



MEMORANDUM

Highway Department

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

TO: Cass County Board of Commissioners

FROM: Barrett Voigt, Cass County Planner

DATE: April 29, 2019

SUBJECT: First Reading Agenda Topic for the May 6, 2019 Commission Meeting: Cass County Subdivision Ordinance Text Amendment for Sections 106.4, 302.1, 302.4, 303, 303.4, and 305.1

The Cass County Planning Commission reviewed the application of the proposed Cass County Subdivision Ordinance Text Amendment of Sections 106.4, 302.1, 302.4, 303, 303.4, and 305.1 at a Public Hearing on April 25, 2019. The intended purpose of the text amendments is to remove language that requires subdivision applications to be submitted to the Planning Office 21 days prior to the next scheduled Planning Commission meeting. This requirement has resulted in a deadline that conflicts with the public hearing requirements of North Dakota Century Code (N.D.C.C.) §11-33.2-05 and creates cost inefficiencies for public hearing advertising fees.

The Planning Commission is recommending approval of the proposed text amendment and has forwarded the application to the Cass County Board of Commissioners for action.

SUGGESTED MOTION:

Move to accept the findings and recommendations of the Planning Commission and staff to approve of the first reading of the proposed text amendments to Sections 106.4, 302.1, 302.4, 303, 303.4, and 305.1 of the Cass County Subdivision Ordinance #2006-1, as the proposal meets the goals and objectives of the Cass County Comprehensive Plan and the Cass County Subdivision Ordinance and all other applicable regulations; authorize notice to be published in the official county newspaper; and schedule the second reading of the proposed text amendment application for the June 3, 2019 County Commission Meeting.

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Cass County Planning Commission Staff Report

Entitlements Requested:	Cass County Subdivision Ordinance (CCSO) Text Amendment		
Title:	§106.4, §302.1, §302.4, §303, §303.4, §305.1 CCSO Text Amendment	Date:	04-12-2019
		Update:	04-25-2019
Location:	N/A	Staff Contact:	Barrett Voigt
Owner(s)/Applicant:	Cass County	Engineer/Surveyor:	N/A
Status:	County Commission Hearing: May 6, 2019		

Proposal

The County Planner is seeking approval of a text amendments of §106.4, §302.1, §302.4, §303, §303.4, §305.1 of the Cass County Subdivision Ordinance (CCSO) for the purpose of eliminating conflicts between county ordinance and North Dakota Century Code (N.D.C.C.) §11-33.2-05 county subdivision regulation of public hearing requirements as well as reducing public hearing notification cost inefficiencies.

Staff Analysis

During the month of February, Planning Department staff identified a potential conflict between local CCSO §302.1, §302.4, §303, §303.4, §305.1 and N.D.C.C. §11-33.2-05 due to the short number of days in the month.

The CCSO requires that any application submitted to the County Planner be provided twenty one (21) days prior to the next scheduled Planning Commission meeting. This requirement results in the establishment of an application deadline 21 days prior to any Planning Commission Meeting. In addition, N.D.C.C. §11-33.2-05 requires notification of a public hearing once a week for two (2) consecutive weeks. Given the limited number of days of February, staff was tasked to meet the application deadline of the local newspaper to request that a notification be published for subdivision application Planning Commission hearing requests in order to fulfill the N.D.C.C. §11-33.2-05 requirements and only pay the standard fee for the service. However, if staff were to pursue conventional practice and meet the newspaper deadline to acquire a standard fee for notification services, the last notification (2nd notification) would then be published during the week of the meeting and only 4 days prior to the public hearing.

To seek clarification on the state statute notification requirements, Planning Department staff contacted the office of the North Dakota Attorney General and the State's Attorney office. Both offices concluded that it was

inconclusive whether publishing an advertisement 4 days prior to the Planning Commission meeting would suffice to meet state statute requirements of “once a week.”

To proactively avoid issues of litigation in the future and to always ensure that staff always pay the standard rate for newspaper notification publication, staff requests a text amendment to the CCSO to eliminate the 21-day requirement and allow staff the authority to establish the application deadline.

Text Amendment Proposal:

Staff proposes the following text amendments in underlined and strikethrough font to §106.4, §302.1, §302.4, §303, §303.4, §305.1 of the CCSO:

106.4. The Cass County Planning Office shall serve as the administrative officer of the Planning Commission and be authorized to process, review, report, recommend and provide notice for all applications described within this ordinance.

The Cass County Planning Office may establish:

1. Deadlines for receipt of complete applications
2. Dates of regular meetings
3. The scheduling of staff reviews and staff reports
4. All required steps in the application process (including public hearings and reviews by other agencies)
5. Required time-frames for action by review and decision-making bodies.

302.1. Application Requirements. All Preliminary Plat Applications shall include the following ~~and shall be submitted at least twenty one (21) days~~ prior to the next regularly scheduled Planning Commission meeting.

302.4. Planning Commission Action. The County Planner will schedule the Preliminary Plat application for action at a regularly scheduled public meeting within ninety (90) days of the first public meeting of the Planning Commission after the date of filing.

~~In general, the County Planner will schedule the Preliminary Plat application for action at the first Planning Commission meeting which is at least twenty one (21) days following filing. However, a~~ A municipality may request the Planning Commission to delay action on the application up to ninety (90) days from the date of filing to allow for the submission of its comments to the Planning Commission. The Preliminary Plat will, therefore, be considered at a public meeting by the Planning Commission in accordance with a schedule that allows time for review of the Plan by the municipality.

SECTION 303

Final Plat Application.

An application for Final Plat Approval can be submitted only after the following, when required as noted, have been completed.

The receipt of an unconditional Preliminary Plat approval in accordance with Section 302 of this Ordinance, when a Preliminary Plat approval is required.

~~Final Plats may be filed with the County Planner on any business day; however, the Planning Commission will officially review the plan at a particular meeting only if the Plan was filed at least twenty one (21) days prior to that meeting.~~

303.4.

Planning Commission Action. The County Planner will schedule the Final Plat application for action at a regularly scheduled public meeting within ninety (90) days of the first public meeting of the Planning Commission after the date of filing.

~~In general, the County Planner will schedule the Final Plat application for action at the first Planning Commission meeting which is at least twenty one (21) business days following filing. However, a A municipality may request the Planning Commission to delay action on the application up to ninety (90) days from the date of filing to allow for the submission of its comments to the Planning Commission. Final Plat approval will be effective for ninety (90) days from the date of the Planning Commission's action on the Final Plat, unless the Planning Commission grants a variance by extending the effective time period of the approval. Within this time period the applicant must meet all conditions of approval, if any; certify plans as specified in this Ordinance; and record plans as specified in this Ordinance.~~

305.1.

Application Requirements. All requests for variances shall be made in accordance with the following procedure:

A. All requests for a variance shall be made in writing and shall accompany and be a part of the application for development. The request shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, or the alternative standard proposed to provide equal or better results, the section or sections of this Ordinance which are requested to be waived and the minimum modification necessary. The request shall be accompanied by a plan prepared at least to the minimum standards of an area sketch plan (*see Section 401*).

B. Should a revision to a submitted plan require a variance which was

not apparent at the time of initial plan submission, the request for a variance shall be submitted in accordance with subsection (A) above, at the time of submission of the revised plans.

- C. Requests for variances shall be considered by the Planning Commission at a public meeting ~~which is at least twenty one (21) days~~ after the submission of the variance request. However, a municipality may request the Planning Commission to delay action on the variance to allow time for the municipality to submit comments to the Planning Commission.

Staff Recommendation

To accept the findings and recommendations of the Planning Commission and staff to approve of the text amendment application as the proposal meets the goals and objectives of the Cass County Comprehensive Plan and the Cass County Subdivision Ordinance and all other applicable regulations.
