

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: March 14, 2011
	Agenda Item No. 38 Roll Call No. [_____] Communication No. <u>11-167</u> Submitted by: Phil Delafield Community Development Director

AGENDA HEADING:

Resolution closing Hearing on Proposed Amendment to the Carmen Estates PUD Conceptual Plan for the land now Platted as Carmen Estates Plats 1,2,3,4 and 5, and denying same.

SYNOPSIS:

The subject conservation easement was required by the City Council as part of the Carman Estates PUD Conceptual Plan and the actual easement was dedicated with the subdivision plat for Carman Estates Plat 4. Aerial photography clearly indicates that some tree canopy that previously existed within the conservation easements has been removed. In addition, structures have been constructed within the easements without prior written consent of the Community Development Director in violation of the recorded conservation easement (i.e. numerous fences, a swimming pool, shed, etc.). Staff recommends that the conservation easements be retained.

FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

The subject conservation easement was required by the City Council as part of the Carman Estates PUD Conceptual Plan approved on June 4, 2001. The actual easement was dedicated with the subdivision plat for Carman Estates Plat 4 was approved January 23, 2006. The conservation easement was signed by Gerald Grubb as the Managing Member of Silver Oak Enterprises, L.L.C., and recorded as part of Carman Estates Plat 4. No survey information of the diameters or species of trees within the easement areas was provided at the time the PUD Conceptual Plan or at the time the subdivision was approved. However, a tree canopy boundary was shown on the PUD Conceptual Plan.

Paragraph 3 of the conservation easement states: “No tree within the easement area larger than 4-inches in diameter measured 1.5 feet above the base, and no tree planted in replacement of any such tree, shall be removed or materially pruned without the prior written consent of the City Forester of the City. Upon the removal of any such tree, regardless of cause, Grantor shall cause such tree to be replaced in close proximity within the Easement Area with a tree of an overstory species approved by the City for placement within the public rights-of-way of at least 2.0 inch diameter measured 1.5 feet above the base.” No additional information was submitted by the developer for review by the City Forester

regarding diameter, species or condition of trees within conservation easement areas where tree removal has occurred. No prior written consent was issued by the City Forester authorizing tree removal within the easement areas.

Aerial photography from the Polk County Assessors website from 2000 through 2010 clearly indicates that some tree canopy that previously existed within the easements has been removed. The aerial photography also clearly shows that a majority of the tree removal in and/or around the conservation easements occurred prior to construction of residential dwellings on the subject lots. At the Plan and Commission meeting on January 20, 2011 numerous homeowners testified that either no trees existed on their lot when it was purchased or that any removals were conducted by Jerry's Homes.

Representatives of Jerry's Homes have denied that they removed any trees in violation of the terms of the conservation easement or PUD Concept Plan and subdivision plat. Representatives of Jerry's Homes have also indicated that they voluntarily planted 2 street trees in the front yard of every lot in the subdivision exceeding the one tree per lot requirement. Representatives believe that no mitigation should be required and/or the extra tree in the front yard should be counted toward mitigation.

City staff has inspected each of the conservation easement areas within the Carman Estates Planned Unit Development in order to determine a reasonable mitigation ratio. Representatives of Jerry's Homes have requested a re-inspection of the properties in question to determine if the easement was correctly reviewed. Staff is agreeable to conduct a new inspection to determine if the tree count is accurate.

Staff recommends that the developer and/or home builders responsible for the improper tree removal be required to provide any necessary mitigation plantings. The homeowners who purchased their homes after the improper tree removal occurred should not be required to pay for the mitigation plantings. Staff recommends contact the homeowners to determine if they would allow mitigation plantings in the conservation easement on their property. Staff's priority will be to place any required replacement trees in locations acceptable to the home owners and within the conservation easement while attempting to take into consideration extra plantings installed by Jerry's Homes.

Paragraph 1 of the recorded conservation easement states: "Grantor shall not excavate within or erect structures or maintain any structure, including but not limited to garages, accessory buildings or fences, on the easement area without obtaining the prior written consent of the Community Development Director of the City." While wood fences require a fence permit, chain link fences under 4 feet in height do not require a fence permit. However, no fence (wood or chain link) is allowed in the conservation easement without the prior written consent of the Community Development Director. Structures have been constructed within the conservation easement at the following addresses:

- 2434 E. Porter Avenue (five-foot chain link fence and above ground pool installed in violation of permit)
- 2438 E. Porter Avenue (opaque wood fence installed with permit)
- 2446 E. Porter Avenue (four-foot chain link fence installed and shed partially constructed in easement)
- 2454 E. Porter Avenue (four-foot chain link fence installed)
- 2508 E. Porter Avenue (four foot chain link fence installed)

On January 20, 2011 the Plan and Zoning Commission voted 7-4 to approve a recommendation to City Council that staff review the erection of any structures within the stated conservation easement and that those improvements that were, through no fault of the homeowner, placed properly with permit be allowed to stay. In addition, the Commission recommended that no further encroachment into the conservation easement area be allowed in this development.

Staff recommends that all existing encroachments be allowed to remain. To avoid additional issues in the future, staff recommends that a notice be mailed to all current property owners within the Planned Unit Development who are subject to the conservation easements with a copy of the recorded easement and a reminder that no structures are permitted within the conservation easement without prior written consent of the Community Development Director. Any future encroachment will be reviewed on a case by case basis pursuant to the terms of the recorded conservation easement.

Staff recommends retention of the conservation easement and mitigation of trees removed in the easement.

To resolve the past violations of the conservation easements, the staff further recommends that negotiations continue with the home owners, developer and/or home builders to secure a reasonable mitigation plan.

PREVIOUS COUNCIL ACTION(S):

Date: February 28, 2011

Roll Call Number: 11-0363

Action: [On](#) proposed amendment to the Carman Estates PUD Conceptual Plan, for the land platted as Carman Estates Plats 1, 2, 3, and 4 (vicinity of 2421-2458 E. Porter Avenue), to allow removal of a 30-foot wide conservation easement: Denying the proposed amendment; and directing the Community Development Director to seek resolution consistent with the staff recommendation. ([Council Communication No. 11-140](#)) **Moved by Meyer to continue the public hearing until March 14, 2011 at 5:00 PM. Motion Carried 7-0.**

Date: June 18, 2001

Roll Call Number: 01-1956

Action: Second consideration of ordinance rezoning 5405 E. Indianola Avenue, from "R1-80" (One Family Residential) and "R1-90" (Large Lot One Family Residential) to "PUD" (Planned Unit Development). Moved by Brooks that this ordinance be considered and given second vote for passage, with amended provisions 1 through 11, and to adopt the portfolios of home plans submitted as the only home style that will be permitted in this development. Motion Carried 6-1. Absent: Flagg.

Final consideration of ordinance above. Moved by Brooks that the rule requiring that ordinances must be considered, and voted on for passage at two council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage with amended provisions 1 through 11, and that the ordinance do now pass, #13,963. Motion Carried 6-1. Absent: Flagg.

Date: June 4, 2001

Roll Call Number: 01-1733

Action: (A) Hearing on rezoning of 5405 E. Indianola Avenue, from "R1-80" (One Family Residential) and "R1-90" (Large Lot One Family Residential) to "PUD" (Planned Unit Development), and approving Conceptual Plan entitled "Carman Estates". Moved by Brooks to adopt. Motion Carried 6-1. Absent: Flagg.

01-1734 (B) First consideration of ordinance above. Moved by Brooks that this ordinance be considered and given first vote for passage. Motion Carried 6-1. Absent: Flagg.

BOARD/COMMISSION ACTION(S):

Board: Plan and Zoning Commission

Date: January 20, 2011

Resolution Number: ZON2010-00225

Action: The Commission voted 7-4 to approve a recommendation to City Council that staff review the erection of any facilities, within the stated conservation easement and that those improvements that were, through no fault of the homeowner, placed properly with permit be allowed to stay. That no further encroachment into the conservation easement area be allowed in this development.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

City Manager to refer negotiations on tree mitigation to Community Development staff. Staff will report the outcome of the negotiations or other enforcement actions to the City Manager.

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