



Naperville

CITY COUNCIL AGENDA ITEM

SUBJECT: Preliminary/Final Plat of Subdivision for Mayor Estates - PZC 14-1-033

TYPE OF VOTE: Simple Majority

ACTION REQUESTED:

Deny the petitioner's request for approval of the Preliminary/Final Plat of Subdivision for Mayor Estates as presented, PZC 14-1-033.

BOARD/COMMISSION REVIEW:

PZC review not required for subdivision plats.

COUNCIL ACTION PREVIOUSLY TAKEN:

Date	Item No.	Action

DEPARTMENT: Transportation, Engineering, and Development Business Group

SUBMITTED BY: Allison Laff, AICP, Planning Operations Manager
Pat Lord, Senior Assistant City Attorney

FISCAL IMPACT:

None

BACKGROUND:

Mr. Michael Mayor is the owner of the property located at 319 Claremont Court (Lot 16, Jefferson Estates Subdivision) and an approximately 0.3 acre piece of property located directly south of 319 Claremont Court (as purchased from the Archdiocese of Joliet – the adjacent landowner). Discussions regarding Mr. Mayor's property were first raised by adjacent property owners during public forum at the September 3, 2013 City Council meeting based on re-grading work that had recently been completed on Mr. Mayor's property. Staff provided CWR 13-018 and CWR 13-019 which addressed the concerns raised and provided additional background information regarding the subject property (see Attachment 1); Ordinance 03-214 (Ordinance Approving the Final Plat of Subdivision, Plat of Easement, and the Development Plans for Jefferson Estates) is also attached for reference (see Attachment 2).

DISCUSSION:

Mr. Mayor is currently seeking approval of a Preliminary/Final Plat of Subdivision to consolidate Lot 16, Jefferson Estates Subdivision with the adjacent 0.3 acre parcel. As noted in

Attachment 1, Mr. Mayor's consolidation request can be approved administratively per Section 7-2-8 (Administrative Plat Procedures) of the Naperville Municipal Code *upon determination that the plat is in technical compliance with all code requirements.*

To date, staff has not approved the proposed plat administratively given that an existing landscape easement is not reflected on this plat specifically for the 0.3 acre southern parcel (see Attachment 3 for submitted Preliminary/Final Plat). Per Section 7-2-1 (Subdivision Plat Requirements) of the Naperville Municipal Code, "the petitioner shall submit a preliminary or final plat which shall show, at a minimum, on its face the following information:

- 1.1 All content as required by 765 ILCS 205/Plat Act as amended.
- 1.2 *All content as required by the Transportation, Engineering and Development Business Group, as stipulated on a checklist provided by the City, as may be amended from time to time.*
- 1.3 If a land donation is contemplated to comply with the required school or park donation, the location, acreage, and specific use of the area proposed to meet said donation shall be designated on the plat.
- 1.4 Any other information, as required by the Director of Transportation, Engineering and Development ("Director"), as necessary to process the requested subdivision plat."

The plat checklist referenced in Section 7-2-1:2 as provided on the City's website (see Attachment 4 - #26) requires that the plat include a delineation of the easement area, type of easement, and the document number of the instrument which created the easement.

While the plat of survey submitted for a September 12, 2013 concept meeting on this property delineated the "grading and landscape easement per document R2004-159735" on the 0.3 acre parcel (see Attachment 5), Mr. Mayor's attorney (Kevin M. Gensler, Esq.) has since contended that the easement is not valid because it was recorded outside of the chain of title (see Attachment 6). Note: Paul Mitchell, Attorney for Charleston Classic Homes (developer of Jefferson Estates) has also submitted an analysis of the easement's validity (see Attachment 7).

Based on the reasons outlined in Attachment 6, Mr. Mayor has refused to include the easement on the proposed Preliminary/Final Plat of Subdivision for Mayor Estates. In response, staff indicated that the appropriate party to determine if Mr. Gensler's findings are accurate is a court of law; this determination is outside of staff's authority. Absent a court ruling that the landscape easement is invalid, the easement must be included on the plat in order for it to be in technical compliance and administratively approved. Staff has communicated this required course of action with Mr. Mayor on several occasions (see Attachment 8 for project timeline).

In an effort to move the project forward, an alternative solution was negotiated and agreed upon by Senior Assistant City Attorney Pat Lord and Kathy West (petitioner's attorney) in July 2014 to provide for the inclusion of a note on the plat which acknowledges the petitioner's dispute over the validity of the easement (see Attachment 9). Mr. Mayor has since indicated that he is not in agreement with this alternative solution.

On January 30, 2015, Mr. Mayor submitted correspondence (see Attachment 10; also included in this attachment is correspondence from Mr. Mayor dated February 20, 2015) requesting that the “Plat be approved on an Administrative Basis or through the City Council Action...”. Accordingly, PZC 14-1-033 has been scheduled for City Council review per Section 7-2-5:3.2 (Administrative Plat Procedures: Process/Review), which notes that “said plat shall not be required to be placed on either the agenda of the Planning and Zoning Commission or the City Council, nor shall the plat be sent to the applicable school or park districts for review. Said plat may be administratively approved by the Zoning Administrator upon determination that applicable Code requirements have been satisfied. *Provided, however, that if the Zoning Administrator determines that the plat should be referred to the City Council for consideration or the petitioner for approval of said subdivision does not agree with the provisions required herein, the City Council shall make the final determination with regard to the approval of said plat.*”

Legal Summary

Attachment 11 is a summary of the City’s legal position regarding Mr. Mayor’s request for approval of the proposed plat of subdivision. An excerpt from the conclusion of that summary is as follows:

Until such time as a court of law makes a determination as to the validity of the Grading and Landscape Easement in question, it is legal staff’s opinion that the City should require that the Grading and Landscape Easement be reflected on the proposed plat of subdivision submitted to the City for approval by Mr. Mayor.

Based on the information included above, staff recommends that the Preliminary/Final Plat of Subdivision for Mayor Estates be denied.

RECOMMENDATION:

Deny the petitioner’s request for approval of the Preliminary/Final Plat of Subdivision for Mayor Estates as presented, PZC 14-1-033.

ATTACHMENTS:

1. CWR 13-018 & CWR 13-019
2. Ordinance 03-214
3. Preliminary/Final Plat of Subdivision for Mayor Estates
4. TED Business Group Plat Checklist
5. Plat of Survey for Southern Property dated 7/30/12
6. Legal Memo prepared by Mr. Kevin Gensler dated 3/28/14
7. Legal Memo prepared by Mr. Paul Mitchell dated 1/11/14
8. Project Timeline for Mayor Estates
9. Email correspondence between Pat Lord and Kathy West dated 5/30/14 to 7/21/14
10. Correspondence from Mr. Mayor dated 1/30/15, 2/20/15, and 3/10/15
11. Legal Summary