



MEMORANDUM

Date: March 13th, 2020

To: Laura Talley, Boerne's Planning and Community Director

From: Rob Wasyliv

CC: Jeff Carroll -Boerne Director of Development Services, Jeff Thompson -Boerne Deputy City Manager, Barbara Quirk - Boerne City Attorney, and Rebecca Pacini -Boerne Planner III

Re: Shoreline Park

In bold, are the sections of **Article 5, Street Specifications and Construction Standards Section 11, Private Streets** referenced in the denial letter by the City of Boerne on March 4th, 2020 and received by KB Home on March 10, 2020. Following these sections are the formal responses by KB Home.

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 applications, 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 those 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.

KB HOME RESPONSE: Article 5, Section 11 of the City Ordinance is entitled “Private Streets.” This community will not have private streets. The streets will be public streets. Notwithstanding that, KB Home offers the following information about its compliance with the requirements of Article 5, Section 11.

The CC&R’s were reviewed by the City prior to final plat approval and were filed with Kendall County on March 2, 2020 (Document Number: 00339445). The Association’s Certificate of Formation and Bylaws are attached hereto as Appendix “J.”

The Association is defined in **Article 1** of the CC&R’s, and its powers and obligations are described throughout the CC&R’s, including, in particular, **Article 4** thereof. **Section 2.38** and **Article 13** of the CC&R’s expressly requires the Association to maintain the Common Areas, including the LID Features, and sets forth the City’s rights regarding taking over and performing such work. In addition, **Section 13.4.1 No Public Funds** within the CC&R’s states:

“It is specifically understood and agreed by the Declarant, Owners and the Association that public funds shall not be used for the maintenance and control of the Common Areas of the LID features.”

Thus, KB Home believes the requirements of the City of Boerne’s Subdivision Ordinance 5.11.014 Section B have been met.

C. The Association agreement must include provision 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 become 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 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), screen walls, or other improvements within the subdivision. These provides 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.

KB HOME RESPONSE: KB Home will amend the CC&R's to include Subparts b. & c. above (see Appendix "I" attached hereto). Such amendment will require the City's consent.

Please refer to section **13.4.2 Default or Failure to Perform** within the CC&R's which, with the City's consent, will be revised as shown:

"13.4.2 Default or Failure to Perform. If the Association fails to maintain the Common Areas and LID Features in accordance with the O&M Manual, the City shall have the right but not the obligation to assume the duty to maintain, repair and make safe any Common Areas and LID Features to the specifications set forth in the O&M Manual. If the Association fails to maintain the Common Area or LID Features in accordance with the O&M Manual, the City may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of time after receiving the City's written demand, the City may maintain the Common Areas and LID Features to the specifications set forth in the O&M Manual at the expense of the Association after giving written notice of its intent to do so to the Association. The City may give its notices and demands to any officer, director, or agent of the Association, or alternatively, to each Owner of a Lot as shown on the City's tax rolls. The rights of the City under this *Section 13.4.2* are in addition to other rights and remedies provided by Applicable Law. In the event the City assumes such maintenance obligations, the City shall have the further right to collect, when the same become due, all Assessments, Regular or Special, levied by the Association pursuant to the provisions hereof for the purposes of maintaining, repairing, replacing or caring for the Common Areas and LID Features, and, if necessary, enforce the payment of delinquent Assessments in the manner set forth herein. In addition or in the alternative, the City may levy an Assessment upon each Lot within the Property on a pro rata basis for the actual cost of such maintenance, notwithstanding any other provisions contained in this Declaration, which Assessment shall constitute a lien upon the Lot against which each Assessment is made. The payment of any such Assessments and liens shall be deemed an obligation of each Owner just like the obligations identified in this Declaration. Nothing contained herein is intended to, nor shall it be interpreted as or deemed to waive, limit or restrict the City's authority and ability to enforce applicable City ordinances regarding the maintenance and/or repair of the Common Areas and LID Features and pursue any remedies available to the City under Texas law.

In the event the City is asked to take over the maintenance of the Common Area by the Association, in addition to the right to levy Assessments and impose liens as discussed above, (i) upon the request of and in the sole discretion of the City, the Association shall convey to the City ownership of all or part of the Common

Area either before or after exercising the City's rights described above, and (ii) the City is authorized, upon taking ownership of the Common Area, to remove any Improvements from the Common Area and sell any buildable land area as 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 Area (if any remain). This Section is 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.

Under no circumstances shall the City be liable to the Declarant, Association or any Owner or their respective heirs, devisees, personal representatives, successors and assigns for negligent acts or omissions relating in any manner to maintaining, improving and preserving the Common Area and LID Features."

Section 13.4.2 Default or Failure to Perform of the CC&R's:

- *Grants the city the ability to file a lien, or assess fees, if needed*
- *Provides the ability for the City to assume maintenance of the Common Areas or LID features.*
- *Provides the ability for the City to take ownership and control of the Common Areas.*
- *In addition, it clearly states that this section doesn't limit, restrict, or otherwise waive the City's authority to enforce the City's ordinances.*

Based on the above, KB Home believes the requirements of Boerne's subdivision Ordinance 5.11.014 section C have been met.

E. Association Contact Information: The Association shall provide and maintain an address and telephone contract with the City Secretary's office of the City of Boerne.

KB HOME RESPONSE: The most applicable contact information at this point is the following:

Rey Saucedo
Vice President of Operations
Lifetime HOA Management
www.LifetimeHOAManagement.com
Office: 210-504-8484
18587 Sigma Road #220
San Antonio, Texas 78258
Rey Saucedo <rey@lifetimehoamanagement.com>

Based upon the above, KB Home believes the requirements of Boerne's subdivision Ordinance 5.11.014 section E have been met.

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 homeowners 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 obligations 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 divide by the average life expectancy of such Common Areas times to the age of the improvements. The life expectancy for a subdivision with private streets shall be a minimum of twenty (20) years.

KB HOME RESPONSE: Within the appendix is a preliminary draft of Shoreline's projected financial statements over a 23-year period. At this time, we are projecting a starting HOA fee of \$175 per quarter, with a one-time \$250 Working Capital Fee and a one-time \$250 LID reserve fee paid at closing.

As we further progress with the project including generating actual construction plans for the LID features, we will re-assess our financial projections to ensure the community and HOA is set-up to fund its operations and infrastructure. In addition, we have budgeted for a Reserve Study to be performed in year 5, after all infrastructure has been installed but prior to KB Home exiting the community. We will perform this step to ensure a responsible reserve balance is being generated within the community.

The LID feature maintenance estimates used within the financials were derived from the San Antonio River Authority (SARA) Low Impact Development Technical Design Guidance Manual (Appendix G. Cost Estimates and Regulatory Guidance). We are assuming the following maintenance schedule as disclosed in the SARA Manual:

- Routine Maintenance (maintenance required monthly to every 2 years)
- Intermediate Maintenance (maintenance required every 6 to 10 years)
- Replacement (service life of 20 years)

In total, across 9 LID features, we estimate a total maintenance and replacement cost of \$2.7M over the 23-year period. The total cost to construct the 9 LID features is estimated to be \$1.3 million (based upon OPC's by Halff Associates). The estimated maintenance and replacement cost are funded by the assessments and working capital fees assigned to the future homeowners. See the appendix for detailed information.

Because the LID features have not yet been constructed, no fund is required at this time according to the calculation under the ordinance (because the age of the improvements is zero). However, in order to assuage any fears about future funds being available, KB Home is prepared to set aside now, in a specific reserve account for the HOA, the amount of \$100,000.00 to start the reserve fund for future LID maintenance and repair.

Based on the above, KB Home believes the requirements of Boerne's subdivision Ordinance 5.11.014 section F have been met.

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 cost of erection, placement, replacement maintenance and removal shall be reimbursed by the Association to the City within thirty (30) days of the invoice. This reimbursement requirement shall include, but not be limited, to the acquisition of property for sign placement.

KB HOME RESPONSE: Shoreline's streets will be public; therefore, all City traffic rules and regulations applicable to the public streets within this community will be met. Based upon the fact that Shoreline has public streets, KB Home believes that Boerne's subdivision ordinance 5.11.014 section H is not applicable.

K. The City may require the Association to provide ongoing reporting of budgetary actions, financial reports, and collection activity on homeowner's 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.

KB HOME RESPONSE: KB Home and the HOA will comply with the applicable ordinance. Additionally, please refer to section **Section 2.38 Low Impact Development** within the CC&R's that states:

"The Property shall comply with the requirements of the operation and maintenance manual ("O&M Manual") created and provided by the design professional for the LID Features within the Property. The Association shall be responsible for administering and enforcing the O&M Manual for the Property. In addition, the Association shall also be responsible for : (i) management of inspection and maintenance assignments of the LID Features; (ii) routine internal inspection and maintenance of the LID Features; (iii) external professional inspection and maintenance of the LID Features, as necessary; (iv) enforcement of inspection and maintenance of the LID Features; and (v) **reporting of inspection and maintenance of the LID Features to the City, if required by Applicable Law.**"

And also refer to **Section 13.1 Obligation of the Association** of the CC&R's which requires annual reporting to the City.

In addition, **Section 13.4.2 Default or Failure to Perform** states that the CC&R's don't waive, limit or restrict the City's authority and ability to enforce applicable City Ordinances as shown below:

"Nothing contained herein is intended to, nor shall it be interpreted as or deemed to waive, limit or restrict the City's authority and ability to enforce applicable City ordinances regarding the maintenance and/or repair of the Common Areas and LID Features and pursue any remedies available to the City under Texas Law."

Based on the above, KB Home believes the requirements of Boerne's subdivision Ordinance 5.11.014 section K have been met.

OTHER ITEMS

Throughout this process, KB Home has demonstrated its willingness to go above and beyond to ensure a responsible community is built. In addition, we have taken every opportunity to address concerns with open communication to P&Z and the public. With this in mind, there are a couple of items discussed during the March 3rd, 2020, P&Z meeting that were not included on the formal denial letter, which we would like to voluntarily address below.

PEST CONTROL: P&Z requested the desire to improve upon the Pest Control language during the P&Z meeting on March 3rd, 2020. To address these concerns KB Home reach out to Laura Tally on March 10th with a request provide

more clarity as to the actual language P&Z would like edited within Section 2.37 of the CC&R's. Prior to the edits, the CC&R's Section 2.37 read as follows:

2.37 Pest Control: Owners and the Association shall follow an environmentally sensitive approach to lawn care, pest management and other aspects of maintaining an environment applicable to the Property by incorporating Integrated Pest Management (IPM) procedures for control of structural and landscape pests which includes, but is not limited to, the use of organic and/ or natural. Owners shall comply with any rules or regulations adopted by the Association, and the Association may also levy fines, penalties, or other charges against an Owner for failure to comply with this Section 2.37

The updated Section 2.37 will state the following:

2.37 Pest Control: Owners and the Association shall follow an environmentally sensitive approach to lawn care, pest management and other aspects of maintaining the Property by incorporating Integrated Pest Management (IPM) procedures for control of structural and landscape pests, such processes include, but are not limited to, the use of organic and/ or natural [pesticides](#). Owners shall comply with any rules or regulations adopted by the Association, and the Association may also levy fines, penalties, or other charges against an Owner for failure to comply with this Section 2.37.

OPERATIONS AND MAINTENANCE MANUAL: Another concern of P&Z was that the CC&R's reference the Operations and Maintenance Manual; however, the P&Z had not yet been able to review this manual. Attached hereto is a draft of the Operations and Maintenance Manual which will be finalized once we have construction plans and installed the LID features. We will not finalize this manual until these steps are accomplished to ensure the manual includes all necessary maintenance requirements.

The manual was designed using a compilation of the San Antonio River Basin LID Technical Design Manual, Appendix D Maintenance Considerations and the TCEQ RG-348 Manual, "Complying with the Edwards Aquifer rules Technical Guidance on Best Management Practices". It was also reviewed by Halff Associates.

Hopefully, this addresses all open items related to the CC&Rs and any remaining concerns from P&Z. If you have any additional questions, please feel free to reach out.

Rob Wasyliw

San Antonio Division President
KB Home

APPENDIX

- **APPENDIX A:** The City of Boerne denial letter dated March 4, 2020 and received by KB Home on March 10th, 2020
- **APPENDIX B:** Pages 67-69 of the Subdivision Ordinance No. 2007-56 of the City of Boerne, Texas.
- **APPENDIX C:** The Engineer's Opinion of Probable Cost provide by Halff Assoicates for the 9 proposed BMP features within Shoreline totaling \$1,296,567.
- **APPENDIX D:** Preliminary draft financial projection for Shoreline's HOA used to generate preliminary HOA assessment estimates of \$175 per quarter plus a \$250 Working Capital and a \$250 LID Reserve Fee paid at closing.
- **APPENDIX E:** Preliminary draft reserve analysis for Shorelines HOA
- **APPENDIX F:** HALFF Memorandum dated 11/18/19 which discloses the surface areas of the required 9 BMP's used to estimate the maintenance and replacement costs used within the reserve analysis.
- **APPENDIX G:** Appendix G. Cost Estimates and Regulator Guidance derived from the San Antonio River Authority (SARA) Low Impact Development Technical Design Guidance Manual. Figures were used from this document to determine a price per square foot for the maintenance and replacement of the LID features.
- **APPENDIX H:** A preliminary draft copy of the **Operations and Maintenance (O&M) Manual**.
- **APPENDIX I:** A copy of the Amendment to the CC&R's adding (i) language from Ordinance 5.11.014 section C subparts b. & c., and (ii) revising the property description to include the entire property.
- **APPENDIX J:** A copy of the Certificate of Formation and the Bylaws for the Association.