

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

The Bismarck Planning & Zoning Commission met on April 24, 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, Robert Field, Cole Johnson, Amber Larson, Dan Lukens (Via Zoom), Gabe Schell, Mike Schmitz (via Zoom), Mike Schwartz, Sheldon Sivak, Trent Wangen, and Paul Zent.

Staff members present were Brady Blaskowski – Building Official, Jannelle 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 Sheldon Sivak to the Planning and Zoning Commission.

**MINUTES**

Chair Schwartz called for consideration of the minutes of the March 27, 2024, meeting.

**MOTION:** Commissioner Zent made a motion to approve the minutes of the March 27, 2024, meeting, as presented. Commissioner Bitner seconded the motion, and it was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

**PUBLIC HEARING – MAJOR SUBDIVISION FINAL PLAT / ZONING MAP AMENDMENT  
FETTIG SUBDIVISION**

Chair Schwartz called for the public hearing on the zoning map amendment and major subdivision final plat for Fettig Subdivision. The property is located 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).

Ms. Wollmuth 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 zoning map amendment and major subdivision final plat for Fettig Subdivision may adversely impact the public health, safety, and general welfare and is not consistent the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Without annexation of the proposed plat, the ability of the city to expand its boundaries and extend municipal services would be limited.

Ms. Wollmuth said, based on the findings contained in the staff report, staff recommends denial of both 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, as presented.

Chair Schwartz opened the public hearing.

Landon Niemiller from Swenson Hagen & Co approached the Commission to address staff's recommendation to deny. He stated the developer plans to only develop Lot 3 and the developer has agreed to provide access easements to the city to allow consolidation of access points in the future. He stated that the developer wishes not to annex at this time because the timeline for full utility services is unknown. Mr. Niemiller then offered a Development Agreement to annex the property when utility services are available.

Chair Schwartz asked about the plan for sanitary sewer.

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

**MOTION:** Based on the findings contained in the staff report, Commissioner Zent made a motion to deny the zoning map amendment and major subdivision final plat for Fettig Subdivision. Commissioner Schell seconded the motion. The motion failed with Commissioners Bitner, Field, Johnson, Schmitz, Schwartz, Sivak, and Wangen voting against the motion. Commissioners Larson, Lukens, Schell and Zent voted in favor of the motion.

Commissioner Johnson asked if denial would mean the developer simply does not develop or if there is another way other than annexation. Commissioner Schell stated that the city will only provide water after annexation.

Commissioner Bitner then asked if this denial means the property is undevelopable. Commissioner Schell indicated the sewer will remain the same regardless of the Commission's decision and only the water provider will change. Commissioner Bitner stated that he disagrees with staff's recommendation to deny because rural water is available to the property.

Commissioner Schmitz stated that he believes the Development Agreement proposal is a good solution. Commissioner Bitner agreed that Mr. Niemiller's solution is reasonable.

Commissioner Schell said he had not been contacted previously on the proposed Development Agreement and typical practice is to annex properties adjacent to corporate limits.

Commissioner Bitner stated he believes the Development Agreement is more appropriate for this developer and advised city staff to work with Mr. Niemiller on it. Chair Schwartz asked about a development schedule and Mr. Niemiller said the plan is to begin construction this summer and fall as the business will be snow removal.

Janelle Combs questioned whether a Development Agreement will work for annexation and if it would bind any future landowner to follow it. She will research it to try to find a way around this issue.

**MOTION:** Based on the findings contained in the staff report, Commissioner Bitner made a motion to continue the public hearing for the zoning map amendment and major subdivision final plat for Fettig Subdivision. Commissioner Wangen seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

#### **PUBLIC HEARING – MINOR SUBDIVISION PLAT APPLE CREEK COUNTRY CLUB FOURTH SUBDIVISION**

Chair Schwartz called for the public hearing on a minor subdivision final plat titled Apple Creek Country Club Fourth Subdivision. The property is located 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 of Apple Creek Country Club Third Subdivision).

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

Ms. Oster said, based on the findings, staff recommends approval of the minor subdivision final plat for Apple Creek Country Club Fourth Subdivision, as presented.

Commissioner Field questioned why this developer was not being asked to annex. Ms. Oster explained that this property is not adjacent to city limits.

Commissioner Bitner asked if efforts have been made to address drainage concerns. Commissioner Schell explained that both City and County Engineering had reviewed and are comfortable with the water plans.

Chair Schwartz opened the public hearing.

Hannah Boese, with Lowry Engineering, came forward to confirm that a drainage plan had been submitted and approved. Grading will be built up to drain to the Highway 10 ditch and because the property is not connected to the city, existing water lines will be used.

Apple Creek Township President, Monte Sicble asked if the property is already developed for homes and roads. He then stated that as long as the township will not be responsible for snow removal or street maintenance, Apple Creek has no issue with the proposed plat. Commissioner Bitner stated there would be no additional costs to the County for building roads.

Ms. Boese stated street maintenance will be the responsibility of the homeowner's association that will be created for this neighborhood.

Marie Halstead, an adjacent property owner, came forward to voice her concerns with increased traffic. Commissioner Schell responded that this project only has 14 new homes and does not require a traffic impact study.

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

**MOTION:** Commissioner Bitner made a motion to approve the minor subdivision final plat titled Apple Creek Country Club Fourth Subdivision. Commissioner Zent seconded the motion, and it was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

**PUBLIC HEARING – FUTURE LAND USE PLAN AMENDMENT  
HAY CREEK TOWNSHIP, SECTIONS 7 AND 18, T139 – R80**

Chair Schwartz called for the public hearing on a future land use plan amendment to adjust the proposed Future Land Uses in portions of Hay Creek Township, Sections 7 & 18, T139N-R80W, to maintain consistency with a Major Street Plan Amendment in this area. The project area is located northwest of Bismarck, west of Tyler Parkway between Ash Coulee Drive to the south and State Highway 1804 to the North.

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 future land use plan amendment would not adversely impact the public health, safety, and general welfare.

Mr. Johnson said, based on the findings, staff recommends approval of the future land use plan to adjust the proposed Future Land Uses in portions of Hay Creek Township, Sections 7 & 18, T139N-R80W, as presented.

Commissioner Zent asked if East 57<sup>th</sup> Avenue is the only road to the area. Mr. Johnson stated that at this time East 57<sup>th</sup> Avenue is the only road and that additional roads could be built depending on future development.

Chair Schwartz opened the public hearing.

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 future land use plan to adjust the proposed Future Land Uses in portions of Hay Creek Township, Sections 7 & 18, T139N-R80W. Commissioner Larson seconded the motion, and the motion was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

**PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT  
REVISIONS TO FLOODPLAIN DISTRICT**

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

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

Ms. Wollmuth said, based on the findings, staff recommends approval of the zoning ordinance text amendment to revise Section 14-04-19 of the City Code of Ordinances (FP – Floodplain), as presented.

Commissioner Schell asked how an individual would know if their manufactured home is pre-FIRM. Ms. Wollmuth said that several mobile home parks in Bismarck were created prior to 1985 and individuals are welcome to call the office for more information.

Commissioner Field asked how this ordinance amendment will benefit the people living in mobile home parks. Ms. Wollmuth stated the benefit is the reduction of the elevation requirement for mobile homes located in a Pre-FIRM mobile home park or subdivision from two feet above the base flood elevation to one foot above the base flood elevation. Commissioner Schmitz commented that most mobile home park residents do not carry flood insurance.

Chair Schwartz opened the public hearing.

Del Lind, a resident of a mobile home park on the south side of the city, came forward to explain the flooding that occurs frequently in his area.

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

Commissioner Bitner asked if the city has any plans to look into Mr. Lind's concerns. Commissioner Schell stated that the City has requested funding from FEMA for improvements within this area. The City has goals to remove homes from the floodplain.

**MOTION:** Commissioner Bitner made a motion to approve the zoning ordinance text amendment to revise Section 14-04-19 of the City Code of Ordinances (FP – Floodplain as recommended by staff. Commissioner Johnson seconded the motion, and it was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

## **PUBLIC HEARING – ZONING ORDINANCE TEXT AMENDMENT AGRICULTURE ZONING DISTRICT**

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

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

Ms. Wollmuth said, based on the findings, staff recommends approval of the zoning ordinance text amendment to revise 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, as presented.

Commissioner Larson asked how the 250-attendance and 12 events per year limits were decided. Ms. Wollmuth explained that the numbers were determined by the stakeholder group.

Commissioner Schell asked if only the major events would have a limit to the number of events they hold per year. Ms. Wollmuth said minor events do not have a limit.

Commissioner Bitner asked if he owned 20 acres of land within corporate city limits, what size building would be allowed. Ms. Wollmuth said it would be based on the zoning district, and that for example if the property was zoned commercial or industrial and 80% of the land would be allowed to be covered with structure. Commissioner Bitner stated he does not like the use of the word “allowed” when referring to projects in the ETA. He noted he understands that Ms. Wollmuth works for the City but does not agree with the City creating requirements for properties in the ETA.

Commissioner Johnson asked if there would be options for an entity that wants more than the allowed events or patrons. Ms. Wollmuth stated there is an option of applying for a PUD – Planned Unit Development, which would be heard by the Planning and Zoning Commission.

Commissioner Sivak asked what the fire suppression requirements would be for a 250-capacity building. Mr. Blaskowski responded that building plans would need to be reviewed in order to determine fire suppression requirements. Commissioner Bitner asked for the number of people to require a building have sprinklers. Mr. Blaskowski explained that it depends on the use, the area of the building, as well as the number of occupants.

Chair Schwartz opened the public hearing.

Sara Otti Coleman, the Director of Tourism for the Department of Commerce, came forward to express her opinions on the ordinance amendment. She supports agri-tourism but believes some of the activities included in the major activities should be considered minor, such as pumpkin patches. She feels the ordinance needs more work.

Commissioner Schell asked Ms. Coleman her thoughts on how to handle an activity considered minor that later becomes a major event. Ms. Coleman does not believe a PUD would pass for something like Papa’s Pumpkin Patch if it were to be proposed today.

Commissioner Zent asked how the events mentioned in the ordinance amendment differ from a county fair. Ms. Coleman said that fairgrounds are not zoned Agriculture.

ReNay Zundel, owner of Apple Creek Farm, addressed the Commission in support of the ordinance amendment. She explained her business and interest in this ordinance

amendment. Her business has gained much interest from the community for education visits. Commissioner Bitner asked Ms. Zundel if she feels confident that this ordinance amendment would not restrict her business. She stated that all of her needs are met with the current draft.

A resident, Bonnie Munsch, came forward to get clarification on the definition of minor and major events. Ms. Wollmuth explained that a major event would include large rural events, such as weddings, corporate events. Minor events include educational events.

A Burleigh County resident, Laurie Holverson, came forward to express concerns with the affect the major events would have on neighbors including traffic and noise. Mr. Nairn responded by explaining the special use permit process for major agricultural recreation that includes public notice and a public hearing so neighbors may voice their concerns to the Planning and Zoning Commission prior to approval.

Don Zundel, owner of Apple Creek Farm, then explained the educational benefits of the events and the contribution to the community.

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

**MOTION:** Commissioner Bitner made a motion to approve the zoning ordinance text amendment to revise 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. Commissioner Wangen seconded the motion.

Commissioner Zent asked if the motion could be changed to approve with changes to the amendment language. Mr. Ehreth explained that the motion would need to be withdrawn and a new motion made. Commissioner Bitner withdrew his motion to approve.

Commissioner Field stated he disagrees with the requirement of a special use permit. Commissioner Larson questioned the rationale for including pumpkin patches and hayrides in the major events. Ms. Wollmuth stated that the rationale is based on the community's existing pumpkin patch and the thousands of visitors each fall season. Commissioner Larson disagrees with including certain activities based on assumed attendance rather than the type of event.

Commissioner Johnson agrees with the requirement of a special use permit to give neighbors the opportunity to ask questions and oppose a large event, if they choose.

Commissioner Schell asked if the number of attendees to an event was considered during stakeholder meetings. Ms. Wollmuth explained the discussions held with the stakeholders and how they collectively decided on 250 people being considered a large event.

Commissioner Zent asked why private riding arenas are included but not commercial riding arenas. Ms. Wollmuth explained that private riding arenas were specifically included because of an existing property owner request for one and that if in the future, that riding arena would like to hold events, similar to those in the major agriculture recreation use, the owner could apply for a special use permit. Mr. Ehreth stated that any use restrictions depend on the zoning district of a property. Mr. Nairn explained that riding arenas are in separate sections of the ordinance, even though the amendments are being presented together.

**MOTION:** Commissioner Bitner made a motion to continue the zoning ordinance text amendment to revise 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 to allow staff to make changes to the draft to include the concerns expressed during the meeting. Commissioner Johnson seconded the motion, and it was unanimously approved with Commissioners Bitner, Field, Johnson, Larson, Lukens, Schell, Schmitz, Schwartz, Sivak, Wangen, and Zent voting in favor of the motion.

## **OTHER BUSINESS**

### **Update on Home Occupation Zoning Ordinance Text Amendment.**

Mr. Nairn explained to the Commission that, because of the controversial nature of this item, a public meeting will be held as its own special meeting of the Planning and Zoning Commission on May 15, 2024, at 5:00 pm in the Tom Baker meeting room. Mr. Nairn asked for feedback on the appropriate time to hold a formal public hearing, and the consensus of the Commission was to wait until the June regular meeting.

## **ADJOURNMENT**

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 7:15 p.m. to meet again on May 22, 2024.

Respectfully submitted,

  
Sarah Fricke  
Recording Secretary

  
Mike Schwartz  
Chair