



Department of Planning & Community & Economic Development

## Planning Division

Katherine Cornwell, Director

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**TO:** Plan Commission  
**FROM:** Timothy M. Parks, Planner  
**DATE:** February 20, 2014  
**SUBJECT:** Condition re: Birchwood Point Land Use Restriction Agreement (Resolution ID 32929)

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On November 19, 2013 meeting, the Common Council conditionally approved a request by MRCEV Acquisitions, LLC/ Veridian Homes to rezone land at 10203 Mineral Point Road to TR-C3 (Traditional Residential-Consistent 3 District) and TR-U1 (Traditional Residential-Urban 1 District), and the plat of Birchwood Point, which contains 230 single-family residential lots, 1 lot for future multi-family development, and various outlots for public and private purposes. The Plan Commission recommended approval of the zoning map amendment and subdivision plat at its November 4, 2013 hearing.

Among the conditions of approval for the Birchwood Point development was a condition (#54 in the attached approval letter) that required the applicant to execute a Land Use Restriction Agreement (LURA) benefitting the City concurrent with the recording of the final plat that would prohibit the further subdivision of the 230 single-family lots. The LURA was proposed by the applicant during the Plan Commission hearing as a means of addressing a concern raised in the staff report that the TR-C3 zoning requested for the single-family lots could facilitate the further subdivision of many of the proposed lots in a fashion not in keeping with the character of the overall development. Whereas TR-C3 zoning requires a minimum of 30 feet of lot width and 3,000 square feet of lot area, the more restrictive TR-C1 proposed by staff requires a minimum of 50 feet of lot width and 6,000 square feet of lot area, which staff felt would reduce the potential for the future division of the lots, many of which were larger than 3,000 square feet. The applicant, however, noted that the TR-C1 yard requirements were too restrictive for the homes anticipated, and that the lots were sized for the less restrictive TR-C3 required yards.

On January 9, 2014, the applicant submitted the attached letter to Planning Division Director Katherine Cornwell seeking relief from condition #54. The letter points to concerns about potential complications to the recorded titles for the lots and regulatory and administrative complications for the City stemming from the recording of the LURA. The Planning Division shares the applicant's concerns and believes that any benefit that may be derived by having the LURA approved and recorded to prevent further subdivision of these lots per condition #54 would likely be exceeded by issues of enforceability and practicality. Therefore, staff recommends that the Plan Commission recommend approval of Resolution ID 32929 to the Common Council eliminating the LURA but otherwise preserving the other conditions of the November 19, 2014 zoning and plat approval.

cc: Katherine Cornwell, Director, Planning Division  
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