

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
January 24, 2024**

The Bismarck Planning & Zoning Commission met on January 24, 2024, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. The meeting was held in person and via Zoom. Chair Schwartz presided and was present in the Tom Baker Meeting Room.

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

Commissioner Wendy Van Duyne was absent.

Staff members present were Brady Blaskowski – Building Official, Sandra Bogaczyk – Office Assistant II, Jannelle Combs – City Attorney, Ben Ehreth – Community Development Director, Isak Johnson – Planner, Daniel Nairn – Planning Manager, Lauren Oster - Planner and Jenny Wollmuth – Senior Planner.

MINUTES

Chair Schwartz called for consideration of the minutes of the December 20, 2023, meeting.

MOTION: Commissioner Zent made a motion to approve the minutes of the December 20, 2023, meeting, as presented. Commissioner Field seconded the motion, and it was unanimously approved with Commissioners Bitner, Field, Johnson, Lukens, Schell, Schmitz, Schwartz, Wangen and Zent voting in favor of the motion.

CONSIDERATION

- 2. MUNICIPAL FOURTH ADDITION FIRST REPLAT
PUD AMENDMENT**
- 3. CAPITAL ELECTRIC SECOND ADDITION
ZONING MAP AMENDMENT**
- 4. MCKENZIE AND COFFIN'S ADDITION
ZONING MAP AMENDMENT**
- 5. WILLIAM BLACKSTONE ADDITION
MAJOR SUBDIVISION PRELIMINARY PLAT
ZONING MAP AMENDMENT**

MOTION: Based on the findings contained in the staff reports, Commissioner Schell made a motion to approve consent agenda items 2, 4 and 5, calling for public hearings and granting tentative approval on the items as recommended by staff. Commissioner Johnson seconded the motion and it was unanimously approved with Commissioners Bitner, Field, Johnson, Lukens, Schell, Schmitz, Schwartz, Wangen and Zent voting in favor of the motion.

Mr. Nairn stated that based on the findings contained in the staff report staff recommended calling a public hearing for Consent Agenda item 3 and explained that staff has learned since the release of the staff report that the recommended annexation agreement is not permitted

by Century Code, and that other alternatives would need to be explored to meet objectives of the plan. He stated that Jacob Barney of Five Star Storage was present at the meeting via Zoom to answer any questions.

Mr. Schmitz asked why plans for storage buildings were being considered in a largely residential area. Mr. Nairn stated that the Future Land Use Plan (FLUP) designates the area for industrial uses, but this can be discussed by the Planning and Zoning Commission.

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

PUBLIC HEARING – MAJOR SUBDIVISION FINAL PLAT FIRST RESPONDERS THIRD ADDITION

Chair Schwartz called for the public hearing on the major subdivision final plat for First Responders Third Addition. The proposed plat is two lots in one block on 5.34 acres and is located in east Bismarck, east of North Bismarck Expressway and south of East Main Avenue / County Highway 10, in the northwest quadrant of 52nd Street NE and Midwest Drive (a replat of all of First Responders Addition, Part of Auditor's Lot 6A of Auditor's Lot 6, Part of Lot 7B of Auditor's Lot 7, part of the W½ of 52nd Street SE right-of-way, and part of the N½ of Midwest Drive right-of-way, Section 1, T138N-R80W/Lincoln Township.

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

Ms. Wollmuth said, based on the findings, staff recommends approval of the major subdivision final plat for First Responders Third Addition as presented.

Chair Schwartz opened the public hearing.

Ms. Wollmuth introduced Mr. Schneider from Toman Engineering who concurred with the information contained in Ms. Wollmuth's presentation.

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

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

PUBLIC HEARING –MINOR SUBDIVISION FINAL PLAT AND ZONING CHANGE SONNET HEIGHTS SUBDIVISION NINTH REPLAT

*This item was presented as 'Sonnet Heights Subdivision Eighth Replat' at the public hearing. After the public hearing, staff discovered that an Eighth Replat already exists. Therefore, this project has been retitled 'Sonnet Heights Subdivision Ninth Replat'. The minutes will use Ninth Replat to reflect the correct name.

Chair Schwartz called for the public hearing on a zoning change from the RM30 – Residential zoning district to the PUD – Planned Unit Development zoning district and a minor subdivision final plat for Sonnet Heights Subdivision Ninth Replat. The proposed plat is 5 lots in one block on 1.15 acres and is located in north Bismarck, along the east side of Normandy Street between Calvert Drive and East Lasalle Drive.

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

Mr. Johnson said, based on the findings, staff recommends approval of the minor subdivision final plat and zoning map amendment for Sonnet Heights Subdivision Ninth Replat as presented.

Chair Schwartz opened the public hearing.

Mr. Johnson stated that Jason Voegele was present to answer questions from the commissioners.

Mr. Schell asked who is to maintain the common area. Mr. Voegele stated that a homeowners association was being established for that purpose.

Mr. Bitner asked Mr. Voegele to address the public comment, included in the agenda packet for this item, regarding right-of-way access, stormwater issues, and access to adjacent properties. Mr. Schneider, on behalf of Mr. Voegele, stated that the proposed lots would receive access from Normandy Street and that the project area is private property adjacent to other privately-owned property, so there is no public access between the properties. He also stated that the stormwater plan was conditionally approved by the City Engineering Department. Mr. Bitner then reiterated that it is not the responsibility of the developer to give neighbors access through private property.

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

MOTION: Based on the findings contained in the staff report, Commissioner Zent made a motion to recommend approval of the zoning change from the RM30 – Residential zoning district to the PUD – Planned Unit Development zoning district and a minor subdivision final plat for Sonnet Heights Subdivision Ninth Replat. Commissioner Johnson seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Field, Johnson, Lukens, Schell, Schmitz, Schwartz, Wangen and Zent voting in favor of the motion.

PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT HOME OCCUPATIONS

Chair Schwartz called for the public hearing on the zoning ordinance text amendment for home occupations.

Mr. Nairn provided an overview of the proposed amendment, noting that the proposed ordinance includes minor and a major home occupation categories, with the minor being allowed by-right and major appearing before the Planning and Zoning Commission. He noted that staff convened a stakeholder committee, conducted a public survey, reviewed peer communities, and took documented complaints from neighbors into consideration when forming suggestions for amending the ordinance, all of which is included in the staff report. He then noted that the parameters of the proposed ordinance include number of employees, noise, traffic, weight of vehicles, quantity and hours of visits, and other provisions. Mr. Nairn stated that providing accessibility to any business with public accommodations may be required by federal law, regardless of home occupation status. He then stated that, as a cumulative result of all findings contained in the staff report, City of Bismarck staff find that the proposed zoning ordinance text amendment would not adversely impact the public health, safety and general welfare.

Mr. Nairn said, based on the findings, staff recommends approval of the zoning ordinance text amendment related to home occupations.

Commissioner Field noted a difference between living in the Extra-Territorial Area (ETA) and within the corporate city limits. He suggested that a majority of people living in the ETA do not want to see limitations on land use regarding possible future business opportunities and stated that he supports limitations in the city limits. Mr. Bitner agreed and noted he felt that limitations on land use would limit property values.

There was discussion about specific and general home occupation scenarios.

Mr. Ehreth stated the vast majority of complaints the City receives are in the ETA, often surrounding the issues of noise and traffic from small businesses storing equipment and materials at homes in the ETA.

Ms. Combs stated that the City of Bismarck does have jurisdiction in the ETA for zoning compliance but not for general health and safety ordinances and further explained the City's role in compliance.

Commissioner Wangen agreed with Commissioners Field and Bitner's position of wanting less regulation on land use in the ETA.

Chair Schwartz asked how many complaints have been business-related. Mr. Ehreth confirmed with Mr. Blaskowski that the complaints are contractor and traffic-related, and about equipment and employees; that the noise and traffic are not the rural setting that the rural residents bought into.

There was discussion about the difference between daily versus weekly traffic regarding garbage and snowplow vehicles versus daily construction vehicles and road stress.

Mr. Schmitz explained that the proposed zoning text amendment is written to allow the clarification and flexibility for more business in the ETA and explained that the current ordinance is not working.

There was discussion about the proposed process and fee schedule.

Commissioners Zent, Field, and Bitner discussed a lack of representation for residents of the ETA.

Mr. Nairn mentioned that the existing Burleigh County home occupation ordinance is, in some ways, more restrictive than what staff is proposing, and that no outside employees are allowed for home occupations outside of the ETA.

Chair Schwartz called for the public hearing on the zoning ordinance text amendment.

Mr. Jake Wutzke, who owns a landscape business on two acres in the ETA, stated that he has not had any complaints directly from neighbors. He requested that commissioners support home-based businesses more than what is detailed in the proposed ordinance.

Mr. Tyson Austin, who owns a landscape business on five acres in the ETA, stated that he lives among neighbors with horses and their livestock trailer traffic, all the package delivery service and day-care traffic in his neighborhood. He disagreed with the proposed ordinance and compared professional drivers' safety levels against private citizens' unsafe driving habits.

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

There was discussion about degrees of enforcement under current rules versus enforcement under the proposed ordinance.

Commissioner Schell suggested that the proposed ordinance is better than the current one and suggested that it might be beneficial to try it and see how it works.

Commissioner Johnson questioned the limitations of outside employment and what impact this may have on childcare and other businesses. Mr. Nairn noted that childcare operators would be exempted, because state licensing requires outside employment, and considered minor home occupations.

Commissioner Johnson noted that the ordinance may consider live-work units permitted under the building code, but that this may be an issue to address in the large zoning ordinance rewrite.

Commissioners Bitner, Wangen, and Field repeated that they cannot support the proposed ordinance.

Mr. Nairn explained that the proposed ordinance only refers to properties in the Rural Residential zoning district.

Commissioner Schmitz suggested convening a new stakeholder group comprised of rural residents and home-based businesses for further discussion about the language of the ordinance.

MOTION: Commissioner Schmitz made a motion to table the discussion for the zoning ordinance text amendment for home occupations. The motion failed to be seconded and the motion died.

Mr. Ehreth stated the difference between tabling and continuing a motion.

MOTION: Commissioner Zent made a motion to continue the discussion for the zoning ordinance text amendment for home occupations. Commissioner Bitner seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Field, Johnson, Lukens, Schell, Schmitz, Schwartz, Wangen and Zent voting in favor of the motion.

OTHER BUSINESS TERMS AND OATHS OF OFFICE

Chairman Schwartz thanked current and previous Commissioners for their service in guiding decisions in city planning.

New oaths of office were shared with those Commissioners present at this time and notarized for filing with City Administration.

ELECTION OF OFFICERS:

Chair Schwartz opened nominations for the election of Chair and Vice Chair at this time.

Chair Schwartz stated that he would enjoy continuing being chair. Commissioner Zent made a motion to reelect Mike Schwartz as the Chair of the Bismarck Planning and Zoning Commission. Commissioner Field seconded the motion and, with Commissioners Bitner, Field, Johnson, Lukens, Schell, Schmitz, Schwartz, Wangen and Zent voting in favor of the motion, Mike Schwartz was reelected Chair of the Bismarck Planning and Zoning Commission.

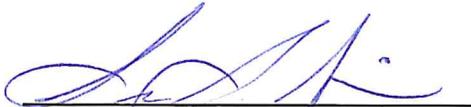
Commissioner Johnson stated that he would enjoy continuing being vice-chair. Mr. Bitner made a motion to elect Cole Johnson as the Vice Chair of the Bismarck Planning and Zoning Commission. Commissioner Zent seconded the motion and with Bitner, Field, Johnson, Lukens, Schell, Schmitz, Schwartz, Wangen and Zent voting in favor of the motion, Cole Johnson was elected Vice Chair of the Bismarck Planning and Zoning Commission.

There was no other business to discuss at this time.

ADJOURNMENT

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 6:45 p.m. to meet again on February 28, 2024.

Respectfully submitted,


Sarah Fricke
Recording Secretary

 - for Mike Schwartz
Mike Schwartz
Chair