

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
August 23, 2023**

The Bismarck Planning & Zoning Commission met on August 23, 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 Mike Schwartz presided and was present in the Tom Baker Meeting Room.

Commissioners present were Robert Field, Cole Johnson, Paul Levchak, Daniel Lukens, Gabe Schell, Mike Schmitz, Trent Wangen, and Paul Zent.

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

MINUTES

Chair Schwartz called for consideration of the minutes of the July 26, 2023 meeting.

MOTION: Commissioner Zent made a motion to approve the minutes of the July 26, 2023 meeting, as presented. Commissioner Lukens seconded the motion, and it was unanimously approved with Commissioners Field, Johnson, Levchak, Lukens, Schell, Schmitz, Schwartz, Wangen, and Zent voting in favor of the motion.

CONSIDERATION

**2. PARADISE VALLEY SECOND ADDITION - ZONING CHANGE AND MAJOR
SUBDIVISION PRELIMINARY PLAT**

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

**PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT
BODEN ADDITION FIRST REPLAT**

Chair Schwartz called for the public hearing on a minor subdivision final plat for Boden Addition First Replat. The property is located in northwest Bismarck, east of North Washington Street and west of Basalt Drive, along the south side of East Lasalle Drive.

Mr. Johnson gave an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the minor subdivision plat would not adversely impact the public health, safety, and general welfare.

Mr. Johnson said, based on the findings, staff recommends approval of the minor subdivision final plat of Boden Addition First Replat.

Chair Schwartz opened the public hearing.

Landon Niemiller with Swenson Hagen and Co. came forward to explain their plan to reduce the number of lots from ten to eight to allow larger twin homes.

Chair Schwartz closed the public hearing, as there were no further comments.

MOTION: Based on the findings contained in the staff report, Commissioner Levchak made a motion to recommend approval of the minor subdivision final plat for Boden Addition First Replat. Commissioner Johnson seconded the motion, and the motion was unanimously approved with Commissioners Field, Johnson, Levchak, Lukens, Schell, Schmitz, Schwartz, Wangen, and Zent voting in favor of the motion.

PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT SILVER RANCH THIRD ADDITION FIRST REPLAT

Chair Schwartz called for the public hearing on a minor subdivision final plat for Silver Ranch Third Addition First Replat. The property is located in northeast Bismarck, north of 43rd Avenue NE and east of 52nd Street NE along the north side of Welder Avenue.

Mr. Nairn provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the proposed minor subdivision final plat would not adversely impact the public health, safety, and general welfare.

Mr. Nairn said, based on the findings, staff recommends approval of the minor subdivision final plat for Silver Ranch Third Addition First Replat.

Commissioner Levchak questioned if the rural residential home to the north of the property had shown any interest in the proposed request. Mr. Nairn replied that no comments had been received from any adjacent property owners.

Chair Schwartz opened the public hearing.

Landon Niemiller with Swenson Hagen & Co. came forward to explain that adjusting the property lines within this area and creating additional lots required a replat.

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

Commissioner Schell stated that, with the additional lots, capital utility charges will apply.

MOTION: Based on the findings contained in the staff report, Commissioner Wangen made a motion to recommend approval of the minor subdivision final plat for Silver Ranch Third Addition First Replat Addition First Replat. Commissioner Johnson seconded the motion, and the motion was unanimously approved

with Commissioners Field, Johnson, Levchak, Lukens, Schell, Schmitz, Schwartz, Wangen, and Zent voting in favor of the motion.

**PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT
TREE TOP SECOND ADDITION**

Commissioner Schwartz called for the public hearing on a minor subdivision final plat for Tree Top Second Addition. The property is located in north central Bismarck, in the southwest quadrant of the intersection of US Highway 83 NW and 57th Ave NE.

Mr. Johnson provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the proposed minor subdivision final plat would not adversely impact the public health, safety, and general welfare.

Mr. Johnson said, based on the findings, staff recommends approval of the minor subdivision final plat for Tree Top Second Addition.

Commissioner Schell questioned the dead end on the private road and if there would be access from the south.

Chair Schwartz opened the public hearing.

Brad Krogstad with KLJ came forward to explain that they have worked with the property owner to the south, Furniture Row, and that they agree with the plans. They are in the process of drafting paperwork reflecting their agreement to a condition to record an easement prior to development.

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

Commissioner Schell stated that with the additional lots, capital utility charges will apply.

MOTION: Based on the findings contained in the staff report, Commissioner Levchak made a motion to recommend approval of the minor subdivision final plat of Tree Top Second Addition. Commissioner Zent seconded the motion, and the motion was unanimously approved with Commissioners Field, Johnson, Levchak, Lukens, Schell, Schmitz, Schwartz, Wangen, and Zent voting in favor of the motion.

**PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT
PLANNED UNIT DEVELOPMENT AMENDMENT
MISTY WATERS SECOND REPLAT**

Chair Schwartz called for the public hearing on a minor subdivision final plat and planned unit development amendment of Misty Waters Second Addition. The property is located northwest of Bismarck, west of River Road along the west side of Burnt Creek Loop.

Ms. Wollmuth provided an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the proposed minor subdivision final plat and planned unit development amendment would not adversely impact the public health, safety, and general welfare.

Ms. Wollmuth said, based on the findings, staff recommends approval the minor subdivision final plat and planned unit development amendment of Misty Waters Second Addition, with the following conditions:

1. The development must generally conform to the site plan submitted with the application, including building locations.
2. A separate easement document for landscaping within the Burnt Creek Loop right-of-way is approved / accepted by the Burleigh County Commission and recorded prior to recordation of the final plat.

Commissioner Schmitz asked that if water and sewer were not permitted and floor drains were, where would the floor drains drain to.

Commissioner Schell asked staff to elaborate on the reasoning behind not wanting to allow water and sewer in each unit. Ms. Wollmuth stated that with water and sewer these units may easily evolve into inappropriate uses such as businesses and dwelling units.

Chair Schwartz questioned the reason for the request for a PUD rather than commercial. Ms. Wollmuth replied that the property is currently zoned PUD – Planned Unit Development, and that storage units are permitted within industrial zoning districts. She went on to say that rezoning a property next to existing residential uses to industrial would not be appropriate.

Chair Schwartz opened the public hearing.

Missy Moritz, the applicant, came forward to explain the neighborhood's need for these storage units and request allowance to include water and sewer hookups. She then described a lack of restrooms for unit owners.

Dave Tschider came forward to describe security and maintenance concerns the applicant has if water and sewer are not permitted. He added that a landscape buffer along the north and east sides of the proposed development would be installed to provide a buffer from the existing residential properties.

Commissioner Levchak expressed concern with the floor drains contaminating the river.

Commissioner Schmitz asked if the applicant would be satisfied with water and sewer connections restricted only to one sink and one toilet.

Commissioner Lukens questioned if staff was aware of the applicant's request of water and sewer. Ms. Wollmuth replied that staff was aware but is not supportive of the individual units having water and sewer.

Chair Schwartz asked why the proposed storage units would be separate from the HOA. Ms. Moritz responded that she doesn't feel the residents of Misty Waters should have to be responsible for supervising the units and that the property would have its own HOA, covenants, and funds. Chair Schwartz then asked if the units would be strictly for the residents of Misty Waters. Ms. Moritz stated the units would be available for Misty Waters residents first and then any remaining for the rest of the community.

Harvey Schneider approached to explain that the sewer are planned to tie into the existing sewer system managed by South Central Regional Water District. There is no design plan for providing floor drains in the units without water and sewer. Mr. Schneider stated a possibility of adding a holding tank for floor drains if the commission decided not to allow water and sewer.

Dave Tschider came forward again to explain that the covenants include provisions to avoid excessive noise, showers and living quarters and stated additional requirements can be added.

Commissioner Zent asked how many units are planned. Ms. Moritz responded that with 32 units planned, there would be no room for expansion and that a communal bathroom carries the risk of vandalism and maintenance responsibility would fall on the HOA.

Commissioner Wangen asked if there was any opposition from the residents of the area. Ms. Moritz said there was none.

Chair Schwartz asked if Ms. Moritz lived on site and if she was prepared to take responsibility to ensure the units were in compliance with the proposed covenants. Ms. Moritz noted that she does not live on-site but security cameras would be installed and would be running 24 hours a day and she will have access to them at any time.

Steve McCormick came forward and stated Misty Waters has provided millions of dollars in tax revenue to both the city and the county. He explained the need for bathrooms in the units and stated that a storage unit facility is most appropriate for this property. He then stated that the Misty Waters HOA would have the final say over the storage unit HOA.

Doug Schmidt, the Vice President of the Misty Waters HOA board of directors, came forward in support of the project and indicated the board supports the project with the bylaws and covenants.

Pat Spillman, a resident of Misty Waters, came forward to address issues in the Misty Waters community he feels should be addressed prior to the storage unit project moving forward. Mr. Spillman spoke of setback requirements from the Missouri River and stated he believes the units do not meet those requirements. He then stated he spoke with seven different neighbors that had not been notified of the project.

Commissioner Field addressed Mr. Spillman by stating holding this project would not solve other problems he has with the development.

Mr. McCormick spoke again about the security cameras being effective in the neighborhood in the past.

Mr. Schmidt came forward to tell the commission that the board voted to approve shop condos at this location at last year's annual meeting, but they have not met on this project specifically.

Logan Thompson, the adjacent neighbor to the north of the project, supports the project including the water and sewer hook ups.

Tom Ault, an 11-year resident of Misty Waters, spoke in support of the project and stated that the value of the units will decrease if they do not include water and sewer.

Commissioner Levchak made a motion to continue the public hearing. The motion failed with no second.

Further discussion was held regarding delays in construction; parking spaces; and the process of changing the PUD amendment document to reflect the Commission's wishes.

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

MOTION: Based on the findings contained in the staff report and arguments made by the applicant, Commissioner Schmitz made a motion to recommend approval of the minor subdivision final plat and planned unit development amendment to include allowance of one toilet and one sink in each storage unit and the conditions indicated in the staff report: The development must generally conform to the site plan submitted with the application, including building locations; and a separate easement document for landscaping within the Burnt Creek Loop right-of-way is approved / accepted by the Burleigh County Commission and recorded prior to recordation of the final plat, for Misty Waters Second Replat. Commissioner Field seconded the motion, and the motion was approved with Commissioners Field, Johnson, Lukens, Schell, Schmitz, Wangen, and Zent voting in favor of the motion. Commissioners Levchak and Schwartz voted against the motion.

Mayor Schmidt suggested that staff could make changes required to meet the intent of the motion without a need to return to the Planning and Zoning Commission for further review.

PUBLIC HEARING - SPECIAL USE PERMIT (DRIVE-THROUGH) JACKS FIRST ADDITION LOT 3, BLOCK 1

Chair Schwartz called for the public hearing on a special use permit to allow a drive-through in conjunction with a fast-food restaurant on Lot 3, Block 1, Jacks First Addition. The property is located in south Bismarck, in the southwest quadrant of the intersection of East Bismarck Expressway and South 11th Street.

Ms. Wollmuth gave an overview of the request and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the proposed special use permit would not adversely impact the public health, safety, and general welfare.

Ms. Wollmuth said, based on the findings, staff recommends approval of the proposed special use permit to allow a drive-through in conjunction with a fast-food restaurant on Lot 3, Block 1, Jacks First Addition, with the following condition:

1. A site plan for site development will not be approved and a building permit will not be issued until the easement is released as proposed.

Chair Schwartz opened the public hearing.

Commissioner Zent asked for the name of the restaurant. The applicant, Andrew Johnson, prefers not to reveal the name but shared that it is a fried chicken franchise.

Commissioner Schell stated that the planned drive-through wraps around the building and a traffic impact study will need to be submitted for review by the city and the North Dakota Department of Transportation prior to site plan approval.

The applicant, Mr. Johnson, stated he has had conversations with the City Engineering department regarding traffic studies and he is aware of all requirements.

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

MOTION: Based on the findings contained in the staff report, Commissioner Wangen made a motion to approve of the special use permit to allow a drive-through in conjunction with a fast-food restaurant on Lot 3, Block 1, Jacks First Addition with the condition that a site plan for site development will not be approved and a building permit will not be issued until the easement is released as proposed. Commissioner Johnson seconded the motion, and the motion was unanimously approved with Commissioners Field, Johnson, Levchak, Lukens, Schell, Schmitz, Schwartz, Wangen, and Zent voting in favor of the motion.

PUBLIC HEARING – 2023 GROWTH PHASING PLAN AMENDMENT

Chair Schwartz called for the public hearing on a proposed amendment to the Growth Phasing Plan.

Mr. Nairn gave an overview of the amendments including the purpose, analysis, function, and priorities. Studies were performed on historical annexations, projections for growth, and the available capacity of land in various areas to meet the growth trends.

Five areas of the map are proposed to change, as outlined in the staff report. The amendment will also change the names of the areas of the plan from Annexed Priority, Expansion Ready, and Expansion Future to Annexed Priority 1, Expansion Priority 2, and Expansion Priority 3, respectively, as well as the definition of Expansion Priority 2.

Chair Schwartz opened the public hearing.

Commissioner Wangen questioned if this proposal is related to any ETA adjustments. Mr. Nairn replied that this is not directly related, but the ETA boundaries are being discussed and this plan may inform those discussions.

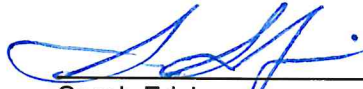
There being no further comment, Chair Schwartz closed the public hearing.

OTHER BUSINESS

ADJOURNMENT

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 7:02 p.m. to meet again on September 27, 2023.

Respectfully submitted,



Sarah Fricke
Recording Secretary



Mike Schwartz
Chair