



Legislation Details (With Text)

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**File created:** 6/17/2019      **In control:** City Council  
**On agenda:** 7/2/2019      **Final action:** 7/2/2019

**Title:** Consider a resolution approving an amendment to the City of Keller Unified Development Code, Article 8, Zoning Districts, Development Standards, and Tree Preservation, Section 8.19, Tree and Natural Feature Preservation to allow advanced tree removal and lot grading for residential Lots 17-19, 2-3 Block G; Lots 19-21 & 23, Block D of Marshall Ridge Phase 1 South, a residential development consisting of 47 residential lots and 3 open space lots, located on approximately 25.166 acres of land, on the south side of Ridge Point Parkway, approximately 1,790 feet east of the North Main Street (U.S. HWY 377) and Ridge Point Parkway Intersection, and zoned Planned Development - Single Family Residential-15,000 square foot minimum (PD-SF-15). Meritage Homes of Texas, LLC, owner/applicant. (TB-18-0002)

**Attachments:** 1. 070219\_MarshallRidgeTreePlan Amend\_Resolution, 2. 070219\_MarshallRidgeTreePlan Amend\_Map, 3. 070219\_MarshallRidgeTreePlan Amend\_ExhibitA\_TreeSurvey&MitigationPlan, 4. 070219\_MarshallRidgeTreePlan Amend\_TreeMitigationOverview, 5. 070219\_MarshallRidgeTreePlan Amend\_Grading&ErosionControlPlans, 6. 070219\_MarshallRidgeTreePlan Amend\_FinalPlat, 7. 070219\_MarshallRidgeTreePlan Amend\_StaffAttachment\_Approvedplans, 8. 070219\_MarshallRidgeTreePlan Amend\_Mitigation Summary, 9. H-3 Presentation Marshall Ridge Ph I South

Date	Ver.	Action By	Action	Result
7/2/2019	1	City Council	deny	

**To:** Mark R. Hafner, City Manager

**From:** Katasha Smithers, Planner I

**Subject:**

Consider a resolution approving an amendment to the City of Keller Unified Development Code, Article 8, Zoning Districts, Development Standards, and Tree Preservation, Section 8.19, Tree and Natural Feature Preservation to allow advanced tree removal and lot grading for residential Lots 17-19, 2-3 Block G; Lots 19-21 & 23, Block D of Marshall Ridge Phase 1 South, a residential development consisting of 47 residential lots and 3 open space lots, located on approximately 25.166 acres of land, on the south side of Ridge Point Parkway, approximately 1,790 feet east of the North Main Street (U.S. HWY 377) and Ridge Point Parkway Intersection, and zoned Planned Development - Single Family Residential-15,000 square foot minimum (PD-SF-15). Meritage Homes of Texas, LLC, owner/applicant. (TB-18-0002)

**Background:**

The Planning and Zoning Commission approved the final plat for Marshall Ridge Phase I South consisting of 47 residential lots and 3 open space lots on February 26, 2007.

The Appeal to the Tree Board (TB-14-0001) approved the preliminary grading for the 47 residential lots and 3 open space lots in preparation of single-family residences on May 12, 2014. In turn, Marshall Ridge Phase I South was able to do advanced tree removal and grading prior to the

construction of homes.

**Marshall Ridge Phase I South Request:**

The Applicant is requesting to do additional grading, remove/build/expand the retaining walls, and remove additional trees on the remaining 9 lots. The 62 trees proposed for removal total 421 caliper-inches. The Applicant submitted an amended Tree Preservation Plan that shows trees which are being preserved and removed. (See Exhibit A.) Trees to be removed are classified into two categories: exempt from mitigation (those in rights of-way, easements, and building pads) and non-exempt from mitigation.

The developer is proposing to mitigate 73 of the 421 caliper-inches by planting trees on the remaining 9 lots. An error caught while reviewing the past Appeal to the former Tree Board resulted in a 60-caliper-inch bank credit which will be applied to this request. The Applicant is proposing to mitigate the remaining 288 caliper-inches by paying \$43,200 into the Tree Reforestation Fund.

Please see the table attached for the tree planting summary.

**Tree Preservation Regulations:**

- Protected quality trees are trees that have a diameter of three inches (3") or greater measured at 4.5' DBH (Diameter at Breast height) above the ground. Tree types that are considered protected per the UDC include Oak (all species), Pecan, Cedar Elm, American Elm, Texas Hickory, Texas Ash, Red Cedar, and Black Walnut.
- Section 8.19 (C.1.e) states, "In cases of severe drainage issues related to the site, the City Staff and/or the developer may request from the Commission to perform lot grading and pad site preparation in conjunction with or following the clearing of rights-of-way and easements but prior to the issuance of building permit(s). In order for the Commission to consider the request for pad site grading in advance of issuance of a building permit, a tree survey as defined in Article Three, an erosion control plan including erosion control seeded mat placement and a tree removal plan shall be submitted. The erosion control mat shall be placed over all graded areas to remain unimproved for more than five (5) calendar days post grading. The tree removal plan shall reflect the areas for proposed tree removal necessary to provide for a finished pad site and a minimum finished floor elevation of the slab. The proposed pad site shall not exceed the maximum pad site area as defined in this Code. The Commission makes recommendation to the City Council that they grant permission for trees in other areas such as proposed ponds, amenity center, etc., to be removed at the time of right-of-way clearing, however the tree removal in these areas shall be mitigated in accordance with this Code. City Council may consider granting the request for advance lot grading shall be final. The decision of the City Council is final."
- Section 8.19 (I.1) of the UDC states, "In the event that it is necessary to remove a protected tree as specified in this Code, the party removing the tree shall be required to replace the protected trees being removed with quality trees as defined herein (see Section 8.20 - Exhibit I). A sufficient number of trees shall be planted to equal or exceed the diameter of each tree removed. This mitigative measure is not meant to supplant good site planning. Tree replacement will be considered only after all design alternatives, which could save more existing trees, have been evaluated and

reasonably rejected.

- Section 8.19 (I.2) of the UDC states, "...The replacement trees shall be located on the same property that trees were removed whenever possible. However, if this is not feasible, they may be placed on a designated property as agreed to by the Planning and Zoning Commission. If the Planning and Zoning Commission approves the planting of replacement trees more than thirty (30) days after the removal of protected trees, the applicant shall provide the Community Development Department with an affidavit that all replacement trees will be planted within six (6) months. A replacement tree that dies within two (2) years of the date it was planted must be replaced by another replacement tree in compliance with this Code."
- Section 8.19 (I.3) states, "The applicant may request from the Planning and Zoning Commission for recommendation to the City Council to make a payment into the Tree Reforestation Fund in lieu of planting the replacement trees if planting is not feasible. The funds shall be used only for purchasing and planting trees on public property or acquiring wooded property that shall remain in a naturalistic state in perpetuity. The fee payment amount shall be established in the City's Fee Schedule. The schedule may be periodically updated by the City without changing this Code. *(Amended by Ord. No. 1818 on October 18, 2016)*"
- The payment amount for the Tree Reforestation Fund in lieu of mitigation is set by the International Society of Arboriculture which sets the average cost of quality trees and the cost of planting a tree. The current fee is set at \$150.00 per caliper inch.

### **Planning and Zoning recommendation:**

The Planning and Zoning Commission recommended denial by a vote of 7-0 on June 10, 2019. The Commission emphasized their reluctance to approve the original Plan in 2014 given the large number of trees it allowed to be removed and the many retaining walls it permitted. Consequently, they were opposed to allowing further tree removal and larger retaining walls. The Commission questioned why the Applicant had not taken the topography into consideration in 2014 with the original grading plan and questioned the Applicant's claim that no builders were interested in the lots as they currently existed without the proposed grading and retaining wall changes. Concern about the height of the proposed retaining walls related to safety in addition to the impact on adjacent lots was also expressed. In response to the Developer's claims that no builder was interested in using 2-story products with walk-out basements, one Commissioner pointed out he had recently just built such a house and was very much enjoying living in it. He pointed out that such homes required far less grading and retaining walls. The Developer claimed he could not find any builders interested in building such multi-level houses with walk-out basements.

### **Alternatives:**

The City Council has the following options when considering this appeal to the UDC Tree Preservation requirements:

1. Approval of the Tree Plan as presented with the additional planting, upsizing of required trees in the residential lots, and pay \$43,200 into the Tree Fund.
2. Approval of the Tree Plan with amendments or modifications that would meet the mitigation

requirement of 288 caliper-inches.

3. Tabling the agenda item to a specific date with clarification of intent and purpose.

4. Deny. (The Council would need to articulate the UDC basis for the denial.)