

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
December 16, 2015**

The Bismarck Planning & Zoning Commission met on December 16, 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, Vernon Laning, Mike Schwartz, Ken Selzer, Mike Seminary, Lisa Waldoch and Wayne Yeager.

Commissioners Brian Bitner and Doug Lee were absent.

Staff members present were Carl Hokenstad – Director of Community Development, Kim Lee – Planning Manager, Jason Tomanek – Senior Planner, Jenny Wollmuth – Planner, Daniel Nairn – Planner. Hilary Balzum – Community Development Administrative Assistant and Charlie Whitman – City Attorney.

MINUTES

Chairman Yeager called for consideration of the minutes of the November 17, 2015 meeting.

MOTION: Commissioner Donahue made a motion to approve the minutes of the November 17, 2015 meeting as presented. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Schwartz, Selzer, Seminary, Waldoch and Yeager voting in favor of the motion.

CONSIDERATION

- A. VARIOUS LOTS AND TRACTS IN NORTHEAST BISMARCK – CITY-INITIATED ZONING CHANGE PHASE II**
- B. AUDITOR’S LOT 6 OF THE NE1/4 OF SECTION 1, T138N-R80W/LINCOLN TOWNSHIP – ZONING CHANGE**
- C. PART OF LOT 1, BLOCK 1, KENSINGTON 1ST ADDITION – ZONING CHANGE**

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

- A. Various Lots and Tracts in Northeast Bismarck – City-Initiated Zoning Change
- B. Auditor’s Lot 6 of the NE1/4 of Section 1, T138N-R80W/Lincoln Township – Zoning Change
- C. Part of Lot 1, Block 1, Kensington 1st Addition – Zoning Change

MOTION: Commissioner Laning made a motion to approve consent agenda items A, B and C, calling for public hearings on the items as recommended by staff.

Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Selzler, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION
TRACT 5 OF THE NE1/4 OF SECTION 26, T139N-R80W/HAY CREEK
TOWNSHIP**

Chairman Yeager called for final consideration of the annexation of Tract 5 of the NE1/4 of Section 26, T139N-R80W/Hay Creek Township. The property is 4.15 acres and is located along the west side of Centennial Road and the north side of I-94.

Mr. Tomanek 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 lots proposed for annexation.
2. The proposed annexation would not adversely affect property in the vicinity.
3. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance.
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Mr. Tomanek said based on the findings contained in the staff report, staff recommends approval of the annexation of Tract 5 of the NE¼ of Section 26, T139N-R80W/Hay Creek Township.

MOTION: Based on the findings contained in the staff report, Commissioner Donahue made a motion to approve the annexation of Tract 5 of the NE1/4 of Section 26, T138N-R80W/Hay Creek Township. Commissioner Schwartz seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Selzler, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION
UNANNEXED TRACTS IN SECTIONS 21 & 22, T139N-R80W/HAY CREEK
TOWNSHIP**

Chairman Yeager called for final consideration of the annexation of unannexed tracts in Sections 21 & 22, T139N-R80W/Hay Creek Township. The properties are 8.54 acres and is located in north Bismarck, along the south side of 43rd Avenue NE and mostly east of US Highway 83.

Mr. Nairn gave an overview of the City-initiated 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 lots proposed for annexation.
2. The proposed annexation would not adversely affect property in the vicinity.
3. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance.
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Mr. Nairn said based on the findings contained in the staff reports, staff recommends approval of the City-initiated annexation of various unannexed lots and parcels in Section 21 & 22, T139N-R80W/Hay Creek Township, as described in the staff report.

Commissioner Atkinson asked if any of owners of the above referenced properties have commented on or are opposed the annexation of their property.

Mr. Nairn said a two owners did wish to be removed from the annexation list at this time and those properties are not reflected in the list provided in the staff report.

MOTION: Based on the findings contained in the staff reports, Commissioner Laning made a motion to approve the City-initiated annexation of unannexed tracts in Section 21 & 22, T139N-R80W/Hay Creek Township, as described in the staff report. Commissioner Waldoch seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Selzler, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

PUBLIC HEARINGS – ZONING CHANGE & MINOR SUBDIVISION FINAL PLAT MEADOWLARK COMMERCIAL 9TH ADDITION

Chairman Yeager called for the continued public hearings on the zoning change from the RT-Residential and P-Public zoning districts to the CA-Commercial zoning district (modified from the original request to CG-Commercial) and minor subdivision final plat for Meadowlark Commercial 9th Addition, a four lot subdivision on 15.06 acres. The property is located in north Bismarck, along the east side of North 19th Street approximately 1/4 mile north of 43rd Avenue NE (a replat of Lot 3, Block 6, Meadowlark Commercial Third Addition and Lots 6-8, Block 4, Meadowlark Commercial Seventh Addition).

Mr. Tomanek gave an overview of the requests, including the following findings for the modified zoning change request:

1. The proposed zoning change would be consistent with the Future Land Use Plan (FLUP) in the 2014 Growth Management Plan. Although the area proposed for the zoning change is outside of the area included in the FLUP, the FLUP identifies the undeveloped

area to the east as medium density residential (MDR). The MDR designation corresponds to development that averages six to seven units per acre. The MDR designation would typically involve a mix of residential land uses including single-family, duplex or townhomes and multi-family dwellings in conjunction with a small amount of commercial land uses intended to service the residential neighborhoods in the vicinity. It is the position of Planning staff that current land uses defined in the FLUP support appropriate zoning transitions and desired future land uses.

2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include undeveloped CG – Commercial-zoned parcels to the west and north, developing commercial property to the south and undeveloped agricultural land to the east. The proposed zoning change would provide an appropriate zoning transition.
3. The proposed zoning change would not have an adverse impact on property in the vicinity.
4. The entire property has been annexed; therefore, the zoning change would not place an undue burden on public services.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek then gave the findings for the final plat:

1. All technical requirements for approval of a minor subdivision final plat have been met.
2. A waiver has been granted by the City Engineer from the storm water management plan requirements.
3. The property is already annexed; therefore, the proposed subdivision would not place an undue burden on public services and facilities.
4. A request to change the zoning to allow commercial uses has been submitted in conjunction with proposed subdivision. The proposed zoning would be compatible with adjacent land uses. Adjacent land uses include developing commercial land uses to the north, south and west and undeveloped land to the east which has been identified as medium-density residential in the Future Land Use Plan in the 2014 Growth Management Plan.
5. The proposed subdivision would not adversely affect property in the vicinity.
6. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.

7. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek said based on the findings contained in the staff reports, staff recommends approval of the zoning change from the RT-Residential and P-Public zoning districts to the CA-Commercial zoning district and minor subdivision final plat for Meadowlark Commercial 9th Addition.

Chairman Yeager said his understanding is that the developer of this property wants to make it very walkable with neighborhood-compatible land uses.

Mr. Tomanek said that is correct, that it will be retail and light office uses.

Chairman Yeager opened the public hearing.

Brian Zuroff, Wenck Associates, said he has met with staff since the last meeting and the zoning buffer and separation concerns throughout the property have been addressed. He said because of the natural topography of the creek corridor, there is a very large grade difference between the land included within the plat and the land adjacent to the east.

Commissioner Bullinger asked for an update on the requested comprehensive stormwater plan for that area.

Mr. Zuroff provided an overview of the activities completed to date, and said the findings of the comprehensive stormwater plan were that the proposed ponds would be sufficient compared to the requirements of the recently updated standards.

Commissioner Bullinger said Mr. Zuroff and Wenck Associates have been working diligently to get where they are with the requested comprehensive stormwater plan and he is comfortable with the overall stormwater plan as proposed.

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

MOTION: Based on the findings contained in the staff reports, Commissioner Donahue made a motion to approve the zoning change from the RT-Residential and P-Public zoning districts to the CA-Commercial zoning district and minor subdivision final plat for Meadowlark Commercial 9th Addition. Commissioner Seminary seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Selzler, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

PUBLIC HEARING – CITY-INITIATED ZONING CHANGE PHASE I VARIOUS LOTS AND TRACTS IN NORTHWEST BISMARCK

Chairman Yeager called for the public hearing on the City-initiated zoning change from the R5-Residential, RM15-Residential and RM30-Residential zoning districts to the P-Public zoning district for various lots and tracts in northwest Bismarck. The properties are located north of Interstate 94 and west of US Highway 83.

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

1. The proposed zoning changes are outside the area covered in the Future Land Use Plan in the 2014 Growth Management Plan.
2. The proposed zoning changes would be compatible with adjacent land uses.
3. The proposed zoning changes would not place an undue burden on public services.
4. The proposed zoning changes would not adversely affect property in the vicinity.
5. The proposed zoning changes are consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
6. The proposed zoning changes are consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Nairn said based on the findings contained in the staff report, staff recommends approval of the City-initiated zoning change from the R5 – Residential zoning district to the P – Public zoning district for the properties as described in the staff report.

Commissioner Laning asked if taxation will be affected since these are all properties owned by the City or other public entities. Mr. Nairn said taxation will not be affected at all.

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 Selzler made a motion to approve the City-initiated zoning change from the R5-Residential, RM15-Residential and RM30-Residential zoning districts to the P-Public zoning district for various lots and tracts in northwest Bismarck, as described in the staff report. Commissioner Waldoch seconded the motion and the request was approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Selzler, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE
UNIVERSITY OF MARY SECOND SUBDIVISION**

Chairman Yeager called for the continued public hearing on a zoning change from the A-Agriculture and RR-Residential zoning districts to the RR-Residential zoning district for University of Mary Second Subdivision. The property is located south of Bismarck, along the southwest side of ND Highway 1804 approximately two miles south of 48th Avenue SE (Government Lot 3, the SE¼ of the NW¼, and part of the SW¼ of the NW¼, Section 2, T137N-R80W/Fort Rice Township).

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

1. The proposed zoning change would be consistent with the Future Land Use Plan (FLUP) in the 2014 Growth Management Plan, which identifies this area as a Civic land use. This future land use designation includes public or institutional service bases, major recreation, educational campuses and other civic facilities.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include the University of Mary campus to the north, the Annunciation Monastery to the northwest and west and a combination of agricultural uses and rural residential to the southeast, south, east and northeast across ND Highway 1804.
3. The property is already owned by the University of Mary, would be served by municipal water via a contract with the City, has a private on-site wastewater treatment system and has direct access to ND Highway 1804; therefore, the zoning change would not place an undue burden on public services and facilities.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee said based on the findings contained in the staff report, staff recommends approval of the zoning change from the A – Agricultural and RR – Residential zoning district to the RR – Residential zoning district for the University of Mary Second Subdivision.

Commissioner Seminary said since this request was delayed in order to explore other alternatives and said if there is no other option besides RR-Residential, what other alternatives are there.

Ms. Lee said when the zoning ordinance rewrite proceeds, an institutional district for campus settings and similar institutional uses will be included. When that new district is in place, staff would support a zoning change request knowing it will be University related.

Chairman Yeager opened the public hearing.

Dave Patience, Swenson, Hagen & Co., said they have explored alternatives and talked to neighboring owners to come to an agreement on this request. He said the proposed road within the subdivision complies with the Fringe Area Road Master Plan and moving it has its pros and cons. He said the owner to the east controls where it would be placed upon further subdivision of the property or not, and selling their land is not in their immediate plans. He said there is no other alternative zoning district to be considered and the University of Mary was told they need to plat their property and submit a zoning change request in order to further develop, so that is what they are trying to do.

Mark Swenson, 6550 University Drive South, said rural residential zoning is not appropriate here and he wants success for University of Mary but not at the expense of the neighboring owners. He said a PUD would be more appropriate in this case and zoning is meant to protect investments and should be transitional. He said the proposed uses are obviously not rural residential uses and trust in the zoning ordinance and those who are supposed to uphold it will be lost if this request is approved. He said he has been told many different proposed uses and that plans are in place that he feels will adversely affect the area. He said a PUD should be written for the University of Mary to allow for more customization of their land uses.

Chairman Yeager said it is his understanding that the uses will be administrative buildings and not student dormitories.

Mr. Swenson said he just does not want to see higher density and industrial style buildings equipped with athletic fields and stadium style lights, or a convenience store as an ancillary use. He said he would like to see more detail as to what is proposed and for the neighboring properties to be considered.

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

Ms. Lee said the educational group use is a permitted use group in the RR-Residential zoning district and clarified that a commercial use such as a convenience store would not be permitted.

Commissioner Schwartz asked if Planning staff did indeed tell University of Mary that the zoning needed to be changed.

Ms. Lee said Planning staff did inform the University of the need for a zoning change and that they were originally going to request the zoning be changed to P-Public, but the opinion was that would be too broad so they changed it to RR-Residential to remain consistent with the rest of the campus.

Commissioner Schwartz asked what the main difference is between the A-Agriculture zoning district versus the RR-Residential zoning district.

Ms. Lee said educational uses are not permitted in the A-Agriculture zoning district, so the University would not even be allowed to receive a building permit for this area if the zoning remained as A-Agricultural.

Chairman Yeager asked if any other campuses near residential neighborhoods, such as Bismarck State College (BSC), have problems with that type of transitional zoning.

Ms. Lee said BSC did try to build a new dormitory recently that was met with some resistance from neighboring property owners and did not come to fruition in that location. She said the University of Mary would have to meet all of the other requirements of the zoning ordinance when developing their property.

MOTION: Based on the findings contained in the staff report, Commissioner Atkinson made a motion to approve the zoning change from the A – Agricultural and RR – Residential zoning district to the RR – Residential zoning district for the University of Mary Second Subdivision. Commissioner Selzler seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Schwartz, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE
MULTIPLE PARCELS IN KMK ESTATES, KMK ESTATES 2ND AND GELOFF
ESTATES**

Chairman Yeager called for the public hearing on a City-initiated zoning change from the RR-Residential zoning district to the R5-Residential zoning district for multiple parcels in KMK Estates, KMK Estates 2nd and Geloff Estates. The properties are located in northwest Bismarck, west of North Washington Street and south of Ash Coulee Drive.

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 at the time the Plan was adopted.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include low density residential uses to the west and south, undeveloped CA – Commercial zoned land to the north across Ash Coulee Drive, and mixed-density residential and a religious institution to the east across North Washington Street.
3. The property is already annexed and municipal services have been or will be installed; 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 City-initiated zoning change from the RR – Residential zoning district to the R5 – Residential zoning district on the parcels described in the staff report:

Chairman Yeager opened the public hearing.

Mr. Swenson said he has a client who owns property in this area with plans to change part of his property to RT-Residential, but does not want this zoning change to jeopardize that option.

Ms. Lee said she has visited with the same owner and has advised him that a change to RT-Residential would be supported and that changing it to R5-Residential now would not preclude the property from being zoned RT-Residential in the future.

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

MOTION: Based on the findings contained in the staff report, Commissioner Donahue made a motion to approve the zoning change from the RR-Residential zoning district to the R5-Residential zoning district for multiple parcels in KMK Estates, KMK Estates 2nd and Geloff Estates, as described in the staff report. Commissioner Atkinson seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bullinger, Donahue, Laning, Selzler, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT LOT 2, BLOCK 5, PRAIRIE VIEW SUBDIVISION

Chairman Yeager called for the continued public hearing on a special use permit to increase the total square footage of accessory buildings located on a rural residential lot to 2,216 square feet for Lot 2, Block 5, Prairie View Subdivision. The property is located east of Bismarck, east of 52nd Street NE and south of East Main Avenue, along the north side of Meadowlark Lane.

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

1. The Apple Creek Board of Township Supervisors recommends approval, if all setbacks are met.

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

Ms. Wollmuth said, based on the findings contained in the staff report, staff recommends approval of the special use permit to increase the total allowable square footage of accessory buildings on Lot 2, Block 5, Prairie View Subdivision to 2,216 square feet with the following condition:

1. The proposed accessory building meets all applicable requirements outlined in the zoning ordinance.

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 increase the total allowable square footage of accessory buildings on Lot 2, Block 5, Prairie View Subdivision to 2,216 square feet with the following condition: 1. The proposed accessory building meets all applicable requirements outlined in the zoning ordinance. Commissioner Waldoch seconded the motion and the request was approved Commissioners Atkinson, Bullinger, Donahue, Laning, Selzler, Schwartz, 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 5:57 p.m. to meet again on January 27, 2016.

Respectfully submitted,



Hilary Balzum
Recording Secretary



Wayne Lee Yeager
Chairman