

SUBDIVISION PETITION REVIEW REPORT

Petition Number: SUB 16-01

Petitioner: Mr. Scott Paul
Vanderbilt Homes
2617 Wynncrest Ridge Dr.
Chesterfield, MO, 63005
314-219-4164

Agent: Gabe DuBois
THD Design Group
148 Chesterfield Industrial Blvd, Suite G
Chesterfield, MO
636-294-2972

Project Name: Essen Estates Subdivision

Location: 214 and 216 Ries Rd.

Petition Date: 1/20/16

Review Date: 1/28/16

Requested Action: Subdivision amendment approval

Code Section: Chapter 25, Article IV

Existing Land Use/Zoning: Single Family / PSD

Surrounding Land Use/Zoning: North –Church / R-2
South –Single Family / R-1
East – Single Family / R-1
West – Single Family / R-2

Plan Designation: Low Density Residential

Project Description:

The petitioner secured approval of a 7 lot single family subdivision on an approximately 2.97 acre tract at 214 and 216 Ries Rd. in 2015. During the process of finalizing the documents and associated paperwork necessary for issuing subdivision and land disturbance permits it was discovered that the petitioner believed that the common ground areas approved as a part of this subdivision were sufficient to meet the open space land dedication requirements of the Ballwin Subdivision Ordinance (Article IV,

Sections 25-121 – 25-123). This issue was not raised by the petitioner during meetings with staff or during the public hearing before the Commission. The petition review report stated the following relative to this issue: **“There is no mention of the petitioner’s intention relative to this requirement. Most developers opt for the payment of a fee in lieu of dedication because the site is too small for the minimum recreation land dedication. This fee is based upon the purchase price of the land or the number of lots being created. The fee is estimated to be approximately \$4,000/lot, but the exact amount will depend upon the submission of sales information.”** The petitioner would like to revisit this issue and make its case in support of the common ground areas of this subdivision meeting the open space dedication requirements of the ordinance. The Board of Aldermen agreeing to this would allow the refunding of \$29,504.93 to the petitioner that was paid as a fee in lieu of land dedication.

Zoning Ordinance Provisions / PSD District:

There are no zoning or site development plan issues associated with this petition, so there is no discussion of any zoning district provisions in this report.

Subdivision Ordinance Requirements (Chapter 25)

The only provisions of the Ballwin Subdivision Ordinance that are relative to this petition are Sections 25-121 through 25-126 of Article IV. No other sections of the subdivision ordinance are discussed in this report. The final approved site development plan for Essen Estates subdivision will not be changed or amended pursuant to the this petition.

The site plan in the submitted documents is sheet 4 from the final approved plans for this subdivision. The colored site plan is new for this petition and is provided to clearly show the areas being proposed as meeting the requirements of the ordinance as a private recreational facility.

1. Sections 25-121 through 25-126 of the subdivision ordinance provide for the dedication of public open space lands, the dedication of private recreational facilities or for the payment of a fee in lieu of land dedication in new residential subdivisions. The language of these sections of the subdivision ordinance is quite specific and needs to be evaluated carefully as it relates to the petitioner’s proposal.

Section 25-121 (a) states that *“all subdividers of residential property shall provide for reasonable and adequate amounts of open space parks and recreational facilities within their developments. The requirement shall be deemed satisfied by the use of any one of the following alternatives or a combination of them:*

- 1. Dedication of open space land for public use;*
- 2. Fees in lieu of dedication, or*

3. Development of parks and recreational facilities within the subdivision or development.”

The petitioner is maintaining that, taken together, the common ground areas in his subdivision meet the intent of one or more of the preceding criteria.

1. Since none of the three common ground properties are proposed to be given to the City of Ballwin or are, in some other manner, set aside for an open space or public recreational purpose, they cannot be considered dedicated under the meaning of that term. Since they are substantially undeveloped, a case may be made that the two front common ground areas adjacent to Ries Rd. could be dedicated as open recreational space, but combined they are not big enough to meet the minimum area criteria of the ordinance (discussed later in this report). A substantial portion of the detention/water quality common ground area must also be included to make a land area that is big enough to meet the minimum land area requirement of the ordinance. This is problematic on two levels. First, the detention/water quality parcel is graded and planted with the sole intent of collecting and holding differential storm water runoff, reducing siltation and pollution of surface waters and recharging ground water. Although these all are desirable attributes for the site, I have to question whether these uses, in the configuration in which they are proposed to be developed in this subdivision, are consistent with a recreational open space designation. A detention basin is designed and built to collect and hold runoff. It is planted with specialized plantings and improved with special soils that do not lend themselves well with most recreational uses. Furthermore, no recreational equipment or facilities are proposed as a part of this plan. A dry residential detention basin is a very specialized facility with slopes, plantings, and improvements that are not recreational in nature. Second, there is a question in my mind if three small parcels, even if their combined areas exceed the minimum area threshold of the ordinance, can jointly be considered as meeting the area requirements of the ordinance or can be seen as suitable for recreational open space purposes. They are completely devoid of any improvements that can be viewed as actively or passively recreational in nature.

2. Since the petitioner is attempting to justify this development under this code section without paying a fee in lieu of dedication, this second subsection clearly does not apply.

3. Ballwin's definition of park is "...a reservation, playground, beach, swimming pool, recreation center or grounds, golf course, or any other area in the city, owned or used by the city, and devoted to active or passive recreation, which specifically includes, but is not limited to George Vlasis Park and additions thereto and the city recreational complex." This definition suggests that to qualify under the third criteria of this section these lands would have to be dedicated to Ballwin. Not only has this not been proposed, but the dedication to Ballwin

introduces additional qualifying criteria, discussed later in this report, that do not appear to have been met. Additionally, giving the property to Ballwin would require Ballwin to accept ownership and maintenance responsibility in perpetuity for the detention facility. Historically, Ballwin has never accepted any private subdivision storm water improvements for ownership and maintenance. Doing so here would potentially establish a precedent.

“The methods selected shall be done in accordance with the requirements of the city planner and shall be reviewed by the Zoning Commission and the Board of Aldermen prior to acceptance of the subdivision plat; but in any event acceptance or rejection shall be by ordinance.” **This section of the code requires that the ordinance accepting the subdivision (15-26) must be amended to allow for the acceptance of the common private ground areas as meeting the recreational dedication requirement. The ordinance presently does not include such language.**

- (b) *“This provision applies to development of all residential lands in the city, including all subdivisions, lots, tracts and parcels of land.”* **These criteria appear to have been met by this proposal.**
- (c) *“Neighborhood facilities, open space parks and recreational facilities that are developed consistent with the requirements of this article shall be within or near the development area, so that the intention of these requirements, specifically, to serve the needs created by such development is accomplished”.* **There is a question as to what an “open space park” is. The term is not defined in the code. The definition of park, however, suggests that it has to be dedicated to Ballwin. That is not proposed here. Additionally, there are no active or passive recreational facilities shown anywhere in this proposal, so this plan does not appear to meet any of these criteria.**
- (d) *“No building permits shall be issued until provisions of this article are satisfied.”* **No building permits have been applied for or issued as of this writing.**

I do not believe that the petitioner’s proposal clearly meets any of the criteria outlined in Section 25-121 except the provision that allows a payment in lieu of land dedication which is the code provision that the petitioner is attempting to avoid.

Section 25-122 (a) establishes a schedule based upon percentages of the land area of a development according to its zoning designation for the amount of land that must be dedicated for a qualifying development. The Essen Estates development is zoned PSD,

so the minimum land dedication is 10.5 percent. The enclosed letter from Gabe DuBois of THD Design Group has determined that 10.5 % of this site is 13,584 square feet. The letter goes on to show that the common ground areas A and B, which front on Ries Rd. and have areas of 2,793 sq. ft. and 4,439 sq. ft. respectively, when combined (7,232 sq. ft.) are not large enough to meet the minimum dedication requirement. A minimum of 6,353 square feet of additional land area is required to do this. This happens to be very close to the 6,561 sq. ft. of land in the detention basin common ground area that is above the “high water” overflow elevation of the basin.

Unfortunately the term “high water” is not defined in Mr. DuBois’ analysis, but he told me that the line separating the orange and green portions of the detention/water quality common ground area reflects an elevation of 556.62 feet. This is approximately 5” above the bottom of the basin and reflects the flooding depth that will be achieved on a regular basis from small storms. This is the water that is intended to recharge the ground water and allow settling out of sediment and hazardous materials.

I do not believe that the area in orange should be considered suitable for recreational purposes. It will frequently have standing water and will be wet and muddy much of the time. Furthermore it will be planted with wet-soil tolerant native plantings that are of questionable suitability for recreational purposes. If the orange area is excluded as recreational space, there is still sufficient green colored land in the common ground area to meet the 10.5% land area rule; however, the green area is steeply sloped. When wet it will be too slippery to utilize for any kind of active recreational purpose. Additionally, the basin formed by the slopes will contain storm water that is detained in the event of larger storms. Although storms large enough to require detention do not happen as frequently as the storms that will flood the bottom 5” of the basin, they happen with enough frequency to require the construction of such basins all over the country. It is not a rare event, so how suitable is the periodically flooded and steeply sloping portion of a detention basin for recreational purposes?

The underlying question here is one of suitability. Can detention basin land that has been graded and planted for the specific purposes of stormwater detention, pollution control and ground water recharge be considered suitable for active or even passive recreational purposes?

Section 25-122 (b) *“Suitability. While specific requirements may vary, all lands to be dedicated shall meet the following general requirements:*

- (1) *Size and shape shall normally contain not less than two contiguous acres.”* **This requirement creates another fundamental problem with the petitioner’s proposal. The land being proposed for acceptance as**

private recreational space only addresses the area requirements of subsection 25-122 (a). It does not come close to meeting the minimum requirement of this subsection 25-122 (b)(1).

A casual review of these two subsections might suggest incompatibility, but they are in fact complimentary. Section 25-122 (a) established the minimum percentage of a site that must be dedicated. It is a simple and straightforward methodology for determining reasonably sized park sites. For smaller developments, however, the percentage approach yields very small parcels of ground. Ballwin has established that park sites of less than 2 acres in area are insufficient to accommodate park and recreational facilities and activities. For this reason, Section 25-122 (b) (1) was included. It establishes a minimum park area dedication threshold of 2 acres.

The land being proposed as meeting the area requirement of the ordinance is substantially smaller than the required 2 acre minimum.

- (2) *“Location and accessibility shall be located in or adjacent to the subdivision or area to be served and easily accessible to same. Consideration should be given to placing park areas where they can be added to by future subdivisions, or the addition of open space required by this provision to an existing park.”* **The location of the land being proposed for private recreational purposes appears to be compliant with the recommendations of this subsection.**
- (3) *“Fifty percent of the land dedicated shall have a grade of less than six percent; it is Permissible for the remainder of the dedicated property to be covered with steep slopes, streams, ditches, lakes or other natural features.”* **The January 7, 2016 letter from Mr. DuBois addresses the minimum slope issue. The land proposed for private recreational purposes appears to meet the slope requirements.**
- (4) *“The land dedicated or to be dedicated should be conveyed in its natural state. Removal of trees, topsoil, and other natural features shall be prohibited unless there is previously acquired the written approval of the Board of Aldermen.”* **The two parcels adjacent to Ries Rd. will be somewhat disturbed during construction of the subdivision improvements. The proposed grading will impact these areas slightly and they will be significantly disturbed by the construction of the sidewalk. The common ground area will be completely reconfigured to accommodate its primary detention and water quality functions. None of the lands proposed for this recreational use will**

be compliant with this requirement. This is especially true of the detention/water quality parcel which will be completely regraded from its pre-development configuration.

- (5) **“The park board shall review the suitability of the land to be dedicated and provide a written recommendation to the Board of Aldermen.” The park board was disbanded in the late 1970’s and will not be making a recommendation on this petition.**
- (6) **“The Board of Aldermen shall have the final determination as to the suitability of dedicated land under this article.” The original subdivision approval ordinance for Essen Estates was passed pursuant to the understanding that a fee in lieu of recreational land dedication was the petitioner’s intended approach to this provision of the subdivision regulations. The proposal to have the common ground accepted as a private recreational facility requires an amendment to the original ordinance and the approval of the Board of Aldermen.**

I do not believe that the lands being proposed for private recreational facility purposes meet the requirements of subsection 25-122.

Section 25-123 establishes that private parks and recreational facilities can be developed and receive credit for the recreational land dedication requirement of the subdivision ordinance. “any subdivision plat containing suitable facilities to be reserved, constructed and maintained by a private organization to serve the needs of the subdivision being created may satisfy the requirements of this article, provided:

- (1) *They fulfill the area and suitability requirements of this article; and* **As I have stated above, I do not believe that the properties proposed for private recreational use in this petition meet either the suitability or area requirements of the ordinance. The ordinance clearly establishes 2 acres as the minimum area suitable for such facilities. The lands proposed for this purpose are nowhere near this large. The areas do not even meet the 10.5% rule since a substantial portion of the land proposed for the recreational area will be substantially flooded many times every year, and the steeply sloped balance of the detention common ground area will be subject to periodic flooding. I believe that there is a legitimate question about whether such areas can be viewed as even marginally suitable for recreational space.**
- (2) *They are reviewed by the Planning and Zoning Commission and the Board of Aldermen, and are approved by the Board of Aldermen. The*

ultimate determination of suitability will be the responsibility of the Board of Aldermen with the advice of the Planning and Zoning Commission.

Section 25-124 establishes the methodology for determining the amount of a fee in lieu of dedication. **The amount of this fee was established prior to the issuance of the subdivision and grading permits for this subdivision and was paid at that time. If the Board of Aldermen determines that the private properties proposed to meet this criteria are acceptable, the fee will be returned to the developer.**

Section 25-125 establishes that any lands resubdivided shall be subject to the provisions of this article. **There is no dispute that these recreational land regulations are applicable to this development.**

Section 25-126 stipulates that *“natural features such As trees, brooks, hilltops, and views shall be preserved whenever possible. The subdivider shall designate or show at the time of filing of his final plat what trees and other naturel features are to be retained. Artificial and natural lakes and wooded area are to be preserved and encouraged as much as possible.”* **This ordinance section was addressed as a part of the original site development plan approval for Essen Estates Subdivision. Several mature trees in the Ries Rd. right-of-way and in and near the front common ground areas are being preserved. There were no trees or other natural features preserved in the detention common ground area or in the rear portion of the subdivision generally. This petition does not change the status of any of the preserved trees.**

Thomas H. Aiken, AICP
Assistant City Administrator/City Planner