



# PLANNING AND ZONING COMMISSION

## MEETING AGENDA April 24, 2024

Tom Baker Meeting Room	5:00 p.m.	City-County Office Building
<p>Any member of the public may attend this meeting. Comments may be provided on public hearing items either in person, at the appointed time, or emailed by 8 am on the meeting day to <a href="mailto:planning@bismarcknd.gov">planning@bismarcknd.gov</a> for distribution to the Commission and inclusion in minutes, unless anonymous.</p> <p>Coverage of this meeting is available on Government Access Channels 2 &amp; 602HD or streaming live and archived online at</p>		<p><a href="https://www.bismarcknd.gov/agendacenter">FreeTV.org</a>. Minutes will be available at <a href="https://www.bismarcknd.gov/agendacenter">https://www.bismarcknd.gov/agendacenter</a>.</p> <p>The City of Bismarck does not discriminate in admission or access to its programs, activities, or services. To request accommodations for disabilities and/or language assistance, please contact the Title VI/ADA Coordinator at 701-355-1330.</p> <p>Agenda subject to change prior to meeting.</p>

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Item No. Page No.

1. Introduction of new commissioner.

### MINUTES

2. Consider approval of the minutes of the March 27, 2024, meeting of the Bismarck Planning & Zoning Commission.

### REGULAR AGENDA

#### PUBLIC HEARINGS

Requests for final action and forwarding to the City Commission

3. **Fettig Subdivision (JW)**.....5

Major Subdivision Final Plat | FPLT2024-002 | *Public Hearing*

Staff recommendation: deny  approve  continue  table  deny

Zoning Map Amendment | ZC2023-014 | *Public Hearing*

Staff recommendation: deny  approve  continue  table  deny



4. **Apple Creek Country Club Fourth Subdivision (LO)**..... 18

Minor Subdivision Plat | MPLT2024-002 | Public Hearing

Staff recommends: approve  approve  continue  table  deny

5. **Hay Creek Township, Sections 7 and 18, T139-R80 (IJ)** ..... 24

Future Land Use Plan Amendment | FLUP2024-001 | *Public Hearing*

Staff recommends: approve  approve  continue  table  deny

6. **Revisions to (FP) Floodplain District (JW)** ..... 34

Zoning Ordinance Text Amendment | ZOTA2023-004 | *Public Hearing*

Staff recommends: approve  approve  continue  table  deny

7. **Revisions to A - Agriculture Zoning District (JW)** ..... 61

Zoning Ordinance Text Amendment | ZOTA2023-001 | *Public Hearing*

Staff recommends: approve  approve  continue  table  deny

**OTHER BUSINESS**

8. **Update on Home Occupations Zoning Ordinance Text Amendment**

9. **Other**

**ADJOURNMENT**

10. **Adjourn.** The next regular meeting date is scheduled for May 22, 2024.

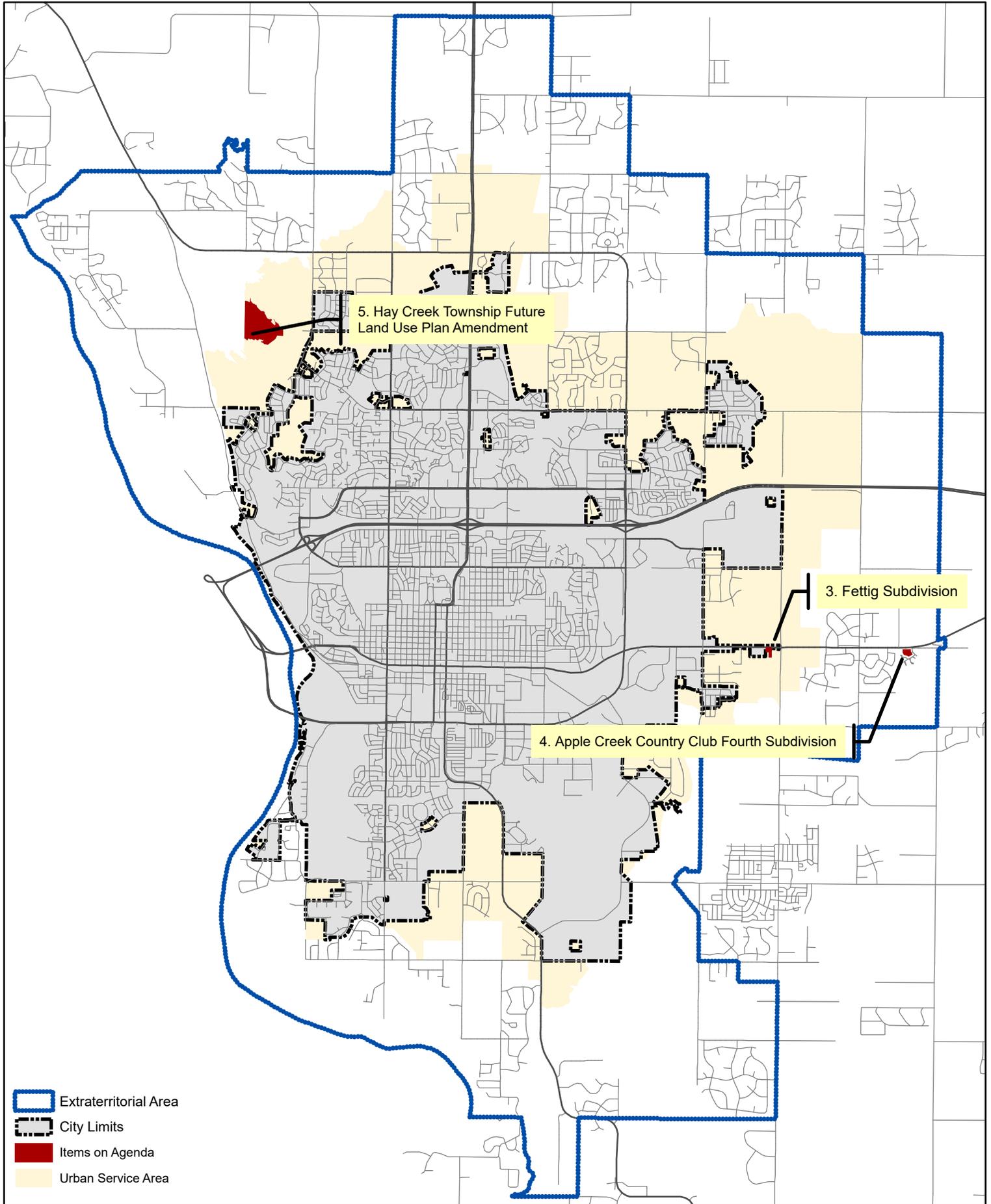
Enclosures: Meeting Minutes of March 27, 2024  
Building Permit Activity Month to Date Report for March 2024  
Building Permit Activity Year to Date Report for March 2024



## **BISMARCK PLANNING AND ZONING COMMISSION PUBLIC HEARING PROCEDURE AND PROTOCOL**

All public hearings before the Bismarck Planning and Zoning Commission will follow the same basic format. This outline has been prepared to help you understand the procedure and protocol.

1. The Chair of the Planning and Zoning Commission will introduce the item on the agenda and ask staff to present the staff report.
2. The Planner assigned to the file will present the staff report on the item. The presentation will be an overview of the written staff report included in the agenda packet, which is posted on the City's website by the end of the day on the Friday before the meeting.
3. The members of the Planning and Zoning Commission may ask staff questions about the request itself or staff's recommendation, but they will not discuss the request prior to obtaining input from the public.
4. The Chair of the Planning and Zoning Commission will then open the public hearing on the request and ask if anyone would like to speak to the Commission.
5. The applicant or his or her designated agent is usually given the courtesy of speaking first to outline the proposal and/or clarify any information presented by staff. The applicant may speak at this time or wait until others have spoken.
6. The public hearing is then opened to the public to voice their support, opposition or to ask questions about the proposal. Please write your name and address on the sign-in sheet, step up to the podium, speak clearly, state both your first and last names and your address, then your comments. Speaking over the microphone rather than directly into it will provide the best audio quality. Also, please avoid tapping or banging the podium, as the microphone amplifies the sound. Your comments as well as any materials distributed to the Planning and Zoning Commissioners at this time will be made part of the public record. If you would prefer to provide written materials to staff at the beginning of the meeting, we will distribute the materials to the Commission for you.
7. Please be respectful of the Planning and Zoning Commissioners, staff and others speaking on the request. Personal attacks against the applicant or others, clapping/cheering or booing speakers is not acceptable. Staff and the applicant will only respond to questions from the Planning and Zoning Commissioners, not questions directly from those speaking at the public hearing.
8. Everyone who wishes to speak will be given a chance to speak; however, at larger public hearings, the Chair may ask speakers to limit their time at the podium to five minutes, not repeat previous testimony/comments and only speak once. Members of the Planning and Zoning Commission may ask questions of those speaking, but may also listen and deliberate after the hearing is closed.
9. After everyone in the audience wishing to speak has given his or her comments, the Chair will close the public hearing portion for the agenda item. No additional comments from the public are allowed after the hearing has been closed. At this point, the Chair will ask staff if they have any additional information or final comments.
10. The Planning and Zoning Commissioners will then discuss the proposal. They may ask staff or the applicant additional questions or for clarification of items stated during the public hearing. At the conclusion of the discussion, the Commission will make its recommendation or decision.



This map is for reference purpose only and is not intended as a survey or accurate representation of all map features.



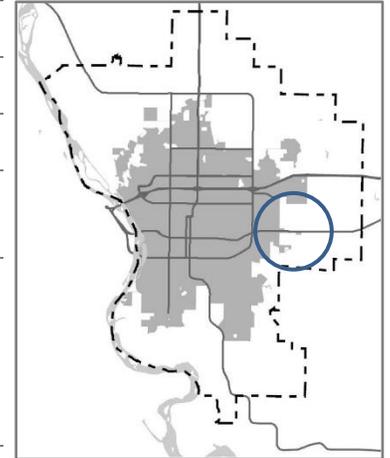
# STAFF REPORT

Application for: **Zoning Map Amendment**  
**Final Plat**

Project ID: **ZC2023-014**  
**FPLT2024-002**

## Project Summary

<i>Title:</i>	Fettig Subdivision
<i>Status:</i>	Planning and Zoning Commission - Public Hearing
<i>Property Owner(s):</i>	Robert Fettig
<i>Project Contact:</i>	Landon Niemiller, AICP, Swenson Hagen & Company
<i>Project Location:</i>	East of Bismarck, between 52nd Street SE and 66th Street SE, along the south side of East Main Avenue / County Highway 10 (a replat of all of Highway Subdivision and Part of the NE¼ of Section 6, T138N-R79W/Apple Creek Township)
<i>Project Size:</i>	4.8 acres
<i>Applicant Request:</i>	Plat and rezone property for development of a single-family dwelling in conjunction with commercial use
<i>Staff Recommendation:</i>	Deny



## Site Information

<i>Existing Conditions</i>		<i>Proposed Conditions</i>	
<i>Lots/Blocks:</i>	1 lot in 1 block and 2 parcels	<i>Lots/Blocks:</i>	3 lots in 1 block
<i>Land Use:</i>	Commercial (hotel) and single-family	<i>Land Use:</i>	Commercial (hotel), single-family, and single-family in conjunction with commercial use
<i>Future Land Use:</i>	Neighborhood Mixed Use (NMU)	<i>Future Land Use:</i>	Neighborhood Mixed Use (NMU)
<i>Zoning:</i>	A – Agricultural CG – Commercial	<i>Zoning:</i>	CG – Commercial
<i>Uses Allowed:</i>	A – Agriculture CG – General commercial, multi-family residential, and offices	<i>Uses Allowed:</i>	CG – General commercial, multi-family residential, and offices
<i>Max Density:</i>	A – 1 unit / 40 acres CG – 42 units / acre	<i>Max Density:</i>	CG – 42 units / acre

**Area Information**

**Property History**

<i>Zoning Jurisdiction:</i>	Extraterritorial Area (ETA)	<i>Zoned:</i>	04/1978
<i>Township:</i>	Apple Creek (organized)	<i>Platted:</i>	07/2009 (Highway Subdivision)
<i>Neighborhood:</i>	Old Highway 10	<i>Annexed:</i>	N/A

**Project Narrative**

Robert Fettig is requesting approval of a zoning map amendment from the A – Agriculture and CG – Commercial zoning districts to the CG – Commercial zoning district and a major subdivision final plat titled Fettig Subdivision.

The proposed zoning map amendment and final plat are being requested to allow the development of a single-family dwelling in conjunction with a commercial use on Lot 3 of the proposed plat. The area within the proposed plat is partially developed, a hotel is located on Lot 1 and a single-family dwelling is located on Lot 2.

The Planning and Zoning Commission considered this request at their meeting of February 28, 2024, called for a public hearing on the zoning change, and tentatively approved the preliminary plat, with

the understanding that staff will not recommend approval of the zoning map amendment or final plat unless an annexation request is submitted. This property is adjacent to corporate limits and in an area identified as future urban growth.

*Additional Information*

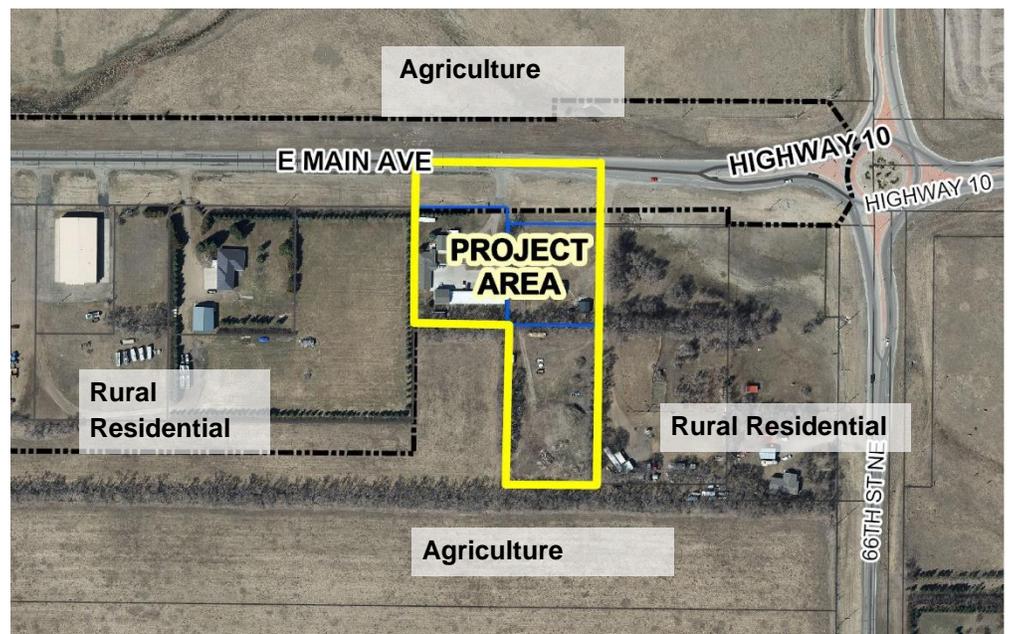
City staff have evaluated the project further and have determined annexation of Lot 1 would not be required. Annexation of Lot 2 and Lot 3 would be required to extend municipal water to Lot 3 from East Main Avenue / County Highway 10. The applicant was notified and has indicated that their preference is to not annex any portion of the plat. Without annexation of Lot 2 and Lot 3, staff will continue to recommend denial of these requests.

**Project Context**

*Land uses adjacent to the project area are depicted on the adjacent map:*

*A Zoning and Plan Reference Map is attached to this staff report, including current zoning, the Future Land Use Plan, Major Street Plan, and Active Mobility Plan.*

*A Growth Phasing Plan Map is also attached to this staff report, showing prioritization for extension of the Bismarck city limits.*



(continued)

**Comprehensive Plan**

Goals and objectives of the Comprehensive Plan as they relate to the zoning map amendment and final plat are referenced in review standards below.

*Future Land Use Plan*

The property has been identified as Neighborhood Mixed Use (NMU) in the Future Land Use Plan. The NMU areas are the social and commercial gathering spaces for the immediate surrounding residential areas.

The property is also located in the Expansion Future area of the Growth Phasing Plan. This plan is a map that shows when areas of Bismarck and its extraterritorial area are expected to annex and develop based on proximity and availability of city services. Expansion Future areas may not be easily serviced with existing infrastructure and municipal services, but annexation is expected as the city expands, and infrastructure and municipal services become available. Municipal water is available and located within the right-of-way of East Main Avenue.

*Access*

Access to all three lots within the proposed plat would be from an existing access point along East Main Avenue via access easements. The proposed plat also includes an access easement along the north side of Lot 2 which could provide access to the adjacent property to the east if access along East Main Avenue becomes limited in the future.

*Infrastructure*

The City and South Central Regional Water District (SCRWD) entered into an agreement in 1996 that allows the City to provide municipal water to SCRWD and for SCRWD to sell this water to rural residents. As part of this agreement the City must approve of and agree to SCRWD

providing water to properties within 2-miles of corporate limits. Municipal water was extended within the East Main Avenue right-of-way recently; however, SCRWD is currently providing water to adjacent properties and to Lot 1 and Lot 2 of the proposed plat. Staff from Engineering, Planning and Public Works have indicated that they would not support SCRWD extending water to Lot 3.

Municipal sanitary sewer is not available in this location and there are existing individual private sewer systems located on each lot. Typically, these private sewer systems are not located on property that is annexed; however, as sewer is not available staff have indicated that the existing private sewer systems could remain, and a new private sewer system could be installed on Lot 3.

*Annexation*

Due to the proximity of corporate limits, its location in the Expansion Future Area and the location of municipal water, staff have indicated to the applicant that support of the proposed zoning map amendment and proposed plat would be contingent on annexation of the proposed plat or at a minimum Lot 2 and Lot 3 of the proposed plat to meet the goals and objectives of the Comprehensive Plan.

The proposed plat is adjacent to corporate limits and in an area that is partially zoned CG – Commercial. Pre-zoning and annexation in anticipation of future development were common practices in the 1970s and 1980s prior to the adoption of a Future Land Use Plan.

Without annexation of the proposed plat, or at a minimum annexation of Lot 2 and Lot 3, staff cannot recommend approval of these requests.

**Public Engagement**

Apple Creek Township was notified of this request on April 19, 2024.

*(continued)*

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on April 12 and 19, and 16 letters were mailed to the owners of nearby properties on April 12, 2024.

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

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

**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.*

**Zoning Map Amendment**

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

**Yes.** The proposed zoning map amendment is within the area designated as Neighborhood Mixed Use (NMU) in the Future Land Use Plan, as described in the Project Context section above. The proposed zoning district would generally conform to the character of this district.

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

**Yes.** Adjacent uses are described in the project context section above. The proposed zoning district would allow the construction of a single-family dwelling in conjunction with a commercial use on Lot 3 of the proposed plat. 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 property is zoned both A – Agriculture and CG – Commercial. The CG – Commercial zoning district was established in 1978 and conditions have changed since this time. The proposed zoning map amendment is being requested to allow the development of Lot 3 to include a single-family dwelling in conjunction with a commercial use.

*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 not adversely impact housing opportunities in any way.

*The goals and objectives of Together 2045 Bismarck’s Comprehensive Plan would be advanced by the proposed zoning ordinance text amendment ([Comprehensive Plan](#))*

**No.** The proposed amendment may impede the goals and objectives of the Comprehensive Plan. Specifically, without annexation of the plat, the following goals would not be advanced.

Objective G5(a) states:

*“Preserve the ability of the City to expand its boundaries by strictly limiting rural development within the Urban Service Area of the Growth Phasing Plan, unless future urbanization is clearly feasible and agreed to by all parties”*

Objective G3(c) states:

*Provide all municipal services, including roadways, water, sewer, stormwater, police, and fire protection equitably to all annexed land, unless certain service connections are clearly not feasible in the*

*(continued)*

*immediate future and both City and landowner mutually agree to forgo such services temporarily until readily available”*

Lots within this plat would have access to municipal water which is located within the East Main Avenue right-of-way. The City has agreed that lots within the plat can be serviced by an individual septic tank and drain field until such a time that municipal sanitary sewer is available.

*The general intent and purpose of the zoning ordinance would be adhered to with the proposed zoning map amendment (Section 14-02-01; [NDCC 40-27-03](#))*

**Yes.** The proposed zoning map amendment would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

*Proper administrative procedures related to the request are being followed (Section 14-07-02, [NDCC Chapter 40-47](#))*

**Yes.** All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The applicant has submitted a complete application for a zoning map amendment, and the required staff review of all submitted materials has occurred prior to submittal of this report to the Planning and Zoning Commission.

*The public health, safety and general welfare will not be adversely impacted by the proposed zoning map amendment ([Goal S10-a](#))*

**No.** City of Bismarck staff find that the proposed zoning map amendment would adversely impact the public health, safety, and general welfare. In particular, without annexation of the proposed plat the ability of the city to expand its boundaries and extend municipal services would be limited.

*Major Subdivision Final Plat*

*The final plat generally conforms to the preliminary plat for the proposed subdivision that was tentatively approved by the Planning and Zoning Commission*

**Yes.** The proposed final plat is substantially similar to the preliminary plat.

*Any and all conditions placed on approval of the preliminary plat by the Planning and Zoning Commission have been satisfied or will remain in place for future completion.*

**Yes.** The planning and Zoning Commission did not place conditions on the approval of the preliminary plat.

*Sufficient easements and rights-of-way are included on the proposed subdivision to provide for orderly development and provision of municipal services beyond the boundaries of the subdivision ([Goal G3-d](#))*

**Yes.** The proposed subdivision includes easements that extended into and through the plat. Easements are included for stormwater and drainage, municipal water and sanitary sewer, access, and other utilities.

*Technical specifications required of the final plat have been met (Section 14-09-07)*

**Yes.** The proposed final plat contains the required information to ensure an accurate and timely review by staff, the Planning and Zoning Commission, and the general public.

*Proper administrative procedures related to the request are being followed (Section 14-09-04)*

**Yes.** All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. Staff held a meeting with the applicant to discuss the request prior to submittal of a formal application. A complete application for the preliminary plat was submitted to the Community Development Department, and the required staff review of all

*(continued)*

submitted materials has occurred prior to submittal of this report to the Planning and Zoning Commission.

Creation of any new lots in the City of Bismarck is subject to development capital charges for municipal utilities. Capital utility charges will be due prior to recordation of the plat.

*The Major Street Plan is adhered to with the proposed subdivision ([Major Street Plan](#))*

**Yes.** The corridors identified in the Major Street Plan are incorporated into rights-of-way within the proposed subdivision. East Main Avenue is included in the proposed plat and is an existing arterial roadway. A plan reference map is attached to this staff report.

*The Active Mobility Plan is adhered to with the proposed subdivision ([Active Mobility Plan](#))*

**Yes.** The corridors identified in the Active Mobility Plan are incorporated into rights-of-way or easements within the proposed subdivision. A future shared use trail could be incorporated into the right-of-way for East Main Avenue. A plan reference map is attached to this staff report.

*A neighborhood park will be available within walking distance for all urban residents ([Goal 11-a, Section 14-09-04\(2\)a\(vii\)](#))*

**Yes.** The provision of neighborhood parks and open space is not needed because the proposed preliminary plat is not an urban subdivision with residential zoning districts.

*Vehicle trips generated by the proposed subdivision will be adequately supported by the transportation system ([Goal C3-c](#))*

**Yes.** The proposed subdivision would likely not have a substantial effect on circulation and safety of public roadways in the vicinity, and therefore, no traffic impact study is required.

*Street connectivity is provided for efficient travel and secondary access for emergency services ([Goal C4, Section 14-09-05](#))*

**Yes.** Subdivision design requirements, such as maximum block length, intended to promote street connectivity has been met, and there are no cul-de-sacs or dead-end streets in the proposed subdivision. The City’s Secondary Roadway Access Policy has been met allowing alternative routes into and out of the subdivision. In particular, access easements have been added to the proposed plat to provide future access to adjacent properties.

*Roadway access is managed to reduce potential points of conflict and improve safety ([Goal C3-b](#))*

**Yes.** Direct access to major public roadways is appropriately limited and spacing of all intersections is adequate to meet the City’s access management standards and professional engineering judgement. Non-access lines will be dedicated with the proposed plat to communicate and enforce this access control.

Access to all three lots within the proposed plat would be from one existing access point along East Main Avenue via access easements. The proposed plat also includes an access easement along the north side of Lot 2 which could provide access to the adjacent property to the east if access along East Main Avenue becomes limited in the future.

*Stormwater runoff impacted by this subdivision is adequately managed to protect public and private investments and the natural environment ([Goal 15, Section 14.1-04-03](#));*

**Yes.** The City Engineer has conditionally approved the Post-Construction Stormwater Management Permit (PCSMP) for the proposed subdivision.

*(continued)*

*Natural hazards and impact to environmentally sensitive land is minimized through the location and design of the proposed subdivision (Goal I6-a)*

**Yes.** 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.

*Water supply systems will seamlessly transition from a rural to an urban system through cooperation with the South-Central Regional Water District (Goal G3-f, Section 14-09-04(2)d)*

**Yes.** The proposed subdivision will be served with municipal water upon development and no future transition will be necessary.

*The City's investment in infrastructure associated with the proposed subdivision is expected to receive a proportional long-term return to residents through future revenues or other public goods associated with this subdivision (Goal G3-a)*

**No,** unless the proposed plat is annexed and a development agreement is created and approved by the Bismarck City Commission. Public costs associated with provision of municipal water and future sewer service to new development will be adequately compensated for through payment of utility capital charges. The initial development will be funded by the developer or through special assessment of properties benefitted by said improvements, as outlined in the Development

Cost Policy. Ongoing costs of maintenance and operation of all public facilities will be offset by property and/or sales tax derived from the proposed subdivision.

*The public health, safety and general welfare will not be adversely impacted by the proposed subdivision (Goal S10-a)*

**Yes.** As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed subdivision would not adversely impact the public health, safety, and general welfare.

**Staff Recommendation**

Based on the above findings staff recommends denial of the zoning map amendment from the A – Agriculture zoning district and the CG – Commercial zoning district to the CG – Commercial zoning district and major subdivision final plat for Fettig Subdivision.

**Attachments**

1. Draft Zoning Ordinance
2. Zoning and Plan Reference Map
3. Proposed Zoning Map
4. Growth Phasing Plan Map
5. Preliminary Plat
6. Final Plat

Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner  
701-355-1845 | jwollmuth@bismarcknd.gov

# **CITY OF BISMARCK ORDINANCE NO. XXXX**

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.), AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the A – Agriculture and CG – Commercial zoning districts and included in the CG – Commercial zoning district:

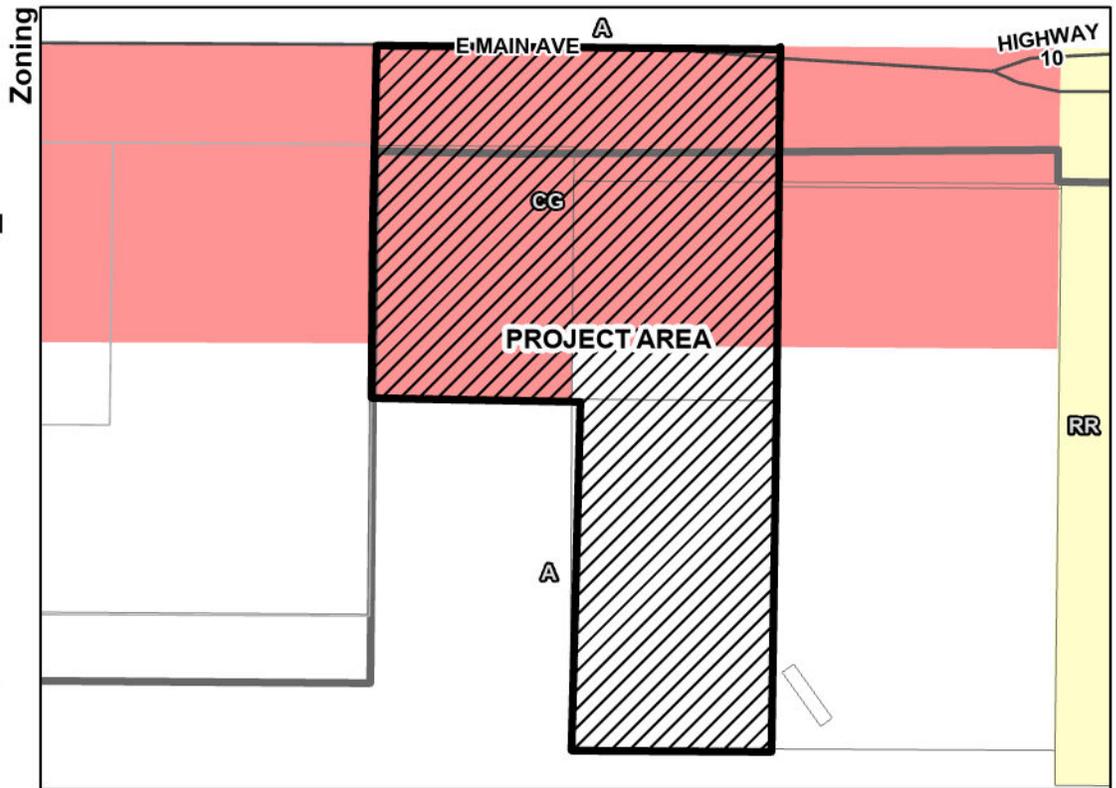
Lots 1-3, Block 1, Fettig Subdivision

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance area hereby repealed.

Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.

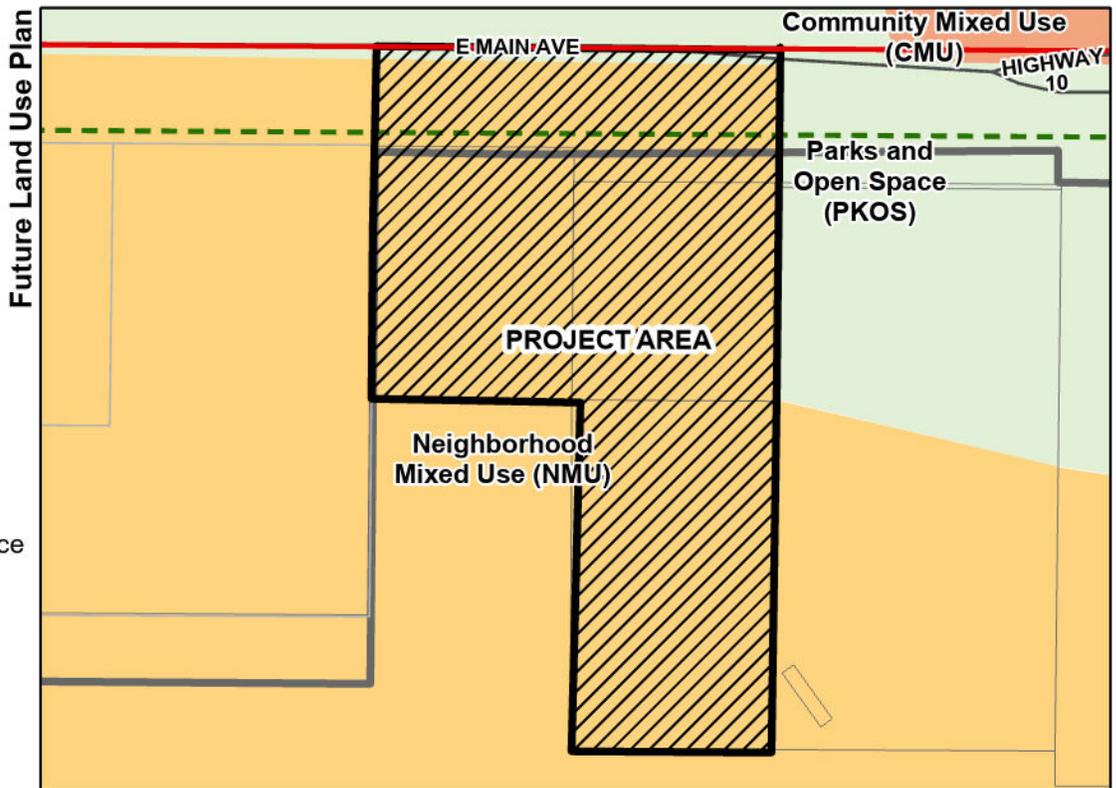
### Zoning Districts

<b>A</b>	Agriculture
<b>RR</b>	Rural Residential
<b>R5</b>	Residential
<b>RMH</b>	Manufactured Home Residential
<b>R10</b>	Residential
<b>RM</b>	Residential Multifamily
<b>RT</b>	Residential (Offices)
<b>HM</b>	Health and Medical
<b>CA</b>	Commercial
<b>CG</b>	Commercial
<b>MA</b>	Industrial
<b>MB</b>	Industrial
<b>PUD</b>	Planned Unit Development
<b>DC</b>	Downtown Core
<b>DF</b>	Downtown Fringe



### Future Land Use Plan

<b>UN</b>	Urban
<b>NMU</b>	Neighborhood Mixed Use
<b>CMU</b>	Community Mixed Use
<b>DMU</b>	Destination Mixed Use
<b>DT</b>	Downtown
<b>IND</b>	Industrial
<b>IF</b>	Industrial Flex
<b>IMU</b>	Industrial Mixed Use
<b>INS</b>	Institutional
<b>RR</b>	Rural Residential
<b>TR</b>	Transitional Rural
<b>PKOS</b>	Parks/Open Space
<b>URA/URB</b>	Urban Reserve Mid/Long-Term



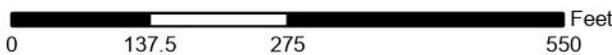
### Active Mobility Plan

— Future Shared Trail

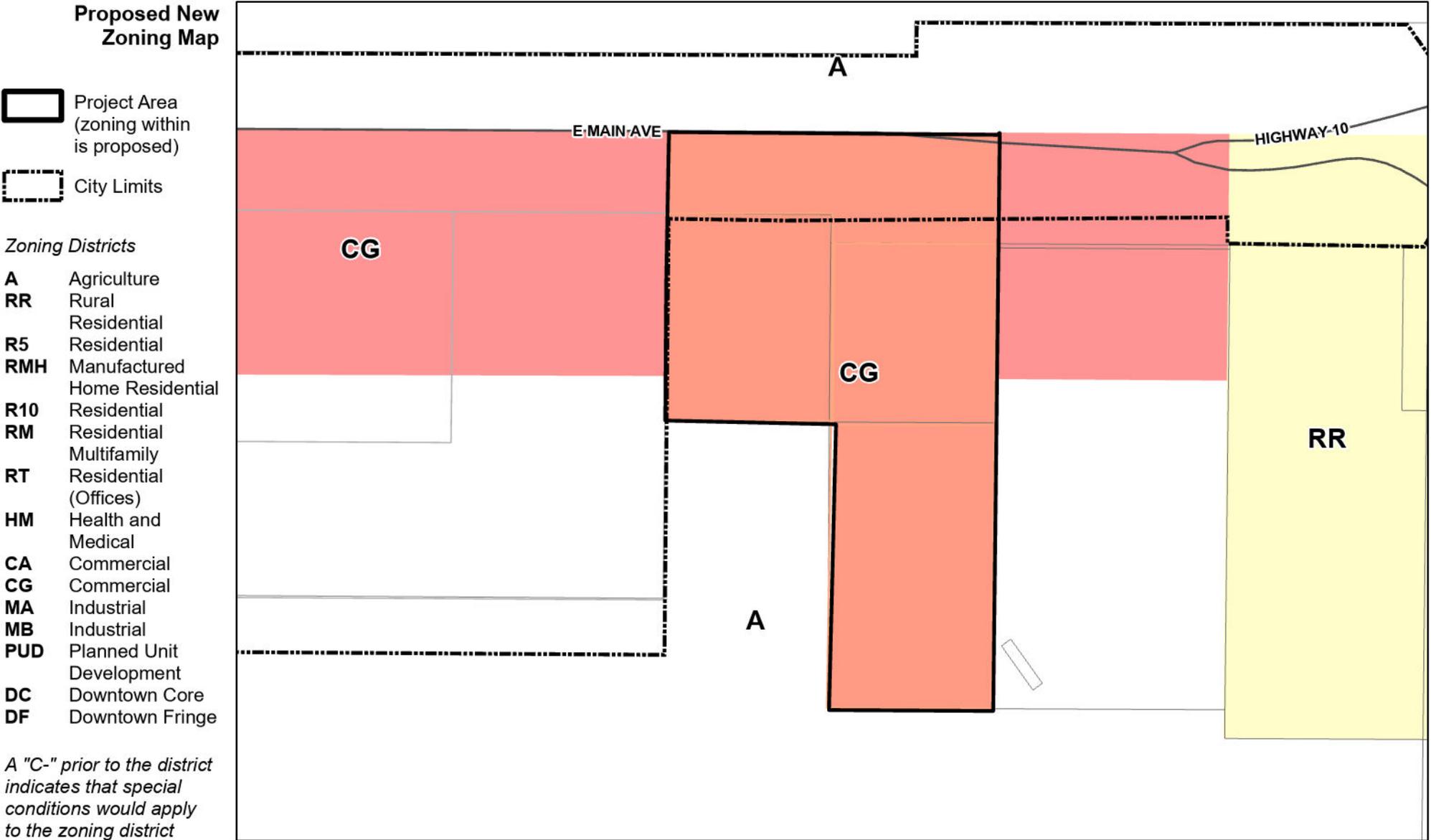
### Major Street Plan

- Existing Arterial
- - Future Arterial
- Existing Collector
- - Future Collector
- Existing Interstate
- - Future Interstate

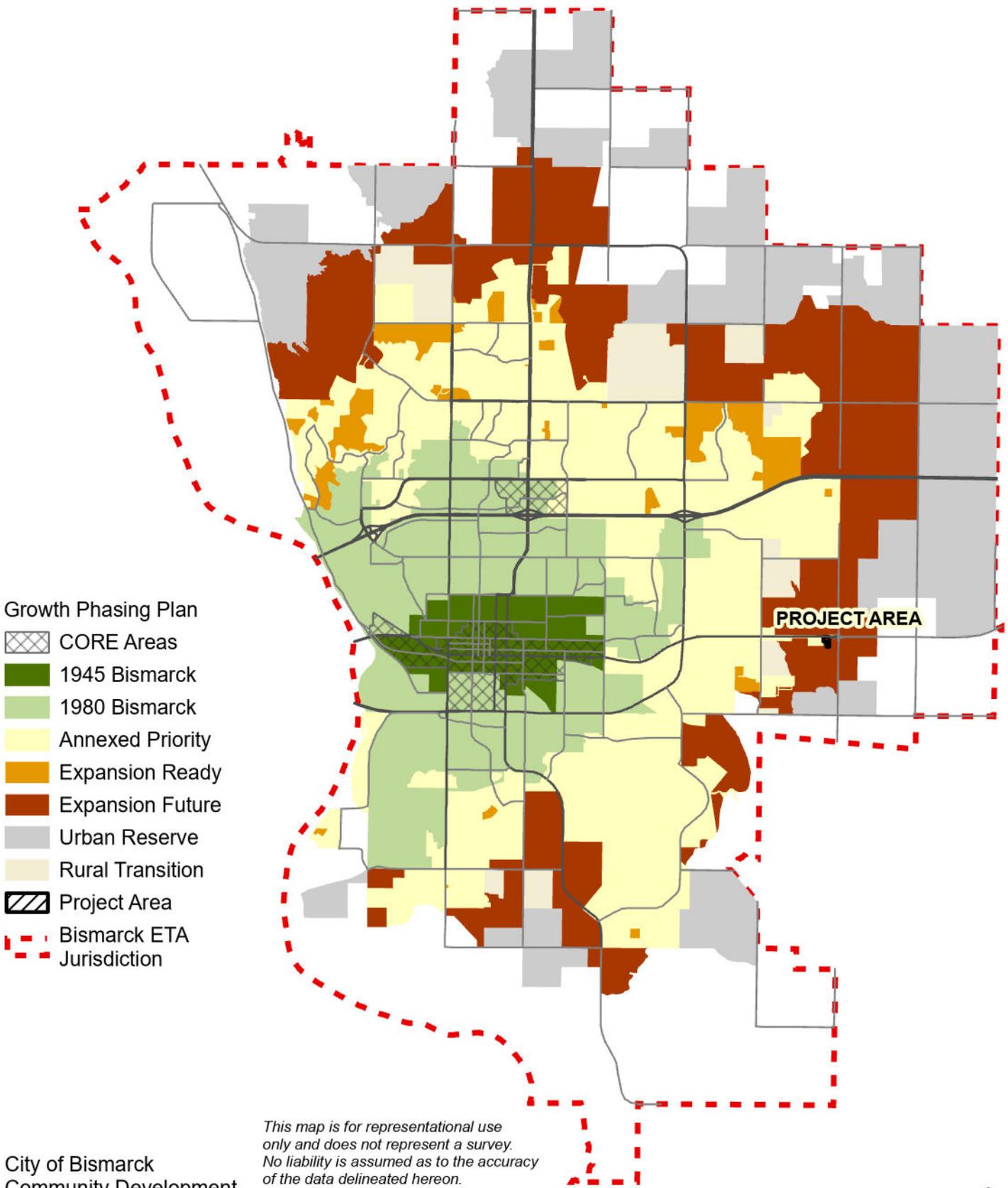
*This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated herein.*



City of Bismarck  
Community Development  
Planning Division  
February 20, 2024



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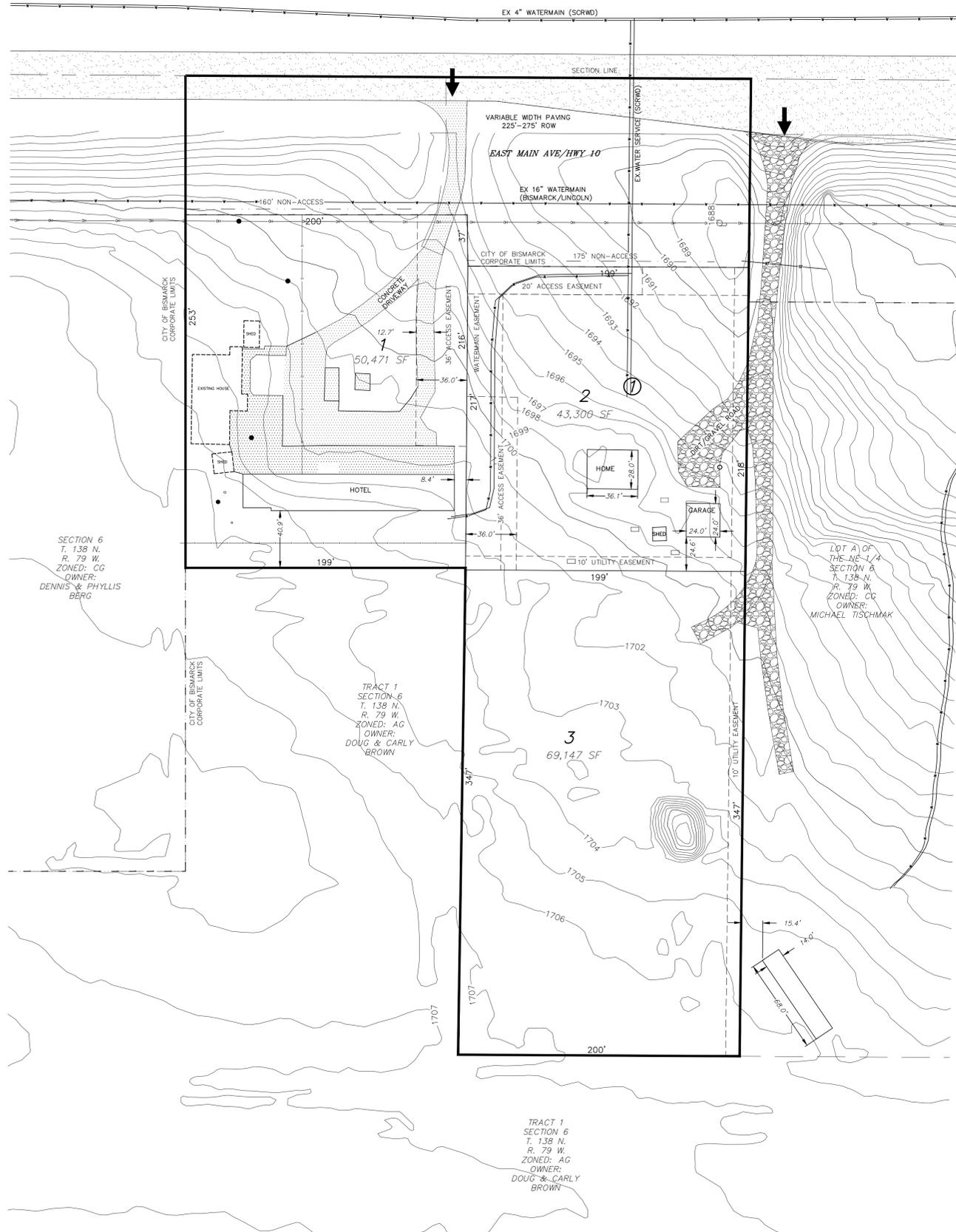


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# FETTIG SUBDIVISION

BEING ALL OF HIGHWAY SUBDIVISION & PART OF THE NE 1/4 OF SECTION 6,  
TOWNSHIP 138 NORTH, RANGE 79 WEST OF THE FIFTH PRINCIPAL MERIDIAN  
BURLEIGH COUNTY, NORTH DAKOTA



LOCATION MAP

**4.8 ACRES**  
**EXISTING ZONING: A/CG**  
**PROPOSED ZONING: CG**  
**3 LOTS**  
**1 BLOCK**

**OWNER: ROBERT FETTIG**

**400' ARTERIAL RIGHT-OF-WAY**



0 40' 80'  
SCALE - 1" = 40'

VERTICAL DATUM: NAVD 88

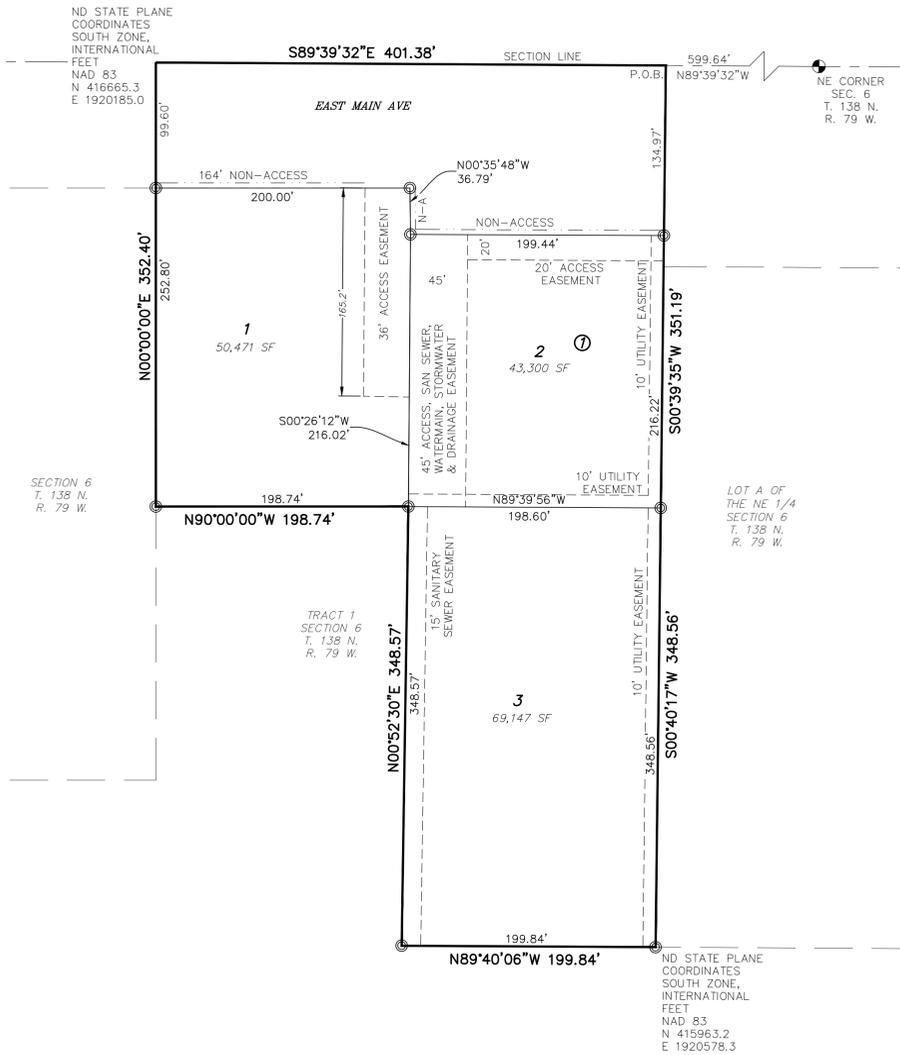
JANUARY 26, 2024

**SWENSON, HAGEN & COMPANY P.C.**  
909 Basin Avenue  
Bismarck, North Dakota 58504  
shc@swensonhagen.com  
Phone (701) 223-2600  
Fax (701) 223-2606

Surveying  
Hydrology  
Land Planning  
Civil Engineering  
Landscape & Site Design  
Construction Management

# FETTIG SUBDIVISION

BEING ALL OF HIGHWAY SUBDIVISION & PART OF THE NE 1/4 OF SECTION 6,  
TOWNSHIP 138 NORTH, RANGE 79 WEST OF THE FIFTH PRINCIPAL MERIDIAN  
BURLEIGH COUNTY, NORTH DAKOTA



### DESCRIPTION

BEING ALL OF HIGHWAY SUBDIVISION & PART OF THE NE 1/4 OF SECTION 6, TOWNSHIP 138 NORTH, RANGE 79 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID NE 1/4 THAT IS NORTH 89 DEGREES 39 MINUTES 32 SECONDS WEST, ALONG SAID NORTH LINE, A DISTANCE OF 599.64 FEET FROM THE NE CORNER OF SAID NE 1/4; THENCE SOUTH 00 DEGREES 39 MINUTES 35 SECONDS WEST, ALONG THE WEST LINE AND ITS NORTHERLY EXTENSION OF LOT A OF SAID NE 1/4, A DISTANCE OF 351.19 FEET; THENCE SOUTH 00 DEGREES 40 MINUTES 17 SECONDS WEST, CONTINUING ALONG SAID WEST LINE, A DISTANCE OF 348.56 FEET, TO THE SOUTH LINE OF SAID LOT A; THENCE NORTH 89 DEGREES 40 MINUTES 06 SECONDS WEST, ALONG THE BOUNDARY OF TRACT 1 OF SECTION 6, A DISTANCE OF 199.84 FEET; THENCE NORTH 00 DEGREES 52 MINUTES 30 SECONDS EAST, CONTINUING ALONG SAID BOUNDARY, A DISTANCE OF 348.57 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECOND WEST, CONTINUING ALONG SAID BOUNDARY, A DISTANCE OF 198.74 FEET TO THE WEST LINE OF HIGHWAY SUBDIVISION; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG SAID WEST LINE AND ITS NORTHERLY EXTENSION, A DISTANCE OF 352.40 FEET TO THE NORTH LINE OF SAID NE 1/4; THENCE SOUTH 89 DEGREES 39 MINUTES 32 SECONDS EAST, ALONG SAID NORTH LINE, A DISTANCE OF 401.38 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT CONTAINS 4.82 ACRES, MORE OR LESS.

### SURVEYOR'S CERTIFICATE

I, TERRY BALTZER, HEREBY CERTIFY I AM A LICENSED LAND SURVEYOR IN THE STATE OF NORTH DAKOTA, THAT THIS SURVEY WAS MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND THAT THE SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, THAT ALL MONUMENTS SHOWN HEREON ARE CORRECT, THAT ALL REQUIRED MONUMENTS HAVE BEEN SET, AND THAT ALL DIMENSIONAL AND GEODETIC DETAILS ARE CORRECT.

SWENSON, HAGEN & CO. P.C.  
909 BASIN AVENUE  
BISMARCK, NORTH DAKOTA  
58504

TERRY BALTZER  
PROFESSIONAL LAND SURVEYOR  
N.D. REGISTRATION NO. 3595

### APPROVAL OF CITY PLANNING COMMISSION

THE SUBDIVISION OF LAND AS SHOWN ON THE PLAT HAS BEEN APPROVED BY THE PLANNING COMMISSION OF THE CITY OF BISMARCK, ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024, IN ACCORDANCE WITH LAWS OF THE STATE OF NORTH DAKOTA, ORDINANCES OF THE CITY OF BISMARCK.

MICHAEL J. SCHWARTZ - CHAIRMAN

ATTEST  
BEN EHRETH - SECRETARY

### APPROVAL OF BOARD OF CITY COMMISSIONERS

THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA, HAS APPROVED THE SUBDIVISION OF LAND AS SHOWN ON THE PLAT, HAS APPROVED THE GROUNDS AS SHOWN ON THE APPROVED PLAT AS AN AMENDMENT TO THE MASTER PLAN OF THE CITY OF BISMARCK, NORTH DAKOTA, HAS ACCEPTED THE DEDICATION AND REDEDICATION OF ALL RIGHTS-OF-WAY AND PUBLIC EASEMENTS SHOWN THEREON AND DOES HEREBY VACATE ANY PREVIOUS PLATTING WITHIN THE BOUNDARY OF THE APPROVED PLAT.

THE FOREGOING ACTION OF THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA, WAS TAKEN BY RESOLUTION APPROVED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

MICHAEL T. SCHMITZ--PRESIDENT

ATTEST: JASON TOMANEK--CITY ADMINISTRATOR

### APPROVAL OF CITY ENGINEER

I, GABRIEL J. SCHELL, CITY ENGINEER OF THE CITY OF BISMARCK, NORTH DAKOTA, HEREBY APPROVE THIS PLAT.

GABRIEL J. SCHELL--CITY ENGINEER

### OWNER'S CERTIFICATE & DEDICATION

I, ROBERT FETTIG, BEING ALL THE OWNERS OF THE LANDS PLATTED HEREIN, HAVE CAUSED THE LAND TO BE PLATTED AND DO HEREBY VOLUNTARILY CONSENT TO THE EXECUTION OF THIS PLAT TITLED FETTIG SUBDIVISION, AND DEDICATE ALL RIGHTS OF WAY TO THE CITY OF BISMARCK AS SHOWN ON THIS PLAT FOR PUBLIC USE, AND CONSENT TO ANY ACCESS CONTROL TO THE PROPERTY AS SHOWN, AND AFFIRM THAT THE DESCRIPTION AS SHOWN IN THE CERTIFICATE OF THE REGISTERED LAND SURVEYOR IS CORRECT.

WE ALSO DEDICATE TO THE CITY OF BISMARCK ALL EASEMENTS AS SHOWN ON THIS PLAT AS UTILITY EASEMENT TO RUN WITH THE LAND FOR GAS, ELECTRIC, COMMUNICATION AND/OR OTHER PUBLIC UTILITIES ON OR UNDER THOSE CERTAIN STRIPS OF LAND DESIGNATED HEREON.

THEY FURTHERMORE DEDICATE UNTO THE CITY OF BISMARCK "STORM WATER AND DRAINAGE EASEMENTS" TO RUN WITH THE LAND FOR THE PURPOSE OF STORM SEWER AND SURFACE WATER DRAINAGE UNDER, OVER, THROUGH AND/OR ACROSS THOSE AREAS DEDICATED HEREON AS "STORM WATER AND DRAINAGE EASEMENTS" FOR THE

PURPOSE OF CONSTRUCTION, RECONSTRUCTION, REPAIR, ENLARGING AND MAINTAINING STORM WATER MANAGEMENT FACILITIES TOGETHER WITH NECESSARY APPURTENANCES THERETO FOR STORM WATER, STORM SEWER AND SURFACE WATER DRAINAGE AND MANAGEMENT OF SAID STORM WATER FLOW IN A MANNER THAT WILL PERMIT THE FREE AND UNOBSTRUCTED FLOW OF WATER UNDER, OVER AND/OR ACROSS THE EASEMENT AREA.

THEY ALSO DEDICATE ACCESS EASEMENTS TO THE PUBLIC, TO RUN WITH THE LAND FOR USE BY ALL LAND OWNING PARTIES, THEIR TENANTS, VISITORS AND LICENSEES, TO PASS AND REPASS ALONG SAID EASEMENT, AND FOR THE USE OF ANY GOVERNMENTAL SUBDIVISION, ITS OFFICERS AND EMPLOYEES FOR EMERGENCY SERVICES AND ANY OTHER GOVERNMENTAL USE OR USES, PROVIDED THAT MAINTENANCE AND CLEARANCE OF THE EASEMENT IS THE RESPONSIBILITY OF THE LAND OWNING PARTIES AND THE CITY SHALL NOT BE RESPONSIBLE IN ANY WAY TO FURNISH ANY CITY SERVICES IF SUCH ACCESS EASEMENTS ARE NOT PROPERLY MAINTAINED OR ARE OBSTRUCTED BY THE OWNERS OF THE PROPERTY IN THE SUBDIVISION.

THEY FURTHER GRANT A WATERMAIN & SANITARY SEWER EASEMENT TO THE CITY OF BISMARCK; SAID EASEMENT TO CONSTRUCT, OPERATE, MAINTAIN, AND REPAIR WATERMAIN AND SANITARY SEWER FACILITIES UNDER OR UPON THE REAL PROPERTY DESIGNATED HEREON AS WATERMAIN EASEMENTS.

STATE OF NORTH DAKOTA )  
COUNTY OF BURLEIGH )

ROBERT FETTIG  
6319 E MAIN AVE  
BISMARCK, ND 58501

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024, BEFORE ME PERSONALLY APPEARED ROBERT FETTIG, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING CERTIFICATE AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

NOTARY PUBLIC  
BURLEIGH COUNTY, NORTH DAKOTA  
MY COMMISSION EXPIRES \_\_\_\_\_

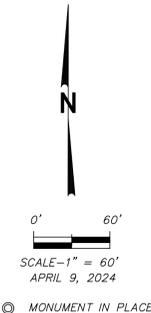
### NOTES

BASIS OF BEARING:  
NORTH DAKOTA STATE PLANE, SOUTH ZONE BY  
CITY ORDINANCE

COORDINATE DATUM:  
NORTH DAKOTA STATE PLANE COORDINATE  
SYSTEM  
NAD 83 SOUTH ZONE  
ADJUSTMENT OF 1986  
UNITS ARE INTERNATIONAL FEET

BEARINGS AND DISTANCES MAY VARY FROM  
PREVIOUS PLATS DUE TO DIFFERENT METHODS  
OF MEASUREMENTS.

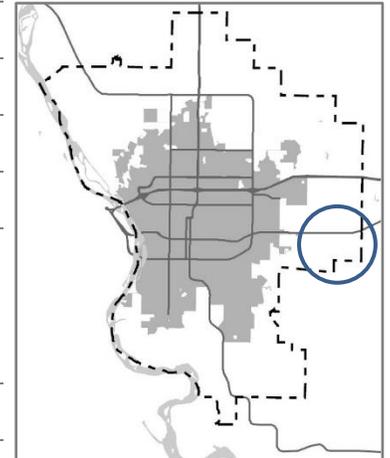
VERTICAL BENCHMARK:  
SE CORNER FETTIG SUBDIVISION  
ELEV. 1706.19 (NAVD 88)



AREA DATA	
LOTS	162,918 S.F. 3.74 ACRES
STREETS	46,893 S.F. 1.08 ACRES
TOTAL	209,811 S.F. 4.82 ACRES

**Project Summary**

<i>Title:</i>	Apple Creek Country Club Fourth Subdivision
<i>Status:</i>	Planning and Zoning Commission - Public Hearing
<i>Property Owner(s):</i>	Mariner Developers, LLC
<i>Project Contact:</i>	Hanna Boese, PE, Lowry Engineering
<i>Project Location:</i>	East of Bismarck, in the southwest quadrant of the intersection of Country Club Drive and County Highway 10 (a replat of Lots 1-5 and 7-11, Block 1, Apple Creek Country Club Third Subdivision)
<i>Project Size:</i>	5.63 acres
<i>Applicant Request:</i>	Replat Lots 1-5 and 7-11, Block 1, Apple Creek Country Club Third Subdivision to modify lot sizes
<i>Staff Recommendation:</i>	Approve



**Site Information**

<i>Existing Conditions</i>		<i>Proposed Conditions</i>	
<i>Lots/Blocks:</i>	10 lots in 1 block	<i>Lots/Blocks:</i>	14 lots in 1 block
<i>Land Use:</i>	Residential	<i>Land Use:</i>	Residential
<i>Future Land Use:</i>	Rural Residential (RR)	<i>Future Land Use:</i>	Rural Residential (RR)
<i>Zoning:</i>	R10 – Residential	<i>Zoning:</i>	R10 – Residential
<i>Uses Allowed:</i>	R10 – Single and two-family residential	<i>Uses Allowed:</i>	R10 – Single and two-family residential
<i>Max Density:</i>	R10 – 10 units / acre	<i>Max Density:</i>	R10 – 10 units / acre

**Area Information**

**Property History**

<i>Zoning Jurisdiction:</i>	Extraterritorial Area (ETA)	<i>Zoned:</i>	11/1999
<i>Township:</i>	Apple Creek (organized)	<i>Platted:</i>	04/2000
<i>Neighborhood:</i>	Apple Creek	<i>Annexed:</i>	N/A

**Project Narrative**

Mariner Developers, LLC is requesting approval of a minor subdivision final plat titled Apple Creek Country Club Fourth Subdivision.

The proposed replat would encompass Lots 1-5 and 7-11, Block 1, Apple Creek Country Club

Third Subdivision, in order to modify lot sizes to increase the number of lots from 10 to 14. The R10 – Residential zoning, which allows single and two-family residences, would not change.

**Project Context**

*Land uses adjacent to the project area are depicted on the adjacent map:*

*A Zoning and Plan Reference Map is attached to this staff report, including current zoning, the Future Land Use Plan, Major Street Plan, and Active Mobility Plan.*



The property has been identified as RR – Rural Residential in the Future Land Use Plan. The rural residential areas are for country living with convenient proximity to city life. Goals and objectives of this plan as they relate to minor subdivision final plats are referenced in review standards below.

Adjacent uses include residential uses to the south and west, agricultural uses to the north, and a country club and golf course to the east.

The previous underlying plat received conditional approval from the Department of Environmental Quality for wastewater storage and management of the site.

**Public Engagement**

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on April 12 and April 19, and 76 letters were mailed to the owners of nearby properties on April 12, 2024.

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

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

**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.*

*Dimensional standards of the zoning ordinance are met with the proposed subdivision ([Title 14](#))*

**Yes.** All lots meet area and width requirements of the zoning district within which they are located, and there is sufficient space within each lot for anticipated buildings to meet density, setback, and lot coverage requirements.

*Stormwater runoff impacted by this subdivision is adequately managed to protect public and private investments and the natural environment ([Goal 15, Section 14.1-04-03](#));*

**Yes.** There is a plan to manage any stormwater runoff generated by this subdivision. The post-construction stormwater management permit (PCSMP) has been conditionally approved by the City Engineer, with concurrence from the County Engineering.

*Technical specifications required of the final plat have been met ([Section 14-09-07](#))*

**Yes.** The proposed final plat contains the required information to ensure an accurate and timely review by staff, the Planning and Zoning Commission, and the general public.

*Proper administrative procedures related to the request are being followed ([Section 14-09-04](#))*

**Yes.** All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The applicant has submitted a complete application for final plat approval, and the required staff review of all submitted materials has occurred prior to submittal of this report to the Planning and Zoning Commission. A public hearing has been scheduled for this request, and all requirements for notice of this hearing have been met, as documented in this report above.

*The public health, safety and general welfare will not be adversely impacted by the proposed subdivision ([Goal S10-a](#))*

**Yes.** As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed subdivision would not adversely impact the public health, safety, and general welfare.

**Staff Recommendation**

Based on the above findings, staff recommends approval of the minor subdivision final plat for Apple Creek Country Club Fourth Subdivision.

**Attachments**

1. Zoning and Plan Reference Map
2. Final Plat
3. Original Plat with Replatted Area Highlighted

Staff report prepared by: Lauren Oster, Planner

701-355-1846 | laoster@bismarcknd.gov

### Zoning Districts

<b>A</b>	Agriculture
<b>RR</b>	Rural Residential
<b>R5</b>	Residential
<b>RMH</b>	Manufactured Home Residential
<b>R10</b>	Residential
<b>RM</b>	Residential Multifamily
<b>RT</b>	Residential (Offices)
<b>HM</b>	Health and Medical
<b>CA</b>	Commercial
<b>CG</b>	Commercial
<b>MA</b>	Industrial
<b>MB</b>	Industrial
<b>PUD</b>	Planned Unit Development
<b>DC</b>	Downtown Core
<b>DF</b>	Downtown Fringe

### Future Land Use Plan

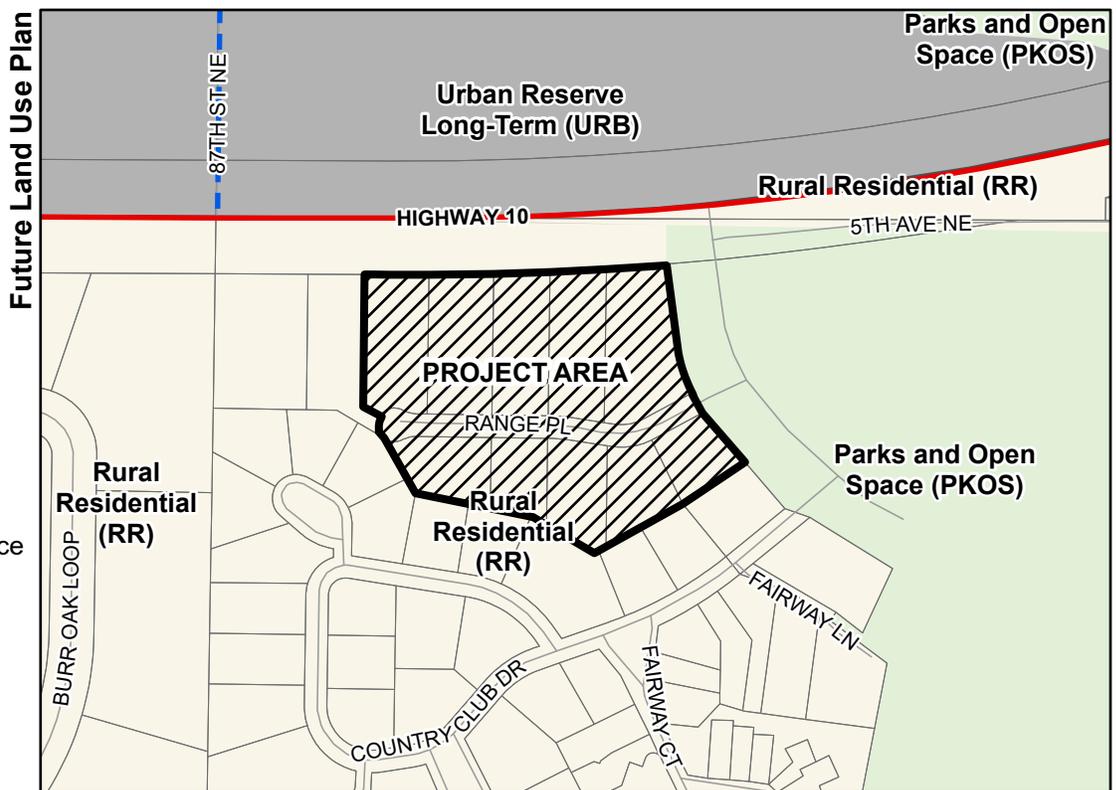
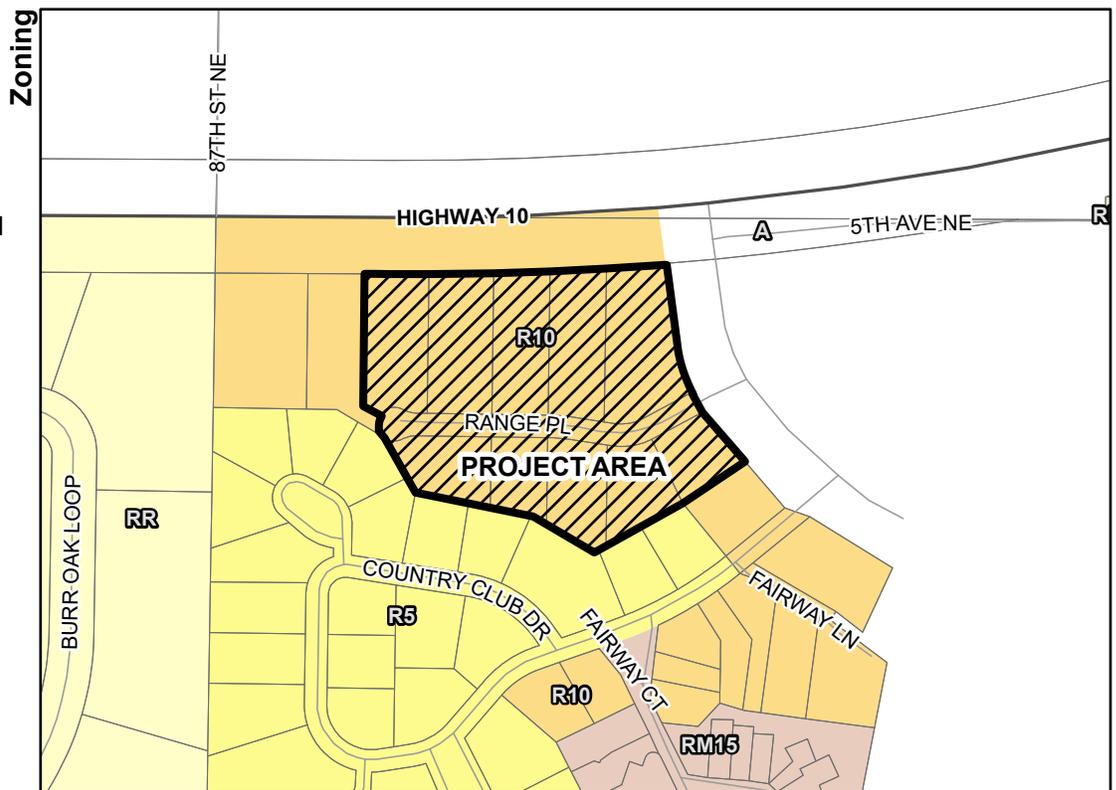
<b>UN</b>	Urban
<b>NMU</b>	Neighborhood Mixed Use
<b>CMU</b>	Community Mixed Use
<b>DMU</b>	Destination Mixed Use
<b>DT</b>	Downtown
<b>IND</b>	Industrial
<b>IF</b>	Industrial Flex
<b>IMU</b>	Industrial Mixed Use
<b>INS</b>	Institutional
<b>RR</b>	Rural Residential
<b>TR</b>	Transitional Rural
<b>PKOS</b>	Parks/Open Space
<b>URA/URB</b>	Urban Reserve Mid/Long-Term

### Active Mobility Plan

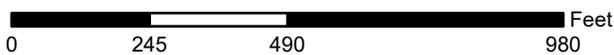
Future Shared Trail

### Major Street Plan

- Existing Arterial
- Future Arterial
- Existing Collector
- Future Collector
- Existing Interstate
- Future Interstate



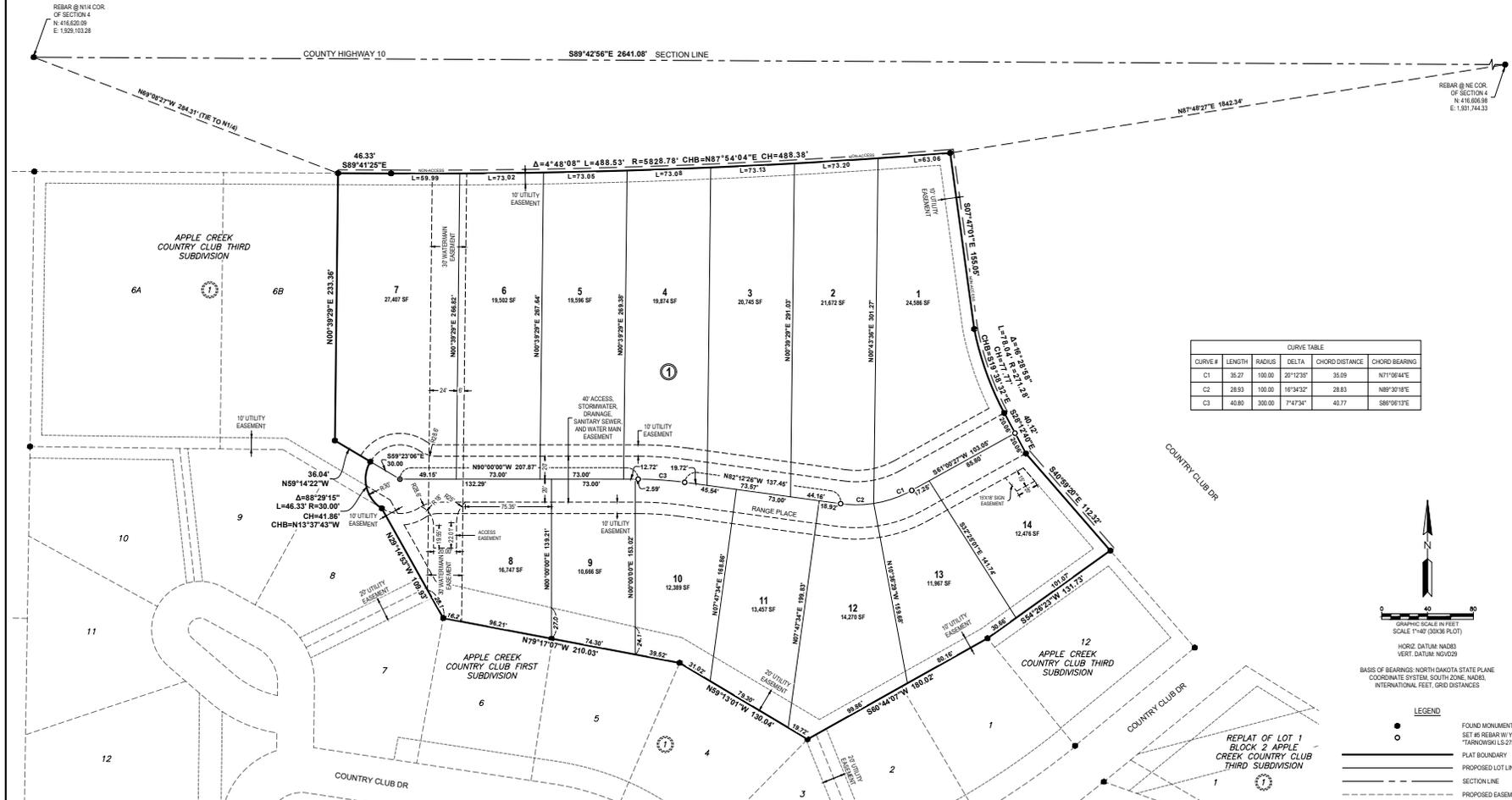
*This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.*



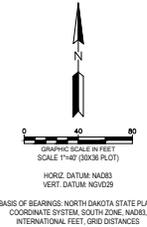
City of Bismarck  
Community Development  
Planning Division  
April 12, 2024

# APPLE CREEK COUNTRY CLUB FOURTH SUBDIVISION

A REPLAT OF LOTS 1 - 5 AND 7 - 11, BLOCK 1, OF APPLE CREEK COUNTRY CLUB THIRD SUBDIVISION  
IN PART OF GOVERNMENT LOT 2 OF SECTION 4, TOWNSHIP 138 NORTH, RANGE 79 WEST  
OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA



CURVE #	LENGTH	RADIUS	DELTA	CHORD DISTANCE	CHORD BEARING
C1	35.27	100.00	20°12'30"	35.59	N71°04'41"E
C2	28.53	100.00	16°34'35"	28.83	N69°37'18"E
C3	40.80	300.00	7°47'34"	40.77	S86°06'19"E



**OWNERS CERTIFICATE AND DEDICATION**  
THE MARKER DEVELOPERS, LLC, BEING ALL THE OWNERS OF THE LANDS PLATTED HEREIN, HAVE CAUSED THE LAND TO BE PLATTED AND DO HEREBY VOLUNTARILY CONSENT TO THE EXECUTION OF THIS PLAT TITLED APPLE CREEK COUNTRY CLUB FOURTH SUBDIVISION, AND AFFIRM THAT THE DESCRIPTION AS SHOWN IN THE CERTIFICATE OF THE REGISTERED LAND SURVEYOR IS CORRECT.

WE ALSO DEDICATE ALL EASEMENTS AS SHOWN ON THIS PLAT AS "UTILITY EASEMENT" TO RUN WITH THE LAND FOR GAS, ELECTRIC, COMMUNICATION AND/OR OTHER PUBLIC UTILITIES ON OR UNDER THOSE CERTAIN STRIPS OF LAND DESIGNATED HEREOF.

WE ALSO DEDICATE ALL EASEMENTS AS SHOWN ON THIS PLAT AS "STORMWATER & DRAINAGE EASEMENT" TO RUN WITH THE LAND FOR THE FREE AND UNOBSTRUCTED FLOW OF WATER UNDER AND/OR OVER THESE AREAS INCLUDING THE CONSTRUCTION AND MAINTENANCE OF STORMWATER FACILITIES TOGETHER WITH NECESSARY APPURTENANCES.

WE ALSO DEDICATE TO ALL LANDOWNING PARTIES ALL EASEMENTS AS SHOWN ON THIS PLAT AS "ACCESS EASEMENT" TO RUN WITH THE LAND FOR FREE AND UNOBSTRUCTED USE OF THE LAND, THEIR TENANTS, VISITORS AND LICENSEES, AND FOR THE USE OF ANY GOVERNMENTAL SUBDIVISION, ITS OFFICERS AND EMPLOYEES FOR EMERGENCY SERVICES AND ANY OTHER GOVERNMENTAL USE OR USES, PROVIDED THAT MAINTENANCE AND CLEARANCE OF THE EASEMENT IS THE RESPONSIBILITY OF THE LAND OWNING PARTIES AND THE CITY OF BISMARCK SHALL NOT BE RESPONSIBLE IN ANY WAY TO FURNISH ANY SERVICES IF SUCH ACCESS EASEMENTS ARE NOT PROPERLY MAINTAINED OR ARE OBSTRUCTED BY THE PROPERTY OWNERS IN THE SUBDIVISION.

WE ALSO DEDICATE TO ALL LANDOWNING PARTIES ALL PRIVATE EASEMENTS AS SHOWN ON THIS PLAT AS "PRIVATE WATER MAIN AND SANITARY SEWER EASEMENT" TO RUN WITH THE LAND FOR USE BY ALL LANDOWNING PARTIES, THEIR TENANTS, VISITORS AND LICENSEES TO CONSTRUCT, OPERATE, MAINTAIN, AND REPAIR WATER MAIN AND/OR SANITARY SEWER FACILITIES UNDER OR UPON THOSE AREAS DESIGNATED AS SUCH.

WE ALSO DEDICATE TO ALL LANDOWNING PARTIES ALL EASEMENTS AS SHOWN ON THIS PLAT AS "SIGN EASEMENT" TO RUN WITH THE LAND FOR THE NON-EXCLUSIVE USE OF ALL LANDOWNING PARTIES, THEIR TENANTS, AND LICENSEES TO PLACE SIGNS ON THE EASEMENT AREA PROVIDED THAT ALL SIGNS PLACED FOLLOW ALL RELEVANT LOCAL, STATE, AND FEDERAL LAWS.

**APPROVAL OF CITY PLANNING AND ZONING COMMISSION**  
THE SUBDIVISION OF LAND AS SHOWN ON THIS PLAT HAS BEEN APPROVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF BISMARCK, NORTH DAKOTA, ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024, IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH DAKOTA AND ORDINANCES OF THE CITY OF BISMARCK.

MICHAEL J. SCHWARTZ, CHAIR ATTEST: BEN BRETHE, SECRETARY

**APPROVAL OF BOARD OF CITY COMMISSIONERS**  
THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA, HAS APPROVED THE SUBDIVISION OF LAND AS SHOWN ON THIS PLAT AS AN AMENDMENT TO THE MASTER PLAN OF THE CITY OF BISMARCK, NORTH DAKOTA, HAS ACCEPTED THE DEDICATION OF ALL RIGHTS OF WAY AND PUBLIC EASEMENTS SHOWN THEREON AND DOES HEREBY VACATE ANY PREVIOUS PLATTING WITHIN THE BOUNDARY OF THIS PLAT.

THE FOREGOING ACTION OF THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA, WAS APPROVED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

MICHAEL T. SCHWITZ, PRESIDENT ATTEST: JASON TOMANEK, CITY ADMINISTRATOR

**LEGAL DESCRIPTION**  
A REPLAT OF LOTS 1 AND 7 - 11, BLOCK 1 OF APPLE CREEK COUNTRY CLUB THIRD SUBDIVISION, IN PART OF GOVERNMENT LOT 2 OF SECTION 4, TOWNSHIP 138 NORTH, RANGE 79 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 6B, BLOCK 1 OF SAID APPLE CREEK COUNTRY CLUB THIRD SUBDIVISION; THENCE S89°41'25"E ON AND ALONG THE NORTH BOUNDARY LINE OF SAID SUBDIVISION A DISTANCE OF 46.33 FEET; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 302.78 FEET, AN ARC LENGTH OF 48.33 FEET, A DELTA ANGLE OF 4°49'57", A CHORD BEARING OF N67°04'41"E, AND A CHORD DISTANCE OF 48.83 FEET TO THE NORTHEAST BOUNDARY CORNER OF SAID SUBDIVISION; THENCE S89°41'25"E ON AND ALONG THE EAST BOUNDARY LINE OF SAID SUBDIVISION A DISTANCE OF 150.00 FEET; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 211.28 FEET, AN ARC LENGTH OF 71.84 FEET, A DELTA ANGLE OF 16°29'58", A CHORD BEARING OF S19°38'32"E, AND A CHORD DISTANCE OF 77.77 FEET; THENCE S28°12'42"ON AND ALONG THE EAST BOUNDARY LINE OF SAID SUBDIVISION A DISTANCE OF 40.12 FEET; THENCE S49°39'29"ON AND ALONG THE EAST BOUNDARY LINE OF SAID SUBDIVISION A DISTANCE OF 112.12 TO THE NORTH CORNER OF LOT 12, BLOCK 1 OF SAID SUBDIVISION; THENCE S54°29'29"ON AND ALONG THE NORTH LINE OF SAID LOT 12 A DISTANCE OF 131.70 FEET; THENCE S89°41'25"ON AND ALONG THE SOUTH BOUNDARY LINE OF SAID SUBDIVISION A DISTANCE OF 130.04 FEET; THENCE N91°17'07"ON AND ALONG THE SOUTH BOUNDARY LINE OF SAID SUBDIVISION A DISTANCE OF 31.03 FEET; THENCE N91°17'07"ON AND ALONG THE WEST BOUNDARY LINE OF SAID SUBDIVISION A DISTANCE OF 38.93 FEET; THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 48.33 FEET, A DELTA ANGLE OF 89°29'15", A CHORD BEARING OF N10°31'19"W, AND A CHORD DISTANCE OF 41.48 FEET; THENCE N87°42'29"W ON AND ALONG THE EAST LINE OF SAID LOT 8B A DISTANCE OF 38.04 FEET; THENCE N00°39'29"E ON AND ALONG THE EAST LINE OF SAID LOT 8B A DISTANCE OF 233.36 FEET TO THE POINT OF BEGINNING.

S/AID TRACT OF LAND CONTAINS 5.63 ACRES, MORE OR LESS.

GREG MARNER, OWNER  
MARNER DEVELOPERS, LLC  
ALL LOTS OWNED BY EACH OWNER FOR THIS PLAT

STATE OF \_\_\_\_\_, ISS \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, JSS \_\_\_\_\_

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024,  
BEFORE ME PERSONALLY APPEARED GREG MARNER,  
KNOWN TO ME TO BE THE PERSON(S) DESCRIBED AND  
WHO EXECUTED THE WITHIN CERTIFICATE AND THEY  
ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

NOTARY PUBLIC: \_\_\_\_\_

STEVE MARNER, OWNER  
MARNER DEVELOPERS, LLC  
ALL LOTS OWNED BY EACH OWNER FOR THIS PLAT

STATE OF \_\_\_\_\_, ISS \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, JSS \_\_\_\_\_

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024,  
BEFORE ME PERSONALLY APPEARED STEVE MARNER,  
KNOWN TO ME TO BE THE PERSON(S) DESCRIBED AND  
WHO EXECUTED THE WITHIN CERTIFICATE AND THEY  
ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

NOTARY PUBLIC: \_\_\_\_\_

WICK MARNER, OWNER  
MARNER DEVELOPERS, LLC  
ALL LOTS OWNED BY EACH OWNER FOR THIS PLAT

STATE OF \_\_\_\_\_, ISS \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, JSS \_\_\_\_\_

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024,  
BEFORE ME PERSONALLY APPEARED WICK MARNER,  
KNOWN TO ME TO BE THE PERSON(S) DESCRIBED AND  
WHO EXECUTED THE WITHIN CERTIFICATE AND THEY  
ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

NOTARY PUBLIC: \_\_\_\_\_

**APPROVAL OF BOARD OF COUNTY COMMISSIONERS**  
THE BOARD OF COUNTY COMMISSIONERS OF BURLEIGH COUNTY, NORTH DAKOTA, HAS APPROVED THE SUBDIVISION OF LAND AS SHOWN ON THIS PLAT AS AN AMENDMENT TO THE MASTER PLAN OF BURLEIGH COUNTY, NORTH DAKOTA, HAS APPROVED THE GRANTING AS SHOWN ON THE PLAT AS AN AMENDMENT TO THE MASTER PLAN OF BURLEIGH COUNTY, NORTH DAKOTA, AND DOES HEREBY VACATE ANY PREVIOUS PLATTING WITHIN THE BOUNDARY OF THE PLAT.

THE FOREGOING ACTION OF THE BOARD OF COUNTY COMMISSIONERS OF BURLEIGH COUNTY, NORTH DAKOTA, WAS TAKEN BY RESOLUTION APPROVED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

GABRIEL J. SCHELL, CITY ENGINEER OF THE CITY OF BISMARCK, NORTH DAKOTA, HEREBY APPROVES THIS PLAT.

GABRIEL J. SCHELL, CITY ENGINEER

BRUN BITNER, CHAIR ATTEST: MARK SPILONSKOWSKI  
BURLEIGH COUNTY AUDITOR/TREASURER

**SURVEYORS CERTIFICATE**  
MICHAEL J. TARNOWSKI, HEREBY CERTIFY I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF NORTH DAKOTA. THAT THIS SURVEY WAS MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN, THAT ALL MONUMENTS AND MARKS SET, TOGETHER WITH THOSE FOUND, ARE OF THE CHARACTER AND OCCUPY THE POSITIONS SHOWN THEREON AND ARE SUFFICIENT TO ENABLE THIS SURVEY TO BE RETRACED.

MICHAEL J. TARNOWSKI  
PROFESSIONAL LAND SURVEYOR  
N.D. REGISTRATION NO. PLS 27308

**SURVEYOR'S CERTIFICATE**  
MICHAEL J. TARNOWSKI, HEREBY CERTIFY I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF NORTH DAKOTA. THAT THIS SURVEY WAS MADE BY ME OR UNDER MY DIRECTION AND SUPERVISION AND THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN, THAT ALL MONUMENTS AND MARKS SET, TOGETHER WITH THOSE FOUND, ARE OF THE CHARACTER AND OCCUPY THE POSITIONS SHOWN THEREON AND ARE SUFFICIENT TO ENABLE THIS SURVEY TO BE RETRACED.

MICHAEL J. TARNOWSKI  
PROFESSIONAL LAND SURVEYOR  
N.D. REGISTRATION NO. PLS 27308

**LEGEND**

- FOUND MONUMENT
- SET BY REBAR W/ YPC, TARNOWSKI LS 27006
- PLAT BOUNDARY
- - - PROPOSED LOT LINE
- - - SECTION LINE
- - - PROPOSED EASEMENT
- - - PROPOSED NON-ACCESS
- - - EXISTING LOT LINE
- - - EXISTING EASEMENT
- ▨ VACATED EASEMENT

**PLAT NOTES:**

- BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS DOCUMENTS OF RECORD DUE TO DIFFERENT METHODS OF FIELD MEASUREMENT.
- FIELD SURVEY COMPLETED 12/20/23.
- SUBJECT TO ALL EASEMENTS OF RECORD WHETHER SHOWN OR NOT SHOWN.
- PROPOSED ZONING: RESIDENTIAL.
- 100-YEAR FLOOD PLAN: FEMA ZONE X, DOCUMENT #8901500000, EFFECTIVE DATE: 8/20/14.
- BENCHMARK AT TOP NUT OF HYDRANT #2322 (BISMARCK HYDRANT BOOK ELEV. = 1104.96 NAVD83)

TOTAL LOTS: 245,334 SF 5.63 AC

**OWNER:** MARNER DEVELOPERS, LLC  
3485 GALLATIN DR  
BISMARCK, ND 58508

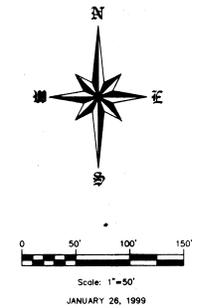
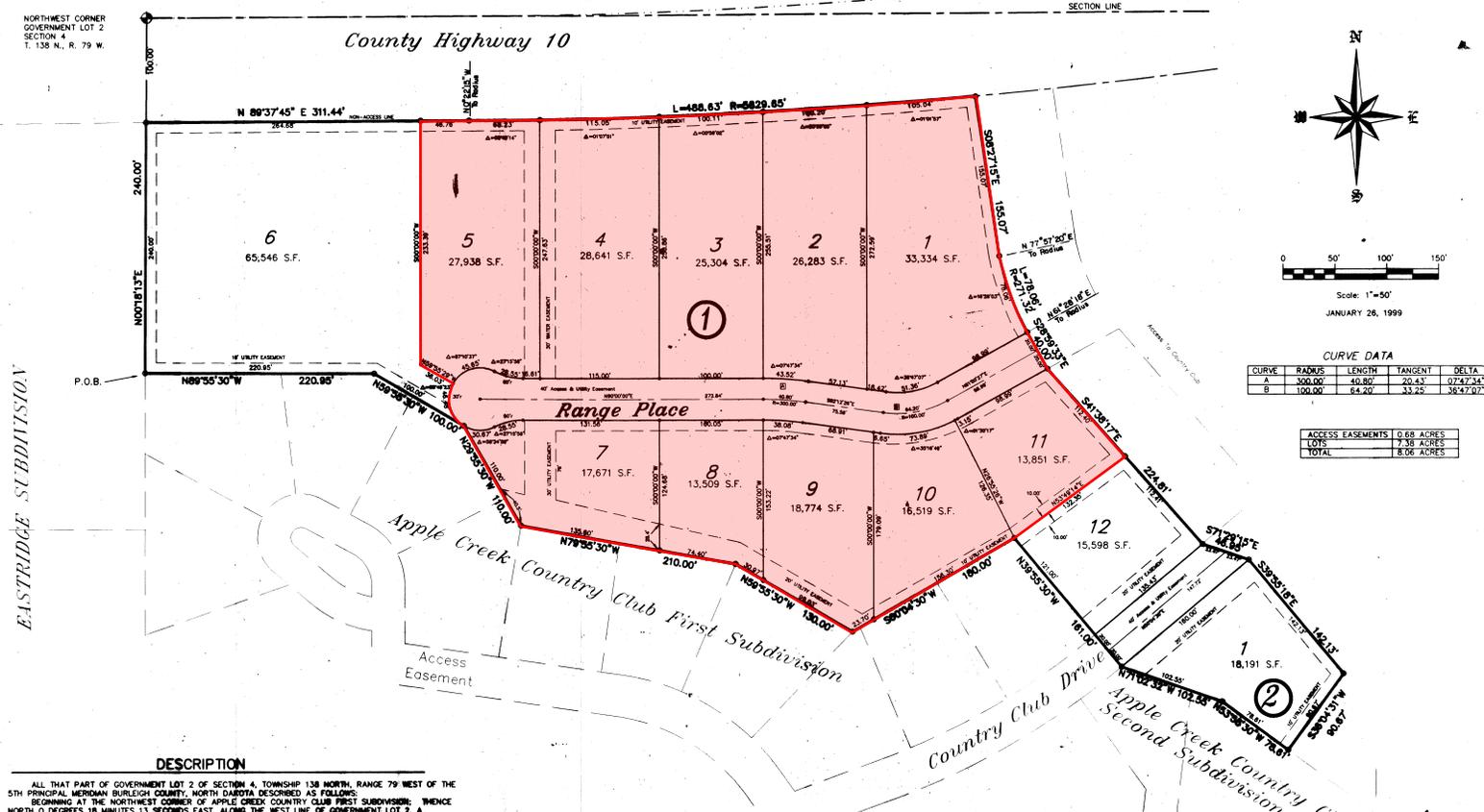
**SURVEYOR:** MICHAEL J. TARNOWSKI,  
PLS 27308  
MOUNTAIN PLANS, LLC  
1300 TACOMA AVE, SUITE A  
BISMARCK, ND 58504  
(701) 587-3264

**MOUNTAIN PLANS, LLC**  
108 52026A AVE, BISMARCK, ND 58504 (701) 587-3264 WWW.MOUNTAINPLANS.COM

# Apple Creek Country Club Third Subdivision

PART OF GOVERNMENT LOT 2 OF SECTION 4, T. 138 N., R. 79 W.  
Burleigh County, North Dakota

NORTHWEST CORNER  
GOVERNMENT LOT 2  
SECTION 4  
T. 138 N., R. 79 W.



CURVE DATA

CURVE	RADIUS	LENGTH	TANGENT	DELTA
A	300.00	40.80	20.43	0742.24
B	100.00	64.20	33.02	3637.07

ACCESS EASEMENTS 0.68 ACRES  
LOTS 7.38 ACRES  
TOTAL 8.06 ACRES

EASTRIDGE SUBDIVISION

### DESCRIPTION

ALL THAT PART OF GOVERNMENT LOT 2 OF SECTION 4, TOWNSHIP 138 NORTH, RANGE 79 WEST OF THE 5TH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA DESCRIBED AS FOLLOWS:  
BEGINNING AT THE NORTHWEST CORNER OF APPLE CREEK COUNTRY CLUB FIRST SUBDIVISION; THENCE NORTH 0 DEGREES 18 MINUTES 13 SECONDS EAST, ALONG THE WEST LINE OF GOVERNMENT LOT 2, A DISTANCE OF 240.00 FEET; TO THE SOUTH RIGHT-OF-WAY LINE OF COUNTY HIGHWAY 10; THENCE NORTH 89 DEGREES 37 MINUTES 45 SECONDS EAST, CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 311.44 FEET; THENCE EASTERLY AND TO THE LEFT, CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE, ON A 5829.65 FOOT RADIUS CURVE AN ARC LENGTH OF 488.63 FEET; THENCE SOUTH 08 DEGREES 27 MINUTES 15 SECONDS EAST, A DISTANCE OF 150.07 FEET; THENCE SOUTHEASTERLY AND TO THE LEFT ON A 27.32 FOOT RADIUS CURVE, AN ARC LENGTH OF 75.08 FEET; THENCE SOUTH 28 DEGREES 58 MINUTES 33 SECONDS EAST, A DISTANCE OF 40.00 FEET; THENCE SOUTH 41 DEGREES 38 MINUTES 17 SECONDS EAST, A DISTANCE OF 22.61 FEET; THENCE SOUTH 71 DEGREES 28 MINUTES 13 SECONDS EAST, A DISTANCE OF 46.34 FEET; THENCE SOUTH 39 DEGREES 55 MINUTES 18 SECONDS EAST, A DISTANCE OF 142.13 FEET; THENCE SOUTH 36 DEGREES 04 MINUTES 31 SECONDS WEST, A DISTANCE OF 140.17 FEET; TO THE NORTH LINE OF APPLE CREEK COUNTRY CLUB SECOND SUBDIVISION; THENCE NORTH 53 DEGREES 55 MINUTES 30 SECONDS WEST, ALONG SAID NORTH LINE, A DISTANCE OF 78.61 FEET; THENCE NORTH 71 DEGREES 02 MINUTES 32 SECONDS WEST, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 102.55 FEET; THENCE NORTH 39 DEGREES 55 MINUTES 30 SECONDS WEST, CONTINUING ALONG SAID NORTH LINE AND THE NORTH LINE OF APPLE CREEK COUNTRY CLUB FIRST SUBDIVISION, A DISTANCE OF 181.00 FEET; THENCE SOUTH 60 DEGREES 04 MINUTES 30 SECONDS WEST, ALONG THE NORTH LINE OF APPLE CREEK COUNTRY CLUB FIRST SUBDIVISION, A DISTANCE OF 180.00 FEET; THENCE NORTH 59 DEGREES 40 MINUTES 30 SECONDS WEST, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 210.00 FEET; THENCE NORTH 29 DEGREES 55 MINUTES 30 SECONDS WEST, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 110.00 FEET; THENCE NORTH 59 DEGREES 55 MINUTES 30 SECONDS WEST, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 100.00 FEET; THENCE NORTH 89 DEGREES 55 MINUTES 30 SECONDS WEST, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 220.95 FEET TO THE POINT OF BEGINNING.  
THE ABOVE DESCRIBED TRACT CONTAINS 8.06 ACRES, MORE OR LESS.

### SURVEYOR'S CERTIFICATE

I, TERRY BALTZER, A REGISTERED LAND SURVEYOR IN THE STATE OF NORTH DAKOTA, HEREBY CERTIFY THAT THE ANNEXED PLAT OF THE NOTES OF A SURVEY PERFORMED UNDER MY SURVEYING LICENSE AND COMPLETED ON JANUARY 26, 2000, AND THAT ALL INFORMATION SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Terry Baltzer  
REGISTERED LAND SURVEYOR  
N.D. REGISTRATION NO. 3388

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

ON THIS 24 DAY OF February, 2000, BEFORE ME PERSONALLY APPEARED TERRY BALTZER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING SURVEYOR'S CERTIFICATE AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

BRAND PATIENCE  
NOTARY PUBLIC  
BURLEIGH COUNTY, NORTH DAKOTA  
MY COMMISSION EXPIRES AUGUST 24, 2004

### APPROVAL OF BOARD OF CITY COMMISSIONERS

THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA, HAS APPROVED THE SUBDIVISION OF LAND AS SHOWN ON THE ANNEXED PLAT, HAS ACCEPTED THE DEDICATION OF ALL ACCESS EASEMENTS SHOWN THEREON, HAS APPROVED THE GROUNDS AS SHOWN ON THE ANNEXED PLAT AS AN AMENDMENT TO THE MASTER PLAN OF THE CITY OF BISMARCK, NORTH DAKOTA.

THE FOREGOING ACTION OF THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA, WAS TAKEN BY RESOLUTION APPROVED THE 12 DAY OF December, 1999.

W.C. WOODEN - CITY ADMINISTRATOR

### APPROVAL OF CITY PLANNING COMMISSION

THE SUBDIVISION OF LAND AS SHOWN ON THE ANNEXED PLAT HAS BEEN APPROVED BY THE PLANNING COMMISSION OF THE CITY OF BISMARCK, NORTH DAKOTA, ON THE 24 DAY OF February, 2000, IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH DAKOTA, ORDINANCES OF THE CITY OF BISMARCK AND REGULATIONS ADOPTED BY THE SAID PLANNING COMMISSION. IN WITNESS WHEREOF WE SET THE HANDS AND SEALS OF THE CHAIRMAN AND SECRETARY OF THE PLANNING COMMISSION OF THE CITY OF BISMARCK.

David Backstead - CHAIRMAN  
Carl Hokenstead - SECRETARY

### APPROVAL OF CITY ENGINEER

I, MELVIN J. BULLINGER, CITY ENGINEER OF THE CITY OF BISMARCK, NORTH DAKOTA, HEREBY APPROVE 'APPLE CREEK COUNTRY CLUB THIRD SUBDIVISION' BURLEIGH COUNTY, NORTH DAKOTA AS SHOWN ON THE ANNEXED PLAT.

Melvin J. Bullinger  
CITY ENGINEER

### OWNER'S CERTIFICATE & DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT APPLE CREEK COUNTRY CLUB INC., BISMARCK, NORTH DAKOTA, BEING THE OWNER AND PROPRIETOR OF THE PROPERTY SHOWN ON THE ANNEXED PLAT HAS CAUSED THAT PORTION DESCRIBED HEREON TO BE SURVEYED AND PLATTED AS 'APPLE CREEK COUNTRY CLUB THIRD SUBDIVISION', BURLEIGH COUNTY, NORTH DAKOTA.

THEY ALSO DEDICATE EASEMENTS TO RUN WITH THE LAND, FOR GAS, ELECTRIC, TELEPHONE OR OTHER PUBLIC UTILITIES OR SERVICES ON OR UNDER THOSE CERTAIN STRIPS OF LAND DESIGNATED HEREON AS 'UTILITY EASEMENTS'.

THEY FURTHERMORE GRANT 'ACCESS EASEMENTS' TO ALL LAND OWNING PARTIES, THEIR HEIRS AND ASSIGNS, OVER THE TRACTS SHOWN HEREON. SAID EASEMENTS TO INCLUDE THE FULL AND FREE RIGHT FOR SAID PARTIES, THEIR TENANTS, VISITORS AND LICENSEES, IN COMMON WITH ALL OTHERS HAVING LIKE RIGHT AT ALL TIMES HEREAFTER FOR ALL PURPOSES CONNECTED WITH THE USE OF SAID PARTIES, TO PASS AND REPASS ALONG SAID EASEMENTS AND TO HOLD SAID EASEMENTS TO SAID PARTIES, THEIR HEIRS AND ASSIGNS AND APPURTAINMENT TO THE LAND OF SAID PARTIES. THEY ALSO DEDICATE SAID EASEMENTS TO AND FOR THE USE OF ANY GOVERNMENTAL SUBDIVISION, ITS OFFICERS AND EMPLOYEES FOR UTILITIES AND ANY OTHER GOVERNMENTAL SERVICES OR USES IT DEEMS NECESSARY OR ADVISABLE.

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

ON THIS 24 DAY OF February, 2000, BEFORE ME PERSONALLY APPEARED [Signature] KNOWN TO ME TO BE THE PRESIDENT AND SECRETARY RESPECTIVELY, THAT 'APPLE CREEK COUNTRY CLUB INC.' AND WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

[Signature]  
NOTARY PUBLIC  
BURLEIGH COUNTY, NORTH DAKOTA  
MY COMMISSION EXPIRES [Date]

Melvin J. Bullinger  
CITY ENGINEER

SWENSON, HAGEN & CO. P.C.  
PLANNING, SURVEYING, ENGINEERING, ARCHITECTURE  
1100 PINE STREET, FLOOR 1000, BISMARCK, ND 58102  
TEL: 701.223.1100 FAX: 701.223.1101

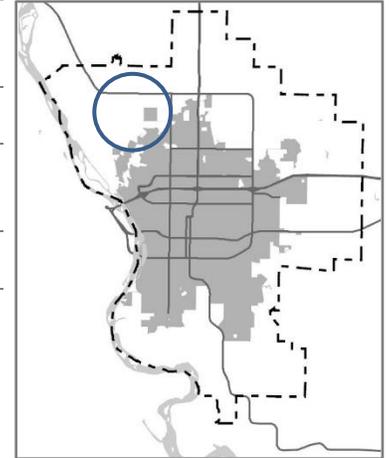
# STAFF REPORT

Application for: **Future Land Use Plan Amendment**

Project ID: **FLUP2024-001**

## Project Summary

<i>Title:</i>	Hay Creek Township, Future Land Use Plan Amendment
<i>Status:</i>	Planning and Zoning Commission - Public Hearing
<i>Property Owner(s):</i>	Lucinda Ward (Section 7, T139N-R80W) Ron Knutson (Section 18, T139N-R80W)
<i>Project Contact:</i>	Isak Johnson, Planner
<i>Project Location:</i>	Northwest of Bismarck in Sections 7 and 18, T139N-R80W, and Sections 12 and 13, T139N-R81W, Hay Creek Township, West of Tyler Parkway between Frisco Way and State Highway 1804
<i>Project Size:</i>	0.17 square miles, more or less
<i>Applicant Request:</i>	Adjust the proposed Future Land Uses to maintain consistency with a Major Street Plan Amendment in this area
<i>Staff Recommendation:</i>	Approve



## Site Information

<i>Existing Conditions</i>		<i>Proposed Conditions</i>	
<i>Lots/Blocks:</i>	Parts of 6 tracts of land	<i>Lots/Blocks:</i>	Parts of 6 tracts of land
<i>Land Use:</i>	Undeveloped/agricultural	<i>Land Use:</i>	Undeveloped/agricultural
<i>Future Land Use:</i>	Neighborhood Mixed Use (NMU) Community Mixed Use (CMU)	<i>Future Land Use:</i>	Community Mixed Use (CMU) Neighborhood Mixed Use (NMU)
<i>Zoning:</i>	A – Agricultural	<i>Zoning:</i>	A – Agricultural
<i>Uses Allowed:</i>	A – Agriculture	<i>Uses Allowed:</i>	A – Agriculture
<i>Max Density:</i>	A – 1 unit / 40 acres	<i>Max Density:</i>	A – 1 unit / 40 acres

**Area Information**

**Property History**

<i>Zoning Jurisdiction:</i>	Extraterritorial Area (ETA)	<i>Zoned:</i>	N/A
<i>Township:</i>	Hay Creek (organized)	<i>Platted:</i>	N/A
<i>Neighborhood:</i>	Undefined	<i>Annexed:</i>	N/A

**Project Narrative**

The Community Development Department is requesting approval of a Future Land Use Plan Amendment (FLUP) in Hay Creek Township (portions of Sections 7 & 18, T139N-R80W). More precisely, planning staff are requesting the flipping of the two existing FLUP designations along the proposed extension of 57<sup>th</sup> Avenue NW east of the section line that makes the western boundary of Section 7 & 18, T139N-R80W.

This FLUP amendment is connected to MSPA2023-001 in the same general area such that the more intense land uses will remain adjacent to the proposed arterial roadways. This was discussed with the relevant landowners

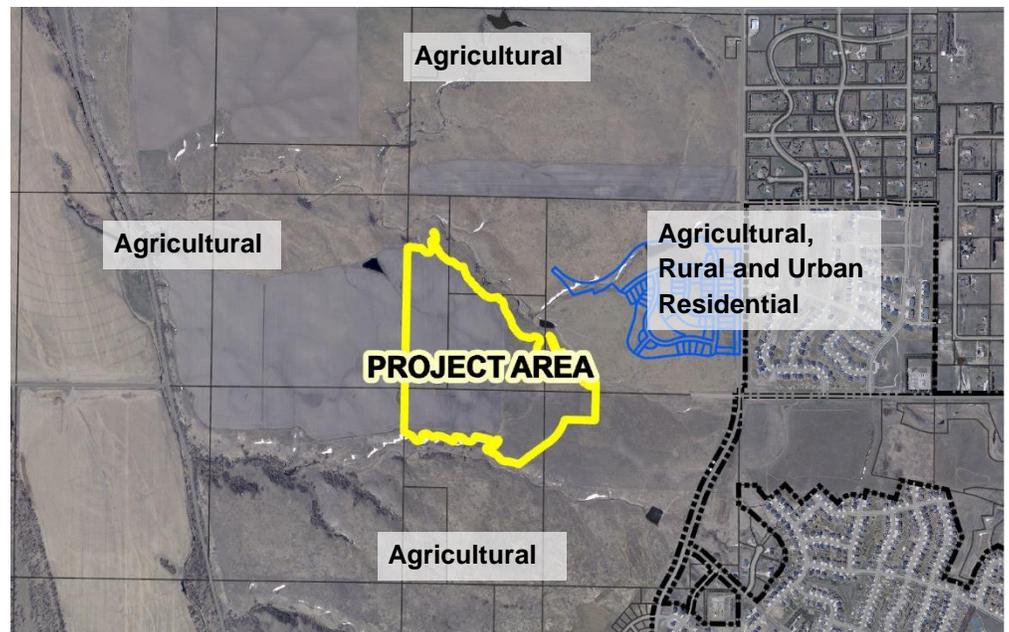
during stakeholder meetings for the Major Street Plan project.

MSPA2023-001 was considered by the Planning and Zoning Commission at the February 28, 2024, meeting. MSPA2023-001 was then approved by the Planning and Zoning Commission after a public hearing at the March 27, 2024, meeting where this FLUP Amendment was originally considered. If the FLUP Amendment is approved by the Planning and Zoning Commission, they will be brought to the Board of City Commissioners for final consideration and approval simultaneously.

**Project Context**

*Land uses adjacent to the project area are depicted on the adjacent map:*

*A Zoning and Plan Reference Map is attached to this staff report, including current zoning, the Future Land Use Plan, Major Street Plan, and Active Mobility Plan.*



The project has been identified as Neighborhood Mixed Use (NMU) and Community Mixed Use (CMU) in the Future Land Use Plan. The NMU and CMU areas both contain mixtures of residential, commercial and employment characteristics with the mixtures focusing more on residential opportunities in NMU areas and more on commercial opportunities in CMU. Goals and objectives of this plan as they relate to Future Land Use Plan Amendments are referenced in review standards below.

The immediate area is currently undeveloped, agricultural land with the nearest point of Bismarck’s current corporate limits being approximately 0.32 miles to the east. There is currently a major subdivision plat in process to the northeast of this project, in the southeast portion of Section 7, Hay Creek Township titled William Blackstone Addition.

There is no specific timeline for development of this project area. The purpose of this project is to maintain consistency with the related MSPA2023-001 project such that anticipated, higher-intensity land uses are adjacent to anticipated higher-capacity roadways for when the area is developed at an undetermined point in the future.

**Public Engagement**

The public has been duly notified of this FLUP Amendment request. A notice was published in the Bismarck Tribune on April 12 and April 19, and 2 letters were mailed to the owners of nearby properties on April 12, 2024. Hay Creek Township was notified of this request simultaneously with MSPA2023-001 on March 18, prior to the public hearing of MSPA2023-001.

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

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

**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 proposed amendment is compatible with adjacent land uses, both existing and proposed in the Future Land Use Plan ([FLUP standards](#))*

**Yes.** The adjacent uses are described in the Project Context section above. The adjacent Future Land Use Plan designations are Neighborhood Mixed Use, Urban Neighborhood and Parks and Open Space. The proposed amendment does not substantially alter the envisioned future, urban character of the area, but rather makes adjustments to remain consistent with a proposed MSPA2023-001 in the area.

*The proposed amendment is suitable for the natural conditions of the site, including topography, drainage, wetlands, and other natural conditions ([FLUP standards](#))*

**Yes.** The area proposed for amendment does not contain any natural conditions that would substantially impede development in the character of the proposed district. Stormwater management, grading, and other land alternation activities that occur with site development would not be out of the ordinary for this land use.

The proposed amendment is not altering the proposed shape of future mixed-use areas, but rather shifts the designations of two existing areas such that the more intense of the two better aligns with the appropriate roadways as described in a nearby MSPA2023-001.

*(continued)*

*The proposed amendment is aligned with the Major Street Plan or accompanied by an amendment to the Major Street Plan that would render it in alignment (FLUP standards)*

**Yes, with** a formal amendment to the Major Street Plan. In conjunction with this request, planning staff requested approval of an amendment to the Major Street Plan which appeared for a public hearing at the March 27, 2024 meeting of the Planning and Zoning Commission and was approved by the Commission. If approved here, the amendments to the Future Land Use Plan and Major Street Plan would be presented to the Board of City Commissioners, simultaneously, for final consideration and approval in a manner where they are in alignment. A plan reference map is attached to this staff report.

*The proposed amendment does not adversely affect the City's ability to provide municipal utilities in the future to or beyond the district(s) proposed for amendment (FLUP standards)*

**Yes.** Although municipal services are not available or imminent in this area, it may be reasonably assumed that services could be extended to this location in the future. There are no known obstacles that would make such extension impractical or prohibitively expensive.

*The current Future Land Use Plan designation is not adequate to meet the needs of the community or suitable for this tract of land, as justified by the applicant, and the proposed land use designation would, to some degree, alleviate this condition (FLUP standards)*

**Yes.** Planning staff provide this FLUP amendment in conjunction with MSPA2023-001 that was presented for a public hearing at the March 27, 2024 meeting of the Planning and Zoning Commission. MSPA2023-001 was initiated by planning staff after conversations with City staff, Burleigh County staff, the Metropolitan Planning Organization (MPO), Morton County staff, City of Mandan staff, and the landowners.

The FLUP was also discussed during these meetings, particularly with the landowners, and this FLUP amendment would maintain consistency between the two plans.

*The proposed amendment is consistent with the goals and objectives of Together 2045 Bismarck's Comprehensive Plan and other adopted plans and policies (FLUP standards)*

**Yes,** the following objectives of the plan would be advanced through the proposed amendment:

- The proposed FLUP amendment is compatible with existing geographical conditions and proposed land uses of the area, given the fact that this is only adjusting the location of two existing FLUP designations of the area rather than introducing entirely new FLUP designations.
- This proposed amendment would not inhibit the outward expansion of the urban development and services and would remain consistent with the Major Street Plan so long as MSPA2023-001 is approved in conjunction with this project.

*The proposed amendment would not adversely affect the public health, safety, and general welfare (Goal S10-a)*

**Yes.** As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed amendment to the Future Land Use Plan would not adversely impact the public health, safety, and general welfare.

**Staff Recommendation**

Based on the above findings staff recommends approval of the proposed Future Land Use Plan Amendment in Sections 7 & 18, T139N-R80W, Hay Creek Township, as identified in the attached map exhibits.

**Attachments**

*(continued)*

1. Draft Future Land Use Plan Resolution
  2. Zoning and Plan Reference Map
  3. Existing Major Street Plan and Future Land Use Plan of Area
  4. Proposed Changes to Major Street Plan and Future Land Use Plan
- 

*Staff report prepared by:* Isak Johnson, Planner

701-355-1850 | [ijohnson@bismarcknd.gov](mailto:ijohnson@bismarcknd.gov)

**RESOLUTION OF  
THE BISMARCK BOARD OF CITY COMMISSIONERS  
AMENDMENT TO THE FUTURE LAND USE PLAN (FLUP2024-001)**

**WHEREAS**, the Board of City Commissioners of the City of Bismarck, North Dakota, wishes to formally amend the City of Bismarck's Future Land Use Plan, which establishes districts in the City of Bismarck and its extraterritorial area that are planned to take shape by the year 2045; and

**WHEREAS**, said Future Land Use Plan was adopted as part of Together 2045 Bismarck's Comprehensive Plan by the Bismarck Planning and Zoning Commission on November 16 and by the Bismarck Board of City Commissioners on December 27, 2022; and

**WHEREAS**, the Future Land Use Plan may, from time to time, be amended according to standards and procedures established in the comprehensive plan; and

**WHEREAS**, the Planning and Zoning Commission held a public hearing on April 24, 2024 and, after consideration of the matter, recommended the amendment to the Board of City Commission.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of City Commissioners of the City of Bismarck, North Dakota, to amend the Future Land Use Plan from the Neighborhood Mixed Use (NMU) and Community Mixed Use (CMU) designations to the Community Mixed Use (CMU) and Neighborhood Mixed Use (NMU) designations for the area shown on the attached exhibit and described, more or less, as:

The area along the western half of the section line that divides Sections 7 & 18, T139N-R80W, Hay Creek Township in Burleigh County, North Dakota

is in all things allowed and granted.

**BE IT FURTHER RESOLVED** that the Community Development Director of the City of Bismarck is directed to revise all subsequent publications of the Future Land Use Plan to reflect the amendments hereby resolved.

Adopted this 14th day of May, 2024.

**CERTIFICATE**

I, Jason Tomanek, do hereby certify that I am the duly appointed, qualified Assistant City Administrator of the City of Bismarck, North Dakota, and that the foregoing is a full, true and correct copy of a resolution adopted at a legally convened meeting of the Board of City Commissioners held on this May 14, 2024.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Bismarck, North Dakota.

\_\_\_\_\_  
Jason Tomanek  
City Administrator  
Bismarck, North Dakota

\_\_\_\_\_  
Date

DRAFT



# Zoning and Plan Reference Map

FLUP2024-001

SECTIONS 7, 18, T139-R80, & 12, 13, T139-R81 (HAY CREEK TWP)

## Zoning Districts

<b>A</b>	Agriculture
<b>RR</b>	Rural Residential
<b>R5</b>	Residential
<b>RMH</b>	Manufactured Home Residential
<b>R10</b>	Residential
<b>RM</b>	Residential Multifamily
<b>RT</b>	Residential (Offices)
<b>HM</b>	Health and Medical
<b>CA</b>	Commercial
<b>CG</b>	Commercial
<b>MA</b>	Industrial
<b>MB</b>	Industrial
<b>PUD</b>	Planned Unit Development
<b>DC</b>	Downtown Core
<b>DF</b>	Downtown Fringe

## Future Land Use Plan

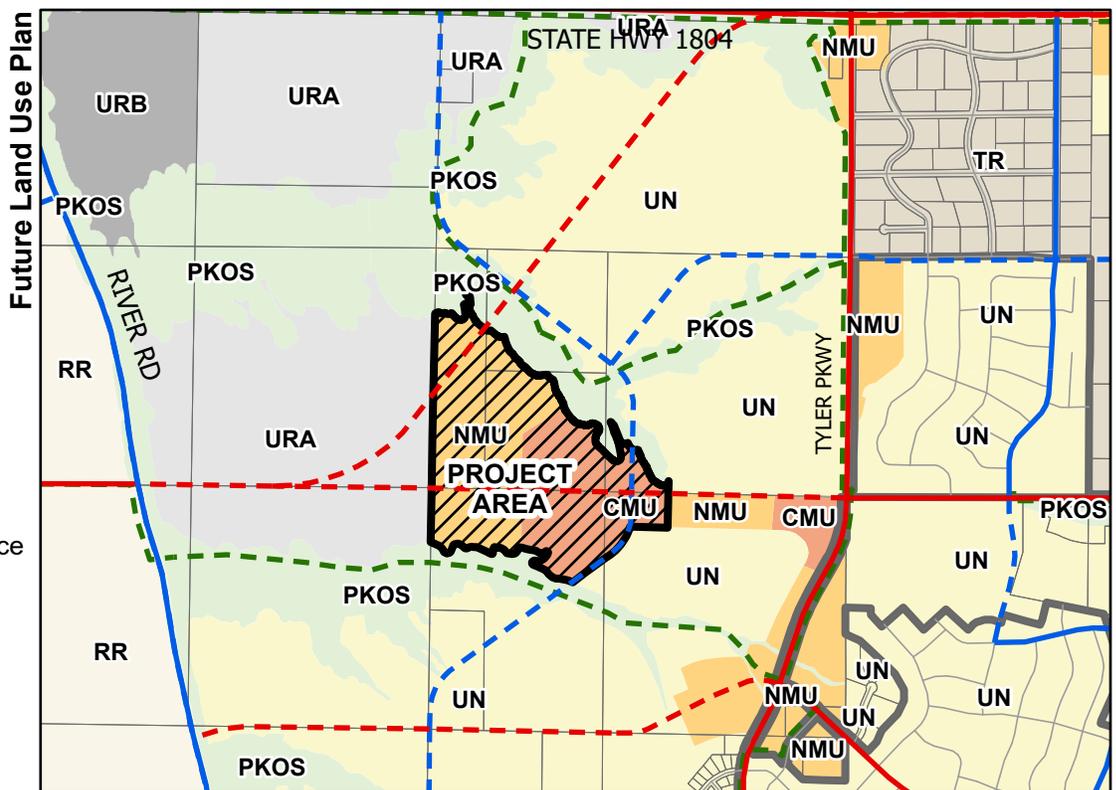
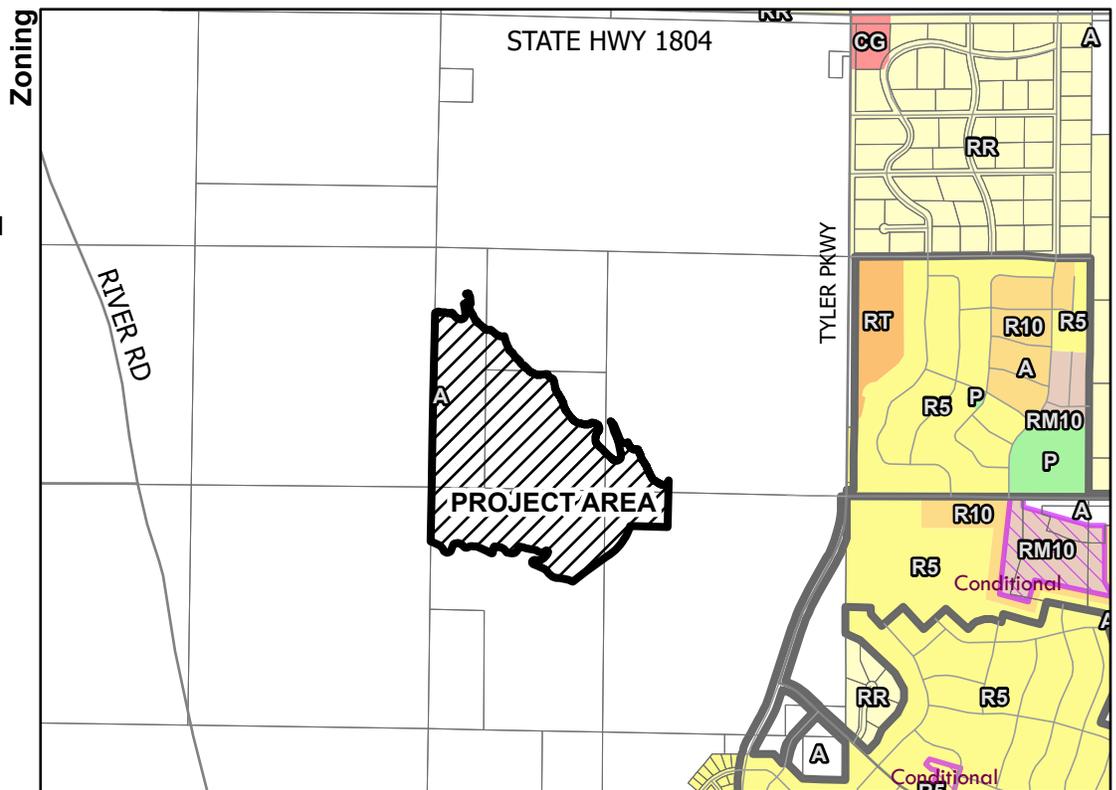
<b>UN</b>	Urban
<b>NMU</b>	Neighborhood Mixed Use
<b>CMU</b>	Community Mixed Use
<b>DMU</b>	Destination Mixed Use
<b>DT</b>	Downtown
<b>IND</b>	Industrial
<b>IF</b>	Industrial Flex
<b>IMU</b>	Industrial Mixed Use
<b>INS</b>	Institutional
<b>RR</b>	Rural Residential
<b>TR</b>	Transitional Rural
<b>PKOS</b>	Parks/Open Space Urban Reserve
<b>URA/URB</b>	Mid/Long-Term

## Active Mobility Plan

Future Shared Trail

## Major Street Plan

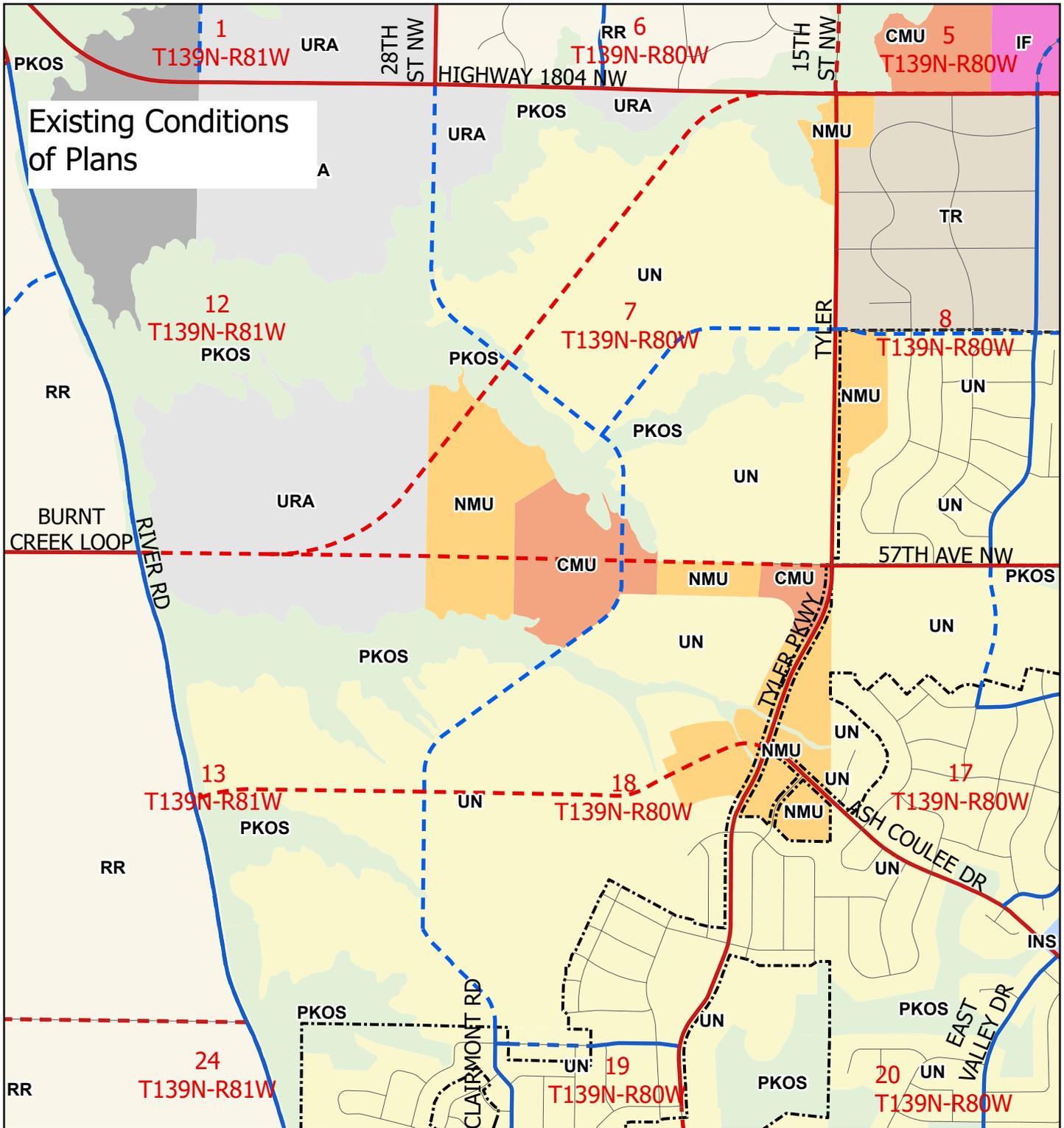
- Existing Arterial
- Future Arterial
- Existing Collector
- Future Collector
- Existing Interstate
- Future Interstate



This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated herein.



City of Bismarck  
Community Development  
Planning Division  
April 18, 2024



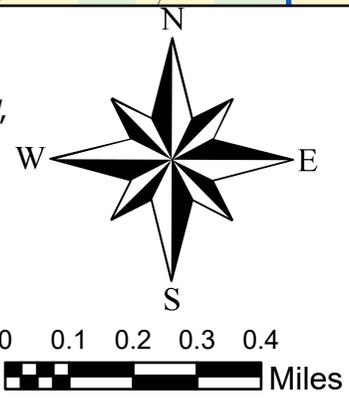
Existing Conditions of Plans

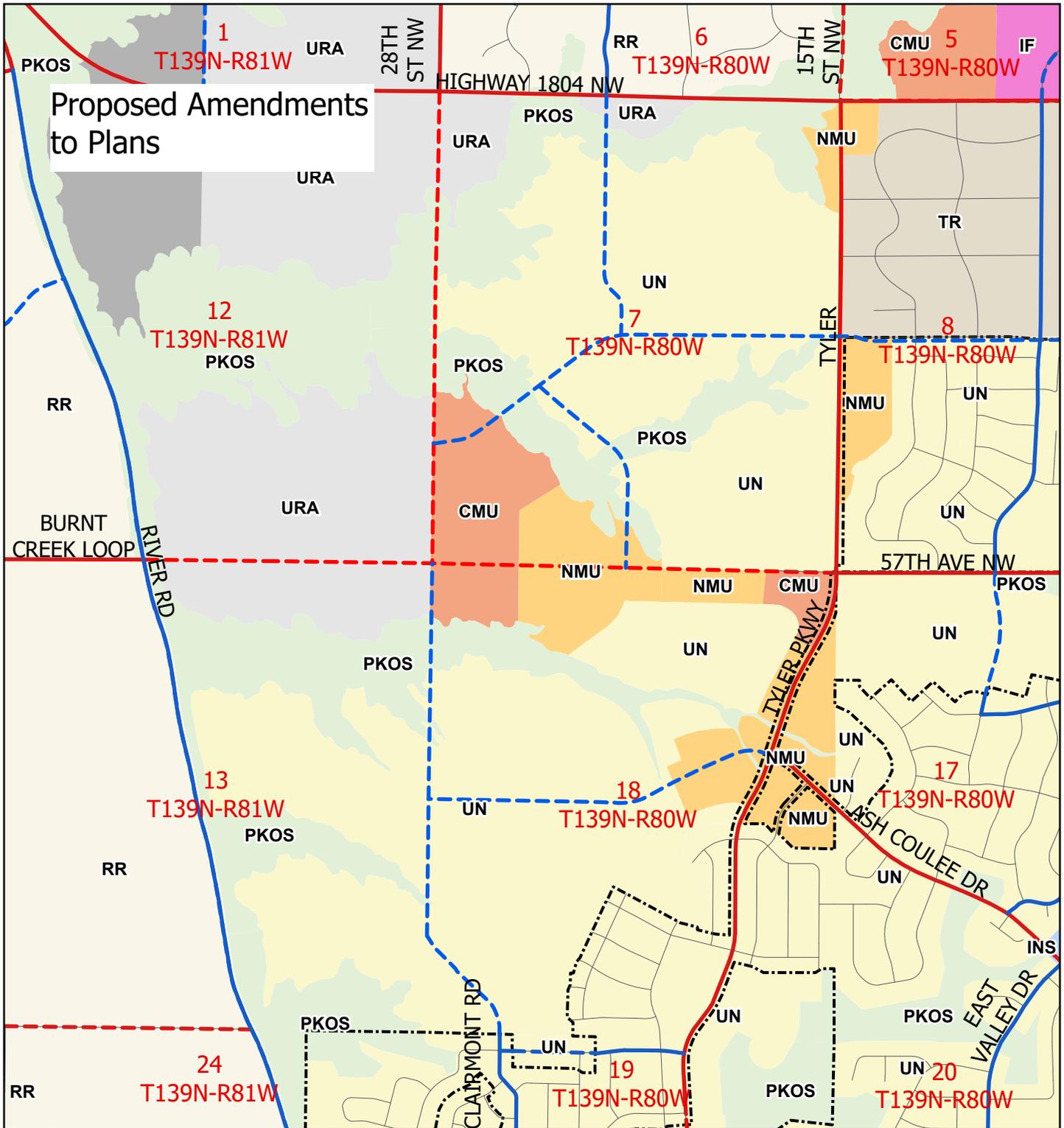


Existing Conditions of Future Land Use Plan and Major Street Plan in parts of Sections 7 & 18, T139N-R80W and Sections 12 & 13, T139N-R81W, of Hay Creek Township.

**Legend**

- |                                   |                              |                           |                               |
|-----------------------------------|------------------------------|---------------------------|-------------------------------|
| <b>Existing Major Street Plan</b> | Future Collector             | Community Mixed Use (CMU) | Parks and Open Space (PKOS)   |
| Existing Arterial                 | <b>Existing FLUP</b>         | Industrial Flex (IF)      | Urban Reserve Long-Term (URB) |
| Future Arterial                   | Urban Neighborhood (UN)      | Institutional (INS)       | Urban Reserve Mid-Term (URA)  |
| Existing Collector                | Neighborhood Mixed Use (NMU) | Rural Residential (RR)    | City Limits                   |
|                                   |                              | Transitional Rural (TR)   |                               |

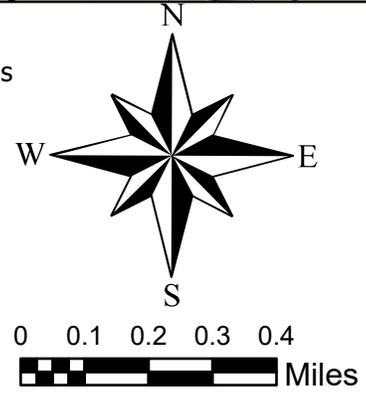




**Proposed Amendments to Plans**



Draft of proposed Amendments to Future Land Use Plan and Major Street Plan in parts of Sections 7 & 18, T139N-R80W and Sections 12 & 13, T139N-R81W, of Hay Creek Township.



**Legend**

- |                          |                     |                             |                               |
|--------------------------|---------------------|-----------------------------|-------------------------------|
| <b>Major Street Plan</b> |                     | <b>Future Land Use Plan</b> |                               |
|                          | Arterial, Existing  |                             | Community Mixed Use (CMU)     |
|                          | Arterial, Future    |                             | Industrial Flex (IF)          |
|                          | Collector, Existing |                             | Institutional (INS)           |
|                          | Collector, Future   |                             | Neighborhood Mixed Use (NMU)  |
|                          |                     |                             | Parks and Open Space (PKOS)   |
|                          |                     |                             | Rural Residential (RR)        |
|                          |                     |                             | Transitional Rural (TR)       |
|                          |                     |                             | Urban Neighborhood (UN)       |
|                          |                     |                             | Urban Reserve Mid-Term (URA)  |
|                          |                     |                             | Urban Reserve Long-Term (URB) |
|                          |                     |                             | City Limits                   |



# STAFF REPORT

Agenda Item # 6  
April 24, 2024

Application for: **Zoning Ordinance Text Amendment**

Project ID: **ZOTA2023-004**

## Project Summary

<i>Title:</i>	Revisions to FP – Floodplain District
<i>Status:</i>	Planning & Zoning Commission – Public Hearing
<i>Project Contact:</i>	Jenny Wollmuth, AICP, CFM
<i>Request:</i>	Amend Section 14-04-19 of the City Code of Ordinances (FP – Floodplain) relating to the Flood Insurance Rate Map (FIRM) effective date and requirements for manufactured home parks, enclosures, and substantial improvements.
<i>Staff Recommendation:</i>	Approve

## Project Narrative

The Community Development Department requests approval of amendments to Section 14-04-19 of the City Code of Ordinances (FP – Floodplain). The proposed amendments would add additional definitions to avoid misinterpretation and clarify requirements, reduce the freeboard or elevation requirement for Pre-FIRM manufactured home parks or subdivisions from two feet above the Base Flood Elevation (BFE) to one foot above the BFE, and change the effective date of the Flood Insurance Rate Map (FIRM) to June 6, 2024. The FIRM is an official map of a community on which FEMA determines base flood elevation, flood zones and floodplain boundaries.

The Planning and Zoning Commission considered this request at their meeting of March 27, 2024 and called for a public hearing on the proposed zoning ordinance text amendment.

### *National Floodplain Insurance Program and Community Rating System*

The City of Bismarck and its Extraterritorial Area (ETA) is a participating community in the National Floodplain Insurance Program (NFIP). Participation in the NFIP is a State requirement

for communities in North Dakota. Communities that participate in the NFIP must adopt a local floodplain ordinance that meets or exceeds FEMA and State requirements. Any modifications made to the City’s floodplain ordinance must be reviewed by the State Floodplain Insurance Program Coordinator and FEMA Floodplain Specialists for compliance with State and Federal requirements. The proposed changes outlined in the draft ordinance have been reviewed and approved by both the State and FEMA.

The City of Bismarck and its ETA are also a participating community in the Community Rating System (CRS). The CRS is a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum NFIP requirements. As a result, flood insurance premium rates are discounted to reflect the reduced flood risk resulting from the City of Bismarck meeting the goals of the CRS program. Currently, flood insurance policy holders are eligible for up to a 15% discount in their premium given our CRS status of Class 7.

The current Class 7 CRS classification is largely due to the existing two foot freeboard or elevation requirement for structures. This requirement was

added to the ordinance in 2010, after the 2009 ice dam flooding event, to provide additional protection for any future flooding events caused by ice damming on the Missouri River.

FEMA modeling for FIRMs does not take ice damming into consideration as this type of flooding is challenging to predict. Flood waters may rise more rapidly giving less time to protect structures and may cause flooding that is above and beyond the FEMA model.

Staff has been assured that no change to this discount or class rating would occur if the ordinance is adopted as proposed.

*Sources of Information*

A stakeholder group comprised of industry professionals, including professional land surveyors, members of the Burleigh County Water Resource District and Burleigh County Planning, a representative of manufactured home communities, ND Department of Water Resources staff, members of the Bismarck Board of Adjustment and Bismarck Planning and Zoning Commission, and the Mayor was formed in May 2023.

The stakeholder group met five times to review existing requirements, FEMA and State guidelines, and technical bulletins, and to suggest changes.

*Proposed Changes*

At the request of FEMA and the ND Department of Water Resources, a citation of statutory authority referencing Chapters 40-47, 11-33, and 58-03 of the ND Century Code was added to delegate responsibility to the City to adopt regulations designed to promote public health, safety and general welfare of its citizen. While this language is used and referenced in Title 14, FEMA and the State requested it be specifically added to the FP – Floodplain district regulations. Other amendments include:

- Definitions for enclosures, existing manufactured home park or subdivision, expansion to an existing manufactured home park or subdivision, new manufactured home park or subdivision and violation.
- Clarifying language to the definition of substantial improvement explaining that any repair, reconstruction, or improvement of a structure that occurs within a consecutive two-year period would be a substantial improvement if the repair, reconstruction, or improvement exceeds 50% of the value of the structure.
- Technical requirements to allow enclosures below the BFE based on certain conditions.
- Reference to the effective date of the FIRM, which is June 6, 2024.
- Reducing the freeboard or elevation requirement for Pre-FIRM manufactured home parks or subdivisions from two feet above the BFE to one foot above the BFE.

The stakeholder group was asked specifically if they were in favor of reducing the elevation requirement for all new construction and substantial improvements from two feet to one foot above the BFE. The stakeholder group was not in favor of this reduction for the following reasons:

- The two foot freeboard or elevation requirement provides long-term protection for homeowners. With new flood insurance rate mapping efforts, flood modeling can change the Special Flood Hazard Area (SFHA) impact based on a variety of factors including the changing characteristics of the Missouri River.
- Burleigh County is in the process of updating its floodplain ordinance. Burleigh

*(continued)*

County Planning Commission continues to recommend a two foot freeboard standard. It has been suggested that Burleigh County and Bismarck floodplain ordinances try to be as consistent as possible. This would be the case, for a significant regulatory portion of the ordinance, if both the City and the County maintain the two foot freeboard standard.

- By maintaining a two foot freeboard or elevation requirement, homeowners carrying flood insurance will continue to experience the 15% discount.

**Public Engagement**

A stakeholder committee met on five occasions to draft, review and offer suggested changes to the draft ordinance.

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on April 12 and April 19, 2024.

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

**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.*

**Zoning Text Amendment**

*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 proposed amendment.

Objective I6(b) states:

*“Participate actively in the National Flood Insurance Program and the Community Rating System to manage designated floodplains”*

*The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance ([Goal S9-e](#), [G10-g](#))*

**Yes.** Amendments to this section of the zoning ordinance have been made regularly in the past for various reasons including clarification purposes and to reflect the most recent FIS and FIRM completed for the community in 2015. Conditions have changed since this time period, which justify the proposed revision. In particular, a new FIS and FIRM for the community was recently completed. These documents must be adopted prior to June 6, 2024.

*The general intent and purpose of the zoning ordinance would be adhered to with the proposed amendment ([Section 14-02-01](#); [NDCC 40-27-03](#))*

**Yes.** The proposed zoning text amendment would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

*The proposed text amendment will preserve the overall integrity and coherence of the zoning ordinance ([Goal G10](#))*

**Yes.** All sections of the zoning ordinance containing any references to or potential conflicts with the proposed zoning ordinance text amendment have been reviewed and corrected, as needed. Additional definitions for enclosure, existing manufactured home park or subdivision, expansion to an existing manufactured home park or subdivision, new manufactured home park or subdivision and violation have been added along

(continued)

with clarifications for flood hazard reduction to avoid misinterpretation and clarify requirements.

*Proper administrative procedures related to the request are being followed (Section 14-07-02, [NDCC Chapter 40-47](#))*

**Yes.** All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The zoning ordinance text amendment has been initiated by staff from the Community Development Department, on behalf of the Planning and Zoning Commission. A preliminary draft is attached to this report for consideration by the Planning and Zoning Commission.

*The public health, safety and general welfare will not be adversely impacted by the proposed zoning text amendment ([Goal S10-a](#))*

**Yes.** As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning text amendment would not adversely impact the public health, safety, and general welfare.

**Staff Recommendation**

Based on the above findings, staff recommends approval of the amendments to Section 14-04-19 of the City Code of Ordinances (FP – Floodplain district) as outlined in the draft zoning ordinance text amendment.

**Attachments**

1. Draft zoning ordinance text amendment

*Staff report prepared by:* Jenny Wollmuth, AICP, CFM, Senior Planner  
701-355-1845 | [jwollmuth@bismarcknd.gov](mailto:jwollmuth@bismarcknd.gov)

# CITY OF BISMARCK ORDINANCE NO. XXXX

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND 14-04-19 OF THE CODE OF ORDINANCES OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO REGULATIONS FOR PROPERTIES LOCATED WITHIN THE FP – FLOODPLAIN ZONING DISTRICT.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA:

Section 1. Amend. Section 14-04-19 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to regulations for properties located within the FP – Floodplain , his hereby enacted to read as follows:

14-04-19. FP Floodplain District. In any FP floodplain district, the following regulations shall apply:

1. The Legislature of the State of North Dakota has in North Dakota Century Code, Chapters 40-47, 11-33 and 58-03, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

2. Statement of purpose. It is the purpose of this section to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- a. To protect human life and health;
- b. To minimize expenditure of public money for costly flood control projects;
- c. To minimize the need for rescue and relief efforts associated with flooding, generally undertaken at the expense of the general public;
- d. To minimize prolonged business interruptions;

- e. To minimize damage to public facilities and utilities located in special flood hazard areas such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges;
  - f. To help maintain a stable tax base by providing for the use and development of special flood hazard areas so as to minimize future flood blight areas;
  - g. To ensure that potential buyers are notified that property is located in a special flood hazard area;
  - h. To ensure that those who occupy the special flood hazard areas assume responsibility for their actions; and
  - i. To provide an increased level of protection in anticipation of future increases in the base flood elevation (BFE).
3. Methods of reducing flood losses. In order to accomplish its purposes, this section includes methods and provisions for:
- a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood water elevations or flow velocities;
  - b. Requiring that uses vulnerable to flooding, including attendant utilities and facilities which serve such uses, be protected against flood damage at the time of initial construction;
  - c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or convey flood waters;
  - d. Controlling filling, grading, dredging, and other development which may increase flood damage; and
  - e. Preventing or regulating the construction of flood barriers or obstructions which will unnaturally divert flood waters or which may increase flood hazards in other areas.
4. Definitions. Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give this section its most reasonable application.

“Accessory Structure” for floodplain management purposes means structures that are on the same parcel of property as a principal structure, the use of which is incidental to the use of the principal structure. Accessory structures are a single-story structure that may

only be used for parking or storage, represent a minimal investment by owners, and have low damage potential. Structures that include the following uses are not considered accessory structures for floodplain management purposes: habitable spaces, bathrooms, toilet rooms, laundry facilities, and entertainment and recreational spaces including but not limited to workshops and game rooms.

"Agricultural Structure" for floodplain management purposes means structures that are used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock.

"Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this section or a request for a variance.

"Attendant utilities and equipment" means utilities, electrical, plumbing, heating, ventilation, and air conditioning equipment, as well as facilities and services associated with new construction.

"Base flood or 100-year flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

"Base flood elevation (BFE)" means the height of the base flood or 100-year flood, usually in feet above mean sea level, as designated on a FEMA published digital flood insurance rate map (DFIRM) or as determined by the storm water management plan prepared for the area in which the property is located.

"Basement" means any area of a building having its floor subgrade (below ground level) on all sides.

"Best available data (BAD)" means water elevation information from any source used to estimate or determine the base flood elevation (i.e., high water mark).

"Conveyance or hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given location that determines the flow-carrying capacity at that location.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the special flood hazard area.

**"Enclosure" means enclosed walled in areas below the lowest floor of an elevated building that are constructed of flood-resistant materials and designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of floodwaters.**

“Existing Manufactured Home Park or Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

“Expansion to an Existing Manufactured Home Park or Subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Fill" means materials such as soil, gravel, or crushed stone that is placed in an area and increases the ground elevation, whether or not that was the intention.

"Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood insurance rate map (FIRM) or digital flood insurance rate map (DFIRM)" means the official map issued by the Federal Emergency Management Agency (FEMA) where special flood hazard areas are designated as Zone A, AE, AO, AH, A1-A30 or A-99.

"Flood insurance study (FIS)" means the official report provided by the Federal Emergency Management Agency (FEMA) that includes flood profiles, the flood insurance rate map (FIRM), and the water surface elevation of the base flood.

"Floodplain or flood-prone area" means any land area susceptible to partial or complete inundation by water from any source.

"Floodplain Administrator" means the person designated by the Director of Community Development to administer and enforce the City's floodplain regulations.

"Floodproofing (dry)" means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight to two (2) feet above the base flood elevation with walls that are substantially impermeable to the passage of water.

“Floodproofing (wet)” means the use of flood damage resistant materials and construction techniques to minimize flood damage to structures by intentionally allowing floodwater to enter and exit automatically (without human intervention) to minimize unequal

pressure of water on walls (hydrostatic load or pressure). Wet floodproofing also requires structures to be anchored to resist flooding, have mechanical and utility equipment elevated or protected, and have flood openings installed in walls.

"Floodway or regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"Letter of map amendment (LOMA)" means an official amendment to the currently effective flood insurance rate map (FIRM) which establishes that a property is not located in a special flood hazard area. A letter of map amendment (LOMA) is issued by FEMA.

"Letter of map revision (LOMR)" means an official amendment to the currently effective flood insurance rate map (FIRM) which is issued by FEMA and changes flood zones, delineations and elevations. A letter of map revision based on fill (LOMR(f)) is a LOMR issued by FEMA based on the placement of fill.

"Lowest floor" means the lowest floor of a structure including the basement and/or crawl space.

"Manufactured home" means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle, but does include a mobile home.

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of this section.

**"New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.**

"Non-conversion agreement" means an agreement signed by applicants and property owners, affirming that the owners agree not to convert or modify in any manner that is inconsistent with approved permit (and variance conditions, when applicable).

"Non-residential" means any building or structure or portion thereof that is not classified as residential.

"Pre-FIRM Building" means a building for which construction or substantial improvement occurred on or before ~~December 31, 1974~~ **September 18, 1985, or before** the effective date of ~~an~~the initial Flood Insurance Rate Map (FIRM).

"Principal structure" for floodplain management purposes means a structure that is not an accessory structure. All principal structures must be constructed in accordance with the requirements applicable to residential construction or nonresidential construction as determined by the use of the structure.

"Post-FIRM Building" means a building for which construction or substantial improvement occurred after ~~December 31, 1974~~ **September 18, 1985, or before** the effective date of ~~an~~the initial Flood Insurance Rate Map (FIRM), whichever is later.

"Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"Recreational vehicle" means a vehicle which is built on a single chassis; four hundred (400) square feet or less when measured at the largest horizontal projection; designated to be self-propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal uses. Recreational vehicles include, but are not limited to, travel trailers, trailers on wheels, park-model trailers and other similar vehicles.

"Residential" means:

- a. Buildings and structures and portions thereof where people live or that are used for sleeping purposes on a transient or non-transient basis;
- b. Residential structures, including but not limited to one and two-family dwellings, multifamily dwellings, group dwellings, bed and breakfast facilities, hotels and motels; and
- c. Institutional facilities where people are cared for or live on a 24-hour basis in a supervised environment, including but not limited to board and care facilities, assisted living facilities, nursing homes, group homes, congregate care facilities, hospitals, medical centers, jails and detention centers.

"Special flood hazard area (SFHA)" means an area of land that would be inundated by a flood having a one percent (1%) chance of being equaled or exceeded in any given year (100-year flood).

"Start of construction" includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms.

"Storage tank" means any closed vessel used to store gases or liquids.

"Storm water management plan" means a document prepared in accordance with the provisions of Title 14.1 of the City Code of Ordinances to evaluate surface water runoff and flood risks within a development, plat or watershed; to document special flood hazard areas; and to determine the systems required to convey or control flood flows within and through the area.

"Structure" means a walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed fifty percent (50%) of the market value as assessed of the structure before the damage occurred.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, that occurs within a consecutive two (2) year period. ~~‡~~The cost of which equals or exceeds fifty percent (50%) of the market value as assessed of the structure either: before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief from the requirements of this section which permits construction in a manner that would otherwise be prohibited by this section.

"Violation" means the failure of a structure or other development to be fully compliant with the floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by the floodplain management ordinance is presumed to be in violation until such time as that documentation is provided.

5. General provisions.

- a. Jurisdiction. This section shall apply to all special flood hazard areas within the jurisdiction of the City of Bismarck, including all lands within the corporate limits of the City of Bismarck and the extraterritorial jurisdiction as provided for in Section 40-47-01.1 of the North Dakota Century Code, including areas specifically included in the jurisdiction of the City of Bismarck through agreement as approved by the Board of City Commissioners.
- b. Basis for establishing the special flood hazard areas. The special flood hazard areas identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report titled "The Flood Insurance Study for Burleigh County, North Dakota and Incorporated Areas", dated August 4, 2014, June 6, 2024 with an accompanying flood insurance rate map (FIRM), and as subsequently updated by any Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR) and/or Letter of Map Revision Based on Fill (LOMR(f)) issued by the Federal Emergency Management Agency (FEMA), is hereby adopted by reference and declared to be a part of this section. The Flood Insurance Study (FIS) is on file in the office of the Floodplain Administrator. Special flood hazard areas may also be designated in a storm water management plan prepared for a development, plat or watershed.
- c. Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this section and other applicable regulations, unless a valid building permit was in place prior to July 27, 2010, except as provided for in subsection 6(b)(5) 7(b)(iii) (additions to existing structures).
- d. Greater restrictions. This section is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this section and another section of the City Code of Ordinances, an easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

- e. Interpretation. In the interpretation and application of this section, all provisions shall be:
- 4i. Considered as minimum requirements;
  - 2ii. Liberally construed in favor of the City of Bismarck; and
  - 3iii. Deemed neither to limit nor repeal any other powers granted to the City under the North Dakota Century Code or the Home Rule Charter for the City of Bismarck.
- f. Warning and disclaimer of liability. The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the City of Bismarck, any officer or employee thereof, or the Federal Emergency Management Agency (FEMA) for any flood damages that result from reliance on this section or any administrative decision lawfully made thereunder.
- g. Severability. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.
- h. ~~g.~~ h. Letter of Map Revision (LOMR) and Letter of Map Revision based on Fill (LOMR-F). Development on any parcel for which a Letter of Map Revision (LOMR) or Letter of Map Revision based on Fill (LOMR-F) has been issued shall comply with all of the requirements and recommendations as contained therein. Development on any parcel for which a LOMR or Letter of Map Revision based on Fill (LOMR-F) has been issued shall be constructed in accordance with the provisions of FEMA Technical Bulletin 10-01.
- i. ~~h.~~ i. Non-conforming Status. Any structure constructed with the lowest floor elevated as required by the regulations in effect at the time of construction shall be considered a non-conforming structure for the purposes of this section, provided the lowest floor of said structure is elevated on fill and/or a permanent foundation to at least one (1) foot above the base flood elevation.

6. Administration.

a. Establishment of a development permit. A development permit shall be obtained before construction or development begins within any special flood hazard area established in subsection ~~4(b)~~ 5(b) (basis for establishing the special flood hazard areas). Application for a development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- 1i. Elevation in relation to mean sea level (NAVD88), of the lowest floor (including basements and/or crawl spaces) of all structures;
- 2ii. Elevation in relation to mean sea level (NAVD88) to which any structure has been floodproofed;
- 3iii. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in subsection ~~6(b)(2)~~ 7(b)(ii) (nonresidential construction); and
- 4iv. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

b. Establishment of a non-structural development permit. A non-structural development permit shall be obtained before any land disturbing activity begins within any special flood hazard area established in subsection ~~4(b)~~ 5(b) (basis for establishing the special flood hazard areas). Application for a non-structural development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; proposed elevations upon completion of the land disturbing activity; the type of fill being used, if fill is proposed; and a description of the extent to which any watercourse will be altered or relocated as a result of proposed land disturbing activity.

c. Administration by the Floodplain Administrator. The Floodplain Administrator, as defined herein, shall administer and implement this section by granting or denying

development permit and non-structural development permit applications in accordance with its provisions.

- d. Duties and Responsibilities of the Floodplain Administrator. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to:

- 4i. Permit application review.

- a. Review all development permit applications and non-structural development permit applications to determine that the permit requirements of this section have been satisfied.

- b. Review all development permit applications and non-structural development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

- c. Review all development permit applications and non-structural development permit applications to determine if the proposed development or land disturbing activity is located in the floodway. If located in the floodway, assure that the encroachment provisions of this section are met.

- 2ii. Use of other base flood data. When base flood elevation data has not been provided in accordance with subsection 4(b) 5(b) (basis for establishing the special flood hazard areas), the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data available (known as best available data (BAD)) from a federal, state or other source, as criteria for requiring that new construction, substantial improvements, or other development in the floodplain are administered in accordance with subsection 6(b)7(b) (specific standards).

- 3ii. Information to be obtained and maintained.

- a. Obtain and record the actual elevation (in relation to mean sea level in NAVD88) of the lowest floor (including basement and/or

crawl space) of all new or substantially improved structures, and whether or not the structure contains a basement and/or crawl space.

b. For all new or substantially improved floodproofed structures:

i. Obtain and record the actual elevation (in relation to mean sea level in NAVD88) to which the structure has been floodproofed; and

ii. Maintain the floodproofing certifications required in subsection ~~5(a)(3)~~ 6(a)(iii).

c. Maintain for public inspection all records pertaining to the provisions of this section.

~~4~~ iv.

Alteration of watercourses. The Floodplain Administrator shall:

a. Notify nearby communities, water resource districts, and the North Dakota State Engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished; and

c. Notify the appropriate water resource district prior to removal or placement of fill within two hundred (200) feet of the ordinary high water mark of a body of water during normal flow or stage.

~~5~~ v.

Interpretation of flood insurance rate map (FIRM) or Digital flood insurance rate map (DFIRM) boundaries. Make interpretations where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of

the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection **7 8** (variance procedure). The Floodplain Administrator may require information be submitted by a registered land surveyor.

7. Provisions for flood hazard reduction.

- a. General standards. In all special flood hazard areas, the following standards are required:

**4i.** Anchoring.

a. All new construction and substantial improvements, including additions, shall be anchored to prevent flotation, collapse or lateral movement of the structure.

b. All manufactured homes must be elevated and anchored to resist flotation, collapse or and lateral movement of the structure. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors as referenced in FEMA P-85 / 2009. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

**2ii.** Construction materials and methods.

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage; and

c. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Such facilities shall be located in areas that have been elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation for residential **structures and manufactured homes. Construction.**

Such facilities shall be located in areas that have been elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation or in areas that have been floodproofed to at least two (2) feet above the base flood elevation for nonresidential construction.

**3iii.** Utilities.

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- b. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into flood waters; and
- c. All new and replacement on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

**4iv.** Subdivision proposals.

- a. All subdivision proposals shall be consistent with the need to minimize flood damage;
- b. All subdivision proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
- d. Base flood elevation data shall be provided for all subdivision proposals and other proposed developments. Elevation data must be provided in NAVD88 for areas with a flood insurance rate map (FIRM) or other base flood elevation data in that datum.

- b. Specific standards. In all special flood hazard areas where base flood elevation data have been provided as set forth in subsection 4(b) (basis for establishing the special flood hazard areas) or subsection 5(d)(2) (use of other base flood data), the following provisions are required:

- i. Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement and/or crawl space, elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation.
  
- ii. Nonresidential construction. Construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement and/or crawl space, elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation or, together with attendant utility and sanitary facilities, shall:
  - a. Be floodproofed to at least two (2) feet above the base flood elevation, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water;
  - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
  - c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the Floodplain Administrator as set forth in subsection ~~5(d)(3)~~ 6(d)(ii) (information to be obtained and maintained).
  
- iii. Manufactured homes.
  - a. Manufactured homes shall be anchored in accordance with subsection ~~6(a)(1)~~ 7(a)(i) (anchoring).
  
  - b. All manufactured homes or those to be substantially improved shall be on a permanent foundation, as referenced in FEMA P-85 / 2009, have the lowest floor bottom of the frame of the manufactured home elevated on fill and/or a permanent foundation to at least two (2) feet above the base flood elevation, and be securely

anchored to an adequately anchored foundation system. However, within a Pre-FIRM manufactured home park, a newly placed manufactured home or those to be substantially improved shall be on a permanent foundation, have the bottom of the frame of the manufactured home elevated on fill and/or a permanent foundation to at least one (1) foot above the base flood elevation, and be securely anchored to an adequately anchored foundation system.

iv. Recreational Vehicles.

a. All recreational vehicles to be placed on a site must be on the site for less than 180 consecutive days; and be fully licensed and highway ready.

v. Enclosures. New construction and substantial improvements may have enclosures with areas below the base flood elevation, that are less than 300 square feet and usable solely for building access and utility service connections serving the building, if constructed in accordance with the following requirements:

a. Must have structural and non-structural components constructed of flood damage resistant material. Flood damage resistant materials must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 2;

b. Must be provided with flood openings designed to equalize the hydrostatic pressure of flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. Flood opening designs must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 1;

c. Must have mechanical, electrical, and utility equipment elevated at least two feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and,

d. Prior to the issuance of a building permit, the property owner must submit a signed non-conversion agreement to the City of Bismarck.

**The non-conversion agreement must be recorded with the Burleigh County Recorder.**

- vi.** Attached garages, decks and landings providing primary access, and accessory buildings.
- a. Garages attached to any residential structure, non-residential structure or manufactured home shall be subject to the same construction requirements as the residential structure, non-residential structure or manufactured home to which it is attached.
  - b. Decks and landings providing access to the primary entrance of a residential structure, non-residential structure or manufactured home shall be subject to the same construction requirements as the residential structure, non-residential structure or manufactured home to which it provides access.

**vii.** Accessory structures.

- a. Accessory structures defined within this section that are not greater than 600 square feet in area may be constructed with the lowest floor below the base flood elevation in accordance with the following wet floodproofing requirements:
  - i. Must be anchored to resist floatation, collapse and lateral movement.
  - ii. Must have structural and non-structural components constructed of flood damage resistant material to an elevation of at least two feet above the base flood elevation. Flood damage materials must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 2;
  - iii. Must be provided with flood openings designed to equalize the hydrostatic pressure of flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. Flood opening designs must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 1;

- iv. Must have mechanical, electrical and utility equipment elevated at least two-feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and,
  - v. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to the City of Bismarck. The non-conversion agreement must be recorded with the Burleigh County Recorder.
- b. Accessory structures defined within this section that are greater than 600 square feet in area may be constructed with the lowest floor one foot above the base flood elevation in accordance with the following requirements.
- i. Must have mechanical, electrical and utility equipment elevated at least two-feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and,
  - ii. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to the City of Bismarck. The non-conversion agreement must be recorded with the Burleigh County Recorder.
- c. Accessory structures that are not enclosed and do not have more than one ridged wall may be constructed at grade in accordance with the following requirements.
- i. Must have structural and non-structural components constructed of flood damage resistant material to an elevation of at least two feet above the base flood elevation. Flood damage materials must meet or exceed the requirements of the most recent version of FEMA Technical Bulletin 2;

- ii. Must have mechanical, electrical and utility equipment elevated at least two-feet above the base flood elevation or specifically designed to prevent water from entering or accumulating within the components during flooding in accordance with the most recent version of FEMA Technical Bulletin P-348; and,
- iii. Prior to the issuance of a building permit for the structure, the property owner must submit a signed non-conversion agreement to the City of Bismarck. The non-conversion agreement must be recorded with the Burleigh County Recorder.

**6viii.** Additions to existing structures.

- a. Any addition to any existing residential structure, non-residential structure, manufactured home, garage, deck, landing or accessory structure that ~~is considered a post-FIRM building and~~ is not deemed a substantial improvement may be constructed with the lowest floor at the same elevation as the existing structure, ~~provided the lowest floor of the existing structure is elevated on fill and/or a permanent foundation to at least one (1) foot above the base flood elevation. Any addition to any existing residential structure, non-residential structure, manufactured home, garage, deck, landing or accessory structure that is considered a pre-FIRM building and is not deemed a substantial improvement may be constructed with the lowest floor at the same elevation as the existing structure.~~
- c. Floodways. Floodways are designated areas located within the special flood hazard areas established in subsection 4(b) (basis for establishing the special flood hazard areas). Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:
  - i. ~~4.~~ Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating that encroachments shall not

result in any increase in flood levels during the occurrence of the base flood discharge.

- ii. **2.** If the preceding subsection is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of subsection **6 7** (provisions for flood hazard reduction).

8. **8.** Variance procedure.

- a. Board of Adjustment. The Board of Adjustment, as established in Chapter 14-06 of the City Code of Ordinances (Board of Adjustment), shall hear and decide appeals and requests for variances from the requirements of this section.
- b. Appeals. An appeal may be filed by any person, firm, or corporation aggrieved, or by any governmental officer, department or board affected by any decision or determination made by the Floodplain Administrator in the enforcement or administration of this section, in accordance with the provisions of Sections 14-06-02 (Powers and Duties) and 14-06-03 (Appeal Procedures).
- c. Variances. An application for a variance may be made by any person, firm, or corporation with a legal interest in the property for which the variance is being sought, in accordance with the provisions of Sections 14-06-02 (Powers and Duties) and 14-06-03 (Appeal Procedures).
- d. In considering appeals and variance applications, and in addition to the requirements outlined in Section 14-06-02 (Powers and Duties), the Board of Adjustment shall consider all technical evaluations, all relevant factors, and the standards specified in this section, including:
  - i. **1.** The danger to life and property due to flooding or erosion damage;
  - ii. **2.** The danger that materials may be swept onto other lands to the injury of others;
  - iii. **3.** The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - iv. **4.** The importance of the services provided by the proposed facility to the community;

- v. ~~5.~~ The necessity to the facility of a waterfront location, where applicable;
  - vi. ~~6.~~ The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;
  - vii. ~~7.~~ The compatibility of the proposed use with the existing and anticipated development;
  - viii. ~~8.~~ The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - ix. ~~9.~~ The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - x. ~~10.~~ The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - xi. ~~11.~~ The costs of providing governmental services during and after flood conditions, including maintenance and repair of utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- e. Upon consideration of the factors in subsection ~~(78)(d)~~ and the purposes of this section, the Board of Adjustment may attach such conditions to the granting of a variance as it deems necessary to further the purpose of this section.
- f. Conditions for variances.

~~i.1.~~ Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this subsection.

~~ii.2.~~ Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.

~~iii.3.~~ Variances shall only be issued upon a determination that the variance is the minimum

necessary, considering the flood hazard, to afford relief.

**iv.4.** Variances shall only be issued upon:

1. A showing of good and sufficient cause;
  2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  3. A determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- g. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation lower than two (2) feet above the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- h. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances granted to the Federal Emergency Management Agency (FEMA) upon request.
9. Encroachment Analysis. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.
10. 9. Penalties for Violations. Penalties for violation of this section shall be in accordance with the provisions of Chapter 14-05 (Enforcement) of the City Code of Ordinances. Nothing herein shall prevent the City of Bismarck from taking such other lawful action as is necessary to prevent or remedy any violation.

\* \* \* \* \*

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent remaining portions of this ordinance.

Section 3. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 4. Effective Date. This ordinance shall take effect after final passage, adoption and publication.

DRAFT



# STAFF REPORT

Agenda Item # 7  
April 24, 2024

Application for: **Zoning Ordinance Text Amendment**

Project ID: **ZOTA2023-001**

## Project Summary

<i>Title:</i>	Agriculture Recreation Uses and Private Riding Arena
<i>Status:</i>	Planning & Zoning Commission – Public Hearing
<i>Project Contact:</i>	Jenny Wollmuth, AICP, CFM
<i>Request:</i>	Amend Sections 14-02-03, 14-03-06, 14-03-08, and 14-04-17 of the City Code of Ordinances to allow agriculture recreation uses and private riding arenas in the A – Agriculture zoning district based on certain criteria
<i>Staff Recommendation:</i>	Approve

## Project Narrative

The Community Development Department requests approval of amendments to Sections 14-02-03, 14-03-06, 14-03-08, and 14-04-17 of the City Code of Ordinances to allow agriculture recreation uses and private riding arenas in the A – Agriculture zoning district based on certain criteria.

Planning staff has been asked by property owners to amend the zoning ordinance to allow for agriculture recreation uses that offer opportunities to promote agritourism and to amend the ordinance to allow private riding arenas that are larger in size than standard accessory buildings.

The Planning and Zoning Commission considered this request on February 28, 2024, and called for a public hearing on the proposed zoning ordinance text amendment.

### Sources of Information

Planning staff reviewed ordinances from peer communities throughout the state and zoning practice publications from the American Planning Association.

A stakeholder group, including representatives from the Planning and Zoning Commission, Board of Adjustment, representatives from Papas Pumpkin Patch, Apple Creek Farms and Grandpa Al’s Hayrides was formed in the Fall of 2023 and four meetings have been held to draft and review the proposed amendments.

City and County staff also met with representatives of the Convention and Visitors Bureau and the Tourism Division of the ND Department of Commerce in March 2024. During this meeting, staff was asked to revise the draft ordinance originally considered at the February Planning and Zoning Commission to provide more flexibility, educate the public about agriculture and create additional opportunities for agritourism.

In order to balance the education component of agritourism with the commercial component of agritourism, staff revised the draft ordinance to create two agriculture recreation categories. Agriculture recreation minor and agriculture recreation major were added to the ordinance.

Agriculture recreation minor includes uses that are education focused. This would be permitted without approval of a special use permit in the A – Agriculture zoning district. Agriculture recreation

major includes uses that are event focused and similar to commercial recreation uses.

requirements to meet applicable building and fire codes.

*Proposed Changes*

The proposed amendments include the following:

- Definitions for agriculture, agriculture recreation minor, agriculture recreation major, and private riding arena.
- Modify the lot/parcel size and increase the area of accessory buildings approved by special use permit for properties the A – Agriculture zoning district that are entirely outside of the Urban Service Area Boundary (USAB).
- Agriculture recreation, minor uses permitted by right for properties located in the A – Agriculture zoning district that are entirely outside of the Urban Service Area Boundary (USAB) and include 35 or more acres.
- Agriculture recreation, major uses approved by special use permit for properties located in the A – Agriculture zoning district that are entirely outside of the Urban Service Area Boundary (USAB) and include 35 or more acres. Criteria for approval include mitigation of noise and light impacts to adjacent properties, additional setback requirements and requirements to meet applicable building and fire codes.
- Private riding arenas approved by special use for properties located in the A – Agriculture zoning district that are entirely outside of the Urban Service Area Boundary (USAB) and include 35 or more acres. Criteria for approval include location requirements, building size limitation of no larger than 22,000 square feet, setback requirements, restrictions for sales, training and/or similar events, and

**Public Engagement**

A stakeholder committee met on four occasions to draft, review and offer suggested changes to the draft ordinance.

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on April 12 and April 19, 2024.

All written comments received by staff prior to the public hearing will be distributed to the Planning and Zoning Commission and summarized by staff during the oral presentation.

**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 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 objective of the plan would be advanced through the proposed amendment.

Objective I7(e) states:

*“Encourage agritourism that combines retail of local produce with unique experiences, such as vineyards, pumpkin patches, Christmas tree groves, community-supported agriculture, and farm-based event venues.”*

*The proposed text amendment is justified by a change in conditions since the zoning ordinance was originally adopted or clarifies a provision that is confusing, in error or otherwise inconsistent with the general intent and purpose of the zoning ordinance ([Goal S9-e](#), [G10-g](#))*

**Yes.** This section of the zoning ordinance was previously amended in 2012, specifically relating to sizes of accessory buildings in the A – Agriculture zoning district within a certain distance of corporate limits. Conditions have changed since this time period, which justify the proposed revision. In particular, the utilization of the Urban Service Area Boundary (USAB) to designate areas suitable for agriculture recreation uses and private riding arenas.

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*The general intent and purpose of the zoning ordinance would be adhered to with the proposed amendment (Section 14-02-01; [NDCC 40-27-03](#))*

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**Yes.** The proposed zoning text amendment would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

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*The proposed text amendment will preserve the overall integrity and coherence of the zoning ordinance ([Goal G10](#))*

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**Yes.** All sections of the zoning ordinance containing any references to or potential conflicts with the proposed zoning ordinance text amendment have been reviewed and corrected, as needed. Additional definitions for agriculture, agriculture recreation and private riding arena, and criteria for approval have been added to the ordinance to avoid misinterpretation, and to clarify uses and approval requirements.

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*Proper administrative procedures related to the request are being followed (Section 14-07-02, [NDCC Chapter 40-47](#))*

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**Yes.** All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The zoning ordinance text amendment has been initiated by staff from the Community Development

Department, on behalf of the Planning and Zoning Commission. A preliminary draft is attached to this report for consideration by the Planning and Zoning Commission.

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*The public health, safety and general welfare will not be adversely impacted by the proposed zoning text amendment ([Goal S10-a](#))*

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**Yes.** As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning text amendment would not adversely impact the public health, safety, and general welfare.

Certain federal and state requirements associated with commercial building construction may apply to event spaces / buildings associated with agriculture recreation and private riding areas, depending on the situation. Notably, any commercial use, regardless of size, that is open to the public must provide reasonable accommodations for persons with disability to be compliant with the Americans with Disabilities Act (ADA). Although this is not a zoning criterion, the property owner is still responsible for compliance.

**Staff Recommendation**

Based on the above findings, staff recommends approval of the zoning ordinance text amendment for Sections 14-02-03, 14-03-06, 14-03-08, and 14-04-17 of the City Code of Ordinances to allow agriculture recreation uses and private riding arenas in the A – Agriculture zoning district based on certain criteria.

**Attachments**

- 1. Draft zoning ordinance text amendment
- 2. Map of properties outside the USAB

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*Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner*

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# CITY OF BISMARCK ORDINANCE NO. XXXX

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND 14-02-03, 14-03-06, 14-03-08, 14-04-17, OF THE CODE OF ORDINANCES OF THE CITY OF BISMARCK, NORTH DAKOTA, AS AMENDED, RELATING TO RIDING ARENA AND AGRICULTURE RECREATION.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA:

Section 1. Amend. 14-02-03 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to riding arenas, his hereby enacted to read as follows:

14-02-03. Definitions. The following definitions represent the meanings of terms as they are used in these regulations:

\* \* \* \* \*

Agriculture. The science or practice of cultivating the soil, producing crop, and raising livestock.

Agriculture Recreation, Minor. An education focused agriculture-related activity, such as educational tours that occur in conjunction with agricultural production, that are intended to educate the public about agriculture, agricultural practices, agricultural activities, or agricultural products.

Agriculture Recreation, Major. Any agricultural-related use that combines agriculture production with commercial recreation uses that are ancillary to the primary agricultural use, such as a celebration, ceremony, wedding, reception, corporate function, pumpkin patch, hayrides, or similar activity for someone other than the property owner, involving the gathering of individuals assembled for the common purpose of said event.

\* \* \* \* \*

Private Riding Arena: A building or portion of a building used exclusively for private equestrian activities by the property owner. A private riding arena must be ancillary to a single-family dwelling.

\* \* \* \* \*

14-03-06. Incidental Uses. Permitted uses and approved special uses shall be deemed to include accessory uses and accessory structures that are customarily incidental to the principal use, subject to the following standards:

1. Accessory Uses and Buildings

\* \* \* \* \*

b. One and two-family residential accessory uses and buildings

\* \* \* \* \*

6. All allowable accessory buildings for a single-family rural residence in the agricultural zoning district (A) shall be limited to a maximum area of one (1) percent of the total lot area up to a maximum of five thousand (5,000) square feet. The maximum building height shall be limited to twenty-five (25) feet.

The allowable accessory buildings for a single-family rural residence on a lot in the agriculture zoning district (A) A – Agriculture zoning district with at least (40) acres in area, or the aliquot part of a corrective section intended to comprise a quarter-quarter section, provided such aliquot part is not less than thirty-five (35) acres in size-area, and located entirely outside the Urban Service Area Boundary (USAB), may be increased to a maximum of seventy five hundred (7,500) 8,000 square feet provided a special use permit is approved by in accordance with the provisions of Section 14-03-08.

The allowable accessory buildings for a single-family rural residence on a lot in the A – Agriculture zoning district with at least eighty (80) acres in area, or two aliquot parts of a corrective section intended to comprise two quarter-quarter sections, provide such aliquot parts are not less than seventy (70) acres in area when combined together, and located entirely outside the Urban Service Area Boundary (USAB), may be increased to a maximum of 15,000 square feet as a special use in accordance with the provisions of Sections 14-03-08 and 14-04-17.

A private riding arena up to 22,000 square feet, in addition to the accessory buildings allowed in this section for a single-family rural residence, may be located on a lot in the A – Agriculture zoning district with at least thirty-five (35) acres area, and located outside the Urban Service Area Boundary (USAB), as a special use in accordance with the provisions of Section 14-03-08.

\* \* \* \* \*

14-03-08. Special Uses. In order to carry out the purposes of this title, the board of city commissioners finds it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the city planning and zoning commission and by the Zoning Administrator (where allowed) prior to the granting of a building permit or certificate of occupancy and that the city planning and zoning commission and the Zoning Administrator (where allowed) are hereby given limited discretionary powers relating to the granting of such a permit or certificate.

\* \* \* \* \*

4. Permanent uses (planning and zoning commission approval). The city planning and zoning commission is authorized to grant special use permits for the following uses:

\* \* \* \* \*

aa. Agriculture Recreation, Major. Agriculture Recreation, Major may be permitted in any A – Agricultural district as a special use provided:

1. The use is ancillary to the primary agricultural use.
2. The lot in which the use is located is at least thirty-five (35) acres in area.
3. The lot in which the use is located is outside the Urban Service Area Boundary (USAB).
4. Attendance is limited to two hundred and fifty (250) persons in attendance at any time.
5. No more than twelve (12) events per year, not to include agriculture recreation, minor uses.
6. Site design and building(s) must conform to all applicable requirements of the International Building Code (IBC) and the International Fire Code (IFC) as adopted by the City of Bismarck (Title 4 of the City Code of Ordinances – Building Regulations).

7. All parking areas shall be mowed and designed to prevent debris from the site entering the public right-of-way and be arranged to provide for orderly and safe loading or unloading and parking.
8. Access to buildings or areas associated with the agriculture recreation use shall be an all-weather access and be designed for safe and orderly access for patrons and emergency services.
9. Sound generated by the use shall meet the requirements outlined in Chapter 08-10 of the Code of Ordinance.
10. All outdoor light fixtures shall be installed in a manner intended to limit the amount of off-site impacts. Light fixtures located near adjacent properties may require special shielding devices to prevent light trespass.
11. The use is setback a minimum of 50 feet adjacent to properties with a residential use, zoning, or land use classification.
12. A site plan, and if necessary, a stormwater management plan is submitted for review and approval prior to the issuance of a building permit or commencement of operations.

**bb. Private riding arena: A private riding arena may be permitted in any A – Agricultural district as a special use provided:**

1. The use is ancillary to and in conjunction with a single-family dwelling.
2. The lot in which the use is located is at least thirty-five (35) acres.
3. The lot in which the use is located is outside the Urban Service Area Boundary (USAB).
4. There will be no sales, shows, competitions, training clinics, or similar events within or on the premises in which the private riding arena is located. There will be no spectator seating, stands or bleachers within the arena.
5. The proposed building is setback a minimum of 100 feet adjacent to properties with a residential use or zoning.
6. Site design and building(s) must conform to all applicable requirements of the International Building Code (IBC) and the International Fire Code (IFC) as adopted by the City of Bismarck (Title 4 of the City Code of Ordinances – Building Regulations).
7. A site plan, and if necessary, a stormwater management plan is submitted for review and approval prior to the issuance of a building permit.

14-04-17. “A” Agricultural Zoning District. In an A agricultural district, the following regulations shall apply:

\* \* \* \* \*

2. Uses Permitted. The following uses are permitted.

I. Agriculture Recreation, Minor, shall be allowed on a parcel of land Thirty-five (35) acres in area, and entirely located outside the Urban Service Area Boundary (USAB).

\* \* \* \* \*

The following special uses are allowed as per Section 14-03-08 hereof:

\* \* \* \* \*

u. Private riding arena

v. Agriculture Recreation, Major

\* \* \* \* \*

11. Accessory Buildings.

\* \* \* \* \*

The allowable accessory buildings for a single-family rural residence on a lot in the ~~agriculture zoning district (A) A –~~ Agriculture zoning district with at least (40) acres in area, or the aliquot part of a corrective section intended to comprise a quarter-quarter section, provided such aliquot part is not less than thirty-five (35) acres in size area, and located entirely outside the Urban Service Area (USAB) may be increased to a maximum of ~~seventy-five hundred (7,500)~~ 8,000 square feet provided a special use permit is ~~approved by~~ in accordance with the provisions of Section 14-03-08.

The allowable accessory buildings to a non-farm single family residence may be increased to a maximum of fifteen thousand (15,000) square feet in area provided:

a. The property on which the accessory building(s) is to be located is no less than 80 acres in area, or two aliquant parts of a corrective section intended to comprise two quarter-quarter sections, provided such aliquot parts when combined are not less than seventy (70) acres in area.

b. ~~The property on which the accessory buildings(s) is to be located is at least two (2) miles from the current corporate limits of Bismarck.~~

c. ~~A special use permit is approved by the Planning Commission in accordance with provisions of Section 14-03-08.~~

The allowable accessory buildings for a single-family rural residence on a lot in the A – Agriculture zoning district with at least seventy (70) acres in area and located entirely outside the Urban Service Area Boundary (USAB), may be increased to a maximum of 15,000 square feet as a special use in accordance with the provisions of Sections 14-03-08.

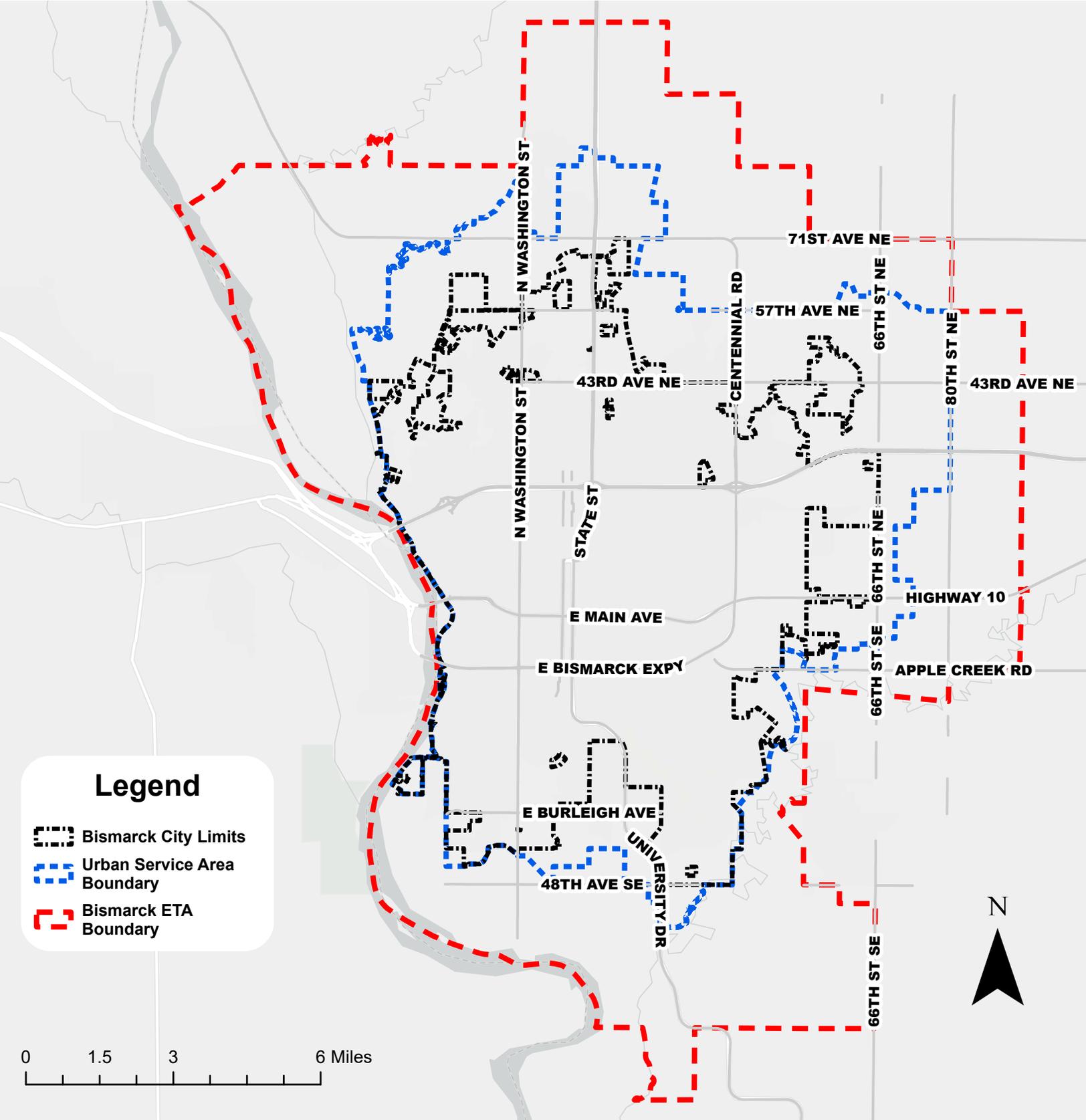
A private riding arena up to 22,000 square feet, in addition to the accessory buildings allowed in this section for a single-family rural residence, may be located on a lot in the A – Agriculture zoning district with at least thirty-five (35) acres area, and located entirely outside the Urban Service Area Boundary (USAB), as a special use in accordance with the provisions of Section 14-03-08.

\* \* \* \* \*

Section 2. Severability. If any section, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent remaining portions of this ordinance.

Section 3. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 4. Effective Date. This ordinance shall take effect after final passage, adoption and publication.



**Legend**

-  Bismarck City Limits
-  Urban Service Area Boundary
-  Bismarck ETA Boundary





## MEMORANDUM

### Special Home Occupation Public Meeting

TO: Chair Michael Schwartz and Planning and Zoning Commission

FROM: Daniel Nairn, AICP, Planning Manager

DATE: April 18, 2024

A special public meeting on the Home Occupations ordinance is scheduled for 5:00 PM on May 15, 2024 in the Tom Baker Meeting Room of the City-County Office Building at 221 N 5<sup>th</sup> Street. The purpose of this meeting is to listen to public comment and engage in discussion as a Planning and Zoning Commission over proposed changes to Section 14-03-06 Home Occupations, and other related sections, of the City Code of Ordinances. No action would be taken at this meeting.

An agenda with an attached proposed draft ordinance and background information will be released on the Agenda Center website on or before May 1. Staff will also issue a press release and notice on the City of Bismarck website.

Community Development staff have met four times in the two months with a stakeholder group comprised of rural residents and business owners. The consensus of this group is that a broader desire in the community exists for an opportunity to provide more public input on proposed changes before formally submitting to the Planning and Zoning Commission for a vote. Staff agree.

The purpose of this ordinance amendment is to revise existing requirements related to business activity in residential areas to allow a broader range of commercial activity than currently allowed while continuing to protect the residential character of neighborhoods. The ordinance applies to all residential zoning districts, but different standards will apply to rural and urban zoning districts.

Although a public hearing was previously opened for this meeting and continued, Community Development staff now withdraw this request. A new public hearing will be noticed for the May 22, 2024 regular meeting of the Planning and Zoning Commission. The reason for this change is that additional sections of Title 14 are proposed to be revised, which will require a new legal notice to hold a valid public hearing.



**BISMARCK PLANNING & ZONING COMMISSION  
MEETING MINUTES  
March 27, 2024**

The Bismarck Planning & Zoning Commission met on March 27, 2024, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> 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 (via Zoom), Robert Field, Cole Johnson, Amber Larson, Dan Lukens, Gabe Schell, Mike Schmitz, Mike Schwartz, and Paul Zent.

Commissioner Trent Wangen was absent.

Staff members present were Brady Blaskowski – Building Official, Janelle Combs – City Attorney, 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.

Chair Schwartz introduced and welcomed Amber Larson to the Planning and Zoning Commission.

**MINUTES**

Chair Schwartz called for consideration of the minutes of the February 28, 2024, meeting.

**MOTION:** Commissioner Schmitz made a motion to approve the minutes of the February 28, 2024, meeting, as presented. Commissioner Lukens seconded the motion, and it was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, and Zent voting in favor of the motion.

**CONSIDERATION**

**3. CENTRAL OUTPOST SUBDIVISION  
MAJOR SUBDIVISION PRELIMINARY PLAT  
ZONING MAP AMENDMENT**

**4. WEST REGION MEDICAL SECOND ADDITION  
MAJOR SUBDIVISION PRELIMINARY PLAT  
ZONING MAP AMENDMENT**

**5. REVISIONS TO (FP) FLOODPLAIN DISTRICT  
ZONING ORDINANCE TEXT AMENDMENT**

**MOTION:** Based on the findings contained in the staff reports, Commissioner Schmitz made a motion to approve consent agenda items 3, 4, and 5, calling for public hearings as recommended by staff. Commissioner Zent seconded the motion and it was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, and Zent voting in favor of the motion.

**PUBLIC HEARING – MAJOR STREET PLAN AMENDMENT  
CONSIDERATION – FUTURE LAND USE PLAN AMENDMENT  
HAY CREEK TOWNSHIP, SECTIONS 7 AND 18, T139-R80, SECTIONS 12-13, T139-R81**

Chair Schwartz called for the public hearing on the major street plan amendment and consideration of a future land use plan amendment for Sections 7 and 18, T139-R80, Sections 12-13, T139-R81, Hay Creek Township. The property is located northwest of Bismarck in Sections 7 and 18, T139N-R80W, and Sections 12 and 13, T139N-R81W, Hay Creek Township, West of Tyler Parkway between Frisco Way and State Highway 1804.

Mr. Johnson provided an overview of the requests and stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the major street plan amendment and future land use plan 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 major street plan amendment and calling for public hearing for the future land use plan amendment, as presented.

Chair Schwartz opened the public hearing.

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

**MOTION:** Based on the findings contained in the staff report, Commissioner Johnson made a motion to approve the major street plan amendment and call for public hearing for a future land use plan amendment for Sections 7 and 18, T139-R80, Sections 12-13, T139-R81, Hay Creek Township. Commissioner Bitner seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, and Zent voting in favor of the motion.

**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 car service for oil changes on Lot 3, Block 1, Jacks First Addition. The property is located in south-central Bismarck, south of East Arbor Avenue and east of University Drive, in the southwest quadrant of the intersection of Bismarck Expressway and South 11th Street.

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 proposed special use permit would not adversely impact the public health, safety, and general welfare.

Ms. Oster said, based on the findings, staff recommends approval of special use permit to allow a drive-through car service for oil changes on Lot 3, Block 1, Jacks First Addition, as presented.

Commissioner Field asked if pits were going to be constructed for this business. He stated he is concerned about flooding. Ms. Oster answered that, based on the site plan, there would be a lift system, rather than deep pits.

Chair Schwartz opened the public hearing.

Landon Niemiller from Swenson & Hagen came forward to represent the applicant and explain that the plans include shallow pits and that the plans would be going the site plan process to address any easements on the east and south sides of the property.

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

Commissioner Bitner then asked if elevation is considered during the permitting process. Commissioner Schell explained that this will go through the site plan process which will adhere to all current floodplain development standards.

**MOTION:** Commissioner Lukens made a motion to approve the special use permit to allow a drive-through car service for oil changes on Lot 3, Block 1, Jacks First Addition. Commissioner Zent seconded the motion, and it was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, and Zent voting in favor of the motion.

#### **PUBLIC HEARING – SPECIAL USE PERMIT (ACCESSORY BUILDING) OLIVE TREE SUBDIVISION, LOT 2, BLOCK 1**

Chair Schwartz called for the public hearing on a special use permit to increase the allowable size of accessory structures up to 2,400 square feet on Lot 2, Block 1, Olive Tree Subdivision. The property is located northwest of Bismarck, west of Burnt Creek Loop, on the north side of Olive Tree Drive.

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 special use permit would not adversely impact the public health, safety, and general welfare.

Mr. Johnson said, based on the findings, staff recommends approval of the special use permit to increase the allowable size of accessory structures up to 2,400 square feet on Lot 2, Block 1, Olive Tree Subdivision, as presented.

Commissioner Fields asked if greenhouses always require a special use permit. Mr. Johnson explained that because the property is already at the limit for area of accessory structures, a special use permit is required in this case.

Commissioner Bitner asked about the costs of special use permits. Mr. Johnson stated that a temporary special use permit is \$150, and a standard special use permit, such as this one, is \$700.

Commissioner Larson questioned whether the plan to build the greenhouse 10 feet from the main house followed building codes and how the city enforced building codes. Mr. Johnson explained that the distance between structures is primarily regulated by building codes, with distances of less than 10 feet between structures likely requiring some type of fire protection. Investigations of possible zoning or building code violations is triggered by complaints from members of the public, at which time City staff would reach out to the property owner in question for further information.

Chair Schwartz opened the public hearing.

An adjacent property owner, James Martel, came forward with concerns about the use of the greenhouse. He has concerns about it becoming a business that includes additional traffic and parking issues in the neighborhood. He then stated he has no objections to a greenhouse but is concerned about the size. He then voiced concerns about the destination of the runoff because of the existing large accessory building and the planned greenhouse.

The applicant, Corey Hendricks, came forward to address concerns. He explained that the greenhouse will be 576 square feet and will include walkways between the vegetable plants that he intends to plant directly into the ground, not in pots. He will also store garden tools in the greenhouse. He stated he will not be running a business out of either of his accessory buildings. He simply wants to extend his growing season. He then addressed his neighbors' concerns with water runoff. He previously brought in fill dirt to raise the existing building and installed gutters and down spouts to collect precipitation. He also dug a 30-foot diameter pond to collect run off. The pond has a capacity of 14,000 to 16,000 gallons.

Commissioner Zent asked if there are plans to run electricity to the greenhouse. Mr. Hendricks explained that he intends to use extension cords for heating pads under starter plants.

Travis Jensen, another nearby property owner, lives two lots from the applicant's property, came forward to state that while he supports a greenhouse, he would like staff to relook at the topography of the area because the ditch does not run to the river.

Chair Schwartz asked how often the neighborhood saw water issues. Mr. Jensen answered that each year is different, depending on snow and rainfall.

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

Commissioner Schell explained that Olive Tree Subdivision was platted in the early 2000s and therefore predates the current stormwater review process.

Commissioner Bitner stated that he is not opposed to this special use permit but questioned what the City would do if the proposed accessory structure causes a water problem. Commissioner Schell answered that the neighbors may need to work together to find a solution if this were to occur in the future. .

Commissioner Fields asked if the applicant has considered adding barrels to collect rainwater. Mr. Hendricks answered that he does have a few 250-gallon water containers and explained again that he has shaped his yard to collect rainwater in the pond he dug, away from his neighbors.

Commissioner Bitner then questioned the appearance of water containers and reminded the applicant to be considerate of neighbors. Mr. Hendricks stated he has plans to build boxes around the containers to match the buildings.

**MOTION:** Based on the findings contained in the staff report, Commissioner Schmitz made a motion to recommend approval of the special use permit to increase the allowable size of accessory structures up to 2,400 square feet on Lot 2, Block 1, Olive Tree Subdivision. Commissioner Johnson seconded the motion,

and the motion was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, and Zent voting in favor of the motion.

**CONTINUED PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT  
HOME OCCUPATIONS**

Mr. Nairn requested to delay the public hearing on the zoning ordinance text amendment regarding home occupations until the April 24, 2024, meeting. He explained that the stakeholder group has met a few times and still had issues to address.

**MOTION:** Commissioner Bitner made a motion to continue the public hearing on the zoning ordinance text amendment for home occupations as recommended by staff. Commissioner Zent seconded the motion, and it was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, and Zent voting in favor of the motion.

**OTHER BUSINESS**

Ms. Wollmuth provided an update on the draft ordinance regarding agri-tourism and private riding stables. Commissioner Field asked for the location of the riding stables. Ms. Wollmuth explained that private riding stables would be permitted on agriculturally zoned properties that are outside the Urban Service Area and at least 35 acres in size.

**ADJOURNMENT**

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 7:13 p.m. to meet again on April 24, 2024.

Respectfully submitted,

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Sarah Fricke  
Recording Secretary

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Mike Schwartz  
Chair

PERMIT ACTIVITY REPORT - MTD  
DATE SELECTION 3/2024

\*\*\*\*\*City\*\*\*\*\*

\*\*\*\*\*ETA\*\*\*\*\*

Census Code	3/2024		3/2023		3/2024		3/2023	
	Permits	Valuations	Permits	Valuations	Permits	Valuations	Permits	Valuations
SINGLE FAMILY DETACHED	6	\$2,321,350.75	2	\$622,781.18	1	\$443,619.50	1	\$311,595.64
ROWHOUSE (2) 1-HR FIRE SEPARATION	6	\$1,839,465.00	8	\$2,183,482.36	0	\$0.00	0	\$0.00
RESIDENTIAL ADDITION	1	\$36,480.00	1	\$32,796.00	0	\$0.00	0	\$0.00
DETACHED GARAGE	1	\$16,900.00	0	\$0.00	0	\$0.00	0	\$0.00
DECKS\PORCHES & COVERED PORCHES	2	\$3,641.40	4	\$0.00	0	\$0.00	0	\$0.00
SWIMMING POOLS	1	\$85,000.00	0	\$0.00	0	\$0.00	0	\$0.00
RESIDENTIAL ALTERATION/OTHER	8	\$558,865.69	0	\$0.00	1	\$0.00	1	\$16,137.68
HOME OCCUPATION	2	\$0.00	1	\$0.00	1	\$0.00	0	\$0.00
STORAGE SHED	1	\$2,880.00	0	\$0.00	0	\$0.00	0	\$0.00
BASEMENT FINISH	7	\$183,207.00	5	\$92,471.50	1	\$12,814.00	1	\$16,125.00
RESIDENTIAL	1	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
COMMERCIAL	0	\$0.00	1	\$0.00	0	\$0.00	0	\$0.00
NURSERY STOCK SALES	0	\$0.00	4	\$0.00	0	\$0.00	0	\$0.00
NEW SIGN PERMITS	9	\$94,106.00	1	\$9,750.00	0	\$0.00	0	\$0.00
SIGN ALTERATION	2	\$25,568.00	0	\$0.00	0	\$0.00	0	\$0.00
COMMERCIAL NEW CONSTRUCTION	7	\$1,538,210.00	14	\$9,729,753.00	0	\$0.00	0	\$0.00
COMMERCIAL ADDITION	0	\$0.00	1	\$1,000,000.00	0	\$0.00	0	\$0.00
COMMERCIAL ALTERATION	9	\$2,907,030.00	14	\$7,636,245.00	1	\$11,430.00	0	\$0.00
<b>Total</b>	<b>63</b>	<b>\$9,612,703.84</b>	<b>56</b>	<b>\$21,307,279.04</b>	<b>5</b>	<b>\$467,863.50</b>	<b>3</b>	<b>\$343,858.32</b>

**PERMIT ACTIVITY REPORT - MTD  
DATE SELECTION 3/2024**

\*\*\*\*\*City\*\*\*\*\*

\*\*\*\*\*ETA\*\*\*\*\*

Trade Permit Type	3/2024		3/2023		3/2024		3/2023	
	Permits	Valuations	Permits	Valuations	Permits	Valuations	Permits	Valuations
BUILDING ELECTRIC	58	\$0.00	49	\$0.00	0	\$0.00	0	\$0.00
BUILDING MECHANICAL	94	\$2,026,648.90	117	\$1,345,188.94	5	\$48,048.00	7	\$24,462.50
BUILDING PLUMBING	26	\$3,338,835.00	8	\$269,350.00	0	\$0.00	1	\$9,720.00
BUILDING SEPTIC	0	\$0.00	0	\$0.00	1	\$0.00	0	\$0.00
<b>Total</b>	<b>178</b>	<b>\$5,365,483.90</b>	<b>174</b>	<b>\$1,614,538.94</b>	<b>6</b>	<b>\$48,048.00</b>	<b>8</b>	<b>\$34,182.50</b>

PERMIT ACTIVITY REPORT - MTD  
DATE SELECTION 3/2024

	*****City*****		*****ETA*****	
	3/2024	3/2023	3/2024	3/2023
Living Units	Units	Units	Units	Units
BASEMENT FINISH	0	0	0	0
DECKS\PORCHES & COVERED PORCHES	0	0	0	0
DETACHED GARAGE	0	0	0	0
RESIDENTIAL ADDITION	0	0	0	0
RESIDENTIAL ALTERATION/OTHER	0	0	0	0
ROWHOUSE (2) 1-HR FIRE SEPARATION	6	8	0	0
SINGLE FAMILY DETACHED	6	2	1	1
SWIMMING POOLS	0	0	0	0
<b>Total</b>	<b>12</b>	<b>10</b>	<b>1</b>	<b>1</b>

**PERMIT ACTIVITY REPORT - YTD  
DATE SELECTION 3/2024**

\*\*\*\*\*City\*\*\*\*\*

\*\*\*\*\*ETA\*\*\*\*\*

Census Code	3/2024		3/2023		3/2024		3/2023	
	Permits	Valuations	Permits	Valuations	Permits	Valuations	Permits	Valuations
SINGLE FAMILY DETACHED	10	\$3,490,439.55	2	\$622,781.18	1	\$443,619.50	1	\$311,595.64
ROWHOUSE (2) 1-HR FIRE SEPARATION	28	\$5,294,837.00	16	\$3,595,620.92	0	\$0.00	0	\$0.00
MULTI FAMILY RESIDENTIAL	1	\$241,700.00	0	\$0.00	0	\$0.00	0	\$0.00
MANUFACTURED HOMES	4	\$0.00	2	\$0.00	0	\$0.00	0	\$0.00
RESIDENTIAL ADDITION	3	\$115,583.40	1	\$32,796.00	0	\$0.00	0	\$0.00
DETACHED GARAGE	1	\$16,900.00	1	\$16,800.00	0	\$0.00	0	\$0.00
DECKS\PORCHES & COVERED PORCHES	8	\$26,981.90	6	\$9,531.00	0	\$0.00	0	\$0.00
SWIMMING POOLS	1	\$85,000.00	1	\$85,000.00	0	\$0.00	0	\$0.00
RESIDENTIAL ALTERATION/OTHER	15	\$692,994.35	4	\$139,300.00	3	\$59,000.00	2	\$25,387.68
HOME OCCUPATION	2	\$0.00	2	\$0.00	1	\$0.00	0	\$0.00
STORAGE SHED	1	\$2,880.00	0	\$0.00	0	\$0.00	0	\$0.00
BASEMENT FINISH	14	\$315,131.00	17	\$308,826.00	3	\$80,023.00	3	\$85,677.50
RESIDENTIAL	1	\$0.00	1	\$0.00	0	\$0.00	0	\$0.00
COMMERCIAL	0	\$0.00	4	\$0.00	0	\$0.00	0	\$0.00
NURSERY STOCK SALES	0	\$0.00	4	\$0.00	0	\$0.00	0	\$0.00
NEW SIGN PERMITS	21	\$504,185.61	7	\$258,053.00	0	\$0.00	0	\$0.00
SIGN ALTERATION	8	\$88,422.13	2	\$3,050.00	0	\$0.00	0	\$0.00
COMMERCIAL NEW CONSTRUCTION	13	\$3,915,610.00	28	\$17,409,753.00	0	\$0.00	0	\$0.00
COMMERCIAL ADDITION	0	\$0.00	1	\$1,000,000.00	0	\$0.00	0	\$0.00
COMMERCIAL ALTERATION	27	\$8,259,001.00	29	\$12,136,355.00	1	\$11,430.00	1	\$19,500.00
<b>Total</b>	<b>158</b>	<b>\$23,049,665.94</b>	<b>128</b>	<b>\$35,617,866.10</b>	<b>9</b>	<b>\$594,072.50</b>	<b>7</b>	<b>\$442,160.82</b>

**PERMIT ACTIVITY REPORT - YTD  
DATE SELECTION 3/2024**

\*\*\*\*\*City\*\*\*\*\*

\*\*\*\*\*ETA\*\*\*\*\*

Permit Type	3/2024		3/2023		3/2024		3/2023	
	Permits	Valuations	Permits	Valuations	Permits	Valuations	Permits	Valuations
BUILDING ELECTRIC	172	\$0.00	166	\$0.00	1	\$0.00	0	\$0.00
BUILDING MECHANICAL	306	\$5,461,713.88	337	\$4,707,492.84	43	\$325,724.53	58	\$766,970.25
BUILDING PLUMBING	52	\$4,561,666.00	21	\$644,101.00	1	\$1,000.00	1	\$15,015.00
BUILDING SEPTIC	0	\$0.00	0	\$0.00	1	\$0.00	0	\$0.00
<b>Total</b>	<b>530</b>	<b>\$10,023,379.88</b>	<b>524</b>	<b>\$5,351,593.84</b>	<b>46</b>	<b>\$326,724.53</b>	<b>59</b>	<b>\$781,985.25</b>

PERMIT ACTIVITY REPORT - YTD  
DATE SELECTION 3/2024

\*\*\*\*\*City\*\*\*\*\*

\*\*\*\*\*ETA\*\*\*\*\*

Living Units	3/2024	3/2023	3/2024	3/2023
	Units	Units	Units	Units
MULTI FAMILY RESIDENTIAL	0	0	0	0
MANUFACTURED HOMES	3	2	0	0
BASEMENT FINISH	0	0	0	0
DECKS\PORCHES & COVERED PORCHES	0	0	0	0
DETACHED GARAGE	0	0	0	0
RESIDENTIAL ADDITION	0	0	0	0
RESIDENTIAL ALTERATION/OTHER	0	0	0	0
ROWHOUSE (2) 1-HR FIRE SEPARATION	88	40	0	0
SINGLE FAMILY DETACHED	9	2	1	1
SWIMMING POOLS	0	0	0	0
<b>Total</b>	<b>100</b>	<b>44</b>	<b>1</b>	<b>1</b>