



**KROB LAW OFFICE, LLC**  
Attorneys at Law

**MEMORANDUM**

**To: Palmer Lake Board of Trustees**

**From: Scott Krob, Town Attorney**

**Date: January 6, 2024**

**Re: Lakeview Heights Resubdivision – Master Plan Application**

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General nature of Lakeview’s Resubdivision - Master Plan application

There are several types of land use decisions the Board of Trustees (BOT) is authorized to make. The nature of the decision and the amount of discretion the BOT has, or its ability to place conditions on its approval, depends on the type of land use application it is considering. For example, the Board has complete discretion on whether to annex an eligible piece of property to the Town and can impose any conditions on that annexation that are negotiated between the Town and the property owner. The BOT has a lesser degree of discretion in considering an application seeking approval for a conditional use. In that situation, it can impose conditions that are reasonably related to mitigating the impact of the proposed conditional use on the surrounding properties or the neighborhood.

The BOT has even less discretion when considering a subdivision application. For a subdivision application, if the property owner has met all of the applicable criteria, then they are entitled to have their application approved, and their property subdivided. The first step in the subdivision process is submission of a master plan by the applicant, which is what the BOT has before it on Thursday, January 9, 2025. The criteria that apply to a master plan for a subdivision are set forth in Palmer Lake’s Town Code, Chapter 16.16, a copy of which is included with this memo.

Therefore, the issue for the BOT is: Does the Lakeview Heights Master Plan meet the criteria set forth in Chapter 16.16? If the application meets the criteria, then the applicant is entitled to have the application approved and to move forward to the next step in the subdivision process, which is submission of a preliminary plat, followed by submission of a final plat.

If the master plan application does not currently satisfy all of the criteria set forth in Section 16.16, then the BOT can (1) continue the matter and give the applicant time to satisfy the remaining criteria, (2) approve the application subject to conditions, or (3) deny the application. If it elects option (2), approval with conditions, those conditions must be limited to fulfillment of one or more of the specific requirements related to subdivision. The BOT does not have the authority to add conditions that are unrelated to or not part of the requirements for subdivision. Some of the conditions recommended to the BOT in connection with Lakeview Height's master plan fall into this category of conditions that go beyond the requirements for a subdivision and, therefore, cannot be imposed.

If the BOT elects option (3) to deny the application, the BOT will need to identify each of the specific criteria set forth in Chapter 16.16 that the master plan application does not satisfy and why the BOT does not believe it is satisfied.

If the BOT imposes requirements beyond those set forth in Chapter 16.16 or fails to specifically identify the criteria that caused it to deny the master plan application, the BOT's decision would likely be susceptible to legal challenge by the applicant.

I have provided two draft resolutions with these considerations in mind. The first is a resolution approving the Lakeview Heights Master plan with conditions. It includes the conditions recommended by the Planning Commission, to the extent they relate to subdivision. I have not included the PC's recommendations that sought to impose requirements that are not supported under the Town code, such as a requirement for a second access, for example.

The other resolution is one to deny the Lakeview Heights Master Plan. I have left a blank for the BOT to fill in, specifying the specific criteria the applicant failed to satisfy, causing the BOT to deny the application.

I look forward to discussing these matters with the Board.