

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
December 18, 2024**

The Bismarck Planning & Zoning Commission met on December 18, 2024, 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. Dakota Media Access was present to record the meeting and archive on freetv.org for public viewing. Chair Schwartz presided and was present in the Tom Baker Meeting Room.

Commissioners present were Brian Bitner (via Zoom), Robert Field, Cole Johnson, Amber Larson, Daniel Lukens, Gabe Schell, Mike Schmitz, Mike Schwartz, Sheldon Sivak, Trent Wangen, and Paul Zent.

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

MINUTES

Chair Schwartz called for consideration of the minutes of the November 20, 2024 meeting.

MOTION: Commissioner Zent made a motion to approve the minutes of the November 20, 2024 meeting, as presented. Commissioner Larson seconded the motion, and it was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

CONSIDERATION

**2A. FUELLER FOUNTAIN SUBDIVISION
PRELIMINARY PLAT**

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

**PUBLIC HEARING – SYKES SECOND ADDITION
MINOR SUBDIVISION FINAL PLAT**

Chair Schwartz called for the public hearing on the minor subdivision final plat titled Sykes Second Addition. The property is located in southeast Bismarck, south of Airway Avenue and east of University Drive, in the northwest quadrant of the intersection of Burlington Drive and Wanchena Way (Lot 2A and Lot 2B of Lot 2, Block 1, Sykes Addition).

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 minor plat would not adversely impact the public health, safety, and general welfare.

Ms. Wollmuth explained that the applicant and their consultant received notifications and updates throughout the application process. North Dakota Century Code and the City's Zoning ordinance require a certified letter be sent to the applicant notifying them of the public hearing. The zoning ordinance requires this letter be sent no later than 10 days before the public hearing. Unfortunately, the certified letter was not sent out 10 days prior to the hearing and did not meet this requirement. As such staff's recommendation is that the public hearing be continued to the January 22nd meeting.

The applicant and their consultant are aware of this error and the required certified letter has already been sent.

Ms. Wollmuth said, based on the findings contained in the staff report, Staff recommends the public hearing for the minor subdivision final plat for Sykes Second Addition be continued to the January 22, 2025 Planning and Zoning Commission meeting to ensure proper applicant notification requirements are met.

Chair Schwartz opened the public hearing.

Landon Niemiller – Swenson Hagen & Co expressed that the delay will not be an issue for the applicant.

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

MOTION: Based on staff's recommendation, Commissioner Schmitz made a motion to continue the public hearing on the minor subdivision final plat titled Sykes Second Addition. Commissioner Bitner seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

PUBLIC HEARING – BOULDER RIDGE FIRST ADDITION, PART OF LOT 27, BLOCK 1 ZONING MAP AMENDMENT

Chair Schwartz called for the public hearing on the zoning map amendment from the CA – Commercial zoning district to the CG – Commercial zoning district on Part of Lot 27, Block 1, Boulder Ridge First Addition. The property is located in northwest Bismarck, in the northeast quadrant of the intersection of North Washington Street and 43rd Avenue NE.

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 zoning map amendment would not adversely impact the public health, safety, and general welfare.

Ms. Wollmuth said, based on the findings contained in the staff report, staff recommends approval of the zoning map amendment from the CA – Commercial zoning district to the CG – Commercial zoning district on Part of Lot 27, Block 1, Boulder Ridge First Addition.

Chair Schwartz opened the public hearing.

Landon Niemiller – Swenson Hagen & Co. explained that the line dividing the CG – Commercial and CA - Commercial zoning designations aligns to match the existing office spaces to the north and separating potential higher intensity commercial uses from the nearby residential uses.

Craig Thurow, a neighboring property owner asked for the difference between CA – Commercial and CG – Commercial. Ms. Wollmuth explained that CG is a higher intensity commercial zoning which allows larger businesses and offers more options.

Mr. Thurow then asked what will happen with the existing easement. Mr. Niemiller explained that Lots 26 and 27 have a private easement which will likely become an access point.

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

Commissioner Schell asked staff if the applicant only plans to change a portion of the land. Ms. Wollmuth explained that yes, only the western portion of Lot 27 is proposed to be rezoned and there is currently a lot modification in process to split Lot 27 into two parcels. She stated that the eastern portion of Lot 27 would remain zoned CA – Commercial and be combined with Lot 26 to the east.

MOTION: Based on the findings contained in the staff report, Commissioner Wangen made a motion to approve the zoning map amendment from the CA – Commercial zoning district to the CG – Commercial zoning district on Part of Lot 27, Block 1, Boulder Ridge First Addition. Commissioner Johnson seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

PUBLIC HEARING – NORTHERN PACIFIC ADDITION, PART OF LOT 3, BLOCK 4 ZONING MAP AMENDMENT

Chair Schwartz called for the public hearing on a zoning map amendment from the R5 – Residential zoning district to the RM30 – Residential zoning district on the South 105 feet of the East half of Lot 3, Block 4, Northern Pacific Addition. The property is located in central Bismarck, on the north side of East Avenue C between North 1st Street and North 2nd Street.

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 zoning map amendment would not adversely impact the public health, safety, and general welfare.

Mr. Johnson said, based on the findings contained in the staff report, staff recommends approval of the zoning map amendment from the R5 – Residential zoning district to the RM30 – Residential zoning district on the South 105 feet of the East half of Lot 3, Block 4, Northern Pacific Addition.

Commissioner Schell asked if there exists conforming and non-conforming zoning in the area. Mr. Johnson explained that, yes, there are non-conforming uses in this general area.

Chair Schwarz asked how far to the east the RM30 zoning extends. Mr. Johnson stated that the RM30 zoning extends several blocks to the east.

Chair Schwartz opened the public hearing.

Josh Schaffner – KPJ Properties told the commission that previously there were two structures in this area that had experienced fire damage and were deteriorating and these structures have been removed. They are hoping to expand by building up, rather than out.

Commissioner Schell mentioned this is in the historic Cathedral district of the City and asked if the architectural plans would match the area. Mr. Schaffner answered that they are waiting for approval before drawing architectural plans and the design of the intended structure has yet to be determined.

Secretary's Note: This property is outside the boundary of the National Register of Historic Places Cathedral Area Historic District.

Chair Schwartz asked how many units are intended and expressed concern with parking issues which was included in a written public comment submitted to the commission before the hearing. Mr. Schaffner said they have discussed a four-unit structure with a garage structure located across from the alley.

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 approve the zoning map amendment from the R5 – Residential zoning district to the RM30 – Residential zoning district on the South 105 feet of the East half of Lot 3, Block 4, Northern Pacific Addition. Commissioner Johnson seconded the motion, and the motion was unanimously approved with Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

**PUBLIC HEARING – STEINS FOURTH ADDITION, PART OF BLOCK 25,
AND HAY CREEK PARK ADDITION, PART OF BLOCK 1
ZONING MAP AMENDMENT**

Chair Schwartz called for the public hearing on a zoning map amendment from the R5 – Residential to the Conditional R10 – Residential zoning district on Lots 2-13, Block 25, Steins Fourth Addition and Lots 1-8, Block 1, Hay Creek Park Addition. The property is located in central Bismarck, north of East Divide Avenue on both sides of North 26th Street (Lots 2-13, Block 25, Steins Fourth Addition and Lots 1-8, Block 1, Hay Creek Park Addition).

Mr. Nairn stated that the recommended conditions related to ensuring that stormwater would be managed during site development.

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 zoning map amendment would not adversely impact the public health, safety, and general welfare.

Mr. Nairn said, based on the findings contained in the staff report, staff recommends approval of the zoning map amendment from the R5 – Residential to the Conditional R10 – Residential

zoning district on Lots 2-13, Block 25, Steins Fourth Addition and Lots 1-8, Block 1, Hay Creek Park Addition.

Chair Schwartz opened the public hearing.

Dawn Watson, the applicant, explained that only two property owners in the area did not sign the application for the zoning map amendment. She said developers are interested in building twin homes, so that is the goal of this request.

Mathew Krogen, a homeowner on E Capital Avenue, provided photos of flooding in the area and stated approval of the request to amend the zoning map will lead to additional flooding problems. (handout attached)

Commissioner Schell clarified that there were no legal easements or lots dedicated to drainage created during the North 26th Street construction project.

Chair Schwartz asked how frequently flooding is an issue. Mr. Krogen responded that the area floods every spring.

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

Mr. Nairn restated that staff is recommending approval with conditions to protect against stormwater impacts, and the allowable lot coverage of 30% is the same as in the R5 – Residential zoning district, with the option to increase lot coverage if stormwater is managed.

Commissioner Schell stated that the City's Engineering department handles stormwater drainage will evaluate impacts to this area.

MOTION: Based on the findings contained in the staff report, Commissioner Schell made a motion to approve the zoning map amendment from the R5 – Residential to the Conditional R10 – Residential zoning district on Lots 2-13, Block 25, Steins Fourth Addition and Lots 1-8, Block 1, Hay Creek Park Addition. Commissioner Sivak seconded the motion, and the motion was approved with Commissioners Johnson, Larson, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion. Commissioners Bitner, Field, and Lukens voted against the motion.

PUBLIC HEARING – SPECIAL USE PERMIT – MAJOR HOME OCCUPATION MCKENZIE AND COFFIN'S ADDITION, LOTS 31-32, BLOCK 90

Chair Schwartz called for the public hearing on a special use permit for a major home occupation on Lots 31-32, Block 90, McKenzie and Coffin's Addition. The major home occupation would consist of work for a public relations and marketing business. The property is located in central Bismarck, in the southeast quadrant of the intersection of N 4th Street and E Boulevard Avenue.

Ms. Oster 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 special use would adversely impact the public health, safety, and general welfare, on the basis that the proposed use would not always meet ordinance requirements for residency of the home occupation on the property

Ms. Oster said, based on the findings contained in the staff report, staff recommends denial of the special use permit for a major home occupation on Lots 31-32, Block 90, McKenzie and Coffin's Addition.

Commissioner Johnson asked whether a zoning map amendment was considered. Ms. Oster explained that staff did consider a zoning map amendment but that there were no obvious options for connecting a suitable zoning district to similar districts nearby.

Commissioner Zent asked how many employees would be at the residence. Ms. Oster said that the applicant indicated up to three outside employees would potentially be at the residence and that the home has parking for three vehicles with potentially additional parking in the alley.

Chair Schwartz opened the public hearing.

Lonnie Dietz, the applicant, explained that his request meets almost all of the requirements and will comply with all of the requirements most of the time. He wants a location to run his business in Bismarck while residing elsewhere.

Commissioner Schmitz asked where his primary residence is located. Mr. Dietz said he lives in Texas.

Commissioner Johnson asked if his business is seasonal. Mr. Dietz explained that his business is not seasonal and most of the work he does is computer based so there won't be many clients visiting.

Chair Schwartz asked if the applicant intended to make any changes if the special use was approved. Mr. Dietz replied that for the immediate future, he believes parking is sufficient and does not anticipate any changes.

Commissioner Zent asked if any advertising or signs would be posted at the home. Mr. Dietz stated that he would follow city ordinances.

Commissioner Schell thanked the applicant for being transparent with his business plans.

Chair Schwartz asked the applicant how he chose this location. Mr. Dietz stated he likes the property for his business because of its architecture, layout and location.

Dan Eastgate, the applicant's realtor, made a statement that he believes Mr. Dietz acts in the best interests of Bismarck and reminded the commission that only one condition is questionable.

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

Ben Ehreth stated that the applicant has been honest with staff about the intended use of the property. He then explained that the larger component of the special use permit is that residence is the primary use and because the business owner does not reside here, this could easily become a zoning violation. He said the decision of the commission will set the precedence for future requests. He explained that if this request is denied, there is an option to initiate a zoning map amendment to a PUD – Planned Unit Development to this area that

would allow this use. Mr. Ehreth then explained that he believes rezoning to a PUD zoning district would avoid causing other lots to be out of zoning compliance.

Commissioner Schmitz asked if a variance would work to allow this use. Mr. Ehreth replied that a hardship would be difficult to prove in this situation.

Commissioner Johnson stated the ordinance regarding home occupations does not indicate the property owner must reside in the home.

Additional discussion regarding the intentions of the new home occupation ordinance occurred.

MOTION: Commissioner Johnson made a motion to approve the special use permit for a major home occupation on Lots 31-32, Block 90, McKenzie and Coffin's Addition. Commissioner Lukens seconded the motion, and the motion was approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion. Commissioner Schell voted against the motion.

ADJOURNMENT

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 6:25 p.m. to meet again on January 22, 2025.

Respectfully submitted,



Sarah Fricke
Recording Secretary



Mike Schwartz
Chair

Mathew Krogen
2403 E Capitol Ave
Bismarck ND 58501
701-471-5942
MATHEWKROGEN@HOTMAIL.COM

My name is Mathew Krogen. I have lived on East Capitol Ave for 17 years.
I received the letter regarding zoning from R5 to R10 ZC2024-017 Agenda Item #2E.
My presentation is regarding 'Goal S10-a, S5-a'
"Condition to protect against any negative stormwater impacts to nearby properties. "

The most recent example of our street flooding is from August. The 26th Street construction, connecting to East Capitol Ave was started in 2020. East Capitol Ave and 26th Street are both at the bottom of a hill. Both streets connect and drain into Hay Creek. Because of this convergence, East Capitol Ave backs up. The August flooding was so intense it uplifted a car, floated it down the street, ending up on the sidewalk. KFYR did a news story about our street flooding. The Facebook video went viral and has over 3.5 million views.

Where the car ended up is 2406 East Capitol Ave (Steins 4th, Block 29 Lot 24). This is an empty lot because of continuous flooding. The water drains underneath the interstate through this lot to Hay Creek (third convergence). There used to be a house on this lot, but because of flooding it was sold to the city.

When the construction of 26th Street was started, a drainage lot was put in at 2026 N 26th Street (Stein's 4th, Block 25 Lot 13). This 26th Street drainage lot directly protects my house.

I am against zoning to R10 because duplexes will increase impervious surfaces. This will lead to increased water backup and increased flooding on East Capitol Ave.

- 1) If the current 26th Street drainage lot was built to protect houses from flooding, why is it now considered for removal?
- 2) If you choose to remove the drainage lot on 26th Street, what steps will you take to ensure my home's protection?

Protect the current 26th Street drainage lot as it is.
You have the precedence of the city buying a lot in my area for flooding protection.
Goal S10-a, S5-a. "Condition to protect against any negative stormwater impacts to nearby properties. "

I am willing to answer questions. Pictures are included for documentation.
My information is provided for later contact as needed.



Kind Regards,
Mathew Krogen

12/18/2024

types from one to four units. Goals and objectives of this plan as they relate to this zoning map amendment are referenced in review standards below.

Public Engagement

Public engagement will commence if the Planning and Zoning Commission calls for a public hearing on this request.

Basic project information, with the ability to contact staff for more details, has been provided publicly online through the Open Development Projects Dashboard and Community Development Activities map.

Review Standards and Findings of Fact

The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.

The Future Land Use Plan is adhered to with the proposed zoning map amendment (Future Land Use Plan)

Yes. The Urban Neighborhood classification of the Future Land Use Plan is described as a mix of housing types from one to four-unit buildings. This land use classification would support either the R5 – Residential or R10 – Residential zoning district.

The proposed amendment is compatible with adjacent land uses and zoning (Goal S10-a, S5-a)

Yes, with a condition to protect against any negative stormwater impacts to nearby properties due to increased impervious surfaces. Adjacent uses are described in the project context section above. The proposed zoning district would allow two-family dwellings and single-family dwellings. There are existing two-family dwellings along East Capitol Avenue in the immediate vicinity of the project area.

Because R10 – Residential lots typically have greater impervious surface, a condition would be placed to ensure that stormwater would be evaluated during site development if more than thirty percent of the lot is covered. Development that may be anticipated from the proposed zoning would have no negative impact on the surrounding properties.

A change in conditions or by an error in the zoning map has occurred since the previous zoning classification was established (Goal S9-e)

Yes. The current zoning district of R5 – Residential district was established in 1976 for Stein's Fourth Addition and 2012 for Hay Creek Park Addition. Conditions have changed since this time. The lots were annexed through a city-initiated action in 2016 and infrastructure was installed shortly after. The Comprehensive plan was adopted in 2022, which includes objectives to encourage a variety of housing types.

Undue restriction of housing options or access to neighborhood amenities would not result from the proposed zoning map amendment (Goal S1-a, Goal T1-c)

Yes. The proposed zoning map amendment would enhance the diversity of housing types available to Bismarck residents and would support a mix of uses to create vibrant neighborhoods where necessities and amenities of daily life are easily accessible to all residents.

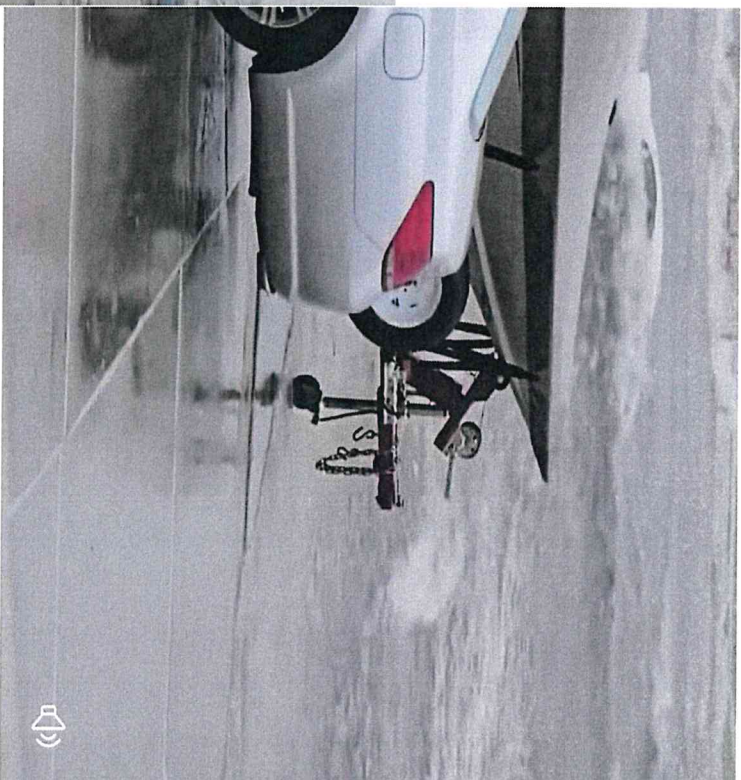
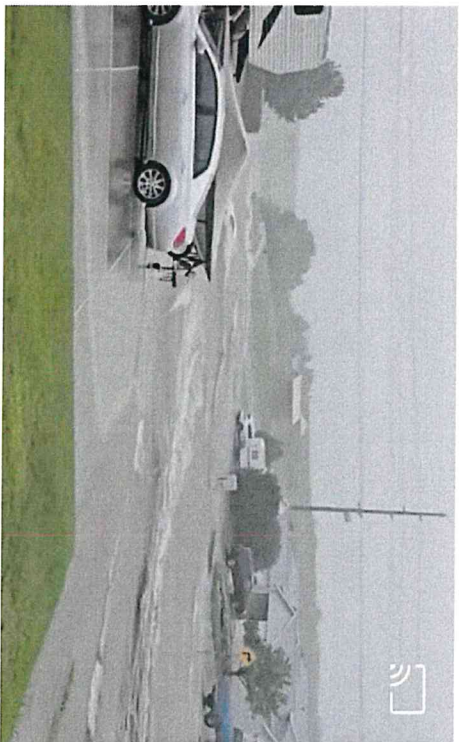
The goals and objectives of Together 2045 Bismarck's Comprehensive Plan would be advanced by the proposed zoning ordinance text amendment (Comprehensive Plan)

Yes. the following objectives of the plan would be advanced through the zoning map amendment.

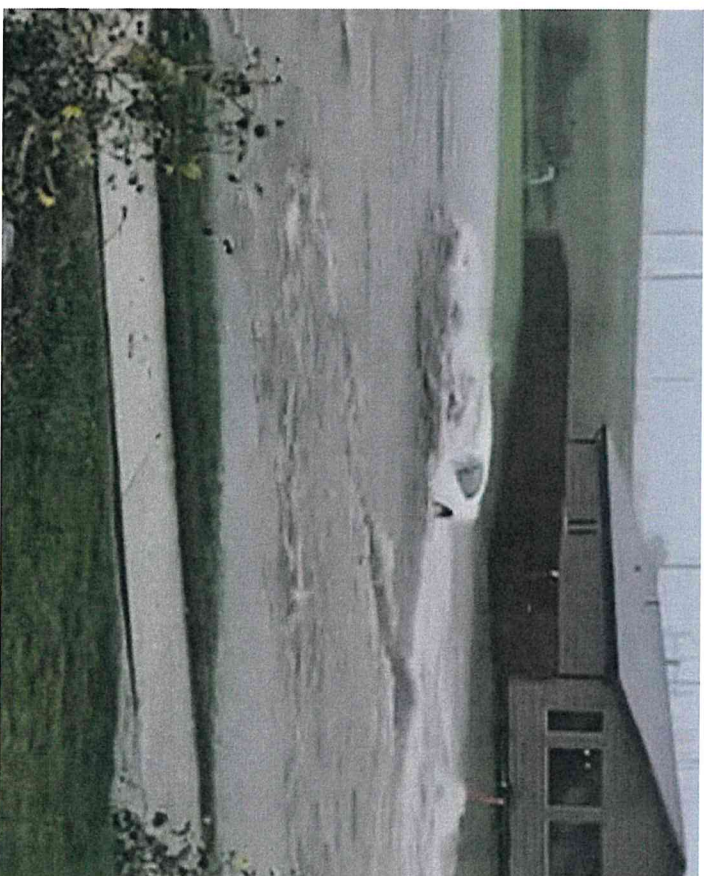
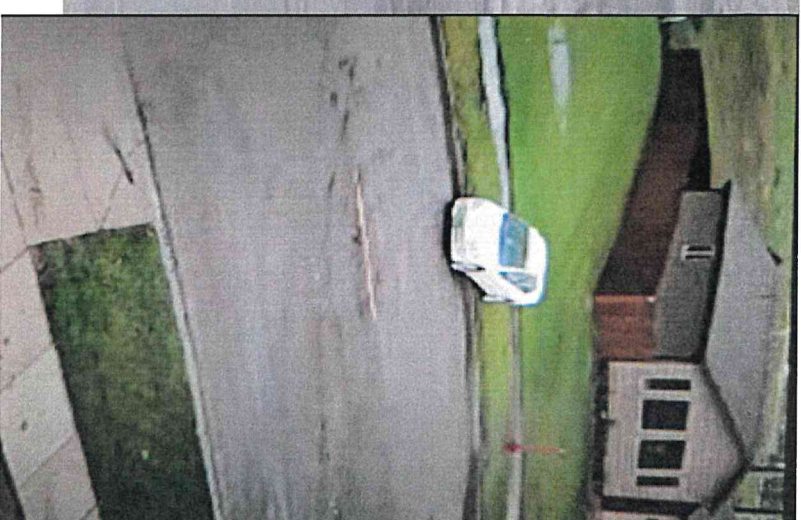
S6(a): Allow house-scale building types with more than one residential unit in all or most residential zoning districts. This would include

(continued)

Roads turned into rivers Tuesday evening after torrential rainfall in Bismarck. Terry Schreiner sent us this video from East Capitol Ave. & 23rd Street. Hopefully, no one was in the car, but this is a reminder of the force of water. Never drive into flooded roads.



👍👎 16K 1.3K comments • 4.6K shares • 3.5M views



2) 26th Street drainage lot construction.



Current view of 26th street drainage lot



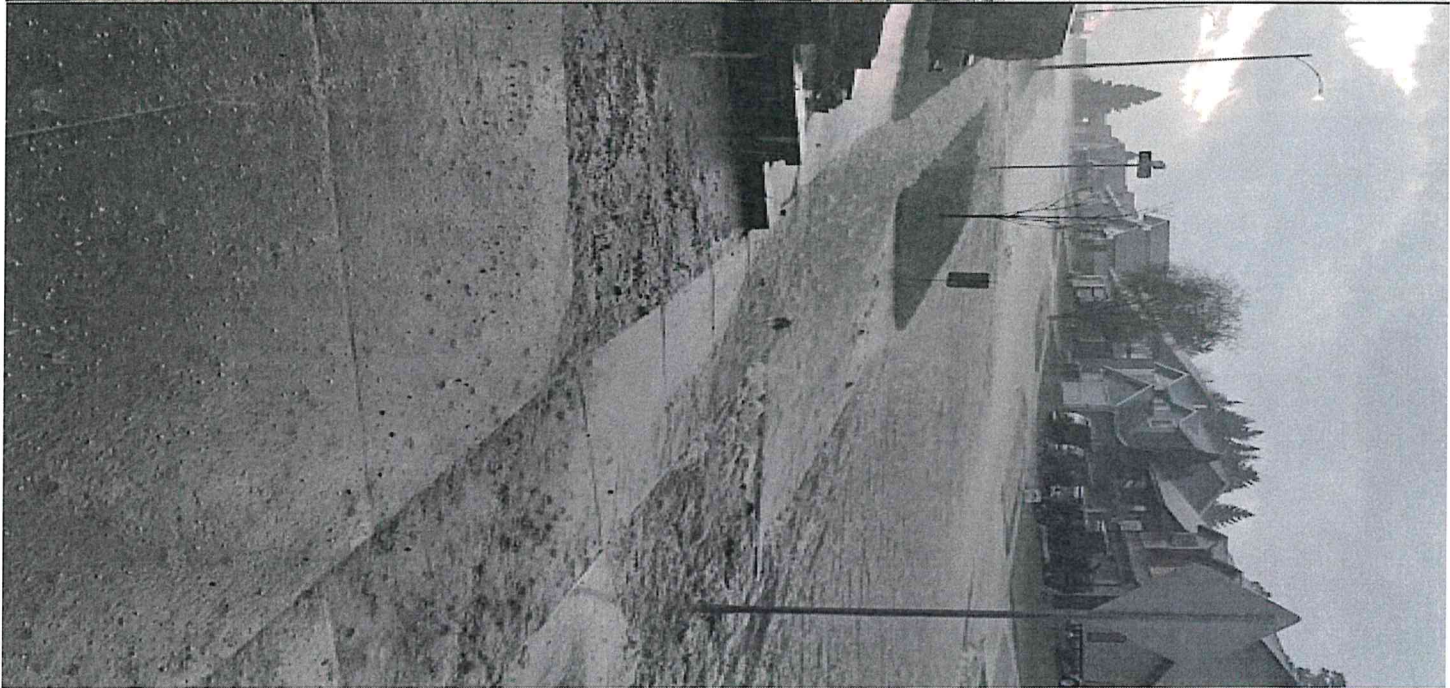
3) 26th Street Hill Bottom



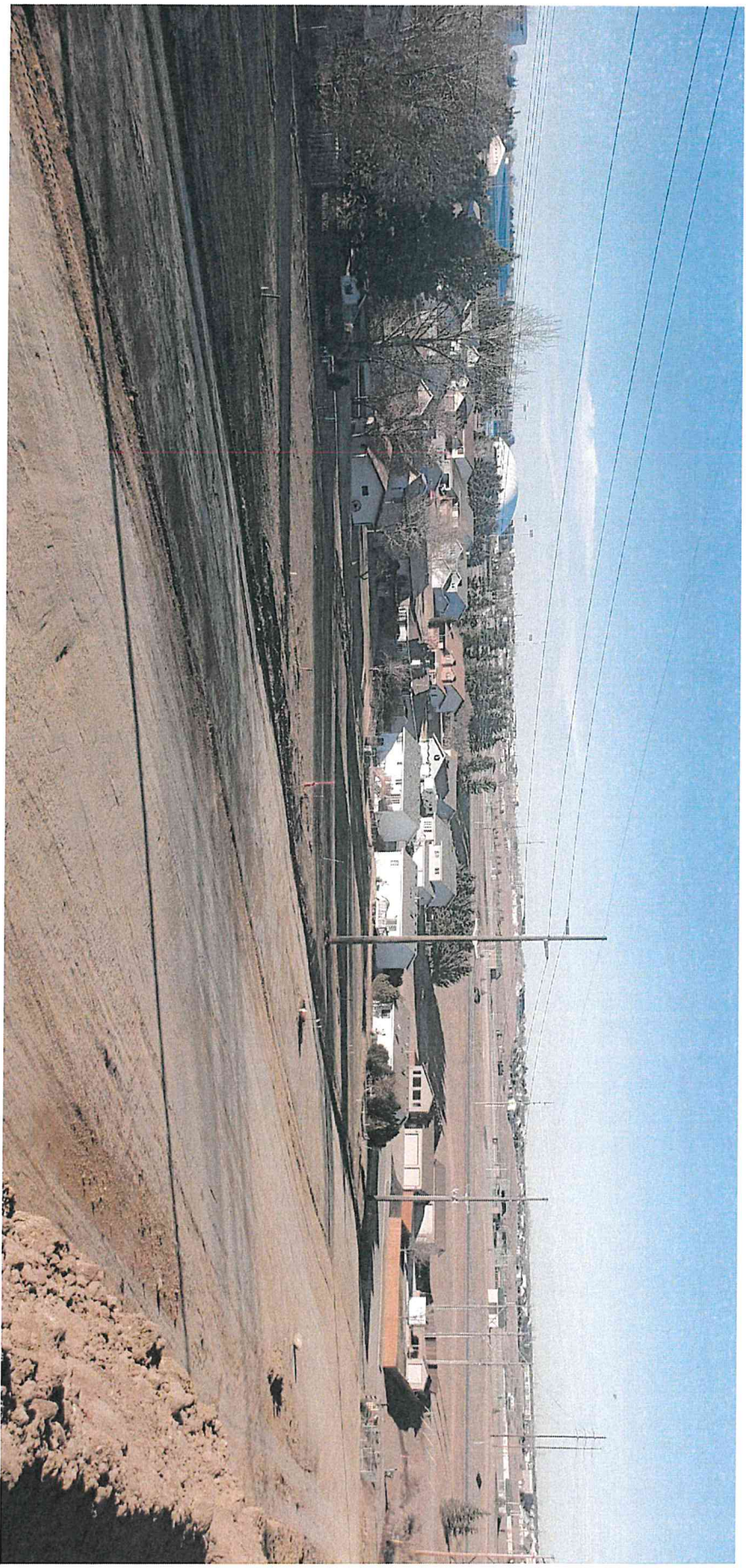
East Capitol Ave to Hay Creek



East Capitol Ave Hill Bottom



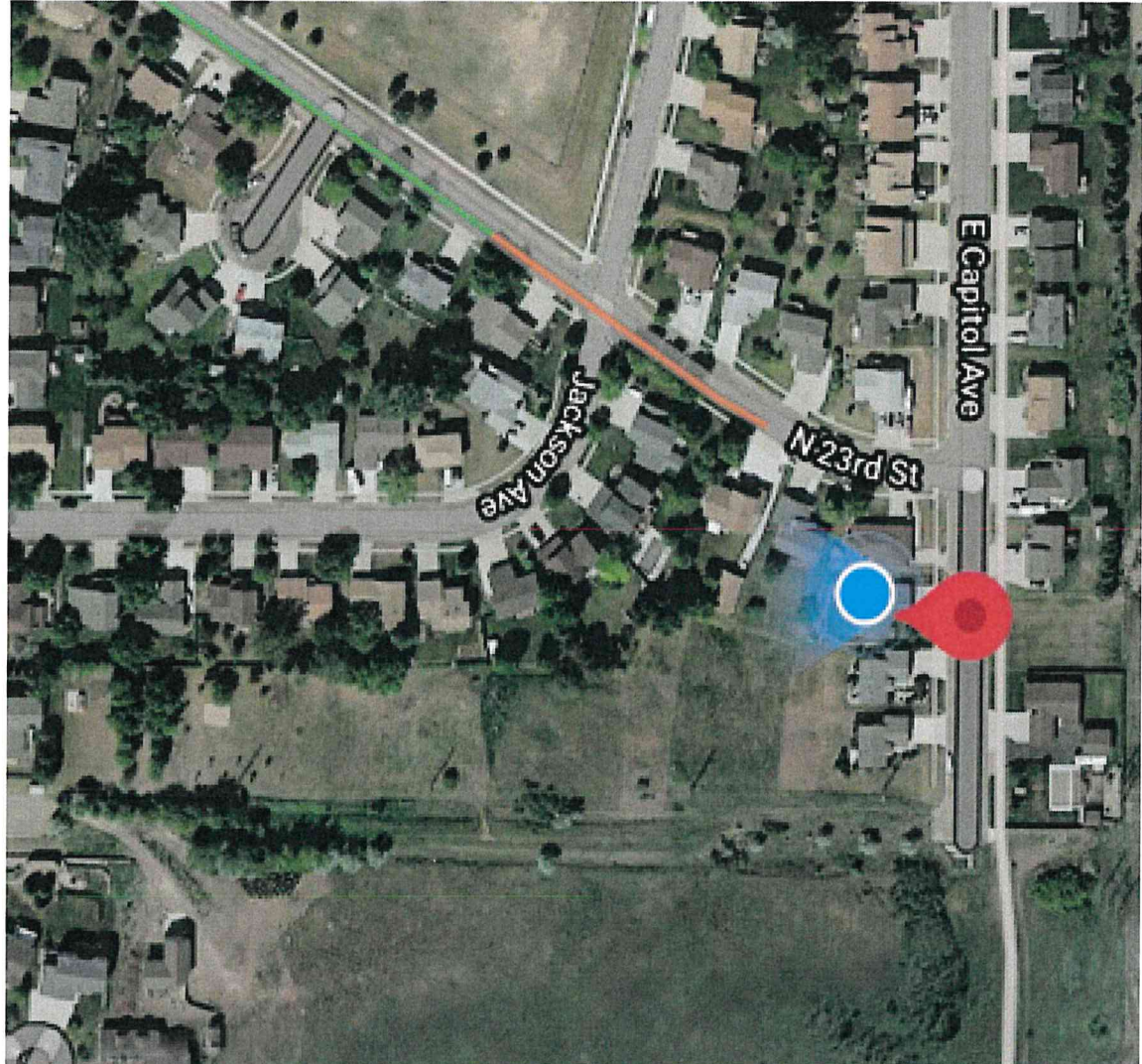
4) 26th Street Angle



Vehicles wreck going down 26th in winter



5) Before 26th Street Construction



After 26th Street Construction. Drainage Lot



6) Corner of 23rd Street and East Capitol Water Back Up.

