

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
JUNE 26, 2013**

The Bismarck Planning & Zoning Commission met on June 26, 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, Mike Donahue, Vernon Laning, Mike Schwartz, Ken Selzler, Lisa Waldoch, John Warford and Wayne Yeager.

Commissioner Doug Lee was absent.

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

Others present were Amanda & Joseph Allmaras, Dan Koosman, Laurie Duncan, Jeffrey Duncan, Landon Niemiller, Ted Redmond, Gary Kraft, Joan Millner, Jack Gety, Roger Will, Kevin Currie, Dennis Heupel, Howard Job, Linda Norris, Jennifer Bentz, Robert & Tammy Landsberger, Marv & Doris Becher, Bruce & Deb Hicks, John & Diane Sperle, Nick McCormick, John Walsh, Carmen Traeholt and Bill Bauman.

INTRODUCTIONS

Chairman Yeager introduced new Commissioner Michael Donahue.

MINUTES

Chairman Yeager called for consideration of the minutes of the May 22, 2013 meeting.

MOTION: Commissioner Selzler made a motion to approve the minutes of the May 22, 2013 meeting as received. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

CONSIDERATIONS –

- A. MEADOWLARK COMMERCIAL 7TH ADDITION –
ZONING CHANGE, FARMP AMENDMENT AND PRELIMINARY PLAT**
- B. KOOSMAN ADDITION –
ZONING CHANGE AND PRELIMINARY PLAT**
- C. ALEXANDER SUBDIVISION–
ZONING CHANGE AND PRELIMINARY PLAT**
- D. TRILLIUM 4TH ADDITION – PRELIMINARY PLAT**
- E. LIBERTY ADDITION – ZONING CHANGE**

- F. COTTONWOOD ADDITION – ZONING CHANGE**
- G. PT LOT 1, BLOCK 1, UNITED TRIBES TECHNICAL COLLEGE ADDITION – ZONING CHANGE**
- H. W200' OF LOT 1 AND LOTS 2-3, BLOCK 1, DUEMELAND'S 3RD SUBDIVISION – ZONING CHANGE**
- I. LOT A OF THE NW ¼ OF SECTION 1, T139N-R81W/WEST HAY CREEK TOWNSHIP – LAND USE PLAN AMENDMENT**

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

- A. A zoning change from the A-Agricultural, RT-Residential, CG-Commercial and MA-Industrial zoning districts to the CG-Commercial and MA-Industrial zoning districts, a Fringe Area Road Master Plan amendment to move the north-south collector roadway approximately 750 feet to the west, and a preliminary plat for Meadowlark Commercial 7th Addition. The proposed plat includes 12 lots in four blocks on 58.57 acres and is located in north Bismarck, east of US Highway 83 and south of the future section line road (57th Avenue NE) (a replat of Auditor's Lot C, Lots 1 and 2, Block 3, Meadowlark Commercial 3rd Addition in Section 15, T139N-R80W/Hay Creek Township).
- B. A zoning change from the RR-Residential zoning district to the R5-Residential and RM10-Residential zoning districts and preliminary plat for Koosman Addition. The proposed plat includes 15 lots in three blocks on 7.64 acres and is located west of North Washington Street along the south side of Ash Coulee Drive (a replat of Lot 2 and Lots 3A and 3B of Lot 3, Block 1, KMK Estates Subdivision).
- C. A zoning change from the A-Agricultural zoning districts to the RR-Residential zoning district and preliminary plat for Alexander Subdivision. The proposed plat includes one lot in one block and is located along the east side of 52nd Street NE, between 43rd Avenue NE and 71st Avenue NE (part of the S½ of the SW¼ of the SW¼ of the NW¼ of Section 7, T139N-R79W/Gibbs Township).
- D. A preliminary plat for Trillium 4th Addition. The proposed plat includes 18 lots in five blocks on 84.13 acres and is located along the east side of South 26th Street and the north side of Airway Avenue (part of the NW ¼ of Section 11, T138N-R80W/Lincoln Township).
- E. A zoning change from the P-Public zoning district to the R5-Residential and P-Public zoning district for Liberty Addition. The property is located east of North Washington Street between 43rd Avenue NE and 57th Avenue NE (a replat of Lot 1, Block 9, Boulder Ridge 5th Addition).
- F. A zoning change from the R10-Residential zoning district to the R10-Residential and RM15-Residential zoning district for Cottonwood Lake 6th Addition Replat. The property is located along the east side of South Washington Street between Wachter Avenue and Burleigh Avenue (a replat of Lots 1-8, Block 2 and Lots 1-6, Block 3, Cottonwood Lake 6th Addition).

- G. A zoning change from the P-Public zoning district to the CG-Commercial zoning district for part of Lot 1, Block 1, United Tribes Technical College Addition. The property is located in south Bismarck along the east side of ND Highway 1804 directly adjacent to the Bismarck Airport.
- H. A zoning change from the MA-Industrial and MB-Industrial zoning districts to the MB-Industrial zoning district for the West 200 feet of Lot 1 and all of Lots 2 and 3, Block 1, Duemeland's 3rd Subdivision. The property is located along the north side of Cartridge Loop and the east side of Yegen Road.
- I. A Land Use Plan amendment to introduce the light industrial land use classification for Lot A of the NW ¼ of Section 1, T139N-R81W/West Hay Creek Township. The property is located along the north side of Burnt Creek Drive, east of River Road/ND Highway 1804 and southwest of The Ridge at Hawktree.

MOTION: Based on the findings contained in the staff reports, Commissioner Armstrong made a motion to approve consent agenda items A, B, C, D, E, F, G, H and I, and calling for public hearings and/or tentative approval on the items as recommended by staff. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION
PART OF THE W ½ OF SECTION 16, T139N-R80W/HAY CREEK TOWNSHIP**

Chairman Yeager called for final consideration of the annexation of that part of the W½ of Section 16, T139N-R80W/Hay Creek Township lying north of Boulder Ridge 2nd Addition, Boulder Ridge 3rd Addition and Boulder Ridge 4th Addition, and south of Boulder Ridge 5th Addition.

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

- 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 of development.
- 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 the zoning ordinance.
- 4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Ms. Lee said based on these findings, staff recommends approval of the annexation of that part of the W½ of Section 16, T139N-R80W/Hay Creek Township lying north of Boulder Ridge 2nd

Addition, Boulder Ridge 3rd Addition and Boulder Ridge 4th Addition, south of Boulder Ridge 5th Addition, zoning change and final plat of Country West Heights Addition.

MOTION: Based on the findings contained in the staff report, Commissioner Selzler made a motion to approve the annexation of part of the W ½ of Section 16, T139N-R80W/Hay Creek Township. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**FINAL CONSIDERATION– ANNEXATION
EAST 314 FEET OF LOT 14, BLOCK 4, KMK ESTATES 2ND SUBDIVISION**

Chairman Yeager called for the final consideration of the annexation of the East 314 feet of Lot 14, Block 4, KMK Estates 2nd Subdivision. The property is located along the north side of Colt Avenue west of North Washington Street.

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

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, as the property is already 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 the zoning ordinance.
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Ms. Lee said based on these findings, staff recommends approval of the annexation of the East 314 feet of Lot 14, Block 4, KMK Estates 2nd Subdivision.

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the annexation of part of the East 314 feet of Lot 14, Block 4, KMK Estates 2nd Subdivision. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**FINAL CONSIDERATION– ANNEXATION
PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT
HAY CREEK COMMERCIAL ADDITION**

Chairman Yeager called for the final consideration of the annexation and the public hearing on the zoning change from the A-Agricultural and CG-Commercial zoning districts to the CG-Commercial zoning district and the final plat for Hay Creek Commercial Addition. The proposed

plat is two lots in two blocks on 37.33 acres and is located in north Bismarck along the east side of US Highway 83 between 43rd Avenue NE and 57th Avenue NE (a replat of Lots A and B and an unplatted portion of the W ½ of Section 15, T139N-R80W/Hay Creek Township).

Mr. Tomanek provided an overview of the request, 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.

Mr. Tomanek then provided the following findings for the zoning change:

1. The proposed zoning change would be consistent with the Land Use Plan (future land use component of the US Highway 83 Corridor Transportation Study), which identifies the area as commercial.
2. The proposed zoning change would generally be compatible with adjacent land uses. Adjacent land uses include developing commercial uses to the south, east and west and rural residential dwellings directly adjacent to the north. The rural residential homes to the north lie approximately 600 feet north of the proposed developed and would be separated by the proposed extension of East LaSalle Drive, and the Hay Creek corridor drainage way.
3. The entire property would be annexed prior to development; therefore the proposed zoning change would not place an undue burden on public services.
4. The proposed zoning change may have an adverse impact on property in the vicinity; in particular, there are five existing rural residentially-zoned homes approximately 600-700 feet north of the proposed subdivision. The homes would be separated from the commercial development by a public roadway (East LaSalle Drive) and approximately 550 feet of open space along the southern tier of the residentially zoned property.
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 City Engineer has not approved the storm water management plan.
3. The proposed subdivision would conform to the Fringe Area Road Master Plan, which identifies East LaSalle Drive as the east-west collector roadway collector roadway for this section.
4. The proposed subdivision would be generally compatible with adjacent land uses. Adjacent land uses include commercially-zoned property to the east, commercial property to the south and west and five, rural residential homes to the north. The commercial development would be separated from the homes by approximately 600-700 feet, most of which is the homeowners' back yards.
5. The proposed subdivision may have an adverse impact on property in the vicinity; in particular, there are five existing rural residentially-zoned homes approximately 600-700 feet north of the proposed subdivision. The homes would be separated from the commercial development by a public roadway (East LaSalle Drive) and approximately 550 feet of open space along the southern tier of the residentially zoned property.
6. The proposed subdivision would be annexed prior to development; therefore the proposed subdivision would not place an undue burden on public services.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek then stated that although a revised storm water management plan for the final plat had been submitted, it had not yet been approved by the City Engineer. Because there is not an approved storm water management plan, staff is recommending conducting the public hearing but continuing action on the annexation, zoning change and final plat for Hay Creek Commercial Addition.

Commissioner Bullinger added that they are in the process of reviewing the revised plan, adding that it had been revised because of the slope needed to the north for East LaSalle Drive, which resulting in a reconfiguration of the roadway.

Chairman Yeager opened the public hearing on the zoning change and final plat for Hay Creek Commercial Addition.

Bruce Hicks indicated that he owned the easternmost lot in Gussner Acreage Homesites to the north and there is approximately 550 feet between his home and this development. He added that although staff has been helpful, the developers have not communicated with the residents in Gussner Homesites. He added that they would like to be involved in the planning for this area.

Roger Will asked if the property owners to the north would have access to the proposed east-west street (LaSalle Drive). He also asked about the slope of the property in Gussner Homesites and how it relates to the proposed subdivision.

Linda Norris stated that she wanted to know more from the developer regarding the plans for the property.

Brad Krogstad, KLJ (the consulting engineer for the project), indicated that the lots in Gussner Homesites would have access to LaSalle Drive. He added that storm water would flow toward Hay Creek and that the storm water management plan was changed because the alignment of the roadway was shifted south to avoid the need for grading outside of the project. He added that a one month delay in approval could cause the developer to lose a prospective tenant.

Commissioner Warford asked who would be responsible for bringing the residents up to speed on the project. Mr. Krogstad replied that he would let the developer know the wishes of the Commission and would work with the developer if needed.

Mr. Will asked for clarification on the access to LaSalle Avenue and the grading for the roadway. Mr. Krogstad explained that the right-of-way width was expanded from 80 feet to 140 feet in order to allow grading for the new roadway to be done within the right-of-way. He added that Ben White at KLJ is the contact person for this project and that the residents could contact him directly if they had specific questions.

Chairman Yeager asked for confirmation that all easements and grading would be contained within the developer's property. Mr. Krogstad replied that they would.

Commissioner Warford asked for an explanation of the access points on LaSalle Avenue. Mr. Tomanek responded that access points will be limited to help control the flow of traffic, adding that the development process starts with site plan review.

Commissioner Bullinger added that only one or two access points would be allowed on LaSalle from the north for safety purposes.

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

MOTION: Based on the findings contained in the staff reports, Commissioner Lanning made a motion to continue action on the annexation, zoning change from the A-Agricultural and CG-Commercial zoning districts to the CG-Commercial zoning district and the final plat for Hay Creek Commercial Addition. Commissioner Armstrong seconded the motion and it was approved with Commissioners Armstrong, Donahue, Laning, Schwartz, Selzler, Waldoch, and Yeager voting in favor of the motion and Commissioners Atkinson, Bullinger and Warford voting against the motion.

**FINAL CONSIDERATION– ANNEXATION
PUBLIC HEARING – ZONING CHANGE AND MINOR SUBDIVISION FINAL PLAT
RIVER ROAD HEIGHTS ADDITION**

Chairman Yeager called for the final consideration of the annexation and the public hearing on the zoning change from the RR-Residential zoning district to the R5-Residential zoning district and the minor subdivision final plat for River Road Heights Addition. The proposed plat is five lots in one block on 2.18 acres and is located along the east side of River Road between Sandy River Drive and Wilderness Cove Road (a replat of Lot 1, Block 1, Scott Johnson Second Subdivision).

Ms. Wollmuth provided an overview of the request, 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, although the provision of emergency services and garbage collection may be problematic because of the disconnected location.
2. The proposed annexation may adversely affect property in the vicinity. In particular, the proposed annexation may have an adverse impact on the surrounding rural residential agricultural land uses.
3. The proposed annexation is not consistent with the general intent and purpose of Title 14 of the City Code of Ordinances. In particular, although the proposed annexation is located adjacent to current cooperate limits; it is disconnected by topography and urban roadway connections.
4. The proposed annexation is not consistent with the master plan, other adopted plans, policies and accepted planning practice. Although the location of the proposed annexation is adjacent to corporate limits, there is a natural separation between urban character above the grade separation and the rural and agricultural character of the area below the grade separation.

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

1. The proposed zoning change is not completely consistent with the Land Use Plan, which identifies the long range use of this area as parks, open space and greenways (Bismarck Mandan Regional Future Land Use Plan). It is presumed that the parks, open space and greenways land use classification is a result of the existing grade separation of this area and its proximity the Missouri River.
2. The proposed zoning change is not completely compatible with adjacent land uses. Adjacent land uses include, urban single-family residential to the east above the grade separation, rural residential and agricultural uses to the north, south and west. This property is adjacent to the City of Bismarck and urban single-family residentially zoned property to the east, however there is a significant grade separation of approximately 100 feet between the two. This grade separation or ridge acts as a natural separation from the higher intensity urban land use to the east from the lower intensity rural and agricultural land uses to the north, south and west.
3. The proposed subdivision would be annexed prior to development; and would have access to River Road via a private road along the western edge of the proposed

subdivision. City staff has determined that municipal services can be provided; however, due to the grade separation it is not advisable by planning staff.

4. The proposed zoning change is not consistent with the general intent and purpose of the zoning ordinance. In particular, the proposed zoning change is not compatible with the character of the existing neighborhood and could be considered a spot zone because of the grade separation between this parcel and the adjacent R5 – Residential zoning to the east.
5. The proposed zoning change is not consistent with the master plan, other adopted plans, policies and accepted planning practice. In particular, there is a natural separation between the higher intensity R5-Residential zoning district to the east and the lower intensity RR-Residential and A-Agricultural zoning districts to the north, south and west.

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

1. All technical requirements for approval of a minor subdivision final plat have been met.
2. The storm water management plan has been approved by the City Engineer.
3. The proposed subdivision is not completely compatible with adjacent land uses. Adjacent land uses include, single-family residential to the east, rural residential to the west and agricultural uses to the north and south. This property is adjacent to the City of Bismarck and single-family residentially zoned property to the east, however there is a significant grade separation of approximately 100 feet between the two. This grade separation or ridge acts as a natural separation from the higher intensity urban land use to the east from the lower intensity rural use to the west and agricultural land uses to the north and south.
4. The proposed subdivision would be annexed prior to development; and would have access to River Road via a private road along the western edge of the proposed subdivision. City staff has determined that municipal services can be provided; however, due to the grade separation it is not advisable by planning staff.
5. The proposed subdivision may adversely affect property in the vicinity. In particular, the proposed subdivision may have an adverse impact on the existing rural residential and agricultural property to the north, south and west.
6. The proposed subdivision is consistent with the general intent and purpose of the subdivision regulations.
7. The proposed subdivision is not consistent with the master plan, other adopted plans, policies and accepted planning practice. In particular, there is a natural separation between the higher intensity R5-Residential zoning district to the east and the lower intensity RR-Residential and A-Agricultural zoning districts to the north, south and west.

Ms. Wollmuth said based on these findings, staff recommends denial of the annexation, zoning change from the RR-Residential zoning district to the R5-Residential zoning district and the minor subdivision final plat for River Road Heights Addition.

Chairman Yeager opened the public hearing on the zoning change and minor subdivision final plat for River Road Heights Addition.

Dave Patience, Swenson Hagen & Co., appeared on behalf of the applicant. He indicated that the City can provide necessary services and the property adjoins the City limits, adding that is how a city progresses. He added that the Fire Department accepted a proposal for a private drive at the maximum acceptable grade of 10%; infrastructure is already in place; and the owner purchased a lot in Promontory Point to provide utility access for this project without having to wait for City services to be extended. The slope is protected by an easement and the applicant hired a soil engineer to test the slope, who determined that the stability of the slope would not be compromised by this project.

Rudra Tamm, the applicant, added that growth of Bismarck will continue because of the energy boom. He added that the Commission can control growth, but they cannot stop it. He then referenced the Growth Management Plan and the fact that this property is within the City's urban service area boundary, which would support approval of the project. He went on to highlight the findings of the 2003 Growth Management Plan that supported the development of urban residential in this location.

Diane Sperle stated that she was an adjacent land owner and that the access easement for this property is through their front yard. She added that there was a large incline on the property in question. Traffic will also be increased and she questioned who would maintain the driveway. She concluded by stating that rocks fall from above and the residents want to maintain the scenic look of River Road.

Jennifer Bentz stated that she lives across the street, adding that the incline is very steep on this property. She added that traffic is already heavy and River Road has issues and cannot handle more traffic. She concluded by stating that the roadway has been closed every summer because of slumping.

Mr. Patience appeared again and replied that River Road may have issues, but it is identified as a collector roadway and its purpose is to feed annexations and growth. He added that growth like this has been discussed many times and has usually been supported.

Commissioner Waldoch asked if different access points could be put in to avoid the existing driveways. Mr. Patience replied that they needed to follow the fire codes and landing requirements for the access. He added that it was not practical to remove a large portion of the property for an access point, so they went with the existing access points on the north and south sides of the property.

John Sperle stated that there is an 18-foot elevation change from their driveway to the proposed building site, adding that with this development water will flow straight on to their property.

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

Commissioner Warford asked for more information on the grade separation between this area and the adjacent property to the east that is already within the corporate limits. Ms. Lee replied that the Growth Management Plan Update is still in a draft form, but the proposed land use component recommends that the split between urban and rural occur at the top of the slope rather than on River Road. She added that with the grade separation and the physical distance of this property from the current corporate limits via roadways, it makes more sense to divide the urban and rural at the top of the bluff. It is expected that the urban service area boundary will also be moved upon adoption of the updated plan.

Commissioner Warford stated that good points have been made regarding growth and he is confident that developers will meet that demand; however, in this particular case, he is willing to listen to staff because they are trained professionals.

MOTION: Based on the findings contained in the staff reports, Commissioner Warford made a motion to deny the annexation, zoning change from the RR-Residential zoning district to the R5-Residential zoning district and the minor subdivision final plat for River Road Heights Addition. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT KAMROSE ADDITION

Chairman Yeager called for the public hearing on the zoning change from the RM15-Residential, RT-Residential and CA-Commercial zoning districts to the R10-Residential, RM15-Residential and P-Public zoning districts and the final plat for Kamrose Addition. The proposed plat is 31 lots in four blocks on 20.84 acres and is located along the east side of South Washington Street and the north side of Burleigh Avenue (a replat of Lots 1-9, Block 1, Lots 11-14, Block 5 and Lots 1-3, Block 6, Huber Real Estate Trust First Addition).

Mr. Tomanek provided an overview of the request, 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 undeveloped land to the north, mixed-density residential to the west, developing mixed-density residential to the east and undeveloped land to the south.
3. The entire subdivision is annexed; therefore, it 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 and subdivision regulations.

6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek 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 requirement was waived by the City Engineer, as a plan was previously submitted for the underlying subdivision and the runoff will be decreasing with the lower intensity land uses.
3. The proposed subdivision generally conforms to the Fringe Area Road Master Plan for this area, which identifies Washington Street and Burleigh Avenue as arterial roadways.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include undeveloped land to the north, mixed-density residential to the west, developing mixed-density residential to the east and undeveloped land to the south.
5. The entire subdivision is annexed; 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 with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek said based on these findings, staff recommends approval of the zoning change from the RM15-Residential, RT-Residential and CA-Commercial zoning districts to the R10-Residential, RM15-Residential and P-Public zoning districts and the final plat for Kamrose Addition.

Chairman Yeager called for the public hearing on the zoning change and final plat for Kamrose Addition.

There being no public comment, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff reports, Commissioner Armstrong made a motion to approve the zoning change from the RM15-Residential, RT-Residential and CA-Commercial zoning districts to the R10-Residential, RM15-Residential and P-Public zoning districts and the final plat for Kamrose Addition. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT
HAY CREEK MEADOWS 2ND ADDITION REPLAT**

Chairman Yeager called for the public hearing on the minor subdivision final plat for Hay Creek Meadows 2nd Addition Replat. The proposed plat is four lots in one block on 0.54 acres and is located along the north side of East Divide Avenue between Crane Drive and North 33rd Street (a replat of Lot 9, Block 8, Hay Creek Meadows 2nd Addition).

Ms. Wollmuth provided an overview of the request and provided the following findings:

1. All technical requirements for approval of a minor subdivision final plat have been met.
2. The storm water management plan has been approved by the City Engineer.
3. The proposed minor subdivision final plat is compatible with adjacent land uses. Adjacent land uses include single family residential to the north and west, and two-family residential to the south and east.
4. The proposed minor subdivision final plat is already annexed; therefore, it would not place an undue burden on public services and facilities.
5. The proposed minor subdivision final plat would not adversely affect property in the vicinity.
6. The proposed minor subdivision final plat is consistent with the general intent and purpose of the subdivision regulations.
7. The proposed minor subdivision final plat is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Wollmuth said based on these findings, staff recommends approval of the minor subdivision final plat for Hay Creek Meadows 2nd Addition Replat.

Chairman Yeager opened the public hearing on the minor subdivision final plat for Hay Creek Meadows 2nd Addition Replat.

Jeff Duncan stated that he lives behind the property and was wondering what the plans were for the buildings.

Dave Patience stated that the zoning restricts them to two a duplex.

Gary Kraft added that one building will be a two story with a walkout and the other building will be one to one and a half stories with a walk out. He added that the City is widening Divide Avenue in this area and power poles will need to be relocated.

There being no further 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 minor subdivision final plat for Hay Creek Meadows. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE
LOTS 1-7, BLOCK 1, HUBER REAL ESTATE TRUST FIRST ADDITION**

Chairman Yeager called for the public hearing on the zoning change from the RM15-Residential zoning district to the R10-Residential zoning district on Lots 1-7, Block 1, Huber Real Estate Trust First Addition. The property is located along the east side of South Washington Street north of Burleigh Avenue.

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

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 undeveloped land to the north, mixed-density residential to the west, developing mixed-density residential to the east and undeveloped land to the south.
3. The entire subdivision is annexed; therefore, it 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 and subdivision regulations.
6. The proposed zoning change 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 zoning change from the RM15-Residential zoning district to the R10-Residential zoning district on Lots 1-7, Block 1, Huber Real Estate Trust First Addition.

Commissioner Lanning asked if they could construct singles or duplexes without rezoning. Mr. Tomanek replied that R10-Residential is needed for single-family or traditional twinhomes where each half and the associated land are owned separately.

Chairman Yeager opened the public hearing on the zoning change for Lots 1-7, Block 1, Huber Real Estate Trust First Addition.

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

MOTION: Based on the findings contained in the staff report, Commissioner Selzler made a motion to approve the zoning change from the RM15-Residential zoning district to the R10-Residential zoning district on Lots 1-7, Block 1, Huber Real Estate Trust First Addition. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT (OVERSIZED ACCESSORY BUILDING)
LOT 2, BLOCK 4, BROOKFIELD ESTATES**

Chairman Yeager called for the public hearing on the proposed special use permit for an oversized accessory building on Lot 2, Block 4, Brookfield Estates. The property is located southeast of the intersection of East Bristol Drive and Birchcrest Drive, approximately ½ mile north of County Highway 10.

Ms. Wollmuth gave an overview of the request as well as the following findings on the special use permit:

1. The proposed special use complies with all applicable provisions 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 proposed special use would be compatible with the surrounding rural residential neighborhood.
5. The request is compatible with adopted plans, policies and accepted planning practice.

Ms. Wollmuth said based on these findings, staff recommends approval of the special use permit to increase the total allowable square feet of accessory buildings to 3,200 square feet on Lot 2, Block 4, Brookfield Estates. Ms. Wollmuth also indicated that she had received e-mail comments from two adjacent land owners, which were distributed and area attached as Exhibits B and C.

Chairman Yeager opened the public hearing on the special use permit for Lot 2, Block 4, Brookfield Estates.

There being no public comment, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Atkinson made a motion to approve the special use permit to increase the total allowable square feet of accessory buildings to 3,200 square feet on Lot 2, Block 4, Brookfield Estates. Commissioner Waldoch seconded the motion and it was

unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT (CHILD CARE CENTER)
PART OF THE E½ OF THE SW¼ OF SECTION 28, T139N-R80W/HAY CREEK
TOWNSHIP**

Chairman Yeager called for the public hearing on the proposed special use permit for an afterschool child care center in conjunction with a church facility on part of the E ½ of the SW ¼ of Section 28, T138N-R80W/Hay Creek Township. The property is located at the intersection of North 3rd Street and East Divide Avenue, south of Northridge Elementary School (306 East Divide Avenue).

Ms. Wollmuth gave an overview of the request as well as the following findings on the special use permit:

1. The proposed would comply with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance, provided that a variance is granted by the Board of Adjustment to allow the proposed after school child care center to use the adjacent outdoor recreation area at Northridge Elementary School.
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, in particular, adequate off-street parking would be provided.

Ms. Wollmuth said based on these findings, staff recommends approval of the special use permit for an afterschool child care center in conjunction with a church facility on part of the E ½ of the SW ¼ of Section 28, T138N-R80W/Hay Creek Township (306 East Divide Avenue), with the following conditions:

1. The Board of Adjustment grants a variance from the outdoor recreation area requirement to allow the proposed after school child care center to use the adjacent outdoor recreation area at Northridge Elementary School.

2. The configuration of the day care facility closely resembles the proposed layout included with the application.
3. The number of children allowed to occupy the day care facility is limited to 40.
4. The hours of operation are limited to after school from 3:00 PM to 6:00 PM on school days only.
5. Any changes to the proposed after school child care center would require an amendment to the special use permit.

Commissioner Bullinger asked about the hours of operation of 3:30 to 6:00 pm. Ms. Wollmuth clarified that it should be 3:00pm to 6:00pm to allow staff to prepare for operation prior to children arriving at the facility.

Chairman Yeager opened the public hearing on the for an afterschool child care center in conjunction with a church facility on part of the E ½ of the SW ¼ of Section 28, T138N-R80W/Hay Creek Township (306 East Divide Avenue).

There being no public comment, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Donahue made a motion to approve for an afterschool child care center in conjunction with a church facility on part of the E ½ of the SW ¼ of Section 28, T138N-R80W/Hay Creek Township (306 East Divide Avenue), with the following conditions: 1) The Board of Adjustment grants a variance from the outdoor recreation area requirement to allow the proposed after school child care center to use the adjacent outdoor recreation area at Northridge Elementary School; 2) The configuration of the day care facility closely resembles the proposed layout included with the application; 3) The number of children allowed to occupy the day care facility is limited to 40; 4) The hours of operation are limited to after school from 3:00 PM to 6:00 PM on school days only; and 5) Any changes to the proposed after school child care center would require an amendment to the special use permit. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

OTHER BUSINESS

There was no other business to address at this time.

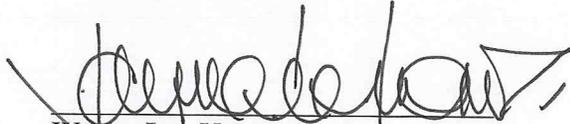
ADJOURNMENT

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:40 p.m. to meet again on July 24, 2013.

Respectfully submitted,



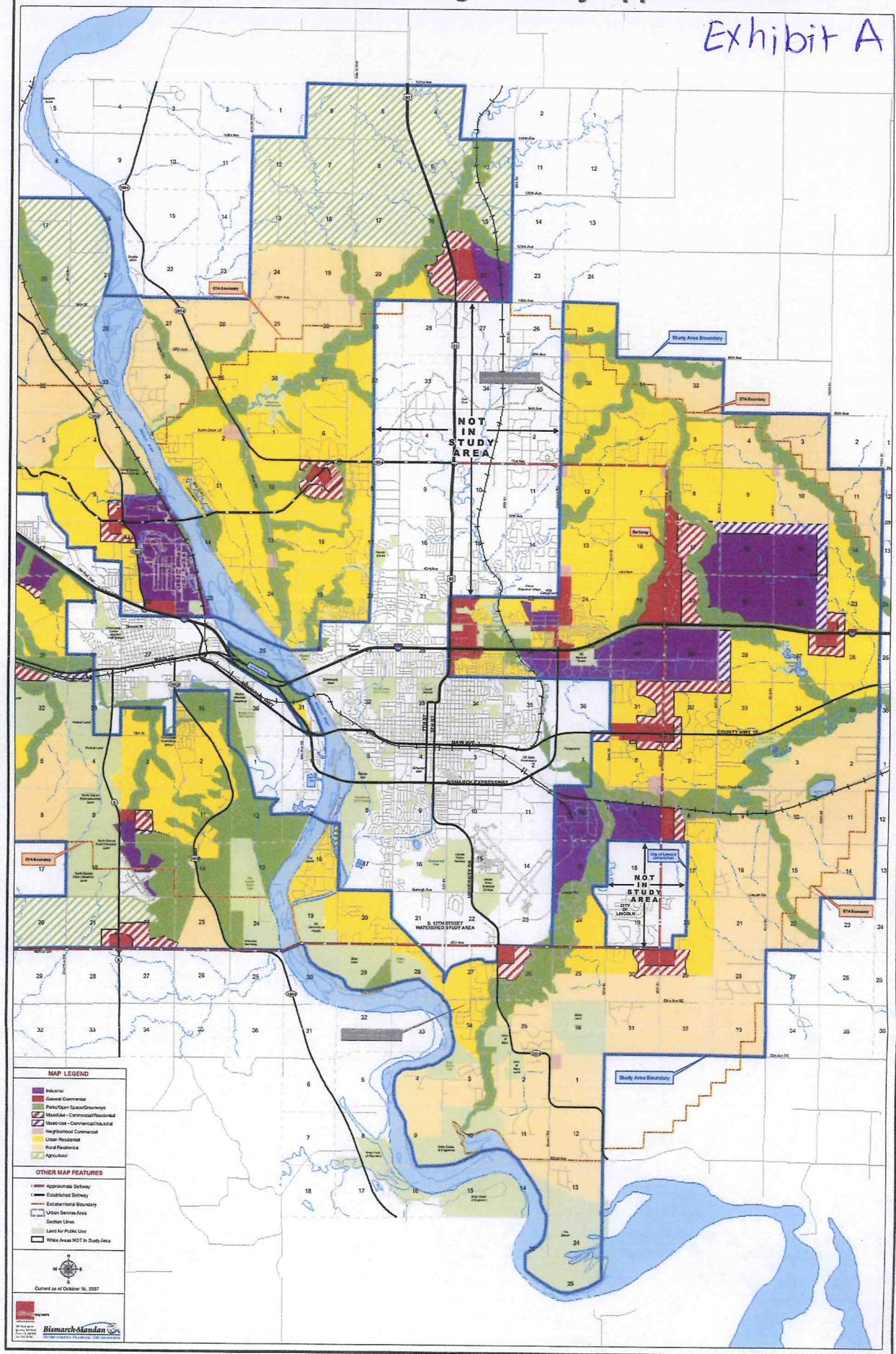
Kim L. Lee, AICP
Recording Secretary



Wayne Lee Yeager
Chairman

Fig 2. Bismarck/Burleigh County Approved Plan

Exhibit A



Community Development

From: [REDACTED]
Sent: Tuesday, June 25, 2013 3:47 PM
To: cobplan@nd.gov
Subject: special use permit , lot2 block 4 Brookfield Estates

We wanted to express our o.k. to give approval for this permit and to allow any other homeowner in Brookfield Estates the opportunity to do thae same. Providing its for private storage and no commercial use .

Don and Marilynne Reiner
801 East Bristol Drive

Community Development

From: [REDACTED]
Sent: Tuesday, June 25, 2013 8:59 PM
To: cobplan@nd.gov
Subject: Joseph Allmaras request for a special use permit on June 26, 2013

We live in Brookfield Estates and feel that this commission should NOT approve the request of Mr. Joseph Allmaras to increase the total area of his accessory buildings to 3200 square feet. We already have a quite liberal limit for accessory buildings which has always worked fine out here for everybody else since 1975.

Since this family has moved into our subdivision our quality of life has gone down here. They seem to always be repairing some old vehicle and are often revving up engines or hot rodding around our streets in various conveyances. If they are permitted an even larger accessory building yet, we fear that this will only lead to an even larger number of noisy vehicles on our streets.

A two acre residential lot is not sufficient for this kind of operation. That type of life style is more suited to a farm where there is considerably more space between the residences.

I wish to remain anonymous but am not alone in my thoughts.