

REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION WAS HELD ON September 19, 2016 AT THE BROADWAY COMMONS, 302 E. BROADWAY, IN WILLISTON, NORTH DAKOTA.
(Meeting location changed for this meeting to accommodate remodeling work at the City Hall)

Vice-Chairman Maristuen called the meeting to order at 5:30pm. Roll Call was taken. A quorum was present.

MEMBERS PRESENT: Boyeff, Hansen, Long, Christensen, Bauer, Maristuen

MEMBERS ABSENT: Aafedt

OTHERS PRESENT: Kent Jarcik, Planning Director; Rachel Laqua, Principal Planner; Josephine Ching, Staff Planner; Bob Hanson, City Engineer; Howard Klug, President of City Commission

DISPOSITION OF MINUTES:

- Minutes were approved for August 15, 2016 regular meeting.

MOTION BY BOYEFF, SECOND BY HANSEN to approve minutes as presented. CARRIED ON VOICE CALL. (unanimous)

COMMUNICATION:

A. Planning article of the month; no discussion.

B. Disposition of Unfinished Business Item A.

Maristuen stated that this item has been tabled for over a year (never presented to Commission) and as it is not ready to move forward staff asked that it be removed from the agenda.

MOTION BY CHRISTENSEN, SECOND BY HANSON to remove this item from the agenda. CARRIED ON VOICE CALL. (unanimous)

PUBLIC HEARINGS:

A. Ordinance 1028, proposed updated Sign Ordinance – Staff

Maristuen introduced Item A of Public Hearings (as above) and asked Laqua to introduce. Laqua began by explaining that this is an ordinance repealing sections 8.L, 9.L, 10.L, 11.L, 12.L, 13.L, 14.L, 15.L, 16.L, 17.L, 18.L, 19.L, 20.L, 21.L, 22.L, 23.L, and 24.L of ordinance 613 of the Williston City Ordinance, otherwise known as the zoning ordinance, and replacing and amending Section 25.G. General sign regulations, amending the sign regulations for the City of Williston.

Laqua stated that she wanted to give a quick history of this ordinance, why it is being looked at, what the current ordinance is and what ordinance 613 says. She stated that she would talk about the committee that helped work on the ordinance and what their intent was; go over public comment that has been received so far; and then go into more detail on what is in the ordinance.

Laqua said that staff started working on this as part of the Unified Development Code that is still in the process of being worked on. She stated that right now the sign ordinances don't work; the sign regulations are split up in each zoning section and there is a little bit in Section 25 G but there is really no way to comprehensively work with modern signage needs, both temporary and permanent.

Two years ago the comprehensive work group which consisted of: the Mayor; City Commissioner Brostuen; Planning Commissioners Aafedt, Boyeff and Maristuen; City Engineer Hanson; Building Official Tracy; Assistant City Attorney Evert; Public Works Director Tuan; Fire Chief Catrambone; Economic Development Director Wenko; City Auditor Kautzman; and planning staff. Committee looked at eight different sign ordinances around the country; sign ordinances that were restrictive and sign ordinances that were more permissive. The Committee looked at the Comprehensive Plan from 2010 and the public comments made as part of updated Comprehensive Plan and the updated UDC to decide what direction the community wanted to go with signage. That resulted in a proposed ordinance being sent out for public comment last winter (2015/2016).

Just before the proposed sign ordinance could go to public hearing there was a Supreme Court case, Reed vs. Town of Gilbert. In that case the Town of Gilbert, Arizona had a sign ordinance that regulated based on the advertising content (real estate vs. political vs. traffic sign, etc...). In this particular case it was a church sign that was not allowed to be as large as a political sign and the outcome of that suit, after reaching the Supreme Court, resulted in a decision disallowing sign regulation based on content. Signs cannot be distinguished as a "For Sale" sign; we can only say you can have this much signage per zone. Laqua said that since the City was already working on our sign ordinance the first proposal was pulled back and re-worked to incorporate this Supreme Court decision. Laqua said that the ordinance being proposed to them now has been out in the public for review for five weeks.

The current C-2:General Commercial ordinance passed about two years ago allowed 2 sq. ft. of signage for every 1 ft. of wall frontage. That ordinance was revised in order to meet the needs of larger box stores such as Menards and Sportsman's Warehouse that have larger stores and need larger signage. For the rest of commercial zones, C-1 and C-3 are still at the old allowance which was 20% of façade up to 200 sq. ft. for a wall sign and up to 125 sq. ft., 45 ft. high for a free standing sign. Laqua said that those numbers aren't really changing just that the City would be switching to proportional signage.

Multi-family zones under Ordinance 613 were allowed 12 sq. ft. of signage. That was updated in Ordinance 1011 to be 32 sq. ft. per entrance recognizing there was a need for more signage in those residential areas. In single family residential areas where there may be a church or a school there is still only the 12 sq. ft. allowed. Because this is so small, most of those facilities can't even replace their sign let alone be allowed to use a dynamic messaging sign that keeps up with their more modern needs.

For temporary signage under Ordinance 613 you were allowed to have: For Sale signs up to 6 sq. ft. in residential areas and up to 10 sq. ft. in other areas; construction signs up to 16 sq. ft. in residential areas and up to 32 sq. ft. in other areas; 32 sq. ft. for roadside markets; 32 sq. ft. for political ads; and 2 sq. ft. for garage sale signs. As new types of signage started being used, banner signs and blades signs, they were not addressed in Ordinance 613 so technically they were not allowed and there was no way to regulate them. Ordinance 1009 allowed greater temporary signage of: not more than ¼ of the allowable signage on the property; only allowed on property with permanent signs; limited to 15 days, one-time per year and a permit was required. This is still not enough.

The AWG Committee met on this as part of the Unified Development Code for the City and their intent was to provide more allowable temporary signage “while encouraging and providing opportunity for greater permanent signage”. Laqua said that use of language was because a lot of public comments against temporary signage is that temporary signs were being used a permanent signage. For example strip malls where there is signage on the building itself but have not invested in a free standing sign listing the businesses in the mall but rather using temporary signs lined up along the front of the property. The Committee was clear in saying that we need to provide more permanent signage to reduce the need for temporary signage used to advertise the business allowing them more options to advertise sales and special events with temporary signage. Laqua stated that there are two views on temporary signage; those who want it and those who don’t. She said that there are businesses who rely on temporary signage but community members who feel that there are too many around and the Committee tried to find a place of balance between those to views.

Laqua stated that there are some people who believe there should be no regulation on temporary signage but warned that, under the City’s ordinance structure, without regulation then a use essentially becomes unallowable. Reminding that banners, flag signs, dynamic messaging, are not addressed in Ordinance 613 and thus are not allowable. It must be listed in the ordinance in order to be allowed. However Laqua further stated that there was a recent ad hoc meeting of the sign committee in which they drove around town looking at different signage in different zones. A specific window sign was pointed out, an electronic sign hanging inside the business that advertised tacos, burritos and the like on a rotating, blinking basis. One of the persons on that drive around asked about regulating that kind of a sign. Laqua stated that if the City chose to regulate that sign they would also have to regulate electronic “OPEN” signs that most all businesses use so there is a fine line between no regulation and over regulation.

Laqua explained the highlights of Ordinance 1028 as presented:

1. Removes sign regulations from individual zoning sections of the overall ordinance and from various previous updates and consolidates all regulations into one section.
2. Provides an intent section at the beginning of the ordinance.
3. Creates clear, detailed definitions and regulations of various types of signs, in order to clarify to the public and reviewers how sign applications will be reviewed.
4. Allows more temporary signage for businesses (zones: P, C-1, C-2, C-3, M-1, M-2, M-3).
 - a. Creates one-time permits for temporary signage.
 - b. Permits would be available through the building department for a \$50 permit fee for a one-time event. One-time event permits would be allowed 8 times per year per property. Based on *Reed vs. Gilbert* these cannot be limited to on-premise signage or community event signage, as was previously discussed.
 - c. Signs may be no larger than 64 square feet.
5. Allows more temporary signage for residential uses.
 - a. No permit is required.
 - b. In R-1E, R-1A, R-1, R-2, R-2A, R-6 and R-7, temporary signs are allowed up to 6 square feet. No more than one temporary sign is allowed per street frontage. If a property has more than 200 feet of frontage, an additional temporary sign may be allowed every 200 feet. This would be in order to allow properties to utilize what would have fallen under a “Real Estate Sign”, which is no longer able to be called out specifically, based on *Reed vs. Gilbert*. Content of these signs cannot be regulated, though the residential zoning would prohibit commercial advertisement.

- c. In Ag, R-3, R-4, and R-5, temporary signs are allowed up to 32 sq. ft. No more than one temporary sign is allowed per street frontage. If a property has more than 200 feet of frontage, an additional temporary sign may be allowed every 200 feet. This would be in order to allow properties to utilize what would have fallen under a “Real Estate Sign”, or “Now Leasing sign” which is no longer able to be called out specifically, based on *Reed vs. Gilbert*. Content of these signs cannot be regulated, though the residential zoning would prohibit commercial advertisement.
6. Clearly defines which signs require permits and which do not.
 7. Clearly lays out in a spreadsheet format the size and height allowances for signs in all zones.
 8. Increases the amount of available signage in a number of situations including:
 - a. Proportional signage allowances in commercial and industrial zones.
 - b. Allowances for business center signage with a sign master plan, to take into account modern commercial settings and developments.
 - c. Larger, more flexible signage allowances for apartment complexes and subdivisions.
 9. Based on *Reed vs. Gilbert*, removes the distinctions made between land development, construction and real estate signs.
 - a. Fixed yard signs no larger than 32 square feet and no more than 6 feet tall are allowed on P, C-1, C-2, C-3, M-1, M-2 and M-3 without a permit, in order to allow properties to utilize what would have fallen under a “Real Estate Sign”, which is no longer able to be called out specifically, based on *Reed vs. Gilbert*.
 - b. In Residential zones, the temporary signs described above would fulfill that need.
 10. Creates allowances for non-residential, non-commercial uses in residential zones (such as churches, schools, lodges, etc.) for both permanent and temporary signage, which currently do not have access to an appropriate amount of signage.
 - a. This includes allowing one temporary sign of up to 64 square feet for up to 8 events of 15 days each per year. These signs must be permitted with a \$50 permit fee.
 - b. For permanent signage, non-residential uses in residential zones may use up to 45 square feet of signage, 25 square feet of which may be dynamic messaging. On local and collector streets, these signs may be no taller than 6 feet. On arterials, these signs may be up to 8 feet tall.
 - c. Creates the ability to do a sign master plan for a campus in any residential zone – i.e. hospitals and school campuses, which require greater signage.
 11. Allows greater overall signage for businesses:

	Current Ordinance	Proposed Ordinance 1028
Commercial and industrial wall signage	20% of façade, up to 200 square feet	2 square feet per 1 foot of building frontage. For example, a 200 foot long building in M-1 can currently have 200 square feet of wall signage. With the new ordinance, the building would be allowed 400 square feet of wall signage
Non-residential uses in Residential Neighborhoods	12 square feet	45 square feet, monument style only, with 25 square feet of dynamic messaging. For example, a church can now have a digital display sign.
Temporary sign	1 event of 15 days per year, no more than ¼ of the size of	8 events of 15 days each, with a single sign that is a maximum of 64 square feet. For example, a 64 square foot temporary sign can be placed on a

	existing signs on the property	property for an event of 15 days each with a permit. This would include flags, banners, trailer signs, etc.
Commercial signage for two businesses on one lot	One freestanding sign of 125 square feet	Up to 200 square feet or, in the case of 3 businesses on one lot, a business center identification sign can be used. For example, a strip mall will no longer be limited to 125 square feet of total free standing signage.
On lots with more than one frontage and at least 250 feet of frontage per frontage	One freestanding sign of 125 square feet	One freestanding sign of either 125 square feet or 200 square feet, depending on the number of businesses on the lot, is allowed per street frontage. For example, a lot with three 250 foot long frontages may have 3 signs, one per frontage.

PUBLIC COMMENT:

Jean Ludvig - on behalf of many not-for-profit local organizations: City Band, Entertainment Inc., Lions Club events, etc.... These events are limited on how to get information out to the public. Radio, Television, print ads are cost restrictive and not always the best way to reach target populations. They rely heavily on temporary signs to advertise their events; trailer signs are limited by locations. Would ask the Commission to consider these non-profit groups needs and suggested possibly a community marquee sign.

Wayne Munson, Indigo Signworks – Voiced their concern a couple years ago about the current code of 125 sq. ft. free standing sign. Customers still concerned about having only a 125 sq. ft. free standing sign. Standard gas station sign: name, gas price, specials (pizza) – will exceed 125 sq. ft. This is the only part of this Ordinance that Indigo has concerns with. They appreciate the 200 sq. ft. for multi-tenant sign but would like to see 200 sq. ft. for free standing; stating that 125 sq. ft. is too small for the general public to read; if an advertisement can't be read than what is the purpose. Also would ask for 250 sq. ft. for multi-tenant free standing sign. He stated that if businesses are limited in ability to advertise it will affect their business.

Kevin Gebhardt, Newman Signs re: off premise advertising. He pointed to Ord. 1028, page 13, Sec. 25(9)(d) – illumination. Said that many/most of bill board signs are set with lights along the bottom pointing upward to the board. He noted that the new ordinance indicated that lighting should be placed at the top of the billboard pointing down and asked why. Laqua answered that it was intended to cut down on light pollution and was modeled after other cities' billboard ordinances. Kevin said that lighting at the top of a bill board is harder to maintain and repair and with the addition of solar panels for powering the lights, which have to be placed on the top of the sign it would become crowded with the lights there too. He would like sign companies to be given the option of light placement. Kevin then pointed to page 18, Sec. 25(13). He noted that this section now only allows billboards to be placed in M-2:Heavy Industrial zones where as under the current ordinance they would also be allowed in M-1:Light Industrial. He feels that losing the opportunities in the M-1 zone would harm the customer's ability to advertise. He would like to see M-1 placement of billboard remain in the new ordinance. Kevin discussed pg. 19, Sec. 25(13) – billboard heights. Currently they are allowed to be up to 60 ft. high and the new ordinance would restrict them to 45. Kevin said that Newman doesn't necessarily want to put up 60 ft. billboards but occasionally it is necessary because of the terrain in order to get the

billboard where it can be most easily visible. Kevin asked that the option to go up to 60 ft. remain in the new ordinance if it becomes necessary to go above the 45 ft. Finally he addressed the overall sign square footage wherein Ordinance 1028 restricts the square footage of a billboard to 168 sq. ft. Industry standard is 672 sq. ft. He used McDonalds as an example stating that their national advertising sends pre-printed vinyl signs to billboard companies to hang; there is no way with the new proposal that they will be able to service companies wanting billboard advertising under this restriction. He asked that the size be left as is in the current sign policy.

Karissa Teske – One Stop Trailers & Signs – Karissa stated that they feel this sign ordinance is too restrictive. Churches, schools, non-profits, etc... the \$50 permit fee is too much. The trailer signs are rented at a cost of \$85 per week, asking people to pay another \$50 will greatly reduce their business. Karissa stated that they have talked to some people that rent regularly from us as well as property owners and they have all said they are unwilling to pay the \$50. She stated that they own about two dozen signs, half of which are located in other towns and of the dozen that are in town several are out of service needing cleaning or repairs. Usually only 6 -8 signs out in the City at one time. One Stop Trailers believes that the restrictions on temporary signs in this ordinance could potentially put them out of business.

Tracy Paulson, Shepherd's Garden – Tracy stated that she is a small business owner downtown. She has tried several forms of advertising and found that the temporary trailer signs are the best way for her to advertise specials. She uses them for Mother's Day, Valentine's Day, Easter, Christmas and the like. Since she is a small business located in the Downtown Plaza she has little opportunity to advertise otherwise and feels that she would not be able to afford the cost with the additional \$50 permit fee.

Leo Warmsbecker, The Sign Shop – Restricting a free standing sign to 125 sq. ft. and putting that 45 ft. in the air will make that sign too small to read. Said he might have a customer come in with \$40K to pay for signs, states what he wants and Leo would have to tell them he can't build that sign because the code won't allow it. That customer is going to walk out and he will lose that business, thus he loses income, negative impact on his business. Stated that has happened in his office three times this year.

Janna Lutz, Williston Chamber of Commerce – stated she was available to address any questions from the letter that was provided in the Commission packets from the Chamber. Said that the Chamber feels some of the restrictions in Ordinance 1028 would be harmful to some businesses in the area and that the ordinance should be more flexible with things like balloons, banners, flags, pendants and the like not being able to have writing on them which hinders a business's ability to advertise.

Bob Horab, Builder's Assoc. – Stated that Planning staff only met with the Builder's Assoc. one time on this ordinance. He said that balloons and inflatables are meant to get attention to bring customers in and while he understands that it may be a distraction to drivers, a small billboard would be just as much if not more a distraction while people struggle to read them.

COMMISSION DISCUSSION:

Commissioner Maristuen – addressed the Commission and stated that the fees are set by the City Commission through Resolution but Planning Commission can make comment and recommendation on the fee.

Commissioner Hansen – stated that she was a small business owner for a long time and she understands the struggle and believes the \$50 fee is too much and should be re-considered especially when there are people that rely so heavily on that.

Commissioner Bauer – asked Laqua why the fee went from \$30 to \$50. Laqua stated that it was recommended by the Sign Committee. It is part administrative fee and part to incentivize permanent signage.

Laqua continued to address the issue of balloons, pendants, and blade signs. She stated that currently they are not addressed in the ordinance and therefore there is no regulation on them so they are not allowed at the moment. They have been included in Ordinance 1028 simply to allow regulation that they have to be kept in good condition, clean, not tattered, looking nice; they are otherwise allowed (non-worded).

Commissioner Maristuen - for clarification the original intent of the Sign Committee was to clean up what we had, expanded the amount of signage that was allowed while still keeping the community looking respectful and appealing. He stated that he would hope that the sign industry would take time to get into the code, come to the City and understand what your business is allowed. Based on the current code(s) that is a hard clarification with the old ordinance and amendments as we have now. As to what to do with the Ordinance at this hearing Maristuen said that the Commission could either deny it as presented, sending it with that recommendation to the City Commission which could send all the work that has been done back to the drawing board or approve it with changes that the Commission suggests tonight, or if there is any legal issue it could be tabled. Maristuen urged that it get moved forward in some form.

Commissioner Bauer – stated that it seemed that there were only issues with specific items and not the whole document so he felt like just a few more meetings with the sign industry and interested public and little more work on the Ordinance that it should be able to meet their needs.

Commissioner Long – asked the Commission if anyone thought they should move this Ordinance along to the City Commission and in the mean-time try having some of the meetings suggested by Commissioner Bauer and make some revisions to the Ordinance before it is presented to City Commission. She also agreed that the permit fee should be lower than \$50. Her thought with this suggestion was to not slow down the process much more.

Commissioner Maristuen – added that Temporary Signs seem to be the biggest issue. The sign industry was represented at the meeting tonight but the general public was not and he knows they have concerns as well and need to have a chance to be heard as well.

Commissioner Boyeff – commented that he has been a part of a lot sign discussions while he has served on this Commission. He has seen a lot of requests for variances and requests for over-sized

signs over the years; concern with non-profit organizations and the fee structure; it doesn't sound like this ordinance is ready to address all those concerns just yet. With that, Boyeff made a motion.

MOTION BY BOYEFF, SECOND BY BAUER to recommend to the City Commission denial of Ordinance 1028 as presented to allow more consideration of comments by public and Planning & Zoning Commission. AYES: Christensen, Hansen, Bauer, Boyeff. NAYS: Maristuen, Long. ABSENT/NOT VOTING: Aafedt. ABSTAINED: None (recommendation of denial passes by vote of 4-2 with one not voting)

B. Ordinance 1052, proposed Downtown Design Review Board Ordinance – Staff

Maristuen introduced Item B of Public Hearings (as above) and asked Laqua to introduce. Laqua began by giving a quick history of why this has come to the Commission. She said that at the time of working on the Downtown Plan there was a lot of discussion on what buildings looked like downtown and what was appropriate for a downtown, both in uses and aesthetics. There was talk about the Downtown Plan changing and adding ordinances to be sure that appropriate building materials were used. Laqua said that the reason an ordinance structure was suggested is that at the time there wasn't enough support for review board that could look at things and make recommendations subjectively about design and materials. When the ordinance finally started coming together it was in light of a warehouse being built downtown that was an industrial metal building due to lack of lack of restrictions on building types allowed in commercial areas. At that time the Commission asked staff to look at ordinance that would disallow metal buildings in the downtown because they are not an appropriate metal structure. Laqua stated that the committee looked at some draft ordinances and how to fit that into the City's ordinance structure and at then of that ended up being support for a Downtown Design Review Board because the staff didn't feel comfortable dictating how the downtown should look or regulating those things. The Committee that looked at the metal building ordinance consisted of three local builders; Mark Barstad, Barstad Builders; Bob Horab, McCody Concrete; Rick Tofte, Tofte Construction; Mark Schneider, LJA Architects and Mike McLean of JLG Architects; Karissa Kjos (former) Director of the Downtowners Assoc. and City Commissioners Tate Cymbaluk and Deanette Peisik.

That committee spent last winter looking at other Downtown Design Review Boards exploring how they operate legally and protect they protect aesthetic concerns in historical areas of a community. Laqua said that they looked at Bismarck and Grand Forks primarily as two different structures of Downtown Design Review Boards. Grand Forks is very strict stating that builders have to bring building materials, lighting, door knobs, proposed paint colors and the like before the Board for approval. Bismarck she said is more open to interpretation and working with the builders in how much historical integrity is reasonable to keep when re-doing buildings from the 1960's for example. At the end of all that research (which Laqua said was available if Commissioners ever wanted to review it) the committee put together the Downtown Design Review Board and Downtown Design Review Guidelines which are presented to the Commission at this meeting. Laqua said the zoning ordinance amendment, Ordinance 1052, updates the changes made to the C-3 and M-1 districts by Ordinances 961 and 1025, directing that all building permits in the Downtown District must be reviewed by the Downtown Design Review Board. The ordinance amendment 1052 would require properties in C-3: Restricted Commercial and M-1: Light Industrial in the Downtown District which are undergoing renovation or being built to be evaluated by the Downtown Design Review Board.

The committee has recommended that the board a standing board appointed by the City commission on a two-year staggered basis. The board will meet on an as needed basis. Appeals of any board decision shall be made to the Planning and Zoning Commission within 30 days of the board decision

and if necessary would follow normal progression of appeal from the Planning and Zoning Commission meaning it would go the Board of Adjustments. It is suggested that the board be made up of: the Chair of the Renaissance Committee (Kirk Schoepp); a representative of the Downtowner's Assoc. (Louise Skaare, Executive Director); two City Commissioners (Tate Cymbaluk, Deanette Piesik); two Planning Commissioners (to be named at a later time); three local builders (Mark Barstad, Barstad Builders; Bob Horab, McCody Concrete; Rick Tofte, Tofte Construction); two local architects (Mark Schneider, LJA Architects; Nick Lippert, JLG Architects); Planning staff, the City Attorney, the Building Official, and Economic Development Director.

Laqua said that this ordinance and guidelines were forwarded to the Chamber of Commerce, Downtowners Association, and Home Builders Association. The ordinance and guidelines have also been on the City website and were noticed on Facebook and in the newspaper. The Downtowners Association met in their usual board meeting on the first Friday of September and voted to write a letter in favor of this proposed Design Review Board (which had not yet been received). Staff also spoke at the Downtowners Association member meeting on the second Friday in September.

CONDITIONS REQUIRED FOR APPROVAL:

1. Public Hearing at October 11, 2016 City Commission meeting, and Second Reading at October 25, 2016 City Commission hearing.
2. Two Planning and Zoning Commissioners to serve on Design Review Board

Laqua concluded her presentation and Commissioner Maristuen opened the meeting for public comment.

Bob Horab said that he likes that the committee and proposed Design Review Board is more a mix of industry representatives and not so much city staff so the Board could keep up on building material and design changes.

City Engineer Hanson stated that a member of either the City Engineering or Public Works Department needed to be part of the Board.

Upon Maristuen's second call for public comment, City Commission President Klug asked Laqua what would be in place to ensure timely review of submissions by this board in light of criticisms made the earlier presentation about timely, or not timely, review of submissions. Laqua explained it was intended to function similarly to the Renaissance Zone Board where a meeting is called as needed. Klug asked if it would be a quorum board and if a decision on any submission could be made without waiting two months to get the entire board together. Laqua stated that she would clarify with the City Attorney but she believed that a decision could be made by whatever members were in attendance at any given meeting because it is an appointed board rather than an elected board.

Mark Schneider of LJA Architects addressed the Commission stating that he had been able to sit in on some of the building committee for this ordinance. He stated that he felt the team had done a great job at getting to this point. Schneider said that there are a lot of great metal buildings, great brick buildings and other building materials but should they be allowed to be painted black for example. When it comes down to it, having a board and guidelines being set in place it allows a common sense look at, and approach to, what is best for the City. He further stated that he didn't see any reason that there couldn't be a guideline of possibly 30 days for a meeting and decision.

After a third and final call for public comment and hearing none Maristuen closed the public hearing and asked for the wishes of the Commission.

Commissioner Long thought there needed to be some structure built into the ordinance to that if there is an appeal there is some guideline set on how that process is to be followed; are minutes from the Review Board meeting required for the appeal so that the next Commission knows who was voting on the item and so on. Laqua said she would update the accompanying resolution with Commission comments before presentation to the City Commission.

MOTION BY LONG, SECOND BY CHRISTENSEN to recommend to the City Commission approval of Ordinance 1052 contingent meeting the Conditions Required for Approval as presented (above). **AYES:** Christensen, Hansen, Bauer, Boyeff, Long, Maristuen. **NAYS:** None. **ABSENT/NOT VOTING:** Aafedt. **ABSTAINED:** None

C. Variance request to allow an over-sized modular home (over allowed lot coverage area) at 318 14th Ave. E, City of Williston – Kelly Skelton

Maristuen introduced Item C of Public Hearings (as above) and asked Laqua to introduce. Laqua explained that the applicant is proposing to put a house on his property which would exceed the allowable lot coverage in the R-3: Multifamily and Townhouse Residential Zone. Currently, there is a house and garage on the property. The applicant has proposed to remove the current house and replace with a modular unit.

Laqua explained that the applicant maintains that he discussed the property with a City department and was told his property was 165' x 50', which would mean he would have had an 8,250 square foot lot. Based on that information, the applicant ordered a 1600 square foot modular house prior to applying for or receiving a building permit. When the applicant came in to apply for a building permit, the error in the lot size calculations was determined.

With a 7,000 square foot lot in the R-3 zone, 35% of the lot may be covered by buildings, which is 2,450 square feet. The applicant has an 1,120 square foot garage, and has ordered a 1,600 square foot house, which combined would cover 2,820 square feet of the lot. This is 370 feet over the lot allowance, and would cover 40% of the lot.

Laqua said that if the applicant had actually had an 8,250 square foot lot, 35% of the lot would be 2887.5 square feet, and the house ordered would fall within the allowed lot coverage. Because the construction of the house would not meet lot coverage requirements for the lot at its actual size and in the R-3 district, the applicant has applied for a variance from the zoning ordinance.

Variances must meet the following criteria (please see attached for variance section of Ordinance 613):

- i. Special conditions or 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 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.

At the September 6th, 2016 ad hoc committee meeting Mr. Skelton appeared in person and stated that he was not intending to try to "get around" the code, but that there was an honest mistake made and that he had looked for information from the Building Department prior to ordering the house.

The committee noted that their concern was that a precedent could be set. The City Attorney said that due to the factual circumstances in this case, if the committee felt a variance was warranted, it would be made clear in the findings that the variance was granted based on the unique factual circumstances of the case and would not set a future precedent.

Laqua stated that he ad hoc committee did not make a recommendation. She further explained the conditions that would be required for approval of this variance as follows:

1. Findings to be made in favor of a variance:
 - a. Mr. Skelton appears to have received misinformation. He does appear to have ordered a house which would be in compliance with lot coverage if his lot were the size he believed it to be.
 - b. Mr. Skelton's house has been ordered and is unable to be modified.
 - c. Mr. Skelton's garage is unable to be modified.

Laqua told the Commission that their recommendation would go to the Board of Adjustments for final review and concluded her presentation.

Commissioner Christensen asked about Mr. Skelton ordering his house before having a building permit. Laqua stated that generally staff encourages people to go through the permitting process before ordering anything; shed, sign, house, etc. for this very reason.

The applicants, Kelly and Kristy Skelton addressed the Commission. Mr. Skelton explained that he had previously spoke with a City department about the size of his lot and lot coverage and based on the information he received he believed that the 1600 sq. ft. home he eventually ordered was appropriate based on the information he had been given. He said he ordered the home on a Monday, went to the Building Department for his permit on Wednesday and learned on Friday of that same week that there was a problem. He stated that he had no intention of causing any trouble, is not trying to get around the rules. He said there was just an issue with misinformation and an honest mistake and all he is trying to do is provide a better life for his family.

Commissioner Maristuen asked if anyone else in the audience had any comment. Matt Degenstein approached the Commission. He lived right across the street from the Skelton's and said that he himself has tried to get a variance to build a garage taller than allowed for his tow truck and has been denied. He says however if you drive around their neighborhood you can easily find garages that are taller than code as well as many other properties that are not as they should be. Skelton's property is right across from Ryan Motors, not a totally residential area and Mr. Degenstein felt there should be no problem with allowing Skelton's to place their house on the lot.

Commissioners Christensen and Hansen both stated that they were at the September ad hoc meeting when this was discussed. Christensen said it did appear that Mr. Skelton had done his due diligence talking to the City before he ordered the home and he believed Mr. Skelton did receive wrong information about his lot size and that this was the fault of the City.

MOTION BY CHRISTENSEN, SECOND BY BAUER, to recommend to the Board of Adjustments approval of variance based on the factual circumstances of this case. AYES: Long, Boyeff, Hansen, Christensen, Bauer, Maristuen. NAYS: None. ABSENT/NOT VOTING: Aafedt. ABSTAINED: None.

COMMITTEE REPORT:

- NONE

UNFINISHED BUSINESS:

- A. Short plat for rearrangement of an 11.91 acre parcel in the SW1/4NW1/4 of Section 22, T154N, R101W, into two sublots, north of Hwy 2/85 and east of 27th Ave W and a zone change for the entire property from A: Agricultural to C-2: General Commercial - Martin Reiger/Jeff Ames

Will be removed from agenda per motion and vote under Communications, Item B above.

NEW BUSINESS:

- A. Special Permitted Use request for a cellular communications tower located on Lot 3R, Borsheim Subdivision, City of Williston – TowerCo/Verizon

Maristuen introduced Item A of New Business (as above) and asked Ching to present. Ching explained this property located in Lot 3R in the Rearrangement of Lot 1R in Blocks 3, 5, 6 of Borsheim Subdivision has been proposed for a 60' telecommunications tower. Ordinance 912 required towers to be set back a distance equal to at least 75% (or 45 feet) of the height of the tower from any adjoining lot line. This proposed cell tower does meet the setback distance from any adjoining lot line. Ching said that Ordinance 912 also states that any cell tower must have a separation distance of 3 times (in this case 180 feet) the height of tower from any residential house. There is no residence within 180 feet from this cell tower.

Ching stated that the area proposed for the tower is a 60' x 60' fenced area, accessed by a gravel road from 47th St West. The applicant is proposing a chain link fence with barbed wire on top. Since the cell tower is located in an industrial area, a chain link fence would be acceptable; however, after the ad hoc meeting and staff review of the ordinance, barbed wires are not allowed in City Limits according to Section 12-61.

The applicant has filed an obstruction report with the FAA. The FAA has determined the proposed cell tower will have no hazard to air navigation.

Other discussion at the August 1, 2016 and again at the Sept. 6, 2016 ad hoc meetings was on creating a condition of abandonment clause for cell towers since the City currently does not have one. Based on City Attorney's direction, it would be difficult to define abandonment and track the cell towers to see if they are being operated. The condition of abandonment could be something that staff could look into it in the future but it would not apply for this specific SPU.

Ching concluded her presentation and reminded the Commission that Matt Kundert representing the applicant was on speaker phone for any further questions.

Commissioner Boyeff asked if this tower needed to be discussed with the Airport Board; Ching explained that a letter approving the tower has already been issued by the FAA and reviewed with no concerns by the airport manager, Steven Kjergaard.

MOTION BY LONG, SECOND BY HANSEN, to approve the Special Permitted Use request for a telecommunications tower on Lot 3R in the Rearrangement of Lot 1R in Blocks 3, 5, and 6 of the Borsheim Subdivision. AYES: Hansen, Long, Boyeff, Christensen, Bauer, Maristuen. NAYS: None. ABSENT/NOT VOTING: Aafedt. ABSTAINED: None.

B. Special Permitted Use request for a cellular communications tower located on Lot 4 and 9, Block 9, Tofte Bean Subdivision, City of Williston – TowerCo/Verizon

Maristuen introduced Item B of New Business (as above) and asked Ching to present. Ching stated this property, located in Lot 4, Block 2 of Tofte-Bean Subdivision, has been proposed for a 100' telecommunications tower.

Ching explained that this proposed cell tower meets the setback distance required in Ordinance 912 from the north, east, and west adjoining lot lines. The tower does not meet the south setback property line requirement. However, since both of the properties are owned by the same owner, this setback would not need to be met, as any future owners of the south property would be aware of the cell tower location. Ordinance 912 also states that any cell tower must have a separation distance of three times (300 feet) the height of tower from any residential house. There is no residence within 300 feet from this cell tower.

The area proposed for the tower is a 25' x 75' fenced area. The property will take access from East Dakota Parkway by a paved driveway onto the Storage Plaza lot. Ching explained that the applicant is proposing an ornamental fence around the cell tower, which will match the existing ornamental fence running along East Dakota Parkway. It was discussed at the ad hoc meeting that according to the ordinance, the fence will have to be 6 feet high.

Discussion on this tower at the August and September, 2016 ad hoc meetings also included how the proposed cell tower is located extremely close (approximately 15 feet) from the south storage building. Planning staff explained that according to the cell tower ordinance, the setback requirement is only for residential units and does not apply to other buildings. The attorney recommended that a hold harmless/indemnification agreement be signed by the applicant regarding this item.

Ching stated that there are two items, as follows, that should be contingencies of any approval of this SPU:

1. The ornamental fence will have to be a minimum of six-feet high.

2. A hold harmless/indemnification agreement will need to be signed by the property owner, due to the proximity of the tower to the south property line.

MOTION BY BAUER, SECOND BY HANSEN, to approve the Special Permitted Use request for a telecommunications tower located in Lot 4, Block 2 of the Tofte-Bean subdivision contingent addressing all staff comments (above). AYES: Hansen, Long, Boyeff, Christensen, Bauer, Maristuen. NAYS: None. ABSENT/NOT VOTING: Aafedt. ABSTAINED: None

C. Special Permitted Use request to add additional wells to existing oil well pad located in the SWSE, Sec. 11, T155N, R101W, City of Williston – Whiting Oil & Gas/Karen Horab

Maristuen introduced Item C of New Business (as above) and asked Ching to introduce. Ching said the applicant requests a special permitted use (SPU) to add four additional oil wells to an existing pad.

Ching explained that the property is located within the City's one mile extra-territorial jurisdiction and is split 50/50 between the County and the City. Planning staff has contacted the County Development Department. Since the proposed oil wells would be located within the City's extra-territorial jurisdiction, the County agreed that it would make sense for this project to go through the City's process.

There are two well pads on this property, one on the northwest corner and one on the southeast corner. The applicant is proposing to add four additional oil wells on the well pad located on the southeast corner of the property. There is already one existing oil well on this pad.

Ching stated that there is an existing rural water line running along south of this property. Whiting Cooperation will have water brought in by installing overland pipes. The property will take access from 58th St NE.

At the ad hoc committee meeting held on September 6th, 2016, discussion included:

Fencing: The well pad is not currently fenced, although the site plan shows there is an existing fence. The applicant will need to install a minimum 6 feet high security fence as required by Ordinance 912. After reviewing the ordinance, staff explained to the applicant the fence will need to be installed during the production phase.

Landscaping: Planning staff noted that due to the hills in this area, landscaping will not be required. Planning staff also noted that the berm on the south side of the oil pad will need to be stabilized. The ad hoc committee mentioned since this well pad is located in the ETJ and this will be the direction where the city will grow, it would seem appropriate to have the applicant to install landscaping now. Staff suggested the landscaping could be something that could be discussed at the Planning and Zoning meeting.

Truck Traffic: The applicant explained that there should be about eight trucks per day per well during fracking (32 trucks for four oil wells total). The applicant will be installing overland pipes, which should reduce the amount of truck traffic on 58th Street.

Ching explained the conditions for approval of this SPU:

1. Depending on Planning and Zoning Commission's direction at the Planning and Zoning meeting, landscaping may need to be installed.
2. A six-foot high security fence to be constructed around the oil pad during the production phase
3. The berm on the south side will need to be stabilized

Commissioner Boyeff asked who was responsible for maintaining the road. Principal Planner Laqua interjected that the township is responsible for road maintenance to the west but since there is no legal access to the road from the east (Hwy 2/85) it is not an official road; no maintenance is mandated. Laqua explained on an aerial map that Whiting's access to the well site is from the south-west and that there is no legal DOT access to the "prairie trail" east of the well site.

Boyeff asked the applicant if the wells had been permitted. The applicant stated that the current wells are permitted and the four proposed wells are in the permitting process concurrent with this SPU.

Commissioner Christensen voiced concerns that just because the road to the east of the pad to the highway is and unofficial road that it would not stop service companies from using it. Applicant stated that they mark the pad with signage and adds into any agreements with service companies that there is no access past the well site and may not be used by any Whiting Oil employee or affiliate. They stated they have always had good luck with service companies respecting those directions.

Christensen further stated that he has looked at that are and has not concerns with landscaping as the natural lay of the surrounding land completely hides the site from the highway.

MOTION BY BOYEFF, SECOND BY HANSEN, to approve the Special Permitted Use request to add four additional oil wells to an existing pad on the W2SE E2SW excepting Fendee Estates, Section 11, T155N, R101W, contingent on addressing all staff comments. AYES: Long, Boyeff, Hansen, Christensen, Bauer, Maristuen. NAYS: None. ABSENT/NOT VOTING: Aafedt. ABSTAINED: None.

D. Payment in Lieu of providing one required parking space in the downtown, First National Bank & Trust's new building at 310 1st Ave. E (old Gaffaney's lot), City of Williston - FNBT

Maristuen introduced Item D of New Business (as above) and asked Laqua to introduce. Laqua stated this application utilizes Ordinance 998, which changes the parking requirements downtown and allows an option for a downtown development to pay cash in lieu of providing required parking spaces, provided that they can show a good faith effort to provide as much of the required parking as possible on site.

First National Bank previously requested of the Parking Authority and Planning Commission to pay in lieu of providing several spaces in their project located on the corner of 1st Ave E and Broadway. The Parking Authority approved the request at their August 12, 2015 meeting, and the Planning and Zoning Commission approved the request at their August 17, 2015 meeting.

The project needs 10 spaces to meet the parking requirement for the building. The project was only able to provide 4 spaces within the parking areas of the building. However, an MDU transformer was required to be placed in the lot, allowing them to only put three spaces on the property. They are requesting to pay in lieu of providing in the remaining space, since they cannot add any more parking to the lot. Under the ordinance, as a new development, the developer would pay \$15,000 per un-provided space. The total for this project would be \$15,000 which would be paid at time of certificate of occupancy, and would go into the Parking Authority budget.

On September 14, 2016, the Parking Authority met on the project. The Parking Authority determined that the project and application met the requirements of Ordinance 998.

Commissioner Christensen asked Laqua to clarify the number of required vs. proposed parking spots. Laqua explained that the downtown parking requirements were changed to encourage more business downtown and said that the City is able to provide parking in public parking spaces and through the use of timed parking on the streets. She said that with the Parking Officer in place there have been fewer issues and/or complaints with available parking downtown. She stated that this building would require ten parking spots but the bank was unable to provide that asking for a parking reduction of six, only providing four of the ten required. Because of the restraints of the lot the Parking Authority and Planning & Zoning Commission agreed in August, 2015 to the payment in lieu of six parking spaces. During the course of the winter and construction of the building it became necessary for MDU to place a transformer behind the building which took up one of four parking spaces; FNBT now needs to do a payment in lieu for that space. FNBT also has one space on Broadway with a two-hour parking allowance, parking spaces on 1st Ave. to the west of the building with three-hour parking allowance and a public parking lot just across Broadway from there building. FNBT will provide one ADA compliant space on this lot. Laqua reminded the Commission that all payment in lieu fees will go into the Parking Authority fund to help create and maintain downtown parking.

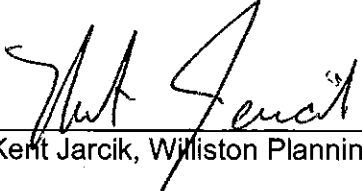
Commissioners Christensen and Hansen expressed their unhappiness that the bank is asking for forgiveness for something they've already done rather than permission to do something they know they need permission for. Jarcik added to that there should be fines associated with a situation such as this.

MOTION BY LONG, SECOND BY BOYEFF, to approve the Payment in Lieu request for one parking space contingent on the \$15,000 being paid to the Parking Authority before issuance of the Certificate of Occupancy. **AYES:** Long, Boyeff, Christensen, Bauer, Maristuen. **NAYS:** Hansen. **ABSENT/NOT VOTING:** Aafedt. **ABSTAINED:** None. (Approved with a 5-1 vote with one absent)

Commissioner Maristuen reminded the Commission that the Downtown Design Review Board would require that two Planning & Zoning Commissioners be part of that Board and asked for volunteers. Commissioners Hansen and Christensen stated they would serve on that Board.

DATE OF NEXT REGULAR MEETING: October 17, 2016

MEETING ADJOURNED.



Kent Jarcik, Williston Planning Director

APPENDIX TO THE
CITY OF WILLISTON PLANNING & ZONING COMMISSION MEETING
SEPTEMBER 19, 2016

- A. Special Permitted Use request for a cellular communications tower located on Lot 3R, Borsheim Subdivision, City of Williston – TowerCo/Verizon

- B. Special Permitted Use request for a cellular communications tower located on Lot 4 and 9, Block 9, Tofte Bean Subdivision, City of Williston – TowerCo/Verizon

- C. Special Permitted Use request to add additional wells to existing oil well pad located in the SWSE, Sec. 11, T155N, R101W, City of Williston – Whiting Oil & Gas/Karen Horab

- D. Payment in Lieu of providing one required parking space in the downtown, First National Bank & Trust's Trust Department building located on Lots 15 & 16, Block 8, Original Townsite (310 1st Ave. E.), City of Williston - FNBT