

**CITY PLANNING & ZONING COMMISSION  
MEETING MINUTES  
December 21, 2011**

The Bismarck Planning & Zoning Commission met on December 21, 2011, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Chairman Yeager presided.

Commissioners present were Mark Armstrong, Tom Atkinson, Mel Bullinger, Curt Juhala, Vernon Laning, Doug Lee, Mike Schwartz, Lisa Waldoch, John Warford and Wayne Yeager.

Commissioner Ken Selzler was absent.

Staff members present were Carl Hokenstad – Community Development Director, Kim Lee – Planning Manager, Jason Tomanek – Planner, Charlie Whitman – City Attorney and Ray Ziegler – Building Official.

Others present were Dave Patience - 909 Basin Avenue, Harley Swenson – 8301 Highway 1804 South, Rob Woodbury – 2523 Colonial Drive, John & Myrna Hauck – 6420 TJ Lane, Brad Krogstad – 312 Duchess Drive, Morgan Forness – 1915 Shiloh Drive, Matt Reichert – 3712 Lockport Street, Joan Millner – 1315 North 3<sup>rd</sup> Street, Scott Bittner – 3712 Lockport Street, Kim Conway – 2511 Colonial Drive and Richard Synder – 1520 Pinewood Drive.

**MINUTES**

Chairman Yeager called for consideration of the minutes of the November 16, 2011 meeting.

**MOTION:** Commissioner Lee made a motion to approve the minutes of the November 16, 2011 meeting as received. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

**CONSIDERATIONS –**

**ZONING CHANGE FROM A TO RT AND PRELIMINARY PLAT – SHILOH  
CHRISTIAN SCHOOL THIRD ADDITION**

**ZONING CHANGE FROM A TO R5, R10 AND RM15, FRINGE AREA ROAD MASTER  
PLAN AMENDMENT AND PRELIMINARY PLAT – BOULDER RIDGE THIRD  
ADDITION**

**ZONING CHANGE FROM A TO R5 AND PRELIMINARY PLAT – BOULDER RIDGE  
FOURTH ADDITION**

**ZONING CHANGE FROM A & R5 TO R5 & P AND PRELIMINARY PLAT – EAGLE  
CREST FIFTH ADDITION**

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

- A. A zoning change from the A-Agricultural zoning district to the RT-Residential zoning district and preliminary plat for Shiloh Christian School Third Addition. The property is one lot in one block on 10 acres and is located along the north side of I-94 east of North 19<sup>th</sup> Street approximately 1/8 mile (an unplatted portion of the NE¼ of Section 27, T139N - R80W/Hay Creek Township).
- B. A zoning change from the A-Agricultural zoning district to the R5-Residential, R10-Residential and RM15-Residential zoning districts, fringe area road master plan amendment and preliminary plat for Boulder Ridge Third Addition. The property is 35 lots in three blocks on 20.77 acres and is located north of 43<sup>rd</sup> Avenue NE and east of North Washington Street (part of the SW¼ of Section 16, T139N-R80W/Hay Creek Township).
- C. A zoning change from the A-Agricultural zoning district to the R5-Residential zoning district and preliminary plat for Boulder Ridge Fourth Addition. The property is 25 lots in four blocks on 9.76 acres and is located north of 43<sup>rd</sup> Avenue NE and east of North Washington Street (parts of the NW¼ and SW¼ of Section 16, T139N-R80W/Hay Creek Township).
- D. A zoning change from the A-Agricultural and R5-Residential zoning districts to the R5-Residential and P-Public zoning districts and preliminary plat for Eagle Crest Fifth Addition. The property is 36 lots in three blocks on 16.53 acres and is located west of Valley Drive along High Creek Road between Mustang Drive and Round Top Road (part of Tract 2-A of the NW¼ of Section 20, T139N-R80W/Hay Creek Township, and a replat of Lot 1, Block 4 and Lot 5, Block 5, Eagle Crest 4<sup>th</sup> Addition).

**MOTION:** Based on the findings contained in the staff reports, Commissioner Laning made a motion to approve Consent Agenda Items A, B, C and D, calling for public hearings on the items. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

#### **PUBLIC HEARING – FINAL PLAT – MAPLETON ADDITION**

Chairman Yeager called for the public hearing for the final plat for Mapleton Addition. The property is two lots in one block on 3.00 acres and is located along the north side of Century Avenue between North 15<sup>th</sup> Street and Ohio Street (an unplatted portion of the SW1/4 of Section 22, T139N-R80W/Hay Creek Township).

Mr. Tomanek provided an overview of the request and listed the following findings for the final plat:

1. All technical requirements for approval of the final plat have been met.

2. The proposed subdivision lies outside the Fringe Area Road Master Plan area.
3. The stormwater management plan has been approved by the City Engineer.
4. The proposed subdivision is compatible with adjacent land uses. Adjacent land uses include commercial and office uses surrounding the property.
5. The proposed subdivision would not adversely affect the adjacent properties.
6. The City and other agencies will 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.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with the master plan; other adopted plans, policies and accepted planning practice.

Mr. Tomanek said based on the above findings, staff recommends approval of the final plat for Mapleton Addition.

Chairman Yeager opened the public hearing for the final plat for Mapleton Addition.

There was no public comment.

Chairman Yeager closed the public hearing.

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

**PUBLIC HEARING – ZONING CHANGE FROM RT-RESIDENTIAL TO CA-COMMERCIAL – LOTS 3 & 4, LESS THE EAST 80.63 FEET OF LOT 4, BLOCK 1, EASTDALE ADDITION**

Chairman Yeager called for the public hearing for the zoning change from the RT-Residential zoning district to the CA-Commercial zoning district for Lots 3 & 4, less the East 80.63 feet of Lot 4, Block 1, Eastdale Addition. The property is located in east Bismarck, along the north side of East Rosser Avenue just east of North 26<sup>th</sup> Street.

Mr. Tomanek listed the following findings for the zoning change:

1. The proposed zoning change is in an area outside the boundaries of the Bismarck-Mandan Regional Future Land Use Plan.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include a church and developed single-family residential to the north, developed multi-family property to the east, partially-developed commercial property to the south and commercial property to the west.
3. The property is already annexed; therefore, the proposed zoning change would not place an undue burden on public services.
4. With the installation of the required buffer yard landscaping, the proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek then listed the following additional information:

1. There was an error in the legal description in the public hearing notice.
2. A site plan has been submitted as part of the City's formal Site Plan Review process. The site plan shows the expansion of the existing strip mall facility located on the parcel directly to the west and an additional strip mall facility on the remaining undeveloped property related to this zoning change request. The site plan also illustrates the appropriate buffer yard screening elements and separation distance necessary to satisfy the regulations of the Landscaping and Screening Ordinance.
3. The primary access to the site will be from the south off Rosser Avenue. There is a significant elevation change across the site from south to north that would limit access from the north.

Mr. Tomanek said based on the above findings, staff recommends approval of the zoning change from the RT-Residential zoning district to the CA-Commercial zoning district for Lots 3 & 4, less the East 80.63 feet of Lot 4, Block 1, Eastdale Addition.

Chairman Yeager opened the public hearing for the zoning change from the RT-Residential zoning district to the CA-Commercial zoning district for Lots 3 & 4, less the East 80.63 feet of Lot 4, Block 1, Eastdale Addition.

No public comment was received.

Chairman Yeager closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Juhala made a motion to approve the zoning change from the RT-Residential zoning district to the CA-Commercial zoning district for Lots 3 & 4, less the East 80.63 feet of Lot 4, Block 1, Eastdale Addition. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE FROM RM30-RESIDENTIAL AND A-AGRICULTURAL TO CG-COMMERCIAL – LOT 5, BLOCK 1, CENTENNIAL PARK 4<sup>TH</sup> ADDITION AND TRACT 1 OF THE N½ OF SECTION 25, T139N-R80W/ HAY CREEK TOWNSHIP**

Chairman Yeager called for the public hearing for the zoning change from the RM30-Residential and A-Agricultural zoning districts to the CG-Commercial zoning district for Lot 5, Block 1, Centennial Park 4<sup>th</sup> Addition and Tract 1 of the N½ of Section 25, T139N-R80W/ Hay Creek Township. The property is located along the south side of Trenton Drive approximately ¼ mile east of Centennial Road.

Ms. Lee listed the following findings for the zoning change:

1. The proposed zoning change would be inconsistent with the Land Use Plan, which identifies the long range use of this area as urban residential (Tract 1) and commercial (Lot 5, Block 1) (Bismarck-Mandan Regional Land Use Plan). The commercial land use designation for Lot 5, Block 1, Centennial Park 4<sup>th</sup> Addition is contrary to the established zoning for this lot.
2. The proposed zoning change would not be compatible with all adjacent land uses. Adjacent land uses include single-family residential and undeveloped R10-zoned lots to the north, undeveloped CG-zoned lots to the west, I-94 and commercial/industrial uses to the south across I-94, and undeveloped land to the east.
3. The proposed zoning change will not place an undue burden on public services, provided the unplatted property was platted and the entire Trenton Drive right-of-way was extended to the eastern edge of the property and improved.
4. The proposed zoning change would adversely affect property in the vicinity. In particular, an extension of commercial uses on the south side of Trenton Drive would adversely affect the low-density residential development on the north side of Trenton Drive.

5. The proposed zoning change is not consistent with the general intent and purpose of the zoning ordinance. In particular, the zoning ordinance discourages incompatible uses in close proximity to one another without the use of transitional zoning and/or landscape buffers.
6. The proposed zoning change is not consistent with adopted plans, policies and accepted planning practice. In particular, given the fact that there is no longer a zoning transition between the single-family residential area on the north side of Trenton Drive and the commercial area on the south side of Trenton Drive, expanding the existing commercial area further to the east is contrary to the concepts of transitional zoning and buffers.

Ms. Lee then listed the following additional information:

1. This area was originally platted as Centennial Park 2<sup>nd</sup> Addition in 1978 with MA – Industrial zoning.
2. When the plat of Centennial Park 4<sup>th</sup> was approved in 1994, the zoning was changed to a mix of residential and commercial uses at the request of the property owner (Century Park Partnership). At that time, the lots along the south side of Trenton Drive were zoned to CG – Commercial (Lots 1-3) and to RM30 – Residential (Lots 4 & 5).
3. In 1996, Lot 4, Block 1, was rezoned from RM30 – Residential to CG – Commercial at the request of the property owner (Frank Bavendick). At this same time, an RM15 area was created on the north side of Trenton Drive between the CA – Commercial along Yorktown Drive and Colonial Drive to serve as a transition between the commercial development and the single-family residential to the north, with the consent of the property owner (Century Park Partnership).
4. In 1997, most of the RM15 transition area created in 1996 was rezoned to R10 – Residential at the request of the property owner (Centennial Partners) in order to reduce the density on the residential lots. The remaining RM15 parcel (Lot 17, Block 4) was rezoned to CA – Commercial in 1998 at the request of the property owner (Centennial Partners).
5. A request to rezone Lot 5, Block 1, Centennial Park 4<sup>th</sup> Addition from RM30 to CG was denied by the Planning & Zoning Commission during consideration of the request in April 2004 and was subsequently withdrawn by the applicant.
6. If the zoning change were to be approved, the unplatted tract would need to be platted and Trenton Drive extended to the eastern edge of the tract prior to development of the tract.

Ms. Lee said based on the above findings, staff recommends denying the request for a zoning change from the RM30–Residential and A–Agricultural to CG–Commercial on Lot 5, Block 1, Centennial Park 4<sup>th</sup> Addition and Tract 1 of the N½ of Section 25, T139N-R80W/Hay Creek Township.

Ms. Lee distributed an email and a letter from property owners in the area in regards to the zoning change, attached as Exhibit A and Exhibit B.

Chairman Yeager opened the public hearing for the zoning change from the RM30–Residential and A–Agricultural to CG–Commercial on Lot 5, Block 1, Centennial Park 4<sup>th</sup> Addition and Tract 1 of the N½ of Section 25, T139N-R80W/Hay Creek Township.

Harley Swenson said that he owns land adjacent to the proposed zoning change and is not opposed to the CG-Commercial zoning, but is concerned with all of the allowable uses in that district. Mr. Swenson suggested that a PUD-Planned Unit Development would be a better zoning designation so the adjacent land owners can see what is being proposed. He stated that as presented, he is opposed to the zoning change.

Rob Woodbury indicated that he owns property on Colonial Drive and his purpose for appearing is to find out what is going to be built on the property. He added that until that information is provided, he opposes the zoning change.

Scott Ritter stated that he represents Dale Pahlke for the zoning change request. He went on to say that he disagrees with staff's findings and thinks that this property would be best zoned commercial. Mr. Ritter said the land would be used for personal projects or could be sold. He added that this request is very similar to the new dental office located on Calgary Avenue because there are no buffers between the commercial and residential. Mr. Ritter concluded by saying that commercial zoning is appropriate for these lots and should be considered.

Kim Conway said that she lives on Colonial Drive where there are 17 houses and 27 children under the age of 18. She feels that the wrong kind of business could be bad with so many kids being so close to it. Ms. Conway would like to know what kind of business would be going in there.

Chairman Yeager closed the public hearing.

After some discussion, it was the general consensus of the City Planning & Zoning Commission that the request be denied.

**MOTION:** Based on the findings contained in the staff report, Commissioner Lee made a motion to deny the zoning change from the RM30–Residential and A–Agricultural to CG–Commercial on Lot 5, Block 1, Centennial Park 4<sup>th</sup> Addition and Tract 1 of the N½ of Section 25, T139N-R80W/Hay Creek Township. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

## **PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT – DEFINITIONS**

Chairman Yeager called for the public hearing for the zoning ordinance text amendment relative to Definitions.

Ms. Lee provided an overview of the zoning ordinance text amendment for Definitions. The proposed amendments would modify the definitions of family and single-family dwelling.

Ms. Lee said staff recommends approval of the zoning ordinance text amendment for Definitions, as presented.

Chairman Yeager opened the public hearing for the zoning ordinance text amendment relative to Definitions.

There was no public comment.

Chairman Yeager closed the public hearing.

**MOTION:** Commissioner Lee made a motion to approve the zoning ordinance text amendment relative to Definitions. Commissioner Juhala seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

## **OTHER BUSINESS**

There was no other business.

## **ADJOURNMENT**

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 5:36 p.m. to meet again on January 25, 2012.

Respectfully submitted,

---

Kimberley Gaffrey  
Recording Secretary

---

Wayne Yeager  
Chairman

**Kim Lee**

---

**Subject:** FW: City Planning and Zoning Commission Meeting 12-21-11

-----Original Message-----

From: Amy Ruff

Sent: Monday, December 12, 2011 5:29 PM

To: cobplan@nd.gov

Subject: City Planning and Zoning Commission Meeting 12-21-11

To Whom It May Concern,

I live at the corner of Trenton and Colonial Drive; my home will be the most impacted by the proposed changed from Residential and Agricultural to that of Commercial zoning on Lot 5, Block 1 Centennial Park 4th Addition and Tract 1 of the N1/2 of Section 25, T139N-R80W/Hay Creek Township.

We built our home in 2000 at that time Trenton road didn't even connect to Colonial Drive. We had no traffic and especially no traffic to the Mobile Home park located directly east of us. Over the past 10 years we have seen the road open up, have paid to have sidewalks put in, have seen two business arrive (gas station and vehicle sales). With the growth of the mobile home park and the growth of the housing development on the north side of Century Ave we have seen an increase in traffic; living through almost unbearable traffic over the past two years.

I would like further information relating to the prospect of property values increase or decreases based upon the change to commercial. I have no desire to lose my investment in property and financial security for my family; just so Dale Pahlke can get a zoning change to allow commercial property to be built and more then likely result in a financial gain for him.

Sincerely,

Amy Ruff  
2502 Colonial Drive  
Bismarck, ND



P.O. Box 711  
Bismarck, ND 58502  
701-223-7543  
Fax: 701-258-8350

December 21, 2011

Kim Lee  
Community Development Department  
Planning Division  
P.O. Box 5503  
Bismarck, ND 58506  
Fax: 222-6450

Dear Kim:

This letter is in regards to Mr. Dale Pahlke's request for a zoning change from the RM30-Residential and A-Agricultural zoning districts to the CG-Commercial zoning district on Lot 5, Block 1, Centennial Park 4<sup>th</sup> Addition and Tract 1 of the N ½ of Section 25, T139N-R80W/Hay Creek Township.

The Dakota Zoo currently owns Lot 6, Blk E, Centennial Park 4<sup>th</sup> Addition and supports Mr. Pahlke's request for the zoning change.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Lincoln".

Terry Lincoln  
Zoo Director

EXHIBIT B