

Minutes of the Ward County Planning Commission

April 20, 2017

The meeting was called to order at 7:00 PM by Vice Chairman Fegley. Present were Commissioners Carswell, Fjeldahl, Fegley, Kopp, Kossan, Livingston, & Sipma. Also present were County Planning and Zoning Administrator Amber Turnquest, States Attorney Roza Larson, and Misty Hester, Secretary.

Moved by Commissioner Carswell, seconded by Commissioner Kossan, to approve the Planning Commission Meeting Minutes from the March 16, 2017 meeting. Roll call: all voted yes; motion carried.

Amber Turnquest presented the following updates to the agenda:

- Item #1: The Sundre Township has recommended approval.
- Item #2: Handouts are available on the table for the new garage addition outline and a letter from the neighbor, Terry Saunders.
- Item #3: The Tatman Township Board has recommended approval.
- Item #4: The Freedom Township (not Cameron) Board has recommended approval. A hand-out is also available from the Budd-Falen Law Offices.
- Item #5: A hand-out is available from the Berthold Township Supervisors meeting dated April 12, 2017.
- Item #6: A hand-out is available from the Northwest Landowners Association.

REGULAR AGENDA:

Application for a plat approval by **Norman Sollid on behalf of Robert and Brenda Hustad** for the following described property:

Outlot 2 of SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26-154-82, Sundre Township

The plat application is for a 5.42 acre outlot. The Sundre Township has recommended approval. The Ward County Water Resource Board has not yet responded.

Moved by Commissioner Fjeldahl, seconded by Commissioner Sipma, to approve the plat. After discussion, Kossan had recommended to amend the motion to include the approval of the water board. Roll call: all voted yes; motion carried.

PUBLIC HEARING:

Application for a variance by **Todd Hillestad** for the following described property:

Sandy Beach Addition, Lot 2, Block 1, Rice Lake Section 10-152-85, Rice Lake Township; also known as 134 South Rice Lake Road, Douglas, ND

The variance application is to allow a garage to be built 3 feet 10 inches and 20 inches from the southern property line and 18 inches from the east property line.

Chapter 2, G of the Ward County Zoning Ordinance states that "all lots adjoining the lake shall have a minimum set-back, for all new or moved on structures, of 18 feet from the road right-of-way line."

Chapter 3, Article 15 of the Ward County Zoning Ordinance states that the minimum width of either side yard must be 10% of lot width.

Amber clarified that the applicant submitted a new distance is 26" from the front property line and 36" from the east lot line. A letter from Terry Saunders, the neighbor, states he has no issues with the variance.

Moved by Commissioner Carswell, seconded by Commissioner Kopp, to open the public hearing at 7:08 PM.

Matt, of Future Builders, representing Todd Hillestad, spoke for the variance. They are attaching to the current structure and the door would be covered if the garage isn't placed where it is on the plat. Matt verified the garage is above the required elevation.

Leo Schmidt, Ward County Building Inspector, gave a brief history of the permit that was granted by Ward County in 2007 for an addition to the lake cabin had been there since 1964.

A brief discussion ensued regarding access to the house, and structures around the lake that are on the property line.

Moved by Commissioner Carswell, seconded by Commissioner Livingston, the public hearing was closed at 7:15 PM

Discussion ensued.

Moved by Commissioner Livingston, Seconded by Commissioner Sipma, to approve the variance so there isn't a hardship of blocking egress and ingress to the house existing if the garage isn't placed where it is on the plat. Roll Call: all voted yes; motion carried.

Application for a variance and plat approval by **Ron Anderson** for the following described properties:

Outlot 3 of SW ¼ NE ¼, Section 2-157-82, Tatman Township

Outlot 4 of SW ¼ NE ¼, Section 2-157-82, Tatman Township

Both plat applications are for 2 acre outlots. The Tatman Township Board has recommended approval. The Ward County Water Resource Board returned the plat without objection, but with the recommendation that a storm water management plan may be required if the property is (a) developed or subdivided or (b) if an application is made for a building permit; and that no development as a result of this plat should obstruct any watercourses or divert surface water flows.

The variance application is to allow the outlots to be created and their access to be by easement only. Chapter 3, Article 24, Section 4, F, 1, c of the Ward County Zoning Ordinance states that "primary access to any lot by easement only is not allowed".

Moved by Commissioner Livingston, seconded by Commissioner Carswell, to open the public hearing at 7:20 PM.

For the record, no one appeared to speak for against the variance and plat approval for Ron Anderson.

Moved by Commissioner Carswell, seconded by Commissioner Kopp, the public hearing was closed at 7:22 PM

Discussion ensued regarding the 2 existing homes on the property sharing the private driveway. A letter from the Tatman township states it is a private driveway for over 40 years and the township would not maintain it. Further discussion ensued.

Moved by Commissioner Fjeldahl, seconded by Commissioner Sipma, to approve the variance and plat based on no other access is available. Roll call: Commissioners Fjeldahl, Sipma, Livingston, and Kopp voted yes, Commissioners Kossan, Carswell, and Vice Chairman Fegley voted no; motion carried.

Application for a variance and plat approval by **John Pietsch** for the following described property:

Outlot 5 Lying in the NW ¼ NW ¼, Section 12-153-83, Freedom Township

The plat application is for a 5.33 acre outlot. The Freedom Township Board has recommended approval. The Ward County Water Resource Board returned the plat without objection, but with the recommendation that a storm water management plan may be required if the property is (a) developed or subdivided or (b) if an application is made for a building permit; and that no development as a result of this plat should obstruct any watercourses or divert surface water flows.

The variance application is to allow the outlot to be created without dedicating the 75 feet of right of way as required by Chapter 3, Article 24, Section 4, A, 12 of the Ward County Zoning Ordinance.

Amber reminded the Board of the Bud Fallen Law Offices handout.

Moved by Commissioner Livingston, seconded by Commissioner Carswell, to open the public hearing at 7:45 PM.

John Pietsch, South Prairie, appeared and spoke for his application request. He corrected the agenda as it said his property was 4.66 acres in Cameron Township when it should show 5.33 acres in Freedom Township.

Frank Fallon, Bud Fallen Law Offices L.L.C. in Cheyenne, Wyoming, appeared and spoke for the Ward County Farm Bureau and the variance and plat approval for John Pietsch. Mr. Fallon's concerns involve the 5th amendment in a constitutional nature. He gave examples of court cases involving regulations of exaction of property (using the Nexus testing), and the burden of proof lying on the government entity-not the homeowner. The 3 cases he spoke about were Nollan vs. California Coastal Commission, Dolan vs. City of Tigard, and Kuntz vs. Water Management Agency out of Florida.

Extensive discussion between the commissioners and Mr. Fallon ensued regarding land law uses.

Troy Coons, NW Landowners Association, appeared and presented a resolution to the Commission regarding the current Ward County right of way policy. Roza reminded the Board this resolution was out of order and not a part of Mr. Pietsch's variance and plat approval.

Travis Zabloutney, Minot, appeared and spoke for Mr. Pietsch's request and support the commission to change of the ordinance.

Moved by Commissioner Livingston, seconded by Commissioner Sipma, the public hearing was closed at 8:12 PM

Moved by Commissioner Sipma, seconded by Commissioner Fjeldahl, to approve both the plat and the variance as requested of not taking the additional feet beyond the 33' with the hardship being the extra footage being taken. Roll call: all voted yes; motion carried.

Application for a zone change by **Charles Cummings** for the following described property:

Outlot 1 of NE ¼ SE ¼, Section 3-156-86, Berthold Township

The application is to change the zoning from A-1 – Agricultural to C-2- Highway Commercial.

Moved by Commissioner Kopp, seconded by Commissioner Carswell, to open the public hearing at 8:20 PM.

Charles Cummings, owner, 11701 268th St NW, Berthold ND, appeared and spoke for his application for a zone change for the repair shop of vehicles and small trucks.

A brief discussion ensued.

Marvin Heller, Berthold township chairman, appeared and gave clarification as to why the Berthold Township was against the zone change including the following concerns: they didn't know what he had in mind and township has rules that any businesses have to be along the township roads.

Travis Zablotney, as a property rights activist, spoke on behalf of the zone change by Charles Cummings.

Moved by Commissioner Sipma, seconded by Commissioner Carswell, the public hearing was closed at 8:35 PM

Clarification was requested of Amber by Commissioner Sipma as to what Zone C2 would allow. Discussions ensued.

Moved by Commissioner Fjeldahl, seconded by Commissioner Kossan, to approve the zone change. Roll call: all voted yes except Commissioners Livingston and Carswell; motion carried.

First Reading Changes to Dedicated Right of Way

Moved by Commissioner Fjeldahl, seconded by Commissioner Livingston, to include the following changes in the Ward County zoning ordinance:

Suspend the current policy of dedicated right of way and allow 33 feet of statutory right of way on all plats adjacent to publicly maintained roads.

The change would strike Chapter 3, Article 24, Section 4, A, (12):

12. Unless otherwise shown on the Master Plan, right-of-way and roadway widths shall be not less than as follows:

Class of Road	Right of Way
County Roads	150 ft. (75' from centerline) 66' (33' from centerline)
Township Roads	80 ft. (40' from centerline) 66' (33' from centerline)
Section Lines	80 ft. (40' from centerline) 66' (33' from centerline)
Frontage Roads	80 ft. (40' from centerline) 66' (33' from centerline)
Rural Subdivision Roads	80 ft. (40' from centerline) 66' (33' from centerline)

~~Plats proposed along roads shall donate and dedicate to the public for public use sufficient right-of-way to meet these requirements.~~

The change would strike the 80 feet from item "c" and replace it with 66 feet, in Chapter 3, Article 24, Section 4, A, (20)

20 Minimum road standards for township subdivision roads:

- a Culvert design frequency 25 years
- Culvert diameter minimum 18 inches
- b Graded roadbed width 30 feet

- c Right-of-way width ~~80 feet~~ 66 feet
- d Slopes (in, out and back) 4' to 1'
- e Base of ditch width 5 feet
- f Road bed elevation* 1 foot above side terrain*
- g Depth of roadbed gravel 6 inches
- h Maximum gradient 7 percent and up to 10 percent if not longer than 300'
- i Cul-de-sac radius 60' of road surface plus additional 15' of boulevard to equal 75'
- j Finished road surface width 24 feet
- k Ditch depth shall be a minimum of two feet below shoulder of new road. If curb and gutter is used, the ditch requirements will be eliminated.

* Or 13 feet minimum from shoulder to a point level with roadbed when 3 to 1 slopes and 4 foot ditch are inclusive.

The change would strike the following from Chapter 3, Article 24, Section 4, F, (1), e:

- e. Road right-of-way shall be clearly shown on plats and including widths required in Article 24, Section 4, A, (12).

Discussions ensued regarding the correct way to make the motion to ensure it doesn't wipe the slate clean, but the right-of-way shows 33' with any footage beyond that needed would be purchased. Commissioner Sipma would like the record to show his encouragement for the county commissioners to take a good hard look at this and move forward with this.

Roll call: all voted yes; motion carried.

Amber reminded the Board and the public that the next hearing will be the 2nd reading at public hearing for changes for what was just discussed at 7:00 on May 18, 2017 at the Ward County Administration Building. It then would go to the county commissioners for a 1st reading and 2nd reading with public hearing.

After brief discussions on last month's tabled items, it was decided to table discussion again until next month. Commissioner Sipma requested that the commission would have the exact bill with the exact language in order to make better decisions.

Moved by Commissioner Fjeldahl, seconded by Commissioner Carswell, to table remaining items until the next meeting. Roll call: all voted yes; motion carried.

Other Business:

There being no further business, the meeting was adjourned by Vice Commissioner Fegley at 9:24 PM.

Chairperson, Ward County Planning Commission

Attest:

Deputy Ward County Auditor, Secretary