



## AGENDA ITEM 5B

Prepared by:  
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June 20, 2007  
Prepared For: Planning Commission

**A. Agenda Item:** Consider request by Lambie-Geer properties to revise construction phasing for the Arbor Ridge subdivision, located at the southeast corner of 83<sup>rd</sup> Street and Kill Creek Road.

**B. Attachments:** Exhibit A - Ordinance No. 2066 rezoning Arbor Ridge property  
Exhibit B - Benefit district agreements, dated 2/23/05 and 7/18/05  
Exhibit C - Approved and proposed phasing plans  
Exhibit D - Staff reports dated 11/16/04 and 2/15/05  
Exhibit E - Commission meeting minutes, 11/23/04, 2/22/05, 4/26/05 and 5/22/07

### C. Background

Jim Lambie of Lambie-Geer Homes has requested a change to the phasing of the Arbor Ridge subdivision. The Arbor Ridge subdivision was rezoned to 'P-D' Planned Development. A preliminary development plan was approved in conjunction with the zoning change in late 2004 (*Exhibits A and B*). The first phase, currently under construction, takes access from Valley Springs Drive. According to the approved preliminary development plan (*Exhibit C*), Phase 2 is to begin to the south of Phase 1, with access still limited to Valley Springs Drive. Lambie is proposing instead to construct roughly two-thirds of what would have been Phase 3 as the second phase.

The Planning Commission discussed this request at their May 22<sup>nd</sup> meeting. Meeting minutes are attached as *Exhibit D*. The Commission requested that staff research previous minutes and reports to determine the reasoning behind the approved phasing plan. The 'P-D' district standards found in Article 4 of the Zoning Regulations state that a final development plan may be submitted for each phase or once for the entire development. Staff has found that the preliminary development plan alludes to individual final development plan applications with each construction phase. A final development plan was submitted for the entire 90 acre property in conjunction with the Phase 1 plat. Following is an excerpt from staff's report at that time:

" It should be noted that although the Final Development Plan depicts all phases of the project, the Planning Commission is considering approval of only Phase I at this time. Potential impacts to traffic and sewer facilities will need to be analyzed and accounted for as the development builds out in a phased manner. "

City Attorney Patrick Reavey did not have adequate time to thoroughly research this issue, but did provide the following opinion on the matter via e-mail to staff:



- " The Planning Commission's indication that it was only approving "Phase I" of the development suggests only Phase I received approval. Thus, only the Final Development Plan for Phase I was approved. Arbor Ridge's application for Phase II should be construed as an application to approve the Final Development Plan for Phase 2. "

The question before the Commission remains one of interpretation. Following is an excerpt from Subsection G of Section 4.04 of the Subdivision Regulations:

- " G. Standards for Approval of a Final Plat: The Final Plat of a proposed subdivision shall be approved by the Planning Commission if the applicant proves by clear and convincing evidence that:
1. The plat meets the requirements of these regulations;
  2. The construction documents have been approved by the City Engineer; and
  3. The plat is in substantial compliance with the approved Preliminary Plat (Major and Staged Subdivisions) or Sketch Plat (Minor Subdivision). The Final Plat shall be deemed to be in substantial compliance with the approved Preliminary Plat provided any modification to the plat does not:
    - a. Vary the proposed gross residential density or intensity of use by more than five percent (5%) or involve a substantial reduction in the area set aside for common open space, nor the substantial relocation of such area, nor;
    - b. Substantially change the design of plat so as to significantly alter, as determined by the Planning Commission:
      - (1) Pedestrian or vehicular traffic flow.
      - (2) The arrangement of the site.
      - (3) The relation of open space to residential development.
      - (4) The proposed phasing of construction. "

Again, Attorney Reavey's opinion on the matter:

" ....the question before the Commission is whether the application for Phase I significantly alters the Preliminary Development Plan that was previously submitted. See Section C.(2) of Article 4 of Zoning Regulations. On this question, the regulations' use of the terms "substantially change", "significantly alter", and "as determined by the Planning Commission" clearly indicates the Planning Commission has discretion in making the determination. Thus, from a legal perspective, the Commission is free to find that the change in phasing does "substantially change" the previous plan or it does not (i.e. there is no right or wrong answer from a legal perspective). See **Rodrock Enterprises, L.P. v. City of Olathe, Kan.**, 28 Kan.App.2d 860, 861, 21 P.3d 598 (Kan.App. 2001)("The law now requires that the planning commission consider various factors in evaluating a plat. Consideration of the factors requires the exercise of judgment and discretion.") (emphasis added). In other words, the answer to the question is entirely up to the commission. "



Following is a table of the number of lots per phase:

| Approved phasing plan                            | Proposed phasing plan        |
|--|------------------------------|
| Phase 1: 43 lots (15 permits pulled, 1 occupied) | Phase 1: 43 lots             |
| Phase 2: 46 lots                                 | Phase 2: 48 lots             |
| Phase 3: 74 lots                                 | Phase 3: 46 lots             |
| Phase 4: 64 lots                                 | Phase 4: 26 lots             |
| Phase 5: 0 lots                                  | Phase 5: 55 lots             |
|  | Phase 6: 0 lots (open space) |
| Total: 227 lots                                  | Total: 218 lots              |

**D. Previous Approval Conditions:**

Regardless of the sequence of the phasing, it is clear that the approval of the Preliminary and Final Development plans carries conditions relating to phases of development that occur after Phase I. These conditions and the progress toward these conditions are outlined below:

1. Conditions of the P-D Rezoning (Ordinance 2066): The following conditions were made as part of the rezoning (See Exhibit A):

a) Applicant shall enter an agreement not to protest the formation of a Benefit District to fund the installation of the traffic signals, or other traffic control devices, at the Kill Creek Road and Valley Spring Drive intersections with 83<sup>rd</sup> Street should be required of the developer prior to the approval of the Final Development Plan for Phase I.

Progress: This agreement was signed on February 23<sup>rd</sup>, 2005 and is attached as Exhibit B.

b) Final Development Plan applications should include architectural design guidelines that address the design issues outlined in Section IV, Number 2 of the staff report dated November 18<sup>th</sup>, 2004, which are outlined as follows:

- (1) The concept design could benefit from further definition of variety, color and texture, as stated below.
- (2) Stucco, brick and painted clapboard siding should be encouraged
- (3) Housing styles, shapes, color and materials should be varied within the overall theme of dwellings
- (4) Architectural embellishments that add visual interest
- (5) Differentiation throughout the development with respect to design and the prominence of garages

Progress: Architectural elements were discussed at length during the approval process for Phase I (See minutes attached as Exhibit B. It was concluded at that time that no architectural restrictions would be imposed on Phase I, but that the option for architectural requirements is kept open for subsequent phases.

c) Final Development Plan applications for phases of development beyond Phase I should include an analysis of the capacity of the pump station at the wastewater treatment plant and a commitment from the



developer to participate in the improvements necessary to increase the capacity of the pump station if necessitated by the development.

Progress: To date, no such analysis has been submitted. The referenced pump station was upgraded in connection with the recent sewer plant construction. It is anticipated that no further upgrades will be necessary in support of Phase II.

d) The developer should be required to submit reports on the traffic volumes and signal warrant analysis for the intersections of Kill Creek Road and Valley Springs Drive with 83<sup>rd</sup> Street in conjunction with Final Development Plan applications Phases II through IV.

Progress: To date, no such traffic analysis has been submitted.

e) The traffic study suggests that it may be appropriate to widen 83<sup>rd</sup> Street to a 3-lane section between the east development access road and Valley Spring Drive due to the required turn bay and taper lengths of the left turn lanes. This issue should be addressed at the time of Final Development Plan application for Phase III.

Progress: The applicant has submitted public improvement plans for the 83<sup>rd</sup> Street improvements associated with the eastern access drive, however no further information relating to the 3-lane section has been provided.

**2. Conditions relating to the July 2005 Agreement:** Kill Creek Investors entered into an Agreement dated July 18, 2005 (Exhibit B). Per the Agreement, the City is required to hold a public hearing on a proposed expanded benefit district, which district would include \$672,305.40 in assessments against the Arbor Ridge property. City Staff received cost estimates back on the proposed expanded district, which look to be about \$5 million. At the Staff level, we are confident the expanded benefit district idea will not work as there is no way for the City to afford it.

The Agreement provides that if the expanded benefit district is not approved, then Kill Creek Investors will submit a signed petition for completion of the public improvements, and that said Petition will be denied or accepted at the meeting following submission. If the Petition is accepted, Kill Creek Investors has 9 months from the date bonds are issued to complete the improvements.

City Staff has asked the applicant if he will agree to dispense with the public hearing on the expanded district as Staff is confident it will not be approved due to lack of funding. If he agrees, then we will ask him to submit the Petition for benefit district for action by the governing body. If he does not agree, we will go ahead and schedule the public hearing for a decision by the Governing Body, fully expect the Governing Body to deny the petition.

Progress: Regardless of the outcome of the benefit district issue, it is clear that the 83<sup>rd</sup> Street improvements indicated on the approved Preliminary and Final Development plans are required to be in place in connection with the second phase of development. On the original phasing plan, Phase II was directly south of Phase I and the only access into the subdivision would be Valley Spring Drive. The requested change in phasing will serve to lessen the importance of the 83<sup>rd</sup> Street improvements at Valley Spring Drive, (which include an east bound right turn lane), however there is a sidewalk proposed from Valley Spring Drive to Kill Creek Road and minor intersection improvements at 83<sup>rd</sup> & Kill Creek that would be beneficial regardless of the traffic impacts. It is recommended that the completion of the 83<sup>rd</sup> Street improvements shown on the Preliminary and Final Development Plans near Kill Creek and Valley Spring Drive remain a condition of the second phase of development, regardless of where that phase occurs.



### **E. Conclusion:**

Clearly, the phasing for the subdivision will be altered by Lambie's request, which is attributed to shifts in market demand. Staff finds the alteration to be positive in that it will create a second access point earlier than expected. There are several conditions of the preliminary development plan that would be enacted with the new Phase 2, including the applicant providing a traffic study and pump station capacity analysis. There are also previous approval conditions that must be met prior to the approval of Phase II regardless of where that phase occurs.

Also in conjunction the proposed Phase 2 plat, a sidewalk would need to be installed from Valley Springs Drive to the Kill Creek Road intersection. This sidewalk was not installed with Phase 1 in order for the City to investigate widening 83<sup>rd</sup> Street to 3 urban standard lanes from Kill Creek to Waverly Road. The study has been completed now and the Council has determined that the project is too expensive to fund at this. These improvements would be constructed in a timely manner as the approved preliminary plat intended.

If the Commission determines the change in construction phasing 'significantly altered', causing a 'substantial change in the design of the plat', Lambie will need to revise the approved Preliminary Development Plan. As the subdivision is zoned 'P-D' Planned Development, any revision to the Preliminary Development Plan would necessitate a zoning change from 'P-D' to 'P-D'.

Based upon direction from the Commission, staff will advise Lambie-Geer to submit either a Final Plat for Phase 2 as proposed, or to first submit a 'P-D' rezoning application to revise the approved Preliminary Development Plan. The applicant's professional representative has stated that they will be present to participate in the discussion.

***End of Report***

***Attachments to Follow***