

**BISMARCK PLANNING & ZONING COMMISSION  
MEETING MINUTES  
February 26, 2014**

The Bismarck Planning & Zoning Commission met on February 26, 2014 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Chairman Yeager presided.

Commissioners present were Tom Atkinson, Mel Bullinger, Mike Donahue, Vernon Laning, Doug Lee, Mike Schwartz, Lisa Waldoch, John Warford and Wayne Yeager.

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~~Commissioners Mark Armstrong and Ken Selzler 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 January 22, 2014 meeting.

**MOTION:** Commissioner Lee made a motion to approve the minutes of the January 22, 2014 meeting as received. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

#### **CONSIDERATION**

- A. DAYBREAK ADDITION –  
ZONING CHANGE AND PRELIMINARY PLAT**
- B. SARA’S SUBDIVISION –  
PRELIMINARY PLAT**
- C. KILBER NORTH 2<sup>ND</sup> ADDITION FIRST REPLAT –  
ZONING CHANGE**
- D. SECTION 2, FORT RICE TOWNSHIP –  
FRINGE AREA ROAD MASTER PLAN AMENDMENT**
- E. PART OF KMK ESTATES AND GELOFF ESTATES –  
ZONING CHANGE**
- F. RM DISTRICT/SINGLE FAMILY PROVISIONS –  
ZONING ORDINANCE TEXT AMENDMENT**
- G. RM & RT DISTRICTS/ROW HOUSES –  
ZONING ORDINANCE TEXT AMENDMENT**
- H. RELIGIOUS INSTITUTIONS –  
ZONING ORDINANCE TEXT AMENDMENT**

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

- A. Daybreak Addition – Zoning Change and Preliminary Plat
- B. Sara’s Subdivision – Preliminary Plat
- C. Kilber North 2<sup>nd</sup> Addition First Replat – Zoning Change
- D. Section 2, Fort Rice Township – Fringe Area Road Master Plan Amendment
- E. Part of KMK Estates and Geloff Estates – Zoning Change
- F. RM District/Single Family Provisions – Zoning Ordinance Text Amendment
- G. RM & RT Districts/Row Houses – Zoning Ordinance Text Amendment
- H. Religious Institutions – Zoning Ordinance Text Amendment

**MOTION:** Commissioner Schwartz made a motion to approve consent agenda items A, B, C, D, E, F, G and H, 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 Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION –  
GELOFF ESTATES ADDITION**

Chairman Yeager called for final consideration of the annexation of Geloff Estates Addition. The proposed property is located along the south side of Colt Avenue west of North Washington Street (A replat of part of Lot 5, Block 2, KMK Estates 2<sup>nd</sup> Subdivision).

Ms. Lee provided an overview of the request, including the following findings:

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.
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 stated that based on these findings, staff recommends approval of the annexation of Geloff Estates Addition, with the understanding that the lots remain combined as one parcel until the property is rezoned to R5-Residential.

**MOTION:** Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the annexation of Geloff Estate Addition with the understanding that the lots remain combined as one parcel until the property is rezoned to R5-Residential. Commissioner Warford seconded the motion and it

was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT –  
KILBER NORTH 2<sup>ND</sup> ADDITION FIRST REPLAT**

Chairman Yeager called for the public hearing on the minor subdivision final plat for Kilber North 2<sup>nd</sup> Addition First Replat. The proposed plat is 16 lots in one block on 2.72 acres and is located in north Bismarck along the east side of Normandy Street and south of 43<sup>rd</sup> Avenue NE (a replat of Lots 2-7, Block 2, Kilber North 2<sup>nd</sup> 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. A request for a zoning change for the proposed subdivision has been submitted. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include developing single and two-family residential to the west and south and office uses to the north and east.
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 Kilber North 2<sup>nd</sup> Addition First Replat, with the following condition:

1. Development of the site is limited to twin homes, as proposed.

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 Schwartz made a motion to approve the minor subdivision final plat for Kilber North 2<sup>nd</sup>

Addition First Replat, with the condition that development of the site is limited to twin homes, as proposed. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – FINAL PLAT –  
AIRWAY AVENUE ADDITION**

Chairman Yeager called for the public hearing on the final plat for Airway Avenue Addition. The proposed plat is 11 lots in one block on 20.00 acres and is located in southeast Bismarck, along the north side of Airway Avenue and the west side of South 26th Street (the S1/2 of the SE1/4 of the NE1/4 of Section 10, T138N-R80W/Lincoln Township).

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

1. All technical requirements for consideration of the 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 Airway Avenue as the east-west collector roadway for this section.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include industrial uses to the north and west; undeveloped land to the east which is zoned MA - Industrial and the Airport to the south.
5. The proposed subdivision would not adversely affect the adjacent properties.
6. 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, provided access via urban section roadways are required prior to development of lots within the development.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.

Mr. Tomanek said based on these findings, staff recommends approval of the final plat for Airway Avenue Addition with the understanding that individual lots will not be developable until access via a paved roadway is provided and all adjacent roadways are improved to City urban section roadway standards or are under contract for such improvement.

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 Lee made a motion to approve the final plat for Airway Avenue Addition, with the understanding that individual lots will not be developable until access via a paved roadway is provided and all adjacent roadways are improved to City urban section roadway standards or are under contract for such improvement. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE –  
PART OF LOT 4, BLOCK 1, BOUTROUS 2<sup>ND</sup> ADDITION**

Chairman Yeager called for the public hearing for a zoning change from the A-Agriculture zoning district to the CG-Commercial zoning district for the South 59 feet of the East 151 feet of Lot 4, Block 1, Boutrous 2<sup>nd</sup> Addition. The property is located in north Bismarck, north of East Interstate Avenue between State Street and North 19<sup>th</sup> Street.

Ms. Wollmuth provided an overview of the request, including the following findings:

1. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include existing commercial uses to the west and south across East Interstate Avenue, an extension of Basin Electric property to the east and an undeveloped agriculturally zoned property to the north.
2. The property is already annexed; therefore, the proposed zoning change would not place an undue burden on public services.
3. The proposed zoning change would not adversely affect property in the vicinity.
4. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
5. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Wollmuth said based on these findings, staff recommends approval of the zoning change from the A – Agriculture zoning district to the CG – Commercial zoning districts on the South 59 feet of the East 151 feet of Lot 4, Block 1, Boutrous 2<sup>nd</sup> Addition.

Chairman Yeager opened the public hearing.

Clark Bormann said he is an attorney representing the owner, Jerry Brekke. Mr. Bormann stated on behalf of Mr. Brekke, he wanted to say how much his client would appreciate the acceptance of the staff recommendation to approve this request.

Commissioner Laning asked if it is known yet what the property will be used for. Mr. Bormann said that an expansion of the parking lot for Grand Theatres has already been constructed.

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

**MOTION:** Commissioner Warford made a motion to approve the zoning change from the A-Agriculture zoning district to the CG-Commercial zoning district for the South 59 feet of the East 151 feet of Lot 4, Block 1, Boutrous 2<sup>nd</sup> Addition. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT –  
LOT 1, BLOCK 2, SUNRISE TOWN CENTRE**

Chairman Yeager called for the public hearing for a special use permit for a drive-through window in conjunction with a financial institution located within Dan's SuperMARKET to be located on Lot 1, Block 2, Sunrise Town Centre Addition. The property is located in northeast Bismarck, east of Centennial Road in the southeast quadrant of the intersection of Yorktown Drive and Saratoga Avenue.

Ms. Wollmuth provided an overview of the request, including the following findings:

1. A financial institution with a drive-through window is allowed as a special use in the CG – Commercial zoning district, provided specific conditions are met. The proposed drive-through window meets all six provisions outlined in Section 14-03-08(4)(g) and meets the required vehicle stacking outlined in Section 14-03-10(2) of the City Code of Ordinances (Zoning). The proposed special use would not adversely affect the public health, safety and general welfare.
2. The proposed special use would not be detrimental to the use or development of adjacent properties.
3. The use would be designed, operated and maintained in a manner that is compatible with the appearance of the existing character of the surrounding area.
4. Adequate public facilities and services are in place.
5. This use would not cause a negative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity.
6. Adequate measures have been taken to minimize traffic congestion in the public streets and provide for appropriate on-site circulation of traffic. In particular, adequate off-street parking would be provided and stacking areas are located on private property away from Greensboro Drive.

Ms. Wollmuth said based on these findings, staff recommends approval of a special use permit to allow a drive-through window in conjunction with a financial institution located within Dan's SuperMARKET on Lot 2, Block 1, Sunrise Town Centre Addition, with the following conditions:

1. The construction and operation of a drive-through must meet all applicable requirements for such a use in the CG- Commercial zoning district.
2. Development of the site must generally conform to the site plan submitted with the application.

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 special use permit for a drive-through window in conjunction with a financial institution located within Dan's SuperMARKET to be located on Lot 1, Block 2, Sunrise Town Centre Addition: 1) The construction and operation of the drive-through window must meet all applicable requirements for such a use in the CG – Commercial zoning district; and 2) Development of the site must generally conform to the site plan submitted with the application. Commissioner Lee seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

#### **PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT – OFF-STREET PARKING AND LOADING/JOINT USE OF PARKING**

Chairman Yeager called for the public hearing for a zoning ordinance text amendment relating to Off-street Parking and Loading/Joint Use of Parking. The proposed ordinance would allow for multi-tenant shopping centers, having a minimum of 30,000 square feet of leasable area and a minimum of five tenants, to have a lower ratio to calculate required off street parking spaces. Ms. Lee stated that many patrons of shopping centers visit more than one shop during their stop and it makes sense to have a lower parking ratio and allow for the joint use of parking.

Chairman Yeager opened the public hearing.

Dave Patience said the owners of Kirkwood Mall asked for some research to be done on this concept and said they fully support this change.

Ms. Lee stated that due to a publication error for the public hearing, staff is recommending that this request be continued to the March 26<sup>th</sup> meeting of the Planning & Zoning Commission.

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

**MOTION:** Commissioner Warford made a motion to continue the zoning ordinance text amendment relating to Off-street Parking and Loading/Joint Use of Parking to the March 26<sup>th</sup> meeting of the Planning & Zoning Commission. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

### **PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT – APPEAL PROCEDURES**

Chairman Yeager called for the public hearing for a zoning ordinance text amendment relating to Appeal Procedures. The proposed ordinance would clarify procedures for an appeal of a decision made by the Bismarck Planning and Zoning Commission or the Board of Adjustment to the Board of City Commissioners.

Chairman Yeager opened the public hearing.

Bob Snyder submitted his comments regarding the appeal process, which are attached as Exhibit A. Mr. Snyder stated that he has always been very critical of government in general but his support lately has been for what the local government of the City is doing now in relation to the proposed zoning ordinance text amendment. He said Ms. Lee and Mr. Whitman, City Attorney, have redefined the relationship between the Planning and Zoning Commission and the City Commission. He went on to say that it seems this major rewrite happened to come about because of the cause and effect due to the knock-down, drag out brawl known as the 'Baptist Home Rezoning' case.

Mr. Snyder reviewed the history of the Ruth Meiers request for a zoning change and the resulting appeal and expressed his dissatisfaction with that process. He went on to say he attended the public hearing on the requested zoning change for the former Baptist Home that was held on November 20, 2013, and he did not like what he saw. He added that the initial appeal to the City Commission was not completed correctly as the appeal request was not submitted by an authorized person and it was not submitted to the appropriate department. Because the process defined in City Code was not followed, he believes the entire hearing at the City Commission on December 17<sup>th</sup> was illegal and in violation of the City's own procedure.

Mr. Snyder then said there is no reason for somebody to serve on a board where the City Commission on a whim can ignore what the Planning and Zoning Commission has recommended. He said he would like to add an eighth suggestion to the list he had originally submitted which says any vote held at City Commission should be held publicly. He

concluded by stating the proposed changes are common sense and the Planning and Zoning Commission will support a rewrite that will require people to do the right thing. Ms. Lee stated that due to a publication error for the public hearing, staff is recommending that this request be continued to the March 26<sup>th</sup> meeting of the Planning & Zoning Commission.

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

**MOTION:** Commissioner Warford made a motion to continue the zoning ordinance text amendment relating to Appeal Procedures to the March 26<sup>th</sup> meeting of the Planning & Zoning Commission. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

### **PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT – LANDSCAPING AND SCREENING**

Chairman Yeager called for the continued 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 this item was continued from the January 22<sup>nd</sup> meeting to allow time for staff to better define some of the gray areas. He said he has spoken with Mr. Whitman as well as the City Forester, Jackson Bird, and they have determined to reconsider options for the enforcement of the Landscaping and Screening requirements. Mr. Tomanek noted that Planning Staff will research options for bonds or cashier's checks in the amount of the required landscaping in an effort to encourage compliance with the ordinance requirements. Mr. Tomanek closed by saying he has plans to rework the concept to include more financial information such as the requirement of bonds and acceptance of cashier's checks. He said he would like to continue this item to the March 26<sup>th</sup> meeting in order to allow time for more research to be done on these items.

Commissioner Laning asked if one month will be enough or if staff would like more time. Mr. Tomanek said they are trying to have this finalized prior to the busy landscaping season that is coming, but it will get done in one month if needed or two months if that is what is granted.

Commissioner Lee asked if when this is approved, if prior work done will fall under the old rules or if all of the previous landscaping work will have to be redone. Mr. Tomanek said this would not apply to anything done previously; it would only be applicable to new site plans going forward.

Chairman Yeager opened the public hearing.

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

**MOTION:** Commissioner Laning made a motion to table the zoning ordinance text amendment relating to Landscaping & Screening to a future meeting of the Planning & Zoning Commission. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

### **OTHER BUSINESS**

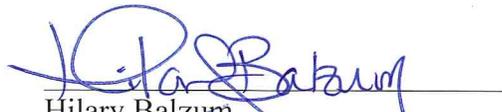
Mr. Patience spoke in regards to the public hearing that was held on January 22<sup>nd</sup> for a zoning change from the PUD-Planned Unit Development zoning district to the RM15-Residential zoning district on Lots 1-2, Block 1, Hamilton's First Addition. The recommendation for that action included restrictions that were not agreed on by the developer and which were subsequently protested at the City Commission meeting of February 11<sup>th</sup>. The City Commission sent this item back to the Planning and Zoning Commission to reconsider the restrictions and allow the developer to plead his case that he cannot make use of the project with the proposed restrictions in place. He requested that the Planning and Zoning Commission call for another public hearing on this item for their next meeting on March 26<sup>th</sup>.

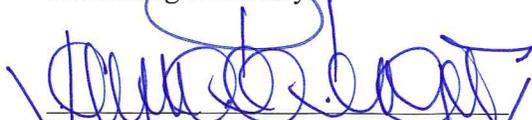
**MOTION:** Commissioner Warford made a motion to call for another public hearing on the zoning change from the PUD-Planned Unit Development zoning district to the RM15-Residential zoning district on Lots 1-2, Block 1, Hamilton's First Addition at the March 26<sup>th</sup> meeting of the Planning & Zoning Commission. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Waldoch, 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 6:15 p.m. to meet again on February 26, 2014.

Respectfully submitted,

  
Hilary Balzum  
Recording Secretary

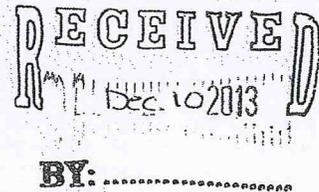
  
Wayne Lee Yeager  
Chairman

The following are constructive suggestions to improve the pending rewrite of City Ordinance Sec. 14-01-06. They are relatively minor, because, in my opinion, whoever did the rewrite did an excellent job.

1. Under the current ordinance, all witnesses who testify at the appeal hearing before the city commission as to facts must be placed under oath. In the rewrite, no one is placed under oath at any stage. I suggest that this body be given discretion to place witnesses under oath. This power should be used sparingly, and only when this body collectively believes someone is attempting to pull a fast one.
2. Because this body, under the rewrite, is in effect a trial court, and the city commission is the appellate court, reviewing the record of this body, I suggest that this body should be required to issue a written decision, which is the final decision of this body. I believe that it is important for this body to provide the city commission with as complete a record as possible.
3. The rewrite allows the "aggrieved applicant" or an agent, to file the notice of appeal. This is somewhat ambiguous. If a notice of appeal is filed by agent, a requirement should be added that such a notice also be accompanied by a document stating the authority for the agent to do so.
4. Under both the existing ordinance and the rewrite there is no requirement that the appeal hearing be publicly noticed, because it is not a public hearing; one has to hunt around to see what's happening. Under the rewrite, the notice of appeal can be filed in both the city administrator's office and the office of community development, making it even harder. I suggest that the appeal hearing before the city commission be publicly noticed, in the usual manner, by publication in the Tribune, affording those supporting or disputing the decision by this body time to prepare for the hearing. In a similar vein, I suggest that a time limit be set for the filing of documents (which under the rewrite will probably mostly consist of legal briefs). I suggest 5 days. This will prevent the city commission and its staff from being blindsided by documents filed at the last minute, and give them time to prepare.
5. There are several references to a "Zoning Administrator." I'm not aware that such a position even exists, and it should be defined. Similarly, there are several references to the "secretary" of both this body and the city commission. I don't know who these people are and they should be defined as well.
6. If the proposed rewrite to 14-01-06 is enacted, the city commission will become a true quasi-judicial appellate body. As such, there must be a standard of review for the notice of appeal. In my Dec. 10 filing with the city administrator, I wrote exclusively on what standard should apply, and what the consequences of a failure to comply should be. It is the standard used in the courts, and I request that this body review it.
7. This one is the toughest. Under the rewrite, the entities entitled to appeal continue to be exclusive to the aggrieved applicant and certain city entities. I see a lurking equal protection problem here. I refer this body to my Dec. 16 filing with the city administrator. In my opinion, some sort of provision should be included to allow an appeal from a decision by this body approving a zoning change application. I don't have exact language for this, but I believe it should give this body, or the city commission the discretion to determine the legal standing of an entity to appeal an approval.

That's about it. All in all, the rewrite goes a long way to satisfy the criticisms contained in my four filings in the Baptist Home debacle. I believe all four, plus this document, have been submitted to you separately from the agenda packet, but are part of the record.

Respectfully submitted,  
Robert J. Snyder



Dec. 10, 2013

HAND DELIVERED

Bill Wocken

Bismarck City Administrator

221 N. 5<sup>th</sup>. St.

Bismarck, ND

Re: Ruth Meiers Hospitality House/Baptist Home alleged appeal

Mr. Wocken:

This letter is to respond to a certain letter by one Jeffrey J. Ubl, dated, and seemingly filed somewhere in city administration, on Nov. 26, 2013, which purports to appeal the Nov. 20 decision of the Bismarck Planning and Zoning Commission, denying an application by the Ruth Meiers Hospitality House for a rezoning, from RM30 to PUD, of the property currently owned by the Baptist Home

The following comments are based solely upon the four corners of Mr. Ubl's letter itself, and a review of the applicable city ordinances. I submit that this is also the standard, together with the standard of strict compliance with the ordinances, the City Commission must apply in determining whether this so-called appeal is valid.

In the letter, Mr. Ubl identifies himself as an architect, and alleges that the Ruth Meiers Hospitality House is a "client" of his firm. He further states that he is filing an appeal "on behalf" of his architectural client. The letter was apparently delivered not to the City Administrator, but to Carl Hokenstad, the Director of Community Development, giving rise to the question of whether Mr. Hokenstad is an "other designated official" (see City Ordinance Sec. 1-01-20), as mandated by the city ordinance described immediately below.

The procedure to appeal a decision from the Planning and Zoning Commission is set forth in Bismarck City Ordinance Sec. 14-01-06, which reads in pertinent part as follows:

"Any final decision of the city planning and zoning commission may be appealed to the city commission by either the aggrieved applicant or by any officer, department, board or bureau of the city. Notice of the appeal shall be delivered to the city administrator or other designated official within 10 days of the city planning and zoning commission's decision."

This language is clear and unequivocal. It is not a mere suggestion, but mandatory (City Ordinance Sec. 14-02-03). Only an aggrieved applicant (or certain city entities) can perfect the appeal.

Here, the so-called appeal was made not by the applicant, the Ruth Meiers Hospitality House through a duly authorized executive or member of its governing board, but by a self-stated architect who claims to have the applicant as a "client" for purposes not specified, and was delivered to a person who is apparently not authorized to receive it. Mr. Ubl's letter, on its face, fails entirely to satisfy the requirements of City Ordinance Sec. 14-01-06.

In fact, the letter does not even attempt to claim that the author, Mr. Ubl, was authorized by the Ruth Meiers Hospitality House to file any type of legal document, much less a notice of appeal, stating merely that it was being done "on behalf" of Meiers. By that reasoning anyone, licensed to practice law or not, could file any legal document anywhere on behalf of anyone else, which is not only ill-advised, but may, depending on the circumstances, constitute engaging in the unauthorized practice of law, a criminal act (see NDCC Sec. 27-11-01).

Although it may not have risen to the level of engaging in the unauthorized practice of law (that is for the Burleigh County State's Attorney's office to determine), Mr. Ubl's letter clearly demonstrates he had no legal standing whatever to file a notice of appeal in this matter.

Notices of appeal are technical, specific documents. Only if the prospective appellant (here, the Ruth Meiers Hospitality House) follows, to the letter, the mandates of the authority specifying the procedure to appeal (here, City Ordinances Secs. 14-01-06, 1-01-20 and 14-02-03), does the appellate body (here, the Bismarck City Commission) obtain jurisdiction over the substance of the appeal. That is what is known as "perfecting" the appeal. It was not done here, and such a failure is fatal to the attempted appeal.

In summary, there is no valid appeal because, as a matter of law, none was perfected by the applicant, the Ruth Meiers Hospitality House, and therefore the Bismarck City Commission lacks the jurisdiction or power to consider the merits of it. This is a threshold issue, and must be decided before any substantive action is taken by the City Commission on this matter.

If the City Commission decides that there is, as a matter of law, a valid appeal, I request that it states the exact basis for that decision, taking into account the issues raised herein.

Please call this letter to the attention of the members of the City Commission, its appropriate staff, and City Attorney Whitman.

Thank you for your time and attention.



Robert J. Snyder

1009 N. 14<sup>th</sup>. St.

Bismarck, ND 58501

701.222.8899

Dec. 16, 2013

HAND DELIVERED

Bill Wocken

Bismarck City Administrator

221 N. 5<sup>th</sup> St.

Bismarck ND

Re: Ruth Meiers Hospitality House/Baptist Home alleged appeal.

Mr. Wocken:

This letter is supplemental to my Dec. 10, 2013, letter to the City Administrator. It is not entirely germane to the pending matter, but is something about which the City of Bismarck must be put on notice as a result of a review of the key city ordinance at the heart of this matter.

City Ordinance Sec. 14-01-06 identifies who has the right to appeal to the Bismarck City Commission from a decision of the Bismarck Planning and Zoning Commission. The entitled parties are exclusive to the "aggrieved applicant" and certain city entities.

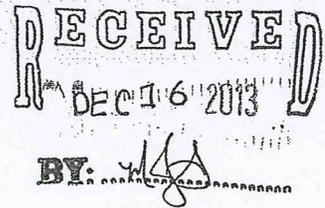
Here, the Planning and Zoning Commission, by a vote of 10-1, denied the application of the Ruth Meiers Hospitality House. Some type of attempt was possibly made to appeal it.

What if the roles were reversed? What if the vote, say a close one of 6-5, approved the application? Would anyone outside of city government have the right under City Ordinance Sec. 14-01-06 to appeal such a decision to the City Commission? No.

Here, there was a clearly-identified opposition entity, the Baptist Home Neighbors. This group participated in this matter prior to the Nov. 20, 2013, Planning and Zoning Commission hearing, at the hearing, both through individual members and legal counsel, Blaine Nordwall, and has participated in the current appeal process, again through Mr. Nordwall. Yet, this entity would not have the same appellate rights as those afforded the Ruth Meiers Hospitality House.

The Fourteenth Amendment to the United States Constitution, and Article 1, Sections 9 and 23, of the North Dakota Constitution, guarantee equal protection under the law. The First Amendment to the United States Constitution, and Article 1, Section 5, of the North Dakota Constitution, guarantee, as a fundamental right, the ability to seek redress of grievances.

In *Gange v. Clerk of Burleigh County District Court*, 429 N.W. 2d., 429,433 (N.D. 1988), an equal protection case, the North Dakota Supreme Court stated that, when facing an issue of an alleged violation of a fundamental right, the standard for judicial review is one of "strict scrutiny," the highest standard possible, and will be declared such a violation "unless it is shown that the statute promotes a



compelling governmental interest and that the distinctions drawn by the law are necessary to further its purpose." (citations omitted)

In this matter, City Ordinance Sec. 14-01-06 is, in effect, a statute. A fundamental right, the right to appeal, has been granted to one party, while being denied to another. There is no compelling governmental interest for this. In this regard, City Ordinance Sec. 14-01-06 is clearly unconstitutional.

While somewhat collateral, this further illustrates the surreal condition of City Ordinance Sec. 14-01-06, as described in Mr. Nordwall's Dec. 13, 2013, letter to the City Administrator.

Please call this letter to the members of the City Commission, its appropriate staff, and City Attorney Whitman.

Thank you for your time and attention.

A handwritten signature in black ink, appearing to read 'Robert J. Snyder', with a long horizontal line extending to the right.

Robert J. Snyder

1009 N. 14<sup>th</sup> St.

Bismarck, ND 58501

701.222.8899

Charlie Whitman  
Bismarck City Attorney  
221 N. 5<sup>th</sup> St.  
Bismarck, ND  
Via email

Re: Ruth Meirs/Baptist home appeal hearing

Charlie:

This letter is in response to the Dec. 17, City Commission hearing. It is being sent solely on my behalf, and does not represent the views of anyone else. In fact, I have never stated that I represent anyone else in these proceedings, and have never stated that I am an attorney.

It is clear to me that the City Commission does not understand its role as the appellate body in a quasi-judicial proceeding, which yesterday's meeting was, as a being a direct appeal to the City Commission from the Planning and Zoning Commission's decision to deny the Ruth Meiers Hospitality House's application. If the City Commission did understand that role, it would have followed the mandates of City Ordinance Sec. 14-01-06, both in regards to the validity of the notice of appeal, which establishes the City Commission's jurisdiction regarding the appeal, and the conduct of the meeting. The only alternative is that the City Commission deliberately chose to ignore the mandates of the ordinance, the substance of which was presented to the City Commission well in advance of the Dec. 17 meeting.

All citizens have the right to consult with legal counsel. This is particularly critical when the proceeding involves semi-complex issues of law, such as an appeal.

Of concern is the conduct of Commissioner Seminary at the hearing. He was openly hostile to me, who did not appear at an attorney, and Blaine Nordwall in particular, who did. He was scornful of the appearance of any attorney at this meeting, and publicly berated Mr. Nordwall for being there at all.

Of even more concern is the conduct of Mayor Warford. The Mayor, in his role as a member of the Planning and Zoning Commission, voted, on Nov. 20, to deny the application of the Ruth Meiers Hospitality House, at which Mr. Nordwall both appeared and spoke. Yet, at the Dec. 17 City Commission meeting, he lamented that the neighbors had "lawyered up," a term that is normally applied to alleged criminals. Mayor Warford then reversed himself, and voted to overrule the Planning and Zoning Commission's decision, of which he was a part.

I consider both Mayor Warford's, and Mr. Seminary's, conduct to be unprofessional, and unworthy of City Commission office. Both owe apologies to me, and especially to Mr. Nordwall, preferably in writing.

Please file this in the appropriate manner.

Sincerely,

Robert J. Snyder

My name is Robert Snyder. I have previously filed two legal memoranda with the city administrator, and appeared and very briefly spoke at the Dec. 17 hearing held by the city commission on whether the Ruth Meiers Hospitality House should be allowed a rezoning of the property commonly called the Baptist Home from its current RM30 classification (residential) to PUD (wide open).

I did so as a person who lives 4 blocks from the Baptist Home. I also deliberately did not identify myself as representing anyone else, and I never stated I am an attorney. I did so, because I believe that every citizen has the right to read the Code of City Ordinances and understand its provisions, without the necessity of hiring an attorney to interpret it, and be allowed to voice any concerns the citizen may have to city government. Sadly, that is not the case. The Code is riddled with ambiguities, and should be extensively rewritten.

I now appear in this matter as Robert J. Snyder, Attorney at Law, representing myself. I have been an attorney for 36 years, concentrating on litigation at all judicial levels. I have not actively practiced for 12 years, but I could step into court tomorrow if I wanted, and in this matter I will if necessary.

I must confess that, in all my years, I have never appeared on the city level; this is my first experience with it. If nothing else has been made clear to me as a result of the current process, it is that the city commission is, to say the least, unwilling to follow its own laws. It also is clear to me that the city commission is hostile to people, such as Blaine Nordwall, counsel for the Baptist Home Neighbors, and me, who did not appear as an attorney, who attempt to point out to its members what the law says. I can only say that, as a result of experiencing what I have, if this is the way the city commission normally conducts its business, every citizen of the city is in real trouble.

In order to understand what has been happening recently, it is necessary to understand the character of the neighborhood being threatened. This neighborhood has been the solid so-called middle class part of town for well over 50 years: the bedrock of the city. Several people of my age whom I know grew up within a few blocks of where I now live, and some of them are now quite prominent.

The neighborhood has been going through a very good transformation recently. Young families are moving in, because the neighborhood affords what passes for affordable housing in the current crazy real estate market. It is the home to the Capitol grounds, several schools, numerous churches, and Hillside Park, in my opinion the best park in the city. It's a nice place to live. The neighborhood has come full circle and is about to become what it was in the 1950's.

There is a great danger all of that will be destroyed if the pending zoning change is allowed to go into effect. This cannot be allowed to happen.

The Baptist Home has been there since 1947, five years before my house was built, and five years before the pool at Hillside was constructed. At the time it was built, there was nothing there but the Capitol grounds. It was built before there were any real zoning regulations, and was grandfathered in.

Since then, it has been a rather innocuous eyesore. Nobody really minded, apart from the fact that the main building looks like a prison more than anything else. If Ruth Meiers gets what it wants, that will drastically change.

Ruth Meiers wants nothing less than to transform that property into one-stop shopping for every transient for miles around, plus installing its' and related agencies' administrative offices there. Ruth Meiers has refused to negotiate with anyone, including the neighborhood. It's their way or the highway. Just the potential parking situation is a nightmare.

However, others can state this better than I. My focus, as an attorney, is to take a good look at whether the law has been followed in attempting this radical change. To repeat a recent quote from U.S. House Speaker John Boehner, "Are you kidding me?"

We have to start with the process of how a zoning change comes about. An application for a change in zoning must, by law, first be filed with the office of the planning and zoning commission. This commission is comprised of the mayor, a county commissioner, and nine lay people, the latter of whom serve without pay. I suggest that all interested people read Chapter 14 of the Code of City Ordinances to see how this works.

Here, an application for rezoning was signed by Jaclyn Bugbee, the executive director of the Ruth Meiers Hospitality House. It was taken under consideration by the planning and zoning commission, including a meeting and a full public hearing on Nov. 20. At the hearing, so many people testified that the number of witnesses was limited by the commission; both sides were afforded a full and fair opportunity to be heard.

At the close of the public hearing, the planning and zoning commission voted 10-1 to deny the application, most likely because the proposed zoning change violates every single one of the standards set forth in City Ordinance Sec. 14-02-01. Among those who voted to deny the application was Mayor Warford.

The public hearing was televised and recorded. I urge anyone with an interest in seeing the hearing to obtain a copy of the recording, likely from the city administrator's office. Anyone can see the Code of City Ordinances on line.

City Ordinance Sec. 14-01-06 is the section specifying the procedure to appeal a decision of the planning and zoning commission to the city commission. For the purposes of this matter, the only entity with the legal standing to appeal was the "aggrieved applicant," the Ruth Meiers Hospitality House.

An appeal document was filed, but not by Ruth Meiers. It was filed by one Jeffrey J. Ubl, a self-stated architect, who claimed to have Ruth Meiers as a "client" for purposes not stated. Mr. Ubl claimed he was filing it "on behalf" of Ruth Meiers, but no authority to do this was ever produced. This document was not filed in the office of the city administrator, as mandated by 14-01-06, but in the office of community development. It could not have been more deficient, as a matter of law, if it had been done deliberately.

On Dec.10, I filed a legal memorandum challenging this purported notice of appeal. Mr. Nordwall, as legal counsel for the Baptist Home Neighbors, filed a similar one three days later. I will not repeat the full content here, and anyone desiring to see them can obtain copies from the city administrator's office. In short, we declared that because this purported notice of appeal was so entirely deficient, the city commission lacked, as a matter of law, the jurisdiction to consider the appeal at all.

Sec. 14-01-06 contains provisions governing the appeal hearing. Among those provisions are that all parties shall be given the right to appear and speak ("parties" is not defined), that all witnesses testifying or offering exhibits through testimony shall be put under oath, and that everyone be given a full and fair opportunity to be heard.

The appeal hearing was held on Dec. 17, and we had to wait for two and a half hours for it to come up on the agenda. The hearing was a fiasco.

It began with a terse announcement that the appeal was valid. This was obviously the result of some sort of back room deal. Only when I pressed the city commission to do so was a public vote taken. None of the issues raised in the two legal memoranda filed by Mr. Nordwall and me was even mentioned. At a bare minimum, Mr. Ubl, the author of the purported appeal, and Ms. Bugbee, the executive director of Ruth Meiers, should have been required to appear and explain how they managed to get the purported notice of appeal wrong in every way possible. That was not done, and one must wonder why.

When it came time for witnesses, I asked that all fact witnesses be placed under oath, as mandated by Sec. 14-01-06. The city commission seemed confused by this request. A very strange discussion ensued, and at the end of it the city commission announced that one witness from each side would testify, not under oath, as long as the testimony before the planning and zoning commission was not rehashed, and no new evidence was presented.

Ms. Bugbee, on behalf of Ruth Meiers spoke first, for about 20 uninterrupted minutes, including the use of exhibits and power-point. In so doing she entirely violated the rules just set by the city commission, and not a single city commissioner objected.

Mr. Nordwall then rose to speak on behalf of the Baptist Home Neighbors. Before he could say a single word, Commissioner Seminary, seconded by Commissioner Axvig, moved to set a hearing. Mayor Warford had to remind them twice that doing this violated the just-set rule established by the city commission.

When Mr. Nordwall was finally allowed to speak, he was savaged by Mr. Seminary to the point that he was not allowed to say anything at all. I consider Mr. Seminary's performance appalling and unworthy of city commission office.

So much for a full and fair opportunity to be heard. Calling this a kangaroo court would be an insult to the kangaroo. Something is very wrong here. I urge everyone to view the recording of that hearing.

At the end of the hearing, the city is faced with a public record that consists of a purported notice of appeal that violated every requirement of City Ordinance Sec. 14-01-06; two separate legal challenges

to it; a back room deal that ignored both challenges; a refusal to require those responsible for the notice to explain it; illegal testimony by Ms. Bugbee; a suppression of Mr. Nordwall's right to speak, and nothing else at all. In my legal opinion, a judge will not be impressed.

At the end of the hearing everyone, including me, was confused. Another hearing had been set, but on what? Was it to be a hearing on the purported appeal again, or something else?

That became clear when the city commission issued its written decision on Dec. 18, less than a day after the hearing, and it is four full pages long. I will not get into it point by point, but I do have some comments about it.

First, while it appears to be a very thorough analysis, when you remove the extraneous verbiage, all it really says is that that it overrules the decision of the planning and zoning commission, and sets a public hearing, probably on Jan. 14, 2014. This hearing will be the final stage of the process of enacting the zoning change ordinance into law.

Second, given the time span between the end of the appeal hearing and the issuance of the decision, the author has near-superhuman talents, or it was written before the hearing even started.

Third, the decision was signed by Mayor Warford, the same person who, in his role as a member of the planning and zoning commission, voted to deny Ruth Meiers' application for a zoning change. He reversed himself, with no new evidence to support it. No vote by the commission was apparently taken, certainly not a public one.

Fourth, the decision gives no weight whatever to the hard work put in by the planning and zoning commission, and its 10-1 vote. If I was a member of the planning and zoning commission I would not be pleased with that at all.

Fifth, it does not establish a standard in determining the validity of a notice of appeal, despite my specific request in my Dec. 10 filing that it do so. It merely stated that the commission "finds the notice of appeal to be adequate and effective for the purposes of this appeal," without explaining why.

Sixth, the decision mixes up the Preamble, the Findings of Fact, and the Conclusions of Law, to the point where, in my legal opinion, it is difficult to tell what is what. In my opinion, a judge will not be impressed by this either.

It may be argued that I'm dealing in mere technicalities. What some others may consider technicalities, I, as an attorney, consider following the law controlling the conduct of city government.

A miscarriage of justice is going on here on such a scale that every citizen of this city should be alarmed.

Hand delivered this 31<sup>st</sup> day of December, 2013.

Robert J. Snyder

Attorney at law—pro se

1009 N. 14<sup>th</sup> St.

Bismarck, ND 58501

222.8899