

City of Bel Aire

STAFF REPORT

DATE: 10/09/2024

TO: Bel Aire City Council

FROM: Paula Downs

RE: Agenda

STAFF COMMUNICATION

FOR MEETING OF	10/15/24
CITY COUNCIL	
INFORMATION ONLY	

SUMMARY:

PUD-24-03. Proposed a Final PUD containing approved duplexes to be converted to townhouses with zero interior lot lines on a reduced lot size in an R-4 zoning district as built.

The city placed an ad in the Ark Valley Newspaper as required by the city code. The affidavit of publication is in the packet. The PUD process required notification of surrounding property owners.

City staff met with the applicants to finalize details what was important for the process.

History

The property has been zoned R-4 since 2008 and was replatted in 2020. The R-4 zoning district has a 10' side yard set back requirement.

Without knowledge of our processes, the developer hired a surveying company that completed a metes and bounds survey to split the lots. This survey was filed with the Sedgwick County Register of Deeds Office, which accepted and processed the lot split.

The discovery of lot splits outside of the city process changed how a single structure defined in the city building code could be divided into two single structures. The agreements and understanding of use were changed. The zoning code and building code issues created within the Bel Aire is not a new problem in the region for other jurisdictions.

Final plat of Bristol Hollows was approved in November 2019. Final plat document was approved by City Council December 2019.

Development Agreement

The Development Agreement was approved by City Council and signed on April 7, 2020. Key elements of the Development Agreement:

- Purpose; Paragraph three (3). Any deviations from the conceptual drawing shall be submitted for review and approval by the City;
- 2. Permitted Use:
 - All lots are zoned R-4, remain controlled by a for-profit development, as a single controlling entity or owner for the approved development;
 - A. and B. Construction shall have the following conditions:
 - Two-family dwelling units (duplexes) as shown on approved site plan;
 - Any low-density residential use based on the most current city zoning code;
 - Height and area regulations for R-4 developments;
 - Minimum dwelling unit – 1,000 s.f.;
 - Adhere to other requirements; drainage, stormwater, fencing & screening; landscaping; lighting, etc.,
- 24. Modification of Plat Through Replatting Process- *While it is intended by the parties that the development will precede in compliance with this Agreement and the existing plat of Bristol Hollows **nothing herein shall be construed to prohibit modifications to the Bristol Hollows development as a result of the formal replatting process.***
- 25. Respective Responsibilities of City and Developer:
 - C. The Developer agrees to assume responsibility to see that all original purchases of lots in the Addition receive a copy of the Developer's Agreement and the Restrictive Covenants at the time of purchase;
 - E.any individual or entity who later becomes a Developer by acquiring ownership of a lot or lots in said projects, shall do so subject to the terms of this Development Agreement....

Non-Conforming Issues Created with Lot Split:

- Landscaping requirements- 2 street trees in front yard of each side. Corner lots require three street trees of each lot;
- Interior lot line requirements- R-4 requires a 10' side yard setback. PUD eliminates the 10' side yard requirement. Outside lot lines are still at 10' and meet requirements;
- Lot coverage for accessory structures may be restricted based on size and quantity of structures;
- Home-based business use could be an issue depending on what type of business;
- Utilities installed across lots requires agreements- this would be a contract issue outside of City

PUD Application- PUD-24-03 (Final PUD is R-4 District with PUD Overlay)

Application was submitted with the following documents:

- Planned Unit Development Agreement
- PUD Exhibit referencing lot splits
- Ownership list

PUD Agreement:

- Developer desires zoning by a PUD;
- Agreement is necessary to establish a zoning change to a Planned Unit Development in the City;
- Intent is to permit a new approach to providing increased development flexibility in a manner otherwise constrained by the traditional development standards of the Zoning Code and Subdivision Regulations;
- Permitted Use: R-4 Single Family- includes Single-Family and Two-Family;
- Agreement allows:
 - Lot splits for all lots described in the PUD and requires applications for lot splits be submitted to the City and Register of Deeds office;
 - Respread of special assessment taxes divided 50% of aggregate to each new lot created in the lot split;
 - R-4 zoning district shall apply to lots described in PUD- with exceptions:
 - No required interior side yard setbacks;
 - Divided lots, shall have a minimum lot area of 4,000 square feet;
 - Divided lots, shall maintain a minimum lot width of 25';
 - All dwellings shall be built to all applicable building standards.

Staff Report recommended approval of the PUD Application with modifications to the PUD agreement listed above.

Status of Construction:

- Currently 40 two-family homes (duplexes);
- Lots are at all stages of construction;
- Some lots have not yet been constructed;
- Some lots have received final occupancy certificates;
- City has issued building permits based on building plans submitted;
- Lot split information was discovered around August- building inspector noticed boundary pins on the lots and GIS search confirmed lot splits had been completed.

Discussion

Townhouse Information:

- Can solve cross-lot concerns to protect property rights;
- Townhouse Ownership Act: Townhouse definition from K.S.A 58-3701: General legal definition of townhouse is “a single-family home that is attached to other units and shares walls with them:
 - Attached: Townhouses are attached to other units, usually by one or two walls;
 - Single-family: Townhouses are privately owned and can be considered a single-family home;
 - Property lines: Townhouses are separated by property lines;
 - Yard or public way: Townhouses have a yard or public way on at least two sides;
 - Height: Townhouses are usually no more than three stories tall;
 - Ownership: Townhouse owners are responsible for the entire unit, including the interior, exterior, roof, and land;
 - Maintenance: Townhouse owners are responsible for all property maintenance and repairs;
 - Taxes: Townhouse owners are responsible for all real estate taxes.
- Townhouses can be part of a PUD;
- R-5 Zoning Code 18.7.6- Sets out what is permitted within this district and includes information related to townhouses.

Building Code Requirements relating to 2-hour Fire Wall:

- You can have townhomes with the 1-hour wall but only if there is no plumbing in the walls. Most of the units currently constructed have plumbing in the shared wall;
- Townhouse requires each individual wall support the roof independently;
- Sedgwick County Fire Department does not inspect residential properties;
- Bel Aire inspected based on the 1-hour requirement because of the two-family duplex construction. Walls were built as required for a two-family (duplex). There is no indication, based on our inspections that this was a 2-hour rated wall;
- Owner of property (if they own ½ of the two-family residence) should be aware of the common wall design and that the difference between 1-hour and 2-hour; affects fire spread, events that happen on one side could affect the other side i.e. water leaks, and sound. Expectation in an apartment or two-family duplex that you are more “connected” to the other side. This is typically not the expectation in home ownership.

Two-Family Unit vs. Townhouse:

- Lot split created two different lots with townhomes vs. two-family unit (duplex);
- City could require them to file their covenants to provide for the understanding of how each individual property owner would ensure their “community rights”:
 - Utility lines running under each owner’s property;
 - Sharing siding, roof, etc.

Correct Process Steps- Consideration of R-4 vs. R-5 Zoning District

- Developer created the original plat, and it was established as an R-4 zoning district;
- Prior to splitting lots they should have filed a PUD or requested a rezone to R-5.
- R-5:
 - Townhome development would have been addressed correctly in the development agreement;
 - R-5 creates the acceptance of a zero-lot line construction;
 - Construction would have then met the requirements of a townhome construction;
 - R-4 to R-5 would have moved from a single-family residential category to a multi-family residential category.
- R-5 would have rectified:
 - Zero lot lines;
 - 2-hour wall issue;
 - Landscaping;
 - All other conditions would still be present;
 - In addition, R-5 would have allowed more dense construction which would be adverse to the development of this neighborhood.
- Filing the PUD application:
 - Development remains in the R-4 zoning district;
 - Lots would remain non-conforming;
 - Less dense construction is a benefit to the neighborhood.

Golden Factors:

- **The character of the neighborhood;**

The City of Kechi and county are rural residential. Bel Aire has housing that is built and utilized for the current zoning R-4 residential duplex design. The senior housing south of the PUD area is a low impact residential multi-family use.

- **The zoning and uses of nearby properties;**

North- Rural residential, Agriculture

East-R-4 and R-5.

South-R-4 single family with reduced side yard setbacks,

West-R-4, Agriculture

- **The suitability of the subject property for the uses to which it has been restricted;**

The City of Bel Aire 2018 Master Growth Plan is in line with the existing and proposed uses.

- **Extent to which removal of the restrictions will detrimentally affect nearby property;**

There are no adverse changes to nearby properties based on the approved City of Bel Aire 2018 Master Growth Plan.

- **Length of time the property has remained vacant as zoned;**

The PUD area was vacant for 16 years- 2008 to 2024.

- **Relative gain to the public health, safety, and welfare by the destruction of the value of petitioner's property as compared to the hardship imposed upon the applicant;**

The City of Bel Aire will gain affordable single-family housing with each family responsible as owners. Ownership adds value to neighborhoods and to the city.

- **Conformance of the requested change to the adopted or recognized Comprehensive (master plan) being utilized by the city.**

The city 2018 Master Growth Plan is in line with the existing and proposed uses.

- **Impact of the proposed development on community facilities.**

City installed a lift station and has prepared for development in this area. The city has required separate water and sewer for each unit. Community facilities are in place with no adverse impact.

- **Opposition or support of neighborhood residents. By itself this factor is not a sufficient reason to approve or deny a request.**

Letter from a property owner in the notification area concerned that construction was going to be very dense. They reviewed the case and were satisfied with the development.

Recommendations of professional staff:

Staff recommends the approval of the PUD with the following conditions:

- Original Development Agreement updated with current PUD information; and
- PUD Agreement submitted with PUD-24-03 application be updated as identified in the staff report.