

ITEM NO. 11 PRELIMINARY PLAT; KAPPA DELTA ADDITION; 1.8 ACRES; 1602 HIGH DR (SLD)

PP-3-2-11: Consider a Preliminary Plat for Kappa Delta Addition, a 1.8 acre subdivision containing one lot, located at 1602 High Drive. Submitted by Bartlett & West, for Zeta Epsilon House Corporation, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

APPLICANT PRESENTATION

Mr. Darron Ammann, Bartlett & West, said he was aware of the communications sent by the neighborhood and appreciated their comments and concerns. He said he tried to get a neighborhood meeting set up but the neighborhood by-laws require a certain amount of time be given for notification so it did not work out. He said he made phone calls to a few people that were not returned. He said the rock garden deed was a mystery item that they did not know about. He stated when the survey manager pulled the new title deed description for the entire property the issue never came up. He said what they were doing at this time had no impact on platting the parcel lines and trying to combine the piece of property. He said this was a procedure to get a page and a half legal description reduced. He said he had several conversations with the applicant about doing some improvements to the property at some point in the future. He did not know what those improvements would be or when they would take place. He said there would be upgrades to the parking and maintenance upgrades to the building, such as a new roof.

Commissioner Harris inquired about the site improvements.

Mr. Ammann said in order to do any improvements the property needed to be platted because it had never been platted. He said the applicant was looking to enhance parking improvements and potentially a building addition in the far future. He stated the applicant wanted to work with the neighborhood and be a good neighbor.

Commissioner Harris asked if parking may be put on the piece of land the neighborhood thinks was restricted from adding parking.

Mr. Ammann said at this point in time his answer was that it was undetermined. He said probably not because they wanted to keep as much green space as possible in the front of the property.

Commissioner Dominguez inquired about the plan.

Mr. Ammann said platting needed to be done in order to move forward with a Site Plan at some point in the future. He said currently there was no concept of what would be done other than improve parking. He said the rock garden area was a private thing that was done between two private parties.

PUBLIC HEARING

Mr. Kurt Falkenstien, West Hills Neighborhood Association, said they had the indenture and were interested in keeping the rock garden as green space. He felt the Preliminary Plat should not be approved because the document specifically said it should not be.

Commissioner Dominguez asked how Mr. Falkenstien found out about the Preliminary Plat.
Mr. Falkenstien said word of mouth.

Commissioner Liese said the document was very interesting and asked staff to clarify if it was irrelevant to the Planning Commission decision.

Mr. McCullough said the City would have no regulatory authority to enforce the private deed restriction.

Mr. Randy Larkin, staff attorney, said it was an agreement between outside parties and the City would not get involved in enforcing those types of agreements or covenants between third parties. He said the platting process would establish the footprint for what it would be. He said the deed had no relevance to the platting process.

Commissioner Liese asked if he was indirectly advising Planning Commission to not consider it in their deliberations about the proposed plat.

Mr. Larkin said it had no effect on the process.

Mr. McCullough said staff was directly advising them to not necessarily consider it. He said it was always good information to know about these things but that there was no current proposal to impact the area at all, just simply platting and creating boundary lines. He said Site Planning could be a different story and when the notice goes out for the Site Plan the issue might come up again, although the staff legal position would still be the same. He stated as a plat issue it had very little relevance.

Commissioner Singleton asked if the neighborhood association was aware that by platting all the applicant was doing was combining the property into one lot for the legal description.

Mr. Falkenstien said tonight was the first time he had heard what the applicant was proposing.

Commissioner Singleton said at this point the applicant was just trying to compact the legal description.

Ms. Day said additionally, it would dedicate an easement to cover existing City utilities crossing the property and the additional minimum right-of-way width for the street.

Mr. Falkenstien said if it was at all related to parking and related to the rock garden the neighborhood would like to nip it in the bud tonight.

Commissioner Singleton said the plat had nothing to do with parking.

Commissioner Rasmussen said all Planning Commission would be doing was approving a plat. He asked if he would still recommend denial.

Mr. Falkenstien said no.

Commissioner Harris said one of the things in the deed was that if the property developed with parking or a building the rock garden would revert back to the ownership of the neighborhood association. She wondered if it was platted as one property would there be a mechanism to honor that.

Mr. Larkin said the City was not in a position to honor that and enforce a contract between outside parties. He said if there was violation then one party could possibly take action against the other party.

Commissioner Harris asked if the land could be subdivided.

Mr. McCullough said in the future there could be some sort of court order affecting the subdivision of the property.

Ms. Sarah Casad, 1130 Emery Rd, said the deed included a stipulation that if the land was ever built upon the ownership would revert back to neighborhood association because it was intended as a dedicated buffer. She felt it would change the character of the neighborhood. She said the sidewalk on the west side of Emery was

because it would destroy the bird sanctuary on the east side. She suggested two plats, one with the original deeded property.

Ms. Susan Michalski, Kappa Delta Sorority, said the rock garden issue just came up this week. She said they purchased the property 20 years ago and this was never brought to their attention. She said when she took over she found out that none of the property was platted and they wanted to do things right that were not done in the past. She said knowledge of the deed was brand new and that they wanted to start on the right foot. She said when the property was built in the 1950's nobody had cars so they wanted to try and meet City requirements for residence and sidewalks. She said they were not intending to do any major projects or big construction. She said she was more than willing to meet with the neighborhood and address their concerns. She said they loved the green space and did not want anything to happen to it but that there were city requirements for the size of parking stalls and sidewalks that they were looking at from a liability standpoint. She said if they do need to change the parking lot they were not trying to wipe out all the trees.

Commissioner Harris asked if they currently had a parking capacity problem.

Ms. Michalski said when the new City requirements came about there was a certain number of lots required for the number of residents. She said the size, width, and depth of the lot might be an issue but they have not gotten into the details of that.

Commissioner Harris asked if they did not have enough parking spaces for the current residents and their guests the way it was currently configured.

Ms. Michalski said on weekends with visitors parking was always an issue. She said they did not know yet if they could add more asphalt.

Commissioner Dominguez asked if they had been notified by the City that they were in violation of parking.

Ms. Michalski said no.

Commissioner Dominguez asked if they planned on putting in additional parking.

Ms. Michalski said she was not sure. She said they needed to add more asphalt to the parking lot in order to drive across it.

Commissioner Dominguez asked if there was an increase in the number of residents.

Ms. Michalski said no, that the number of residents had decreased. She said they were not looking at building expansions.

COMMISSION DISCUSSION

Commissioner Singleton said the property needed to be platted and it made sense to plat the property, as well as the easement and right-of-way being good for the City. She recognized there may be some issues between the private land owners but it did not look like there was even any suggestion of a Site Plan that would affect the rock garden or the deed.

ACTION TAKEN

Motioned by Commissioner Singleton, seconded by Commissioner Liese, to approve the Preliminary Plat of the Kappa Delta Addition and forwarding it to the City Commission for consideration of dedication of easements and rights-of-way.

Commissioner Finkeldei agreed that Planning Commission does not consider private issues and for that reason he would support the plat. He hoped both sides worked on the issue.

Commissioner Harris said she would support this because platting it would allow the property to develop other areas that did not have anything to do with the garden and they couldn't do it otherwise. She said she did not see the advantage of two plats because it would still belong to the property owner and they could still do what they wanted and then the neighborhood could contest it with the deed. She did not think the neighborhood would lose anything in this process and would still have recourse with the document they had to limit development on that area, whether it was platted or not.

Motion carried 7-2, with Commissioners Burger and Dominguez voting in opposition.