

A. ROLL CALL Vice-Chair McLean called the meeting to order in the absence of Chair Robinson. Commissioners Present: Leingang, Huber, Mehlhoff, Helbling, McLean, Smith, Hammond, Gardner. Commissioners Absent: Robinson, Horn, Intveld, Buchmiller.

B. CONSIDER APPROVAL OF MINUTES

1. *April 22, 2024 Minutes.* Smith moved and Vayda Hammond seconded to approve. Roll Call vote: Aye 8, Nay 0, Absent Horn, IntVeld, Buchmiller, Robinson. The motion passed.

C. PUBLIC HEARINGS

1. *Consider Preliminary Plat for Longhorn 3rd Addition. STATEMENT/PURPOSE:*
The Central Dakota Humane Society requested approval of a preliminary plat to be named Longhorn 3rd Addition. Said property is in the extra-territorial jurisdiction and would be a replat of Lot 1, Block 1, Longhorn 2nd Addition. The property is located on Highway 1806 and 37th Street.

BACKGROUND/ALTERNATIVES

Overview Of Request

The requested preliminary plat aims to adjust access to the property. The applicant, Central Dakota Humane Society (CDHS), plans to expand their operations that requires better access. The previous plat limited access to the current location of aprons and placed non-access lines and easements, directing all Longhorn 2nd traffic to use the existing aprons. Access to the CDHS lot was restricted to an offset location opposite Entzel Drive. The proposed modification would realign the approach to be in line with Entzel Drive, enhancing safety at the intersection by improving sight lines.

Preliminary Plat

The property to be re-platted covers 11.69 acres and will be reconfigured into a one-lot, one-block subdivision. It dedicates no new rights-of-way. The section labels indicate the percentage of the property that was previously in Sections 9 and 10, but this does not mean the property is divided into two separate lots. The site is significantly encumbered by overhead electrical transmission infrastructure. The access easement is intended for Lot 1, Block 1, Longhorn 3rd, and Lot 2, Block 1, Longhorn 2nd. A right-of-way for a future arterial road was acquired with the 2020 plat.

Property History

Longhorn was originally approved as a residential development. The Humane Society's operations on this property began in 1994. In 2020, the property was rezoned from R7 - Residential to CB - Commercial (Ord. 1336) with restrictions in tandem with a section line vacation, land use and transportation plan amendment, and the approval of the Longhorn 2nd Addition plat.

Adjacent Properties Zoning, Land Use and Future Land Use

The property directly to the north lies within Morton County zoning jurisdiction. Properties lying to the west, east and south are A - Agriculture. The Future Land Use Map identifies this property as Commercial, Low Density Residential to the west, open space to the north and west and rural residential to the north and south.

Additional Information and Public Outreach

- An application and fee of \$450 was received on April 26, 2024.
- Nineteen (19) letters were sent to adjacent property owners.
- Legal notices were published May 17 & 24, 2024.

Findings of Fact

Preliminary Plat

1. All technical requirements for consideration of a preliminary plat have been met;
2. The proposed subdivision would likely not have substantial effects on the safety and circulation of public roadways in the vicinity, and therefore no traffic impact study is required;
3. The proposed plat includes sufficient easements and rights-of-way to provide for orderly development and provision of municipal services beyond the boundaries of the subdivision;
4. The City of Mandan and other agencies would be able to provide necessary public services, facilities, and programs to serve the development allowed by the proposed subdivision at the time of development, without improvements to City Sanitary Sewer that if not made, prevent the development from moving forward;
5. Portions of the subdivision are in the Special Flood Hazard Area, however the subdivision is proposed to be developed according to the existing ordinance requirements pertaining to Floodplain Development and therefore, the proposed development should not adversely impact water quality and/or environmentally sensitive lands, or areas that are topographically unsuited for development,
6. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
7. The proposed subdivision is consistent with the Comprehensive Plan, the Future Land Use Plan, and other plans and studies, policies, and accepted planning practice;
8. The proposed subdivision would not adversely affect the public health, safety and general welfare.

Staff Comments

- Staff began working on this project in 2022. The city has approved the adjustment to the site access and it has been vetted by the Engineering Department. The plat will adjust the access. The access easement serving Lot 2, Block 1, Longhorn 2nd, is adjusted slightly to extend further west than previously depicted to ensure that it overlaps with the proposed new approach to 37th Street.
- The CDHS Expansion was approved by Mandan Architecture Review Commission.
- Staff requested document numbers for recorded easements to be added to the final plat, if/when they are available.

RECOMMENDATION

Planner Stromme stated that the Planning Department staff recommended approval of the preliminary plat for Longhorn 3rd Addition. Vice-Chair McLean inquired if there were any comments or questions. Vice-Chair McLean inquired if there were any comments or questions, hearing none, the public hearing was opened.

Open Public Hearing

Vice-Chair McLean opened the public hearing and invited anyone calling in or present, to come forward

to speak for or against the request for a preliminary plat to be named Longhorn 3rd Addition. A second invitation was given to come forward to speak for or against the request.

Close Public Hearing

Vice-Chair McLean inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

Commission Action

Vice-Chair McLean inquired if there were any further comments or questions from members of the Planning and Zoning Commission.

Smith moved and Leingang seconded to approve the preliminary plat of Longhorn 3rd Addition. Roll Call vote: Aye 8, Nay 0, Absent Horn, IntVeld, Buchmiller, Robinson. The motion passed.

2. *Consider a special use permit for Lot 1, Block 1, Bridgeview Bay Addition.* . **Staff Report**
Principal City Planner Stromme presented.

STATEMENT/PURPOSE

Monte & Lynette Gawryuk request consideration of a Special Use Permit for Lot 1, Block 1, Bridgeview Bay Addition. The property is located at 2600 Marina Road Southeast. This matter was previously presented in January; however, a public hearing was not held given the applicant's inability to participate. This property calls for Commercial use.

BACKGROUND/ALTERNATIVES**Project Description**

Monte & Lynette Gawryluk request consideration of a special use permit for Missouri Point Shop Condos, a proposed multi-use shop development in southeast Mandan's Bridgeview Bay area. The property is Lot 1, Block 1, Bridgeview Bay Addition in Section 6, Township 138N, Range 80W, City of Mandan, Morton County, North Dakota, and is located along the Missouri River at the eastern boundary of McKenzie Drive Southeast.

Overview Of Request

This request would permit for the construction of a 3-structure 22 multi-use shop condos on the property, intended for a combination of owner-occupied commercial and personal use. The proposal includes three (3) structures, each containing between six (6) and eight (8) units.

Property History

Pursuant to the city records, the property has not been developed in the past, despite the surrounding properties being developed as early as the 1970s to the 1980s. The most recent re-platting occurred in 2004, and it has been in the CB – Commercial district zoning since 2000 (Ord. 909). A previous attempt to develop this property with a mixed-use condominium building stalled in the mid-2010s. That project was then supported by the City of Mandan.

Special Use Permit

Multi-use shops are not a zoning entitlement on any property in Mandan. Since 2019, each development has required special use permits for multi-use shop developments. These permits are designed to assess

potential impacts from proposed developments by considering factors such as traffic, usage patterns, architectural design, adherence to existing plans and studies, and other relevant considerations. The applicant has provided an overview of the intended development and responses to standard questions related to special use permits as shown in Exhibit 2. A detailed breakdown of the review process for this development can be found in Exhibit 6. The proposed development includes a central drive lane flanked by two (2) east-to-west oriented buildings, with an additional building situated at the eastern end of the lot, along the Missouri River bank. The condominium units, each measuring approximately 50 ft. x 25 ft., will have a height of approximately 28 ft. to 30 ft. At this point it is unknown if the lot will be raised to improve drainage. This may result in the appearance of the building being taller than rendered.

Adjacent Properties Zoning, Land Use and Future Land Use

Adjacent properties to the north are zoned RM – Residential and CB – Commercial and consist of a marina and restaurant. To the west the property is a CB – Commercial zoned marine sales dealership and to the southwest an RM – Residential zoned multifamily residential development. To the south, there are single-family homes zoned R7 – Residential. The property is immediately on the west bank of the Missouri River. The future land use plan supports commercial uses on the property.

Additional Information and Public Outreach

- An application and fee of \$450 was received on December 27, 2023.
- Ten (10) letters were sent to adjacent property owners. Two (2) letters were received from property owners in support of the project and one (1) letter was received in opposition; those letters were provided to committee members. Copies are available upon request.
- Legal notice was published on May 17, 2024.

Staff Comments

- The proposed development represents a change from the neighborhood's existing character and does not align with the goals of the City's Land Use Plan. For each of these reasons city staff is recommending denial. In any event, should the Planning and Zoning Commission not accept this recommendation and elect to approve, it should restrict all uses in the building so that none may be owned or used for storage and personal recreation (man caves, etc.) as the Land Use Plan is unsupportive of developing storage and non-commercial uses in commercial zones.
- Initial findings from the City's Zoning Ordinance audit highlight some concerns about issuing special use permits for multi-use shops in commercial zones, a practice less common in similar communities.
- The development does not fully meet the buffering and screening requirements outlined in the Gateway to Mandan zoning overlay, which calls for a six-point buffer standard. Currently, only three-points of buffering exist. The applicant has suggested using the open space of an adjoining property owner to meet the requirement, but staff believes this approach is not ideal. It is important that each landowner maintains the ability to develop their property according to the same Code of Ordinances. Multi-use shop developments require a thorough review process.
- The development's schematic does not comply with the impervious surface setback required for Gateway properties into Mandan.
- The McKenzie Drive SE and Bismarck Expressway interchange is anticipated to experience increased traffic and visibility, which aligns with the City's future Land Use Plan for commercial areas with good access to major roads. This indicates that the property could potentially be developed in a way that provides greater benefits to the region's residents, as highlighted in the City's Land Use Plan. • This topic has been a significant focus in both the Mandan and Bismarck zoning ordinance studies. The trend of

multi-use shops emerged around the same time as the adoption of the land use plan, which does not speak to the development of them. City staff is concerned about the rapid growth of this trend without comprehensive planning to determine the community's interest in these establishments.

- The proposed development may also be influenced by Corps of Engineers easements along the Missouri River, which could impact building placement.
- City staff underscores the importance of pre-application meetings to address project goals and concerns early on. Unfortunately, no such meeting took place for this project, which has hindered the resolution of some issues at an early stage.

RECOMMENDATION

Based on the findings presented in the special use permit evaluation Exhibit 5, along with the project's failure to comply with the City's Land Use Plan, and other issues outlined in this report, the Planning Department staff recommended denial of the request.

Vice-Chair McLean inquired if there were any comments or questions for Planner Stromme. He stated that two (2) renderings were available for review.

Commissioner Huber requested clarification of the six-points as compared to the three-point buffering standard. Planner Stromme explained when there is development in the Gateway and there are two uses viewed by the ordinance that is not complimentary and it classifies them on a one-to-seven-point system as single-family, and to develop seven by one there needs to be six points of buffer in between. A point of buffer can be accomplished with one row of conifers; two rows is two points of buffer; and the opaque signs they are showing would be the third point. They are requesting to use open space on the adjoining property owner's property to count as the remaining points. Given the special use proposal and that being someone else's property that does not qualify as the city's appearance to permit that kind of encumbrance of someone else's land to permit a development to move forward. The land use that requires the buffer should be the property that accounts for the buffer(s) on it. That would be for the portion that borders the R-7 property as shown on the exhibit. Planner Stromme stated there are concerns with that in the long term and how that affects a property as a buffer.

Vice-Chair McLean inquired if there were any comments or questions, hearing none, the public hearing was opened.

Open Public Hearing

Vice-Chair McLean opened the public hearing and invited anyone calling in or present, to come forward to speak for or against the request for a Special Use Permit for Lot 1, Block 1, Bridgeview Bay Addition.

Wade Vogel came forward and stated he is representing Monte & Lynette Gawryluk and he has been working on this project since December 2023 when the Garwryluk's purchased the project from previous owners with plans to develop something with this parcel of land. They attended the pre-planning meeting on this and several modifications have been made to the original plans and it is discouraging to learn that what has been done has been moot. There were no comments received at the second pre-planning meeting. He said that the Gawryluk's have been in contact with several neighbors and property owners and with Moritz asking if there are any concerns or thoughts and the feedback was that the plans were a good fit. The neighbors to the south voiced concern they don't want a bar or restaurant in that location due to noise and increased traffic. At the recommendation of the city, changes were made to zone the property as commercial-flex space (new term). Bismarck allows that type of zoning projects with the

zoning on 83 North and they are all sold out. Mandan has commercial flex space and there are people who need and do want spaces such as that. He inquired if this space is not allowed to be used as proposed, he inquired as to what would be ideal for that space that has sat vacant forever? What has been proposed would be a nice addition; the neighbors agree that it is a nice addition that would clean up that area and he reported that he has received several phone calls from residents stating there is a need for this in this area. About the six-points of buffer, he said he has read it and he's driven the areas presented where the ordinance is to be utilized and he cannot find another area in Mandan that is being utilized. Six points of buffer on this particular lot would make the lot useless if a fence or berm were to be added, rows of trees or shrubs stating that the lot is not wide enough to support that. A couple rows of trees and a fence with minimal lighting along the back side. Memorial Highway, McKenzie Drive, 40th Avenue Southeast from Memorial Hwy to McKenzie and 46th Avenue Southeast have a lot of new construction in that area since this Ordinance was written. He does not believe it has been enforced in any of these areas. He is requesting the same type of leniency for this area that is being proposed.

Commissioner Smith stated he has questions regarding the plat and the setbacks. On the east Missouri River side, the survey plat shows a 10 ft. rear setback. Where is that boundary line located at the riprap?

Mr. Vogel stated that it is not actually at the riprap. Swensen Hagan has worked on this and have not completed the final survey. It appears to be about 10 ft. inside so if you drive down on that lot there is a cut because the previous owners brought in fill that was full of trees and they took all the trees out spent a lot of money to assure that lot would be buildable. There is a cut and then it comes upwards and that's where they started this project. There is probably about 20 ft. to the riprap. Commissioner Smith inquired if the Morton County Water Resource easement is affected. In 2016 that was amended wherein the overall footprint was reduced but there is currently an easement in effect for 12,700 sq. ft. on this lot and, the Corp has some interest in that easement area as well. Where is that easement on the survey plat and is that going to delay this project? Mr. Vogel replied that he is not aware if that will cause delay but he will review it with the engineers. Commissioner Smith inquired how this project will be managed such as will there be Bylaws, similar to that as a condo association has in place? Mr. Vogel replied that they have drawn up the condo declaration from Missouri Landing Association wherein snow removal, landscaping, mowing and exterior land maintenance, etc., will be taken care of.

A second and third invitation was given to come forward to speak for or against the request.

Close Public Hearing

Vice-Chair McLean inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

Commission Action

Vice-Chair McLean inquired if there were any further comments or questions from members of the Planning and Zoning Commission.

Commissioner Smith stated that when this was initially presented to the P & Z Committee, he was not in favor of having shop condos on river front property; however, when looking at the changes that have been made to those initial plans and considering what has been presented now, it appears to be a residential condo apartment building that will be facing the river with a commercial store front appearance. He recommended that proper restrictions be in place if this is approved and moves forward.

Mayor Helbling's comments were inaudible.

Commissioner Huber stated that aesthetic changes, however, are not the purview of the P & Z Commission and should be reviewed by the Mandan Architectural Review Committee. If the aesthetics are followed through that might help drive those uses. Her concerns lie with the uses and she gets concerned about the shop condo while the commercial flex space term is better – are there any ways to put restrictions on uses so it's not just wide-open CB? And, limitations on storage without other active commercial use? Planner Stromme stated that he understands that the P & Z Commission can address these questions by stating that there be no storage use could be permitted as part of the CB other non-commercial uses such as mancaves could be restricted as well and just require bona fide tenants utilize the condo units that are not communicated intent of the developers. It would be something they would need to know to continue with the project. He does not think the city with its moratorium on its storage developments realistically state no more self-storage in any form wherein this is a sort of a gap in what that covered so the city did not lean into restrictions as part of it, however, that could be part of the intent of the action. In summary the P & Z Commission could do that as an implementation of the city's use plan which is primarily about how residents are using property and not necessarily what they look like. That is the city's main goal of the use plan on this property is that it is discouraging non-commercial uses. That would be his recommendation if that is what the P & Z Commission wishes to address. To say that it is approved without the storage or the personal recreational use. Commissioner Huber inquired if there would be any concerns about uses being too intensive with CB with this type of property? Planner Stromme stated there has been a lot of requests for zoning of CB in the Lakewood area. There are other codes that restrict intensity so it is not a huge concern such as building and fire codes that could prevent certain uses from the condo shop units.

Mayor Helbling comments inaudible.

Commissioner Huber explained that she asked that question due to @ 15 years ago a very prominent main street building was being used as cold storage and now has upwards of probably \$2 million invested in it and is serving @ 40 people for work purposes. There was a time when the zoning code had to be used and enforced to change that with no storage being allowed on Main Street in that location. As things change hands, it may be something of interest that speaks to the Land Use Plan as commercial in nature. Vice-Chair McLean stated that he is not in favor of hand-tying this property to limitations. If a piece of property is purchased, the landowner should be afforded the opportunity to develop it. As noted by Mayor Helbling, too many restrictions will warrant policing the property and who would take on that responsibility to enforce violations? Rather the city should work with the Declarations of the property for the Association.

Commissioner Smith motioned to approve the Special Use Permit for Lot 1, Block 1, Bridgeview Bay Addition with a recommendation that the record will reflect that the statements of the applicant pertaining to the covenant's restriction of no overnight parking and any other restrictions to be worked out with the City Principal Planner. Commissioner Gardner seconded.

Planner Stromme clarified this motion will approve the Land Use Plan but not the site plan as the buffer is not something the City Planner can administratively approve nor can this Commission administratively waive. The landscaping in front of the building is not something that they can choose not to do because the city has not been consistent in its enforcement of that over the years. If approved, staff will continue to pursue a six-point buffer or advise how to get around that zoning variance but that is not what is being

considered tonight, rather it is approving the Use Permit and a Special Use Permit cannot be approved while ignoring the code issues that are not addressed with the site plan. There are still items that need to be worked on and for the record, he said that he will make sure these items are addressed. This is a Special Use and it should not be considered because “someone got away with something.” In summary, the Ordinance details will have to be worked out between the city and the land owners or they will have to come back for a variance.

Smith moved and Gardner seconded to approve. Roll Call vote: Aye 7, Nay 1 Victoria Vayda Hammond, Absent Horn, IntVeld, Buchmiller, Robinson. The motion passed.

D. OTHER BUSINESS

1. *Code Study Update.* **Code Study Update:**

Planner Strommer reported that the issues with the new software have been work in progress. He provided the following updates:

- Project started in the fall of 2023
- The Best Practices Summary has been completed and a formal group has been formed
- A survey was distributed and over 500 responses were received
- The Order of Operations is being reviewed by staff; then will go to the working group; then brought to this Committee
- Discussions will occur with the Park District for dedications including building permits; developer subdivisions and future proposal will include that the homebuyer will have responsibility for the park dedication fee
- New development and park developments will be part of the planning going forward
- Also reviewed will be removing landscaping ordinances
- Next steps will be presenting feedback to consultants and endorsements by MPO
- Re-reviews by this Commission and more public engagement events this summer
- The plan is to have draft Ordinances ready by the June 2024 meeting for review
- No major concerns and has been a bigger project than originally anticipated

E. ADJOURN Vayda Hammond moved and Gardner seconded to adjourn . Roll Call vote: Aye 8, Nay 0, Absent Horn, IntVeld, Buchmiller, Robinson. The motion passed. The meeting adjourns at 6:25 p.m.