



Department Source: Community Development - Planning

To: City Council

From: City Manager & Staff

Council Meeting Date: September 19, 2016

Re: Kitty Hawk Manor, Plat No. 6 – Preliminary Plat (Case #16-137)

Executive Summary

Approval of this request will result in the creation of an eight-lot subdivision and the dedication of additional right of way for Northland Drive.

Discussion

The applicant, Crockett Engineering Consultants, on behalf of the Manor Homes, LLC, is seeking approval of an 8-lot preliminary plat that includes previously platted portions of Kitty Hawk Manor, Plat No. 2 and Northland Acres. Of the 8 proposed lots, 7 will have frontage on Gypsy Moth Drive and the eighth lot will have access off of Northland Drive. Of the lots that have frontage on Gypsy Moth Drive, 5 are proposed for development with single-family dwellings while the remaining two lots are being retained as common areas.

Recently, Manor Homes, who is developing property along the south side of Gypsy Moth and currently owns Lot C2 (as shown on the preliminary plat), repurchased the north 100' of several of the lots (Lots 1-5 shown on the preliminary plat) along the north side of Gypsy Moth, as well as an existing lot in Northland Acres (shown as Lot 6 in the preliminary plat). The 5 new development lots on the north side of Gypsy Moth are being made possible due to the applicant's recent acquisitions and elimination of a private restrictive covenant along north 100-feet of Lots 1-5.

As part of the plat review process it was brought to staff's attention that a private restrictive covenant was recorded over the north 100-feet of the lots north of Gypsy Moth Drive shown as Lots 70-81 of Kitty Hawk Manor, Plat 2. Public comments received during the plat review process claimed that the applicant was not entitled to proceed with his request due to the private covenant.

In response to these claims, staff reviewed the recorded plat for Kitty Hawk Manor, Plat 2 and was unable to identify any developer imposed restrictions on the plat that would restrict the development as it is proposed. Staff further consulted with the City's legal department regarding the private covenant and was informed that private covenants and claims of violation against them are private civil matters to which the City is not a party. Given this instruction, staff completed its review of the preliminary plat ensuring that the requirements of the City's zoning and subdivision regulations were being met.

At its August 18, 2016, meeting, the Planning and Zoning Commission considered this request. Staff presented its report and a representative for the applicant gave an overview of the request. Commissioners inquired about the current owner of the property included in the



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preliminary plat, which is Manor Homes, LLC, as well access to Lot 6, which will be from Northland Drive.

Commissioners also inquired about the existence of any development restrictions on the property, which staff had mentioned in the staff report, and if the City would be open to any litigation as a result of allowing development that may contradict the private restriction. Staff responded that the restrictions placed on the property were done so by private individuals, and the City was not a party to the restrictions.

Two members of the public spoke in opposition to the request. Both were nearby property owners concerned with the impact of the development on their properties. Each provided additional information regarding the private development restrictions. One of the speakers, Annette Kolling-Buckley Greenlee, indicated that she had never received the north 100 feet of lots 72-74, which was part of the agreement with the previous developer. The applicant agreed to transfer this portion to Ms. Greenlee.

After further discussion, the Planning and Zoning Commission voted (9-0) to recommend approval of the plat, with the condition that the north 100 feet of Lot C2 (also shown as Lots 73 and portions of Lots 72 and 74) either not be developed, or that the property be transferred to Ms. Greenlee and the preliminary plat be revised prior to Council approval.

Since the PZC meeting, staff has received a revised preliminary plat that removed the north 100 feet of Lots 73 and portions of Lots 72 and 74 in order to meet the Planning and Zoning Commission's conditions. The plat has been modified accordingly. Staff has verified that Ms. Greenlee is now the current owner per the Boone County Assessor's website.

The Planning and Zoning Commission staff report, locator maps, revised preliminary plat (dated 9/6/16) preliminary plat (dated 7/15/16, revised to conform with the Commission recommendation), previously approved "Kitty Hawk Manor" preliminary plat, and meeting excerpts are attached.

Fiscal Impact

Short-Term Impact: Limited short-term impact. All infrastructure extension will be a developer's expense.

Long-Term Impact: Long-term impact would include infrastructure maintenance and public safety services. Such increased costs may be offset by increased property taxes and user fees.



Vision & Strategic Plan Impact

Vision Impacts:

Primary Impact: Development, Secondary Impact: Not Applicable, Tertiary Impact: Not Applicable

Strategic Plan Impacts:

Primary Impact: Infrastructure, Secondary Impact: Not Applicable, Tertiary Impact: Not Applicable

Comprehensive Plan Impacts:

Primary Impact: Land Use & Growth Management, Secondary Impact: Not applicable, Tertiary Impact: Not Applicable

Legislative History

Date	Action
11/17/2014	Resolution #216-14: Approved "Kitty Hawk Manor" preliminary plat
7/13/1978	Approved "Kitty Hawk Manor Plat No. 2" final plat

Suggested Council Action

Approve the preliminary plat for "Kitty Hawk Manor, Plat No. 6".