



City of Keller

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Legislation Text

File #: 16-494, **Version:** 1

To: Mark Hafner, City Manager

From: Michele Berry, Senior Planner

Subject:

Consider a resolution approving an appeal to the City of Keller Unified Development Code, Article 8, Zoning Districts, Development Standards, and Tree Preservation, Section 8.18, Tree and Natural Feature Preservation and Amend Resolution No. 3769 to allow advanced tree removal and lot grading for residential, Lots 1-4 and Lots 8-18, Block D, Lots 1-3 and Lots 20-18, Block E, and Lots 11-13 and Lots 18-20, Block F, Marshall Ridge Phase 3D, a portion of residential development consisting of forty-eight (48) residential lots, and one (1) open space lot, located on approximately 19.636-acres of land, located on the west side of Marshall Ridge Parkway and, approximately 1,000 feet north of Mount Gilead Road, and zoned as PD-SF-12 (Planned Development-Single Family Residential-12,000 square foot minimum) and PD-SF-15 (Planned Development-Single Family Residential-15,000 square foot minimum). Meritage Homes of Texas, LLC, owner/applicant. (TB-17-0002)

Current Zoning:

PD-SF-12 (Planned Development-Single Family Residential-12,000 square foot minimum) and PD-SF-15 (Planned Development-Single Family Residential-15,000 square foot minimum)

Background:

The zoning for this section of the Marshall Ridge subdivision was created by a Lawsuit Settlement Agreement and Release (Civil Action No. 4:02-CV-746-Y) in 2003. The Planning and Zoning Commission approved the Preliminary Plat for the Marshall Ridge development on September 11, 2006 which included nine hundred four (904) residential lots, twenty-three (23) open space lots, six (6) commercial lots and one (1) amenity lot. Several final plats have been approved over the years for the multiple phases of the Marshall Ridge development. In May 2014, a tree appeal was approved for Marshall Ridge, Phase 1 South. A Planned Development Zoning Change was approved by Ordinance No. 1677 on February 4, 2014 changing the minimum dwelling unit area from 1,800 square feet to 3,000 square feet. The Final Plat for Marshall Ridge Phase 3D was approved by the Planning and Zoning Commission on April 11, 2016. The civil construction plans were approved by the City on April 22, 2016.

An appeal to the Tree and Natural Preservation requirements was approved by Resolution No. 3769 on June 21, 2016 with the following conditions:

1. Approve the tree preservation plan as presented with additional planting, upsizing of required trees in the residential lots, escrowing \$56,800 with the City to be refunded at the final approval of the 45th lot/ home or when the final caliper inches are planted. Beginning at two (2) years from the effective date of final acceptance of public improvements, five (5) building permits must be pulled within the

previous six (6) months and five (5) building permits must be pulled every subsequent six (6) months, or the obligation of the developer will be considered unmet, the escrowed funds would be forfeited to the City's Tree Reforestation Fund, less the mitigated amount (installation of the additional trees) to date in Marshall Ridge Phase 3D. The CC&Rs for Marshall Ridge Phase 3D shall include this recommendation for tree mitigation as approved by the City.

2. The developer shall have a ninety (90) day period from date of approval by City Council to determine how many caliper inches may be planted within the Marshall Ridge subdivision open spaces. An escrow of \$196,750 shall be made to the City, a portion of which may be refunded to the applicant in the amount of mitigation trees planted in the open space areas. The remaining amount after completion of installation of mitigation trees in the Marshall Ridge open space areas shall be forfeited to the City's Tree Reforestation Fund.

3. Grading shall be permitted to develop streets, utilities and easement areas, but limited to residential lot prep (including tree removal, earthwork, and retaining walls) up to twenty-one (21) of the forty-eight (48) lots in Sub-Phase 1 as shown on the attached Exhibit "A".

4. Additional erosion control measures as shown in the attached Exhibit "A" shall be installed for those lots prepped in Sub-Phase 1. Staff shall establish a recurring on-site meeting with the developer on a monthly basis to evaluate the effectiveness of the additional erosion control measures installed.

5. Lots 14-18, Block D shall be excluded from Sub-Phase 2 grading and shall only be graded at time of release of building permits for these lots.

6. Sub-Phase 2 (remaining twenty-two (22) lots) will commence development upon the completion of a final inspection on fifty percent (50%) of those lots developed in Sub-Phase 1 (11 residential lots) and the effectiveness of the additional erosion control measures has met the requirements of City staff. City staff shall submit a final report on the effectiveness of the erosion control measures to City Council prior to Sub-Phase 2 grading. If City staff does not approve of the effectiveness of the additional erosion control measures for Sub-Phase 1, then City Council shall consider the release of Sub-phase 2 grading.

The developer paid to the City \$196,750 for payment in lieu of planting. An additional \$56,000 was paid into escrow and will be released back to the developer once all trees within the residential lots are planted, per the approved mitigation plan.

On April 3, 2017 staff completed inspection of the off-site tree plantings of sixty-three (63) trees totaling two hundred fifty-two (252) caliper inches, with supporting irrigation. A refund was issued on July 28, 2017 in the amount of \$25,200.

On August 15, 2017 the City accepted the public improvements for Marshall Ridge Phase 3D and permits for Sub-Phase I were released. As of September 19, 2017 the City has received four (4) building permits for residential homes in Sub-Phase I.

Analysis:

The purpose of this appeal is to amend the previously approved Tree Appeal by Resolution No. 3769 and allow the advanced tree removal and grading within Sub-Phase II residential lots. The applicant

has stated that the scheduling of the Sub-Phase II construction will disrupt new residents living in Sub-Phase I.

Tree Code Requirements:

During the construction of a residential development, all trees within street rights-of-way, utility or drainage easements as shown on an approved final plat/construction plans as approved by the City may be removed and shall be exempt from the tree protection and replacement requirements per Section 8.18 (C.1.d) of the UDC.

Lot 25, Block D is an open space lot proposed to contain drainage infrastructure. The entire lot has been designated as a drainage and utility easement. As such, and tree removal from the easements are exempt from mitigation.

Upon submission of a building permit, the trees within the proposed building pads and the eight-foot (8') construction zone around the building pads are exempt along with twenty percent (20%) of the remaining quality trees per Section 8.18 (C.2) of the UDC. The applicant has provided a grading plan with the location of the building pad sites and the location of the driveways. Trees located in these areas are exempt from mitigation.

Marshall Ridge Phase 3D Amendment Request:

The applicant is requesting a revision to the Resolution No. 3769 conditions.

1. Amend condition 5: Remove the requirement for Lots 14-18, Block D, which restrict grading to be done at the time of the single-family home permit approval.
2. Amend condition 6: Allow Sub-Phase II to begin advanced tree removal and lot grading per the approved mitigation and tree protection plans once the additional erosion control measures for Sub-Phase I met City staff requirements.

Tree Mitigation Plan:

The approved tree survey and tree protection plan will not require any adjustment. No amendments are proposed to the tree mitigation plan. Staff has verified that the offsite planting was installed and irrigated. The additional trees required on each residential lot will be inspected as part of the final inspection of each single-family house.

Existing Roadway Access:

Marshall Ridge Parkway to the east.

Surrounding Zoning & Land Uses:

North: Marshall Ridge South Phase I, zoned PD-SF-15

South: Single family residential homes, zoned SF-36

East: Ridgeview Elementary School zoned PD-SF-6.5 and Marshall Ridge, Phases 5B & 5D zoned PD-SF-12; Mount Gilead Ranch subdivision to the southeast zoned PD-SF-25

West: Milestone Church Addition, zoned PD-PH-6.5

Request:

The applicant is requesting to perform advanced lot grading and tree removal for Sub-Phase II in

Marshall Ridge Phase 3D. The following amendments to Resolution No. 3769 are being proposed:

1. Eliminate the following condition: 5. Lots 14-18, Block D shall be excluded from Sub-Phase 2 grading and shall only be graded at time of release of building permits for these lots.
2. Amend the following condition: 6. Sub-Phase II (remaining twenty-two (22) lots), will commence development upon final acceptance of Sub-Phase 1 by City staff and the effectiveness of the additional erosion control measures has met the requirements of City staff.

Citizen Input:

An appeal to the Tree Ordinance does not require a public hearing, so no public hearing notifications were sent out to the surrounding property owners for this request. There has been no response from the public to this application. The public will have an opportunity to speak on this agenda item at the "Persons To Be Heard".

Professional Opinion:

Staff is in support of the intent to release Sub-Phase II for advanced grading. The development is inspected weekly for the integrity of the tree protection fencing. The weekly inspection will also allow staff to monitor the erosion control. Staff does not support accepting the responsibility of ensuring the effectiveness of the erosion control measures.

Staff would support the amendment to read as:

6. Sub-Phase II (remaining twenty-two (22) lots), will commence development upon final acceptance of Sub-Phase 1 by City staff and the effectiveness of the additional erosion control measures has met the requirements approved by Resolution No 3769..

Board Review:

The Planning and Zoning Commission considered this item on October 9, 2017 and recommended approval by a unanimous vote (7-0) with the following conditions:

1. Approve the tree preservation plan as presented with additional planting, upsizing of required trees in the residential lots, escrowing \$56,800 with the City to be refunded at the final approval of the 45th lot/ home or when the final caliper inches are planted. Beginning at two (2) years from the effective date of final acceptance of public improvements, five (5) building permits must be pulled within the previous six (6) months and five (5) building permits must be pulled every subsequent six (6) months, or the obligation of the developer will be considered unmet, the escrowed funds would be forfeited to the City's Tree Reforestation Fund, less the mitigated amount (installation of the additional trees) to date in Marshall Ridge Phase 3D. The CC&Rs for Marshall Ridge Phase 3D shall include this recommendation for tree mitigation as approved by the City.
2. The developer shall have a ninety (90) day period from date of approval by City Council to determine how many caliper inches may be planted within the Marshall Ridge subdivision open spaces. An escrow of \$196,750 shall be made to the City, a portion of which may be refunded to the applicant in the amount of mitigation trees planted in the open space areas.

The remaining amount after completion of installation of mitigation trees in the Marshall Ridge open space areas shall be forfeited to the City's Tree Reforestation Fund.

3. Grading shall be permitted to develop streets, utilities and easement areas, but limited to residential lot prep (including tree removal, earthwork, and retaining walls) up to twenty-one (21) of the forty-eight (48) lots in Sub-Phase 1 as shown on the attached Exhibit "A".
4. Additional erosion control measures as shown in the attached Exhibit "A" shall be installed for those lots prepped in Sub-Phase 1 . Staff shall establish a recurring on-site meeting with the developer on a monthly basis to evaluate the effectiveness of the additional erosion control measures installed.
5. **Eliminate this condition in its entirety: Lots 14-18, Block D shall be excluded from Sub-Phase 2 grading and shall only be graded at time of release of building permits for these lots.**
6. **Sub-Phase II (remaining twenty-two (22) lots), will commence development upon final acceptance of Sub-Phase 1 by City staff and the effectiveness of the additional erosion control measures has met the requirements approved by Resolution No 3769.**

City Council Action:

The City Council has the following options when considering a Planned Development Zoning Change application:

- Approve as submitted
- Approve with modifications or additional condition(s) (including the modifications to Resolution No. 3769 as recommended by the Planning and Zoning Commission and supported by staff)
- Tabling
- Deny