

**BISMARCK PLANNING & ZONING COMMISSION**  
**MEETING MINUTES**  
**January 27, 2016**

The Bismarck Planning & Zoning Commission met on January 27, 2016, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Vice Chairman Lee presided.

Commissioners present were Mel Bullinger, Vernon Laning, Doug Lee, Mike Schwartz, Ken Selzer, Mike Seminary and Lisa Waldoch.

Commissioners Tom Atkinson, Brian Bitner, Mike Donahue and Wayne Yeager were absent.

Staff members present were Carl Hokenstad – Director of Community Development, Jason Tomanek – Senior Planner, Jenny Wollmuth – Planner, Daniel Nairn – Planner. Hilary Balzum – Community Development Administrative Assistant, Jason Hammes – Assistant City Attorney, Brady Blaskowski – City Building Official and Charlie Whitman – City Attorney.

**MINUTES**

Vice Chairman Lee called for consideration of the minutes of the December 16, 2016 meeting.

**MOTION:** Commissioner Seminary made a motion to approve the minutes of the December 16, 2015 meeting as presented. Commissioner Schwartz seconded the motion and it was unanimously approved with Commissioners Bullinger, Laning, Lee, Schwartz, Selzer, Seminary and Waldoch voting in favor of the motion.

**CONSIDERATION**

- A. SCHWAN’S COMMERCIAL ADDITION – ZONING CHANGE AND PRELIMINARY PLAT**
- B. LIGHT OF CHRIST ADDITION – ZONING CHANGE, FRINGE AREA ROAD MASTER PLAN AMENDMENT AND PRELIMINARY PLAT**
- C. EVERGREEN RIDGE ADDITION – PUD AMENDMENT**
- D. STONERIDGE ADDITION – PUD AMENDMENT**
- E. KAMROSE CROSSING ADDITION – PUD AMENDMENT**
- F. VARIOUS LOTS AND TRACTS IN EAST BISMARCK – ZONING CHANGE**
- G. OFF-STREET PARKING AND LOADING REQUIREMENTS – ZONING ORDINANCE TEXT AMENDMENT**

Vice Chairman Lee called for consideration of the following consent agenda items:

- A. Schwan's Commercial Addition – Zoning Change And Preliminary Plat
- B. Light of Christ Addition – Zoning Change, Fringe Area Road Master Plan Amendment and Preliminary Plat
- C. Evergreen Ridge Addition – PUD Amendment
- D. Stoneridge Addition – PUD Amendment
- E. Kamrose Crossing Addition – PUD Amendment
- F. Various Lots and Tracts in East Bismarck – Zoning Change
- G. Off-Street Parking and Loading Requirements – Zoning Ordinance Text Amendment

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

**PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT  
MEADOWLARK COMMERCIAL SIXTH ADDITION 1<sup>ST</sup> REPLAT**

Vice Chairman Lee called for the public hearing on the minor subdivision final plat for Meadowlark Commercial Sixth Addition 1<sup>st</sup> Replat, a three lot subdivision on 29.48 acres. The property is located in north Bismarck, east of US Highway 83, north of 43<sup>rd</sup> Avenue NE along the west side of North 19<sup>th</sup> Street.

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

1. All technical requirements for approval of a minor subdivision final plat have been met;
2. The requirement to provide a storm water management plan has been waived by the City Engineer;
3. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
4. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
5. The proposed subdivision would not adversely affect the public health, safety and general welfare.

Ms. Wollmuth said, based on the findings contained in the staff report, staff recommends approval of the minor subdivision plat for Meadowlark Commercial Sixth Addition 1<sup>st</sup> Replat and granting a waiver from the storm water management plan.

Vice Chairman Lee opened the public hearing.

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

**MOTION:** Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the minor subdivision plat for Meadowlark Commercial Sixth Addition 1<sup>st</sup> Replat and granting a waiver from the storm water management plan. Commissioner Waldoch seconded the motion and the request was unanimously approved with Commissioners Bullinger, Laning, Lee, Selzler, Schwartz, Seminary and Waldoch voting in favor of the motion.

### **PUBLIC HEARING – CITY-INITIATED ZONING CHANGE PHASE II VARIOUS LOTS AND TRACTS IN NORTHEAST BISMARCK**

Vice Chairman Lee called for the public hearing on the City-initiated zoning change from the R5-Residential, R10-Residential, RM30-Residential, RT-Residential and A-Agriculture zoning districts to the P-Public zoning district for various lots and tracts in northeast Bismarck. The properties are located north of Interstate 94 and east of US Highway 83.

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

1. The proposed zoning change generally conforms to the Future Land Use Plan in the 2014 Growth Management Plan, as amended;
2. The proposed zoning change is compatible with adjacent land uses and zoning;
3. The City of Bismarck and other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the new zoning classification at the time the property is developed;
4. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
5. The zoning change is in the public interest and is not solely for the benefit of a single property owner;
6. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;
7. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

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, R10-Residential, RM30-Residential, RT-Residential and A-Agriculture zoning districts to the P-Public zoning district for various lots and tracts in northeast Bismarck for the properties as described in the staff report.

Vice Chairman Lee opened the public hearing.

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

**MOTION:** Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the City-initiated zoning change from the R5-Residential, R10-Residential, RM30-Residential, RT-Residential and A-Agriculture zoning districts to the P-Public zoning district for various lots and tracts, as described in the staff report. Commissioner Schwartz seconded the motion and the request was unanimously approved with Commissioners Bullinger, Laning, Lee, Selzler, Schwartz, Seminary and Waldoch voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE  
AUDITOR’S LOT 6 OF THE NE1/4 OF SECTION 1, T138N-R80W/LINCOLN  
TOWNSHIP**

Vice Chairman Lee called for the public hearing on a zoning change from the RR-Residential zoning district to the Conditional MA-Industrial zoning district for Auditor’s Lot 6 of the NE1/4 of Section 1, T138N-R80W/Lincoln Township. The property is located east of Bismarck, along the west side of SE 52nd Street approximately ½ mile south of East Main Avenue/County Highway 10.

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

1. The proposed zoning change generally conforms to the Future Land Use Plan in the 2014 Growth Management Plan, as amended;
2. The proposed zoning change is compatible with adjacent land uses and zoning;
3. The City of Bismarck and other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the new zoning classification at the time the property is developed;
4. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
5. The zoning change is in the public interest and is not solely for the benefit of a single property owner;

6. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;
7. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Mr. Tomanek said based on the findings contained in the staff report, staff recommends approval of the zoning change from the RR – Residential zoning district to the Conditional MA – Industrial zoning district as outlined in the attached draft ordinance.

Commissioner Laning asked if the owner objects to the requirement of a berm being installed on the property. Mr. Tomanek said he spoke with the owner today and because the zoning ordinance for the adjacent Midwest Business Park involved a significant amount of compromise between the owner and the adjacent neighbors, staff felt the same provisions should be implemented in this case as well.

Vice Chairman Lee opened the public hearing.

Donavan Voeller, 225 52<sup>nd</sup> Street NE, said he is happy with what staff has worked out for development requirements for this request and said he has an email from a neighbor, Dwight Wragham, who has concerns with where the MA-Industrial zoning district will eventually end. He said his neighbor would like to see this use go somewhere that is already appropriately zoned for it, and 52<sup>nd</sup> Street SE is not designed or equipped to hold up to traffic from the uses proposed here. He said he, himself, opposed Midwest Business Park and feels that more transition area is needed between these developments and the residential neighborhood to the east. He said he believes business in general is slowing down and he does not think that more MA-Industrial land is needed. He would like to see this request be denied, but if it is approved it should have the same requirements as Midwest Business Park Addition has since it will be an extension of similar land uses.

Mark Swenson, 6550 University Drive South, said he is the owner and he takes issue with the requirements in the draft ordinance and feels if he has to follow the things listed, such as building materials and colors, then all requests of this nature should have to do the same thing. He said he feels the requirements are unfair and excessive regulations on his request are singling him out. He said the property is bisected by power lines and there is a motor cross track to the west, so there is not any other exceptional zoning district to be applied here. He said it will be light industrial development as opposed to heavy industrial uses and it would be to the benefit of the city to have more industrial opportunities available.

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

Mr. Tomanek said this is a unique situation, as the surrounding uses do vary and the owner did try to change the zoning to MA-Industrial in 2007 without any conditions and staff did

recommend denial of that request. He said a new Future Land Use Plan has been implemented since that time and when looking at the request again, Planning staff must consider the adjacent rural residential neighborhood. Mr. Tomanek noted that Planning staff has changed its recommendation since the previous zoning change request in 2007 due in part to the change in land use to the north in addition to the conditions proposed to help mitigate adverse impacts between the proposed industrial land uses and the existing rural residential use. He said Planning staff faced a similar situation with Hamilton's First Addition in which case a 6-foot tall landscaped berm was required to help screen and separate the neighboring residential development to the east.

Vice Chairman Lee asked what the current use and future plans are for the land to the south of this property.

Mr. Tomanek said it is not owned by the applicant and is currently agricultural uses. He said the Future Land Use Plan identifies the area as an extension of the industrial land uses. Mr. Tomanek noted that there is a significant elevation change to the south which becomes a significant drainage way leading to Apple Creek. He closed by stating the lower area is designated floodway and flood plain areas.

Commissioner Seminary asked if there is a buffer of any kind on the south side of Midwest Business Park. Mr. Tomanek said there is not at this time but platting that property could possibly require a buffer easement.

Vice Chairman Lee said there is a utility easement to the south of this property so it is very boxed in by the surrounding uses.

Mr. Tomanek said there is an overhead transmission line easement to the south and those are typically 100-150 feet wide.

Vice Chairman Lee said he feels this change is appropriate given the adjacent existing industrial use.

**MOTION:** Based on the findings contained in the staff report, Commissioner Schwartz made a motion to approve the zoning change from the RR-Residential zoning district to the Conditional MA-Industrial zoning district for Auditor's Lot 6 of the NE1/4 of Section 1, T138N-R80W/Lincoln Township, as outlined in the draft ordinance. Commissioner Laning seconded the motion and the request was unanimously approved with Commissioners Bullinger, Laning, Lee, Schwartz, Selzler, Seminary and Waldoch voting in favor of the motion.

## **PUBLIC HEARING – ZONING CHANGE PART OF LOT 1, BLOCK 1, KENSINGTON FIRST ADDITION**

Vice Chairman Lee called for the public hearing on a zoning change from the RM15-Residential zoning district to the RT-Residential zoning district for Lot 1 less the Westerly 2 feet taken for sidewalk and the N1/2 of the vacated Interstate Avenue adjacent, Block 1,

Kensington First Addition. The property is located in east Bismarck, between Interstate 94 and East Century Avenue along the east side of North 19th Street.

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

1. The proposed zoning change is outside the area included in the Future Land Use Plan (FLUP) in the 2014 Growth Management Plan because it was previously platted and zoned.
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include Pebble Creek Golf Course to the north and east, a parochial school to the south, and office uses to the west across North 19<sup>th</sup> Street.
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. Wollmuth 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 for Lot 1, less the westerly 2 feet taken for sidewalk, and the N1/2 of the vacated Interstate Avenue adjacent, Block 1, Kensington First Addition.

Vice Chairman Lee opened the public hearing.

There being no comments, Vice Chairman Lee 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 Lot 1, less the Westerly 2 feet taken for sidewalk, and the N1/2 of the vacated Interstate Avenue adjacent, Block 1, Kensington First Addition. Commissioner Laning seconded the motion and the request was unanimously approved with Commissioners Bullinger, Laning, Lee, Selzler, Schwartz, Seminary and Waldoch voting in favor of the motion.

## **PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT OFF-PREMISE ADVERTISING SIGNS**

Vice Chairman Lee called for the public hearing on a zoning ordinance text amendment relating to off-premise advertising signs.

Ms. Wollmuth explained that the proposed amendment would augment and clarify requirements for off-premise advertising signs (billboards) and that staff recommends approval of the amendment as presented, based on the following findings:

1. The proposed text amendment would not adversely affect the public health, safety or general welfare.
2. The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance.
3. The proposed text amendment is consistent with the general intent and purpose of the zoning ordinance.
4. The proposed text amendment is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Wollmuth explained that the proposed zoning text amendment defines off-premise advertising signs, digital off-premise advertising signs and sign face, and includes provisions for the size, spacing and setbacks of off-premise advertising signs. She said it also includes criteria for approval of an off-premise advertising sign as an administrative special use by the Zoning Administrator and that a public hearing and approval by the Planning and Zoning Commission for off-premise advertising signs is no longer a requirement in this version of the zoning text amendment.

Vice Chairman Lee opened the public hearing.

Commissioner Seminary said he met with industry representatives from the area and feels that some good discussion was held and compromises were made. He said after making comparison to other communities he feels what is in front of them now is appropriate.

Vice Chairman Lee asked if this would purely be an administrative approval process to either approve or deny a billboard request as opposed to holding a public hearing. Ms. Wollmuth said that is correct; a special use permit would still be applied for, but it would receive administrative approval or denial instead of going through the Planning Commission process as previously outlined in the October 2015 draft zoning text amendment.

Vice Chairman Lee asked if any off premise advertising signs would be allowed less than 300 feet from a residentially zoned property anymore. Ms. Wollmuth said that if approved as

proposed, the zoning ordinance text amendment would no longer allow an off premise advertising sign to be placed less than 300 feet from a residentially zoned property.

Commissioner Laning asked if there is an appeal process if a resident or business in the area has objections to the approval of an administrative special use permit for a new billboard. Mr. Whitman explained that a resident or business cannot appeal the decision as an uninvolved party and that an appeal can only be submitted by the applicant.

Ms. Wollmuth added that if approved as proposed, the zoning ordinance text amendment includes additional criteria for the approval of an administrative special use permit prior to the issuance of a permit.

Jim England, Newman Outdoor Signs, said he supports the administrative approval process compared to a public hearing and feels the originally proposed ordinance from October 2015 was very restrictive. He said he has concerns with the requirement of any and all parts of a billboard being at least 200 feet from the center point of the intersection of arterial and collector roadways and would like to see that reduced to 150 feet. He said the average block is 350 feet so that does not leave very much room for billboard placement options. He said he understands the safety concerns involved, but that requirement would minimize the number of potential locations.

Commissioner Bullinger said the standard arterial roadway is 120 feet wide so the half width mark would be 60 feet and reducing the setback to 150 would be very difficult with those distances.

Kevin Gebhardt, Newman Outdoor Signs, said he also met with staff and understood that an appeal to the Board of Adjustment would only be applicable in the event all of the criteria are not met and the permit is denied. He said he would like to see exceptions to the 15 foot setback requirement in the areas surrounding Interstate 94 and that the setback requirements apply to the pole rather than the entire sign. He said a standard sign would be high enough that it would not infringe on traffic.

Commissioner Bullinger said changing the setback requirements would conflict with landscape requirements, specifically with the height some mature trees can reach.

Mr. Tomanek said perimeter parking lot landscape parking lot requirements are anywhere from four to ten feet in width and can include a variety of trees and shrubs. He said a billboard could potentially be blocked by mature trees in the future.

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

Commissioner Seminary asked if there is a history of complaints related to billboards in the past. Ms. Wollmuth replied they have received a few in the past in regards to placement and proximity.

Commissioner Seminary said he knows the new ordinance seems tight and he is confident in Planning staffs judgment, but he does have concerns of an appeal process not being available for concerned residents.

Mr. Whitman said the existing ordinance does not allow for a resident to appeal as it is and going forward there will not be anything closer than 300 feet allowed near any residence.

Commissioner Seminary said the minimal amount of complaints received in the past should be an indicator that this not overly troubling and staff will make certain it does not become an issue.

**MOTION:** Based on the findings contained in the staff report, Commissioner Seminary made a motion to approve the zoning ordinance text amendment relating to off-premise advertising signs. Commissioner Waldoch seconded the motion and the request was unanimously approved Commissioners Bullinger, Laning, Lee, Selzler, Schwartz, Seminary and Waldoch voting in favor of the motion.

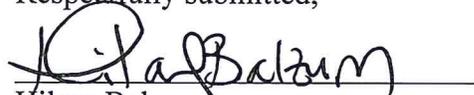
#### **OTHER BUSINESS**

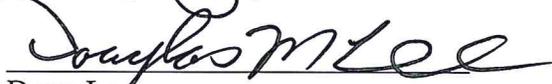
There was no other business to discuss at this time.

#### **ADJOURNMENT**

There being no further business, Vice Chairman Lee declared the Bismarck Planning & Zoning Commission adjourned at 5:57 p.m. to meet again on February 24, 2016.

Respectfully submitted,

  
Hilary Balzum  
Recording Secretary

  
Doug Lee  
Vice Chairman