

**BISMARCK PLANNING & ZONING COMMISSION  
MEETING MINUTES  
July 22, 2015**

The Bismarck Planning & Zoning Commission met on July 22, 2015, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Chairman Yeager presided.

Commissioners present were Tom Atkinson, Mel Bullinger, Mike Donahue, Doug Lee, Ken Selzer, Mike Seminary, Lisa Waldoch and Wayne Yeager.

Commissioners Brian Bitner, Vernon Laning and Mike Schwartz were absent.

**MINUTES**

Chairman Yeager called for consideration of the minutes of the June 24, 2015 meeting.

**MOTION:** Commissioner Lee made a motion to approve the minutes of the June 24, 2015 meeting as received. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Lee, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

**CONSIDERATION**

- A. PART OF LOT 4, BLOCK 2, PINEHURST 4<sup>TH</sup> ADDITION – ZONING CHANGE**
- B. DOWNTOWN DISTRICTS/PARKING GARAGES – ZONING ORDINANCE TEXT AMENDMENT**

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

- A. Part of Lot 4, Block 2, Pinehurst 4<sup>th</sup> Addition – Zoning Change
- B. Downtown Districts/Parking Garages – Zoning Ordinance Text Amendment

**MOTION:** Commissioner Seminary made a motion to approve consent agenda items A and B, calling for public hearings on the items as recommended by staff. Commissioner Donahue seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Lee, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE  
LOT 1, BLOCK 3, KMK ESTATES**

Chairman Yeager called for the public hearing on the zoning change from the RR-Residential zoning district to the R10-Residential and Conditional RT-Residential zoning districts for Lot 1, Block 3, KMK Estates. The property is located in northwest Bismarck along the west side of North Washington Street and the south side of Buckskin Drive.

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

1. The proposed zoning change is outside the boundaries of the Future Land Use Plan (FLUP) in the 2014 Growth Management Plan.
2. The proposed zoning change would be generally compatible with adjacent land uses. Adjacent land uses include single-family dwellings to the south and west, large-lot single-family rural residential dwellings and a church to the north, and single and two-family dwellings across North Washington Street to the east.
3. The parcel is already annexed; 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, provided limitations are placed on the overall height of any structures and structures would not exceed two stories.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations, provided limitations are placed on the overall height of any structures and structures would not exceed two stories.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice, provided limitations are placed on the overall height of any structures and structures would not exceed two stories.

Mr. Tomanek said, based on the above findings, staff recommends approval of the zoning change from the RR – Residential zoning district to the R10 – Residential zoning district on the West 170 feet of Lot 1 and to the Conditional RT – Residential zoning district on Lot 1 less the West 170 feet, Block 3, KMK Estates, with the following condition:

1. The maximum height of any building is limited to two stories.

Chairman Yeager opened the public hearing.

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

**MOTION:** Based on the findings contained in the staff report, Commissioner Lee made a motion to approve the zoning change from the RR – Residential zoning

district to the R10 – Residential zoning district on the West 170 feet of Lot 1 and to the Conditional RT – Residential zoning district for Lot 1 less the West 170 feet, Block 3, KMK Estates, with the following condition: 1. The maximum height of any building is limited to two stories. Commissioner Seminary seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Lee, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE  
THE SOUTH 170 FEET OF LOT 2, BLOCK 1, BOULDER RIDGE 3RD ADDITION**

Chairman Yeager called for the public hearing on the zoning change from the RM15 – Residential zoning district to the RT – Residential zoning district for the South 170 feet of Lot 2, Block 1, Boulder Ridge 3<sup>rd</sup> Addition. The property is located along the north side of 43<sup>rd</sup> Avenue NE and the east side of Normandy Street.

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

1. This area was not included in the Future Land Use Plan (FLUP) in the 2014 Growth Management Plan because it was already platted and zoned.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include undeveloped RM15-Residential zoned property to the north, developing R5-Residential and R10-Residential zoned property to the west, office uses and one rural residence to the south across 43<sup>rd</sup> Avenue NE and developing CG-Commercial zoned property and one rural residence to the east.
3. The property is already annexed and municipal services are in place; 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 said, based on the above findings, staff recommends approval of the zoning change from the RM15 – Residential zoning district to the RT – Residential zoning district for the South 170 feet of Lot 2, Block 1, Boulder Ridge 3<sup>rd</sup> Addition, with the understanding that the lot will need to be split through the City’s lot modification process prior to the request being forwarded to the City Commission for final action and that an access easement is provided across the northern portion of the lot so that the South 170 feet of Lot 2 has an access route from Normandy Street.

Dave Patience, Swenson, Hagen & Co., explained that the area to the east of this location is transitioning and developing as commercial uses and there is office uses on the south side of 43<sup>rd</sup> Avenue NE. He said he feels this is an appropriate transition as well. In order to protect the surrounding residential and rural residential neighborhood, there will be ten to twelve condo-style units that will face the street to the north of this parcel, not the single family homes. He added that landscaping is already in place.

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 zoning change from the RM15 – Residential zoning district to the RT – Residential zoning district for the South 170 feet of Lot 2, Block 1, Boulder Ridge 3<sup>rd</sup> Addition, with the understanding that the lot will need to be split through the City’s lot modification process prior to the request being forwarded to the City Commission for final action and that an access easement is provided across the northern portion of the lot so that the South 170 feet of Lot 2 has an access route from Normandy Street. Commissioner Waldoch seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Lee, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE  
LOT 8, BLOCK 15, REPLAT OF PART OF TIBESAR’S FIRST SUBDIVISION**

Chairman Yeager called for the public hearing on the zoning change from the RT – Residential zoning district to R5 – Residential zoning district for Lot 8, Block 15, Replat of Part of Tibesar’s First Subdivision. The property is located in north Bismarck, along the south side of East Capitol Avenue and approximately one and a half blocks west of the intersection of East Capitol Avenue and State Street.

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

1. This area is not included in the Future Land Use Plan (FLUP) of the 2014 Growth Management Plan because it was already platted and zoned.
2. The proposed use would be compatible with adjacent land uses. Adjacent land uses include single-family dwellings to the north, west, and south, and an office use to the east.
3. The property is already annexed; therefore, the zoning change would not place an undue burden on public services.
4. The proposed zoning change and subsequent development would not adversely affect property in the vicinity.

5. The proposed zoning change and subsequent development are consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change and subsequent development are consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Nairn said, based on the above findings, staff recommends approval of the zoning change from RT – Residential zoning district to R5 – Residential zoning district for Lot 8, Block 15, Replat of Part of Tibesar’s First Subdivision.

Chairman Yeager opened the public hearing.

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

**MOTION:** Based on the findings contained in the staff report, Commissioner Lee made a motion to approve the zoning change from RT – Residential zoning district to R5 – Residential zoning district for Lot 8, Block 15, Replat of Part of Tibesar’s First Subdivision. Commissioner Donahue seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Lee, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE  
LOTS 2 & 3, BLOCK 4, MEADOWLARK COMMERCIAL SEVENTH ADDITION**

Chairman Yeager called for the public hearing on the zoning change from the RT – Residential zoning district to the PUD – Planned Unit Development zoning district for Lots 2 & 3, Block 4, Meadowlark Commercial Seventh Addition. The property is located in north Bismarck, east of US Highway 83 along the south side of the future section line road, 57<sup>th</sup> Avenue NE, and the west side of the future North 19<sup>th</sup> Street.

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

1. The proposed zoning change would not be consistent with the Future Land Use Plan in the 2014 Growth Management Plan. The Future Land Use Plan reflects open space and commercial uses, storage facilities are considered and industrial land use and not an appropriate use in a commercial district.
2. The previous arrangement between the applicant and the Bismarck Parks and Recreation District (BPRD) would have provided land to the BPRD along the Hay Creek corridor for multi-use trails and open space. As part of the arrangement, BRPD would have become the land owner along a portion of North 19<sup>th</sup> Street, thus resulting in BPRD sharing a portion of the construction costs associated with the extension of North 19<sup>th</sup> Street. The current agreement between the applicant and the BPRD would no longer result in the BPRD owning land along North 19<sup>th</sup> Street; however, the applicant has indicated a willingness to provide an easement to allow the extension of the Hay Creek trail. The

final location of the future trail extension is not known at this time and it is likely that the exact location would not be determined until such time as each lot along the east side of North 19<sup>th</sup> Street is studied and programmed to accommodate an end-user of the property. If the final location of the multi-use trail cannot lie adjacent to Hay Creek due to topographic constraints, BPRD has indicated that an alternative would be to locate the multi-use trail within the North 19<sup>th</sup> Street public right-of-way.

3. The proposed zoning change would be somewhat compatible with adjacent land uses. Adjacent land uses include agricultural to the north and east, developing commercial property to the south and five, rural residential homes to the west. The residential properties gain access to their homes from the US Highway 83 frontage road and onto Brookside Lane. The access to the proposed storage facility would be along North 19<sup>th</sup> Street. Brookside Lane and North 19<sup>th</sup> Street would not intersect; therefore additional traffic would not be likely along the residential street, Brookside Lane.
4. The proposed zoning change may have an adverse impact on property in the vicinity; in particular, there are existing rural residentially-zoned homes south of the proposed zoning change.
5. The entire property has been annexed; therefore the zoning change would not place an undue burden on public services.
6. The proposed zoning change is not consistent with the general intent and purpose of the zoning ordinance. In particular, the proposed industrial use is not supported by the Future Land Use Plan (FLUP); industrial land uses would be more appropriate located between Hay Creek and the CP railroad line. In addition, adequate access to Lot 1, Block 4 via a public roadway does not currently exist and the developer does not intend to construct the roadway at this time.
7. The proposed zoning change is not consistent with the master plan, other adopted plans, policies. In particular, the proposed land use does not follow the FLUP of the 2014 Growth Management Plan (GMP) and the proposal to not construct North 19<sup>th</sup> Street and 57<sup>th</sup> Avenue NE adjacent to the lots proposed for development is inconsistent with long standing City policy.

Mr. Tomanek said, based on the above findings, staff recommends approval of the zoning change from the RT – Residential zoning district to the PUD – Planned Unit Development zoning district, as outlined in the draft PUD ordinance.

Commissioner Atkinson asked why the staff recommendation is to approve the request if there are so many things in the staff report stating the request is not compatible with the location.

Mr. Tomanek said after meeting with the applicant and knowing their intentions of how to design the landscape screening around the property as well as access and design, staff feels the concept and the operation plans for the facility are in line with the surrounding area.

Commissioner Seminary said he is sometimes confused on the consistency of the use versus the staff recommendation being appropriate; however, he feels this is the appropriate recommendation for this request given what is coming in the future for North 19<sup>th</sup> Street. He said that will be a major north to south connection over time and asked what the main concern is with this request when it comes to compatibility with the surrounding area.

Mr. Tomanek said the main concerns are access, public roadways and the general storage use being an industrial use; however the proposed facility would be climate controlled and regularly staffed so that softens the impact of this particular use quite a bit. He said there is not anything in the community thus far with this level of design, but the adjacent rural residential homes will see somewhat of an impact. He said the area in general is programmed now for future commercial uses.

Commissioner Seminary said he agrees with what Mr. Tomanek said and that previous studies did not anticipate the magnitude of growth the City has been seeing, and the City needs to find a way to become more comfortable with storage uses.

Commissioner Lee asked what the primary access point to the facility will be. Mr. Tomanek said patrons would mostly come from the south, up North 19<sup>th</sup> Street, or over on East LaSalle Drive once that is completely constructed and open. He said a temporary cul-de-sac easement sized appropriately for emergency services to access the site will be in place as well as a dustless, all-weather surface road.

Chairman Yeager opened the public hearing.

Bruce Hicks, 1475 Brookside Lane, said he has been a resident of Gussner Home Sites for many years and that East LaSalle Drive is paved all the way up to their development but right now most of the earth work has been done using North 19<sup>th</sup> Street. He said this is causing a large mess on the road and he is not opposed to development and can see the benefits of it, but right now there is already a lot of construction traffic on Brookside Lane. He said there is a culvert being constructed and dirt work seems to be done without any real plan. He said he feels communication is lacking between the developer and the neighborhood, as they were told 57<sup>th</sup> Avenue NE would be used to move equipment, not Brookside Lane, and now a lot of the regular traffic is shortcutting through the neighborhood as well. He said the culvert being dug through the creek is causing a lot of runoff through the coulee which floods the entire area.

Chairman Yeager asked if Brookside Lane is maintained by Burleigh County. Mr. Tomanek said it is and that it is platted and a public right-of-way, but it is outside city limits. He suggested communication with Burleigh County is needed to resolve the concerns Mr. Hicks has.

Commissioner Atkinson asked how long it will be before East LaSalle Drive connects to North 19<sup>th</sup> Street. Commissioner Bullinger said that need is development driven so it would depend on how much and how fast development takes place.

Brian Zuroff, Wenck Associates, said the plan is to have those roadways connect in the fall of 2015 based on the projected development plan. He said utility plans are being worked on and the exit from the cul-de-sac would be curbed to avoid regular traffic shortcutting and using Brookside Lane. He said the developer is also willing to barricade the trail being used to prevent any heavy truck traffic, adding that some increased traffic will be experienced upon development but nothing comparable to that of a multi-family use. He said the disturbed wetland and drainage areas have to be replaced so the water issues will be resolved. It is the desire of the developer to have a very high end storage facility, as there is a severe lack of that in the area now. He said they have received conditional use terms from MDU as well as WAPA because of the easement, so those will also have to remain accessible to those entities.

Mr. Hicks said there might not be much traffic as a result of this project, but would like to see the many other projects going up in the area, such as Dick's Sporting Goods and Gordman's, be taken into consideration as well. He said traffic is already changing and is going to get crazier and will always find its way onto Brookside Lane.

Commissioner Lee asked if Mr. Hicks would feel more comfortable with the plan if the developer was asked to barricade Brookside Lane. Mr. Hicks said that would make him feel a lot better.

Mr. Tomanek said staff can work with the County Engineer and the City Traffic Engineer as far as barricading Brookside Lane and the perimeters necessary to allow that, but it would have to be included as a condition of the motion and approval of the request.

Darin Will said his mother owns two properties on Brookside Lane and asked how the construction equipment will be moved if not down Brookside Lane once the proposed road and bridge are in place and the road cannot handle that large of a load. He said they are also experiencing water issues that were not there prior to development.

Mr. Tomanek said one option may be to construct 57<sup>th</sup> Avenue NE as it would be a section line road.

Kevin Nelson, Wenck Associates, said those concerns will most certainly be addressed and that equipment will be moved using North 19<sup>th</sup> Street as much as possible. A permit is currently being processed to complete the culvert there as well to make utilization of that roadway safer.

Commissioner Lee asked if it would negatively affect the development if a restriction was imposed on Brookside Lane. Mr. Nelson said it would not.

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 zoning change from the RT – Residential zoning district to the PUD – Planned Unit Development zoning district, as outlined in

the draft PUD ordinance, with the condition that the developer will work with Burleigh County and the City of Bismarck to create a plan to block access by construction traffic via Brookside Lane and to explore alternative access points, for Lots 2 & 3, Block 4, Meadowlark Commercial Seventh Addition. Commissioner Waldoch seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Lee, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT  
LOT 2, BLOCK 1, WISDOM OFFICE PARK ADDITION**

Chairman Yeager called for the public hearing on the special use permit to allow the development and operation of a child care center on Lot 2, Block 1, Wisdom Office Park Addition. The property is located in north Bismarck, between State Street and North 19<sup>th</sup> Street, along the south side of East Century Avenue (1701 East Century Avenue).

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

1. A child care center is allowed as a special use in the RT – Residential zoning district, provided specific conditions are met. The proposed child care center meets the provisions outlined in Section 14-03-08(4)(q) of the City Code of Ordinances, provided that the number of children using the outdoor recreation area does not exceed 50. A copy of this section is attached.
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, provided a fire sprinkler system is installed to meet the current building and fire code requirements.
4. The use would be designed, operated and maintained in a manner that is compatible with the appearance of the existing character of the surrounding area.
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 and provide for appropriate on-site circulation of traffic; in particular, adequate off-street parking would be provided.

Ms. Lee said, based on the above findings, staff recommends approval of the special use permit to allow the operation of a child care center on Lot 2, Block 1, Wisdom Office Park Addition with the following conditions:

1. The operation of the child care center must meet all applicable requirements for such a use in the RT – Residential zoning district.
2. Development of the site must generally conform to the site plan submitted with the application.
3. The number of children using the outdoor recreation area at one time must be limited to 45.

Chairman Yeager opened the public hearing.

Bill Baumann, Director of the Missouri Valley Family YMCA, said child care is in huge demand in Bismarck right now and they currently are only meeting 30-40% of the need at this time. He said families want to move here and know that they will be able to find high quality child care when they do. He said this would be a great location for a child care center as it has perfect access and minimal internal building changes will be needed. He said they are hoping to open by February 1<sup>st</sup> and, because the YMCA is such a huge provider nationwide, they can partner with large local businesses to provide quality care for the children of those employers.

Commissioner Lee asked how many children the Bismarck YMCA currently provides care for. Mr. Baumann said they currently have 170 children enrolled in their infant, toddler and preschool programs total and could double that number with this new facility.

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 special use permit to allow the operation of a child care center on Lot 2, Block 1, Wisdom Office Park Addition with the following conditions: 1. The operation of the child care center must meet all applicable requirements for such a use in the RT – Residential zoning district; 2. Development of the site must generally conform to the site plan submitted with the application; and 3. The number of children using the outdoor recreation area at one time must be limited to 45. Commissioner Atkinson seconded the motion and the request was approved with Commissioners Atkinson, Bullinger, Donahue, Lee, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

## **PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT OFF-STREET PARKING & LOADING/DOWNTOWN PARKING DISTRICT**

Chairman Yeager called for the public hearing for a zoning ordinance text amendment relating to off-street parking and loading/downtown parking district. Mr. Tomanek explained that the proposed amendment would extend the boundaries of the downtown parking district. Staff recommends approval of the amendment as presented.

Commissioner Bullinger asked what the verbage relating to the south line or the center line makes reference to. Mr. Tomanek explained that is in regards to the edge of the right-of-way unless otherwise specified.

Chairman Yeager opened the public hearing.

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

**MOTION:** Based on the proposed zoning ordinance draft language and the recommendation of staff, Commissioner Seminary made a motion to recommend approval of the zoning ordinance text amendment relating to off-street parking and loading/downtown parking district as recommended by staff. Commissioner Donahue seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Lee, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

### **OTHER BUSINESS**

There was no other business to discuss at this time.

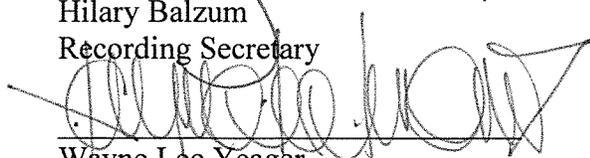
### **ADJOURNMENT**

There being no further business, Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:20 p.m. to meet again on August 26, 2015.

Respectfully submitted,



Hilary Balzum  
Recording Secretary



Wayne Lee Yeager  
Chairman