

**PLANNING AND ZONING COMMISSION
MEETING MINUTES OF OCTOBER 10, 2019**

APPROVED

STATE OF TEXAS §
COUNTY OF TARRANT §
CITY OF BEDFORD §

The Planning and Zoning Commission of the City of Bedford, Texas, met in Work Session at 6:30 p.m. and Regular Session at 7:00 p.m. in the Council Chamber of City Hall, 2000 Forest Ridge Drive, Bedford, Texas on the 10th day of October, 2019 with the following members present:

Chairman: Todd Carlson
Vice Chairperson: Michael Davis
Members: Keith Quigley
 Bryan Henderson
 Linda Moye

Constituting a quorum.

Staff present included:

| | |
|--------------------|---|
| Bill Syblon | Development Department |
| Kristtina Starnes | Planning & Zoning Assistant |
| Jayashree Narayana | Consultant with Livable Plans and Codes |

(The following items were considered in accordance with the official agenda posted by October 4, 2019)

CALL TO ORDER

Chairman Carlson called the Work Session to order at 6:05 p.m.

WORK SESSION

The Commission and Staff reviewed and discussed items on the regular agenda.

Chairman Carlson adjourned the Work Session at 6:17 p.m.

EXECUTIVE SESSION

Chairman Carlson called the Executive Session to order at 6:17 p.m.

The Commission and Staff reviewed and discussed items on the regular agenda.

Chairman Carlson adjourned the Work Session to order at 6:39 p.m.

REGULAR SESSION

The Planning and Zoning Commission convened in the Council Chamber at 7:00 p.m. and the Regular Session began.

CALL TO ORDER

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Chairman Carlson called the meeting to order at 7:01 p.m.

INVOCATION

Commissioner Davis gave the invocation.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was given.

APPROVAL OF MINUTES

1. Consider approval of the following Planning and Zoning Commission meeting minutes: September 26, 2019 regular meeting.

Motion: Commissioner Quigley made a motion to approve the meeting minutes of the September 26, 2019 regular meeting with the corrections as stated.

Commissioner Henderson seconded the motion and the vote was as follows:

| | |
|-------------|--|
| Ayes: | Commissioners Quigley, Henderson, Moye, Vice Chairman Davis and Chairman Carlson |
| Nays: | None |
| Abstention: | None |

Motion approved 5-0-0. Chairman Carlson declared the September 26, 2019 meeting minutes approved.

PUBLIC HEARINGS

2. Zoning Case PZ-PP-2019-50052, consideration of a preliminary plat for Jackie Davis. The property is zoned Residential 9,000 SF Detached (R9) and the legal description is Joseph W Shaklee Survey, Abstract 1390, Tracts 2A01 and 2B, located at 1200 Shannon Lane and 1408 Schumac Road, Bedford, Texas. The property is located south of Schumac Lane and west of Forest Ridge Drive. (PZ-PP-2019-50052)

Jayashree Narayana, Interim Planning Manager, reviewed case PZ-PP-2019-50052.

Mr. Davis is requesting approval for the preliminary and final plat, dividing one acre that is approximately 5.6 acres to 14 lots. The property is located at Schumac Lane and Shannon Lane. The preliminary and final plat will meet the City's requirements, and the City Engineer is present to answer any questions regarding specific drainage issues on the property. The applicant is also present to answer any questions.

Chairman Carlson explained that in terms of plat review, it is administrative review, and there are four questions the commissioners are allowed to ask by State law and local regulations. First, does it comply with the subdivision ordinance?

Ms. Narayana said yes.

Chairman Carlson asked if it complies with land development code.

Ms. Narayana said yes.

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Chairman Carlson asked if it complies with any and all other regulations of the City.

Ms. Narayana said yes.

Chairman Carlson asked if the applicant is asking for a variance.

Ms. Narayana said no.

Chairman Carlson said those are the four questions the commission is allowed to ask about the plat.

Ray Ojeskie, attorney representing Mr. Davis, 201 Main Street, Fort Worth, Texas 76102.

Mr. Ojeski many hours have been invested in this plat between Mr. Davis, Mr. Davis's engineer, and City staff. Revisions to the plat were made to satisfy City staff's comments. City staff engaged with a flood plain consultant to review the proposed plat. The final product is the result of professional engineered study. The preliminary and final plats meet all of the City's subdivision ordinance requirements. The applicant is not seeking any variances or exceptions to the plat. When a plat meets the requirements of the City's subdivision regulations, the plat must be approved as an administrative act. There is no discretion to deny this plat. He has Section 212.010 of the Local Government Code with him and is willing to read that to the commission if asked to provide clear direction as to how these proceedings should occur. The platting process is a precursor to the actual development of this property. Building and construction plans must be submitted to City staff, and they must be reviewed as part of the building permit and inspection process. The platting process should not be confused with the building permit and inspection process. That will still occur. A lot of the issues that the citizens are there to discuss would be construction and building permit issues that should be discussed at the appropriate time. He asked the commission members to trust their City staff. This is their job and what they're supposed to do. They are here to protect the City of Bedford and that's the reason why they do their jobs. There's no evidence that they lack the competence or experience to review the plans and determine that they meet the Bedford subdivision requirements.

Vice Chairman Davis said just to reiterate, the applicant is just dividing land.

Mr. Ojeskie said that is correct. This is a division of one lot into 14 lots essentially, and that is what they are doing is to put them on the plat so they can be recognized as 14 individual platted lots for future development.

Chairman Carlson opened the public hearing at 7:13 p.m.

Steve Brimnay, 1209 Shannon Lane, Bedford, Texas.

Mr. Brimnay said there are three lots on Donna Lane that the City bought, and two of those lots had houses on them that were torn down. These lots run along the SB-1 creek that runs through the plat that is proposed. He asked the commission if they can tell him why those houses were torn down. He said he assumes they were torn down because of flooding and asked if that will happen with this plat, and is the City liable if it does.

Kenny Overstreet, Public Works Director for the City of Bedford.

Those houses were torn down because their foundations sat below the flood plain.

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Mr. Brimnay asked again if the City would be liable if the same thing happens to the homes proposed on the plat.

Matt Butler, City Attorney, said that he is comfortable with the City's position.

Mr. Brimnay said the tax payers' money will potentially be spent on purchasing those homes and tearing them down if the flooding occurs there, since it has already occurred.

Commissioner Davis said that the commission is dividing land.

Mr. Brimnay said he understands, but people are going to buy these lots and build houses.

Commissioner Davis said that, again, the commission is dividing land.

Mr. Brimnay said he reviewed the engineering documents for the drainage, and they doubled the coefficient for the runoff compared to what is around there and asked if that is standard practice.

Dean Yanagi, Senior Staff Engineer for the City of Bedford.

Mr. Yanagi said that the coefficient shows existing conditions and proposed conditions. The coefficient is for impervious areas and covers many things. Parks are at a 0.3 and residential is 0.6, that's why it is doubled. This is standard practice.

Mr. Brimnay said that the drainage maps shows zones labeled DA-1, DA-2, DA-3, DA-10 and DA-12. Those areas show the water flow and believes that in DA-1 the water flow is incorrect. The drainage and grading plans have boundaries for drainage easements set by the City's engineer and by FEMA. He asked how a FEMA boundary can be outside of the City's drainage easement. The engineer documents don't indicate a gully that is behind Shannon Lane. He asked if SB-1 is under the jurisdiction of the Army Corps of Engineers. He asked what the purpose is of the 100-foot retaining wall by the proposed Shannon Court and if it's to control flooding. He asked if any construction will occur within the FEMA flood plain and, if so, will it affect the flow of water. He said that there is erosion that occurs every time it rains, especially at Lots, 1, 2, and 13 on the proposed plat. The slope from Hidden Oaks to Shannon Court is significant, and the flow of water will increase once the trees are removed. The City has gone out on two occasions to do work on the easement that stops at his house. There will be other problems when the City comes in to put concrete channels to direct water.

John Hoag, 1200 Overhill Drive, Bedford, Texas.

Mr. Hoag said the property on Donna was bought by the City because it was in the flood plain. The FEMA flood plain was not updated and didn't show that the area had been filled in, and the house that was torn down wasn't really in the flood plain. He called FEMA several times and they threatened him that if he didn't let up then they would raise his rates. The flood plain maps are bad in the City.

Blaise Ferrandino, 1409 Schumac Lane, Bedford, Texas.

Mr. Ferrandino said he lives on the creek. There are certain stipulations for when part of the land is located in the flood plain. Any additional volume of water that is south backs up into their neighborhood.

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Mr. Ferrandino read the following document submitted to the Planning & Zoning Commission:

1408 Schumac Plat

Presented at October 11, 2019 meeting of the Planning and Zoning Committee. Bedford, TX

Considerations:

1.1.A (from the City of Bedford zoning ordinance)

The purpose of this Ordinance is to promote the health, safety, and general welfare of the community. The zoning regulations herein established have been designed to:

- (1) Promote compliance with the planning principles and land use patterns developed in the Comprehensive Land Use Plan. (please refer to this plan (Pg. 8) which designates part of the 1408 Schumac area as parks and open space)*
- (2) Prevent adverse or undesirable effects incompatible uses of land.*
- (3) Assure sufficient, suitable land for future development.*
- (4) Protect and improve the physical environment.*
- (5) Protect and maintain property values.*
- (6) Ensure that land uses are properly situated in relation to one another.*
- (7) To guide public and private policy and action and control density so that property can be adequately serviced by public services and facilities; and*
- (8) Preserve and develop the community's economic base.*

1.1 (from City of Bedford subdivision regulations)

The regulations contained herein, which were prepared after careful study by qualified members of the City Staff, are for the purpose of promoting the public health, safety and general welfare of the citizens of the City of Bedford.

3.1 (from the City of Bedford zoning ordinance)

The owner/applicant, his/her engineer or land planner shall submit a Final Plat prepared by a surveyor, registered in the State of Texas, which is in conformance with the approved Preliminary Plat of the subdivision and shall submit to the City Engineer complete preliminary engineering plans for all public improvements of the subdivision. The engineering plans shall be prepared in accordance with The Design Guidelines of the City of Bedford and City Ordinance No. 985 (Flood Damage Prevention) and all amendments thereto.

(Ordinance 985 is now subsumed by Article II)

ARTICLE II. - FLOOD DAMAGE PREVENTION²¹

DIVISION 1. - STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS

Sec. 62-31. - Statutory authorization.

The Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses.

(Ord. No. 09-2945, § 2, 9-22-09)

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Sec. 62-32. - *Findings of fact.*

(a) *The flood hazard areas of Bedford are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.*

(b) *These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood proofed or otherwise protected from flood damage.*

(Ord. No. 09-2945, § 2, 9-22-09)

Sec. 62-33. - *Statement of purpose.*

The purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) *Protect human life and health;*
- (2) *Minimize expenditure of public money for costly flood control projects;*
- (3) *Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;*
- (4) *Minimize prolonged business interruptions;*
- (5) *Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;*
- (6) *Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and*
- (7) *Insure that potential buyers are notified that property is in a flood area.*

(Ord. No. 09-2945, § 2, 9-22-09)

Sec. 62-34. - *Methods of reducing flood losses.*

In order to accomplish its purposes, this article uses the following methods:

- (1) *Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;*
- (2) *Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;*
- (3) *Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;*
- (4) *Control filling, grading, dredging and other development which may increase flood damage;*
- (5) *Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.*

We look to Planning and Zoning Commission of the City of Bedford to find that the materials submitted in seeking a plat for 1408 Schumac to be inadequate and potentially inaccurate. Given the extremely complex nature of drainage in our area it is our contention that further study is needed on site and

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that a comprehensive impact study is needed for the surrounding areas. This is in keeping with the Planning and Zoning Ordinance design, Article II dedicated to flood damage prevention, and the Comprehensive Land Use plan each of which is cited above. We are not calling for a legal conclusion but, rather, asking that the Commission use its ministerial charge to determine that the materials submitted are insufficient and that, therefore, the plat is rejected.

It is understood that HB 3167 has accelerated the decision-making clock and put cities in a tenuous position relative to developer's legal rights. However, HB 3167 was never intended to supersede or negate the primary duty of city government to protect its citizens and their property. Nor was it intended to abrogate the legal rights of the citizens of Bedford at large. Consider the legal exposure as the items below lead to their respective, probable outcomes – i.e. flooding, erosion, compromised foundations and land, decreased property values, and potential injury and loss of life. We ask that the city of Bedford work in partnership with its the residents by rejecting this plat. We have the same legal concerns relative to the well-being of the city as do you. We now ask that you look to share our concerns relative to the safety of ourselves, our children, our land, our quality of life, and our property values. We are your neighbors as you are ours.

Reasons the plat must be rejected

1. Survey map is inadequate:

a. The relationship between the floodplain and the plat is inaccurate. Concrete evidence of the inaccuracies is provided by a careful examination of the FEMA map for the area in question. The city should not ignore empirical evidence from long-time residents who have seen flooding and pooling within the proposed plat well beyond the flood plain areas indicated by the FEMA map.

b. We have concrete evidence of inaccuracy in the form of a survey map done for 1217 Shannon Lane. This map clearly shows the flood plain encroaching far to the east of what is indicated on the plat map. This encroachment was verified by a Bedford City engineer.

c. Standard survey procedure requires the indication of a benchmark. This benchmark serves as fixed reference from which distances and elevations might be measured in a consistent fashion. The surveys of this plat have no indication of a benchmark. Therefore it is unclear whether a fixed reference point was used to create the diagram.

d. The floodway is not indicated on the plat as required by the Preliminary Plat Ordinance:

The location, dimensions, descriptions and flow lines of all existing drainage structures, and the location and projected high-water elevations of the flood plain and floodway as defined by the Federal Emergency Management Agency.

This is a significant omission since the rules governing improvement in and around a floodway differ from those found in a floodplain.

e. There are discrepancies amongst three crucial sources: the 2009 FEMA/FIRM map (most up-to-date, the 2006 FEMA/FIRM map (used by the City of Bedford Floodplain Administrator), and the topographical map provided in the package submitted by the developer. It would seem prudent to commission an independent engineering study so that the lines of the floodplain might be properly known and included in future planning.

If the city proceeds in approving this plat without resolution of these inaccuracies it exposes itself to legal action emanating from various sources as well as FEMA sanctions.

2. Drainage is not fully accounted for in the application: (examples)

a. There is no headwall at the bottom of the lot 6 and 7 driveways. This water will wash across the road and into lots 10 and 11.

b. Drainage calculations for platted land versus undeveloped land shows a precise 2:1 ratio. This number was presumably arrived at outside the context of a field study.

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- c. There are waterways, appearing during storms that enter the property which are not accounted for on the drainage map. One example is the significant storm drainage runoff behind 1201 and 1205 Shannon Lane that does not appear to be documented in any of the engineering reports. This drainage runoff affects the proposed lots 9 and 10. This is a significant omission.*
- d. From our observations, we feel that the drainage direction in part of DA 1 is incorrect.*
- e. The elevation of proposed lots 11 and 12 and the subsequent grading that will take place will impact 1201 Shannon. How will the flow of water off of these lots be managed so that it doesn't affect 1201 Shannon?*
- f. There are no drainage arrows relative to the interface between existing developed land and the proposed plat.*
- g. There are no spot grades clarifying the drainage flow indicated by the arrows.*
- h. There is no detail of the drainage pipe under the cul-de-sac. In addition there is no headwall indicated.*
- i. Contour lines do not continue to boundary line so it is hard to tell how the water entering the development is being controlled.*

If the city proceeds in approving this plat without demanding a more comprehensive drainage report and detailed engineering it exposes itself to legal action emanating from various sources as well as FEMA sanctions.

3. Erosion is not fully accounted for: (examples)

- a. There is no engineering provided for the 3:1 slope come from Hidden Oaks in the South heading north into the neighborhood. This is already an area of severe erosion and erosion is certain to increase significantly with decrease of permeable land as well as the acceleration which comes from movement over paved surfaces and finished structures.*
- b. There is no engineering provided for the interface of Lots 1 and 2 and existing properties to the east. The undeveloped and developed properties are at different elevations at the point of interface.*
- c. Consider the erosion on the west side of SB-1 near the Schumac Lane Bridge. With the increased volume noted in the plat drainage table, it is likely this canyon wall will continue to erode. This has ramifications for the entire area, but especially for the proposed lot 13 which indicates its viable building area directly adjoins this cliff.*
- d. There is storm drain located between 1209 and 1213 Shannon that carries the storm and a constant flow of spring water for Shannon Lane, Michael, and Joshua Court into SB-1. During a storm, the runoff is significant and has created a deep ravine and serious erosion problems. The plan does not provide for limiting further erosion*

If the city proceeds in approving this plat without demanding a more comprehensive erosion report and detailed engineering it exposes itself to legal action emanating from various sources as well as FEMA sanctions.

4. Downstream impact: (examples)

City of Bedford Subdivision Regulation 6.2 (4)

A developer must assume all responsibility for surface water coming on site, what is generated by the development, and for not creating a detriment downstream of the development.

- a. The developer is fully responsible for any negative consequences which might arise downstream of the plat. Considering that property downstream is already flooding the increased volume (even the modest estimates provided in the drainage study table) will most definitely cause additional problems.*
- b. The property at 1200 Overhill floods on a regular basis. Increase in volume will surely result in increased flooding on this property. In the drainage study there is no accounting of or accommodation of this eventuality.*

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Without an impact study and accommodations based upon same the developer, the city might be considered negligent.

5. Safety: (examples)

a. The cul-de-sac right of way is adjacent to the floodplain (by our calculations the pavement itself is in the flood plain). Regardless of which interpretation one takes, there is inadequate engineering information detailing how the structural integrity of the cul-de-sac will be supported and maintained. The proposed three-foot fence/wall at the west and northwest base of the cul-de-sac will be woefully inadequate when a typical storm comes along. These storms elevate the creek level far beyond three feet above the flood plain. Our observations would place the figure at least ten feet, but this varies. One thing is certain: the level goes well above three feet several times yearly.

b. You have seen photographic evidence of SB-1's depth and current during a heavy rain. It is hard to describe the fury of that creek to those who not see it rise on a regular basis. The photographic evidence you see is after a typical storm. Every 2 – 3 years the creek rises and spreads much farther – well into the numerous lots proposed by this plat. In its fury it poses a real threat to people and animals. If the plat goes through, the houses built upon it will be in danger of flooding.

c. People do not venture into the 1408 Schumac floodplain lands during storms. This is because it is deadly. It can easily kill adults, children, and animals. The current is powerful enough to wash an automobile downstream with ease. If houses are to be built in this land the city will be placing residents in grave danger. Children could very easily, in some cases without leaving their own property walk into the creek. Eight of the proposed lots within the plat would be within a "stone's throw" (0 – 30 yards) of the danger. All in proximity are in danger. We, who live here, never tread in this land during storms. If the proposed plat is allowed to move forward, treading upon this land will be a daily event.

People can easily be swept up in the creek's fury. We implore you to trust the people who have tracked the creek for years and consider the legal ramifications. We believe that approval plat, without further study, would place people in peril.

Joe Liesing, 1500 Michael Drive, Bedford, Texas.

Mr. Liesing said that if everyone drives to their neighborhood they can see what happens during a storm. When storms come through, water comes up to his back porch and front door. The storm drains cannot take the water in fast enough. The strong current will get worse once the vegetation and trees are removed and replaced with streets and houses. If 14 or 15 buildings are going to be built, it will affect everybody in that immediate area. He asked the commission to not allow this development to be passed.

Joe Carter, 1501 Michael Drive, Bedford, Texas.

Mr. Carter said he built three houses on Shannon on the west side of Brook Hollow North. When he built that, he had to raise the house on the corner of Schumac and Shannon in order to meet with the City codes. Now there is a completely different flood plan. The water that comes down runs across the street to the gutter on the other side. He doesn't understand what they are going to do about the water. If they don't intend to build houses and all they are talking about is dividing property, then why is there a consideration at all. They aren't talking about dividing property, they are talking about building houses. The encroachment on the back of that lot is about three feet higher than when the property was built. When you step off of the retaining wall, you will find that it's still in the flood plain. If where he was building was in the flood plain, it's still in the flood plain. If people really knew about

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the flooding problems, they would not want to build a house there. If it can't hold the water now, how will it sustain the water in the future.

Justin Bartos, 1212 Shannon Lane, Bedford, Texas.

Dr. Bartos said all of the land to the west slopes up to Michael Drive. His property has a slope behind it and at one point there was a nature water source before this area was developed. There is a history of a tremendous amount of water running down that slope. Within a month after he built his house he had to put sandbags up against his garage door to keep his house from flooding. A developer would have built this property out 30 years ago if they thought they could make money by building houses. Until a more sophisticated engineering plan is established to undertake this issue it will continue to be a flood. He understands that this case is about dividing property in hopes of developing on those properties, and it's better to address these issues now instead of when people purchase these lots and discover they cannot build on them.

Susan Thompson, 1217 Shannon Lane, Bedford, Texas.

Ms. Thompson said the creek is in her backyard. The City is currently reinforcing the Schumac bridge on the north side of this property with expense of the tax payers, because the bridge is being prevented from washing out. On the south end of this property at Brook Hollow Park, the City is currently involved with taking some concrete retaining walls that the fury of the stream laid flat. The City is breaking up that concrete and using them as stones further down the creek. She told the commission to see how much money that is costing and then multiply it.

Mr. Ferrandino asked the commission if they are only covering the preliminary plat or both preliminary and final.

Chairman Carlson said the first item is the preliminary and the next item is the final plat tonight. They are required to cover the agenda regardless of the decision.

Clyde Wright, 1217 Joshua Court, Bedford, Texas.

Mr. Wright said there are driveways from Lot 1 through Lot 5. All of the driveways come down to about Lots 1 and 2. There is no way of stopping the water. He asked who will be responsible for the water that hits their houses, and when will they get the answers of questions being asked. From what he understands, the developer is responsible for the water coming off of them. Someone will have to take it on and distribute it the right way.

Chairman Carlson closed the public hearing at 8:00 p.m.

Commissioner Henderson asked City staff and City engineers in regards to protecting the bridge on the north end of the property and the downstream to the impervious development in that area.

Kenny Overstreet said that in regards to the work they were stating to the north part of that subdivision, there was an area where a sanitary sewer that was invulnerable of collapsing. Public Works went in and built a concrete back wall and backfilled around that to support that manhole to keep it from collapsing into the creek.

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Commissioner Henderson asked if it was the bridge.

Kenny Overstreet said no. The work they did was strictly to protect the manhole. If that is the same project they are talking about, it was done about a month ago.

Commissioner Henderson asked if the City engineer has looked at the effect of the downstream water flow for this area.

Dean Yanagi said the plans he sent to Blaise are not final plans, they are still in the process of being reviewed. They are working with the engineer and one thing they talked about was to put in a drop inlet with a smaller storm pipe to retain some of that water. That is one thing they are looking at right now because there are concerns about that. They are also looking at providing erosion protection along where the edge of the cul-de-sac is. Those are not on the plans yet, they are still in the design phase. The plans that he has are not construction-ready plans. As far as the lots, as each builder comes in for each lot, the City still has to review each lot individually on a case by case basis. If a builder comes in and wants to fill in that flood plain, they will be required to go through FEMA. Right now this is just a subdivide, and as builders come in they will have to look at each lot one by one to make sure they are still following the rules and not going into the flood plain or filling in the flood plain.

Commissioner Henderson asked if they can put fill into the flood way or flood plain.

Dean Yanagi said no, they cannot. It would have to go through FEMA and get a CLOMAR permit to get that approved.

Chairman Carlson asked if he could explain what a CLOMAR is.

Dean Yanagi said it is a letter of map revision to show that if you are filling in a flood plain that you aren't going to be affecting the flood plain as far as raising elevations or causing any downstream flooding. That is a permit that comes from FEMA. As far as the Corps of Engineer, there is a sanitary sewer that will be going along the creek that the builder will have to go through them to get the permit. There is a permit through Corps of Engineer they will have to get for sanitary sewer.

Commissioner Quigley asked Dean Yanagi if all they are talking about is a preliminary plan to divide the property up so the property owner can sell those lots. They are not talking about a single developer coming in to do a subdivision buildout. Each one of these lots would have to come back and have building permitting to go through and an individual process for every one of these lots?

Dean Yanagi said that is his understanding. As far as the grading, they have a preliminary grading from the developer of what they think it will be. They have finished floor elevations established. As far as the actual grading plan, they don't have that yet. They won't have that until the builder comes in and builds customized homes, that's when they will have to review it and make sure that they don't fill in the flood plain.

Commissioner Quigley asked if that is something that will come back to P&Z and City Council.

Dean Yanagi said it will not go to P&Z, just permits and building inspections.

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Jayashree Narayana said she would like to clarify that it doesn't matter if it's a customer builder or developer or a track home builder. The process from a subdivision standpoint and the City's regulations is first you are subdividing the property, and if you are putting in public infrastructure like this subdivision is, there will be a whole level of review from the City's standpoint on the construction plans of the streets, infrastructure, drainage, waterlines, etc. Those are the construction plans. Subdivision usually is the first step, next the construction plans are reviewed. Once the infrastructure goes through the City goes in and inspects it making sure it is built according to the plans. When each lot is developed, you will be working with the builders on the erosion, any kind of work in the flood plain – which requires additional reviews. This is just the first step of everything talked about in terms of technical requirements. The City has regulations. Every subdivision in the City is built to those standards. This subdivision will follow the exact same standards as all other subdivisions of the City.

Commissioner Henderson asked Jayashree Narayana if she could confirm if the streets will have to be permitted as well.

Jayashree Narayana said yes. There will be construction plans that the builder submits to the City. That is what Mr. Yanagi was talking about.

Vice Chairman Davis said the developer is dividing the land in hopes of building, and the testimony heard is that it is not buildable. That fact could come to fruition at the end. He could plat it, and it be determined during the construction planning phase, that it is in fact not buildable. Is that a possibility?

Jayashree Narayana said it is and the property owner or developer can go to FEMA and do a map revision and make changes to accommodate drainage. It's an engineering issue, cost issue, and the property owner has the ability to do that at that point.

Vice Chairman Davis said that the commission has been tasked with voting on the land owner's right to divide his land.

Jayashree Narayana said yes.

Vice Chairman Davis said this survey was provided to the commission during the public hearing, and it does in fact show a 100-year flood plain on Lot 1R of this subdivision. But it states that the basis of that flood plain was on a very old map in Volume 388-219 Page 13. It was shown on a plat. If you look at the notes, immediately below it says that according to the U.S. Department of Housing and Urban Development, this property has now been deemed to be in Zone X, which is defined as beyond the 100-year flood plain. He wanted to clarify that this survey gives a flood plain note. What is shown on the survey as a flood plain was drawn on a map when this subdivision was platted some time ago.

Motion: Commissioner Quigley made a motion to approve zoning case PZ-PP-2019-50052.

Vice Chairman Davis seconded the motion and the vote was as follows:

Ayes: Commissioners Quigley, Moye, Vice Chairman Davis and Chairman Carlson

Nays: None

Abstention: Commissioner Henderson

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Motion approved 4-0-1. Chairman Carlson approved zoning case PZ-PP-2019-50052.

- 3. Zoning Case PZ-FP-2019-50057, consideration of a final plat for Jackie Davis. The property is zoned Residential 9,000 SF Detached (R9) and the legal description is Joseph W Shaklee Survey, Abstract 1390, Tracts 2A01 and 2B, located at 1200 Shannon Lane and 1408 Schumac Road, Bedford, Texas. The property is located south of Schumac Lane and west of Forest Ridge Drive. (PZ-FP-2019-50057)**

Jayashree Narayana, Consultant, reviewed case PZ-FP-2019-50057.

This is a continuation of the preliminary plat, it is the final plat request to approve the 14 lots. This is the first step in the process. There will be construction plans for the infrastructure, drainage, and each individual lot needs to be reviewed for erosion control and drainage standpoint before building permits can be pulled for these lots.

Chairman Carlson opened the public hearing at 8:13 p.m.

Carol Leising, 1500 Michael Court, Bedford, Texas.

Ms. Leising said if this project goes through, she will have to sell her house because will lose its value. Her husband has already put a sign up.

Pam Wright, 1217 Joshua Court, Bedford, Texas.

Ms. Wright said her property backs up to 1200 Shannon. She has lived there for twenty years and has only had that one house behind her property. On the plat, he plans to demolish that house and build four houses in that same lot and she's not happy about that. They are on ¼-acre lots, the homes are old but they are 2,300 to 3,800 square feet. Anything that is approved should be comparable to the rest of the neighborhood.

Steve Brennan, 1209 Shannon Lane, Bedford, Texas.

Mr. Brennan asked who will pay for the retaining walls that will need to be built or the water management system, will it be the builder of the lot or tax payers. Since it doesn't go to P&Z for another review, the builder just needs to get a building permit. He just wants to know who will pay for all of this.

Jim Carter, 1501 Michael Drive, Bedford, Texas.

Mr. Carter said after this, it doesn't go to City Council. It just goes to the building department.

Chairman Carlson said that plats don't go to City Council. This is it.

Mr. Carter said that people make mistakes including City engineers and City employees, they make mistakes all the time. The citizens have been placed in an adversarial position with the people who are supposed to be protecting them.

Sheryl Bartos, 1212 Shannon Lane, Bedford, Texas.

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Ms. Bartos has lived in her house for 30 years and has witnessed what the water does. Her house was not even a year old and they had to sandbag their house to keep the water coming into their house. There is a concrete drainage ditch that was built at the resident's expense to keep water from flowing into her yard. When it rains there's a river that runs between her house and Mr. Carter's house. The water runs down from Forest Ridge. The creek won't be able to handle the water when the additional 14 homes are built. She told the commissioners that the flooding will be on their conscience.

Joe Liesing, 1500 Michael Drive, Bedford, Texas.

Mr. Leising suggested that they adjourn and drive to Shannon Lane.

Phillip Thompson, 1217 Shannon Lane, Bedford, Texas.

Mr. Thompson said the commission is putting in place a provision for someday to have families there with kids who will play along that creek.

Marsha Wall, 1213 Joshua Court, Bedford, Texas.

Ms. Wall told the commission that everyone who had houses built there followed everything the City told them, but they still have water in their backyard. She asked who will fix their houses before allowing the new houses. She told the commission that they have an issue. She always has water in her backyard. She asked how could the commission approve this plat after everyone who has told them their issues and shown pictures of the water and damage.

Chairman Carlson said this is state law. They are the Planning & Zoning Commission. The four questions asked at the beginning of the meeting, they rely on the City staff on that information. State law requires this process. Talking about legal jeopardy, the applicant has rights and if the City doesn't act on it in 30 days there's a penalty. He said that they aren't immune to any of their concerns. They asked the four questions, and the answers were correct.

Ms. Wall said the commission is relying on those answers by the people who gave it to them. But the citizens are telling them that the information is not correct and it is missing information. She asked why they don't take both maps and put them together and see what is wrong.

Justin Bartos, 1212 Shannon Lane, Bedford, Texas.

Dr. Bartos said the commission is basing the answers thinking that the City Engineer and the City Planner did all of their work. After seeing and hearing the arguments, the commission should question if the City Engineer and staff has done their due diligence. They should look at it and question how the flooding is in 2019 versus what it was 40 years ago.

Commissioner Quigley said he wanted to point out that someone asked why the City didn't go out and get a second independent study. He said that the owner and his engineering people have been working with the City for two years going back and forth and making changes based on recommendations. They could table the case but wouldn't be able to meet soon enough because those independent studies take years. State law will approve the plat regardless. Their hands are tied. The commission doesn't have any other choice.

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Blaise Ferrandino, 1409 Schumac Lane, Bedford, Texas.

Mr. Ferrandino said he doesn't want to see the City sued. They will all be sued if they start building on that land. He understands that the commission is in a horrible position. He finds the survey flawed in regard to the flood plain. He's talked to an insurance adjuster and a county engineer, and they said that there are questions unresolved. He understands the legal risk but asked how they can go into this knowing they could be endangering people. He said either way they go there will be a problem, but he would rather err on the side of protecting the citizens and residents of Bedford. He said that Mr. Yanagi said that the drainage reports are not complete yet and asked if there is more coming with the drainage reports. It is encumbant for the developer to show what is going to come of the water that comes onto the property. There are not any arrows there showing it. It's a concern for the existing residents as well as for the future residents of Vista Ridge because the water backs up. He said the City will get sued either way. He asks the commission to do what is right and get sued.

Kara Leising, 1500 Michael Drive, Bedford, Texas.

Ms. Leising said her neighbors all look out for each other. She lives at the bottom of the hill on Michael Drive and has seen the water run through her property. She said she hopes that the City will be there to take care of all of the damage and problems that comes with the flooding. She said surveyors and other people working for Mr. Davis have been in the neighborhood doing work. They are outside making noise and littering. She said they need to be good neighbors and keep the neighborhood nice.

Steve Brennan, 1209 Shannon Lane, Bedford, Texas.

Mr. Brennan asked the City engineer about two drainage areas that are not accounted for in the drainage maps, DA-10 and DA-12. He asked if that will be taken into consideration. He asked if the commission doesn't have an answer, then how can they proceed.

Vice Chairman Davis said State law allows this to move forward.

Mr. Brennan asked the commission if they are representing the citizens of Bedford, and are the citizens' hands tied also.

Chairman Carlson said yes, and they generally don't do public hearings for plat reviews. He reiterated that the commissioners are all volunteer citizens. They are not immune to these problems. This is State law, and the City Attorney says this is proper and this is all the commission is allowed to do.

Mr. Brennan said all of their questions have not been answered such as the drainage issue.

Chairman Carlson said that's a valid question but they have to deal with what's in front of them.

Vice Chairman Davis said they are looking at a division of land. The citizens are looking at the use and civil engineering, and the two are apples and oranges.

Mr. Brennan asked why the City is asking for drainage plans and grading plans if all the commission is doing is breaking up land.

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Vice Chairman Davis said the commission cannot answer that question. They are charged with approving a map. He has faith in their City staff.

Mr. Brennan said there are problems that City staff is not aware of.

Vice Chairman Davis said that has nothing to do with a map. He said that if someone comes in and wants to build a house on a lot but nothing can be built on that lot, then it's just a piece of land.

Commissioner Henderson said that this meeting shouldn't have been a formal meeting or public hearing in the first place. The notification letters are not sent out regarding plats either. He said that he went out and walked this property and was shocked at the number of trees that he saw, the slope of the land, and believes that the builder or developer will be out quite a few dollars to make this buildable. He said he doubts that there will be small, cheap houses out there. If this were a situation where they could evaluate this rather than being required to answer those four questions, he would be voting no. But at this point their hands are tied and don't have a choice but to approve this plat.

Clyde Wright, 1217 Joshua Court, Bedford, Texas.

Mr. Wright said Commissioner Quigley mentioned that the City has been looking at this property for the last two years. But the commissioners need to look back further than two years because the applicant has been denied before and ask why he's been denied before. He asked Matt Butler, City Attorney, if he agrees with everything the commissioners are saying.

Matt Butler said he works at the pleasure of the commission.

Mr. Wright said the commission has deaf ears and needs to look into why Mr. Davis was denied before back in the 1990s.

Blaise Ferrandino, 1409 Schumac, Bedford, Texas.

Mr. Ferrandino asked if the residents can ask for a drainage study for the water coming on to their land.

Chairman Carlson said that would be directed to Public Works.

Mr. Ferrandino said the commission has three options that he read from HB3167. One is to approve, one is to deny, and one is to approve with conditions. The drainage issue is an obvious problem. They do have the option to approve, they are asked to make a decision within 30 days. They should approve with conditions and the condition would be to provide the drainage report.

Vice Chairman Davis said if the drainage study goes for more than 30 days, then the plat automatically gets approved.

Mr. Ferrandino said it all comes down to the drainage. It's an obvious problem and maybe the study will change the answers to those questions to no.

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Vice Chairman Davis said he agrees with a lot that has been said, but he is hard pressed to know of someone who has been killed or died because a map was drawn wrong. And that is all he is asked to do is approve a map.

Mr. Ferrandino said in the case of the flood zone, all of this other work is required to show additional details. This plat is not adequate.

Vice Chairman Davis said that the plats are in different codes. This is simply a map. He recommends that the residents are at the City during the development phase when the developer is addressing their issues.

Chairman Carlson said there's building permitting process, construction process, every step of the way has to be approved by the City. They can go to Council and state their case also.

Commissioner Quigley said there's nothing that says that they can't get on the agenda and go to Council meetings and talk about all of this and ask their questions. He asked when this application was submitted and when the 30-day countdown started.

Jayashree Narayana said there was an application submitted a few years ago for a zoning change. That changed the density which was a public hearing process and was denied at that point. The countdown started on October 3rd.

Commissioner Quigley asked Kenny Overstreet and Dean Yanagi if there's any further study that can be done before the 30 days is up.

Kenny Overstreet said a complete drainage study would take several months. You could also ask the developer what steps he has taken to quantify the drainage limits.

Mr. Ferrandino said HB 3167 makes allowances for the developer to grant extensions to the City, so a proper drainage study can be done.

Chairman Carlson asked Matt Butler if the commission can approve a plat with conditions.

Matt Butler said in the circumstances when staff is saying that it meets all of the conditions of the development regulations, that provision is not applicable.

Mr. Ferrandino said HB 3167 allows for an extension for the 30-day period if the developer agrees to it. If so, a further drainage study would answer questions. He asked if that is available to them because the law allows for it if there's an agreement between the developer and the City.

Jayashree Narayana said essentially the plat is the legal process for the property to start the development process. The technical aspect of the drainage study can still happen, and they still have to meet the City's regulations and FEMA regulations. A lot of those questions cannot be answered until a builder actually takes a lot and decides what kind of house they want to build, what the setbacks are, how much they want to grade the property, etc. So a lot of those decisions are determined by how much grading on each lot will be, and that is not going to happen now. The assessment is of the larger watershed. This is a small parcel in a larger watershed that goes from north at S.H. 121 and Harwood down to the Trinity River. When talking about the larger watershed, this small parcel of land

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is not going to make a big difference on the drainage. With that being said, the technical aspect of the subdivision regulations will still apply. The planning process is more for an administrative process that they can subdivide the property. This was advertised as a public hearing that was not required in the ordinance. There is not a negotiation on those aspects.

Mr. Brennan asked who is building the road. There is a road on the plat, and someone has to build the road before a builder can start building. He asked if the drainage study will be complete before the road is built.

Dean Yanagi said after the plat gets approved, they will have to finalize the construction plans. It is the developer's responsibility that when he subdivides and builds the road, there has to be access and there is water, sewer and sanitary sewer services. That will be done by the developer as far as the road construction and utilities.

David Medina, 1600 Michael Court, Bedford, Texas.

Mr. Medina said every time it rains, six inches of water goes in front of his yard into his neighbor's front yard. He has neighbors who have pumps to pump the water away from their houses. His neighbor's house floods every four years.

Chairman Carlson closed the public hearing at 8:58 p.m.

Commissioner Quigley said they don't have the time to ask for further studies. Even if they did, they don't know what a builder is going to plan and what they would do on a lot. He found in the staff report that the applicant would dedicate water, sanitary sewer and storm drains in the development but he didn't find that on the plat. He told the audience that they can go to City Council and he's recommends it. There aren't many Bedford citizens who do it often enough. However, this is a law from the State, not from the City Council. They should go to Council and talk about drainage issues. There are several neighborhoods that have them. There have been several laws that have changed recently, and the commission has gone through them with the City attorney. The only concern with HB 3167 was the timing. Most people bring things to them that they want to change, such as a variance or special exception. This case is different, and Staff was able to answer the four questions that the State mandates correctly. If they want to change the law, go to City Council, write to their legislature, and ask them why they made this change. If there's something on a plat that they have questions on, there's not enough time to get them answered.

Commissioner Henderson said he agrees with Commissioner Quigley. Also, the City can no longer dictate what building materials are used, as long as it meets the code. He said they should express their thoughts to their State representatives.

Chairman Carlson said in the past 15 years, this has never happened on a plat review. They are just site maps. If this were any other application or case, such as a special use permit or a site plan, there would be a different conversation going on. But the letter of the law and the State requirements are fulfilled, and by law the applicant cannot be denied. It opens the commission up to legal liability. Plat reviews are dictated to them by the State and the City.

Vice Chairman Davis asked if they all abstained, but the applicant still gets the final plat. It would still happen by State law.

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Motion: Commissioner Quigley made a motion to approve zoning case PZ-FP-2019-50057.

Chairman Carlson seconded the motion and the vote was as follows:

Ayes: Commissioners Quigley, Henderson, Vice Chairman Davis and Chairman Carlson
Nays: None
Abstention: Commissioner Moye

Motion approved 4-0-1. Chairman Carlson recommended approval of zoning case PZ-FP-2019-50057.

ADJOURNMENT

Motion: Commissioner Quigley made a motion to adjourn.

Commissioner Henderson seconded the motion and the vote was as follows:

Ayes: Commissioners Quigley, Henderson, Moye, Vice Chairman Davis and Chairman Carlson
Nays: None
Abstention: None

Motion approved 4-0-1. Chairman Carlson adjourned the Planning and Zoning Commission meeting at 9:06 p.m.

Todd Carlson
Planning and Zoning Commission

ATTEST:

Kristtina Starnes
Planning & Zoning Assistant