

CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
August 28, 2013

The Bismarck Planning & Zoning Commission met on August 28, 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 Mel Bullinger, Mike Donahue, Vernon Laning, Doug Lee, Mike Schwartz, Ken Selzler, Lisa Waldoch and Wayne Yeager.

Commissioners Mark Armstrong, Tom Atkinson and John Warford were absent.

Staff members present were Carl Hokenstad – Community Development Director, Jason Tomanek – Planner, Jenny Wollmuth – Planner, Steve Saunders – Transportation Planner and Charlie Whitman – City Attorney.

Others present were Jamie Thelen, Jim Sand, Dave Pankow, Jesse Helland, Mike Wild, Dan Zacher, Daryl Korczak, Robert Bakken, Curt Dahme, Pam Smokey, Elise Smokey, Steve Smokey, Eric Johnson, Marjorie Johnson, Tom Nemeth, Pam Nemeth, Scott Brownlee, Mark Swenson, Kayla Effertz, Meike Engelhardt, John DesRoches, Ray Venjohn, Neil Effertz, Casey Clement, Tom Engelhardt, Don Clement, Marshall Pudwill, Dave Carlson, Jill Yiri, Bernie Reisenhauer, Nick McCormick, Tonya Holmston, Dain Cote, Angie Milakovic, Sara Cote, Quirin Friese, Corrine Vatnsdal-Geck, Dale Gossett, Rachelle Schommer, George Lee, Virginia Lee, Pam Emter, Kerry Emter, Dan Koosman, Beth Robinson, Loren Schwab, Vance Vessey, Susan Bultsma, Paul Bultsma, Joanne Drevlow, Jim Miller, Joy Hofstad, Brandy Geloff, Cathy Palczewski, Steve Vogelpohl, Randy Nicola, Morris Duffy, Curtis Wentz, Rick Geloff, Larry Hochhalter, Vonda Hochhalter, Arnold Thomas, Tracy Kuznia, Cheryl Aanks, Cody Trom, Rachael Trom, Larry Scheidt, Shannon Bakke, Jackie Andahl, Dwight Kinnishtzke and Steve Thilmony.

UPDATE ON DOWNTOWN SUB-AREA STUDY – CRANDALL ARAMBULA

Jason Graf from Crandall Arambula presented an update on the Downtown Sub-area Study via speaker phone. He outlined organizational points/concepts for downtown development to create immediate interest: organized space and traffic patterns expanding sidewalks as hospitality easements, key property owners' buy-in, hotel/Civic Center construction, cultural trail/bike system, public market, and train depot public/park space. Mr. Graf made the case that without these *game-changers* (essential projects which create immediate momentum, strategically located, to change the perception of downtown including typically public investment created to stimulate private investment) further development will not follow. A follow-up meeting with a draft plan to be presented is expected in October along with a follow up meeting for plan adoption in November.

CONSIDERATION

- A. EAST DIVIDE INDUSTRIAL PARK ADDITION – ZONING CHANGE AND PRELIMINARY PLAT
- B. LOTS 1-3, B 2 AND THE S1/2 OF THE VACATED MAYFAIR AVENUE – ZONING CHANGE
- C. SUBDIVISION REGULATIONS/RECORDING OF DOCUMENTS – ZONING ORDINANCE TEXT AMENDMENT
- D. SUBDIVISION REGULATIONS/NEIGHBORHOOD PARKS AND OPEN SPACE – ZONING ORDINANCE TEXT AMENDMENT

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

- A. A zoning change from the A-Agricultural and MA-Industrial zoning districts to the MA – Industrial zoning district, and the preliminary plat for East Divide Industrial Park Addition. The proposed plat includes 21 lots in five blocks on 78.05 acres and is located in northeast Bismarck, along the south side of East Divide Avenue, directly west of 52nd Street NE (Auditor's Lots B-B, C-C, D & E of the S½ of Section 25, T139N-R80W/Hay Creek.
- B. A zoning change from the MA-Industrial zoning district to the CG-Commercial zoning district on Lots 1-3 & the S½ of vacated Mayfair Avenue, Mayfair Managers Addition. The proposed zoning change is located along the west side of South 12th Street just south of Bismarck Expressway.
- C. A zoning ordinance text amendment for the Subdivision Regulations / Recording of Documents.
- D. A zoning ordinance text amendment for the Subdivision Regulations / Neighborhood Parks and Open Space Policy.

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 as recommended by staff. Commissioner Bullinger seconded the motion and it was unanimously approved with Commissioners Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager, voting in favor of the motion.

FINAL CONSIDERATION – ANNEXATION

LOT 14 LESS THE EAST 314 FEET, BLOCK 4, KMK ESTATES 2ND SUBDIVISION

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

Mr. Tomanek 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.

Mr. Tomanek stated that based on these findings, staff is recommending approval of the annexation of Lot 14 less the East 314 feet, Block 4, KMK Estates 2nd Subdivision.

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

PUBLIC HEARING – FINAL PLAT HIGH MEADOWS 12TH ADDITION

Chair Yeager called for the continued public hearing on the final plat of High Meadows 12th Addition. The plat includes 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.

Mr. Tomanek explained that this item was a continuation from the July meeting. The proposed layout will take three existing properties convert them into 25 lots. As the storm water management plan has not yet been approved by the City Engineer, staff recommends another continuation until the stormwater management plan is approved.

Chair Yeager opened the public hearing.

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

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to continue the final plat for High Meadows 12th Addition. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE AND MINOR SUBDIVISION FINAL PLAT --EDGEWOOD VILLAGE SQUARE ADDITION

Chair Yeager called for the public hearing on the zoning change from the RM15-Residential zoning district to the R10-Residential zoning district and the minor subdivision final plat for Edgewood Village Square Addition. The proposed plat is five lots in one block on 1.61 acres and is located along the west side of Nebraska Drive between North Colorado Drive and East Calgary Avenue.

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

1. The proposed zoning change would be consistent with the Land Use Plan, which identifies the long term 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 one and two-family residential to the north and west, multi-family to the east and a senior care center to the south.
3. The property is 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.

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. A storm water management plan waiver request has been approved by the City Engineer.
3. The proposed minor subdivision final plat is compatible with adjacent land uses. Adjacent land uses include one and two-family residential to the north and west, multi-family to the east and a senior living and care center to the south.
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 that based on these findings, staff recommends approval of the zoning change from the RM15-Residential zoning district to the R10-Residential zoning district and the minor subdivision final plat for Edgewood Village Square Addition.

Chairman Yeager opened the public hearing.

Mr. Barda approached the Board to state his concerns about his property abutting the addition, wondering how the driveway would affect his property. Ms. Wollmuth responded that the driveway would be built next to his land and that there is no easement.

Mr. Barda asked if there is any curb and gutter. Chair Yeager explained the construction would be to City ordinance and would apply to the construction of the driveway.

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

MOTION: Based on the findings contained in the staff reports, Commissioner Lee made a motion to approve the RM15-Residential zoning district to the R10-Residential zoning district and the minor subdivision final plat for Edgewood Village Square Addition. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT – ALEXANDER SUBDIVISION

Chair Yeager called for the public hearing on the zoning change from the A-Agricultural zoning district to the RR-Residential zoning district and the final plat for Alexander Subdivision. The proposed plat is one lot in one block and is located northeast of Bismarck along the east side of 52nd Street NE, between 43rd Avenue NE and 71st Avenue NE (part of the NW ¼ of Section 7, T139N-R80W/Gibbs Township).

Gibbs Township Supervisor John Hauck joined the Commissioners.

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 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 a single lot rural residential subdivision to the south and agriculturally zoned property to the north, east and west.
3. The proposed subdivision would be served by South Central Regional Water District and would have direct access on to 52nd Street NE; 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 and subdivision regulations.
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 zoning:

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, with written concurrence of the County Engineer.
3. The Gibbs Township Board of Supervisors has recommended approval of the proposed plat.
4. The proposed subdivision generally conforms to the Fringe Area Road master Plan, which identifies 52nd Street NE as an arterial.
5. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include a single lot rural residential subdivision to the south and agriculturally zoned property to the north, east and west.
6. The proposed subdivision would be served by South Central Regional Water District and would have direct access to 52nd Street NE; therefore, the proposed subdivision would not place an undue burden on public services.
7. The proposed subdivision would not adversely affect property in the vicinity.
8. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
9. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Wollmuth stated that based on these findings, staff recommends approval of the zoning change from the A-Agricultural zoning district to the RR-Residential zoning district and the final plat for Alexander Subdivision.

Chairman Yeager opened the public hearing.

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

Mr. Hauck comments that this plat is a good request and fits right in.

MOTION: Based on the findings contained in the staff reports, Commissioner Laning made a motion to approve the zoning change from the A-Agricultural zoning district to the RR-Residential zoning district and the final plat for Alexander Subdivision. Commissioner Selzler seconded the motion and it was unanimously approved with Gibbs Township Supervisor Hauck and Commissioners Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION
PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT
KOOSMAN ADDITION**

Chairman Yeager called for final consideration of the annexation and the public hearing for the zoning change from the RR-Residential zoning district to the R5-Residential and RM10-Residential zoning districts and the final plat for Koosman Addition. The proposed annexation, zoning change and final plat includes 17 lots in 3 blocks on 8.16 acres and is located in northwest Bismarck, 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).

Mr. Hokenstad 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.
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.

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

1. The proposed zoning change is outside of the area covered by the Land Use Plan.

2. The proposed zoning change would be compatible with adjacent land uses, provided the required landscape buffer yards are installed in conjunction with site development. Adjacent land uses include rural residential to the east, west and south and undeveloped CA-zoned property to the north across Ash Coulee Drive. It is expected that the underlying rural residential lots in KMK Estates will transition to urban density residential over time, and the proposed development will provide a land use transition between the future higher intensity land uses to the east along North Washington Street and the lower intensity land uses to the west.
3. The subdivision proposed for this property will be annexed and services will be extended in conjunction with development; 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. Hokenstad 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 is consistent with the Fringe Area Road Master Plan for this section, which identifies Ash Coulee Drive as an arterial roadway. North Washington Street to the east of the proposed plat is classified as a principal arterial on the MPO's Functional Classification Network (July 2011) and Ash Coulee Drive is classified as a minor arterial.
4. The proposed subdivision would be compatible with adjacent land uses, provided the required landscape buffer yards are installed in conjunction with site development. Adjacent land uses include rural residential to the east, west and south and undeveloped CA-zoned property to the north across Ash Coulee Drive. It is expected that the underlying rural residential lots in KMK Estates will transition to urban density residential over time, and the proposed development will provide a land use transition between the future higher intensity land uses to the east along North Washington Street and the lower intensity land uses to the west.
5. The proposed subdivision will be annexed and services will be extended in conjunction with 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 with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Hokenstad said that based on these findings, staff recommends approval of the annexation, the zoning change from the RR – Residential zoning district to the R5 – Residential and RM10 – Residential zoning districts, with the condition that the development of the RM10-zoned lots be limited to one four-unit building on each lot and the final plat of Koosman Addition, with the condition that the required buffer yard is installed in conjunction with site development. He added that staff is supportive of the requests because staff expects a higher intensity land use to the east of this property along North Washington Street and views this mid-density residential development as a logical transition between that higher intensity land use to the east and the existing lower intensity residential land uses to the west and south.

Chairman Yeager called for final consideration of the annexation and opened the public hearing on the zoning change and final plat for Koosman Addition.

Dan Koosman, KLC of Wilmar, Inc., stated that he was the developer and provided an overview of why this particular site was selected for the project. He added that the units will have a low density residential look and showed the Commission pictures of a similar project he has recently completed in Minot. The units are set up to be able to turn into condos in the future, but will be high-end rental units for now. The market for the product is empty-nesters and older people, as the units do not have steps at the entry. The finishes within the units are higher end and the units have vaulted ceilings. The total width of each building is 78 feet, which is similar to a single-family dwelling. The development would include 15 4-unit buildings as well as the existing residence along Colt and one more single family residence. He went on to say that the existing trees along the western edge of the development would remain and would provide a visual buffer of the development from that direction.

Commissioner Laning asked about access to the lots. Mr. Koosman responded that the only access would be from Colt Avenue, as any access point on Ash Coulee would not be allowed because Ash Coulee is designated as a major thoroughfare. He added that additional right-of-way for Ash Coulee is dedicated in the proposed plat.

Rick Geloff, 425 Colt Avenue, appeared before the Commission and presented a petition opposing the project, which was signed by 92 property owners in the neighborhood (*attached as Exhibit A*). He stated that all of the other zoning in this area from just north of Century Avenue north through Ash Coulee is R5 or RR and the proposed RM10 zoning does not fit with the neighborhood. He went on to state that the number of units created by this development (62, including the one existing single-family unit) will all have to use Colt Avenue and go out to North Washington to access the property. He questioned staff's traffic

calculations in the staff report and stated that they did not indicate when those trips would occur. He went on to state that North Washington Street is already congested and that improvements will not be made until 2015 at the earliest. Because of the bottleneck on North Washington Street, the neighbors are concerned that the residents from this development will take alternative routes through the neighborhood. He added that one of the property owners to the west would have an S-curve for Huron through their property, which would limit the development option for that tract, and future development of property to the west would also be impacted by the roadway alignment. He then questioned snow removal within the development and stated that when snow is pushed off the end of Huron Drive in the new development it will kill the existing trees in that area. He concluded by urging the Commission not to approve the request.

Joy Hofstad, 405 Colt Avenue, stated she and her family had lived at this address for 21 years. She questioned information in the staff report that indicated staff could not support an access point on Ash Coulee because it was too close to the intersection of North Washington and Ash Coulee. Colt Avenue is only 600 feet south of the intersection, but how can that be acceptable when an access on Ash Coulee is not acceptable. She also questioned the traffic count numbers used and the fact that they were two years old and don't take into account recent development north on North Washington Street. She also questioned staff's comment in the staff report that it was unlikely all trips would go out to North Washington Street. The neighborhood is concerned about access to North Washington Street at peak travel times and the impact this development will have on the wait times at Colt Avenue. She added that the proposed land use is too dense for the neighborhood and they are concerned about traffic, snow removal, emergency access and public safety. She concluded by stating that staff's finding that this project would not have an adverse impact on the development is not accurate. She asked the Commission to consider the impact to the residents with this project and deny the request.

Chair Yeager asked staff to address the issues with access on Ash Coulee. Mr. Hokenstad replied that both North Washington Street and Ash Coulee/43rd are major arterials and the intersection is located on two major arterials, so access in proximity to that intersection is limited. He went on to state that Colt Avenue is a local road and that access to that road is not limited to the same extent.

Jimmy Carter, 515 Colt Avenue, stated that he had lived at this address for 20 years. His concern is not a NIMBY (Not in My Backyard) thing, it is a SIMBY thing (Safety in My Backyard). These 60 additional units will have a significant impact on traffic and safety in the neighborhood, especially on Wednesdays and Sundays when members of Century Baptist Church park on Colt Avenue.

Chair Yeager asked staff if there was a concern about the connection of the two segments of Huron Drive. Mr. Hokenstad replied that this plat provides a future connection, but staff has no indication of when the properties between the two sections of Huron would develop.

Rick Geloff addressed the Commission again, stating that Colt is considered a major arterial from a snow removal standpoint. *(Secretary's Note: The City's snow emergency route map*

includes four priority levels: Snow Emergency Routes - Priority 1, School Emergency Routes – Priority 2, Minor Arterial Routes – Priority 3, and Residential Routes – Priority 4.) He then presented a map showing the location of land owners contacted by him and others regarding this request, identifying who was not home, who signed the petition and who had not.

Robert Shaw, 250 Buckskin Avenue, stated that this request concerns him because of traffic. If residents cannot get out on Colt, they will go down to Buckskin and exacerbate the problem there. He added that he would recommend the Commission vote “no” on this request.

Pat Koski, the realtor representing the sale of the land for the development, stated that he did not want traffic to be the sole factor in this decision, as he thinks it is a moot point with all of the other residential development in this area. In a few years, there will be many more than 62 units coming from the north past Colt Avenue. He added that residents are looking for alternatives to single-family residential in this neighborhood and asked the Commission to look at factors other than traffic and approve the proposal.

Bruce Whitmore, 435 Ash Coulee, stated he has no plans to develop his property and if anyone is thinking he will be providing a connection for Huron Drive they are mistaken. He stated that in a previous meeting it was stated that there would be condos or twinhomes as a buffer, an ownership situation rather than a rental situation as with apartments and this proposal.

Chair Yeager stated that the staff report includes a 15-foot landscape buffer yard around the proposed RM10 zoning. Mr. Hokenstad added that it is his understanding that there is some vegetation on the site, but additional planting may be needed in order to meet ordinance requirements.

Paul Bultsma, 400 Colt Avenue, stated that most of the trees along the western property line of the proposed development are actually on his property and he would not want those trees to count as part of the buffer yard. He added that it would have been beneficial for the Commissioners to have gone door-to-door like he did and see the number of people with concerns with this development. He then asked for a show of hand of who was concerned with the proposed 4-plexes and members of the audience raised their hands. Mr. Bultsma continued by stating that the development is going from two units to 62 units on the same property and they are all going to access Colt Avenue. He added that traffic concerns are not a moot point; those people are going to be on the road when he wants to go to work or the grocery store. This development is going to overload the streets and he does not want to pay for this development through lowered property values for others to make money. He added that the neighbors are concerned that this project is so far along without a chance for public input. He then questioned who would pay if Huron is forced to go through. He then expressed concern that an extension of Huron would all be on his property rather than on the lot line with his neighbor to the north. He said that the owner can't guarantee that these will be high end rentals and he thinks that the existing residents will be heavily impacted by this

development and the traffic generated. He concluded by stating that the petition speaks for itself; the people are fine with single family developments, they are not fine with 4-plexes.

Mark Swenson appeared on behalf of Dick Flurer, the property owner to the east. He stated that he has visited with Mr. Koosman. He added that there is a shelterbelt between the two properties that is mostly on Mr. Flurer's property. Some or all of that shelterbelt may need to come out because of the age of the trees and shrubs. His concern is that this development may adversely impact the development of his property when the time comes. Mr. Flurer's property would need a cul-de-sac because a connection is not being provided to the west, and he just wants to tie it down if Mr. Flurer comes back five years from now and wants to develop he will be allowed to use a cul-de-sac. Chair Yeager replied that any comment on that topic by the Commission would be speculation. Mr. Hokenstad added that a buffer yard would be required along the east side of the proposed development and Chair Yeager added that the buffer yard needs to be on the applicant's property.

Eric Johnson, 518 Huron Drive, talked about compression and the impact of traffic from future development. Mr. Johnson stated that if you look at the undeveloped area near the Ash Coulee and North Washington intersection, all of that area is going to be developed and all owners will have an average of 2 cars. If the two segments of Huron are connected, it will allow people to travel from this area through the development out to Ash Coulee and west over to Valley Drive. He added that it was his understanding that the developer was given permission to do light dirt work, but that is not what is occurring. He then showed before and after photos showing the amount of grading having already occurred on this site. He added that the density of 62 units on 8 acres is similar to the density in mobile home courts. He concluded by saying that the compression will continue and the residents are concerned.

Scott Brownlee, 527 Brunswick Drive, stated that he did not sign the petition because of some of the wording. He made reference to the required 15-foot landscape buffer, stating that that is not an adequate buffer between rural residential and higher density residential. He stated that he does not agree with the staff report that this is a good land use buffer, stating that twinhomes would be much more appropriate. He also questioned the finding that the proposed development would be compatible with neighborhood, asking how can a high-density development be compatible with rural residential on three sides. He then questioned the impact of the proposal on the development and the finding that it would not have an adverse impact. He indicated that traffic is problematic on North Washington. His concern is not with overall traffic volumes but with peak traffic volumes, adding that the traffic that doesn't go out to Washington will go through the adjacent neighborhood. He then suggested that properties with development proposals, especially zoning changes, be posted so that more people are aware of proposed changes. The amount of dirt was moved was a significant amount of work; if this is not approved, with the site go back to how it was.

There being no additional comments, Chair Yeager closed the public hearing.

Chair Yeager stated that a property owner does have the right to grade their property as long as they maintain erosion control.

Commissioner Waldoch stated that she found the comments of the owners to the west interesting, especially the difference between how Huron was shown to go through and what they envisioned for their properties. In her opinion, it is appropriate to transition on this property because of its proximity to North Washington Street, but she would be more comfortable with R10 than RM10, with twinhomes only. She also expressed concerns with the buffer yard and where it was located.

Commissioner Lee stated that he usually supports higher density, but this abrupt change from Rural Residential to RM10 is not appropriate. He added that he would also prefer to see an R10 development in this location.

Chair Yeager stated that the request before the Commission is for RM10 zoning and that the request is not for R10. Mr. Hokenstad stated that the Commission can continue the request and provide the applicant time to go back and work on an R10 proposal if desired.

Dan Koosman approached the Commission, stating that the City staff members he was working with were supportive of the proposal. He added that he would prefer to not include Huron Drive in the development and just have a loop road off Colt Avenue, but City staff would not support that. He went on to state that the proposed met all of the requirements without a secondary access on Huron Drive and this design was his second choice, adding that connecting the two portions of Huron Drive works. He added that the layout of the property for twinhomes would not significantly reduce the overall density. He then referenced the project in Minot, stating that the traffic generated is not significant and it works well. He looked at the traffic counts and the impact of the development on the neighborhood, adding that traffic will go to the east not west through the existing development. He added that City staff is confident that this development is appropriate in this location as a transition and that it will not have a significant impact on traffic. He concluded by stating that he is not interested in changing his project to an R10 development at this time.

Commissioner Lanning asked about snow removal on the Loop. Chair Yeager replied that the roadway would be a public roadway and snow removal would be the responsibility of the City.

MOTION: Based on the findings contained in the staff reports, the comments received from adjacent property owners, and that this is not a good transition from the RR-Residential and R5-Residential zoning, Commissioner Lee made a motion to deny the annexation, zoning change and final plat of Koosman Addition. Commissioner Lanning seconded the motion and the motion to deny passed with Commissioners Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion and Commissioner Bullinger voting against the motion.

Chairman Yeager allowed a few minutes break as many people left the hearing room.

**FINAL CONSIDERATION– ANNEXATION
PUBLIC HEARING – ZONING CHANGE
PART OF LOT 1, BLOCK 1, UNITED TRIBES TECHNICAL COLLEGE
SUBDIVISION**

Chair Yeager called for final consideration of the annexation and the public hearing on the 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 Subdivision. The property is located in south Bismarck, along the east side of ND Highway 1804 directly adjacent to the Bismarck Airport.

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 is outside the boundaries of the Land Use Plan.
2. The proposed zoning change would generally be compatible with adjacent land uses. Adjacent land uses include the Bismarck Airport, including the National Oceanic and Atmospheric Administration (NOAA) offices and the City of Bismarck's Emergency Operations Center to the north, United Tribes Technical College Campus to the east and southeast, the United States Army Reserve facilities to the south and Lincoln-Oakes Nursery to the west.
3. An annexation request has been submitted in conjunction with this application; only the portion of the campus designated for the hotel project would be annexed.
4. The proposed zoning change would not have an adverse impact on 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 listed several staff concerns about traffic flow, especially concerning ingress and egress to ND Highway 1804 as it is to have a limited number of access points.

Mr. Tomanek stated that based on these findings, staff recommends approval of the annexation and the 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 Subdivision, with the following conditions:

1. A plat of irregular description will be prepared and recorded to create a separate lot which the hotel project would occupy.
2. The property would be annexed prior to development.
3. The ingress/egress to the site from ND Highway 1804 is resolved to the satisfaction of the City Traffic Engineer, NDDOT, the applicant and developer prior to forwarding the request to the Board of City Commissioners for final action.

Commissioner Lee asked if the ND Department of Transportation does not approve the traffic pattern proposed what would happen with the annexation request. Mr. Tomanek stated that the annexation is not desirable without the proposed zoning change and construction of a hotel.

Chairman Yeager opened the public hearing.

Chair Yeager closed public hearing with no commentary from the public.

MOTION: Based on the findings contained in the staff reports, Commissioner Laning made a motion to approve the annexation and the zoning change for United Tribes Technical College Subdivision with the following conditions: 1) a plat of irregular description will be prepared and recorded to create a separate lot which the hotel project would occupy; 2) the property would be annexed prior to development; and 3) the ingress/egress to the site from ND Highway 1804 is resolved to the satisfaction of the City Traffic Engineer, NDDOT, the applicant and developer prior to forwarding the request to the Board of City Commissioners for final action. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

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

Chairman Yeager called for the public hearing for a Land Use Plan amendment for Lot A of the NW¼ of Section 1, T139N-R81W/West Hay Creek Township, to introduce the light industrial land use classification into an area classified as urban residential. 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.

As this request is located in West Hay Creek Township, Quirin Friese, Hay Creek Township Supervisor, joined the Planning & Zoning Commission for this agenda item.

Mr. Tomanek indicated that this request had been continued at the July 24th meeting of the Planning & Zoning Commission to provide the applicant time to meet with the adjacent property owners. He added that it is staff's understanding that this meeting was held on August 15th. The Land Use Plan amendment is being requested in advance of a zoning change and plat for the development of storage units on the property.

He then provided an overview of the request, including 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 Hay Creek Township Board of Supervisors have recommended denial of the request.
4. 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.
5. 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.
6. 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.
7. The amendment to the Land Use Plan is not in the public interest and is solely for the benefit of a single property owner.

Mr. Tomanek stated that based on these findings, 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.

Commissioner Laning asked if staff had received any feedback from the residents after the neighborhood meeting. Mr. Tomanek replied that they had not.

Commissioner Lee asked about the existing aggregate operation adjacent to the parcel. Mr. Tomanek replied that he had been out to the site and it appeared that it was a sand and/or gravel removal operation based on the site and the type of equipment present.

Commissioner Lee then asked if that was a permitted use in the A-Agricultural zoning district. Mr. Tomanek stated that he could double-check the ordinance, but he believes it is an allowable use within the A-Agricultural zoning district. *(Secretary's Note: It was verified that sand and gravel extraction is a permitted use in the A-Agricultural zoning district.)*

Chairman Yeager opened the public hearing on 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.

Vance Vessey stated that he is president of the Hawktree Home Owners Association. He clarified that the sand and gravel pit in question had not been in operation for several years; however, the pit to the south of Burnt Creek Drive is operational. He went on to state that notices were sent to all owners within the various development in Hawktree and a meeting was held on August 15th. The concerns and questions raised at the meeting included the appearance of the buildings, whether or not there would be covenants and if those could be changed by future owners, security of the facility, the possibility of outside storage on the property, the appearance of the landscape buffer and how well it would screen the units. He also stated that Karen McCormick had mentioned at the meeting that both pieces were zoned A-Agricultural and could be used for agricultural uses. At the conclusion of the meeting, a vote was taken and 24 lots of the 26 lots represented were opposed to the project.

Commissioner Donahue asked how many lots are in the various developments. Mr. Vessey replied that there were 137 lots total.

Vance Vessey then spoke as a private owner within the development. He stated that he was one of the owners that were in favor of the project. He stated that he likes the covenants that exist in Hawktree, but that he would like to have additional storage close to his home. He also sees the storage facility, especially since it would be set up as a condo, it would add value to his property when he went to sell.

Kilee Harmon, a resident of Hawktree, stated that the neighborhood meeting was held in their garage. She added that the two owners who supported the request lived at the eastern edge of the Hawktree development, furthest away from the proposed storage facility and least impacted by it. She stated that she has several letters from others that she agreed to read on their behalf. She then read letters from The Ridge at Hawktree Association, Carl and Lori

Lemmerman, and David and Susan Larson, all in opposition to the request, attached as Exhibits B, C & D. Ms. Harmon added that there was also a concern with crime associated with storage units and how that would impact the homeowners at Hawktree. She concluded by stating that both she and her husband are opposed to the request, especially because of the crime associated with storage units and facilities.

Loran Schwab, a resident of Hawktree, pointed out to the Commissioners that there are plans in place to develop homes in the area of the former sand and gravel pit on the north side of Burnt Creek Drive. He added that he was opposed to the request because of the visual impact on the residential area.

Nick McCormick, the applicant, stated that the storage units will be high-priced units, ranging from \$80,000 to \$100,000 each. He added that they will be secured with perimeter fencing and landscaping will be installed to provide a visual buffer. He understands that the neighbors are opposed to his request.

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

Chair Yeager then asked if staff had anything to add. Mr. Tomanek clarified which uses were permitted in the A-Agricultural zoning district.

Commissioner Lee asked if the Land Use Plan includes any light industrial areas in this area of the community. Mr. Tomanek showed on the Land Use Plan areas that are designated for future commercial and industrial development. He added that there are no industrial areas designated in this area; however, there is an industrial area designated east of US Highway 83 along the railroad tracks.

Hay Creek Township Supervisor Friese stated that the Township was opposed to the request.

MOTION: Based on the findings contained in the staff report, Commissioner Selzler made a motion to deny the Land Use Plan amendment for Lot A of the NW¼ of Section 1, T139N-R81W/West Hay Creek Township, to introduce the light industrial land use classification into an area classified as urban residential. Commissioner Laning seconded the motion and the motion to deny passed with Commissioners Bullinger, Donahue, Freise, Laning, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion and Commissioner Lee voting against the motion.

PUBLIC HEARING – ZONING CHANGE AUDITOR'S LOTS 4 & 5, SECTION 1, T138N-R80W/LINCOLN TOWNSHIP

Chairman Yeager called for the public hearing for a zoning change from the A-Agricultural zoning district to the MA-Industrial zoning district on Lots 4 & 5, Section 1, T138N-R80W/ Lincoln Township. The property is located in east Bismarck along the south side of County Highway 10 and the west side of 52nd Street SE.

Mr. Tomanek provided an overview of the request, indicating that the applicants are only asking for a zoning change now, but would come back in the future with a plat prior to development of the site. He then outlined the following findings:

1. The proposed zoning change lies within the boundaries of the Land Use Plan (2007 Bismarck-Mandan Future Regional Land Use Plan). The current Land Use Plan indicates the future land uses include Mixed-Use Commercial and Industrial land uses in addition to Urban Residential land uses. The City of Bismarck is currently updating the Growth Management Plan and the future land use recommendations. The plan makes recommendations regarding urban development in this general location. It suggests that the area between the Missouri Valley Complex and 52nd Street SE would be best suited for business park and light industrial land uses. The GMP Future Land Use Plan (FLUP) is a draft and has not been finalized or adopted.
2. The proposed zoning change would be somewhat compatible with adjacent land uses. Adjacent land uses include the Missouri Valley Complex to the west, undeveloped agriculturally zoned land to the north across East Main Avenue, undeveloped RR-Residential zoned land to the south and existing rural residential to the east across to 52nd Street SE.
3. The entire property is currently within the corporate limits; 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, residents within the existing rural residential subdivision to the east expressed concerns with industrial land uses in this area when a similar request was considered in 2007. At that time, the adjacent property owner to the south of these parcels had requested a zoning change from the A – Agriculture zoning district to the MA – Industrial zoning district. Planning staff recognizes this request is similar; however, Planning staff is supportive of the vegetative landscape buffer yard and the use of the 6-foot earthen berm to help mitigate the impacts of the incompatible land uses by providing additional separation and visual screening of the property. Additionally, staff recognizes that the GMP FLUP contains draft recommendations indicating the appropriate future land uses in this area would be light industrial and business park uses. Planning staff also recognizes that 52nd Street SE is an arterial roadway that is intended to carry large volumes of traffic. This roadway also provides physical separation between the proposed use and the existing rural subdivision.
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 stated that based on these findings and the concerns expressed by adjacent property owners, staff recommends continuing the public hearing for the zoning change from

the A-Agriculture zoning district to the MA-Industrial zoning district for Auditor's Lots 4 & 5, Section 1, Lincoln Township to allow Planning staff time to work with the applicant for the purpose of exploring a conditional MA-Industrial zoning district or a Planned Unit Development (PUD) zoning district.

Chairman Yeager asked about any required roadway improvements. Mr. Tomanek replied that prior to development, the property would need to be platted and roadways constructed.

Chairman Yeager opened the public hearing on the zoning change from the A-Agricultural zoning district to the MA-Industrial zoning district on Lots 4 & 5, Section 1, T138N-R80W/ Lincoln Township.

Jim Christianson appeared on behalf of the applicant. He indicated that the site plan is a conceptual site plan for future development. Midwest Motor Express has been located to the north of this property for approximately 40 years and all of the property owned by MME was annexed into the City in the 1970s. He went on to state that the property is ideally located for industrial development and provided an overview of the project. He added that the concept plan includes a landscape berm to provide a buffer between this use and the existing rural residential subdivisions to the east across 52nd Street. The conceptual site plan and landscape berm were developed in part to address the concerns of these neighbors. The concept plan also includes the ability to have a shared roadway between this property and the Missouri Valley Complex. He also stated that because the end users have not yet been identified, a PUD would not be a good alternative for this project. The concept plan also includes a secondary access point on 52nd Street. If the zoning is approved, a plat will be brought in and development would commence in 2014.

Richard Hammond indicated that he lives in the Prairiewood Subdivision across 52nd Street. He stated that he objects to the zoning change to MA-Industrial because it is not compatible with the residential development that was there first. He added that the property was zoned MA-Industrial because the County had originally zoned 40 acres industrial and the City scaled it back when it came under the City's jurisdiction. The buffer zone is not adequate as it takes a long time for trees to grow to the point that they provide a buffer. He went on to state that this is an old request as it has been made before, and that the owner just wants industrial because the owner thinks this is the highest and best use. He concluded by stating that he hopes this request is turned down again.

Dwight Wrangham, a home owner across 52nd Street, stated that he had lived in that area for many years and has attended many meetings on the proposed rezoning of this property over the years. He provided an overview of land uses in the area and stated that mashing together industrial and residential doesn't make any sense, adding that the buffer will not actually provide a visual buffer because of the topography of the MME property.

Donovan Voeller stated that he also lives across the street from the proposed zoning change. He added that at a previous meeting, the Planning & Zoning Commission recommended that the best use of this area was residential. Mr. Voeller added that since that action was taken, he and several other property owners have invested significant amounts improving their

properties because they didn't have to worry about commercial uses across 52nd Street. He showed several photographs of industrially-zoned properties in Carufels Subdivision to show the types of material stored outside and the height of those materials. He added that a six-foot berm will not screen these types of activities. He went on to say that the types of uses in the pictures are not compatible with residential and not compatible with his neighborhood. Many of the homes on the east side of 52nd Street were constructed prior to Midwest Motors locating in the area. He then stated that the trees in some other buffer yards are only two feet tall and would not shield him from the industrial uses. He does not want his property to be devalued so that Midwest Motors can increase the value of its property. At least with a PUD, some restrictions could be put into place.

Jan Wangler stated that she and her husband live in the neighborhood across 52nd Street. The reason many of the pictures were taken was to show that many of the buffer yards do not actually provide the screening they are intended to provide. She then showed several photographs of recently installed buffer yards. Planted trees do not always meet the minimum requirements and they are not always replaced if they do not make it. She also showed several photographs of her yard, showing that even the mature material on the east side of 52nd Street does not provide an adequate screening in the winter. She stated that when this property was before the Planning & Zoning Commission last time, the applicant was told not to come back unless they had a PUD.

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

Commissioner Lee asked if the request was denied, could the applicant come back with a PUD request. Mr. Tomanek replied that the request could come back, but it would have to start with consideration and it would set them back a month.

Commissioner Donahue asked if the request was continued, when would it come back to the Commission. Mr. Tomanek replied that if the request was continued, it would appear on the next agenda. Commissioner Donahue then asked if there was a record of the previous request and the statement made that the applicant was told to come back with a PUD. Mr. Tomanek replied that that same issue was raised at the neighborhood meeting, adding that staff had done some research and could not find anything on the referenced statements and no one on staff could recall the discussion.

Commissioner Lee asked the applicant if they thought they could have a PUD put together by the next meeting. Mr. Christianson stated that he was unsure if they could have a PUD or the uses for a conditional MA put together within a month. He added that they would have covenants to dictate appearance of the structures. He went on to state that a PUD is good if you know who the future users will be, but in this case that is unknown.

Mr. Tomanek clarified that the request could also be tabled, which puts it on the table indefinitely. When the developer is ready to come back, the neighbors would be re-notified.

Mr. Christianson asked that the Planning & Zoning Commission act on the staff recommendation before them, which is to continue the action, to keep the project moving forward.

Commissioner Lee stated that he was involved in the discussion for the property to the south. He added that if that property is rural residential and the property to the east is rural residential, having industrial on this property doesn't make sense.

MOTION: Based on the findings contained in the staff report, Commissioner Lee made a motion to deny the zoning change from the A-Agricultural zoning district to the MA-Industrial zoning district on Lots 4 & 5, Section 1, T138N-R80W/ Lincoln Township. Commissioner Schwartz seconded the motion and the motion to deny passed with Commissioners Donahue, Laning, Lee, Schwartz, Selzler and Waldoch voting in favor of the motion and Commissioners Bullinger and Yeager voting against the motion.

Chairman Yeager allowed a two-minute break to allow for better air circulation of the room.

**PUBLIC HEARING – MAJOR PUD AMENDMENT –
LOTS 1 AND 3-18, BLOCK 1, MISSOURI VALLEY COMPLEX**

Chair Yeager called for the public hearing on the Major PUD Amendment for 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.

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

1. The PUD as amended would not create incompatibilities with the existing adjacent land uses, as it adds a use that is similar in scope to other permitted uses, provided that the auction uses are limited to the multi-use activity lots (Lots 14, 15, 16, 17 & 18, Block 1) and commercial livestock sales and auctions are excluded. Adjacent land uses include undeveloped State-owned land to the north and southeast, a State prison and other State-owned land to the west, industrial uses to the south and southwest, an industrial uses and undeveloped RR and A-zoned land to the east.
2. The property is already being developed; therefore, the PUD as amended will not place an undue burden on public services.
3. The proposed PUD amendment is consistent with adopted plans, policies and accepted planning practice, provided that the auction uses are limited to the multi-use activity lots (Lots 14, 15, 16, 17 & 18, Block 1) and commercial livestock sales and auctions are excluded.

Mr. Hokenstad stated that based on these findings, staff recommends approval of the Major PUD Amendment to allow auctions limited to benefit auctions, estate auctions, occasional

livestock auctions tied to 4H or other not-for-profit educational livestock shows, and similar types of auctions, but specifically excluding commercial livestock sales and auctions, and with this activity limited to Lots 14, 15, 16, 17 & 18, Block 1 as outlined in the draft PUD amendment document distributed with the agenda packet.

Chairman Yeager opened the public hearing on the request.

Neil Effertz appeared before the Commission and stated that he is a resident and auctioneer and requests that the County Fairgrounds host livestock auctions. He added that it is a typical business for a fairground where local and non-local buyers and sellers convene and create positive business opportunities. He then stated that in Burleigh County, the Civic Center is not an adequate site due to logistics of getting livestock into the city and because of the size of the venue. He emphasized the extraordinary potential specific to Bismarck due to the closing of Farmer's Livestock and Minot Livestock, yet there are high numbers of customers and sellers in the region needing a facility. He made a distinction between breeding stock auctions and commercial livestock auction, adding that there is a need for breeding stock auctions. He went on to state that breeding stock auctions are a lower density activity that he feels should be allowable on the fairgrounds site.

Chairman Yeager asked how many head of cattle would be auctioned, or what is a typical number would be for a commercial auction vs. a breeders auction. Mr. Effertz explained that they could be the same numbers, but the number is not what should determine the PUD, but rather the activity - either livestock/breeding show or commercial livestock sale for slaughter.

Mark Swenson, a neighboring property owner, expressed his concern with his perception of the County's historic lack of buffering of used on the property, referring to the removal of a green belt along the eastern edge that was required by ordinance. He also is concerned that since a request for a zoning change from A-Agriculture to MA -Industrial development was denied for his property, and that it is not good business to create an RR or other residential zone next to a motocross track, that he will be left with land which will not be developable. He requested that the County be required to move the motocross further away from his land, that proper landscape buffering be installed on the site so that he can develop RR on his land, or allow his land to be zoned industrial. He is asking the Commission to deny auctions on the site.

Mr. Thompson stated that he is a resident and auctioneer. He asked the Commission to approve the ordinance that will continue to allow auctions at the fairgrounds.

Kayla Effertz stated that she works with 4H groups and voiced her support of the proposed amendment to allow auctions. The amendment will allow educational events to occur, siting an annual 4H project culminating with an auction event, which advances the education and citizenship of youth, and this benefits the students and community.

Commissioner Lee asked for clarification whether or not 4H could still do their work as they are not considered a commercial livestock activity. Mr. Tomanek replied that 4H auctions

were not considered a commercial livestock activity and was already allowed under the PUD without an amendment. The amendment just clarifies that this type of activity is allowed.

Commissioner Bullinger asked Mr. Hokenstad if it is possible to limit the frequency of auction events. Mr. Hokenstad stated that such wording could certainly be added. Chairman Yeager added that it would be the wish of the Commission to add such limitations.

Commissioner Lee asked the Commission what would be their feelings about having periodic commercial livestock auctions several times a year. Commissioner Selzler stated that he is in favor of livestock auctions, citing the need of livestock owners to have venues to do business. Commissioner Lee noted the need to limit the size of auctions.

Chairman Yeager warned that the Commission is trying to set numbers on something that the Commission may not fully understand regarding the scope of the possible auctions. He added that there are questions on how the Commission can also temper the decision with wishes of adjacent land owners.

MOTION: Commissioner Lee made a motion to continue the item so that the applicant could come back in one month with wording about the frequency and size of auctions activities planned for the Missouri Valley Complex. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

FINAL CONSIDERATION AND PUBLIC HEARING – ZONING CHANGE – NORTH 250 FEET OF LOT 1, BLOCK 1, NORTHERN SKY ADDITION

Chair Yeager called for the public hearing on the zoning change from the CA-Commercial zoning district to the PUD – Planned Unit Development zoning district on the North 250 feet 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.

Ms. Wollmuth provided an overview of the request, indicating that the PUD was being requested to allow a drive-through and car wash on the property. She then outlined the following findings:

1. The proposed zoning change is generally consistent with the Land Use Plan, which identifies the long range use of this area as mixed use (Future Land Use Component of the US Highway 83 Transportation Corridor Study). The mixed use land use classification allows for some commercial uses in addition to residential and office uses.
2. The proposed zoning change would be generally compatible with adjacent land uses. Adjacent land uses include a religious facility to the north, developing RT-Residential zoned land to the east and undeveloped and un-annexed RT-Residential and CA-Commercial zoned land to the south and west.

3. The entire property is currently within the corporate limits; therefore the proposed zoning change would not place an undue burden on public services.
4. The proposed zoning would not have an adverse impact on property in the vicinity, given the zoning of the adjacent parcels. In particular, the proposed carwash and drive through may have an adverse impact on the adjacent properties as they are only allowed as special uses in a CG-Commercial zoning district.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is not completely consistent with the master plan, other adopted plans, policies and accepted planning practice; however, the zoning change will specify the look and character of the proposed neighborhood market including the drive through and carwash facility.

Ms. Wollmuth stated that based on these findings, staff recommends approval of the zoning change from the CA-Commercial zoning district to the PUD – Planned Unit Development zoning district on the North 250 feet of Lot 1, Block 1, Northern Sky Addition, as outlined in the draft PUD ordinance distributed with the agenda packet.

Chair Yeager opened the public hearing on the zoning change.

There being no public commentary, Chair 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 CA-Commercial zoning district to the PUD – Planned Unit Development zoning district on the North 250 feet of Lot 1, Block 1, Northern Sky Addition, as outlined in the draft PUD ordinance. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Bullinger, Donahue, Lee, Laning, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

PUBLIC HEARING – MAJOR PUD AMENDMENT – LOT 1, BLOCK 1, GOOD SHEPHERD NORTH ADDITION

Chair Yeager called for the public hearing on the Major PUD Amendment for Lot 1, Block 1, Good Shepherd North Addition. The property is located in northwest Bismarck, along the west side of North Washington Street and the north side of Medora Avenue.

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

1. The proposed PUD amendment may not be completely compatible with adjacent land uses. Adjacent land uses include single-family dwellings adjacent to a portion of the site along the west, undeveloped RT-zoned land to the south and north, and undeveloped R10 zone land to the northwest. The proposed landscape buffer yard

and the two-story portions of the proposed buildings would help mitigate the some of the visual impacts along the western property line of Lot 1, Block 1, Good Shepherd North Addition. The buffer yard plant types and quantities would need to be installed in conjunction with site development and would help mitigate incompatibility. Additionally, an earthen berm planted with trees along the western property line between the proposed facilities and the buffer yard plantings required by City ordinance would be incorporated. The minimum height of the berm would be five feet.

2. The property is already annexed; therefore proposed zoning change would not place an undue burden on public services.
3. The proposed PUD amendment may adversely affect property in the vicinity. In particular; the previous development proposal addressed the incompatibility of a multi-family land use adjacent to the existing single-family land use by reducing the height of the westernmost portions of the proposed apartment buildings from three stories to two stories when adjacent to the single-family residences to the west. The current proposal demonstrates the proposed buildings adjacent to the west property line would have two-story and three-story portions.
4. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations. In particular, multi-family dwellings, commercial uses and developments that have the sizeable structures, large numbers of dwelling units and potential to generate large volumes of traffic, are generally compatible with arterial roadways such as North Washington Street.
5. The proposed PUD amendment is consistent with the master plan, other adopted plans, policies and accepted planning practice. In particular, the Land Use Plan was amended on November 27, 2012 to extend the mixed-use land use classification approximately 1,635 feet to the south in part of the E½ of the section (south to the southern edge of Good Shepherd North Addition). The Land Use Plan was amended in conjunction with the Sand Companies, Inc.'s second PUD request to rezone the property from the Conditional RT – Residential zoning district to the Planned Unit Development zoning district. Planning staff was supportive of the Land Use Plan amendment request.
6. The overall site layout as proposed has changed from what was previously approved. The approved configuration of the site, the reduced height of the buildings and the inclusion of a continuous landscape buffer yard and earthen berm helped to mitigate the impacts of incompatible land uses. The change in building configuration and site layout does resemble the plan that was approved in November 2012. Additionally, the revised plan does address the adjacent property owners' concerns relating to the height of the proposed apartment buildings along the southwestern portion of the parcel by providing two-story portions of the buildings that would be most closely located to the existing single-family homes to the west.

Mr. Tomanek stated that based on these findings, staff is generally supportive of the request to amend the PUD for this property, but recommends that the Planning and Zoning Commission consider the input of adjacent property owners and amend the findings, if necessary to support the Commission's decision.

Commissioner Selzler asked how far the newly proposed driveway is from the intersection. Mr. Tomanek stated that the driveway has been moved 60-80 feet to the west, which puts it approximately 200 feet from the intersection with Washington, deferring to the Traffic Engineer's approval of the plan.

Chairman Yeager opened the public hearing on the request.

Jamie Theil, The Sand Companies, spoke to the modification as being subject to the traffic study, adding that they now only having two access points to control traffic better than the previously proposed plan. Then he stated that the stand-alone building was to now be a focal point of the development rather than looking like an apartment building.

Commissioner Bullinger asked how the free-standing building will tie into the rest of the development versus being attached, and which structure will be built first. Mr. Theil replied that more than likely the first two buildings to be constructed will be at the north part of the development.

Rachelle Schommer voiced her concern that the reason for the PUD amendment is due to a change of ownership or management rather than a need to modify the original plan. She added that the change has resulted in financial options not amenable to the original management group, and therefore she felt the PUD request was an abuse of the system. She is concerned that the original site plan agreed upon last year has been overly compromised with the new plan's changes, including the garage configuration, the addition of a pool, the reduction of park space, and the free-standing building adding another building to the site.

Chairman Yeager pointed out that last year's plan was included in the Commissioner's packets to aid in comparison.

Dave Carlson voiced his concern that the change of management has seemingly given way to businesses having more power than the local already-established neighborhood. Property values will be adversely affected and the neighborhood does not accept the new design.

Ms. Danks is concerned that her property value will decrease due to housing and traffic congestion.

Jill Yiri is concerned that the addition of a building, increasing of the footprint and parking and the addition of car lights beaming into neighbors' houses are all additions to the new plan which make the PUD unacceptable.

Chairperson Yeager asked the applicant if the change in plan was a result of the traffic impact study. Mr. Theilen replied that yes the traffic impact study and the relocation of the access point on Medora does change many aspects of building and stormwater drainage. As

for site lines, he stated, that if the neighbors want a fence or divider for headlights or the play area, he would be able to comply.

Chairman Yeager closed public hearing.

Mr. Tomanek reminded the Commission that if the PUD amendment does not pass, the previously approved PUD still stands. He added that if the PUD amendment is denied the developer has the right to appeal that decision to the City Commission. If the decision is to approve the amendment, then that would be the final decision and there would no further meetings beyond the Planning and Zoning Commission for the PUD amendment.

Commissioner Lee stated that he was the Commissioner who said the design could be worse than what was presented last time, adding that he was offended that the developers would ask for such a dramatic change from development plan approved in November 2012.

MOTION: Based on the findings contained in the staff report, Commissioner Lee made a motion to deny the Major PUD Amendment for Lot 1, Block 1, Good Shepherd North Addition. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING - SPECIAL USE PERMIT (DRIVE-THROUGH) –
LOT 3 LESS LOT 3A, BLOCK 1, PRAIRIE HILLS 5TH ADDITION**

Chair Yeager called for the public hearing on the special use permit to allow a drive-through on Lot 3 less Lot 3A, Block 1, Prairie Hills 5th Addition. The property is located in northwest Bismarck, along the south side of Divide Avenue between Schafer Street and College Drive.

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

1. A bank with a drive-through window is allowed as a special use in the CG – Commercial zoning district, provided specific conditions are met. The proposed drive-through window and ATM kiosk meet all six provisions outlined in Section 14-03-08(4)(g) and meets the required vehicle stacking outlined in Section 14-03-10(2) of the City Code of Ordinances (Zoning). Copies of both sections the ordinance are attached.
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. This use would not cause a negative 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 and stacking areas are located away from Divide Avenue

Ms. Wollmuth stated that based on these findings, staff recommends approval of the special use permit to allow a drive-through window and ATM kiosk in conjunction with a financial institution on Lot 3 less Lot 3A, Block 1, Prairie Hills 5th Addition, with the following conditions:

1. The construction and operation of a drive-through and ATM kiosk window must meet all applicable requirements for such a use in the CG- Commercial zoning district.
2. Development of the site must generally conform to the site plan submitted with the application.

Chairman Yeager opened the public hearing on the request.

Dr. Tello, the owner of the property to the north (The Eye Center of the Dakotas) approached the Commission to express his concerns with the proposed special use permit, citing the potential for traffic congestion as customers are coming and going from the proposed financial institution and his business. He specially stated that he fears for his patients' safety, many of whom are sight impaired, when they are driving to and from his clinic. He also suggested that the value of his property will decrease because of the access issues in front of his property, adding that it is currently retail but green space has been developed on one side of the building limiting the parking potential. If the business is sold in the future, there is no other access for his business.

Chairman Yeager clarified that the Commission is voting yes or no on a special use permit for the requested use, not determining whether or not to allow access or the use of easements for a neighboring property owner; that is an issue between neighbors and is not within the scope of this hearing.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Lee made a motion to approve a special use permit to allow a drive-through window and ATM kiosk in conjunction with a financial institution on Lot 3 less Lot 3A, Block 1, Prairie Hills 5th Addition, with the following conditions: 1) the construction and operation of a drive-through and ATM kiosk window must meet all applicable requirements for such a use in the CG- Commercial zoning

district; and 2) development of the site must generally conform to the site plan submitted with the application. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Bullinger, Donahue, Selzler, Schwartz, Laning, Lee, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT –
CA-COMMERCIAL ZONING DISTRICT/EDUCATION GROUP**

Chair Yeager called for the public hearing on the zoning ordinance text amendment relating to the CA-Commercial zoning district and the education use group.

Ms. Wollmuth provided an overview of the request, indicating that it was initiated by staff and would allow education uses in the CA - Commercial zoning district. She added that staff is recommending approval of the amendment as presented.

Chair Yeager opened the public hearing on the request. There being no public comment, the public hearing was closed.

MOTION: Commissioner Laning made a motion to approve. zoning ordinance text amendment relating to the CA-Commercial zoning district and the education use group. Commissioner Lee seconded the motion and it was unanimously approved by Commissioners Bullinger, Donahue, Laning, Lee, Selzler, Schwartz, Waldoch and Yeager voting in favor of the motion.

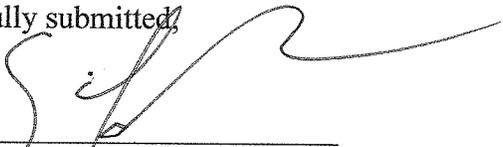
OTHER BUSINESS

There was no other business to address at this time, other than noting that the temperature in the room had reached 92°.

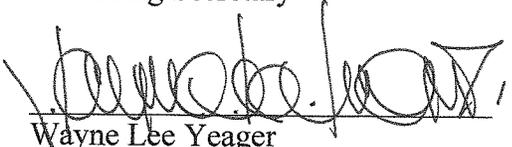
ADJOURNMENT

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 9:35 p.m. to meet again on September 25, 2013.

Respectfully submitted,



Sandra Bogaczyk
Recording Secretary



Wayne Lee Yeager
Chairman

August 28, 2013

To: Bismarck Planning Commission
Bismarck City Commission

RE: Koosman Addition - northwest Bismarck

Attached are the signatures of homeowners west and southwest of the location of the proposed development referred to as the Koosman Addition in northwest Bismarck. The homeowners were visited and all gave input as to the concerns they had.

Thank you for the opportunity we have to participate in the public hearing and voice our concerns.

Concerned Homeowners Affected by the Koosman Addition

Reference File: Koosman Addition

We, the undersigned owners of the property affected by the requested zoning change described in the above referenced file do hereby protest against any change of the Zoning District which would rezone the property to any classification other than R5.

Property Owner	Address
Ronald Fiechter	719 Mustang DR. Bismarck ND
Kip Motta/Hoffman	713 Mustang dr Bis. ND
Wayne Levang	709 Mustang Dr. Bismarck ND
Marie Ludwig	709 Mustang Dr Bismarck ND
Mary Kille	665 Mustang Dr. Bismarck
Jay E Burroughs	657 Mustang Dr. Bismarck
Nolan Pridwell	651 Mustang Dr. Bis
JEROME J. Klay	656 Mustang DR. BISMARCK
Dave Nelson	538 Buckskin Ave Bismarck ND
Ray Mock	520 Buckskin Ave.
John Klay	525 Buckskin Ave.
Karen Hallderson	519 Buckskin Ave.
Elizabeth A. Robinson	505 Buckskin Ave.
Shawn M. Robinson	505 Buckskin Ave
Janice M. Bred	436 Buckskin Ave.
Robert Bred	436 Buckskin Ave.
Alan King	617 Regina Ln
Genevieve K. Hunt	617 Regina Ln.
Signe H. Schlander	4130 Selkirk Rd
Curtis West	305 Colt Ave.

Reference File: Koosman Addition

We, the undersigned owners of the property affected by the requested zoning change described in the above referenced file do hereby protest against any change of the Zoning District which would rezone the property to any classification other than R5.

Property Owner

Address

<i>Blushman</i>	622 Brunswick Circle
<i>Rudy Steidl</i>	630 BRUNSWICK CIRCLE
<i>John M. Wise</i>	634 Brunswick Circle
<i>[Signature]</i>	638 Brunswick Circle
<i>[Signature]</i>	250 Buckskin Ave
<i>[Signature]</i>	712 MUSTANG DR.
<i>[Signature]</i>	668 Mustang Drive
<i>Lisa A. Clark</i>	608 Mustang Dr
<i>Angie Milakovic</i>	506 Huron Dr
<i>[Signature]</i>	250 Buckskin Ave
<i>[Signature]</i>	4124 Selkirk Rd
<i>[Signature]</i>	4100 Selkirk Road
<i>Debra Huber</i>	4100 Selkirk Road
<i>[Signature]</i>	700 Mustang Dr.
<i>Arnold Thomas</i>	700 Mustang Dr
<i>Jess H. Sturck</i>	509 Brunswick Circle
<i>[Signature]</i>	517 Brunswick Dr.
<i>Kenn A. Bushaw</i>	604 Huron Dr
<i>[Signature]</i>	604 Huron Dr

Reference File: Koosman Addition

We, the undersigned owners of the property affected by the requested zoning change described in the above referenced file do hereby protest against any change of the Zoning District which would rezone the property to any classification other than R5.

Property Owner	Address
Jeffrey K Heflat	405 Colt Ave. Bismarck
Ace Japel	4106 Selkirk Rd - Bismarck
Joan Hapel	4106 Selkirk Rd Bismarck ND
Raymond Hapel	4112 Selkirk Rd Bismarck ND
Kaylen Jhu	4118 Selkirk Rd Bismarck ND
Susan Ghemy	4140 Selkirk Rd Bismarck, ND
Mark J. Behr	4139 Selkirk Rd Bismarck ND
Linda M. Gorden	4139 Selkirk Rd Bismarck, ND
Karen Hoovestel	4131 Selkirk Rd Bismarck ND.
Howard Hoovestel	4131 Selkirk Rd - " "
Connie Armstrong	4125 Selkirk Rd Bismarck ND
Ed J. Wynn	518 Huron Dr. Bismarck ND
Margie Johnson	518 Huron Dr. Bismarck, ND
John Wynn	629 Huron Dr Bismarck ND
Barbara Hoffman	624 Huron Dr Bismarck, ND
Walt J. Wynn	612 Huron Dr Bismarck ND
Sam Jahn	530 Huron Dr Bismarck
Sherrice Brown	425 Huron Dr. Bismarck, ND
Robert K. Becken	416 Huron Dr Bismarck, ND.

Reference File: Koosman Addition

We, the undersigned owners of the property affected by the requested zoning change described in the above referenced file do hereby protest against any change of the Zoning District which would rezone the property to any classification other than R5.

Property Owner	Address
Paul & Susan Bolton	400 Colt
Bruce & Paulette Whitcomb	
Rick + Brandy Beloff	425 Colt Ave
Jessie Markovic	609 Huron Drive.
Shawn Markovic	609 Huron Drive
Alicia Overbeck	615 Huron Drive
Angela	615 Huron Drive
Kayla Johnson	626 Mustang Dr.
Sharon Gredate	662 Mustang Dr
Jodi Sullivan	419 Brunswick Drive.
Penny	419 Brunswick Dr. Bismarck
Pat Boh	425 Brunswick Dr. Bismarck
Dana Boh	425 Brunswick Dr. Bismarck
Annelle Cooks	436 Brunswick Dr. Bismarck
Joy Backman	413 Brunswick Dr Bismarck
Karen Kelmaka	422 Brunswick Dr Bismarck
Maria M. Juan	431 Brunswick Dr., Bismarck, ND
Cindy Thompson	428 Brunswick Dr. Bismarck ND
Dennis Fehr	442 Brunswick Dr Bismarck

Reference File: Koosman Addition

We, the undersigned owners of the property affected by the requested zoning change described in the above referenced file do hereby protest against any change of the Zoning District which would rezone the property to any classification other than R5.

Property Owner

Address

Barry Kaszak	424 Huron Dr.	Bismarck ND
Steve Smokey	500 Huron Dr.	Bismarck ND
Steve Dremlo	4013 Overlook Dr.	Bismarck ND
Steve Dremlo	4016 Overlook Dr.	Bismarck, ND
Mike Str	4008 Overlook Dr.	Bismarck, ND
MARSHALL Purwill	614 BRUNSWICK CIR.	BISMARCK, ND
Nela Redwell	614 Brunswick Circle	Bismarck ND
Jeanne Johnson	430 Colt Ave	Bismarck, ND
Marshall	415 Colt Ave	Bismarck, ND
Cecelynn Duffly	415 Colt Ave	Bismarck, ND
James Bamhardt	718 Mustang Dr.	Bismarck, ND
Disa Schmidt	706 Mustang Dr.	Bismarck, ND
Wendy	501 Huron Dr.	Bis. ND.
Bird Wabbe	618 Huron Dr	Bis. ND
Boyd Jensen	528 Buckskin Ave	Bis. ND
Mike	300 " "	" "
Jerin M	417 Huron Drive,	Bis, ND
V. [Signature]	512 Huron Drive	" "
Ferry Pedersen	524 Huron Dr.	Bis. ND

Reference File: Koosman Addition

We, the undersigned owners of the property affected by the requested zoning change described in the above referenced file do hereby protest against any change of the Zoning District which would rezone the property to any classification other than R5.

Property Owner	Address
Maria + Sean Furd	647 Regina Lane
Dani + Sara Cote	641 Regina Lane
Jim Ginge	635 Regina Lane
Narasimhan Kandam	629 Regina Lane
_____	623 Regina Lane
Jim + Tracy Regina	608 Regina Lane
Dave Blatt	616 Regina Lane
Jon Klein	700 Brunswick Dr
John DesRoches	624 Regina Ln.
Pamela DesRoches	624 Regina Ln
Julianne Fruhwirth	638 Regina Ln.
_____	638 MUSTANG DRIVE
Frankello	632 Mustang Drive
Cody Tom	620 Mustang Drive
Bruce W. Safeson	603 Mustang Drive
_____	609 Mustang DR
Sharon Fox	602 Mustang Dr.
Larry Gordon	727 Mustang Dr.
Ken Herman	618 Brunswick Circle