

Planning Commission Minutes

December 19, 2022 at 6 PM

1. **ROLL CALL** – Meeting which was available in person was called to order by Chair Robert Mann. A quorum was present.

PRESENT

Robert Mann, Chair
Gerry Harris, Vice Chair
Bobby Wilson
Chad Ball
Judy Horne
Keith Macedo
Jay Moore
Howard Carter

ABSENT

City Employees Present: Melissa McCarville, City Business Manager; Rick Bramall, City Building Inspector; Mayor Ernie Penn; Steve Tennant, City Attorney; Bill Hellard, Fire Chief; Chris Brackett, City Engineer

2. **Approval of Minutes:** November 28, 2022 meeting minutes were tabled until the January meeting.

3. Comments from Citizens:

Tyler Matlock - 276 New York Avenue: He explained how the closing on his new home in Wagon Wheel subdivision had been delayed many, many times; he encouraged the City administration to ensure that when plans are approved here, the construction and completion is carried out in a timely fashion. There needs to be checks and balances in place to make sure that developers are following through with deadlines and that they have enough capital to complete the development. He felt that no development should be delayed for more than one year, as this one has.

Steve Tennant stated that we have no legal authority over the financials of the developers and that there would be no way to prevent this from happening in the future.

Public Hearings:

4A. Preliminary Plat- The Grove at Engles Mill Ph. 3; Owner - Riverwood Homes; located on S. Grace Ln. as presented by Bates & Associates:

Geoff Bates was present to discuss the request. The request is due to the change in side setbacks from 0 on one side and 10 feet on the other, to 5 - 5 feet, which he said does not change the actual distance of 10 feet between each house. This is like the 2nd phase request for 5-5 side setback. Mr. Bates had seen the conditions in Chris Brackett's memo which state:

“The revised Planned Unit Development for the Grove at Engles Mill Subdivision Phase III has been reviewed and it is our opinion that the Planning Commission's approval should be conditional on the following comments.

1. The fire hydrant locations and traffic circle shown on the plat must be reviewed and approved by the Fire Department.
2. Payment in lieu of Park Land Conveyance will be required for this subdivision at \$600 per single family unit. This fee will be \$49, 200 for the 83 lots.”

This is not a variance but due to it being a PUD it had to be sent back before the Planning Commission to approve the setback changes.

Public Comment:

Norm Toering - 306 Claybrook Drive: He noted that this subdivision is not even close to what the PUD was described to be originally, and when a PUD is initially approved, it should not be changed. Changing the setbacks allows them to stray from the promised development design. He also asked how many Phases there will be.

Mr. Brackett said nothing has changed other than the setbacks from 0-10 feet to 5-5 feet. Changes are allowed through the PUD ordinance.

Out Lot #1 has no determined use in this phase, but most likely will be used for a sewer lift station in a future phase.

Judy Horne said the developer needs to do what he promised regarding the small cemetery. It has a white plastic fence around it, but he had promised at the October 28, 2019 Planning Commission meeting that they would clean up the cemetery and would put a wrought iron fence around it. She also noted that the detention pond is very unsightly, also not looking like what was promised. Detention ponds are supposed to be landscaped and this one has only grass with some erosion areas.

It was suggested that she speak with the City Administration, asking them to contact the developer to make sure this is all done as promised.

Having no further discussion, Robert Mann called the question to approve the Preliminary Plat for The Grove at Engles Mill Ph. 3 subject to Chris Brackett's memo. Upon roll call, the motion passed unanimously.

4B. Final Plat- The Grove at Engles Mill Ph. 3; Owner - Riverwood Homes; located on S. Grace Ln. as presented by Bates & Associates:

Geoff Bates was present to discuss the request. He had received a copy of Chris Brackett's memo with conditions as follows:

"The Planned Unit Development for the Grove at Engles Mill Subdivision Phase III Final Plat has been reviewed and it is our opinion that the Planning Commission's approval should be conditional on the following comments.

1. The required Payment In Lieu of Park Land Conveyance must be paid prior to the signatures on the Final Plat. This fee will be \$600 per single family unit. The fee will be \$49,200 for 82 single family lots.
2. All public improvements must be completed, and a Final Inspection scheduled. All punch list items must be completed and accepted prior to final approval of the final plat.
3. A one-year Maintenance Bond to the City of Farmington for the public improvements except for the water and sanitary sewer improvements must be provided prior to the signatures on the Final Plat. The engineer must submit an itemized cost of these improvements for approval prior to obtaining the bond.

4. If the sidewalk construction is to be delayed until the home construction, then the developer shall provide an escrow account in accordance with Ordinance 8.1 ©, 3(A). the engineer shall provide a cost estimate for the construction of the sidewalk for approval.
5. If the installation of the Street Lights has not been completed at time of Final Plat signatures, then the developer shall provide the paid invoice from the electric company for these lights.
6. Provide one original and 6 copies of the recorded plat to the City.

The following comments need to be addressed on the Final Plat prior to signatures.

1. Show the addresses for each lot on the Final Plat.
2. Show the Minimum Finished Floor Elevations for Lots 131, 132 & 133. This Minimum FFE for Lots 131 and 132 shall be one foot above the 100- year WSE in the drainage swale between these lots at the street. The Minimum FFE for Lot 133 shall be one foot above the 100- year WSE in the Phase II Detention Pond.”

The developer had previously agreed to provide a common area for a walk-through to the City’s Ball Park. Chad Ball asked who would be responsible for maintaining the common area; the developer will be responsible for it until the POA is established. After further discussion, an additional condition of approval will be that the common area shall be a Pedestrian Access Easement between the City of Farmington and the POA.

It was agreed that the Common Area 2 must not have vehicular traffic cutting through to the Ball Park and no parking in this area either. It must be trails and walkable only. Mr. Bates said that some type of permanent bollards (barrier) would be installed there.

Chad Ball asked that the money paid in lieu of park land dedication be designated specifically to resolve this issue. The Commission does not have this authority. Someone from the Planning Commission will need to present this request to the City Council at their next meeting.

Public Comment:

Norm Toering- He expressed concern with the detention pond and spillway and the properties that surround it. He offered a stern warning that additional water will be channeled into the adjacent Twin Falls Subdivision, causing flooding. He also strongly spoke out against allowing constant changes to this PUD through many meetings.

Having no further discussion, Robert Mann called the question to approve the Final Plat for The Grove at Engles Mill Ph. 3 subject to Chris Brackett’s memo as well as these additional conditions:

(1) Create permanent restricted vehicular access and parking to Common Area 2. (2) Also, maintenance for this area must be done by the developer until a POA is established, at which time it will be the POA’s responsibility. Upon roll call, the motion passed unanimously.

4C. Preliminary Plat- Goose Creek Ph. 5; Owner - Red Canyon Development; Location - west of Goose Creek Ph. 2; Presented by Jorgensen & Associates:

Steve Tennant addressed the Commission as well as the citizens present for the discussion of this subdivision. He emphasized that a lawsuit has been filed by Mrs. Phyllis Young and the City of Farmington and City Engineer are among the defendants. This subdivision has been noted in the lawsuit for causing irrefutable and irreparable harm/damage to the property of Mrs. Young. Mr. Tennant explained that this meeting was not the proper place to debate the alleged damages by any

parties present. He said there will be no tolerance for any discussion pertaining to the lawsuit and that he would immediately stop any such attempts.

In Count 10 of the lawsuit, Mrs. Young's attorney David Dixon, who was present at this meeting, asked for a preliminary injunction for no further approval of additional phases of this subdivision. However, Mr. Tennant again reminded that this is not a court of law; the Commission has to just look at the Preliminary Plat request. An injunction to stop any construction plans would have to be ordered by the Courts, and this has not been done.

Jared Inman with Jorgensen & Associates was present to discuss the request. He explained that this development would be Phase 5 and is located directly west of Phase 2. Phase 5 will consist of 102 lots (including 2 that are unbuildable). Water and sewer will be connected onto existing utility lines that were installed with Phase 2. Drainage infrastructure will be provided and will closely match the patterns provided in the original drainage report for Phase 1. Mr. Inman had received City Engineer Brackett's memo that listed conditions for approval of the Preliminary Plat.

Chris Brackett's memo with conditions is as follows:

"The Preliminary Plat for the Goose Creek Village Phase V has been reviewed and it is our opinion that the Planning Commission's approval should be conditional on the following comments.

1. The fire hydrant locations and traffic circle shown on the plat must be reviewed and approved by the Fire Department.
2. The water and sewer improvements must be reviewed and approved by the City of Fayetteville Engineering Department and the Arkansas Department of Health prior to construction plan approval.
3. Payment in lieu of Park Land Conveyance will be required for this subdivision at \$600 per single family unit. this fee will be \$60,600 for the 101 lots.
4. Lot 263 shall be shown as unbuildable.
5. A completed Grading Permit Application and fee must be submitted prior to final approval of the plans. A preconstruction conference will be required prior to any mass grading on the site. The owner, their engineering consultant, and their contractor responsible for the best management practices will be required to attend this conference.
6. After a final review set of plans and drainage report has been approved by KMS, the applicant should submit to the City two (2) sets of full size plans and three (3) sets of half size plans, and two (2) copies of the final drainage report that have been sealed by the engineer of record for final approval and distribution."

There was a miscount on the lots on the previous plats seen. This had been corrected on the current plan being seen at this meeting.

Chad Ball asked about the open space area which is approximately 12 acres and marked as a detention pond. Mr. Inman said the area also includes some woods, but was all labeled as detention.

It was noted that builder DR Horton bought out Red Canyon Development a couple of weeks ago and it will now be their responsibility for upkeep of the construction site and detention area until POA is established. If a POA is not established Horton will be responsible. They will also be paying \$60,600 in lieu of the park land dedication. (\$600 X 101 lots). This is due to not wanting a park as well as the maintenance of a park.

Gerry Harris asked why the walking path and park in the detention area had been deleted from the original plan. Mr. Inman said that the builder changed it.

Chad Ball mentioned blocking off the area of McLeod Street that will join existing McLeod in another subdivision to the north during construction. He wanted assurance that construction traffic will not go through the existing subdivision. Mr. Inman noted the request.

Judy Horne complimented the developer for putting larger lots and homes adjacent to the large homes in the existing subdivision.

Public Comment:

David Dixon, Attorney for Phyllis Young, took issue for not allowing Mrs. Young to read her letter and speak. It was determined to allow her to speak, but not about the issues related to the lawsuit.

Phyllis Young- 546 Goose Creek: She said she has been to multiple City meetings as a concerned citizen. She complained that she has lived on her land for 66+ years and the increased drainage is more than what she used to have. She had photos of the damage she was willing to show. These were not shown. She said she is very upset that the Planning Commission will not do anything to delay or stop the development.

At this point, City Attorney Tennant interrupted and objected to her comments; Mr. Dixon wanted her to be allowed to speak; there were citizens present who were concerned either for Mrs. Young or for their own property concerns regarding increased water run-off and erosion; further heated discussion ensued between parties present, and Chairman Mann had to call the meeting back to order.

Tyler Matlock - 276 New York: reminded that there needs to be accountability to have developers finish one phase before starting another. He plans to take his concerns to the City Council regarding the fact Wagon Wheel still is not finished and Goose Creek has not met its requirements for the current phases.

Mark Bradley - 693 Goose Creek: He has owned 50 acres there for 42 years. His land begins where the 48" culverts were installed and he asked why did they have to change from 24 to 48 inch culverts? Additional water from these culverts have eroded his farm land to where it has become un-crossable and it has eaten into his usable farm land by 2 to 3 feet a year. He said the creek used to be a few inches wide but now is 50 yards wide with 12 foot banks. This is causing him to lose access to portions of his land. He asked who would be responsible for checking this creek for erosion and tracking issues with it? The impact is flowing downstream from the development as well. He felt Arkansas' ADEQ should be involved with this. He asked if the Planning Commissioners ever consider the impact downstream that developments will cause or actually go see the result of their decisions.

Chris Brackett, City Engineer, said that per our Drainage Criteria Manual and state laws we measure it at peak flow and calculate the drainage from the existing land and add the development's drainage flow. The 24" culverts were under-sized and needed to be upgraded to the bigger size for the drainage to flow into Goose Creek. He said the Goose Creek basin is very large.

Mr. Bradley suggested the City fix the damages in the downstream part from this development to the edge of the city limits. He felt ADEQ and the Corps of Engineers should be brought in to look at this.

Alisha Willis - 453 Goose Creek: She asked if an environmental impact study had been done for this area downstream of the development. She just bought a half-million dollar home and had concerns about how all this drainage will impact her. The City's engineer said that the City is limited by an ordinance regarding waterways and runoff capacities that was passed years ago.

Deltina Kunesko - 31671 Goose Creek: She owns 10 acres just outside of the city limits and outside the flood plain. However, flooding has occurred twice, with the second time being in 2017. The creek at peak times is OK, but in very large rains, it's bad. In answer to a question, the detention pond area is 12 acres and the land will not have houses built on it in the future.

Derek Travis-13975 Little Elm: His property sits 100 yards away from Goose Creek and it has flooded their property which butts up to Goose Creek. Their home flooded in May and they didn't have flood insurance so the damage is all on them to repair. Adding more homes and developments will cause more flooding. He added that flood insurance would cost \$10,000 a year. He closed by saying that growth needs to be done responsibly for the protection of future residents.

Hal Henson- 11651 E. Creek Lane: He wanted to express his appreciation to the Planning Commission for trying to protect citizens. He said developer DR Horton is a "master chess player" and the Commission and City need to treat developer requests like a chess match. When Mr. Henson moved here, builders were his neighbors. But now, these companies are national builders with no commitment to Farmington or its people, so the City has to step up its game. He said these out-of-town developers do not care about Mrs. Young or others in the City. We all need to work together to protect each other; we have to do things better to protect the citizens.

Chad moved to table this item until next month, seconded by Keith Macedo. This will give a couple of weeks to let things settle a bit. It was asked if tabling until next month would cause any legal jeopardy. The answer from the City Attorney was no, but denying this Preliminary Plat could result in a lawsuit. Those in attendance were reminded that there will no additional notification regarding the January 23, 2023 meeting.

Having no further discussion, Robert Mann called the question to table the Preliminary Plat for Goose Creek Ph. 5. Upon roll call, Bobby Wilson voted "No" with the remaining six commissioners voting "Yes." Motion to table passed 6-1.

Adjournment: Having no further business, the in-person Planning Commission meeting was adjourned at 7:00 PM.



Judy Horne - Secretary



Robert Mann, Chair