

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
September 28, 2016**

The Bismarck Planning & Zoning Commission met on September 28, 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, Mike Donahue, Vernon Laning, Doug Lee, Mike Schwartz, Mike Seminary, Lisa Waldoch and Wayne Yeager.

Commissioners Brian Bitner and Ken Selzler were absent.

Staff members present were Kim Lee – Planning Manager, Jenny Wollmuth – Planner, Daniel Nairn – Planner, Will Hutchings – Planner, Hilary Balzum – Community Development Administrative Assistant, Jason Hammes – Assistant City Attorney and Charlie Whitman – City Attorney.

MINUTES

Chairman Yeager called for consideration of the minutes of the August 24, 2016 meeting.

Commissioner Laning pointed out that he was not present for the August 24th meeting, but is listed in the vote for the last agenda item. Ms. Balzum said she will make the correction prior to publication of the minutes.

MOTION: Commissioner Lee made a motion to approve the minutes of the August 24, 2016 meeting, with corrections. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Atkinson, Schell, Donahue, Laning, Lee, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

CONSIDERATION

- A. EDEN’S SUBDIVISION – ZONING CHANGE AND PRELIMINARY PLAT**
- B. HARVEST RIDGE SUBDIVISION FIRST REPLAT – PRELIMINARY PLAT**
- C. SONNET HEIGHTS SUBDIVISION SEVENTH REPLAT – ZONING CHANGE**
- D. LOTS 1-2, BLOCK 1, REPLAT OF CALKINS ADDITION AND AUDITOR’S LOTS A & B OF THE SE1/4 OF THE NE1/4 OF SECTION 33, T139N-R80W/CITYLANDS – ZONING CHANGE**

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

- A. Eden’s Subdivision – Zoning Change and Preliminary Plat
- B. Harvest Ridge Subdivision First Replat – Preliminary Plat

- C. Sonnet Heights Subdivision Seventh Replat – Zoning Change
- D. Lots 1-2, Block 1, Replat of Calkins Addition and Auditor’s Lots A & B of the SE1/4 of the NE1/4 of Section 33, T139N-R80W/City Lands

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

**FINAL CONSIDERATION – PARTIAL ANNEXATION
PUBLIC HEARINGS – FUTURE LAND USE PLAN AMENDMENT, ZONING
CHANGE AND FINAL PLAT
MEMORY 1ST ADDITION**

Chairman Yeager called for final consideration of the partial annexation of Memory 1st Addition and the public hearings on an amendment of the Future Land Use Plan to extend the Industrial land use classification southwest of Hay Creek west to North 19th Street; a zoning change from the A-Agriculture zoning district to the CG-Commercial and MA-Industrial zoning districts; and final plat of Memory 1st Addition. The proposed plat is eight lots in three blocks on 66.53 acres and is located north of Bismarck, along the east side of US Highway 83/State Street and the north side of an eastern extension of 57th Avenue NE (Part of the SW1/4 of Section 10 and the NW1/4 of Section 15, T139N-R80W/Hay Creek Township).

Ms. Lee gave an overview of the requests, including the following findings for the annexation:

1. 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 annexation at the time the property is developed.
2. The proposed annexation is a logical and contiguous extension of the current corporate limits of the City of Bismarck.
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 accepted planning practice.
5. The proposed annexation would not adversely affect the public health, safety and general welfare.

Ms. Lee then gave the findings for the Future Land Use Plan amendment:

1. The proposed amendment is compatible with adjacent land uses.
2. The proposed amendment is justified by a change in conditions since the Future Land Use Plan was established or last amended.
3. The proposed amendment is in the public interest and is not solely for the benefit of a single property owner.
4. The proposed amendment is consistent with the general intent and purpose of the zoning ordinance.
5. The proposed amendment is consistent with the other aspects of the master plan, other adopted plans, policies and accepted planning practice.
6. The proposed amendment would not adversely affect the public health, safety, and general welfare.

Ms. Lee then gave the 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, if amended as proposed.
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 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 plat 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, 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 the neighborhood parks and open space is not needed because the proposed final plat is not an urban subdivision with residential zoning districts.
6. 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.
7. 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.
8. 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.
9. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance.
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. Lee said, based on the findings in the staff report, staff recommends approval of the partial annexation; the proposed amendment to the Future Land Use Plan to extend the Industrial classification in the southwest portion of the SW¹/₄ of Section 10, T139N-R80W west to the future extension of North 19th Street from 57th Avenue NE north to where Hay Creek crosses North 19th Street; the zoning change from the A – Agricultural zoning district to the CG – Commercial zoning district on Lots 1 & 2, Block 1 and Lots 1 & 2, Block 2 and to the MA – Industrial zoning district on Lots 1-4, Block 3; and the final plat for Memory 1st Addition, with the understanding that individual lots will be annexed and that all municipal

services needed to serve that lot, including roadways and utilities, will be in place or under contract prior to development of that lot.

Commissioner Seminary said the City has had recent discussions regarding the creation of donut holes with annexations similar to this request. He said these can cause some challenges and asked if discussions have been had as it relates to this annexation request.

Ms. Lee said this annexation would create an extension of other un-annexed pieces, but she anticipates those surrounding pieces coming into the City in the future.

Chairman Yeager opened the public hearing.

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

Commissioner Lee asked if a time frame can be put on the surrounding unannexed parts in order to avoid any development issues.

Michael Gunsch, Houston Engineering, Inc., said the existing fireworks stand on the property will take some time to move, but will possibly be done within the next year and once that is relocated, the remaining lots can start being annexed. He said he will explore the exact time frame with the owner.

Commissioner Lee said he would like something to be done to make sure the requirement for annexation is revisited within two years so developers know this type of annexation is not ideal.

Commissioner Seminary said once exceptions start being made, it will set a precedent for similar requests.

Mr. Gunsch asked if development of North 19th Street and the requirement for annexation within two years can be included in a developers agreement. Ms. Lee said that has been done in the past, so it is an option here.

Commissioner Schell said he does not know how enforceable the annexation requirement would be even if it is included in the developers agreement, in the event the owner changes their mind.

Commissioner Seminary said these requests still need to be considered by the City Commission, so it might be best to move these forward for discussions before that board.

Commissioner Laning asked if the owner is the same throughout the subdivision. Mr. Gunsch said it is all the same owner so as it is developed, parts will be sold off and the owners are aware of the requirements.

MOTION: Based on the findings contained in the staff report, Commissioner Seminary made a motion to recommend approval of the partial annexation; the proposed

amendment to the Future Land Use Plan to extend the Industrial classification in the southwest portion of the SW¼ of Section 10, T139N-R80W west to the future extension of North 19th Street from 57th Avenue NE north to where Hay Creek crosses North 19th Street; the zoning change from the A – Agricultural zoning district to the CG – Commercial zoning district on Lots 1 & 2, Block 1 and Lots 1 & 2, Block 2 and to the MA – Industrial zoning district on Lots 1-4, Block 3; and the final plat for Memory 1st Addition, with the understanding that individual lots will be annexed and that all municipal services needed to serve that lot, including roadways and utilities, will be in place or under contract prior to development of that lot. Commissioner Lee seconded the motion and the request was approved with Commissioners Atkinson, Donahue, Laning, Schell, Schwartz, Seminary and Waldoch voting in favor of the motion. Commissioner Lee and Yeager opposed the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT (DRIVE-UP SERVICE)
LOT 1, BLOCK 7, STONECREST 2ND ADDITION**

Chairman Yeager called for the public hearing on a request for a special use permit for the operation of a drive-through oil change service facility in conjunction with a tire repair business on Lot 1, Block 7, Stonecrest 2nd Addition. The property is located in east Bismarck, between East Calgary Avenue and Greensboro Drive and between Centennial Road and French Street along the eastern edge of French Street (3601 French Street).

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

1. 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.
2. The proposed special use is compatible with adjacent land uses and zoning.
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.
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.
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.

Mr. Hutchings said, based on the findings contained in the staff report, staff recommends approval of the special use permit for Lot 1, Block 7, Stonecrest 2nd Addition, for the construction and operation of a drive-through oil change facility, with the following conditions:

1. The service facility must meet all applicable requirements for such a use in the CG-Commercial zoning district.
2. The development of the site must generally conform to the site plan submitted with the application.

Chairman Yeager opened the public hearing.

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

MOTION: Based on the findings contained in the staff report, Commissioner Lee made a motion to approve the special use permit for Lot 1, Block 7, Stonecrest 2nd Addition, for the construction and operation of a drive-through oil change facility, with the following conditions: 1. The service facility must meet all applicable requirements for such a use in the CG-Commercial zoning district; and 2. The development of the site must generally conform to the site plan submitted with the application. Commissioner Laning seconded the motion and the request was unanimously approved with Commissioners Atkinson, Donahue, Laning, Lee, Schell, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

Hay Creek Township Supervisor Quirin Friese joined the meeting at this time.

**PUBLIC HEARING – SPECIAL USE PERMIT (ACCESSORY BUILDING)
LOT 3, BLOCK 1, HAY CREEK PINES SUBDIVISION**

Chairman Yeager called for the public hearing on a request for a special use permit to increase the total area of accessory buildings on the property to 3,190 square feet by constructing a 2,400 square foot accessory building with a 350 square foot covered patio and a 440 square foot covered patio. The property is located north of Bismarck, east of US Highway 83, between 97th Avenue NE and 84th Avenue NE, along the west side of Forest Drive (9506 Forest Drive).

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

1. 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.
2. The proposed special use is compatible with adjacent land uses and zoning.

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.
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.
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.

Ms. Wollmuth said, based on the findings contained in the staff report, staff recommends approval of the special use permit to increase the total area of accessory buildings on the property to 3,190 square feet by constructing a 2,400 square foot accessory building with a 350 square foot covered patio along the east side of the building and a 440 square foot covered patio along the west side of the building on Lot 3, Block 1, Hay Creek Pines Subdivision.

Chairman Yeager opened the public hearing.

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

Chairman Yeager asked if Hay Creek Township had any comments to provide on this request. Mr. Friese said the Township discussed the special use permit at their last meeting and nobody had any objections.

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 area of accessory buildings on the property to 3,190 square feet by constructing a 2,400 square foot accessory building with a 350 square foot covered patio along the east side of the building and a 440 square foot covered patio along the west side of the building on Lot 3, Block 1, Hay Creek Pines Subdivision. Commissioner Lee seconded the motion and the request was unanimously approved with Commissioners Atkinson, Donahue, Laning, Lee, Schell, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – SPECIAL USE PERMIT (DRIVE-THROUGH SERVICE)
LOT 2B OF LOT 2, BLOCK 1, 43RD AVENUE COMMERCIAL PARK 2ND
ADDITION**

Chairman Yeager called for the public hearing on a request for a special use permit to bring an existing drive-through in conjunction with a coffee shop (Rocket Coffee) in a multi-tenant building into compliance. The property is located in north Bismarck, west of US Highway 83, in the northeast quadrant of the intersection of 43rd Avenue and Coleman Street (4401 Coleman Street).

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

1. 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.
2. The proposed special use is compatible with adjacent land uses and zoning.
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.
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.
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.

Ms. Wollmuth said, based on the findings contained in the staff report, staff recommends approval of the special use permit for Lot 2B of Lot 2, Block 1, 43rd Avenue Commercial Park 2nd Addition to allow a drive-through in conjunction with a coffee shop (Rocket Coffee) in a multi-tenant building, with the following condition:

1. The development of site must generally conform to the site plan submitted with the application.

Commissioner Seminary asked why this is needed since there is already a drive-through in place at this location. Ms. Wollmuth said the business opened prior to a special use permit being issued, so this would bring it into compliance.

Chairman Yeager opened the public hearing.

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

MOTION: Based on the findings contained in the staff report, Commissioner Seminary made a motion to approve the special use permit for Lot 2B of Lot 2, Block 1, 43rd Avenue Commercial Park 2nd Addition to allow a drive-through in conjunction with a coffee shop (Rocket Coffee) in a multi-tenant building, with the following condition: 1. The development of site must generally conform to the site plan submitted with the application. Commissioner Atkinson seconded the motion and the request was unanimously approved with Commissioners Atkinson, Donahue, Laning, Lee, Schell, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT
ELIMINATION OF CR ZONING DISTRICT – SECTIONS 14-03-06, 14-03-08, 14-04-01, 14-04-13 AND 14-05-05.1**

Chairman Yeager called for the public hearing on a zoning ordinance text amendment relating to the elimination of the CR-Commercial zoning district.

Mr. Nairn explained that the proposed amendment would remove the CR – Commercial zoning district from Title 14 and eliminate references to the CR and CB zoning districts throughout Title 14.

Mr. Nairn then gave 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.

Mr. Nairn said, based on the findings in the staff report, staff recommends approval of the zoning ordinance text amendment that removes the CR – Commercial zoning district from Title 14 and eliminates references to the CR and CB zoning districts throughout Title 14, as presented.

Chairman Yeager opened the public hearing.

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

MOTION: Based on the findings contained in the staff report, Commissioner Lee made a motion to recommend approval of the zoning ordinance text amendment that removes the CR – Commercial zoning district from Title 14 and eliminates references to the CR and CB zoning districts throughout Title 14, as presented. Commissioner Waldoch seconded the motion and the request was unanimously approved with Commissioners Atkinson, Donahue, Lee, Laning, Schell, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

**PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT
INCIDENTAL USES/ACCESSORY USES & RMH – RESIDENTIAL ZONING
DISTRICT – SECTIONS 14-03-06 AND 14-04-05**

Chairman Yeager called for the public hearing on a zoning ordinance text amendment relating to Incidental Uses/Accessory Uses and the RMH-Residential zoning district.

Ms. Lee explained that the proposed amendment would clarify the maximum permitted accessory building size allowed in the RMH-Residential zoning district.

Ms. Lee then gave 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. Lee said based on the findings in the staff report, staff recommends approval of the zoning ordinance text amendment to clarify provisions for accessory buildings in the RMH Residential zoning district, as presented.

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 Donahue made a motion to recommend approval of the zoning ordinance text amendment to clarify provisions for accessory buildings in the RMH-Residential zoning district, as presented. Commissioner Lee seconded the

motion and the request was unanimously approved with Commissioners Atkinson, Donahue, Laning, Lee, Schell, Schwartz, Seminary, Waldoch and Yeager voting in favor of the motion.

OTHER BUSINESS

There was no other business to discuss at this time.

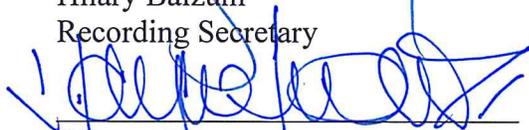
ADJOURNMENT

There being no further business, Vice Chairman Lee declared the Bismarck Planning & Zoning Commission adjourned at 5:31 p.m. to meet again on October 26, 2016.

Respectfully submitted,



Hilary Balzum
Recording Secretary



Wayne Yeager
Chairman