

CENTERVILLE PLANNING COMMISSION
REGULAR MEETING
Tuesday, January 27, 1981

Mr. Tate called the meeting to order at 7:30 p.m.

Attendance: Mr. Elmer C. Tate, Jr., Mr. Brian Bergsten, Mr. Dallas Horvath, Mr. Bernard Samples, Col. Stanley Morrow, Mr. Robert Chappell.
Absent: Mrs. Marian Simmons. Also present: Mr. Alan C. Schwab, City Planner; Mr. Karl M. Schab, City Engineer; Mr. Robert N. Farquhar, City Attorney; Mr. Joseph S. Minner, Assistant City Manager.

Approval of Minutes of January 6, 1981, Planning Commission Special Meeting:

MOTION: Mr. Samples moved to approve the Planning Commission minutes of January 6, 1981, as written. Mr. Horvath seconded the motion. The motion was approved unanimously.

SETTING OF PUBLIC HEARINGS

The following item was set for public hearing on Tuesday, February 24, 1981 at 7:30 p.m. in the City Building:

Fister, Lee H. and Judith W. - Variance on Side Yard Requirement
Location: 2122 Pelwood Drive

COMMUNICATIONS

Mr. Schwab stated that the projects which were forwarded to Council on January 6, 1981 by the Planning Commission are still being reviewed by Council.

UNFINISHED BUSINESS

Shadybrook - Preliminary Plan

To remain on the table.

Walnut Grove - Bond Release

Mr. Tate asked Mr. Schab what has happened on this proposed bond release since the last Planning Commission meeting when no action was taken.

Mr. Schab stated that a letter was received from Washington Township which confirmed that the roadways and the plat has been accepted for maintenance by Washington Township. Mr. Schab asked Mr. Farquhar to address the Planning Commission as to what the purpose of a bond is and anything else he might wish to add.

Mr. Farquhar stated that the bond goes back to the beginning of the plat. When it was first approved, the developer entered into a Subdivider's Agreement which was secured by a performance bond. In the Subdivider's Agreement, he agreed to do certain things based upon plans which were approved by the Engineering Department and the Planning Commission. Once the Engineering Department and the Planning Commission

have determined that the conditions of the Subdivider's Agreement have been met, you basically do not have any alternative except to approve the bond release. The problem here is that Planning Commission should take some kind of action. By not taking any action at all, you are denying any appeal rights that the subdividers may have. Mr. Farquhar stated that it is his opinion that once the Engineer and in this case Washington Township both indicate that performance has been had, the course of action is pretty clear. You do not have any choice but to approve the release of the performance bond and the setting of the maintenance bond. He stated that it can be denied but you do not really have any grounds to deny it. In the event of a denial, at least they would have the right to appeal to Council.

Mr. Bergsten asked if the appeal process would be effective since this plat is in Washington Township.

Mr. Farquhar stated yes it would go to Council only in the form of an appeal. Otherwise, the Planning Commission has final approval.

Mr. Schab stated that staff recommendation is to release the performance bond of \$168,500 subject to receipt of a maintenance bond in the amount of \$8,425.

Mr. Samples asked Mr. Farquhar what the rights of the parties would be if no action were taken on the bond release.

Mr. Farquhar stated that if no action were taken, a Writ of Mandamus could be issued to force the Planning Commission to take some action. They are entitled to have some action taken. He stated if the bond release were approved, since there has been some opposition expressed, anyone who appears in opposition under the Ordinance has the right of appeal to Council.

Mr. Bergsten asked what would happen if action were not taken tonight.

Mr. Farquhar stated that one of two things could happen. First the City could be sued with an order from the court either to take action or show cause why it did not. If the court determined that the developer has an absolute right to have the bond released, then you would get a court order ordering you to release it. Something less than that would be that you might get an order from the Court ordering you to either take action or show cause why you should not take action. You might get either of those in this situation. There is a fairly decent chance of getting a direct Writ to take the action based upon the fact that you have an engineering determination that they have performed.

MOTION: Mr. Samples moved to release the performance bond of \$168,500 for Walnut Grove subject to receipt of a maintenance bond in the amount of \$8,425. Col. Morrow seconded the motion.

Mrs. Costello asked if she could speak on the issue.

Mr. Tate stated no, the better part of two meetings had been used for discussion on this matter and all the information had been brought forward during those times. Mr. Tate asked Mr. Farquhar if Mrs. Costello had the right to appeal.

Mr. Farquhar stated that Mrs. Costello would have the right to appeal if she had stated her opposition to the issue.

Mr. Tate stated that she has stated her opposition.

Mr. Farquhar stated that although we have never run across this situation for a bond release, she would have a right to appeal since it comes under the same appeal rights. She would probably have the right to appeal the decision to Council.

Mr. Samples stated that unless he can be assured Mrs. Costello does have the right to appeal, he would like to withdraw the motion.

Mr. Farquhar stated that in other action that has been taken which comes under the Subdivision Regulations, we have had the right of appeal established by precedent, so in this situation since Mrs. Costello has appeared in opposition, she would have a right of appeal.

Mr. Tate stated Mrs. Costello has appeared in opposition and she has given a lengthy dissertation on what the problems are and a list of events that have occurred over the past year. Those problems have been looked into and the bond has been held up for the past two meetings. The original reason for holding the release of the bond up was a statement that was made by Mrs. Costello that there was an error in the recorded plat as far as the elevations were concerned. Mr. Tate stated that has been cleared up as far as he is concerned and as far as the Engineer is concerned. On that basis, as long as we are not in error on the judgment, it is his (Mr. Tate's) feeling that the next step would not be with the Planning Commission. The next step would have to be with Council.

Mr. Farquhar stated that he would like to point out that the action that will be taken is that the bond will be released subject to the posting of a maintenance bond. Once that maintenance bond is posted, it a moot question on appeal to Council. The normal appeal times do not apply in this situation because once the maintenance bond is posted, the question is out of the City's hands. In other actions under the Ordinance, there is a delay time which does not apply in this situation. Other than that, there is a right of appeal.

Mr. Tate stated then a motion to deny the bond release would simply be sent to Council under the appeal procedure unless the developer decided to take matters into his own hands and get a Writ.

Mr. Farquhar stated that the developer would probably have two (2) choices. One would be to appeal the decision and the other would be to go right into court and try to get a Writ of Mandamus. One of the defenses to a Writ of Mandamus is that they have not exhausted their remedies. Since they have a clear right of appeal, Mr. Farquhar stated he would think that they would at least have to go to Council first.

Mr. Chappell stated that basically the Planning Commission has no alternative than to release the bond as it has been professionally determined that the plans were carried out to the degree of a variance normally accepted.

Mr. Tate asked Mrs. Costello to give her prepared statement.

Mrs. Costello stated that she opposed the release of the Walnut Grove bond because of the preliminary topo plans which were approved were incorrect and the storm sewer was constructed on the basis of these plans. As a result, the water shed areas feeding the storm sewers are different than planned and the area feeding the storm sewer emptying into their yard is larger than planned for. There are properties receiving larger bodies of water than what was originally intended. Also, the purpose of part of the performance bond is to install survey markers defining all the lot lines. This has not been done.

After the discussion of Mrs. Costello's appeal rights, Mr. Samples stated that his motion would stand.

Mr. Bergsten stated that possibly the developer has met all his legal obligations, however, he has not met his moral obligations.

The motion was approved 4-2. Mr. Bergsten and Mr. Horvath voted no.

NEW BUSINESS

Polo Club Estates, Sec. 2 - Bond Release

Mr. Schab stated that Polo Club Estates, Sec. 2, is a development located east of SR 48 and south of Nutt Road at Atchison Road in Washington Township. Inspections by City and Township staff shows that all improvements are in place. The Township Trustees have accepted the streets for maintenance.

It is the recommendation of staff to release the performance bond of \$143,000 subject to receipt of a maintenance bond in the amount of \$7,150. Mr. Schab stated that one specific item was mentioned in the Township notification of release. They have requested that the maintenance bond which would normally run for a one (1) year period would not be sufficient to show up the problems which might be occurring in the plat. They have requested that the maintenance bond be posted for a period of more than one (1) year. Mr. Schab stated that the Subdivider's Agreement states that a one (1) year maintenance bond will be posted. He asked Mr. Farquhar if this would be possible.

Mr. Farquhar stated that this would not be possible because the City is bound by the Subdivider's Agreement the same as the developer is. In the contract we have agreed that upon the developer having performed, there will only be a one (1) year maintenance bond.

Mr. Schab stated that if a problem were to occur within one (1) year, the insurance company could be contacted stating that the maintenance bond has not been complied with and we want the problem corrected.

Mr. Farquhar stated that once notice is given to the bonding company before the expiration of one (1) year, they have to continue to honor it until the problem is resolved.

Mr. Schab stated that we can handle this situation in this way and City and Township staff can keep a close eye on this plat within the time allotted.

Mr. Samples asked what the concern of the Township is.

Mr. Schab stated that the concern of the Township is the concrete street which has had certain failures. It has shown an amount of cracking which is more than usually expected. Another concern is that the original contractor (Kanter Corporation) is now out of business and someone else is taking over. The new party will be posting the maintenance bond for the Kanter Corporation. In view of these two facts, the Township wanted to have a longer period to watch if there is going to be a problem.

Mr. Bergsten asked if there is some feeling that the concrete streets were not built to specifications.

Mr. Schab stated that the streets were built to specifications. However, the question is in looking at the streets in Section 1 versus Section 2. Section 2 was built by the same developer. Section 1 was used for the construction traffic for Section 2. The Township has some fears of this and that want to be doubly sure.

MOTION: Mr. Horvath moved that the performance bond of \$143,000 for Polo Club Estates, Section 2 be released subject to a maintenance bond in the amount of \$7,150. Mr. Chappell seconded the motion. The motion was approved unanimously.

Maralgate Farms, Sec. 1 - Bond Release

Mr. Schab reviewed the recommendation for release of the performance bond for Maralgate Farms, Section 1, located south of Spring Valley Road just west of the City corporation line. He stated that the lots in Section 1 are 30% completely developed. He stated for this reason the recommendation is to have only the performance bond for the streets released. The separate sidewalk bond of \$12,000 is not to be released at this time. Mr. Schab stated that the streets have been inspected by City and Township staffs. The Trustees have agreed to maintain the streets as stated in a letter dated December 16, 1980. It is, therefore, staff recommendation to release the performance bond of \$156,000 for Maralgate Farms, Section 1, subject to receipt of a maintenance bond in the amount of \$7,800.

MOTION: Mr. Horvath moved to release the performance bond of \$156,000 for Maralgate Farms, Section 1, subject to receipt of a one-year maintenance bond in the amount of \$7,800. Col. Morrow seconded the motion. The motion was approved unanimously.

Maralgate Farms, Sec. 2 - Bond Release

Mr. Schab stated that the same review of Section 1 would apply to Section 2. Staff recommendation is to release the performance bond of \$87,496 subject to receipt of a maintenance bond in the amount of \$4,374. A separate sidewalk bond of \$16,034 is not to be released at this time.

MOTION: Mr. Horvath moved to release the performance bond of \$87,496 for Maralgate Farms, Section 2, subject to receipt of a maintenance bond in the amount of \$4,374. Mr. Chappell seconded the motion. The motion was approved unanimously.

Beechwood One, Sec. 1 - Bond Release

Mr. Schab reviewed the area of Beechwood One, Section 1, located south of Spring Valley Road and west of Clys Road in Washington Township. The lots are developed with only a few exceptions.

Staff recommendation is to release the performance bond of \$190,500 for Beechwood One, Section 1, subject to receipt of a maintenance bond in the amount of \$9,525. A separate bond for the sidewalks should be reduced to \$10,000 since approximately \$5,900 of sidewalks are not in place.

MOTION: Col. Morrow moved to release the performance bond of \$190,500 for Beechwood One, Section 1, subject to receipt of maintenance bond in the amount of \$9,525. A separate sidewalk bond of \$23,000 shall be reduced to \$10,000. Mr. Samples seconded the motion. The motion was approved unanimously.

Beechwood One, Sec. 2 - Bond Release

Mr. Schab stated that Section 2 of Beechwood One contains a park area of approximately five (5) acres. He stated that the streets and storm sewers are in place. They have been inspected, approved, and accepted by the Washington Township Trustees. Mr. Schab stated one lot is still under construction, therefore, the sidewalks for this one lot is not in place.

Staff recommendation is to release the performance bond of \$102,000 for Beechwood One, Section 2, subject to receipt of a maintenance bond in the amount of \$5,100. A separate sidewalk bond of \$14,000 should be reduced to \$1,000.

MOTION: Mr. Chappell moved to release the performance bond of \$102,000 for Beechwood One, Section 2, subject to receipt of a maintenance bond in the amount of \$5,100. A separate sidewalk bond of \$14,000 shall be reduced to \$1,000. Col. Morrow seconded the motion. The motion was approved unanimously.

Normandy Manor - Modification of Recommendation

Mr. Schab stated that the bond proposed for release is that for maintenance of a ditch. In referring to a letter dated February 19, 1980 from the Washington Township Trustees, Mr. Schab stated that a performance bond of \$2,500 was required for the maintenance of the open ditch in the plat as a condition of approval for release of the performance bond in February of 1980. He stated that the performance bond has become unnecessary as the maintenance work responsibilities are covered in the individual deeds.

Mr. Farquhar stated that the clause in the individual deeds very clearly states that the property owners do have the legal obligation to maintain the ditch.

Mr. Tate asked what the reason was for requiring a performance bond for ditch cleaning originally.

Mr. Schab stated that the reason for requiring the separate bond for ditch cleaning was to be sure that the ditch would be in an acceptable condition once all the lots were developed. The bond was to protect the Township from having to maintain the ditch.

Staff recommendation is to modify the original Planning Commission action by deleting the performance bond of \$2,500 for ditch cleaning.

Mr. Samples asked Mr. Farquhar if this modification is being requested because the contingency was improper.

Mr. Farquhar stated that he didn't feel that it was improper at the time. He stated that what apparently has happened is that the performance bond was not posted, but they have performed. Therefore, there is no longer a need to have a performance bond. What is being requested is to delete the requirement for a performance bond since there is nothing to perform any longer.

Mr. Bergsten asked if the developer is leaving the ditch in good shape since it will now be the responsibility of the property owners.

Mr. Schab stated that the ditch has been inspected and it is in good condition.

Mr. Samples expressed concern as to why the ditch is being treated in this manner and will the Planning Commission hear complaints for this approval in the future.

Mr. Schab stated that much work was put into the decision of placing an open ditch in this area. He stated that the design of the ditch was reviewed and approved by the Washington Township Trustees. A deed restriction better outlines the responsibilities of the property owner and the responsibility without limitation of maintenance or liability concerning the ditch. Therefore, the property owner should be more aware of the situation since it is in his deed.

MOTION: Mr. Samples moved to no longer require a performance bond in the amount of \$2,500 for ditch improvements in Normandy Manor as (previously approved on February 26, 1980) based on staff recommendation and a letter from Washington Township Trustees dated February 19, 1980. Mr. Bergsten seconded the motion. The motion was approved unanimously.

There being no further business, the meeting was adjourned.

Mallas J. Harvath 2/24/81

