



CITY OF TONTITOWN PLANNING OFFICE

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Meeting: **March 30, 2021**
Project: **215 & 233 S. Mantegani Rd**
Waiver Request
Planner: Anthony Apple

AGENDA ITEM

4

WAIVER REQUEST

215 and 233 S. Mantegani Road

Parcel #s 830-37727-002, 830-37727-012, 830-37727-006 and 830-37727-008

SUMMARY: Request to waive the requirements in code sections 152.160 Improvements and 152.161 Determining Necessity For Improvements to construct the west half of S. Mantegani Road with the development of the planned subdivision. (See attached Vicinity Map, Figure 1 and Preliminary Plat, Figure 4)

CURRENT ZONING: R-3 Single-Family Residential – 9,600 sf minimum lot size and C-2 – General Commercial (See attached Current Zoning Map, Figure 2)

FUTURE LAND USE CATEGORY: RM – Residential Medium (See attached Future Land Use Map, Figure 3)

CITY WARD: 3 – Don Doudna, Tim Burress

INFRASTRUCTURE SERVICE AREAS (not a guarantee of service availability):

Water: Tontitown Water. There is an 8-inch water main along the west side of S. Mantegani Rd

Electric: Ozarks Electric

Sewer/Septic: Currently septic system. Will connect to 12-inch sewer main on the east side of S. Mantegani Rd when property is developed.

Phone: Century Tel

Natural Gas: Black Hills Energy

Cable: Cox Communications

PROJECT SYNOPSIS:

Mantegani Estates is a planned subdivision that includes one commercial lot, thirteen single-family residential lots and one detention pond lot. See attached Figure 4. The commercial lot and detention pond front S. Mantegani Rd which is currently a substandard road. S. Mantegani Rd is planned to be a Collector Roadway with Trail per the Master Street Plan. Since the subdivision fronts S. Mantegani Rd, S. Mantegani Rd is required to be improved per code sections 152.160 **Improvements** and 152.161 **Determining Necessity For Improvements**. Both sections are provided below.

IMPROVEMENTS

152.160 GENERAL PROVISIONS.

- (A) *Generally.* The subdivider shall be required to install improvements, where the need for such improvements is created in whole or in part by the proposed subdivision, in accordance with § 152.161. For purposes of this section, an **OFF-SITE IMPROVEMENT** shall mean any improvement listed in these regulations which are to be installed on property located outside the proposed subdivision.
- (B) *Installation.* Any required improvements shall be installed according to city standards; provided improvements to roads located outside the city's corporate limits but within the city's planning area shall be installed to county standards. The subdivider shall be required to bear that portion of the cost of improvements which bears a rational nexus to the needs created by the subdivision.

- (C) *Proportionate share.* At the time the Planning Commission grants preliminary plat approval, the Planning Commission shall determine whether the proposed subdivision creates a need for improvements and the portion of the cost of any needed improvements which the subdivider shall be required to bear; provided, that portion of the cost of improvements to roads located outside the city's corporate limits but within the city's planning area shall be determined by the county. In determining that portion of the cost of improvements which the subdivider shall be required to bear the Planning Commission shall consider the acreage within the proposed subdivision as a percentage of all the acreage which, when fully developed will benefit from the offsite improvements; provided, the Planning Commission may use a different method of measurement if it determines that use of the acreage standard will not result in the subdivider bearing that portion of the cost which bears a rational nexus to the needs created by the subdivision.

152.161 DETERMINING NECESSITY FOR IMPROVEMENTS.

- (A) *Indirect access to substandard streets.* When a proposed subdivision has access to paved streets or roads only by way of substandard or unimproved roads or streets leading from the subdivision to the paved streets or roads, the subdivider shall be responsible for contributing his or her proportionate share of the cost of improving the substandard access roads or streets to existing city standards. The subdivider's proportionate share of the costs shall be determined by the Planning Commission in accordance with the provisions of § 152.160.
- (B) *Direct access to substandard streets.* When a proposed subdivision has direct access to, or fronts on, an existing road or street which is below current standards, the subdivider shall be responsible for contributing his or her proportionate share of the cost of improving the street or road to existing city standards. The Planning Commission shall determine the subdivider's proportionate share of the costs in accordance with the provisions of § 152.160.
- (C) *Drainage.* Drainage improvements shall be required whenever a proposed subdivision causes the need for such improvements.
- (D) If minimum lot size created by preliminary plat exceeds ten acres the Planning Commission may waive certain requirements.

152.015 DEFINITIONS.

SUBDIVIDER. Any person dividing or proposing to divide land so as to constitute a subdivision and includes any agent of the subdivider.

SUBDIVISION. The division of any parcel of land into separate lots, units or building sites for the purpose (whether immediate or future) of sale or building development.

LARGE SCALE DEVELOPMENT. The development of a parcel or a lot within a platted subdivision. The term **DEVELOPMENT** shall include, but not be limited to, the construction of a new improvement, the construction of an addition to an existing improvement, or a revision of land use that results in the need for access and utilities.

The purpose of this waiver is to request the improvements to S. Mantegani Rd be constructed during the development of the commercial lot (Lot 1) rather than during construction of the subdivision.

STAFF ANALYSIS: It is evident by code and the subdivider's agent agrees, by submission of the waiver request, that it is the responsibility of the subdivider to upgrade the full length of the subdivision side of S. Mantegani Rd. However, the applicant must show that the request meets the waiver requirements code section 152.163.

RIGHT TO PETITION FOR A WAIVER

IMPROVEMENTS

152.163 WAIVERS.

A subdivider may petition the Planning Commission for a waiver of improvement requirements in whole or in part on one or more of the following grounds:

- (A) *No plans for upgrading.* The city has no plans for upgrading the substandard street or road on which improvements are proposed to be required by the subdivider.
- (B) *Primary access to improved streets.* The proposed subdivision has primary access to improved streets or roads and the portion of the subdivision which fronts on a substandard street or road is so small or remote from anticipated future traffic patterns as to cause an unfair imposition on the subdivider.
- (C) *Alternate improvements.* The subdivider proposes alternative improvements which will protect the health, safety and welfare of persons residing in the proposed subdivision and the surrounding area and equally benefit said persons.

STAFF ANALYSIS: The City has planned the grading of S. Mantengani Rd to a Collector Roadway with Trail as evidenced by the Master Street Plan.

The City finds that the entire subdivision fronts the substandard road. Although Lot 1 is approximately two-thirds of the frontage to S. Mantegani Rd, see Figure 5, and has a use different from the rest of the subdivision, by the definition of "Subdivision. The division of any parcel of land into separate lots, units or building sites for the purpose (whether immediate or future) of sale or building development.", Lot 1 is still part of the subdivision whether it develops immediately or in the future or has a different use than the portion of the subdivision that does not front the substandard road.

Although an alternate improvement proposal was submitted, the alternate does not satisfy the requirement to upgrade the entire west half of S. Mantegani Rd at the time of developing the subdivision.

WAIVER APPEAL:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other land structures or buildings in the same district.

Applicant's Response:

The preliminary plat this waiver is associated with has the peculiar predicament that one lot of the proposed subdivisions is zoned for commercial use. This commercial lot directly fronts S. Mantegani Rd. and would be utilized as the access point onto this site. If improvements are made to S. Mantegani Rd. along the entire lot 1 frontage with Mantegani Estates preliminary plat the commercial development will be forced to demo sidewalk, and curb and gutter to make an access connection to S. Mantegani Rd.

STAFF ANALYSIS: The City does not consider this situation as a special condition due to the subdivision consisting of all fifteen lots. Although Lot 1 is a commercial lot, it remains a part of the subdivision that fronts S. Mantegani Rd. The City agrees that if the improvements were made with the construction of the residential portion of the subdivision, the improvements made to S. Mantegani Rd could be unnecessarily damaged with the development of the commercial lot (Lot 1). However, the City is not guaranteed the development of Lot 1 at any given time.

2. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.

Applicant's Response:

City Code Section 152.161 – Determining Necessity for Improvements (B) – Direct access to substandard streets.

Mantegai Estates preliminary plat satisfies access to the residential portion of the plat. With the development and permitting process - Lot 1 of Mantegani Estates will improve the substandard street for direct access.

STAFF ANALYSIS: All subdividers are required to upgrade the fronting portion of the roads adjacent to their development. This proposed subdivided property is not different from any other within the City. The City agrees that the preliminary plat satisfies the access to S. Mantegani Rd from the residential portion of the subdivision via the extension of Florence Ave. However, the entire length of the eastern boundary of the "subdivision" fronts S. Mantegani Rd. The literal interpretation of the code requires the west half of S. Mantegani Rd to be constructed during the development of the "subdivision" regardless "(whether immediate or future) of sale or building development".

3. That the special conditions and circumstances do not result from the actions of the applicant.

Applicant's Response:

The special conditions and circumstances are not a result from action of the applicant or the preliminary plat this waiver is associated with. Holding street improvements till the development of the commercial lot 1 is the only special condition we would like to city to consider. This would ensure the overall improvements to S. Mantegani Rd. would be homogenous through-out with no unsightly saw cuts to what would be a new driving surface, curb and gutter, and sidewalk.

STAFF ANALYSIS: The City disagrees with the assertion the special condition is not a result of the applicant. The portion of the property currently zoned C-2 could have been rezoned to R-3 and the residential portion extend to S. Mantegani Rd. However, the developer has chosen to keep the C-2 zoning and extend the C-2 zoning westward. It is understood the developer would like the City to postpone the construction of the west half of S. Mantegani with the construction of the commercial lot (Lot 1), however there is no guarantee that Lot 1 will ever be developed.

STAFF RECOMMENDATIONS:

Staff recommends the denial of the waiver request to delay the construction of the west half of S. Mantegani Rd until the development of Lot 1 of the Mantegani Estates subdivision.

As an alternative, if Planning Commission determines to be appropriate, the staff recommends that the construction of the sidewalk along the west side of S. Mantegani Rd be deferred until the development of the commercial lot (Lot 1). However, the west half of the street portion of S. Mantegani Rd along the full length of the east property line of the subdivision shall be constructed during the construction of the residential portion of the subdivision.

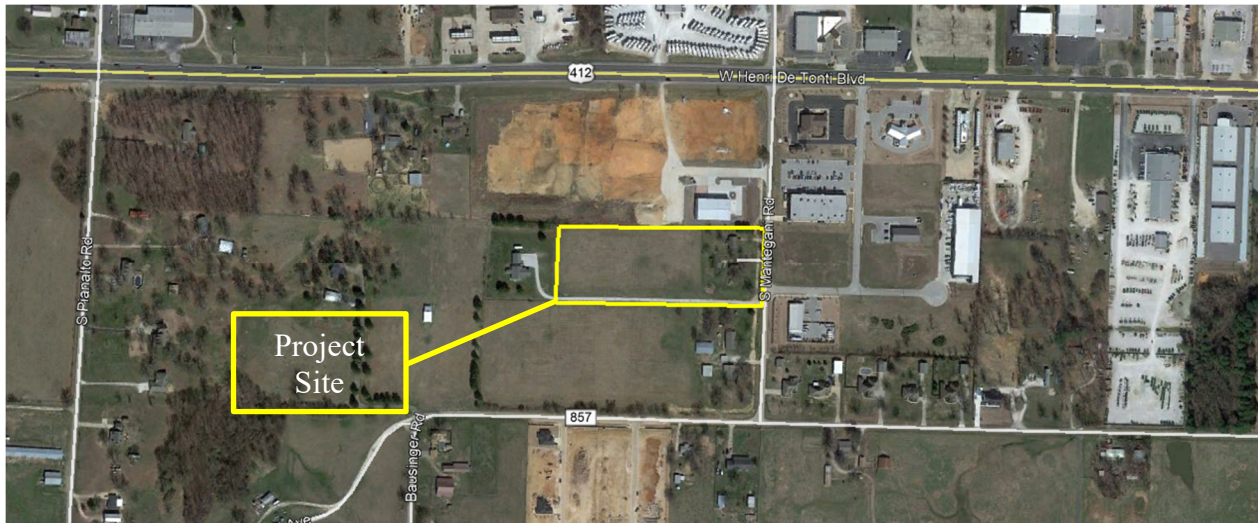


Figure 1: Vicinity Map

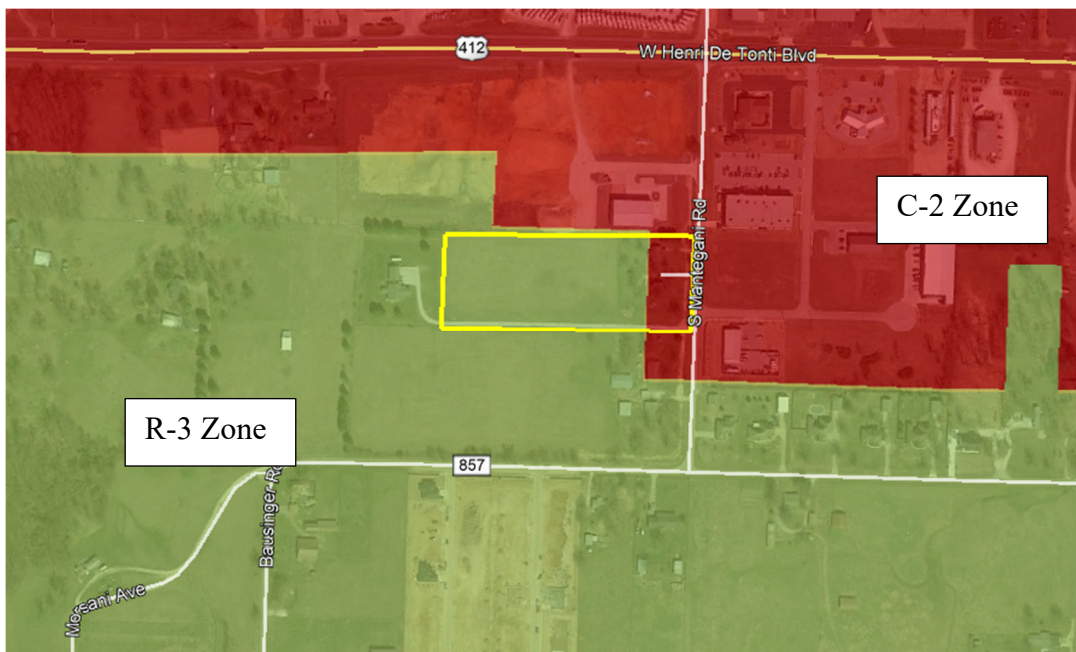


Figure 2: Current Zoning Map

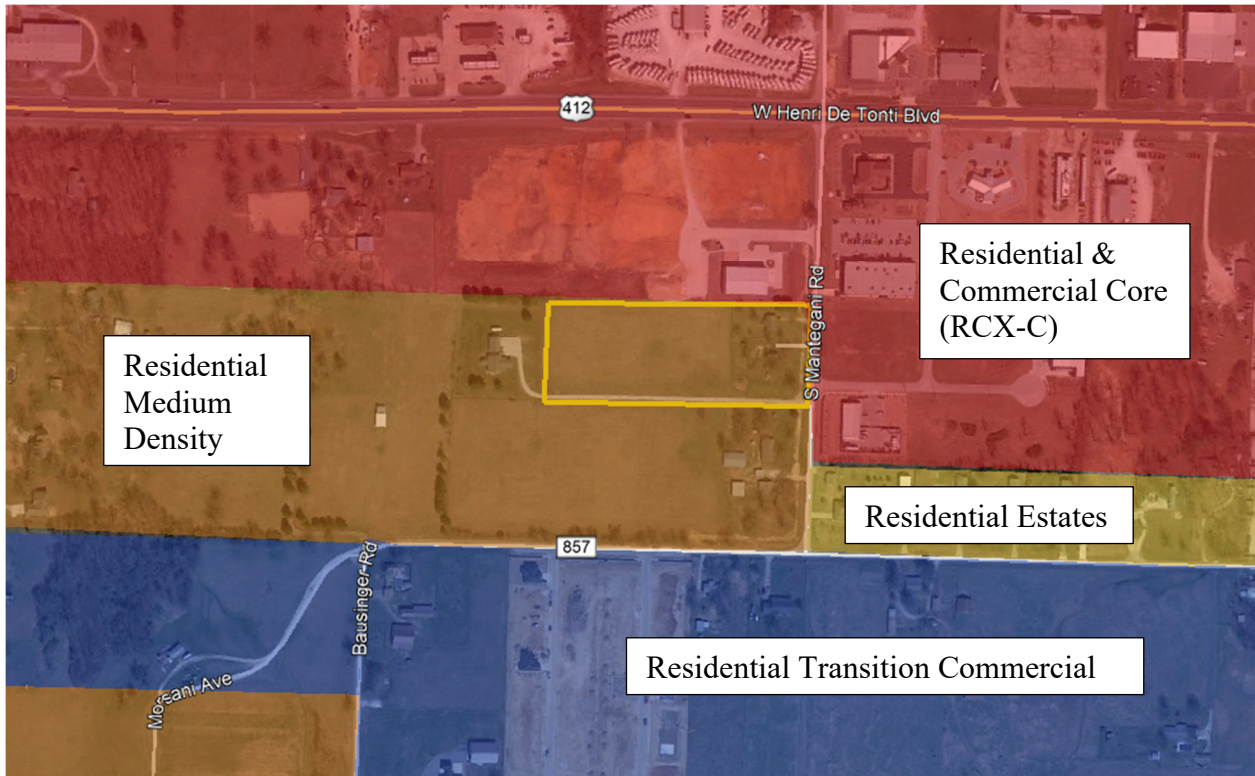


Figure 3: Future Land Use Map

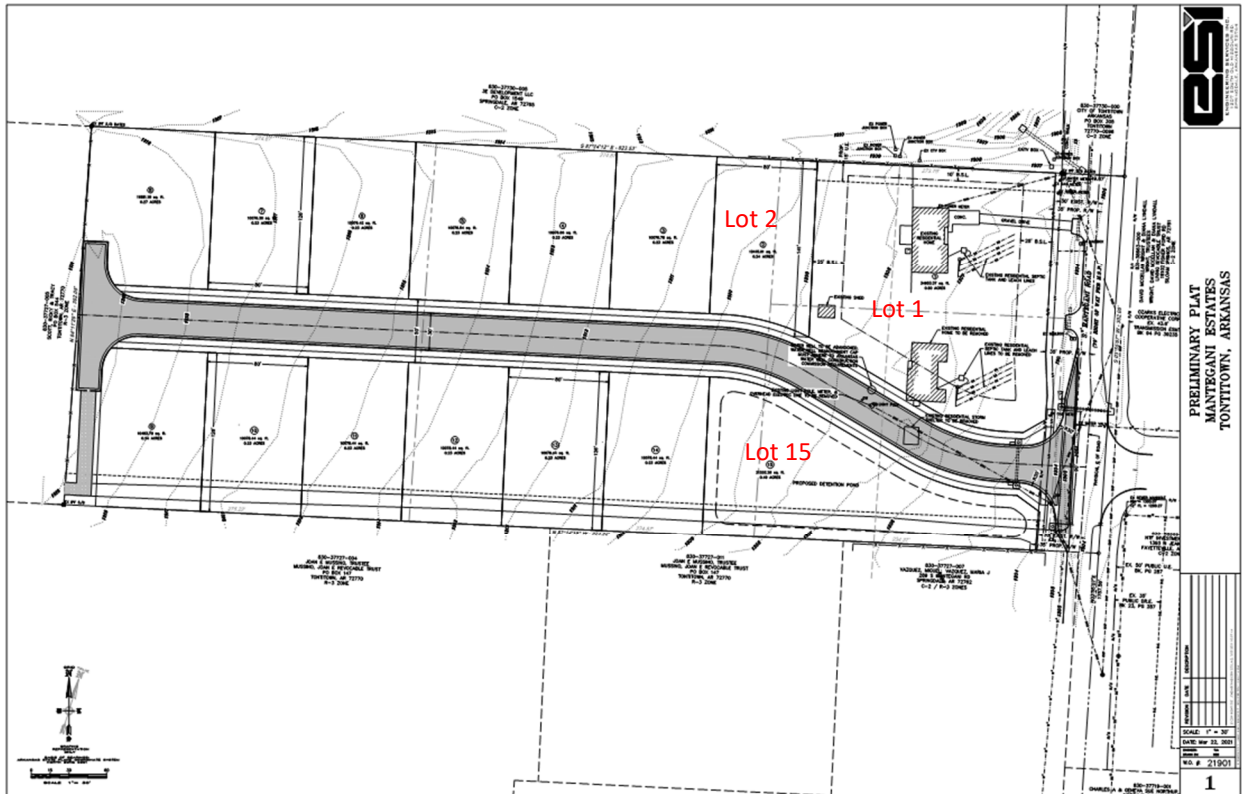


Figure 4: Mantegani Estates Preliminary Plat

