

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
May 27, 2020**

The Bismarck Planning & Zoning Commission met on May 27, 2020, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Due to ongoing public health concerns related to COVID-19, the meeting was held via Zoom. Chair Schwartz presided and was present in the Tom Baker Meeting Room.

Commissioners present were 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, Will Hutchings – Planner, Daniel Nairn – Planner, Jenny Wollmuth – Planner, Hilary Balzum – Community Development Administrative Assistant and Janelle Combs – City Attorney.

MINUTES

Chair Schwartz called for consideration of the minutes of the April 22, 2020 meeting.

Commissioner Laning said Tim Atkinson needs to be corrected to Tom Atkinson on the last page of the minutes.

Staff indicated those corrections would be made prior to the signing and publication of the minutes.

MOTION: Commissioner Bakken made a motion to approve the minutes of the May 27, 2020 meeting, with the noted correction. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion.

CONSIDERATION

A. PART OF SECTIONS 19 AND 30, T139N-R80W/HAY CREEK TOWNSHIP – ZONING CHANGE

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

A. Part of Sections 19 and 30, T139N-R80W/Hay Creek Township - Zoning Change

MOTION: Based on the findings contained in the staff report, Commissioner Bakken made a motion to approve consent agenda item A calling for a public hearing

on the item as recommended by staff. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION
HERITAGE RIDGE SECOND ADDITION**

Chair Schwartz called for final consideration of the annexation of Heritage Ridge Second Addition, except for the 15th Street NW right-of-way along the western edge of the plat. The property is located in northwest Bismarck, north of 57th Avenue NW and east of 15th Street NW (part of the SW¼ of Section 8, T139N-R80W/Hay Creek Township).

Mr. Nairn 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. Nairn said based on the above findings, staff recommends approval of the annexation of Heritage Ridge Second Addition, except for the 15th Street NW right-of-way along the western edge of the plat.

Commissioner Bitner asked why the right-of-way of 15th Street NW is being left out of the annexation request. He said he was asked by a citizen why that is and he is not clear.

Mr. Nairn said it was omitted at the request of staff in order to align with the annexation of Heritage Ridge Addition, which did not include this roadway, and also because it is developed as a rural right-of-way, but could be annexed in the future.

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to recommend approval of the annexation of Heritage Ridge Second Addition, except for the 15th Street NW right-of-way along the

western edge of the plat. Commissioner Bakken seconded the motion and the motion was approved with Commissioners Bakken, Laning, Schell, Schwartz, Van Duyne and Wangen voting in favor of the motion. Commissioners Bitner and Levchak opposed the motion.

Commissioner Bitner said the south side of the first phase of Heritage Ridge Addition had an annexed right-of-way and asked what the benefit is to the public of not annexing the adjacent right-of-way.

Ms. Lee said historically when it a roadway is on the edge of the City and the other side of the roadway is outside of the City, there are issues with maintenance, similar to 43rd Avenue NE and 57th Avenue NE. Normally, right-of-way with an improved roadway is not annexed until both side of the roadway are also annexed.

Commissioner Bitner said this would fall to the responsibility of Burleigh County for the time being.

Ms. Lee responded that was correct.

**PUBLIC HEARINGS – ZONING CHANGE AND MINOR SUBDIVISION FINAL PLAT
HUNTINGTON COTTAGES SECOND ADDITION**

Chair Schwartz called for the public hearing on the zoning change from the R5-Residential zoning district to the R10-Residential zoning district and the minor subdivision final plat for Huntington Cottages Second Addition. The proposed plat is 21 lots in one block on 4.54 acres and is located in north Bismarck, west of North Washington Street, along the south side of Colt Avenue (a replat of Lot 4, Block 2, KMK Estates).

Mr. Hutchings gave an overview of the requests, including the following findings related to land use for the zoning change:

1. The proposed zoning change is in a developed area of the community and is outside of the Future Land Use Plan in the 2014 Growth Management Plan, as amended.
2. The proposed zoning change is not 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 zoning change is in the public interest and is not solely for the benefit of a single property owner.

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

Mr. Hutchings then gave the findings related to land use for the 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).
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

Mr. Hutchings said, based on these findings, staff recommends approval of the zoning change from the R5 – Residential zoning district to the R10 – Residential zoning district and the minor subdivision final plat for Huntington Cottages Second Addition, with the following conditions:

1. The developer submits a petition for improvements to Colt Avenue prior to plat recordation.
2. The developer enters into a Private Drive and Private Utility Agreement and/or Development Agreement with the City prior to plat recordation.

Chair Schwartz opened the public hearing.

Ken Nysether, SEH Inc., said the developer gathered a lot of support from the surrounding neighborhood and comments to him have been shared with the Commissioners. He said they addressed concerns with the neighboring owners as much as possible and feels the concept fits in well with their other project to the south.

Additional comments in support of the requests are attached as Exhibits A-C.

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

Commissioner Bitner asked if this is a chunk of land with existing homes or if it is undeveloped.

Mr. Hutchings replied there is one home on the west side of the plat over two lot lines that is to be demolished. He said the site plan approval will come with the condition that it be demolished also.

Commissioner Bitner said it is good to see large lot redevelopment and thinks this is a great way to handle it.

MOTION: Based on the findings contained in the staff report, Commissioner Levchak made a motion to recommend approval of the zoning change from the R5 – Residential zoning district to the R10 – Residential zoning district and the minor subdivision final plat for Huntington Cottages Second Addition, with the following conditions: 1) The developer submits a petition for improvements to Colt Avenue prior to plat recordation; and 2) The developer enters into a Private Drive and Private Utility Agreement and/or Development Agreement with the City prior to plat recordation. Commissioner Bakken seconded the motion and the motion was unanimously approved with Commissioners Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion.

PUBLIC HEARING – RURAL RESIDENTIAL LOT SPLIT LOT 7, BLOCK 1, WILLOW VIEW ESTATES SUBDIVISION

Chairman Schwartz called for the public hearing on a request for a rural residential lot split to split Lot 7, Block 1, Willow View Estates Subdivision into two parcels (to be known as 7A and 7B) for the development of one additional single-family rural residential dwelling. The property is located east of Bismarck, east of 80th Street NE, along the north side of County Highway 10.

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

1. All technical requirements for approval of a rural residential lot split have been met.
2. The resulting parcels would meet the minimum lot width, depth and area requirements of the zoning district in which it is located.
3. The Gibbs Township Board of Supervisors has not yet made a recommendation for the proposed lot split.
4. The proposed lot split is compatible with adjacent land uses.
5. The proposed lot split and the resulting parcels would not place an undue burden on existing public services and facilities.

6. The proposed lot split complies with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.
7. The proposed lot split is consistent with the master plan, other adopted plans, policies and accepted planning practice.
8. The proposed lot split would not adversely affect the public health, safety and general welfare.
9. The proposed lot split is compatible with adjacent land uses.
10. The proposed lot split and the resulting parcels would not place an undue burden on existing public services and facilities.
11. The proposed lot split complies with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance.
12. The lot split is consistent with the master plan, other adopted plans, policies and accepted planning practice.
13. The proposed lot split 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 rural residential lot split for Lot 7, Block 1, Willow View Estates Subdivision, with the following condition:

1. The existing 800 square foot accessory building, located on the proposed Lot 7B, is demolished prior to the issuance of a permit for a single-family rural residential dwelling on Lot 7B.

Commissioner Levchak said there appears to be an access easement through the driveway and asked if there is a maintenance agreement associated with this easement.

Ms. Wollmuth said there possibly could be between the two current owners.

Commissioner Levchak said he is concerned that if the property is sold and a house is built without a maintenance agreement for the shared access, there could end up being some disputes.

Ms. Wollmuth said she can share that information with the owners and their engineer can also likely relay it as well.

Chair Schwartz opened the public hearing.

Todd Marschall, Houston Engineering, said a maintenance agreement can be proposed to the owner for resolution of that concern.

Commissioner Bitner asked if there is an access easement recorded on the original plat. Mr. Marschall said there is and it was added for access to Lot 8 for the cellular communications tower which will remain there.

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

Commissioner Schell asked if there is a non-access line along Lot 7.

Ms. Wollmuth said there is a non-access line along the south line of the subdivision adjacent to County Highway 10, with the exception of the 20-foot access location.

Commissioner Levchak said he is bothered to approve this request without a maintenance agreement as part of the lot split and he thinks that should be part of the approval.

Commissioner Bitner asked how that could be added.

Chair Schwartz said it could be added as a condition to the motion to approve.

Commissioner Schell said he would view this as similar to any other plat as far as services needed and there being an understanding between the owners that it is their responsibility. He said it is not the role of the City to find a forever solution for things like this.

Ms. Combs said maintenance agreements are actually not very common, based on her title work experience in North Dakota, and said asking for it would be much more than a standard closure agreement during purchase of the property. She said because it is part of an access it must be maintained and would not be fair to pick that level of participation for the owner.

Commissioner Levchak said he understands not getting involved, he would just prefer see it written rather than understood.

Ms. Combs said because it is a platted easement it is considered to be written and so it is the responsibility of the owners to ensure the access does not get blocked.

Ms. Wollmuth added that she just looked at the underlying plat and there is not a non-access line along that subdivision; however, when the request was reviewed by Burleigh County it was understood that access would only be through the noted access point.

MOTION: Commissioner Bakken made a motion to recommend approval of the rural residential lot split for Lot 7, Block 1, Willow View Estates Subdivision, with the following condition: 1) The existing 800 square foot accessory building, located on the proposed Lot 7B, is demolished prior to the issuance of a permit for a single-family rural residential dwelling on Lot 7B. Commissioner Bitner seconded the motion and the motion was unanimously approved with

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

**PUBLIC HEARING - SPECIAL USE PERMIT
PART OF LOT 3 (TO BE KNOWN AS LOT 3A OF LOT 3), BLOCK 1,
MEADOWLARK COMMERCIAL 4TH ADDITION**

Chair Schwartz called for the public hearing on a special use permit for a drive-through in conjunction with a new fast food restaurant to be located on part of Lot 3 (to be known as Lot 3A of Lot 3) Block 1, Meadowlark Commercial 4th Addition. The property is located in north Bismarck, north of 43rd Avenue NE and east of US Highway 83, along the west side of Skyline Crossings.

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

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 is consistent with the master plan, other adopted plans, policies and accepted planning practice.
8. The proposed special use would not adversely affect the public health, safety and general welfare.

Ms. Wollmuth said, based on these findings, staff recommends approval of the special use permit for a drive-through in conjunction with a new fast food restaurant on Part of Lot 3 (to be known as Lot 3A of Lot 3), Block 1, Meadowlark Commercial 4th Addition.

Chair Schwartz opened the public hearing.

Harvey Schneider, Toman Engineering, said he concurs with Ms. Wollmuth's comments and presentation and added that the Culver's corporate office prepared this site plan and have said that about 60% of their business is drive-through orders. He added that 14 stacking spaces are being provided with an entrance off of Skyline Crossings.

Commissioner Van Duyne said she sees a lot of stacking space being provided and asked if any parking would be available directly adjacent to the building. She said the ADA spaces appear to be across the drive lane and asked if that is similar to other locations. Commissioner Van Duyne then said she sees one pedestrian crossing on the north side of the building and asked how other protective measures will be taken.

Mr. Schneider said it is comparable to the Mandan location as far as the pedestrian crossing and location of the ADA spaces. He added that they can look into adding a pedestrian crossing on the east and west sides as they prepare the official site plan for review by City staff.

Commissioner Levchak asked what the rationale is for having a crosswalk from the parking area to the building.

Mr. Schneider said that can also be asked to the Culver's corporate office, as they do have a little room for adjustment if needed.

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

MOTION: Based on the findings contained in the staff report, Commissioner Levchak made a motion to approve the special use permit for a drive-through in conjunction with a new fast food restaurant on Part of Lot 3 (to be known as Lot 3A of Lot 3), Block 1, Meadowlark Commercial 4th Addition. Commissioner Laning seconded the motion and the motion was unanimously approved with Commissioners Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion.

**PUBLIC HEARING - SPECIAL USE PERMIT
LOT 2, BLOCK 3, BREEN'S 2ND SUBDIVISION (8001 79TH AVENUE NE)**

Chair Schwartz called for the public hearing on a special use permit to increase the total area of accessory buildings to 3,165 square feet, which would allow the construction of a 2,240 square-foot accessory building, on Lot 2, Block 3, Breen's 2nd Subdivision (8001 79th Avenue NE).

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

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 Hay Creek Township Board of Supervisors has recommended approval of the proposed special use.
4. 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.
5. Adequate public facilities and services are in place or would be provided at the time of development.
6. The proposed special use would not cause a negative cumulative effect, when considered in conjunction with other uses in the immediate vicinity.
7. 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.
8. The proposed special use is consistent with the master plan, other adopted plans, policies and accepted planning practice.
9. The proposed special use would not adversely affect the public health, safety and general welfare.

Ms. Wollmuth said, based on these findings, staff recommends approval of the special use permit to increase the total area of accessory buildings to 3,165 square feet, which would allow the construction of a 2,240 square-foot accessory building, on Lot 2, Block 3, Breen's 2nd Subdivision (8001 79th Avenue NE).

Commissioner Levchak asked how large of a building could be built without a special use permit. Ms. Wollmuth said they could go up to 2,400 square feet total at this property without a special use permit. She said over 2,400 square feet and up 3,200 square feet requires a special use permit.

Chair Schwartz opened the public hearing.

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

MOTION: Based on the findings contained in the staff report, Commissioner Levchak made a motion to approve the special use permit to increase the total area of accessory buildings to 3,165 square feet, which would allow the construction of a 2,240 square-foot accessory building, on Lot 2, Block 3, Breen's 2nd Subdivision (8001 79th Avenue NE). Commissioner Laning seconded the motion and the motion was unanimously approved with Commissioners Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion.

**PUBLIC HEARING - SPECIAL USE PERMIT
LOT 9, BLOCK 2, PRAIRIE PINES FIRST SUBDIVISION (9401 CEDAR LANE)**

Chair Schwartz called for the public hearing on a special use permit to increase the total area of accessory buildings to 2,592 square feet, which would allow the construction of a 2,400 square-foot accessory building, on Lot 9, Block 2, Prairie Pines First Subdivision (9401 Cedar Lane). The property is located north of Bismarck, south of 97th Avenue NE and west of 41st Street NE, along the east side of Cedar Lane (9401 Cedar Lane).

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

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 is consistent with the master plan, other adopted plans, policies and accepted planning practice.
8. The proposed special use would not adversely affect the public health, safety and general welfare.

Ms. Wollmuth said, based on these findings, staff recommends approval of the special use permit to increase the total area of accessory buildings to 2,592 square feet, which would allow the construction of a 2,400 square-foot accessory building, on Lot 9, Block 2, Prairie Pines First Subdivision (9401 Cedar Lane).

Chair Schwartz opened the public hearing.

Written comments in support of the request are attached as Exhibits D-F.

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

Commissioner Bitner said he received a call from a concerned citizen regarding the potential for commercial activity on this property and asked if that is what the building will be used for.

Mr. Markwed, the applicant, said he does own an excavating company, but he owns other property and buildings for that equipment, and this building will be for personal use only.

MOTION: Based on the findings contained in the staff report, Commissioner Levchak made a motion to approve the special use permit to increase the total area of accessory buildings to 2,592 square feet, which would allow the construction of a 2,400 square-foot accessory building, on Lot 9, Block 2, Prairie Pines First Subdivision (9401 Cedar Lane). Commissioner Laning seconded the motion and the motion was unanimously approved with Commissioners Bakken, Bitner, Laning, Levchak, Schell, Van Duyne, Wangen and Schwartz voting in favor of the motion.

Commissioner Van Dyke joined the meeting at this time.

OTHER BUSINESS

INTRODUCTION OF NEW PLANNING AND ZONING COMMISSIONER JOHN VAN DYKE

Chair Schwartz introduced John Van Dyke as the newest member of the Bismarck Planning and Zoning Commission. He welcomed Commissioner Van Dyke and thanked him for joining this Commission.

Commissioner Van Dyke introduced himself and said he is a planner by occupation, originally from Boise, Idaho, and has a background in land use planning, and is currently working for the City of Mandan. He said he is looking forward to his role as a Planning Commissioner.

UPDATE ON REVISED ANNEXATION REQUEST – ELK RIDGE SECOND ADDITION

Ms. Lee said at the April meeting of the Bismarck Planning and Zoning Commission, a request for the annexation of Elk Ridge Second Addition was approved. She said since that time, the applicant has requested to reduce the annexation area. She said this is not a typical request, so she wanted to share it here as it is ready to proceed to the City Commission for consideration as a reduced annexation request. Ms. Lee showed an exhibit of the reduced area and said a connection to the corporate limits would still be provided, but the outer edge would not be included in the annexation. She said it would still be platted and zoned as previously approved as well.

Commissioner Levchak asked if it is common for a request to change after it has been approved.

Ms. Lee said it is not common.

Commissioner Levchak said he would prefer they stay with what they applied for rather than changing it after it has been approved.

Ms. Lee said staff did not have a concern with the reduction as it would be smaller rather than larger and staff would still have recommended approval to this Commission if it had been proposed at the reduced size Initially.

Commissioner Levchak said he is uncomfortable with a developer reducing the taxation by annexing pieces of property at a time.

Ms. Lee said many years ago it was typical to annex pieces at a time like this after the subdivision was completed.

Commissioner Levchak asked if action needs to be taken on this.

Ms. Lee said she was providing it more as an update, so it was not placed on the agenda as an action item.

Ms. Combs added this is a regular meeting so action can be taken if that is the wish of the Commission.

Commissioner Bakken asked if the rest of the property would be annexed eventually.

Ms. Lee said it would be annexed prior to development, possibly as soon as next year.

Commissioner Bakken said he is comfortable with that.

Commissioner Bitner asked how the rest would be formally annexed.

Ms. Lee said it would be submitted as a new application for approval by this Commission as an annexation of the remainder of the platted area.

Chair Schwartz asked what the preference is on how to proceed.

Ms. Lee said the request has not been to City Commission yet and would go in June unless this Commission has other preferences.

Commissioner Schell said he views this similarly as if it had gone to City Commission for approval and then a change happened there, it just happens to be earlier in the process and is a lesser request than what was originally approved.

Commissioner Laning said he agrees with that sentiment and said if it was approved first at a larger scale it should not be an issue to approve it at a smaller scale.

Chair Schwartz said he is receiving the sense that there is not a need for a motion and the request can proceed to consideration by the City Commission with the reduced annexation size.

OTHER

There was no other business to discuss at this time.

ADJOURNMENT

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 6:05 p.m. to meet again on June 24, 2020.

Respectfully submitted,



Hilary Balzum
Recording Secretary



Mike Schwartz
Chair