

**North Oaks City Council
Meeting Minutes
North Oaks City Council Chambers
June 18, 2021**

1. CALL TO ORDER

Mayor Ries called the special meeting to order on June 18, 2021 at 4:00 p.m.

2. ROLL CALL

City Councilmembers participated **by telephone or other electronic means** pursuant to Minn. Stat. § 13D.021. Residents can view the meeting on our cable access channel and through the website portal just like other public meetings.

Present: Mayor Kara Ries. Councilmembers Rich Dujmovic, Jim Hara, Sara Shah, Tom Watson

Staff Present: Administrator Kevin Kress, Attorney Jim Thompson, Engineer Tim Korby

Others Present: North Oaks Company President Mark Houge, North Oaks Company Attorney Tom Bray

A quorum was declared present.

Mayor Ries noted due to the late hour of the previous meeting, the Council decided to recess and reconvene to continue the discussion at this date and time. They are discussing the Anderson Woods final plan approval.

UNFINISHED BUSINESS

9c. Consider approval of application for final plan/plat/subdivision for the Anderson Woods Development Site (Site F of the 1999 East Oaks PDA as well as adjacent parcels as shown on the previously-submitted preliminary plans legally described as Tract G, REGISTERED LAND SURVEY NO. 633, RAMSEY COUNTY, MINNESOTA) including approval of related development contract

Mayor Ries noted some things stated on record that she wants to clarify that after some discussion with Attorney Thompson. In the discussion on some of the preliminary plans and moving into final stage approval there has been a lot of discussion on Vadnais Lakes Area Water Management Organization's (VLAWMO) role in all of this; in conversations with Al Fiori and Brian Corcoran, they are not in the business of approving planning or development plans. They simply look at the wetland conservation act and that is really their only jurisdiction. It is the City's obligation to review this within the ordinances and contractual obligations (the PDA) and look at issues in regard to health, general welfare, and safety. The City Council needs to be sure they are being compliant with their own ordinances, with the PDA, and with the current zoning and land use. She noted it has been stated incorrectly on the record that "VLAWMO approved this" and the Council must look at the compliance of each of these applications and whether they are fulfilling their obligation in following the PDA. Mayor Ries said there has been a lot of discussion about being in the final plan phase and that there is nothing they can do; they also have the obligation of the PDA which requires and often trumps what the ordinances say. She opened the discussion.

Engineer Korby has done some analysis and has come up with additional options for the water main and the land bridge. Regarding the water main, Option A right now is designed with two separate water mains going down the middle of the road and the purpose is to have some sort of a loop on Pond View Trail, which he will call a “pseudo-loop.” Option B would be to get rid of one of the pipes on Pond View Trail and extend it to the north, hook up the 4 additional homes for the “villas” and the hook up to the existing water system further to the north which would be a true loop with water crossing on two different points on Centerville Road. He noted it is very expensive which is about \$200,000 (estimated) to extend it further to the north, hook up those 4 lots and connect to the system to the north. Option C would also be a true loop and instead of crossing at the same spot on Centerville Road they could cross a few hundred feet down the road, bring it in between lots 6 and 7 or 7 and 8 and come in on the north side of the cul-de-sac. Engineer Korby would push to have a true loop as it is good for the health and safety of the residents on North Oaks.

North Oaks Company President Mark Houge noted one thing not considered in those costs is right-of-way acquisition and the fact that the Company has already sold those 4 lots and one has already installed a well and paid for it. The other 3 are under contract with the understanding that they would be putting in a well and the nearest water line is in Osprey Court and they are all on a loop. He noted they do not see it as a viable option to go up to the Villas of Wilkinson Lake.

Engineer Korby noted there are cases where a resident has a well and can use it for irrigation purposes and then City water is for drinking purposes.

Councilor Shah asked Attorney Thompson if the City has the authority to ask the applicant to extend the utilities like this?

Attorney Thompson asked Mr. Korby what the engineering plans that were part of the approval of the preliminary plat/plan showed with respect to the water.

Engineer Korby replied they showed the double barrel with two pipes going down the road.

Attorney Thompson sees two legal issues. First, the statute says that the obligation of the Council is to approve a final plat if it complies with the conditions in the preliminary plat resolution and any applicable requirements. This is a legal issue if the Council were to mandate a change in what was approved at the preliminary plat stage. A second issue is that the four lots to the north are not part of this development; granted they were done by the same developer but hypothetically if it was a different developer, they would not have any authority to make that developer do something different than when it was approved. There are two legal hurdles he sees. He noted the developer can agree and they can negotiate something to do one of the other two options that Engineer Korby suggests, but legally, the Council is in a tough situation demanding it.

Mayor Ries stated the City has the right to enforce health, safety, and general welfare and maintaining water quality in that area would be an issue. She asked if that is correct, generally speaking.

Attorney Thompson replied yes.

Mayor Ries noted the City has the right be enforcing consistent water quality. Also, if something was incorrect or falsely stated on the record prior, the City has the right to go in and review that fact and asked if that is correct.

Attorney Thompson replied yes, that is correct. He clarified if it is a misstatement relating to a previous development that has already been approved it is difficult as to how they would enforce that.

Mayor Ries stated during approval of those four plats there was discussion about looping in the water – she asked if the City can retroactively connect these homes to water and do they have that authority.

Attorney Thompson replied generally, yes, the City does have that authority, for example when a road is built and rebuilt and if they extend sanitary sewer and water the City can require that the property owners hook up in a specified period of time. He stated many cities do that in a way that does not jeopardize the homeowners, if they have a brand-new septic system or well, they are given time.

The Council discussed the previous City Council and Planning Commission's decisions regarding looping the water.

Mr. Houge reminded the Council that the reason they have the design with the two lines running parallel in the street was a request by White Bear Township to maintain water quality. In terms of health and safety it is the exactly the same in terms of water quality whether the line runs up and down Pond View Trail or is connected at a point north on Centerville Road. It is going to tap into the same 16-inch line and the water flow is the issue, not the proximity of the connections to the water line. He clarified to suggest that it saves the City money to eliminate that line is incorrect as the Company is paying for the line either way. If the City wants to put in a new line and assess the owners on the Villas, that would be their option but it would come at an additional expense to the City and those homeowners.

The Council continued the discussion of the water line options and who would potentially cover the expense of hooking up the water. They then moved on to a discussion regarding the location of the trail access and NOHOA, including safety and security in the trail head being close to the entrance of the City.

Engineer Korby noted there are 122 engineering comments and they are working through those with the Company. Regarding the land bridge, other options include a concrete arched culvert and a corrugated metal arched culvert. The advantages environmentally are cutting the wetland impact in half, reconnecting the wetland sides – although both VLA WMO and HR Green's engineers have said the water can flow from both directions in somewhat of a loop. Perhaps the most important is reconnecting the wildlife as these culverts for turtle and wildlife crossings. The disadvantage is the expense and it is estimated to be as much as \$500,000 extra to put in some sort of a real bridge, and that is something the Council would have to discuss and decide on. He

showed a picture on screen of what a culvert could look like. He noted it was mentioned in NOHOA's letter that they are not in favor of going away from the land bridge due to the maintenance as at some point in the future a culvert goes bad.

Mr. Houge noted the entire land bridge has been built, it is completely done, and is ready for gravel base and paving.

Mayor Ries thinks it is important for Mr. Korby to review it for structural integrity, erosion, sloping, runoff, and other impact, as at one point, NOHOA had comments and concerns. Resolution 1391 that only approved grading and denied storm water collection, utilities, and putting in the road. She would like Engineer Korby to review this.

Mr. Houge stated the City has had an engineer looking at this project for over a year, has done a thorough review, and just because there is a new engineer it does not discount the fact that the previous engineer did a thorough review of all of the design to the get them to the point they are at. In addition, there have been numerous on-site meetings coordinated with a soils engineer, records of the compaction, and everything was done exactly to the specification requested by the City Engineer at the time, the rip rap is a slope that is designed to be maintained, there are no retaining walls required. The ponds were not constructed other than the grading of the area that creates the pond. No work has been done by the Company that exceeds the authority given by the City to do grading.

Mayor Ries anticipated those comments and asked Kress to send her any documentation on the engineered documents of the bridge; the only thing they had was a wetland impact that was submitted to VLAWMO for their review, there was no actual grading or design work submitted to the City that actually showed this type of land bridge structure and what it entailed. Her concern is there is initial grading in the City but they also have ordinance 151.027 which talks about land reclamation and is not specific to a point in time. In order to review the ordinance and make sure things are being met, those plans, designs, and quantities need to be disclosed.

Councilor Shah noted VLAWMO reviewed the plan and did not raise any issues about the current design from an environmental standpoint and the City gave the applicant the grading permits in July of 2020. She stated the applicant did not do anything different than what they asked for in the preliminary plan and the City they gave them the authority to do that. She does not see that they have latitude or authority to change this land access situation as the Company is doing exactly what was approved in the concept plan and the preliminary plan. She asked Attorney Thompson's legal opinion.

Mayor Ries wants to clarify two things stated on the record: it was only the initial grading that was approved in Resolution 1391 and no permits were ever issued, and second VLAWMO does not review plats, environmental wetland tables, they only review the wetland conservation act and where the water is impacted. She noted the Planning Commission and previous Council would couch everything on the perception that VLAWMO goes into an environmental study. She noted there was an EAW done which only anticipated using the existing farm roads and did not anticipate this particular road.

Attorney Thompson said it sounds like the plans for this roadway at the time of preliminary plan approval did not include the bridge or culvert option. The answer to the question Councilor Shah raised has two legal issues associated with it, first going beyond the boundaries of the plat. He stated the Mayor is correct in the sense that a permit was not issued for this grading, there was a resolution approved which is what is contemplated in the PDA to allow the preliminary grading so that was authorized. He recognizes another provision in the Code on land reclamation and in this particular instance he thinks the process was followed that is contemplated by the PDA which is a resolution approving the preliminary grading. It appears the grading was done pursuant to that authority, though there may be some misunderstanding. His understanding is that there were no utilities installed and there was no roadway installed; rather there was just grading for the roadway which is what was authorized by that resolution. With respect to whether they can change the rules now regarding the road, the answer is the same in that the statute says if what they are doing complies with what was approved at the preliminary plat/plan stage, the law is they cannot change the rules on that without the consent of the developer. He noted it is true as a Council that they have the authority for health and safety, and for example if there is a health and safety concern about where this road hooks up to Centerville Road, the Council has authority over that and does not have to approve a road connection that is unsafe. He thinks the same principal applies regarding the trail in that if it is an unsafe location the Council has some discretion. He pointed out that the preliminary plat resolution for this development says “final trail plans be developed in concept with NOHOA Staff (as they will be responsible for acceptance and maintenance of the trails).” Attorney Thompson stated the last legal item left is the development agreement and they will be working on that; he hopes they will ensure that issues that came up in Nord will not come up this time.

The Council discussed the classification of a natural environment lake and how the lots meet the minimum ordinance requirements. They spoke about the NOHOA June 6 letter and determined the issues raised have been reviewed or are incorporated into the 122 engineering comments. It was noted that every item in the memo shows the City’s and NOHOA’s commentary. The engineer clarified the grading report, including preliminary grading to final approval standards.

Mr. Houge noted the previous engineer told the Company exactly what they wanted to see to approve the project and its construction and that is what the Company followed. At this point, it is not appropriate for the City Engineer today (even though they are different) to be reviewing the work of the city engineer that was fully capable and reviewed the same item 6 months ago.

Attorney Thompson noted the change in engineers is not an issue, what becomes problematic is changing the rules. The rules are: what was approved and in place when the Council approved the preliminary plat. A new engineer should be reviewing all of the plans as it is a condition in the final plat resolution that is part of the agenda tonight – that final plans need to be revised in order to address the engineering comments in the memo dated December 11, 2020. The current City Engineer has to comment on those and they have to comply. It does not matter whether there is a new engineer or not with respect to what the applicable rules are and those are the rules that were in place when the previous Council approved the preliminary plat. The engineer must review these plans to make sure they are consistent with the approved plans and the previous engineer’s December 11, 2020 memo.

The Council again spoke about the location of the trail, including the conceptual trail layout and consistency with the 1999 PDA.

Councilor Watson pointed out number 7 in the resolution and asked does it mean these parcels cannot be sold without an agreement on easements with NOHOA.

Attorney Thompson replied yes, that is what it means. The trail easements need to be conveyed to NOHOA before conveyance of any of the affected lots.

Mayor Ries gave Attorney Thompson some history and stated the roads are actually easements to the Home Owners' Association just like the trails are.

Attorney Thompson understands that. He said the answer is yes, this resolution requires a development agreement, and that provision will be in the development agreement and was also in the Nord agreement.

The Council spoke about escrow requirements, basement elevations (including Gary Eagles' letter from February 24, 2021), walkout basements versus lookout basements and moving cubic yards of soil to create a walkout basement.

Attorney Thompson noted that is where the City's land reclamation ordinance would come into effect. If a lot is sold and they want to bring in grading and meet the threshold for a land reclamation permit which requires a CUP approved by the City Council, they would have the authority to review that at that time if they met the 100 cubic yard threshold.

The Council discussed platting, surface water runoff, drainage, and building codes.

Mr. Houge pointed out the proposed grading plans show proposed elevation for various levels of a home on lots 5, 6, and 7 which would be typical. If they are creating lots and doing grading, they need to show how the home would be placed. Regarding the six lots that they chose not to grade because they wanted to retain the tree, when the homeowner decides what type of home they would like to build, those basement elevations will come into play.

The Council discussed code requirements, the development agreement, and slab-on-grade versus walkout basements.

Attorney Thompson clarified they can put things in the development agreement that the future homeowners cannot come back at the City and say they did not know they could not put in a walkout basement but instead can only do a slab-on-grade. He stated they should have known it because it was on the title when they purchased the property and noted they would add a few more remedies to the development agreement to make sure home owners know about these lots whether they have attorneys or not when they buy these lots.

Mayor Ries noted it is the deadline for approval so legally the Council needs to either approve, deny, or come to an agreement with Mr. Houge to extend the deadline at this point. She would

like to try to connect those four houses with water and asked Mr. Houge if he would be willing to have that discussion and seeing if it would be possible and looking at the financials.

Mr. Houge said with all due respect, they cannot do that; they built those homes, marketed them for sale, and people who have been looking at them were fully apprised that they would be using wells and there is no benefit from a health and safety point of view.

Mayor Ries asked Mr. Korby to explain the benefit of the water quality being in a true loop rather than parallel pipes.

Mr. Korby explained it would be bringing in water from a different point if there was ever an issue, a break, or settlement under the road, it is more reliable for health and safety.

Attorney Thompson explained the resolution prepared which has been reviewed by the developer's attorney and is based primarily on the resolution used for the Nord development which approved the final plans subject to further engineer review to make sure they comply with the plans that have been approved. It requires the developer to enter into a development agreement with the City, the form of which is acceptable to the City, and the developer will provide a cash escrow letter of credit, requires the trail easements to be conveyed to NOHOA before conveyance of any lots, and carries forward some setback and other requirements in the preliminary plat resolution and specifies the name of the street. Attorney Thompson noted this resolution covers Tract G of registered Land Survey No. 633 which is the current legal description for the nine lots.

The Council discussed adding both engineer memos from the previous and current engineers, as well as conveyance of the road to NOHOA. Regarding NOHOA's trail access opinion, it was noted that in North Oaks they do not put those access points near a County road as those can become accesses for theft and trespassing. Councilor Watson and Mayor Ries would like to put something in the resolution regarding the trail location being revisited to keep consistent with other trails in North Oaks.

Councilor Watson would like to see traffic counts and safety matters on that area of Centerville Road and would like to see that represented, as well.

Attorney Thompson suggested adding some language such that the Council reserves the right to request and provide information to NOHOA regarding traffic safety concerns for their consideration.

Mr. Houge objects to adding the HR Green engineer's letter from May as the Company received preliminary approval with the City's engineering comments at the time and many of the items in the HR Green letter are more clean-up items on the drawing and they will clearly take care of that. Second, he cannot agree to change the trail location after having worked this issue thoroughly with the City and NOHOA previously to come up with an agreement/preference of what the Company thought NOHOA wanted.

Councilor Watson clarified he is not asking them to change the trail but rather take into consideration some factors that were not considered such as nearby road traffic, a.m./p.m. traffic, and truck traffic as he is pretty sure the Company and NOHOA did not take those into consideration.

Attorney Thompson stated with respect to adding the other engineering drawings, over the objection of the applicant, he does not recommend adding that; they could encourage the developer to review those comments and comply with those they can.

Councilor Shah asked Attorney Thompson to summarize the modifications to the resolution.

Attorney Thompson said if a motion is made with a second to adopt this resolution, they can clarify to make sure what the terms are.

MOTION by Shah, seconded by Watson, to approve Resolution 1425 the final plat subdivision for the Anderson Woods site. [02:38:45]

Attorney Thompson noted number 7 would now read “*road and trail easements shall be conveyed to NOHOA prior to the conveyance.*” A new sentence would be added to paragraph 7 that says “*The City reserves the right to present additional information and comments to NOHOA related to the traffic, safety, and security concerns relating to the proposed location of the trail.*”

Engineer Korby and Attorney Thompson discussed the 122 engineering comments on the plans.

Mr. Houge stated the drawings referred to in the resolution are new plans; there was a set of preliminary plans that was approved by a prior Council. These are what the Company is calling the final plans and they were instructed to hold off making any changes to these final plans until the approval (presumably today) and then they can incorporate comments. Again, he rejects to changing that paragraph from reference to the earlier engineer’s comments because that is what the approval is based on. He also stated the language should say the “approved” trail rather than the “proposed” trail.

Attorney Thompson suggested in paragraph 2 it say “*final plans shall be revised to address the City’s Engineer’s comments.*”

Tom Bray, attorney for the North Oaks Company, thinks the Council is confusing two issues. First is the willingness of the NOC to work with the current City Engineer Mr. Korby and take his comments into consideration, which Mr. Houge has already indicated the Company is willing to do. Second is the City’s legal right to add new conditions at this point in the process by requiring compliance with Mr. Korby’s letter which was not a part of the record, preliminary approval, or referenced in the resolution of preliminary approval. The Company strongly objects to any reference to any engineer comments other than the engineer comments that are specifically referenced in the preliminary approval resolution. Beyond that they are adding new conditions and simply do not have the right to do that.

Attorney Thompson said the reference right now to the engineer's memo is dated December 11, 2020 which did not exist at the time of preliminary plat approval, so by definition, the comments have to come after that. He does not think they should get hung up on a date here but thinks it should say "*final plans shall be revised to address the City's Engineer's comments.*" He clarified if the engineer is commenting on the appropriate plans, then those are appropriate comments.

Attorney Bray noted the Company maintains its objection; the preliminary approval resolution required the Company to respond to the City Engineer's plans and were provided an extensive memo and the Company fulfilled its obligation by responding to that.

MOTION by Watson to amend the main motion on Resolution 1425 as presented to add the modification to item 2 and delete the reference to the date and insert the words "City Engineer" and add the word "comments." With respect to item 7 to add the word "road and trail easements" and include the comment from attorney Thompson that the City reserves the right to provide information about traffic safety, security, and road conditions to the consideration of this trail. [2:58:00]

Attorney Thompson clarified the amendment to the motion with amendments as follows: the first sentence of paragraph 2 would read, "*final plans shall be revised to address the City Engineer's comments.*" Second, paragraph 7 would be revised to read "*road and trail easements*" and to add another sentence to that paragraph that says "*the City Council reserves the right to present additional information and comments to NOHOA on traffic, safety, and security issues relating to the trail location.*"

Watson agrees with Attorney Thompson's statements as modifications to his motion. Dujmovic seconded. Motion carried as Councilmembers Dujmovic, Hara, Ries, and Watson voted for; Councilmember Shah voted against. [3:02:30]

Mayor Ries called a vote to approve the Resolution as amended.

Motion carried as Councilmembers Dujmovic, Hara, Ries, and Watson voted for; Councilmember Shah voted against. [3:03:00]

MOTION by Watson, seconded by Hara, to table agenda items 9d, 9e, and 9g to the next regularly scheduled City Council meeting on July 8, 2021. [3:05:00]

Councilor Shah is disappointed that they cannot get through this material in a more efficient manner as she thinks they should attend to City business.

Motion carried as Councilmembers Hara, Ries, and Watson voted for; Councilmembers Dujmovic and Shah voted against.

9d. Consider North Oaks Company request for preliminary grading on Island Field

9e. Proposed Change to Building Permit Refund form

9g. Discussion on Wetland Protection Ordinance from City of Minnetonka**10. COUNCIL MEMBER REPORTS**

Councilor Dujmovic sent the Council a report on crime statistics and police data over the last 5 years and is still working on a script for a video for new residents.

Councilor Hara shared that he spoke with NOHOA Executive Director about weed management and it is a NOHOA role rather than the City's. He agrees with Councilor Shah about attending to City business and noted he was charged along with Engineer Korby and Administrator Kress to look at the City water rates for those tied into the Shoreview water system. He noted they have not had a meeting or conversation about it. He thinks Council and City Staff should be aware that they spend so much of their time on developments and there may be some residents who will receive a big water bill and would like them to attend to more than just developments.

Councilor Watson had nothing to report but said the meetings would be shorter if they cut the politics.

Councilor Shah attended the RCLLG quarterly meeting and the VLAWMO Tech meeting.

Mayor Ries noted June 26, 2021 is Recycling Day. She followed up with the weed comments and stated it is a NOHOA issue and there are only two times per year that NOHOA can get a permit from the DNR to treat and they must be very cautious because the Department of Health may send a letter stating they need to change the process or chemical. Mayor Ries and Councilor Watson had a meeting with St. Paul Water and are initiating a joint effort to investigate this and look at some possible new ways to address the zebra mussels.

a. 319 Watershed Grants**11. CITY ADMINISTRATOR REPORTS****12. CITY ATTORNEY REPORTS****13. MISCELLANEOUS****a. March 2021 Forester Report****14. ADJOURNMENT**

Watson moved, Dujmovic seconded to adjourn the meeting at 7:15 p.m. Motion carried unanimously by roll call.

Kevin Kress

Kevin Kress, City Administrator

Kara Ries

Kara Ries, Mayor

Date approved 7/8/2021