



*P.O. Box 1677 • 402 E. Blanco  
Boerne, Texas 78006*

March 4, 2020

Mark Schendel  
Vice President of Land Acquisition  
KB Home  
4800 Fredericksburg Road  
San Antonio, Texas 78229

Mr. Schendel:

The City of Boerne hereby notifies KB Home that Shoreline Park, Phase 1 final plat was denied by the Planning and Zoning Commission on March 2, 2020 for non-compliance with the following highlighted sections of the Subdivision regulations in place at the time of the Master Development Plan approval (3/28/2017). The sections of the ordinance are identified below.

**Article 5, Street Specifications and Construction Standards**

**Section 11, Private Streets**

The following sub-sections of 5.11.014

B. An Association agreement consistent with State and other appropriate laws must be submitted to and approved by the City Manager and made a part of the final plat documents. The restrictive covenants -- Covenants, Conditions and Restrictions ("CCRs") -- and the Association documents including articles of incorporation and by-laws shall be submitted to the City for review and approval along with the preliminary plat application, and shall be filed at Kendall County prior to final plat acceptance in order to ensure that there is an entity in place for long-term maintenance of these Common Areas. The Association's CCRs shall provide for continuous maintenance and control of the Common Areas by a responsible body, in perpetuity, for the benefit of the homeowners. Such maintenance and control shall be performed without using public funds. In the approval of the above documents, the City shall determine that the proper legal position is ensured and that the proposed Association will function properly both during and after the time in which the developer is active in the subdivision.

C. The Association agreement must include provisions that allow, but do not require, the City to take over the maintenance of the Common Areas, including private streets, using Association funds if such action becomes necessary due to request of the Association, nonperformance or inaction by the Association and/or if the Association becomes defunct.

The following provisions shall also be included in the Association Agreement which would control in the event the City is asked to take over the maintenance of the Common Areas by the Association:

- a. Grant the City all the rights of the Association to either file a lien on property within the subdivision or assess property owners within the subdivision for the costs of maintaining, repairing, replacing or making safe any Common Areas;
  - b. In the sole discretion of the City, convey to the City ownership of all or part of the Common Areas either before or after exercising the City's rights under (a) herein above; and
  - c. Authorize the City, upon taking ownership of the Common Areas to remove any improvements or amenities from the Common Areas and sell any buildable land area as residential lots to recoup the City's expenses for maintenance or demolition of the improvements. Any money that remains after the City has recovered all of its expenses, including any necessary and reasonable legal expenses, shall be retained for future maintenance or upgrading of the Common Areas (if any remain), screening walls, or other improvements within the subdivision. These provisions are not intended to allow the City to profit in any way from taking over the Association's responsibilities or funds; they are only intended to allow the City to recoup its actual incurred expenses.
- E. Association Contact Information. The Association shall provide and maintain an address and telephone contact with the City Secretary's office of the City of Boerne.
- F. Legal Requirements. In order to assure the establishment of a proper Association, including its financing, and the rights and responsibilities of the property or home owners in relation to the use, management and ownership of Common Areas, the subdivision plat, dedication documents, covenants, and other recorded legal agreements must:
  - g. Place an Association charge on each lot in a manner which will both assure sufficient Association funds and which will provide adequate safeguards for the lot owners against undesirable high charges;
  - h. Establish each lot owner's obligation to pay assessments for the maintenance and operation of the Common Areas which shall be set aside in a reserve fund subject to the following restrictions:
    - ii. The balance of the fund shall be equal to the total replacement cost of the improvements divided by the average life expectancy of such Common Areas times the age of the improvements. The life expectancy for a subdivision with private streets shall be a minimum of twenty (20) years;
- H. Traffic Enforcement. The Association, its members and the City of Boerne agree that all traffic rules and regulations enforced and applied by the City on all public streets, alleys and rights-of-way governing the operation and movement of vehicles are hereby extended to all streets, alleys and rights-of-way within the subdivision. All such streets, roads, alleys, and rights-of-way shall henceforth be governed and controlled by all traffic laws set forth in state law and City ordinance.
  - a. The City may erect, place, replace, maintain and/or remove such traffic control signs, signals and devices that may be necessary or appropriate in the application and extension of traffic rules and regulations to the subdivision. If the City is so required, all costs of erection, placement, replacement, maintenance and removal shall be reimbursed by the Association to the City within thirty (30) days of such invoice. This reimbursement requirement shall include, but not be limited, to the acquisition of property for sign placement.

- K. The City may require the Association to provide ongoing reporting of budgetary actions, financial reports, and collection activity on homeowners' assessments. Should the funding of the Common Areas maintenance not support the level of maintenance required by applicable ordinance, the City may require additional security for the provision of such maintenance.

After clarification by the Planning and Zoning Commission at the March 2<sup>nd</sup> meeting, it is Staff's understanding that the Commission's interpretation of the ordinance calls for a detailed assessment for the entire development of what fees will be apportioned to future homeowners, specifically detailing the cost and maintenance for all Common Areas. For further clarification, please also provide responses to each item with the section of the CCR that you believe correlates. Lastly, please make sure that all acreages and exhibits of acreage are included in the CCR's. If you have any questions, please feel free to contact me.

Regards,



Laura H. Talley  
Director, Planning and Community Director

Cc: Rob Wasylw, KB Home  
David Broadbeck, KB Home  
Barbara Quirk, City of Boerne  
Jeff Thompson, City of Boerne  
Jeff Carroll, City of Boerne