



City of Keller

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Legislation Text

File #: 19-324, **Version:** 1

To: Mark R. Hafner, City Manager

From: Scott Bradburn, 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 13-32, Block B; Lots 8-14, Block F; Lots 1-14, Block G, and one open space lot of Gean Estates Phase 3, a residential development consisting of forty-one (41) residential lots and two (2) open space lots, located on approximately 40.73 acres of land, on the south side of Bancroft Road, approximately 2,550 feet east of the Bancroft and Bourland Road Intersection, at 740 Bancroft Road, and zoned Single Family Residential-36,000 square foot minimum (SF-36). Kyle Dickerson, Lennar Homes of Texas Land and Construction, owner/applicant. LJA Engineering, Inc., Engineer. (TB-18-0001).

Action Requested:

Consider a resolution for the approval of 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 to allow advanced tree removal and grading and approve the Tree Preservation Plan. No public hearing is required for this request

Property Description:

Located on approximately 40.73 acres of land, on the south side of Bancroft Road, approximately 2,550 feet east of the Bancroft and Bourland Road Intersection, at 740 Bancroft Road.

Background:

The Planning and Zoning Commission ("Commission") approved the preliminary plat for Gean Estates on December 8, 2014. The preliminary plat provided a layout for a residential neighborhood consisting of 104 residential lots, seven open space lots, and one amenity center lot to be developed in three phases.

A final plat for Gean Estates Phase 1 (consisting of 37 residential lots, six open space lots and one amenity center lot) was approved by the Commission on April 27, 2015. Some of the tree mitigation for Phase 1 resulted in "banking" surplus caliper-inches. Phase 1 is nearly completed.

A final plat for Gean Estates Phase 2 (consisting of 26 residential lots and one open space lot) was approved by the Commission on February 22, 2016. Phase 2 used some - but not all - of the banked caliper-inches from Phase 1 to meet the mitigation requirements (detailed, below).

A final plat for Gean Estates Phase 3 (consisting of 41 residential lots and two open space lots) was approved by the Commission on May 22, 2017). Construction plans for Gean Estates Phase 3 were approved on November 15, 2018.

Gean Estates Phase 1 & 2 Tree Appeal and Tree Bank:

The Gean Estates Phase 2 Tree Appeal, approved by City Council on May 17, 2016 (Resolution No. 3759), allowed the advanced grading and tree removal for 14 of the 26 lots and one open space. The approval required a total of 558.6 caliper- inches of mitigation. The Applicant provided 448 caliper inches worth of trees towards mitigation. The remaining amount of 110.6 caliper inches was credited from the mitigation bank from Gean Estates Phase 1. After Phase 2, the mitigation bank contains 100.4 inches.

On April 2, 2019, the Commission's recommendation for the Applicant's request for approval of a Tree Preservation Plan for Gean Estates Phase 3 was presented to City Council. The Commission recommended the City Council approve the proposed Tree Preservation Plan but with the following additional recommendations:

- 1) That City Council grants this Tree Mitigation Plan as presented with additional tree plantings, upsizing of required trees in the residential lots, payment of \$217,000 into the Tree Reforestation Fund, applying one hundred point four (100.4) banked caliper inches set aside with the Gean Estates Phase 2 Tree Appeal, and escrowing \$105,000 with the City to be refunded at the final approval of the 41st lot/home or when the final caliper inches are planted.
- 2) If 18 months from the effective date of the final acceptance of public improvements five (5) building permits are not obtained, the escrowed funds would be forfeited to the City less any mitigated amount (installation of the additional trees).
- 3) The Covenants, Conditions and Restrictions (CC&Rs) for Gean Estates shall include requirements of the Tree Mitigation Plan as approved by the City.

If the appeal was approved, the Applicant intended to submit a grading plan which would address tree removal and grading for the rights-of-way, easements, and residential lots at the same time.

City Council denied the Tree Preservation Appeal for Phase 3 of Gean Estates by a vote of 3 to 3. The City Council was concerned about the proposal because of the amount of money being put into the Restoration Fund rather than planting on site. Though the fund may be used to purchase wooded areas and also individual trees to be planted on City property, the fund cannot be used to establish trees (irrigate, mulch, etc.) The cost to establish and maintain trees planted by the City is in addition to the cost of purchasing the trees and must be borne by the City, not the developer. The City Council encouraged the Applicant to try and identify additional areas within the Gean Estates development to plant trees.

Gean Estates Phase 3 Request:

The Applicant met with Staff to discuss options for on-site planting. Though Phase 3 did not offer additional planting sites, Phase 1 did have significant open areas where trees could be planted. Because the area abutted drainage facilities, the Public Works Staff reviewed the plan to identify potential areas to add additional trees in open space lots in Gean Estates Phase 1. A specific area was marked off by the Public Works Staff where trees could be planted in open space lots and not interfere with drainage nor be in a floodplain

The Applicant is asking to allow the removal of trees from 40 of the 41 residential lots and from one of the two open space residential lots in Phase 3 to perform advanced-lot grading. The Applicant submitted a Tree Survey and a Tree Preservation Appeal Plan (Tree Plan) that shows trees to be preserved and removed. 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 Tree Plan shows a building pad for each residential lot measuring approximately 80 feet by 90 feet. This pad area will allow for the home foundation, porches, patios and any required foundation treatments that may be required based on geotechnical reports.

The Applicant has looked at each lot individually, counted trees within the pad area as exempt and included the additional 20% of remaining quality trees as exempt (per the City's Tree Ordinance). However, the Applicant is requesting to remove 648 healthy trees that are not exempt - not in the building pads, easements, or rights of-way. These trees are all subject to mitigation. The total mitigation required for Phase 3 of Gean Estates is 2,250.4 caliper inches.

Residential Tree Removal Regulations & Tree Survey:

Protected quality trees per the UDC are trees that have a diameter of six inches (6") or greater measured at four and one-half feet (4.5') above the ground. Trees 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 permits. 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". This Code provision applies to the one open space lot that contains trees proposed for removal.

Tree Replacement Regulations:

Section 8.19 (I.1) of the UDC states that if protected trees are removed, the party removing the trees shall be required to replace the protected trees with quality trees. A sufficient number of trees shall be planted to equal or exceed the number of caliper inches of each tree removed. Said replacement trees shall be a minimum of three caliper inches (3") and seven feet (7') in height when planted.

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."

Section 8.19 (I.3) allows an applicant to make a request to make a payment into the Tree Reforestation Fund in lieu of planting replacement trees. The fund is only to be used for purchasing and planting trees on public property or acquiring wooded property that shall remain in a natural state in perpetuity. The payment amount 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 rate is set at \$150.00 per

caliper inch.

Analysis:

The request for this appeal is based on the Applicant's desire for advanced tree removal within all but one lot for Gean Estates, Phase 3. If the appeal is approved, the Applicant intends to submit a grading plan which will address tree removal and grading for the rights-of-way, easements, and residential lots at the same time.

The Applicant proposes two different alternatives for the Tree Preservation Appeal. Both utilize upsizing for 200-caliper inches; both plant an additional 500 caliper-inches on lots in Phase 3. One alternative completely mitigates the need for paying a required fee into the Reforestation Fund by planting 484, three-inch-caliper quality trees on 25' centers in open space lots in Phase 1. The second alternative plants 242 three-inch-caliper trees on 50' centers in open space lots in Phase 1 and offsets the remaining 724 caliper-inches by paying \$108,600 into the Tree Mitigation Bank. (This figure takes into account the extra two caliper inches, thus lowering the figure by \$300.)

Alternative Mitigation Method (1):

Mitigation Method-	Caliper Inches-
Upsizing Required Planting on Lots in Gean Estates Ph.3	200
Additional Planting on Lots in Gean Estates Ph.3	500
Plant 484 (3') Caliper Trees on Open Space Lots in Gean Estates Ph. 1	1452
Use Remaining Mitigation Banked Inches	100.4
Total	2252.4
Note 2 additional Caliper-Inches over in planting.	

Alternative Mitigation Method (2):

Mitigation Method-	Caliper Inches-
Upsizing Required Planting on Lots in Gean Estates Ph.3	200
Additional Planting on Lots in Gean Estates Ph.3	500
Plant 242 (3') Caliper Trees on Open Space Lots in Gean Estates Ph. 1	726

Use Remaining Mitigation Banked Inches	100.4
Total	1526.4
Pay for 242 (3") Caliper Trees into the Restoration Fund	726
Total	2252.4

(See Attachment 2: Proposed Tree Planting on Phase 1 of Gean Estates.)

Similar to the requirements of the Phase 2 Tree Preservation Plan - and if the appeal for Phase 3 is granted - staff would inspect the tree fencing and tree tags prior to construction. Once staff confirmed that the fencing and tags mirrored the Tree Plan, staff would approve the inspection and the applicant would be able to proceed with the removal of trees.

Planning and Zoning Recommendation:

The Planning and Zoning Commission took action on this item on June 24, 2019, and recommended approval of the second option by a vote of 7-0 with the following proposed amendments:

1. The City Council grants this Tree Mitigation Plan as presented with additional tree plantings, upsizing of required trees in the residential lots, payment of \$108,600 into the Tree Reforestation Fund, applying one hundred point four (100.4) banked caliper inches set aside with the Gean Estates Phase 2 Tree Appeal, and escrowing \$213,900 [1,426 caliper inches (200 caliper-inches upsized, 1226 new caliper-inches) x \$150] with the City to be refunded at the final approval of the 41st lot/home or when the final caliper inches are planted.
2. If 18 months from the effective date of the final acceptance of public improvements five (5) building permits are not obtained, the escrowed funds would be forfeited to the City less any mitigated amount (installation of the additional trees).
3. The Covenants, Conditions and Restrictions (CC&Rs) for Gean Estates shall include requirements of the Tree Mitigation Plan as approved by the City.

The Commission chose the second alternative, because it felt the trees would be too crowded on 25' centers and possibly struggle to reach maturity if planted. The 50-foot center plantings proposed in the second alternative appeared to provide a healthier, long-term urban forest plan.

If this Appeal is approved with the above conditions, Staff will prepare a Memo of Understanding to clearly state the requirements for the tree mitigation for the Phase 3 Construction plans and the Developer's Agreement.

Alternatives:

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

Preservation requirements in order to meet Gean Estates Phase 3 Mitigation Requirements:

1. Approve the tree plan as recommended by the Planning and Zoning Commission, upsizing 200 caliper-inches of trees on lots in Phase 3, planting an additional 500 caliper-inches on lots in Phase 3, planting an additional 242, 3"-caliper trees in the open space lots in Gean Estates Phase 1, applying the remaining 100.4 banked caliper-inches from Phase 1 and 2, and depositing \$108,600 in the Tree Restoration Fund with the following conditions:
 - a. Escrow \$213,900 [1,426 caliper inches (200 caliper-inches upsized, 1226 new caliper-inches) x \$150] with the City to be refunded at the final approval of the 41st lot/home or when the final caliper inches are planted.
 - b. If 18 months from the effective date of the final acceptance of public improvements five (5) building permits are not obtained, the escrowed funds would be forfeited to the City less any mitigated amount (installation of the additional trees).
 - c. The Covenants, Conditions and Restrictions (CC&Rs) for Gean Estates shall include requirements of the Tree Mitigation Plan as approved by the City.
2. Approve with modifications and/or additional condition(s).
3. Tabling the agenda item to a specific date with clarification of intent and purpose.
4. Deny.