

CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
August 26, 2009

The Bismarck Planning & Zoning Commission met on August 26, 2009, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Building, 221 North 5th Street. Chairman Yeager presided.

Commissioners present were Mark Armstrong, Mel Bullinger, Jo Conmy, Jack Hegedus, Curt Juhala, Elden Spier, Lisa Waldoch, Jan Wangler, John Warford and Wayne Yeager.

Commissioner Doug Lee was absent.

Apple Creek Township Representative Paul Zent was present.

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

Others present were Bill Augustadt – PO Box 322, Bismarck, Andrew Aakre – 128 Soo Line Drive, Bismarck, Damon Jorgensen – 128 Soo Line Drive, Bismarck, Rick & Kaye Hessinger – 10001 Apple Creek Road, Bismarck, Marcus Hall – 2000 North 52nd Street, Bismarck, Gailen Narum – 2422 LaCorte Loop, Bismarck, Cyndy Meideinger – 6305 Omar Street, Bismarck, Marv Abraham – 6050 93rd Street SE, Bismarck, Dave Thomason – 8802 Apple Creek Road, Bismarck, Beverly Solberg – 2523 Avenue B, Bismarck, Arnold, Beth & Kevin Schieve – 11101 5th Avenue NE, Menoken, ND, Janel Schwab – 9725 Creekside Drive, Bismarck, Patricia & Kerry Olson – 1201 100 Street SE, Bismarck, Ingrid Bailey – 4051 Sandy River Drive, Bismarck, Kathleen Jones – 4308 Wildwood Street, Bismarck, Delores Shimek – 4438 Crestwood Drive, Bismarck, Dave Patience – 909 Basin Avenue, Bismarck, Bob Robinson – 2220 West Harbor Drive, Bismarck, Emil & Geralyn Kirschenmann – 5401 Fernwood Drive, Bismarck, D.T. Pearce – 5001 Fernwood Drive, Bismarck, and Richard Solberg – 9252 Apple Creek Road, Bismarck.

MINUTES

Chairman Yeager called for consideration of the minutes of the July 22, 2009 meeting.

MOTION: Commissioner Juhala made a motion to approve the minutes of the July 22, 2009 meeting as received. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Spier, Waldoch, Wangler, Warford and Yeager voting in favor of the motion.

CONSIDERATIONS – MAJOR PUD AMENDMENT – MISSOURI VALLEY COMPLEX

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

- A Major PUD Amendment for Lot 1 and Lots 3-18, Block 1, Missouri Valley Complex. The property is located on the east edge of Bismarck, south of County Highway 10/Main Avenue and east of Bismarck Expressway (staff recommendation – schedule a hearing).

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

PUBLIC HEARING – ZONING CHANGE FROM A-AGRICULTURE TO RR-RESIDENTIAL AND FINAL PLAT – GOLFOVIEW ESTATES

Chairman Yeager called for the public hearing for the zoning change from A-Agriculture to RR-Residential and the final plat of Golfview Estates, a 45.8 acre development with 22 lots in four blocks. The property is located north of Apple Creek Road between 80th Street SE and 106th Street SE (Part of the SE¼ of Section 3, T138N-R79W/Apple Creek Township).

Ms. Lee provided an overview of the requests and 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 rural residential (Bismarck-Mandan Regional Land Use Plan).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include rural residential to the southwest and agricultural uses to the north, east, west and southeast.
3. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established. In particular, there has been additional rural residential development in this area within the past decade (East Valley Estates platted in 2002).
4. The subdivision proposed for this property would be served by South Central Regional Water District and would have access to Apple Creek Road; therefore, the proposed zoning change will 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 and subdivision regulations.
7. 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 for the proposed subdivision has been approved by the City Engineer.

3. The proposed subdivision is outside of the area covered by the Fringe Area Road Master Plan. Apple Creek Road is a section line road and is classified as an arterial. Based on the overall concept plan, it appears that Palmer Drive will function as a north-south collector in this section.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include rural residential to the southwest and agricultural uses to the north, east, west and southeast.
5. The proposed subdivision would be served by South Central Regional Water District and would have access to Apple Creek Road; therefore, the proposed subdivision would not place an undue burden on public services or 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 then provided the following additional information:

1. The Apple Creek Township Board of Supervisors has recommended denial of the proposed subdivision.
2. The proposed subdivision is within the 4-mile ETA and is subject to new joint jurisdiction legislation (HB 1554). As the proposed subdivision was presented to the City for approval prior to May 1, 2009, the City has jurisdiction. However, the governing body that would otherwise have jurisdiction (in this case, Apple Creek Township) may object to the final decision of the City and request negotiation within 30 days of the final decision of the City Commission. If the City of Bismarck and Apple Creek Township do not come to an agreement within 30 days, the dispute is submitted to a committee for mediation. If the mediation committee is unable to resolve the dispute to the satisfaction of the City and Apple Creek Township, the dispute must be resolved by the Burleigh County Board of Commissioners.
3. Although the proximity of the two access points on Apple Creek Road are not ideal, this configuration does meet the City's secondary access policy. The City's secondary access policy generally limits the total number of rural residential lots from the last intersecting primary roadway access to 16 lots and the length of roadways from the last intersecting primary roadway access to 1320 feet. The area master plan for the entire Golfview Estates development shows a roadway connection to 5th Avenue SE, which then connects over to 119th Street SE. This roadway connection would be required in a future phase of the project the thresholds included in the secondary access policy are exceeded.
4. Preliminary vehicle count numbers taken in June 2009 for this portion of Apple Creek Road are 450 vehicles per day between 93rd Street SE and Apple Way (west of the new development) and 1267 vehicles per day between 93rd Street SE and 80th Street SE. Using

a trip generation standard of 9 vehicle trips per day for single family residential development, approximately 189 additional trips would be added with the proposed development (21 additional units).

Ms. Lee said based on the above findings, staff recommends approval of the zoning change from A-Agriculture to RR-Residential and the final plat of Golfview Estates.

Chairman Yeager opened the public hearing for the Golfview Estates.

Rick Hessinger distributed a list of his concerns and questions, and the same is attached as Exhibit A. Mr. Hessinger then cited his list of concerns and questions, which dealt with the overall size of the development as planned, plans for sewage/water issues and traffic ramifications. He concluded by saying he was opposed to the request.

Dave Thomason said that Golfview Estates is a potential start to another town of Lincoln, not 22 houses on 35 acres, because there will be more and more houses added. Mr. Thomason went on to say he would like to see five acre lots to continue with the country setting. Mr. Thomason stated that he is also concerned with public safety because Apple Creek Road has not had any improvements other than a patch here and there and fixing what the flood has caused since he has lived there in 1979. Mr. Thomason continued by saying Apple Creek Road is narrow, there is more and more traffic on the road, he does not agree with the traffic counts, and with the addition of 22 homes, there will be even more traffic. Mr. Thomason concluded by saying he is opposed to Golfview Estates.

Rick Solberg said he would also like to see the acre size stay at five acres rather than the smaller lots size. Mr. Solberg agrees with Mr. Thomason that this will turn into another town of Lincoln and other than Mr. Mariner, no one else will benefit from the development. Mr. Solberg said he is also concerned about the increase in traffic on Apple Creek Road, the septic systems for the proposed homes and the potential of a hundred plus homes in this area.

Cyndy Meidinger stated that her major concern is Apple Creek Road because it is too narrow, especially when there is farm equipment or bicyclists on the road, and because there are no shoulders and with increased traffic, it is not safe. Ms. Meidinger said that she would like to see the traffic count taken again because when it was done, Apple Creek Road to the east was flooded. Ms. Meidinger concluded by saying she would also like to see stop signs at 66th Street and 93rd Street.

Kerry Olson said he is unsure when all the water permeability tests were completed for this subdivision, but there was a drought when the development was being planned and he is concerned what all of the septic systems will do with the quality of his well.

Kevin Schieve stated that he is apprehensive with the proposed access point for the subdivision because it is on a hill and when you are coming from town, will not be able to see it. Mr. Schieve said that the traffic counts are flawed because you cannot get an accurate count when the roads are flooded. Mr. Schieve continued by saying he is concerned with the state or federal slough and wants to know if there has been any impact study completed.

Damon Jorgensen said the septic requirements for the proposed subdivision are regulated by the North Dakota State Health Department, as well as the City of Bismarck Building Inspections Division. Mr. Jorgensen went on to say every lot that is designed is required to have a depth to ground water test which specifies the elevation that the seasonably high water level reaches at any

given point in time. Mr. Jorgensen stated that it is clearly outlined in the North Dakota Water Sewer Service handbook that there needs to be 24 inches of separation between the highest point that the ground water level reaches and the bottom of the treatment area. Mr. Jorgensen continued by saying in the seven years he has been designing septic systems in the Bismarck area, these are the guidelines that have been followed. Mr. Jorgensen said that each septic system for each lot will be specific for the type of soil contained on that lot. Mr. Jorgensen commented that nothing will be going into the slough and even though it is true septic systems have failed in the past, those systems were over 10 years old and not subject to the guidelines that are in place today.

Chairman Yeager asked if there is a model for the septic systems and how long they last. Mr. Jorgensen responded by saying the average life of a septic system is approximately 20 to 30 years. He added on the proposed lots there can be approximately four to six systems placed in every lot depending on the soil content. Mr. Jorgensen said these lots will more than likely never be on a city sewer system because of the distance they are located from town, and in order to accommodate that distance, every property between the proposed development and Bismarck would have to be developed to even afford city sewer. Mr. Jorgensen continued by saying the Apple Creek Country Club does have its own private lagoon system in place because they preferred city size lots near the golf course.

Mr. Jorgensen noted that the future master plan for this area had identified some smaller density lots located near the creek, but it was just a preliminary plat. It was determined there were too many issues to move forward at that time, hence the reason this proposed plat was scaled down to 22 lots. Mr. Jorgensen said that any further development will be presented to the City Planning & Zoning Commission for approval. Mr. Jorgensen added that the storm water management plan has been approved and all storm water will be held in a detention pond that will be released at a historic rate.

Commissioner Hegedus asked if the proposed subdivision would be on rural water. Mr. Jorgensen answered by saying yes, the proposed subdivision would be on rural water.

Commissioner Wangler asked what the topography of the road is along the east side of the proposed subdivision that was under water and how much higher than that road the lots are. Commissioner Wangler also inquired whether or not the 24 inch difference will be met for the septic systems. Mr. Jorgensen responded by saying the first lot located by the entrance to the subdivision will be identified and maintained as a storm water management pond and the ground goes uphill going north and to the west also, so on all the other lots the septic systems will be above the required ground water level.

Commissioner Hegedus asked for clarification that the 65,000 square foot lot does not include the roadway. Mr. Jorgensen said the 65,000 square foot does not include the roadway and the 65,000 square feet is the saleable and buildable property.

Commissioner Juhala inquired whether or not the hill located between the two access points will block the view for motorists and be an issue. Mr. Jorgensen responded by saying he recently visited the site and did not see a problem, furthermore, if it would have been an issue it would have been addressed during the plat review meeting.

Township Representative Zent said he disagrees with Mr. Jorgensen because there is a visibility issue and feels the access points should be farther apart or the ground made more level.

Commissioner Warford asked why the lots are proposed at an acre and a half lots when Apple Creek Township requires five acre lots. Mr. Jorgensen responded by saying that during his meeting with the Township Representatives he did address their concern with the septic systems. He added that he drew out an exhibit showing that an acre and a half lot size would accommodate a septic system being moved four times if they needed to be moved. Mr. Jorgensen said while five acre lots are attractive to the country style living, those lot sizes are not cost feasible to construct with the paving of the roads and the utilities because of the current development costs.

Commissioner Wangler said that according to the master plan there would be a total of 221 lots including the 22 proposed lots. Mr. Jorgensen said that just because a master plan is prepared, it does not mean it will necessarily be built that way. He added that every plat must be approved by the City Planning & Zoning Commission.

Commissioner Waldoch asked if there are any future plans for improvement of Apple Creek Road. Mr. Jorgensen said that the traffic counts on Apple Creek Road were approximately 450 and that is not significant enough at this time to improve the road. The road would be improved when the traffic demands warrant it to be improved.

Township Representative Zent said the traffic counts east of 93rd Street were 450 vehicles per day, but it increases closer to Bismarck and at Yegen Road the count is 1815 vehicles per day. Mr. Zent went on to say that the residents that spoke tonight have addressed the concerns of Apple Creek Township, they appreciate that fact that Mr. Jorgensen met with them and have given them something to think about as far as lot size, but will have to discuss the lot size at their annual meeting and take a vote on it before they will make any changes to their requirements. Mr. Zent concluded by saying that traffic and access points are major issues which have not been properly addressed in the past, and Apple Creek Township still recommends denial of Golfview Estates.

Arnold Schieve said that he is opposed to this plat because he does not want to have to deal with more garbage on his land and the road count is wrong because half of the time the ropes that were supposed to be across the road, were bundled up on the side of the road. Mr. Schieve concluded by saying he is concerned about his well and the condition of his water after this subdivision goes in.

Chairman Yeager closed the public hearing for the Golfview Estates.

Commissioner Armstrong asked if the proposed subdivision will be developed under the City's Land Use Plan or does Apple Creek have a Land Use Plan and if so, does it require five acre tracts. Township Representative Zent said that Apple Creek Township has a Land Use Plan, the proposed subdivision would follow those guidelines and it does require five acre tracts. Commissioner Armstrong then asked if all tracts in Apple Creek Township are five acres. Mr. Zent responded by saying not with the last several subdivisions that were developed where Apple Creek Township did not have the authority to approve or deny.

Commissioner Armstrong inquired whether or not the proposed subdivision is subject to the new legislation laws. Ms. Lee answered by saying the proposed subdivision is located within the two to four mile extraterritorial area. Because, the proposed subdivision was presented before the new legislation was approved, there is joint jurisdiction with the City of Bismarck having lead jurisdiction.

Commissioner Armstrong wanted to know what will happen if the City Planning & Zoning Commission approves the proposed plat and it goes before the Board of City Commissioners and Apple Creek Township does not approve. Ms. Lee said Apple Creek Township would have the opportunity to request mediation at that time. Commissioner Armstrong then asked what will happen if it goes to mediation and it does not get resolved. Ms. Lee responded by saying it will then be forwarded to the Board of County Commissioners.

Commissioner Armstrong asked Township Representative Zent if Apple Creek Township would see the City Planning & Zoning Commission approval of this subdivision as a step towards the mediation process. Mr. Zent answered by saying Apple Creek Township would like to see this go to mediation because the Township has issues they would like to negotiate on, but not in a public setting.

Commissioner Hegedus commented that Apple Creek Road is technically a section line road and the Township has the right of way to improve the road in the future if traffic warrants the improvements, so that should not be an issue.

Township Representative Zent added that there are issues with building roads in Apple Creek Township because there are so many wetlands in the area, along with environmental issues that need to be addressed.

Commissioner Bullinger asked Marcus Hall, the County Engineer, if he is comfortable with the site distance issue with the proximity of the access points that was raised. Mr. Hall responded by saying the access points and site distance meet the requirements, but they are not ideal.

Commissioner Wangler asked when the traffic counts were taken for Apple Creek Road. Mr. Hall responded by saying the traffic counts were set up in various locations for ten days. Mr. Hall added that it is true during the traffic counts some of the tubes moved; however, any data from those were disregarded. Mr. Hall went on to say he cannot recall the exact dates the counters were placed on the roads, but was sensitive to the fact of the flooding and did not place any counters out when there was flooding. Mr. Hall concluded by saying he is very comfortable with the traffic count data along Apple Creek Road provided to the City Planning & Zoning Commission.

Commissioner Warford commented that he was in favor of expanding the City Planning & Zoning Commission expanded to allow townships to have a vote and a say on items, adding that he thinks the City Planning & Zoning Commission should listen to the township's opinion because the elected representatives are speaking for the people of the township. Commissioner Warford went on to say that what he heard is that if the City Planning & Zoning Commission goes against Apple Creek Township's recommendation, then it will force negotiations and wants to know what will it take to have the representatives of Apple Creek Township meet with the land owners. Mr. Hokenstad responded by saying that in the past the City Planning & Zoning Commission has tabled or continued an item with the request that the developers meet with the neighboring land owners and report back to the City Planning & Zoning Commission when it is put back on the agenda. Mr. Hokenstad concluded by saying this has been an effective method in the past.

MOTION: Based on the findings contained in the staff report, Commissioner Juhala made a motion to table the zoning change from A-Agriculture to RR-Residential and final plat of Golfview Estates. Commissioner Spier seconded the motion.

After a brief discussion of procedures and the desires of Apple Creek Township, Commissioner's Juhala and Spier withdrew their motions.

MOTION: Based on the findings contained in the staff report, Commissioner Armstrong made a motion to approve the zoning change from A-Agriculture to RR-Residential and final plat of Golfview Estates. Commissioner Hegedus seconded the motion with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Spier, Waldoch and Warford voting in favor of the motion and Commissioners Wangler, Zent and Yeager voting against. The motion passed 8-3.

PUBLIC HEARING – FINAL PLAT – ERICKSON SUBDIVISION

Chairman Yeager called for the public hearing for the final plat of Erickson Subdivision, a 3 acre development with one lot in one block. The property is located south of Lincoln in the area known as Swansonville - - ¼ mile east of 52nd Street SE, south of 48th Avenue SE (NW ¼ 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. All technical requirements for consideration of a final plat have been met.
2. The proposed subdivision is compatible with adjacent land uses. Surrounding land use includes similar large-lot residential, most of them unplatted, but all zoned RR-Residential
3. The proposed subdivision would not adversely affect property in the vicinity.
4. The Storm Water Management Plan was waived because no alterations or new construction is proposed for this property.
5. The Erickson property does not currently have an access easement for the driveway.
6. Two sections of our ordinance require an established access for lots as follows:

14-09-05(4)(d) Design Standards. Lots.

All lots shall abut on a street or other public or private right-of-way.

14-02-03. Definitions. Zoning Lot: A tract of land occupied or to be occupied by a principal building and its accessory buildings, together with such open spaces and yards as are required under the provisions of this article, having not less than the minimum area required by this ordinance for a zoning lot in the district in which such land is situated and having its principal frontage on a dedicated public right-of-way or a permanent, exclusive, non-obstructed access easement to a dedicated public right-of-way, not less than twenty feet wide.

Mr. Greenquist provided the following additional information:

1. This parcel is developed and occupied. There is an existing house and accessory buildings. It is located in an established, large-lot, rural residential neighborhood. Very few of the lots in this area have been platted. New development is not proposed on the subject property.

2. Access to the property is provided by a private driveway shared by three residences. The driveway is maintained by the homeowners. The width of the driveway strip is 16½ feet.
3. If this were an undeveloped area and the purpose of this plat was for new construction, the developer would be expected to provide an all-weather access road, constructed to county specifications, dedicated as public right-of-way to be publicly maintained. Because the existing driveway strip is narrow at 16½ feet, and property adjoining the strip is not owned by this landowner, any widening or major improvements to the driveway access would be difficult.
4. The Board of Township Supervisors of Apple Creek Township recommends that this plat be approved.

Mr. Greenquist said based on the above findings, staff recommends the public hearing on the final plat of Erickson Subdivision be continued until the access issue has been resolved.

Chairman Yeager opened the public hearing for the Erickson Subdivision.

Mr. Patience said that Mr. Erickson was transferred with his job and when he went to sell his house the bank said in order to be in compliance with the ordinances he must go through the platting process. Mr. Patience went on to say that in order to plat a subdivision, you must submit a title insurance policy and that was prepared by North Dakota Guaranty & Title Co. There were not any red flags or comments regarding insufficient or inadequate access. The Erickson's had a closing scheduled for September and the purchasers had another title insurance policy prepared, but this time it was prepared by Bismarck Title Co., who pointed out the issues with access. Mr. Patience continued by saying he spoke with Mr. Greenquist and was told that all land owners must have documented access, so he called attorney Dave Tschider to have the documents prepared for Mr. Weiss, Mr. Saylor and Mr. Erickson, the owners who live along the driveway, to establish a legal claim to their access. Mr. Patience said that Mr. Erickson is scheduled to close in September; Mr. Tschider will have the documents ready for signatures and would like to see the City Planning & Zoning Commission approve the plat, and send it to the Board of City Commissioners once all the documents are signed.

Mr. Hegedus asked if the 16 foot roads will be improved to meet the minimum requirements of 20 feet. Mr. Patience responded by saying the road width cannot be changed because at the time the private drive was built, 16 foot was adequate and standards are always changing.

Township Representative Zent said that Apple Creek Township is aware of the situation, they do consider it a private drive, so they are not required to be the standard road width. Mr. Zent said the Township does not maintain the roads and approves of the Erickson Subdivision.

Mr. Greenquist suggested that on the street sign pole for 55th Street, another sign be added that says "private drive" to eliminate any issues.

Chairman Yeager closed the public hearing for the Erickson Subdivision.

MOTION: Based on the findings contained in the staff report, Commissioner Hegedus made a motion to approve the final plat of Erickson Subdivision subject to the following

conditions: 1) documentation formalizing the access from Erickson Subdivision to 48th Avenue SE is provided, and 2) a private drive sign be added to the 55th Street SE sign pole, prior to the final plat being forwarded to the Board of City Commissioners. Commissioner Wangler seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Spier, Waldoch, Wangler, Warford, Zent and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE FROM A-AGRICULTURE AND RR-RESIDENTIAL TO PUD-PLANNED UNIT DEVELOPMENT – LOTS 2-6, BLOCK 1, PEARCE ESTATES

Chairman Yeager called for the public hearing for the zoning change from A-Agriculture and RR-Residential to PUD-Planned Unit Development of Lots 2-6, Block 1, Pearce Estates, a 39.5 acre development with five lots in one block. The property is located along the east side of Fernwood Drive between Sandy River Road and Burnt Creek Loop (5001 Fernwood Drive).

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

1. Because of the seasonal nature of the commercial recreation uses, the proposed zoning change would be consistent with the Land Use Plan, which identifies the long term use of the land as urban residential (Bismarck-Mandan Regional Land Use Plan).
2. The proposed zoning change would not be completely compatible with all of the adjacent land uses. In particular, the seasonal commercial recreation uses are not completely compatible with the adjacent rural residential and agricultural land uses. Both the noise and traffic generated by the seasonal commercial recreational uses may have an adverse impact on adjacent properties.
3. The proposed PUD would accommodate an existing seasonal commercial recreational use that depends on the agricultural nature of the property; therefore, the natural features of the property will be preserved insomuch as possible.
4. The internal private drive system is adequately designed for the type of traffic generated, given its seasonal nature. The property is served by Fernwood Drive, which is a gravel road from a point just north of Crestwood Drive to a point just south of Burnt Creek Loop.
5. The character and nature of the proposal contains a planned and coordinated mix of land uses.
6. The use of the property is not expected to change; therefore, the proposed zoning change would not place an undue burden on public services.
7. The proposed zoning change is not completely consistent with all adopted plans, policies and accepted planning practice; however, the zoning change will address the current use of the property and establish parameters of operation of the seasonal commercial recreation use.

Ms. Lee provided the following additional information:

1. Section 14-04-18 of the Bismarck Code of Ordinances (Zoning) indicates that the intent of the City's Planned Unit Development district is "to encourage flexibility in development of land in order to promote its most appropriate use; to improve the design, character and quality of new development; to facilitate the adequate and economical provision of streets and utilities; and to preserve the natural and scenic features of open space."
2. This property was historically used for agricultural production and the seasonal sale of garden produce; however, the use of the property has evolved to a more intensive seasonal commercial recreation use over time. Papa's Pumpkin Patch has been open to the public since 1989. This event occurs from mid-September to late-October each year, with approximately 50,000 visitors during the fall season. Papa's Polar Patch was started in 2007-2008 and runs during school vacation times (Holiday vacation break, Martin Luther King Jr. Day weekend, President's Day weekend and Spring break weekend – weather permitting), with approximately 2500 visitors during the winter season. Other than these seasonal events, the property is used for agricultural and residential purposes, with two private residences occupying the property.
3. Commercial recreational uses are only allowed in the CG – Commercial, CR – Commercial and MA – Industrial zoning districts. None of these zoning districts would be appropriate in this location because of the intensity of the other permitted uses within those districts; therefore, the PUD is being proposed to address the existing seasonal commercial recreational uses.
4. The proposed PUD would allow the continued use of the property for seasonal commercial recreation uses in addition to the agricultural and residential uses. Copies of the written statement, site plan and proposed building elevations were attached to the staff report.

Ms. Lee based on the above findings, staff recommends approval of the zoning change from A – Agriculture and P – Public to PUD – Planned Unit Development for Lots 2-6, Block 1, Pearce Estates, as outlined in the draft PUD ordinance.

Commissioner Juhala said he understands that all the pumpkins are not locally grown and they have imported pumpkins. Ms. Lee responded by saying she has heard this too, however, that was not addressed in the proposed ordinance because it was addressing the overall use of the property. The use is considered a seasonal, commercial recreational uses because it involves more than just the sale of produce grown on the property. Ms. Lee went on to say that staff is aware that pumpkins and hay bales have been brought in to the location for several years.

Commissioner Hegedus asked if the Comprehensive Plan indicates that this property should be used as residential. Ms. Lee answered by saying that Regional Land Use Plan that was prepared for the Metropolitan Planning Organization and adopted by the Board of City Commissioners identifies this area as urban residential in the long term, at full build out.

Commissioner Wangler noted that under Section 4b of the ordinance that there shall be no production of noise louder than the noise of traffic at that point, but then in Section 4c a public address system is allowed, so it seems contradictory. Ms. Lee said Section 4b addresses the general ambient noise of

the facility and Section 4c addresses the public address system so it minimizes the impact on the adjacent property owners.

Commissioner Hegedus commented that with the mentioned 50,000 plus visitors during pumpkin season, which is a potential of 10,000 vehicles and buses, it creates a lot of dust on the narrow gravel roads leading up to and entering the location which affects the whole neighborhood. Commissioner Hegedus asked if the new uses would allow for more public events, camping and camping trailers. Ms. Lee responded by saying, yes, that under Section 4b some of those things would be allowed. Ms. Lee went on to say Section 4b was added since the version of the draft ordinance, distributed at the last meeting. It was added because the Pearce family have received several requests to hold various fundraisers, company picnics and events and asked that it be included in the ordinance.

Chairman Yeager said that this area of Bismarck has become a very busy with the Papa's Pumpkin Patch, the marina and the public boat landing. Chairman Yeager said that based on his personal experience while in this area, you can hear the Heskitt Station all day long and questions how a noise ordinance can be enforced when it will not be enforced across the river.

Ms. Lee noted that the issue with the road was addressed with the County Engineer and the Hay Creek Township Supervisors and although dust is an issue, it is a seasonal issue and the traffic counts do not warrant the paving of the roads at this point in time. Ms. Lee commented that if the Pearce family wanted to start watering the gravel road to keep down the dust, the Township would not have an issue with them doing so, but is not in the position of doing it themselves.

Chairman Yeager opened the public hearing for zoning change for the Lots 2-6, Block 1, Pearce Estates.

Bill Augustadt said that he is in front of the City Planning & Zoning Commission on behalf of Allan Hanson and Jack & Gail Skaley, who are adjacent property owners, adding the Commissioners should have all received a copy of the letter he is going to read. The letter is attached as Exhibit B. Mr. Augustadt went on to say that when the Pumpkin Patch was first started, the pumpkins were grown, sold and given away on the property which was essentially a truck farm and an allowed use in the A-Agriculture district. He added that he didn't think anyone other than the Pearce's know exactly when pumpkin production ceased and they began trucking in pumpkins, but it has been suggested it was in the neighborhood of twenty years ago or more. It was at this point it became a zoning violation and has been expanding ever since. It was approximately five years ago that the P.A. system was installed, resulting in noise and loud music being telegraphed at least half a mile away. Then the Polar Patch was started two years ago and last summer campers began showing up. To his knowledge, at no time have the Pearce's inquired of staff as to the legalities of the ever-expanding enterprise, nor have they discussed it with their neighbors. On the Papa's Pumpkin Patch website opening page acknowledges that this is normally a quiet neighborhood with the following statement. "Chose the natural beauty of a quiet weekday where we are open from 12:00 pm to 7:00 pm daily or enjoy the festive atmosphere of music, concessions, monster wagon rides, hay rides, and more on the weekends". The Pearce's have acknowledged that up to 50,000 people attend Pumpkin Patch activities in a six week period, a number that will certainly increase, as has been happening over the years, and especially if these activities are permitted to continue expand as proposed. The road system serving this area is in no way designed to accommodate this kind of traffic. Sandy River Drive is extremely narrow, having a twenty foot paved section, with very steep tree lined ditches on each side, which makes meeting oncoming traffic extremely challenging especially for those not familiar with the area. Fernwood

Drive is, for the most part, winding gravel except for a couple of hundred of yards of paved section on the north and south ends, also having a narrow section with abrupt tree lined ditches. When the Pumpkin Patch is active, traffic generates so much dust that it just hangs in the air, making being outside untenable. If it rains the road is transformed into a virtually unusable quagmire. He went on to say that just to give the City Planning & Zoning Commission an idea what normal traffic is like on Fernwood Drive, last Thursday afternoon he was at the Skaley's property for three hours picking chokecherries and in that three hour period, not one vehicle drove by. That is normal traffic on Fernwood. On the north end of Fernwood Drive it intersects with Burnt Creek Loop, another narrow section road which already carries much of the traffic from Misty Waters, Burnt Creek Estates, Sleepy Hollow, Olive Tree, and Ponderosa. As to the charitable nature of the enterprise, whether the operation is for profit, non-profit, charitable, or whatever is irrelevant, as the activities constitute a violation of the underlying zoning districts. Of all the people who benefit from visiting the Pumpkin Patch, few would want to live next to it. He then addressed the staff recommendation. In the staff report under findings, he stated that the staff acknowledges in findings #2, that the proposed zoning is not compatible with adjacent land uses. In findings #3, staff suggests legitimizing the existing zoning violations to the detriment of the adjacent property owners through the use of a planned unit development. In findings #7, staff again acknowledges that this action is not consistent with accepted planning practices, yet once more suggests using a zoning change to legitimize and increase ongoing zoning inconsistencies. The staff recommendation for approval is inconsistent with the findings. He concluded by stated, on behalf of Jack & Gail Skaley and Allan Hanson, he would request that the Planning & Zoning Commission deny the zoning change with a caveat that the Pearce's be allowed to run only the Pumpkin Patch this fall, as I am sure they have already made a financial commitment. After this year, activities be scaled back to those activities allowed under the current zoning.

Kathleen Jones said her property is located a quarter of a mile from Papa's Pumpkin Patch and as far as the noise level, she hears the races in Mandan more than she hears noise from the Pumpkin Patch. Ms. Jones continued by saying the weekend traffic in September is a little heavy, but she can go to the grocery store and it doesn't take her ten minutes to get from River Road to her home on Wildwood Street, which is a mile and a half. Ms. Jones went on to say the truck traffic on the road is minimal with only six to eight semis coming in with various products. Ms. Jones added that she travels on Fernwood Drive at least four to six times per day and passes at least two vehicles every time she travels on Fernwood Drive, so even though during the Pumpkin Patch and Polar Patch season the traffic increases, there must be at least thirty to forty cars per day traveling on Fernwood Drive. Ms. Jones said overall, looking at the good this place does for the entire community, she is in favor of this zoning change and the Pearce family has done a lot for Bismarck. Ms. Jones concluded by saying she has volunteered at the Pumpkin Patch and there are no safety concerns.

Roger Bailey said he lives on Sandy River Drive and is not that far from Papa's Pumpkin Patch. Mr. Bailey added that what the Pearce's have done for the community is exceptional and they do not do it to profit themselves as much as they do the community. Mr. Bailey commented that traffic is not a concern and people are handling it very well and it is not a problem. Mr. Bailey concluded by saying that he fully supports the Pearce's and their efforts.

Chairman Yeager said he agrees that traffic is not an issue, suggesting that the speed that people drive is a major issue for causing the dust on gravel roads, because people tend to exceed the speed limit on these roads.

Emil Kirschenmann said his property is just north of the Pumpkin Patch. Mr. Kirschenmann went on to say that his neighbor, Bob Roberson asked him to read a letter of his concerns. Mr. Kirschenmann said that Mr. Roberson is not against the Pumpkin Patch, because it is a great Halloween activity for children. His biggest concern is the traffic and noise level, which he is afraid will continue to become more bothersome if the zoning change is approved with year round activities. Mr. Kirschenmann also stated that Mr. Roberson is concerned about what this will do to his property value and feels that approval of this will have a negative affect on the residents and property owners in the surrounding areas. Mr. Kirschenmann added that his only concern is the public address system because it does get noisy and the sound tends to carry in the river bottoms.

Chairman Yeager asked what time it is when Mr. Kirschenmann hears the public address system. Mr. Kirschenmann responded by saying usually between 9:00 am and 5:00 pm.

Delores Shimek said she lives quite a ways from Papa's Pumpkin Patch and at times she can hear the loud speakers, but it is very minimal and the car races in Mandan are a lot worse.

Dave Pearce said they do ship in pumpkins for the Pumpkin Patch but they are grown in Tappen. Mr. Pearce went on to say the reason they started shipping in pumpkins is because he needed space for parking and activities and the best space for that was one of the major pumpkin growing fields. Mr. Pearce continued by saying it is true that they do haul in hay bales for mazes. They accumulate the hay bales from the area, then ship them down to Wisconsin and Minnesota to the dairy farmer after they use them. Mr. Pearce added that the truckers benefit from the transaction as well because they have full loads to and from Wisconsin and Minnesota. Mr. Pearce said the main reason that the public address system was installed is for children that get lost and they simply need a way of addressing everyone at the Pumpkin Patch. Mr. Pearce commented that usually announcements are made on the hour or to greet arriving groups and they will obey the ordinance as far as the time requirements. Mr. Pearce said with regards to the campers that were brought up earlier, it happened one time for a three day family reunion which included one night of karaoke. Mr. Pearce continued by saying there is a new building going in on the property and the public address system is being designed in a way to reduce the sound carrying to other properties. Mr. Pearce does understand that the dust is an issue, but feels it has a lot to do with the speed vehicles travel on this road. He has tried putting down water, but cannot put enough water on it to keep the dust down. Mr. Pearce said he truly appreciates all the comments and support received from the community, and wants to be good friends and good neighbors because he truly enjoys what he does. Mr. Pearce concluded by saying they would like to continue to do what they do very well for the community, under the guidelines of the proposed Planned Unit Development.

Geralyn Kirschenmann said her concern are the weekends throughout the year that aren't include in the Pumpkin Patch or Polar Patch seasons, for reunions, family events and reunions. Ms. Kirschenmann on to say she feels better knew that this has been limited to six weekends per year.

Chairman Yeager closed the public hearing for the zoning change for Lots 2-6, Block 1, Pearce Estates.

MOTION: Based on the findings contained in the staff report, Commissioner Hegedus made a motion to deny the zoning change from A-Agriculture and RR-Residential to PUD-Planned Unit Development on Lots 2-6, Block 1, Pearce Estates. Commissioner Wangler seconded the motion. With Commissioners Wangler voting in favor of the

motion and Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Spier, Waldoch, Warford and Yeager voting against, the motion was denied 9-1.

Commissioner Warford said he did not support the motion because you have business that is a product of its own success. It has increased and it does have an effect on the neighborhood, but life is a series of balances and judgment calls. Commissioner Warford added that this community has an event for the kids and you could see the joy on their faces that this brings. He went on to say that the greater good of the community will be hurt in denying the Pumpkin Patch their existence. Commissioner Warford added that he did listen to the neighbors and understand about the noise, because from his house he can hear the race track in Mandan, the Community Bowl at BSC and also hears the trains twenty eight times a day. Commissioner Warford concluded by saying that as citizens of the community, we all have infringements and he does not want to have his fingerprints on the outcry that would result from denying the Pumpkin Patch.

MOTION: Based on the findings contained in the staff report, Commissioner Warford made a motion to approve the zoning change from A-Agriculture and RR-Residential to PUD-Planned Unit Development of Lots 2-6, Block 1, Pearce Estates. Commissioner Waldoch seconded the motion. With Commissioners Armstrong, Bullinger, Conmy, Juhala, Spier, Waldoch, Warford and Yeager voting in favor of the motion and Commissioners Hegedus and Wangler voting against, the motion was passed 8-2.

OTHER BUSINESS

There was no other business.

ADJOURNMENT

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 7:21 p.m. to meet again on September 23, 2009.

Respectfully submitted,

Kimberley Gaffrey
Recording Secretary

Wayne Yeager
Chairman

City Planning Zoning Commission

Tom Baker Meeting Room

Wednesday August 26, 2009

Questions/concerns regarding the proposed Golfview Estates.

1. When all phases of planned development are completed, how many large lot single-family residential units will there actually be?

2. What are the plans for sewage/waste issues?
 - A. Will there be a separate sewage system or individual septic systems?
 - B. If septic systems are utilized, will the ground soil type adequately accommodate the proposed septic systems? Have appropriately valid soil percolation tests been completed?
 - C. Why was a separate sewage treatment system used for the Apple Creek Housing addition adjacent to the Apple Creek Country Club?
 - D. If septic systems are used, what are the long range ramifications for environmental water issues? Have these issues been adequately determined?
 - E. If, in the future, a separate sewage system or connection to the city system is required, who pays for this correction?

3. What are the traffic ramifications? In considering a development of this size, why do we have two proposed access roads so close to each other, spaced at only 847' apart?
 - A. What is the long range planning for street/roadway development?

Based on what seems to be lack of adequate long range planning, I am opposed to the rezoning and plat approval as requested for Golfview Estates. I am particularly concerned with issues of sewage infrastructure and roadway development.

Additionally, with the absence of any adopted long range plan, I do not totally understand why the township is not authorized to determine such issues for their respective jurisdictions.

Rick Hessinger
10001 Apple Creek Road
Bismarck, ND. 58504
701-255-2566

August 21, 2009

RECEIVED

AUG 24 2009

Bismarck-Burleigh County Community Development Department
c/o Kim Lee, Planner
221 North 5th Street
Bismarck, ND 58501

We are writing in regard to the August 26, 2009, Public Hearing on a zone change for the Pearce Estates, from A - Agricultural and RR - Residential to PUD - Planned Unit Development, for Lots 2 - 6, Block 1, Pearce Estates. Unfortunately, we are unable to attend the hearing as we will be out of town, but hope to have a representative attend the meeting on our behalf.

We are opposed to the zoning change.

We are the owners of 5245 Fernwood Drive, which is Lot 2 and the south 100' of Lot 1 of Hanson's Subdivision, which abuts the northwest corner of Pearce Estates. If you will refer to the site map of Papa's Pumpkin Patch, the shop/storage building on our property is near the upper left hand corner of Box J.

We purchased the property in 1992 from Allan Hanson of Bismarck. Mr. Hanson owns the two remaining lots in the subdivision; it is not his primary residence. We will have the opportunity to purchase those lots when the property becomes available. Our intention was to build our retirement home in a country setting to enjoy the peace and serenity of the area. Since that time, we have invested thousands of dollars and countless hours developing the property to build our home in the Spring of 2010.

In 1992, the Pumpkin Patch was a small event around Halloween, and has grown to a point where there are thousands of people attending over a six-week period. For the past several years, the pumpkins have not been grown there and have been trucked in. A loudspeaker system has been added, which is an unacceptable disturbance. The much-increased traffic and dust created is a huge safety concern for the neighborhood. In addition, Papa's Polar Patch has been added in December/January. There is the potential (as indicated in their request) for other seasonal activities, a public pavilion/shelter, and restrooms and concessions. We believe these expanded requests will just increase the size and scope of this endeavor, and further reduce the adjacent property values.

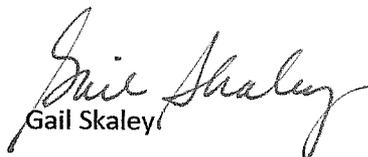
We want to be good neighbors and appreciate what Papa's Pumpkin Patch has done for the school children in the community. We do not object to it continuing as it was in the beginning – when the pumpkins were grown and sold on the property.

These activities have been going on for some time, even though the zoning did not allow it – that does not make it appropriate. We urge you to oppose this zoning change.

Thank you for your consideration.

Sincerely,


Jack Skaley


Gail Skaley

cc: Kim Lee, Bismarck-Burleigh County Community Development Department
Bill Augustadt

EXHIBIT B