

Jon Weber, Chairman, Madison County Commissioners
Brent Mendenhall, Madison County Commissioner

Developers of Nordic Ridge Estates Subdivision

13 Oct, 2020

Public Comment and Official Notification of withdrawal of Appeal

Dear Sirs:

Having filed an appeal, it is obvious that we have concerns about the approval of the preliminary plat for the Nordic Ridge Estates Subdivision.

We aren't going to discuss specifics; however, our concerns are outlined here (in this packet) and they have to do with our belief that current code has not been followed. Code references are included. We are NOT opposed to these developers or to this subdivision—as long as it complies with code.

The appeal process gives us the ability to make you aware of these concerns. It allows you and the developers to rethink decisions based on things you may not have been aware of before.

The appeal process, however, appears to make it difficult for all involved.

While we do not know particulars or the reasons why, we are aware of some very difficult financial issues that may arise for the developers from a reversal of decision at this point. Adding this to our belief that the county approved a plat that must now be changed to comply with code; we are very concerned for the developers.

We have been told by one county official that we should drop the appeal because we are putting the developers in a bind. Yet, we have not put the developers in a bind, and we are concerned that you as County Commissioners are unaware of why they *are* in a bind.

We also make note that a public hearing will most likely bring contention between citizens and towards county officials because caring citizens will be forced to choose between loyalty to people or to the law. We have experienced first-hand the burden of animosity towards those who choose to ask for the law to be followed. And we have seen the re-interpretation of law which benefits the county in hopes of resolving harm caused to its citizens because laws were

not followed by the county. This exasperates the issues and often misplaces responsibility for solutions.

Let us be clear:

As involved citizens who attended the first public hearing we *are responsible* to help you in your duties by letting you know that there are concerns with the compliance of this plat and application to current code. In filing our appeal, we have done this. However, we have no *God-given authority or desire* to harm our neighbors financially or otherwise.

Developers have the *right* to develop their property; and they have the *responsibility* to develop according to current codes, or they can petition and wait for undesirable laws to be changed.

You as County Commissioners have been given the *authority* to allow property to be developed; and you are *responsible* to sign documents testifying that a final plat complies with the regulations of Chapter 115, Subdivision code. You are also responsible to repair any damage caused to the developers due to approvals given at any time by the Administrator, the Planning and Zoning Commission, or yourselves on a preliminary plat that does not comply with code.

We make available now for you both, the developers and the County Commissioners, the codes in question. We have carried out our responsibility as citizens.

It is *now up to you to work together to make any necessary changes to the plat and resolve any issues resulting from errors made by either of you to this point*. We trust you can do this in a sincere and timely manner which may allow the subdivision to go forward *and* comply with current county code.

We ask that this packet (which includes our final clarifications), as well as this letter, be included in the public meeting minutes for today. We have taken a lot of time and effort to make this concise and helpful. You, as County Commissioners and developers, may choose to read and consider our concerns, and act to correct any errors that have been made, or you can choose to dismiss it. We desire county code to be followed, but we leave it up to you to make your own decisions.

This is official notification that we **withdraw our appeal and the request for a public hearing.**

Respectfully,
Shane and Kirsten Ruebush

Concerns regarding non-compliance of code for the Nordic Ridge Estates Subdivision plat and application.

Submitted to Madison County Commissioners, 13, October 2020 during public comment
by Shane and Kirsten Ruebush

Chapter 115, Article I, Sec 115-4 Compliance

All subdivisions *shall comply* with the provisions of this chapter.

Chapter 115, Article III, Sec 115-53 Minimum Standards Required

All plats submitted pursuant to the provisions of this chapter, and all subdivision improvements, features and facilities designed, constructed, or made in accordance with said provisions *shall fully comply with the minimum design standards* set forth in this chapter.

Chapter 115, Article III, Sec 115-54 Required Open Space

All subdivision projects in the county proposing 5 or more residential units; including mobile home parks, condominiums, and other special developments; *shall be required to provide open space as provided in this chapter.*

(d) Uses allowed. For the purposes of calculating the qualifying open space area in a subdivision, and to meet subdivision open space requirements, the following land uses will be allowed in qualifying community open space and natural open space areas...(please see uses allowed)

1. Easements are not listed as allowed as open space area and cannot be added to the calculation. Utilities may be allowed *in* open space, however *they do not qualify as open space.* 115-54 (6) (2) The North Ridge Plat **states 2.44 acres of easements are incorrectly counted as open space.** (See also Chapter 101, Article I, Sec 101-5 Intent)
2. As seen on the plat, at least part or all of the easement area appears to lie in the same space occupied by natural open space. **This appears to be double counting** and if so, does not meet required calculations of open space. 115-54 (b)
3. "At least 50 percent of the total required open space must be natural open space." 115-54 (d) (2) **It seems a total of 3.8 acres of the total open space needed (7.67 acres) is required to be natural open space.** Without easements this requirement is not met.
4. Natural Open Space is 'undeveloped open space....*Uses allowed* in natural open space "include non-motorized trails and trailheads, wildlife viewing, and other similar passive recreational activities...or actively operated farmlands..." "Small, *disconnected parcels* of property may not be counted as natural open space. 115-54 (d) (2)

The plat shows "natural open space" as 25 foot strips in the front and back of every lot, sometimes along 3 sides of a lot, and overlapping with utility and road easements.

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"To qualify as natural open space, lands *must be contiguous* and of *sufficient size* to provide *effective wildlife habitat and open views.*" 115-54 (d) (2)

Disconnected, small parcels (via personal property lines) located on numerous private property parcels may not be counted as natural open space. They are not contiguous in use, due to property lines, nor are they of sufficient size or available for allowed uses or management.

Please see the following regarding natural open space ownership:

"Options [for management] include the following: a) *maintenance by the HOA*, b) **Sold as a single parcel for...rangeland or agricultural** c) *maintained by...the Soil Conservation Service or a land trust.*"

The Comprehensive plan, Appendix B, paragraph 21, gives further clarification for management: "If the open space is agricultural...the agricultural open space can be sold "in fee" to the homeowners' association (or developer?), which can in turn lease it to local farmers.

5. Community Open Space, for use as a park (stated purpose), for *liability sake* and to *meet intent* of the current code, needs to be owned by the HOA (sold "in fee" to the homeowner's association) and managed by the HOA or the county parks department. See 115-54 (d) (2)

The Nordic Ridge plat states, "**Owner retains the rights to sell lots 5&6, block 2, if the county zoning regarding open space is changed in the future.**"

Why would the county allow a private property owner to assume liability for a park owned by him but required to be "community open space?" Does this meet the current 'intent' of community space?

Chapter 117, Article III, Sec 117-60 Transitional Agricultural (TAG) Zone

Area/density requirements. There is no minimum lot area requirement, but *overall development density shall be an average of 1 dwelling unit per 2 acres.*

6. Clustering to 1 acre lots does not allow for additional base density.

"Clustering does not mean higher density. Clustering simply take the same number of homes allowed on a tract of land, and groups them together. Lots sizes can include any range of acreage, but typically a large parcel of open space is created in the subdivision layout that is treated differently than individual private lots. Comp Plan; Chapter 6

7. However, with additional open space, density bonuses may be given.

Sec 115-55 Density Bonuses (a) and (1) "*Greater residential densities than those allowed by the base zoning, may be granted for projects that provide more open space than the required minimum, ... For additional community or natural open space, a percentage density increase equal to the additional percentage of open space provided, up to a maximum of 30 percent additional..*"

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The North Ridge, 30 acre subdivision plat, located in Trans Ag zone can have an overall density of only 15 homes, no matter the lot sizes.

Unless....additional open space is created.

To have the 18 proposed dwelling units, there would need to be 50% (30% plus 20%) or 12.78 total acres of open space in the subdivision.

Chapter 115, Article III, Sec 115-56 Streets and Roads – Dedication

“Street and road location *shall conform* to the following:”

8. (2) (b) *Collector roads. Full-movement intersections of collector or local roads with county farm-to-market roads shall be provided in intervals between 1,056 and 1,320 feet (one-quarter mile), along county farm-to-market roads, with no more than 4 access points/intersections per linear mile. The planning commission may approve modifications in the instance of unusual topographic or natural features that prevent the meeting of this required spacing. Intersections should match up with the overall county 10-block per mile address grid whenever possible.*

The Planning and Zoning Commission did not specifically approve any modification due to unusual topographic or natural features this requirement; the requirement is not met.

**If there were an accident/death on this farm-to-market intersection, and the county allowed this modification without written explanation on the findings of fact, there could be liability issues for the county and/or the subdivider.

9. (3) *Connections to adjacent developments. All development plans shall incorporate collector streets stubbed to the boundary of the development plan to provide connection to adjacent parcels at intervals not to exceed 1,320 feet and no less than 250 feet. Stub streets should line up with the streets of existing development on adjacent parcels, or to previously approved development plans.*
 - a) The commission may provide for some flexibility in the street grid standards in some circumstances, such as development proposed to connect to historic town sites with an existing street grid system in place.

The Planning and Zoning Commission did not specifically provide for a reason stubbed streets are not incorporated in the plat. Planning for connection to adjacent developments was not discussed. Requirement is not met.

Chapter 115, Article III, Sec 115-31(e)(1)(b) Preliminary Plat– Administrative Review

10. Irrigation companies need to be contacted to ensure the appropriate transfer of water rights to the subdivision. A recent public hearing demonstrated that the Reid Canal Company had not been contacted about this subdivision by the administrator prior to the preliminary plat hearing.

Chapter 115, Article VII, Sec 115-167 Definitions (Large-Scale Development)

“The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Large-scale development includes the following types and scales of development: a) **Single-family residential projects of 16 or more lots or units.**”

11. The North Ridge Estates Subdivision qualifies as a Large-Scale Development under current code.

“...large-scale developments, as defined in section 101-1, will be subject to review the requirements in this article *in addition to those required for other subdivisions* and developments.”
(The 16 unit number is used 2 times in current code)

The following required information is or may be lacking in the application:

- Appropriate identification clearly stating that the drawing is a large-scale development project; 115-170
- *Public services.* Identification of the physical means and the identity of the proposed provider of all required public and private infrastructure and services to be provided to the development.... 115-169 (a)
- *Impact analysis.* And estimate of the capital costs and on-going service costs of providing the identified infrastructure and services to the development... 115-169 (b)
- *Financing and tax revenue.* A description of the proposed means of financing the construction, maintenance and operation of the infrastructure and services for the development. This description must include an estimate of property tax revenues generated by the development at build out for each of the affected taxing entities. 115-169 (c)

Current Code versus Future Code

While there are overall concerns regarding some parts of the law, it must also be observed that:

- Under current code, the North Ridge Estates Subdivision is a Large-Scale Development, yet it is not identified as such, nor are the additional requirements included in the application.

Yet, this part of the code is currently being proposed for change. A Public Hearing was scheduled on October 8th regarding an amendment to change the definition of Large-Scale Development. If passed, the North Ridge Estates would no longer be a Large-Scale Development, but it qualifies now. Decisions on this proposal have been tabled and are currently in further discussion.

- Under current code, the North Ridge Estates does not meet the requirements for amount as well as defined uses of required community and natural open space.

Yet there is current discussion during public meetings of the Planning and Zoning Commission to remove required open space in the future. In the same public hearing as noted above, it was also

proposed to remove required open space from subdivisions of 8 lots or less. If passed, this would most likely call in question the fairness of requiring larger subdivisions to have open space. Discussions appear to be on-going regarding the desire to require open space at the same time a subdivision has not met the requirements for open space.

- Under current code, the North Ridge Estates must meet the required overall base density of Trans Ag and have only 15 homes per the 30 acres. Or, add an additional 20% open space.

On Aug 10 (3 days before this subdivision was approved by Planning and Zoning), the County Commissioners discussed a possible change to Trans Ag Zone from 1 dwelling unit per 2 acres to 1 dwelling unit per 1 acre. It seems this was brought up by the Administrator. If approved sometime in the future, this subdivision would be in compliance with Trans Ag base density. The lot owners, who have retained ownership of community space could then sell it. However, the current requirements of chapter 115 are not met.

It appears that this subdivision is in large part based on possible future law, not current law.

We respectfully ask that current law be followed, and when officials desire to make changes to the law, that those changes be made to the law before subdivisions are approved.