APPLICATION TYPE: OTHER BUSINESS

File Number:5-D-06-OBRelated File Number:Application Filed:4/7/2006Date of Revision:Applicant:JOHN K. KING, ATTORNEY FOR OPPONENT

Owner:

PROPERTY INFORMATION

General Location:

Other Parcel Info.:

Tax ID Number: 999 999

Size of Tract:

Accessibility:

GENERAL LAND USE INFORMATION

Existing Land Use:

Surrounding Land Use:

Proposed Use:

Sector Plan:

Growth Policy Plan:

Neighborhood Context:

ADDRESS/RIGHT-OF-WAY INFORMATION (where applicable)

Street:

Location:

Proposed Street Name:

Department-Utility Report:

Reason:

Appeal of MPC decision to certify for recording the final plat of the Resub of Lot 13, Cartref, Block A (9-SW-05-F)

ZONING INFORMATION (where applicable)

Current Zoning:

Former Zoning:

Requested Zoning:

Previous Requests:

Extension of Zone:

History of Zoning:

PLAN INFORMATION (where applicable)

Current Plan Category:

Requested Plan Category:



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Sector Plan Designation:

Density:

Jurisdiction:

SUBDIVISION INFORMATION (where applicable)

Subdivision Name:

Surveyor:

No. of Lots Proposed:

No. of Lots Approved: 0

Variances Requested: S/D Name Change:

OTHER INFORMATION (where applicable)

Other Bus./Ord. Amend.:

Appeal of MPC decision to certify for recording the final plat of the Resub of Lot 13, Cartref, Block A (9-SW-05-F)

MPC ACTION AND DISPOSITION

Planner In Charge: Tom Brechko

Staff Recomm. (Abbr.):

Staff Recomm. (Full): Background:

On September 8, 2005, the Planning Commission approved the third final plat that had been submitted for the resubdivision of this 2.46 acre lot into four lots. The two previous final plats were denied on appeal to Knoxville City Council. An appeal was also filed on the Planning Commission's September 8, 2005 approval to Knoxville City Council. On November 22, 2005, City Council reviewed the case and upheld the appeal (denied the final plat) based on seven grounds.

Planning Commission Staff's Action on the Final Plat:

Under Section 36-35 of the Knoxville Knox County Minimum Subdivision Regulations, if an appeal of an approval of a final plat is upheld, the applicant may redesign his subdivision to eliminate contested features or portions and submit his final plat for certification. Following the action of City Council on November 22, 2006, the applicant revised the final plat and submitted the plat to Staff for certification for recording.

Following the submission of the revised final plat, Staff conducted a thorough review of the final plat in view of the seven grounds (identified below in italics) on which Knoxville City Council had denied the final plat and made the following findings:

"All lots do not have a minimum of 25 feet of width on a public street, in violation of Section 64-24 of the Subdivision Regulations." The revised plat includes an adjustment to the lot line between Lots 3 and 4 that increases the frontage for Lot 4 along the right-of-way of Westland drive, from 25' to 34'. This increase of the lot frontage allows for a distance of 25.1' between the property corner for the adjoining lot to the southwest and the corner between Lots 3 and 4. All lots now meet the minimum frontage requirement of Section 64-24.

"Such frontage on a public street does not provide readily apparent physical means of pedestrian and vehicular access that is traversable access, in violation of Section 64-24.1 of the Subdivision Regulations." The applicant has provided documentation from KUB regarding the relocation of the utility pole at the street frontage for Lot 4. Relocation costs would be the responsibility of the property owner. This would also apply for any alterations of a sewer manhole or drainage structure. The property owner would be responsible for obtaining a right-of-way permit from the City for the driveway and alteration of any drainage structure. While there would be costs associated with providing the driveway for Lot 4, existing topography and utilities would not prohibit the provision of traversable pedestrian and vehicular access to the lot. It is Staff's position that all lots comply with Section 64-24.1.

"The final plat does not meet the requirements of the City's Zoning Ordinance, Article 5, Section 6.D.9 in that it does not have 25 feet on a public street nor on approved permanent easement, meeting the requirements of the Subdivision Regulations." As identified in Item 1 above, the plat has been revised to provide the 25' of frontage for Lot 4 on Westland Dr. The three other lots have more than adequate frontage on either Westland Dr. or Sherwood Dr. Meeting the legal frontage, an exclusive permanent easement or joint permanent easement is not required for meeting the access requirements of Section 64-24 of the Subdivision Regulations.

"The final plat does not meet the requirements of the City's Zoning Ordinance, Article 5, Section 7.b.2, as to the minimum width of driveways and minimum width of curb cut. Minimum driveway width is 10

feet and the curb cut is 20 feet." We do not require that the driveway and curb cuts be identified on the final plat. As previously stated, the lots meet the access requirements. Documentation for the proposed driveways (including application for the right-of-way permit) is provided when the property owner applies for the building permit. At that time, the property owner will be required to comply with the requirements of the zoning ordinance. For most lots the driveway location is not known until the specific house plans are selected. The plat provides adequate public street frontage to provide driveways and curb cuts in accordance with City requirements.

"The proposed access if off an easement and the easement does not comply with the requirements of Section 64-24.42 and 64-25 in that the proposed plan unnecessarily creates double frontage lots." With all lots meeting the minimum frontage requirements, a joint permanent easement is not required for meeting the legal access requirements. The "common area / shared access easement" shown on the final plat is not a joint permanent easement as identified in the Subdivision Regulations and therefore the "common area / shared access easement" does not create double frontage lots. There are many instances of lots meeting the frontage access requirements that have either shared or cross access easements with adjoining parcels.

"Additionally, the final plat does not reflect or show the required paved width of the easement which is required to be 20 feet, so the final plat does not show conformity with Section 64-24.50 of the Subdivision Regulations." As identified in Item 5 above, the "common area / shared access easement" is not a joint permanent easement and therefore is not subject to the requirements of Section 64-24.50.

"The proposed development does not enhance the sound development of the neighborhood in which the subdivision lies, in violation of Section 62-20 of the Subdivision Regulations." Section 62-20 of the Minimum Subdivision Regulations is within a section of the code labeled "Streets and Roads" and Section 62-20 is captioned "Relation to Adjoining Road System". No new roads are proposed for this subdivision. In Knox County Circuit Court on October 17, 2005, Judge Workman ruled that the application of Section 62-20 as a basis for denial of the proposed subdivision of this property into four lots was not valid. With the minor changes between the previous final plat and the revised plat that is before us at this time, it would seem reasonable that the ruling would still apply. If a developer of the subdivision decides to utilize the shared access easement over the common area to provide a single access to the lots from Sherwood Dr., that single access would be superior to providing four individual driveway connections to Sherwood Dr. and Westland Dr.

Based on the above findings, Planning Commission Staff made the determination that the final plat complied with the Minimum Subdivision Regulations and Knoxville Zoning Ordinance and pursuant to Section 36-35 on the Minimum Subdivision Regulations, certified the final plat for recording. Staff certified the final plat on April 7, 2006 and it was recorded that same day.

Current Appeal:

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On April 7, 2006, Mr. John K. King, the attorney for the opponents, filed an appeal of the Planning Commission Staff's certification of the final plat. In the appeal application, under reasons for the appeal, Mr. King stated that the final plat does not meet requirements of Subdivision Regulations and the decision to certify plat for recording is improper.

MPC Action:	Denied			MPC Meeting Date:	5/11/2006
Details of MPC action:					
Summary of MPC action:	Appeal denied				
Date of MPC Approval:		Date of Denial:	5/11/2006	Postponements:	
Date of Withdrawal:		Withdrawn prior	to publication?:	Action Appealed?:	5/16/2006

LEGISLATIVE ACTION AND DISPOSITION

If "Other": Postponed 6/6, 7/5, 7/18, 8/1		If "Other":	
Disposition of Case:	approved appeal	Disposition of Case, Second Reading:	
Ordinance Number:		Other Ordinance Number References:	
Date of Legislative Action:	8/15/2006	Date of Legislative Action, Second Reading:	
Legislative Body:	Knoxville City Council		

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Comments:

Date of Legislative Appeal:

Amendments:

Effective Date of Ordinance: