

**BISMARCK PLANNING & ZONING COMMISSION  
MEETING MINUTES  
July 24, 2013**

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

Commissioners present were Mark Armstrong, Tom Atkinson, Mel Bullinger, Mike Donahue, Vernon Laning, Doug Lee, Mike Schwartz, Ken Selzler, Lisa Waldoch and Wayne Yeager.

Commissioner John Warford was absent.

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

Others present were Nick McCormick, Howard Job, Tom Oakland, Shane Holmstrom, Tonya Holmstrom, Jeremy Easum, Vance Vesey, Kilee Harmon, Doris Flurer, Dick Flurer, Jim Christianson, Dave Pankow, Claus Lembke, Lon Romsaas, Dave Patience, Don Barsness, Jerry Splonskowski, David Mayer, Kent Orvik, Quentin Wentz, Helen Brunner, Harlan Brunner, Mike Reiner, Jill Yri, Dave Lang, Vivian Lang, Neil Delabarre, Karen McCormick, Barry Lesmeister, Doug Prchal, Bruce Hicks, Deb Hicks, Justin Harmon, Roger Will and Don Clement.

**CONSIDERATIONS –**

- A. OAKLAND SUBDIVISION – ZONING CHANGE AND PRELIMINARY PLAT**
- B. PINEHURST 9<sup>TH</sup> ADDITION – ZONING CHANGE AND PRELIMINARY PLAT**
- C. FAZEKAS SUBDIVISION – PRELIMINARY PLAT**
- D. LOT 1, BLOCK 1, EDGEWOOD VILLAGE 2<sup>ND</sup> ADDITION – ZONING CHANGE**
- E. AUDITOR’S LOTS 4 & 5, SECTION 1, T138N-R80W/LINCOLN TOWNSHIP – ZONING CHANGE**
- F. PART OF LOT 1, BLOCK 1, NORTHERN SKY ADDITION – ZONING CHANGE**
- G. MISSOURI VALLEY COMPLEX – MAJOR PUD AMENDMENT**
- H. LOT 1, BLOCK 1, GOOD SHEPHERD NORTH ADDITION – MAJOR PUD AMENDMENT**
- I. CA – COMMERCIAL ZONING DISTRICT – ZONING ORDINANCE TEXT AMENDMENT**

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

- A. A zoning change from the A-Agricultural zoning district to the RR-Residential zoning district and a preliminary plat for Oakland Subdivision. The proposed plat includes 17 lots in four blocks on 40 acres and is located along the south side of 84<sup>th</sup> Avenue NE, between Moonstone Lane and 41<sup>st</sup> Street NE (part of the NW<sup>1</sup>/<sub>4</sub> of Section 2, T139N-R80W/Hay Creek Township).

- B. A zoning change from the RT-Residential zoning district to the RT-Residential and PUD-Planned Unit Development zoning districts and a preliminary plat for Pinehurst 9<sup>th</sup> Addition. The proposed plat includes two lots in one block on 8.3 acres and is located in west Bismarck between East Century Avenue and Country West Road along an extension of West Interstate Avenue (part of the NW¼ of Section 29, T139N-R80W/Hay Creek Township).
- C. A preliminary plat for Fazekas Subdivision. The proposed plat includes two lots in one block on 3.128 acres and is located west of England Street, south of Scout Street (part of the NE¼ of Section 19, T138N-R80W/Lincoln Township).
- D. A zoning change from the RM15-Residential zoning district to the R10-Residential zoning district on Lot 1, Block 1, Edgewood Village Second Addition. The property is located along the east side of Nebraska Drive between North Colorado Drive and East Calgary Avenue.
- E. A zoning change from the A-Agriculture zoning district to the MA-Industrial zoning district on Auditor's Lots 4 & 5, Section 1, Lincoln Township. The is located in east Bismarck along the south side of County Highway 10 and the west side of 52<sup>nd</sup> Street SE.
- F. A zoning change from the CA-Commercial zoning district to the PUD-Planned Unit Development zoning district on part of Lot 1, Block 1, Northern Sky Addition. The property is located in northwest Bismarck along the west side of North Washington Street, and the south side of Durango Drive.
- G. A major PUD Amendment on Lots 1 and 3-18, Block 1, Missouri Valley Complex. The property is located in east Bismarck, along the south side of County Highway 10, the east side of Bismarck Expressway and the north side of Yegen Road and Apple Creek Road.
- H. A major PUD amendment on Lot 1, Block 1, Good Shepherd North Addition. The property is located along the west side of North Washington Street and the north side of Medora Avenue.
- I. A zoning ordinance text amendment for the CA – Commercial zoning district relating to the Education Use Group.

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

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

Chairman Yeager called for the continued final consideration of the annexation and the continued public hearing on the zoning change from the A-Agriculture and CG-Commercial zoning districts to the CG-Commercial zoning district and the final for Hay Creek Commercial Addition. The proposal includes two lots in two blocks on 37.33 acres and is located in north Bismarck, along the east side of US Highway 83 approximately ½ mile north of 43<sup>rd</sup> Avenue NE (a replat of Lots A & B and an unplatted portion of the W½ of Section 15, T139N-R80W/Hay Creek Township).

Mr. Tomanek 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.

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 provided 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 would conform to the Fringe Area Road Master Plan, which identifies East LaSalle Drive as the east-west 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 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 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 reminded the Commission that these items were continued from the June 26<sup>th</sup> meeting to allow the adjacent property owners and the developer time to meet and discuss the impacts of the proposed annexation, zoning change, and plat to the adjacent property owners. Mr. Tomanek added that he had spoken with one of the adjacent property owners whom indicated that meeting was held and went well.

Mr. Tomanek said based on these findings and the approval of the stormwater management plan by the City Engineer since the packets were distributed, staff recommends approval of the annexation, the zoning change from the A-Agriculture and CG-Commercial zoning districts to the CG-Commercial zoning district and the final for Hay Creek Commercial Addition.

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

Bruce Hicks stated that he is a resident of the adjacent rural residential subdivision (Gussner Acreage Homesites). He further stated that a meeting was held on July 16, 2013 with the

adjacent property owners and the developer. Information was provided regarding borings and landscaping buffers that will be place between their property and East Lasalle Drive. Mr. Hicks stated that he still had one question of the developer; he asked were the stormwater run-off would go.

Dave Mayer, KLJ (the applicants consulting engineer), stated that drainage will flow into Lot 1, Block 1. He added that there is a collection site at the east side of the plat; however, that water will also flow into Lot 1, Block 1 eventually.

Jerry Splonskowski, Northwest Contracting, reiterated that a meeting was held between the developer and the adjacent property owners. During that meeting it was stated that the adjacent property owners would be able to pick the trees and other landscaping required for buffering. Mr. Splonskowski added that he would like the adjacent property owners and staff to know that the types of vegetation will be from the City's approved list.

There being no further comment, Chairman Yeager closed the public hearing on the zoning change and final plat for Hay Creek Commercial Addition.

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

#### **PUBLIC HEARING – FINAL PLAT HIGH MEADOWS 12<sup>TH</sup> ADDITION**

Chairman Yeager called for the public hearing on the final plat of High Meadows 12<sup>th</sup> Addition. The proposed plat is 25 lots in two blocks on 9.16 acres and is located in northwest Bismarck, west of North Washington Street between Colt Avenue and Buckskin Avenue (a replat of Lots A and B of Lot 3, Block 2 and Lot 4, Block 2, KMK Estates Subdivision).

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

1. All technical requirements for approval of a final plat have been met.
2. The storm water management plan has not yet 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 east 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 single-family 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, provided the existing accessory buildings within the proposed Canter Street right-of-way are removed prior to recording the plat.
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, provided the property is annexed and rezoned to R5-Residential prior to the plat being recorded and the new lots sold for development.
8. The proposed subdivision is consistent the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said that the stormwater management plan had not yet been approved by the City Engineer. Based on the findings, staff recommended continuing action on the final plat of High Meadows 12<sup>th</sup> Addition until such time as the City Engineer has approved the stormwater management plan.

Chairman Yeager opened the public hearing on the final plat for High Meadows 12<sup>th</sup> Addition.

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

**MOTION:** Commissioner Schwartz made a motion to continue action on the final plat of High Meadows 12<sup>th</sup> Addition. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING –FINAL PLAT  
TRILLIUM 4<sup>TH</sup> ADDITION**

Chairman Yeager called for the public hearing on the final plat for Trillium 4<sup>th</sup> Addition. The proposed plat is located east of South 26th Street along the north side of Airway Avenue (part of the NW¼ of Section 11, T138N-R80W/Lincoln Township).

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

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 consistent with the Fringe Area Road Master Plan for Section 11, T138N-80W/Lincoln Township, as amended, which identifies Morrison Avenue as the east-west collector for this section. Airway Avenue on the south side of the plat is classified as a minor arterial on the MPO's Functional Classification Network (July 2011) and South 26<sup>th</sup> Street on the west side of the plat is classified as a future minor arterial.

4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include developing light industrial to the west, commercial uses to the north, a combination of light and heavy industrial uses to the east and the Bismarck Airport and developing light industrial uses to the south.
5. The proposed subdivision is already annexed and services will be extended in conjunction with development; therefore, it would not place an undue burden on public services and facilities, provided access via urban section roadways are required prior to development of lots within the development.
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.

Ms. Lee said based on these findings and approval of the stormwater management plan by the City Engineer since the packets were distributed, staff recommends approval of the final plat of Trillium 4<sup>th</sup> Addition, with the understanding that individual lots will not be developable until access via an paved roadway is provided and all adjacent roadways are improved to City urban section roadway standards or are under contract for such improvement.

Commissioner Armstrong asked if South 26<sup>th</sup> Street would be paved south of Walmart. Commissioner Bullinger replied that as lots are developed the road will be improved.

Chairman Yeager opened the public hearing on the final plat for Trillium 4<sup>th</sup> Addition.

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

**MOTION:** Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the final plat for Trillium 4<sup>th</sup> Addition, with the understanding that individual lots will not be developable until access via an paved roadway is provided and all adjacent roadways are improved to City urban section roadway standards or are under contract for such improvement. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

#### **PUBLIC HEARING – ZONING CHANGE AND MINOR SUBDIVISION FINAL PLAT LIBERTY ADDITION**

Chairman Yeager called for the public hearing on the zoning change from the P-Public zoning district to the R5-Residential and P-Public zoning districts and the final plat for Liberty Addition. The proposed plat is six lots in one block on 16.15 acres and is located east of North Washington Street between 43<sup>rd</sup> Avenue NW and 57<sup>th</sup> Avenue NE (a replat of Lot 1, Block 9, Boulder Ridge 5<sup>th</sup> Addition).

Mr. 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 the long range use of this area as public (future land use component of US Highway 83 Corridor Transportation Study). The Land Use Plan amendment process allows an administrative amendment when the change is less than 660 feet in depth. In this case, it seems reasonable to allow an administrative amendment to extend the residential land use classification approximately 175 into the public land use classification.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include developing single-family residential to the south and east; undeveloped RT-Residential and A-Agricultural zoned property to the west, and undeveloped A-Agricultural zoned property to the north.
3. The property is already annexed and municipal services are in the process of being installed; 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.

Mr. Lee 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 would be compatible with adjacent land uses. Adjacent land uses include developing single-family residential to the south and east; undeveloped RT-Residential and A-Agricultural zoned property to the west, and undeveloped A-Agricultural zoned property to the north.
4. The property is already annexed; therefore, the proposed zoning change would not place an undue burden on public services and facilities.
5. The property is already annexed; therefore, the proposed zoning change would not place an undue burden on public services and facilities.
6. The proposed subdivision would not adversely affect property in the vicinity, provided the modified buffer yard is installed between the institutional and residential uses in the subdivision in conjunction with the construction of the elementary school as proposed.
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.

Ms. Lee said based on these findings and the approval of the stormwater management plan by the City Engineer since the packets were distributed, staff recommends approval of the zoning change from the P-Public zoning district to the R5-Residential and P-Public zoning districts and the minor subdivision final plat of Liberty Addition.

Chairman Yeager opened the public hearing.

Claus Lembke stated that he is concerned with the zoning change questioned the timing of this particular zoning change as the property is already being developed as a school. Ms. Lee clarified that the property in question is being re-platted and re-zoned to create five residential lots on the northern side of the new school, adding that the school is already zoned P-Public and that is not changing.

Mr. Lembke stated he was also concerned about access to the elementary school and asked the Commission to ensure that good access to the school is provided. Ms. Lee added that a traffic impact study had been completed for this area and aspects of the study are being implemented. She added that access to and from the school would be from East LaSalle Drive and the school would not have direct access to North Washington Street or 57<sup>th</sup> Avenue NE.

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

**MOTION:** Based on the findings contained in the staff reports, Commissioner Atkinson made a motion to approve the zoning change from the P-Public zoning district to the R5-Residential and P-Public zoning districts and the minor subdivision final plat for Liberty Addition. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

#### **PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT COTTONWOOD LAKE 6<sup>TH</sup> ADDITION**

Chairman Yeager called for the public hearing on the zoning change from the R10-Residential zoning district to the R10-Residential and RM10-Residential zoning districts and the minor subdivision final plat for Cottonwood Lake 6<sup>th</sup> Addition. The proposed plat is 20 lots in two blocks on 4.93 acres and is located along the east side of South Washington Street between Wachter Avenue and Burleigh Avenue (a replat of Lots 1-8, Block 2, Lots 1-6, Block 3, Cottonwood Lake 6<sup>th</sup> Addition).

Mr. Tomanek gave an overview of the requests and presented 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 north and west; multi-family residential to the south; and undeveloped single-family residentially zoned land to the east.
3. The property is already annexed; therefore, the proposed 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 on 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 would be compatible with adjacent land uses, provided the appropriate landscape buffer yard is installed in conjunction with the development of the condo buildings. Adjacent land uses include single-family residential to the north and west; multi-family residential to the south; and undeveloped single-family residentially zoned land to the east.
4. The property is already annexed; therefore, the proposed zoning change would not place an undue burden on public services and facilities.
5. The property is already annexed; therefore, the proposed zoning change 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.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek stated that an e-mail was submitted and distributed to the Commissioners regarding the impact of increased traffic on the surrounding neighborhood (attached as Exhibit A). Mr. Tomanek notes that the City Engineering Department had requested a traffic impact study be completed in conjunction with the multi-family residential project adjacent to the subject property.

Mr. Tomanek said based on these findings and the approval of the stormwater management plan by the City Engineer since the packets were distributed, staff recommends approval of the

zoning change from the R10-Residential zoning district to the R10-Residential and RM10 Residential zoning districts and the minor subdivision final plat for Cottonwood Lake 6<sup>th</sup> Addition, with the following conditions: 1) the development of Lots 1 & 2, Block ,1 is limited to one four-unit condo on each parcel; and 2) the development of the remaining lots is for one-half of a twin home units; the lot widths proposed do not comply with the minimum lot widths for a single-family dwelling. Two lots would need to be recombined as one parcel to support the minimum lot requirements for a single-family dwelling.

Chairman Yeager opened the public hearing on the zoning change and minor subdivision final plat for Cottonwood Lake 6<sup>th</sup> Addition.

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

**MOTION:** Based on the findings contained in the staff report, Commissioner Schwartz made a motion to approve the zoning change from the R10-Residential zoning district to the R10-Residential and RM10-Residential zoning districts and the minor subdivision final plat for Cottonwood Lake 6<sup>th</sup> Addition, with the following conditions: 1) the development of Lots 1 & 2, Block ,1 is limited to one four-unit condo on each parcel; and 2) the development of the remaining lots is for one-half of a twin home units; the lot widths proposed do not comply with the minimum lot widths for a single-family dwelling. Two lots would need to be recombined as one parcel to support the minimum lot requirements for a single-family dwelling. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE  
WEST 200 FEET OF LOT 1, AND LOTS 2-3. BLOCK 1, DUEMELANDS 3<sup>RD</sup> SUBDIVISION**

Chairman Yeager called for the public hearing on the zoning change from the MA-Industrial and MB-Industrial zoning districts to the MB-Industrial zoning district on the west 200 feet of Lot 1, and Lots 2-3, Block 1, Duemelands 3<sup>rd</sup> Subdivision). The property is located along the north side of Cartridge Loop and east side of Yegen Road.

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

1. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include industrial land uses to the north, south, east and west.
2. The property is being served by a private well and septic system and would have access to Yegen Road via Cartridge Loop; therefore, the zoning change would not place an undue burden on public services and facilities.
3. The proposed zoning change would not adversely affect property in the vicinity.
4. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.

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

Ms. Wollmuth stated that based on the findings contained in the staff report, staff recommends approval of the 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 Lots 2-3, Block 1, Duemelands 3<sup>rd</sup> Subdivision.

Chairman Yeager opened the public hearing on the zoning change for the west 200 feet of Lot 1, and Lots 2-3, Block 1, Duemelands 3<sup>rd</sup> Subdivision.

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

**MOTION:** Commissioner Lee made a motion to approve the 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 Lots 2-3, Block 1, Duemelands 3<sup>rd</sup> Subdivision. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

#### **PUBLIC HEARING – LAND USE PLAN AMENDMENT LOT A OF NW¼, SECTION 1, T139N-R81W/WEST HAY CREEK TOWNSHIP**

Chairman Yeager called for the public hearing on the Land Use Plan for Lot A of the NW¼, of Section 1, T139N-R81W/West Hay Creek Township, to introduce a light industrial land use classification into this property. The property is located along the north side of Burnt Creek Drive, between ND Highway 1804/River Road and Hawktree Drive, southwest of The Ridge at Hawktree.

Ms. Lee gave an overview of the request and outlined the following findings:

1. The proposed change in the Land Use Plan is not compatible with adjacent land uses. Adjacent land uses include a mix of agricultural uses, rural residential uses and urban-density rural residential uses.
2. The proposed Land Use Plan amendment does not reflect a change in conditions since the Land Use Plan was established, nor does it result in an improved Land Use Plan which better responds to the needs of the community.
3. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the Land Use Plan at the time the property is developed.
4. The proposed Land Use Plan amendment will adversely affect property in the vicinity. In particular, an industrial land use in this location could have an adverse impact on the adjacent residential and agricultural land uses.

5. The proposed Land Use Plan is not consistent with the other aspects of the master plan, other adopted plans, policies and planning practice. In particular, introducing an industrial land use classification to a small parcel surrounded by an area designated as urban residential would be the land use planning equivalent of spot zoning.
6. The amendment to the Land Use Plan is not in the public interest and is solely for the benefit of a single property owner.

Ms. Lee stated that based on the findings contained in the staff report, staff recommends denial of the proposed amendment to the Land Use Plan for Lot A of the NW¼, of Section 1, T139N-R81W/West Hay Creek Township, to introduce a light industrial land use classification into this property.

Ms. Lee then referenced the two e-mails and one letter received regarding this request that had been distributed to the Planning Commission. There was a letter from Loren Schwab (attached as Exhibit B), an e-mail from Shiloh Morris in opposition to the request (attached as Exhibit C), and an e-mail from Hay Creek Township indicating that they were not supportive of the request (attached as Exhibit D).

Commissioner Lee asked if there is any zoning in that general area that would support storage units. Ms. Lee responded that there is not currently any industrially-zoned property in this area.

Commissioner Lanning asked if there would be any view obstructions. Ms. Lee replied that the property in question is visible from the existing residential area at Hawktree.

Chairman Yeager opened the public hearing on the Land Use Plan amendment for Lot A of the NW¼, Section 1, T139N-R81W/West Hay Creek Township.

Nick McCormick approached the Commission and stated that he is the applicant. He stated that he does not know about the current elevation and view, however, he would install pine trees as a buffer. He also stated that this request is needed because the covenants for the subdivisions at Hawktree do not allow the storage of vehicles and other items outside the home or the construction of accessory buildings.

Commissioner Lee asked if there would be outside storage associated with this request. Mr. McCormick replied that there would not.

Kilee Harman, a resident of The Ridge at Hawktree, stated that she is frustrated because of the lack of communication between the developer and the property owners. She went on to state that she is not necessarily opposed to the request, but would like more information about the project, including what the building would look like and how the elevation of the proposed building(s) would appear from the existing residences.

Loren Schwab, a resident of The Ridge at Hawktree, stated that he is concerned with losing his view. He asked that the neighbors be given an opportunity to review the storage building, elevations, and landscaping prior to the Planning Commission approving the request.

Vance Vessy, a resident of The Ridge at Hawktree, stated that there is a need for storage because the covenants for the subdivisions will not allow any storage outside the houses.

Nick McCormick added that the nearest storage units are five minutes away and there are no units available.

Commissioner Armstrong asked staff if the Commission could require stipulations if they chose to approve this request. Ms. Lee explained that this request was only for a Land Use Plan amendment, adding that if this request is approved, the applicant would need to come in with a zoning change and plat prior to developing the property. She added that the next step in the process would be the more appropriate step to add conditions.

Commissioner Waldoch stated that this is considered a spot zone and asked if there would be a transition, and if so, what the transition would be between the industrial use and the future and existing residential uses. Ms. Lee stated that per ordinance there would be at least a 50 foot buffer yard with a six-foot berm between low density residential and an industrial use. She added that the specifics relating to the buffer yard would likely be addressed during the request for zoning change.

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

Commissioner Lee stated that there is a need for an upscale storage facility such as this one and he would support this request.

Commissioner Donahue stated that this since this would be considered a spot zone, he would not support the request.

Commissioner Lee asked if because of the uniqueness of the request, would a PUD be more appropriate. Ms. Lee replied if the Land Use Plan amendment were approved, staff would suggest that the zoning change request be for a PUD rather than a straight MA-Industrial zoning district, since it is for a specific use and a smaller tract of land.

**MOTION:** Commissioner Selzler made a motion to continue the public hearing on the Land Use Plan amendment for Lot A of the NW¼, of Section 1, T139N-R81W/West Hay Creek Township, to introduce a light industrial land use classification into this property, in order to provide time for the developer and the adjacent property owners to meet and discuss the project further. Commissioner Donahue seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

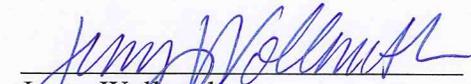
## **OTHER BUSINESS**

There was no other business to address at this time.

## **ADJOURNMENT**

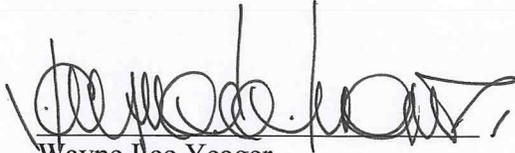
There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:17 p.m. to meet again on August 28, 2013.

Respectfully submitted,



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Jenny Wollmuth  
Recording Secretary



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Wayne Lee Yeager  
Chairman

EXHIBIT A

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**Date:** Wed, 17 Jul 2013 21:02:37 -0500 [07/17/2013 09:02:37 PM CDT]

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**From:** Steve Herman [REDACTED]

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**To:** Jason Tomanek <cobplan@nd.gov>

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**Subject:** Sattler re-plat

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I was wondering if anyone is looking at traffic when they are adding developments in an area. South Washington has pretty heavy traffic with the Fox Island, South Bay, MK, and housing down by Sibley. We already have a lot of Apartments and Condos in the area. They are adding 120+ apts. just south of Sattlers' Southland. MK is adding lots to their development. Wachter is looking at 200+ lots at Washington and Burleigh from what I hear.

I realize that Sattler is only adding another 24 units with his request but at what point do we say that the roads have too much traffic, the schools can't add more students, the existing roads and facilities can't handle more? Have you ever done a traffic count survey on South Washington. I know that Boulder Ridge commands a lot of attention but we also pay taxes down here and could at the least get traffic control. Washington should probably be four lane down to Burleigh and on south to handle the increased load from all the existing new development. Add to that another 400 or so lots they are platting down here plus multi-family and we will have even more traffic to deal with.

When they added the four way stop at Washington and Burleigh it made a tremendous change in the traffic flow and allowed people to make a left onto Washington without a 10 minute wait. With the increase we already see from existing new development I don't see how it can be a good thing to add any more to this area without a serious look at the impact on roads, schools and other infrastructure.

Steve Herman  
2987 Warwick Loop  
[REDACTED]

July 17<sup>th</sup>, 2013

Loren C. Schwab  
701-220-6288  
4010 Ridge Way  
Bismarck, ND  
58503

Dear Bismarck – Burleigh Co.  
Community Development Department  
C/O Kim Lee:

Regarding: Change of Land Use from Urban Residential to Industrial  
Of 4.97 Acres for Lot A NE ¼ of Section 1, T139N-R81W/West Hay Creek Township

I am a homeowner adjacent to this property and have some concerns regarding the requested zoning changes. When I purchased my lot I did so with a clear understanding of the Zoning of the property around me. I received this information from the Bismarck Development Department and reviewed the zoning as well as the projected plans going forward regarding future development in this area. The zoning in place and the Departments plans moving forward were set up for Urban Residential development.

It is my understanding that this requested change is with the intent of placing storage units on this property. I have some concerns as to how this will change the look of our Urban Residential area. I don't see any storage units being built in similar developments throughout the Bismarck / Mandan area. Ex: Promontory Point, South Port, Horizon Heights, Boulder Ridge, Misty Waters, etc.

Our Hawktree Homeowners Association does not allow outbuildings due to the covenants put in place at the time this development was set up. This covenant was put in place to protect the look and feel of our development; all the homeowner's purchased their lots and built their homes with a clear understanding of this covenant and the surrounding zoning. Now Storage Units are being considered adjacent to our development to help satisfy storage needs. Homeowner's should have planned for additional storage when building their homes with larger garages.

However I do understand things change and one has to be open to change as we move forward. I don't know if this is a good idea or bad, I do feel the need to ask some questions in order to get a clear understanding of the proposed project by the McCormick's.

**Date:** Mon, 22 Jul 2013 18:58:57 -0500 [07/22/2013 06:58:57 PM CDT]

**From:** Shiloh Morris <[REDACTED]>

**To:** cobplan@nd.gov <cobplan@nd.gov>

**Subject:** Zoning

To whom it may concern.

We are property owners of 7603 Hawktree drive. We are opposed to storage units being built across from our property. Hawktree is trying to keep the views open and unobstructed and that is why we purchased this property.

Thank you

Shiloh and Robyn Morris

Sent from my iPhone

Kim Lee

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**From:** HayCreekTownship@aol.com  
**Sent:** Wednesday, July 24, 2013 9:43 AM  
**To:** klee@nd.gov  
**Subject:** July 24 Agenda Item please

July 24 Agenda Item please (last listed item)

Re: Lot A of NW 1/4, Section I, T139N-R81W/West Hay Creek Township- Land Use Plan Amendment Zone Change

Kim:

On behalf of Hay Creek Township Board, I express our concerns and objections to the proposed change:

- 1) We are not in favor of "spot zoning" for this area of the Township;
- 2) Residents of adjoining property have expressed individual concerns/disapproval to members of our Board regarding the proposed change;
- 3) Questions were raised regarding runoff and drainage from this specific property relative to Burnt Creek.

My apologies for not appearing in person. I write in hope you will be able to register these concerns with the commission.

I am available via telephone at 701.222.1521 or via email at [haycreektownship@aol.com](mailto:haycreektownship@aol.com)

Dave Pearce, Chair  
Hay Creek Township Officers