

**CITY PLANNING & ZONING COMMISSION  
MEETING MINUTES  
July 28, 2010**

The Bismarck Planning & Zoning Commission met on July 28, 2010, 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, Jo Conmy, Jack Hegedus, Curt Juhala, Vernon Laning, Lisa Waldoch, John Warford and Wayne Yeager.

Commissioner Ken Selzler was absent.

Township Representatives Neil Modin (Hay Creek) and Paul Zent (Apple Creek) were present

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

Others present were Dave Patience – 909 Basin Avenue, Lyle Kirmis – 316 North 5<sup>th</sup> Street, Bill Clairmont – 1720 Burnt Boat Drive Suite 203, Betty & Ervin Eggers and Michelle & Joe DuFrame – 335 Ridgeland Loop, Launi Bullinger – 1822 Harmon Avenue, Wade Felton – 503 Greenfield Lane, Dennis Kaiser – 750 Aster Lane, Tim Fliginger – 301 Ridgeland Loop, and Norm Steinle – 9027 Hogue Road.

**MINUTES**

Chairman Yeager called for consideration of the minutes of the June 23, 2010 meeting.

**MOTION:** Commissioner Armstrong made a motion to approve the minutes of the June 23, 2010 meeting as received. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Laning, Waldoch, Warford and Yeager voting in favor of the motion.

**CONSIDERATION – ZONING CHANGE – LOTS 4-5, LESS THE WEST 276.41 FEET, BLOCK 1, SONNET HEIGHTS SUBDIVISION 1<sup>ST</sup> REPLAT**

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

A zoning change from RM30-Residential zoning district to R10-Residential zoning district for Lots 4-5, less the West 276.41 feet, Block 1, Sonnet Heights Subdivision 1<sup>st</sup> Replat. The property is part of 2 lots in 1 block on 1.43 acres located along the north side of Canada Avenue at the intersection with Lasalle Drive.

**MOTION:** Commissioner Warford made a motion to approve the consent agenda. Commissioner Juhala seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Laning, Waldoch, Warford and Yeager voting in favor of the motion.

**CONTINUATION OF THE FINAL CONSIDERATION – ANNEXATION AND PUBLIC HEARING – ZONING CHANGE FROM R5-RESIDENTIAL TO R10-RESIDENTIAL AND FINAL PLAT – COUNTRY WEST XXX**

Chairman Yeager called for the continuation of the final consideration for the annexation and the public hearing for the zoning change from the R5-Residential zoning district to the R10-Residential zoning district and the final plat for Country West XXX. The property is located along the north side of Valley Drive at the intersection with Tyler Parkway (part of the SE ¼ of Section 19, 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 accepted planning practice.

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

1. The proposed zoning change would be consistent with the Land Use Plan, which identifies this area as open space adjacent to residential (Bismarck-Mandan Regional Land Use Plan). Given the topography of the property, it is reasonable to allow an administrative amendment to the land use plan to move the dividing line between the two land uses to the north side of the proposed lots.
2. The proposed zoning change is compatible with adjacent land uses. There is single-family residential to the south and west, park property to the east and undeveloped land to the north.
3. The subdivision proposed for this property would be completely annexed prior to development and utilities are already in place in Valley Drive; therefore, the zoning change will 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 all adopted plans, policies and accepted planning practice.

Ms. Lee then listed the following findings for the plat:

1. All technical requirements for approval of a final plat have been met.
2. The proposed subdivision is consistent with the Fringe Area Road Master Plan, which identifies both Valley Drive and Tyler Parkway as collectors.
3. A waiver from the storm water management plan submittal requirements has been approved by the City Engineer.
4. The proposed subdivision is compatible with adjacent land uses. There is single-family residential to the south and west, park property to the east and undeveloped land to the north.
5. The proposed subdivision would be completely annexed prior to development and utilities are already in place in Valley Drive; 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, provided additional property is included in the plat in accordance with the undevelopable land provisions of the subdivision regulations.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee then listed the additional information for the plat:

1. The public hearing on this request was continued at the June 23, 2010 meeting because a concern was raised regarding the extension of Tyler Parkway to the northern edge of the Clairmont property.
2. Section 14-09-04(4)(f) of the City's Regulations Governing the Subdivision of Land indicates that all areas proposed for development shall be platted to the edge of the property with all undevelopable land included within the plat (subject to discussion and agreement by the landowner and the City). If this is the last phase of development for this tract, the remainder of the parcel would have to be platted in accordance with the City's undevelopable land provisions.

3. Based on the topography, it appears that the remainder of the area east of the proposed alignment of Tyler Parkway is not developable and should be included in this plat, along with the right-of-way for Tyler Parkway. The land west of Tyler Parkway appears to have a small area that is still developable; therefore, platting of this area would not be required.

Ms. Lee said based on the above findings, staff recommends approval of the annexation, zoning change from the R5-Residential zoning district to the R10-Residential zoning district and final plat for Country West XXX, provided the final plat is revised to include the Tyler Parkway right-of-way and the undevelopable land east of the proposed alignment of Tyler Parkway prior to the request being forwarded to the Board of City Commissioners for final action.

Ms. Lee added that if the applicant is unwilling to include this additional undevelopable property in the final plat, staff recommends denial of the final plat, as well as the annexation and zoning change because these actions are tied to the final plat.

Chairman Yeager called for the final consideration for the annexation and the public hearing for the zoning change from the R5-Residential zoning district to the R10-Residential zoning district and final plat for Country West XXX.

Attorney Lyle Kirmis said he represents the C-Family Trust/Clairmont Development Co. and thinks that staff is incorrectly interpreting the regulation. Mr. Kirmis went on to say that there is a strained effort to pick up an easement for Tyler Parkway, but that strained effort is to apply a procedure that says if it is the end of the property that can be developed, then the developer has to plat the undeveloped land. The recommendation itself says that if this is the last phase of development for this tract, then the remainder of the parcel would have to be platted in accordance with the City's undevelopable land provision. Mr. Kirmis continued by saying that the problem with the staff recommendation is the proposed development is not the last phase of development for this project area. Included in the master plan are additional lots to the north of the proposed plat, which are graded and have sewer lines in place and will eventually be developed. Mr. Kirmis stated that at the time those lots to the north are developed, then Tyler Parkway should be completed. Adding the suggested requirement would be an incorrect application of the actual regulation for undevelopable land.

Commissioner Laning asked who owns the property to the north of the proposed plat. Mr. Kirmis responded by saying they are owned by C-Family Trust/Clairmont Development Co.

Commissioner Warford asked why the land should not be reserved for Tyler Parkway at this point in time from a common sense standpoint. Mr. Kirmis answered by saying the land is going to be open no matter what under the master plan and there is no way the additional lots can be developed in the future without the extension of Tyler Parkway. Mr. Kirmis added that the City would be requiring a private land owner to grant an easement when it does not meet the regulations.

Commissioner Bullinger asked how the access would be proposed for the two lots to the north. Mr. Kirmis responded by saying Tyler Parkway would have to be extended, but those lots are not platted yet.

Commissioner Bullinger asked if the grade of those lots is not such that those driveways might not be the best move for the City in terms of granting access to that property on Tyler Parkway. Dave Patience answered by saying he looked at the grades of that land and proposed a shared private drive to the south of the lots behind Country West XXX. Commissioner Bullinger said he was told that for the five or six lots shown to the west of Tyler Parkway, the access is immediately behind the developed lots. Mr. Patience said that is correct. Commissioner Bullinger added that he thought the same prohibition would be necessary on the west side so that the access to those two lots, if they are developable, would have to be almost immediately behind the proposed plat. Mr. Patience stated that it is a definite possibility and the lots in the proposed Country West XXX are two hundred-forty feet deep, so there is adequate space to allow for a driveway behind the lots would not interfere with their privacy or use.

Commissioner Laning asked if the Bismarck Planning & Zoning Commission approves this plat without the easement, is there a risk in the future that the land needed to extend Tyler Parkway would not be available. Mr. Kirmis said no, because that particular parcel cannot be developed and Tyler Parkway is included in the master plan, so there is no risk.

Commissioner Laning asked why C-Family Trust/Clairmont Development Co. has an objection if the land is set aside for Tyler Parkway in the master plan anyway. Mr. Kirmis responded by saying it is taking private property that is not yet needed or ready to be used and it does not meet any of the requirements of the regulations because they are not at the end of the developable property. It would be like going out to everyone in the City and asking for easements according to the master plan.

Wade Felton said his family owns land to the north of this proposed plat of Country West XXX. Mr. Felton stated that in 2007 and 2008 the City designed the embankment to go across the coulee north of this plat and at that point in time he designed the road bed across the embankment to meet his property to the north. He went on to say that because of the grade of the intersection of the access of Tyler Parkway and Valley Drive, it has to be tore out to meet the actual grades for the proposed road going across the embankment. Mr. Felton suggested that if that intersection has to be torn out, then any driveways located to the north of the proposed plat would be way beyond any acceptable grade to enter those two lots on the east side. He said that it makes sense that those two lots should be platted now, along with the right-of-way for Tyler Parkway.

Chairman Yeager closed the public hearing.

Ms. Lee said that this is the first time that the undevelopable land regulation is being applied to a plat where the property line is in the middle of an undevelopable area, as opposed to the edge of an undevelopable area. In this case, that undevelopable area is the only way to provide access to other properties and if the road is not extended at this time, there is no guarantee that the future phases of development for Clairmont's land will ever come in and the road would ever be

dedicated. Ms. Lee concluded by saying there is also an issue with secondary access for the property owner to the north.

Commissioner Hegedus stated that that extension of Tyler Parkway is included in the City's master plan, since it is master planned, he does not believe it needs to be dedicated at this time.

**MOTION:** Based on the findings contained in the staff reports, Commissioner Hegedus made a motion to approve the annexation, zoning change from R5-Residential zoning district to R10-Residential zoning district and the final plat for Country West XXX, excluding the Tyler Parkway right-of-way requirement. Commissioner Lanning seconded the motion with Commissioners Conmy, Hegedus, Juhala, Laning and Waldoch voting in favor and Commissioners Armstrong, Bullinger, Warford and Yeager voting against. The motion passed 5 to 4.

### **FINAL CONSIDERATION –ANNEXATION – PARTS OF SATTLER'S SUNRISE SIXTH ADDITION AND SATTLER'S SUNRISE EIGHTH ADDITION**

Chairman Yeager called for the final consideration of the annexation for parts of Sattler's Sunrise Sixth Addition and Sattler's Sunrise Eight Addition. The property is located east of Centennial Avenue on the north side of Century, adjacent to existing Sattler developments (Section 24, T139N-R80W/Hay Creek Township).

Mr. Greenquist provided an overview of the request and listed the following findings for the annexation:

1. Zoning changes and subdivision plats have been approved but neither plat has been recorded yet. The applicant has requested revisions to both plats to correspond with the annexation.
2. 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.
3. The proposed annexation would not adversely affect property in the vicinity.
4. The proposed annexation is consistent with the general intent and purpose of Title 14 of the City Code of Ordinances.
5. The proposed annexation is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Greenquist said based on the above findings, staff recommends approval of the annexation for Lot 1, Block 1; Lots 1-2, Block 2; Lots 1-8, Block 18, Sattler's Sunrise Sixth Addition and Lots 1-11, Block 1, Sattler's Sunrise Eight Addition (to be known as – after approved plat revisions – Lots 1-9, Block 1; Lots 1-18, Block 1 and Lots 1-12, Block 3, Sattler's Sunrise Eighth Addition).

Chairman Yeager asked if there were any public comments on the proposed annexation for parts of Sattler's Sunrise Sixth Addition and Sattler's Sunrise Eight Addition.

No public comment was received.

**MOTION:** Based on the findings contained in the staff report, Commissioner Warford made a motion to approve the annexation for Lot 1, Block 1; Lots 1-2, Block 2; Lots 1-8, Block 18, Sattler's Sunrise Sixth Addition and Lots 1-11, Block 1, Sattler's Sunrise Eight Addition (to be known as – after approved plat revisions – Lots 1-9, Block 1; Lots 1-18, Block 1 and Lots 1-12, Block 3, Sattler's Sunrise Eighth Addition). Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Laning, Waldoch, Warford and Yeager voting in favor of the motion.

### **PUBLIC HEARING – FINAL PLAT – SCHMITT SUBDIVISION**

Chairman Yeager called for the public hearing for the final plat for Schmitt Subdivision. The property is located south of Lincoln in Swansonville, 1/8 mile east of 52<sup>nd</sup> Street SE on the south side of 48<sup>th</sup> Avenue SE (NW¼ of Section 30, T138N-R79W/Apple Creek Township)

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

1. This parcel is currently zoned RR-Residential which matches the proposed use. A zoning change is not needed.
2. The proposed subdivision complies with the Fringe Area Road Master Plan, adequate right-of-way will be dedicated for 48<sup>th</sup> Avenue SE, a future arterial roadway.
3. Because this property is within 2-miles of the corporate boundary, a plat note indicates the terms for possible future city water supplying this property.
4. Access to the property is provided by a shared, unimproved private driveway which is maintained by the users.
5. The applicant is requesting a waiver of the minimum lot width of 150-feet. This lot is 148.5 feet wide.
6. The proposed subdivision is compatible with adjacent land uses and would not adversely affect property in the vicinity. Surrounding land use includes similar large-lot, mostly unplatted, RR-Residential properties.
7. The Storm Water Management Plan has been approved by the City Engineer.

8. No response was received from Apple Creek Township.
9. The proposed plat is not completely consistent with all adopted plans, policies and accepted planning practices because it is not served by a publicly maintained, all-weather access road built to minimum standard specifications. Emergency services could encounter more than normal difficulties when providing assistance in extreme weather situations.

Mr. Greenquist said that based on the above findings, staff recommends approval of the final plat of Schmitt Subdivision, with approval of the waiver which would allow a 148.5 feet frontage on 48<sup>th</sup> Avenue SE and with the understanding that staff will work with the engineer regarding the language for the easement.

Chairman Yeager opened the public hearing for the final plat of Schmitt Subdivision.

No public comment was received.

Chairman Yeager closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the final plat of Schmitt Subdivision with approval of the waiver which would allow a 148.5 feet frontage on 48<sup>th</sup> Avenue SE and with the understanding that staff will work with the engineer regarding the language for the easement. Commissioner Zent seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Laning, Waldoch, Warford, Zent and Yeager voting in favor of the motion.

### **PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT – NORTHRIDGE ESTATES COMMERCIAL PARK**

Chairman Yeager called for the public hearing for the minor subdivision final plat for Northridge Estates Commercial Park. The property is located along the north side of ND Highway 1804 east of the intersection with North Washington Street, and is a replat of Lot 1, Block 1, Northridge Estates Second Subdivision.

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 minor subdivision does not require the dedication of public rights-of-way or the construction of new streets; does not create any public improvements; does not land-lock or otherwise impair convenient ingress and egress to or from the rear or side of the subject tract or any adjacent property; does not violate any local, state or federally

adopted law, ordinance, regulation, plan or policy; and is part of a previously platted subdivision.

4. The proposed minor subdivision may not be completely compatible with adjacent land uses. Adjacent land uses include rural residential to the north and east, an elk ranch to the south, and agricultural land to the west. Although a 20-foot landscaped buffer yard has been included between the commercial uses and the adjacent residential uses, having four commercial uses on this property versus one commercial use will have a significant impact on the adjacent rural residential parcels.
5. The proposed minor subdivision may place an undue burden on public services. In particular, the creation of four commercial parcels will require the construction of a right turn lane along ND Highway 1804 at the intersection with North Washington Street and along North Washington Street at the intersection with the proposed access point.
6. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
7. The proposed minor subdivision is not completely consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said that although staff has concerns with the intensity of development at this intersection and believes that commercial development in this location at this time is premature, the plat does meet all of the technical requirements for approval of a minor subdivision final plat.

Based on the above findings, staff recommends approval of minor subdivision final plat of Northridge Estates Commercial Park (a replat of Lot 1, Block 1, Northridge Estates 2<sup>nd</sup> Subdivision), with the following provisions:

1. A westbound right turn lane along ND Highway 1804 at the intersection with North Washington Street must be constructed by the applicant in accordance with NDDOT requirements prior to the plat being recorded;
2. A northbound right turn lane along North Washington Street at the intersection with the proposed private access must be constructed by the applicant in accordance with Burleigh County and Hay Creek Township requirements prior to the plat being recorded;
3. The private access road must be paved as needed to provide dust-free access to any site being developed. The paving of the private access road may be phased if the properties develop from west to east, but must be constructed in its entirety prior to the development of Lots 3 or 4;
4. The entire buffer yard must be planted by June 15, 2011 or in conjunction with the development of the first site, whichever comes first. The landscape plan for the buffer

yard must meet the requirements of Section 14-03-11 of the City Code of Ordinances and must be approved by City staff prior to installation; and

5. The County Engineer, on behalf of Hay Creek Township, review the line of sight for southbound traffic on North Washington Street at the intersection with the proposed private access road and determine if there is a proper line of sight prior to the request being forwarded to the Board of City Commissioners for final action.

Commissioner Armstrong inquired what can go in this area under limited commercial. Ms. Lee responded by saying limited retail and service use, such as strip malls and a convenience store or filling station, church or daycare would be allowed as a special use. Service Group A, Retail Group A, a restaurant without a drive-thru, a clinic or multi-family residential would also be allowed. She added that the intersection of Washington and Century Avenue is zoned CA-Commercial and those uses are typical.

Commissioner Laning asked if there is a direct access to the lots from Highway 1804. Ms. Lee answered by saying no, there would be no access points from Highway 1804 and there is a non-access easement along the plat adjacent to Highway 1804.

Commissioner Juhala asked what kind of buffer zone is required for the proposed plat. Ms. Lee stated there is a requirement of a twenty foot buffer yard along north and east side of the plat that would have to be planted right away, in accordance to the buffer yard ordinance. Mr. Tomanek stated buffer yards are generally tied to land use and this would be a commercial use located next to single family residential so options would be to use trees and shrubs or a six foot high opaque fence that is wood or vinyl.

Chairman Yeager opened the public hearing for the minor subdivision final plat for Northridge Estates Commercial Park.

Mr. Patience stated he was involved with the proposed plat the last time it was proposed and when it came time to put up the turn lanes the developers decided not to proceed because it was very costly. They have been sitting on the property since then but now have an opportunity to sell the land for a church use. The requirements quoted for the buffer yard are from the city standards and this property is located outside city limits. Mr. Patience said he talked to Swenson & Hagen's landscape architect, who said the required trees and shrubs would provide a salad bar for all the critters out there and the only thing that is going to grow out there is the deer. Mr. Patience added that the developers are willing to install a shelterbelt landscape buffer like a big string of evergreens. He also noted that the ordinance states that the occupant is required to install the buffer zone, not the developers and thinks there should be some common ground and compromise for this rural property. Mr. Patience said that originally the project was ended because the turn lanes were so expensive, but the developers realize they have to have the turn lanes built. Now there is a quarter mile long buffer zone that is required and there needs to be some kind of compromise and the developers are willing to work on it.

Commissioner Waldoch asked if the landscape architect could work on a proposal to bring back to the Bismarck Planning & Zoning Commission as a recommendation for the landscaping. Mr.

Patience responded by saying of course that can happen, but it would be more beneficial for the occupants to install and take care of the trees and shrubs because they will be there.

Ms. Lee said that staff recommends that a landscape plan be submitted and reviewed by staff, with input from Hay Creek Township, prior to this proposed plat being presented to the Board of City Commissioners. Mr. Patience said that the developers agree and that is acceptable.

Dennis Kaiser said that he represents the church entity that is looking at purchasing Lot 1 and wanted to clarify that that it would not be a church being built there, rather the headquarters for the churches that are located in North Dakota and South Dakota. What they are looking at doing is building a 5,000 square foot office building on the lot, so the traffic will be very minimal and the building would be very nice.

Chairman Yeager closed the public hearing.

Neil Modin said Hay Creek Township realized today that the traffic is low, but there is a major problem with the line of sight at that intersection and will stand firm on the recommendation of a turn lane. Mr. Modin said that they also agree that there needs to be a buffer zone installed immediately, however, they are willing to look at other options instead of what is required in the city ordinance.

**MOTION:** Based on the findings contained in the staff reports, Commissioner Juhala made a motion to approve the minor subdivision final plat for Northridge Estates Commercial Estates, with the following provisions: 1) A westbound right turn lane along ND Highway 1804 at the intersection with North Washington Street must be constructed by the applicant in accordance with NDDOT requirements prior to the plat being recorded; 2) A northbound right turn lane along North Washington Street at the intersection with the proposed private access must be constructed by the applicant in accordance with Burleigh County and Hay Creek Township requirements prior to the plat being recorded; 3) The private access road must be paved as needed to provide dust-free access to any site being developed. The paving of the private access road may be phased if the properties develop from west to east, but must be constructed in its entirety prior to the development of Lots 3 or 4; 4) The entire buffer yard must be planted by June 15, 2011 or in conjunction with the development of the first site, whichever comes first. The landscape plan for the buffer yard must meet the requirements of Section 14-03-11 of the City Code of Ordinances and must be submitted to and approved by City staff, in consultation with Hay Creek Township, prior to the request being forwarded to the Board of City Commissioners for final action; and 5) The County Engineer, on behalf of Hay Creek Township, review the line of sight for southbound traffic on North Washington Street at the intersection with the proposed private access road and determine if there is a proper line of sight prior to the request being forwarded to the Board of City Commissioners for final action. Commissioner Hegedus seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy,

Hegedus, Juhala, Laning, Modin, Waldoch, Warford and Yeager voting in favor of the motion.

**OTHER BUSINESS**

There was no other business.

**ADJOURNMENT**

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:12 p.m. to meet again on August 25, 2010.

Respectfully submitted,

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Kimberley Gaffrey  
Recording Secretary

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Wayne Yeager  
Chairman