



Community Development Department

DATE: March 26, 2024

FROM: Ben Ehreth, Community Development Director

ITEM: Capital Electric Second Subdivision, Lot 2, Block 1 – Planning and Zoning Commission Appeal

REQUEST:

Appeal of the February 28, 2024, decision of the Planning and Zoning Commission to deny a zoning change from the A – Agricultural zoning district to the Conditional MA – Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision.

BACKGROUND INFORMATION:

The property is located northwest of Bismarck, north of 57th Avenue NW and west of N. Washington Street, in the northwest quadrant of the intersection of Sonora Way and ND Highway 1804 NW.

The Bismarck Planning and Zoning Commission held a public hearing on this request on February 28, 2024. The applicant, a representative of the owner, and two members of the public spoke during the meeting and one written comment was submitted to the Commission. Concerns raised by members of the public, both during the hearing and in the written comment, were related to the proposed storage use adjacent to rural residential areas and the increase in traffic to this area. Other concerns raised related to crime, incompatibility with current neighborhood character, and the additional distraction it would have to the traveling public, especially those experiencing the Lewis and Clark Trail along ND Highway 1804. Written comments and an excerpt of the draft minutes are included with this memo.

At the conclusion of the public hearing and based on the findings contained in the staff report, the Planning and Zoning Commission voted 5 to 3 to deny the request, noting that the proposed amendment is not compatible with adjacent land uses and zoning. The Planning and Zoning Commission did not concur with staff's determination that the proposed zoning change was consistent with the required findings of fact.

RECOMMENDED CITY COMMISSION ACTION:

Consider the request for an appeal of the February 28, 2024, decision of the Planning and Zoning Commission.

STAFF CONTACT INFORMATION:

Ben Ehreth, Community Development Director, 701-355-1842, behreth@bismarcknd.gov

Daniel Nairn, Planning Manager, 701-355-1854, dnairn@bismarcknd.gov
Lauren Oster, Planner, 701-355-1846, laoster@bismarcknd.gov

ATTACHMENTS:

1. BCC_ZC_Cap_Elec_2nd_Appeal

**BISMARCK PLANNING & ZONING COMMISSION
MEETING MINUTES
February 28, 2024**

The Bismarck Planning & Zoning Commission met on February 28, 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. Vice Chair Johnson presided and was present in the Tom Baker Meeting Room.

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

Commissioners Robert Field and Mike Schwartz were absent.

Staff members present were Stephanie Pretzer – Assistant 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.

**PUBLIC HEARING – ZONING MAP AMENDMENT
CAPITAL ELECTRIC SECOND SUBDIVISION, LOT 2, BLOCK 1**

Vice Chair Johnson called for the public hearing on a zoning map amendment from the A – Agricultural zoning district to the Conditional MA – Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision. The property is located northwest of Bismarck, north of 57th Avenue Northwest and west of North Washington Street, in the northwest quadrant of the intersection of Sonora Way and ND Highway 1804 Northwest.

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

Ms. Oster said, based on the findings, staff recommends approval of the zoning map amendment from the A – Agricultural zoning district to the Conditional MA – Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision, as presented.

Vice Chair Johnson opened the public hearing.

The applicant, Jacob Barney, addressed the commission to explain his intentions for the site. He plans to construct a self-storage facility including landscaping to blend with the surrounding areas. He stated there is a substation on the north side of the property and the WAPA easement limits uses of this site.

Mayor Schmitz stated he believes anything could be built to the south of the 125-foot WAPA easement, so he disagrees there are restrictions on this property.

Ron Knutson, via zoom, stated he is concerned with the overall aesthetic of North Bismarck. He questioned whether a traffic study has been conducted and mentioned storage units could increase crime in the area.

Claudia Berg, a nearby resident, would have a direct view of the proposed storage units and opposes this proposal. She stated the Lewis and Clark Trail is in the area and she, therefore, has concerns with the effect on tourism and long-term development as well as traffic concerns.

Commissioner Schell stated that while he shares the concern about traffic safety, the proposal does meet site distance standards. Commissioner Zent asked whether there would be a stop sign or a yield sign, to which Commissioner Schell responded that a stop sign is the standard.

Nic Cullen, with Houston Engineering, came forward to speak on behalf of the applicant stating this site will be Industrial Flex according to the Future Land Use plan.

Mr. Barney then stated that self-storage facilities typically yield very low traffic while another use may cause more traffic. He also reminded the commission that they intend to include a landscape buffer to blend the units with the surrounding neighborhood. He stated the plans include motion sensor lights and no pole lights to disturb the neighborhood.

Vice Chair Johnson closed the public hearing.

Commissioner Wangen asked why this area is industrial in the Future Land Use plan. Mr. Nairn responded by saying the area already has a substation as well as the WAPA easement and the area has a need for storage units.

MOTION: Commissioner Bitner made a motion to deny zoning map amendment from the A – Agricultural zoning district to the Conditional MA – Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision. Commissioner Schmitz seconded the motion, and it was approved with Commissioners Bitner, Schmitz, Van Duyne, Wangen, and Zent voting in favor of the motion. Commissioners Johnson, Lukens, and Schell voted against the motion.

Sarah Fricke

From: sfricke@bismarcknd.gov
Subject: FW: Moratorium on self-storage buildings taking effect in Mandan

From: Ron Knutson <[REDACTED]>
Sent: Tuesday, February 27, 2024 8:14 PM
To: Michael Schmitz <Mschmitz@bismarcknd.gov>
Subject: Moratorium on self-storage buildings taking effect in Mandan

CAUTION: ***External Email - Use caution clicking links or opening attachments***

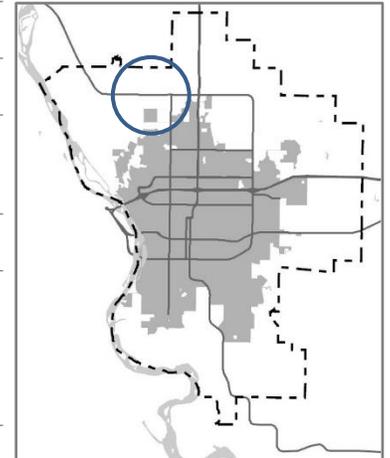
Please do not allow industrial in a commercial corridor. The planning and zoning department should be ashamed of themselves for allowing spot zoning. What is the matter with them, allowing out of state and out of city people to come in and not follow the rules we had to follow the rules this is not a place to put storage units. Please vote against tomorrow's proposal. Thx Michael. Ron.

https://bismarcktribune.com/news/local/mandan/mandan-moratorium-self-storage-buildings/article_c33d0794-bb08-11ee-9eca-4f628b70d2bb.html

Sent from my iPhone

Project Summary

<i>Title:</i>	Capital Electric Second Subdivision, Lot 2, Block 1
<i>Status:</i>	Planning and Zoning Commission - Public Hearing
<i>Property Owner(s):</i>	Michael Ward, Owner Five Star Storage, Applicant
<i>Project Contact:</i>	Jacob Barney, Five Star Storage
<i>Project Location:</i>	Northwest of Bismarck, north of 57th Avenue Northwest and west of North Washington Street, in the northwest quadrant of the intersection of Sonora Way and ND Highway 1804 Northwest
<i>Project Size:</i>	7.04 acres
<i>Applicant Request:</i>	Rezone to Conditional MA – Industrial to enable the use of a self-storage facility
<i>Staff Recommendation:</i>	Approve with conditions



Site Information

<i>Existing Conditions</i>		<i>Proposed Conditions</i>	
<i>Lots/Blocks:</i>	1 Lot in 1 Block	<i>Lots/Blocks:</i>	1 Lot in 1 Block
<i>Land Use:</i>	Agriculture/Undeveloped	<i>Land Use:</i>	Conditional Light Industrial
<i>Future Land Use:</i>	Industrial Flex (IF)	<i>Future Land Use:</i>	Industrial Flex (IF)
<i>Zoning:</i>	A – Agricultural	<i>Zoning:</i>	Conditional MA – Industrial
<i>Uses Allowed:</i>	A – Agriculture	<i>Uses Allowed:</i>	Conditional MA – Light industrial, general commercial, warehouses, manufacturing and shop condos
<i>Max Density:</i>	A – 1 unit / 40 acres	<i>Max Density:</i>	Conditional MA – N/A

Area Information

Property History

<i>Zoning Jurisdiction:</i>	Extraterritorial Area (ETA)	<i>Zoned:</i>	10/1998
<i>Township:</i>	Hay Creek (organized)	<i>Platted:</i>	04/05
<i>Neighborhood:</i>	Undefined	<i>Annexed:</i>	N/A

(continued)

Project Narrative

Michael Ward and Five Star Storage are requesting approval of a zoning map amendment from the A – Agriculture zoning district to the Conditional MA – Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision. The applicant is

proposing to develop the property to include a self-storage facility. The conditional MA – Industrial zoning would limit the use of the property to storage, as proposed.

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 Industrial Flex (IF) in the Future Land Use Plan. The Industrial Flex (IF) areas are flexible employment centers for a range of businesses, primarily for smaller-scale industrial uses and offices. Goals and objectives of this plan as they relate to a zoning map amendment are referenced in review standards below.

Adjacent uses include agricultural uses to the north, west, and east, and residential uses to the south across ND Highway 1804 NW. A substation is located on the lot to the north of the proposed site.

The right-of-way for Sonora Way was granted when the property was platted in 2005; however, the street was never built to County Commercial/Industrial Subdivision Roadway standards as the substation to the north generated

minimal traffic. Since the proposed self-storage facility will generate increased traffic to this area, Sonora Way will need to be built to the County Commercial/Industrial Subdivision standards at least to the entrance of the substation driveway. A gravel temporary cul-de-sac will also need to be constructed at the end of the street for turnaround purposes.

Public Engagement

The public has been duly notified of this request. A notice was published in the Bismarck Tribune on February 16 and February 23, and 30 letters were mailed to the owners of nearby properties on February 15, 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.

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 Industrial Flex (IF) 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 applicant is aware of the Bismarck’s Growth Phasing Plan and intends to annex into the city once city services are available. However, connection to city services is currently not feasible as the closest city service are half a mile from the property.

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

Yes, with certain conditions applied to this zoning district. Adjacent uses are described in the project context section above. The proposed conditional zoning district would allow self-storage. Certain conditions including design, aesthetic, and development standards applied to the proposed zoning would alleviate potential incompatibilities to adjacent land uses in the future. A densely landscaped 20-foot-wide buffer yard is required

along the south and west sides of the lot. The proposed conditional zoning restricts more intensive uses, including, but not limited to:

- Retail Group B, which includes vehicle sales
- Service Group B, which includes motor vehicle repair garages
- Wholesale trade and distribution
- Hotel/Motel

With these conditions, development that may be anticipated from the proposed zoning would have no negative impact on the surrounding properties.

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

Yes. The current zoning district of A – Agricultural was established prior 1980. Conditions have changed since this time including the adoption of new comprehensive plans.

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 conditional 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](#))

Yes. The proposed conditional zoning map amendment would conform to the Industrial Flex (IF) designation as outlined in the Future Land Use Plan.

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](#))

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

Staff Recommendation

Based on the above findings, staff recommends approval on the zoning map amendment from the A – Agriculture zoning district to the Conditional MA – Industrial zoning district, as outlined in the attached draft zoning ordinance, for Lot 2, Block 1, Capital Electric Second Subdivision with the following conditions:

1. Comply with all relevant design, aesthetic, and development standards.

Attachments

1. Draft Zoning Ordinance
2. Zoning and Plan Reference Map
3. Proposed Zoning Map

Staff report prepared by: Lauren Oster, Planner

701-355-1846 | laoster@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 – Agricultural zoning district and included in the Conditional MA – Industrial zoning district:

Lot 2, Block 1, Capital Electric Second Subdivision

This Conditional MA - Industrial zoning district is subject to the following additional standards:

1. *Uses Permitted*. The following uses are permitted within this Conditional MA – Industrial zoning district:
 - a. Industrial group A, limited to storage buildings and warehouses, including rental and condo storage units.
 - b. Utility service group.All other uses not included in this list shall be prohibited.

2. *Special Uses*. There are no uses allowed as special uses within this Conditional MA – Industrial zoning district.

3. *Dimensional Standards*.

- a. Lot Area. The minimum lot area is ten thousand (10,000) square feet.
- b. Lot Width. The minimum lot width is sixty (60) feet measured along the front building line.
- c. Lot Coverage. The maximum lot coverage for buildings and required parking is eighty (80) percent of the total lot area.
- d. Front Yard. The minimum front yard setback is fifty (50) feet from the property line adjacent to ND Highway 1804 and fifteen (15) feet from the property line adjacent to all other roadways.
- e. Side Yards. No side yards are required except where a lot adjoins a residential district.
- f. Rear Yard. The minimum rear yard setback is ten (10) feet.
- g. Height Limits. The maximum building height is seventy-five (75) feet.

4. *Design and Aesthetic Standards.*

- a. Intent. It is the intent of the design standards to create and maintain a high visual quality and appearance for this development, encourage architectural creativity and diversity, to create a lessened visual impact upon the surrounding land uses and to stimulate and protect investment through the establishment of high standards with respect to materials, details, and appearance.
- b. Building Materials. All building facades shall be designed with finished materials, with primary building materials being limited to modular masonry materials such as brick, stone or dimensional block; precast concrete or aggregate panels; stucco or stucco-like materials; or prefinished metal architectural panels. All elevations, especially those facing a public right-of-way, must be visually pleasing and must not be exclusively covered in prefinished metal panels if this material is used.

The following building types and materials are expressly prohibited: wood as an exterior wall finish, except where used as an accent material and exposed, untextured, uncolored, unaugmented concrete.

All subsequent renovations, additions and related structures constructed after the construction of the original building shall be constructed of materials comparable to those used in the

original construction and shall be designed in a manner conforming to the original architectural design and general appearance.

- c. Enclosed Building Requirement. All production, processing, storage (excluding the storage of vehicles allowed over the WAPA easement), sales, display, or other business activity shall be conducted within a completely enclosed building.
- d. Outdoor Storage. Outdoor storage is only permitted for temporary vehicle storage within the WAPA easement area on the northern portion of the lot if agreed to by the utility entity. Continuous storage of vehicles involving 12 or more consecutive months without moving the vehicle(s) from the property is prohibited.

5. *Other Development Standards.*

- a. Buffer Yards. In addition to the requirements of Section 14-03-11, a 20-foot-wide buffer yard shall be provided along the south side, adjacent to ND Highway 1804 NW, and west side of the lot. Said buffer yard shall be densely planted in conjunction with site development with the minimum number, species and size of trees and shrubs required for a 20-foot buffer yard in the City's landscaping ordinance (2 shade trees, 4 ornamental trees, 3 large upright coniferous trees, 10 small upright coniferous trees and 14 shrubs).
- b. Lighting. Lighting at entrances, exits, and drive aisles between buildings is permitted provided that any associated glare does not create a public nuisance or traffic safety hazard. High-intensity lighting devices oriented outward, including but not limited to laser lights, strobe lights, searchlights, and beacons, are not permitted.

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 and Plan Reference Map

ZC2023-013

CAPITAL ELECTRIC SECOND SUBDIVISION, L2, B1

Zoning Districts

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

Future Land Use Plan

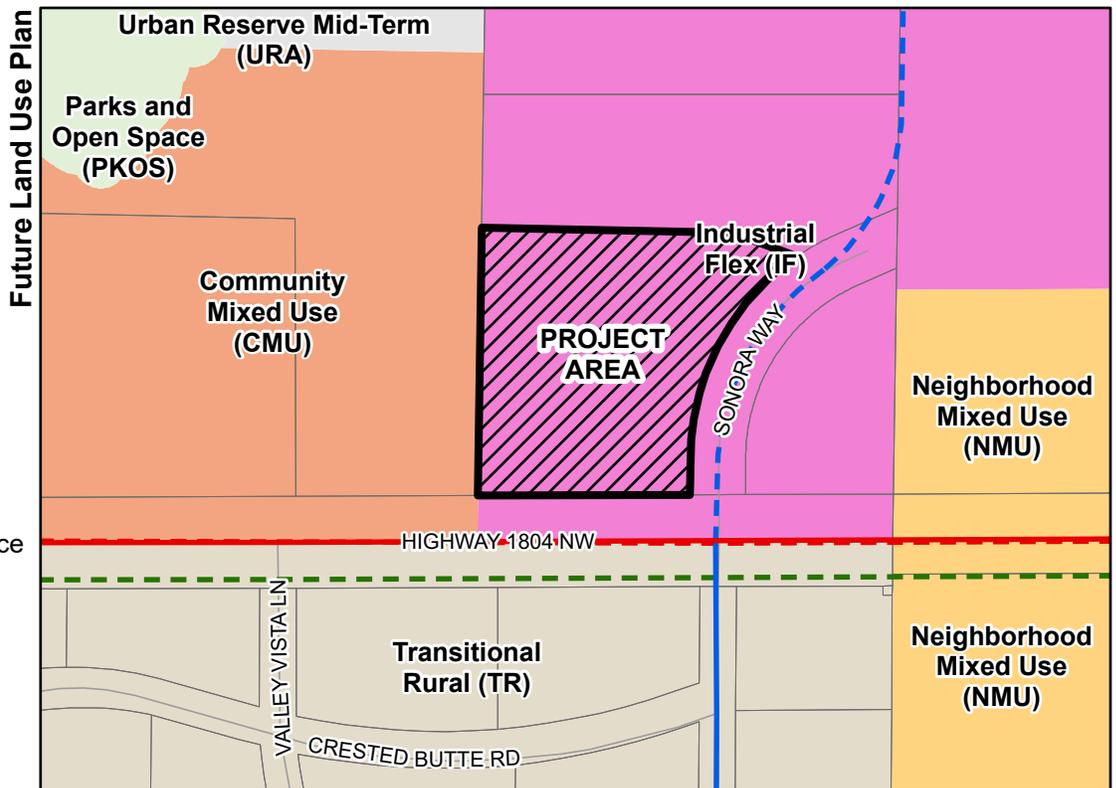
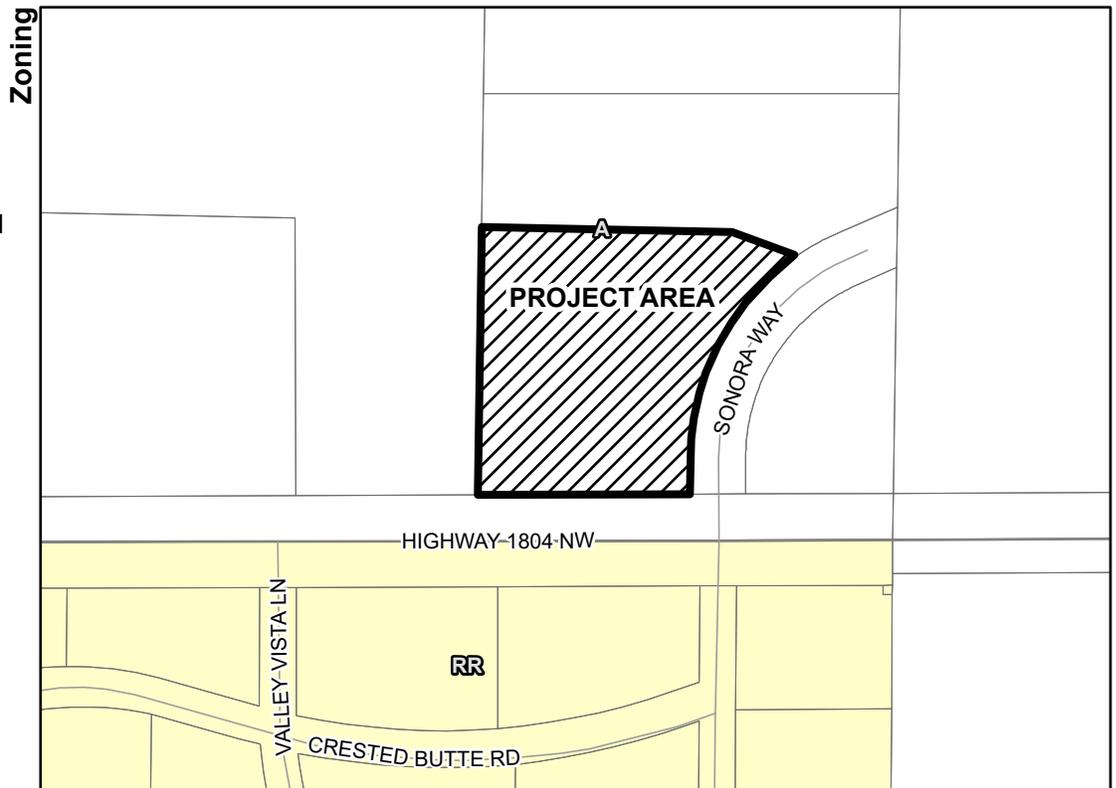
UN	Urban
NMU	Neighborhood Mixed Use
CMU	Community Mixed Use
DMU	Destination Mixed Use
DT	Downtown
IND	Industrial
IF	Industrial Flex
IMU	Industrial Mixed Use
INS	Institutional
RR	Rural
TR	Transitional Rural
PKOS	Parks/Open Space Urban Reserve
URA/URB	Mid/Long-Term

Active Mobility Plan

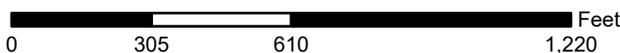
Future Shared Trail

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
January 18, 2024



Proposed Zoning Change

CAPITAL ELECTRIC SECOND SUBDIVISION, L2, B1

ZC2023-013

Proposed New Zoning Map

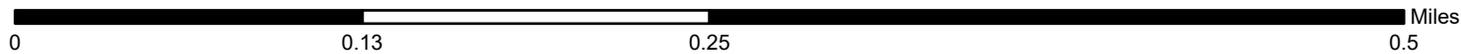
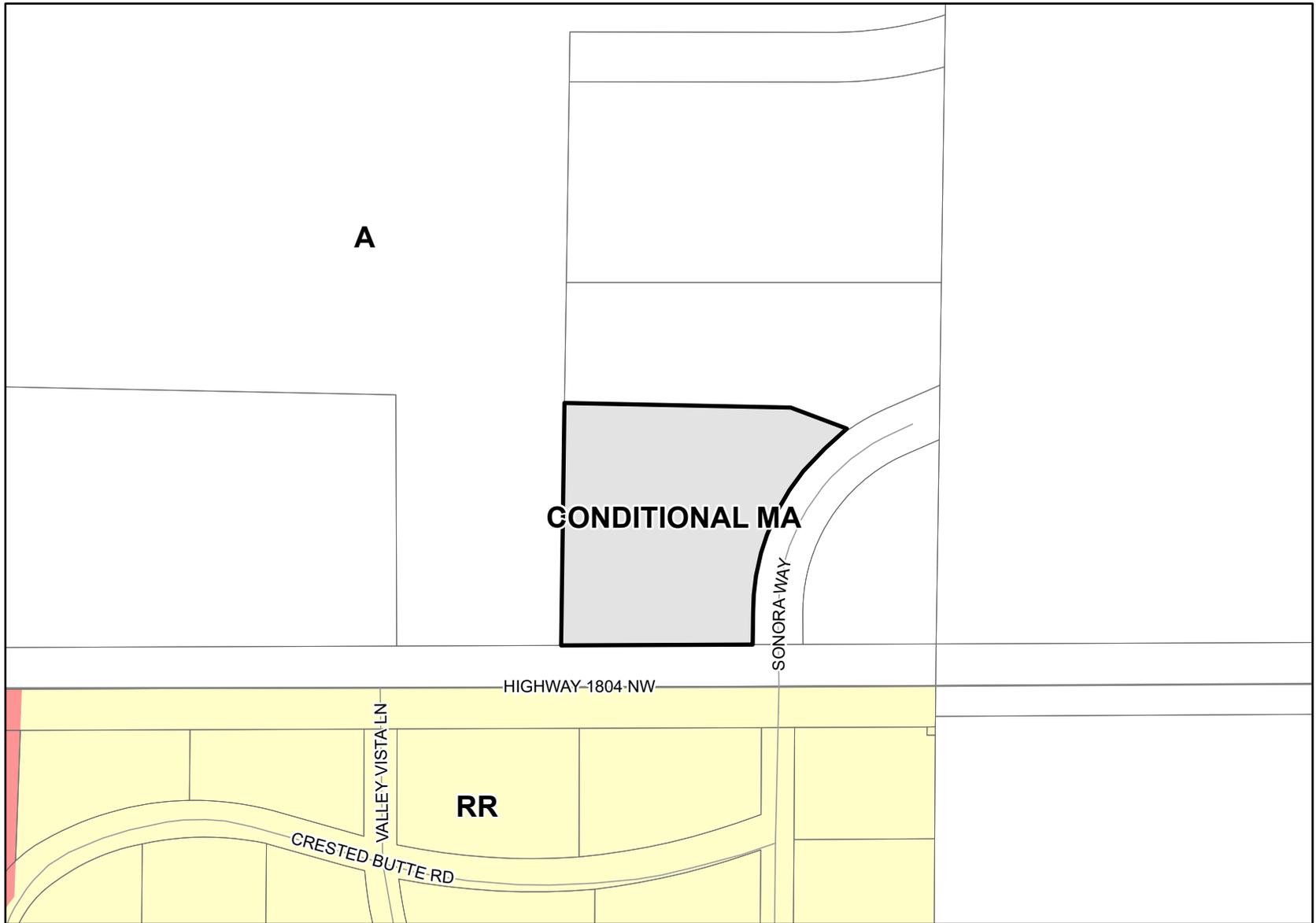
 Project Area
(zoning within
is proposed)

 City Limits

Zoning Districts

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

A "C-" prior to the district indicates that special conditions would apply to the zoning district



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
January 18, 2024