

**CITY PLANNING & ZONING COMMISSION  
MEETING MINUTES  
September 26, 2012**

The Bismarck Planning & Zoning Commission met on September 26, 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 Mark Armstrong, Mel Bullinger, Curt Juhala, Vernon Laning, Doug Lee, Mike Schwartz, Ken Selzler, Lisa Waldoch, John Warford and Wayne Yeager.

Commissioner Tom Atkinson was absent.

Staff members present were Kim Lee – Planning Manager, Jason Tomanek – Planner, Kimberley Tomanek – Office Assistant III, Jenny Wollmuth – Planner and Charlie Whitman – City Attorney.

Others present were Dave Patience, Lon Romsaas, Darin Scherr, Neil Fortier, JD Bork, Paul Zent, Jeff Herauf, Mark Petesch, Barbara Weekes, Gary Johnson, Duane & Angie Hoovestol, Marcy Krueger, Jayden Gittel, Bonnie & Gary Dirk, Harley Swenson, Jeff & Heather Zins, Tim & Teresa Hendrickson, John & Myrna Hauck, Mike Donahue, LeRoy Stromme, Marcy Krueger, Paul Zent, Daren Schneider, Hope Schreiner, Doug Prchal and Richard Sander.

**MINUTES**

Chairman Yeager called for consideration of the minutes of the August 22, 2012 meeting.

**MOTION:** Commissioner Warford made a motion to approve the minutes of the August 22, 2012 meeting as distributed. Commissioner Lee seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**CONSIDERATIONS –**

- A. ZONING CHANGE AND PRELIMINARY PLAT – APPLE CREEK RIDGE SUBDIVISION**
- B. PRELIMINARY PLAT – PINE MEADOWS THIRD SUBDIVISION**
- C. ZONING CHANGE – LOTS 7 & 8, BLOCK 5, BROOKFIELD ESTATES**
- D. ZONING CHANGE – LOTS 3 & 4, BLOCK 4, EDGEWOOD VILLAGE FIRST ADDITION**
- E. LAND USE PLAN AMENDMENT AND ZONING CHANGE – LOT 1, BLOCK 1, GOOD SHEPHERD NORTH ADDITION**
- F. ZONING ORDINANCE TEXT AMENDMENT – NEIGHBORHOOD RECREATION AND OPEN SPACE REQUIREMENTS**

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

- A. A zoning change from the A–Agricultural zoning district to the RR–Residential zoning district and preliminary plat for Apple Creek Ridge Subdivision. The property is 55 lots in 5 blocks containing 121.05 acres and is located along the north side of 5<sup>th</sup> Avenue NE, east of 119<sup>th</sup> Street NE, approximately ½ mile south of County Highway 10 (Auditor’s Lot 5, 6, and 7 of the SE¼ of Section 35, T139N-R79W/Gibbs Township).
- B. A preliminary plat for Pine Meadows Third Subdivision. The property is one lot in one block containing 2.04 acres and is located south of County Highway 10 and east of 80<sup>th</sup> Street SE (Auditor’s Lot A of the SE¼ of the NW¼ of Section 4, T138N-R79W/Apple Creek Township).
- C. A zoning change from the CA-Commercial zoning district to the RR-Residential zoning district for Lots 7 & 8, Block 5, Brookfield Estates. The property is two lots in one block containing 4.14 acres and is located along the north side of Belaire Drive adjacent to County Highway 10, approximately ¼ mile west of 80<sup>th</sup> Street NE.
- D. A zoning change from the RM15-Residential and P-Public zoning districts to the RM20-Residential zoning district for Lots 3 & 4, Block 4, Edgewood Village First Addition. The property is two lots in one block containing 7.83 acres and is located east of North 19<sup>th</sup> Street and north of East Calgary Avenue, at the intersection with Koch Drive.
- E. 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.
- F. A zoning ordinance text amendment relating to neighborhood recreation and open space. The proposed amendment would establish requirements for the dedication of neighborhood recreation and open space or payment in lieu of dedication, in conjunction with the platting and annexation process.

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

Chairman Yeager invited the representative from the Sand Companies to briefly discuss the project as proposed on Lot 1, Block 1, Good Shepherd North Addition (Consent Agenda Item E) and how it differed from the previous proposal that was denied in June 2012. Jeremy Bork explained that the buildings were modified to reduce portions from three stories to two stories, a landscape berm is now proposed as part of the buffer yard, one of the buildings was shortened which would provide more separation between the existing houses and the proposed building in the southwest corner of the property.

**FINAL CONSIDERATION – ANNEXATION  
PUBLIC HEARING – LAND USE PLAN AMENDMENT OF THE NW¼ OF SECTION  
25, T139N-R80W/HAY CREEK, ZONING CHANGE (A, R5 & R10 TO RM15, RT &  
CONDITIONAL CG) AND FINAL PLAT  
TRENTON ADDITION**

Chairman Yeager called for the final consideration for the annexation and public hearing for the Land Use Plan amendment from the residential land use classification to the commercial land use classification for part of the NW¼ of Section 25, T139N-R80W/Hay Creek Township; the zoning change from the A-Agricultural, R5-Residential and R10-Residential zoning districts to the RM15-Residential, RT-Residential and Conditional CG-Commercial zoning districts; and final plat for Trenton Addition. The property is 138 lots in three blocks containing 28.82 acres and is located along an extension of Trenton Drive east of Centennial Road between I-94 and East Century Avenue (Tracts 1, 2 and 3 in the N½ of the NW¼ of Section 25, T139N-R80W/Hay Creek Township and a replat of Lots 1-6, Block 8, Centennial Park 4<sup>th</sup> Addition).

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 subdivision 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 for the final plat of Trenton Addition has not yet been approved by the City Engineer.

Ms. Lee then listed the following findings for the Land Use Plan amendment:

1. The proposed amendment to the Land Use Plan would not be compatible with adjacent land uses. In particular, the proposed amendment would extend the commercial land use classification approximately 2,200 feet east of Centennial Road into an area with existing low density uses along the north side of Trenton Drive.
2. The proposed Land Use Plan amendment does not reflect a change in conditions since the Land Use Plan was established, nor would it result in an improved Land Use Plan which better responds to the needs of the community.
3. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the Land Use Plan at the time the property is developed.
4. The proposed Land Use Plan amendment may adversely affect property in the vicinity.

In particular, the extension of general commercial uses on the south side of Trenton Drive and the amount of traffic potentially generated by those uses would adversely affect the existing low-density residential development on the north side of Trenton Drive.

5. The proposed Land Use Plan amendment is not consistent with the other aspects of the master plan, other adopted plans, policies and planning practice.

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

1. The residential portions of 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). The commercial portion of the proposed zoning change would not be consistent with the Land Use Plan.
2. The residential portions of the proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include I-94 to the south, single-family residential and undeveloped R5, R10 and RM30 zoned property to the west, and Century Park manufactured home park to the north and east. The commercial portion of the zoning change would not be compatible with adjacent land uses.
3. The property would be annexed prior to development; therefore, the zoning change would not place an undue burden on public services and facilities.
4. The residential portions of the proposed zoning change would not adversely affect property in the vicinity; however, the commercial portion of the proposed zoning change may adversely affect property in the vicinity. In particular, the extension of general commercial uses on the south side of Trenton Drive approximately 2,200 feet east of Centennial Road and the amount of traffic potentially generated by those uses would adversely affect the existing low-density residential development on the north side of Trenton Drive.
5. The residential portions of the proposed zoning change are consistent with the general intent and purpose of the zoning ordinance; however, the commercial portion of 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 residential portions of the proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice; however, the commercial portion of the proposed zoning change is not consistent with the master plan, other 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 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 not yet been approved by the City Engineer.
3. The proposed subdivision is outside of the area included in the Fringe Area Road Master Plan.
4. The proposed subdivision would be compatible with adjacent land uses, provided the landscape buffer shown on the plat is installed in accordance with the provisions of Section 14-03-11 (Landscaping and Screening) in conjunction with site development. Adjacent land uses include I-94 to the south, single-family residential and undeveloped R5, R10 and RM30 zoned property to the west, and Century Park manufactured home park to the north and east.
5. The property would be annexed prior to development; therefore, the subdivision would not place an undue burden on public services and facilities.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said based on the above findings, staff recommends continuing action on the annexation, the Land Use Plan amendment, the zoning change and final plat for Trenton Addition, until the storm water management plan for the final plat is approved by the City Engineer.

Chairman Yeager called for final consideration for the annexation and opened the public hearing for the Land Use Plan amendment from the residential land use classification to the commercial land use classification for part of the NW<sup>1</sup>/<sub>4</sub> of Section 25, T139N-R80W/Hay Creek Township; the zoning change from the A-Agricultural, R5-Residential and R10-Residential zoning districts to the RM15-Residential, RT-Residential and Conditional CG-Commercial zoning districts; and final plat for Trenton Addition.

Dave Patience, with Swenson Hagen & Co., explained that the delay with the storm water management plan is with the Federal Highway Administration because of the concern with how run off from the watershed can be dumped into the Interstate from the proposed plat. He went on to say that an agreement can be made because Swenson, Hagen & Co. has to meet the requirements of the Federal Highway Administration and City Engineering, but it will take another week. Mr. Patience added that he would hate to see this plat delayed another month and miss the rest of the construction year and understands that it cannot be forwarded to the Board of City Commissioners until the storm water management plan is approved.

Commissioner Bullinger commented because the plat would be draining into the NDDOT right-of-way, the City must wait to approve the storm water management plan until the NDDOT has reviewed and approved the proposal. The Engineering Department does not have the Department of Transportation's approval at this time. He went on to say that the conceptual drawing provided by Swenson, Hagen & Co. showing several detention ponds to capture the runoff from the proposed development appears to meet the requirements.

Harley Swenson stated that he owns the eight lots that are west of Cumberland Drive and he had a long discussion with the Highway Department and was told that the City of Bismarck sets the rules and if the City of Bismarck approves a storm water management plan, the Highway Department will approve also it. *(Secretary's Note: After the meeting, clarification was provided by the NDDOT indicating that the NDDOT does in fact have to approve the proposal if flows into the NDDOT right-of-way are modified.)* Mr. Swenson said that if this plat is not approved, he will remove his lots from it so he can start building something this year, as his lots that are already platted. He concluded by saying he hopes the City Planning & Zoning Commission will approve the plat with the condition that the storm water manage plan be approved by the City Engineer.

Ms. Lee said that if the City Planning & Zoning Commission decides to approve the final plat with the condition that it will not be forwarded to the Board of City Commissioners until the storm water management plan has been approved by the City Engineer, then staff recommends approval of the annexation as presented; denial of the Land Use Plan amendment from the residential land use classification to the commercial land use classification for part of the NW<sup>1</sup>/<sub>4</sub> of Section 25, T139N-R80W/Hay Creek Township on the south side of Trenton Drive; approval of the zoning change from the A-Agricultural, R5-Residential and R10-Residential zoning districts to the RM15-Residential and RT-Residential zoning districts and denial of the Conditional CG-Commercial zoning district for the property south side of Trenton Drive; and approval of the final plat with the understanding the buffer yard of the northern and eastern edges of the plat is installed in conjunction development of the underlying Lot 4, Block 1 and Lots 1 & 2, Block 3, Trenton Addition.

Chairman Yeager closed the public hearing.

**MOTION:** Commissioner Armstrong made a motion to approve the annexation; deny the Land Use Plan Amendment request; approve the zoning change from the A-Agricultural, R5-Residential and R10-Residential zoning districts to the RM15-Residential and RT-Residential zoning districts; and approve the final plat titled Trenton Addition, with the condition that the storm water management plan for the final plat be approved by the City Engineer before any items are forwarded to the Board of City Commissioners. Commissioner Laning seconded the motion with Commissioners Armstrong, Bullinger, Juhala, Lee, Selzler, Waldoch, Warford and Yeager voting in favor of the motion and Commissioner Schwartz voting against. The motion passed 9 to 1.

(The zoning change to the Conditional CG-Commercial zoning district for Lots 1-3, Block 1 was not approved as requested, but was approved as the RT-Residential zoning district.)

## **PUBLIC HEARING – ZONING CHANGE (A TO RR & P) AND FINAL PLAT HARVERST RIDGE SUBDIVISION**

Chairman Yeager called for the public hearing for the zoning change from the A-Agricultural zoning district to the RR-Residential and P-Public zoning districts and final plat for Harvest Ridge Subdivision. The property is 31 lots in four blocks containing 84.53 acres and is located along the east side of North Washington Street, north of 90<sup>th</sup> Avenue NE and approximately ½ mile west of US Highway 83 (part of the NW¼ of Section 33, T140N-R80W/Burnt 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 Land Use Plan (land use portion of the US Highway 83 Transportation Corridor Study), which identifies the area as residential.
2. The proposed zoning change would be 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 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 a final plat have been met.
2. The proposed subdivision generally conforms to the Fringe Area Road Master Plan, which identifies Sage Drive as the north-south collector for this section.
3. The storm water management plan has not yet been approved by the City Engineer.
4. 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.
5. 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 that since the storm water management plan has now been approved by the City Engineer and based on the above findings, staff recommends approval of the zoning change from the A-Agricultural zoning district to the RR-Residential and P-Public zoning districts and final plat of Harvest Ridge Subdivision.

Chairman Yeager called for the public hearing for the A-Agricultural zoning district to the RR-Residential and P-Public zoning districts and final plat for Harvest Ridge Subdivision.

Theresa Hendrickson inquired about the start date of the proposed project if it is approved and will Washington Street be completed all the way up from ND Highway 1804. Mr. Patience responded by saying the project would start immediately upon approval and the roads will only be completed within the proposed plat.

LeRoy Stromme indicated that he is concerned with traffic and suggested speed limit controls along with either yield signs or stop signs at the intersections.

Chairman Yeager closed the public hearing.

Commissioner Warford said he would like to make a disclaimer that his son John Warford, Jr. his portion of land to Felton Development and has no financial interest in this property.

**MOTION:** Based on the findings contained in the staff report, Commissioner Warford made a motion to approve the zoning change from the A-Agricultural zoning district to the RR-Residential and P-Public zoning districts and final plat for Harvest Ridge Subdivision. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Armstrong, 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 R5 & P) AND FINAL PLAT  
BOULDER RIDGE 5<sup>TH</sup> ADDITION**

Chairman Yeager called for the final consideration for the annexation and public hearing for the zoning change from the A-Agricultural zoning district to the R5-Residential and P-Public zoning district and final plat for Boulder Ridge 5<sup>th</sup> Addition. The property is 73 lots in 10 blocks containing 58.54 acres and is located in northwest Bismarck, between 43<sup>rd</sup> Avenue NE and 57<sup>th</sup> Avenue NE, east of North Washington Street and approximately ½ mile west of US Highway 83 (part of the NW¼ and the SW¼ of Section 16, T139N-R80W/Hay Creek 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 the long range use of this area as residential, public and open space (land use component of US Highway 83 Corridor Transportation Study).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include developing single family residential to the south; single family residential, multi-family residential and publicly owned open space to the east; the former Good Shepard Lutheran Church and undeveloped land to the west; and undeveloped land to the north.
3. The subdivision proposed for this 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.

Ms. Lee 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 is consistent with the Fringe Area Road Master Plan for Section 15, T139N-R80W/Hay Creek Township, which identifies Normandy Street as the north-south collector and LaSalle Drive as the east-west collector for this section.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include developing single family residential to the south; single family residential, multi-family residential and publicly owned open space to the east; the former Good Shepard Lutheran Church and undeveloped land to the west; and undeveloped land to the north.

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 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.

Ms. Lee said because the required off-site sanitary sewer easement has not been provided as requested, staff recommends continuing action on the annexation, the zoning change and final plat of Boulder Ridge 5<sup>th</sup> Addition.

Chairman Yeager called for final consideration for the annexation and public hearing for the zoning change from the A-Agricultural zoning district to the R5-Residential and P-Public zoning districts and final plat for Boulder Ridge 5<sup>th</sup> Addition.

Lon Romsaas, with Swenson Hagen & Co. stated the plat is being presented in order to continue with building a new elementary school. He went on to say that Boulder Ridge Development is agreeable to the sanitary sewer easement to service the elementary school site and would be willing to grant the sanitary sewer all the way over to Washington Street to benefit the developer on the other side if that same developer would grant a similar easement on another piece of property in northwest Bismarck that was requested a year and a half ago, but the same developer refused to grant the easement. Mr. Romsaas added that the sanitary sewer easement that is in question is not required in order for this plat to proceed.

Chairman Yeager closed the public hearing.

**MOTION:** Commissioner Warford made a motion to approve the annexation; the zoning change from the A-Agricultural zoning district to the R5-Residential and P-Public zoning district; and final plat for Boulder Ridge 5<sup>th</sup> Addition, with the understanding that the required off-site storm water and drainage easements shall be provided prior to recording the plat. Commissioner Waldoch seconded the motion with Commissioners Armstrong, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion and Commissioner Schwartz voting against. The motion passed 9 to

**PUBLIC HEARING – ZONING CHANGE (R5 TO R10)  
LOTS 2-8, BLOCK 16, LOTS 19-22 & LOTS 24-26, BLOCK 17, SONNET HEIGHTS  
SUBDIVISION AND LOTS 1-7, BLOCK 3 AND LOT 1, BLOCK 4, HUDSON STREET  
ADDITION**

Chairman Yeager called for the public hearing for the zoning change from the R5-Residential zoning district to the R10-Residential zoning district for Lots 2-8, Block 16, Lots 19-22 & Lots 24-26, Block 17, Sonnet Heights Subdivision and Lots 1-7, Block 3 and Lot 1, Block 4, Hudson

Street Addition. The property is 22 lots in three blocks containing 7.1 acres and is located Along both sides of Bremner Avenue west of Coleman Street and Hudson Street south of Weyburn Drive, approximately ¼ of a mile west of US Highway 83.

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 Land Use Plan, which identifies this area as residential (land use portion of the US Highway 83 Transportation Corridor Study).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include partially developed R5-zoned property to the west and north, partially developed R10 zoned property to the east and developing RT-zoned property to the south.
3. The property is already annexed; 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.

Mr. Tomanek said based on the above findings, staff recommends approval of the zoning change from the R5-Residential zoning district to the R10-Residential zoning district for Lots 2-8, Block 16, Lots 19-22 & Lots 24-26, Block 17, Sonnet Heights Subdivision and Lots 1-7, Block 3 and Lot 1, Block 4, Hudson Street Addition.

Chairman Yeager called for the public hearing for the zoning change from the R5-Residential zoning district to the R10-Residential zoning district for Lots 2-8, Block 16, Lots 19-22 & Lots 24-26, Block 17, Sonnet Heights Subdivision and Lots 1-7, Block 3 and Lot 1, Block 4, Hudson Street 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 zoning change from the R5-Residential zoning district to the R10-Residential zoning district for Lots 2-8, Block 16, Lots 19-22 & Lots 24-26, Block 17, Sonnet Heights Subdivision and Lots 1-7, Block 3 and Lot 1, Block 4, Hudson Street Addition. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

## **PUBLIC HEARING – RURAL RESIDENTIAL LOT SPLIT – LOT 5, BLOCK 1, MEADOW VIEW SECOND SUBDIVISION**

Chairman Yeager called for the public hearing for the rural residential lot split for Lot 5, Block 1, Meadow View Second Subdivision. The property is located on Fox Island, at the corner of Larson Road and Smokey Lane (1600 Larson Road).

Ms. Wollmuth 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 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.
3. The proposed rural residential lot split will not be detrimental to the use or development of adjacent properties.
4. The proposed rural residential lot split will have access from either Larson Road or Smokey Lane; therefore, it will not place an undue burden on existing public services and facilities, provided the access location for the new parcel is in a location approved by the County Engineer.
5. The proposed rural residential lot split is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Wollmuth said based on the above findings, staff recommends approval of the rural residential lot split for Lot 5, Block 1, Meadow View Second Subdivision into two parcels, a western parcel of approximately 1.86 acres and eastern parcel of approximately 2.96 acres, with the understanding that a plat of irregular description will be prepared as required by the Burleigh County Auditor. The lot split will not be effective until the required plat of irregular description is recorded with the Burleigh County Recorder.

Chairman Yeager opened the public hearing for the rural residential lot split for Lot 5, Block 1, Meadow View Second Subdivision.

There was no public comment

Chairman Yeager closed the public hearing.

**MOTION:** Based on the findings contained in the staff reports, Commissioner Juhala made a motion to approve the rural residential lot split for Lot 5, Block 1, Meadow View Second Subdivision into two parcels, a western parcel of approximately 1.86 acres and eastern parcel of approximately 2.96 acres, with the understanding that a plat of irregular description will be prepared as required by the Burleigh County Auditor. The lot split will not be effective until the required plat of irregular

description is recorded with the Burleigh County Recorder. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT (GROUP DAY CARE FACILITY)  
LOT 8, BLOCK 2, WELLE SUBDIVISION (8887 WELLE LOOP)**

Chairman Yeager called for the public hearing for a special use permit for a group day care facility to be located in Lot 8, Block 2, Welle Subdivision (8887 Welle Loop). The property is one lot containing 4.62 acres and is located along the south side of Welle Loop, west of 15<sup>th</sup> Street NW and north of 84<sup>th</sup> Avenue NW.

Ms. Wollmuth 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 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 proposed special use would not be detrimental to the use or development of adjacent properties.
6. The proposed special use would be compatible with the surrounding RR – Rural Residential neighborhood.
7. The request is compatible with adopted plans, policies and accepted planning practice.

Ms. Wollmuth then listed the following additional information:

1. Adjacent property owners have raised concerns regarding the possible violation of the subdivision's covenants. There are two aspects of Section VII of the covenants that are in question: subsection 1 and subsection 8. Subsection 1 prohibits commercial buildings or structures. Subsection 8 requires that a variance be obtained if the property owner does not adhere to the zoning ordinances prescribed for the property. A group day-care facility is an accessory use to a principle residential dwelling and that a group day-care facility is permitted within a RR – Residential zoning district provided a special use permit is obtained.
2. Section 14-02-03 of the City Code of Ordinances defines a group day care as, “a detached single family dwelling, which also serves as the primary residence of the operator of the

day-care, offering care, maintenance and supervision for hire or compensation, for less than twenty-four (24) hours per day, for at least eight (8) but not more than twelve (12) children under the age of 12 years, having a fenced outdoor recreation area, and licensed by the North Dakota Department of Human Services as a group day-care facility.” There are not specific standards for group day-care facilities in section 14-03-08 (Special Uses).

3. Section 14-04-01(2) of the City Code of Ordinances permits a group day-care to be operated in a single-family residence in an RR – Residential zoned district provided a special use permit is approved by the Planning Commission in accordance with provisions of Section 14-03-08.

Ms. Wollmuth said based on the above findings, staff recommends approval of the special use permit to operate a group day-care facility as an accessory use in a single family residence located on Lot 8, Block 2, Welle Subdivision (8887 Welle Loop).

Chairman Yeager called for the public hearing on the special use permit for a group day care facility to be located in Lot 8, Block 2, Welle Subdivision (8887 Welle Loop).

Jeff Zins said that he and his wife Heather did review the subdivision covenants and there was not anything stated in the covenants about not allowing a day care in your home.

Mark Petesch stated that covenants were revised in 2001 and for the most part everyone follows them. He went on to say that he spoke with the Zins before they purchased the land and it was understood that it would only be the Zins’ children and a few more and he was okay with that, but then found out that it could be many more children. Mr. Petesch requested that the Zins get 2/3 approval from the neighbors in order to operate the day care. He then distributed a letter and signatures from the neighborhood, attached as Exhibit A.

Jeff Zins said that Heather Zins has been running a day care at their current residence and is currently allowed seven children and would like to increase that number by a couple more children because they already have two children of their own and are expecting a third. He stated that that is why they are applying for the special use permit. In order to have the maximum allowed of 12 children, they would have to hire an additional staff and they do not want to hire an employee. Mr. Zins added that his wife runs an in home day care because she has a vision impairment that does not allow her to drive so this is her source of income. He concluded by saying there are currently only two families that utilize the day care that operates from 7:00 a.m. to 5:30 p.m.

Duane Hoovestol inquired if the Zins sell the home if the special use permit stays with the property. Ms. Lee responded by saying the special use permit is attached to the property. She also stated that the Planning & Zoning Commission has the ability to place restrictions on the number of children allowed in the day care.

Jeff Herauf stated that he has concerns with the traffic that would increase with the day care use. He continued by saying that he is not looking forward to children playing in his backyard because he moved to the country to be away from people.

Marcy Krueger stated that she is the adjacent neighbor and she said she is supportive of the

family moving to the area but not the day care they're hoping to operate.

Gary Dirk inquired if the operators can hire employees to work at the day care. Chair Yeager noted that there are requirements to hire additional staff depending on the number of children and their ages. Mr. Dirk also inquired about the validity of the covenants recorded with the subdivision. City Attorney Whitman said that the City of Bismarck cannot enforce the covenants of the subdivision because the City is not a land owner within the subdivision. He continued by saying that covenants are an agreement between land owners to use the land in a certain way. Mr. Whitman said the interpretation of the covenants and the applicability will depend on how specific the language is relating to the day care use. Mr. Whitman ended by stating the purpose of the Planning & Zoning Commission is to make decisions and recommendations based on the regulations in the zoning ordinance, not private matters involving covenants.

Commissioner Lee stated that he believes there is a need for additional day care providers in the community and the likelihood of people traveling to a rural area for day care isn't very practical.

Chairman Yeager closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Lee made a motion to approve the special use permit to operate a group day-care facility as an accessory use in a single family residence located on Lot 8, Block 2, Welle Subdivision (8887 Welle Loop). Commissioner Armstrong seconded the motion with Commissioners Armstrong, Bullinger, Juhala, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion and Commissioners Laning and Warford voting against. The motion passed 8 to 2.

**FINAL CONSIDERATION – ANNEXATION  
LOT B OF THE NE¼ OF SECTION 23, T139N-R80W/HAY CREEK TOWNSHIP**

Chairman Yeager called for final consideration of the annexation of Lot B of the NE¼ of Section 23, T139N-R80W/Hay Creek Township. The property is one unplatted tract containing 10.02 acres and is located in northeast Bismarck, on the west side of Centennial Road between East Century Avenue and 43<sup>rd</sup> Avenue NE.

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 said based on the above findings, staff recommends approval of the annexation of Lot B of the NE¼ of Section 23, T139N-R80W/Hay Creek Township.

**MOTION:** Based on the findings contained in the staff report, Commissioner Schwartz made a motion to approve the annexation of Lot B of the NE¼ of Section 23, T139N-R80W/Hay Creek Township. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION  
LOTS 9-15, BLOCK 7, CENTENNIAL PARK 4<sup>th</sup> ADDITION**

Ms. Lee stated that the land owner, Harley Swenson, has asked to have these lots annexed so he can move forward with development plans. Previously Mr. Swenson had participated in the annexation request with the Trenton Addition subdivision. Ms. Lee continued by saying that because that plat had been delayed, Mr. Swenson has decided to move forward with development of twin homes on the property. Ms. Lee said the staff recommends approval of the annexation of Lots 9-15, Block 7, Centennial Park 4<sup>th</sup> Addition along with the Cumberland Drive right-of-way adjacent to the lots.

Commissioner Bullinger inquired about the width of the Cumberland Drive right-of-way. Ms. Lee replied that 66-feet of right-of-way would be annexed in conjunction with the adjacent lots.

**MOTION:** Based on the recommendation of staff, Commissioner Laning motion to approve the annexation of Lots 9-15, Block 7, Centennial Park 4<sup>th</sup> Addition along with the adjacent Cumberland Drive right-of-way. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**OTHER BUSINESS**

Mr. Tomanek updated the City Planning & Zoning Commission and presented the revised site plan submitted by McDonald's. The revised plan reconfigures the stacking area for the drive through facility. Mr. Tomanek noted that the revised layout would allow for the two lanes of vehicles to stack parallel to the existing fence along the south side of the property and it would closely resemble the current configuration of the property.

**MOTION:** Based on the revised site plan, Commissioner Warford made a motion to accept the modified site plan for Tract 605, Original Plat (605 East Main Avenue). Commissioner Lee seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Juhala, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**ADJOURNMENT**

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:22 p.m. to meet again on October 24, 2012.

Respectfully submitted,

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Kimberley Tomanek  
Recording Secretary

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Wayne Lee Yeager  
Chairman

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