

**CASS COUNTY PLANNING COMMISSION
AGENDA FOR June 25, 2009**

Cass County Highway Department Conference Room
7:00 AM
1201 Main Avenue West, West Fargo, ND 58078

1. Call to Order
Establish Quorum of Members
Approve April 23, 2009 Minutes
2. Odegaard Subdivision (South ½, SW ¼, Section 33, Pleasant Township)
Minor Subdivision
[Action Requested]
3. City Extra-Territorial Zoning Legislation
[Information]
4. Other business and citizen comment
5. Adjournment

Additional copies of the agenda and Planning Commission materials are available on the Cass County Website:

http://www.casscountygov.com/departments/planning/Planning_Commission.htm

***Planning Commissioners:
Please call Highway Department Secretary
at 298-2370 if you are unable to attend.***

Persons with Disabilities needing accommodations should call 298-2370 prior to the meeting.

**CASS COUNTY PLANNING COMMISSION
APRIL 23, 2009**

1. MEETING TO ORDER

The meeting was called to order on April 23, 2009, at 7:00 AM in the Highway Department Conference Room with members present as follows: Ken Lougheed, Keith Monson, Todd Ellig, Mark Johnson, Scott Wagner, Lou Bennett, and Brad Wimmer. Chad Peterson was absent. Also present was County Engineer, Keith Berndt and County Planner, Tim Solberg.

2. MINUTES APPROVED

MOTION, passed

Mr. Monson moved and Mr. Ellig seconded that minutes from the February 26, 2009 meeting be approved as written. Motion carried.

**3. Odegaard Subdivision (South ½, SW ¼, Section 33, Pleasant Township) – Final Plat
Minor Subdivision**

Public hearing held; Final plat approved

Mr. Solberg reviewed the final plat for Odegaard Subdivision, a tract of located in the South ½, SW ¼, Section 33 of Pleasant Township filed in the Cass County Planning office by Tom & Bonnie Odegaard. This parcel of land has previously been split for one lot and this subdivision would create an additional three buildable lots. Lots 1, 3, & 4 are to be buildable and lot 2 and 5 are to be unbuildable. The subdivision will use existing public roads, on-site septic sewer systems, and Cass Rural Water as a water source. The proposed access will be off of State Highway 46 for lots 3 and 4 and off of township road 171st Ave SE for lot 1. The developer will need to raise access to base flood elevation or higher to accommodate the requirements of the County Subdivision Ordinance. This is attainable off of State Highway 46, however may be difficult on 171st Ave SE.

Cass County Engineer, Keith Berndt recommends denial of the Plat in its current form based on the following:

1. The West Lot as shown is not buildable between the creeks.
2. The West Lots cannot be accessed by a road above the 100 year floodplain. The section line on the west side of the plat was inundated during the recent flooding near State Highway 46 and south of Cass County 18.
3. Given recent flooding events, appropriate minimum building elevations are uncertain at this time. Homes in Pleasant Township built to the current 2 ½ foot above the old base flood elevation appeared to have flooding problems.
4. The variance from the 1:40 requirement was granted based in part on the understanding that the land where the homes would go was not suitable for farming. It appears the homes would be built on tilled land.

Mr. Berndt would also recommend that restrictive covenants be added to help in preventing any new lots from becoming a detriment to existing homes in the vicinity.

Staff recommends two options for the Planning Commission to consider:

Approve with the following conditions:

1. Meet desires of Planning Commission and review agencies.
2. Build primary access to base flood elevation.

Mr. Kleinjan disagrees as the Sheyenne River is going through both culverts. It is flowing now, but if it were to back up the land would be under water.

Mr. Lougheed feels that what needs to be considered is what has happened throughout history. These creeks were cut in due to water needing an outlet. If we have learned anything from recent events, we need to learn that anything is possible.

Mr. Ellig made the suggestion that if Mr. Kleinjan wants to limit development in the area, maybe an agreement could be reached between Mr. Kleinjan and Mr. Odegaard for the purchase of some of the land in question.

Randy Kramer with Property Resources Group stated that they may be willing to consider moving the lot line of lot 1 to the north but lot 1 is the most attractive lot from a homeowner's standpoint with its landscape, where lot 2 is just black dirt. He also feels that the fact that the lots stayed dry this year should serve as a testament to why this plat should be approved.

Mr. Kleinjan wanted it in the record that lots 2 and 3 were dry, but lot 1 was not. Mr. Kramer stated that the buildable part of lot 1 did remain dry. Mr. Kleinjan has another concern regarding lot 1 with regards to space available on the buildable portion of lot 1. He does not feel there is sufficient space for an adequate septic and drain field. Mr. Berndt questions if there is enough land for this that would be outside the 100 year flood plain.

Mr. Wagner understands the owner's position, but at the same time the County Commission and Planning Commission have a public responsibility. They must consider public safety and allowing building in an area that is only accessible by boat during flooding is not responsible. They must consider access in and out. Mr. Berndt agrees and stresses that so many homeowners waited this time around and once they realized that their homes were in jeopardy, they were unable to have sand and bags delivered because they had lost their access roads. He also feels that in this case, they may have to spend more in fixing the road to provide proper access than would be feasible.

Mr. Lougheed feels that the Planning Commission is at a crossroads. We need to determine if our ordinances are correct or if there are changes that need to be made based upon what is occurring in the county. Many homeowners have spent a lot of money building their dream homes based on ordinances and recommendation and now, due to flooding, they have lost that dream.

Mr. Wimmer agrees as many homes built based on information from '97 have flooded this year. The City of Fargo is now having to take a serious look at what to do in these areas.

Mr. Berndt feels that if the developer reconfigures the plat with lots 1 and 2 adjusted and with considerations made for access, he would be able to agree with the plat.

Mr. Odegaard asked if they could drop lots 1 and 2, just having lots 3 and 4 as buildable lots. Mr. Kleinjan would be comfortable with this, as lots 3 and 4 were dry and access is already there to State Highway 46. He would recommend to the builders that elevation of newly built homes be higher than his home was built at.

Mr. Berndt is on the South Side Flood Protection Planning Committee and their goal has always been to develop a plan that presents a zero negative impact on the surrounding areas and he feels their current plans are very close to that.

Mr. Wimmer stated that the City of Fargo plans to go to a vote on sales tax in roughly 60 days. Mr. Berndt said that while a county side sales tax would be preferable to some, so that consideration can be made on a county wide basis, the county would not be able to call for a special election for sales tax. They would have to wait and put the questions on the Primary ballot in June 2010. Mr. Wimmer stressed that the City of Fargo sales tax would include far more than just the southside flood protection.

Mr. Wagner would like everyone to keep in mind that if the City of Fargo was lost to flooding, the economic impact would be wide spread. Mr. Berndt feels that with the Governor and the congressional delegation involved, the benefits of the flood protection being considered are on a much wider scale that just the City of Fargo. They extend up and down the entire river corridor.

Mr. Bennett offered some advice from past experience in dealing with the Sheyenne Diversion. Those involved in the planning need to disperse as much information as possible to the public as soon as possible in order to discourage rumors. Rumor mills can be so detrimental to the process, but the more information that is provided, the fewer rumors get started.

5. ADJOURNMENT

MOTION, passed

On motion by Mr. Johnson, seconded by Mr. Bennett, and all voting in favor, the meeting was adjourned at 8:40 AM.

Staff Review – Odegaard Subdivision (Revised)

A revised plat will be available at the June 25 Meeting. The proposed subdivision is located in the South ½, SW¼, Section 33 of Pleasant Township. This parcel of land had previously been split for one lot and this subdivision would create an additional three buildable lots.

Applicant: Tom and Bonnie Odegaard (Randy Cramer of Property Resources Group)

Phone: (701) 428-3215 (Odegaard's) (701) 306-5419 (Randy Cramer)

Background and Analysis

Commissioners will recall approving this plat at the April 23, 2009 meeting with a condition that Lot 1 be shown as an unbuildable lot. The developer felt that the most valuable residential lot in the proposed development was Lot 1, therefore their desire was to find a way to make the lot more suitable for development and acceptable to the Planning Commission. Taking into consideration the concerns the Planning Commission had with Lot 1 the developer has made some changes to the initial plan. The concerns the Planning Commission had with Lot 1 included access to the lot being at or above BFE, and the setback and buildable area of the lot. The developer is addressing the issues through the following measures:

- A one-mile section of 53rd St SE will be graveled to gain year-round access to Cass County Highway 17 S, thereby meeting the subdivision requirements for access at or above base flood elevation. This road is an unimproved dirt road, however it did not get flooded during the 2009 Spring flooding event, therefore it will not be raised. A BFE is not established in this section, using the best available information staff feels confident that the 2009 event can serve as sufficient evidence that the road elevation is adequate.
- Lot 1 will show a river setback at an 8:1 ratio from bottom of the creek bed to the proposed building elevation per Pleasant Township floodplain ordinance (2.5' above BFE). The previous setback on the intermittent stream was from the bottom of the creek bed to the building site, which the County Engineer did not feel was sufficient for the safest building site. The new setback will allow the developer to move the north lot line to provide adequate space for building. The developer is also conferring with the County Sanitarian to ensure adequate lot size for a drainfield to be placed on the buildable area (outside of the setback).

Comprehensive Plan Consistency: Commissioners will recall approving a variance request to lot density restrictions from the developer at the February 26, 2009 meeting. In light of the developer's alternative approach to lot density restrictions and Commission's approval of the variance, staff feels the development is consistent with the goals of the Comprehensive Plan.

Design standards not met include: Notation of existing FEMA floodplain required.

Review Agency Comments

Cass County Engineer – setback concerns as noted in background and analysis, and would like to see a letter signed by Township stating their acceptance of maintenance responsibility on the improved gravel road section – 6/19/09

County Sanitarian – none to date – 6/19/09

Township – approved – 4/23/09

Cass Rural Water – none to date

Cass County Electric – none to date

Water Resource District – elevation is the key to flood protection for homes in this area – 4/24/09

Qwest – no comment – 4/13/09

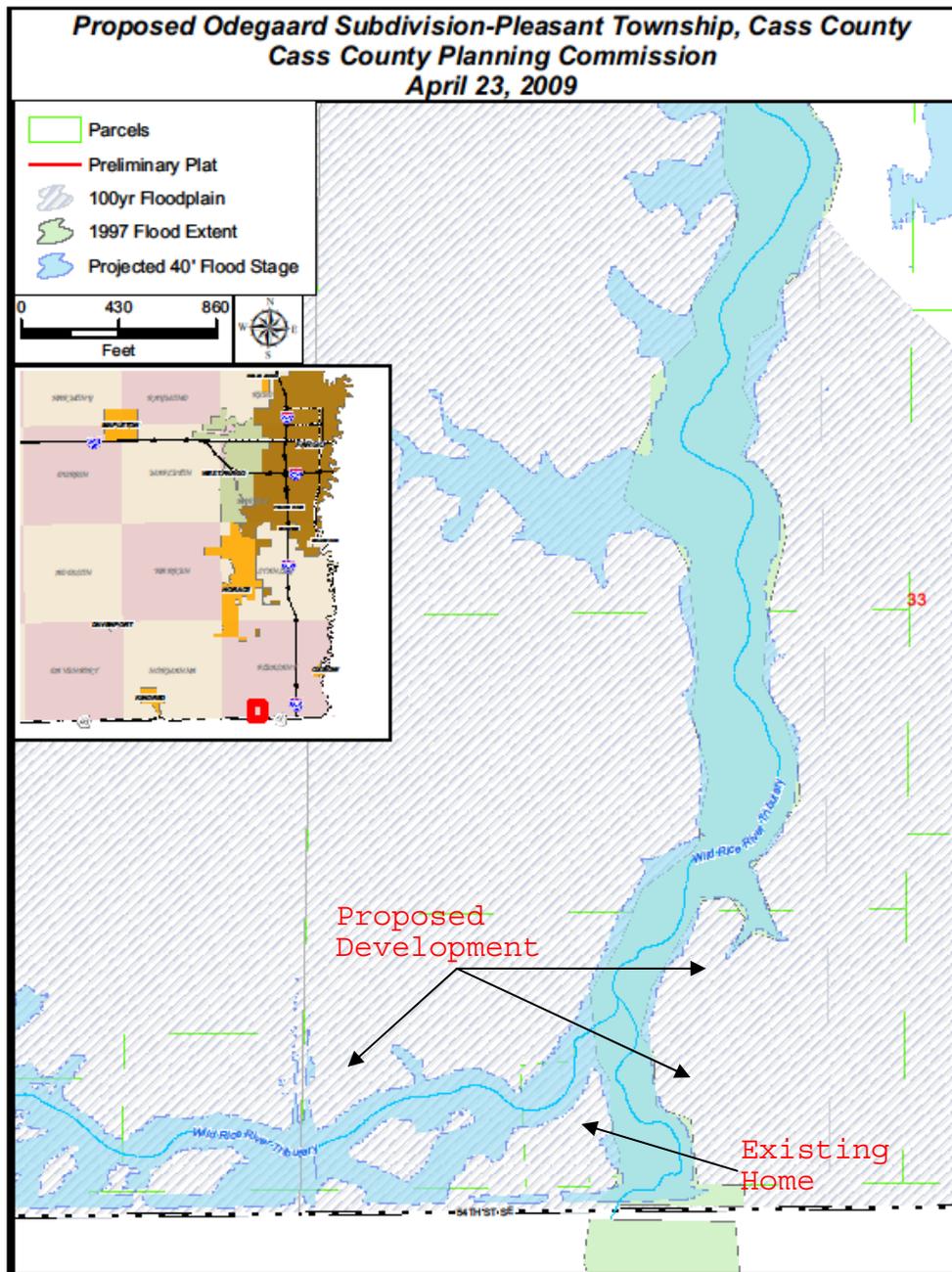
ND DOT – Access changes need to be permitted which will apply to lots 3 and 4 – 6/18/09

Public Comment – Mr. Kleinjan's comments as recorded in minutes of April 23, 2009 Planning Commission meeting

Recommendation

Staff recommends approval of the plat with the following conditions:

1. Meet desires of Planning Commission and review agencies.
2. Copy of permit from ND DOT for access change.
2. Submit application fee of \$155.00
3. Submit deed restriction and record prior to plat.



Odegaard Estates, S1/2, SW1/4, S33, Pleasant Township



Background:

The State of North Dakota grants cities the authority to extend the application of their zoning regulations outside of their corporate limits (NDCC 40-47-01.1). This law previously allowed a city to extend their zoning jurisdiction to a ½ mile out for cities with a population under 5,000, 1 mile out for cities with a population greater than 5,000 but less than 25,000, and 2 miles out for cities with a population greater than 25,000. That was rolled back with a sunset date of this year from a previous law allowing for 1, 2, and 4 miles under the same population settings.

Over the past couple of years a long discussion took place and an interim legislative committee, the Advisory Commission on Intergovernmental Relations (ACIR), was asked to consider crafting a new bill that would be a fair alternative to the townships and landowners in areas in the extraterritorial jurisdiction of cities. During this process, by far the most compelling argument made against extraterritorial jurisdiction was the citizens right to vote. Those who were being held to zoning regulations in the extraterritorial jurisdiction of a city did not have a right to vote in that city and thereby felt they were being governed by an entity that they were not allowed to vote for.

After the ACIR held countless public hearings they came up with a bill which they were not entirely in agreement over. After introduction the bill was further tweaked by both the House and Senate before being sent to conference committee. In the end the legislation became what could be seen as a compromise between both sides.

Summary of new legislation

Following is a brief summary of the legislation which became effective May 1, 2009 in bulleted points:

- A city may extend its zoning regulations by ordinance to any ¼, ¼ section of unincorporated territory if a majority of the ¼, ¼ is within:
 - 1 mile if the city population is less than 5,000 with “joint jurisdiction” from ½ mile to 1 mile
 - 2 miles if the city population is greater than 5,000 and less than 25,000 with “joint jurisdiction” from 1 mile to 2 miles
 - 4 miles if the city population is greater than 25,000 with “joint jurisdiction” from 2 miles to 4 miles
- Under “joint jurisdiction” the township or county has the authority to receive applications, impose fees, and issue permits and does so under its adopted regulations.
- For a decision to be final under “joint jurisdiction” the township or county must give written notice to the city. The city may request negotiation on the decision within 30 days of the notice, if negotiation is not requested the decision is final. If negotiation is requested and not successful within 30 days of the request for negotiation then the dispute must be submitted to a committee for mediation. The committee must be made up of two members of each jurisdiction and a Governor appointee who will reside over the mediation. If mediation is unsuccessful then the dispute must be resolved by the county commission.
- A city exercising its ET authority must hold a zoning transition meeting if the territory to be zoned (ET) is currently zoned. This meeting must take place before the city adopts an ordinance exercising this authority.
- When a portion of a city is attached to the bulk of the city by a strip of land less than 100’ wide, that portion and strip of land must be disregarded in determining the ET limits of the city.