

**CITY PLANNING & ZONING COMMISSION  
MEETING MINUTES  
May 23, 2012**

The Bismarck Planning & Zoning Commission met on May 23, 2012, 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 Tom Atkinson, Mel Bullinger, Curt Juhala, Vernon Laning, Doug Lee, Mike Schwartz, Ken Selzler, Lisa Waldoch, John Warford and Wayne Yeager.

Commissioner Mark Armstrong was absent.

Gibbs Township Supervisor Richard Sander was present.

Staff members present were Carl Hokenstad – Community Development Director, Kim Lee – Planning Manager, Jason Tomanek – Planner, Kimberley Gaffrey – Office Assistant III and Charlie Whitman – City Attorney.

Others present were John Hanson, Mark Rodacker, Loran Galpin, Don Clement, Dave Patience, J.D. Nash, Eddy Mitzel, Doris Flurer, LaVonne & Larry Duppong, Don Knapp, Neil Zundel, Howard & Linda Altenburg, John & Myrna Hauck, Joan Millner, Nadene Silbernagel, Roger Glatt, Ralph Keller, Dave & Marlene Sautner, Dave & Melissa Mortvedt, Don Knapp, Wayne Kilber, Neil Zundel, Mark Ollenburger, John Deck, Thomas Huber, Jill Yri, Chad & Sara Gross, Nathan McKenzie, Rachelle Schemmer, James Warne and Al Olson.

**MINUTES**

Chairman Yeager called for consideration of the minutes of the April 25, 2012 meeting.

**MOTION:** Commissioner Laning made a motion to approve the minutes of the April 25, 2012 meeting as received with a minor correction. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**CONSIDERATIONS –**

- A. LAND USE PLAN AMENDMENT – PART OF THE EAST HALF OF SECTION 17, T139N-R80W/HAY CREEK TOWNSHIP AND ZONING CHANGE – LOT 1, BLOCK 1, GOOD SHEPHERD NORTH ADDITION**
- B. ZONING CHANGE – LOT 10, BLOCK 11 AND THE NORTH 3 FEET OF LOT 6 AND THE VACATED OWNES AVNUE ADJACENT, BLOCK 12, JENNINGS 2<sup>ND</sup> ADDITION**
- C. ZONING CHANGE – LOTS 1-6, BLOCK 1, IMPERIAL VALLEY SUBDIVISION**

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

- A. A Land Use Plan amendment from institutional to mixed use for part of the E½ of Section 17, T139N-R80W/Hay Creek Township and a zoning change from the Conditional RT- Residential zoning district to the PUD–Planned Unit Development zoning district for Lot 1, Block 1, Good Shepherd North Addition. The property is located a along the west side of North Washington Street approximately one-half mile north of Ash Coulee Drive/43<sup>rd</sup> Avenue NE.
- B. A zoning change from the R5–Residential and RT–Residential zoning districts to the R5–Residential zoning district on Lot 10, Block 11 and the North 3 feet of Lot 6 and the vacated Owens Avenue (Avenue N) adjacent, Block 12, Jennings Second Addition. The property is located along both sides of North 8<sup>th</sup> Street north of Divide Avenue.
- C. A zoning change from the RM30–Residential zoning district to the R10–Residential zoning district for Lots 1-6, Block 1, Imperial Valley Subdivision. The property is located along Princeton Avenue at the intersection of Burleigh Avenue and South 12<sup>th</sup> Street.

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

**FINAL CONSIDERATION – ANNEXATION  
PART OF SATTLER’S SUNRISE SIXTH ADDITION AND ALL OF SATTLER’S  
SUNRISE NINTH ADDITION**

Chairman Yeager called for final consideration of the annexation of part of Sattler’s Sunrise Sixth Addition and all of Sattler’s Sunrise Ninth Addition. The property is 131 lots in 9 blocks on 50.58 acres and is located in northeast Bismarck, one-half mile east of Centennial Road and north of East Century Avenue, along the east edge of Sattler’s Sunrise development.

Mr. Tomanek provided an overview of the request and listed 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 said based on the above findings, staff recommends annexation of a portion of Sattler's Sunrise Sixth Addition (Lots 2-12, Block 5, Lots 1-3, Block 6 and Lots 2-23 & 25, Block 7) and all of Sattler's Sunrise Ninth Addition (Lots 1-25, Block 1, 1-28, Block 2, Lots 1-28, Block 3, Lots 1-11, Block 4 and Lots 1-2, Block 5).

**MOTION:** Based on the findings contained in the staff report, Commissioner Atkinson made a motion to approve the annexation of a portion of Sattler's Sunrise Sixth Addition (Lots 2-12, Block 5, Lots 1-3, Block 6 and Lots 2-23 & 25, Block 7) and all of Sattler's Sunrise Ninth Addition (Lots 1-25, Block 1, 1-28, Block 2, Lots 1-28, Block 3, Lots 1-11, Block 4 and Lots 1-2, Block 5). Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION  
PUBLIC HEARING – ZONING CHANGE (A TO MA) AND FINAL PLAT  
HAMBURG INDUSTRIAL PARK 1<sup>ST</sup> ADDITION**

Chairman Yeager called for final consideration of the annexation and the public hearing for the zoning change from the A–Agricultural zoning district to the MA–Industrial zoning district and the final plat for Hamburg Industrial Park 1<sup>st</sup> Addition. The property is seven lots in one block on 17.5 acres and is located east of the Bismarck Airport along Yegen Road north of the intersection with Lincoln Road (part of the NW¼ of the SW¼ of Section 13, T138N-R80W/Lincoln Township).

Ms. Lee provided an overview of the request and listed 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.

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

1. The proposed zoning change is consistent with the Land Use Plan, which identifies this area as industrial (Bismarck-Mandan Regional Future Land Use Plan).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include undeveloped agricultural land to the east and south, agricultural and industrial uses to the north and the Bismarck Airport to the west.
3. The subdivision proposed for this property would be annexed prior to development; therefore, the 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 also listed 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 conforms to the Fringe Area Road Master Plan which identifies Yegen Road as an arterial roadway.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include undeveloped agricultural land to the east and south, agricultural and industrial uses to the north and the Bismarck Airport to the west.
5. The proposed subdivision would be annexed prior to development; therefore, it would not place an undue burden on public services and facilities.
6. The proposed subdivision would not adversely affect the adjacent properties.
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 the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said based on the above findings, staff recommends approval of the annexation, the zoning change from the A–Agricultural zoning district to the MA–Industrial zoning district and the final plat for Hamburg Industrial Park 1<sup>st</sup> Addition.

Chairman Yeager opened the public hearing for the zoning change and final plat for Hamburg Industrial Park 1<sup>st</sup> Addition.

There was no public comment.

Chairman Yeager closed the public hearing.

**MOTION:** Based on the findings contained in the staff reports, Commissioner Lee made a motion to approve the annexation, the zoning change from the A–Agricultural zoning district to the MA–Industrial zoning district and the final plat for Hamburg Industrial Park 1<sup>st</sup> Addition. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION  
PUBLIC HEARING – ZONING CHANGE (A, RM15, RM30 & MA TO R10 & RM30),  
FRINGE AREA ROAD MASTER PLAN AMENDMENT AND FINAL PLAT  
EDGEWOOD VILLAGE SIXTH ADDITION**

Chairman Yeager called for final consideration of the annexation and the public hearing for the zoning change from the A–Agricultural, RM15–Residential, RM30–Residential and MA–Industrial zoning districts to the R10–Residential and RM30–Residential zoning districts, the Fringe Area Road Master Plan Amendment and the final plat for Edgewood Village Sixth Addition. The property is 59 lots in six blocks on 63.61 acres and is located in northeast Bismarck, north of East Century Avenue, between Colorado Drive and Centennial Road (part of the S½ of the NW¼ of Section 23, part of the N½ of the SW¼ of Section 23, part of the SW¼ of the NE¼ of Section 23 and part of the E½ of Section 22 T139N-R80W/Hay Creek Township).

Commissioner Atkinson recused himself from this agenda item.

Mr. Tomanek provided an overview of the request and listed 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.
5. The storm water management plan has not been approved by the City Engineer.

Mr. Tomanek then listed 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 Land Use Plan).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include single and two-family zoned property to the southwest, multi-family-zoned property to the south, industrially zoned property to the southeast and undeveloped property to the east and north. The undeveloped property to the east and north is included in the master plan and identified as future single, two and multi-family dwellings.
3. An annexation request has been submitted in conjunction with this request and the property would be annexed prior to development; therefore the proposed zoning change would not place an undue burden on public services.
4. The proposed zoning change 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.
7. The storm water management plan has not been approved by the City Engineer.

Mr. Tomanek then listed the following findings for the Fringe Area Road Master Plan amendment:

1. The Fringe Area Road Master Plan was adopted by the Board of City Commissioners on September 9, 2003.
2. The City is initiating an amendment to the Fringe Area Road Master Plan for Section 23, Hay Creek Township, to add an extension of Calgary Avenue west of the Nebraska Drive as an east-west collector for this section. Calgary Avenue between North 19<sup>th</sup> Street and Nebraska Drive is classified as a collector on the Metropolitan Planning Organization's Functional Classification Network Map (2004).
3. The amendment will add an extension of Calgary Avenue west of Nebraska Drive as an east-west collector for this section in order to provide a continuous east-west collector.

4. The proposed subdivision (Edgewood Village Sixth Addition) would conform to the Fringe Area Road Master Plan as amended.
5. The Fringe Area Road Master Plan (FARMP) does not identify an east-west collector roadway between North 19<sup>th</sup> Street and Nebraska Drive in Sections 22 and 23/Hay Creek Township. The FARMP was amended in 2006 with Edgewood Village First Addition, and Calgary Avenue was adopted as the east-west collector roadway east of North 19<sup>th</sup> Street to the section line. An amendment to the FARMP is necessary to identify the remaining portion of the east-west collector roadway in Section 23, Hay Creek Township. The proposed subdivision would conform to the FARMP as amended.

Mr. Tomanek also listed the following findings for the final plat:

1. All technical requirements for approval of a final plat have been met.
2. The Fringe Area Road Master Plan (FARMP) does not identify an east-west collector roadway between North 19<sup>th</sup> Street and Nebraska Drive in Sections 22 and 23/Hay Creek Township. The FARMP was amended in 2006 with Edgewood Village First Addition, and Calgary Avenue was adopted as the east-west collector roadway east of North 19<sup>th</sup> Street to the section line. An amendment to the FARMP is necessary to identify the remaining portion of the east-west collector roadway in Section 23, Hay Creek Township. The proposed subdivision would conform to the FARMP as amended.
3. The storm water management plan has not been approved by the City Engineer.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include single and two-family zoned property to the southwest, multi-family-zoned property to the south, industrially zoned property to the southeast and undeveloped property to the east and north. The undeveloped property to the east and north is included in the master plan and identified as future single, two and multi-family dwellings.
5. An annexation request has been submitted in conjunction with this request and the property would be annexed prior to development; therefore the proposed subdivision would not place an undue burden on public services.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek said based on the above findings, staff recommends continuing action on the request for the annexation; the zoning change a from the A-Agriculture, RM15-Residential, RM30 and MA-Industrial zoning districts to the R10-Residential and RM30-Residential zoning districts; the amendment to the Fringe Area Road Master Plan for Section 23, T139N-R80W/Hay Creek Township (Map 9), to extend the east-west collector (Calgary Avenue) west of Nebraska Drive; and the final plat for Edgewood Village Sixth Addition until such time as the storm water management plan is approved by the City Engineer.

Commissioner Laning asked if Nebraska Drive is shown on the master plan and will go all the way north. Mr. Tomanek responded by saying that Nebraska Drive is shown on the master plan.

Chairman Yeager opened the public hearing for the zoning change, Fringe Area Road Master Plan amendment and final plat for Edgewood Village Sixth Addition.

Dave Patience with Swenson, Hagen & Co. said that the Nebraska Drive right-of-way has already been dedicated all the way up to 43<sup>rd</sup> Avenue NE. Mr. Patience added that he was told that the storm water management plan had been was approved.

Commissioner Bullinger said the storm water management plan was received last week and revisions were needed. When it was resubmitted again at 4:45 p.m. on Tuesday afternoon, more revisions were needed.

Chairman Yeager closed the public hearing.

Chairman Yeager stated that staff's recommendation was to continue the public hearing on all items until the storm water management plan for the final plat was approved by the City Engineer.

**MOTION:** Based on the findings contained in the staff report, Commissioner Lee made a motion to continue action on the request for the annexation; the zoning change a from the A-Agriculture, RM15-Residential, RM30 and MA-Industrial zoning districts to the R10-Residential and RM30-Residential zoning districts; the amendment to the Fringe Area Road Master Plan for Section 23, T139N-R80W/Hay Creek Township (Map 9), to extend the east-west collector (Calgary Avenue) west of Nebraska Drive; and the final plat for Edgewood Village Sixth Addition until such time as the storm water management plan is approved by the City Engineer. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

Commissioner Atkinson returned to the Commission.

**FINAL CONSIDERATION – ANNEXATION  
PUBLIC HEARING – ZONING CHANGE (A, RM30, RT & CA TO RM30, RT & CA)  
AND FINAL PLAT  
NORTHERN SKY ADDITION**

Chairman Yeager called for final consideration of the annexation and the public hearing for the zoning change from the A–Agricultural, RM30–Residential, RT–Residential and CA–Commercial zoning districts to the RM30–Residential, RT–Residential and CA–Commercial zoning districts, and the final plat for Northern Sky Addition. The property is four lots in two blocks on 15.78 acres and is located in north Bismarck, along the west side of North Washington Street approximately 1/8 mile north of 43<sup>rd</sup> Avenue NE (part of the SE ¼ of Section 17, T139N-R80W/Hay Creek Township).

Mr. Tomanek provided an overview of the request and listed 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 listed the following findings for the zoning change:

1. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include undeveloped R5-Residential and RT-Residential zoned property to the north, undeveloped RT-Residential and RM-Residential zoned land to the south, Horizon Middle School campus directly to the west and existing single-family and partially-developed single-family zoned lots along the east side of North Washington Street.
2. The proposed zoning change generally conforms with the Land Use Plan portion of the US Highway 83 Transportation & Corridor Study, which identifies this area for mixed uses and neighborhood commercial uses.
3. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include Horizon Middle School to the west, single-family dwellings to the east, undeveloped land to the south and undeveloped land to the north which has been proposed as a church and campus facility.
4. The zoning change would not place an undue burden on public services or facilities.

5. The proposed zoning change would not adversely affect property in the vicinity.
6. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
7. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek also listed the following findings for the final plat:

1. All technical requirements for approval of the final plat have been met.
2. The storm water management plan has been approved by the City Engineer.
3. The proposed subdivision is generally conforms to the Fringe Area Road Master Plan, which identifies Medora Avenue as the east/west collector roadway, Ash Coulee Drive as the east/west arterial roadway and Washington Street as the north/south arterial roadway for this section.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include Horizon Middle School to the west, single-family dwellings to the east, undeveloped land to the south and undeveloped land to the north which has been proposed as a church and campus facility.
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.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.

Mr. Tomanek said based on the above findings, staff recommends approval of the annexation of Lot 1, Block 1; the zoning change from the A-Agriculture, RM30-Residential and CA-Commercial zoning districts to the RM30-Residential zoning district for Lots 1-2, Block 2, from the RT-Residential zoning district to the RT-Residential zoning district for Lot 2, Block 1 and from the RT-Residential zoning district to the CA-Commercial zoning district for Lot 1, Block 1; and the final plat for Northern Sky Addition.

Chairman Yeager opened the public hearing for the zoning change and final plat for Northern Sky Addition.

There was no public comment.

Chairman Yeager closed the public hearing.

**MOTION:** Based on the findings contained in the staff reports, Commissioner Selzler made a motion to approve the annexation of Lot 1, Block 1; the zoning change from the A-Agriculture, RM30-Residential and CA-Commercial zoning districts to the RM30-Residential zoning district for Lots 1-2, Block 2, from the RT-Residential zoning district to the RT-Residential zoning district for Lot 2, Block 1 and from the RT-Residential zoning district to the CA-Commercial zoning district for Lot 1, Block 1; and the final plat for Northern Sky Addition. Commissioner Juhala seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

### **PUBLIC HEARING – ZONING CHANGE (A & R10 TO R5) AND FINAL PLAT PROMONTORY POINT V**

Chairman Yeager called for the public hearing for the zoning change from the A–Agricultural and R10–Residential zoning districts to the R5–Residential zoning district and the final plat for Promontory Point V. The property is 134 lots in 11 blocks on 70.73 acres and is located along the top of the plateau north of Burnt Boat Drive, between River Road and Tyler Coulee (part of the E½ of the NW¼, part of the E½ of the SW¼, part of Government Lot 1 and part of Government Lot 2, Section 19, T139N-R80W/Hay Creek Township and part of Tract 24A and part of Tract 24B of the E½ of Section 24, T139N-R81W/West Hay Creek Township).

Mr. Tomanek provided an overview of the request and listed the following findings for the zoning change:

1. The proposed zoning change is consistent with the Bismarck-Mandan Regional Future Land Use Plan, which identifies the area as urban residential.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include agricultural land to the north and east, a bluff line to the west and developing single and two-family lots to the south.
3. 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.

Mr. Tomanek then listed the following findings for the final plat:

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

2. The storm water management plan has been approved by the City Engineer.
3. The proposed subdivision generally conforms to the Fringe Area Road Master Plan, which identifies Clairmont Road and Valley Drive as collector roadways through this section.
4. The proposed subdivision conforms to the Land Use Plan, which identifies this area as urban residential (Bismarck-Mandan Regional Future Land Use Plan).
5. The proposed subdivision is compatible with adjacent land uses. Adjacent land uses include agricultural land to the north and developing single and two-family lots to the south.
6. The proposed subdivision would not adversely affect the adjacent properties.
7. 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.
8. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.

Mr. Tomanek said based on the above findings, staff recommends approval of the zoning change from the A-Agriculture and R10-Residential zoning districts to the R5-Residential zoning district and the final plat for Promontory Point V.

Commissioner Schwartz asked if the City has been approached about green space in this area. Mr. Tomanek answered by saying that Bismarck Parks and Recreation have not been contacted in regards to any park land dedication for this area.

Chairman Yeager called for the public hearing for the zoning change from the A-Agriculture and R10-Residential zoning districts to the R5-Residential zoning district and the final plat for Promontory Point V.

Mr. Patience, with Swenson, Hagen & Co. stated that there is green space on both sides of the plateau and the side on the Tyler coulee is someday expected to all be a city park or a storm water management facility. He also said that the developer does not have control of the Tyler coulee and cannot make a commitment at this time.

Chairman Yeager closed the public hearing.

**MOTION:** Based on the findings contained in the staff reports, Commissioner Lee made a motion to approve the zoning change from the A-Agriculture and R10-Residential zoning districts to the R5-Residential zoning district and the final plat for Promontory Point V. Commissioner Juhala seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Juhala, Laning,

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

**PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT  
RIDGEFIELD 2<sup>ND</sup> ADDITION**

Chairman Yeager called for the public hearing for the minor subdivision final plat for Ridgefield 2<sup>nd</sup> Addition. The property is 27 lots in one block on 3.53 acres and is located along the north side of East Calgary Avenue between US Highway 83 and North 19<sup>th</sup> Street (a replat of Lots 8 and 9, Block 1, Ridgefield Addition).

Ms. Lee provided an overview of the request and listed the following findings for the minor subdivision final plat:

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

Ms. Lee said based on the above findings, staff recommends approval of the minor subdivision final plat for Ridgefield 2<sup>nd</sup> Addition and granting a waiver to allow the continued use of a private roadway (Calgary Loop).

Chairman Yeager called for the public hearing on the minor subdivision final plat for Ridgefield 2<sup>nd</sup> Addition.

Mark Ollenburger said that he lives on Koch Drive and was told the surrounding Koch and Mitzel developments would be four unit condominiums and was surprised to find out this had changed to twin homes. He stated that the current density will not fit into the area aesthetically

and he is concerned about the storm water management, the continuous state of construction, weed control, parking and green space for children.

Eddy Mitzel with Mitzel Homes indicated that the drive way for this development will be off of Calgary Avenue and not Koch Drive. He went on to say that parking shouldn't be an issue, and with the lesser density, emergency services will not be affected.

Chairman Yeager closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Warford made a motion to approve the minor subdivision final plat for Ridgefield 2<sup>nd</sup> Addition and granting a waiver to allow the continued use of a private roadway (Calgary Loop). Commissioner Lee seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

Mr. Sander, Gibbs Township Supervisor, joined the Planning & Zoning Commission

#### **PUBLIC HEARING – ZONING CHANGE (A TO RR) AND FINAL PLAT ROCK CREEK 4<sup>TH</sup> SUBDIVISION**

Chairman Yeager called for the public hearing for the zoning change from the A–Agricultural zoning district to the RR–Residential zoning district and the final plat for Rock Creek 4<sup>th</sup> Subdivision. The property is one lot in one block on 24.8 acres and is located north of 71<sup>st</sup> Avenue NE and west of 80<sup>th</sup> Street at the north end of Rock Creek Road (part of the SE¼ of Section 5, T139N-R79W/Gibbs Township).

Ms. Lee provided an overview of the request and listed 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 urban residential (Bismarck-Mandan Regional Land Use Plan).
2. The proposed zoning change is compatible with adjacent land uses. Adjacent land uses include rural residential to the south and agricultural land to the west, north and east.
3. The subdivision proposed for this property would be served by South Central Regional Water District, would have access to 71<sup>st</sup> Avenue NE via Rock Creek Road, and provisions have been made for further subdivision of the property; therefore, the proposed subdivision would not place an undue burden on public services.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.

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

Ms. Lee then listed 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 of the County Engineer.
3. The Gibbs Township Board of Supervisors has recommended approval of the proposed subdivision.
4. The proposed subdivision is in conformance with the Fringe Area Road Master Plan, which identifies the quarter-section line (78<sup>th</sup> Avenue NE) as the east-west collector for this section. The south half of the required right-of-way would be dedicated with this subdivision.
5. The proposed subdivision is compatible with adjacent land uses. Adjacent land uses include rural residential to the south and agricultural land to the west, north and east.
6. The proposed subdivision would be served by South Central Regional Water District, would have access to 71<sup>st</sup> Avenue NE via Rock Creek Road, and provisions have been made for further subdivision of the property; 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. Lee said based on the above 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 Rock Creek 4<sup>th</sup> Subdivision.

Chairman Yeager opened the public hearing for the zoning change and final plat for Rock Creek 4<sup>th</sup> Subdivision.

There was no public comment.

Chairman Yeager closed the public hearing.

**MOTION:** Based on the findings contained in the staff reports, Commissioner Lee made a motion to approve the zoning change from the A-Agriculture to the RR-Residential zoning district and the final plat for Rock Creek 4<sup>th</sup> Subdivision. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager and Gibbs Township Supervisor Sander voting in favor of the motion.

**PUBLIC HEARING – RURAL RESIDENTIAL LOT SPLIT  
LOT 5, BLOCK 1, HUBER SUBDIVISION**

Chairman Yeager called for the public hearing for the rural residential lot split for Lot 5, Block 1, Huber Subdivision. The property is one lot on 4.52 acres and is located along the east side of 52<sup>nd</sup> Street NE south of 43<sup>rd</sup> Avenue NE (7115 30<sup>th</sup> Avenue NE).

Ms. Lee provided an overview of the request and listed the following findings for the rural residential lot split:

1. All technical requirements for approval of a rural residential lot split have been met.
2. The Gibbs Township Board of Supervisors has recommended approval of the lot split.
3. The resulting parcels will meet the minimum lot width (150 feet), depth (200 feet) and area requirements (65,000 square feet) for the RR – Residential zoning district.
4. The proposed rural residential lot split will not be detrimental to the use or development of adjacent properties.
5. The proposed rural residential lot split will not place an undue burden on existing public services and facilities, provided access for the two new parcels is a shared access on 52<sup>nd</sup> Street NE.
6. The proposed rural residential lot split is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said based on the above findings, staff recommends approval of the rural residential lot split for Lot 5, Block 1, Huber Subdivision into two parcels of 2.26 acres each, to be described as the North 160 feet of Lot 5 and the South 160 feet of Lot 5, and with the understanding that access to the two resulting parcels will be a shared access on 52<sup>nd</sup> Street NE. A plat of irregular description will not be required.

Chairman Yeager called for the public hearing on the rural residential lot split for Lot 5, Block 1, Huber Subdivision.

There was no public comment.

Chairman Yeager closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Warford made a motion to approve the rural residential lot split for Lot 5, Block 1, Huber Subdivision into two parcels of 2.26 acres each, to be described as the North 160 feet of Lot 5 and the South 160 feet of Lot 5, and with the understanding that access to the two resulting parcels will be a shared access on 52<sup>nd</sup> Street NE. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Sander, Selzler, Waldoch, Warford and Yeager and Gibbs Township Supervisor Sander voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT (SMALL WIND ENERGY SYSTEM)  
LOT 1, BLOCK 1, APPLE RIDGE SUBDIVISION**

Chairman Yeager called for the public hearing for a special use permit to allow the installation and operation of a 45-foot, 2.1 kW, wind turbine (small wind energy system) on Lot 1, Block 1, Apple Ridge Subdivision. The property is one lot on 28.2 acres and is located at 9701 County Highway 10 along the south side of the roadway.

Mr. Tomanek provided an overview of the request and listed the following findings for the special use permit:

1. The proposed special use complies with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.
2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent properties.
4. The 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. The use would not cause a negative cumulative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity.
6. No comment was received from the Gibbs Township Board of Supervisors.
7. Adequate measures have been taken to minimize the impact of the SWES, including setbacks, design and location of the proposed wind turbine.

Mr. Tomanek said based on the above findings, staff recommends approval of the special use permit to allow the installation and operation of a small wind energy system on Lot 1, Block 1, Apple Ridge Subdivision (9701 County Highway 10) with the following conditions:

1. The location of the SWES closely resemble the proposed layout included with the application
2. The applicant obtains all the necessary building permits prior to installation.

Chairman Yeager called for the public hearing on the special use permit for a small wind energy system on Lot 1, Block 1, Apple Ridge Subdivision.

Don Knapp said he lives in the neighboring Apple Valley View subdivision which is 1000 feet west of the proposed location for the wind turbine. He, along with the 9 other residents of Valley View, LLC, are concerned about the noise.

Neil Zundel stated that he lives closer than Don Knapp does to the proposed site and he is very concerned about the noise adding that the east and northeast wind that we experience that will carry the noise in his direction.

Larry Duppong explained that he lives closest to the proposed wind generator and he is concerned about the noise and that it is starting to look more like a commercial area instead of a residential area.

Jack Hanson with Enterprise Sales Co. said that the wind does carry noise, but this unit will be much quieter than a passing truck on County Highway 10. He went on to say that the unit decibel level is less than what the requirements are, but he understands that any new sound in a neighborhood will be heard until people get used to it.

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 allow the installation and operation of a small wind energy system on Lot 1, Block 1, Apple Ridge Subdivision (9701 County Highway 10) with the following conditions: 1) The location of the SWES closely resemble the proposed layout included with the application; and 2) The applicant obtains all the necessary building permits prior to installation.

Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Sander, Selzler, Waldoch, Warford and Yeager and Gibbs Township Supervisor Sander voting in favor of the motion.

Gibbs Township Supervisor Sander left the Planning and Zoning Commission.

Commissioner Warford left the meeting at 6:13 p.m.

**PUBLIC HEARING – ZONING CHANGE (R10 TO RM10)  
W½ OF LOT 24 LESS THE SOUTH 163 FEET, PARK HILLS AUDITOR’S LOTS**

Chairman Yeager called for the public hearing on the zoning change from the R10–Residential zoning district to the RM10–Residential zoning district for the W½ of Lot 24, less the South 163 feet, Park Hills Auditor’s Lots. The property is one parcel on 26,887 square feet and is located along the south side of Jefferson Avenue between Bell Street and Riverside Park Road.

Ms. Lee provided an overview of the request and listed the following findings for the zoning change:

1. The proposed zoning change is outside the boundaries of the Bismarck Land Use Plan.
2. The proposed zoning change would not be completely compatible with adjacent land uses. Adjacent land uses include a combination of one and two-family residential to the north, south, east and west.
3. The area is already annexed; therefore, the zoning change would not place an undue burden on public services and facilities.
4. The proposed zoning change may adversely affect property in the vicinity. In particular, the introduction of a four unit building into this area may adversely affect the character of the existing one and two family residential property that surrounds it.
5. The proposed zoning change is not consistent with the general intent and purpose of the zoning ordinance. In particular, the zoning ordinance encouraged the use of transitional zoning and discourages the use of spot zoning.
6. The proposed zoning change is not consistent with the master plan, other adopted plans, policies and accepted planning practice. In particular, a four-unit building in an area of one and two-unit buildings would be considered a spot zone.

Ms. Lee said based on the above findings, staff recommends denial of the request for a zoning change from the R10–Residential zoning district to the RM10–Residential zoning district for the W½ of Lot 24 less the South 163 feet, Park Hill Auditor’s Lots.

Commissioner Laning asked if any information on the proposed building had been submitted with the request. Ms. Lee replied that a site plan, building elevations and floor plans had been submitted and displayed those items on the overhead. She indicated that the building would have a north-south orientation on the parcel and each of the four units would have a two-car garage that would be accessed from a common drive along the eastern edge of the parcel.

Chairman Yeager called for the public hearing for the zoning change from the R10–Residential zoning district to the RM10–Residential zoning district for the W½ of Lot 24, less the South 163 feet, Park Hills Auditor’s Lots.

Al Olson, a nearby land owner, appeared in opposition to the request. He indicated that the request was not in character with the rest of the neighborhood, which is all one and two family residential. He concluded by saying that he was strongly opposed to the request because it was out of character with the neighborhood.

Ralph Keller appeared on behalf on the Keller Family Trust. He indicated that he is proposing a four-plex because of the size of the parcel. He added that he could build two two-unit buildings on the site, but he does not think that would look as nice as a four-plex. He went on to say that the proposed units would be designed for older occupants and would be on one level with no steps. He added that the units would be high end and would add value to the neighborhood. He does not want to build two two-unit buildings with a smaller footprint and multiple levels, but would if that is what he has to do. If he has to build two two-unit buildings, they would have to rent to families because of the steps. He concluded by saying that he would be living in the building.

Commissioner Schwartz asked about the property to the west of this lot. Ms. Lee replied that it was occupied by a two-unit building, adding that staff had looked at extending the RM10 zoning to a larger area. Because a single two-unit building is not a permitted use in the RM district, extending the RM10 would make that lot non-conforming.

Chairman Yeager asked about splitting the lot and building two two-unit buildings. Mr. Keller responded that the two two-unit buildings would be more expensive to build and would not be as nice as a single four-unit building. He reiterated that he wants to design a building with no steps for older people and has no intention of building anything other than the proposed four-unit building. He asked that the Commission give serious consideration to his request.

Mr. Olson appeared again and stated that Mr. Keller is not going to own the property forever and the occupancy could change. He added that a spot zone not be approved, which would be consistent with past practice.

Chairman Yeager closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Bullinger made a motion to deny the request for a zoning change from the R10–Residential zoning district to the RM10–Residential zoning district for the W½ of Lot 24 less the South 163 feet, Park Hill Auditor’s Lots. Commissioner Waldoch seconded the motion. With Commissioners Atkinson, Bullinger, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion and Commissioners Juhala, Laning and Lee voting against the motion. The motion passed 6 to 3.

## **PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT NON-CONFORMITIES**

Chairman Yeager called for the public hearing on the zoning ordinance text amendment relating to non-conformities.

Ms. Lee provided an overview of the proposed zoning ordinance text amendment, indicating that the proposed amendment would modify the requirements for nonconforming uses or structures devoted in whole or in part to a residential use.

Ms. Lee said staff is recommending approval of the zoning ordinance text amendment relating to non-conformities as presented.

Chairman Yeager called for the public hearing on the zoning ordinance text amendment relating to non-conformities.

There was no public comment.

Chairman Yeager closed the public hearing.

**MOTION:** Commissioner Lee made a motion to approve the zoning ordinance text amendment relating to non-conformities as presented. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

#### **PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT ACCESSORY BUILDINGS**

Chairman Yeager called for the public hearing on the zoning ordinance text amendment relating to accessory buildings.

Ms. Lee provided an overview of the proposed zoning ordinance text amendment, indicating that the proposed amendment would modify the allowable area for accessory buildings, generally increasing the area from what is currently allowed.

Ms. Lee said staff is recommending approval of the zoning ordinance text amendment relating to accessory buildings as presented.

There was a brief discussion amongst the commissioners and staff about the proposed zoning ordinance text amendment for accessory buildings.

There was no public comment.

Chairman Yeager closed the public hearing.

**MOTION:** Commissioner Juhala made a motion to approve the zoning ordinance text amendment relating to accessory buildings as presented. Commissioner Lee seconded the motion. With Commissioners Atkinson, Bullinger, Juhala, Laning, Lee, Schwartz, Waldoch and Yeager voting in favor of the motion and Commissioner Selzler voting against the motion. The motion passed 8 to 1.

**OTHER BUSINESS**

There was no other business.

**ADJOURNMENT**

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:38 p.m. to meet again on June 27, 2012.

Respectfully submitted,

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Kimberley Gaffrey  
Recording Secretary

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Wayne Lee Yeager  
Chairman