BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
June 4, 2015

The Bismarck Board of Adjustment met on June 4, 2015 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Vice Chairman Clark presided.

Members present were Jennifer Clark, Ken Heier, Ken Hoff, Chris Seifert and Jeff Ubl. Michael Marback participated via telephone.

Staff members present were Brady Blaskowski – Building Official, Jenny Wollmuth – Planner, Jason Hammes – Assistant City Attorney and Hilary Balzum – Community Development Office Assistant.

MINUTES:

Vice Chairman Clark called for approval of the minutes of the May 7, 2015 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Ubl to approve the minutes of the May 7, 2015, meeting. With Board Members Clark, Heier, Hoff, Seifert, Ubl and Marback voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-03-11(10)(E) OF THE CODE OF CITY ORDINANCES (LANDSCAPING AND SCREENING)(BUFFER YARDS) – LOT 3 LESS THE WEST 1 FOOT AND THE WEST 16 FEET OF LOT 4, BLOCK 2, MEADOW VALLEY ADDITION (413 EAST BISMARCK EXPRESSWAY)

Vice Chairman Clark stated the applicants, Lyndon and Mona Mertz, are requesting a variance to eliminate the required landscaping buffer yard for a new commercial use adjacent to a single-family residential use along the south side of their property in conjunction with the construction of a new commercial building.

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

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the CG – Commercial zoning classification.

2. The hardship is not caused by the provisions of the Zoning Ordinance.

3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.

4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.

5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth said based on the above findings, staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Ms. Clark asked for some history on the vacant lot. Ms. Wollmuth said it is the old Pizza Hut location which was torn down when the Mertz's purchased it. Ms. Wollmuth also stated that the digital billboard located on the property will stay.

Ms. Mertz distributed pictures of the location and said they bought it seven years ago with the intent of renovating the Pizza Hut building but there was mold throughout the building so it had to be torn down. She said they sought a new a tenant and have found a large retailer willing to occupy this location for 10 years but would need to remove some of the parking spaces to accommodate the landscape requirements. She said there is a Montana-Dakota Utilities easement on the property and they have provided a statement saying the landscape will be cut as needed in the event they need to access their easement.

Ms. Clark asked if any of the surface lot will be replaced. Ms. Mertz said the worst parts will be replaced soon but most of it will be done after construction of the building is complete.

Mr. Hoff asked how the new building compares in size compared to the building that was torn down. Ms. Mertz said the old building was around 4,600 square feet and the new building will be approximately twice that size but will be only one story.

Mr. Hoff said there will not be a landscape buffer at all if the residential neighbor ever makes the decision to remove their bushes and a buffer is needed there. He asked if a dirt berm can be required between the properties. Ms. Wollmuth said that is not a requirement of this location.

Mr. Hoff asked what the specific requirements are for this zoning district. Ms. Wollmuth said a 20 foot landscape buffer to include various amounts of trees and shrubs whether a fence is installed or not.

Mr. Hoff asked what would happen if the potential tenant leaves and if parking would have to be added back in. Ms. Wollmuth said any amount of parking from 12 spaces up to 140 spaces could be needed depending on the new use.

Mr. Ubl asked if there are any past examples of a situation like this that could be provided. Mr. Blaskowski said provisions have been made based on the existence of utility easements including negotiating with the utility companies to accommodate their requirements during the site plan review process.

Vice Chairman Clark opened the public hearing.

Brian and DeeAnn Johnson said they live just on the other side of the fence and they already deal with a lot of garbage from Famous Dave's even with the fence that is there and the lilac bushes along that side of their property. She said what is there now is not enough to keep out garbage and noise and minimizing the requirement will only make it worse.

Mr. Hoff asked what the options are with this request. Ms. Wollmuth said the Board could require a fence be installed, which would slightly change the landscape materials required but a 20 foot buffer is still the requirement unless a variance is granted.

Ms. Mertz said they also have had issues with having to pick up garbage that comes from Famous Dave's and she will be talking to them again if it continues to be a problem when the new tenant moves in. She said she would also be willing to move their dumpster closer to the Famous Dave's side of the building.

Peggy Goodvagen said she lives in the cul-de-sac to the south of this property and Bismarck Expressway is so busy and noisy as it is that landscape buffers are needed just for that reason. She said her neighborhood no longer has a view of the Capital building or anything because of all of the large buildings and billboards that have gone up right next to their neighborhood.

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

MOTION: A motion was made by Mr. Marback to approve the variance to eliminate the required landscaping buffer yard for a new commercial use adjacent to a single-family residential use along the south side of their property in conjunction with the construction of a new commercial building. The motion was seconded by Mr. Seifert and with Board Members Seifert and Marback voting in favor of the motion and Board Members Heier, Hoff, Ubl and Clark opposing the motion, the motion failed.

MOTION: A motion was made by Mr. Hoff to approve the variance to eliminate the required landscaping buffer yard for a new commercial use adjacent to a single-family residential use along the south side of their property in conjunction with the construction of a new commercial building with the findings modified to require a ten foot buffer with the planting material installed as required in the city zoning ordinance. The motion was seconded by Mr. Heier and with Board Members Clark, Heier, Hoff, Seifert and Marback voting in favor of the motion, the motion was approved and the variance was granted. Board Member Ubl opposed the motion.

VARIANCES FROM SECTION 14-03-09 OF THE CITY CODE OF ORDINANCES (NONCONFORMING USES) AND SECTION 14-03-054)(C) OF THE CITY CODE OF ORDINANCES (SUPPLEMENTARY PROVISIONS) – THE WEST 48 FEET OF LOT 5 AND THE WEST 48 FEET OF THE SOUTH 25 FEET OF LOT 6, BLOCK 11, NORTHERN PACIFIC ADDITION (300 EAST AVENUE B)

Vice Chairman Clark stated the applicant, Deborah Kashur, is requesting variances to allow the construction of an accessory building on a nonconforming lot (less than 7,000 square feet,) with an existing nonconforming use (single-family dwelling) in the RT – Residential zoning district, and to reduce the required front yard setback from twenty (20) feet to eighteen (18) feet in order to construct an accessory building.

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

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RT-Residential zoning classification.

2. The hardship is not caused by the provisions of the Zoning Ordinance.

3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.

4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.

5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth said based on the above findings, staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Ms. Kashur said parking in the street at their home has become very difficult with all of the new parking restrictions being enforced and they are in desperate need of a garage for their vehicles. She said their yard is small and with a stop sign right in front of their house they are restricted on where they can park in the street. She said a 24 x 24 garage would be sufficient and would also enhance the quality and value of their home.

Mr. Hoff said he would like to avoid leaving too much room for parking in front of the garage resulting in vehicles blocking the sidewalk. He said he would like to see the garage moved further west to avoid parking in front of the garage doors being an option. Mr. Seifert said vehicles parking in front of garages and blocking sidewalks could be an issue anywhere, not just here.

Vice Chairman Clark opened the public hearing.

There being no comments, Vice Chairman Clark closed the public hearing.

MOTION: A motion was made by Mr. Hoff to approve the variances to allow the construction of an accessory building on a nonconforming lot (less than 7,000 square feet,) with an existing nonconforming use (single-family dwelling) in the RT – Residential zoning district, and to reduce the required front yard setback from twenty (20) feet to eighteen (18) feet in order to construct an accessory building. The motion was seconded by Mr. Heier and

with Board Members Heier, Hoff, Seifert, Ubl, Marback and Clark voting in favor of the motion, the motion was approved and the variance request was granted.

VARIANCE FROM SECTION 14-04-01(6) OF THE CITY CODE OF ORDINANCES (RR – RESIDENTIAL)(REAR YARD) – LOT 2, BLOCK 1, FOXHAVEN FIRST SUBDIVISION (7440 RED FOX LANE)

Vice Chairman Clark stated the applicants, Paul and Belinda Wutzke, are requesting a variance to reduce the required rear yard setback located along the west side of the property from sixty-four (64) feet to thirty (30) feet in order to construct an accessory building.

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

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR-Residential zoning classification.

2. The hardship is not caused by the provisions of the Zoning Ordinance.

3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.

4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.

5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth said based on the above findings, staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Ms. Wutzke said she realizes it seems like a large amount of footage from the setback is being requested but because the lot is so large a 64 foot setback is required and they just cannot meet that requirement. She said they would like to build a 24 foot by 32 foot accessory building to house their lawn equipment, four wheelers and other items of that nature needed to maintain their property. She said they have three large evergreen trees that they will be very close to or that will even have to be removed if they are required to have any more than a 32 foot setback. She said she has visited with her neighbors on both sides of her property and they have both said they are ok with her setback being reduced for this reason.

Vice Chairman Clark opened the public hearing.

There being no comments, Vice Chairman Clark closed the public hearing.

Mr. Seifert said it appears there would only be one tree in the way based on the site renderings if they were required to maintain the original setback.

MOTION: A motion was made by Mr. Heier to approve the variance to reduce the required rear yard setback located along the west side of the property from sixty-four (64) feet to thirty (30) feet in order to construct an accessory building. The motion was seconded by Mr. Hoff and with Board Members Heier, Hoff, Seifert, Ubl, Marback and Clark voting in favor of the motion, the motion was approved and the variance was granted.

VARIANCES FROM SECTION 14-04-07(7) OF THE CITY CODE OF ORDINANCES (R10 – RESIDENTIAL)(FRONT YARD) AND SECTION 14-04-06(9) OF THE CITY CODE OF ORDINANCES (R10 – RESIDENTIAL)(REAR YARD) – THE EAST 102 FEET OF LOTS 1 & 2, BLOCK 45, FLANNERY AND WETHERBY ADDITION (1623 EAST AVENUE B)

Vice Chairman Clark stated the applicants, Kenneth and Susan Wangler, are requesting variances to reduce the required front yard setback located along the north side of the property from twenty-five (25) feet to sixteen (16) feet, and to reduce the required rear yard setback located along the west side of the property from twenty (20) feet to ten (10) feet in order to construct an addition to the exiting attached garage.

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

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R10-Residential zoning classification.

2. The hardship is not caused by the provisions of the Zoning Ordinance.

3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.

4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.

5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth said based on the above findings, staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Mr. Wangler explained that the garage that is there now is not useful as the roof is collapsing and the foundation is lower than the sidewalk next to it so they are having water issues. He said it is not large enough for most vehicles made today and they would like to expand to two stalls so there is one for each of the duplex units. He said they will also be adding a parking pad so each unit would have two parking spaces available. He said he is committed to improving his property and feels this would be a nice addition

and worthwhile investment. He then said he could possibly expand the garage further to the south and use two of the existing foundation walls if he would be allowed to build on the old footings which he said he was informed he could possibly do.

Mr. Blaskowski explained that older homes are often not frost protected which makes it more difficult to build new structures on top of old footings especially when they are going to be attached to another structure.

Vice Chairman Clark opened the public hearing.

Mr. Marback excused himself from the meeting at this time.

There being no comments, Vice Chairman Clark closed the public hearing.

MOTION: A motion was made by Mr. Hoff to continue the variance to reduce the required front yard setback located along the north side of the property from twenty-five (25) feet to sixteen (16) feet, and to reduce the required rear yard setback located along the west side of the property from twenty (20) feet to ten (10) feet in order to construct an addition to the exiting attached garage, to allow the applicant more time to verify the foundation depth of the attached garage and to explore more options on how to make the addition better fit the property to the July 2, 2015 meeting of the Board of Adjustment. The motion was seconded by Mr. Heier and with Board Members Heier, Hoff, Seifert, Ubl, Marback and Clark voting in favor of the motion, the motion was approved and the variance was granted.

VARIANCE FROM SECTION 14-04-03(7) OF THE CITY CODE OF ORDINANCES (R5 – RESIDENTIAL)(FRONT YARD) – LOT 11, BLOCK 1, KILBER ADDITION (1905 HARDING PLACE)

Vice Chairman Clark stated the applicants, Aric and Mary Bandle, are requesting a variance to reduce the required front yard setback from twenty-five (25) feet, measured from the eastern edge of the private roadway / access easement (Harding Place), to twelve (12) feet in order to construct a single-family dwelling.

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

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R5 - Residential zoning classification.

2. The hardship is not caused by the provisions of the Zoning Ordinance.

3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.

4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.

5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth said based on the above findings, staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Mr. Bandle explained that their lot is very oddly shaped and only a small portion of one corner of the garage would be in the setback because of the way the lot is angled. He said there is a significant drop in the elevation of the lot and that he has visited with the Homeowner's Association and they have been agreeable to his proposal.

Vice Chairman Clark said she feels since this is a new home as opposed to an older existing home with known limitations the issues of how to make a home fit on the lot should have been known when it was purchased.

Mr. Bandle said he was advised the 25 foot setback requirement could possibly be modified when he made the purchase and many of the surrounding lots do not meet the setback requirement either.

Mark Fleck, Mr. Bandle's home builder, said there will be drainage issues if the home is moved further towards the back of the garage and water will collect between his home and his neighbors' so Mr. Bandle would then have to build a retaining wall as well.

Mr. Hoff asked how long the lot has been empty. Mr. Bandle said since it was subdivided in 1999.

Vice Chairman Clark opened the public hearing.

There being no comments, Vice Chairman Clark closed the public hearing.

MOTION: A motion was made by Mr. Hoff to approve the variance to reduce the required front yard setback from twenty-five (25) feet, measured from the eastern edge of the private roadway / access easement (Harding Place), to twelve (12) feet in order to construct a single-family dwelling, with the modification to the findings that the front yard setback be reduced from twenty-five (25) feet to fifteen (15) feet, due to drainage and topography needs. The motion was seconded by Mr. Seifert and with Board Members Heier, Hoff, Seifert, Ubl, Marback and Clark voting in favor of the motion, the motion was approved and the variance was granted.

VARIANCE FROM SECTION 14-04-03(7) OF THE CITY CODE OF ORDINANCES (R5 – RESIDENTIAL)(FRONT YARD) – LOT 13, BLOCK 4, HIGHLAND ACRES SECOND ADDITION (1136 NORTH PARKVIEW DRIVE)

Vice Chairman Clark stated the applicant, Troy Olson, is requesting a variance to reduce the required front yard setback located on the west side of their property from twenty-five (25) feet to fifteen (15) feet in order to construct a single family dwelling.

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

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R5-Residential zoning classification.

2. The hardship is not caused by the provisions of the Zoning Ordinance.

3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.

4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.

5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth said based on the above findings, staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Mr. Olson explained there is a grade difference at both the front and the rear of the lot into heavily watered areas that putting the house anywhere other than proposed would create significant problems. He said he would like to maintain a decently sized backyard as well and with the corner of the proposed house already being near the slope in the back, moving it further back would be difficult.

Vice Chairman Clark asked what the planned square footage of the new home would be. Mr. Olson said approximately 1,535 square feet so not overly large but average size and comparable to others in the area.

Vice Chairman Clark said she would like to remind those present that this is not a request for a variance from the covenants of the subdivision and that discussion needs to be applicable to the variance request from the setback requirements.

Vice Chairman Clark opened the public hearing.

Ms. Clark asked if there is a parking requirement for single family homes. Mr. Blaskowski explained that the only requirement for parking for single family homes is that covered parking on a slab must be provided.

Bruce Whittey, 1139 North Parkview Drive, provided an aerial map image and explained that this area was first subdivided in the 1960's and has definitely had its challenges since then including the coulee that runs through the property which most of the homes back up to. He said all of the homes in the subdivision conform to what the requirements were when it was first platted which included 20 foot setbacks on corner lots and 30 foot setbacks on all of the others. He said he is not opposed to new construction in the neighborhood but a home with a 15 foot setback when the others next to it have a 30 foot setback will not be consistent or aesthetically pleasing. He said many of the residents in

this neighborhood are opposed to the request and provided petition signatures from those residents. Petition and signatures in opposition to this request are attached as Exhibit A.

Mr. Ubl asked if any sidewalks have been planned to be constructed. Mr. Whittey said their HOA has discussed it as it is mandated but there has not been any formal action to get that process started as of yet.

Mr. Hoff asked what the building allowances for this lot would be as it is technically in a flood hazard area. Ms. Wollmuth explained that if any portion of a lot is located within the Special Flood Hazard Area (SFHA) or 100-year floodplain, the structure or house would need to be constructed two (2) feet above base flood elevation. She said Mr. Olson could petition to have his property removed from the SFHA with a Letter of Map Amendment (LOMA) through the Federal Emergency Management Agency.

Ms. Clark said she will leave it up to Mr. Olson at this time if he would like to withdraw his request and submit a new one after he has had some time to redraw the placement of a home on this property and have the request continued to the next meeting of the Board of Adjustment or have the Board make a motion and vote on the request as they normally would. Mr. Olson said he would like this request to be voted on.

Mr. Hoff pointed out that the house meets the setback requirement but it is the garage that will be partially in the setback.

Keith Larson, 1143 East Coulee Road, said his home is almost twenty feet from the same water hazard Mr. Olson would have and the house could easily be moved closer to the back of the lot and still avoid any flood threats.

Mr. Ubl said all of Highland Acres has grade issues and considering all of the information that has been provided he cannot support this request and would encourage the applicant to redraw the layout of his home on this lot.

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

MOTION: A motion was made by Mr. Ubl to deny the variance to reduce the required front yard setback located on the west side of their property from twenty-five (25) feet to fifteen (15) feet in order to construct a single family dwelling. The motion was seconded by Mr. Seifert and with Board Members Heier, Hoff, Seifert, Ubl, Marback and Clark voting in favor of the motion, the motion was approved and the variance request was denied.

OTHER BUSINESS

BYLAWS OF THE BOARD OF ADJUSTMENT

MOTION: A motion was made by Mr. Ubl to continue discussion of the bylaws of the Board of Adjustment to the July 2nd meeting. The motion was seconded by Mr. Seifert and with Board Members Heier, Hoff, Seifert, Ubl, Marback and Clark voting in favor of the motion, the motion was approved.

ADJOURNMENT

There being no further business, Vice Chairman Clark declared the meeting of the Bismarck Board of Adjustment adjourned at 7:28 p.m. to meet again on July 2, 2015.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Jennifer Clark, Vice Chairman

Petition to Deny the Variance Request of Front Yard Set Back at 1136 N Parkview Drive

Petition summary and background	The Bismarck Board of Adjustments will be conducting a public hearing at 5:00 pm on June 4, 2015 to hear the request of a variance to reduce the required front yard set back at 1136 N Parkview Dr from 30 feet (per covenants of Highland Acres II); 25 feet (per R-5 Residential) to 15 feet. This variance is requested in order to construct a new home on a vacant lot.
Action petitioned for	We, the undersigned, are property owners in the subject area who request that the Bismarck Board of Adjustments **deny** the applicant's request for a 15 foot set back.

Printed Name	Signature	Address	Date
Susan Borud	Susan Borud	1033 Highland Pl. Bis ND	6/3/15
Troy Borud	Troy C Borud	1033 Highland PL	6/3/15
John R. Wilson	John R. Wilson	1027 Highland PL	6/3/15
Philip Seifert	Philip Seifert	1026 Highland PL	6/3/15
Susan Seifert	Susan Seifert	1026 Highland PL. Bis	6-3-15
Doug BEAUDOIN	[illegible]	1017 HIGHLAND PL. BIS	6-3-15
Gail Beaudoin	Gail Beaudoin	1017 Highland Place Bism.	6-3-15
Erin Jacobson	E Jacobson	1020 Highland Pl Bis	6-3-15
[redacted]	[redacted]	[redacted]	[redacted]
MIKE CONLIN	[illegible]	1008 Highland PL Bis	6-3-15
Carol Conlin	Carol Conlin	1008 Highland Pl.	6-3-15

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Action petitioned for	We, the undersigned, are property owners in the subject area who request that the Bismarck Board of Adjustments **deny** the applicant's request for a 15 foot set back.

Printed Name	Signature	Address	Date
Deanna Johnson	Deanna Johnson	1204 East Coulee Rd	6/3/15
Kate Hanlon	Kate Hanlon	1205 E. Coulee Rd	6/3/15
Keith Larson	Keith Larson	1143 E. Coulee Rd	6/3/15

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Printed Name	Signature	Address	Date
Bridget Whitley	Bridget K. Whitley	1139 N. Parkview Dr.	5/30/15
Drew Flurer		1038 N Parkview Dr.	5/30/15
Parker Scott		1048 N Parkview Dr.	5/31/15
Jason & Heidi Bonner	Heidi Bonner	1108 N Parkview Dr	6/1/15
Clifton Hudgins		1129 N. Parkview Dr	6/1/15
Elizabeth A. Lucas	Elizabeth A. Lucas	1032 Highland Pl.	6/2/2015
Mary Jane Yetter	Mary Jane Yetter	1038 Highland Pl.	6-2-2015
Ken Yetter	Ken Yetter	1038 Highland Pl.	6-2-2015
Sue Seminary	Sue Seminary	1212 N Parkview Dr	6/2/2015
Cody + Megan Sletten	Cody Sletten	1221 N Parkview Dr.	6/2/15
JIM CHRISTIANSEN		1009 E. HIGHLAND ACRES RD	6/3/15
Diane Rath	Diane Rath	1209 E Coulee Rd	6/3/15
Craig Smith		1121 N. Parkview Dr.	6/4/15