

**CITY PLANNING & ZONING COMMISSION
SPECIAL MEETING MINUTES
August 1, 2012**

The Bismarck Planning & Zoning Commission held a special meeting on August 1, 2012, at 5:00 p.m. in the First Floor Conference Room in the City-County Office Building, 221 North 5th Street. Chairman Yeager presided.

Commissioners present were Tom Atkinson, Vernon Laning, Ken Selzer, Mike Schwartz, Lisa Waldoch and Wayne Yeager.

Commissioners Mark Armstrong, Mel Bullinger, Curt Juhala, Doug Lee and John Warford were absent.

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

Others present were Jim Nelson, Gary Lind, Blaine Doppler, Doug Larson, Kent French, Nadeane Silbernagel and Dave Silbernagel.

**PUBLIC HEARING – SITE PLAN AND BUILDING ELEVATIONS APPROVAL –
LOTS 5 & 6, BLOCK 1, HAMILTON’S FIRST ADDITION**

Chairman Yeager called for the public hearing for the site plan and building elevations for Lots 5 & 6, Block 1, Hamilton’s First Addition. Approval of the site plan and building elevations for each development project is a requirement of the Planned Unit Development ordinance for Hamilton’s First Addition. This project is a 41-unit shop/storage condo facility in six buildings on two lots in one block totaling 4.9 acres.

Mr. Tomanek provided an overview of the request, showing a location map, the proposed site plan with the orientation of buildings, and architectural renderings of the buildings. He added that the PUD ordinance for Hamilton’s First Addition contains requirements pertaining to the design, appearance, building materials, building colors, outdoor storage areas, parking and loading areas, landscaping and screening, buffer yards, screening of mechanical equipment and solid waste collection areas, and signage. He then outlined how the elements of the proposed site plan and building elevations relate to the specific requirements of the Planned Unit Development, stating that the proposed site plan and building elevations meet the ordinance requirements, and added that the required berm is scheduled to be completed by the end of the week. Installation of the berm was delayed; however, no building permits will be issued until the entire buffer yard is installed. Mr. Tomanek also mentioned that the proposed parking count is based on a warehouse or storage use and that additional parking would be required if individual units are converted to retail or service uses. Any change in occupancy would require a building permit and parking would be reviewed at that time.

Mr. Tomanek then reviewed the findings included in the staff report:

1. The proposed site plan, building elevations, building materials and colors have been submitted. The proposed building materials include pre-finished, non-corrugated metal architectural panels and a stucco-like material for the exterior. The roof material proposed is also non-corrugated metal panels.
2. A three-part color scheme is proposed for the exterior building colors. The colors include MS Colorfast 45 Paint System labeled as *Light Stone*, *Burnished Slate* and *Bright White*. The *Light Stone* color is proposed as the primary building color, the *Burnished Slate* color would be a 3-foot high wainscot band around the entire building and the *Bright White* color would be the accent color.
3. The 50-foot wide, 6-foot high berm has been partially constructed. However, as of July 19, 2012, the topsoil had not re-applied and none of the required vegetation was installed. The general shape and location of the berm is acceptable; in particular, the berm extends north-south along the entire east property line of Hamilton's First Addition and generally conforms to the previously-approved design submitted in conjunction with the plat and zoning change request from 2009. In contrast to the ordinance, the construction of the required berm did not commence until recently. The owners and the City of Bismarck Engineering Department worked collectively to utilize soil removed from a regional storm water pond that is currently under construction on Lot 7, Block 1, Hamilton's First Addition. The ordinance required that, "*The entire landscape buffer yard shall be installed within one (1) year of the subdivision plat being recorded, and shall include a berm no less than six (6) feet in height and be planted with a minimum of four (4) shade trees, three (3) ornamental trees, five (5) large upright coniferous trees and ten (10) small upright coniferous trees per one hundred (100) linear feet.*" The landscape buffer yard for Hamilton's First Addition will need to be installed prior to any building permits being issued for this project.
4. The proposed parking meets the requirements of Section 14-03-10 of the City Code of Ordinances (Off-street Parking and Loading), based on the square footage and indicated uses. The site plan application indicates that the uses proposed for the shop/storage condos would be storage units. The off-street parking requirement for warehouse and storage facilities is one space for every 600 square feet of gross floor area. Any change in use or occupancy from storage or warehouse facilities uses would require additional parking at the required ratio for the occupancy served.

Mr. Tomanek said based on the above findings, staff recommends approval of the site plan and building elevations with the following conditions:

1. The applicants provide a date-certain relating to the completion of the berm and complete installation of the required buffer yard plantings.
2. The required buffer yard for the entire subdivision, including the berm and plantings, must be installed prior to a building permit being issued for these lots.

Chairman Yeager opened the public hearing for the site plan and building elevations for Lots 5 & 6, Block 1, Hamilton's First Addition.

Kent French, owner of the property to the east, stated that he was opposed to the development when it was first proposed. He added that this was the first time that the Planning Commission allowed an industrial use next to residential. His concern now is how the City will protect those who live there. He is especially concerned about the berm and how it will be maintained. He believes the slope of the berm will prevent mowing of the berm and they will have nothing but weeds. He also stated that the berm comes right up to the property line and that the utility companies will not have access to the 10-foot utility easement along the eastern edge of the plat. He concluded by saying that it is on zoning, that it is on the City.

Jim Nelson, Franklin Development, stated that they just purchased the property a few months ago. He added that they had met with City staff and would be meeting all of the provisions of the PUD. He added that the slope of the berm is similar to other berms approved by the City that are maintained. He is required to keep his property in a certain condition and that is his intent. He went on to say that the black dirt will be placed on the berm and final shaping will take place later this week; they could start planting the berm on Monday. Mr. Nelson added that the City Forester had advised him that the current temperatures would place stress on the trees if they were planted now. For that reason, they would like to get a building permit now, delay planting the trees for six to eight weeks, and tie the completion of the buffer yard to the issuance of a certificate of occupancy rather than a building permit.

Doug Larson, owner of a residence to the east, asked what would be done to the east side of the dike (berm). Mr. Nelson replied that the intent was to plant native grasses.

Chairman Yeager questioned whether or not the berm would be irrigated. Mr. Nelson replied that the berm is 1300 feet long north to south and they would be installing it all in order to obtain a building permit. The berm will not be irrigated.

Commissioner Waldoch asked if there is an association to care for the berm. Mr. Nelson stated that there would be an association similar to the one that was created for the Franklin Shops on Franklin Avenue.

Chairman Yeager asked staff about the slope on the sides of the berm. Mr. Tomanek replied that the slope on the sides of the berm was 3-to-1 and that this was acceptable for this type of berm.

Commissioner Waldoch asked about the northern two-thirds of the berm, which is under different ownership. Mr. Nelson replied that the northern lots are still owned by the developers. He added that Franklin Development agreed to put in the entire berm and the developers agree to take care of the portion over Lots 1-4. He added that they are following the direction of the PUD and doing what is necessary to meet the requirements.

Commissioner Waldoch then asked how they will water the landscape material. Mr. Nelson replied that the material would require less water in the fall, which is one of the reasons they

wanted to delay planting. He added that the trees will be native to North Dakota and will need less water.

Commissioner Waldoch asked if there was any way to change the PUD requirement that the berm be in place and required landscaping installed prior to obtaining a building permit. Mr. Tomanek replied that the PUD ordinance adopted by the City Commission was very specific on that matter and the only way to change it would be to amend the PUD. He added that the PUD includes specifics on the trees on shrubs, but does not specifically address ground cover; however, it does make reference back to the section of the zoning ordinance on landscaping and screening. That section requires landscaped areas to be maintained and kept weed-free; it also requires dead or damaged plant material to be replaced.

Mr. French stated that he has no concerns with the proposed project or the developers, adding that his problem is with the City and the zoning of the property. He asked who he should call when there is a problem with the landscaping. He added that he is fussy and has one of the nicest homes in Bismarck and that the park in his development is better than anything in the City. The Planning Commission allowed industrial next to residential, and now he wants to know how the City is going to enforce the maintenance of the berm. Mr. Tomanek replied that Environmental Health deals with tall grass and weed complaints. Mr. French was not satisfied with that answer and accused Planning staff of approving the zoning and then passing the enforcement on to someone else. He added that the neighbors should not have to put up with weeds in their backyard.

Commissioner Waldoch stated that she knows where Mr. Nelson lives and that he has one of the tidiest yards in Bismarck. Based on that, she believes that he will do a good job. She added that the PUD ordinance is extremely detailed. The land uses to the west and south are industrial and this subdivision was designed as a soft industrial use as a transition between those industrial uses and the residential uses to the east. Mr. French responded that this was the first time the City had ever approved industrial next to residential and that it was only allowed because they are “trailer house people.”

Mr. Nelson stated that he feels slighted that Mr. French thinks he will not take care of his property. Mr. French responded that his issue is not with Mr. Nelson, but with the Planning Commission who allowed this land use next to residential. He went on to say that it is not going to get mowed, because he had his man out there with a mower and it is too steep.

Gary Lind, Franklin Development, stated that when they developed the shops on Franklin Avenue, they retained ownership of some of the units to stay connected to the project. They intend to do the same with this project.

Mr. French reiterated that his issue is not with Franklin Development, but with the City for approving the zoning. He added that he wants to know what is going to happen on the berm.

Chairman Yeager asked where the berm was within the easement. Mr. Tomanek responded that there is a 10-foot utility easement along the eastern edge of the plat and the eastern 10 feet of the

50-foot berm easement is on top of the utility easement. He added that the utilities were provided copies of the plat and were aware of this overlap.

Commissioner Schwartz asked if the City was responsible for maintaining its share of the berm. Mr. Tomanek replied that Franklin Development is installing the berm and all of the vegetation for the entire development. He added that he is not aware of the specifics of the City's maintenance schedule for their facilities, but that the City does maintain their property on a rotational basis.

Mr. French asked about the break in the berm. Mr. Tomanek indicated that there will be a break in the berm to allow drainage from Mr. French's development to drain into the City's regional detention area on Lot 7. He added that a 30-foot stretch of the berm will be removed to allow drainage in the future. Mr. French responded that perhaps a culvert system would work better by allowing drainage without removing the berm.

Mr. French then asked if this meeting was just to accommodate the development schedule of the new owners. Mr. Tomanek replied that this public hearing was being held because the PUD requires a public hearing on the site plan and building elevations for all projects within this subdivision.

Mr. French stated that the City passes things and then won't back it up, adding that he still doesn't have an answer on the maintenance of the berm.

Mr. Nelson and Mr. Lind replied that a 3-to-1 slope could be mowed. Mr. French disagreed.

Chairman Yeager asked if the City will verify construction of the berm when completed. Mr. Tomanek replied that he met with the contractor on site regarding the berm and that staff will be notified when the berm is completed. He added that there were survey stakes in the ground and he has to trust that the survey elevations are accurate.

Mr. Larson asked if there was an ordinance requirement that the dike (berm) had to be mowed. Mr. Tomanek replied that the PUD ordinance does not address groundcover, adding that weeds or tall grass complaints are enforced by Environmental Health.

Mr. French stated that the berm is too steep to mow. Because the adjacent land residents are "trailer house people," the City doesn't care about them. He added that the Planning Commission would not have approved this type of development behind any other residential property and that it was only allowed here because it is manufactured housing. He concluded by stating that the Planning Commission was a joke, none of them should be on the Planning Commission, and that they have discriminated against the adjacent residents. Mr. French then left the meeting.

Commissioner Waldoch stated that Mr. French shouldn't make that assumption.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Waldoch made a motion to approve the site plan and building elevations with the following conditions: 1) The applicants provide a date-certain relating to the completion of the berm and complete installation of the required buffer yard plantings; and 2) the required buffer yard for the entire subdivision, including the berm and plantings, must be installed prior to a building permit being issued for these lots. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Atkinson, Laning, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

ADJOURNMENT

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:09 p.m. to meet again on August 22, 2012.

Respectfully submitted,

Kim L. Lee, AICP
Recording Secretary

Wayne Lee Yeager
Chairman