

BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
January 28, 2015

The Bismarck Planning & Zoning Commission met on January 28, 2015, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Yeager presided.

Commissioners present were Tom Atkinson, Mel Bullinger, Mike Donahue, Kathleen Jones, Doug Lee, Lisa Waldoch and Wayne Yeager. Commissioner Mike Seminary participated via telephone.

Commissioner Vernon Laning and Ken Selzler were absent.

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, Steve Saunders – Transportation Planner, William Hutchings – Transportation Planner, Charlie Whitman – City Attorney and Jason Hammes – Assistant City Attorney.

INTRODUCTION OF NEW COMMISSIONER

Chairman Yeager took a moment to welcome Kathleen Jones from the Burleigh County Commission as the new ex-officio member to the Bismarck Planning and Zoning Commission.

**PRESENTATION/PUBLIC HEARING –
2015-2040 LONG RANGE TRANSPORTATION PLAN**

Chairman Yeager called for the presentation and public hearing on the 2015-2040 Long Range Transportation Plan (LRTP).

Steve Saunders of the Bismarck-Mandan Metropolitan Planning Organization (MPO) introduced Jason Carbee of HDR Engineering. Mr. Saunders explained that the MPO is mandated by the federal government to revise the LRTP every five years in order to receive federal funding for any listed individual project within it.

Jason Carbee, HDR Engineering, gave an overview of the draft LRTP, including how the visions of the community are to be implemented; what the mobility, safety and transit access priorities are; and how overarching trends are impacting the Plan. The Plan also identifies the short-term, mid-term and long-term transportation goals for the metropolitan area.

Commissioner Seminary asked the Commissioners to go to page 12 of the draft LRTP which shows car crash statistics, noting the locations of those crashes. He then stated that he wants to make it clear that he will be lobbying for full funding from the state of North Dakota when it comes time for the interchange at 66th Street NE to be implemented. He said the portion

of State Street north of Interstate-94 has issues stretching for three and a half miles due to there being nine traffic signals in that stretch, with a tenth one on the way, which is resulting in increased truck traffic on Centennial Road by vehicles wanting to avoid all of the stop and go traffic on State Street. He said traffic in general has increased on State Street as it is both a US highway and an arterial roadway being used by all types of people for all types of reasons every single day. He is very concerned for the safety of the citizens utilizing Centennial Road on a daily basis because of the close proximity to the new high school and the amount of truck traffic diverting to Centennial Road to avoid the signals and congested traffic on State Street.

MOTION: Commissioner Seminary made a motion to accept the 2015-2040 LRTP as presented to include his comments and for the draft Plan to be forwarded to the Bismarck City Commission for acceptance and adoption. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Jones, Lee, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

MINUTES

Chairman Yeager called for consideration of the minutes of the December 17, 2014 meeting.

MOTION: Commissioner Lee made a motion to approve the minutes of the December 17, 2014 meeting as received. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Jones, Lee, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

CONSIDERATION

- A. SOUTHPORT PHASE II – PUD AMENDMENT**
- B. CAPITOL VIEW ADDITION – PUD AMENDMENT**
- C. ACCESSORY BUILDINGS – ZONING ORDINANCE TEXT AMENDMENT**

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

- A. Southport Phase II – PUD Amendment
- B. Capitol View Addition – PUD Amendment
- C. Accessory Buildings – Zoning Ordinance Text Amendment

MOTION: Commissioner Schwartz made a motion to approve consent agenda items A, B and C, granting tentative approval 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, Jones, Lee, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

Commissioner Seminary stated he has a potential conflict of interest with agenda items 6 & 7 because the firm he works for is the engineer of record, although he is not directly involved with the projects. He added that he would be open to removing himself from the table for those items if that is the wish of the Commission.

Chairman Yeager asked if anybody has any objections to Commissioner Seminary remaining at the table for the next two agenda items. A general consensus was given by those commissioners present that Commissioner Seminary may remain in the meeting for those items mentioned.

**PUBLIC HEARING – ANNEXATION
PART OF THE E1/2 OF SECTION 9, T139N-R80W/HAY CREEK TOWNSHIP**

Chairman Yeager called for the public hearing on the annexation of part of the E1/2 of Section 9, T139N-R80W/Hay Creek Township. The property is located in north Bismarck, along the west side of US Highway 83 between 57th Avenue NE and ND Highway 1804 (Auditor's Lot B of the SE $\frac{1}{4}$; the East 1698 feet of the SE $\frac{1}{4}$ less Auditor's Lot B and Daybreak Addition and Tree Top Addition; Auditor's Lot C2 of the NE $\frac{1}{4}$; and the East 1698 feet of the NE $\frac{1}{4}$ less Auditor's Lots C1, C2, C3 and D; Section 9, T139N-R80W/Hay Creek Township).

Ms. Lee gave 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 at the time the property is developed.
2. The proposed annexation would not adversely affect property in the vicinity.
3. The proposed annexation is consistent with the general intent and purpose of Title 14 of the City Code of Ordinances.
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Ms. Lee said based on the above findings, staff recommends approval of the annexation of part of the E $\frac{1}{2}$ of Section 9, T139N-R80W/Hay Creek Township, more specifically described as Auditor's Lot B of the SE $\frac{1}{4}$; the East 1698 feet of the SE $\frac{1}{4}$ less Auditor's Lot B and Daybreak Addition and Tree Top Addition; Auditor's Lot C2 of the NE $\frac{1}{4}$; and the East 1698 feet of the NE $\frac{1}{4}$ less Auditor's Lots C1, C2, C3 and D; Section 9, T139N-R80W/Hay Creek Township, with the understanding that the property will not be developable until it is platted and zoned.

Chairman Yeager opened the public hearing.

Michael Gunsch, Houston Engineering, said he wanted to clarify the description of the portion being annexed. Ms. Lee said the description referenced in the staff recommendation is the correct legal description as verified by the Burleigh County Tax Equalization Office.

Mr. Gunsch said he also wanted to add that the developer's plans are consisted with the Growth Management Plan and services already available will be adequate.

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

MOTION: Based on the findings contained in the staff report, Commissioner Jones made a motion to approve the annexation of part of the E½ of Section 9, T139N-R80W/Hay Creek Township, more specifically described as Auditor's Lot B of the SE¼; the East 1698 feet of the SE¼ less Auditor's Lot B and Daybreak Addition and Tree Top Addition; Auditor's Lot C2 of the NE¼; and the East 1698 feet of the NE¼ less Auditor's Lots C1, C2, C3 and D; Section 9, T139N-R80W/Hay Creek Township, with the understanding that the property will not be developable until it is platted and zoned. Commissioner Atkinson seconded the motion and it was approved with Commissioners Atkinson, Bullinger, Donahue, Jones, Lee, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

**FINAL CONSIDERATION - ANNEXATION
PUBLIC HEARING – FINAL PLAT AND ZONING CHANGE
RDO HAY CREEK INDUSTRIAL ADDITION**

Chairman Yeager called for the final consideration of the annexation of RDO Hay Creek Industrial Addition as well as the public hearing on the zoning change from the A-Agriculture and MA-Industrial zoning districts to the MA-Industrial zoning district and final plat of RDO Hay Creek Industrial Addition. The proposed plat is 9 lots in two blocks on 57.40 acres and is located in east Bismarck, between East Divide Avenue and I-94, west of Bismarck Expressway (A replat of Tract B of the E1/2 of the SW1/4, Lot 3, part of Lot 5 of the W1/2 of the SE1/4, Lot 5E of Lot 5, Lot 7D of Lot 7 and Lot 8C of Lot 8, Block 3 Miriam Industrial Park First Addition and Lot B of Lot 6 and Lot 7 of Lot 7, Block 3, Miriam Industrial Park First Addition, Section 26, T139N-R80W/Hay Creek Township).

Ms. Wollmuth gave 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. Wollmuth then presented the following findings for the zoning change:

1. The proposed zoning change is outside the area covered in the Future Land Use Plan (FLUP) in the 2014 Growth Management Plan.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include undeveloped agricultural land and rural residential properties across Interstate 94 to the north, existing industrial to the east, undeveloped agricultural land and undeveloped RT – Residential zoned land to the south and existing residential and public land across the railroad tracks to the west.
3. The subdivision proposed for this property would be annexed prior to development; therefore, the zoning change would not place an undue burden on public services and facilities.
4. The proposed subdivision would not adversely affect the adjacent properties.
5. The proposed 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.

Ms. Wollmuth then presented the 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 is outside the area covered in the 2014 Fringe Area Road Master Plan. Channel Drive, a collector roadway, will be extended north from the intersection of East Divide Avenue and Global Drive to Miriam Avenue.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include undeveloped agricultural land and rural residential properties across Interstate 94 to the north, existing industrial to the east, undeveloped agricultural land and undeveloped RT – Residential zoned land to the south and existing residential and public land across the railroad tracks to the west.
5. The entire subdivision would be annexed prior to development; therefore, it would not place an undue burden on public services and facilities.
6. The proposed subdivision would not adversely affect the adjacent properties.

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

Ms. Wollmuth said based on the above findings, staff recommends approval of the annexation of that portion of RDO Hay Creek Industrial Addition not previously annexed; the zoning change from the A-Agriculture and MA-Industrial zoning districts to the MA-Industrial zoning district; and the final plat of RDO Hay Creek Industrial Addition, including granting a waiver to reduce the roadway width of Channel Drive from 48 feet to 44 feet.

Chairman Yeager opened the public hearing.

Mike Miller, 3106 East Capitol Avenue, said he lives west of the proposed area right along Hay Creek and that the potential flood status on his property has changed before and he does not want to see it change again because of changes to the surrounding area.

Chairman Yeager said the requirements for stormwater control are significant and that there are never any guarantees, but engineers are in place to look for and monitor issues to avoid water problems.

Mr. Gunsch said the stormwater plans and criteria are clear as far as where the water storage in this location will be. He said Hay Creek is unique as it relates to FEMA requirements in that it is only allowed a one foot increase with impact. He said this particular project had no allowance for encroachment so there will be no change in flood elevations at Mr. Miller's property.

There being no further 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 annexation of that portion of RDO Hay Creek Industrial Addition not previously annexed; the zoning change from the A-Agriculture and MA-Industrial zoning districts to the MA-Industrial zoning district and the final plat of RDO Hay Creek Industrial Addition, including granting a waiver to reduce the roadway width of Channel Drive from 48 feet to 44. Commissioner Donahue seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Jones, Lee, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE
SOUTH 40 FEET OF THE VACATED EAST THAYER AVENUE ADJACENT TO
BLOCKS 1 & 2, EAGLES ADDITION**

Chairman Yeager called for the public hearing on the zoning change from the MA – Industrial zoning district to the CG – Commercial zoning district on the South forty (40) feet of the vacated East Thayer Avenue adjacent to Blocks 1 and 2, Eagles Addition. The property is located in east Bismarck, east of North 26th Street between East Rosser Avenue and East Broadway Avenue.

Ms. Wollmuth gave an overview of the city-initiated 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 north, south and west and existing industrial uses to the south.
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 the above findings, staff recommends staff recommends approval of the zoning change from the MA – Industrial zoning district to the CG – Commercial zoning district on the South forty (40) feet of the vacated East Thayer Avenue adjacent to Blocks 1 and 2, Eagles 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 report, Commissioner Atkinson made a motion to approve the city-initiated zoning change from the MA – Industrial zoning district to the CG – Commercial zoning district on the South forty (40) feet of the vacated East Thayer Avenue adjacent to Blocks 1 and 2, Eagles Addition. Commissioner Donahue seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Jones, Lee, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

**CONTINUED PUBLIC HEARING – SPECIAL USE PERMIT
LOT 1, BLOCK 1, BOUTROUS THIRD ADDITION**

Chairman Yeager called for the continued public hearing on the special use permit to allow a forty-five (45) foot tall pylon sign with two 36'x10.6' digital billboard faces less than 300 feet from a residential zoning district. The property is located in central Bismarck, along the west side of North 12th Street and the north side of East Capitol Avenue, west of State Street (2112 North 12th Street).

Ms. Wollmuth explained that this request was continued at the December 17, 2014 of the Planning Commission to allow staff additional time to further research the information submitted by the applicant and the safety improvements outlined in the NDDOT Safety Improvement Study.

Ms. Wollmuth then said staff has concerns with the proposed special use. In particular, the potential for the digital billboards to increase the number of visual distractions on an existing high traffic roadway (State Street) and near a high ranking dangerous intersection (State Street and East Capitol Avenue). According to the NDDOT 2011-2013 Urban High Crash Locations, the proposed special use would be placed near the 7th most dangerous intersection in the state of ND and the 2nd most dangerous intersection in the City of Bismarck.

Ms. Wollmuth added that the NDDOT has recently conducted a safety improvement study for State Street / US Highway 83 from East Divide Avenue to East Calgary Avenue. This study identifies a number of safety concerns and makes recommendations regarding lane assignments, traffic light visibility and other potential obstructions to the safe flow of traffic. The City of Bismarck and the NDDOT have not made final determinations on which safety options outlined in this study will be implemented, but hope to have a safety improvement project in place for 2015 or 2016.

Ms. Wollmuth then said the applicant and landowner met with City staff on Wednesday, December 10, 2014, in an effort to alleviate staff's concerns with the proposed special use. The applicant provided staff with copies of studies from other cities and states throughout the country that indicated that digital billboards do not increase the potential for visual distractions resulting in higher crash statistic. Staff has reviewed the submitted information and understands the applicant's desire to place the digital billboards in a location that has a high volume of traffic to increase the visibility of the digital billboards. However, staff still has concerns with the proposed special use.

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

1. The proposed special use meets the provisions for a digital billboard outlined in Section 4-04-12(5) of the City Code of Ordinances. In particular, the digital billboard is oriented away from the residential properties and the sign faces or viewing surfaces of the digital billboard signs would not be visible from any of the residential property located within 300 feet of the sign based on the information submitted by the applicant.

2. Although the proposed special use meets the provisions for such a use in the zoning ordinance, the proposed special use is not completely in harmony with the purpose and intent of the zoning ordinance and the master plan of the City of Bismarck. In particular, the placement of digital billboards in a location that has been designated as a high ranking dangerous intersection may increase the potential for traffic accidents and cause unsafe driving conditions in this location.
3. The proposed special use may adversely affect the health and safety of the public and the workers and residents in the area. In particular, adding digital billboards in this location may increase visual distractions at an already high ranking dangerous intersection which may increase the crash potential in the area.
4. Although the proposed special use would be oriented away from the residential properties to the north and northwest, it may be detrimental to the use or development of adjacent properties. In particular, adding digital billboards may increase visual distractions at an already high ranking dangerous intersection which may increase the crash potential in the area.
5. The proposed special use does not completely comply with all of the special regulations established by Section 14-03-08 of the City Code of Ordinances. In particular, the visual distractions in this area may be increased with the placement of the proposed digital billboards causing a negative impact on the safety and welfare of the public.

Ms. Wollmuth said based on the above findings, staff recommends denial of the special use permit to allow a forty-five (45) foot tall pylon sign with two 36'x10.6' digital billboard faces less than 300 feet from a residential zoning district for Lot 1, Block 1, Boutrous Third Addition.

Commissioner Lee said he wanted to confirm that this item only needs a special use permit because of the close proximity to the residential neighborhood. Ms. Wollmuth said that is correct. Commissioner Lee asked if it will be visible to that neighborhood. Ms. Wollmuth said according to the drawings submitted with the application, the reader boards will face away from the residences and should not be visible to them.

Chairman Yeager opened the public hearing.

Mike Derby, Dakota Outdoor Advertising, said they have been before this Commission previously for a digital billboard to be placed on Bismarck Expressway and that request was approved. He said a neighborhood meeting was held to address concerns with the residents and all of the concerns raised at that time have since been settled. He said the business he is with has been a family business since 1965 and with technological advances they are changing to a digital sign company and he understands the concerns that come with that. He said he feels if digital billboards were causing a bulk of accidents then he would anticipate that being proven and that has not been the case.

Commissioner Atkinson asked if there will be a negative impact on this project if it is put off until the NDDOT study is complete. Commissioner Bullinger said that might not be until May or June. Mr. Derby said if that is the case then yes, it will have a negative impact on this project. He added that he is confident that the study they are doing will not reveal any negative impact from digital signs and he would like the sign to be up by the beginning of the summer, adding it will take anywhere from sixty to ninety days to erect the sign once it is approved.

Commissioner Bullinger clarified that the NDDOT will not come back and say no to digital billboards, but they can put stipulations on placement. He then said the State Street safety study is solely for safety and traffic channelization improvements.

Bob Lewis, Dakota Outdoor Advertising member and representing attorney for Mr. Derby, said the NDDOT did permit the billboard and that his client wants to work closely with the City as well as the residents to address concerns. He said they are within 300 feet of a residential zone but they are further than that away from any actual residential structure. He said a static billboard could have been constructed by now without a special use permit and that studies have shown no difference between digital billboards and static billboards or that they cause any different distractions than anything else on the roadway. Mr. Lewis also stated that under the law, the Planning and Zoning Commission has limited discretionary authority to review and make findings and conclusions. He went on to explain to the Planning and Zoning Commission that they must have reasonable grounds for the conclusion reached and that there needs to be facts presented to the Commission. He stated that staff's recommendations are arbitrary and capricious because the applicant has submitted studies showing that digital billboards pose no greater risk than static billboards as far as driver distractions. He went on to reference the studies submitted prior to the meeting in support of digital billboards. He stated that in all of those studies there is no direct evidence that roadside billboards play a direct role in distraction based crashes. He also stated that there is no evidence presented to the Commission that states that digital billboards increase crashes. He reiterated this statement by summarizing the conclusions of the studies he presented to the Commission. He said this location is the number two most dangerous intersection in Bismarck but is number six in the actual number of crashes and that it was ranked as number two because there was a fatality associated with one of the crashes at this intersection. He asked were the line would be drawn to conclude that a digital billboard could not be placed at a location, and stated that there is no evidence supporting the fact that a digital billboard placed in this location would be more dangerous. He further stated that the digital billboard will hold an image for eight seconds before it changes, and studies show that the driver looks at the billboard for about one second. He reiterated that there is no basis for the conclusion that the placement of a digital billboard in those location may cause a distraction as a reason to deny a digital billboard in this location, and that facts have not been provided that would support staff's decision, rather it is a gut feeling of staff or an arbitrary feeling as it is not supported by the evidence presented. He asked the Planning and Zoning Commission to approve the proposed special use.

Commissioner Bullinger asked if the permit that was filled out differentiates whether the proposed billboard would be static or digital. Mr. Lewis said he does not have the permit with him but they usually say which type it will be.

Commissioner Waldoch asked if the 3-D rendering of the height of the billboard is accurate in comparison to the height of the building it will be next to. Mr. Lewis said it only shows how far the light off the billboard will reach, not necessarily an accurate height ratio.

Commissioner Seminary asked how many signs Dakota Outdoor Advertising has in Bismarck. Mr. Derby said they have done five.

Commissioner Lee asked if any of their signs are on State Street. Mr. Derby said none of them are.

Mike Boutrous, owner of the proposed location, said he wanted to reiterate that none of the adjacent owners have any issues with this proposal and that he asks the special use permit be approved at this time.

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

Commissioner Seminary said he is happy to hear from the applicants of their desire to work with the City and he does support advertising. However, he draws the line when potential is seen for an increased danger because of a billboard, and as the Mayor of the City, that is all he needs to know. He said he feels this proposal is particularly sensitive as it is in a location where in one day there is an average of 21 speeding citations issued. He said he feels it would be irresponsible to support something of that nature.

Commissioner Lee said he disagrees because the NDDOT issued a permit and they rely on the engineers and their judgment in allowing it without any negative impact.

Chairman Yeager asked if there is any violation of the city ordinance if this is approved. Mr. Whitman said the Commission can either grant it or not grant it, but there is not a prohibition of a digital billboard in the city ordinance; it does fall under the items needing a special use permit in order to be allowed. He said if it is not approved here then the applicants can appeal the decision to the Board of City Commissioners.

Ms. Wollmuth stated that it is unclear if the NDDOT researches safety implications prior to issuing an Outdoor Advertising Permit and Alteration Application and that she has spoken with the Building Official and Zoning Administrator for the City of Bismarck, Brady Blaskowski, and he stated that the NDDOT Outdoor Advertising Permit and Alteration Application is submitted to the local zoning office for verification that a proposed sign can be located within a particular zoning district. She asked that the board look at the NDDOT Outdoor Advertising Permit and Alteration Application and noted that in bold letters at the bottom of the permit it states that, "this permit does not authorize the violation of local zoning ordinances." She also stated that the type of sign message indicated on the permit states "digital-varies."

Lieutenant Jeff Solemsaas, Traffic Commander Bismarck Police Department, said that he sees daily traffic incidents adding that the point here is that in order to be considered an intersection collision, a collision must occur within the parallel lines of an intersection. He said 60% of the collisions in this location are rear end collisions and that the entire State Street corridor is riddled with traffic collisions. He added that the purpose of a digital billboard is to draw attention and for people to look at it and distract their attention away from their driving.

Commissioner Lee asked if Mr. Solemsaas has ever had anybody say they were in an accident because they were distracted by a billboard.

Commissioner Seminary said he would like to call the question as a motion and second have already been given. Mr. Whitman said all of the commissioners will have to agree to call the question and have roll called. The general consensus of the Commission was to have the question answered. Mr. Solemsaas said he has heard many excuses from people as to why an accident was caused, but he has not had anybody say specifically it was because they were looking at a billboard.

Chairman Yeager said as a Commission they can vote as they wish but he feels they are in a position where the ordinance should be followed as well as the staff recommendation and the needs of the community.

MOTION: Based on the findings contained in the staff report, Commissioner Seminary made a motion to deny the special use permit to allow a forty-five (45) foot tall pylon sign with two 36'x10.6' digital billboard faces less than 300 feet from a residential zoning district for Lot 1, Block 1, Boutros Third Addition. Commissioner Donahue seconded the motion and the request was denied with Commissioners Atkinson, Bullinger, Donahue, Jones, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion. Commissioner Lee opposed the motion.

PUBLIC HEARING – SPECIAL USE PERMIT LOT 18, BLOCK 12, GRANDE PRAIRIE ESTATES SECOND SUBDIVISION

Chairman Yeager called for the public hearing on the special use permit to increase the total allowable square feet of accessory buildings to 2,700 square feet on Lot 18, Block 12, Grande Prairie Estates Second Subdivision. The property is located north of Bismarck, along the west side of Morris Road, east of 26th Street NE and north of 43rd Avenue NE.

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

1. The proposed special use complies with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.

2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent properties.
4. The proposed special use would be compatible with the surrounding rural residential neighborhood.
5. The Hay Creek Township Board of Supervisors has recommended approval of the proposed special use.
6. The request is compatible with adopted plans, policies and accepted planning practice.

Ms. Wollmuth said based on the above findings, staff recommends approval of the special use permit to increase the total allowable square feet of accessory buildings to 2,700 square feet on Lot 18, Block 12, Grande Prairie Estates Second Subdivision.

Ms. Wollmuth then added that comments received from an adjacent owner in opposition to the proposal have been distributed. These comments are attached as Exhibit A.

Commissioner Atkinson said he wanted to confirm that the request is for an increase of 1500 square feet with 1200 square feet existing and a maximum of 3200 square feet. Ms. Wollmuth said that is correct and that approval was also given by Hay Creek Township.

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 Atkinson made a motion to approve the special use permit to increase the total allowable square feet of accessory buildings to 2,700 square feet on Lot 18, Block 12, Grande Prairie Estates Second Subdivision. Commissioner Lee seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Jones, Lee, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT AUDITOR’S LOT A, BLOCK 4, WACHTER’S ADDITION

Chairman Yeager called for the public hearing on the special use permit to allow a drive-through in conjunction with a food establishment in a single-tenant building along the west side of South 7th Street and north side of East Bismarck Expressway on part of Auditor’s Lots A, C and D, part of Blocks 3 and 4, Wachter’s Addition. The property is located in south Bismarck, on the Kirkwood Mall property, along west side of South 7th Street and north side of East Bismarck Expressway.

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

1. The proposed special use would comply with all applicable provisions of the zoning ordinance.
2. The proposed special use permit would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent properties.
4. The use would be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area.
5. Adequate public facilities and services are in place.
6. The use would not cause a negative cumulative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity.
7. Adequate measures have been taken to minimize traffic congestion in the public streets to provide for appropriate on-site circulation of traffic on the Kirkwood Mall property.

Ms. Wollmuth said based on the above findings, staff recommends approval of the special use permit to allow a drive-through in conjunction with a food establishment in a single-tenant building along the west side of South 7th Street and north side of East Bismarck Expressway on part of Auditor's Lots A, C and D, part of Blocks 3 and 4, Wachter's Addition with the following condition:

1. 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 Schwartz made a motion to approve the special use permit to allow a drive-through in conjunction with a food establishment in a single-tenant building along the west side of South 7th Street and north side of East Bismarck Expressway on part of Auditor's Lots A, C and D, part of Blocks 3 and 4, Wachter's Addition with the following condition: 1. Development of the site must generally conform to the site plan submitted with the application. Commissioner Jones seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Jones, Lee, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT
AUDITOR’S LOTS B & C, BLOCK 4, WACHTER’S ADDITION**

Chairman Yeager called for the public hearing on the special use permit to allow a drive-through in conjunction with a coffee shop in a multi-tenant building along the east side of South 3rd Street on part of Auditor’s Lots A, C and D, part of Block 3 and Block 4, Wachter’s Addition. The property is located in south Bismarck, on the Kirkwood Mall property, along east side of South 3rd Street, between East Bowen Avenue and East Bismarck Expressway.

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

1. The proposed special use would comply with all applicable provisions of the zoning ordinance.
2. The proposed special use permit would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent Properties.
4. The use would be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area.
5. Adequate public facilities and services are in place.
6. The use would not cause a negative cumulative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity.
7. Adequate measures have been taken to minimize traffic congestion in the public streets to provide for appropriate on-site circulation of traffic on the Kirkwood mall property

Ms. Wollmuth said based on the above findings, staff recommends approval of the special use permit to allow a drive-through in conjunction with a coffee shop in a multi-tenant building along the east side of South 3rd Street on part of Auditor’s Lots A, C and D, part of Block 3 and Block 4, Wachter’s Addition with the following condition:

1. Development of the site must generally conform to the site plan submitted with the application.

Commissioner Seminary asked if the amount of parking being taken away from Kirkwood Mall because of the projects will leave sufficient parking leftover for the mall patrons. Ms. Wollmuth said some time was spent the day after Thanksgiving surveying the parking at the mall when shopping was at its busiest and she said this particular location of parking was mostly vacant.

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 Seminary made a motion to approve the special use permit to allow a drive-through in conjunction with a coffee shop in a multi-tenant building along the east side of South 3rd Street on part of Auditor's Lots A, C and D, part of Block 3 and Block 4, Wachter's Addition with the following condition: 1. Development of the site must generally conform to the site plan submitted with the application. Commissioner Jones seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Jones, Lee, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

OTHER BUSINESS

ELECTION OF OFFICERS

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

Commissioner Waldoch made a motion to elect Doug Lee as vice chairman. Commissioner Seminary seconded the motion and with all other Commissioners voting in favor, Commissioner Lee was elected for a term as vice chairman.

UPDATE ON DOWNTOWN DISTRICT REVISIONS

Mr. Tomanek explained that the process has started for creating a design review committee for the Downtown Fringe and Downtown Core zoning districts and that input will be taken from local architects and a public hearing will be held on the zoning ordinance text amendment being written. He said guidelines should be available for review in February and the amendment will move forward from there.

There was no other business to discuss at this time.

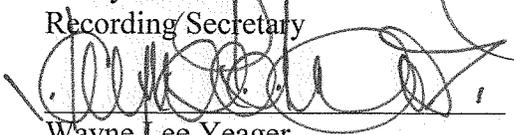
ADJOURNMENT

There being no further business, Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:30 p.m. to meet again on February 25, 2015.

Respectfully submitted,



Hilary Balzum
Recording Secretary



Wayne Lee Yeager
Chairman

Exhibit 4.

Dary - Angela James
4660 W. Roundup Rd
Bismarck, ND 58503
January 23, 2015

RECEIVED
JAN 26 2015

Bismarck Community Development Dept -
Planning Division :

This letter is in regards to the public hearing scheduled Wed., January 28, 2015, at 5:00 p.m. for the request made by Jamie King to approve the total area of accessory buildings to 2,700 square feet on a rural residential lot.

We have reviewed the request and proposed site plan, and are in opposition to the request.

Jamie King currently has an attached garage and a sizeable detached accessory building which appears to be 1,200 sq. feet in size.

We have lived at our home for 35 years. The total area for accessory buildings originated at 1,200 sq. feet, then was increased to 1,800 sq. feet, and finally to 2,400 sq. feet.

We feel 2,400 sq. feet, as the current zoning allows, is more than adequate.

Perhaps another option for Mr. King would be to purchase more acreage elsewhere or a commercial lot for his needs. We do not

want our residential development to be
over-built with excessively large
accessory buildings.

Thank you.

Sincerely,

Gary and Angela Ternes

Gary and Angela Ternes

701-258-7872

Bismarck

Community Development Department

January 16, 2015

Dear Property Owner:

Please be advised that the Bismarck Planning & Zoning Commission will be conducting a public hearing on Wednesday, January 28, 2015, at 5:00 p.m. in the Tom Baker Meeting Room, City-County Building, 221 North 5th Street, Bismarck, North Dakota, which may be of interest to you.

Jamie King is requesting approval of a special use permit to increase the total area of accessory buildings to 2,700 square feet on a rural residential lot. The property is north of Bismarck, east of North 26th Street and north of 43rd Avenue NE, between Hay Creek Drive and Morris Road, and is legally described as Lot 18, Block 12, Grande Prairie Estates Second Subdivision (2808 Morris Road).

A map showing the location involved in the request and the proposed site plan are enclosed for your information.

At the hearing, the Bismarck Planning & Zoning Commission will provide an opportunity for all interested persons to be heard with respect to this item. Interested persons may also submit written comments regarding this request prior to the meeting to the Community Development Department ~ Planning Division, PO Box 5503, Bismarck, North Dakota 58506-5503, fax: 701- 222-6450, or e-mail - planning@bismarcknd.gov.

The agenda packet for the meeting, which will include a staff report for this request, will be posted online at www.bismarcknd.gov, under Agenda, Minutes/City Planning and Zoning Commission by the end of the day on Friday, January 23rd. The meeting will also be aired live on Government Access – Cable Channel 2 and can be viewed on-line at freetv.org under Government Access/Bismarck Planning and Zoning Commission.

If you have any questions or need any additional information on this request, please contact Jenny Wollmuth, the planner in our office assigned to this request, at 355-1845.

Bismarck Community Development Department – Planning Division

JW/hlb

Enc: Location Map
Site Plan

