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MEMORANDUM

To: Town of Palmer Lake Planning Commission

From: Scotty P. Krob, Town Attorney

Date: November 15, 2024

Re: Consideration of Lakeview Heights Resubdivision Master Plan

The Master Plan for Lakeview Heights Resubdivision is on the November 20, 2024 agenda for the Planning Commission's consideration and recommendation to the Board of Trustees. This memo is being provided to assist the Commission in its consideration. Under the applicable regulations, the Planning Commission is charged with reviewing the Master Plan and then submitting it to the Board of Trustees along with recommended actions. It is within the purview of the Commission to recommend approval, approval with conditions, or denial. The Master Plan must be approved, with or without conditions, by the Board of Trustees before the applicant proceeds to the next step, which will involve submission of a preliminary plat.

The comments from the Town's Design Review Team (DRT) are reflected in the November 11, 2024 memo from Dawn Collins to the applicant, that is included in your packet.

There are a couple issues related to this subdivision that have been raised and that the DRT would like to address at the outset of this memo and that we will be glad to follow up and discuss any questions you have at the meeting.

Issue 1: What are the "applicable regulations" governing the Commission's consideration of this application?

I recognize that the Planning Commission and the DRT have devoted a substantial amount of time and effort to developing new and improved subdivision regulations and that those new subdivision regulations were approved by the Board of Trustees based on the Planning Commission's recommendation, effective July 25, 2024. The question has been raised whether the most recent submittal from the applicant should be considered under the Town's new or

previous subdivision regulations. Having considered the issue and discussed the various filings with staff, my conclusion is that the Lakeview Heights subdivision is to be considered under the old regulations and that if the Town were to apply the new regulations, it would be changing the rules midstream, exposing the Town to potential liability. My reasons for reaching this conclusion are as follows:

When a land use application is submitted under one set of regulations and then the regulations are replaced with a new set, the regulations under which the application was initially submitted continue to govern the application if (1) the application was substantially complete at the time it was filed, (2) the applicant has pursued the application with reasonable diligence, and (3) the current application is substantially the same as the initial application. It is the date of initial submission, and not the date of completeness, that is the determinative date for deciding which regulations apply.

In this instance, the applicant submitted its original application on July 19, 2023. Its second submission was filed on November 15, 2023; third submission on July 26, 2024; and current resubmission on October 29, 2024. The Town Administrator has indicated the initial application was substantially complete, that many of the changes in subsequent submissions were made to comply with adopted regulations, at the request of Town staff and consultants, and that the current submission is substantially the same as the initial one. That is consistent with my understanding, as well.

Under these circumstances, the subdivision application should be reviewed under the subdivision regulations that were in place at the time of the original submission. For purposes of this memo, when there is a reference to the “applicable regulations” it refers to the subdivision regulations in effect on July 19, 2023. To assist the Planning Commission, a copy of the applicable code, which is Title 16 Subdivisions as it existed on July 19, 2023, is included in your packet.

Issue 2: Is a second access required?

It is my understanding that some of the early drawings related to the Lakeview Heights development showed a second access, but that second access is no longer available because a portion of the land needed for the second access is not owned by the applicant. The Town’s engineer has provided the following information for the Planning Commission’s guidance on this issue:

Regarding a second access to the proposed Lakeview Heights development, a review of the applicable criteria, adopted by the Town, from the El Paso County (EPC) Land Development Code (LDC) and Engineering Criteria Manual (ECM) indicate that a second access is not required by these criteria. The following is a summary of that review. Chapter 8 of the EPC LDC speaks to dead-end roads, particularly Paragraph 8.4.4.(D) which reads as follows:

(D) *Dead-End Road Standards.*

- (1) *Maximum Number of Lots on Dead-End Road.*** *The maximum number of lots fronting and taking access from a dead-end road is 25. A corner lot is not counted in the maximum number of lots on*

a dead-end road when the fire department determines that adequate emergency access is provided to the corner lot by an alternative road.

- (2) **More than 25 Lots on a Dead-End Road.** *Where more than 25 lots would front and take access to a dead-end road, a second means of access shall be provided. The second access shall be either a public road or a road located within an easement specifically constructed for emergency access purposes.*

In situations where a second access is planned but is not practicable to construct initially, a divided 4 lane road meeting the design and construction requirements of the ECM shall be considered a second means of access until the second access road is constructed. Provision for crossing the median of a 4 lane road by emergency vehicles shall be included in the design. Roads taking access from the 4 lane road shall be subject to the dead-end and roadway termination standards of this Code and the ECM.

- (3) **Maximum Length of Dead-End Road.** *The maximum length of a dead-end road is governed by the ECM, and may be further limited in those areas subject to wildfire hazard in accordance with this Code.*

These paragraphs are speaking to dead-end roads not being allowed more than 25 lots. They are specifically speaking to the dead-end configuration, which is interpreted as a singular leg of road that ends without an access point, usually in a cul-de-sac or similar turn-around. The Phase 1 roads of the Lakeview Heights development are not necessarily dead-end roads. The internal roads are looped such that no dead-end roads are created. The issue of a second access for this development is focused more on the single point of entry to the site from Lake Avenue.

Unfortunately, the LDC does not provide a specific definition of dead-end roads that can be interpreted or applied to the entry point of this development. When speaking to dead-end roads, the LDC does reference the ECM. However, the ECM does not address the number of access points to/from roads, it speaks only to the spacing of access points according to roadway classifications.

Applying the dead-end road configuration presented in the LCD to this development, dead-end roads are only identified in the future phase as the shorter cul-de-sac roads located toward the east end of the Master Plan drawing. If the applicant combines the lots along those future roads, as has been proposed, those roads would pass as having less than 25 lots. Keep in mind that the future phase is not being considered for approval at this time. For the Phase 1 being considered, since the LDC speaks to dead-end roads and not single access point developments, the adopted codes and regulations do not require a second access to the development as it is currently proposed with looped internal roadways.

To provide support to this conclusion, reference is made to a similar development in EPC. The Forest Lakes development started at Bristlecone Lake (west end of Baptist Road/Forest Lakes Drive from I-25) and progressed west toward the mountains. EPC approved this development that has a single access road into the development with looped internal roads and a few select dead-end roads. The characteristics of the Forest Lakes development are similar to the Lakeview Heights development. The similarities and the EPC approval of the Forest Lakes development supports the above interpretation of the LDC and ECM criteria as it applies to the Lakeview Heights development.

Staff recommendations

In addition to the two issues discussed above, the memo to the applicant identified a number of other issues warranting discussion by the Planning Commission. With regard to those issues, the DRT recommends the Planning Commission's recommendation of the Master Plan to the Board of Trustees include the following conditions:

1. With regard to ownership of the lots that are subject to the application, that the applicant provide evidence demonstrating that (1) it is the owner of all lots within the proposed resubdivision or (2) that it has written authority to act on behalf of each of the owners.
2. With regard to the requirement for an additional 5 feet on each side of the roadway, that the applicant either (1) add all impacted lot owners as applicants and dedicate the additional area on the plat or (2) obtain easement agreements acceptable to the Town from the owners of each of the affected lots.
3. With regard to other burdens the applicant proposes to place on lots not included in the application, including sprinklering of new homes, if required, and participation in the Firewise Community program, that the applicant provide written confirmation that the non-applicant lot owners have been advised of and consent to such burdens being placed on their property.
4. With regard to public land dedication, that the applicant dedicate 20% in the form of a parcel of property within the subdivision the Commission deems appropriate, or pay a fee in lieu of such dedication.
5. With regard to the roadway and related utilities, that the applicant provide evidence that the owners of all affected lots have received notice that their lot would be subject to a proportional reimbursement requirement before a building permit would be issued for their lot and of the anticipate costs involved.
6. With regard to engineering issues, that the matters identified by the Town's Engineer in the memo to the applicant be addressed, including the letter of intent from the wastewater provider, Master Plan Drawings, Traffic Impact Study, and Master Drainage Development Plan.
7. With regard to the detention facility for the subdivision, that it be included within the subdivision plat.
8. With regard to the zoning of the property, that all lots must be combined as part of the platting process.

9. Regarding stormwater drainage, that the comments of the Town's stormwater consultant as set forth in the memo to the applicant be addressed
10. A general note that the applicant must comply with all other applicable Town regulations in submitting and pursuing the preliminary and final plat.

The Commission should also discuss with the applicant the referral comments that are summarized in the memo to the applicant and recommend conditions the Commission deems appropriate to address those comments, particularly those of the El Paso County Department of Parks and Community Services and School District 38.

I look forward to our discussions.