

BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
May 25, 2022

The Bismarck Planning & Zoning Commission met on May 25, 2022, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. The meeting was held in person and via Zoom. Chair Schwartz presided and was present in the Tom Baker Meeting Room.

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

Commissioner Kevin Martin was absent.

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

MINUTES

Chair Schwartz called for consideration of the minutes of the April 27, 2022 meeting.

MOTION: Commissioner Bakken made a motion to approve the minutes of the April 27, 2022 meeting, as presented. Commissioner Bitner seconded the motion, and it was unanimously approved with Commissioners Bakken, Bitner, Johnson, Laning, Levchak, Schell, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

CONSIDERATION

2. **FRANK ADDITION – ZONING CHANGE AND MAJOR SUBDIVISION PRELIMINARY PLAT**
3. **BLOCK 49 AND PART BLOCK 56, GOVERNOR PIERCE ADDITION – ZONING CHANGE**
4. **BLOCK 45, GOVERNOR PIERCE ADDITION – ZONING CHANGE**
5. **LOTS 1 AND 2, BLOCK 1, KILBER NORTH ADDITION FIRST REPLAT – ZONING CHANGE**
6. **LOT 7, BLOCK 41, NORTHERN PACIFIC 2ND ADDITION – ZONING CHANGE**
7. **AGENCY FOSTER HOMES FOR ADULTS – ZONING ORDINANCE TEXT AMENDMENT**
8. **FRONT YARD SETBACK IN CG AND MA ZONING DISTRICTS – ZONING ORDINANCE TEXT AMENDMENT**

MOTION: Based on the findings contained in the staff reports, Commissioner Bakken made a motion to approve consent agenda items 2-8, granting tentative approval or calling for a public hearing on the items as recommended by staff. Commissioner Laning seconded the motion, and it was unanimously approved with Commissioners Bakken, Bitner, Johnson, Laning, Levchak, Schell, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE
LOT 1, BLOCK 1, COTTONWOOD PARKVIEW ADDITION**

Chair Schwartz called for the public hearing on the zoning change from the A – Agricultural zoning district to the R10 – Residential zoning district for Tract 24A and part of Tract 24B, Section 24, T139N-R81W/West Hay Creek Township. The property is located northwest of Bismarck, west of Tyler Parkway at the western terminus of Del Rio Drive.

Mr. Nairn said the applicant has requested to modify their request and change the zoning to R5-Residential rather than R10-Residential, and because this is a reduction in density, they do not need to go back to the consideration stage of the approval process.

Mr. Nairn 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 would be able to provide necessary public services, facilities, and programs to serve any development allowed by the new zoning classification at the time the property is developed.
4. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map.
5. The zoning change is in the public interest and is not solely for the benefit of a single property owner.
6. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
7. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Mr. Nairn said, based on the above findings, staff recommends approval for the zoning change from the A – Agricultural zoning district to the R5 – Residential zoning district for Tract 24A and part of Tract 24B, Section 24, T139N-R81W/West Hay Creek Township.

Commissioner Levchak said one portion of a map shows the adjacent property as being zoned RR-Residential and another indicates it as conservation for the Future Land Use and asked why those are different.

Mr. Nairn said it is somewhat confusing in black and white and explained that the conservation area is west of the proposed project area, which itself is classified as Low Density Residential. The proposed zoning map references the rural residential zoning district while the Future Land Use Plan map identifies the future land use as conservation.

Commissioner Bakken asked if there is any reason given for why the applicant asked to reduce the density. Mr. Nairn said a petition and letter from the neighbors was obtained and submitted to be the Planning and Zoning Commission and he understand the developer has since met with the adjacent neighbors to discuss some of the concerns raised. He said after those discussions it was decided to reduce it to R5-Residential.

Chair Schwartz opened the public hearing at this time.

Landon Niemiller, Swenson Hagen & Co., said the original request was to change the zoning to R10-Residential with the intent of planning for a single-family subdivision, but with the function of more building coverage allowed on the lots with the R10 zoning. He said the R10-Residential does open up the uses to twin homes. When he met with the developer/owner and the neighbors there was more comfort with changing it to the R5-Residential zoning district instead and that would be sufficient. He said there is not a prepared subdivision at this time as they are continuing to work through a slope stability study before the plat is presented publicly.

Commissioner Laning asked how many lots or homes would be developed. Mr. Niemiller said with being limited by slope stability issues there would likely not be more than 20 lots. He said it is a tight space to work with and the number is dependent on the results of the slope stability study.

Commissioner Zent said the area is landlocked with Del Rio Drive being the only access and asked if other access points would be added. Mr. Niemiller said it is possible a lot on the north side of the property that belongs to the same owner would be used as another access point if needed.

Aaron Hummel, 3804 Powder Ridge Drive, said on behalf of the neighborhood he wanted to share some concerns and the names on the petition are of those along Powder Ridge Drive with the same concerns. He said he appreciates the meeting that was held with the developer and the neighborhood and their request to reduce the density from what was originally proposed. He said other than some potential geological and watershed concerns they hope due diligence is done here.

Written comments and a copy of the petition opposed to the change to the R10-Residential zoning district are attached as Exhibit A.

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

Commissioner Laning said he has often wondered, when there are issues with visibility, if the various property owners could not collectively purchase the property and leave it open to avoid blocking a view when that is a concern.

Commissioner Schell said the project will come before them when a plat and annexation are requested, so there would be another opportunity for discussion on the development.

MOTION: Commissioner Bakken made a motion to recommend approval of the zoning change from the A – Agricultural zoning district to the R5 – Residential zoning district for Tract 24A and part of Tract 24B, Section 24, T139N-R81W/West Hay Creek Township. Commissioner Bitner seconded the motion, and the motion was unanimously approved with Commissioners Bakken, Bitner,

Johnson, Laning, Levchak, Schell, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

**PUBLIC HEARING - SPECIAL USE PERMITS (OVERSIZED ACCESSORY BUILDING)
LOT 3, BLOCK 2, GRANDE PRAIRIE ESTATES**

Chair Schwartz called for the public hearing on a special use permit to increase the area of accessory buildings to 3,200 square feet with the construction of an 1,800 square foot accessory building on Lot 3, Block 2, Grande Prairie Estates. The property is located north of Bismarck, along the north side of 43rd Avenue NE and the south side of East Roundup Road (4355 Hillsboro Drive).

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 not provided a recommendation for 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 area of accessory buildings to 3,200 square feet with the construction of an 1,800 square foot accessory building on Lot 3, Block 2, Grande Prairie Estates, with the condition that a secondary access approach permit from East Roundup Road is granted by Burleigh County.

Commissioner Bakken asked if the building would be located on the east side of the property and outside of the shelter belt. Ms. Wollmuth said that is correct.

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 Bitner made a motion to approve the special use permit to increase the area of accessory buildings to 3,200 square feet with the construction of an 1,800 square foot accessory building on Lot 3, Block 2, Grande Prairie Estates, with the condition that a secondary access approach permit from East Roundup Road is granted by Burleigh County. Commissioner Zent seconded the motion, and it was unanimously approved with Commissioners Bakken, Bitner, Johnson, Laning, Levchak, Schell, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

OTHER BUSINESS

UPDATE ON TOGETHER 2045

Mr. Nairn said staff has worked on the Plan through winter and spring and are almost ready for the presentation of the first draft. He said they will bring it to the Advisory Committee tomorrow to review section by section and then they can release it publicly throughout the summer and fall. He said they plan on bringing it to the Planning and Zoning Commission around October for approval by the end of the year, adding there is plenty of time left to make any desired changes. Mr. Nairn said the structure of the Plan will include five elements of Shape, Connect, Inhabit, Thrive and Grow and he gave a brief overview of each. He added that they are working through the neighborhood names and did offer a survey on how to refer to the neighborhoods or their preferred nicknames so staff could continue to work through the City of Neighborhoods portion. He closed by saying staff is also trying to tie the Plan into the City's 150th celebration with looking forward toward the future to promote looking ahead to what is next.

Commissioner Laning asked if this Plan includes the various highway configurations and options as well. Mr. Nairn said they do envision part of this plan to tentatively be called the Major Street Plan which would show corridors envisioned as arterials or collectors and would not differ much from the Fringe Area Road Master Plan (FARMP). He said they do not get into a great deal of detail on transportation planning because there is already the Metropolitan Transportation Plan (MTP) through the Metropolitan Planning Organization (MPO).

Commissioner Van Duyne thanked staff for the work they have put into this project as it has been years and a tremendous job of working and sharing. She said if the MPO is in the process of updating the Metropolitan Transportation Plan (MTP) would that possibly impact the information in this Plan.

Mr. Ehreth said they try to have all of the Planning documents work together. These are offset a little bit but with this Plan they used growth projections from the previous MTP and as that gets updated every five years, this Plan likely will as well so as to stay in line with those growth projections. He added that multiple items are keying off of each other for the future of the community.

OTHER BUSINESS

Commissioner Zent said, as it relates to agenda item #5, the request for a zoning change for Lots 1 and 2, Block 1, Kilber North Addition First Replat, it appears that there is some groundbreaking being done and footings already being poured. He asked if construction for development has already started and if that is permissible while the zoning change is not approved yet.

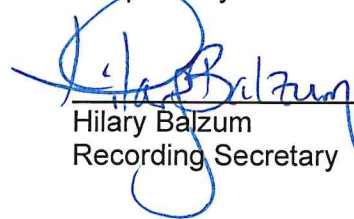
Ms. Wollmuth said there are three lots being developed in that area at this time and explained that the one adjacent to Boulder Ridge Road did have a project approved through the City's site plan process already and that lot is not included in the current zoning change request.

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 5:28 p.m. to meet again on June 22, 2022.

Respectfully submitted,



Hilary Balzum
Recording Secretary



Mike Schwartz
Chair

May 23, 2022

Bismarck Planning and Zoning Commission
221 North 5th Street
P.O. Box 5503
Bismarck, North Dakota 58506-5503

Subject: Rezoning of Tract 24A and part of Tract 24B, Section 24, T139N-R81W/West Hay Creek Township

Dear Members of the Committee,

We write to you today in opposition to the proposal to rezone the referenced tract of land from Agricultural (A) to Single and two-family residential (R10). We are landowners and homeowners adjacent to the tract which is being proposed for rezoning. We have made a significant investment in the building of our homes and one of the most valuable things about our homes has been the beautiful view of the Missouri River Valley, a view that would be destroyed by the proposed development. Many of us made the decision to purchase or build in this area due to the zoning that was in place at the time of purchase and, right or wrong, based on the commentary provided by selling agents. Thus, many of us decided to build our "forever home" here and are devastated to learn of this news. However, our concerns about this development go way beyond just the loss of the view.

The proposed use of this land (R10) is a denser zoning classification than all the adjacent properties, for which we see no good reason and only disadvantages for the existing neighborhood property owners, as well as significant downsides for the geology and watershed of the area. We believe there are several challenges that would come with development of the proposed project site, which we have outlined in this letter.

Inappropriate zoning classification

The future land use map shows the area to the west adjacent to the project area as "Conservation," an acknowledgement of the unique characteristics of the site on the bluffs of the Missouri River Valley. It makes no sense, then, that a buffer zone of R10 designation is needed between the existing R5 zoning area and this conservation zone. Typically, from a city planning perspective, more dense zoning types are used as a buffer as you move toward more major collector and arterial roads or denser development, not as a transition from low density to no density zones.

According to the definitions in the 2014 Bismarck Growth Management Plan, "Low Density Residential" (which this area is identified as) corresponds to "R5 zoning district" (page 21). Why the Community Development Department Staff Report shows that the proposed use of R10 "conforms to this land use designation" of low density residential, then, is not understood. According to the Growth Management Plan, R10 use would be listed as "Medium Density Residential." Needless to say, this proposed zoning of R10 comes as a big shock, and could not have been disclosed prior, even if selling agents had been more upfront with us about the potential development plans for this area.

Impact to existing property values

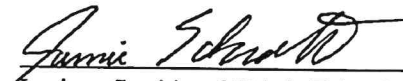
It's hard to quantify what the financial impact will be, but we think it's pretty safe to say there will be a significant negative impact. We have seen sale prices for homes on the street hundreds of thousands of dollars higher than the initial building cost, despite being less than 10 years old. We attribute that to the views, something which people have been willing to pay a premium for. That view will now be lost, and with it, a substantial value.

Further economic impact to adjacent property owners

We would expect that the covenant restrictions that currently apply to the Promontory Point developments would also apply in this area. These restrictions prohibit the use of fences except when used in conjunction with a pool for safety purposes. So, there will also be a loss of privacy that will need to be dealt with through additional window coverings, plantings, etc. Noise and dust mitigation is also a concern and will need to be dealt with.

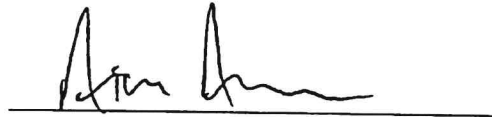
In summary, there are many reasons why R10 zoning of this land is problematic, and therefore we humbly request that the committee reject the proposal for R10 zoning of this land. We ask that you consider changing the designation on the future land use map to "Conservation" in line with the adjacent area to the west and for the geologic and watershed reasons that may exist. We believe this is a more appropriate zoning classification for this space. If development cannot be avoided altogether, we ask that a less dense classification of R5, with larger lots that would preserve the bulk of the vegetation, together with height restrictions limiting development to structures no more than a single story in height be implemented. There are further geologic and watershed issues of concern that will need to be adequately addressed in future phases of development. We ask that the city do its due diligence to represent the best interest of the city, residents of the affected neighborhood, the resident living below the developed area, and future generations. We sincerely hope that the desires of the existing residents be considered on this matter.

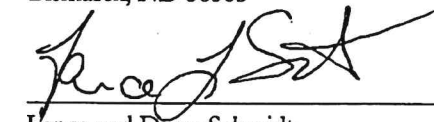
Sincerely,

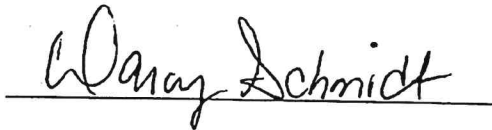

Jamison (Jamie) and Kristin Eckroth
3702 Powder Ridge Drive
Bismarck, ND 58503



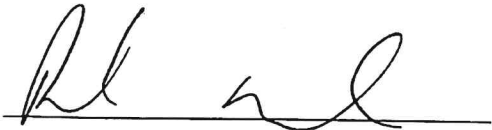

Kristopher and Nicole Ahmann
3714 Powder Ridge Drive
Bismarck, ND 58503




Lance and Darcy Schmidt
3720 Powder Ridge Drive
Bismarck, ND 58503



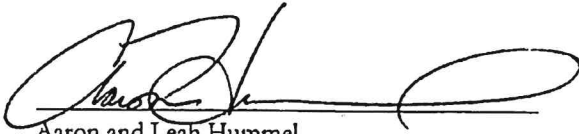

Christopher and Rachel Marohl
3726 Powder Ridge Drive
Bismarck, ND 58503



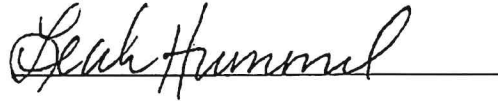
Bismarck Planning and Zoning Commission Letter May 25th Meeting



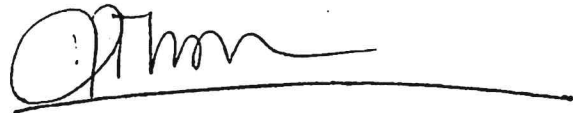
Cody and Julia Carter
3812 Powder Ridge Drive
Bismarck, ND 58503



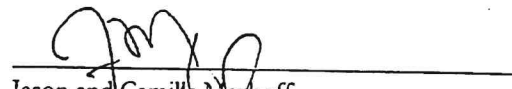
Aaron and Leah Hummel
3804 Powder Ridge Drive
Bismarck, ND 58503



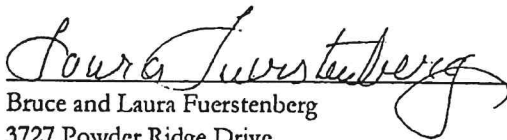
Nick & Jessalyn Thompson
3715 Powder Ridge Dr.
Bismarck, ND 58503



Rodhan and Lina Khthir
3811 Powder Ridge Drive
Bismarck, ND 58503



Jason and Camille Meyhoff
3900 Powder Ridge Drive
Bismarck, ND 58503



Bruce and Laura Fuerstenberg
3727 Powder Ridge Drive
Bismarck, ND 58503