

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
April 26, 2023**

The Bismarck Planning & Zoning Commission met on April 26, 2023, 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 Brian Bitner, Cole Johnson, Paul Levchak, Daniel Lukens, Gabe Schell, Mike Schmitz, Wendy Van Duyne, Trent Wangen, and Paul Zent.

Staff members present were Jannelle Combs – City Attorney, Ben Ehreth – Community Development Director, Sarah Fricke – Senior Administrative Assistant, Daniel Nairn – Senior Planner and Jenny Wollmuth – Senior Planner.

MINUTES

Chair Schwartz called for consideration of the minutes of the March 22, 2023 meeting.

MOTION: Commissioner Wangen made a motion to approve the minutes of the March 22, 2023 meeting, as presented. Commissioner Schmitz seconded the motion, and it was unanimously approved with Commissioners Bitner, Johnson, Levchak, Lukens, Schell, Schmitz, Schwartz, Van Duyne, Wangen, and Zent voting in favor of the motion.

CONSIDERATION

2. LOT 1, BLOCK 1, RIVER OF HOPE ADDITION AND LOT 1, BLOCK 6, MEADOWLARK COMMERCIAL THIRD ADDITION – ZONING CHANGE

MOTION: Based on the findings contained in the staff report, Commissioner Bitner made a motion to approve consent agenda item 2, calling for a public hearing on the item as recommended by staff. Commissioner Zent seconded the motion, and it was unanimously approved with Commissioners Johnson, Levchak, Lukens, Schell, Schmitz, Schwartz, Wangen, and Zent voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE AND MAJOR SUBDIVISION FINAL PLAT
TALL PINES SUBDIVISION, LOTS 1-3, BLOCK 1**

Chair Schwartz called for the public hearing on the zoning change and major subdivision final plat titled Tall Pines Subdivision. The property is located in Northeast of Bismarck, north of 43rd Avenue NE and east of 52nd Street on the north side of 57th Avenue NE.

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 of Together 2045.
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; and
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Mr. Nairn then gave the findings related to land use for the major subdivision 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 Major Street Plan, as amended;
4. The City Engineer has conditionally approved the Post-Construction Stormwater Management Permit (PCSMP)
5. A neighborhood park agreement including this plat was approved by the Bismarck Parks and Recreation District in conjunction with Silver Ranch Third Addition;
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; and
11. The proposed subdivision would not adversely affect the public health, safety and general welfare.

Mr. Nairn said, based on the above findings, staff recommends approval of a zoning change from the A – Agricultural to the RR5 – Residential and Conditional RR5 – Residential zoning districts and approval for the final plat for Tall Pines Subdivision, including granting of a waiver from the requirements related to ghost platting in the Urban Service Area Boundary, with the understanding that Lot 2, Block 1, Tall Pines would be annexed into the city limits when municipal services are available and adjacent to the subdivision.

Commissioner Levchak asked if letters were mailed to adjacent property owners. Mr. Nairn stated letters were mailed and no comments have been received from neighbors, but a resolution to recommend approval was received from Gibbs Township.

Chair Schwartz opened the public hearing.

Eric Wagner, the applicant, appeared to answer any questions.

Commissioner Levchak asked whether the religious institution was moving from a different location. Mr. Wagner stated they are currently using a building in Mandan.

Commissioner Zent asked about the steepness on the east side of the lot. Mr. Wagner stated the area had been mostly filled.

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

MOTION: Commissioner Levchak made a motion to recommend approval of the zoning change from the A – Agricultural to the RR5 – Residential and Conditional RR5 – Residential zoning districts and approval for the final plat for Tall Pines Subdivision, including granting of a waiver from the requirements related to ghost platting in the Urban Service Area Boundary, with the understanding that Lot 2, Block 1, Tall Pines would be annexed into the city limits when municipal services are available and adjacent to the subdivision. Commissioner Bitner seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Johnson, Levchak, Lukens, Schell, Schmitz, Schwartz, Van Duyne, Wangen, and Zent voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT - DATA CENTER EXPRESSWAY INDUSTRIAL PARK FIRST REPLAT, LOT 2, BLOCK 1

Chair Schwartz called for the public hearing on a special use permit to construct a data center on Lot 2, Block 1, Expressway Industrial Park First Replat. The property is located in southeast Bismarck, south of East Bismarck Expressway on the southwest corner of Apple Creek Road and Yegen Road.

Mr. Nairn gave an overview of the request, including the following findings related to land use for the special use permit:

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; and
8. The proposed special use would not adversely affect the public health, safety and general welfare.

Commissioner Levchak asked if any negative comments were received from adjacent property owners. Mr. Nairn replied that no public comments were received.

Chair Schwartz opened the public hearing.

Chair Schwartz asked whether the shop condos would be used by the owners or, if not, how would they be used.

Commissioner Schell then asked about the facilities power needs and if the utilities could keep up with the demand or if new infrastructure would be necessary.

Landon Niemiller from Swenson Hagen & Co. came forward to note that the applicant was present to answer any questions or address any concerns.

The applicant, Colton Shoults with Northern Immersion, LLC, came forward to state that the shop condos would be used by the owners of the property at this time. He then responded to Commissioner Schell's concern with the facility's power needs by explaining that the area was chosen based on the available utilities and no new infrastructure will be required. He then shared that the company has several operations throughout North Dakota and surrounding states, and they would like to have their headquarters in Bismarck for testing new immersion cooling systems.

Commissioner Levchak asked if this Bismarck location would be doing any manufacturing and if they would be staffing the facility. Mr. Shoults replied that immersion cooling tanks

would be manufactured at the facility to cool bitcoin monitors, and they may be hiring additional staff members.

Commissioner Zent asked about the nature of the data centers and whether data would be stored on site. Mr. Shoults explained that the data center would not be used for data storage but rather for mining of cryptocurrency, which was briefly explained. He further explained that the immersion cooling product would be used to support this data center operation.

Chair Schwartz asked if site growth is predicted. Mr. Shoults said the business would not be growing in this area.

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

MOTION: Based on the findings contained in the staff report, Commissioner Wangen made a motion to recommend approval of special use permit to construct a data center on Lot 2, Block 1, Expressway Industrial Park First Replat. Commissioner Levchak seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Johnson, Levchak, Lukens, Schell, Schmitz, Schwartz, Van Duyne, Wangen, and Zent voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT - DATA CENTER HAY CREEK SUBSTATION ADDITION, LOT 1, BLOCK 1

Chair Schwartz called for the public hearing on a special use permit to construct a data center on Lot 1, Block 1, Hay Creek Substation Addition. The property is located in east Bismarck, east of North Bismarck Expressway and north of East Main Avenue.

Mr. Nairn gave an overview of the request, including the following findings related to land use for the special use permit:

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; and
8. The proposed special use would not adversely affect the public health, safety and general welfare.

Chair Schwartz opened the public hearing.

Gary Emineth, with Top Speed Energy, came forward to answer any questions or respond to any concerns.

Commissioner Schell asked if water and sewer municipal services would be required. Mr. Emineth replied that because no regular staff will be on site, no water or sewer services are necessary. Commissioner Schell also asked for confirmation that the applicant would be building outside of the regulatory floodplain. Mr. Emineth responded that the pad was built up initially by Central Power and that the building site is outside of the regulatory floodplain.

Commissioner Levchak asked about plans for power interruptions and their affect on operations. Mr. Emineth explained that there is a contractual agreement between Top Speed Energy and Capital Electric that allows the utility to reduce power to the data center during periods of peak demand.

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

MOTION: Based on the findings contained in the staff report, Commissioner Schmitz made a motion to recommend approval of special use permit to construct a data center on Lot 1, Block 1, Hay Creek Substation Addition. Commissioner Levchak seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Johnson, Levchak, Lukens, Schell, Schmitz, Schwartz, Van Duyne, Wangen, and Zent voting in favor of the motion.

PUBLIC HEARING - SPECIAL USE PERMIT (OVERSIZED ACCESSORY BUILDING) LOT 12, BLOCK 1, BROOKFIELD ESTATES

Chair Schwartz called for the public hearing on a special use permit to increase the total allowable area of accessory buildings up to 3,200 square feet on Lot 12, Block 1, Brookfield Estates. The property is located east of Bismarck, between 66th Street NE and 80th Street NE, along the west side of West Bristol Drive (930 West Bristol 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 be consistent with the general intent and purpose of the zoning ordinance.
2. The proposed special use would be compatible with adjacent land uses and zoning if recommended conditions are met.
3. The Gibbs Township Board of Supervisors has been notified of the proposed special use but has recommended tentative approval of the request.

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 if recommended conditions are met.
9. The proposed special use would not adversely affect the public health, safety, and general welfare if recommended conditions are met.

Ms. Wollmuth noted that the applicant intends to utilize an existing second approach along the north side of the property to gain access to the proposed accessory building and has received a second approach permit from Burleigh County. Therefore the condition of approval outlined in this staff report, that a second approach permit is required is no longer needed.

Ms. Wollmuth said, based on these findings, staff recommends approval of the special use permit to increase the total allowable area of accessory buildings up to 3,200 square feet on Lot 12, Block 1, Brookfield Estates.

Commissioner Levchak asked if there were any comments from adjacent property owners. Ms. Wollmuth stated there were no comments received.

Chair Schwartz opened the public hearing.

The applicant, Nathan Bernhardt, came forward to answer any questions or respond to any comments.

Commissioner Levchak asked if the building would be used commercially. Mr. Bernhardt said it would be used only for personal storage.

Commissioner Schmitz asked if Gibbs Township had any comments. Gibbs representative, Richard Sander said Gibbs Township has no reservations about the request.

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

MOTION: Based on the findings contained in the staff report, Commissioner Bitner made a motion to recommend approval of the special use permit to increase the total allowable area of accessory buildings up to 3,200 square feet on Lot 12, Block 1, Brookfield Estates. Commissioner Zent seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Johnson,

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

OTHER BUSINESS

Mr. Nairn came forward to notify the commissioners that the staff report format would be changing slightly starting in May 2023. The "Required Findings" will now include references to the ordinance and comprehensive plan standards and staff response to each. Staff can be contacted if there are any questions.

Commissioner Zent asked if these changes would be on all projects. Mr. Nairn responded that the format for all projects will include these changes, but the agenda items will be in the same order.

ADJOURNMENT

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 5:41 p.m. to meet again on May 24, 2023.

Respectfully submitted,



Sarah Fricke
Recording Secretary

Mike Schwartz
Chair