

**CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
April 24, 2013**

The Bismarck Planning & Zoning Commission met on April 24, 2013 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Yeager presided.

Commissioners present were Mark Armstrong, Tom Atkinson, Mel Bullinger, Doug Lee, Lisa Waldoch, John Warford and Wayne Yeager.

Commissioners Vernon Laning and Ken Selzler were absent.

Staff members present were Hilary Balzum - Office Assistant, Carl Hokenstad – Community Development Director, Kim Lee – Planning Manager, Jason Tomanek – Planner, Jenny Wollmuth – Planner and Charlie Whitman – City Attorney.

Others present were John Hauck, Myrna Hauck, Jay Schlenker, Peter Fried, Tyronne Kittleson, Matt Fischer, Marlene Sautner, David Sautner, Jack Russell, Ben White, Jack Schwichtenberg, Peg Schwichtenberg, Lindsay Bartch, Dan Sipes, Chad Trom, Dawn Packard, Dough Philp, Nadine Philp, Dean Kadrmas, Reyne Kadrmas, Maureen Eichele, Toni Ganje, Jim Blotsky, Brad Krogstad, Allen Roll, Joan Millner, Skip Duemeland, Rick Geloff, Blaine Nordwell, Mark Swenson, Judith Hammer and Haud Mjekiq.

MINUTES

Chairman Yeager called for consideration of the minutes of the March 27, 2013 meeting.

MOTION: Commissioner Armstrong made a motion to approve the minutes of the March 27, 2013 meeting as received. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Lee, Waldoch, Warford and Yeager voting in favor of the motion.

CONSIDERATIONS –

- A. COUNTRY WEST HEIGHTS ADDITION – ZONING CHANGE AND PRELIMINARY PLAT**
- B. COUNTRY RIDGE 1ST SUBDIVISION – ZONING CHANGE, FRINGE AREA ROAD MASTER PLAN AMENDMENT AND PRELIMINARY PLAT**
- C. RIVER ROAD HEIGHTS ADDITION – ZONING CHANGE**
- D. PART OF LOT 2, BLOCK 1, MENARDS 2ND ADDITION – ZONING CHANGE**

Chairman Yeager called for consideration of the following consent agenda items:

- A. A zoning change from the A-Agricultural zoning district to the R5-Residential zoning district and preliminary plat for Country West Heights Addition. The proposed plat

includes 26 lots in three blocks on 11.30 acres and is located in northwest Bismarck, north of Ash Coulee Drive and west of North Washington Street (part of the NW¼ of Section 17, T139N-R80W/Hay Creek Township, including a replat of Lots 1-3, Block 1, Horizon Heights 5th Addition).

- B. A zoning change from the A-Agricultural zoning district to the RR- Rural Residential zoning district, Fringe Area Road Master Plan amendment and the preliminary plat for Country Ridge 1st Subdivision. The proposed plat includes 35 lots in five blocks on 78.50 acres and is located along the east side of 66th Street and the south side of 84th Avenue NE (Part of the NW ¼ of Section 5, T139M-R79W/Gibbs Township).
- C. A zoning change from the RR- Rural Residential zoning district to the R5-Residential zoning district on River Road Heights Addition.
- D. A zoning change from the P-Public zoning district to the CG-Commercial zoning district on part of Lot 2, Block 1, Menards 2nd Addition.

MOTION: Based on the findings contained in the staff reports, Commissioner Lee made a motion to approve consent agenda items A, B, C and D calling for public hearings and/or tentative approval on the items. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Lee, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ANNEXATION, ZONING CHANGE AND FINAL PLAT – EAGLE CREST 6TH ADDITION

Chairman Yeager called for the public hearing on an annexation, zoning change and final plat of Eagle Crest 6th Addition. The proposed plat is 130 lots in 13 blocks on 55.75 acres and is located south of an extension of Ash Coulee Drive approximately one mile west of North Washington Street (part of the NE¼ and SE¼ of Section 18, T139N-R80W/Hay Creek Township).

Ms. Lee provided an overview of the requests, including the following findings for the annexation:

1. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the annexation at the time the property is developed.
2. The proposed annexation would not adversely affect property in the vicinity.
3. The proposed annexation is consistent with the general intent and purpose of Title 14 of the City Code of Ordinances.
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Ms. Lee then provided the following findings for the zoning change:

1. The proposed zoning change would be consistent with the Land Use Plan, which identifies the long range use of this area as urban residential (Bismarck-Mandan Regional Future Land Use Plan).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include urban single-family residential and rural residential to the east and northeast, and agricultural land to the north, west and south.
3. The subdivision proposed for this property would be annexed prior to development; therefore, the zoning change would not place an undue burden on public services and facilities.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee then provided the following findings for the final plat:

1. All technical requirements for approval of a final plat have been met.
2. The storm water management plan has been approved by the City Engineer.
3. The proposed subdivision generally conforms to the Fringe Area Road Master Plan for the area and the Northwest Subarea Study, which identifies Ash Coulee Drive and Tyler Parkway as arterials for this section.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include urban single-family residential and rural residential to the east and northeast, and agricultural land to the north, west and south.
5. The proposed subdivision would be annexed prior to development; therefore, it would not place an undue burden on public services and facilities.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said based on these findings, staff recommends approval of the annexation, zoning change and final plat of Eagle Crest 6th Addition.

Chairman Yeager opened the public hearing on the annexation, zoning change and final plat of Eagle Crest 6th Addition.

With there being no public comment on this item, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff reports, Commissioner Warford made a motion to approve the annexation, zoning change and final plat of Eagle Crest 6th Addition. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Lee, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT – NORTH HILLS 17TH ADDITION

Chairman Yeager called for the public hearing on the zoning change from the A-Agricultural zoning district to the R5-Residential zoning district and final plat of North Hills 17th Addition. The proposed plat is 54 lots in three blocks on 20.334 acres and is located along the south side of 43rd Avenue NE between Normandy and Dominion Streets (An unplatted portion of the NW1/4 of Section 21, T139N-R80W/Hay Creek Township.)

Mr. Tomanek provided an overview of the requests, including the following findings for the zoning change:

1. The proposed zoning change is outside the boundaries of the Land Use Plan.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include single-family residential to the south; single-family, two-family and multi-family residential to the east; and undeveloped land to the north and west.
3. The subdivision proposed for this property is partially annexed and the remainder would be annexed prior to development; therefore, the zoning change would not place an undue burden on public services and facilities.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek then gave the following findings for the final plat:

1. All technical requirements for consideration of a final plat have been met.
2. The proposed subdivision does not impact the Fringe Area Road Master Plan for this area, which identifies Normandy Street as the north-south collector, 43rd Avenue NE as the east-west arterial and Calgary Avenue as the east-west collector roadway for this section.
3. The storm water management plan has been approved by the City Engineer.
4. The property is partially annexed and the remainder of the proposed subdivision would be annexed prior to development; therefore, the proposed subdivision would not place an undue burden on public services and facilities.
5. The proposed subdivision would not adversely affect property in the vicinity.
6. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.

Mr. Tomanek said based on these findings, staff recommends approval of the zoning change from the A-Agricultural zoning district to the R5-Residential zoning district and final plat of North Hills 17th Addition.

Chairman Yeager opened the public hearing on the zoning change and final plat for North Hills 17th Addition.

Jim Blotske asked who approved the stormwater plan and then stated he is uncomfortable with how the water is flowing already.

Commissioner Bullinger explained that the stormwater plan was completed a while ago and that it may be best to make an appointment with the engineering department to obtain more information.

With there being no further comments, Chairman Yeager closed the public hearing.

MOTION: Commissioner Lee made a motion to approve the zoning change from the A-Agricultural zoning district to the R5-Residential zoning district and the final plat of North Hills 17th Addition. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Lee, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT – WEST REGION MEDICAL ADDITION

Chairman Yeager called for the public hearing on the zoning change from the RT-Residential and CG-Commercial zoning districts to the RT-Residential and CG-Commercial zoning districts and the final plat of West Region Medical Addition. The proposed plat is nine lots in two blocks on 16.65 acres and is located along the south side of East Calgary Avenue, west of North 19th Street (Replat of Lots 1 & 2, Block 1, Pebble Creek 6th Addition).

Ms. Wollmuth provided an overview of the requests, including the following findings for the zoning change:

1. The proposed zoning change is consistent with the Land Use Plan, which identifies the long range use of this area as general commercial (Bismarck Mandan Regional Future Land Use Plan).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include multi-family residential to the north and east, general commercial to the west, and a religious facility to the south.
3. The property is already annexed; therefore, the zoning change would not place an undue burden on public services and facilities.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Wollmuth then provided the following findings for the final plat:

1. All technical requirements for consideration of a final plat have been met.
2. The proposed subdivision generally conforms to the Fringe Area Road Master Plan for this area, which identifies East Calgary Avenue as the east-west collector roadway for this section.
3. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include residential multi-family to the north and east, general commercial to the west, and a religious facility to the south.
4. The proposed subdivision is already annexed; therefore, it will not place an undue burden on public services and facilities.

5. The proposed subdivision would not adversely affect property in the vicinity.

Ms. Wollmuth said based on these findings, staff recommends approval of the zoning change and the final plat of West Region Medical Addition.

Chairman Yeager opened the public hearing on the zoning change and final plat for West Region Medical Addition.

With there being no public comment, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Warford made a motion to approve the zoning change from the RT-Residential and CG-Commercial zoning districts to the RT-Residential and CG-Commercial zoning districts and final plat of West Region Medical Addition. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Lee, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – FINAL PLAT – GELOFF ESTATES

Chairman Yeager called for the public hearing on the final plat of Geloff Estates. The proposed plat is six lots in one block on 1.85 and is located along the south side of Colt Avenue west of North Washington Street (A replat of part of Lot 5, Block 2, KMK Estates 2nd Subdivision).

Ms. Lee provided an overview of the request, including the following findings for the final plat:

1. All technical requirements for approval of a final plat have been met.
2. The storm water management plan has been approved by the City Engineer.
3. The proposed subdivision is outside of the area covered by the Fringe Area Road Master Plan. North Washington Street to the west of the proposed plat and Ash Coulee Drive to the north of the proposed plat are both classified as minor arterials on the MPO's Functional Classification Network (2009).
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include a combination of urban single-family residential and rural residential to the north, south, east and west.
5. The proposed subdivision would be annexed prior to development; therefore, it would not place an undue burden on public services and facilities.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.

8. The proposed subdivision is consistent the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said based on these findings, staff recommends approval of the final plat for Geloff Estates Addition, with the following condition:

1. Upon recording of the mylar for Geloff Estates Addition, Lots 1-6, Block 1 will be combined as one tax parcel by the County Auditor and will remain combined as one parcel until the property is annexed, rezoned to R5- Residential and the accessory building on Lots 1 and 6 is removed from the property.

Chairman Yeager opened the public hearing.

Ms. Lee submitted Exhibit A. to the record on behalf of Drew and Janelle Combs.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Warford made a motion to approve the final plat of Geloff Estates, with the condition that upon recording of the mylar for Geloff Estates Addition, Lots 1-6, Block 1 will be combined as one tax parcel by the County Auditor and will remain combined as one parcel until the property is annexed, rezoned to R5- Residential and the accessory building on Lots 1 and 6 is removed from the property. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE, FRINGE AREA ROAD MASTER PLAN AMENDMENT AND FINAL PLAT – COUNTRY NORTH ESTATES 4TH SUBDIVISION

Chairman Yeager called for the public hearing on the propose zoning change from the A-Agricultural zoning district to the RR-Rural Residential zoning district, Fringe Area Road Master Plan amendment and final plat for Country North Estates 4th Subdivision.

Mr. Tomanek gave an overview of the requests as well as the following findings on the zoning change:

1. The proposed zoning change would be consistent with the Land Use Plan, which identifies the long range use of this area as Urban Residential and Parks/Open Space/Greenways (for portions of the property located within the Special Flood Hazard Area (100 year floodplain) (Bismarck-Mandan Regional Future Land Use Plan).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent

land uses include rural residential dwellings to the west and north and agricultural land to the east and south.

3. The subdivision proposed for this property would be served by South Central Regional Water District and would have direct access to Endicott Drive; therefore, the proposed subdivision would not place an undue burden on public services.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.

Mr. Tomanek then gave these findings for the Fringe Area Road Master Plan amendment:

1. The Fringe Area Road Master Plan was adopted by the Board of City Commissioners on September 9, 2003.
2. The applicant has submitted a concept plan demonstrating how the area north of the relocated east-west collector could be developed.
3. The amendment will: 1) move the east-west collector roadway approximately 600 feet south of the original location identified in the Fringe Area Road Master Plan to avoid future conflict with existing homes along the east side of Centennial Road.
4. The proposed subdivision (Country North Estates Fourth Subdivision) would conform to the Fringe Area Road Master Plan as amended.

Mr. Tomanek then gave the following findings on the final plat for Country North Estates 4th Subdivision:

1. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include rural residential dwellings to the west and north and agricultural land to the east and south.
2. The Fringe Area Road Master Plan (FARMP) identifies the east-west collector roadway between 57th Avenue NE and 71st Avenue NE in an area where existing residences are located. An amendment to the FARMP has been initiated to move the future east-west collector roadway approximately 600 feet to the south. The proposed subdivision would conform to the FARMP as amended.
3. The storm water management plan has been approved by the City Engineer.
4. The proposed subdivision would be served by South Central Regional Water District and would have direct access to Endicott Drive; therefore, the proposed subdivision would not place an undue burden on public services.

5. The proposed subdivision would not adversely affect property in the vicinity.
6. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
7. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Commissioner Atkinson asked if the township concerns have been addressed. Mr. Tomanek said yes and also that the staff is comfortable the concerns have been addressed or will be before the plat is recorded.

Mr. Tomanek said based on these findings, staff recommends approval of the zoning change, Fringe Area Road Master Plan amendment and final plat of Country North Estates 4th Subdivision.

Chairman Yeager opened the public hearing on the zoning change, Fringe Area Road Master Plan amendment and final plat of Country North Estates 4th Subdivision.

Pete Friedt approached the board to state his concern regarding the ability of the neighboring landowner to be able to continue to access of his land through the subdivision.

Dave Patience said that this would be a question that would have to be asked of the landowner.

With their being no further comment, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Lee made a motion to approve the zoning change, Fringe Area Road Master Plan amendment and final plat of Country North Estates 4th Subdivision. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Lee, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – FINAL PLAT – CENTURY CENTENNIAL ADDITION

Chairman Yeager called for the public hearing on the final plat of Century Centennial Addition. The proposed plat is two lots in one block on 17.5 acres and is located in northeast Bismarck along the west side of Centennial Road and the south side of East Century Avenue (Tracts 2 & 3 less right-of-way as part of the NE1/4 of Section 26, T139N-R80W/Hay Creek Township).

Mr. Tomanek provided an overview of the request, including the following findings for the final plat:

1. All technical requirements for consideration of a final plat have been met.
2. The storm water management plan has been approved by the City Engineer.

3. The proposed subdivision is outside the boundaries of the Fringe Area Road Master Plan.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include existing single-family residential and a hotel to the south, industrially-zoned property to the west which is currently being platted as Revolutionary Addition, industrial land uses to the north and single-family residential dwellings across Centennial Road to the east.
5. The proposed subdivision is not currently annexed; however annexation would be required prior to development. Therefore, the proposed subdivision would not place an undue burden on public services and facilities.
6. The proposed subdivision would not adversely affect property in the vicinity provided an appropriate 20-foot landscape buffer yard is installed along the south side of Lot 1, Block 1 in conjunction with site development.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek said based on these findings, staff recommends approval of the final plat of Century Centennial Addition.

Chairman Yeager opened the public hearing on the final plat of Century Centennial Addition.

Dave Patience stated his concern to the Commission regarding the proposed plat, which is only two lots, one of which is five acres and the other which is 10 acres. He noted that staff recommended a street be put in, but now is not the time to have that done as it would limit options for the use of the property.

Commissioner Warford said that he is concerned that the property is not being annexed. Mr. Patience answered that when it was first purchased, the main concern was to find an occupant. He added that without annexation, taxes can be avoided and that this is a smart choice from a business standpoint, but it will probably be annexed in the near future.

Commissioner Lee asked why this property is being platted prior to it being annexed. Mr. Patience explained that if it is going to be available to be occupied then it must go through the platting process as it is a process that can take several months whereas an annexation in his opinion can happen very quickly.

Commissioner Warford commented that it may make sense from a business sense but it does not make sense from a planning perspective.

With there being no further comment, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Armstrong made a motion to approve the final plat of Century Centennial Addition. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Waldoch and Yeager voting in favor of the motion. Commissioners Lee and Warford opposed the motion.

PUBLIC HEARING – ZONING CHANGE – LOTS 17-18 AND 27-28, BLOCK 17, SONNET HEIGHTS SUBDIVISION

Chairman Yeager called for the public hearing on the zoning change from the R5-Residential zoning district to the R10-Residential zoning district on Lots 17-18 and 27-28, Block 17, Sonnet Heights Subdivision.

Ms. Lee provided an overview of the request, including the following findings for the zoning change:

1. The proposed zoning change is consistent with the Land Use Plan, which identifies this area as residential (land use portion of US Highway 83 Corridor Transportation Study).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include single-family residential to the north and east and a combination of one and two-family residential to the south and west.
3. The property is already annexed; therefore, the proposed zoning change would not place an undue burden on public services.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said based on the findings in the staff report, staff recommends approval of the zoning change from the R5-Residential zoning district to the R10-Residential zoning district on Lots 17-18 and 27-28, Block 17, Sonnet Heights Subdivision.

Commissioner Atkinson asked how many houses already exist in this area and Ms. Lee stated she did not have an exact number but there are quite a few.

Chairman Yeager opened the public hearing on the zoning change for Lots 17-18 and 27-28, Block 17, Sonnet Heights Subdivision.

Tyrone Kittelson spoke to say that he is a former resident of Bismarck and plans to return in the near future to live on a lot that he purchased in 1981 that is adjacent to the proposed rezoning. He is now concerned that the proposed zoning change would devalue his lot, the residences will be too close together and the landscape will not be well developed. He also said he is concerned about a mini-mall being put in.

Ms. Lee explained that the proposed zoning would not allow for any commercial development.

With there being no further comments, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff reports, Commissioner Lee made a motion to approve the zoning change from the R5-Residential zoning district to the R10-Residential zoning district on Lots 17-18 and 27-28, Block 17, Sonnet Heights Subdivision. Commissioner Atkinson seconded the motion and it passed unanimously with Commissioners Armstrong, Atkinson, Bullinger, Lee, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT – LOTS 1-8 and 27-28, BLOCK 1, MCKENZIE & COFFINS ADDITION

Chairman Yeager called for the public hearing on a special use permit for Lots 1-8 and 27-28, Block 1, McKenzie & Coffins Addition. The proposed special use permit would allow for the adaptive reuse of an existing church facility as a day care center.

Ms. Wollmuth provided an overview of the request, including the following additional information for the special use permit:

1. The proposed daycare center is intended to accommodate 200 children, the total number of children under the age of 2½ years will be under 50.
2. The proposed daycare center will employ a maximum number of approximately 25 employees.
3. The hours of operation for the daycare center will be from 6:30 am to 7:30 pm, Monday through Friday.
4. The applicant has indicated that there may be individualized tutoring services available to students after normal operating hours, specifically, from 6pm to 9pm, Monday through Friday and Saturday and Sunday afternoons. Tutoring services will be provided to a minimal number of students which would necessitate a small number of employees/ teachers.

5. The applicant has been working with the Building Inspections Division to satisfy all the requirements necessary to meet the guidelines set forth to establish and operate a daycare center, in particular the entire facility will be retrofitted with a sprinkler system and all interior alterations will be done in accordance with 2009 International Building Code.
6. The City Traffic Engineer has expressed concerns over the proposed use. In particular, citing that additional traffic volumes could have the potential to create traffic issues disrupting the neighborhood. The City Traffic Engineer has also expressed his desire to reconfigure the existing diagonal parking located on the west side of North 11th Street in the public right of way, to function as a parallel pick-up and drop-off area that would be conducive to the proposed use. Thus reducing any potential safety concerns that would be associated with backing into traffic on North 11th Street. If the reconfiguration cannot be accomplished the City Traffic Engineer suggests that the parking area be stripped with a 60 degree angle pavement marking and parking blocks be installed to prevent parked vehicles from encroaching in the side walk. In addition this parking area should also be signed as a loading zone with appropriate time restrictions.
7. Section 14-03-08(4)(r) of the City Code of Ordinances outlines the requirements for a day care center. A copy of this section of the City Code is attached.

Ms. Wollmuth then provided the following findings:

1. The proposed special use complies with all applicable provision of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.
2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent properties.
4. The use would be designed, operated and maintained in a manner that is compatible with the appearance of the existing character of the surrounding area.
5. Adequate public facilities and services are in place.
6. The use would not cause a negative cumulative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity.
7. Adequate measures have been taken to minimize traffic congestion in the public streets and provide for appropriate on-site circulation of traffic.

Ms. Wollmuth said based on these findings, staff recommends approval of the special use permit for the adaptive reuse of an existing church facility as a day care center on Lots 1-8, Block 1, McKenzie & Coffins Addition, with the following conditions:

1. Operating hours will be limited to 6:30 a.m. – 7:30 p.m.
2. Special use permit is for a daycare only, all other uses are prohibited.
3. As Lots 27-28, Block 73, McKenzie & Coffins Addition are needed in order to comply with parking requirements, they must remain a parking lot and are undevelopable.

Ms. Wollmuth distributed written comments received as Exhibits B, C, D and E for public record.

Chairman Yeager opened the public hearing.

Dave Patience said that he wanted to inform the Commission that he has spoken with the Corcoran School and that their goal is to match the setback of the neighborhood, but they do not want it tied to the special use permit. He said the current requirement is 25 feet and the City Traffic Engineer has said that the right-of-way parking should be eliminated and turned into a drop off zone. He said there is also access from the south to be used without blocking traffic in the area. He went on to explain that drop-offs and other traffic will be spread throughout the day since not everybody works the exact same schedule so they're won't be as much traffic backed up as people are anticipating. He also stated that Child Care Resource and Referral study show Burleigh County only has enough child care facilities for about 48% of what is actually needed and that this center will have certified teachers and staff as well as an educational curriculum.

Skip Duemeland said he concurs with staff on their recommendation of approving the permit and he wants everybody to know that all safety factors have been considered and implemented

Tori Ganje said there is no way that this area can handle the traffic, that it is understood that the need for child care is there but that this is not the appropriate place for it.

Blaine Nordwall is an attorney who spoke on behalf of Robert and Cynthia Graham to explain that the information described does not describe child care facilities. He said pick up and drop off times are concentrated at the same times that most of the neighborhood is going to and coming from work. He said the number of employees is not consistent with how many children will be there so parking will in fact be affected. He went on to say that the alley is not acceptable for use as it is accessible to one car at a time and it is rutted so it would need maintenance before being heavily used.

Dawn Packard said she feels parking in the neighborhood is already difficult and that this is a large corporate daycare that will be a big impact on a small neighborhood.

Nel Nosbush said that he lives near the referenced alley and that it is barely big enough for a garbage truck to pass through and moving a fence up to the alley will make it worse. He said there are people who work shift work that will be affected by this proposed use as well.

Al Roll who is a staff member of the church that currently occupies the building said that all of the interest in the building since it became available has been from child care operators since the space cannot be used for very many other things. He said his concern is if it is not used for a child care then what will it turn into instead. He said over 300 people attend two separate services on Sundays and that parking has been managed as best as possible.

Doug Phelps said there are properties on 10th Street that have rental units in them so the traffic is mixed throughout the day and that a building specifically designed for use by a child care provider needs to be sought out. He said that winters worse than what we've had in the past will create issues with the drive lanes becoming crowded.

With there being no further public comment, Chairman Yeager closed the public hearing.

Chairman Yeager asked that Ms. Wollmuth read the conditions 2 & 3 as stated in the staff report. Ms. Wollmuth read the conditions and Commissioner Warford asked her to please explain the zoning further. Ms. Wollmuth added that the zoning will not allow for commercial uses, but as a daycare center it complies.

Commissioner Armstrong asked if since there is a square foot per child requirement for the outdoor play area, is the play area large enough to accommodate the number of children expected. Ms. Wollmuth said that there is a provision that applies to the rotation of children, and that the Building Inspections Division has determined there is enough outdoor play area, assuming the children would not all be outside at once.

Commissioner Lee said he understands that the need for child care is there and that sometimes churches outgrow their spaces, noting that the facility should continue to be used but also that traffic will be a serious problem.

MOTION: Commissioner Lee made a motion to deny the special use permit for a child care facility on Lots 1-8 and 27-28, Block 3, McKenzie & Coffins Addition. Commissioner Atkinson seconded the motion. With Commissioners Atkinson and Lee voting in favor of the motion and Commissioners Armstrong, Bullinger, Waldoch, Warford and Yeager opposing the motion, the motion failed.

With the original motion failing, Chairman Yeager requested a new motion be made.

MOTION: Commissioner Bullinger made a motion to continue the public hearing of the special use permit for a child care facility on Lots 1-8 and 27-28, Block 3, McKenzie & Coffins Addition, in order for the applicant to organize a neighborhood meeting to address concerns of the neighbors. Commissioner Lee seconded the motion and it was unanimously approved with Commissioners

Armstrong, Atkinson, Bullinger, Lee, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT – PART OF BLOCK 15, NORTHERN PACIFIC ADDITION

Chairman Yeager called for the public hearing on a special use permit for part of Block 15, Northern Pacific Addition, which would allow for a temporary parking facility.

Mr. Tomanek provided an overview of the request as well as the following findings for the special use permit:

1. The proposed special use complies with all applicable provisions of the zoning ordinance.
2. The proposed special use permit would not adversely affect the public health, safety and general welfare;
3. The proposed special use would not be detrimental to the use or development of adjacent properties.
4. The use would be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area;
5. Adequate public facilities and services are in place to serve this property.
6. The use would not cause a negative cumulative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity.
7. Adequate measures have been taken to minimize traffic congestion in the public streets to provide for appropriate on-site circulation of traffic; in particular, ingress to the parking structure would be limited to one driveway near the middle of the block along the north side of East Avenue A.

Mr. Tomanek said that based on these findings, staff recommends approval of the special use permit for a temporary parking facility on part of Block 15, Northern Pacific Addition, with the following conditions:

- The development and use of the site generally conforms to the site plan submitted with the application.
- Adequate measures are in place to limit the amount of mud and debris that would be tracked off the site and onto the public roadway.
- The use of the site as an off-street parking facility would cease once the construction of the 6th Street Parking Ramp is complete.

- Adequate measures will be utilized along the perimeter of the parking area adjacent to public sidewalks to prevent vehicles from encroaching onto the public right-of-way.

Commissioner Bullinger asked if it is really going to be 18 months for the new parking ramp to be completed and if a bid has been secured yet. Mr. Tomanek said that bid closings are scheduled for May. Commissioner Bullinger asked if a two year time limit could be put on the new ramp instead. Mr. Tomanek said the proposed parking facility is intended to be and only used during the construction of the proposed 6th Street ramp. Mr. Tomanek went on to say that staff would have concerns if the request was to make this area a permanent parking lot because the preferred use would be a mixed-use building that helps with the transition from the downtown area into a residentially dominated area on the fringe of downtown.

Commissioner Warford said he would like a condition included that states it is temporary until the completion of the new parking ramp.

Commissioner Bullinger asked who is going to enforce debris and encroachment into the public right of way. Mr. Tomanek said that the City Engineering Department and Public Works will likely handle the erosion control. He also said fencing has been proposed to help control encroachment.

Chairman Yeager opened the public hearing.

With there being no public comments, Chairman Yeager closed the public hearing.

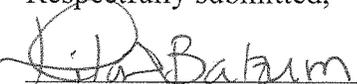
OTHER BUSINESS

There was no other business to address at this time.

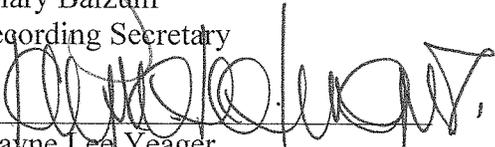
ADJOURNMENT

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:48 p.m. to meet again on May 22, 2013.

Respectfully submitted,



Hilary Balzum
Recording Secretary



Wayne Lee Yeager
Chairman

Community Development

From: Combs, Jannelle [REDACTED]
Sent: Wednesday, April 17, 2013 1:34 PM
To: cobplan@nd.gov
Cc: Combs, Drew A. [REDACTED]
Subject: Planning & Zoning meeting for Geloff Estates subdivision

Bismarck Planning and Zoning Commission,

We are writing to express concerns about the proposed Geloff Estates plat. Our first concern is that the lots are less square footage than other lots in adjacent subdivisions. Our home is on a 17,715 square foot lot in High Meadows 9th Addition. Other lots near the proposed plat are at 12,288 and 15,174 square feet (Lots 4 and 5 respectively). On the other side of the street across from the proposed subdivision are 15,610, 15,200 and 13,507 (Lots 5-7, Block 1). Plus both Lots 6 and 7, Block 1 are actually owned by one couple, so the lot is actually a 28,707 square foot lot. On the other side of Brunswick, the lots are also larger than the proposed subdivision. Lot 6, Block 11 is a 14,357 square foot lot and Lot 5 is a 12,627 square foot lot. In addition, Lots 6 and 7 of Block 2. Considering the adjacent lots and to comply with Bismarck City ordinance 14-02-01, to not encourage overcrowding of land, we believe the property should be platted in no less than 4 lots with no less than 15,000 square feet per lot. This also coordinates platting with adjacent subdivisions under Bismarck City Ordinance 14-09-04. While the plat appears to be the same size as the plats across the street, it is apparently not as deep as those lots, plus Lot 4 is markedly smaller on street footage compared to adjacent lots. If subdivided, it would make more sense to make all the lots the size of Lot 3 in the proposed plat.

Secondly, we have significant concerns as to whether any further platting of the lots could support the current utilities. Our water pressure is at less than 40 psi, when we had a plumber check it a month ago. We have a pump for the sprinkler system because there is not sufficient pressure for it in the house. Adding additional lots to the existing infrastructure would likely decrease our pressure even further. The plumber felt over 50 and closer to 70 is normal. I know we had much more water pressure when we lived by the State Capitol. Replatting the lot into 6 lots will not achieve the city ordinance goal of providing adequate utilities under Bismarck City Ordinance 14-02-01.

Lastly, we have concerns about the completion of Brunswick Drive, which is now a dead end on our side of the street. With Lots 6 and 7 across the street owned by the same people, it would make more sense to keep Brunswick a dead end and make the end a cul-de-sac. This would cost less for everyone, keep the neighborhood street slower for traffic and create more space for the lots that are proposed to be subdivided. The City already has a lot of infrastructure needs that will be to completed and finishing Brunswick would add to those improvements. We would ask that if the plat is approved in any way, that existing trees not be demolished as they are some form of wind break and increase the value to the city. The lots are at the bottom of a hill, so maintaining existing trees would also assist with moisture issues for those lots.

Thank you for your time and consideration,

Drew & Jannelle Combs
436 Brunswick Drive
Bismarck, ND 58503
Owners in High Meadows 9th Addition.

NORDWALL LAW OFFICE

723 North 2nd. Street
Bismarck,
North Dakota 58501

701-258-0930 (Land/Fax)
701-425-8609 (Cell)
bpnordwall@bis.midco.net

April 24, 2013

HAND DELIVERED

Bismarck Planning and Zoning Commission
PO Box 5503
Bismarck, ND 58506-5503

RE: Proposed Special Use Permit (Child Care Center) for 924 N 11th Street (Lots 1-8 and 27-28, Block 73, McKenzie & Coffins Addition)

Dear Members of the Commission:

This letter is prepared on behalf of Robert and Cynthia Graham. The Grahams live at 519 N 10th Street, an address on Block 73, McKenzie & Coffins Addition. Due to their proximity to the requested special use permit, they received one of the "Dear Property Owner" letters sent on April 12.

The Grahams object to the grant of the requested special use permit, for these reasons:

1. The proposed parking is inadequate.
 - a. The "additional information" included with the staff report states that the "proposed daycare center will employ a maximum number of approximately 25 employees." That estimation, whatever its source, is inconsistent with the prescribed staffing for 200 children at N.D. Admin Code § 75-03-10-08, assuming winter usage when only pre-school children are present. A more realistic minimum number of staff during winter usage is 37.
 - b. The assumption of adequate off-street parking of one space for each two employees, and one space for each ten clients, may be reasonable during

hours when few children are being picked up or left for care. It is wholly unrealistic during the times when employed parents typically leave their children (7:30 a.m. to 8:30 a.m.) and pick up their children 4:30 p.m. to 5:30 p.m. At such hours parents will be obliged to park on the street.

2. The limited carrying capacity of all access streets will present traffic safety hazards:
 - a. During the during the typical "pick up and drop off times" (7:30 a.m. to 8:30 a.m., and 4:30 p.m. to 5:30 p.m.) these streets are already at their busiest, as local working householders leave for and return from work.
 - b. During winter usage, the typical pick up and drop off times occur during dusk or full dark, a factor which makes driving more challenging. It also makes pedestrians, especially children, harder to see.
 - c. On-street parking by local householders is common and lawful on the surrounding non-arterial streets. In warmer weather, the streets allow (but barely) two lanes of traffic. Winter weather often presents significant obstacles to passage in two lanes.
 - d. All parking spaces, except the diagonal parking on 11th Street) is accessible from the north/south alley bisecting Block 73. That alley is currently a narrow, badly rutted and poorly graveled road. It is insufficient for current traffic.
 - e. The special use would, by increasing traffic and, invariably, noise, disturb the quiet enjoyment of the property of neighboring householders.

The proposed special use fails to meet the requirements for issuance of a permit, in that:

- It will adversely affect the public safety and general welfare;
- It will be detrimental to the use of adjacent properties; and
- Measures taken to minimize traffic congestion in the public streets and provide for appropriate on-site circulation of traffic are woefully inadequate.

Respectfully submitted, by



Blaine L. Nordwall
Bar ID no. 03424

c. R. and C. Graham

Community Development

From: Robert Graham [REDACTED]
Sent: Monday, April 22, 2013 11:16 PM
To: cobplan@nd.gov
Subject: special use permit for property at 924 n 11th St.

Bismarck Planning and Zoning Commission:

I live in a quiet , lovely, residential neighborhood in Bismarck. Why is an intrusive business which creates more noise, traffic and congestion being proposed for inclusion into our residential area?

I am opposed to the zoning commission granting a special use permit for the property at 924 N 11th Street. Our neighborhood is residential and should not be subjected to businesses of any kind.

Sincerely,

Cynthia Graham
 915 N 10th ST.
 Bismarck, ND 58501

RECEIVED

April 13, 2013
915 N Tenth St.
Bismarck, ND 58501

APR 10 2013

**Jenny Wollmuth, Planner
Bismarck Community Development Department
P.O. Box 5503
Bismarck, ND 58506-5503**

Dear MS. wollmuth:

In regards to the Corcoran School requested setback variance for the property located at 924 N 11th St. (lots 1-8, Block 73, McKenzie & Coffins Addition), I am opposed to the setback variance along the west property line from 6 feet to zero feet.

Granting of a variance along the west property line would cause problems for the continued maintenance of the alley by limiting the availability for snow removal and trash pickup during the winter months.

Further, I question the acceptability of operating a for profit school within a residential neighborhood. The existance of a school to be located at the 924 N 11th St. property can only result in decreasing existing property value in the area due to vastly increased traffic and noise.

Sincerely,



Robert E. Graham

Community Development

From: Robert Graham
Sent: Wednesday, April 24, 2013 12:17 AM
To: cobplan@nd.gov
Subject: Special Use Permit for property at 924 N 11th St.

Bismarck Planning and Development Commission:

The R-10 zoning regulations at 1.d state "To discourage any use which would generate traffic on minor streets other than normal traffic to serve residences of those streets". The proposed special use permit to convert the church at 924 N 11th St to a school would generate such traffic increases into our neighborhood. This increased traffic would greatly endanger neighborhood children and adults trying to undertake their normal daily activities.

R-10 zoning regulations at 1.e. also indicate that no facility should be allowed which may increase the need for police, fire, or other city services such as sewer and water. A facility housing over two hundred individuals from 7:30 A.M. to 8:00 P.M would seriously tax the sewer and water capabilities of the neighborhood. Water pressure could be reduced and thus reduce the capability of firefighting in the neighborhood, along with overwhelming the existing sewer lines requiring replacement at neighborhood expense.

Allowing the vast commercialization of a church facility within a neighborhood for educational purposes far exceeds the intent of the zoning regulations to allow small day care facilities within residential neighborhoods.

To expect residential homeowners to tolerate and pay for commercialization of their neighborhood with the concurrent decrease in property values because of undesirable commercialization is totally unacceptable.

Therefore, I am urging the Bismarck Planning & Zoning Commission to disapprove the special use request being sought for the property located at 924 N 11th St.

Sincerely,

Robert Graham
915 N 10th St.
Bismarck, ND