

MANDAN PLANNING AND ZONING COMMISSION
MANDAN CITY HALL
Wednesday, January 23, 2023

The Planning and Zoning Commission of Mandan duly met in session in the Commission Meeting Room of the Mandan City Hall on Monday, January 23, 2023, at 5:30 p.m. CST. City Hall will be open for this meeting. If you would prefer to appear via video or audio link, please provide your contact information to andrew.stromme@cityofmandan.com. Planning & Zoning Commission members may be attending this meeting remotely.

ROLL CALL

Chair Robinson called the meeting to order.

Commissioners Present: Leingang, Mehlhoff, Helbling, McLean, Smith, Vayda, Gardner, Robinson, Buchmiller. Commissioners Absent: Horn, Liepitz; and Nancy Moser, Secretary.

MINUTES

Commissioner McLean motioned to approve the December 28, 2022 minutes as presented. Commissioner Vayda seconded the motion. Upon vote, the motion passed unanimously.

PUBLIC HEARINGS

1. A request from Three Sons Investments, LLC, for consideration of a preliminary plat to be named Arlene's Subdivision and a zone change from A (Agriculture) to R7 (Single-Family Residential) zoning districts. Said property is part of Lot 1A including all of Lot 1 and Lot 3 of Lot 1A of Outlot A of the NW ¼ part of Auditor's Lot J, in Sections 1 & 2, Township 138N, Range 81W, Morton County, North Dakota. The property is located on 1806 and Cottontail Way South.

A. Staff Report

City Principal Planner Stromme presented.

Three Sons Investments, Fred & Arlene Berger, requested consideration of a preliminary plat and zone change from A – Agriculture to R7 – Residential for a subdivision to be titled Arlene's Addition. The property is located south of the City of Mandan in the Extraterritorial Area off ND Hwy. 1806 South on Cottontail Way near the Memory Fireworks building.

Property Overview and History

The property is presently un-platted and largely unimproved. The area around this property began developing prior to 1938 aerial imagery.

Proposed Plat and Zone Change

The proposed plat is 5.02 acres in size and contains one lot, one block, currently in three lots and this would consolidate it into one lot. Portions of the property are located within the 100-year floodplain. The floodplain is for the Heart River. There is a twenty-foot (20') electrical

easement bisects the property. The proposed rezone from A – Agriculture to R7 – Residential aligns with the adopted future land use designation of low-density residential.

Right-of-Way

A legacy right-of-way deficiency on Cottontail Way has precluded Morton County, the agency responsible for road maintenance in the ETA, from improving or maintaining the roadway. This is traced back to a previous subdivision plat where sufficient ROW of eighty-feet was not secured, which was approved by the City. It is unclear how the City and/or County are empowered to rectify this issue, but research into solutions is underway.

Adjacent Properties and Land Uses

Adjacent land uses include rural residential, seasonal commercial (fireworks sales), recreational uses and cropland. Adjacent properties are zoned R7 – Residential, CC – Commercial, and A – Agriculture.

Findings of Fact

Preliminary Plat

1. All technical requirements for consideration of a preliminary plat have been met.
2. The proposed subdivision would likely not have substantial effects on the safety and circulation of public roadways in the vicinity, and therefore no traffic impact study is required.
3. The proposed plat includes sufficient easements and rights-of-way to provide for orderly development and provision of municipal services beyond the boundaries of the subdivision.
4. The City of Mandan and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the proposed subdivision at the time of development.
5. Portions of the property are located in the Special Flood Hazard Area; however, the subdivision is proposed to be developed according to the existing ordinance requirements pertaining to Floodplain Development and therefore, the proposed development should not adversely impact water quality and/or environmentally sensitive lands, or areas that are topographically unsuited for development.
6. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance.
7. The proposed subdivision is consistent with the Comprehensive Plan, the Future Land Use Plan if amended and other plans and studies, policies and accepted planning practice.
8. The proposed subdivision would not adversely affect the public health, safety and general welfare.

Zone Change

1. The City of Mandan and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by this zone change.
2. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
3. The proposed zoning change is consistent with the Future Land Use Plan if amended, other adopted plans and policies, and accepted planning practice.
4. The proposed zoning change would not adversely affect public health, safety and general welfare.

Planner Stromme stated this request is for a preliminary plat and zone change from A – Agriculture to R7 – Residential for a subdivision to be titled Arlene’s Addition pursuant to the Land Use Plan. There are plan to construct one home on the property.

Agency and Other Department Comments

- ~ Eleven (11) letters were sent to adjoining property owners notifying of the hearing. The Planning Staff has answered questions from one neighbor and has received comments in opposition to the request due to the right-of-way issue described in the staff report. Planner Stromme referred to the map of the property to provide further explanations to the questions including historical information about Cotton Tail Way. There were some deficiencies that have been introduced to the Planning Commission. There has been some opposition received regarding traffic flow to Cotton Tail Way, however, Planner Stromme stated that he has not had an opportunity to review those comments due to receiving them just before meeting.
- ~ Morton County Planning and Engineering Departments have reviewed the request and no changes are required wherein they agreed with the reports and access to the property.

Engineering and Planning Staff Comments

- ~ A ghost plat will accompany the forthcoming final plat request. The intention of that document is to illustrate how future lot subdivision to be more in-line with the 1.5 acre minimum required for a septic system.
- ~ Development of the property will require rural water and septic permitting. MWWS and Custer Health have advised the applicant.
- ~ An ownership transfer will be necessary in advance of final plat recordation to ensure the properties combined are owned by the same entity. The current condition is two different LLCs which are represented by the same individual.

Planner Stromme recommended approval of the preliminary plat and zone change of Arlene’s Subdivision contingent on the developer or applicant providing a statement how access to the property will be taken into consideration and how maintenance will be managed on the road. It will be important that the parties involved, including emergency services, agree with the plans for access. The surveyor for the project was available to answer questions.

Commissioner Smith inquired if the section line on Hwy 2 would have to be closed? Planner Stromme replied, yes, as shown on the map and that would be handled during the final plat.

Chair Robinson inquired if there were any comments or questions for Planner Stromme.

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone in the room or on the phone to come forward to speak for or against the request of a preliminary plat to be named Arlene’s Subdivision and a zone change from A (Agriculture) to R7 (Single-Family Residential) zoning districts.

Chair Robinson inquired if there were any comments or questions.

A second and third announcement was made to come forward to speak for or against the request of a preliminary plat to be named Arlene's Subdivision and a zone change from A (Agriculture) to R7 (Single-Family Residential) zoning districts.

C. Close Public Hearing

Chair Robinson inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Commissioner Gardner inquired if the only issue is access to the property? Planner Stromme stated that the plan will need to include an explanation of the way the property is to be accessed in addition to the way that access road will be maintained. The city does not typically do any sub-dividing until that is addressed. For this project, Morton County is in charge of all maintenance. Because this location is in a growth area of the city, the city handles the sub-dividing for the county to handle annexation. Due to the deficiency of the right of way dedicated for Cotton Tail Way, it has never been maintained or improved by the county. In 2003 the city was advised not to allow a development to take place the way it did, and the city was provided that opportunity, however, it did not take that opportunity or feedback.

Commissioner Smith motioned to recommend approval of a preliminary plat to be named Arlene's Subdivision and a zone change from A (Agriculture) to R7 (Single-Family Residential) zoning districts subject to documented access agreement and the road to be maintained either by the county or privately. Commissioner McLean seconded the motion. Upon vote, the motion passed unanimously.

OTHER BUSINESS

1. Update on Northwest Mandan Land Use and Transportation Plan Amendment.

Planner Stromme stated that since the last meeting several individuals have met to review comments received. The City of Mandan staff have been working with the Metropolitan Planning Organization (MPO). The cities of Mandan and Bismarck exceed the population of 50,000 people which mandates transportation plans to be in place and to make sure the city/county is using transportation dollars effectively. He stated that he has been working with the Morton County Planning Director about priority areas. Planner Stromme provided information on how are Future Land Use Plans used:

- The Future Land Use Plan is a guiding document
- The plan provides recommended future zoning classifications and locations for future transportation infrastructure
- Designations include (i) Land Use; (ii) Transportation; (iii) Sensitive areas
- The City of Mandan Future Land Use Plan extends beyond the 2-mile ETA wherein no property within the city planning jurisdiction may lack a future land use designation
- Future Land Use Plans guide development. Certain areas and plan components may not be realized for greater than fifty (50) years
- Future Land Use Plans and Corridor Planning efforts are common

Planner Stromme stated that all the maps referred to in this presentation can be found on the City of Mandan website. The Mandan policy conflicts with the DOT policy and that conflicts with the city's ability for infrastructure, which necessitated the amendment for northwest Mandan. There are developers wanting to build there and a Future Land Use Plan has worked for them, however, a review of the plan is warranted. In order to implement the future plan, it is city staff's belief that the city would be going in a direction that the city would be directly in conflict with the transportation policy and the goals of the plan to realize access at this location. That brought staff to lay out the new policy for northwest Mandan and address where things could go. There are existing future and planned developments for northwest Mandan. That alignment calls for a departure from the existing location of 56th and Old Red Trail to a future location for arterial roadways to meet in northwest Mandan. That indicates the arterial roadway would be shifted that is congruent with the Transportation Planning policy rather than in conflict with it so the city is not investing in an area that it has been guided not to.

Planner Stromme stated that the main goal of this presentation is to outline the concerns the city has with the northwest Mandan Future Land Use Plan and the Transportation Policy. A similar situation is an area in south Fargo, on 52nd Avenue, in the area of the Walmart. There was a subdivision built there in an area close to I-94 and because of the Transportation Policy and the goals of that community to get the infrastructure built with the capacity it had. They did realign that roadway.

Subsequent to discussion held at the last P & Z Commission meeting, Planner Stromme met with the group involved with this matter, and the recommendation that came out of that was that Mandan continue with the amendment of the Land Use Plan that was introduced and vetted by several people who are familiar with the area and familiar with ways to make the new policy work for the city with the existing plan. He suggested discussion occur to bring out additional concerns and to see if any support is realized. If not, he will bring back an amended plan to the next meeting for this committee's recommendation. He stated there are individuals ready to develop this land and they want to follow an approved plan. This committee can discuss this and decide if the city wants those individuals to follow the plan as adopted and build according to the plan the city has in place or make a change to that.

Commissioner Gardner inquired if the difference between the current plan and the new proposed plan is the location of Old Red Trail? The new proposal is not discussing a new location for the interchange? Planner Stromme replied, yes, the city wants to leverage the momentum behind the Land Use Plan that designates interstate access at 56th Avenue northwest and I-94, thus, there will not be a recommended change to that. He concurred that the most significant change would be to amend the city's plan to be in alignment with the Transportation Planning Policy as prescribed by the state. The road alignments do not include a recommendation to adjust proposed future land use designation as the designations that are proposed or presented in the amendment. The discussion today is not moving the interchange to a different location rather the discussion is about the scope of moving Old Red Trail around, in particular, the location of Old Red Trail as an arterial roadway in the future.

Commissioner Smith inquired about the proposed amendment as originally designated is being moved to medium density is why being R7 considered? Planner Stromme replied that

it was not initially brought up to be R7. The recommendation of the group is that generally it is seen as a greater likelihood as a future development scenario so that medium density development would have stronger access management. The medium density is what the group decided it should be, being between higher and lower intensity use in a subdivision.

Commissioner Gardner commented that at the last meeting there was discussion whether or not it should be this interchange and if that question is not being asked of the P & Z Commission, he suggested it would be helpful if residents discuss how, it would change the perspective, if Old Red Trail changes. Chair Robinson commented that a fair amount of time has been spent discussing that interchange. The question today is about wrapping Old Red Trail around.

Chair Robinson invited comments from the public.

Keith Landeis came forward and referenced the new proposed route that would be coming off Old Red Trail, heading north, back the east, back to the south. That goes right through the center of his property. There is a plot where it initially comes off that is the farmstead he grew up on. He stated that Franklin D. Roosevelt made a campaign stop there and that is meaningful to his family. He is the 2nd and 3rd generation living on this family ranch and they want to keep it within the family. The property has been put into an irrevocable trust. That was brought up last month, and Planner Stromme commented that trusts are designed to be broken. Mr. Landeis' understanding is that irrevocable trusts are "not to be broken" wherein people and attorneys go through processes to make sure they are not broken. If a threat of eminent domain is used to get through this property it will be difficult to penetrate that irrevocable trust. He voiced concerned that the proposed plan was developed with "zero" input from him. He requested the Commission to not table the proposed plan and to give it a vote of no confidence and ask the people working on this to go back and consider looking at what a practical person would do; find out where the interchange will be located; and then look at the parameters if an interchange were to come in.

Mark Landeis came forward and commented that it is difficult to separate the interchange and Old Red Trail because there would be no discussion had on Old Red Trail if it wasn't for the interchange. He said residents have been told that by putting in the interchange it will relieve traffic at Sunset. He requested information on statistics as to what percentage of relief there will be for traffic. If an interchange will not be put in, there is no need to reroute Old Red Trail. What about other aspects if there is a change, for example, commercial development? How will this affect resident's special assessments? He suggested if the data has not been determined and no solid answers are provided to the questions that have been raised, it is his position that this plan should be stopped.

Alicia Doll came forward and inquired if the focus is on 56th Street for the location for the interchange? Planner Stromme stated that federal policy dictates that interchanges are to be located two-miles or more apart, in a rural or suburban setting which may be considered rural or suburban. Two miles west of 56th is Hwy 25 and any closer there would be issues with Hwy 25 and if it were to be closer to Sunset it would be in an industrial park or the Red Trail Elementary School. The alignment at 56th was called out in the regional beltway study for the Future Land Use Plan, Metropolitan Transportation Plan and other plans adopted by a community. Ms. Doll inquired about the map presented, is it for the reroute of Old Red Trail

for now, not implementing any off ramps or on ramps? What is the reason for building a completely new road versus the county road that is already there? Planner Stromme explained that 25th Street (a gravel road) is shown on the current version of the Future Land Use Plan as a future arterial roadway. Ms. Doll stated she does not have many concerns about rerouting Old Red Trail except for the fact that someday it appears there will be an on and off ramp put in at 56th Street. She commented that where the development stops at the bottom of the hill, there appears to be an open area that would be perfect for an on and off ramp and it was 2.6 miles from Highway 25 continuing 2.5 miles to Sunset exit. That is open land and it is for sale. Coming off interstate there would be businesses lining the road and not affecting any homes or housing developments and would not be displacing anyone. It appears 37th Street is tagged to be an artery road. She understands that 37th Street will potentially tie in behind the middle school and high school. It appears, that is how this plan is attempting to alleviate Sunset exit traffic. Ms. Doll requested that the city and the residents who are concerned about this plan continue discussing the future potential plans for this area while keeping cost effectiveness in mind.

Commissioner Gardner inquired about the proposal on 25th Street and if that is still a consideration? Planner Stromme replied that 25th Street is already identified as an alignment for north-south connector to be made between a future location and the current location of Old Red Trail. Also, 25th Street is a gravel road that goes from Old Red Trail up to the half section line. It is already designated as a future connector rather than an arterial. It was looked at to be a location as discussed from where Old Red Trail would go from its current location as a frontage road to the proposed location of the arterial at the half section line and where that would curve north. When discussing with the Metropolitan Planning Organization (MPO) and the county to keep the alignment where it was shown due to asymmetry being realized from where Old Red Trail would be or that connection would be on the east side of 52nd.

Russ Doll came forward and stated there is a business going up along Old Red Trail, West River Implement, wherein the area of Corvette Circle that was pointed out as being a good place to put an exit ramp wherein roads going to the north would tie into 37th Street. He said he agrees with Mr. Landis that it would be foolish to run through his land.

Derek Zander came forward and stated he is with Red Trail Holdings and they own the quarter section of land that is being referred to which is 1.25 miles east of 56th. That property is not for sale, having owned it for about a year and half. He has been working with Director Froseth since the West River Equipment shop condos were being permitted, He looked at that exit alignment and it was decided to stay on 56th Avenue due to the fact that it is a section line and already has a right of way line there. An original plat was approved last summer and the DOT's ruling came out and the city requested them to look into that. The second plat was shown in the December 2022 Planning and Zoning Committee meeting giving Old Red Trail a right of way to go up and around for the future interchange at 56th Avenue.

Lee Klapprodt came forward and stated he owns property on 56th Avenue Northwest. He commented that the plan that is being reviewed has been under review for a long time. In his opinion it is a concept plan and he has not seen any details applied to this project. The compliance, engineering and other studies or analysis have not been completed. He noted

there is a high voltage transmission line in the footprint of this. The lift station built by the city is located in the middle of that footprint. There are federal wetlands on both the north and south sides of the interstate. The creek that runs through there, the stock dam, the creek below the stock dam as it flows to the interstate to the south side, is all federally recognized wetland. In his experience as a planner for the state for 40 years, many people had concept plans on paper and pursued implementing those plans, however they never did the research that was required to prove the plan was viable. He recommended that the city take the necessary time to do a detailed analysis in a preliminary way that the DOT Department would accept.

Keith Landeis came forward and stated that on the east side of 56th Avenue he understands the need for access there and when diverting traffic flow around Old Red Trail half mile east, half mile south, instead of finding a way to get them right on 56th at Old Red Trail does not make any sense. The Planner explained to him that it was asymmetrical with the east side.

Planner Stromme stated there has been sufficient feedback provided to present to the working group in order to further discuss this matter. He will schedule a meeting to discuss the feedback with the group and bring recommendations back to the next Planning and Zoning Committee meeting.

ADJOURNMENT

Commissioner Smith motioned to adjourn the meeting. Commissioner McLean seconded the motion. Upon vote, the motion passed unanimously.

The meeting adjourned at 6:57 p.m.