agenda (as above) and asks Ressler to present. Ressler first indicates that the property is zoned agriculture, surrounded on all sides by agricultural zoning with single family homes. This property currently has a single family home on the north side of Chinaman's Coulee. Ressler says that this property has been proposed for a subdivision, in order to divide the property into two lots, it does need to be a subdivision because of the waterway easement through Chinaman's Coulee. Both lots can only take access by 15th Ave W, which is also known as 16th Ave W further to the south. The proposed lot line will trail through Chinaman's Coulee. Both lots will therefore have a coulee easement in order to protect the water flow and drainage. Also marked on the plat is the flood zone area (shown in the lined portion of the plat). The current proposed site plan shows a proposed single family home on the south side of the coulee, in Lot 2. This lot will be served by a water well and septic drain field, since water is not currently within reasonable reach. If 16th Ave W is reconstructed and a water line is put in, the owner of Lot 2 will need to connect to the water line at that time. It is doubtful sewer will reach this area. Ressler states that because of the water well supplying the proposed 2nd lot, the owner would need to get approval from the City Commission.

At the ad hoc committee meeting held on August 4, 2014, discussion focused on the provision of water and sewer. It was concluded that a well was fine, as long as the owner connected to a water line in 16th Ave W if it is ever available and that a septic system was fine if it is approved by the health department, since it is unlikely that sewer will reach this area.

Boyeff calls for public input. Leroy Siddel, a neighbor, speaks with his concern that Williams Rural Water will not/cannot get water to this area and wonders if there will be sewer and water accessible to everyone. City Engineer Hanson states that they are still working on the back bone infrastructure, and the financial aspect of that, hopes to reconstruct the REC road to 16th Ave. and the project would allow a water line on the section line that could be connected from the south to this area; however sewer presents a lot of issues still because of Chinaman's Coulee.

Developer Melendez speaks to the issue of water and sewer and states that they are aware of all of these issues. He adds that there is a section in the code that allows for septic systems in this type of situation and that the property owners are willing to sign an agreement to hook to city water if it is ever available.

Boyeff calls for any further questions of Melendez; none. Boyeff calls twice more for any further public input and hearing none closes the public hearing and asks for the wishes of the Commission.

MOTION BY HAUGEN, SECOND BY FLECK, to approve the preliminary subdivision plat of a parcel in Section 2, T154R, R101W, at 7.7 acre Tract in Lot 4, City of Williston, contingent on addressing all staff comments and approval by the City Commission for a water well. AYES: Maristuen, Haugen, Long, Aafedt, Fleck, Christensen, Boyeff. NAYS: ABSENT/NOT VOTING: ABSTAINED: None.

COMMITTEE REPORT:

UNFINISHED BUSINESS:

- a. Administrative review plat, known as Cook Subdivision – Damian Butterfield.

Damian Butterfield, owner of Cook Subdivision, presents to the Commission that in March 2014 the Planning Commission approved his request to change the lot lines of his two lots from east/west to north/west contingent on closing ingress/egress from Hwy 1804 and allowing those lots access only from Bean Drive. Butterfield presented that his current auto-glass replacement and repair business sits on the eastern portion of the proposed lot line adjustment and that the set-up of his business, which includes semi-truck delivery of glass and semi-truck windshield repair, closing the access to/from Hwy 1804 is nearly impossible. Presenting an aerial view of the lots he demonstrated that the delivery ramp runs off the south-eastern section of his building. He demonstrates that access to/from Bean Drive would be nearly impossible. Butterfield points out to the Commission how the flow of traffic for repair and for delivery works and has discussion with Commissioners. City Engineer Hanson states that the original objection to the access points on Hwy 1804 was his but after further seeing the traffic flow on Bean Drive, he withdraws his objection to the Hwy 1804 accesses remaining. Commissioner Aafedt added that she had had conversation with then City Commissioner Klug about this and was told that it was very likely the Hwy 1804 access points would need to remain as is.

MOTION BY AAFEDT, SECOND BY FLECK, to withdraw the contingency placed on the March 17, 2014 approval of the Cook Subdivision Administrative Review which required removal of ingress/egress access from Hwy 1804; all other contingencies and approval of the plat to remain. AYES: Maristuen, Haugen, Long, Aafedt, Fleck, Christensen, Boyeff. NAYS: ABSENT/NOT VOTING: ABSTAINED: None.

NEW BUSINESS:

- a. Retroactive Special Use Permit (SPU) request for existing commercial and multi-family use of lot and building known as the Metro Building, Original Townsite, Lot 1 – 10, Block 25, City of Williston – Steve Price

Boyeff introduces this item of new business (as above) and asks Ressler to present. Ressler states that this property is approximately one acre, is currently zoned C-3: Restricted Commercial and is outside of the Renaissance Zone. Current use is as an Apartment and Office Building. Surrounding uses are single family homes and commercial. Ressler says this property has been proposed for a special use permit to bring the apartments above office space into conformance with our current ordinance 961. Ressler explains that ordinance 961 was put into place about a year ago to encourage retail in the downtown area; this ordinance essentially took away the ability to have living space over office within the Renaissance Zone but still allows that within the C-3 zone, outside of the Renaissance Zone, with a special use permit.

These apartments have been in place for a number of years, and we believe they were originally permitted. Ressler adds that the property is under contract for sale, and needs to be in conformance with our codes.

Ressler explains that with the 8 apartment units and 41,000 sq. ft. of office space the building would need to provide 90 parking spaces; they have 84. If the six additional parking spaces cannot be provided, the property owner would need to go before the parking committee and back to this Commission to ask for parking reduction and would need to pay in lieu of those spaces.

At the September 2, 2014 ad hoc meeting a question arose regarding whether building and fire inspections have been completed on the building. As a matter of the sale, they have been, but

there do need to be additional inspections in order to permit this SPU, according to the City Attorney.

Ressler states that ad hoc recommended approval of this SPU with usual conditions of addressing all staff comments and suggested that should the Commission choose to approve that a second condition be added that would require the applicant/owner to address the parking issue with the parking authority and Planning & Zoning Commission.

Assistant City Attorney Evert addresses the issue of inspections. He states that he was originally under the impression that the building was going to be remodeled, in which case they would need to come into compliance with current codes. However as this is merely to allow them to continue pre-existing use and Evert stated he felt it would be unfair to the applicant to require them to bring everything into compliance, further adding that any action requiring a building permit (re-model) would trigger a condition that would require them to come into full compliance with current codes and inspections.

Fleck asks for clarification on what amount of re-model would trigger the requirement for full compliance. Kelly Aberly, building dept., states that anything 50% or higher would require full compliance.

Boyeff asks the applicant's representative, attorney Ryan Geltel, about the parking situation. He states that they will be looking at re-stripping the parking areas to provide the six more spaces rather than having to pay in lieu, they believe that they can accomplish this. Geltel adds that the building was, in August of 2014, inspected and approved by the local fire chief after some minor repairs or replacements were made. He read the short list of the fire chief's comments and stated how they were corrected.

Kress speaks to the issue of the parking spaces and states that he believes that they should be addressed now. He says that although re-stripping may well be the answer there should be some defined guidelines. Evert states that there could be contingency or agreement placed on the SPU that the parking spaces have to be addressed in 60 days, either re-stripped to add the six additional spaces or steps taken to go to the parking committee and back in front of the Planning Commission to request a reduction and to pay in lieu. Geltel thought that 60 days would be enough time to comply with that. Discussion is had with attorney Geltel about whether this SPU was a requirement for the pending sale of this property; Bill Glenn, working on the sale/purchase, interjects that his lender is going to require written acknowledgement of City's approval of the existing use. Geltel had stated earlier that one current commercial leasee had recently signed a 20 year lease with option of two additional 10 year terms.

MOTION BY HAUGEN, SECOND BY FLECK, to approve the Special Use Permit (SPU) request for existing commercial and multi-family use of lot and building known as the Metro Building, Original Townsite, Lot 1 – 10, Block 25, City of Williston, contingent on addressing all staff comments and that the applicant develop a plan with City staff to take care of the parking space issue. If the lot is re-stripped, it can be taken care of by staff; if payment in lieu is required the applicant will come back before the Commission for a parking reduction request. AYES: Maristuen, Haugen, Long, Aafedt, Fleck, Christensen, Boyeff. NAYS: ABSENT/NOT VOTING: ABSTAINED: None.

- b. Special Use Permit (SPU) request for a cellular communications tower to be located in the W1/2S1/4, Section 12, T154N, R101W (Mike Wells' property east of University Avenue), City of Williston – Verizon/Mike Bieniek

Boyeff introduces Item (b) of New Business (as above) and asks Kress to present. Kress reminds that commission that this came before them in June and was approved; however it was discovered at that time there had been an issue with notice to surrounding owners. At attorney Evert's direction, and motion of the Commission in July, notice was re-sent and this item will be presented now as though it were a brand new item.

Kress states that the applicant, Mike Bienik for Verizon Wireless, requests a special permitted use to erect 95' tall monopole wireless telecommunications tower with a 5' lightning rod (total height 100 feet) located on the Mike Wells property east of University Avenue and west of 9th Avenue East. This is a monopole tower; no guy wires are necessary.

In an e-mail dated June 4, 2014, the applicant stated "The proposed tower is designed to offload some of the capacity from the existing network in and around the City of Williston. With the population boom being experienced in this portion of North Dakota, wireless telecommunications has become all the more important. The network is taxed and needs the site to allow it to function correctly."

Kress discusses Section 6(b)(4) of Ordinance 912 requires that a tower must be set back at least 75 percent of the height of the tower from any adjoining lot line. Seventy-five percent of the height of the proposed tower is 75 feet. At the May 19, 2014 Planning and Zoning Commission, your Commission approved an administrative review plat that would create two lots out of a single existing lot. The existing lot is the property on which this tower is proposed. When the approved plat is recorded, it will create a lot line. Kress states the applicant has provided proof that the proposed tower will be at least 75 ft. of that new lot line.

Kress further states that Table 1 in Section 6(b)(5) of Ordinance 912 requires that telecommunications towers be separated from single-family residences by 200 feet or 300% of the height of the tower, whichever is greater. For the proposed 100 foot tower, the required separation distance from single family residences is 300 feet. The applicant has stated that the proposed tower is located approximately 226' from the nearest residence to the east (Doyle Fishell) and approximately 214' from the nearest residence to the south (Tate Wells). Thus, the proposed tower does not meet the separation requirement.

However, Section 6(b)(5) also states "the Planning Commission may reduce the standard separation requirements if the goals of the ordinance would be better served thereby." The applicant asks the Commission to consider the following points to support this request to reduce the standard separation requirements (these points provided by the applicant):

1. There is an existing tree line that will all but shield the tower from view for the residents to the east.
2. The house to the south is owned by Mike Well's son.
3. The tower has been located at its proposed location in order to not interrupt Mr. Well's operations [*Joe's Digging Service, also on this property*]. If the tower location is moved to the north on the wells property, it would interfere with Wells' day-to-day operations.
4. A tower of this height would have a fall zone radius closer to around 33' (one-third the tower height); therefore there is little need to have a 300' setback.

At the June 2, 2014 ad hoc committee discussion at the ad hoc committee included tower height; 95-foot tall tower with a 5-foot lightning rod at the top. Total height is 100 feet; and compliances with required setbacks and separation distances: The committee directed the applicant to respond to staff's e-mail providing additional information on these distances. The applicant has provided this information, as noted above.

Kress states that following the June 16, 2014, Planning Commission meeting, letters, reviewed by the City Attorney, were sent to property owners within 300 feet of the proposed tower along with a release document for them to sign, as directed by the Planning Commission. One of these owners protested and was unwilling to sign the release. He submitted a petition of surrounding owners who were also opposed to the tower.

At the July 21, 2014 Planning Commission meeting, the City Attorney, after reviewing the situation and the proceedings at the June 16, 2014 Planning Commission meeting, recommended to the Commission that this entire case be re-heard due to the fact that there was not adequate notice to surrounding owners prior to the June 16, 2014 Planning Commission meeting. The Commission voted to accept the City Attorney's recommendation and re-hear the case at this August 18, 2014 Planning Commission meeting.

At the August 4, 2014 ad hoc committee meeting the events since the June 16, 2014 Planning Commission meeting were summarized for the ad hoc committee and the applicant. The applicant stated he believes this project meets the criteria for approval. Discussion included:

FLEXIBILITY IN LOCATION: The committee asked if there was any flexibility in locating this tower. The applicant stated that this is a capacity site; it is design to cover gaps in coverage.

AESTHETICS: One Commissioner challenged the aesthetics of the tower in that neighborhood that was, other than the proposed tower site, residential. He also noted the possibility that the adjacent trailer court could transition into a different residential use. The committee emphasized that the ground facilities for this tower must be aesthetically screened, standard approval for aesthetic screening is a vinyl fence which is a staff comment. The applicant put in writing what the base of the tower will look like. A depiction of the ground equipment is included in the applicant's submittal package.

Kress says that the tower was approved by the airport manager at the 100' in its current location; they just have to place and maintain aviation beacons on the tower. A note from the airport manager states, "My zoning is not extremely clear on this location whether it is acceptable or not."

Kress directs Commission to the findings in accordance with Section 27 of the Williston Zoning Ordinance.

Boyeff asks if there any questions of Kress, none were asked. Boyeff asked the Commission if they wanted to hear public comment as there were several members of the audience that would like to speak, Commission agreed to hear from the audience.

Mike Bienik representing Verizon Wireless first addresses the Commission. Bienik stated his agreement with Kress' presentation and understanding that of the issues surrounding the original submission including the Commissions condition that the two property owners that are

within the 300 ft. set-back sign a written acknowledgment and agreement of this tower placement; one refused to sign.

Bienik continues and explains to the Commission that Verizon's system here has been in place since the early 1990's and at that time there was a fairly small population and cell phones were used just to place calls; land lines were still widely used. Today however the population has exploded and continues to increase. Cell phones now use data to send texts and access the internet, this also includes the prevalence of other devices such as I-Pads and finally cell phones are replacing more and more land lines. All of this heavily taxes the current system. The proposed tower on the Mike Wells property would be a "capacity site", Bienik likened this to four dice creating a square and needing to place a center point to pull and handle some function those other towers; this prevents lost calls, inability to access 911 (safety issues and liability to Verizon). Since the system is already in place, they are limited in location of a new tower.

Tate Wells, property owner to the south that lies within the 300 foot set-back, tells the Commission that he is in agreement with the proposed tower and hands his written consent to Kress.

Pam Fishell, property owner to the south that lies within the 300 foot set-back, states that her concern is that all properties surrounding this site are residential, rural, mobile home or otherwise and she feels it is inappropriate to place a tower where it will harm the landscape of the area. She is bothered by the fact she is even closer (within the 300 ft. set-back) and questions placement per ordinance as she reads its purpose is to encourage placement in non-residential areas. Fishell asks for clarification of the distance issue, Kress explained that the ordinance states a tower should be at least (3 x the tower height) feet from any residence. In this case a 100 foot tower is proposed, $3 \times 100 = 300$ feet.

Commissioner Aafedt states her understanding is that this tower is not compliance. Discussion is had between her and Kress about permitting within those set-backs and refers her back to Section 6(b)(5): "the Planning Commission may reduce the standard separation requirements if the goals of the ordinance would be better served thereby."

Craig Anderson, a nearby property owner, adds his objection to the tower stating "I just don't want to look at it".

Aafedt asks about the area of coverage. Bienik explains that the four existing "corner towers" have a radius of 3 to 6 miles and are spaced 3 to 6 miles apart but with so many devices now using so much it pulls down the distance that the towers can effectively service. He adds that there is legislation that demands a company like Verizon to provide a certain amount of coverage and this case there is only a half-mile area to accomplish that; this area was approved by the airport after working with them on an acceptable height; FAA originally approved a 160 ft. tower, Sloulin Field did not agree. Commission is reminded that this is a monopole tower and does not have guy wires and the base of the pole itself is approximately just 3 feet wide.

Commissioner Christensen ask Kress if he knows what surrounding towns/cities ordinances are on cell towers, Kress did not know; Bienik stated his experience has been that the set-backs equal the height of the tower.

Commissioner Fleck asks what type of zone this tower would be conforming. Kress states that there is no zone that excludes cell towers, an SPU would be required on any property that is not owned by the City.

MOTION BY CHRISTENSEN, SECOND BY MARISTUEN, to approve the Special Use Permit (SPU) request for a cellular communications tower to be located in the W1/2S1/4, Section 12, T154N, R101W (Mike Wells' property east of University Avenue), City of Williston, contingent on addressing all staff comments. **Discussion is had Kress and Evert as to whether or not this motion should also address the previous approval. Evert states that the previous approval was contingent on agreement by neighbors within the 300 ft. set-back. Without that, the previous approval is null. Boyeff clarifies that this motion approves the SPU as presented at this hearing, Christensen and Maristuen affirm. AYES: Maristuen, Haugen, Long, Aafedt, Fleck, Christensen, Boyeff. NAYS: ABSENT/NOT VOTING: ABSTAINED: None.

- c. Final plat, a rearrangement of Lots 4 and 5, Block 1, Hi-land Heights 2nd Subdivision, SW ¼ of Section 25, T155W, R101W, City of Williston – Jay Mikolinski

Boyeff introduces Item (c) of new business (as above) and asks Kress to present. Kress outlines on the map the location of this item and Item (d) to follow and explains that they are separate plats but related by a sewer system.

Kress begins by explaining that on May 27, 2014, the City Commission approved the preliminary plat for the rearrangement of Lots 4 and 5, Block 1, Highland Heights 2nd Subdivision, to create five single family lots. The project site is zoned R-1A: Rural Residential. The following lots are proposed: The five lots exceed the minimum required lot area of one-half acre for the R-1A zone.

The lots will take access from 1st Avenue West, a dedicated public street. Public utilities will run through an easement on the westerly (rear) edge of the lots. Kress states that the utilities will come to this property through a subdivision south across 72nd Street West (new business Item (d)), proposed to be developed by the same developer and add that no lots on this subdivision can be built on until the utilities are extended to them to the satisfaction of the City. Kress adds that during the plat process the applicant has continued to work and make progress on the utility provisions.

Kress says a standard development agreement would be required to include the following special provisions:

1. No lots on this subdivision can be built on until the utilities are extended to them to the satisfaction of the City.
2. No curb, gutter, boulevard, sidewalk or street light will be required along 1st Ave. E.; this will remain a rural section road
3. No curb, gutter, boulevard, sidewalk or street light will be required along 72nd Street; this will remain a rural section road.

MOTION BY MARISTUEN, SECOND BY CHRISTENSEN, to approve the rearrangement of Lots 4 and 5, Block 1, Hi-Land Heights 2nd Subdivision, SW ¼ of Sec. 25, T155N, R101W, City of Williston, contingent on no construction being done on the lots until public utilities reach them, addressing all staff comments, and a development agreement being signed and recorded.

AYES: Maristuen, Haugen, Long, Aafedt, Fleck, Christensen, Boyeff. NAYS: ABSENT/NOT VOTING: ABSTAINED: None.

- d. Final plat a rearrangement of Lots 1, Block 5, Hi-land Heights 2nd Subdivision, SW ¼ of Section 25, T155W, R101W, City of Williston – Jay Mikolinski

Boyeff introduces Item (d) and asks Kress to present. Kress first points the Commissioners to a revised plat handed out before the meeting. He begins by pointing out Lot 11 on the plat and stating that it is actually the street. He states that this is not something that is done often but that it was considered here. The street would be built to city street standards, 60 ft. ROW however it would be a private road owned and maintained by the HOA. Kress explains that he alternative to that is to run an easement up each lot. He points out the detention basin which would also be owned by the HOA. HOA would be required to be set up with these and other standard conditions and would be reviewed by the city attorney.

Again Kress states that the City Commission approved the preliminary plat for the Cottonwood Hollow Subdivision II, to create seven single family lots and two multi-family lots; and a zone change from A: Agricultural to R-1: Single family residential for 3.45 acres, and from A: Agricultural to R-3: Lowrise Multifamily and Townhouse Residential for 2.88 acres. The zone change will not become effective until the final plat records. The following lots are proposed:

- 7 R-1-zoned single-family lots, each with an area between 0.48 acres and 0.55 acres
- 2 R-3-zoned multi-family lots, each with an area between 1.11 acres and 1.24 acres

The single-family lots will be developed with individual, detached single-family residences. The multi-family lots will be developed with blocks of three, four, or seven units attached side-by-side. A total of 28 units is proposed; all of them will have a two-car garage. There will be between 21 and 23 outside parking spaces for each multifamily lot. Kress states that the proposed density of the multifamily lots is 11 dwelling units per acre (DUA) for Lot 1 and 12 DUA for Lot 17. Both of these are under the maximum density for the R-3 zone of 19 DUA.

Kress says that a standard development agreement will be required and will include special provisions involving ownership and screening of the detention basin, the developer creating a screening plan to be reviewed and approved by staff, conditions of the CC&Rs and the HOA, verification that the HOA has been established. Further all lots on the east side to have fencing or screening along their eastern property line to prevent access onto 1st Avenue West. These are NOT double frontage lots and will all take access from the center private street. Curb, gutter, boulevard, sidewalk and street lights will not be required on 72nd Street; some curb and gutter will be required on 1st Ave. W as specified by the City Engineer. No certificate of occupancy will be granted until street trees are installed along the private street. Park District does not require any park dedication for this project however cash in lieu will have to be paid at the time of individual lot development.

Kress states that the City Engineer pointed out that the property is subject to the 70th Street recapture agreement which has to do with the sewer that was put in by a private developer; the developer should contact the City Engineer regarding this agreement.

City Engineer Hanson makes a correction stating that the recapture agreement includes sewer and water, not just sewer. He further states his concern that the center street is shown as a lot

and would be owned by the HOA. Hanson questions the assessment of taxes on that and who would be responsible for that if the HOA dissolves. He states he would rather the street be a standard easement rather than a Lot so that if the taxes are not paid in the future and the City has to levy on that lot, the City would not end up with another street to have to take care of. Discussion is had including attorney Evert and Kress that the City could require it written into the CC&Rs that the surrounding property owners would be assessed taxes on Lot 11 (street) however that will not address the issue of the HOA dissolving.

Jarcik interjects and states that it is the City's policy that all streets should be public streets rather than private. He says there are some compelling reasons to make this particular street a private street and states that the City Commission did hear that and approved it as private.

Boyeff states that if it were an easement, everyone would pay the taxes. Discussion is had with the Commission, staff, Eric Kirby (Ames Engineering) and attorney Ryan Geltel both representing the applicant regarding removing Lot 11 and making it a standard ROW easement. Geltel also clarifies a statement in the fact sheets for this meeting concerning the multi-family units not being townhouses and not being sold as individual lots. It is the developer's full intention that these be condominium units owned by a condo association that will be created within the HOA.

MOTION BY FLECK, SECOND BY CHRISTENSEN, to recommend approval of the final plat for Cottonwood Hollow II Subdivision, a subdivision of 6.33 acres to create seven single family lots and two multi-family lots; contingent upon a detention basin, addressing all staff comments, development agreement with project specific provisions, general performance lien, an updated title opinion and removal of Lot 11 of the current plat to be replaced by an access and utility easement. AYES: Maristuen, Haugen, Long, Aafedt, Fleck, Christensen, Boyeff. NAYS: ABSENT/NOT VOTING: ABSTAINED: None.

- e. Final plat to be known as Northern Heights, residential use, located in the L&G Subdivision, Lot 2 (east of the Buffalo Trails Campground), City of Williston – Nick Lippert

Boyeff introduces Item (e) under new business and asks Kress to present. Kress says on July 8, 2014, the City Commission approved the preliminary plat for the Northern Heights Subdivision, a subdivision of 8.94 acres to create 24 single family lots and one detention basin lot; and a zone change R-1A: Rural Residential to R-1: Single Family Residential for the entire project site, located in Lot 2 of the L&G Subdivision. The zone change will not become effective until the final plat records.

The following lots are proposed:

- 24 single-family lots, ranging in size from approximately 10,000 square feet to approximately 14,000 square feet. This lot size exceeds the minimum 8,000 square feet required in the R-1 zone.
- 1 private park/detention basin lot of 15,751 square feet. This park will be owned and maintained by a homeowners association (HOA). The Williston Parks and Recreation district has stated they will not accept this park as it is too small for them to maintain and operate.

Kress says this project will transition from the Lake Park Subdivision to the south, with most lots right around 8,000 square feet in area, and the Hi-Land Heights 1st Subdivision to the north, with lots of half an acre (21,280 square feet) or greater.

The project site will take access from the south through a street access easement on the south side of the project site connecting to 66th Street East. Access from the north will be provided by an extension of 4th Avenue East. Kress adds that all streets within the project site will be paved, dedicated public streets with a 60-foot wide right of way accommodating a 38-foot back of curb to back of curb street with a 6-foot wide boulevard and a 5-foot wide sidewalk.

Kress say that although the city discourages cul-de-sacs, two of the proposed streets do end in cul-de-sacs. These two roads would not be able to extended northward due to the pattern of development. Kress says that these cul-de-sacs are of a configuration satisfactory to the City Engineer and Fire Chief.

Public sewer is available along the east side of the project site. Public water can be made available by running a water line from 2nd Avenue West along 66th Street and into the project site. At the July 8, 2014 City Commission Meeting the Commission directed that a committee be formed to evaluate whether to for a special assessment district for the installation of 66th St and the repaving of 66th St. to an urban street standard. On August 24, 2014 that committee met and determined that there is no need for an urban street standard at this time for 66th St. and can remain a rural street section. Discussion is ongoing with the developer concerning construction scheduling.

Kress states that the standard development agreement will require the following special provisions:

1. The detention basin/park must be on its own lot and owned by a homeowners' association (HOA).
2. The detention basin must be screened with landscaping or decorative fencing.
3. The detention basin is considered an improvement; the general performance lien will not be released until the detention basin is installed and landscaped/screened. In the event the developer escrows for improvements, the escrow agreement must include a plan depicting how the detention basin will be landscaped or screened, and the amount of the escrow must include the cost of landscaping/screening the detention basin as depicted in the plan.
4. The conditions, covenants, and restrictions (CC&R's) for the HOA must state that:
 - a. Membership in the HOA is mandatory for all property owners in this subdivision;
 - b. The HOA owns the detention basin/park lot and is empowered to assess the members of the HOA for the cost of maintenance of the detention basin/park;
 - c. If the HOA dissolves, the City of Williston can assess the property owners for the maintenance of the detention basin/park lot.

Boyeff asked Aberly about the names of the cul-de-sacs, she states they will need to line them up as closely as possible with streets map and likely name them a court or a circle. Boyeff further questions Hanson about the short distance from one cul-de-sac to the dead end street

with no turn around. Hanson is not concerned by this because of possible/probable development to the west which would extend the road.

Haugen asks for clarification on the applicant's responsibility re: 66th St. Kress states that even though City Commission decided that it would not be necessary to bring this street to urban street standards, the applicant is still responsible for re-paving 66th St. just will not be required to add curb and gutter. Kress asks Hanson to discuss the timing of this. Hanson says there is consideration of a special assessment district to bring in City sewer, if there is interest construction would begin next year. It is explained that 66th St. will be torn up for the installation of water-line so the thought is "why not install sewer while the street is open". Water line and re-paving will happen regardless.

MOTION BY LONG, SECOND BY MARISTUEN, to approve the final plat for the Northern Heights Subdivision, a subdivision of 8.94 acres to create 24 single family lots and one detention basin lot, located in Lot 2 of the L&G Subdivision, contingent on; addressing all staff comments, development agreement with project specific provisions, general performance lien and updated title opinion. AYES: Maristuen, Haugen, Long, Aafedt, Fleck, Christensen, Boyeff. NAYS: ABSENT/NOT VOTING: ABSTAINED: None.

- f. Final plat for East Valley Rail and proposed zone change from A: Agriculture to M-2: Heavy Industrial on approximately 306 acres of land located west of 133rd Ave. and north of ND Hwy 1804, Containing portions within Sections 17 and 20, City of Williston – Jason Everett, owner's agent/Civil Science Infrastructure

Boyeff asks Kress to present Item (f). Kress reminds that this first came to this Commission in January 2014 and that this final plat is a little different than they saw at that time. This will be explained by the applicant. City Commission, on April 22 2014, approved East Valley Rail Subdivision, a subdivision of 242.46 acres to create 23 lots for industrial development (rail yard); and a zone change from A: Agricultural to M-2: Heavy Industrial on approximately 161.75 acres (the remainder of the 242.46 acres was already zoned M-2).

Kress states that there were six contingencies placed on that preliminary approval by the City Commission. He goes over them as they were also concerns of P&Z Commission at preliminary plat hearing.

- 1 - All traffic volume, traffic easement studies necessary to evaluate the traffic flow to and from this project site along the truck route that runs through downtown Williston to identify any major problems and /or improvements due to increased truck traffic.

Kress pointed the commission to reports, studies and memos in the packet and states that the answer to this questions is NO.

- 2 – Further information from the ND DoT is necessary to clarify the improvements to Highway 1804 tying to the proposed four lane highway and/or safety improvements including a three lane consideration.

Kress discusses response from NDDOT, WALT PETERSON SAID IN AN AUGUST 12 E-MAIL: We will have a couple consultants working on projects for this area. One consultant will look at 1804 from the new proposed east truck route, east for 20 miles.

After we determine that location, we will have another consultant begin the section from railroad overhead to the new truck route. 2016 would probably be the earliest we can get something on the ground. Design will be based on traffic numbers and projected traffic. I have had discussions with Bismarck on the need to 4 lane the section from railroad overhead to the new truck route.

3 – The speed limit on Highway 1804 should go down to a maximum of 40 miles per hour zone east of the project site.

WALT PETERSON SAID IN AUGUST 12 E-MAIL: No, we have looked at that a couple times and speed OK at present. Kress says it is his understanding that six months after this development is operational the NDDOT will assess this again.

4 – The east bound left turn lane should be extended into this property.

Discussed in Traffic Memo.

5 – Paving on these (Kress pointed out) roads should be concrete or hot-mix asphalt.

6 -- As well as all considerations of review of water flows, and channels, and culverts meet approval of the City Engineer after his review.

Hanson's comments are included in staff comments.

The preliminary plat proposes the following lots:

- 8 lots that are served by rail spurs,
- 15 lots not served by rail spurs

The final plat before the Commission depicts a different number and configuration of lots. The revised plat was again reviewed by the City's traffic consultant who stated that as long as the access points stay the same and the general land use and sizes are the same or less, he saw no need for an updated traffic study.

Kress states that the development agreement should include project specific provisions that detention basins must be on their own lot and owned by an HOA and must be screened with landscaping or decorative fence; developer to provide screening plan prior to final plat recordation. The detention basin is considered an improvement; the general performance lien will not be released until the detention basin is installed and landscaped/screened. Kress says that the CC&Rs are fairly standard and listed in the Commission packets and points out one requirement that the HOA is responsible for the maintenance of the private street.

Engineer Doug Perkins with Civil Science addresses the Commission. He quickly runs through a slide show depicting the BNSF railroad, its importance to Williston and several larger cities in surrounding states and into Canada. He discusses the involvement of the NDDOT and BNSF of helping to finalize this project, access points, a dead end private road, removal of one cul-de-sac and traffic flow through the development.

Discussion is had in regards to the private road and its dedication on the plat, confirmed that it will be dedicated on the final plat.

Perkins continues and addresses some staff comments/requirements, largely discussing how they have already addressed those. He explains that Hwy 1804 will continue to be a 2 lane road but will contain both a right and left-hand turn lane, left-hand turn lane has been extended to provide more stacking for truck traffic. Access to Vestal property south of Hwy 1804 will be aligned with the westerly access to East Valley. Boyeff states concern that the access to the Vestal property had previously been required to move because of steep grade and visibility issues and he worries about it moving back. Jason Evert, developer, states that he was aware of that adding that the access was originally moved 800 ft. and this re-configuration would only move the access back 160 ft. Boyeff was comfortable with that.

Clarification is made about easements within the development; they will run on the lot lines so they will be preserved. Discussion is had regarding traffic flow into and around Williston to Hwy 1804 and how the traffic study ended in conclusion that this development would only increase traffic 4%.

Hanson questions the developer's plan of fast tracking initially and slowing later in development. He is concerned that there will need to be huge dirt moves, 60-70 ft. cuts and how that will actually work. He also questions re-seeding / reclamation bond; Boyeff suggest that can all be addressed in the development agreement. To that Kress adds that they could require the developer to grade to completion, meaning once they start grading they cannot stop, must complete the work. Kress says staff will work with applicant. Boyeff confirms with Kress that this would be in staff comments.

MOTION BY HAUGEN, SECOND BY MARISTUEN, to approve the Final plat for East Valley Rail on approximately 306 acres of land located west of 133rd Ave. and north of ND Hwy 1804, Containing portions within Sections 17 and 20, City of Williston, contingent upon addressing all staff comments, a development agreement and the "grade to completion" provision. AYES: Maristuen, Haugen, Long, Aafedt, Fleck, Christensen, Boyeff. NAYS: ABSENT/NOT VOTING: ABSTAINED: None.

- g. Final plat to be known as Orville Erickson Subdivision, a dedication of land to a new high school, NW ¼ Except Sublots 1, 2, 5, 6, T154R, 101W, City of Williston – Orville Erickson/Bill Moonen, AE2S

Boyeff introduces the final item of new business (as above) and asks Kress to present. Kress indicates this property on the map and reminds the Commission this plat is just to parcel off the section of the land being dedicated to the school district.

The area of proposed Block 1 has been annexed to the City as of August 12, 2014. This lot has been deeded to Williston Public School District No. 1 for the development of a new high school. Proposed Block 2 will remain in the City's extra-territorial jurisdiction at this time.

The project site will take access from 37th Street West, and a dedication for the extension of the existing 37th Street West is included in the plat. However, the development of the school itself cannot proceed until a second means of access has been provided.

Development of the school will require the extension of utilities from the adjacent Harvest Hills Subdivision to this property and the construction of a sewer lift station in the southwest corner of Lot 1.

The final plat has been revised from the preliminary plat to depict the 80-foot right of way for the future 44th Street entirely on the school property, rather than only half that right of way on the school property. The 33-foot statutory section line right of way along the north section line has also been depicted on the revised plat.

Kress states that the development agreement will require the following special provisions:

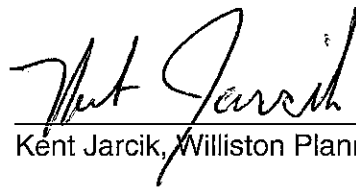
1. There can be no development on Lot 1 until a second means of access, connecting this lot to 26th Street West, has been obtained by the school district.

Discussion is had as to how to control future development on the unplatted parcel of land in the future and that should it never be annexed to the city or developed the comprehensive plan would take presence. Kress has been talking to the property owner, will keep communications open and has no concern about this at this time.

MOTION BY LONG, SECOND BY AAFEDT, to approve final plat for Orville Erickson Subdivision, a dedication of land to a new high school, NW ¼ Except Sublots 1, 2, 5, 6, T154R, 101W, City of Williston, contingent on addressing all staff comments, a development agreement with project specific provisions. AYES: Maristuen, Haugen, Long, Aafedt, Fleck, Christensen, Boyeff. NAYS: ABSENT/NOT VOTING: ABSTAINED: None.

DATE OF NEXT REGULAR MEETING: September 15, 2014

MEETING ADJOURNED.



Kent Jarcik, Williston Planning Director

APPENDIX
to the
AUGUST 18, 2014 PLANNING AND ZONING COMMISSION MINUTES

1. Special Use Permit (SPU) request for existing commercial and multi-family use of lot and building known as the Metro Building, Original Townsite, Lot 1 – 10, Block 25, City of Williston – Steve Price

2. Special Use Permit (SPU) request for a cellular communications tower to be located in the W1/2S1/4, Section 12, T154N, R101W (Mike Wells' property east of University Avenue), City of Williston – Verizon/Mike Bieniek