

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
January 22, 2014**

The Bismarck Planning & Zoning Commission met on January 22, 2014 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, Tom Atkinson, Mel Bullinger, Mike Donahue, Vernon Laning, Ken Selzler, Lisa Waldoch, John Warford and Wayne Yeager.

Commissioners Doug Lee and Mike Schwartz were absent.

Staff members present were Carl Hokenstad – Community Development Director, Kim Lee – Planning Manager, Jason Tomanek – Planner, Jenny Wollmuth – Planner, Hilary Balzum – Community Development Office Assistant, Jason Hammes – Assistant City Attorney and Charlie Whitman – City Attorney.

MINUTES

Chairman Yeager called for consideration of the minutes of the December 18, 2013 meeting.

MOTION: Commissioner Warford made a motion to approve the minutes of the December 18, 2013 meeting as received. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

CONSIDERATION

- A. EVERGREEN RIDGE ADDITION –
ZONING CHANGE AND PRELIMINARY PLAT**
- B. SOUTHBAY 5TH ADDITION –
ZONING CHANGE AND PRELIMINARY PLAT**
- C. PART OF LOT 4, BLOCK 1, BOUTROUS 2ND ADDITION –
ZONING CHANGE**
- D. LOT 4, BLOCK 1, TRENTON ADDITION –
LAND USE PLAN AMENDMENT AND ZONING CHANGE**
- E. OFF-STREET PARKING AND LOADING/JOINT USE OF PARKING –
ZONING ORDINANCE TEXT AMENDMENT**
- F. APPEAL PROCEDURES – ZONING ORDINANCE TEXT AMENDMENT**

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

- A. Evergreen Ridge Addition – Zoning Change and Preliminary Plat
- B. Southbay 5th Addition – Zoning Change and Preliminary Plat
- C. Part of Lot 4, Block 1, Boutrous 2nd Addition – Zoning Change

- D. Lot 4, Block 1, Trenton Addition – Land Use Plan Amendment and Zoning Change
- E. Off-Street Parking and Loading/Joint Use of Parking – Zoning Ordinance Text Amendment
- F. Appeal Procedures – Zoning Ordinance Text Amendment

MOTION: Commissioner Warford made a motion to approve consent agenda items A, B, C, D, E and F, granting tentative approval and/or calling for public hearings on the items as recommended by staff. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**FINAL CONSIDERATION - ANNEXATION
PUBLIC HEARING – ANNEXATION, ZONING CHANGE AND FINAL PLAT –
HAMBURG INDUSTRIAL PARK 2ND ADDITION**

Chairman Yeager called for final consideration of the annexation and the public hearing on the zoning change from the A-Agriculture zoning district to the MA-Industrial zoning district and the final plat for Hamburg Industrial Park 2nd Addition. The proposed plat is six lots in two blocks on 13.2 acres and is located in east Bismarck, east of the Bismarck Airport and along the east side of Yegen Road, north of the intersection with Lincoln Road (part of the NW¹/₄ of the SW¹/₄ of Section 13, T138N-R80W).

Ms. Lee provided an overview of the requests, including 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 the zoning ordinance.
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

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

1. The proposed zoning change is consistent with the Land Use Plan, which identifies the future use of this area as industrial (Bismarck-Mandan Regional future Land Use Plan).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include undeveloped agricultural land to the east and south, agricultural and

industrial uses to the north and the Bismarck Airport and the first phase of this development to the west.

3. The subdivision proposed for this property would be annexed prior to development; therefore, it would not place an undue burden on public services and facilities.
4. The proposed subdivision would not adversely affect the adjacent properties.
5. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
6. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee then offered the following findings for the final plat:

1. All technical requirements for approval of a final plat have been met.
2. The storm water management plan has been approved by the City Engineer.
3. The proposed subdivision conforms to the Fringe Area Road Master Plan, which identifies Yegen Road as an arterial roadway.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include undeveloped agricultural land to the east and south, agricultural and industrial uses to the north and the Bismarck Airport and the first phase of this development to the west.
5. The proposed subdivision would be annexed prior to development; therefore, it would not place an undue burden on public services and facilities, provided a cul-de-sac or hammerhead turn-around is provided at the east end of Hagen Drive.
6. The proposed subdivision would not adversely affect the adjacent properties.
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 stated that based on these findings, staff recommends approval of the annexation, the zoning change from the A-Agriculture zoning district to the MA-Industrial zoning district and the final plat for Hamburg Industrial Park 2nd Addition, provided the required cul-de-sac or hammerhead turn-around at the east end of Hagen Drive is added to the boundary of the final plat or an off-site easement for the turn-around is obtained prior to recording the final plat.

Chairman Yeager opened the public hearing.

There being no comments, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the annexation, zoning change from the A-Agriculture zoning district to the MA-Industrial zoning district and the final plat for Hamburg Industrial Park 2nd Addition, provided the required cul-de-sac or hammerhead turn-around at the east end of Hagen Drive is added to the boundary of the final plat or an off-site easement for the turn-around is obtained prior to recording the final plat. Commissioner Donahue seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT –
KAMROSE ADDITION FIRST REPLAT**

Chairman Yeager called for the public hearing on the minor subdivision final plat for Kamrose Addition First Replat. The proposed plat is 11 lots in one block on 1.91 acres and is located in southwest Bismarck along the east side of South Washington Street and the north side of Burleigh Avenue (a replat of Lot 1, Block 1, Kamrose First Addition).

Mr. Tomanek provided an overview of the request, including the following findings:

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 property is already annexed; therefore, the proposed subdivision would not place an undue burden on public services and facilities.
4. The zoning for the proposed subdivision is not changing and would continue to be compatible with adjacent land uses. Adjacent land uses include developing single and two-family residential to the north and east, undeveloped multi-family zoned parcels to the south and established single-family residential to the west across South Washington Street.
5. The proposed subdivision would not adversely affect property in the vicinity.
6. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
7. The proposed subdivision is consistent the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek said based on these findings, staff recommends approval of the minor subdivision final plat for Kamrose Addition First Replat, with the following condition:

1. Development of the site must generally conform to the site plan submitted with the application; any substantial deviation from the master plan would need to be reconsidered by the Planning & Zoning Commission before implementation.

Chairman Yeager opened the public hearing.

There being no comments, Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the minor subdivision final plat for Kamrose Addition First Replat, with the condition that development of the site must generally conform to the site plan submitted with the application; any substantial deviation from the master plan would need to be reconsidered by the Planning & Zoning Commission before implementation. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE – LOTS 1 & 2, BLOCK 1, HAMILTON’S FIRST ADDITION

Chairman Yeager called for the public hearing for a zoning change from the PUD-Planned Unit Development zoning district to the RM15-Residential zoning district for Lots 1-2, Block 1, Hamilton’s First Addition. The property is located in northeast Bismarck, along the south side of Calgary Avenue and the east side of Hamilton Street.

Mr. Tomanek then provided an overview of the request and the following findings:

1. The proposed zoning change would not be entirely consistent with the Land Use Plan (Bismarck-Mandan Regional Future Land Use Plan), which was amended to allow industrial land uses prior to the zoning change of the parcel in 2009. However, because this amendment would move the boundary between land use classifications less than 600 feet, it would be considered a minor amendment and would be approved administratively in conjunction with the zoning change.
2. The proposed zoning change would be generally compatible with adjacent land uses. Adjacent land uses include Legacy High School to the north, multi-family residential to the west, undeveloped limited industrial and service uses to the south and single-family dwellings to the east which is buffered by a 6-foot high, 50-foot wide earthen berm with trees and shrubs installed atop the berm.
3. The property is already annexed; therefore, the proposed zoning change would not place an undue burden on public services.

4. The proposed zoning would not have an adverse impact on property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice

Mr. Tomanek said based on these findings, staff recommends approval of the zoning change from the PUD-Planned Unit Development zoning district to the RM15-Residential zoning district on Lots 1-2, Block 1, Hamilton's First Addition, with the following conditions:

1. Development of the site must generally conform to the site plan submitted with the application and is limited to four (4) 12-unit apartment buildings and four (4) twin homes located along the easternmost portion of the property.
2. The maximum height of any building is 35 feet.
3. Lots 1 & 2, Block 1, Hamilton's First Addition must be combined as one parcel through the City's lot modification process.
4. The twin homes must remain as part of the overall development and cannot be split off in the future and sold as individual lots.

Chairman Yeager opened the public hearing.

Mike Kelsch, an attorney representing Liechty Homes, asked if the drainage issue at this location caused by the berm that is in place will be addressed at some point. He said Liechty Homes would like to develop this area but standing water is already an issue in the area of Stonecrest 2nd Addition. He also wants to know who is supposed to maintain the berm as he is aware litigation between the owners is in process. He concluded by stating that removal of the berm should be considered.

Dave Patience said he was under the impression that the water issues were further to the south and that the berm, as well as the underlying easement, could be vacated in order to expand the site. He said his main concern is the stipulation on the number of units being allowed to be built. He said the applicant would like to have the flexibility of more garages near the utility easement to allow more transition between the residential and industrial zoning districts.

Commissioner Laning asked Mr. Patience if he is asking for the unit number limitation to be lifted. Mr. Patience said with the transition to the industrial zoning and the new high school being built nearby, a stipulation on the number of units would not allow them to work around the buffer.

There being no further comments, Chairman Yeager closed the public hearing.

Chairman Yeager asked Mr. Tomanek why the limitation was put on the number of allowable units. Mr. Tomanek said in following the Land Use Plan, gradually increasing densities to serve as transitional zoning is ideal. He said a request to vacate the buffer would likely be accepted by staff but staff would like to see guarantees that the developer will provide orderly growth and compatible land uses. He said it is likely that more recommendations of this nature will be made in the future because there are recent examples of incompatible land uses in areas where master plans were developed but later changed after a portion of the area was developed. Mr. Tomanek continued by saying that Planning staff received a master plan from the consultant and staff is basing the recommendation on the submitted master plan.

Mr. Patience said when a zoning change is applied for and the planning staff asks for a sketch it is given, but it is not necessarily the final plan and the owner is being restricted on his options before the land purchase is even complete.

Commissioner Donahue stated that his support regarding this item is on the side of the Planning staff.

Commissioner Warford said people buy land and it changes hand and then rules change, which typically makes people unhappy. He said this puts restrictions on the developers but they need to look down the road and plan ahead so there is more consistency and less 'buyer beware'.

Commissioner Bullinger asked if there will be any changes made to the proposed layout if the zoning change is approved. He said it is an issue that the driveway on the north side runs parallel to the right of way and adjacent to the sidewalk which is supposed to be six feet wide. He said a joint driveway would be more acceptable.

Mr. Tomanek said the general concept would be approved at this time and that conditions on recommendations like this may become more standard going forward because of the sensitivity of the permitted uses.

MOTION: Based on the findings contained in the staff report, Commissioner Donahue made a motion to approve the zoning change from the PUD-Planned Unit Development zoning district to the RM15-Residential zoning district for Lots 1-2, Block 1, Hamilton's First Addition, with the following conditions: 1. Development of the site must generally conform to the site plan submitted with the application and is limited to four (4) 12-unit apartment buildings and four (4) twin homes located along the easternmost portion of the property; 2. The maximum height of any building is 35 feet; 3. Lots 1 & 2, Block 1, Hamilton's First Addition must be combined as one parcel through the City's lot modification process; and 4. The twin homes must remain as part of the overall development and cannot be split off in the future and sold as individual lots. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger,

Donahue, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT – LANDSCAPING AND SCREENING

Chairman Yeager called for the public hearing for a zoning ordinance text amendment relating to Landscaping and Screening. The proposed ordinance would clarify the requirements of the landscaping and screening ordinance relating to installation, maintenance, replacement, inspection and enforcement.

Mr. Tomanek explained that currently, most site plans that come in for the review process require a landscape plan. He said most plans that have been installed in the past have required more than one inspection to determine compliance with approved plans. In addition, because landscape contractors do not require permits, it has been difficult in the past to make sure the improved plans are implemented correctly. He said subdivisions require a stormwater certification so there is a precedent for such a certification. He added that issues need to be worked through and a workable ordinance needs to be adopted.

Commissioner Bullinger asked if landscape plans ever come in separately from a site plan review application. Mr. Tomanek replied that sometimes after a site plan has already been approved a modification to the landscape plan might be allowed as long as the minimums are met, but it is rare that a landscape plan would ever come in for review without a site plan application.

Mr. Patience said that consulting engineers cannot be the ones to certify the landscape plans as they are not familiar with the technical names of the landscape materials. He said the Forestry department should charge a landscape fee and hire seasonal employees to take inventory once a year on the items that have been required.

Jake Axtman said he supports the intent of the amendment, but there needs to be some more detailing done and some more revisions made so that it works for everyone.

AJ Wallevand said the items mentioned need to be worked through so that the process will run smoothly for all of those involved.

Mr. Swenson said a professional engineer should not sign any plans unless they are confident in doing so. He said his concerns are regarding the lack of follow up on landscaping that is being neglected. He added that the ordinance is already not being followed even with new development.

There being no further comments, Chairman Yeager closed the public hearing.

Commissioner Warford said he would like to see the staff take a look at some of the definitions such as landscape designer, landscape architect, professional engineer and professional engineer with certification.

MOTION: Commissioner Laning made a motion to continue the zoning ordinance text amendment to the February 26th meeting, to allow staff to clarify the amendments and definitions within. Commissioner Donahue seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT – DOWNTOWN DISTRICTS

Chairman Yeager called for the public hearing for a zoning ordinance text amendment relating to Downtown Districts. The proposed ordinance would require a special use permit prior to the demolition of any building structure in the Downtown Core and Downtown Fringe zoning districts.

Mr. Tomanek explained that the Downtown Core and Downtown Fringe districts have a use table regarding what is allowed in the downtown area. He explained that this amendment is an attempt to address the removal of buildings for the purpose of creating surface parking lots by requiring a special use permit to be obtained, as well as approval of a site plan prior to the demolition of a structurally sound and historically significant building. He said it is not intended to prohibit the use of a property, but to preserve the historical fabric of Bismarck and to maintain a more dense and walkable nature in the downtown area.

Commissioner Bullinger asked if this would dictate the inventory taken for the historical register in 2000 to be updated regularly. Mr. Tomanek said the inventory has been amended by the State since adoption.

Chairman Yeager opened the public hearing.

Kate Herzog said that looking at this proposal from a financial angle it makes sense. She said when structures are demolished to create surface parking lots, taxable property is lost and commercial opportunities are lost. She said many resources are being put into the revitalization of the downtown area and there are many options for owners who wish to get their properties compatible with the surrounding area again.

There being no further comments, Chairman Yeager closed the public hearing.

MOTION: Commissioner Warford made a motion to approve the zoning ordinance text amendment relating to Downtown Districts as presented. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

OTHER BUSINESS

ELECTION OF OFFICERS

Commissioner Armstrong made a motion to re-elect Wayne Yeager as chairman for another term. Commissioner Warford seconded the motion and with all other Commissioner voting in favor, Chairman Yeager was elected for another term.

Commissioner Warford made a motion to re-elect Mark Armstrong as vice chairman for another term. Commissioner Bullinger seconded the motion and with all other Commissioners voting in favor, Vice Chairman Armstrong was elected for another term.

ADJOURNMENT

There being no further business, Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:15 p.m. to meet again on February 26, 2014.

Respectfully submitted,



Hilary Balzum
Recording Secretary



Wayne Lee Yeager
Chairman