

**BISMARCK PLANNING & ZONING COMMISSION**  
**MEETING MINUTES**  
**April 23, 2014**

The Bismarck Planning & Zoning Commission met on April 23, 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 Mark Armstrong, Tom Atkinson, Mel Bullinger, Mike Donahue, Vernon Laning, Doug Lee, Mike Schwartz, Ken Selzler, Lisa Waldoch, John Warford and Wayne Yeager.

Staff members present were Carl Hokenstad – Director of Community Development, 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.

**PRESENTATION – 2014 FRINGE AREA ROAD MASTER PLAN UPDATE**

Chairman Yeager called for the presentation on the proposed 2014 Fringe Area Road Master Plan Update.

Bill Troe, SRF Consulting, said the proposed Fringe Area Road Master Plan Update would include the edges of the City of Bismarck on all sides and would focus on areas that need to be looked at as potentially future urban scale development. He said the timeline would allow for the delivery of a draft of the update in June and that they are on schedule for that delivery. He said areas with significant topography still need more work, but that it is worth the investment to put roadwork through some of the more rough terrain in certain areas. He said flexibility needs to be built into the plan as well and a process for amendments needs to be in place so that more development concepts can be considered. He closed with saying information is available at [www.fringeroadplan.com](http://www.fringeroadplan.com) which includes maps, guidelines, goals and objectives.

**MINUTES**

Chairman Yeager called for consideration of the minutes of the March 26, 2014 meeting.

**MOTION:** Commissioner Warford made a motion to approve the minutes of the March 26, 2014 meeting as received. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**CONSIDERATION**

**A. FERNWOOD SECOND SUBDIVISION –**

**ZONING CHANGE AND PRELIMINARY PLAT**

- B. LOTS 1-9, BLOCK 1; LOTS 1 & 9, BLOCK 2; AND LOT 25, BLOCK 3, NORTH HILLS 17<sup>TH</sup> ADDITION – ZONING CHANGE**
- C. ALL OF LOTS 1 & 2 AND PART OF LOTS 3, 6 & 7, BLOCK 6, WESTERN HILLS – ZONING CHANGE**
- D. PART OF THE W1/2 OF THE SW1/4 OF SECTION 10, T139N-R80W/HAY CREEK TOWNSHIP – ZONING CHANGE**
- E. FLOODPLAIN DISTRICT REGULATIONS – ZONING ORDINANCE TEXT AMENDMENT**

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

- A. Fernwood Second Subdivision – Zoning Change and Preliminary Plat
- B. Lots 1-9, Block 1; Lots 1 & 9, Block 2; and Lot 25, Block 3, North Hills 17<sup>th</sup> Addition – Zoning Change
- C. All of Lots 1 & 2 and Part of Lots 3, 6 & 7, Block 6, Western Hills – Zoning Change
- D. Part of the W1/2 of the SW1/4 of Section 10, T139N-R80W/Hay Creek Township – Zoning Change
- E. Floodplain District Regulations – Zoning Ordinance Text Amendment

Chairman Yeager asked if any items needed to be removed for discussion. Mr. Tomanek said that at the applicant's request, the application for the zoning change on Lots 1-9, Block 1; Lots 1 & 9, Block 2; and Lot 25, Block 3, North Hills 17<sup>th</sup> Addition has been withdrawn.

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

**FINAL CONSIDERATION – ANNEXATION  
PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT –  
DAYBREAK ADDITION**

Chairman Yeager called for the public hearing on the final plat; the zoning change from the A-Agriculture zoning district to the CG-Commercial zoning district; and final consideration of the annexation of Daybreak Addition. The proposed plat is three lots in two blocks on 21.89 acres and is located in north Bismarck along the west side of US Highway 83 and along the north side of 57<sup>th</sup> Avenue NE (part of the SE¼ of Section 9, T139N-R80W/Hay Creek Township).

Mr. Tomanek 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.
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.

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

1. The proposed zoning change would be consistent with the Future Land Use Plan in the draft Growth Management Plan Update, which identifies the area as commercial.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include undeveloped land to the north and west, developing commercial and multi-family uses to the south, US Highway 83 and a fireworks sales building to the east, and four rural residential dwellings to the northeast that are located along the east side of US Highway 83.
3. An annexation request has been submitted for the entire subdivision; therefore the proposed zoning change would not place an undue burden on public services.
4. The proposed zoning change 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 then presented 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 with the Fringe Area Road Master Plan, which identifies US Highway 83 and 57<sup>th</sup> Avenue as arterial roadways. The proposed subdivision also conforms with the roadway network in the US Highway 83 Corridor Transportation Study, which identifies Yukon Drive as a north-south collector roadway for this section.

4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include undeveloped land to the north and west, developing commercial and multi-family uses to the south, US Highway 83 and a fireworks sales building to the east, and four rural residential dwellings to the northeast that are located along the east side of US Highway 83.
5. The entire subdivision would be annexed; therefore the proposed subdivision would not place an undue burden on public services.
6. The proposed subdivision would not have an adverse impact on property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance.
8. The proposed subdivision 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 annexation of Daybreak Addition, the zoning change from the A-Agriculture zoning district to the CG-Commercial zoning district and final plat of Daybreak Addition.

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 reports, Commissioner Lee made a motion to approve the annexation, the zoning change from the A-Agriculture zoning district to the CG-Commercial zoning district and final plat of Daybreak Addition. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION  
PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT –  
EAST DIVIDE INDUSTRIAL PARK ADDITION**

Chairman Yeager called for the public hearing on the final plat; the zoning change from the A-Agriculture and MA-Industrial zoning districts to the MA-Industrial and P-Public zoning districts; and final consideration of the annexation of East Divide Industrial Park Addition. The proposed plat is 21 lots in five blocks on 79.12 acres and is located in northeast Bismarck, along the south side of East Divide Avenue, directly west of 52nd Street NE (Auditor's Lots B-B, C-C, D & E of the S1/2 of Section 25, T139N-R80W/Hay Creek Township).

Mr. Tomanek 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.
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.

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

1. The proposed zoning change would be consistent with the Land Use Plan (Bismarck-Mandan Regional Future Land Use Plan), which identifies this area as industrial. The proposed zoning change would also be consistent with the Future Land Use Plan (FLUP) of the draft Growth Management Plan Update, which identifies this area as industrial.
2. The proposed zoning change would be generally compatible with adjacent land uses. Adjacent land uses include the North Dakota Army National Guard Armory and the Burleigh County Highway Department Shop to the north, industrial uses to the west, undeveloped land to the south and rural residential dwellings across North 52<sup>nd</sup> Street to the east.
3. An annexation request has been submitted in conjunction with this request, the entire property would be annexed prior to development; therefore the proposed zoning change would not place an undue burden on public services.
4. The proposed zoning change may have an adverse impact on property in the vicinity. In particular, there are existing rural residentially-zoned homes to the east of the proposed subdivision across North 52<sup>nd</sup> Street NE. Historically, a public arterial roadway has been an adequate separation and buffer between incompatible land uses.
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 acceptable planning practice.

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

1. The preliminary plat was tentatively approved by the Planning & Zoning Commission

on August 23, 2013.

2. All technical requirements for approval of a final plat have been met.
3. The storm water management plan has been approved by the City Engineer.
4. The proposed subdivision would be generally compatible with adjacent land uses. Adjacent land uses include the North Dakota Army National Guard Armory and the Burleigh County Highway Department Shop to the north, industrial uses to the west, undeveloped land to the south and rural residential dwellings across 52nd Street NE to the east.
5. The proposed subdivision is outside the boundaries of the Fringe Area Road Master Plan. Divide Avenue will be extended through this property and has been identified as an arterial roadway and 52nd Street NE is a section line roadway which has also been identified as an arterial road.
6. The proposed subdivision may have an adverse impact on property in the vicinity. In particular, there are existing rural residentially-zoned homes to the east of the proposed subdivision across 52nd Street NE. Historically, a public arterial roadway has been an adequate separation and buffer between incompatible land uses.
7. An annexation request has been submitted in conjunction with this request, the entire property would be annexed prior to development; therefore the proposed subdivision would not place an undue burden on public services.
8. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance.
9. The proposed subdivision 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 annexation of that portion of the plat not previously annexed, the zoning change from the A-Agriculture and MA-Industrial zoning districts to the MA-Industrial and P-Public zoning districts and final plat of East Divide Industrial Park Addition.

Chairman Yeager opened the public hearing.

Gary Bless, 5210 Cherrywood Drive, said he lives southeast of the proposed addition and that he appreciates the City of Bismarck and the Planning and Zoning Commission making Bismarck a better place to live. He said he cannot think of any other place in Bismarck where industrial zoning is adjacent to residential zoning. He said he appreciates the use of zoning and landscape and is asking that things continue that way in order to keep Bismarck a good place to live.

Levi Murray, 5311 20<sup>th</sup> Ave NE, said he would like more of a buffer between the proposed addition and his property because the road that is supposed to go in will line up directly with his driveway and he is concerned about his driveway being used as a turnaround point for vehicles. He said there is also a waterway that runs through his yard which is going to end up being a stormwater system and he wants to know where that water is going to be rerouted to.

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

Mr. Tomanek said the street names in the proposed plat have been changed to military themed names and that the updated version of the plat will be presented to the City Commission.

Commissioner Lee asked if any examples can be given of other industrial zoned areas that are adjacent to residential areas.

Mr. Tomanek said the zoning change that was completed for Midwest Motor Express was similar to this proposal and it was approved by placing conditional uses on a select portion of the area must closely located to existing residential as well as putting a buffer yard requirement in place.

Commissioner Laning said with there being a ditch on two sides of the plat a berm might help, but it would have to be fairly high in order to block any visibility.

Steve Thilmony, who is representing the applicant, Steve McCormick, said 52<sup>nd</sup> Street is 40 feet wide and with the proposed 25 foot waterway there will be a total of 65 feet between the proposed plat and the neighboring properties.

Commissioner Lee asked if adding another 25 feet would hinder development of the site.

Mr. Thilmony said it would not totally prevent development, but that it would incur a very large expense for the developer.

Commissioner Waldoch asked if it is possible to further review and modify the plat and add conditions to the approval.

Mr. Tomanek said conditions can be added now or the proposals can be continued to the next meeting on May 28<sup>th</sup>.

Commissioner Lee made a motion to approve the annexation, zoning change and final plat for East Divide Industrial Park Addition, with the modification that twenty feet be added to the buffer to include the appropriate landscaping along the eastern edge of each lot along 52<sup>nd</sup> Street.

**MOTION:** Based on the findings contained in the staff reports, Commissioner Lee made a motion to approve the annexation of East Divide Industrial Park Addition,

the zoning change from the A-Agriculture and MA-Industrial zoning districts to the MA-Industrial and P-Public zoning districts; and the final plat for East Divide Industrial Park Addition with the condition that a 20 foot buffer yard be planted with trees on the west side of the storm water easement in accordance with the Landscaping and Screening ordinance requirements. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

Commissioner Lee made a motion to approve the annexation, zoning change and final plat for East Divide Industrial Park Addition, with the modification that twenty feet be added to the buffer to include the appropriate landscaping along the eastern edge of each lot along 52<sup>nd</sup> Street.

**FINAL CONSIDERATION – ANNEXATION  
PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT –  
SOUTHLAND 2<sup>ND</sup> ADDITION**

Chairman Yeager called for the public hearing on the final plat; the zoning change from the R5-Residential, RM15-Residential and P-Public zoning districts to the R5-Residential, R10-Residential, R10-Residential, RM15-Residential and P-Public zoning districts; and final consideration of the annexation of Southland 2<sup>nd</sup> Addition. The proposed plat is 123 lots in eight blocks on 48.80 acres and is located east of South Washington Street between the south Bismarck storm water channel and Burleigh Avenue (part of the NW1/4 and all of Auditor's Lots C and D of Section 16, T138N-R80W/Lincoln Township).

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.
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 presented the following findings on the zoning change:

1. The proposed zoning change would be consistent with the Land Use Plan, which generally identifies the long range use of this area as single-family residential (South 12<sup>th</sup> Street Watershed Storm Water Management and Land Use Plan). The Future Land

Use Plan (FLUP) in the Growth Management Plan Update does not include this area, as the proposed plat was already in process when the draft FLUP was finalized.

2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include single-family residential to the northwest, north and northeast, undeveloped land to the east and south, and developing mixed-density residential to the west.
3. The entire subdivision would be annexed prior to development; therefore, the proposed zoning change would not place an undue burden on public services and facilities.
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 accepted planning practice.

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

1. The preliminary plat received tentative approval on October 23, 2013.
2. All technical requirements for approval of a final plat have been met.
3. The storm water management plan has been approved by the City Engineer.
4. The proposed subdivision generally conforms to the Fringe Area Road Master Plan for this area, which identifies Santa Fe Drive as the east-west collector for this section and Boston Drive south of Santa Fe Drive as the north-south collector for this section.
5. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include single-family residential to the northwest, north and northeast, undeveloped land to the east and south, and developing mixed-density residential to the west.
6. The entire subdivision would be annexed prior to development; therefore, it would not place an undue burden on public services and facilities.
7. The proposed subdivision would not adversely affect property in the vicinity.
8. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
9. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said based on these findings, staff recommends approval of the annexation of Southland 2<sup>nd</sup> Addition, less that portion previously annexed (underlying Auditor's Lots C and D of Section 16, T138N-R80W/Lincoln Township); the zoning change from the R5-Residential, RM15-Residential, P-Public zoning district to the R5-Residential, R10-Residential, RM15-Residential and P-Public zoning districts; and final plat for Southland 2<sup>nd</sup> Addition. Ms. Lee said staff also recommends that the City initiate annexation of the unplatted 1.18-acre tract north of Southland 2<sup>nd</sup> Addition to eliminate the un-annexed donut hole created by this plat.

Chairman Yeager opened the public hearing.

Commissioner Warford asked how long the parties involved in the requests have been negotiating a solution that works for everybody. Ms. Lee said discussions between the owners started last fall and that the engineer hired by the applicant had stated a verbal agreement was reached but later withdrawn by one of the owners and the issues have since gone unresolved.

Commissioner Laning asked if the piece between the two areas that is not included in the requests is zoned for agricultural uses. Ms. Lee said it is currently zoned R5-Residential.

Commissioner Lee asked if the roads are proposed the way they are so that connections can be made in the future. Ms. Lee said that with the proposed roads, connections could later be made on Live Oak Lane and Boston Drive.

Commissioner Waldoch said she does not want to move these requests forward until the parties involved have reached an agreement.

Kathy Wachter, 2201 Boston Drive, said she currently lives on a dead end street and is wondering if Boston Drive is going to be continued to Burleigh Avenue or if it is going to end up being blocked off on both ends.

Landon Niemiller, Swenson, Hagen & Co., said the lot that is not included between the two developments could potentially be developed into three lots and that the developer would like to move forward with the requests at some point in the future, which would provide the roadway connections.

Comments received from Chad Wachter in opposition of the plat without the inclusion of the 1.18-acre tract are attached as Exhibit A.

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

**MOTION:** Based on the findings contained in the staff reports, Commissioner Warford made a motion to approve the annexation of Southland 2<sup>nd</sup> Addition, less that portion previously annexed (underlying Auditor's Lots C and D of Section 16, T138N-R80W/Lincoln Township) the zoning change from the A-Agriculture and MA-Industrial zoning districts to the MA-Industrial and P-Public zoning

districts; and the final plat for Southland 2<sup>nd</sup> Addition, as well as acceptance of the recommendation that the City initiate annexation of the unplatted 1.18-acre tract north of Southland 2<sup>nd</sup> Addition to eliminate the un-annexed donut hole created by this plat. Commissioner Armstrong seconded the motion and it was approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Warford and Yeager voting in favor of the motion. Commissioner Waldoch opposed the motion.

**FINAL CONSIDERATION – ANNEXATION  
PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT –  
SATTLER’S SUNRISE 10<sup>TH</sup> ADDITION**

Chairman Yeager called for the public hearing on the final plat; the zoning change from the A-Agriculture zoning district to the R5-Residential zoning district; and final consideration of the annexation of Sattler’s Sunrise 10<sup>th</sup> Addition. The proposed plat is 60 lots in six blocks on 21.22 acres and is located east of Centennial Road between East Century Avenue and 43rd Avenue NE (part of the SE1/4 of Section 24, T139N-R80W/Hay Creek Township).

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.
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 offered the following findings on the zoning change:

1. The proposed zoning change would be consistent with the Land Use Plan, which identifies this area as urban residential (Bismarck-Mandan Regional Future Land Use Plan). The proposed zoning change would also be consistent with the Future Land Use Plan (FLUP) in the Growth Management Plan Update, which identifies this area as MDR (low density residential).
2. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include single-family residential and an elementary school to the west, single-family residential to the south, and undeveloped A-zoned property to the north and east.
3. The entire subdivision would be annexed prior to development; therefore, the proposed zoning change would not place an undue burden on public services and facilities,

provided the plat is extended to the eastern edge of the applicant's property in order to provide services to the adjacent property owner.

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 accepted planning practice.

Ms. Lee then presented the following findings on the final plat:

1. The preliminary plat received tentative approval on December 18, 2013, with the understanding that a public hearing on the final plat would not be scheduled unless the plat was extended to the northern boundary of the applicant's property and an agreement is reached with the adjacent land owner and the City on the alignment of Calgary Avenue. The revised layout does not preclude Calgary Avenue be centered on the quarter-section line, nor does it require that alignment. In addition, it has been determined that sanitary sewer service for the property to the north will need to be provided from multiple directions because of the topography.
2. All technical requirements for approval of a final plat have been met.
3. The storm water management plan has been approved by the City Engineer.
4. The proposed subdivision generally conforms to the Fringe Area Road Master Plan for this area, which identifies Calgary Avenue as the east-west collector for this section. The alignment of Calgary Avenue was moved approximately 500 feet to the north with the Sattler's Sunrise 9<sup>th</sup> Addition plat, although it can be moved back to the south closer to the original proposed alignment with this plat.
5. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include single-family residential and an elementary school to the west, single-family residential to the south, and undeveloped A-zoned property to the north and east.
6. The entire subdivision would be annexed prior to development. It would not place an undue burden on public services and facilities, provided the plat is extended to the eastern edge of the applicant's property in order to provide services to the adjacent property owner.
7. The proposed subdivision would not adversely affect property in the vicinity. Although it would be desirable to have the plat extended to the northern edge of the applicant's property in order to provide services to the adjacent property owner, the applicant does not wish to plat more lots at this time.

8. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
9. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said based on these findings, staff recommends approval of the annexation, the zoning change from the A-Agriculture zoning district to the R5-Residential zoning district and final plat for Sattler's Sunrise 10<sup>th</sup> Addition.

Chairman Yeager opened the public hearing.

Jim Miller, 5018 Hitchcock Drive, said he has concerns about the property that is adjacent to the area on Hitchcock Drive, specifically the two large soil piles that are behind his lot that come up directly to the utility easement on the property. He said there is no erosion control or storm water management in place and this is creating issues with the grading of his lot if he chooses to construct a retaining wall. He said the main things he wants to happen are for all of the existing soil piles to be removed, the appropriate storm water and erosion control measure be put in place, a specific area for soil piling be designated away from adjacent owners, all adjacent property owners be provided with final grade elevation data and these conditions to be fulfilled prior to any building permits being issued.

Commissioner Lee asked if he has visited with the owner, Sattler Family, LLP. Mr. Miller said he has had difficulty getting his calls answered when he has tried contacting Mr. Sattler or Mr. Sattler's company.

Art Goldammer, 3100 North 13<sup>th</sup> Street, said he is interested in developing the property to the north of these proposed requests and that he is in the process of purchasing the property from Don Reuter, but he would like the requirements of allowing services to be clarified. Mr. Goldammer suggested that easements be extended north to the quarter line to allow utility extensions to the adjacent parcel.

Jason Petryszyn, Swenson, Hagen & Co., said a notice of intent as well as a stormwater pollution plan is in place for Sattler's Sunrise 6<sup>th</sup> and 9<sup>th</sup> Additions and a grading plan will be submitted to the Engineering Department and the Public Works Department.

Mr. Miller said he understands that plans are out for future development and that the exact timing is unknown, but that the erosion problems that are being experienced are current and need to be addressed now.

Don Reuter, 901 Mouton Avenue, said he is trying to sell the land he owns to the north to which Mr. Goldammer referred and he has finally found a serious buyer, as previous offers have been turned away due to the lack of services provided. He said the project proposed does not align with services on his property and he wants to know when and how they will.

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

Commissioner Warford asked if there is a plan to deal with the soil piles being referenced. Ms. Lee responded that the proposed plat does have an approved stormwater management plan and that staff can work with Mr. Sattler on any issues existing along the adjacent properties.

**MOTION:** Based on the findings contained in the staff reports and the information presented at the public hearing, Commissioner Lee made a motion to continue the annexation; the zoning change from the A-Agriculture zoning district to the R5-Residential zoning district; and the final plat for Sattler's Sunrise 10<sup>th</sup> Addition to the May 28<sup>th</sup> meeting of the Planning and Zoning Commission. Commissioner Waldoch seconded the motion and it was approved with Commissioners Donahue, Laning, Lee, Schwartz, Selzler and Waldoch voting in favor of the motion.

Commissioner Warford recused himself from the meeting for this agenda item.

#### **PUBLIC HEARING – ZONING CHANGE AND FINAL PLAT – UNIVERSITY OF MARY SUBDIVISION**

Commissioner Warford recused himself from the meeting for this agenda item.

Chairman Yeager called for the public hearing for a zoning change from the A-Agriculture and RR-Residential zoning districts to the P-Public zoning district and final plat for University of Mary Subdivision. The property is located along the west side of ND Highway 1804 approximately two miles south of 48<sup>th</sup> Avenue SE (Government Lots 14, 15 & 16 of Section 34 and parts of Lots 4, 5, 6 & 7, Block 1, Rockstad Subdivision of the NW $\frac{1}{4}$  and part of the SW $\frac{1}{4}$  of Section 35, T138N-R80W/Lincoln Township, and part of Government Lot 1 of the NE $\frac{1}{4}$  of Section 3 and part of Government Lot 4 of the NW $\frac{1}{4}$  of Section 2, T137N-R80W/Fort Rice Township).

Ms. Lee gave an overview of the requests, including the following findings for the zoning change:

1. The proposed zoning change would be consistent with the Land Use Plan, which identifies the long range use of this area as rural residential and parks/open space (Bismarck-Mandan Regional Future Land Use Plan). The proposed zoning change would also be consistent with Future Land Use Plan (FLUP) in the draft Growth Management Plan Update, which identifies this area as a civic or public facility.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include a combination of agricultural uses and rural residential to the north, east and south and to the west across Apple Creek.
3. The property is already developed and is served by public services and facilities; therefore, the zoning change would not place an undue burden on public services and facilities.

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 accepted planning practice.

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

1. The preliminary plat received tentative approval on February 27, 2013, with the understanding that the issues relating to the lot layout and the section lines are resolved prior to the submittal of the final plat. The size of the plat has been reduced since that time, with the area south of the main roadway through the campus being removed from the plat.
2. All technical requirements for approval of a final plat have been met.
3. The storm water management plan has not been approved by the City Engineer, as written concurrence from the County Engineer has not been received.
4. The proposed subdivision generally conforms to the Fringe Area Road Master Plan for the area, which identifies ND Highway 1804 as an arterial roadway.
5. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include a combination of agricultural uses and rural residential to the north, east and south and to the west across Apple Creek.
6. The property is already developed and is served by public services and facilities; therefore, the subdivision would not place an undue burden on public services and facilities.
7. The proposed subdivision would not adversely affect property in the vicinity.
8. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
9. The proposed subdivision is consistent the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said based on these findings, staff recommends continuing the public hearings on the zoning change from the A-Agriculture and RR-Residential zoning districts to the P-Public zoning district and final plat for University of Mary Subdivision until the storm water management plan has been approved by the City Engineer, with written concurrence from the County Engineer.

Chairman Yeager opened the public hearing.

Tom Schiwal, 6510 Pearson Circle, said he feels a dormitory allows residents to live in a unit temporarily, similar to a man camp, and he can already hear activity on the campus as it is. He said the noise with the new dorms will be excessive and he has concerns of pollution and aesthetic appeal, as well as the safety of heavy equipment working on the hill when it has already been shifting and a rock slide could be possible.

Herbert Schumacher, 7225 Sibley Drive, has property nearby and he said he wants to make sure the lagoon system that is in place is going to be changed and will not be the same one that is currently being used.

Shiraz Hyder, 6700 University Drive, said he feels Bismarck is a safe and well planned city and the he has many ties to the University of Mary including being on the faculty and his daughter being a student there. He said the actions that have been taken with this project have left a lot of heartache between the University and its neighbors. He understands development cannot be avoided, but these proposals have transpired without proper notifications between all of the parties involved.

Mark Swenson, 6550 University Drive, said the units constructed are apartments, not dormitories, because they are fully equipped including a kitchen. He said what used to be a single-family home near the campus has now been turned into a recreational center, as well as a bar, and it is immediately adjacent to his property. He said there is a major issue with the City having allowed construction prior to the platting and zoning process and that the zoning change request needs to be modified because it does not fit with the surrounding area. He said a site plan for the new building was approved without any landscape plans and there is no stormwater detention due to an oversight in the site plan application process. He then told Ms. Lee to give the definition of the word "campus".

Charlie Whitman, City Attorney, informed Mr. Swenson that the public hearing is not intended to be a question and answer session but rather an opportunity to voice concerns and give statements. Answers from staff cannot be demanded at the meeting; staff is allowed time to consider the questions and respond at a later date.

Mr. Swenson said he wants to know what the limitations on uses on a campus would be. He said 100 acres were removed from the proposed plat and this should not be considered a slight change. He said he is frustrated that the single family home referenced earlier was converted into a recreational center without the owner first acquiring a special use permit.

Chairman Yeager asked Ms. Lee what type of residency was proposed and how building permits were issued prior to the property being platted. Ms. Lee said the Rural Residential zoning district includes educational uses as permitted uses and the recreational center was allowed as an ancillary use to the University, an educational use. She added that these building are located on appropriately zoned and platted property.

Mr. Swenson said there are multiple drainage problems in the area and that in an email from Bill Wocken, City Administrator, he was told that stormwater around the building on the property will drain east to the highway and then through neighboring properties. He is concerned that there are not any stormwater easements on any of the neighboring properties and he wants to know if the downstream capacity is adequate. He said he feels a change to the PUD-Planned Unit Development zoning district would have been more appropriate, adding that the P-Public zoning district is not going to fit in this area. He added that Shiloh Christian School is zoned RT-Residential.

Mr. Hyder suggested that a separate meeting between the residents and staff be scheduled to discuss the issues presented.

Mr. Swenson said there is information on the City website as to why platting is required and it lists items such as appropriate access for emergency services as well as access through neighboring properties being required.

Mr. Whitman said if a neighborhood meeting is held it should be limited to one Commission member in addition to staff and residents.

Steve Cates, 3521 Highway 1804 South, said he lives near the property and the new building looks exactly like all of the other new apartment buildings in the area. He said his concern is of the gray area of it being private land and a precedent being set with the proposed P-Public zoning. He said property values have been damaged and people are frustrated because their concerns have not been addressed. He said the zoning definitions are vague and that he urges all parties to resolve the issues at hand.

Comments received from Harley Swenson regarding access to adjacent properties and the proposed P-Public zoning are attached as Exhibit B.

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

**MOTION:** Based on the findings contained in the staff reports and the input received during the public hearing, Commissioner Armstrong made a motion to continue the public hearings on the zoning change from the A-Agriculture and RR-Residential zoning districts to the P-Public zoning district and final plat for University of Mary Subdivision, until the stormwater management plan has been approved by the City Engineer and to allow time for adjacent land owners to work with the University to resolve any outstanding issues. Commissioner Waldoch seconded the motion and the request was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch and Yeager voting in favor of the motion.

Commissioner Warford returned to the meeting at this time.

## **PUBLIC HEARING – FINAL PLAT – SARA’S SUBDIVISION**

Chairman Yeager called for the public hearing for the final plat for Sara’s Subdivision. The property is located in the City’s extraterritorial area along the west side of England Street, south of Scout Street (The N½ of the NE¼ of the SE¼ of the NE¼ and the NE¼ of the NW¼ of the SE ¼ of the SE¼ of the NE¼ of Section 19, T138N-R80W/Lincoln Township).

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

1. All technical requirements for approval of a final plat have been met; the preliminary plat was approved on February 26, 2014.
2. The stormwater management plan has been approved by the City Engineer, with written concurrence from the County Engineer.
3. The proposed subdivision generally conforms to the Fringe Area Road Master Plan, which identifies England Street as a north-south arterial roadway.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include urban residential to the east, and rural residential to the north, south, and west.
5. The proposed subdivision would be served by South Central Regional Water District and would have direct access to England Street; therefore, the proposed subdivision would not place an undue burden on public services and facilities.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent the master plan, other adopted plans, policies and accepted planning practice.

Ms. Wollmuth said based on the above findings, staff recommends approval of the final plat of Sara’s Subdivision, including granting a waiver from USAB platting requirements.

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 Warford made a motion to approve the final plat of Sara’s Subdivision. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee,

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

**PUBLIC HEARING – ZONING CHANGE –  
LOTS 2-4, BLOCK 4 AND LOT 2, BLOCK 5, HUBER REAL ESTATE TRUST  
FIRST ADDITION**

Chairman Yeager called for the public hearing for a zoning change from the R5-Residential zoning district to the R10-Residential zoning district for Lots 2-4, Block 4 and Lot 2, Block 5, Huber Real Estate Trust First Addition. The property is located in south Bismarck east of South Washington Street along Dortmund Drive just south of the intersection of Freiburg Land and Dortmund Drive.

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

1. The proposed zoning change is outside the boundaries of the Land Use Plan.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include developing single and two-family land uses to the north and west, undeveloped multi-family zoned land along South Washington Street to the west, developing single-family land uses to the east and developing single and two-family land uses to the south.
3. The entire subdivision is already annexed; therefore, it would not place an undue burden on public services and facilities.
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 and subdivision regulations.
6. The proposed zoning change 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 the R5 – Residential zoning district to the R10 – Residential district for Lots 2-4, Block 4 and Lot 2, Block 5, Huber Real Estate Trust First Addition.

Chairman Yeager opened the public hearing.

Bryan Senger, 213 Glenwood Drive, said he owns lots nearby and when he purchased it, it was zoned R5-Residential and he would like it to stay that way. He said there is enough R10-Residential zoning in the area already and they need more single-family homes.

Landon Niemiller, Swenson, Hagen & Co., said the change is needed in order to develop the area and that the adjacent properties are both R5 and R10, so it is a good fit for the neighborhood and is also good transitional zoning.

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

**MOTION:** Based on the findings contained in the staff reports, Commissioner Armstrong made a motion to approve the zoning change from the R5-Residential zoning district to the R10-Residential zoning district for Lots 2-4, Block 4 and Lot 2, Block 5, Huber Real Estate Trust First Addition. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

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

Chairman Yeager called for the public hearing for a zoning ordinance text amendment relating to Landscaping & Screening. Mr. Tomanek explained that the proposed amendments would clarify the requirements of the landscaping and screening ordinance relating to installation, maintenance, replacement, inspection and enforcement, and create requirements for the posting of a bond or other security for required landscaping. (Staff recommends approval of the amendment as presented.)

Mr. Tomanek also said there are numerous site plans that have landscape plans that end up with deficiencies. He said no comments have been given from area landscape architects or consulting engineers regarding the changes and that requirements need to be enforced. He said these changes will apply to all development projects going forward but the proposed changes will not have an impact on previously approved site plans.

Chairman Yeager opened the public hearing.

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

**MOTION:** Commissioner Lee made a motion to approve the zoning ordinance text amendment relating to Landscaping & Screening as recommended by staff. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

### **PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT – OFF-SITE PARKING LOTS**

Chairman Yeager called for the public hearing for a zoning ordinance text amendment relating to Off-Site Parking Lots. Ms. Lee explained that the proposed ordinance would

create provisions to allow off-site parking lots in the R5-Residential, R10-Residential, RM-Residential and RT-Residential zoning districts as a special use.

Ms. Lee explained that off-site means in a different location not directly adjacent to the property utilizing the parking lot. She said there is currently not anything in the zoning ordinance that says how or where parking lots are permitted uses and that this will create a process for special use permits to be obtained in order to create off-site parking lots in Residential and Hospital Medical districts. Staff recommends approval of the amendment as presented.

Chairman Yeager opened the public hearing.

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

**MOTION:** Commissioner Armstrong made a motion to approve the zoning ordinance text amendment relating to Off-site Parking Lots as recommended by staff. Commissioner Bullinger seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

## **OTHER BUSINESS**

### **URBAN SERVICE AREA BOUNDARY MODIFICATION**

Ms. Lee explained that amendments to the Urban Service Area Boundary were worked on prior to the adoption of Growth Management Plan Update. The proposed boundary takes areas that are now in Burleigh County's jurisdiction out of the Urban Service Area Boundary. She added that the area north of Pioneer Park and the area below the bluff above River Road was removed because of its flooding history in the area and because of the topography. She said if the Planning and Zoning Commission agrees with the modifications, they will be forwarded to the City Commission for final approval and implementation.

**MOTION:** Commissioner Laning made a motion to forward the modifications to the Urban Service Area Boundary to the City Commission as recommended by staff. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Donahue, Laning, Lee, Schwartz, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

### **UPDATE ON CITY COMMISSION ACTION – GROWTH MANAGEMENT PLAN UPDATE**

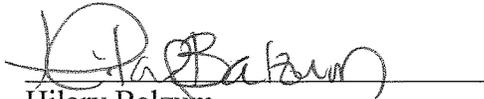
Ms. Lee said the City Commission did not make any changes prior to the adoption of the Growth Management Plan, adding it was approved on April 22, 2014.

There was no other business to discuss at this time.

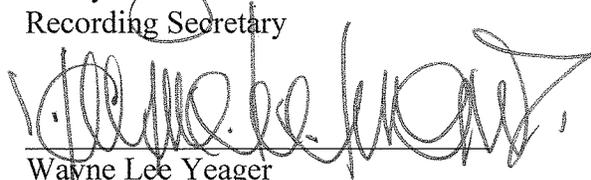
**ADJOURNMENT**

There being no further business, Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 7:57 p.m. to meet again on May 28, 2014.

Respectfully submitted,



Hilary Balzum  
Recording Secretary



Wayne Lee Yeager  
Chairman

**Kim Lee**

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**From:** Chad Wachter  
**Sent:** Wednesday, April 16, 2014 11:43 PM  
**To:** Kim Lee  
**Cc:** Lance Wachter  
**Subject:** Sattler Family LLLP - Southland 2nd Addition  
**Attachments:** CW20140415-082405\_0004.pdf

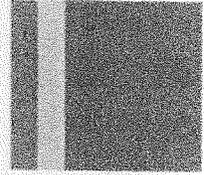
Ms. Lee:

I own a piece of property located between Cottonwood Lake Fourth Addition and the submitted plat of Southland Second Addition. This plat of Southland Second Addition will produce an island of unplatted land and will cause several streets not to be united. I believe this would produce many problems in the future for everyone affected including the neighborhood and the City of Bismarck. I request that the plat be rejected until a plan is established on how to incorporate this strip of land into the development plan so that it does not become orphaned.

Sincerely,  
Chad Wachter,  
Vice President

Wachter Development Co.

Harley Swenson  
8301 HWY 1804 S  
BISMARCK, ND 58504



April 14, 2014

Ms. Kim Lee, AICP, Planning Manager  
BISMARCK COMMUNITY DEVELOPMENT  
P.O. Box 5503, Bismarck, ND 58506-5503

RE: University of Mary final plat/zoning change

Dear Kim,

I am reluctant to write this letter opposing the referenced items because the University has been a good neighbor of mine for 50 years. I'd like to keep it that way. However, I need to express my opposition to a couple of issues and I will be unable to attend the April 23, 2014, Planning Commission meeting.

1. FINAL PLAT: I note that approximately 100 acres in section 2 has been removed from the plat since it was considered for preliminary approval. It removes the requirement for the University to provide collector street right-of-way along the north-south  $\frac{1}{4}$  line in section 2 for future access to my property and other property lying south and west of the plat. This is O.K. at this time because there is no "near term" need for this access.

The plat, however, does not provide any such right-of-way along the east-west  $\frac{1}{4}$  line in section 35 to property formerly owned by me (now owned by my son, Mark). Omitting this right-of-way completely eliminates vehicular access to his "view property" west of the University's new dormitories. This is bothersome to me because several years ago, I gave right-of-way to the University for a water main on this property!

I'm sure that the planning commission and staff knows that one of the BASIC underlying principles of good planning involves providing reasonable access to neighboring property that is otherwise "landlocked".

I met with Greg Vetter at the University today, and I thought that we were in agreement that the University would agree to provide Mark's property reasonable vehicular access using a private easement that could follow University roads most of the way to Mark's property. The easement could be moved in the future if it was in the University's best interest. However, I just received an email from him where he thinks that vehicular access could be from the north. This is physically impossible! So, I guess we still have a problem.



2. P-PUBLIC ZONING: This zoning classification has historically been used on land, owned by public entities, to allow anything from parks to sewage facilities. It is expected that public agencies, subject to influence by the public, will act responsibly with this broad land use discretion. Is the Planning Commission willing to grant this same broad discretionary land use on over 200 acres to any private entity? The University already has a sewage treatment facilities, farm land and other uses on their property – far more than the “education and recreation uses” listed in the planning department cover letter – or is the staff suggesting that ONLY these 2 uses be allowed – I don’t think so!

What would/could the city do if the private entity sold or leased P-Public zoned property to someone else? As we know, there are NO use limitations on P-Public lands.

I would think that PUD would be a more appropriate zoning classification for this large tract of private property. Allowing P Public zoning on large private tracts is precedent setting and will likely be asked for by others!

Unless there is extreme hardship caused by delaying this action for 1 month, I request that the Planning Commission table this action until the next meeting. This will allow time for, and incentivize the adjacent landowners and University staff to search for solutions for the aforementioned issues.

Thank you for your time and consideration.

Harley Swenson

