

Minutes of March 14 2020

Forest Heights Neighborhood Group Meeting

Topic: Forest Heights Circle and Forest Heights Estates Subdivision, and Current Residents

Attendance:

Phyllis Didleau – Resident/Developer

Jon Didleaux - Resident/Developer

Ruby – Resident (with Jon)

Jack Yonce - Resident

Leilani Ritchie - Resident

Judy von Ahlefeldt - Resident

Absent: Chuck Bauer- Resident

The meeting began at 1:00 pm. Saturday, March 14, 2020 at Phyllis Didleau's home.

Phyllis prepared an agenda and explained how she and Jon acquired the property from Phil Wells a few years ago.

All four resident neighbors (Yonce, Bauer, Ritchie, and von Ahlefeldt) are all adjoining neighbors to the subdivision lots and/or to the Forest Heights Circle parcel, which is also owned by Jon and Phyllis. In addition, Yonce owns a portion of Forest Heights Circle which also part of his lot.

Phyllis and Jon hired Dan Kupferer, Land Development Consultants (LDS), to assist with the El Paso County Development Process and Requirements, and documents preparation. In 2017-18 Phyllis and Jon attended two Early Assistance Meetings (EA Meetings) at El Paso County Community Planning and Land Development Services, with Mr. Kupferer

In the time since the last EA meeting several steps in the Development Process have been completed. Both the subdivision lots area, and the road area have been surveyed, and the Water Court Decree has been obtained. The Drainage Report is in final draft format for Submission and County Review (Judy is reviewing the final draft), and the Soils and Geology Report is expected. These can all receive further comment after the County has gone over them and the subdivision is in the public review stage later on.

Phyllis, assisted by Judy von Ahlefeldt, met with LDC (Dan Kupferer and Ken Harrison (PE), on Monday March 9, 2020 to summarize progress so far and make a plan to complete necessary steps so all documents from proposed subdivision can be submitted to El Paso County for Subdivision Review.

The primary purposes of the Saturday, March 14, 2020 meeting was to inform neighbors of the progress made and what to expect from the Subdivision Process, to ask about their concerns, and especially to explain and discuss with them the issues and opportunities regarding the Subdivision Process and specifically what was known at this point about County requirements for Forest Heights Circle maintenance once improvements are satisfactory.

OVERALL INFORMATION

The information on the El Paso County Assessors site includes the legal descriptions of each already developed and occupied lot.

All of these have been occupied for a long time, and all owners were in residence well before the 2013 fire. Judy and Phyllis have owned property on Forest Heights Circle since the early 1970s. Platted property deeds for Jon, Phyllis, Judy, and Chuck have ingress/egress easements as part of their deeds. Jack Yonce owns the part of the 60 Forest Heights Road as part of his deed, but does not have any statement of ingress/egress easement. Lielani's deed is silent on the ingress/egress easement issue.

Jack Yonce's ownership, which is across the street from Jon Diddleaux's lot, and a small part of the new subdivision is between the 435' portion of Forest Heights Circle abutting Herring Rd (Tract A). Yonce's tract of 60 ROW on Forest Heights Circle extends approximately 448 feet east of the east end of Tract A. Tract B of Forest Hts extends from the east end of Yonce's tract (adjacent to Richie and the the subdivision tract to the north to the west edge of Phyllis' lot, and on the south along one subdivision lot, along Bauer's lot and to the west edge of von Battlefield's lot. (see the Map)

It is proposed (draft) to end Forest Hts. Circle with a cool DE sac meeting Fire District requirements at the eastern portion of where two of the subdivision lots are across from each other on Forest Heights. It is proposed that Phyllis and Judy continue to share the eastern ~506 feet of Forest Heights as a shared driveway east of and beyond the new cool DE sac.

This plan will lower improvement costs for Forest Heights Circle, and will protect the wetland crossing near Phyllis and Judy's lots from unnecessary construction impacts. It already has a functional culvert on a short drainage from the east.

The current EPC Assessors Site Parcel Map shows Tract A, between Herring Road and Yonce's Tract as xxx.121) The reset of the 60 road tract is combined with the subdivision lots as one large parcel (xxx.120) on the Assessor site.

INTENTS

The intent for the formal Subdivision Proposal to the County, would create a single parcel for the 60' Forest Heights Circle road - west and east of Yonce's, and include a "proper" cool DE sac meeting Fire District needs and EPC Land Development Code and ECM standards for a private road this size. This all needs formal, official discussion with both the County and the Fire District.

- Everyone at the meeting wanted to keep Forest Heights Circle a private 24' gravel road surface, and a private road. The projected 34' width meets Fire District requirements. The road is sufficiently wide at the west end, but narrows to about 16' near Phyllis's property line, so different treatments are needed for different road areas.
- Forest Heights Circle is an important link in the Black Forest Trails Association local trails system, which connects to nearby Regional Trails so it is important to maintain it as a gravel surface and with a low speed limit.
- Everyone agreed that they did not want Forest Heights paved, and it did not need to be wider than 24 feet (That is the current width of paved Herring.

- Everyone agreed it should have a low speed limit to protect residents, children and pets.
- Jon suggested it might be good to create a mailbox Kiosk on Forest Heights Circle because the present individual mailboxes on Herring are subject to damage and dangerous for the mail carrier because of traffic.

Judy explained what EDARP was and how to access it on the internet to get information when the subdivision has been submitted, reviewed and posted, and also to look at similar subdivisions' documents. She gave a thumbnail sketch of the Subdivision Process, what kinds of documents, needed to be submitted, the review process, posting and hearings.

Judy explained that Jon and Phyllis would need to apply for a waiver for the road, because the County has regulations about connections of subdivision roads and new lots to paved county roads, which would include paving Forest Heights. The paving standard would need a waiver. These have not been put into writing yet by LDC consultant, but as Judy understands it, it would involve a waiver for the road to remain gravel, and a deviation for the approval of the lots to access a private road (not directly into a County Road). There is a process for this that involves recommendations by Planning Staff and the Planning Commission, and approval by the Board of County Commissioners.

At the present time, Jon and Phyllis own most of Forest Heights Circle 760 ROW in road in two separate parcels. Yonce owns a piece of the road part way down, and between the flag lot proposed to the south (which would access Forest Heights) and the rest of Forest Heights and the cool DE sac which would access the other two lots. (Please see map)

Jon wants to merge the 12 acres adjoining his lot on two sides into his 2.5 ac lot, but first the big parcel has to have four lots created, and the road situation has to be rearranged (through the subdivision process so all the lot lines are in the right place).

Judy and Chuck have formal easements that run with their deeds to use Forest Heights Circle for Ingress and Egress, Lielani's deed is silent on this (perhaps the easement needs to be added to her deed?) Phyllis has an easement and Yonce owns the piece in front of his lot. Probably ALL Lots on Forest Hts and also the three new lots should have easements to use Forest Hts for ingress and egress in that run with their deeds, regardless of the 60 ROW ownership.

In order to have a waiver and deviations granted by the Commissioners, "The County" - Planners, County Attorney, County Engineers) must be satisfied that the physical characteristics of the road meet appropriate county regulations(width, access, culverts, ditches etc) AND that there be legal assurance to the County that the road will continue to be maintained after the new subdivision is approved (with four lots – but Jon will combine lot 2 with his so there will not be an additional dwelling, and so there actually would be three new lots, with three new houses – total of nine homes with Forest Heights Addresses – six existing platted lots, and the three news ones in Forest Heights Estates.

Waivers and exceptions to the Land Development Code, and Deviations are Exceptions for the Engineering Criteria Manual. The El Paso County Community Development and Planning Administrator (Craig Dossey) can approve some of these, others must received planing Commission recommendation and Commissioner approval. See LDC Chapter 7.3 for Waivers. The Planners and Consultant must assist with this. Here is the language on Waivers from the Land Development Code (LDC). You can read the rest online.

7.3. - **WAIVERS**

- **7.3.1. Purpose**

The purpose of this Section is to provide for flexibility in the application of this Code when a subdivision design standard is inapplicable or inappropriate to a specific subdivision design.

Phyllis and Jon wanted to meet with the neighbors to discuss this, gather concerns and then be able to explore this with the Consultant, the County and legal advice.

FOREST HEIGHTS MAINTAINENCE AGREEMENT

The County requires a Maintenance Agreement among the private road users (after the road has been "improved" to the County's satisfaction) that will continue on indefinitely, and the Neighbors/users need to create an agreement that spells out costs, which would be done annually or in emergencies, and who will administer this. This is needed for any private road, regardless of how the ownership is structured.

In large subdivisions this is accomplished with a legal entity such as an HOA or a Metro District (both of which have rules and regulations at the State Level also). There are examples of subdivisions where each lot owns its piece of the road and there is a legal agreement to maintain it, which includes permitted uses (which jive with a subdivision's covenants –ire AGREEMENTS among owners).

This subdivision situation is different from most that the County gets – where a developer (individual or company) buys a tract of land, subdivides it, and has the entire say about roads, covenants etc.

In this case, there are two residents (Jon and Phyllis) who are also the Developers. They purchased two tracts which includes a road built in 1954 and has long-established platted adjoining tracts with owners who have ingress/egress easements. Jack Yonce owns a piece of to 60' ROW which must be used by the new lots. Because the County must approve new lots in the Subdivision process, there are requirements to improve and maintain the road.

There are a lot of loose ends to this situation, and complications cause by the County Land Development Code and Engineering Criteria manual which were not designed for this kind of development.

So it is important to give opportunity to the adjoining property owners/long term residents (which in this case INCLUDES the Developers -owners of the proposed subdivision AND the road, and includes Yonce also because he owns part of the road) to not only voice their concerns, but to work with Phyllis, Jon and Jack for the best outcome for administration of this private road that are acceptable to the County, and that will be economical, and best satisfy everyone's goals and concerns.

**Here are the direct results of the March 14, 2020 meeting recorded on the Flip chart:
ROAD AGREEMENT**

WANT:

private,
gravel,
save (replant) trees in ROW,

DON'T WANT:

HOA
Heavy and Commercial Vehicles at residences
or use road routinely

avoid disruption of Leilani's rock entrance,
protect existing lifestyles,
Speed bumps (divided opinion)
low speed limit,
safety (kids, pets)
protect property values
New residents to pay directly, or pay fee to "Road \$kitty" for construction damage to roads
Accommodate non-motorized trail use
Split opinion about recreational motorized use. Speed and type.

Other ideas and concerns:

AVOID doing a formal HOA

Judy pointed out Poentisch Subd had Covenants on EDARP

Need more info about HOA structure, regulations and county Code requirements
Most saw value in having well designed covenants, Leilani did not want covenants

Covenants can, and probably should, be separate from the Maintenance Agreement for the road

Short discussion building envelopes and structure types and heights, animal keeping

Toward the end of the meeting a discussion began on what to call a Maintenance Agreement Group - possibly "Forest Heights Neighborhood Group"

At this point this is an ad hoc Committee of the Whole

One vote per lot (and to include new three lot subdivision?) Or would new subdivision be a separate entity and operate as an HOA of 3 lots?)

Bylaws needed, Tax ID,

What business format?

Maintenance is a separate issue from costs of road improvement to get the subdivision approved to sell lots

Short discussion that current residents can handle snow plowing for small events and should be reimbursed for time and gas, but large events should come from a "Road \$kitty" funded by annual fees, and there should be a full meeting if any large expenses occurred

A dollar cap on "Road \$kitty" could be established and result in less annual fees until "Road \$kitty" reaches a predetermined level and then fee collection would resume again.

Need to have at least three officers and find out more about legal stuff needs to be done (Phyllis).
Concern was expressed about disruption of road use during construction.

Jon offered to get some bids, Phyllis will also pursue this, Judy cautioned to not start road reconstruction until more is known about phasing and county requirements.

Yonce was concerned about destroying the trees along the road when the road is widened. Most could be moved by a tree spade but locates would need to be done and a contractor hired/paid to move the trees. Judy did a nose count on Monday. There are two ~6"-7" (base diameter) pine trees in the road ROW, and a third closest to Herring) in the ROW which could (should) be moved because it is under the powerline and will need to be cut soon, and about 10 smaller diameter pine trees (4" at the base) mostly on Yonce's tract. Judy is getting some estimates for removal to nearby lots.

On the north side, on Yonce's tract, are some New Mexican locust shrubs, and a clump of small narrowleaf cottonwood trees which are offshoots of a larger tree that died in the 2013 fire. These could be moved with a larger tree spade, or possibly avoided in the road design. The sprout coming from the large cottonwood tree that died is probably not feasible to move (parent tree stump is quite large).

At Leilanie's drive there is a culvert in the ROW ditch which needs to be cleaned out. Forest Hts is 20 foot wide (driving tread) at her driveway, but there is room to enlarge it on the south to 24' to meet minimum road width.

The road design would ideally avoid her decorative rock wall driveway entrance, which may be within the 60' ROW, but there is room to go around it. That needs to be worked out with the County and Phyllis and Jon.

These are draft minutes – please send any additions or corrections to Phyllis, I will add them and Phyllis will send a final draft copy to you for the record

Attached:

March 14 meeting agenda by Phyllis

DRAFT Subdivision Map – LDC (**Title needs changed**) March 13 edition

Color working draft by JVA for March 14, 2020 Meeting (Lot numbers have been corrected)