

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

The Bismarck Planning & Zoning Commission met on July 27, 2016, 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, Gabe Schell, Ken Selzler, Mike Seminary and Wayne Yeager. Commissioner Brian Bitner participated via telephone.

Commissioners Mike Donahue, Vernon Laning, Doug Lee and Mike Schwartz were absent.

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

Chairman Yeager introduced William Hutchings as the new planner for the City of Bismarck. Mr. Hutchings said he is originally from Montana and has a background in architecture. He said he has worked in this region most recently as a transportation planner for the Bismarck-Mandan Metropolitan Planning Organization (MPO) until accepting this position.

MINUTES

Chairman Yeager called for consideration of the minutes of the June 22, 2016 meeting.

MOTION: Commissioner Atkinson made a motion to approve the minutes of the June 22, 2016 meeting as presented. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Atkinson, Bitner, Schell, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

CONSIDERATION

- A. COTTONWOOD PARKVIEW ADDITION – ZONING CHANGE AND PRELIMINARY PLAT**
- B. MEMORY 1ST ADDITION – FUTURE LAND USE PLAN AMENDMENT, ZONING CHANGE AND PRELIMINARY PLAT**
- C. MDU RESOURCES NORTHWEST ADDITION – PRELIMINARY PLAT**
- D. WOODLAND THIRD SUBDIVISION – PRELIMINARY PLAT**

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

- A. Cottonwood Parkview Addition – Zoning Change and Preliminary Plat

- B. Memory 1st Addition – Future Land Use Plan Amendment, Zoning Change and Preliminary Plat
- C. MDU Resources Northwest Addition – Preliminary Plat
- D. Woodland Third Subdivision – Preliminary Plat

Chairman Yeager clarified that the staff recommendation for item C, a preliminary plat for MDU Resources Northwest Addition, should be tentative approval, not schedule a hearing as indicated on the agenda.

MOTION: Commissioner Atkinson made a motion to approve consent agenda items A, B, C and D, 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 Atkinson, Bitner, Schell, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

Hay Creek Township Supervisor Dave Pearce joined the meeting at this time.

**PUBLIC HEARINGS –
ZONING CHANGE AND FINAL PLAT
KOCH CREEK COMMERCIAL SUBDIVISION**

Chairman Yeager called for the public hearing on the final plat and the zoning change from the A-Agriculture zoning district to the CG-Commercial zoning district for Koch Creek Commercial Subdivision. The proposed plat includes two lots in one block on 8.56 acres and is located north of Bismarck, between US Highway 83 and North Washington Street, along the north side of ND Highway 1804 (being a plat of Auditor’s Lot 2 of Auditor’s Lot B in the W1/2 of the SE1/4, Section 4, T139N-R80W/Hay Creek Township).

Ms. Wollmuth gave an overview of the requests, including the following findings for the zoning change:

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 Hay Creek Township Board of Supervisors has recommended conditional approval of the proposed zoning change.
5. 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.

6. The zoning change is in the public interest and is not solely for the benefit of a single property owner.
7. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
8. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.
9. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Ms. Wollmuth then gave the findings for the final plat:

1. All technical requirements for approval of a final plat have been met.
2. The final plat generally conforms to the preliminary for the proposed subdivision that was tentatively approved by the Planning and Zoning Commission.
3. The proposed subdivision generally conforms to the 2014 Fringe Area Road Master Plan (FARMP), as amended.
4. The storm water management plan for the subdivision has been approved by the City Engineer with written concurrence from the County Engineer.
5. The provision of neighborhood parks and open space is not needed because the proposed final plat is not an urban subdivision with residential zoning districts.
6. The Hay Creek Township Board of Supervisors has recommended approval of the proposed final plat.
7. The proposed subdivision plat includes sufficient easements and rights-of-way to provide for orderly development and provision of municipal services beyond the boundaries of the subdivision.
8. 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 proposed subdivision at the time the property is developed.
9. The proposed subdivision is not located in an area that is subject to flooding, an area where the proposed development would adversely impact water quality and/or environmentally sensitive lands, and/or an area that is topographically unsuited for development.
10. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

11. The proposed subdivision would not adversely affect the public health, safety and general welfare.

Ms. Wollmuth said, based on these findings, staff recommends approval of the zoning change from the A-Agriculture zoning district to the CG-Commercial zoning district and approval of the final plat for Koch Creek Commercial Subdivision, including a waiver to delay the paving of the of the roadways within the plat until the electrical substation located on Lot 1, Block 1 is completed.

Chairman Yeager opened the public hearing.

Commissioner Schell said he has noticed there has been activity on this site and asked if that should be allowed prior to approval of the plat and zoning change. Ms. Wollmuth replied this location is in the extra-territorial area (ETA) so staff has been working closely with the County Engineer, who did approve a development permit, however, work is being done under this permit, but in advance of approval of the plat and zoning change, at the risk of the developer.

Shelly Hagel, 532 Highridge Drive, said she feels there was not enough notice given to the neighboring owners regarding these changes and asked if a substation is restricted to any particular zoning districts.

Chairman Yeager said substations are a permitted use in all zoning districts because they are a necessity for all types of development.

Ms. Hagel asked what this substation will provide power to and said there is already one a mile away in either direction. She said she does not feel this is appropriate next to the existing agricultural uses and rural single-family homes. She said she would like to know of commercial zoning would be ok on just one of the proposed lots with the other still zoned agricultural.

Ms. Wollmuth said neighbors within a quarter of a mile were notified, as is the procedure with Planning Commission public hearings, 10 days prior to the meeting. She said the Future Land Use Plan (FLUP) identifies this area as commercial, which could include neighborhood commercial uses. She said staff would expect the development to be similar to what is along US Highway 83 now.

Ms. Hagel said there is such a large residential area nearby and health and safety are concerning, especially once the road is developed and connected. She said she is also concerned the proposed holding pond will smell bad and attract mosquitoes.

Chairman Yeager said that pond would be there for large event runoff and would have to be able to drain within 48 hours through a specifically designed stormwater piping system.

Ms. Hagel said the commercial zoning district is very broad and asked if a neighborhood commercial zoning district would be more appropriate.

Ms. Wollmuth said uses allowed in the proposed CG-Commercial zoning district are health and medical, education, retail and things like offices and banks. She said because the FLUP identifies this area as commercial, the proposed zoning district is appropriate in this location.

Ms. Hagel said because they do not live in City limits they cannot vote for the City Commissioners and she feels the timing of this request is odd having just had an election and so many boards having to approved these requests. She said she would like to see the notification process change so people are informed of these changes sooner.

Eric Poppinga, Central Power, said a comprehensive study was completed in 2014 of the transmission and distribution substation system for Bismarck exposure at the Ward and US Highway 83 substations. He said one problem discovered is insufficient distribution exits to provide enough power for the surrounding commercial and residential needs. He said they run into problems after utility companies consolidate and the window of opportunity for operation becomes very small. He said there is a gap between the existing stations and what is actually available and the study also showed this area to be at capacity for electricity. He said they did look at placing it further to the east but with that area having had a 100-year flood event, it was not an option. He said it physically would not fit in the area north of the church because of the coulee so the owner of this property was then approached. He said some work was done prior to approval of the development permit and they understand that is at the risk of the developer, but their County legal requirements are that the road bed needs to be placed, inspected and approved before the final plat is recorded. He said they do not like to operate that way and they admire the requirements of needing a road before a warranty deed is given. He said they work closely with Capital Electric and regular site visits and maintenance is a monthly requirement as well as inspections after major storm events. He said if there is a lightning strike detected, a signal is sent with a report, as well as in the event of breaker or fuse trips, and those are then investigated as well.

Chairman Yeager asked if the stormwater plans are running accordingly with the requirements of the City. Commissioner Schell said they are and that there is a backup area within the property proposed to retain and drain similar to the current conditions. He said the proposed pond is not a regional pond, so even in the event of a large rainfall, it would probably drain in a few hours.

Mr. Pearce asked what the development plans are for Lot 2 of the proposed subdivision. Mr. Poppinga said the plan was to convey that property to Central Power as well, but it was later decided to remain in the ownership of the current owner, Mr. Koch.

Ms. Hagel asked if multi-family residential housing would be allowed on Lot 2 since it is only four acres and said it should not be part of the approval until the owner knows what their plan for development is. She asked if having that lot be CG-Commercial will make the surrounding agricultural property more likely to become zoned that way as well.

Chairman Yeager asked how much urgency there is in getting the approval of these requests in place. Mr. Poppinga said the urgency is fairly great as the systems to the east and west are

not designed to carry the other's load in the event one of them fails. He said with the development of the property and the road they are looking at approximately a \$7 million investment and they are required to submit construction plans a year in advance.

Wilton Kuehn, 531 Highridge Drive, asked if the residents have any real influence on where these substations can be placed. Ms. Lee said they are allowed in all zoning districts because they are a necessity to existing and future development.

Mr. Kuehn said do not object to new development but they would rather not see multi-family and commercial uses in this location.

Mr. Poppinga explained that the connections for the substation would be along the west edge of the property line and exit to the southeast where it would then travel south over Highway 1804 to a source that runs east and west along the south side of the highway. He said they will be all underground connections, except for the transmission lines within the lot.

Ms. Hagel said she does have some signatures petitioning against these requests and would like those to be considered or for the requests to be continued to allow more time for questions to be answered. Secretary's note: A copy of the petition and original signatures has not been provided to the Community Development Department.

Additional written comments in opposition to these requests are attached as Exhibits A and B.

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

Mr. Pearce said with these being requests in the ETA, decisions need to be made between the City, Burleigh County and Hay Creek Township. He said that requires a lot of planning and with the timing of the preliminary plat and the township meetings, things can get delayed. He said they would like to solicit input more as a township, but many of the resources they need to do that are just not in place at this time. He said they trusted the development plans so the resolution for this request was passed at the last township meeting and sent back to the Planning and Zoning Commission, knowing a public hearing would then be held. He said Hay Creek Township did request the road development and setback requirements as well as a landscape buffer zone and this is the first he has heard of any opposition from the neighbors. He said they went with the information received from City staff and had these concerns been known sooner, they definitely would have been taken into consideration.

Chairman Yeager said the recommendation of any township is taken very seriously and it seems most of the concern at this time is of the development plans for Lot 2.

Ms. Wollmuth said to help alleviate the neighborhood concerns, a condition could be placed on the proposed zoning change that would prohibit the development of Lot 2, until the lot is annexed and municipal services are in place.

Commissioner Seminary said he understands the concerns that come with substations and in the case, what the use of the other lot will be in the future. He said the City of Bismarck updated their FLUP in 2014 with a process that included input from many boards and commissions, brokers and contractors as well as a series of meetings and public input opportunities. He said it was approximately a 10-month process before the general footprint was established based on all of the input received.

Commissioner Bitner said the Burleigh County Commission was aware of the substation request and saw it as a necessary good to the public because of the need for electricity. He said their position is for residents to have sufficient energy when needed and he understands the general concerns associated with these requests. He said as far as the notification process goes, there is only so much that can be done with the amount of funding given for that particular task. He said he does not think a request for a substation is out of line and there is no way to see forward to what exactly the development of the other lot might be. He said he cannot speculate on developer's plans but will always take questions from residents if they wish to contact him.

Commissioner Schell asked if the condition requiring annexation prior to development would need to be addressed with the motion. Ms. Wollmuth said yes, if that is wanted it would need to be added at this time.

MOTION: Based on the findings contained in the staff report, Commissioner Seminary made a motion to recommend approval of the zoning change from the A – Agricultural zoning district to the CG – Commercial zoning district, with the condition that Lot 2, Block 1, Koch Creek Commercial Subdivision be annexed into the City of Bismarck and municipal services in place prior to development, and approval of the final plat, including a waiver to delay the paving of the roadways within the plat until the electrical substation located on Lot 1, Block 1 is completed. Commissioner Selzler seconded the motion and the motion was unanimously approved with Mr. Pearce and Commissioners Atkinson, Bitner, Schell, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT SOUTHBAY THIRD ADDITION FIRST REPLAT

Chairman Yeager called for the public hearing on the minor subdivision final plat for Southbay Third Addition First Replat. The proposed plat is three lots on 1.02 acres and is located in southwest Bismarck, west of South Washington Street and south of East Burleigh Avenue southeast of Calypso Drive within Poseidon Loop (being a replat of Lots 1, 2A, 2C, 7 and 8, Block 1, Southbay Third Addition).

Ms. Lee 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 stormwater management plan has been waived by the City Engineer.
3. The proposed subdivision is compatible 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.
5. The proposed subdivision would not adversely affect the public health, safety, and general welfare.

Ms. Lee said, based on the findings contained in the staff report, staff recommends approval of the minor subdivision final plat of Southbay Third Addition First Replat.

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 recommend approval of the minor subdivision final plat of Southbay Third Addition First Replat. Commissioner Atkinson seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bitner, Schell, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT SONNET HEIGHTS SUBDIVISION SIXTH REPLAT

Chairman Yeager called for the public hearing on the minor subdivision final plat for Sonnet Heights Subdivision Sixth Replat. The proposed plat is six lots on 1.73 acres and is located in north Bismarck, in the southeast quadrant of the intersection of Normandy Street and Calvert Drive (Being a replat of Lot 6, Block 1, Sonnet Heights Subdivision).

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 stormwater management plan for the subdivision has been approved 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.

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 final plat of Sonnet Heights Subdivision Sixth Replat.

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 recommend approval of the minor subdivision final plat of Sonnet Heights Subdivision Sixth Replat. Commissioner Waldoch seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bitner, Schell, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE LOTS 1-3, BLOCK 1, SONNET HEIGHTS SUBDIVISION

Chairman Yeager called for the public hearing on a zoning change from the PUD-Planned Unit Development zoning district to the RM15-Residential zoning district on Lots 1-3, Block 1, Sonnet Heights Subdivision. The property is located in north Bismarck, on the south side of 57th Avenue NE approximately a half mile west of US Highway 83.

Mr. Nairn 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.
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Mr. Nairn said, based on the above findings, staff recommends approval of the zoning change from the PUD-Planned Unit Development zoning district to the RM15-Residential zoning district for Lots 1-3, Block 1, Sonnet Heights Subdivision.

Chairman Yeager asked if the access point off of 57th Avenue NE that was granted with the PUD would also be eliminated once the zoning is changed, or if the future developer would still be allowed to use it.

Mr. Nairn said since it was part of the PUD the requirement would be eliminated, and based on the preliminary plans it is not the desire of the developer to have that access to the property off of 57th Avenue NE.

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 recommend approval of the zoning change from the PUD-Planned Unit Development zoning district to the RM15-Residential zoning district for Lots 1-3, Block 1, Sonnet Heights Subdivision. Commissioner Atkinson seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bitner, Schell, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE LOTS 14-19, BLOCK 4, SOUTH MEADOWS ADDITION

Chairman Yeager called for the public hearing on a zoning change from the R5-Residential and R10-Residential zoning districts to the Conditional R10-Residential and RM15-Residential zoning districts on Lots 14-19, Block 4, South Meadows Addition. The property is located in southwest Bismarck, west of South Washington Street and south of West Burleigh Avenue along the south side of Meridian Drive.

Ms. Lee 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.
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Ms. Lee said, based on the above findings, staff recommends approval of the zoning change from the R5 – Residential and R10 – Residential zoning districts to the Conditional R10 – Residential zoning district on Lots 14 and 15, and to the RM15 – Residential zoning district on Lots 16-19, Block 4, South Meadows Addition, with the understanding that the development of the two R10-Residential lots will be limited to two-family dwellings in order to provide an appropriate land use transition between the single-family residential land use to the west and the multi-family residential land use on Lots 16-20.

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 recommend approval of the zoning change from the R5 – Residential and R10 – Residential zoning districts to the Conditional R10 – Residential zoning district on Lots 14 and 15, and to the RM15 – Residential zoning district on Lots 16-19, Block 4, South Meadows Addition, with the understanding that the development of the two R10-Residential lots will be limited to two-family dwellings in order to provide an appropriate land use transition between the single-family residential land use to the west and the multi-family residential land use on Lots 16-20. Commissioner Waldoch seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bitner, Schell, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE
PART OF LOT 21, LOUNSBERRY OUTLOTS (SAXVIK ELEMENTARY SCHOOL)**

Chairman Yeager called for the public hearing on a zoning change from the P-Public zoning district to the PUD-Planned Unit Development zoning district on part of Lot 21, Lounsberry Outlots (Saxvik Elementary School). The property is located in central Bismarck, along the east side of North 21st Street between East Rosser Avenue and East Avenue B.

Ms. Lee 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 character and nature of the proposed planned unit development contains a planned and coordinated land use or mix of land uses that are compatible and harmonious with the area in which it is located.
7. The proposed planned unit development would preserve the natural features of the site insomuch as possible, including the preservation of trees and natural drainage ways.
8. The internal roadway circulation system within the planned unit development has been adequately designed for the type of traffic that would be generated.
9. Adequate buffer areas have been provided between the planned development and adjacent land uses, if needed, to mitigate any adverse impact of the planned unit development on adjacent properties.
10. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
11. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

12. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Ms. Lee said, based on the above findings, staff recommends approval of the zoning change from the P – Public zoning district to the PUD – Planned Unit Development zoning district for a tract of land in Lounsberry’s Bismarck Outlots occupied by the former Saxvik Elementary School, as outlined in the attached draft PUD ordinance.

Commissioner Atkinson said he was asked if, since the school was zoned P-Public for an educational use, would the change to a PUD affect the distance a sex offender is allowed to live from the building.

Darin Scherr, Bismarck Public Schools, said he can clarify that inquiry to be sure but his understanding is it would remain the same because it is remaining an educational use.

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 recommend approval of the zoning change from the P – Public zoning district to the PUD – Planned Unit Development zoning district for a tract of land in Lounsberry’s Bismarck Outlots occupied by the former Saxvik Elementary School, as outlined in the attached draft PUD ordinance. Commissioner Atkinson seconded the motion and the request was unanimously approved with Commissioners Atkinson, Bitner, Schell, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion.

**CONTINUED PUBLIC HEARING – SPECIAL USE PERMIT (MOTOR VEHICLE PARTS SALVAGE YARD)
LOTS A AND B OF LOT 1 AND PART OF LOT 2, BLOCK 1, MIRIAM INDUSTRIAL PARK 2ND ADDITION**

Chairman Yeager called for the continued public hearing on a special use permit for a motor vehicle parts salvage yard to be located on Lot A of Lot 1, Lot B of Lot 1 and Lot 2 less the East 920 feet and less the North 40 feet of the West 405 feet taken for street right-of-way, Block 1, Miriam Industrial Park 2nd Addition. The property is located in east Bismarck on either side of East Divide Avenue: north of East Divide Avenue at the intersection with and west of Channel Drive; south of East Divide Avenue at the intersection with and east of a southerly extension of Channel Drive; and south of East Divide Avenue at the intersection with and west of a southerly extension of Channel Drive.

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

1. If approved as proposed and conditions of approval are met, the proposed special use would comply with all applicable provisions of the zoning ordinance and would be consistent with the general intent and purpose of the zoning ordinance.
2. The proposed special use would be compatible with adjacent land uses and zoning, provided the required wall or fencing and landscaping is installed adjacent to the public rights-of-way of all properties associated with CK Auto, Inc. and that buffer yards are installed where required.
3. The proposed special use would be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area, provided the conditions of approval are met.
4. Adequate public facilities and services are in place or would be provided at the time of development.
5. The proposed special use would not cause a negative cumulative effect, when considered in conjunction with other uses in the immediate vicinity, provided the required wall or fencing and landscaping is installed adjacent to the public-rights of way of all properties associated with CK Auto, Inc. and that buffer yards are installed where required.
6. Adequate measures have been or would be taken to minimize traffic congestion in the public streets and to provide for appropriate on-site circulation of traffic.
7. The proposed special use would not adversely affect the public health, safety and general welfare, provided the required wall or fencing and landscaping is installed adjacent to the public-rights of way of all properties associated with CK Auto, Inc. and that buffer yards are installed where required.

Ms. Wollmuth said, based on the findings contained in the staff report, staff recommends approval of the special use permit, as it would legitimize the existing use of the properties associated with CK Auto, Inc. and would allow the applicant to relocate salvage operations and storage of salvaged vehicles to Lot 2 (1601 Channel Drive). She said this will create the additional space needed on Lots 1A and 1B (3405 East Divide Avenue and 1701 Channel Drive) to comply with provisions of the City Code of Ordinances and resolve existing violations, subject to the following conditions:

1. All encroachments into the public right-of-way, drainage ways, and the floodway must be removed no later than January 1, 2017.
2. All storage and salvage operations must be conducted within an enclosed building or within an area enclosed on all sides with an opaque wall or fence not less than eight (8) feet in height.

3. The required wall or fence must be set back at least fifteen (15) feet from the property lines of those portions of the properties associated with CK Auto, Inc. that function as storage or salvage operations that border the public rights-of-way.
4. All sites must be sufficiently cleared to provide adequate Fire Department access to all portions of existing and proposed buildings located on properties associated with CK Auto, Inc.
5. A completely and permanently landscaped setback strip of at least fifteen (15) feet must be installed around those portions of the properties associated with CK Auto, Inc. that function as storage or salvage operations that border public rights-of-way. All areas between the property line and the required wall or fence shall be landscaped and a buffer yard shall be installed where required in accordance with Section 14-03-11 of the City Code of Ordinances (Landscaping and Screening). In addition, the owner shall be responsible for providing, protecting and maintaining all landscaping materials in a healthy growing condition.
6. A site plan demonstrating the above conditions must be submitted for approval prior to the applicant continuing site development on any of the sites associated with CK Auto, Inc.
7. All applicable provisions of the zoning ordinance are met.
8. Development of the properties associated with CK Auto, Inc. must generally comply with the submitted narrative and the approved site plan.

Commissioner Seminary said he has a list of complaints and violations which includes 17 complaints and violations, seven letters from the City and five floodplain/floodway violations which are what concerns him the most. He said Mr. Blaskowski, Building Official and Floodplain Administrator, advised him recently regarding the floodplain and floodway violations that those issues could potentially impact any resident who carries flood insurance for their property in the City with penalties because this property owner is in violation of the National Flood Insurance Program (NFIP) ordinances and state requirements. He then asked why we think now that granting a special use permit will make him come into compliance.

Ms. Wollmuth said it is the hope of staff that approval of a special use permit to include the lot to the south would allow the owner to move the existing salvage operations and encroachments in the right-of-way, drainage ways and floodway to this lot, which would mitigate the existing violations.

Commissioner Seminary asked if staff would be open to the condition of shutting down operation of the business entirely if they continue to be out of compliance. Ms. Wollmuth said staff would be agreeable to that condition if it is included in the motion today.

Chairman Yeager opened the public hearing.

Chris Krein, CK Auto, Inc., said he had permission to fence the area in the floodway and only found out recently that the cars within that fence had to move. He said he asked Jason Tomanek what to do and brought up purchasing the extra lot which seemed to be a good solution for the much needed extra space. He said in a meeting with staff, Mr. Blaskowski advised him on moving items out of the floodway, but he could not do that without being able to expand into the new lot to the south.

Ms. Lee said the special use permit would apply to all parcels associated with CK Auto, Inc. and that over time they have migrated from a vehicle repair operation to an auto parts salvage and it now needs to be clarified which lots will be which uses.

Mr. Krein said they also do not want to lose their junk dealer permit and that this will mainly be automobiles, but they do have other items associated with their operation.

Sara Krein, CK Auto, Inc., said the adjacent lot would only be for storage, not repair operations.

Chairman Yeager asked how so many vehicles came to be placed in the public rights-of-way. Mr. Krein said many of those vehicles have recently been moved and that it is a planned right-of-way but it is a dead end street right now. He said when they first started the business it was only auto repair, not salvage, and went on to show a timeline of pictures dating back to 2002 showing the gradual growth and changes to the properties. He said they came into the need for a junk permit in 2007 and feels it is being portrayed that they do whatever they want with their property. He said in 2013 they moved their fence and moved some sales operations to the south side of the property.

Chairman Yeager asked if a discussion has ever taken place as far as vacating the rights-of-way associated with Channel Drive and Global Drive. Ms. Lee said that has been discussed in the past and the decision was that the continuation of Channel Drive may be needed in the future.

Ms. Krein said their business expanded significantly in 2013-2015 with the influx of people to the City and the need for the services they were offering. She said business is slowing down and she does not foresee that type of activity again in the very near future, but they would like to be prepared in the event business picks up to that volume again.

Mr. Krein asked why the addition of shutting down his business completely being an option is just coming up now. Commissioner Seminary said many letters of corrective action being needed were sent and the most important issue is that South Central Regional Water District (SCRWD) has said the floodway has been compromised which will have an impact throughout the City. He said documentation shows a significant history of violations and in the event the special use permit is granted, the only options are to comply or close.

Mr. Krein said he sought the consultation of an engineer to help with fill dirt in the floodway in order to avoid issues and violations and took action to fix the elevations and place dirt appropriately and he does not recall ever receiving notification from SCRWD that filling in

dirt had caused a violation. He said they did not do anything without permission and have not received any notice on many of the violations being referenced now.

Chairman Yeager said they have a compilation of letters that were sent to the property, including some that were sent certified, dating back to 2000. Mr. Krein said the last letter he recalls receiving was in 2007 and then back in 2003 when they were notified of the issue stemming from the fill dirt in the floodway. He said he feels somebody should have come to him and told him directly and he feels he needs to be given the opportunity to make this right.

Commissioner Atkinson asked if the special use permit is not granted, what their plan is for coming into compliance. Mr. Krein said he would probably have to lose a couple of million dollars in inventory and move items out of the floodway.

Commissioner Schell asked if the conditions listed in the staff report are attainable. Mr. Krein said he feels that they are. He said 2017 is right around the corner though and delaying the permit will make it harder to meet this deadline.

Commissioner Schell asked if the motor vehicles he has on his property located outside of the City would be brought to this property if the special use permit is approved. Mr. Krein said yes, that is part of his plan.

Commissioner Schell asked what a typical size of property is for a vehicle recycling operation such as theirs. Mr. Krein said anywhere from five to fifteen acres depending on the amount of inventory.

Rick Anderson, Dakota Sanitation, said he understands the concerns of not being able to trust the property will come into compliance, but he has known Mr. Krein for several years and said you will not meet a more honest person than him. He said people need to be able to grow their businesses when they have the opportunity to do so and having purchased from CK Auto, Inc. in the past, he has never seen issues with water around in the floodway and around that inventory. He said he would like to see the property cleaned up as much as everybody else and has even offered to help clean it up, but he feels their business expansion is being hindered. He said with operating a garbage business nearby he worries about his own compliance being questioned and wonders if the timeline for CK Auto, Inc. to come into compliance will be reasonable. He said he does not foresee a road connection in the future all the way to Rosser Avenue and would like to see this special use permit be approved so this business can move forward.

Jason Petryszyn, Swenson, Hagen & Co., said he consulted on the plan to separate the operational uses and gain compliance. He said he met with City staff to get an overview of the concerns and produced a site plan for preliminary review pending the decision made today. He said stormwater and paving plans were also provided to be implemented at the cost of the owner and part of the cleanup process is relative to the paving and landscaping plans. He said they did make construction plans and obtained bids for in the event the permit

is approved so number six in the last of conditions of an approval has already been accomplished.

Tim Kellar said this is a business that is trying to make things work and we should be looking more at how to help them correct the problems rather than saying shut them down. He said they should be allowed to prove themselves and they were there before the neighboring residential properties were developed, so shutting them down for any reason is not necessary.

Cammie Schock, 2105 SE 66th Street, asked how a junk yard permit is obtained by a business. Ms. Lee said they are issued by the City Administration Department, similar to the way a business license is issued.

Ms. Schock said only some of the violation letters were sent certified which should maybe become the common practice to ensure that owners are appropriately notified in the future. She said Commissioner Bitner said another issue here is that this is a City of Bismarck, Apple Creek Township and City of Lincoln issue because of the dirt that has been moved at the owners' other location on 66th Street SE and the impression being that it was done intentionally.

Commissioner Bitner said the issue with the dirt at the property on 66th Street SE being moved is that it violates the floodplain ordinance for that particular jurisdiction. Ms. Schock said they consulted many people on how to do that work correctly and the advice they were given is what was followed.

Chairman Yeager said the focus needs to be on the request in front of them right now which is the space occupied in the City, and the Commission needs to be allowed to move forward on that request only.

Ms. Schock said she feels like only one side of the opinions has been allowed to be heard and it is unfortunate that the mentality with this decision is to choose based on personal gain and not for the good of the community as a whole.

Clayton Maier, Dakota Fence, said being a retired police officer, he has seen a variety of complaints where both sides of the story are not known. He said as the General Manager of Dakota Fence he has spent a great deal of time with Mr. and Mrs. Krein and he wants people to understand that if this permit is not granted, their hands will be tied and they will have to leave.

Judy Miller said she is a neighboring resident and does not want to see the business have to close and understands the amount of growth in the community because that is what brought her neighborhood into development. She said the walking path in that location is popular but she would like to see a better plan showing how the vehicles will be moved out of view and away from the path. She said the zoning ordinance specifies a motor vehicle salvage yard must not be unsightly to the view of neighboring residential homes.

Tami Unterseher, 4310 Fernwood Way, said the relevance with this decision is the questioning of Mr. Krein's character and she is bothered by the assumption that their willingness to comply is not there. She said nobody should jump to conclusions about what will or will not be done and many people here today support their business. She said when her husband became paralyzed, CK Auto, Inc. offered to find a modified vehicle and completely donated it to her family. She said the property is appropriately zoned for these uses and the problem is whether or not the Planning Commission should have placed a residential neighborhood and walking path next to an industrial view. She said businesses are being lost regularly so why stand in the way of one that wants to grow and expand.

Chairman Yeager asked what kind of time table has been proposed for the properties to come into compliance. Mr. Krein said by the time they have transitioned their inventory and developed the road, it would be some time in the spring.

Samantha Krein, daughter of Chris and Sara Krein, said her parents have taught her many valuable things and they work hard to run their business so she does not understand how somebody could say the only other option is to shut them down.

Mr. Krein said there is a significant amount of other encroachments into the floodway in the area, including locations used by Bis-Man Transit, so he is feeling singled out but he does agree with the conditions of the special use permit.

Commissioner Atkinson asked if a completion date can be committed to. Mr. Krein said he feels he could have everything done by May 2017.

Ms. Wollmuth said the condition in the staff report of compliance by January 1, 2017 only applies to encroachments in the public rights-of-way, drainage ways and floodway.

Commissioner Waldoch said she is not being biased but there is a history with this property and they are not out to be for or against anybody or give the impression they do not care.

Ms. Krein said she feels there is a misperception of how their business operates because people are not educated on what exactly it is that they do. She said vehicles are often dropped in the street next to their property without them even knowing they are there and they need to expand their customer parking which is included in the preliminary site plan. She said they can then instruct their tow truck drivers on how to better deliver vehicles so their business can operate more smoothly and successfully all around.

Commissioner Seminary asked if this request is approved, will they sit down with City staff and agree to a date of full compliance with the City Code of Ordinances. Mr. Krein said they will definitely do that and with the plan they have in mind they would be set for at least five years. He said they also have a long-term expansion plan.

Commissioner Schell asked if that date is set as January 1st, how that deadline will be met. Mr. Krein said the completion of the road will be what sets them back the most or he would

need permission to use the incomplete street to move inventory across to the other adjacent lot.

Additional comments in opposition to this request are attached as Exhibits C & D.

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

Commissioner Seminary said this has never been a personal issue between anybody and it ends here if the permit is approved. He said every flood insurance policy holder in the City could face a penalty if this property continues to be out of compliance and that is concerning to him. He said this Commission is in place to make planning decisions on the best possible use of space.

Commissioner Bitner said he has reviewed all of the information provided and he is concerned with the amount of citizens who opposed this request and if it is going to be about the potential amount of money being lost, then the value of the surrounding homes being impacted needs to be considered as well. He said has never heard any question of the integrity of the owners but he has to side with the concerned citizens on this request.

Commissioner Atkinson asked if the other desired deadlines need to be included in the motion or if the January 1st deadline for items being moved out of the floodway and encroachments is sufficient.

Commissioner Seminary said the January 1st deadline is set but beyond that, the other deadlines will be weather dependent.

MOTION: Commissioner Seminary made a motion to recommend approval of the special use permit as it would legitimize the existing use of the properties associated with CK Auto, Inc. and would allow the applicant to relocate salvage operations and storage of salvaged vehicles to Lot 2 (1601 Channel Drive), which will create the additional space needed on Lots 1A and 1B (3405 East Divide Avenue and 1701 Channel Drive) to comply with provisions of the City Code of Ordinances and resolve existing violations, subject to the following conditions: 1. All encroachments into the public right-of-way, drainage ways, and the floodway must be removed no later than January 1, 2017; 2. All storage and salvage operations must be conducted within an enclosed building or within an area enclosed on all sides with an opaque wall or fence not less than eight (8) feet in height; 3. The required wall or fence must be set back at least fifteen (15) feet from the property lines of those portions of the properties associated with CK Auto, Inc. that function as storage or salvage operations that border the public rights-of-way; 4. All sites must be sufficiently cleared to provide adequate Fire Department access to all portions of existing and proposed buildings located on properties associated with CK Auto, Inc.; 5. A completely and permanently landscaped setback strip of at least fifteen (15) feet must be installed around those portions of the properties associated with CK Auto, Inc. that function as storage or salvage

operations that border public rights-of-way. All areas between the property line and the required wall or fence shall be landscaped and a buffer yard shall be installed where required in accordance with Section 14-03-11 of the City Code of Ordinances (Landscaping and Screening). In addition, the owner shall be responsible for providing, protecting and maintaining all landscaping materials in a healthy growing condition; 6. A site plan demonstrating the above conditions must be submitted for approval prior to the applicant continuing site development on any of the sites associated with CK Auto, Inc.; 7. All applicable provisions of the zoning ordinance are met; and 8. Development of the properties associated with CK Auto, Inc. must generally comply with the submitted narrative and the approved site plan; and with the condition that discussions with City staff shall be scheduled to develop a timeline when all properties associated with CK Auto, Inc. will be in compliance with the City Code of Ordinances. Commissioner Selzler seconded the motion and the motion was approved with Commissioners Atkinson, Schell, Selzler, Seminary, Waldoch and Yeager voting in favor of the motion. Commissioner Bitner opposed the motion.

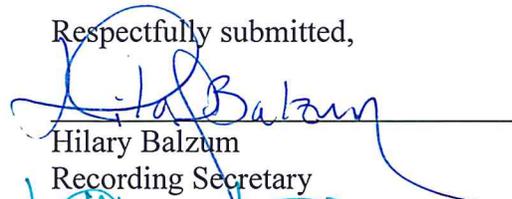
OTHER BUSINESS

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 8:12 p.m. to meet again on August 24, 2016.

Respectfully submitted,



Hilary Balzum
Recording Secretary



Wayne Yeager
Chairman

Hilary Balzum

From: Planning - General Mailbox
Sent: Monday, July 18, 2016 10:57 AM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee
Subject: FW: Proposed Plat and Zoning Change - Koch Creek Commercial Subdivision

From: Kathy Wagner [mailto:kwagner5@gmail.com]
Sent: Monday, July 18, 2016 7:59 AM
To: Planning - General Mailbox
Subject: Proposed Plat and Zoning Change - Koch Creek Commercial Subdivision

I would like to go on record that I am totally against this proposed zoning change that will have an overwhelming effect on my property. They have been working on this project for 2 weeks now and the zoning has not even been approved??? Is this really how things are done?? I want to know who is going to compensate me for the devaluation of my property as well as the safety and health concerns associated with this "proposed project". Please advise....



Referrals are truly appreciated!!!

Kathy Wagner, Realtor

Century 21 Morrison

201 West Front Ave

Bismarck, ND 58504

701.391.4632 cell

701.223.6654 office

701.223.0182 fax

kwagner5@gmail.com

Hilary Balzum

From: Planning - General Mailbox
Sent: Monday, July 18, 2016 10:58 AM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee
Subject: FW: Koch Creek Commercial

From: Kathy Wagner [mailto:kwagner5@gmail.com]
Sent: Monday, July 18, 2016 8:01 AM
To: Planning - General Mailbox
Subject: Koch Creek Commercial

Also, I didn't think this property was in the City Limits??? I don't vote in the city, so how does this work?? Shouldn't this be a county issue??



Referrals are truly appreciated!!!

*Kathy Wagner, Realtor
Century 21 Morrison
201 West Front Ave
Bismarck, ND 58504*

701.391.4632 cell

701.223.6654 office

701.223.0182 fax

kwagner5@gmail.com

Hilary Balzum

From: Planning - General Mailbox
Sent: Monday, June 27, 2016 8:29 AM
To: Carl Hokenstad; Daniel Nairn; Hilary Balzum; Jenny Wollmuth; Kim Lee
Subject: FW: CK Auto

From: Keith [\[mailto:kmantz@bismarck.net\]](mailto:kmantz@bismarck.net)
Sent: Saturday, June 25, 2016 4:28 PM
To: Planning - General Mailbox
Subject: CK Auto

Hello,

I am writing in regards to the recent application for a special use permit for CK Auto. I would recommend against the granting of this special permit. While the owners should be commended on developing a growing business, they have repeatedly been in violation of city ordinances for a number of years. They continued to purchase and develop land in the area, even though they were already aware of the violations and restrictions on the land. A special use permit should not be granted to bring someone into compliance after flagrant violations. The proper course of action would have been to garner the special permit, then proceed with the development. It would not be a good precedent, to allow business with violations, to then ask for changes to our city policies in order to make them compliant.

With the new reconstruction of Divide Avenue in close proximity to the interstate exchange, this is also a gateway to our city. The conditions of this business do not represent our city in a favorable manner. I would question if the requested permit would be allowed in other areas of Bismarck that are similarly zoned? With the varying elevations in the area, even a 15 foot fence does not properly hide the presence of a junk yard within our city. Other junk yards such as the former location on South 26th Street were successfully re-located to areas outside of city limits. There is also the fact that their property lies along the Hay Creek drainage area. How many fluids have and will be released into this area? There are always residual fluids in vehicles.

It appears there are others that live within the area that are also concerned about the presence of this type of business that continues to expand and degrade the area.

I appreciate the opportunity to voice my concerns and urge careful consideration before granting this request. My recommendation would be to deny the special permit.

Sincerely,

Keith Mantz

Hilary Balzum

From: Jenny Wollmuth
Sent: Thursday, June 30, 2016 2:05 PM
To: Hilary Balzum
Subject: FW: CK Auto

Please make sure this is distributed at the 7.27.16 meeting of the Planning and Zoning Commission.

Thanks,

Jenny Wollmuth, CFM, Planner
Community Development Department
Planning Division
701.355.1840-Department
701.355.1845- Direct
www.bismarcknd.gov

From: Carl Hokenstad
Sent: Thursday, June 30, 2016 2:03 PM
To: Brady Blaskowski; Daniel Nairn; Jenny Wollmuth; Kim Lee
Subject: FW: CK Auto

Carl Hokenstad, AICP
Director of Community Development
City of Bismarck Community Development Department
221 N 5th Street
PO Box 5503
Bismarck, ND 58506-5503
Office: 701-355-1840
E-mail: chokenstad@bismarcknd.gov
Website: www.bismarcknd.gov

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From: Gloria David
Sent: Thursday, June 30, 2016 1:29 PM
To: Carl Hokenstad
Subject: FW: CK Auto

Hi Carl. I'm forwarding the email below to you as it concerns CK Auto. The sender requests that it be forwarded to the appropriate office.

Thank you Carl.

Gloria David
Public Information Officer
City of Bismarck
221 N 5th St.
PO Box 5503
Bismarck ND 58506-5503
Office: 701-355-1306
Cell: 701-220-2470
Fax: 701-222-6470
Website: www.bismarcknd.gov
Facebook: www.facebook.com/bismarcknd.gov | Twitter: www.twitter.com/BismarckNDGov

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From: Jacob Carlson [<mailto:jacobcarlsondvm@gmail.com>]
Sent: Thursday, June 30, 2016 9:48 AM
To: Administration - General Mailbox; Gloria David
Subject: CK Auto

Good morning,

I am an owner of Missouri Valley Veterinary Clinic PC and Missouri Valley Properties LLP. We have a property on Commerce Drive with an associated veterinary clinic. The property owned by CK Auto is in our immediate industrial area. I understand that there are questions regarding past and future permitting of the properties used by CK Auto.

The area has changed for the better in the last few years with the completion of the Divide Avenue project. I do have a few concerns regarding the amount of space occupied by salvaged cars, and the environmental impact of the stockpiled auto's in the flood plain. The presence of heavy metals, differential fluid, engine oil, brake fluid, antifreeze, power steering fluid etc is concerning to me.

The continued expansion of the business outside of the past permitting limits is also concerning to me. The properties to the north of Divide Avenue are full of cars also, but do not interfere with the appearance of the area to the extent the properties to the south of Divide Avenue do.

Please forward to the appropriate office please. I appreciate your attention to this matter.

Jacob Carlson, DVM
jacobcarlsondvm@gmail.com
701-989-9940

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Jacob Carlson, DVM
Missouri Valley Veterinary Clinic PC
Technical Service Director Global Beef LLC