

MINUTES OF THE REGULAR MEETING  
OF THE PLANNING AND ZONING COMMISSION  
OF THE CITY OF SUNSET HILLS, MISSOURI  
HELD ON WEDNESDAY, JUNE 7, 2023

BE IT REMEMBERED that the Planning and Zoning Commission of the City of Sunset Hills, Missouri met in regular session in the Robert C. Jones Chambers of City Hall, 3939 S. Lindbergh Blvd., in said City on Wednesday, June 7, 2023. The meeting convened at 6:00 P.M.

The meeting began with those present standing for the reciting of the Pledge of Allegiance.

ROLL CALL

<b>Present:</b>	Rich Gau	-Member
	Roger Kaiser	-Member
	Jennifer Geen	-Member
	Brian VanCardo	-Member
	Mike Svoboda	-Member
	Steve Young	-Member
	Frank Pellegrini	-Member
	Michael Hopfinger	-Member
	Erin Seele	-City Attorney
	Mike Knight	-City Planner
	Bryson Baker	-City Engineer
<b>Absent:</b>	Todd Powers	-Member

**APPROVAL OF THE MINUTES**

Copies of the minutes of the May 3, 2023, Planning and Zoning Commission meeting were distributed to the members for their review. Mr. Gau made a motion to approve the minutes as submitted. Mr. Kaiser seconded the motion, and it was unanimously approved.

## Partial escrow release for Maret Pointe Subdivision

Mr. Knight stated a formal request has been made for the release of the remaining subdivision escrow. The engineering cost estimate is itemized. As items are completed, the developer requests the escrow for those items to be released. The City has received notification from Metropolitan Sewer District (MSD) for the sewer improvements and they have verified the improvements have been accepted into the system. The streets still have items that must be completed, per the City inspector.

Jim Keller, of 12501 Maret Drive, was present and stated the street overlay has not been completed. During the last escrow release request, the developer stated he would get bids for the overlay in a couple months, but there have been no updates. The escrow taken by the City is not enough to cover the overlay. If the developer does not do it, the City will have to. The Homeowner's Association (HOA) has repaired the potholes. The third house has started construction, but it is by a different developer.

Mike Deelo, of 3702 Sunset Chase Drive, was present and stated he agrees with Mr. Pellegrini, that the developers must be held responsible for completing construction in a timely manner.

Doug McGuire, of 12502 Maret Drive, asked what the City does when someone does not follow an ordinance because the residents want to know what is going to be done.

AJ Hessburg, of 12515 Maret Drive, asked what the criterion is for the City Engineer to clear a street for approval to satisfy the escrow requirement.

Mr. Knight stated items such as thickness of pavement, radius of the turning circle, and accuracy to the approved plans are checked by the inspector to make sure they have been completed.

Mr. Gau asked what the options are for the situation.

Ms. Seele stated the Commission has the right to take the two requests separately, under state statute. The ordinance stated there were exceptions to the requirements of the road and a condition of the variations was the two inch overlay. The grade and the diameter also do not meet the approved plans.

Mr. Gau stated the street escrow is \$59,000. He asked if this is enough to do the entire street overlay.

Ms. Seele replied no.

Mr. Gau asked if the City would have to come up with the rest of the money.

Ms. Seele stated the City would have to take it to Municipal or Circuit Court for enforcement of the ordinance. There was no escrow agreement for this project.

Mr. Pellegrini asked what happens if they do not release the MSD escrow.

Ms. Seele stated the City would pay attorney fees and interest, if challenged in court.

Mr. Keller stated the construction on the street has been unbelievable. The longer they wait, the worse it gets.

Mr. VanCardo asked how much the actual cost of completing the street would be.

Mr. Baker stated closer to \$100,000.

Michael Courtois, of 3726 Sunset Chase Drive, stated the HOA received a quote for \$20,000 for the first section, alone.

Mr. VanCardo asked if they are designated as separate escrows, if the City can legally hold onto them if the item is complete.

Ms. Seele stated they are individualized.

Mr. Gau asked what the next enforcement mechanism would be.

Ms. Seele stated ultimately it would be either at the Board or the prosecutor's discretion. The City can hold the road escrow and the Board can issue a legal cause of action.

Mr. Gau stated it is a letter of credit, not actually money. He asked if the Commission agrees to send the street escrow situation to the Board.

Mr. Svoboda stated the Commission should give a deadline. If it is not complete, the City should repair the street, and send the developer a bill for it.

Mr. Pellegrini asked about a completion bond.

Ms. Seele stated there are agreements in place that give the City more authority with developers now.

Mr. Pellegrini stated the City should worry about the residents.

Ms. Seele stated if the estimates are wrong, the City can make them give more money.

Mr. Pellegrini stated the legal way is not the easy way. The practical way is the correct way. He agrees with Mr. Svoboda.

Mr. Keller stated the ordinance states he cannot get any of the release until the two inch overlay is complete.

Mr. Pellegrini agrees and stated the MSD escrow should not be released.

Mr. VanCardo asked what all has been released.

Mr. Knight stated everything has been released besides the two items up for discussion.

Mr. Baker stated the water escrow was denied and the Board over-ruled the decision and required it to be released.

Ms. Seele stated the developer has already initiated a lawsuit.

Mr. Hopfinger stated the City should abide by the statute for the MSD escrow and stand firm on the street escrow. Holding the MSD escrow could make the negotiation more difficult.

Mr. Gau asked how to pursue the next action, legally.

Mr. Baker stated the Board would have to do this.

Ms. Seele stated this can be relayed to the Board or a motion can be made for all legal remedies to be pursued.

Dale Gould, of 3708 Sunset Chase Drive, asked if the street inspection is cleared, what grounds do the residents have.

Mr. Gau stated it would come back to the Commission for approval.

Mr. Knight stated the inspector watches the construction activity. The inspector stated the items were not completed, so staff recommendation is to not release it.

Mr. Baker stated there is the Maret Drive overlay and the Maret Pointe construction. Once the Maret Pointe overlay is complete, the escrow can be released. Maret Drive does not have to do with the escrow because there was no escrow required for Maret Drive.

Mr. Gau made a motion that the \$11,994.90 storm sewer escrow be released for Maret Pointe. Mr. Young seconded the motion. With 6 aye votes and 2 nay votes, the motion passed.

Mr. Pellegrini made a motion to recommend the Board of Aldermen send notice to the developer that he is in default of the agreement. He has 20 days, and then the City will commence enforcement and legal actions. The City will take bids to complete the project and bill the developer. Mr. Kaiser seconded the motion, and it was unanimously approved.

Ms. Seele stated this is a recommendation to the Board. The notice will be given for 20 days after the Board's decision and notification.

## **OLD BUSINESS**

P-16-23      Petition for a Text Amendment, submitted by the City of Sunset Hills, to amend Section 7.5-2(m) and Appendix A, Section A-1.5 of the Unified Development Ordinance.

Mr. Knight stated a traffic study is required as part of the application process. Traffic studies start with a scoping meeting for the area of impact, and then existing conditions and site review for trip generation are assessed. Peak periods are worse case scenarios. The traffic analysis puts out a level of service. D is typical and acceptable during peak times. Currently the Code states that if any movement of any intersection exceeds a level D, an application cannot be accepted for the project. The application process has many items. He proceeded to give an example of how if one turning movement increases 5 seconds, the application cannot even be reviewed, even if it enhances all other movements and safety is increased. He explained the level of service letters and showed that it can decrease in the level over one second of delay time. The Text Amendment proposes to add the language that if the development creates less than a level D, the traffic study must find no greater than a 20% increase in the number of seconds for the proposed development.

Mr. Gau asked how adding this language strengthens the process and makes it better.

Mr. Baker stated an example where an existing business wants to tear down and re-build the same type of business. If it is at a level E now, they could not rebuild. If it is currently a level E for any part, they cannot move forward. A development is working on doing this right now and the level may go lower, but they cannot do it because the Code is too strict. Sunset Hills is the only City in the St. Louis area that has this strict of a requirement. It takes a lot of re-development chances out. The added verbiage is more legal because the developer could have the right to sue the City for being so strict.

Mr. Gau stated it is not written very clearly.

Mr. Geen asked if the cities along Manchester have this.

Mr. Baker stated most cities require the traffic study and the Board reviews it based on its merits.

Ms. Seele stated the Board has discussed this. They wanted more of an objective standard and recommended this verbiage.

Tom Batsch, owner of 12852 Maurer Industrial Drive, stated a delay of 8 seconds caused a recommendation of a turning lane to be added for his project. He asked if this change would make his project pass.

Mr. Baker stated this change is based on the Unified Development Ordinance (UDO) and what other cities do. He is unsure if this would allow his project to move forward.

Mr. Gau stated a Level D is not great.

Mr. VanCardo stated it should be up to Mr. Baker's discretion, at the time, to advise the Commission on the traffic study.

Ms. Geen stated she does not want to discourage a developer over something like this.

Mr. Gau made a motion that petition P-16-23 Petition for a Text Amendment, submitted by the City of Sunset Hills, to amend Section 7.5-2(m) and Appendix A, Section A-1.5 of the Unified Development Ordinance be recommended to the Board of Aldermen for approval. Mr. Young seconded the motion. With 7 aye votes and 1 nay vote, the motion passed.

## **NEW BUSINESS**

P-20-23      Petition for a Text Amendment, submitted by the City of Sunset Hills, to amend Section 7.5-2(m) of the Unified Development Ordinances, relating to traffic study requirements

Mr. Knight stated this Text Amendment clarifies that the City is the contractor to choose the traffic study engineer. This matches Section 5 of the Code and helps the City choose which section of the development should be addressed during the scoping meeting.

Mr. Gau made a motion that petition P-20-23 Petition for a Text Amendment, submitted by the City of Sunset Hills, to amend Section 7.5-2(m) of the Unified Development Ordinances, relating to traffic study requirements be recommended to the Board of Aldermen for approval. Mr. Svoboda seconded the motion, and it was unanimously approved.

P-21-23      Petition for a Text Amendment, submitted by the City of Sunset Hills, to amend Appendix A, Section 3 of the Code of Ordinances, and Section 6.2.5 and Section 7.6 of the UDO, relating to improvement guarantee releases

Mr. Knight stated this Text Amendment is for the release of subdivision related improvement escrows. The Code regulates the creation and construction of subdivisions. Missouri state statute empowers the City to collect these escrows and sets the time periods for their release. An engineering cost estimate shows how much the improvements will cost and this is how the escrow amounts are determined. The current language shows that the Commission has the authority to release these funds. Improvements shall be released within 30 days of completion, so timing can be an issue with coordinating meeting dates.

Mr. Gau asked if this gives the City more authority to ensure completion.

Ms. Seele stated not in this verbiage, but there has been verbiage added in other Sections of the Code for escrow agreements. The agreement sets forth some of these terms.

Mr. Vancardo asked if it gives terms for how long they have to complete the project.

Ms. Seele stated no, but it gives authority to place these terms on it.

Mr. Gau asked why the Commission would want to give the authority to the City Engineer.

Mr. Baker stated the Maret Pointe situation is a unique situation. At the time, the escrow agreement was never put into action. This should have taken place. As long as there are escrow agreements, there will not be an issue.

Mr. Vancardo asked why there are not road bonds for situations, like this. The escrow is for the development itself, not for the road that was damaged during development.

Mr. Gau asked how these concerns can be addressed. The residents have no other remedy.

Ms. Seele stated the City has amended the building Code to require developers to give a map of construction traffic. Mr. Baker will inspect the road, estimate the damage, and they have to pay the estimate. In a private subdivision, they are required to come to an agreement with the HOA for the wear and tear of the streets.

Mr. VanCardo asked if this covers inflation.

Ms. Seele stated the escrow agreement does.

Mr. Gau asked if this will become an administrative release.

Ms. Seele stated yes, this is how most cities handle it.

Mr. Pellegrini stated bond and escrow are used interchangeable.

Ms. Seele stated that is why the escrow agreement is important.

Mr. Pellegrini asked about only releasing 95% at a time.

Ms. Seele stated if an item is complete, 5% of it can be held. When the entire project is complete, the rest can be released.

Mr. Pellegrini asked if the Maret Pointe escrow would have been covered with this.

Ms. Seele stated it would have been covered by the agreement.

Mr. Gau made a motion that petition P-21-23 Petition for a Text Amendment, submitted by the City of Sunset Hills, to amend Appendix A, Section 3 of the Code of Ordinances, and Section 6.2.5 and Section 7.6 of the UDO, relating to improvement guarantee releases be recommended to the Board of Aldermen for approval. Ms. Geen seconded the motion, and it was unanimously approved.

## **ANY OTHER MATTERS DEEMED APPROPRIATE**

## **ADJOURNMENT**

Mr. Young made a motion to adjourn the meeting at 7:12 P.M. Mr. Pellegrini seconded the motion, and it was unanimously approved.

Recording Secretary



Sarina Cape