

PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item

**ITEM NO. 4D: RM12 & OS TO FLOODPLAIN OVERLAY; ~~40.24~~ 11.35 ACRES;
31ST & KASOLD DR (MKM)**

Z-8-16-09: Consider a request to rezone approximately ~~40.24~~ 11.35 acres from RM12 (Multi-Dwelling Residential) and OS (Open Space) to the Floodplain Overlay District for Wesleyan Church Development, located southeast of 31st and Kasold Drive. Submitted by Dean Grob, for Chester B. Spray Trust, property owner of record and Wesleyan Church, Contract Purchaser.

1. **STAFF RECOMMENDATION:** Staff recommends approval of the rezoning request for ~~40.24~~ 11.35 acres from RM12 (Multi-Dwelling Residential) and OS (Open Space) Districts to the RM12-FP and OS-FP (Floodplain Overlay District for a portion of the Multi-Dwelling and Open Space Districts) and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

APPLICANT'S REASON FOR REQUEST

"The rezoning is required by the Land Development Code."

KEY POINTS

- Total area of floodplain within the site boundary is 7.78 acres.
- Floodplain encumbers 3.92 acres of the RM12 District and 3.82 acres of the OS District.
- Section 1201(c) of the Development Codes requires that when land is annexed into the City the floodplain shown on the current FIRM shall be included in the floodplain overlay district along with an additional area defined as 'an additional two feet of freeboard' above the base flood elevation. Total area which will be included in the Floodplain Overlay District is 11.35 acres.
- The actual amount of acreage being rezoned is greater than shown on the application due to the inclusion of the road right-of-way with the annexation request.

GOLDEN FACTORS TO CONSIDER

CHARACTER OF THE AREA

- The area contains significant amounts of floodplain and floodway. Agriculture and residential uses are the principal land uses in the area.

CONFORMANCE WITH *HORIZON 2020*

- The proposed rezoning request from A (Agricultural) District to OS (Open Space) District is consistent with land use recommendations found in *Horizon 2020*.

ASSOCIATED CASES/OTHER ACTION REQUIRED

Associated items also being considered at the October Planning Commission meeting:

- Annexation request [A-8-3-09]
- Rezoning Request [Z-8-14-09] from County A (Agriculture) District to the RM12 (Multi-Dwelling Residential) District
- Rezoning Request [Z-8-15-09] for to OS (Open Space) District

Other action required:

- City Commission approval of annexation and publication of ordinance.
- City Commission approval of the rezoning requests and publication of ordinances.
- Submittal of preliminary plat for approval by Planning Commission and acceptance of dedication of easements and rights-of-way by the City Commission.
- Final plat submittal for administrative review/approval and recordation at the Douglas County Register of Deeds.
- Submittal and administrative approval of site plan for the church and multi-dwelling residential developments—unless the proposed residential development contains duplexes which do not share common space (Per Section 20-1305(c)(1) of the Development Code).
- Submittal and administrative review of Floodplain Development Permit for development proposed on property which is encumbered by the floodplain.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- None.

GENERAL INFORMATION

Current Zoning and Land Use: A (County-Agricultural), V-C (County-Valley Channel) and Floodplain Overlay Districts / with rezoning requests to the RM12 (Multi-Dwelling Residential) and OS (Open Space) Districts being considered at the October Planning Commission meeting; undeveloped land in the unincorporated portion of the County used for agricultural purposes.

Surrounding Zoning and Land Use: To the east:
RMO (Multi-Dwelling Residential-Office) District with a portion located within the Floodplain Overlay District; extended care facility-general;
UR (Urban Reserve) District; church;
CO (Commercial Office); single-dwelling residence;
RS10 (Single-Dwelling Residential) District with a portion located within the Floodplain Overlay District; undeveloped;
A (County-Agricultural) District with portions of the property encumbered with floodplain; agricultural uses;

To the north: A (County-Agricultural) District with floodplain overlay, [a rezoning to the RM12 (Multi-Dwelling Residential) District is being considered with this development proposal]; Agricultural land uses.

To the west: A (County-Agricultural), and V-C (County-Valley Channel), Districts with portions of the property encumbered with floodplain; electrical sub-

station, a minor utility, and agricultural uses

To the south: A (County-Agricultural) District and V-C (County- Valley Channel) District; property is encumbered with floodplain; woodland, agricultural uses and a multi-use path.

Project Summary

Floodplain, including both the regulatory floodway and the regulatory floodway fringe, is located in the southern portion of this property. Portions of the RM12 and OS District are being rezoned to the Floodplain Overlay District as required by Section 20-1201(c) of the Development Code. Figure 1 shows the area that is within the floodplain and identifies the location of the regulatory floodway fringe and the regulatory floodway.

REVIEW & DECISION-MAKING CRITERIA

CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response:

"The request conforms to the Comprehensive Plan in every aspect, from general growth, annexation, and proposed land use."

Horizon 2020 recommends the protection and preservation of floodplain areas (Page 3-1). Per Section 20-1201(e) of the Development Code, the Floodplain Regulations are intended to restrict or prohibit uses that are dangerous to the public health, safety and general welfare or uses that cause undue increases in flood heights or velocities.

Staff Finding -- *Horizon 2020* recommends the preservation of floodplain. Rezoning to the Floodplain Overlay District is a tool provided by the Land Development Code to achieve this preservation and protection.

ZONING AND LAND USES OF NEARBY PROPERTY, INCLUDING OVERLAY ZONING

The subject property is surrounded on the north by agricultural zoning which is being requested to be rezoned to a residential district with this development proposal. It is surrounded on the east by residential zoning with small portions of UR (Urban Reserve) Zoning within the City limits. Development in these districts consists of residential uses and an extended care facility.

Property to the west and south is located outside the City limits and is zoned for agricultural uses. An electric substation is located west of the subject property and a multi-use recreational path borders the south and west sides of the property. The K10 bypass is located approximately 500 feet south of the southern property line. Woodlands and agricultural land uses dominate the area to the south and west.

Staff Finding -- Property to the west and south of this development proposal, located outside of the City limits, is zoned and used primarily for agricultural uses. Property to the east and north of this development proposal, located within the City limits, is zoned and used primarily for residential uses.

CHARACTER OF THE AREA

The subject property is located south of the curve where W 31st Street joins with Kasold Drive, both principal arterials. E 1200 Road, a minor arterial is located along the west property line and the K-10 Bypass, a State Highway, is located within 550 feet of the southern property line. The subject property contains floodplain with both floodway and floodway fringe.

Staff Finding -- The area is adjacent to the city limits and is in close proximity to a transportation network consisting of arterials and a state highway. Floodplain, containing both regulatory floodway and regulatory floodway fringe is located on the subject property.

PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY

The *Revised Southern Development Plan* is incorporated by reference in Chapter 14 of *Horizon 2020*. This plan recommends low density residential uses for the subject area and open space zoning for the southern portion of the subject property which is encumbered with floodplain. The plan does not discuss the use of the Floodplain Overlay District for the floodplain.

SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS

Applicant's Response:

"No restrictions."

Currently the land within the floodplain is regulated by the Floodplain Regulations in the Zoning Regulations for the Unincorporated Areas of Douglas County. With this annexation request, additional lands are being placed within the Floodplain Overlay District (2 foot above the Base Flood Elevation). This additional protection is intended to account for future development in the watershed. With the annexation and rezoning, a larger area will be regulated by the Floodplain Regulations. The land is suitable for the uses which are permitted under the current restrictions. The restrictions will not be lessened as a result of the rezoning and will apply to a larger area.

Staff Finding -- The property is well suited for the restrictions which apply under both the County and the City Floodplain Regulations.

LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

Applicant's Response:

"The property has generally always been farmland or vacant floodplain."

Staff Finding – The property has never been developed.

EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES

Applicant's response:

"Complying with the Comprehensive Plan Horizon 2020 and the Revised Southern Development Plan, the proposed rezoning will not detrimentally affect the nearby properties."

The Floodplain Overlay District Zoning will result in a larger area of the property being subject to the City Floodplain Regulations. This should provide greater flood protection to surrounding properties as development occurs in the area.

Staff Finding – No negative impacts are anticipated with this development. The larger area being placed within the Floodplain Overlay District will improve the effectiveness of the Floodplain Regulations.

THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION

Applicant's Response:

"The property is existing floodplain and floodway so implementing the FP overlay district is required."

Rezoning the floodplain, plus the additional 2 feet of freeboard, to the Floodplain Overlay District is required by the Development Code. Placing this additional area into the overlay district is intended to account for future development in the surrounding rural areas. Denial of this rezoning request would result in a lesser level of flood protection for the area. Denial of this rezoning request would not permit the portion of the land which is within the floodplain to be included within this development proposal and annexed into the city.

Staff Finding – Denial of the rezoning request would not present any gain to the public health, safety and welfare as it would result in a lesser level of flood protection for the area.

PROFESSIONAL STAFF RECOMMENDATION

Staff recommends the approval of the rezoning request to the Floodplain Overlay District as this is compliant with the recommendations in the Development Code and will help insure the public health, safety and welfare by increasing the flood protection measures in the area.

