

Date February 14, 2011

WHEREAS, the City Plan and Zoning Commission has advised in the attached letter that at a public hearing held January 20, 2011, the members voted 7-4 in support of a motion to recommend **DENIAL** of a request from Heather Carpenter-Hutchcroft, et al, (owners) for review and approval of an amendment to the Pearl Lake PUD Conceptual Plan on property located at 2421 through 2458 East Porter Avenue, to allow removal of a 30-foot wide conservation easement allowing structures and fences to be located within portions of the rear yard area currently restricted by the easement.

The subject property is more specifically described as follows:

The Northwest ¼ of the Southwest ¼ ,the Southwest ¼ of the Northwest ¼ ,the West 20 Acres of the North 30 Acres of the Southeast ¼ of the Northwest ¼ , the South 309.0 feet of the West 1020.0 feet of the Southeast ¼ of the Northwest ¼ and the North 21.0 feet of the South 330.0 feet of the Southeast ¼ of the Northwest ¼, all in Section 25, Township 78 North, Range 24 West of the 5th p.m., Des Moines, Polk County, Iowa, more particularly described as follows:

Beginning at the West ¼ corner of said Section 25, Township 78 North, Range 24 West and being the centerline of East Indianola Avenue; thence North 00° (Degrees) 12' (Minutes) 57" (Seconds) West along the West line of the Northwest ¼ of said Section 25, a distance of 1316.06 feet to the Northwest corner of the Southwest ¼ of the Northwest ¼ of said Section 25 and being the centerline of Easter Lake Drive; thence South 89°53'24" East along the North line of said Southwest ¼ of the Northwest ¼ and said centerline of Easter Lake Drive, 1314.43 feet to the Northeast corner of said Southwest ¼ of the Northwest ¼; thence continuing South 89°53'24" East along said centerline of Easter Lake Drive and being the North line of the Southeast ¼ of said Northwest ¼, a distance of 885.00 feet to the Northeast corner of the West 20 acres of the North 30 acres of said Southeast ¼ of the Northwest ¼ ; thence South 00°06'42" East along the East line of said West 20 acres of the North 30 acres, 983.38 feet to the North line of the South 330.0 feet of said Southeast ¼ of the Northwest ¼; thence South 89°57'38" East along said North line, 446.22 feet to the East line of said Southeast ¼ of the Northwest ¼; thence South 00°06'42" East along said East line, 21.00 feet; thence North 89°57'38" West, 304.09 feet to the East line of the West 1020.0 Feet of said Southeast ¼ of the Northwest ¼; thence South 00°34'06" East along said East line, 309.01 feet to the South line of said Southeast ¼ of the Northwest ¼; thence North 89°57'35" West along said South line, 1020.00 feet to the Northeast corner of the Northwest ¼ of the Southwest ¼ of said Section 25; thence South 00°13'52" East along

-Continue-

Date February 14, 2011

the East line of said Northwest ¼ of the Southwest ¼, a distance of 1322.02 feet to the Southeast corner of said Northwest ¼ of the Southwest ¼ also being the centerline of East Payton Avenue; thence North 89°56'59" West along the South line of said Northwest ¼ of the Southwest ¼, 1319.44 feet to the Southwest corner of said Northwest ¼ of the Southwest ¼ and the centerline of East Payton Avenue; thence North 00°19'33" West along the West line of said Northwest ¼ of the Southwest ¼ and also being the centerline of East Indianola Road, 1321.81 feet to the Point-of-Beginning. Containing 107.65 acres more or less, including 4.44 acres for roadway easement.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. That the meeting of the City Council at which the proposed approval of the amendment to the Pearl Lake PUD conceptual plan is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on February 28, 2011, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

MOVED by _____ to adopt.

FORM APPROVED:



 Michael F. Kelley, Assistant City Attorney

(ZON2010-00225)

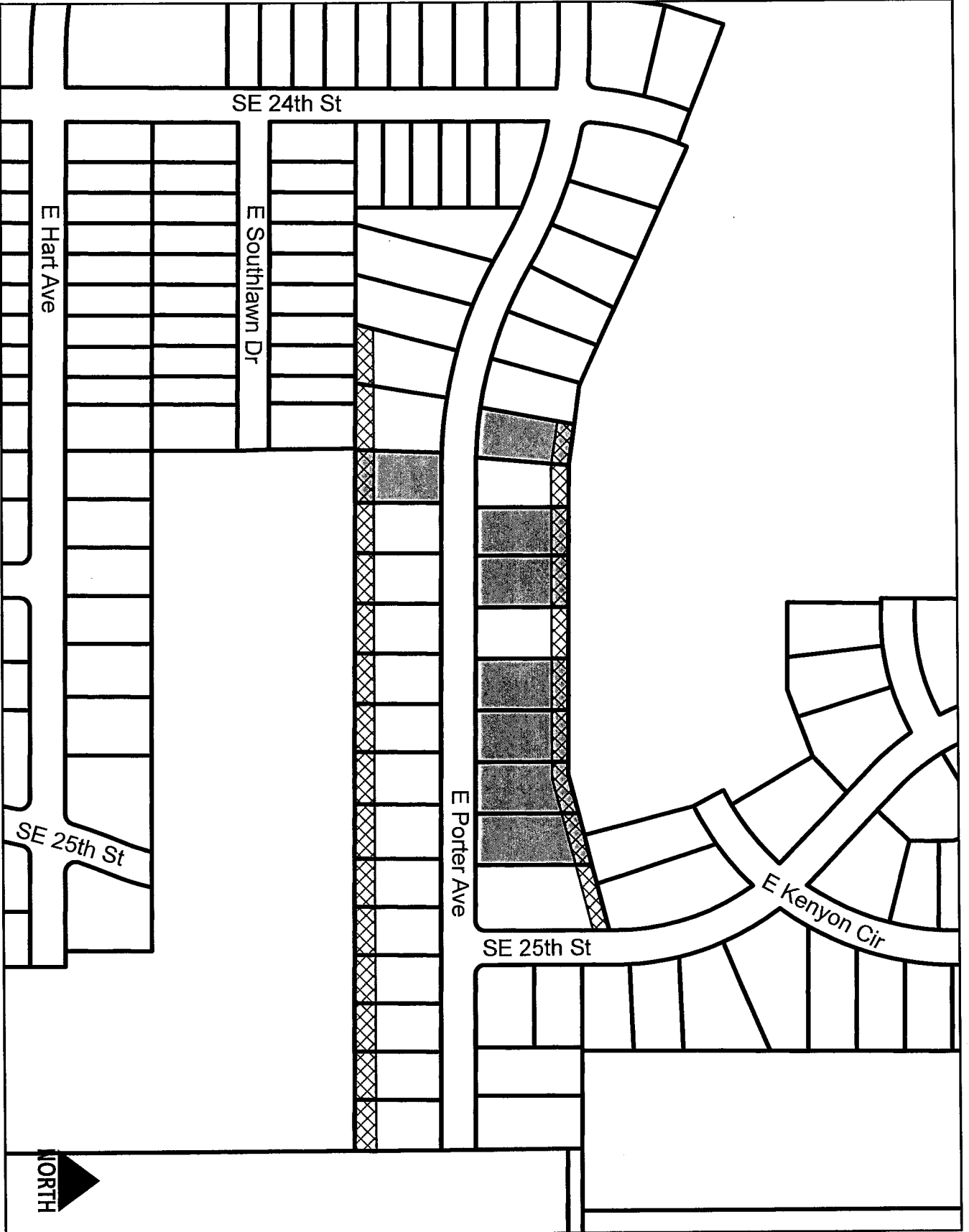
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk



30 foot Conservation Easement Areas



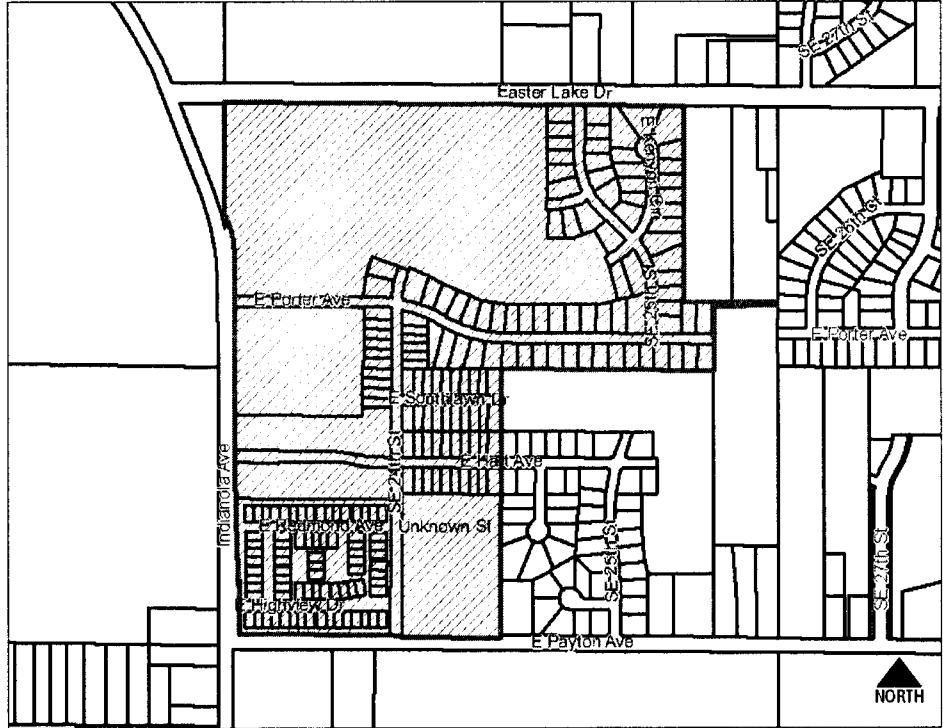
Properties asking for relief from 30 foot Conservation Easement



NORTH

Request from Heather Carpenter-Hutchcroft, et al, (owners) for an amendment to the Carman Estates PUD Conceptual Plan on property located at 2436 through 2458 East Porter Avenue, to allow removal of a 30-foot wide conservation easement allowing structures and fences to be located within portions of the rear yard area currently restricted by the easement.				File # ZON2010-00225	
Description of Action		Review and approval for an amendment to the Carman Estates PUD Conceptual Plan			
2020 Community Character Plan		Easter Lake New Town Plan: Low-Density Residential, Low/Medium Density Residential, Medium-Density Residential, Park/Open Space-Private			
Horizon 2035 Transportation Plan		Indianola Avenue from Southeast 14 th Street to East Army Post Road to widen from 2 lanes undivided to 4 lanes undivided			
Current Zoning District		"PUD" Planned Unit Development District			
Proposed Zoning District		"PUD" Planned Unit Development District			
Consent Card Responses		In Favor	Not In Favor	Undetermined	% Opposition
Inside Area		13	11		
Outside Area					
Plan and Zoning Commission Action		Approval		Required 6/7 Vote of the City Council	
		Denial	4-7	Yes	
				No	

Carmen Estates PUD Amendment - 2400 Block East Porter Avenue ZON2010-00225



January 27, 2011

Item 39
Call # _____

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held January 20, 2011, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 4-7 as follows:



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309-1881
(515) 283-4182

ALL-AMERICA CITY
1949, 1976, 1981
2003

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano		X		
Shirley Daniels		X		
Jacqueline Easley		X		
Dann Flaherty		X		
John "Jack" Hilmes	X			
Joel Huston				X
Ted Irvine	X			
Greg Jones	X			
Jim Martin				X
Brian Millard		X		
William Page		X		
Mike Simonson	X			
Kent Sovern		X		

DENIAL of request from Heather Carpenter-Hutchcroft, et al, (owners) for an amendment to the Carman Estates PUD Conceptual Plan on property located at 2421 through 2458 East Porter Avenue, to allow removal of a 30-foot wide conservation easement allowing structures and fences to be located within portions of the rear yard area currently restricted by the easement. ZON2010-00225

By separate motion Commissioners recommended 7-4 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Dann Flaherty	X			
John "Jack" Hilmes		X		
Joel Huston	X			
Ted Irvine		X		
Greg Jones		X		
Jim Martin	X			
Brian Millard	X			
William Page	X			

Mike Simonson
Kent Sovern

X

X

APPROVAL to recommend to City Council that staff review the erection of any facilities, any improvements within the stated conservation easement and that those improvements that were, through no fault of the homeowner, placed properly with permit be allowed to stay. That no further encroachment into the conservation easement area be allowed in this development.

Written Responses

13 In Favor

11 In Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends denial of the requested amendment. Staff recommends that the Commission consider a recommendation to the City Council that would direct the Community Development Director to consider encroachments of fencing and slight encroachments of other structures no greater than five (5) feet when the property owner plants two (2) or more trees of an approved overstory species within the easement area.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The requesting property owners of 2426, 2429, 2434, 2438, 2446, 2450, 2456, and 2458 East Porter Avenue are seeking to have removal of a Conservation Easement within the rear 30 feet of their properties. This would allow existing encroachments and future development of fences and other accessory structures within the area.
2. **Size of Site:** Affected easement areas total 44,400 square feet or 1.02 acres. The Carman Estates PUD is an approximate total of 107 acres.
3. **Existing Zoning (site):** "PUD" Planned Unit Development.
4. **Existing Land Use (site):** Single-family residential and vacant single-family residential lots.
5. **Adjacent Land Use and Zoning:**
 - North** – "PUD", Carman Estates single-family dwellings and unplatted land approved for single-family use.
 - South** – "R1-80", Uses are agricultural land approved for single-family development and single-family dwellings.
 - East** – "PUD", Carman Estates single-family dwellings.
 - West** – "PUD", Carman Estates single-family dwellings.

6. **General Neighborhood/Area Land Uses:** Carman Estates is located in a mixed density residential community located along Indianola Avenue south of Easter Lake Drive within the Easter Lake New Town area.
7. **Applicable Recognized Neighborhood(s):** Easter Lake Area Neighborhood.
8. **Relevant Zoning History:** The property was rezoned to “PUD” Planned Unit Development as part of the Carman Estates Conceptual Plan on June 18, 2001. The subject property of this amendment has remained unchanged in the “PUD” Conceptual Plan since the original approval. Although the Conceptual Plan has been amended several time on other portions.
9. **2020 Community Character Land Use Plan Designation:** Low Density Residential and Park/Open Space – Private.
10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning boundaries or regulations within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in 414.3 of the Iowa Code. The Commission may make recommendations to the City Council on conditions to be made in addition to the existing regulations so long as the subject property owner agrees to them in writing. The recommendation of the Commission will be forwarded to the City Council.

The application, accompanying evidence and conceptual plan shall be considered by the Plan and Zoning commission at a public hearing. The Commission shall review the conformity of the proposed development with the standards of this division and with recognized principles of civic design, land use planning, and landscape architecture. At the conclusion of the hearing, the Commission may vote to recommend either approval or disapproval of the conceptual plan and request for rezoning as submitted, or to recommend that the developer amend the plan or request to preserve the intent and purpose of this chapter to promote public health, safety, morals and general welfare. The recommendations of the commission shall be referred to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

The Conceptual Plan was originally approved with the intent to protect groves of vegetation and trees within the development. Thirty-foot easements were required by the plan at the rear of the subject property lots. The language of the plan reads:

“Conservation Easements are intended to protect and preserve trees to the extent possible during construction of the subdivision. Tree protection measures including fencing around trees larger than 4-inches in diameter, 1-½ feet above the base. Home builders may remove trees where necessary for house site construction, and remove inappropriate damaged trees, but the intent is that is that trees shall be saved as reasonable. Multiple-family development plans or preliminary plats shall include a tree survey and mitigation protection plan.”

The final plat for the subject properties Carman Estates Plat 4 places permanent conservation easements in the rear 30 feet of the subject properties. Based on the requirement of the Conceptual Plan, the preliminary plat established tree protection during

subdivision grading. Aerial photography from 2006 and 2007 indicates that areas with conservation easements were protected during subdivision development and lot grading. However, the aerials in 2009 revealed much of the area within the easement for lots on the north side of East Porter Avenue had been cleared, with some homes being constructed. It is not clear whether the area was disturbed during construction or by private property owners or both. Aerial photography for 2008 was not obtained by the City due to quality of the product as a result of flyover conditions.

The language of the recorded conservation easement prohibits grading of the area, removal of healthy trees, and placement of structures, including fences, within the easement area without expressed permission of the Community Development Director. At this time four of the subject properties have been served notice of violation for having fences or other structures within the easement area. One property owner has previously sought administrative relief to allow a fence and other structures, but was denied by the Community Development Director. The request before the Commission is the next remedy available to these property owners and has stayed the enforcement for the present time.

The applicants' request indicates that their properties were already cleared within the easement areas upon taking ownership and that most were unaware of the easement restriction even if it was disclosed as part of the sale. Because the area does not have trees and vegetation to protect any longer, the applicants believe that they should be permitted to treat the area as any other portion of their rear yard.

The applicants' have indicated that it appears that trees might have been cleared as a result of minor drainage system improvements. Storm Water staff in the Public Works Department have indicated that any such improvements were not part of any public effort to modify the drainage. There is no evidence that the developer or builders sought permission to improve drainage within the conservation easement area.

III. STAFF RATIONALE

Staff believes that there is still merit to the intent of the original PUD Conceptual Plan. Completely removing the easements would be contrary to the private open space intent of the comprehensive plan and conceivably could be interpreted to require an amendment. Any property south of East Porter Avenue should not be revised as the trees and vegetation are still in place to protect.

There are still substantial trees and vegetation that must be conserved immediately north of the subject properties on the north side of East Porter Avenue on land that has not been final platted. In order to prevent further degradation of the vegetated areas staff believes the easements should be kept in place to further prevent additional areas from being cleared. Also drip lines of trees on adjoining property to the north could be affected if structures are placed within the easement.

Because the trees have essentially been removed from these areas there is some room for a compromise to attempt to restore the intent for these areas. Fences do not have the impact that a foundation of a shed or other structure to a tree dripline. The Community Development Director has discretion to allow such structures under the terms of the easement. In this instance staff believes that at the direction of the Commission and City Council to the Community Development Director, it may be appropriate to allow fencing and very minimal encroachments (four or five feet) of a shed or pool, within the cleared

easement areas on the north side of East Porter Avenue. This should only be permitted subject to those encroachments being mitigated by planting and maintaining at least two overstory trees from the City's approved landscape species within the easement area.

SUMMARY OF DISCUSSION

Jason Van Essen presented the staff report and recommendation.

JoAnne Corigliano stated that she is in favor of retaining this easement and agrees that a lot of folks moved out that way because of the wooded area. With the lake and the way the drainage is, trees area needed in that area.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in favor of the applicant's request

Steve Ragan 2434 SE Porter Avenue, Lot 35 stated there are no trees and the ones that are there are rotten and should have been taken out. His concerns are making the residents pay for tree replacement when they had no hand in the tree removal and they are being penalized for not being informed by Jerry's Homes about the easement.

Brian Millard asked if the replacement of trees by the resident a big concern.

Steve Ragan stated his biggest concern is that the property owners cannot use over 30% of their property because of the easement.

Mike Ludwig clarified that when the subdivision plats are approved by the City those are recorded documents and those easements show up on a title search when you buy a property. That does not mean each person buying property reads that information or recognizes that information. The easement will show up on a title search during any transfer of property.

Brian Millard stated it is sad that people making the most important purchase of their life, do not hire an attorney for themselves. They rely on the real estate agent and maybe the bank looking at it. Real estate agents and banks have no consideration of what happens to you.

Michael Johnstone 2429 E. Porter disagrees with the staff recommendation. If the Council favors the recommendation, then the property taxes should be adjusted to a proper plat size taking that 30 foot by the width of the lot out because on a .25 acre that does not leave much property beyond the back of the deck. He pointed out that the 5 year tax abatement is slowly increasing. His lot has trees which are half decade, old like most of the trees in the area. The drainage issue was noted to him when he first bought his house in 2006. He does agree having the trees for an aesthetic value. However, he does not think it impacts someone putting up a chain link fence or something like that to keep their dog contained. He is in favor of the requested action which is to get rid of the easement or to adjust the taxes to a proper plat size.

Brian Millard asked if the applicant opposed the requirement to plant two overstory trees.

Michael Johnstone stated if it was not at the homeowner's expense, no.

Brian Millard asked who should pay for the trees.

Michael Johnstone stated he would have the developer (Jerry's Homes) pay for the trees.

John "Jack" Hilmes asked if there is a homeowners association that governs what the fences look like.

Michael Johnstone stated to his knowledge there is no homeowners association, which is one of the reasons he moved from Ankeny to Des Moines, but now he is considering moving back to Ankeny.

Heather Hutchcroft 2438 E. Porter stated that she was told at the time of purchase that there was an easement but she was told by Jerry's Homes that it did not preclude the building of fences. She inquired with the City's permit office as to whether or not she could build a fence, explaining about the easement and was told that it would not be a concern and she could a fence. She obtained a permit for the fence and built a fence. In December she received a letter telling her she had thirty days to remove the fence and if not she would be fined \$750.00 a day. (Keeping in mind that the ground is frozen). She did not intentionally break any rules she feels that the City misled her.

The staff recommendation did not indicate that she and her neighbors received permits for the fence they built – this is important to know to show that they thought they were acting in good faith. Also, her request was misstated and should say that they are allowed to keep their existing structures. Her intent was not that they lose the easement in its entirety but that it be modified in some way. If she has to move the fence it would be a great expense to her. To address the paragraph in the staff recommendation that indicates that there was no evidence that the drainage system was installed by Jerry's Homes, this resulted in the removal of several trees. However, she has lived in her home prior to the system being installed so she knows that the drainage system was installed and did result in the removal of much of the vegetation that had been there prior to the construction. She was told by Jerry's Homes that this was necessary for the water to run away properly and they had also consulted with the City and it was approved. She is fine with staff recommendation to amend the existing easement restrictions that it is allowable to build certain structures and she is fine with planting two trees.

Kent Sovern asked if she would be pleased if the action of this board was to affirm that any structure that had received approval by the City would be able to remain in place.

Heather Hutchcroft stated that she believes it is only fair. She paid for a permit. She was then told by the City that the permit was issued erroneously but that it was her responsibility to know that.

Brian Millard asked when was the drainage system installed by Jerry's Homes resulting in the removal of the trees.

Heather Hutchcroft stated approximately 2008.

Brian Millard asked if Jerry's Homes got grading permits.

Heather Hutchcroft stated that she could not be sure, but her understanding was that they did have permits because she inquired about it since she considered the trees and shrubbery that was removed as part of the value of her home.

Brian Millard asked if there was any confusion by the City about what happened would she be glad to tell them.

Heather Hutchcroft stated absolutely, the City can even interview her and look in her yard to see where the drainage system runs.

Will Page asked if her neighbor Steve Ragan also had a permit to build his fence.

Heather Hutchcroft stated yes, that is what she understands to be true.

John "Jack" Hilmes asked if the tree removal improved drainage flow along the north property line.

Heather Hutchcroft stated she could not speak to that, but thinks that it did not affect her property as much as it affected properties further east of her.

John "Jack" Hilmes asked if she thinks that there was a betterment to some of these properties as a result of the trees being removed.

Heather Hutchcroft stated she believes that there was or Jerry's Homes wanted to present a more appealing yard to potential buyers in an economy that is not very good for home sales.

Lo Chang 2454 E. Porter stated that he was upset when he discovered the easement. He hired a company to put up his fence and he was told by them that they took out a permit. He would not buy any property without a backyard. Please allow it to stay the way it is.

John Stodgel 2446 E. Porter stated he has a black chain link fence and asked if he could build a shed.

Mike Ludwig stated that under the staff recommendation he would need to submit a request to the City for his shed and would be required to plant two trees. Each individual request is considered on a case by case basis.

John Stodgel stated that in these new houses with garage, there is only room for two cars so if you have a regular size pickup it has to stay out in the snow, so a shed is needed for lawn mowers and other stuff.

The following spoke in opposition of the applicant's request

Dana Lower 2508 E. Porter stated the Conservation Easement created by the City Plan and Zoning Commission is an essential regulation for the Carmen Estates Neighborhood. It provides many benefits that unfortunately have been overlooked. The Conservation Easement preserves and protects old growth trees in the back 30 feet of every property in the neighborhood. The importance of these trees is immeasurable as they provide wind block and create shade, produce oxygen, and maintain a natural habitat for hawks which battle the rodent population, birds which battle the insect population, deer and many

numerous other animals. The Conservation Easement also prohibits structures from being built in the back 30 feet of each lot. This is an important regulation because it prevents individuals from constructing buildings that could potentially be unsightly and unattractive. There by lowering the aesthetic value of the neighborhood and in turn lowering the overall property value. Carmen Estates should be considered an extension of Easter Lake and Ewing Parks. It is necessary to protect and preserve the trees in order to maintain the natural beauty of the neighborhood. If the easement is abolished, individuals would be allowed clear cut their properties, ruin the natural beauty and lower the overall property value of the neighborhood. If an amendment is allowed for the 2400 block of E. Porter it will create precedence for change. The City Planning and Zoning Commission created the conservation easement in order to preserve the original trees in our neighborhood and prevent the construction of structures that could potentially be unappealing. These consequences would reflect poorly on the entire neighborhood. If the rules are changed because a few individuals decided not to follow them we lose the sense of order. By allowing a portion of our neighborhood to bend the rules, we lose solidarity. It is necessary for the residents of Carmen Estates to remain united in order to maintain our natural and aesthetic beauty which will keep the property values from declining. She also stated that before she moved in she knew about the easement, she was informed about it and it was on the plat map. She came to this neighborhood because of the easement to preserve the trees and she did not want a shed in her back yard. The trees in her backyard are healthy and provide shelter and shade.

Mike Ludwig stated that there are no restrictions on the PUD that regulate the design of the sheds. The easement was intended to preserve the vegetation that was there and the benefits of that. The City can review the design of sheds if the City is granting latitude for construction within the easement.

Dana Lower stated that if the easement is amended and sheds are allowed then she strongly recommends that the standard for other neighborhoods are followed. The shed should be sided to match the house and have an aesthetically pleasing look.

Kathryn Cardamon 2442 E. Porter stated that she was aware of the easement by her realtor and then a representative of Jerry's Homes also told her. The big part of her decision was the easement and the trees being there because she likes the aesthetic value it puts on her home and that it is a conservation area. She was told that it would be protected and could not be changed, and then six months later there is a petition to have it removed. It would be unfair to have it removed totally because of her investment in her property and it adds value to the property. She hopes that the easement is not removed.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Brian Millard asked staff what the Commission's options are other than approve or deny. He thinks there should be another option because the homeowners are being burdened for something that someone else did under the City's watchful eye.

Mike Ludwig stated from staff research, it is not clear whether there were approvals to be doing the grading that resulted in tree removal. Staff is very concerned with just granting a waiver of the easement. It just encourages the next group to go and remove trees and come in and ask for an easement to be waived. Staff has tried to present an alternative to the Commission which would keep the easements but allow a case by case review for encroachment and mitigation for tree removals.

The staff recommendation tries to strike a balance, keeping the emphasis on the value of those easements and requiring new plantings back to replace what was taken out. The current owner is the owner of record of the property. If they individually want to pursue reimbursement from Jerry's Homes for whatever, that is a private matter. Staff has to deal with the current ownership of the property. As far as the enforcement action that was sited, the enforcement of the \$750.00 fine must be a court ordered action. Enforcement will be stayed while this is proceeding so there is no daily fine adding up on these properties. There will be quite a bit of latitude on staff's part to allow existing fences to remain provided that two trees were planted in those easements per lots. Staff would review those requests on a case by case basis.

Brian Millard believes the mitigation's burdening the individual homeowner. Possibly providing a larger conservation easement on the property that Jerry's Homes currently owns to the north is also a reasonable thing for the Commission to consider. The City has heard what some of the property owners have said he thinks the City should go after Jerry's Homes.

Dann Flaherty stated there is an adage in the law that says that we cannot bind future boards. He is concerned if the Commission is going to permit the director to allow fences and out buildings there needs to be some guidelines for the director to take. He asked that whoever makes the motion request some guidelines for what the director can and cannot do with respect to granting those additional encroachments.

Mike Ludwig suggested that some of the items that would be recommended as individual cases are being reviewed could include 1) Demonstrating that a permit was obtained, and complied with. The preference for new applications for fences would be black vinyl clad chain link as required in almost every new PUD in the last five years. If a storage shed was allowed we would ask that it have siding to match the principle structure on the property. Finally, two trees would be required within the easement on each lot.

Kent Sovern stated for the structures that currently exist that were properly permitted, the only option should be that they are legal structures and should stay. However, the Conservation Easement was there for a good reason and should be maintained. Therefore, he would be resistant to new structures going into the conservation easement, whether there are trees in that easement or not. He would resist the motion that provides staff the ability to approve new structures in the existing conservation easement. The Commission should be in the position to say what is there is there, what harm that has been done is done but no additional harm, no additional encroachment into the conservation easement should be allowed. That is a motion that he could support.

COMMISSION ACTION:

Mike Simonson moved staff recommendation to deny the requested amendment and to consider a recommendation to the City Council that would direct the Community Development Director to consider encroachments of fencing and slight encroachments of other structures no greater than five (5) feet when the property owner plants two (2) or more trees of an approved overstory species within the easement area.

Motion failed 4-7 (Greg Jones, Mike Simonson, John "Jack" Hilmes, Ted Irvine voted in favor and JoAnne Corigliano, Kent Sovern, Dann Flaherty, Will Page, Shirley Daniels, Jacqueline Easley, and Brian Millard voted in opposition)

Kent Sovern moved to recommend to City Council that staff review the erection of any facilities, any improvements within the stated conservation easement and that those improvements that were, through no fault of the homeowner, placed properly with permit be allowed to stay. That no further encroachment into the conservation easement area be allowed in this development.

Motion passed 7-4 (JoAnne Corigliano, Kent Sovern, Dann Flaherty, Will Page, Shirley Daniels, Jacqueline Easley and Brian Millard voted in favor and Greg Jones, Mike Simonson, John "Jack" Hilmes, and Ted Irvine voted in opposition)

Respectfully submitted,


Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Item 2010 00225 Date 1-13-11 39

(am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT
DEPARTMENT
JAN 18 2011

Print Name Todd Madden

Signature R. Todd Madden

Address _____

Reason for opposing or approving this request may be listed below:

Item 2010-00225 Date 5/13/11

(am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT
DEPARTMENT
JAN 18 2011

Print Name Doug Pierson

Signature [Signature]

Address 2417 E Ryker Ave DSM

Reason for opposing or approving this request may be listed below:

Item 2010 00225 Date 1-14-11

I (am) (am not) in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

JAN 19 2011

DEPARTMENT

Print Name Jerry's Homes Inc

Signature Ronald R. Hubl Pres

Address 3301 106th Cir Urbandale

Reason for opposing or approving this request may be listed below:

Item 2010 00225 Date 1-14-11

I (am) (am not) in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

JAN 18 2011

DEPARTMENT

Name BRYAN G. FARLOW

Signature [Signature]

Address 2438 Hart Ave.

Reason for opposing or approving this request may be listed below:

