

**CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
November 18, 2009**

The Bismarck Planning & Zoning Commission met on November 18, 2009, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office 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 and Wayne Yeager.

Commissioners Doug Lee and John Warford were absent.

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, Ray Ziegler – Building Official and Charlie Whitman – City Attorney.

Others present were Joe Bitz – 1518 Columbia Drive, Bismarck, Leo and Patricia Bitz – 7311 34th Avenue SE, Wishek, Brandon Schock – GR-8 Country Wind Power, Steve Redding – GR-8 Country Wind Power, Sheryl Zaun – 5700 East Main Avenue #10, Bismarck, Cynthia Kuntz – 5700 East Main Avenue, Paul Silbernagel – 5801 Prairie Rose Loop, Bismarck and Elmer Steiner – 6665 Eric Avenue, Bismarck.

MINUTES

Chairman Yeager called for consideration of the minutes of the October 29, 2009 meeting.

MOTION: Commissioner Juhala made a motion to approve the minutes of the October 29, 2009 meeting as received. Commissioner Hegedus seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Spier, Waldoch, Wangler and Yeager voting in favor of the motion.

**CONSIDERATION –
ZONING CHANGE FROM CR-COMMERCIAL TO CG-COMMERCIAL – LOTS 1-3,
BLOCK 1, KAVANEY COMMERCIAL PARK 2ND ADDITION**

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

- A zoning change from CR-Commercial to CG-Commercial on Lots 1-3, Block 1, Kavaney Commercial Park 2nd Replat. The property is three lots in one block on 7.37 acres located south of Century Avenue East and west of State Street, north of the Gateway Mall property.

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, Waldoch, Wangler and Yeager voting in favor of the motion.

PUBLIC HEARING – DETACHMENT, ZONING CHANGE FROM RM30-RESIDENTIAL, RT-RESIDENTIAL, CA-COMMERCIAL AND CG-COMMERCIAL TO A-AGRICULTURAL, AND PLAT VACATION– HERITAGE SUBDIVISION

Chairman Yeager called for the public hearing for the detachment, zoning change from RM-Residential, RT-Residential, CA-Commercial and CG-Commercial to A-Agricultural and the plat vacation for Heritage Subdivision, a 152.76 acre development with 136 lots in three blocks. The property is located along the north side of East Main Avenue/County Highway 10 and the west side of 66th Street NE (SE ¼ of Section 31, T139N-R79W/Gibbs Township).

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

1. The City and other agencies currently do not provide public services, facilities or programs intended to serve a development.
2. The detachment would not adversely impact property in the vicinity.
3. The proposed detachment is consistent with the general intent and purpose of the zoning ordinance.
4. The proposed detachment is consistent with the master plan, other adopted plans and planning practice.

Mr. Tomanek then listed the following findings for the zoning change:

1. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include agricultural land to the west, north and east, and a mix of light industrial, commercial and rural residential uses to the west and south.
2. The proposed zoning change is justified by the change in conditions since the previous zoning classification was established. In particular, the property has never been developed and is not served by municipal utilities.
3. The City and other agencies would not be able to provide necessary public services, facilities or programs necessary to serve the subdivision under the current zoning classification at this time.
4. The proposed zoning change would not adversely affect property in the vicinity.

5. The proposed zoning change is consistent with the intent and purpose of the zoning ordinance.
6. The proposed zoning change is not completely consistent with the Bismarck Land Use Plan, which identifies this area as general commercial, neighborhood commercial and urban residential. The proposed A-Agriculture zoning and use would not preclude future development as identified in the Land Use Plan when services are available.

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

1. The City and other agencies currently do not provide public services, facilities or programs intended to serve a development allowed by annexation; however, City and County staff are in the process of working with the applicants to ensure adequate right-of-way is preserved to help with the future beltway along 66th Street NE and East Main Avenue/County Highway 10.
2. The detachment would not adversely impact property in the vicinity, provided adequate right-of-way for East Main Avenue/County Highway 10 and 66th Street NE.
3. The proposed detachment is consistent with the general intent and purpose of the zoning ordinance.
4. The proposed detachment is consistent with the master plan, other adopted plans and planning practice.

Mr. Tomanek said based on the above findings, staff recommends approval of the detachment, zoning change from RM-Residential, RT-Residential, CA-Commercial and CG-Commercial to A-Agricultural and plat vacation for Lots 1-136, Block 1, Lots 1-9, Block 2 and Lots 1-4, Block 3, Heritage Subdivision, with the following condition: 1) The one hundred (100) feet of right-of-way for 66th Street NE be preserved as shown on the plat and the varying widths (100-135 feet) of right-of-way for East Main Avenue/Highway 10 is preserved to allow for future development of the roadway network.

Commissioner Juhala asked if the surrounding land was zoned A-Agricultural. Mr. Tomanek responded by saying yes, the surrounding land is zoned A-Agricultural.

Commissioner Hegedus inquired if the one hundred (100) feet right-of-way is standard on the west side of the section line. Mr. Tomanek answered by saying that it is actually preferred to have two hundred (200) feet of right-of-way since 66th Street has been recognized as the beltway corridor, however the County Engineer has been working with the owners to come up with a comfortable accommodation for the right-of-way on the east side of the centerline of 66th Street for the full two hundred (200) feet.

Commissioner Waldoch asked if there is currently access to the property. Mr. Tomanek said there is a small access point shown on the plat for Heritage Subdivision, however, there is not access from Main Avenue or 66th Street other than farm roads. Commissioner Waldoch inquired

if access will be an issue in the future if this land was ever replatted. Mr. Tomanek responded by saying that is something that would need to be reviewed at the time of a replat.

Chairman Yeager opened the public hearing for the detachment, zoning change and plat vacation for Heritage Subdivision.

No public comment was received.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff reports, Commissioner Juhala made a motion to approve the detachment; zoning change from RM-Residential, RT-Residential, CA-Commercial and CG-Commercial to A-Agricultural and plat vacation for Lots 1-136, Block 1, Lots 1-9, Block 2 and Lots 1-4, Block 3 for Heritage Subdivision, with the following condition: 1) The one hundred (100) feet of right-of-way for 66th Street NE be preserved as shown on the plat and the varying widths (100-135 feet) of right-of-way for East Main Avenue/Highway 10 is preserved to allow for future development of the roadway network. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Spier, Waldoch, Wangler and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT – SMALL WIND ENERGY SYSTEMS

Chairman Yeager called for the public hearing for the zoning ordinance text amendment relative to small wind energy systems.

Mr. Greenquist provided an overview of the zoning ordinance text amendment for small wind energy systems. The proposed ordinance provides standards for the placement and operation of small wind turbines for household use which are less than 25 kilowatts in capacity. Mr. Greenquist said that this draft ordinance was presented to the Bismarck Planning & Zoning Commission in May 27, 2009 and was tabled at that time. Mr. Greenquist went on to say that no changes have been made to the proposed ordinance. Mr. Greenquist stated that it appears the two major issues with wind turbines are appearance and sound and he feels the proposed ordinance addresses both of those issues. Mr. Greenquist said he received a comment from Jack Hanson from Enterprise Wind Sales in Valley City and Mr. Hanson said he objects the proposed ordinance because the height requirements are too restrictive and that roof top turbines should be allowed. Mr. Greenquist said comments from GR-8 Country Wind Power were received and they are in favor of the proposed ordinance. Mr. Greenquist then reviewed the proposed ordinance in detail.

Commissioner Juhala commented that he did not fully understand small wind energy systems so he conducted his own research and found out that a 25 kilowatt turbine only produces enough electricity to power 250 of the 100 watt light bulbs or 5 of the 50 gallon water heater and asked

what the efficiency of the 25 kilowatt turbines are. Mr. Greenquist said there are representatives from GR-8 Country Wind Power that could answer his questions.

Steve Redding with GR-8 Country Wind Power said they sell, install and maintain the small wind energy systems. Mr. Redding said the current buy back rate for investor owned utilities at 2.5 to 3.5 cents per kilowatt hour and Basin Electric's rate is 4 cents per kilowatt hour. Mr. Redding went on to say that the efficiency is about at 30 to 40 percent.

Chairman Yeager closed the public hearing.

MOTION: Commissioner Wangler made a motion to approve the zoning ordinance text amendment relative to small wind energy systems. Commissioner Spier seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Spier, Waldoch, Wangler and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT – SETBACKS IN RT, CA AND CG DISTRICTS

Chairman Yeager called for the public hearing for the zoning ordinance text amendment relative to setbacks in RT, CA and CG Districts.

Ms. Lee provided an overview of the zoning ordinance text amendment relating 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.

Chairman Yeager opened the public hearing for the zoning ordinance text amendment relative to setbacks in RT, CA and CG Districts.

No public comment was received.

Chairman Yeager closed the public hearing.

MOTION: Commissioner Armstrong made a motion to approve the zoning ordinance text amendment relative to setbacks in RT, CA and CG Districts. Commissioner Hegedus seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Conmy, Hegedus, Juhala, Spier, Waldoch, Wangler 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 5:48 p.m. to meet again on December 23, 2009.

Respectfully submitted,

Kimberley Gaffrey
Recording Secretary

Wayne Yeager
Chairman