

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
January 22, 2020**

The Bismarck Planning & Zoning Commission met on January 22, 2020, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chair Schwartz presided.

Commissioners present were Tom Atkinson, Steve Bakken, Brian Bitner, Vernon Laning, Paul Levchak, Gabe Schell, Wendy Van Duyne, Trent Wangen and Mike Schwartz.

Commissioners Brian Eiseman and Kevin Martin were absent.

Staff members present were Ben Ehreth – Community Development Director, Kim Lee – Planning Manager, Daniel Nairn – Planner, Will Hutchings – Planner, Jenny Wollmuth, Hilary Balzum – Community Development Administrative Assistant and Jannelle Combs – City Attorney.

INTRODUCTION OF NEW COMMISSIONER

Chair Schwartz introduced new Planning and Zoning Commissioner Trent Wangen.

Commissioner Wangen said he has always held an interest in the Planning and Zoning Commission and has followed the meetings in the past. He said he has been a Burleigh County Sheriff for many and he is happy to participate and learn new things.

MINUTES

Chair Schwartz called for consideration of the minutes of the December 18, 2019 meeting.

MOTION: Commissioner Bakken made a motion to approve the minutes of the December 18, 2019 meeting, as presented. Commissioner Levchak seconded the motion and it was unanimously approved with Commissioners Atkinson, Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion.

CONSIDERATION

- A. ELK RIDGE SECOND ADDITION – ZONING CHANGE, FRINGE AREA ROAD MASTER PLAN AMENDMENT AND PRELIMINARY PLAT**
- B. LOTS 1-3, BLOCK 3, EDGEWOOD VILLAGE 7TH ADDITION – ZONING CHANGE**

Chair Schwartz called for consideration of the following consent agenda items:

A. Elk Ridge Second Addition – Zoning Change, Fringe Area Road Master Plan Amendment and Preliminary Plat

B. Lots 1-3, Block 3, Edgewood Village 7th Addition – Zoning Change

MOTION: Based on the findings contained in the staff report, Commissioner Levchak made a motion to approve consent agenda items As and B, granting tentative approval and calling for public hearings on the items as recommended by staff. Commissioner Bakken seconded the motion and it was unanimously approved with Commissioners Atkinson, Bakken, Eiseman, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION
LOTS 16 AND 17, BLOCK 1 AND LOT 1, BLOCK 4, CLEAR SKY ADDITION**

Chair Schwartz called for final consideration of the annexation of Lots 16 and 17, Block 1 and Lot 1, Block 4, Clear Sky Addition. The property is located in southeast Bismarck, east of 52nd Street SE along the north and south side of Hendrickson Drive, east of Hermanson Drive.

Ms. Wollmuth gave an overview of the request, including the following findings related to land use for the annexation:

1. The City of Bismarck and/or 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. Wollmuth said, based on these findings, staff recommends approval of the annexation of Lots 16 and 17, Block 1 and Lot 1, Block 4, Clear Sky Addition.

MOTION: Based on the findings contained in the staff report, Commissioner Levchak made a motion to recommend approval of the annexation of Lots 16 and 17, Block 1 and Lot 1, Block 4, Clear Sky Addition. Commissioner Bakken seconded the motion and the motion was unanimously approved with

Commissioners Atkinson, Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION
LOTS 2 AND 15-16, BLOCK 2, LOTS 14-22, BLOCK 4, AND LOTS 1-6, BLOCK 5,
BOULDER RIDGE SEVENTH ADDITION, CURRENTLY PART OF THE NW¼ OF
SECTION 16, T139N-R80W/HAY CREEK TOWNSHIP**

Chair Schwartz called for final consideration of the annexation of Lots 2 and 15-16, Block 2, Lots 14-22, Block 4, and Lots 1-6, Block 5, Boulder Ridge Seventh Addition, currently part of the NW ¼ of Section 16, T139N-R80W/Hay Creek Township. The property is located in north-central Bismarck, along the east side of North Washington Street and the south side of 57th Avenue NE.

Mr. Hutchings gave an overview of the request, including the following findings related to land use for the annexation:

1. The City of Bismarck and/or 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.

Mr. Hutchings said, based on these findings, staff recommends approval of the annexation of part of the NW ¼ of Section 16, T139N-R80W/Hay Creek Township, to be known as Lots 2 and 15-16, Block 2, Lots 14-22, Block 4, and Lots 1-6, Block 5, Boulder Ridge Seventh Addition.

Commissioner Laning asked if the acreage calculation on the staff report of 18 lots in 1.21 acres is correct.

Mr. Hutchings said it is not and will be corrected on the information to be forward to the Board of City Commissioners.

MOTION: Based on the findings contained in the staff report, Commissioner Bakken made a motion to recommend approval of the annexation of part of the NW¼

of Section 16, T139N-R80W/Hay Creek Township, to be known as Lots 2 and 15-16, Block 2, Lots 14-22, Block 4, and Lots 1-6, Block 5, Boulder Ridge Seventh Addition. Commissioner Laning seconded the motion and the motion was unanimously approved with Commissioners Atkinson, Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion.

PUBLIC HEARINGS – ZONING CHANGE AND FINAL PLAT COOPERATIVE ADDITION

Chair Schwartz called for the public hearing on the final plat and the zoning change from the A-Agricultural zoning district to the RT-Residential zoning district for Cooperative Addition. The proposed plat is two lots in one block on 5.54 acres and is located in north Bismarck, west of US Highway 83/State Street between Coleman Street and Lockport Street, along the south side of 43rd Avenue NE (part of the NE¼ of Section 21, T139N-R80W/City Lands).

Ms. Wollmuth gave an overview of the request, including the following findings related to land use 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/or other agencies may 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 proposed 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. Wollmuth then gave the findings related to land use 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 City Engineer has conditionally approved the Post-Construction Stormwater Management Permit (PCSMP), with the understanding that at the time of site development of either lot in the proposed plat, the developer is required to provide a comprehensive Stormwater Management Plan for the lot being developed.
5. The requirements of the neighborhood parks and open space policy is not required at this time, if the property develops as residential, the provisions of the Neighborhood Parks and Open Space Policy would apply.
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/or 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 within the Special Flood Hazard Area (SFHA), also known as the 100-year floodplain, an area where the proposed development would adversely impact water quality and/or environmentally sensitive lands, 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. Wollmuth said, based on these findings, staff recommends approval of the zoning change from the A – Agriculture zoning district to the RT – Residential zoning district and the major subdivision final plat for Cooperative Addition.

Commissioner Levchak asked if the RT-Residential zoning district could allow office buildings.

Ms. Wollmuth said that is correct, as well as other uses such as medical offices and multi-family properties.

Commissioner Levchak said uses that are similar to what is in that area now would be allowed. Ms. Wollmuth said that is correct.

Chair Schwartz opened the public hearing.

Rob Illg, SEH, said he is available to answer any technical questions at this time.

Dennis DelaBarre, 4101 Dominion Street, asked if there would be any changes to the streets in this area, such as Dominion Street or Lambton Avenue.

Ms. Wollmuth replied there currently are not plans to extend either of those streets into the area.

Written comments in opposition to this request are attached as Exhibit A.

There being no further comments, Chair Schwartz closed the public hearing.

Commissioner Schell said with water mains and sewer at dead ends in that area there is an easement in place to eventually close those loops with the extension of development.

MOTION: Based on the findings contained in the staff report, Commissioner Bakken made a motion to recommend approval of the zoning change from the A – Agriculture zoning district to the RT – Residential zoning district and the major subdivision final plat for Cooperative Addition. Commissioner Levchak seconded the motion and the requests were unanimously approved with Commissioners Atkinson, Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion.

PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT DAYBREAK MEDICAL ADDITION FIRST REPLAT

Chair Schwartz called for the public hearing on the minor subdivision final plat of Daybreak Medical Addition First Replat. The proposed plat is seven lots in one block on 16.59 acres and is located in north Bismarck, north of 57th Avenue NE and east of North Washington Street, in the northwest quadrant of the intersection of East Greenfield Drive and Saints Drive (a replat of all of Block 2, Daybreak Medical Addition).

Ms. Wollmuth gave an overview of the request, including the following findings related to land use for the minor subdivision final plat:

1. All technical requirements for approval of a minor subdivision final plat have been met.

2. The City Engineer has conditionally approved the Post-Construction Stormwater Management Permit (PCSMP) with the understanding that additional development of the property will require a more detailed stormwater management plan during site plan review.
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 these findings, staff recommends approval of the minor subdivision final plat for Daybreak Medical Addition First Replat.

Commissioner Schell asked if all of the lots within this plat have access to streets and utilities, via easements or otherwise.

Ms. Wollmuth replied that is correct.

Chair Schwartz opened the public hearing.

Landon Niemiller, Swenson, Hagen & Co., said they have maxed out their allowed number of lot modifications in this subdivision so are now required to do a minor subdivision final plat.

There being no further comments, Chair Schwartz closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Bakken made a motion to recommend approval of the minor subdivision final plat for Daybreak Medical Addition First Replat. Commissioner Levchak seconded the motion and the motion was unanimously approved with Commissioners Atkinson, Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion.

**PUBLIC HEARING – FUTURE LAND USE PLAN AMENDMENT AND ZONING CHANGE
PART OF SECTIONS 18 & 19, HAY CREEK TOWNSHIP**

Chair Schwartz called for the public hearings on an amendment to the Future Land Use Plan to modify the boundary between the Low Density Residential and Conservation land use designations and rezone property to establish zoning for this area prior to platting, annexation and development and a zoning change from the A – Agricultural zoning district to the A – Agricultural, R5 – Residential and R10 – Residential zoning districts.

Ms. Lee gave an overview of the request, including the following findings related to land use 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 Hay Creek Township Board of Supervisors has been informed of the proposed amendment but has not yet made a recommendation.
4. The proposed amendment is in the public interest and is not solely for the benefit of a single property owner.
5. The proposed amendment is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed amendment is consistent with the other aspects of the master plan, other adopted plans, policies and accepted planning practice.
7. The proposed amendment would not adversely affect the public health, safety, and general welfare.

Ms. Lee then gave the findings related to land use for the zoning change:

1. The proposed zoning change generally conforms to the Future Land Use Plan in the 2014 Growth Management Plan, if amended in conjunction with this zoning change amended.
2. The proposed zoning change is compatible with adjacent land uses and zoning.
3. The City of Bismarck and/or 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 been informed of the proposed zoning change but has not yet made a recommendation.
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. Lee said, based on the findings in the staff report, staff recommends approval of the Future Land Use Plan Amendment to modify the boundary between the Conservation and Low Density Residential land use designations as shown on the exhibit attached to the staff report and the zoning change from the A – Agricultural zoning district to the A – Agricultural, R5 – Residential and R10 – Residential zoning districts as shown on the exhibit attached to the staff report for part of the NE¼ of Section 19 and part of the SE¼ of Section 18, T138N-R80W/Hay Creek Township, with the understanding that staff would support rezoning of entire lots to R5- Residential or R10-Residential in conjunction with the future platting of the property, provided a slope protection easement is shown over that portion of the lots included in the Conservation designation in the Future Land Use Plan, as amended, as presented.

Commissioner Laning said a letter was submitted from an owner regarding the slopes in this area having sluffing and asked how this area compares to other steep areas, such as along the western edge of Pebble Creek.

Ms. Lee said the Pebble Creek area is similar but had some regrading done prior to the current stormwater requirements being in place.

Commissioner Schell said he has a similar understanding of there having been some fill dirt being placed that may not have been engineered, so that is a constructability concern. He added that with this topography, the BRAUN Intertec report was tasked with determining soil stability in this area.

Commissioner Levchak asked what the net loss of the conservation designation area would be. Ms. Lee said it has not been calculated but it would be very slight.

Commissioner Levchak asked if the map on page 55 is the old map. Ms. Lee said that is correct and added that the other map overlays the new boundary and the main opposition to the request is to the area in the center of the coulee. She added that a calculation done by Mr. Nairn shows a net loss of 6% of the conservation area.

Chair Schwartz asked how the various uses are designated in the Future Land Use Plan. Ms. Lee explained that the 2014 Growth Management Plan designated the uses and this entire area was looked at by a consultant as being an area to designate as conservation.

Chair Schwartz asked who adopts the Growth Management Plan.

Ms. Lee said the Planning and Zoning Commission and the Bismarck City Commission adopted the Growth Management Plan, in addition to some small refinements made to the

plan since then. She said a narrative on the request in the staff report was provided by the applicant.

Commissioner Levchak asked in relation to letters submitted regarding recreational uses in the conservation area how access to that area would be maintained.

Ms. Lee said that area is privately owned and the owner would decide whether to continue to allow recreational uses and is present to speak to that item.

Chair Schwartz opened the public hearing.

Jason Petryszyn, Swenson, Hagen & Co., said this area has two new subdivisions, Elk Ridge Addition and Eagle Crest 8th Addition, and the developer is trying to give those buying property in the area a better idea of how it will develop. He said contours on the maps provided indicate the existing coulee, showing how Tyler Parkway would potentially cross the coulee and how the lots could be laid out. He said he also has more detailed information that better defines the conservation boundary and added that growth plans are typically left vague in order to allow for more descriptive defining later. Mr. Petryszyn said the 2014 Growth Management Plan defines conservation areas to be things such as streams, greenways, trails and wetlands and this particular request does have both technical as well as emotional aspects to consider. He said the stormwater conveyance and slope protection are technical while losing views can be emotional, but he can show how that will not happen. He added that the slope stability study was done and that information will be shared here shortly. He went on to say the study uses a safety factor of 1.5 and the conservation land would continue to serve its purpose. He said the developer is providing more conservation area than other developments in north Bismarck and a development control line will be used to determine other servicing needs. He said the change is minor and conservation area would be added on the east side of the proposed development. Mr. Petryszyn closed by saying the distances from one residence to another residence on the other side of the coulee are anywhere from 400 feet to 800 feet. He added that they continue to put safety factors on developments and the conservation areas will be protected.

Commissioner Laning asked how the development would be accessed.

Mr. Petryszyn said access to individual lots would be from local roads, not off of Tyler Parkway.

Commissioner Levchak asked how the greenway would be reserved with the sale of lots.

Mr. Petryszyn said they would be divided by zoning and lots for facilities as well as lots conveyed to a Home Owners Association (HOA).

Commissioner Atkinson asked if green space would then be a platted lot. Mr. Petryszyn said that is correct, that the City would determine if the areas were for regional or local conveyance, and they could be platted and conveyed to an HOA.

Commissioner Atkinson asked if that is the case with the area along East Valley Drive. Mr. Petryszyn said not yet, adding that Mr. Knutson still owns that property.

Commissioner Levchak then asked if an HOA would own some of the properties. Mr. Petryszyn said if they are not conveyed to the City or the Parks District for ownership, then yes.

Commissioner Levchak asked if an HOA can restrict access.

Mr. Petryszyn replied they would place easements to provide stormwater conveyance needs and the developer has not relayed any intentions to restrict recreational access. He said they have discussed some things with Bismarck Parks and Recreation District, who came back with wanting a park and conveyed park land, but ownership has not changed at this time.

Agnes Solberg, 3707 Del Rio Drive, said she looked at the 2014 Growth Management Plan and the designated green area and purchased her property because of that feature. She said the 2011 Northwest Subarea Study indicated a green area at the top of the coulee and she is disappointed about this request. She said if they cannot rely on the Growth Management Plan then what should they rely on and use when making their purchasing decisions. She said the land in this area does slide, trees fall down and building houses there is not a good idea. Ms. Solberg provided a copy of the executive summary of the 2011 Northwest Subarea Study at this time.

Ron Knutson said he has lived in the Bismarck area since 1989 and now four of his five children are included in his development partnership. He said the new Elk Ridge Addition would have a six-acre park and they are working with the school district to add a grade school in the second phase. He said he has always done quality development such as Whispering Ridge, Eagle Crest and Boulder Ridge, and has donated park land, school land and church land. He said this development could potentially correct some other topographic issues. Mr. Knutson closed by saying they have always been good stewards of the land and this development will be done right and the second phase needs to happen.

Wes Dickhut, Braun Intertec, said they did not consider any existing constraints of the land when starting the study, they just looked at where reasonable development could take place. He said they studied 14 slopes and did soil borings until they hit bedrock, and then took that information and modeled it using a program to look at what drive forces downhill and what resists a downhill force. He said they settled on a 1.5 safety factor for occupied homes with little to no slope stability issues. He said he understands the recent River Road failure raised concern, adding that in 2013 a slope stability study was conducted in that area and the geology is vastly different there. He added that there is nothing unique to this particular area that would compromise development.

Commissioner Levchak asked if that report can be provided to this Commission. Mr. Dickhut said it should be part of the record.

Commissioner Levchak asked if the 1.5 safety factor is pre or post-construction. Mr. Dickhut said it would be post construction.

Commissioner Levchak asked if lawn irrigation factors were considered. Mr. Dickhut said a moist unit weight was used rather than saturated or completely dry, so that has been factored in.

Commissioner Schell indicated the safety factor for the roads is 1.3 and asked if there would be any roads proposed closer to the coulee than structures. Mr. Dickhut said he has not seen any design drawings yet but he did evaluate the existing right-of-way.

Chair Schwartz asked if the setback is uniform or if it varies based on the soil content. Mr. Dickhut said it was determined by the steepness of the slope and soil content.

Chair Schwartz asked if that setback is a recommendation or a requirement. Mr. Petryszyn said it would be a requirement once the plat has been recorded.

Commissioner Levchak asked if there is any elevation of refusal. Mr. Dickhut said there is one slope that is over 100 hundred feet where they could only bore 30 feet down but they did not find anything at less than 20 feet with issues. He said those areas that are sluffing have very shallow composition.

Tom Deis, 2925 Tyler Parkway, said he is opposed to the request because of the uniqueness and how the area functions as well as the proposed connection of Tyler Parkway. He said the area carries a lot of water to the river and there are already existing ground water issues. He said the City needs to do its due diligence and asked who would be held responsible if the coulee does fail. He said Tyler Parkway is a minor arterial roadway, so why would they want more traffic which would make it a major arterial roadway and then have the tax payers pay for it.

Cam Knutson, Tyler Coulee, LLP, said he appreciates the good debate taking place, and it only helps them get better at what they do. He said they dove into the future of Elk Ridge Addition, which will be a several years process, and did study the Growth Management Plan and the Northwest Subarea Study. He said there has been a high overall increase in population in this area, as well as traffic, and while they do not have a plat proposed yet and possibly will not for a few more years, they want to clear up any concerns now.

Tyler Wetsch, 3805 Del Rio Drive, said when he bought his property the area was earmarked to stay open space and he understands the desire to develop. He said he can see the land moving and building more houses would decrease vegetation which will not leave anything to absorb groundwater. He said wildlife would be threatened and there are over 1,000 lots for sale in Bismarck and feels this would make home values drop. He said the houses will be expensive, but there are not enough jobs here that pay for anyone to afford the assumed price range they will be in.

Commissioner Levchak asked who told him the area would not be developed. Mr. Wetsch said he based his information on the Growth Management Plan, which had that area earmarked to not change.

Ron Knutson said the area of Del Rio Drive to the new proposed development are almost 300 yards away from each other and all of that area would stay green and wildlife would continue to be preserved. He said the land at the top is flat and used to be farm land, so it probably never should have been designated as a conservation area. He said Commissioner Schell, as the City Engineer, also mandates strict stormwater management controls.

Mr. Wetsch returned to say runoff would all be diverted through the coulee and that is concerning with any new development because no thought has been given to that.

Commissioner Schell said once the street criteria is exceeded, the City requires storm drains and inlets, but the streets are often used in some areas for stormwater conveyance such as in Promontory Point.

Commissioner Levchak asked where the water ultimately drains to. Commissioner Schell said through the coulee and then to the river with 10 or so outfall locations.

Paul Zent, 4522 Kites Lane, said he can see the north end of the proposed development from his front door and he is not opposed to the requests because he feels this Commission, the owner and City staff will do the right thing. He then asked what the future of Tyler Parkway is.

Commissioner Schell said Tyler Parkway from 15th Street NW south is constructed by Burleigh County. The decision as to how far south it will be constructed would depend on how it is determined to make that leap across the coulee which has not been decided yet. He said funding has not been committed and there has not been any action by the Burleigh County Commission as of yet.

Commissioner Bitner said that is not a priority of the Burleigh County Highway Department at this time and plans are still unknown.

Commissioner Levchak asked how this development would be accessed without the extension of Tyler Parkway to the south.

Commissioner Schell said there would be a cul-de-sac developed with a maximum length to allow for emergency service access which would be a controlling element of the access.

Laura Hardmeyer, 1437 Eagles View Lane, asked if the designations could change again even after this request is approved.

Ms. Lee said she anticipates this being the last change to the Future Land Use Plan for this area, but the zoning districts could potentially change further with the submittal of a new subdivision plat.

Additional comments in opposition to this request are attached as Exhibits B-H, as well as the executive summary of the Northwest Bismarck Sub-Area Study submitted by Ms. Solberg.

There being no further comments, Chair Schwartz closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Bakken made a motion to recommend approval of the Future Land Use Plan Amendment to modify the boundary between the Conservation and Low Density Residential land use designations, as shown on the exhibit attached to the staff report, and the zoning change from the A – Agricultural zoning district to the A – Agricultural, R5 – Residential and R10 – Residential zoning districts as shown on the exhibit attached to the staff report for part of the NE¼ of Section 19 and part of the SE¼ of Section 18, T138N-R80W/Hay Creek Township, with the understanding that staff would support rezoning of entire lots to R5- Residential or R10-Residential in conjunction with the future platting of the property, provided a slope protection easement is shown over that portion of the lots included in the Conservation designation in the Future Land Use Plan, as amended, as presented. Commissioner Laning seconded the motion and the request was approved with Commissioners Atkinson, Bakken, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion. Commissioner Bitner abstained.

OTHER BUSINESS

INFORMATION SESSION FROM JANNELLE COMBS, CITY ATTORNEY ON BOARD CONDUCT AND GOVERNANCE

Ms. Combs said she is visiting with all of the City Boards and Commissions to give a general overview of governance and North Dakota laws as outlined in the distributed memo. Ms. Combs said there has been some questions lately as to motions and reminded those present that the Chair controls the meeting and it is critical that Commissioners remain open and transparent. She said all information needs to be shared at all times in the event something needed to be defended in court. She added that a consensus cannot be built beyond a public meeting even if the consensus building is being done by a non-member talking to Commissioners.

Commissioner Bitner indicated that he feels that happens all the time both here and at the County Commission level.

Ms. Combs said that should be reported to her, as it is the opinion of the Attorney General that non-members doing consensus building is illegal.

Commissioner Bakken said to either direct people offering information to the Commissioner who holds the portfolio, Ms. Combs and City staff. If they find out after the fact that information gathering has taken place it can be fixed right away if they know about it.

Commissioner Levchak asked if every single instance of a conversation had to be shared.

Ms. Combs said in the event an item comes up in general conversation they should ask right away if the person has spoken with any other Commissioners. She indicated Commissioner should also share any digital or email correspondence with her as well.

Ms. Combs memo is attached as Exhibit I.

ELECTION OF OFFICERS

Commissioner Bakken made a motion to reelect Mike Schwartz as the Chair of the Bismarck Planning Commission. Commissioner Bitner seconded the motion. Commissioner Laning motioned to make the motion unanimous. Commissioner Atkinson seconded the motion and with Commissioners Atkinson, Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion Mike Schwartz was reelected Chair of the Bismarck Planning and Zoning Commission.

Commissioner Bakken made a motion to reelect Tom Atkinson as the Vice Chair of the Bismarck Planning and Zoning Commission. Commissioner Laning seconded the motion. Commissioner Atkinson declined his reelection indicating this will be his last term on the Bismarck Planning and Zoning Commission. Commissioner Van Duyne made a motion to elect Vernon Laning as the Vice Chair of the Bismarck Planning and Zoning Commission. Commissioner Bakken seconded the motion and with Commissioners Atkinson, Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion, Vernon Laning was elected Vice Chair of the Bismarck Planning and Zoning Commission.

COMPREHENSIVE PLAN INITIATIVE

Ms. Lee said City staff is beginning the process of creating a new comprehensive plan to draw all of their documents, studies and plans together. She said there will be a stakeholders group created and the process will likely take approximately 18 months. The Plan will be prepared by City staff, although consultants may be utilized for certain components.

Commissioner Levchak asked if staff time and work load can accommodate such a large project.

Ms. Lee said she believes they can handle it as they all have various areas of expertise.

Commissioner Van Duyne said she thinks this a great idea and said to please continue working with Bismarck Public Schools as part of the plan as well. She asked if City codes and ordinances would be updated as well.

Ms. Lee said that is also a need and this plan would lay the groundwork for those updates to happen.

Commissioner Bakken said this also engages other political subdivisions which is a good thing.

ADJOURNMENT

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 7:18 p.m. to meet again on February 26, 2020.

Respectfully submitted,



Hilary Balzum
Recording Secretary



Michael J. Schwartz
Chair

From: [Planning - General Mailbox](#)
To: [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Cc: [Hilary Balzum](#)
Subject: FW: Public Hearing Zoning Change scheduled January 22nd
Date: Wednesday, January 15, 2020 4:56:07 PM

From: Kent French [mailto:████████████████████]
Sent: Wednesday, January 15, 2020 2:36 PM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: Public Hearing Zoning Change scheduled January 22nd

As a homeowner on Mahone Drive, I would like to ask the Zoning Dept. to not allow multi-family residential units to be zoned in the request by Capital Electric and Basin Electric. The property is located between Lockport and Coleman and south of 43rd Avenue. When we purchased this property the understanding was this property was going to be used as it is currently or to continue to develop single-family housing. Changing the zoning to multi-family would change the quiet neighborhood we enjoy without the dangerous traffic to one of chaos with traffic problems at every intersection. We currently have difficulty negotiating traffic from Lockport to 43rd Avenue and Lockport to State street. By adding a large number of apartments, additional problems would significantly occur. We have good zoning in the city where multi-family housing is designed along with proper streets to take care of the traffic flow. To change the zoning on this property to multi-family is not what I believe is in the best interest of local residents and to the multi-family residents that would have to negotiate not only the intersections that are at capacity now but the steep hills coming down Mahone and Lambton across from the fire station. Please don't allow multi-family in this area.

Kent French

843 Mahone Drive



From: [Planning - General Mailbox](#)
To: [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Cc: [Hilary Balzum](#)
Subject: FW: Knutson request to amend the Future Land Use Plan & Zoning Change request
Date: Wednesday, January 15, 2020 4:56:36 PM

From: Roger Weigel [mailto:[\[REDACTED\]](#)]
Sent: Wednesday, January 15, 2020 3:52 PM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: Knutson request to amend the Future Land Use Plan & Zoning Change request

Dear Bismarck Planning & Zoning Commission Members:

I am unable to attend the Wednesday, January 22 public hearing on this referenced request; therefore, I will use this email to submit written comments. For reasons I state below, I strongly oppose this Developer's request and I ask the Bismarck Planning & Zoning Commission Members to officially deny Ron Knutson's request to 1) amend the Future Land Use Plan and 2) a zoning change.

Like most Bismarck residents, the purchase of our home was the largest investment we will ever make. After being in the home buying market for several years, during June 2017 we purchased our third and hopefully final home in Bismarck. At the time, we were willing to pay premium price for a ranch style home with a backyard view overlooking a coulee and conservation area. After doing our homework, we were convinced this home on Del Rio Drive was indeed our forever home.

The most significant deciding factor in the purchase of our home was when we reviewed the Bismarck Future Land Use Plan. The Future Land Use Plan clearly identifies this area to be preserved as conservation area. This land use study and final plan, funded by our tax dollar, was developed by a qualified professional land use planning company. I ask if we cannot use and trust the Future Land Use Plan when making our investment decisions, what other sources of better information could we have used?

There are a number of Required Findings of Fact (relating to land use) which must be satisfied prior to approving a zoning change. One fact is the proposed zoning change generally conforms to the Future Land Use Plan in the 2014 Growth Management Plan. This specific zoning change request clearly violates this fact. Mr. Knutson implies if his plan does not line up with the Future Land Use Plan, let's just amend the plan.

Another Required Finding of Fact is the zoning change is in the public interest and is not solely for the benefit of a single property owner. Again, this request clearly violates that fact. Tyler

LLP and Ron Knutson were well aware of this conservation area designation when they purchased the land. Now in the interest of making a dollar, they simply request and expect the Bismarck Planning & Zoning Commission to approve an amendment to the Future Land Use Plan to modify the boundary between the low density residential and conservation designation. These revisions are not in the best interest of the residents in the neighborhood but would solely benefit a single property owner.

The City of Bismarck, especially northwest and northeast Bismarck, is growing at an amazing rate. This growth is awesome and great for the our thriving community. However, this growth must continue to be well planned and advanced thru a collaborative effort of City, County, property owners, and developers all working within the guidelines as established by the Future Land Use Plan.

I regret I will not be able to attend the public hearing on this matter, and thank you in advance for your thoughtful review of Ron Knutson's request. Tyler Coulee is an amazing, extremely environmentally sensitive area. The preservation of this area is important to Bismarck and has been studied and discussed for well over 30 years. I ask that you find a way to deny this developer's request and help protect and preserve the area of land identified as "CONSERVATION AREA" in the current Future Land Use Plan.

If you would like to discuss this matter further or request clarification of any information I presented, please do not hesitate to contact me either by email or phone.

Thank you.

Roger Weigel

[REDACTED]
cell phone [REDACTED]

From: [Kim Lee](#)
To: [Hilary Balzum](#)
Subject: FW: January 22, 2020: Bulldozing Conservation Land in Tyler Coulee. Planning and Zoning Commission
Date: Wednesday, January 22, 2020 11:48:01 AM
Attachments: [Tyler Coulee Conservation Land 1-18-2020.pdf](#)

From: Gabe Schell
Sent: Tuesday, January 21, 2020 8:29 AM
To: Kim Lee <klee@bismarcknd.gov>
Cc: Ben Ehreth <behreth@bismarcknd.gov>
Subject: FW: January 22, 2020: Bulldozing Conservation Land in Tyler Coulee. Planning and Zoning Commission

FYI. Thanks

Gabe Schell, PE
City Engineer
City of Bismarck

From: Nick Bradbury [REDACTED] >
Sent: Saturday, January 18, 2020 2:12 PM
To: Gabe Schell <gschell@bismarcknd.gov>
Subject: January 22, 2020: Bulldozing Conservation Land in Tyler Coulee. Planning and Zoning Commission

Gabe,

This Wednesday, Jan. 22, 2020, Bismarck Planning and Zoning Commission will consider overturning the Conservation designation ("Permanent Open Space") of a large swath of the core of the Tyler Coulee Watershed. More than any other location, this will affect the greatest number of homeowners of any of the projects in Tyler Coulee to date. This document summarizes the many reasons why Planning and Zoning should NOT overturn the current plan.

Further, I've been very disappointed that City of Bismarck and our residents appear to be completely shut out of the process in planning Tyler Parkway.

Thank you for your attention.

Respectfully,

Nick Bradbury

Bismarck's Open Space Under Attack

January 2020

At the January 22, 2020 meeting of the Bismarck Planning and Zoning Commission, the Commission will hear public comment related to changing a section of land from Conservation designation to R5 and R10 Residential. This will be agenda item #9. The Conservation designation is defined as "Permanent Open Space". This land gets this designation from a publicly-funded document called the Growth Management Plan.

The 2014 Growth Management Plan

The "centerpiece" of the Growth Management Plan is the Future Land Use Plan, wherein the various entities, City, County, Parks, Transportation, Engineering, Schools, even members of private industry such as construction contractors, land developers, Real Estate Brokers, etc. have collaborated to evaluate the land surrounding Bismarck and designated the best uses for it. It is paid for with public funds, and ratified by all parties involved. It is presented for public comment and approved by City and County Commissions.

The Growth Management Plan describes in its own words that it is not a "mistake", that it has been designed with a "detailed understanding of land suitability for development, real estate market forces, and backbone urban infrastructure networks." The current Growth Management Plan is reviewed and updated annually; it was first published in April 2014 and most recently updated in January 2020.

TYLER COULEE

In NW Bismarck, there is a unique geographic feature named Tyler Coulee. It is a 5,000-acre watershed containing a diversity of wildlife and wetlands. Animals regularly found or tracked in the area include whitetail and mule deer, coyote, turtles, rabbit, badger, monarch butterflies, voles, moles, mountain lion, a variety of owls, hawks, eagles, and other birds. The wetlands are federally Recognized and Protected under the Clean Water Act due to direct drainage into the Missouri River. For the past 20-30 years, homes have been built around the margins of the watershed, with the center of the watershed reserved to conserve these natural features.

The 2014 Bismarck Growth Management Plan identifies the center portion of the watershed as an important natural feature and designates this for longterm conservation, "Permanent Open Space".

The Future Land Use Map

The Growth Management Plan identifies the FLUP (Future Land Use Plan) as its "centerpiece". Since 2014, this has been the Future Land Use Plan for Tyler Coulee:

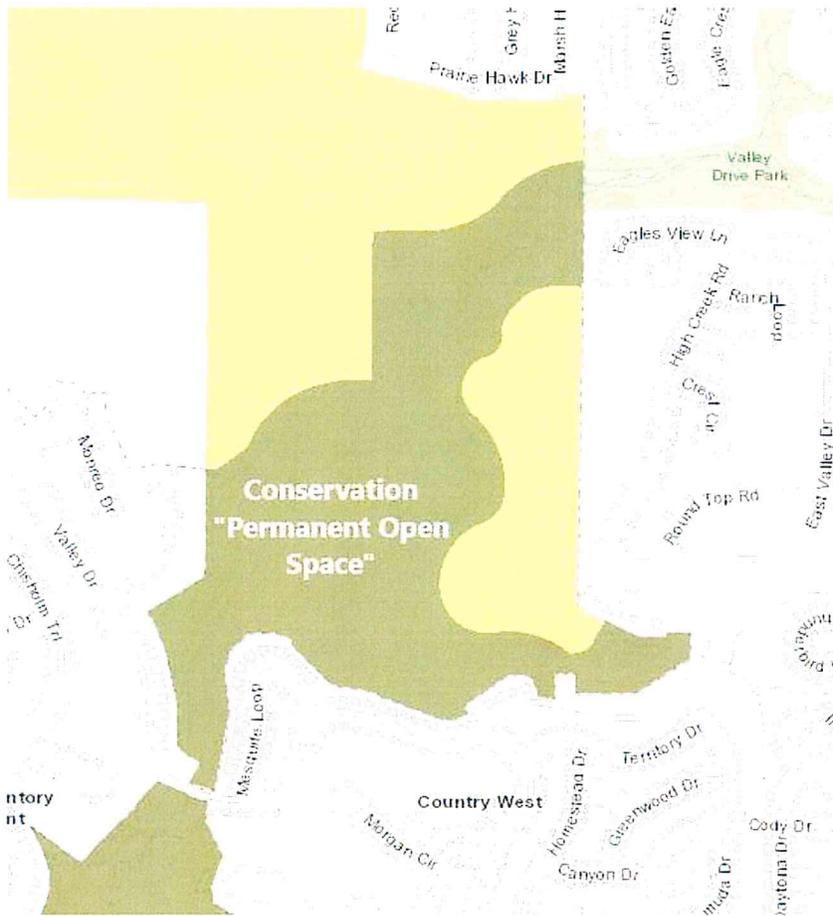


Figure 1 The wider green area in the center of the map represents, essentially, the “heart” of Tyler Coulee, where steep slopes and multiple separate drainages converge to produce wetlands and woodlands. This area has never been developed, however historically was used as Agricultural land for grazing cattle at times, and limited areas cut for hay.

Paying a Premium

Every homeowner in the surrounding neighborhoods has paid a premium to live in an area adjacent to this Conservation-designated land. Many have invested specifically in home designs taking advantage of this view from their adjacent homes. This despite multiple areas being built without any dedicated parks in many neighborhoods. For instance, 6 separate additions of Promontory Point have been approved and built without any park land.

Why Change the Conservation Designation?

Simply, only 1 entity stands to benefit from overturning the Conservation designation on this land: The developer. Bismarck, as a City, has plenty of land designated for residential development without overturning this Conservation designation. For instance, at the December 2018 Planning and Zoning Commission, it was noted that the City already has annexed enough land to supply residential growth for the next 18 years. One of the criteria for changing the designation must be that “The zoning change

is in the public interest and is not solely for the benefit of a single property owner.” This change clearly does not meet that criterion.

Plat Prepared but not Presented:

In the Staff Report, the Staff note that their current plan is based on a “Potential” plat for the area, however that the plat is not being submitted. But they’ve seen it:

The proposed zoning change from the A – Agricultural zoning district to the R5 – Residential and R10 – Residential zoning districts for the areas that would be designated as Low Density Residential originally requested by the applicants was also based on a potential future plat for the area.

So, is there a plat or not?!

2007 Regional Future Land Use Plan No Longer Relevant:

In the Planning Department Staff Report, an image from the 2007 FLUP is presented. This image should not be included in the Staff Report because, as the Staff Report itself notes, that plan is no longer in effect and was superceded by the 2014 Growth Management Plan.

NOT A MISTAKE!

The inclusion of this land as Conservation land in the 2014 Plan is not a mistake caused by differences between prior hand-drawn maps and the current digitized version, as suggested in the Planning Department Staff Report. As noted previously, the 2014 map was designed with a “detailed understanding of land suitability”, specifically considering “environmental needs”. Also, the GMP has been reviewed and updated multiple times since 2014, at least annually for the past 4 years (2016, ’17, ’18, ’19, ’20) and each time, this designation as Conservation Land was continued. Further, no private citizen in the City has resources comparable to those of a major developer, such as a dedicated Land Surveyor, appraisers, realtors, and bankers looking out for their interests. Indeed, the Developer was invited to the table in preparing the 2014 Growth Management Plan:

Throughout the course of the process to update this Plan, the study team attempted to engage each landowner to learn about potential plans for development and uses of the land, and to gain feedback on some aspects of the Plan as they were being developed. Landowners were contacted by paper and electronic mail and phone, invited to stakeholder interviews, received individualized notification about public meetings, and directed to electronic media. Comments received from land owners have been incorporated into the Plan. (2014 Bismarck Growth Management Plan)

It was not a mistake in 2014, nor in any year since as the FLUP and GMP have been reviewed and updated. Now that the Developer (who happens to own ALL open land in the vicinity) wishes to bulldoze over that Conservation land, the Commissions (Planning & Zoning and Bismarck City) are requested to overturn the Plan that has been in place for the better part of a decade as so many homeowners have been purchasing lots and building their homes.

Level of Detail of the Future Land Use Plan

As stated previously, the FLUP was designed with a “detailed understanding of land suitability”. Here is an image from the FLUP, showing the level of detail described at the area in question and the surrounding lands (Figure 2):



Figure 2 The Future Land Use Plan. Note the very high level of detail in portions of the map in other watersheds further away from current development. This 2014 Future Land Use Plan was designed to conserve a significant portion of the Tyler Coulee watershed as Conservation land: Permanent Open Space.

Traffic Planning Completely Absent

A north-south arterial roadway is planned to run through this area, Tyler Parkway. THERE IS NO PLAN FOR THIS ROAD! The City do not have a plan describing the effects of connecting this road to the existing portion of Tyler Parkway. The currently existing portion of Tyler Parkway was not designed as an arterial roadway. It is a neighborhood street with 45 homes’ driveways directly entering the roadway, on-street parking, and curves which limit the Speed Limit to 25 mph. The road is already overtaxed, serving as a neighborhood collector for Promontory Point and Eagle Crest neighborhoods. If connecting this road as an arterial is indeed in the future plan, NO other location of increased residential platting will add more traffic directly onto the already-existing portion of Tyler Parkway. Within the past year, a group of 95 families in the area have petitioned the City Commission to please PAUSE what you’re doing and come up with a plan that makes sense!

From: [Planning - General Mailbox](#)
To: [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: FW: Input and concern regarding the Tyler Coulee area
Date: Wednesday, January 22, 2020 2:19:48 PM

From: Nathan Sailer [mailto: [REDACTED]]
Sent: Tuesday, January 21, 2020 9:10 PM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: Input and concern regarding the Tyler Coulee area

Hello Bismarck Planning and Zoning Commission,

I am a resident of the Country West neighborhood of Bismarck. I would like to give my input and concern regarding the Tyler Coulee area. I feel that Tyler Coulee provides valuable green space to the citizens of Bismarck. I use the trails in the coulee, and have many friends and coworkers who use the coulee regularly for outdoor recreation. It is unique green space that many cities would love to have. It is areas like Tyler Coulee that attract and keep people here. While I understand that the Planning and Zoning Commission has to balance the needs of the city, I urge the commission to keep as much of the coulee in green space as feasible.

Regarding the current condition of the coulee, I ask that the commission and city engineering take a first-hand look at the erosion that has occurred in the coulee due to storm water runoff. I feel that steps need to be taken to reduce the amount of storm water runoff through the coulee from both current and future developments.

I also ask the commission and city engineering to please carefully consider and plan for the increase in traffic volume that would occur on Tyler Parkway if it was extended as planned. It would be better to do any work needed to handle the added volume before the extension is made rather than trying to deal with the consequences after the volume has increased.

Lastly, I ask the commission and city engineering to try to minimize the reduction of green space when Tyler Parkway is extended, and if possible, allow for the trails in the area to still remain in place and connected.

Thank you,

Nathan Sailer

From: [Planning - General Mailbox](#)
To: [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: FW: T139N-R80W/ Hay Creek Township development
Date: Wednesday, January 22, 2020 2:20:08 PM

From: ray larsen [mailto:]
Sent: Tuesday, January 21, 2020 10:31 AM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: T139N-R80W/ Hay Creek Township development

Dear Commission;

I am against the development of the Hay Creek development and you should tell them to go finish their other developments they have started.

I don't care to have apt building pop up in our area and them just doing what they want to do because they got money to buy and destroy that wonderful landscape .

Thank you for your time

Ray H Larson Jr
1438 Eagle Crest Loop
Bismarck N D

From: [Planning - General Mailbox](#)
To: [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: FW: Hay Creek Township development - T139N-R80W/Hay Creek Township
Date: Wednesday, January 22, 2020 2:19:58 PM

From: [REDACTED] [mailto:[REDACTED]]
Sent: Tuesday, January 21, 2020 10:42 AM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Subject: Hay Creek Township development - T139N-R80W/Hay Creek Township

Dear Commission ;

I am asking that you DO NOT let the Hay Creek Coulee be developed , we go hiking in it during the summer & biking , it would be a waste of land going to Mr. Knutson.

I know he developed a lot of land but to change what was to be agriculture land to apt building & homes is a waste. He can go develop the rest of his property's that he has.

Thank you for your time

Karen Larson
1438 Eagle Crest Loop
Bismarck , ND

From: Planning - General Mailbox
To: [Hilary Balzum](#); [Daniel Nairn](#); [Jenny Wollmuth](#); [Kim Lee](#); [William Hutchings](#)
Subject: FW: Changing status of Conservation Land in Tyler Coulee to development land.
Date: Wednesday, January 22, 2020 2:45:58 PM
Attachments: [image001.png](#)
[Tyler Coulee Conservation Land 1-18-2020.pdf](#)

From: Burns, David J. [mailto:]
Sent: Wednesday, January 22, 2020 2:36 PM
To: Planning - General Mailbox <planning@bismarcknd.gov>
Cc:
Subject: Changing status of Conservation Land in Tyler Coulee to development land.

Dear Planning committee: I am in support of keeping this land as open-space land. I agree with the points stated in Nick's attached PDF document.

Most of the area is a steep sided coulee susceptible to slumping and landslides. Why create another area like the homes above the Pebble Creek golf course and Hay Creek where the bike path and backyards are starting to slump into the creek.

The area will be more valuable to the people of Bismarck as an open area than developed for more housing.

I do not live adjacent to the area in question. I use the area for recreation. I usually ride my bike over to connect to the Pioneer bike path, or jog over to get a workout on a soft surface.

My address is 525 Versailles Avenue, Bismarck, ND 58503

Thanks
Dave Burns
Engineering Tech., Oil & Gas Division

701.328.8020(o) • 701.328.8028 (m) • djburns@nd.gov • www.dmr.nd.gov

NORTH
Dakota | Mineral Resources
Be Legendary.™

701.328-8020 (Front Office) • oilandgasinfo@nd.gov • www.dmr.nd.gov • 600 E Boulevard Ave, Dept. 405 • Bismarck, ND 58505

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Bismarck's Open Space Under Attack

January 2020

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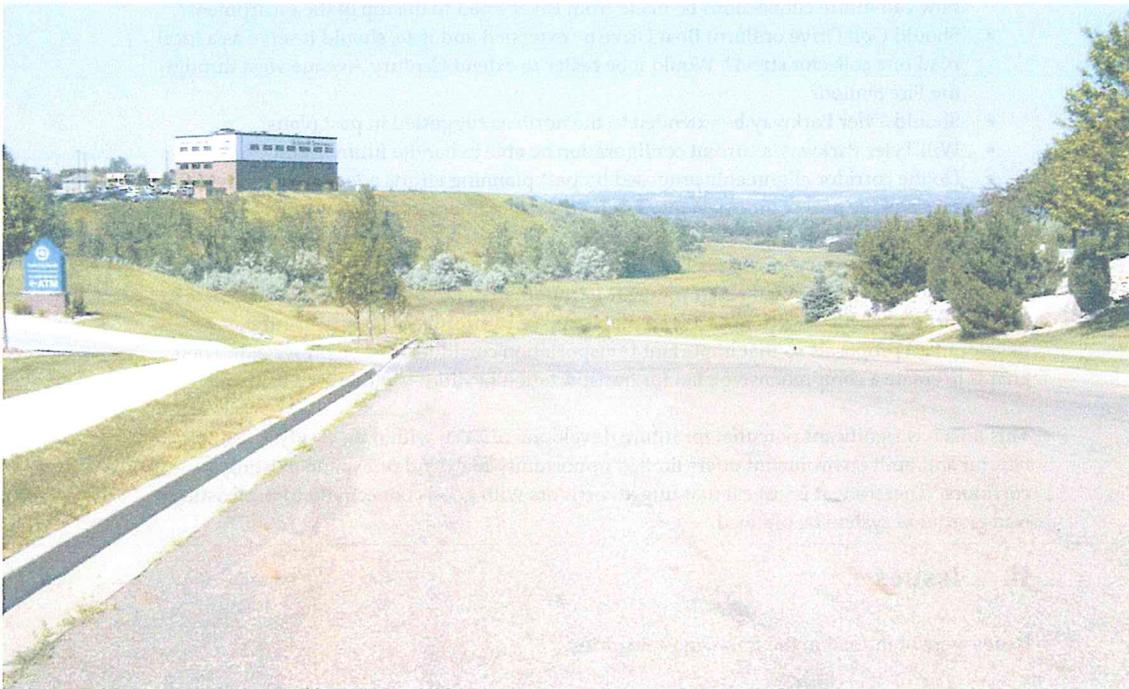
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Northwest Bismarck Sub-area Study
Executive Summary

prepared for



January 2011

III. Proposed Corridor Alignments

Corridor alignment alternatives were derived from the technical analysis with input from the Study Review Committee. Proposed corridor alignments are shown in Figures 1EX, 2EX and 3EX.

Profiles were prepared to examine the approximate grades that could be established for some of the individual corridors. Areas showing a significant amount of cut or fill are indicators of the need for drainage facilities, potential structures, and possibly additional right of way.

The following paragraphs provide an overview of the pros and cons associated with individual alignments. Local technical staffs gave feedback on which alignments they support, and their positions are reflected in the narrative for each corridor that follows.

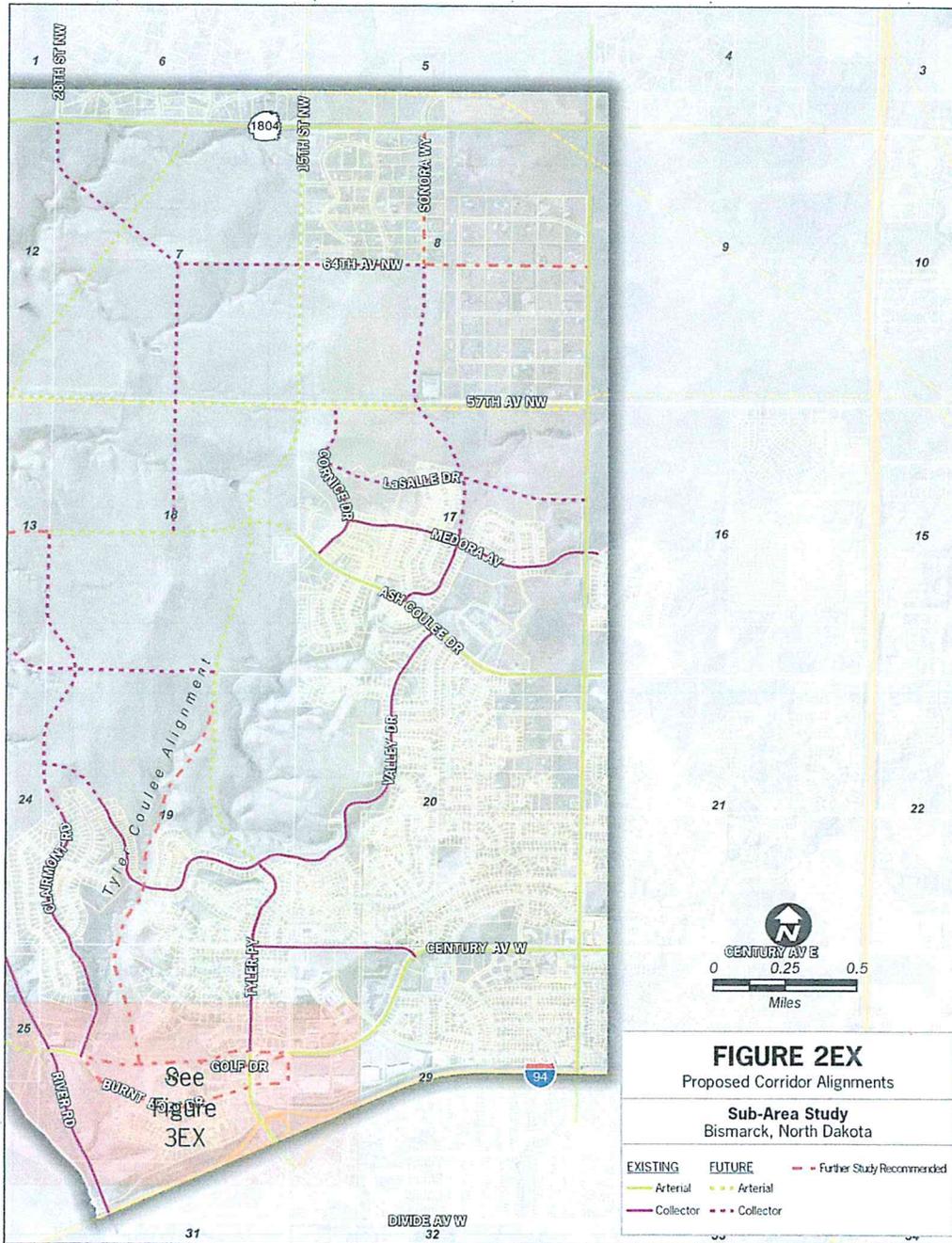
Issues such as corridor speed, type of turn lanes, access management, on-street parking, and use by trucks and other modes of travel are addressed through current city and county policy and ordinances. Further definition of corridor attributes may occur as each corridor develops and with input from public stakeholders.

A. Century Avenue, Golf Drive, & Burnt Boat Drive Alignments

Five options to improve east-west access and mobility by extending or realigning Century Avenue were considered:

- Option A – Do Nothing
- Option B – Extend West off Century Avenue Alignment
- Option C – Extend West off Golf Drive Alignment
- Option D – Extend West off Burnt Boat Drive Alignment
- Option E – Conduct Additional Study of Alignment Alternatives

Option E is recommended because there are unanswered questions concerning alignment alternatives. Concerns were raised regarding potential archaeological site, visual and noise impacts. Efforts to answer these questions were beyond the scope of this study. Often, these questions are answered during the environmental process for a proposed project. The environmental process can address potential social and environmental concerns while examining design alternatives in more detail.



1. Optional Alignment Comparisons and Evaluations

The options for extending Century Avenue were evaluated and compared based on a number of traffic and socio-economic criteria (See Table 1). These criteria and discussion of their evaluations are provided in the following paragraphs. The table compares the options more from a system level than from a level focused only on the Tyler Parkway area. The top two option rankings in Table 1 are highlighted in green and the bottom two option rankings are highlighted in red.

Table 1

Alignment Option	Traffic Evaluation Criteria										Socio-Economic Criteria			
	Intersection LOS	Signal Progression	Vehicle Storage	Tyler Pkway Impacts	Multimodal Opportunities	Interchange Impacts	Traffic Capacity	Traffic Safety	Access Impacts	Visual Impacts	Noise Impacts	Residential Land Purchased	Business & Economic Impacts	Project Cost
Option A – Do Nothing	3	1	4	4	3	2	4	4	4	1	4	1	1	1
Option B – Century Avenue Extension	1	2	1	1	1	1	1	1	1	4	3	2	1	3
Option C – Golf Drive Alignment	1	3	2	2	1	3	2	2	2	3	1	1	3	4
Option D – Burnt Boat Alignment	2	4	3	3	2	4	3	3	3	2	2	1	2	2

- 1 - Top ranked or best option
- 4 - Lowest ranked or worst option

a. Traffic Evaluation Criteria

i. Intersection Level of Service

Intersection Level of Service pertains to the amount of vehicular traffic delay at a given intersection. It is influenced by a number of factors, but primarily it is influenced by the number of vehicles at an intersection, the number of lanes and whether the intersection is signalized. Another factor to consider is the number of left turning vehicles, particularly those that don't have a designated left turn lane or those occurring at unsignalized intersections.

Based on our analysis, the Century Avenue and Golf Drive extension alignments performed equally well. The Burnt Boat Drive intersection operates poorly today, and the intersection delay will continue to increase unless substantial improvements are made. The ability to make these improvements is uncertain.

Future traffic levels at Burnt Boat Drive would be higher than other options primarily because the roadway would carry more traffic from existing developments. This would result in lower intersection performance than occurs with Options A or B. The Do Nothing option operated most poorly because of added pressure it placed on a multitude of other intersections within the

iv. Tyler Parkway Impacts

Our analysis assumed full build-out of traffic lanes along Tyler Parkway, and 30% of full build-out for area development. Under these conditions, each alignment alternative performed relatively the same, with Tyler Parkway operating at near-capacity.

It is important to recognize that should area development exceed the 30% full build out scenario, or should localized high traffic generating development occur, higher traffic volumes would result in more pronounced differences in how well each of the alignment options perform.

Relative impacts to the Tyler Parkway corridor are a function of most of the other traffic analysis criteria examined. The Do Nothing option was considered to perform the worst, assuming that the Tyler Parkway extension is made with no extension of Century Avenue. The heaviest impacts would occur in existing developed areas north of Century Avenue.

With the Burnt Boat Drive alignment option, traffic concerns relate to the high traffic volumes at the Burnt Boat Drive intersection and limitations on vehicle storage between Burnt Boat Drive and the I-94 Interchange.

v. Multimodal Opportunities

Multimodal opportunities relates to the ability to provide or improve non-motorized travel within the study area. In this regard, the Do Nothing option ranked lowest because there would be no provision to extend existing bicycle or pedestrian facilities west of Tyler Parkway. The Century Avenue extension and Golf Drive extension alternatives would provide equal capabilities to extend these facilities, whereas the Burnt Boat corridor has right of way limitations that reduce the ability to adequately provide these amenities.

vi. Interchange Impacts

Analysis of the I-94 Interchange was not included within the scope of this Study. However, placement of major intersections in close proximity to interchange ramps typically creates queues at the interchange that are detrimental to interchange traffic operations. From this standpoint, traffic turning movements that are further from the interchange have fewer impacts. Therefore, the Burnt Boat Drive option raises the greatest concern.

vii. Traffic Capacity

Traffic capacity is influenced by many factors, including vehicle storage, intersection spacing and geometrics. The direct extension of Century Avenue provides the best spacing for major intersections, more room for vehicle storage, and the most corridor capacity for both Tyler Parkway and Century Avenue.

Golf Drive ranks next, since it results in more available lanes than the Burnt Boat Drive option and keeps Century Avenue traffic separate from Burnt Boat Drive traffic. Burnt Boat Drive operates with less capacity since there are fewer lanes and adjacent intersections are in close proximity to Burnt Boat Drive.

The direct extension of Century Avenue has the least impact on access, with access impacts being limited to Golf Drive and Pinto Place. The Golf Drive option would require closure of the east bank driveway and would impact business accesses east of Tyler Parkway through the north-south connection to Century Avenue. Additionally, access to the fire station may become blocked by queues from the Golf Drive intersection.

With the Burnt Boat Drive option, accesses on the east, west and south approaches may become blocked during peak traffic periods. Also, adjacent businesses and Grand View Lane would have detrimental mobility and safety impacts on the Burnt Boat Drive intersection.

b. Socio-Economic Criteria

i. Visual Impacts

Comparisons of visual impacts are subjective and require some assumptions. From the perspective of the Pinto Place neighborhood, negative visual impacts from greatest to least impacting would be the Century Avenue extension alternative, followed by the Golf Drive extension, with the Burnt Boat Drive extension being a distant third. This is the order the options were ranked.

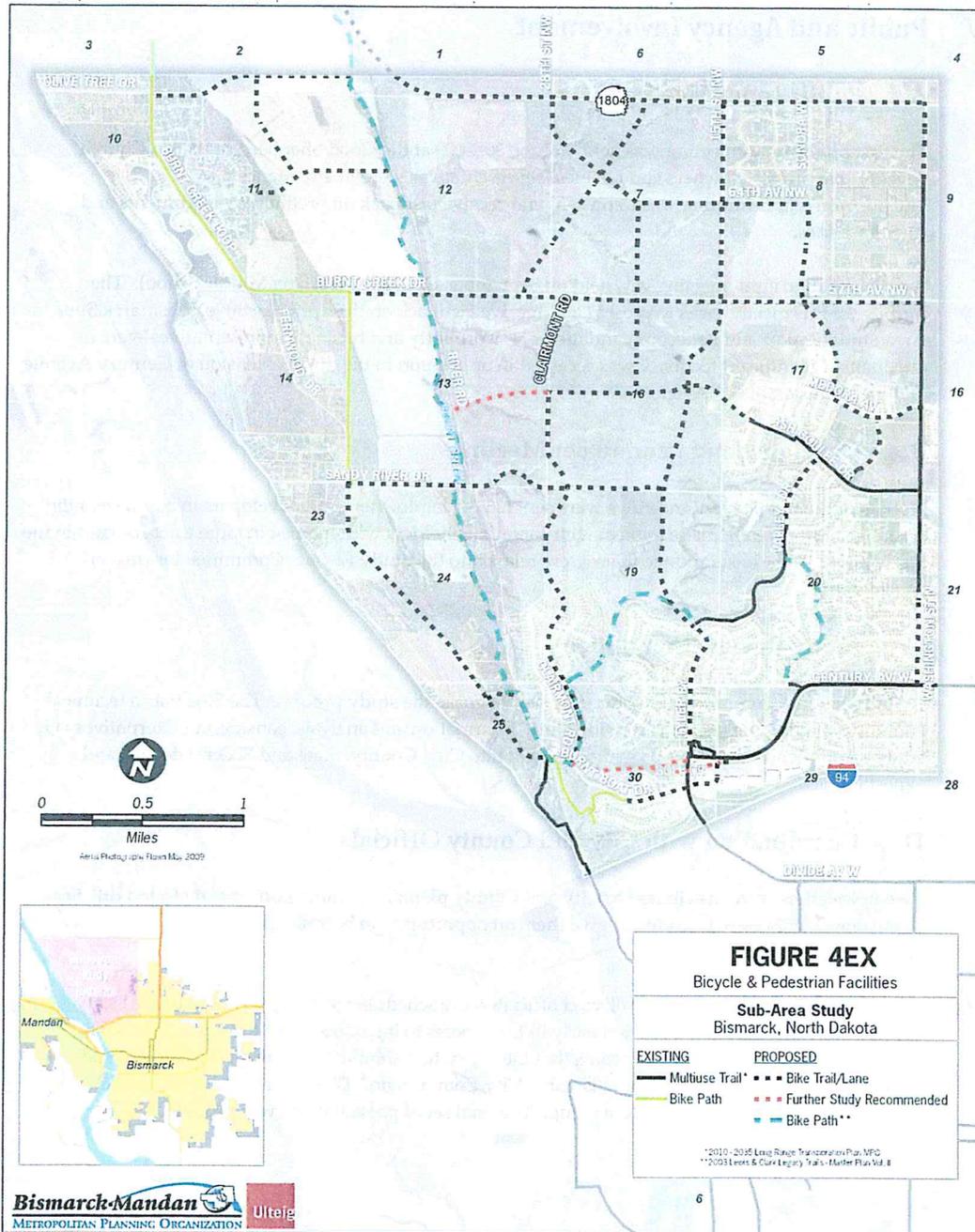
We believe these opinions are subjective because the assumption is made that the valley west of Tyler Parkway remains undeveloped, and the undeveloped look is considered more visually appealing than a developed alternative. If the valley is developed, land use and vegetation adjacent to the streets in the valley could be more influential on the area's visual appeal than choice of alignment options.

ii. Noise Impacts

Noise impacts are proportional to the distance between a roadway and adjacent properties. The closer the roadway, the greater the potential for traffic noise. This study did not conduct noise analysis for the various alignment options.

Therefore, it is not known whether there is a significant difference in noise impacts on Pinto Place residents when comparing the Century Avenue and Golf Drive extension options. Given the distance principle, the Century Avenue option would have a greater noise impact than the Golf Drive option.

It is, however, reasonable to conclude that the Burnt Boat Drive option, while resulting in little if any impact on Pinto Place, would have greater impacts on properties in the vicinity of Burnt Boat Drive. Since most of these properties are more commercial in nature, these impacts were considered lower than the other two alignment options. A noise analysis would need to verify this conclusion.



E. NDDOT Management Presentation

An NDDOT Management Presentation was held on August 16, 2010. The purpose of this presentation was to inform NDDOT management on the findings of the draft Report and to receive any feedback they wished to provide. It also informed them of study content so that they could respond to questions from the public involvement process.

F. MPO TAC and Policy Board Meetings

Progress and status reports have been provided on a monthly basis to the MPO Technical Advisory Committee (TAC) and Policy Board. Summaries of these meetings are available upon request from the MPO.

These meetings serve an important purpose in that they enable local officials and technical staff to stay involved with ongoing study activities. It also benefits the study when local technical staffs use their knowledge and expertise to provide guidance to the consultant.

V. Northwest Subarea Recommendations

A. Priority Corridors and Timing of Development

Burleigh County has identified the need to construct an east-west roadway from Washington Street west to River Road. This study identified the 57th Avenue corridor as the optimum location for this alignment. Since this appears to be a high County priority, its construction may occur prior to development.

The availability of roads and utilities, as well as the cost of infrastructure expansion, are factors that impact the cost of development. Therefore, these factors have a great influence on the timing of development. The timing of development is important because it will largely determine which roads get built first and which roads are available to serve the additional traffic.

The following observations were made concerning the timing of development and potential priority corridors:

- 57th Avenue will likely be constructed by Burleigh County within the next five years. This may lead to surrounding development.
- Developers are planning to extend Clairmont Road to the north to service new residential subdivisions. This will place added pressure on the Burnt Boat Drive/Tyler Parkway intersection, possibly heightening the need to extend Century Avenue.
- The public perceives that congestion and safety issues exist at the Ash Coulee Drive and Washington Street intersection. Further analysis should be undertaken to determine whether these issues occur for more than brief periods during the day. Washington Street corridor upgrades that have been programmed should address this intersection.

3. Consider Policies that Promote a Mix of Employment Centers within Planned Residential Land Use

If current plans to develop the Northwest Subarea as primarily residential land become a reality, a high amount of future commuter traffic may result in traffic congestion on much of Bismarck's north side. Ideally, more people would have the opportunity to find work without having to leave northwest Bismarck when traveling to their work place.

Changes in policies and/or modifications in land use plans can be adopted to promote more mixed use development northwest of Bismarck. This could reduce traffic projections, resulting in less future traffic pressure on the entire transportation system.

4. Consider Policies and New Design Standards that Promote Context Sensitive Solutions and Complete Streets

Current City of Bismarck roadway Design Standards and policies do not specifically address context sensitive solutions and complete streets practices. Design elements including right of way needs, lane widths, placement of multimodal facilities and other design elements could be reassessed in relation to future land use and environmental characteristics.

Establishment of new standards and policies requires careful consideration and stakeholder involvement that was beyond the scope of this study. Therefore, it is recommended that the City of Bismarck review current standards and policies to improve the ability for future developments to incorporate context sensitive solutions and complete streets strategies.

5. Acquire Land for Fire Station Relocation (If Applicable)

This study considers an alternative that would extend Century Avenue directly west of Tyler Parkway (with no realignment). In order for this to occur, the City would need to relocate the fire station from the west side of Tyler Parkway.

The Fire Department personnel have indicated that the Fire Department's optimum service area would benefit by relocating to south of the Divide Avenue Interchange. Available vacant locations appear to be few, and unless the City acts in the near future, the cost of acquiring the needed land may increase significantly. Therefore, if the Century Avenue direct extension option is selected, it might be in the City's best interest to acquire property for a relocated fire station sooner rather than later.

6. Acquire Land for Century Avenue Extension (If Applicable)

Corridor right of way is often acquired through the platting process. In the case of the Century Avenue extension, it is unlikely that the land would be dedicated as street right of way through the platting process. It is unlikely because the Century Avenue extension would have limited developable property on either side of the extension.

Therefore, if the Century Avenue extension is to be constructed, the City may need to purchase the right of way for the roadway corridor.

Additionally, future schools will be needed to accommodate the students located within the new developments. Bismarck School District representatives should consider the need for future schools in this area and incorporate site acquisitions in their school development plans.

11. Prepare a Policy for Roundabout Implementation

Arterial and collector street intersections can be ideal locations for placement of a roundabout. Currently, there is no City or County policy to suggest if or where roundabouts should be considered, and what steps should be taken if a roundabout becomes the preferred method for traffic control.

Without a policy in place, it is likely that developers will choose to prepare plats with insufficient right of way and to implement traffic control that has lower initial costs. This could all occur to the detriment of traffic safety and mobility, as well as reduced aesthetics and sustainability for the region. Some municipalities and state governments have adopted policies that require roundabouts to be considered along with other forms of traffic control. Some entities have even gone as far as to require that other forms of traffic control must be proven more effective than roundabouts.

It is recommended that a new City/County policy be adopted that lays out the steps for roundabout consideration, as well as right of way requirements and how future plats will accommodate them.

12. Context Sensitive Corridor Recommendations

This study recommends that future corridor studies and development proposals within the study area incorporate a Complete Streets/Context Sensitive Solutions based approach to more effectively integrate a multi-modal transportation system into the study area. Prime corridors and locations which may especially benefit from this approach include:

- River Road, where strong consideration should be given to maintaining a two lane, limited access scenic route. Implementation of land use policies to preserve this scenic resource by limiting development within eyesight of the roadway in wooded areas is encouraged.
- Clairmont Road and Ash Coulee Drive, where the future development pattern is likely to remain largely residential; and opportunities exist to create a residential avenue that enhances or establishes a strong neighborhood character similar to the Historic Cathedral District.
- All functionally classified intersections of the recommended roadways in the Study Area where there is a strong opportunity to create effective neighborhood service centers that enhance or define the character of their neighborhoods.
- The recommended roadways located between 57th Avenue, Highway 1804, 15th Street NW and 28th Street NW (in Section 12 in Hay Creek Township) where a future commercial and mixed use center is identified in the Regional Future Land Use Plan.



City Attorney

DATE: January 22, 2020
FROM: Janelle Combs, City Attorney
ITEM: Discussion on Board Conduct and Governance

I was requested to provide a basic overview on common Robert's Rules of Order governance as well as North Dakota laws that often are impacted by work such as with the Planning and Zoning Commission.

Six voting members are the quorum for any Commission meeting since you have eleven voting members.

1. To amend a motion on the table: Need motion and second, and then a simple majority vote to amend the motion; then you need to vote on the actual motion. Or the movant can ask to withdraw the motion. The chair can ask if there is any objection; if none, it is withdrawn. If there is objection, the withdrawal will be put to a vote.
2. Do not need majority if someone rises to a question of privilege (i.e. to complain about noise or heat) or rise to a point of order (i.e. protest breach of rules).
3. If you believe something is out of order without enough discussion or no actual second or a miscalculation of the votes, you can "rise to a point of order" which is one area where you do not need to be recognized by the chair before you speak.

Chair controls the meeting and controls who speaks by "recognizing" members. Discussion is not a conversation. No one should speak a second time until all who wish have spoken. Typically, once the topic is presented by staff, spoke about by the affected parties and all questions of those individuals are done, then a motion is needed before you can further discussion. Also the discussion should only occur after any public hearing is closed.

You have required findings of fact and sometimes you have conditions. Please make your motions to approve or deny based on those findings (mention that in your motion that it based on the findings, you would move to approve or else modify the findings to reject and list what you feel is not met). In addition, if staff recommends conditions, it would be helpful to indicate in your motion that approval is conditioned on the items listed in the staff report (whatever text they may be).

Open records/meetings:

1. If you meet with more five other Commissioners on a particular topic, it is a meeting that we need to disclose. Social or accidental meetings are exempt but be aware to not let the appearance of communication occur.
2. If you email or teleconference with more than five members on Commission business, it is a meeting requiring disclosure or if someone tries to speak to five you to build consensus.
3. Emails, voicemails, letters, texts, notes, etc. documenting anything relating to Planning and Zoning business is discoverable by the public. We must turn those over, even from your personal or business email address or phones. And deletion rarely ever occurs without an electronic bread crumb trail. Several AG opinions specifically call out that if substantive issues are mentioned, even if attending another committee or meeting, and any member provides an opinion regarding public business, builds support or consensus, then open meetings law are triggered.
4. If there is suspicion that you are not handing over all information, you may have to hand over electronic access to your email or phone to review in camera for anything not disclosed. If you miss something and did not disclose it, that will be an open records or meeting violation.
5. Penalties for compliance can require corrective action to announce the prior meetings and provide all of the information discussed to the public. Additionally, there can be civil and criminal penalties, including if the AG's office feels the Authority member should have known of the rules and will require that individual to be personally liable for noncompliance and those fees, without reimbursement from the City or insurance. Our errors and omissions insurance will not likely cover conduct that would rise to that level.
6. If it is kept, it is discoverable. The City will maintain the minutes and memos required under state law to remain, which is 3 years or longer if it involves certain projects. But you may have requests for any documents, especially emails or texts, if we believe you may be impacted.

If you have questions, please let Community Development or City Attorney Departments know. Jannelle is available anytime if you have a legal question on whether an issue is in compliance with her contact information below.

STAFF CONTACT INFORMATION

Jannelle Combs | City Attorney, 355-1340 or jcombs@bismarcknd.gov