

**CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
October 28, 2009**

The Bismarck Planning & Zoning Commission met on October 28, 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, John Warford and Wayne Yeager.

Commissioners Doug Lee, Lisa Waldoch and Jan Wangler were absent.

Gibbs Township Representatives John Hauck, Myrna Hauck and Richard Sander were present. Hay Creek Township Representative Neil Modin was also present. Apple Creek Representative Paul Zent was also present.

Staff members present were Carl Hokenstad – Director of Community Development, Gregg Greenquist – Planner, Kim Lee – Planning Manager, Jason Tomanek – Planner, Kimberley Gaffrey – Office Assistant III, Ben Ehreth – MPO Planner, Steve Saunders – MPO Planner, Marcus Hall – County Engineer and Charlie Whitman – City Attorney.

Others present were Damon Jorgensen – 128 Soo Line Drive, Bismarck, Bismarck, Clay Morris – Bismarck, James Morris – Bismarck, Patrick Bitz – 500 Ausburg Avenue, Bismarck, Leo and Patricia Bitz – 7311 34th Avenue SE, Wishek, Joe Bitz – 1518 Columbia Drive, Bismarck, Roland Huber – 1901 N Grandview Lane, Bismarck and Zac Weis – ND Department of Commerce.

MINUTES

Chairman Yeager called for consideration of the minutes of the September 23, 2009 meeting.

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

PRESENTATION – LONG RANGE TRANSPORTATION PLAN

Bill Troe with URS Corporation presented the draft executive summary for the Long Range Transportation Plan for Bismarck-Mandan Metropolitan Planning Organization, attached as Exhibit A.

**CONSIDERATIONS –
ZONING CHANGE FROM RM30-RESIDENTIAL, RT-RESIDENTIAL, CA-
COMMERCIAL AND CG-COMMERCIAL TO A-AGRICULTURAL, PLAT
VACATION AND DETACHMENT – HERITAGE SUBDIVISION
ZONING CHANGE FROM A-AGRICULTURAL TO RR5-RESIDENTIAL AND
PRELIMINARY L PLAT - WDH SUBDIVISION
ZONING ORDINANCE TEXT AMENDMENT – SETBACKS IN RT-RESIDENTIAL,
CA-COMMERCIAL AND CG-COMMERCIAL DISTRICTS ADJACENT TO
R5-RESIDENTIAL AND R10-RESIDENTIAL DISTRICTS**

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

- A zoning change from RM30-Residential, RT-Residential, CA-Commercial and CG-Commercial to A-Agricultural, plat vacation and detachment for Heritage Subdivision. The property is 136 lots in three blocks on 152.76 acres located along the north side of East Main Avenue/County Highway 10 and the west side of 66th Street NE (SE $\frac{1}{4}$ of Section 31, T139N-R79W/Gibbs Township).
- A zoning change from A-Agricultural to RR5-Residential and preliminary plat for WDH Subdivision. The property is five lots in one block on 39.9 acres located south of Lincoln along the west side of 66th Street SE and along the north side of 62nd Avenue SE (the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 30, T138N-R79W/Apple Creek Township).
- A zoning ordinance text amendment relative to setbacks in the RT-Residential, CA-Commercial and CG-Commercial districts. The proposed ordinance would increase the side and rear yard setbacks in these districts for buildings over two stories in height when located adjacent to an R5-Residential or R10-Residential zoning district.

MOTION: Commissioner Hegedus 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, Spier, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE FROM A-AGRICULTURAL AND
CONDITIONAL RM15-RESIDENTIAL TO R5-RESIDENTIAL, RT-RESIDENTIAL
AND CONDITIONAL RM15-RESIDENTIAL AND FINAL PLAT– NORTH HILLS
SIXTEENTH ADDITION**

Chairman Yeager called for the public hearing for the zoning change from A-Agriculture and Conditional RM15 to RT-Residential for Lot 1, Block 1, RT for Lot 1, Block 2, Conditional RM15-Residential for Lot 2, Block 2 and R5-Residential for Lot 3, Block 2 and final plat for North Hills Sixteenth Addition, a 14.783 acre development with four lots in two blocks. The property is located along the south side of 43rd Avenue between Normandy and Dominion Streets

(a replat of Lot 5, Block 3, North Hills 15th Addition and an unplatted portion of the W½ of the NE¼ of Section 21, T139N-R80W/Hay Creek Township).

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

1. The proposed zoning change is compatible with adjacent land uses. Adjacent land uses include residential development to the south and east, undeveloped land to the north and west and one rural residential single-family home adjacent to the northwest corner of the subdivision. The appropriate buffer yard widths have been included on the plat as buffer yard easements on the north side of Lot 1, Block 1 and the south side of Lot 2, Block 2 to ensure appropriate buffering of higher intensity land uses where applicable. The buffer yard along the south side of Lot 1, Block 1 will be addressed during the site plan review process.
2. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established. In particular the land the land is being platted to accommodate future development of the property.
3. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the new zoning classification at the time the property is developed.
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 planning practice.
7. The area being proposed for a zoning change is not identified in the Bismarck Land Use Plan.

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

1. All technical requirements for approval of the final plat have been met.
2. The Fringe Area Road Master Plan for this area identifies the north-south collector as Normandy Street, which lies feet west of the proposed subdivision; therefore the proposed subdivision does not impact the Fringe Area Road Master Plan for Section 21.
3. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include residential development to the south and east, undeveloped land to the north and west and one rural residential single-family home adjacent to the northwest corner of

the subdivision. The appropriate buffer yard widths have been included on the plat as buffer yard easements.

4. The stormwater management plan for this subdivision has been approved by the City Engineer.
5. The City and other agencies would be able to provide necessary public services, facilities, and programs to serve the development allowed by the proposed subdivision at the time the property is developed.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with the master plan other adopted plans, policies and accepted planning practice.

Mr. Tomanek said based on the above findings, staff recommends approval of the zoning change from A-Agricultural and Conditional RM15 to RT-Residential for Lot 1, Block 1, RT for Lot 1, Block 2, Conditional RM15-Residential for Lot 2, Block 2 and R5-Residential for Lot 3, Block 2 and final plat for North Hills Sixteenth Addition, with the following condition: 1) the maximum density for each lot zoned RM15-Residential is a 4-unit condominium.

Chairman Yeager opened the public hearing for the zoning change and final plat for North Hills Sixteenth Addition.

No public comment was received.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff reports, Commissioner Warford made a motion to approve the zoning change from A-Agricultural and Conditional RM15 to RT-Residential for Lot 1, Block 1, RT for Lot 1, Block 2, Conditional RM15-Residential for Lot 2, Block 2 and R5-Residential for Lot 3, Block 2 and final plat for North Hills Sixteenth Addition, with the following condition: 1) the maximum density for each lot zoned RM15-Residential is a 4-unit condominium. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Spier, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE FROM CG-COMMERCIAL TO
CONDITIONAL MA-INDUSTRIAL – LOT 1, BLOCK 4, NORTHSTAR COMMERCIAL
PARK 3rd SUBDIVISION**

Chairman Yeager called for the public hearing for the zoning change from CG-Commercial to Conditional MA-Industrial for Lot 1, Block 4, Northstar Commercial Park 3rd Subdivision. The property is located along the south side of Northstar Drive east of Aurora Street.

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

1. The proposed zoning change would be consistent with the Land Use Plan, as amended administratively, which would identify this area as Mixed Use (US Highway 83 Corridor Transportation Study).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include light industrial uses to the north, a commercial use to the west, undeveloped CG-zoned property to the south, and agricultural uses to the east.
3. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established. In particular, that portion of this subdivision immediately to the north across Northstar Drive was rezoned to Conditional MA – Industrial zoning in 2005.
4. The property would be served by South Central Regional Water District and would have access to US Highway 83 and 71st Avenue NE via interior roadways; 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 said based on the above findings, staff recommends approval of the zoning change from CG-Commercial to Conditional MA-Industrial for Lot 1, Block 4, Northstar Commercial Park 3rd Subdivision.

Chairman Yeager opened the public hearing for the zoning change for Lot 1, Block 4, Northstar Commercial Park 3rd Subdivision.

Clayton Morris said he is against the zoning change for Northstar Commercial Park 3rd Subdivision and would like for the land to be left alone.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Hegedus made a motion to approve the zoning change from CG-Commercial to Conditional MA-Industrial for Lot 1, Block 4, Northstar Commercial Park 3rd Subdivision. Commissioner Conmy seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Spier, Warford and Yeager voting in favor of the motion.

FINAL CONSIDERATION – ANNEXATION – COUNTY HIGHWAY 10 RIGHT-OF-WAY – 52ND STREET TO 66TH STREET

Chairman Yeager called for the final consideration of the annexation for the County Highway 10 right-of-way from 52nd Street to 66th Street. The property is located east of Bismarck between 52nd Street and 66th Street, along the southern boundary of Section 31, T139N-R79W/Gibbs Township and the northern boundary of Section 6, T138N-R79W/Apple Creek Township.

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

1. The proposed annexation will not adversely affect property in the vicinity.
2. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
3. 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 the County Highway 10 right-of-way from the centerline of 52nd Street to the centerline of 66th Street in Section 31, T139N-R79W/Gibbs Township and Section 6, T138N-R79W/Apple Creek Township.

Chairman Yeager opened the public hearing for the annexation of County Highway 10 right-of-way.

No public comment was received.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Armstrong made a motion to approve the annexation of the County Highway 10 right-of-way from the centerline of 52nd Street to the centerline of 66th Street in Section 31, T139N-R79W/Gibbs Township and Section 6, T138N-R79W/Apple Creek Township. Commissioner Hegedus seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Spier, Warford and Yeager voting in favor of the motion.

OTHER BUSINESS

SMALL WIND ENERGY SYSTEMS ORDINANCE

Mr. Greenquist said the draft ordinance on small wind energy systems was presented for final consideration at the May 27, 2009 meeting and was tabled. Mr. Greenquist went on to say the proposed ordinance would create a provision to allow small wind energy systems, adding that the draft ordinance addresses the two major concerns of the noise and appearance of the turbines. Mr. Greenquist asked the Bismarck Planning & Zoning Commissioners if they are ready to put the proposed ordinance back on the table and call for a public hearing.

MOTION: Commissioner Warford made a motion to reconsider the proposed wind energy systems ordinance and call for a public hearing at the November meeting. Commissioner Hegedus seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Spier, 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 5:36 p.m. to meet again on November 18, 2009.

Respectfully submitted,

Kimberley Gaffrey
Recording Secretary

Wayne Yeager
Chairman