

**CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
October 23, 2013**

The Bismarck Planning & Zoning Commission met on October 23, 2013 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Yeager presided.

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

Commissioners Mel Bullinger and Mike Donahue were absent.

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

Others present were Robert Graham, Alan Lerberg, Marcia Lerberg, Kathleen Atkinson, Kirby Seibel, Marilyn Pope, Frank Kartch, Chris Hambrick, Olivia Huber, Diane Martin, Dave Patience, Landon Niemiller, Leigh Jacobs, Tom Oakland, Steve Kuball, Duane Boeller, Kelly Hall, Rose Laning, Brandy Jurgens, Mike Jurgens, Michelle Metzger, Dan Waldoch and Joan Millner.

MINUTES

Chairman Yeager called for consideration of the minutes of the September 25, 2013 meeting.

MOTION: Commissioner Schwartz made a motion to approve the minutes of the September 25, 2013 meeting as received. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

CONSIDERATION

- A. SOUTHLAND 2ND ADDITION – ZONING CHANGE AND PRELIMINARY PLAT**
- B. SATTLEL’S SUNRISE 10TH ADDITION – ZONING CHANGE AND PRELIMINARY PLAT**
- C. AUDITOR’S LOT A OF THE SE1/4 OF THE NE1/4 OF SECTION 33, T139N-R80W AND LOTS 1 & 2, BLOCK 1, REPLAT OF CALKINS ADDITION – ZONING CHANGE**
- D. LOT 14, BLOCK 1, SONNET HEIGHTS SUBDIVISION – ZONING CHANGE**
- E. LOTS 2 AND 3 OF PARK HILL SUBDIVISION OF LOT 14, LOT 1 OF AUDITOR’S LOT 15, PARK HILL AUDITOR’S LOTS, AND PART OF THE SE1/4 OF THE NE1/4 OF SECTION 5, T138N-R80W – ZONING CHANGE**

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

- A. Southland 2nd Addition – Zoning Change and Preliminary Plat
- B. Sattler’s Sunrise 10th Addition – Zoning Change and Preliminary Plat
- C. Auditor’s Lot A of the SE1/4 of the NE1/4 of Section 33, T139N-R80W and Lots 1 & 2, Block 1, Replat Of Calkins Addition – Zoning Change
- D. Lot 14, Block 1, Sonnet Heights Subdivision – Zoning Change

- E. Lots 2 and 3 of Park Hill Subdivision of Lot 14, Lot 1 of Auditor's Lot 15, Park Hill Auditor's Lots, And Part of the SE1/4 of the NE1/4 of Section 5, T138N-R80W – Zoning Change

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

**PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT –
SOUTH MEADOWS ADDITION**

Chairman Yeager called for the continued public hearing on the zoning change from the A-Agricultural zoning district to the R5-Residential, R10-Residential, RM30-Residential and P-Public zoning districts and the final plat of South Meadows Addition. The plat includes 147 lots in six blocks on 75.89 acres and is located in south Bismarck, south of Burleigh Avenue and west of South Washington Street (part of the E1/2 of the NE1/4 of Section 20, T138N-R80W/Lincoln Township).

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

1. The Land Use Plan identifies this area as urban residential (Bismarck-Mandan Regional Future Land Use Plan).
2. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include developing single- and two-family residential to the west, single-family residential to the north, undeveloped agricultural land to the east, and rural residential to the south.
3. The entire subdivision would be annexed prior to development; 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. Lee then gave an overview of the final plat, including the 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 FAA has determined that the development is in compliance with FAA Advisory Circular 150/5200-33B, "Hazardous Wildlife Attractants On or Near Airports."
4. The proposed subdivision generally conforms to the Fringe Area Road Master Plan for this area, which identifies Downing Street to the west of this plat as the north-south collector for this section and Glenwood Drive to the south of this plat as the east-west collector for this section.

5. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include developing single- and two-family residential to the west, single-family residential to the north, undeveloped agricultural land to the east, and rural residential to the south.
6. The entire subdivision would be annexed prior to development; therefore, it would not place an undue burden on public services and facilities.
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. Lee said that based on these findings, staff recommends continuing action on the zoning change from the A-Agricultural zoning district to the R5-Residential, R10-Residential, RM30-Residential and P-Public zoning districts and the final plat for South Meadows Addition until the stormwater management plan has been approved by the City Engineer.

Chairman Yeager opened the public hearing.

Diane Martin said she was told after the last meeting that the retention pond that was put in near her home is supposed to be draining within 48 hours, but it is currently full from the last time it rained several days ago. She said there is going to be a lot of standing water right next to their home all of the time and especially during the summer.

Dave Patience said he has also wondered why the pond has not drained like it is supposed to and thinks the bottom of it may have been sealed by mistake by heavy equipment when it was constructed and would then need to be perforated somehow. He said many other subdivisions, such as in the Minneapolis area, welcome ponds with standing water and actually consider them an addition to their land value.

Commissioner Laning asked if the water does not drain, then what prevents it from turning stagnant and into a mosquito pond. Mr. Patience answered that an aerator can be added to the pond and repeated that the perception in Bismarck is that ponds are not acceptable.

Olivia Huber said they have experienced issues at their home with drainage because of the makeup of the soil in that area. She said a pond in this location will never be able to drain completely and the only drainage solution they could find at their home for a drain field was to install a gravel bed to pump the water into.

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

MOTION: Based on the findings contained in the staff report, Commissioner Lee made a motion to continue the public hearing on the zoning change from the A-Agricultural zoning district to the R5-Residential, R10-Residential, RM30-Residential and P-Public zoning districts and final plat for South Meadows Addition, pending approval of the stormwater management plan. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson,

Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – FINAL PLAT –
AIRWAY AVENUE ADDITION**

Chairman Yeager called for the public hearing on the final plat for Airway Avenue Addition. The proposed plat is 11 lots in one (1) block on 20.0 acres and is located in southeast Bismarck, along the north side of Airway Avenue and the west side of South 26th Street (the S1/2 of the S1/2 of the NE1/4 of Section 10, T138N-R80W/Lincoln Township).

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

1. All technical requirements for consideration of the final plat have been met.
2. The storm water management plan has been approved by the City Engineer.
3. The proposed subdivision conforms to the Fringe Area Road Master Plan, which identifies Airway Avenue as the east-west collector roadway for this section.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include industrial uses to the north and west; undeveloped land to the east which is zoned MA - Industrial and the Airport to the south.
5. The proposed subdivision would not adversely affect the adjacent properties.
6. The City and other agencies would be able to provide necessary public services, facilities, and programs to serve the development allowed by the proposed subdivision at the time the property is developed, provided access via urban section roadways are required prior to development of lots within the development
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.

Mr. Tomanek stated that the applicant has requested this item to be continued so they could explore alternative options for stormwater management.

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

MOTION: Based on the findings contained in the staff report and the request of the applicant, Commissioner Lee made a motion to continue the final plat for Airway Avenue Addition pending approval of the revised stormwater management plan. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT – OAKLAND SUBDIVISION

Chairman Yeager called for the public hearing on the zoning change from the from the A-Agriculture zoning district to the RR – Rural Residential zoning district and the final plat for Oakland

Subdivision. The final plat is 17 lots in three blocks on 40.0 acres and is located northeast of Bismarck, along the south side of 84th Avenue NE, between 26th Street NE and 41st Street NE (part of the NE¼ of Section 2, T139N-R80W/Hay Creek Township).

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 range use of this area as rural residential (US Highway 83 Corridor Study).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include agricultural to the north and east, and partially-developed rural residential to the south and west.
3. The subdivision proposed for the property would be served by South Central Regional Water District and would have access to both 71st Avenue NE and 41st Street NE via internal streets; 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 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, with written concurrence from the County Engineer.
3. The Hay Creek Township Board of Supervisors has recommended approval of the proposed subdivision.
4. The proposed subdivision is generally consistent with the Fringe Area Road Master Plan for this area, which identifies 84th Avenue NE as an arterial roadway and 76th Avenue NE as the east - west collector roadway for this section.
5. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include agricultural to the north and east, and partially-developed rural residential to the south and west.
6. The subdivision proposed for the property would be served by South Central Regional Water District and would have access to both 71st Avenue NE and 41st Street NE via internal streets; 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 said based on these findings, staff recommends approval of the zoning change from the A-Agricultural zoning district to the RR-Residential zoning district and final plat of Oakland Subdivision.

Ms. Wollmuth also distributed comments received via e-mail, attached as Exhibits A and B.

Chairman Yeager opened the public hearing.

Chris Hambrick asked if the large lot within the subdivision would be allowed to be further subdivided in the future and also where the access point would be on 84th Ave NE. Ms. Wollmuth explained that the existing access point along the south side of 84th Avenue would most likely be used if the owner were to further develop Lot 2, Block 1 in the future. She added that any future development would require an application process including notification of neighboring properties if it does take place.

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

MOTION: Based on the findings contained in the staff reports, Commissioner Armstrong made a motion to approve the zoning change from the A-Agricultural zoning district to the RR-Residential zoning district and the final plat for Oakland Subdivision. Commissioner Atkinson seconded the motion and it was unanimously approved by Commissioners Armstrong, Atkinson, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT –
LOT13B, BLOCK 1, NORTH STAR ACRES**

Chairman Yeager called for the public hearing for a special use permit to increase the total amount of accessory buildings located on the property to 3,200 square feet at 6808 North Star Acres Road. The property is located northeast of Bismarck, south of 71st Avenue NE and west of North Star Acres Road.

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

1. The proposed special use complies with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.
2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed special use complies with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.
4. The proposed special use would not adversely affect the public health, safety and general welfare.
5. The request is compatible with adopted plans policies and accepted planning practice.

Ms. Wollmuth said based on these findings, staff recommends approval of the special use permit to increase the total amount of accessory buildings located on the property to 3,200 square feet, by constructing a 40' x 80' accessory building at 6808 North Star Acres Road.

Chairman Yeager opened the public hearing.

Commissioner Laning asked what the current coverage limit is. Ms. Wollmuth said there is no lot coverage requirement in this district, but the maximum accessory building size without a special use permit is 2,400 square feet.

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

MOTION: Based on the findings contained in the staff report, Commissioner Selzler made a motion to approve the special use permit to increase the total amount of accessory buildings at 6808 North Star Acres Road to 3,200 square feet. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT –
LOTS 1-3, BLOCK 2 AND THE S1/2 OF THE VACATED MAYFAIR AVENUE ADJACENT,
MAYFAIR MANAGERS ADDITION**

Chairman Yeager called for the public hearing for the special use permit for Lots 1-3, Block 2, and the S1/2 of the vacated Mayfair Avenue adjacent, Mayfair Managers Addition, to allow the operation of a 2,400 square foot church in an existing strip mall facility. The property is located in southeast Bismarck, south of Bismarck Expressway on the west side of South 12th Street (1012 South 12th Street).

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

1. A church is allowed as a special use in the CG-Commercial zoning district, provided specific conditions are met. The proposed church meets all five provisions outlined in Section 14-03-08(3)(f) of the City Code of Ordinances (Zoning). A copy of this section of the City Code is attached.
2. The use of the property for a church is in harmony with the purpose and intent of the zoning ordinance and with the master plan of the City of Bismarck.
3. The use of the property for a church would not adversely affect the health and safety of the public and the workers and residents of the area, nor will it be detrimental to the use or development of adjacent properties or the general neighborhood.
4. The use of the property for a church would comply with all special regulations established by the zoning ordinance and the building code, as well as all special conditions necessary for the safety and welfare of the public.

Ms. Wollmuth said based on these findings, staff recommends approval of the special use permit to allow the operation of a 2,400 square foot church in an existing strip mall facility at 1012 South 12th Street with the following condition:

1. A change of occupancy building permit for this use will not be issued until all regulations established by the zoning ordinance including required off-street parking and loading are met.

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

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the special use permit to allow the operation of a church at Lots 1-3, Block 2 and the S1/2 of the vacated Mayfair Avenue adjacent, Mayfair Managers Addition, with the condition that a change of occupancy building permit for this use will not be issued until all regulations established by the zoning ordinance including required off-street parking and loading are met. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT –
DEFINITIONS AND DOWNTOWN DISTRICTS/BREWERY, BREW PUB AND
MICROBREWERY**

Chairman Yeager called for the public hearing for a zoning ordinance text amendment for Definitions and Downtown Districts/Brewery, Brew Pub and Microbrewery.

Mr. Tomanek explained that the proposed ordinance would increase the allowable number of barrels brewed at a microbrewery from 5,000 to 10,000. The zoning ordinance text amendment would also increase the number of gallons of beer brewed from 155,000 gallons to 310,000 gallons per year.

Chairman Yeager opened the public hearing on the proposed zoning ordinance text amendment. There being no comments, the public hearing was closed.

MOTION: Based on staff's recommendation, Commissioner Lee made a motion to approve the zoning ordinance text amendment to the definitions relating to brewery, brewpub and microbrewery ordinance. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT –
ZONING ADMINISTRATOR/MULTIPLE SECTIONS OF TITLE 14**

Chairman Yeager called for the public hearing for a zoning ordinance text amendment relating to the Zoning Administrator/Multiple Sections of Title 14, and stating that the staff recommendation is to continue action, opened the public hearing.

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

MOTION: Commissioner Laning made a motion to continue action on the zoning ordinance text amendment relating to Zoning Administrator/Multiple Sections of Title 14 as recommended by staff. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

OTHER BUSINESS

Ms. Lee explained that the CDs that were distributed prior to the meeting contain the draft report for the Downtown Subarea Study. The MPO wanted the Commissioners to have the report to review prior to the public hearing on the study, which is scheduled for the November 20th meeting.

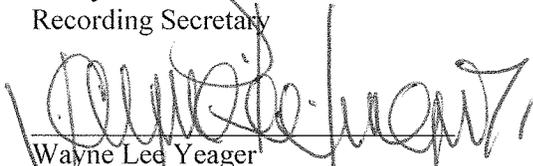
ADJOURNMENT

There being no further business, Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 5:30 p.m. to meet again on November 20, 2013.

Respectfully submitted,



Hilary Balzum
Recording Secretary


Wayne Lee Yeager
Chairman