

**North Oaks Planning Commission
Special Meeting Minutes
City of North Oaks Community Meeting Room
May 28, 2020**

CALL TO ORDER

Chair Azman called the special meeting of May 28, 2020, to order at 5:30 p.m.

In compliance with Governor Walz's Stay-at-Home Order and pursuant to Minnesota Statute 13D.021, the meeting was conducted via Zoom.

ROLL CALL

Present: Chair Mark Azman, Commissioners David Cremons, Jim Hara, Stig Hauge, Nick Sandell, Sara Shah, and Joyce Yoshimura-Rank. City Council Liaison Rick Kingston.

Staff Present: Administrator Kevin Kress, City Planner Bob Kirmis, City Attorney Bridget Nason, Engineer Larina DeWalt.

Others Present: Videographer Maureen Anderson.

A quorum was declared present.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

MOTION by Hauge, seconded by Sandell, to approve the agenda as submitted. Motion carried unanimously by roll call.

Chair Azman said there was a slight possibility the Commission might need to take a short recess. In the event that happens, he would let everyone know. He stated if there are any members of the public that would like to speak in person, the podium is available, and they are welcoming of anyone. He noted there are directions on the outside of the door and people will be asked to follow appropriate social-distancing and other precautions in light of COVID-19. If anyone is participating via Zoom and would like to make comments, they will need to use the "raise your hand" function and then he can allow that person to speak. If anyone has a presentation, that can be managed as well. Everyone should generally follow the three-minute rule to give presentations. In the event someone feels they need additional time, as the Chair he cannot unilaterally allow that, but he can ask the Planning Commission to take a vote to allow persons to have additional time.

CITIZEN COMMENTS

None.

BUSINESS ACTION ITEMS

a. Review of Anderson Woods Parcel - Subdivision Application

Chair Azman called the continued public hearing to order at 5:42 p.m. and asked Staff to make their presentation.

- Planner Kirmis and Engineer DeWalt presented the Planning Report Addendum included in the packet and recommendation for approval of the Anderson Woods preliminary plan/preliminary plat (subdivision) application subject to fulfillment of amended conditions 1-52.
- Commissioner Yoshimura-Rank referenced the condition regarding the City Forester working with the homeowner for preserving trees and asked if that could be put in a letter and given to every future homeowner, welcoming the homeowner but also encouraging the homeowner to work with the Forester before removing any large trees, because the City does care about trees in the developments. She noted the North Oaks Company (NOC) is doing a concerted effort to leave big trees and that it would be a shame to have a homeowner go in and clear-cut trees because of a lack of an ordinance.
- Planner Kirmis stated he felt it was a good idea and could be done, although he was not sure exactly how that would be implemented, as far as being a newsletter from City Hall, etc.
- Commissioner Yoshimura-Rank asked if there was a “Welcome” packet given to new homeowners.
- Administrator Kress said that could probably be coordinated with North Oaks Home Owners’ Association (NOHOA) and put in an email blast.
- Commissioner Yoshimura-Rank commented Engineer DeWalt talked about filling in the wetland for the access road and asked where the water is going, whether it is going to Wilkinson or a culvert.
- Engineer DeWalt stated it was her understanding that the existing drainage conditions are such that it already flows to the north and south from that location, that being a high point of the wet basin. The construction of the roadway will not change the drainage patterns of that wet basin.
- Commissioner Shah thanked Staff for the historical acreage of impacted wetlands as well as the new and improved wetlands. She asked where the projected wetlands information is and wondered what the comprehensive outlook is for the entire East Oaks development area.
- Engineer DeWalt stated she would defer to the Applicant and could only answer with regard to the proposed developments in front of everyone today, which would be an additional proposed .192 acres on top of what is shown.
- Chair Azman asked whether that would be a question Attorney Nason may weigh in on, in terms of the Applicant’s obligations during the submission of new applications and what their obligations are regarding a survey or breakdown/itemization of the impacted wetlands on a Planned Development Agreement-(PDA)wide basis.
- Engineer DeWalt noted that Staff did a conceptual review of the remaining East Oaks Planned Unit Development (PUD) projects and she does not believe there were any other

anticipated wetland impacts for the other projects.

- Commissioner Shah said even if that was the case, if the two developments being spoken about are the only ones with wetland impacts, everyone should be able to do the math.
- City Attorney Nason said she would let the Applicant speak to the question as to whether there are proposed wetland impacts for any of the remaining developments. With respect to the existing wetland impacts, the City has the information that has been provided from the Applicant to the City; specifically, the wetland impacts as noted in the calculations provided in the packet, which shows there are more impacts from a wetland basis than were outlined in the Environmental Assessment Worksheet (EAW). However, the total wetland impacts, including the projected for these developments with respect to subdivision approval -- installation of the roadways -- still comes in at less than .1%. With a phased development, the impacts throughout the entire development need to be looked at. However, even with the increased impact to wetland, the impacts are still quite low as compared to the overall acreage of the development area.
- Commissioner Hara asked if the wetland impact being discussed per the Applicant is as it relates to the road, they are intending to build into each of the developments; it does not address the overall wetland impact of the proposed properties in there. He said when he heard there was no wetland impact, he understood that information was about the entire development, not about just the road. If it is about just the road, it is very different than looking at a significant parcel where homes are going to be located and understanding that when homes and driveways get built, what the wetland implication might be. He asked if he was correct in that the only thing the Commission is looking at or that Vadnais Lake Area Water Management Organization (VLAWMO) has given the Commission direction on is just the road that the developer is intending to build.
- Engineer DeWalt said at a high level, yes; however, the Applicant has been working with VLAWMO and is actively working on permitting for these projects, which requires further analysis of the entire project to ensure that it is feasible for the lots to be buildable. VLAWMO is well-aware of what is being proposed in the future as far as residential lots, and the Applicant is working with VLAWMO and their consultants on the comprehensive applications that are required under the Wetland Conservation Act (WCA) to show the required buffers and working with VLAWMO to make sure that each lot can meet them.
- Commissioner Hara said what the Commission is talking about, which has been approved, is a very minimal part of each development. It would seem to him, if the Commission is looking at overall wetland impact, they should be looking at the totality of each project and not kick the can down the road and wait until the homeowner buys the lot and then see what can be done. He said if the Commission is going to make a recommendation to approve or deny these planned developments, the Commission should have that information in-hand before making a decision so they know if it can actually be achieved.
- Attorney Nason said there are different ways to approach subdivision approval. Sometimes the developer comes in with a plan and they are going to be building the houses and have

more information about exactly where houses would be located, etc. In this particular situation, the developer proposes to obtain subdivision approval, and it is anticipated that the developer would not be doing the construction of the residences. Generally speaking, the developer provides proof or information with the plans that shows that the development could occur without the need for any specific variances from the wetland setbacks. She noted she would defer to the developer for more information.

- Commissioner Cremons asked, relative to the actual construction on the site, if at a later point there was a building plan submittal and approval process that would govern things like the individual homeowner's construction impacting wetlands and the City saying they cannot do that.
- Attorney Nason stated there is a separate process that would have to be completed for each of the building sites, so whoever bought the lot will come in and has to comply with the approval process to obtain the necessary approvals from the City for whatever is developed on the site.
- Mark Houge, NOC, said the work they have done with VLAWMO takes into account all construction on-site, not just roads. The submittal package shows proposed septic systems as well as house locations. In the case of Anderson Woods, given there is no septic system, they have shown the approximate house size. They have taken into account the entire development, all impacts including the house construction, not just the roads. That is how VLAWMO will look at it. NOC will coordinate with the City and Architectural Supervisory Committee (ASC) when the homeowner brings their house plan in to make sure it conforms with what NOC originally proposed the development would look like.
- Commissioner Hara noted the gentleman that signed the VLAWMO letter is only giving approval on the road, no discussion of the houses or the hypothetical location of septic systems or homes on the different plots.
- Mr. Houge said that is because he has not seen the final plans; however, it is taken into account.
- Commissioner Hara asked when the final plans would be available for viewing.
- Mr. Houge stated each homeowner is asked to go before the City to get a permit which conforms with those approvals, so it would be coordinated with the City's permitting department when they apply for a building permit for the home.
- Chair Azman asked if Staff could give an outline of what VLAWMO's representations were in their letters.
- Engineer DeWalt said VLAWMO submitted a letter that outlined the to-date regulatory activities that have occurred for the Anderson Woods development speaking to wetland delineation boundary that was approved for the site in December 2018, which is good for five years from that date. Per Department of Natural Resources (DNR) comments regarding plant

surveys, a survey report was completed and received in July 2019. No state-listed rare or endangered species were observed at that point. A wetland replacement plan application was received May 20, 2020. The application was for the proposed wetland impact to gain access to the buildable lots and is currently under review by VLAWMO, BWSR, DNR, Rice Creek Watershed District, and the Corps of Engineers. All of the requirements and the modeling required are listed. They stated previously they did not have an issue from a high level with the application, but the permit is under review.

- Chair Azman asked what the timing is for the review and any determination on the permit from VLAWMO.
- Engineer DeWalt stated she does not have the information.
- Chair Azman referenced VLAWMO's February 11 letter where it says "no issues at this time for the Anderson Woods site preliminary plan, so we'll need stormwater hydro plans and a replacement plan application for wetland impact for formal application review." He asked if the application is moving in the typical sequence for subdivision review. He asked Staff if the correct sequence is getting VLAWMO approval for proposed homesites or is the Commission moving forward subject to any requirements of VLAWMO. His concern is why the City would want to approve a development that isn't something that is buildable once VLAWMO takes a look.
- Mr. Houge said they have to seek multiple approvals and cannot do this in a parallel manner. There has been a practice over the last 20 years of NOC getting approval from the City prior to bringing it to VLAWMO so that something does not go before VLAWMO for a thorough, technical review and then later have to review it a second time because the City decided the original plan was not suitable. It is a choice everyone makes. It is possible to get approval sometimes, in some communities, ahead of City approval. It is risky, because then the City does not have an opportunity to weigh in on things. NOC chooses to coordinate closely with both parties, but because it is a pretty formal process, the Company cannot literally submit until approval from the City in terms of the preliminary plans. That is why NOC chooses to get preliminary plan approval from the City conditioned upon VLAWMO's approval.
- Engineer DeWalt stated, based on her experience working on many developments, it is fairly standard practice for Staff to recommend approval with conditions that plans and permits meet all regulatory approving parties such as the Watershed, VLAWMO, MnDOT, etc. She has seen it many times and it does not seem to her that it is being done out of order.
- Chair Azman asked if it is conceivable that City approval goes through, VLAWMO does not approve, and then the Applicant may have to come back to the City.
- Administrator Kress confirmed if the Applicant does not meet the requirements of one of the regulatory offices, they have to come back and resubmit.
- Commissioner Shah asked if the Company has any response and willingness to remove the island in the cul-de-sac in response to NOHOA and the Fire Department's feedback.

- Mr. Houge said the NOC is okay with removing plantings in the center island. The Fire Department feedback indicated the turning radius is appropriate for fire trucks.
- Chair Azman asked Engineer DeWalt to explain what the County was saying about multiple access points along Centerville Road and the logistics of that as opposed to what was conceptually provided in the PDA.
- Engineer DeWalt said she provided an email from the Ramsey County Engineer wherein they concur that the Applicant has done some coordination with the County about the expectations related to Anderson Woods. One of the County's suggestions was to align the access of the development with any other existing access along the corridor to create a traditional four-legged intersection. Anderson Lane would be the logical spot and is reflected in the proposal. Regarding the PUD and conceptual street access, the County's position is they would prefer to minimize the access points along Centerville for a number of reasons, including potential signalization, potential sight distance, turn lanes, etc. They talked about studies and trials that have occurred over the last 20 years since this PUD was developed that talk about the benefit of managing accesses and the benefits that come with it such as safer, more efficient roadways and the privacy factor. Based on studies, they support managing/limiting access onto the roadway network when it is practical. In this case, one access point is more than sufficient for nine lots.
- Chair Azman referenced the East Oaks PDA vs. Actual roadway comparison chart and noted the original drawing shows sort of a long road off of Centerville going westerly and then northerly up to the lots. He said there have been concerns raised about tree preservation and the removal of a significant amount of trees in the area, and asked what it would encompass if the original road plan were followed in terms of wetland or tree impacts.
- Engineer DeWalt said she did not believe Staff did an analysis on what the impacts would be if the City were to require access as shown in the original East Oaks PDA roadway exhibit. She asked the Applicant to speak to the issue. She indicated they may want to speak to the original intent of the long access point. She believes the long access point is no longer necessary, in part due to the Wilkinson Villas on the northern portion already being built.
- Chair Azman said the proposed road looks shorter than the other two, and his concern is there is quite a bit of tree loss with the road as proposed in the application and based on the Forester's report. He asked if there is a commitment from the Applicant to continue to try and preserve trees; has the roadway been set out to try and take a look at minimizing the impact of tree removal as well as other concepts.
- Mr. Houge stated the Company gave it a lot of thought, and the road coming from the south is primarily on an existing farm road which would be repurposed for the trail. There would be some tree loss if it had to extend on the northern end. He noted the "C" shape, which would have provided for two entry/access points off of Centerville, would require significantly more trees to be removed on the northeast corner. By turning and going west across the wetland into the westerly three lots, they were able to minimize the removal of trees significantly. With the construction of the northerly entrance that was originally

conceived, it would have required significant grading, which would have also required tree removal. They made a commitment to design the lots such that they do not have to grade the lots; they are basically grading for the road, and tree removal will be limited to the road footprint. When someone goes to build a home, they will be able to place their home to avoid any significant trees. The project also has municipal sewer and water so there are no septic fields required, which also greatly reduces the need to remove trees. The Company is very interested in keeping as many trees on this site as possible. They are able to preserve trees on Lot 9, which basically starts where the entrance road comes in and goes northerly to the home-building site. As per Forester Rehder's recommendations, they will protect any significant trees that are in proximity to the road construction and will have a construction barrier that precludes any tree removal along Centerville Road other than the entrance area.

- Chair Azman asked the Applicant if he had any comments on the additional materials that were submitted or any other information he would like to provide to the Commission; specifically, the May 22, 2020 letter regarding wetland impacts, what it means, and how he intends the Commission to review that.
- Mr. Houge stated each time they do a project in the City of North Oaks, they do a thorough review with the City and VLAWMO on how to avoid wetland impacts. In each case dating back to 1999, they looked at the option of doing a detached townhome project for single-family. It was the preference of the City that it should be single-family. In doing so and while creating lots the City desired, there were some impacts. In each case, the Company has replaced or improved at least twice the amount of wetlands that would have been impacted. For example, they made considerable effort to restore and improve 2 ½ acres in Rapp Farm even though the impacts were very minimal. They did a major project in what was then called Andersonville, now called Anderson Woods. They have approximately four acres of wetland credits in their bank that they can use, and they intend to use a small portion of that for the impacts in Anderson Woods. It will leave the Company with a significant number of improved wetlands from when they started in 1999. They do not anticipate using those in total. At the end of the work on each of the sites in the PDA, they will most likely end up with more/higher quality wetlands than what they started with in 1999.
- Chair Azman asked Mr. Houge how the wetland impact numbers were calculated. He noted the Commission had difficulty getting the information and asked if those records are kept by the Company.
- Mr. Houge stated because that information is not typically a requirement of a PUD, no one was keeping a running tab of it, so neither the City nor VLAWMO had the information. Gary Eagles went through the files, and he was able to pull the numbers from previous applications submitted to VLAWMO.
- Chair Azman asked Mr. Houge if he had further comments regarding the new information in the Addendum that Staff provided.
- Mr. Houge said he thought most things were covered. They are interested in working with the Natural Resource Commission (NRC), Natural Environment Stewardship Team (NEST),

and the City Forester on preserving as many trees as possible on the Anderson Woods site. They are pleased as to how the road connection enables them to do that. They are excited to begin work on wetland improvements in the close proximity to this project, which are over and above what is required. The point where the crossing occurs is a high point and the water flows in both directions. VLAWMO asked for a culvert under the proposed trail exiting the property on the side which helps to balance the water, but in the process, they will be improving the water quality that goes into Wilkinson Lake.

- Chair Azman noted there has been a concern that the proposed road bisects a wetland and that can have some detrimental impacts on the wetlands to the north and south. He asked what the Company's position is on the impacts of the bisected wetland with the roadway.
- Mr. Houge stated that Don Pereira was formerly with the DNR, and the Company asked him to join them to help with environmental improvement initiatives that Doug and Mari Harper would like to pursue. He said Mr. Pereira would speak to the question.
- Don Pereira, NOC, said wetlands provide a lot of benefits and are important to a variety of animals and plants. They are also natural filters to remove sediment nutrients before they get to downstream waterways. One of the emerging focuses is Wilkinson Lake, which is listed by the Minnesota Pollution Control Agency (MPCA) as impaired for nutrients. The proposed roadway, which is an alternative to what was originally proposed, has a very flat topography, so water will not dam up on either side of the roadway because of the flat elevation. The water will be free to move in either direction on its course, either from the south and eventually to Wilkinson Lake, or to the north and around the north end of the island of land that is going to have three lots. He stated there should not be any hydrologic impacts at all. The impacted acreage from the road itself, as far as removing habitat for living organisms, whether that is plants or animals, is covered in the fact that the Company has a positive wetland bank. The Company intends to keep the bank as a strong positive throughout all of the remaining developments as well. The wetland bank means the NOC made a positive contribution to the total acreage of quality wetland in the community.
- Commissioner Yoshimura-Rank asked how a wetland is improved.
- Mr. Pereira stated wetlands get impaired just like lakes do. If they receive too much sedimentation from urban runoff, they will fill in too quickly and lose their capacity to absorb nutrients; they can even start exporting nutrients. There is one line of thinking by VLAWMO staff that the wetlands between Amelia Lake and Wilkinson Lake are dysfunctional to the point where they are now exporting nutrients down into Wilkinson Lake instead of absorbing nutrients. He stated they can take wetlands that have been impaired with too much sedimentation and remove the sediment and re-establish deeper water, which is what they did with one of the Company's more significant wetland improvements, which is south of Wilkinson Lake just to the northwest of the development. On one of his first days on the job, he got a field tour and looked at that wetland. Sediment has been removed on the southern part of the wetland so it is deeper and more functional.

- Chair Azman said there has been some concern about activity out on the site and the PUD might express the concept that there is not supposed to be any activity absent City approval. He asked what activity has been going on at Anderson.
- Mr. Houge said there has been removal of buckthorn in order for the Company to get the soil testing boring rig in, which is a requirement of the City.
- Chair Azman asked how big the soil boring rig is, whether it is pickup-truck sized or larger.
- Mr. Houge said it could be as large as a large piece of earth-moving equipment if it has tracks. Sometimes it is possible to use a truck if it is dry and he thought in this case they used a truck-mounted boring rig.
- Chair Azman noted one of the concerns was that there were tree removal activities that were outside of soil testing boring and he is wondering if that happened at all.
- Mr. Houge stated that has not been happening.
- Chair Azman stated he understands the City Council passed a resolution in March that there were 174 units left and the Company agrees with the resolution in terms of the number of remaining units. He would like to hear from the Company if that is, in fact, correct.
- Mr. Houge stated that is correct and it takes into account the four villa lots constructed the past fall on the north end of the property which are part of the Villas of Wilkinson Lake. They previously had 178 units; they built four on the south end of the Villas of Wilkinson Lake development, which leaves the Company with 174 housing units.
- Chair Azman said if Anderson is approved with nine lots, there would be 165 lots left afterwards.
- Mr. Houge said that Chair Azman was correct.
- Chair Azman asked for a motion to open the public hearing.

MOTION by Yoshimura-Rank, seconded by Hara, to re-open the public hearing at 6:40 p.m. Motion carried unanimously by roll call.

- Chair Azman invited members of the public to speak, noting there were no members of the public in the seating room and he did not see anyone standing in the hallway. He asked for participants on Zoom to raise their hand if they wanted to speak.
- Administrator Kress noted there were a couple of comments by email and wanted to know what the Commission wanted to do as far as reading them in or just including them in the minutes or what the City Attorney's preference was with regard to the comments.

- Attorney Nason said, since the comments are not incorporated as part of the packet, she would request they be read into the record, as they were submitted to be part of the public comment period, and was hopeful they were not too long.
- Administrator Kress noted the comments are 23 pages long.
- Attorney Nason stated that would take a while and suggested circulating the comments to the Planning Commission and incorporating them as part of the record. Because the Planning Commission did not have them ahead of time, she was not sure if the Commission members would be able to have an opportunity to review them while sitting in the meeting.
- Chair Azman asked if Administrator Kress had circulated all comments before the meeting.
- Administrator Kress said he believed he sent the comments to Chair Azman because he did get a few earlier in the day. He believed a majority of them have already had the opportunity to speak or will speak tonight, since a lot of the people are attendees. He stated he could screenshare and noted some of them were from the previous public hearing that was extended out to today.
- Chair Azman stated he thought some of the documents were dated for the prior hearing and were part of the record. He asked if they could deal with the written submissions after the live comments.
- Administrator Kress agreed to do so.
- Citizen Comment: Cheryl Blackford, 7 North Deep Lake Road, commented that on page 51 of the packet there is a statement that says, "It is worthwhile to note that a driveway, which appears to be a legally established nonconforming use, currently exists in the area where the proposed shared driveway is to be located."
- Chair Azman indicated to Ms. Blackford that he thought she was referring to the Nord parcel.
- Ms. Blackford asked if she was jumping the gun.
- Chair Azman stated she may be a little, that the Commission was still on Anderson and felt it would be more beneficial for her to make comments about Nord during the Nord hearings.
- Ms. Blackford apologized and said she would come back later.
- Citizen Comment: Franny Skamser Lewis, 3 Red Maple Lane, asked to screenshare.
- Chair Azman agreed to do so and said he had to ask to start video, which he then did.
- Ms. Skamser Lewis commented that she is far enough along in her pregnancy where the baby is compressing her lungs, so her husband offered his three minutes so she is able to speak without being labored; if it is agreeable to the Commission, she would like to extend her time

a little. She is only commenting on Anderson at this point.

- Chair Azman noted that the question would go to the Commission to make a decision. He did not know if it needed a vote and asked if there were any objections from any Commission members to allow an extension.
- Administrator Kress said his preference would be a motion, second, and roll call if agreeable by the City Attorney.
- Attorney Nason stated either way is acceptable. She understands three minutes is the number that was established before. If the Planning Commission wants to extend that time, it is up to them. Although it may not be necessary, the Planning Commission could do a formal vote to confirm the will of the group.
- Chair Azman asked Ms. Skamser Lewis if she could do her presentation in five minutes.
- Ms. Skamser Lewis agreed that it would not be much longer and wanted to be respectful of the three-minute estimate. She noted she could talk really fast but would probably be out of breath unless she could slow down a little.
- Chair Azman asked if any Commission members had an objection to allowing Ms. Skamser Lewis five minutes. After there were no comments, he asked Ms. Skamser Lewis to proceed.
- Ms. Skamser Lewis said she wanted to focus most of her comments on the WCA and how it is implemented at a City level. She acknowledged that some of the items have already been commented on. She stated when VLAWMO, who is the permitting authority in the WCA, makes their comments, it only applies to the impervious surfaces shown on the plan and does not take into consideration PDA/PUD agreements or a City's Comp Plan and does not include wetland impacts created by NOHOA in the building/maintaining of a trail, which she thinks are important standards to be considered when evaluating plans at the City level. Using screenshare, she indicated she had highlighted a couple of areas within the PDA and Comp Plan where the City certifies to the community as guidance for development that there are strong standards and an interest in avoiding negative environmental impacts at all costs. It is not something they like to do but it is a part of the City's plan. It is also guaranteed by the development agreement; that was a major consideration granted to the City as a signator of the agreement. The WCA provides three questions for local government entities to ask when evaluating plans: Is there another property on which the development can occur so wetland impacts can be avoided; can the project be designed differently to avoid the wetland impacts; can the project footprint be reduced to avoid wetland impacts. She displayed a drawing of the Conceptual Street & Access Plan from the PDA and stated the green are wetlands as designated by the most recent VLAWMO wetland inventory, the orange are the roads that were originally agreed to, and the purple lots indicate additional lots that could be added as part of the density bonus increased flexibility. She noted the parcel was specifically zoned residential multi-family high-density so it could accommodate higher density development that avoids the wetlands. She said she understands that the County has expressed a strong interest in having the access consolidated. She wanted to answer those evaluation questions

for the Anderson parcel. Is there another property on which the development can occur? No, it is not possible. Can the project be designed differently to avoid wetland impacts? Yes. The access could be configured according to the PDA. It could also be configured so that access is consolidated to Centerville Road with either a C-shaped road that terminates before it reconnects to Centerville Road, or a cul-de-sac that terminates east of the wetland. Can the project footprint be reduced to avoid wetland impacts? Yes, lots can be configured according to the conservation model that was proposed by the concept plan of the PDA with higher density and smaller lots. She noted that the WCA does not say that wetland impact is acceptable if it is convenient, less expensive, or increases privacy. While North Oaks residents might be inclined to accept an access plan that they think might impact privacy, that is not something that is taken into consideration by the State mandate. With those wetlands, the cul-de-sac can terminate before the wetland, while still providing plenty of opportunity to develop the additional lots because it has that multi-family high-density. The parcel was intended to have life-cycle housing provided. The wetland impact is not necessary. She commented that earlier there were questions asked about what the additional anticipated wetland impacts are for other parcels. She has a visualization of Island Field, and the site is basically a square-ish rectangle. The easternmost one-third of the property stretching from north to south is entirely wetlands, so she anticipates there will be additional road access wetland impact for that.

- Administrator Kress asked Ms. Skamser Lewis to send him the PowerPoint.
- Ms. Skamser Lewis agreed to do so.
- Citizen Comment: Rachel Maher, 91 Rapp Farm Place, said she wanted to give clarity to the VLAWMO approval process. After the subdivision is approved and it goes to VLAWMO for individual building and septic review and approval amongst the different organizations, if there is wetland impact in any of those different lots, they do not necessarily reject it. From her conversation with VLAWMO, it is rare that they reject something entirely. During that process, if there are wetland impacts, they will make sure all of the proper permits are submitted and approved and proper mitigation is in place. Just because a certain subdivision is approved does not necessarily mean it will be rejected if there are wetland impacts. Also, the level of wetland impact is beyond their control at that point.
- Administrator Kress asked Attorney Nason if she wanted them to call the 7:00 p.m. meeting to order and recess it, or how that should be handled.
- Attorney Nason asked if there was a separate Zoom number for the 7:00 p.m. meeting.
- Administrator Kress, after a reminder by Staff, said the 7:00 p.m. meeting is the same number.
- Attorney Nason indicated she would keep going with the special meeting and call the regular meeting to order at 7:00 p.m. Alternatively, at 7:00 p.m. the special meeting could be recessed for two minutes, then open the regular meeting at 7:00 p.m. and recess it until such time that the special meeting is over. The second option might ensure that the meeting starts

on time. She does not know if the variance Applicant was intending to attend, so it might be worthwhile to acknowledge that and advise them that the meeting will take place once the special meeting is over. She asked Chair Azman and members of the Planning Commission if it was okay to take a brief recess for two minutes at 7:00 p.m., call the regular meeting to order, and recess the meeting until such time as the 5:30 p.m. special meeting is concluded.

- Chair Azman noted there was not much going on at the regular meeting other than approval of minutes and the variance at Sunset and anticipated that it could be fairly quick. He asked if it would be procedurally acceptable to suspend the current special meeting, deal with the regular meeting, and then go back to the special meeting.
- Attorney Nason said if it is anticipated that the regular meeting would be relatively short, that would be an option as well, particularly if the Applicant or any consultants were online for that. If it would be anticipated to take a longer period of time, the Planning Commission might want to wrap up the special meeting first.
- Chair Azman stated his hunch is that the regular meeting would not take long and, absent any objection from Planning Commission members, it would be his preference to get that one done. He noted City Septic Inspector Humpal was also waiting to come on board as well. He said the special meeting could take a while before it concludes. He asked if there were any objections, and after a brief pause indicated there were none. He also noted there were no other hands up for the public hearing aspect of Anderson Woods and no one was physically present in the chambers. He suggested closing the public hearing on Anderson, taking a short recess, have the regular meeting and coming back. He said if anyone wanted to speak, they should raise their hand on Zoom. He noted he did not see any other hands raised.
- Attorney Nason asked for a motion to accept, as part of the public hearing, the comments received by Administrator Kress.
- Chair Azman indicated that was a good point and wanted to know if Administrator Kress could put them on-screen and do a review and then the public hearing could be closed.
- Commissioner Shah asked if Commission members could receive them via email and look through them during the recess.
- Administrator Kress said he could do that and that when the Commission closes out of the regular meeting, he could show them on the screen if everyone was okay with that.
- Chair Azman asked whether they should be part of the public hearing.
- Administrator Kress agreed and said there would be a recess, go to the regular meeting, come back to the special meeting and see the comments, and then close out the public hearing for Anderson Woods.

- Chair Azman stated that brought up another procedural question: can the Planning Commission recess in the middle of a public hearing.
- Attorney Nason said the Planning Commission can do so.
- Citizen Comment: Eric Einan, 16 Sunset Lane, said he wanted to clarify if the Commission was going over his application in the meeting.
- Chair Azman asked Mr. Einan if he was on the variance request at 16 Sunset.
- Mr. Einan stated that he was.
- Chair Azman explained the Planning Commission was in the middle of a public hearing on another matter and would get to him in a few minutes.

MOTION by Yoshimura-Rank, seconded by Sandell, to recess the public hearing of the special meeting regarding Review of Anderson Woods Parcel - Subdivision Application to move into the regular meeting. Motion carried unanimously by roll call (Cremons was absent due to technology issues).

RECESS AND RECONVENE

Chair Azman recessed the special meeting at 7:02 p.m. The special meeting was reconvened at 7:29 p.m.

a. Review of Anderson Woods Parcel - Subdivision Application (continued)

MOTION by Hauge, seconded by Yoshimura-Rank, to re-open the public hearing regarding Review of Anderson Woods Parcel - Subdivision Application. Motion carried unanimously by roll call.

- Chair Azman said he did not see any more hands up and the Council Chambers were empty. He asked Administrator Kress to briefly go over the written submissions and indicate to the Commission if there were any phone calls.
- Administrator Kress stated there were no phone calls. He looked through a lot of the comments sent to the Planning Commission. He said there are a few references to the Anderson parcel, but the majority of the questions are on the Nord parcel. He screenshared the comments and said he highlighted as many areas as he could; green were references to Anderson Woods and yellow were references to Nord. He went through the comments, indicating some were for Nord, Wilkinson Lake parcels, there was a comment asking for a postponement until the Planning Commission can meet again. He noted the comments were prior to tonight and that Chair Azman and he were at the Council Chambers. He indicated another comment from the previous public hearing at 6:00 asking for a postponement. There was a question about maps shown at the NOHOA Board meeting showing only half of the subdivision. He stated that there is a new map in tonight's packet that shows the entire

subdivision. He identified another comment talking about the notice and the changed link for the meeting from the previous meeting that was republished and reposted for tonight. He said another comment speaks to forestry reports and a reference to the Nord parcel as well. Another comment is about the tree inventory. He indicated Cheryl Blackford is present and could provide further comment in addition to her email if she would like. He indicated that concluded comments pertaining to Anderson Woods.

- Chair Azman verified that the written comments would be made part of the record.
- Administrator Kress stated he was correct, that the comments would be put with the packet.
- Attorney Nason suggested the Planning Commission formally vote to accept and include the 23 pages into the public comments in the record for the Anderson parcel.
- Administrator Kress reminded the Commissioners that it is a mixture of Anderson Woods and Nord so there are a few references to both, but that it makes sense if the whole 23 pages are offered and then the same thing could be done for the Nord parcel.

MOTION by Yoshimura-Rank to include the 23 pages of comments about Anderson Woods and Nord developments with the minutes of the meeting.

- Chair Azman asked if it would go with the minutes or is it part of the record.
- Administrator Kress said it would be part of the record and it would be included in the packet that is held at the City Hall and asked Commissioner Yoshimura-Rank if that was acceptable.
- Commissioner Yoshimura-Rank indicated it was.

Seconded by Shah. Motion carried unanimously by roll call.

- Chair Azman indicated there was no one physically present in the Council Chambers and there were no other hands up.
- Administrator Kress noted there was one hand up.
- Citizen Comment: Leanne Savereide, 4 Red Maple Lane, said she would like to talk about the fact that she is one of the four residents whose property the proposed trail would go through. She is not opposed to a trail going through her property but is opposed to this trail as a resident of North Oaks. It is not the best trail for the purposes it is intended, primarily for skiing and the connection between the east and west.
- Chair Azman apologized but noted the comments by Ms. Savereide were geared towards the Nord application and the public hearing being discussed is the Anderson Woods application.

- Ms. Savereide said she thought it was done; she got mixed up with all of the different meetings. She stated she would talk to the Commission later.
- Commissioner Hauge asked Chair Azman what the plan for Anderson was now.
- Chair Azman said it did not appear as though there was anyone left to make any public comments on Anderson. There could be a motion to close the public hearing, and at that point the Commission can deliberate on Anderson and come to a vote on how to recommend to the City Council. He noted the same method would be followed for Nord. After not seeing any more hands up or anyone physically present in the Council Chambers, he asked if there was a motion to close the public hearing at 7:40 p.m.

MOTION by Hauge, seconded by Yoshimura-Rank, to close the public hearing. Motion carried unanimously by roll call.

- Chair Azman stated the public hearing was closed at 7:41 p.m. on the Anderson application. He noted this is the time for the Commission to deliberate as to how to proceed. There are a couple of different options regarding the procedure. Usually the process begins with a motion to either approve or deny the application with or without conditions as recommended by Staff. Sometimes Commissions or bodies like Commissions may take a straw vote on what people are thinking in order to gauge where it is going. He said it is up to the Commission. He asked if anyone had questions or wanted to discuss anything and said the most efficient way to proceed would be to see if there is a motion to approve or deny the application.

MOTION by Yoshimura-Rank to approve the Anderson Woods Parcel Subdivision Application with conditions 1-51, condition 51 being modified to say that the City Forester is able to communicate with all of the homeowners in Anderson Woods development in terms of preserving trees, not just the Lot 9 applicant.

- Chair Azman said if Commissioner Yoshimura-Rank wanted to make her motion to include the conditions in the Staff recommendations, she could revise those recommendations however she wanted as part of her motion.
- Administrator Kress stated it looked like Commissioner Yoshimura-Rank was talking about condition 51. He highlighted the language on the screen and asked Commissioner Yoshimura-Rank if she would change that language to talk about all lots located within the Anderson Woods subdivision.
- Commissioner Yoshimura-Rank stated Administrator Kress was correct.
- Administrator Kress stated if that was acceptable, Chair Azman could ask for a second.
- Chair Azman stated it was acceptable and asked for a second.

- Commissioner Hauge referenced condition 52, comments of other City Staff, and asked if there was anything going in under 52 which was discussed today.
- Administrator Kress said Attorney Nason would have to speak to that, noting that most of the comments were related to the conditions already listed, 1-51. If there were other comments that weren't already incorporated in the conditions, they would come into play at this point.
- Attorney Nason stated Administrator Kress was correct and said the only other condition that might not be spelled out based on when the packet and Staff conditions were compiled was the feedback from the Fire Marshal regarding removing the island. She suggested condition 52 be revised to indicate the island in the cul-de-sac be removed per the Fire Department and NOHOA's request.
- Commissioner Hauge said he is satisfied with that change.
- Chair Azman stated he also would like the cul-de-sac removed, which is a NOHOA request as well. In NOHOA's letter to the City on the application, there were a number of requests for information, and he wanted to make sure that NOHOA gets the information they are looking for. He asked Attorney Nason if the boring soil data and other information NOHOA is requesting be provided to them as a condition by the Applicant.
- Attorney Nason asked Chair Azman which NOHOA letter he was referring to.
- Chair Azman said there are two of them: one from April 7, 2020, starting on page 44 of the packet. Paragraph one discusses the cul-de-sac, paragraph two discusses some trail maintenance items, and in paragraph five they are looking for information dealing with the roads. He stated NOHOA will be taking over the roads, and it would be appropriate to make sure NOHOA receives the information they are looking for in the letter.
- Attorney Nason suggested condition 52 is removal of the cul-de-sac from the island and condition 53 is to provide all information requested in the letter dated April 7, 2020, to NOHOA as the information becomes available to the developer.
- Chair Azman stated, with respect to condition 50, where it says, "Where practical, the Applicant shall consider," the word "consider" makes him nervous because people can say, "Yeah, we considered it but we are not too concerned about it." He would prefer paragraph 50 be a requirement: The Applicant shall undertake development such that trees are preserved to the greatest extent possible. The Applicant shall observe the recommendations of the City Forester upon the site. And for the trees that must be removed for reasonable development, conditions a-j imposed by the Forester shall be followed.
- Attorney Nason stated the motion was made by Commissioner Yoshimura-Rank and asked if she would modify her motion to include the additional recommendations as outlined and discussed for changes to the proposed conditions.
- Commissioner Yoshimura-Rank stated she would do so.

FRIENDLY AMENDMENT by Yoshimura-Rank that her motion include the additional recommendations as outlined and discussed for changes to the proposed conditions.

- Chair Azman asked if there were any additional comments on the motion or terms of the motion before there would be a second.
- Commissioner Sandell asked if Chair Azman was still retaining the “where practical” component.
- Chair Azman noted he did not use that language in particular. He wants to make sure from his standpoint that the Applicant shall undertake the development such that trees are preserved to the greatest extent possible. He noted it might be semantics, but it is more in his mind than just a “shall consider,” it is a “shall undertake.” That way there is more of an authority for the City to enforce that condition if it is observed that trees are being taken that should not or that could be preserved. Similarly, there is not an option to consider the City Forester's recommendations but there is an obligation to follow the recommendations. He noted it is not a directive that the Applicant shall preserve every last tree to the unreasonable progression of the site development, but something a little stronger than “consider.”
- Commissioner Hauge asked Chair Azman if he was waiting for a second.
- Chair Azman said he was pausing a moment to let people think if they wanted to make further changes before a second came along. If not, he would be ready for a second.

Motion Seconded by Hauge.

- Commissioner Hauge stated one of his initial questions was the road that cuts across the wetland. There were comments about the wetland, and what he heard from the Company was that the road crosses the wetland at a high point so the water does not need to go through the road construction, it flows to each side. That was his concern and it has been answered.
- Commissioner Shah said she wanted to talk a little bit about the re-wording that is being suggested with the trees. She asked, with that verbiage, is it implying basically the Forester is pretty much going to have the final say on what is going to be removed and what is not.
- Chair Azman said he does not contemplate that the Forester would get involved to that extent. The City can enforce those conditions and he is sure the Forester might be consulted. There are a lot of trees being removed in that area, and the Applicant has made a commitment on the record that they will do what they can to reduce tree removal. In his background and experience, when you have words like “shall consider,” that means ignore. There is nothing holding the Applicant to that other than they considered it and dispensed with it because they do not have to give a reason. He was not thinking about whether the Forester has that police authority; he was thinking of the City coming in and having at least some authority to take a look and see what is happening out at the site.

- Commissioner Shah noted it would still be on a consulting basis because the City cannot enforce it, they do not have an ordinance.
- Chair Azman said, under his language, the condition is that they “shall” undertake and the condition is mandatory.
- Commissioner Sandell noted the language is “where practical.” He understands there are some semantics to it, but he is wondering what enforcement would really be. The Applicant has identified that they will follow this to the extent they can. He noted he had not thought, the way Commissioner Shah phrased it, that the City Forester would have some governance there, but the way it is stated currently it almost implies that they would, and he is not sure that is the right path.
- Chair Azman stated he respects the comment and that was just his thought. If the language says “shall consider,” even though something may have been mentioned on the record, he does not see that as an obligation or anything the City can do to impose a requirement that it be done. It looks pretty by saying “shall consider” but does not mean anything in his mind, and he was looking for a bit more in the form of a requirement.
- Commissioner Yoshimura-Rank asked if it would be better to add both the NRC and Forester to get more feedback.
- Commissioner Sandell said he is not looking to add more governance to it.
- Commissioner Shah said she is in agreement with Commissioner Sandell; they are going into a territory that Counsel has briefly touched upon and are prematurely entering an area where they are not sure of the City stance on the governance of this.
- Commissioner Hauge asked what Commissioner Sandell was suggesting.
- Commissioner Sandell said he was suggesting to leave it as-is as long as the “where practical” stays in there. He understands where Chair Azman is coming from, to make sure it is worded in such a way that the Applicant takes serious consideration. He thinks the “where practical” on the front end probably gives them some latitude regardless if it says “shall consider” or “will,” and he would prefer it to stay as it is written. He would be all right with Chair Azman’s proposal as long as the word “practical” stayed on the front end of it.
- Chair Azman clarified the technical language he proposed was “to the greatest extent possible” as opposed to “where practical.”
- Councilmember Kingston stated it seemed like the Commission’s goal is to make sure the Forester is contacted when the homeowner is making plans on where they want to build and to take a look at the trees on the property and see if there are options to preserve the trees that should be preserved. The way it is listed seems like it could accomplish that, if they are required to consult with the Forester. He felt giving the Forester the final say on whether or not a homeowner can build on their property in a particular area based on a tree is going to

have some serious consequences.

- Commissioner Hara said if someone spends half a million dollars for a piece of dirt, they are going to be pretty distressed to find out they cannot position their house because there is a tree in the way. Practically speaking, if you have lived in North Oaks long enough, people have taken it upon themselves at times to cut trees down without asking permission or advice from a Forester, so the Commission might be chasing something that is not very practical.
- Commissioner Hauge stated that after listening to the discussion, he tends to agree with Commissioners Sandell and Cremons and Councilmember Kingston, because the Commission should make it practical.
- Attorney Nason said that as she understands the condition as written, it is related to the Applicant's work within the subdivision area, which is essentially the area where the roads will be installed. It does not really apply to the development sites themselves, because the Applicant is not going to be doing the development work on those sites, as she understands. With respect to these conditions, whether it is mandatory or more of a recommendation, it is specific as it relates to the work done by the Applicant on the subject site as it relates to the roadwork. She asked for clarification on that to make sure everyone is on the same page and understands what the recommendation is. She suggested the Chair ask the Applicant if he would agree to the condition as proposed and amended, although ultimately it is the Planning Commission's decision to impose it or not.
- Chair Azman said there already has been questions to the Applicant and an agreement for compliance with the provisions, and he recognizes there is no tree ordinance. He also recognizes that the Comp Plan and the history and the ordinances as written all encompass an idea of preserving the natural properties and features of the land. He is happy to hear from the Applicant. He stated if there is not the traction from the Commission, he does not want to hold up the application from moving forward. He wanted to express his concern and preference for what he thought was somewhat suggestive language that can be ignored, regardless of what the Applicant may/may not have said during the public hearing or public comment portion. They can say they think it is a good idea to follow it; once the paperwork is completed and the preliminary plan is approved and these conditions are there, that is really what is going to govern, not what somebody may have said during a hearing. He reiterated his concern was "shall consider" is "shall consider each of these items," such as treatments for high-value trees, following oak wilt protocol, and installing a tree protection fence. He feels during site development those are items that should be followed. He does not want to jeopardize the unified thought on what is best for the application.
- Commissioner Cremons suggested the language to be "Where practical, the Applicant shall follow the recommendations of the City Forester" and then continue as it is, getting rid of the qualifying language that bothers Chair Azman and just say "shall follow" rather than "shall consider." He stated this is only binding on NOC, it has nothing to do with the owners or the building of houses. He said he thought the Commission was getting bogged down in something that really is not that binding on anybody and does not have anything to do with

what the homeowners are going to be doing with the lots.

- Commissioner Sandell said he would be okay with Commissioner Cremons' language as long as it contained the practicality piece of it.
- Commissioner Cremons proposed to keep the word "practical" and change the few words right after that.
- Chair Azman noted it would read in paragraph 50, "Where practical, the Applicant shall follow the following recommendations of the City Forester," removing the word "consider" and replacing it with "follow."
- Commissioners Cremons, Sandell, and Yoshimura-Rank were okay/fine with the language.
- Commissioner Shah agreed it has to be "where practical," with the summary statement the Forester would be consulted. She noted there are always exceptions, the Commission always sees exceptions, and there will be exceptions to all of the trees as well.
- Attorney Nason noted there is a motion and a second on the floor. The motion and second include the language as proposed by the Chair. If there is consensus by the group to modify the motion to read as previously stated, there would need to be a motion to amend the motion on the floor, which would require a vote of the Planning Commission.
- Commissioner Hauge agreed that would need to be done.
- Chair Azman said he agreed and the motion would be to change in paragraph 50 the word "consider" and have it read "shall follow," and everything else would remain the same.
- Attorney Nason said it would be to amend the pending motion to have the language related to condition 50 read as just described.
- Commissioner Hauge asked Attorney Nason to read the language that would be voted on.
- Attorney Nason stated she hoped Administrator Kress had the motion written down because she did not write it down verbatim.
- Administrator Kress said condition 50 shall read, "Where practical, the Applicant shall follow the following," and it goes from a-j; condition 51 shall read "All of Anderson Woods"; and condition 52 is the removal of the cul-de-sac and the additional comments from NOHOA dated April 7.
- Chair Azman clarified it would be the additional information requested from NOHOA.
- Administrator Kress said it is the letter included in the packet on page 45.

- Attorney Nason said the information requested in the letter dated April 7, 2020, shall be provided to NOHOA as it becomes available to the developer.

AMENDMENT MOTION by Cremons, seconded by Yoshimura-Rank, to amend the motion on the table, as discussed, to change the verbiage in condition 50 to “Where practical, the Applicant shall follow the following,” and in condition 51, “The Applicant shall work with the City Forester and lot purchaser and explore options to preserve trees located within the narrow southern one-third of Lot 9,” and condition 52 is to remove the island from the cul-de-sac and have the Company submit the information as included in the April 7 NOHOA letter.

- Commissioner Shah asked for a clarification on the component around the Forester, as to whether that criteria and condition is only for the Applicant, and asked if that was correct.
- Chair Azman said paragraph 50 says, “Where practical, the Applicant shall consider,” et cetera, and then at 51 it says, “The Applicant shall work with the City Forester and explore options,” et cetera. As he read it, this would impose the obligations on the Applicant, and whatever happens with ultimate homeowners would be a separate matter.
- Commissioner Yoshimura-Rank said she wanted it for the homeowners as well as the Applicant on number 51.
- Chair Azman stated he thought Commissioner Yoshimura-Rank was talking about the “explore options on all the lots.”
- Commissioner Yoshimura-Rank agreed with Chair Azman.
- Chair Azman noted it would be, as he understood it, “The Applicant shall work with the City Forester and explore options to preserve trees located within all of the lots.” He asked Commissioner Yoshimura-Rank if she wanted to include not only the Applicant but also the ultimate purchaser.
- Commissioner Yoshimura-Rank stated yes, if it did not open a can of worms.
- Chair Azman stated it did open a can of worms.
- Administrator Kress said the Applicant has no responsibility for the individual lots, they are not placing the home and have no responsibility there, so the City cannot hold this Applicant to that consideration.
- Commissioner Yoshimura-Rank stated it should then be for all of the lots.
- Chair Azman indicated it would read, “The Applicant shall work with the City Forester,” and “preserve trees located within all of the proposed lots.”

- Commissioner Yoshimura-Rank agreed with Chair Azman.
- Commissioner Shah stated she needed to go back to the criteria the Commission is talking about, having the Applicant work with the Forester, and said the Applicant is selling lots, not homes. She asked for someone to help her understand the scope of lots versus the road.
- Administrator Kress said that, basically, for any work that they perform on individual lots, they would have to follow the criteria listed in number 50. They would have to install tree protection, it talks about grading, and placing fill next to saved trees. He noted a lot of that would probably not happen within individual lots; but if it does, they would have to be compliant with this criterion.
- Chair Azman stated he thought the same would be true with condition 51.
- Administrator Kress agreed with Chair Azman.
- Commissioner Shah asked about the homeowner's decision regarding that.
- Administrator Kress said the Applicant is not tied to that. That would be part of the building application that is received at City Hall after the fact.
- Commissioner Shah said it seems like if the Applicant is working on these individual lots, as they build the home they would be tied to the same criteria.
- Chair Azman clarified that the Applicant will not be building the home. The Applicant will sell the lot to an individual, who will hire their own builder. As the Applicant develops the lots for ultimate sale, the Commission is asking the Applicant, through 50 and 51, to do what they can in conjunction with the City Forester to preserve trees. When the homeowner comes to the City for their building application, that would be a separate deal. The homeowner would not be subject to this particular preliminary plan, if it is approved, in that regard.
- Commissioner Shah said it seems like the Commission is asking the Applicant, where practical, to make these conditions happen; but once a homeowner buys the lot, the Commission has no governance or anything to police them from cutting the trees down.
- Attorney Nason stated there are two different pieces that might be getting confused. Condition 50 is related to the Applicant and its work within the development site, which is primarily the road area. Condition 51 had to do with preserving trees located on the narrow southern one-third of Lot 9. Her notes of the motion originally made included communication to all owners regarding their options about preserving trees on all lots. As she understood, 51 was not an application of all of the criteria in 52, it was more that there was supposed to be a communication piece to the end users/purchasers about the options to preserve trees on the lots.
- Chair Azman said he understood 51 was changed to cover all of the lots: "The Applicant shall work with the Forester and explore options to preserve trees located within all lots in

the subdivision.” That is the way it was stated as part of the motion.

- Commissioner Shah said she was also confused because she thought 51 was a letter or working with the Forester out of encouragement and suggesting practical ways to save the trees on each lot. Condition 50 was specific to the Applicant in terms of scope of the street that had to be built.
- Administrator Kress said he also had all of Anderson Woods for 51. He thought the intent was what Attorney Nason talked about, some kind of letter or correspondence to the new homeowner, but currently the City does not have a tree ordinance to apply any further regulation on that. He thinks it will be fine if it is listed as all of Anderson Woods, but after the developer sells the lot, their obligation is no longer there.
- Commissioner Cremons asked Administrator Kress, if someone submits a building plan that shows they are going to clear-cut one-third of their lot, would that be grounds for rejection of the building plan.
- Administrator Kress stated he did not believe so, although he would have to look at the specific ordinance to see if there are any criteria for removing trees, in particular to the acreage. That is his understanding of this zoning district.
- Attorney Nason said she would have to look at the ordinance, but she thinks that is one of the challenges without a tree preservation ordinance. There are some requirements, but they are only found in the commercial district. There is not anything that would specifically apply to those lots. However, she understands the City is in the process of considering a potential adoption of a tree preservation ordinance. If adopted, the ordinance would apply to any subsequent individual building site developments. There is a way for the City to address this, which would be the adoption of the tree ordinance or other zoning ordinance amendments that would specifically address the development site/tree removal piece.
- Chair Azman suggested, for condition 51, revising the language to say, “The Applicant shall work with the City Forester and homeowner to explore options to preserve trees located within the lots of the subdivision.” He said that way it imposes an obligation to work with both, but lacking a tree ordinance, it does not go much further than that. It provides the thought to stop, take a pause, think about tree preservation, and whether there are options.
- Commissioner Sandell asked if the Applicant works with the homeowner upon building, or do they just sell the lot to a builder and then exit from that point on. He asked if that was the dynamic between NOC and a buyer or a builder.
- Chair Azman said traditionally the Company has sold to private owners and not a developer, although Rapp might be a different example of that. From what he is hearing from Commissioner Yoshimura-Rank and what Attorney Nason’s notes reflect, there was some intent to try to bring in the homeowner to the process through the Applicant on tree preservation issues.

- Commissioner Yoshimura-Rank stated she thinks this is the only opportunity to provide a forum where that discussion can happen.
- Chair Azman noted that it seems fairly benign.
- Mr. Houge said the Company has situations in North Oaks where they sell exclusively to some preferred builders such as in Rapp Farm; in the case of Villas of Wilkinson Lake, there is one builder they prefer to work with; and in other cases like Red Forest Way, they sell to the homeowner directly and they bring their builder. What they tell the homeowner is they need to follow the ordinances in the City, and in many cases the Company reserves the right to review the plans. In the case of Rapp Farm, the Company reviews the builder's drawings before they go to the ASC; in the case of the Villas of Wilkinson Lake, the subassociation reviews the drawings before they go to the ASC. They have found, as a practical matter, that most people that prefer to live in North Oaks prefer to preserve trees, so it is really important that this be practical because he thinks everyone is well-intended, especially the Company, because they are doing everything they can to save as many trees as possible in the design of Anderson Woods, and the last thing they want to see is a homeowner come in and clear-cut.
- Chair Azman said he would be supportive of language that would prompt some involvement of the homeowner through the Applicant without being overly onerous in light of the fact that the general philosophy is to preserve trees, anyway. However, if someone wants to come in and remove trees in whatever manner they wish, he is not sure there is a lot the City can do about it without a tree ordinance. At least with the option in front of the Commission, they can utilize some sort of flowery language that prompts the thought process.
- Commissioner Yoshimura-Rank said that she would like that.
- Commissioner Shah asked that condition 51 be read one more time and also 52 with the precise verbiage.
- Administrator Kress noted he had the verbiage on the screen.
- Chair Azman asked if Commissioner Shah wanted 51 or 52.
- Commissioner Shah said it would be 50 as rewritten and 51. She noted that 50 was rewritten, too.
- Chair Azman stated 50 was changed by replacing the word "consider" with "follow" in the first sentence.
- Commissioner Shah said she thought, per Commissioner Cremons' suggestion, it was summarized and the detail was removed.
- Administrator Kress stated it reads, "Where practical, the Applicant shall follow the following."

- Commissioner Cremons said he proposed leaving all of the details and just changing a few words in the first line of 50. He stated he thinks the detail helps so he would leave it in there.
- Chair Azman clarified that Commissioner Cremons' suggestion was to strike "consider" and replace it with "follow."
- Commissioner Cremons agreed that is what he suggested
- Chair Azman said, for condition 51, he did not know that the Commission was in a position to propose some actual language, it was more about whether there was some buy-in from the Commission on the concept of getting communication/dialogue with the homeowner on a tree preservation idea. He stated if there is some traction with the Commission on that concept, the Commission can think about some language. If there is not, the Commission should move on.
- Commissioner Cremons suggested condition 51 could read, "The Applicant shall work with the City Forester and lot purchasers to explore options to preserve trees located within the entire subdivision."
- Commissioner Shah stated that is more precise on how the Commission plans to work with the homeowners. She stated that another suggestion for condition 50 is that the Commission needs to distinctively call out that what they are asking for the Applicant is for the road of the subdivision.
- Administrator Kress said it is mainly the road, but if they create any impact on the individual lots, these criteria would provide the requirements.
- Commissioner Cremons stated it would be better if the Commission did not limit condition 50 to the road, that it applies to any work they do in the subdivision, which will probably only be the road.
- Commissioner Yoshimura-Rank asked if it would also involve work on the trail.
- Chair Azman said he viewed condition 50 as primarily dealing with the road; but if there are impacts elsewhere, then the recommendations of the Forester would need to be observed.
- Commissioner Shah noted the Commission has specified that NOC will work with the owners as needed in each of the lots in condition 51. Condition 50 is holding them accountable for the road.
- Administrator Kress stated he thinks condition 50 holds them accountable to everything on-site. For 51, if the extra verbiage from Commissioner Cremons is added, that is fine; but the City Council has the final say. If they want additional criteria above and beyond what the Planning Commission has, they can do that. There is enough information tonight that the Commission could move forward with the motions that are on the table.

- Chair Azman said that means revising 50 and 51 per Commissioner Cremons' comments.
- Commissioner Cremons said he would withdraw his prior motion if that would help since it was not seconded and the Commission could move forward with a motion as the revisions were just discussed.
- Administrator Kress said from his perspective the motion is ready to go and the Commission is getting in the weeds a bit on some criteria that the Council can weigh out at their meeting.
- Attorney Nason clarified there was a motion and a second, then there was a motion to amend the existing motion to provide some clarifying language which was approved, so the Commission is at the original spot, which is a motion and a second. She believes the discussion had to do with clarification of exactly what the language from the original motion as amended stated. She did not know if anyone could read back into the record what the original motion as amended was. She clarified that there is a pending motion on the table.
- Administrator Kress asked if there could be a vote, and then call for a new motion when the roll call fails.
- Chair Azman noted there is a motion and a second on the original motion, and then there was a motion to amend. Commissioner Cremons has the motion to amend with his language at conditions 50 and 51, and he does not recall if there has been a second to it. That seems to be where the Commission is at and what he would like to move forward on. He noted Commissioner Cremons has some good accommodations to conditions 50 and 51, he is not hearing a lot of push-back on that, but does not recall if there was a second to it. Motion to amend motion seconded by Yoshimura-Rank.
- Chair Azman noted the Commission is in the second motion which amends the first motion and there is a second. He asked for discussion on that.
- Administrator Kress clarified that the motion was by Commissioner Cremons, seconded by Yoshimura-Rank, to change the verbiage in condition 50 to "Where practical, the Applicant shall follow the following," and in condition 51, "The Applicant shall work with the City Forester and lot purchaser and explore options to preserve trees located within the narrow southern one-third of Lot 9," and condition 52 is to remove the cul-de-sac and have the Company submit the information as included in the April 7 NOHOA letter.
- Commissioner Cremons stated in condition 51 the Commissioners agreed that it would apply to the entire subdivision and not just the southern one-third of Lot 9.
- Administrator Kress noted that Commissioner Cremons was correct.
- Commissioner Shah said Administrator Kress said "remove the cul-de-sac," when he meant to say "remove the island from the cul-de-sac."

- Administrator Kress stated that Commissioner Shah was correct.
- Commissioner Hauge asked if everyone was clear on who made the motion. He noted Commissioner Cremons has a motion on the table that is being discussed but there was an original motion.
- Chair Azman said everyone got bogged down in the motion to amend the original motion, and that was made by Commissioner Cremons and Commissioner Yoshimura-Rank seconded it. Administrator Kress was restating the terms of the motion and the Commission was in a discussion period over that second motion, the motion to amend. The motion Administrator Kress read is the pending motion before the Commission. He said they are at the point of further discussion on that motion and that is what should be discussed now.
- Councilmember Kingston stated he wants to know what they are going to get at the City Council. He is confused and wants to understand what the Commission's intent is. He asked what the role of the Forester is and whether the Forester is making the determination as to whether or not it is practical. He asked what it is the Commission wants the Forester to be doing in these circumstances and what authority they have in terms of vetoing where somebody wants to put their house and what trees might come down.
- Chair Azman said the Commission asked the Forester to do a review of the tree impacts at both sites. With regard to Anderson Woods, the Forester came back with an analysis of what the impact was by the proposed subdivision on the trees at the site and also provided recommendations. The Commission is trying to impose those recommendations on the Applicant in a manner that is reasonable. The City would have the authority to enforce all of these conditions in a manner that is consistent with the conditions as written. If the City decides that something was done that was not practical, then the City could take enforcement action. It is no different than if the City would enforce a condition on any wetland or VLA WMO issues, etc. When it gets shipped up to the City Council, the Council could look at it and say this is a condition the City can enforce if it is not being complied with. The Forester may be consulted, but the Forester has already expressed his opinion on what recommendations are appropriate for the site and the site development.
- Commissioner Hauge stated it is all in the relationship between the Applicant and the City. He noted Commissioner Yoshimura-Rank had a request to include the future homeowner in the situation, too.
- Chair Azman said that would come in at condition 51, which was on the screen, and the language would read, "The Applicant shall work with the City Forester and the lot purchaser to explore options to preserve trees located within the subdivision." He stated it imposes a condition on the Applicant to do something in cooperation with the Forester, but because the City does not have any standards through a tree ordinance, it is more of a suggestion.
- Councilmember Kingston stated he thinks that is where he is confused. He said a homeowner could come in to buy a lot and find out that if they want to put the house in a particular location, if it is not considered practical by the Forester, they don't have the option to do that.

He is trying to understand if that is what the intent is. An example of what might happen is, you have somebody that says there is this tree located here and that they could put the house in another location, but they really like the sunset in another area and there is no way to get there unless the particular tree is moved. He indicated there can be a difference of opinion in terms of whether that is a practical consideration.

- Commissioner Yoshimura-Rank said it is just having the discussion. There is absolutely no weight that the Forester has; there is no ordinance.
- Councilmember Kingston stated he agreed but was looking at the first comment where the Commission was taking out the “shall” to make it a more active recommendation. He is trying to understand what the degrees of freedom are for what a homeowner would do in that case.
- Commissioner Yoshimura-Rank said they are talking about NOC; they are not talking about homeowners.
- Councilmember Kingston asked whether they had added the homeowner into it.
- Commissioner Hauge noted the homeowner was added into it and that Commissioner Yoshimura-Rank did so.
- Commissioner Yoshimura-Rank said it was added to number 51, not 50.
- Commissioner Hauge noted number 50 is on the road and number 51 is the lot.
- Chair Azman stated number 50 is subdivision-wide and he thinks Councilmember Kingston was concerned about how to put this into action. The language was changed to say “Where practical, the Applicant shall follow the following recommendations” where originally it was “Where practical, the Applicant shall consider the following recommendations.”
- Councilmember Kingston said his concern was what the word “practical” means. He gave an example of someone who likes the sunset or the orientation of their home a certain way. He said the phrase “practical language” is going to impede the decision-making regardless of whether “shall consider” or “shall follow” is used. From a practicality standpoint, if Councilmember Kingston is viewing it as maybe not as workable as it should be, then the option should be to take out the “where practical.”
- Commissioner Cremons said he would suggest leaving a little flexibility which “where practical” does. As a practical matter, if there is a dispute about trees, the homeowner will have to come in and talk to the City and try to figure something out. The Commission cannot backdoor their way into a tree ordinance by this resolution. If people are truly concerned about protecting trees in North Oaks, the tree ordinance is going to have to take care of it, and everything the Commission does in the resolution is going to do nothing. He thinks the Commission can move forward on the basis of what has been talked about. The Commission

has made very good changes to the language and needs to get this process moving.

- Commissioner Shah stated she agreed with Commissioner Cremons but the concern is that the Commission is opening the door and she is hearing differing views from different Commissioners. Some want stricter accountability; some are saying the Commission has to be flexible. She asked what the Commission is saying in number 50. She asked, if the Commission is waiting for the City Council to make some sort of decision on a tree ordinance, what is 50 here for.
- Commissioner Cremons said the whole process is between the City and NOC. The Commission has no ability to bind a homeowner or govern what they do with their lots, no matter what is put in the document. What the Commission is doing in number 50 is binding NOC as to all the work they do. In number 51, a process of communication has been added with the homeowners that NOC will have to pursue to make sure the trees are part of the focus as they develop the lots. He said that the Commission cannot do much more relative to this application.
- Commissioner Shah indicated the way Commissioner Cremons phrased number 50 is that he only considered the Applicant. She is hearing from other voices they want the Applicant and homeowners in there. She thinks there is variability here.
- Commissioner Cremons stated the way he understands number 50 is, the Commission is here to govern the terms by which the Applicant can develop this property; nothing else is on the table.
- Councilmember Kingston noted the Applicant is not building the home. The lot will be sold, and then the homeowner comes in and has the obligation to take it to the next level. He said if the Applicant is not building the home, he is trying to understand what the purpose is.
- Commissioner Cremons said condition 50 governs the road and any other work NOC does on those lots. As the language reads right now, it does that. If NOC decides to do some grading before they sell lots or pre-prepare it for utilities and they decide it would be better for them to do it than have the developer do it, they are going to be bound by every one of the provisions. Once the lot is handed over to the owner, there is a separate process that begins at that point that the Commission cannot control by the resolution.
- Attorney Nason stated it is appropriate to revisit a little bit what the Planning Commission and the City Council can do in the subdivision context. She thinks there is clearly a sense from the Planning Commission that they would like the Council to look at how best the City can protect trees, which might be a tree preservation ordinance. With respect to what can be done to a condition on a subdivision approval, when applying the subdivision standards, you are looking at what does your code have and what are the requirements in there as it relates to subdivision. Currently, the City does not really have any. From Staff's perspective, they got the information from the Forester and put it in as a suggestion. As worded, it is really a non-condition; as was mentioned, "shall consider" does not mean anything. The Commission could say, "The Applicant shall follow the recommendations of the Forester with respect to

the Applicant's work and as it relates to the subdivision,” but none of the conditions specifically deal with tree preservation except for using essentially best practices with respect to the tree removal pieces. As far as condition 51 is concerned, it is a little bit of an unusual condition. She understands the Applicant is agreeable to it. If the Applicant is agreeable, then perhaps a bit more unusual condition is not out of order in that if there is some type of communication piece that’s made by the developer to the purchaser of the lot regarding working with the Forester in the importance of preserving trees. It does not specifically require preserving trees/heritage trees, because the code does not contain any of that language currently. She wanted to make sure the Planning Commission is clear in what their recommendation is to the Council and that it is clear in understanding ultimately what the City’s options are as far as any enforceability with respect to the regulations. Once the subdivision is approved and the lots are platted, if there is a violation of the subdivision conditions, there is not a good “remedy” for the City at that point; the lots are platted. It is a little bit different than a violation of a condition of a variance or a Conditional Use Permit (CUP), where there is a process to revoke and rescind that approval.

- Chair Azman said he does not know where the Commission is right now. He tends to agree with Commissioner Cremons on how he views his changes to numbers 50 and 51 and Attorney Nason’s fleshing out what these things mean. He noted there is a motion and a second and thinks he should call the question. He indicated the motion is to swap out “consider” with the word “follow” in condition 50, and in condition 51 to add “the lot owner” and change out “Lot 9” to “subdivision-wide.” He noted there were comments on City Staff on 52, which is removal of the cul-de-sac island. He asked Administrator Kress what else was pertaining to 52.
- Administrator Kress noted there was also a desire for information from the April 7, 2020 NOHOA submittal included in the packet.
- Commissioner Hauge asked Chair Azman if that is what he had suggested, because he thought Chair Azman did not agree that the homeowner should be included in number 51. He said the homeowner is someone that the Commission does not control in the situation, from what everyone has heard from several parties, including Attorney Nason.
- Commissioner Cremons said the language is more of a guidance than an enforceable regulation. There is no reason not to put in “shall work with the City Forester and lot purchaser to explore options.” It is relatively soft language, but at least it raises it to the point where the Commission is expecting NOC to have that conversation and involve the City Forester in the conversation. As Chair Azman and Administrator Kress indicated, as far as revisions, that is as far as he can go.
- Councilmember Kingston asked if it would be a requirement as opposed to trying to observe best practices and make recommendations if the Commission is going to insert “shall follow” instead of “consider.”
- Commissioner Cremons noted condition 50 is NOC and the City, and he has no problem saying the Applicant shall follow the recommendations of the City Forester in an effort to

preserve and save trees. He stated that they should follow the recommendations.

- Commissioner Hauge stated that it says “where practical,” they should follow.
- Commissioner Shah said if the City Forester comes through and identifies the trees to save on where the Company has plotted out the houses to be, where does the Commission stop. She asked if she is hearing that the City is saying they would have to move the house.
- Commissioner Cremons said there would have to be a discussion about what is practical.
- Commissioner Shah said that is the problem; the Commission is trying to define that and is saying it is loose, but who is the force that will say that. Also, at that moment how does the Commission define what is practical.
- Commissioner Cremons noted there is a difficult problem between making the Forester the total controller of what is going to go on/keeping the Forester involved in the process and keeping NOC as best as possible bound by these provisions. He thinks “shall follow” is still fairly fuzzy. The language is “where practical”; it’s got that the City Forester is going to make recommendations so there will be some conversation there. He said he does not think the Commission has the authority to say they have final control over what is going to happen except for NOC’s work; but on their work, they have to follow these rules.
- Commissioner Shah said she is not hearing that from Chair Azman.
- Chair Azman stated he is saying if you look at condition 50 and what it is actually saying in the details, it is not ordering or directing the preservation of trees. As Attorney Nason said, in the process of site development, you are doing what you can to protect trees that might be affected by the development. You want to “Fell all trees to be removed towards the centerline of the street to limit injury to saved trees,” and “Put in a tree protection fence after tree removal,” etc. Condition 50 is not saying, “We want you to go out there and only take down the absolute minimum amount of trees;” 50 is saying, “When you are going through this, do the best you can to save the ones you’re saving.” Condition 51 is a little different and says when a homeowner buys the lot, have a conversation with them about tree preservation, and does not go to the limit of a tree ordinance that might say, “Look, we are going to require you to save certain heritage trees of this size and standard.” He does not think the Commission is getting into tree ordinance territory with conditions 50 or 51. The Commission is imposing the obligations to try and protect the trees that are saved in condition 50. In condition 51, it is to have a conversation. That is not what he originally intended, but he thinks it is workable.
- Administrator Kress said it was time to roll call because the question was called. There was no motion to call the question, but it was time to see where everybody is at. The vote would be approval with the three changes to numbers 50, 51, and 52.
- Attorney Nason noted it was the motion to modify the motion on the table, so she understands the vote to be the modification of language of the motion on the table.

Motion to amend carried unanimously by roll call.

- Chair Azman stated the Commission is now back to the original motion, which was Commissioner Yoshimura-Rank's motion to approve the application subject to conditions 1-52 as were just amended. He asked if there was any further discussion. Not hearing any, he asked for a vote.

Motion as amended carried unanimously by roll call.

- Chair Azman noted the Commission recommended approval subject to the conditions and that will go to the City Council.

RECESS AND RECONVENE

MOTION by Yoshimura-Rank, seconded by Hara, to take a recess for ten minutes. Motion carried unanimously by roll call.

Chair Azman recessed the special meeting at 8:55 p.m. The special meeting was reconvened at 9:06 p.m.

MOTION by Yoshimura-Rank, seconded by Hauge, to reconvene the meeting. Motion carried unanimously by roll call.

b. Review of Nord Parcel - Subdivision Application

- Chair Azman opened the public hearing at 9:06 p.m.
- Planner Kirmis, Engineer DeWalt, and Attorney Nason presented the Planning Report Addendum included in the packet and recommendation for approval of the proposed Nord preliminary plan/preliminary plat (subdivision) application subject to the fulfillment of amended conditions 1-49.
- Commissioner Sandell said Engineer DeWalt made reference to the sewer system which seemed like a different message than previously received for the site. He asked if there would be construction for easements for potential sewer connections and City water and still have wells.
- Engineer DeWalt noted Staff was not talking about sewer service at this time, it was regarding municipal water service, because a question was raised about the future potential for it. The idea is for Staff to address it with easements today, which are easier to get rather than planning for a potential future service 30 years down the road.
- Commissioner Sandell asked if the properties would still be required to have wells initially.
- Engineer DeWalt noted Commissioner Sandell was correct, that there would be no water service. It would be providing easements to make any potential future water service easier to

provide.

- Commissioner Sandell noted it sounded like water service is a potential at some point. He asked if sewer was also a potential at some point.
- Engineer DeWalt said City Staff is trying to address a future unknown. While they have the ability to provide for additional easements today, it will be much more difficult in the future if the opportunity arises.
- Commissioner Sandell apologized if he was mixing water and sewer up; he asked whether the City would want to do the same for potential sewer connections in the future.
- Engineer DeWalt stated it potentially could be done. She noted the Applicant is proposing easements already, so the easements that are part of the application could cover the future utilities.
- Commissioner Hauge stated both the sewer and water is very close, since it is at Rapp Farm, and also fairly close on the Sherwood side, so it should be available for some time in the future. He noted he has raised the question a couple of times and thinks the Applicant is willing to do that. He added that Administrator Kress has also discussed it with the Company.
- Commissioner Yoshimura-Rank asked if there was any discussion about a fire hydrant.
- Engineer DeWalt said that Administrator Kress had conversations with the Fire Department.
- Administrator Kress stated he sat in on a conversation with Mr. Hauge. The problem with the hydrant is, it is still a dead-end loop, so it does not fix the problem. The water line comes through the Rapp Farm area and dead-ends at the cul-de-sac. Without a loop system, it defeats the purpose. The easement is there if the City wants it, but it does not make sense right now.
- Commissioner Hara said he got copied on a letter on May 26 from NOHOA that said they have not agreed to the Nord or Anderson Woods development. He asked Planner Kirmis if he said they had come to an agreement on it and if it had happened in the last couple of days and the Commission had not been updated yet.
- Planner Kirmis stated his understanding is they had come to an agreement regarding the trail location for Nord.
- Commissioner Hauge stated what he understands is that there was a 6-2 vote on the NOHOA Board which was for the trail proposal, with two people on the Board that voted against.
- Commissioner Shah said that happened at the April NOHOA Board meeting. The Board reviewed both Anderson and Nord and provided feedback, and the City received letters of their feedback/comments/suggestions. She said the Board voted, two abstained and six voted

to approve, so the majority have spoken from the NOHOA side.

- Commissioner Sandell stated the letter was quite confusing and the timing seemed odd and kind of implied that NOHOA had not approved anything.
- Commissioner Hara said it reads, “In conclusion, the NOHOA Board, within its purview under the 1999 PUD/PDA, has provided review and comment that has not agreed to the Nord and Anderson Wood development proposals.”
- Commissioner Hauge said he read it as NOHOA says that it is not their job to decide, it is the Planning Commission’s job to decide, and NOHOA does not want to make the decision for the Planning Commission.
- Commissioner Hara said he did not disagree with Commissioner Hauge but that the Planning Commission, representing the community, has to take into consideration the Home Owners’ view on it. He does not think they are pretending to be the authoritative body. He received the letter two days ago, but this is different from what he heard before; and he thought they may have changed their mind on the trail recently and that this letter was in response to that.
- Commissioner Shah asked about the possibility of having Kathy Emmons or someone from the Board call in to get that perspective. She also noted that Mark Houge is on the Board and suggested he could speak to it as well.
- Chair Azman said it is his understanding NOHOA will not be appearing to speak publicly at the hearing today. The purpose of the letter was not to backtrack on their approval of the trail agreement with the Company. The purpose of the May 26 letter was to express the view that while they have provided review and comment about Anderson and Nord, they have not agreed on a boundary expansion agreement such that those parcels would come into NOHOA. He understands that they are expressing they have not taken a position on it. Under the PDA, in Section 2.4, it states that residential lot owners within the development sites shall become either members of NOHOA or members of a subassociation of NOHOA. It is his position that would have been the perfect and opportune moment for NOHOA to take a position on whether they think these development applications are something they would approve of. He thinks it is troubling not having that insight. The letters that appear to be sending somewhat mixed messages are also a little troubling. However, he does not see an objection to anything in the first letter. There is dissension on the NOHOA Board, which is fine, but it would have been preferable from his standpoint under the PDA as the City is considering the applications to find out what NOHOA thinks with a little more substance. He does not believe there is any dispute that NOHOA has agreed with the Company on the proposed trail.
- Commissioner Hara agreed it is confusing because it says, “In conclusion, the NOHOA Board... has not agreed to the Nord and Anderson Woods development proposals.” He noted it does not talk about the specifics as far as the trail, it just says proposal; and he would take that to mean the entire proposal, not a specific part or point of the proposal.

- Chair Azman said he does not think that is the intent but understands what Commissioner Hara is saying and another reason that it is troubling. He suggested digressing for a moment to see if Mr. Houge has received any word from NOHOA that they have backed out of their trail agreement.
- Mr. Houge stated he talked to Kathy Emmons as recently as two days ago. The intent is not to change their position on the trail agreement. He believes this was an effort to clarify two things. He said he was not a party to the preparation of the letter because he recused himself as a representative from the Company. The letter does not state that NOHOA will not accept the lots into NOHOA; it actually says the opposite. That was one point to be clarified based on NOHOA's attorney's opinion. Also, he believes the position the other Board members wanted to communicate is that it was not NOHOA's role to approve the development, but that it does, by virtue of its joinder to the agreement, have a role in approving trails and the design of roads so that they are able to be comfortable taking responsibility for them in the future. He noted the original letter stands as sent and there is no retraction of their commitment to the trails that are proposed.
- Chair Azman said he thinks those are good points. Section 2.4 of the PDA is a section that NOHOA expressly consented and joined to when they signed it, stating that residential lot owners shall become members of NOHOA. NOHOA also takes the position in the clarification letter that, assuming each development is completed consistent with the 1999 PDA and applicable law, NOHOA will expand its boundaries. He sees that NOHOA is trying to say that it is not their authority, and he also does not think they ever tried to take any of that authority. On the other hand, they are also taking a position that they are going to make their own decision about whether or not it is compliant with the PDA. He is not quite sure what the Commission is supposed to do with it, other than take it for what it states.
- Commissioner Hara asked where in the PDA it specifically states that the trail and open-space obligations have been met.
- Attorney Nason stated with respect to the PDA and the trail and open-space obligations, under Article I, Findings and Covenants, there are a couple of references. Under number 5 it talks about how the Company is attempting to create an interconnected system of trails and byways of proposed open-space easements and conservation easements. It proposes to protect and preserve approximately 885 acres of property. With respect to where it says it has met the open-space requirement, Section 12.1 talks about all park dedication requirements essentially are met by what is granted through the PDA. It also states the parties agree that all park dedication requirements for the East Oaks PUD project and development sites, as well as for the subdivision known as West Black Lake, shall be and are satisfied by the developer in the form of: one, execution, delivering, and coordinating by the developer of the open-space easements affecting the protected land to the City and NOHOA; two, granting of conservation easements; three, rough grading of park and trail easements; four, granting of primary trail easements over primary trails and restricted trails. She said with respect to those included parcels, all park dedication, open-space contribution requirements have been fulfilled by the initial dedications and by that trail dedication pursuant to the PDA.

- Chair Azman noted there were two letters and he does not believe NOHOA will be at the meeting tonight to make further comments on them, so the Commission is left reviewing them for what they say. He asked if there were any other questions for Planner Kirmis or Engineer DeWalt on any of their reports regarding the issues.
- Commissioner Sandell asked what the history is with NOHOA approving shared driveways. He noted there are some in the City already and asked if any have been approved or denied recently.
- Planner Kirmis said he knows they exist. He is not aware of any specific standards in the ordinance which specifically regulate shared driveways. Within the PDA there is a reference to shared driveways; specifically, it says driveways must be not less than 10 feet apart except in the case of shared driveways which, to him, implies an allowance of shared driveways. He is not aware if there was any sort of specific approval process for shared driveways.
- Administrator Kress said they have seen several shared driveways throughout the City of North Oaks. As far as the approval process, he does not know that it was very formal on the City or NOHOA's side.
- Chair Azman, on the topic of shared driveway, stated if there is a recommendation that a variance may be needed as a condition, that prompts him to think about a comment he received from a member of the public about whether or not the Shoreland ordinance would apply to Nord and how that particular ordinance would impact the need for a variance, and whether or not, under specific Shoreland ordinances, if there is a variance that is required, is the application approvable.
- Attorney Nason said, with respect to whether the Shoreland ordinance applies to the Nord parcel, the answer is, with respect to the majority of proposed Lots 1, 2, and a portion of Lot 3, yes, those lots are shown as designated within the Shoreland Management area on the zoning map. She reiterated those three parcels are within the Shoreland Management area and subject to the provisions of Chapter 153 of the City Code. With respect to the Shoreland Overlay Zoning District and the included parcels, the PDA specifically states that as part of the PDA being granted, Section 2.1 says that the Council finds that the development sites are rezoned to PUD district under the zoning ordinance and grants a CUP under the Shoreland ordinance and certain variances to allow development of the development sites consistent with the development guidelines. She stated the development guidelines are further fleshed out in Appendix 1 to the PDA, which has been further amended through the 7th Amendment. She said there are specific references within Appendix 1 to variances granted pursuant to the Shoreland ordinance. No other variances, other than those articulated within Appendix 1, were granted as part of that original PUD approval process or any subsequent amendment. She reiterated the Shoreland ordinance applies, there are certain variances that have already been approved with respect to the included parcels, but obviously not with respect to the excluded parcels. She asked Chair Azman to repeat the next part of his question.
- Chair Azman said there is a portion of the Shoreland ordinance which provides that a subdivision is not approvable if a variance is required. He said he was interested in understanding how the ordinance would apply or if it would apply here and how it would

impact the application.

- Attorney Nason stated there is specific language in Section 153.086 of the City Code titled “Consistency With Other Controls” that provides subdivisions must conform to all official controls of the community. “Official controls” is not a defined term within any of the City Code provisions but is defined in State statutes, Chapter 462, Section 352, as essentially including the zoning ordinance, the subdivision ordinance, or other similar ordinances. Section 153.086 further states that a subdivision will not be approved where a later variance from one or more standards and official controls would be needed to use the lots for their intended purpose. She noted there is a provision that, if you have property located within the Shoreland Zoning District, a subdivision of that property will not be approved if, in the future, additional variances are needed. She said with respect to subdivision, it is worthwhile to note that Chapter 152 of the City Code contains a process related to variances at the time of subdivision application. She indicated that as the Planning Commission is aware, they often hear or see applications for variances. The variance process is controlled by Chapter 151. However, at the time of subdivision, State statutes provide a separate variance process for variances granted as part of subdivision approval. The process is also found in Chapter 152. With respect to the language, it is the opinion of Staff that a subdivision cannot be approved if there are going to be variances required at a later date when dealing with Shoreland property. However, to the extent there may be a variance needed at the time of subdivision that could be approved at time of subdivision, that language would not preclude approval of a variance at the time of subdivision. She stated with respect to the shared driveway, Staff’s initial review of the documentation it received showed a shared driveway, and it appeared that there would need to be a variance in order to have that shared driveway specifically because the City Code provisions provide a 30-foot setback from lot lines for driveways. The proposed driveway essentially straddles the lot line between Lots 1 and 2. Staff received additional information from the Applicant that shows the proposed access driveway for Lots 1 and 2 actually exists right now; it is some type of road/farm road that has previously been used to access the real property that would comprise Lots 1 and 2. Furthermore, not only does it exist along those shared lot lines, but it branches out where driveways would be installed to potential residences on Lots 1 and 2. Staff was not aware of that information before today and was under the impression that there would need to be some type of variance to approve the connection of the driveway that connects from a house to the existing north-south farm road. She noted that is why the language regarding a variance was there. She asked Administrator Kress to display a map to help illustrate her point. She said it appears that the old farm road exists over both the north-south driveway access as well as the east and west driveway access, which would be used to get to where the potential building sites/homesites would be located, such that there might not need to be a variance. The information was received by Staff late in the day and additional analysis needs to be completed to confirm that the width, etc., of the existing farm road would support the proposed driveway use. She stated with that information in mind, it is a recommendation that a variance be granted or that the driveway access be found to be a legally established nonconforming use sufficient to provide access to those two residences as a proposed modification for the condition as previously recommended in the Staff report.

- Chair Azman asked if the Commission knows, if it is not a variance that is needed, that there is a legally nonconforming use that is in place.
- Attorney Nason, referencing a map entitled “Development Area C,” said that it appears, based on the information provided, that the blue lines illustrate the old farm road and appears to transverse the lot line between proposed Lots 1 and 2 and also provides some branching out into Lots 1 and 2 such that any further addition would be outside of the 30-foot setback. Additional information will be required to validate and confirm that.
- Commissioner Hara noted the distance coming off of North Deep Lake of that existing trail or old farm road is 24 feet between standing water and the two adjacent wetlands. He asked if that was a satisfactory amount of space to meet wetland requirements as well as a driveway that two sets of cars can use.
- Attorney Nason said, not having the specific information but basing it off the information by the Commissioner, it would not comply with a 30-foot setback from wetlands or any buffer. However, it is Staff’s understanding that the road exists and is a legally established nonconforming use such that it would be able to maintain its existing state and it would be allowed within that particular area.
- Commissioner Sandell asked, if that would allow for no variance, would that be because the Commission would consider it a road and that the driveways would essentially not be shared, they would branch off from the farm road.
- Attorney Nason stated that to find there was no need for a variance, it would have to be found that the old farm road constitutes a legally established nonconforming use in its existing state and that it would provide sufficient access to both the building sites on Lots 1 and 2, at least far enough to get outside of the 30-foot setback area from the lot lines.
- Commissioner Cremons said he thinks he is hearing that until the Commission has the information concerning the farm road, they do not know whether they can approve the subdivision because of the Shoreland ordinance issue. He asked if the Commission is stuck until the issue gets resolved.
- Attorney Nason stated they were not necessarily stuck because one of the conditions of approval was to approve it with the condition that a variance needs to be obtained. If a variance is not obtained, then approval for the subdivision would be held up. The Planning Commission has a couple of different options if they want to know the answer as to whether or not it is a legally established nonconforming use and if the Planning Commission were not comfortable recommending approval with conditions and having approval be in the disjunctive, either with a variance or as a legally established nonconforming use if that can be confirmed. The Planning Commission could continue this matter for a very brief time for Staff to obtain more information sufficient to answer that question.

- Chair Azman asked how VLAWMO's authority impacts whether or not the driveway can be there and how the Commission can address that.
- Mr. Houge noted several questions have been raised about the road and whether it is sufficient. His understanding is that it is sufficient for the width of a driveway. He believes the zoning ordinance defines a driveway as 18 feet wide. He will take the Commissioner's word that it is 23 feet. VLAWMO reviewed the entire plan, including the proposal for a shared driveway, and has approved the project, in part, based on the fact a driveway in a setback area is allowed. The Company is not impacting the wetlands in any way. The driveway has been in use for 30-40 years, including use by heavy logging equipment. It is a very significant roadbed and T's off and would serve Lots 1 and 2 without further improvements. The road is positioned to be south of the proposed trail. The location works out very well so that if you're walking on the proposed trail, it would be north of where the road T's off so they do not conflict.
- Chair Azman asked Mr. Houge where the approval is from VLAWMO. He has seen a "30,000-foot comment" that VLAWMO does not have any issues, but they also state that buffers will need to be complied with.
- Mr. Houge stated he believes there is a letter in the packet from Brian Corcoran, separate from the letter received in the last two days, that says that the development is approved and conforms with all of their requirements. In order to verify their understanding was correct relative to being able to place septic systems in houses on these lots to conform with setbacks, they prepared a drawing showing that as well. They have always believed that to be the case, but they asked their wetland consultant to put that on paper and show it with an illustration. He believed Administrator Kress or Engineer DeWalt had the information to show the Commission.
- Commissioner Hara asked which Corcoran letter approves that, because the one he saw is very vague. It says approval but it was the road and cul-de-sac and had nothing to do with the rest of the development. He asked if there was a newer letter from VLAWMO.
- Mr. Houge said there is a May 27 letter which Administrator Kress displayed on the screen; and a prior letter, which he could not find.
- Administrator Kress stated that he probably has it, but he does not want to jump back and forth on the screen.
- Chair Azman noted there is a May 27 Memo from VLAWMO; and the second bullet point indicates, "Future homes to be built need to follow the buffer setbacks for each wetland on the parcel." He said his question is the buffer on lots and homes and how that may impact, or whether the Commission deals with it now by saying, as a condition, that VLAWMO needs to give approval.
- Engineer DeWalt stated that is a proposed condition already and a typical condition the City provides since the City is not a Local Government Unit (LGU) as far as wetlands go. It is a

requirement and recommendation upon potential approval or recommendation for approval that that is a condition. She noted VLAWMO's policies are very clear, but they have some gray area and leeway, and it is not up to Staff to do the analysis to confirm or deny that what is being proposed works. The Applicant has provided a plan that has been worked on by a wetland engineer to show that the proposed plan with some conceptual homes and septic site locations fit within the assumed wetland buffer requirements per VLAWMO policies. Also, the VLAWMO policy states that a buffer is not required for both the resurfacing of an existing road, sidewalk, or trail that does not increase the area of impervious surface. She reads that to say an existing driveway would not be subject to additional buffer requirements.

- Chair Azman noted that the safest way would be to say that any approval needs to be conditioned on VLAWMO approval.
- Engineer DeWalt stated Chair Azman was correct, which is what the current proposed conditions recommended by Staff address.
- Commissioner Hara asked who the wetland expert was and who hired that consultant.
- Mr. Houge said the Company hired a firm called Kjolhaug Environmental Services Company, who does a lot of work in VLAWMO and are the experts that entities like watersheds rely on for this type of analysis.
- Chair Azman asked if the map displayed on the screen was the drawing referred to earlier from the Company.
- Administrator Kress confirmed that Chair Azman was correct.
- Chair Azman noted the area where the shared driveway would go up and take a right towards Lot 1 is where a buffer is needed if there is no prior road/driveway; if there is an existing road/driveway, the buffer is not applicable, according to his understanding.
- Commissioner Hara asked how someone gets from the shared driveway to Lot 1, because it looks like they would have to go through a wetland buffer zone.
- Chair Azman asked, if it is an existing access path, what is the standard that VLAWMO applies. He thought Engineer DeWalt said then the buffer does not apply.
- Engineer DeWalt reiterated the City is not the LGU for wetlands and this is her interpretation of the policy. The policy clearly says a buffer is not required for the resurfacing of an existing road, sidewalk, or trail that does not increase the area of impervious surface. She reads that to say that if the farm road is used as access, the buffer does not apply. She has been told that VLAWMO typically does not consider driveways within the buffer zones; but VLAWMO will need to review each of the plans and provide their comments, which is what Staff's recommended conditions of approval reflect.

- Commissioner Hara noted the road is not impervious and that it is basically a trail in a field; there is no asphalt or any kind of surface, but basically ground that was driven over at some point. He would presume a driveway would become an impervious surface there.
- Engineer DeWalt said that is not what is being proposed in the current application and she cannot speak to what could be.
- Mr. Houge stated the current road had been built, probably with a gravel base, many years ago. Even in some trails there are gravel bases that get covered over with grass. If anyone were to drive out there today on the road, there is a substantial base beneath the grass. They have been driving on the road off and on at least 2-3 times a week to show people around, and it has a very substantial base to support traffic. He also noted that historically VLAWMO allows for driveways and trails in setback or buffer zones.
- Chair Azman noted the VLAWMO review and approval is a recommended condition. He indicated this is a Shoreland Ordinance and stating a variance might be required later would then make an application for a subdivision not approvable, and it would not apply because this isn't a variance that is being sought later. The variance should be sought now unless it's illegally nonconforming use has been established.
- Attorney Nason said Chair Azman is correct. She noted, under the Shoreland Overlay Zoning District, a subdivision cannot be approved if it will require variances later to use the lots for their intended purposes. It does not necessarily preclude variances granted at the time of subdivision. It is possible the Commission could add a condition of approval for some type of document recorded against the three lots located within the Shoreland Overlay Zoning District that indicates there shall be no variances granted for development/use on those lots.
- Chair Azman said that suggestion made him nervous, because putting that type of restriction on the land as opposed to an official control makes him uncomfortable because of unforeseen conditions on the site because of a septic, etc. He asked if an alternative would be to combine Lots 1 and 2 into one lot and whether it would remove some of the questions about variance and legally nonconforming use.
- Attorney Nason stated the Commission could recommend approval of the proposed subdivision with the listed condition and could add as a condition that Lots 1 and 2 be combined into one lot.
- Chair Azman said he understands there are recreation obligations imposed in the PDA, but there are two orphaned parcels that are not in the PDA. He asked, if there are subdivision requests that include them, what are the recreation obligations that an Applicant would have.
- Attorney Nason stated if the Commissioners look at the language found within the subdivision ordinance, Section 152.052, there is a requirement for every subdivision to be developed for residential uses to have a "reasonable amount of land dedicated or preserved for the benefit of present or future residents of the City or for present or future residents of the areas to be subdivided for open space purposes, parks, playgrounds, trails, or

conservation purposes.” She said that there is a requirement of that particular land to be dedicated for recreational purposes. She noted further in that section it indicates the maximum area to be dedicated/set aside/preserved is 10% of the area being subdivided. Section 4 says that whenever the City Council finds land for the purposes specified above is not required, not suitable, or when they determine the area to be subdivided is too small to warrant the dedication set-aside, conveyance, or preservation of the land, it may reject all of those dedications. She said with respect to the Nord development as it pertains to the included parcels, all of the set-asides have been satisfied pursuant to the terms of the PDA. With respect to the two excluded parcels, which total 3.9 acres, in theory the Commission could require some type of set-aside or dedication; again, that would be of land within the parcels. Alternatively, the Commission could take the position that it is not necessary to require the dedication, that the property being proposed is not reasonable or viable for the dedication purposes, or that the trail proposed through Nord is the functional equivalent of any required dedication under the subdivision ordinance as it relates to the excluded parcels.

- Commissioner Hara said he is curious about the excluded parcels and the current Staff position that they are still a mystery, because the previous Staff, including Robertson and the previous City Planner, in one of their meetings said that parcel V-284 was intended to be a trail. He is curious how current Staff came up with a different assessment of what that was.
- Attorney Nason stated she could not speak for all Staff and was not sure any Staff were at that meeting with the possible exception of Planner Kirmis. She noted the property records research that was conducted was inconclusive as it relates to those parcels.
- Chair Azman asked Attorney Nason what Staff is looking at when property records are pulled.
- Attorney Nason stated they looked at the registered land surveys to try and see if they could ascertain anything from the way those were divided up. There was nothing they were able to ascertain with respect to those particular parcels. In addition, there are not any easements for trail purposes that have been recorded against those parcels.
- Mr. Houge noted Mike Robertson was not in North Oaks very long and he was asking the Company if they knew what those were designed to be. Gary Eagles, who has been involved with the Company for 30 years, had a relationship with Louis Hill before his death, and at no point in time was that configuration ever discussed. Mike Robertson was speculating in his comments. No one within the Company knows what the original intent was when those were created; they can only speculate. The Company is proposing to combine those lots with the adjoining lots to clear up what would otherwise be orphan lots that the City would have to deal with at some point in time.
- Administrator Kress suggested opening the public hearing, noting it was 10:20 p.m., if the Commission wanted public comments.

- Commissioner Cremons asked Mr. Houge if he is suggesting that he would agree to amend the PDA to bring the orphan lots into that development.
- Mr. Houge said if that would be the most expedient way to deal with that issue, the Company would be open to doing so.
- Commissioner Cremons asked City Staff if there was another way to take care of the issue.
- Attorney Nason stated there are two options: The subdivision can proceed, as there is not a legal or code provision that Staff has located that would preclude the subdivision of the property, including the excluded parcels. Alternatively, the PDA could be amended to bring in the excluded parcels. It is more complicated than it sounds, because it is not simply amending it by a text amendment, it is amending it by text amendment which would include rezoning of the property because it would then be rezoned PUD, and the entire rezoning process has to be followed through as outlined in the code.
- Commissioner Cremons said if the goal is to get the orphan parcels into the site so they are done forever as opposed to approving this with the orphan lots still out there, the only way to do that is to amend the PDA and do the rezoning.
- Attorney Nason stated that was incorrect. She said the proposed subdivision includes the excluded/orphaned parcels. The Commission can move ahead with the subdivision, which would include the excluded parcels. At that point you end up with lots that have two different zoning designations, so you would have lots that have a portion of the lot zoned Residential Single Family Medium Density District (RSM)/PUD and a portion of the lot zoned RSL. The PDA does not have to be amended to approve this subdivision. There is another option which would include amending the PDA to include those parcels; that requires Council action and a rezoning, which is a more involved process.
- Chair Azman asked what the implications are of having a dual zoning on one lot. He asked if the former lot lines/boundaries are looked at in order to determine which portion of the lot is subject to which former zoning.
- Attorney Nason stated she thought the answer was yes. She noted there is language in the code that deals with existing lots that have two zoning designations and how those are handled with respect to which requirement. For example, if there are different setback requirements, that would require the stricter of the two to apply.
- Chair Azman asked, regarding a potential amendment of the PDA, if that would be a major or minor amendment.
- Attorney Nason said it would be a minor amendment which requires a majority vote of the Council; however, because the proposed amendment does involve the rezoning of property, it would require completion of the rezoning process of the property. It would not be as simple as having the Council approve an amendment; the amendment would have to be done in

conjunction with a rezoning, following all of the typical rezoning processes in the code.

- Chair Azman asked if having the dual zoning designation on one lot has been problematic in Attorney Nason's experience.
- Attorney Nason stated that it is not entirely uncommon, they have seen it before in other cities, particularly with respect to some of the more urban development where zoning districts sometimes cut across property lines. She said it would be cleaner and easier if it was all zoned the same thing. With respect to these particular developments, some of the concerns about setbacks, etc., at least upon the initial Staff review, do not appear to create too many challenges or inconsistencies. She could not say the Staff has done an extensive analysis on that issue; but on a preliminary, high-level review, it does not appear to be preclusive to development on those sites.
- Mr. Houge said he is concerned that this not be a problem moving forward so he asked the Company's attorney to study the State and City ordinances. There is nothing in the State or City ordinances that preclude the Planning Commission and City Council from approving a subdivision where there is a lot that has two zoning classifications. Also, the Company would be happy to conform with the most restrictive set of ordinances. The immediately adjacent property is residential single-family. These are very large lots, and they could probably put a line where they could make the buildable area restricted to where the PUD subject area ends. He believes there are other areas within the City that have zoning errors, in terms of the map and how it is classified, that could be all cleaned up at the same time the issue is addressed.

MOTION by Yoshimura-Rank, seconded by Shah, to open the public hearing at 10:25 p.m. Motion carried unanimously by roll call.

- Chair Azman opened the floor for public comment. He invited people to raise their hands if they would like to speak on Zoom. He noted there were no persons physically in the Council Chambers currently. He stated there were a couple of hands going up and he knew there were others seeking to speak.
- Citizen Comment: Leanne Savereide, 4 Red Maple Lane, said the proposed trail going through her property is not the trail the people of North Oaks want. She appreciated that all the Commission members looked at the area in question because they know it crosses a road, goes close to a house, and goes through the wetlands. She thinks if NOC would go back to the plan by Randall Arendt that had the wildlife corridors and the lesser density, all of the problems would be solved. There would be room for a trail, there would be less impact on wetlands, and there would be wildlife corridors. She said NOC's website says every effort is made to preserve the natural topography and ensure privacy. She thinks there could be more effort by the Company to preserve the natural topography if they did not have the density bonuses all up to the top. As difficult as it is for everyone to lengthen this process, she asked the Planning Commission to vote to advise the City Council to reject the application for the earlier-referenced and all the other reasons the Planning Commission has been discussing.

- Citizen Comment: Rachel Maher, 91 Rapp Farm Place, said that, according to the PUD, variances have been granted; but it also specifically states none of those variances are included within the Nord parcel. Any variances needed have not been granted and would need to be granted. She noted she had a video that she prepared and asked to share her screen. Her audio presentation began and discussed that the map showing the red area outlines the wetlands with the setback included in the preliminary plan, which is 30 feet. However, the setbacks for M1 and preserved wetlands should be 40 feet and 75 feet, as required by VLAWMO. Using the map, it was indicated the dark red area outlining the wetlands are the noncomplying setbacks that are included in the preliminary plan. The light red area outlining the wetlands are the VLAWMO-required setbacks. To be compliant, a preliminary plan needs to have the correct and required VLAWMO setbacks. The map tells shows that significant wetland impacts are inevitable with the plan as it has been presented. A submitted preliminary plan application is only accounting for wetland impacts as it relates to the cul-de-sac indicated on the map. Wetland impacts caused by future homes, septic systems, driveways, and the shared driveway are not considered or included in the preliminary plan application, even if they are entirely inevitable regardless of future homeowner and developer additions. If the preliminary plan is passed, significant wetland impacts are inevitable in obtaining access to Lots 1 and 2. The entire shared driveway is surrounded by high-value wetlands and does not meet the required setbacks. In addition, once the shared driveway splits, the private driveway needed to access Lot 1 goes straight through the setback areas of two preserved wetlands that are also located in the Shoreland District. Lots 1, 3, 4, and 5 do not have enough space available for a home and two sewage tanks without impacting one or more wetlands. She indicated she was going to fast-forward to other key items for the sake of time. The audio presentation continued and discussed topic two, wetland delineation. For this topic, she focused on the section of the parcel circled in red on the map. She asked everyone to draw their attention to the area being indicated. According to the scale provided in the exhibit, the area between the two wetlands is 85 feet. However, in reality, the boundaries on the wetland are less and the distance between the two wetlands is only 27 feet. She displayed a photograph of the area she was discussing and a map and pointed out a stake on the edge of the northern wetland identifying Point A and a stake in the southern wetland identifying Point B. She said the tape measure in the photo was used to measure the distance between Points A and B, which was 27 feet. She indicated because boundaries in the wetland are not properly identified in the preliminary plan, it causes many issues with the plan itself. She displayed the wetland visual map and said it represents the wetland setbacks with 85 feet between the wetlands. If the boundary of the northern wetland were moved to reflect the actual wetland boundaries, the wetland plus the setbacks greatly reduces the usable area of Lot 1. She stated the yellow dashed line represents the trail included in the preliminary plan. She noted the trail was not feasible as it goes directly through the wetland, which is a very deep wetland. In order to make Lot 1 accessible, the minimum space between Wetland 1 and Wetland 2 must include a VLAWMO-required buffer for Wetland 2 of 75 feet, an absolute minimum of 10 feet for the trail, 10 feet for a driveway, and a VLAWMO-required buffer for Wetland 1 of 75 feet, for a total minimum space needed of 170 feet. The actual space between Wetland 1 and Wetland 2 is 27 feet, leaving a whopping 143 feet short, meaning Lot 1 is entirely inaccessible without significant impacts to high-value wetlands. The issues may have been due to the wetland delineation report being updated. VLAWMO's water management policy requires current

wetland delineation for upcoming projects. VLAWMO also says a delineation should be performed every five years. The last in-field delineation performed for Nord was just over six years ago, and the official report based on that delineation was distributed four years and 10 months ago. Based on the requirements and five-year recommendations of VLAWMO and evidence of wetland expansion, it is reasonable to believe a new wetland delineation report is needed. She noted the third topic goes over a couple of other noncompliance issues. Lot 1 is not a suitable site. Per Ordinance 153.085(A), each lot created through subdivision must be suitable in its natural state for the proposed use with minimal alterations. Lot 1 is not suitable in its natural state and would require significant alterations. Therefore, it is noncompliant. Lot 1 is inaccessible without significant alterations to high-value wetlands; feasible or buildable area is limited and feasibility is questionable. It is also surrounded by preserved wetlands in the Shoreland District. Lot 1 contains important wildlife habitat as identified by VLAWMO. There are also potential erosion issues at the entrance of the shared driveway due to the culvert connecting Wetland 1 with Wetland 3 and there are likely other potential limitations. Moving on to the next compliance issue, no variances have been granted for the Nord parcel. However, in order to simply access and build on Lots 1, 2, 3, and 5, variances will inevitably be needed. Ordinance 153.086 states, "A subdivision will not be approved where a later variance would be needed to use the lots for their intended purpose." Therefore, the Nord subdivision is noncompliant and should be denied. She stated that the preliminary plan should be denied for the following reasons: It contains incorrect setbacks, which is noncompliant with the VLAWMO-required setbacks. The preliminary plan contains inevitable impacts to high-value wetlands, but those impacts are not acknowledged or identified in the plan. Suitable sites for sewage tanks, potential homes, and access to Lots 1 and 2 are not identified to accommodate correct VLAWMO setbacks, which is a preliminary plan requirement. Wetland delineation is potentially incorrect or outdated. The usable area of Lot 1 is significantly less than reflected in the plan. The proposed trail goes through Wetland 2, which is noncompliant with the PDA. Lot 1 is not reasonably accessible, and inaccessibility is noncompliant with the PDA. The wetland delineation used in the preliminary plan does not accurately reflect wetland boundaries; a current wetland delineation is required per VLAWMO water management policy. Lot 1 is not a suitable site, which is noncompliant with required City ordinances. No variances have been granted that are necessary to access and build on certain lots, which is also noncompliant. Necessary variances need to be granted prior to the preliminary plan. For approval, the preliminary plan should include correct setbacks as required by VLAWMO and the DNR; a subdivision that does not contain substantial inevitable impacts to high-value wetlands. It should identify all wetland impacts from shared driveways, private driveways, homes, and sewage tanks that are inevitable. It should identify suitable sites for sewage tanks, potential homes, and lot access based on correct wetland setbacks. An updated wetland delineation report should be obtained and correct wetland boundaries should be identified. Lot 1 should be removed from the subdivision plan and converted to open space, as it is inaccessible on suitable land that is surrounded by high-value wetlands in the Shoreland District. It should include a suitable trail that does not go through a deep wetland. Any variances needed to access and build on lots should be obtained prior to submitting a preliminary plan for approval. There is overwhelming information evidencing noncompliance of this preliminary plan. Acceptance of this plan would not be in the best interest of the community and its residents. Even more importantly, acceptance would be detrimental to the environment; specifically, valuable

wetlands and the biodiversity they support. She asked the Commission to deny this preliminary plan and demand a preliminary plan that is complete, accurate, compliant, and environmentally sound. She stated she realized the video was much longer than her three minutes and appreciated them letting her go on that long.

- Citizen Comment: Cheryl Blackford, 7 North Deep Lake Road, stated she has three major concerns with the proposal. She said Ms. Maher expertly covered the issues with wetlands and she did not want to bore anyone with more talk about that, although it is a major concern of hers. She noted there was a lot of discussion about the shared driveway, another major concern of hers. North Deep Lake Road is narrow and winding. There is not going to be any parking allowed on that driveway, which means that if any of the residents in the proposed two houses have any kind of a gathering -- a party, a Christmas party, a graduation party -- all the cars will need to be parked on the street. On one side of the street there is a pond with a drop-off into the pond; on the other side of the street is a wetland with a drop-off into the wetland. In addition, there is almost no shoulder on either side of the road and there are trees on one side. Basically, there is not anywhere for people to park; and she is concerned about safety for the existing residents. She has not heard anyone address that issue at all. She knows some/all of the Commissioners walked the trail. She does not know if anyone walked down the street and looked at the site to see what they thought of those safety concerns. She said they have lived at their residence since 1996 and have never seen any use of what they used to call the old burn site road, which is another safety concern. She does not know how recent most of the houses are on the street, but she is wondering if they were there when the burn site road was used. She indicated she sent the Planning Commission pictures of what the existing trail easement looks like when it rains, that it is very boggy. She does not think it is an ideal position for a trail, and she noted NOHOA said they would work with the existing homeowners to position that trail. Currently, it is six feet wide. If there will be a 10-foot trail, the wetland will have to be encroached upon, or the land towards her house will have to be encroached upon, which might include cutting down mature oak trees. She is not convinced that it is a good site for a trail and understands that the City is saying that it is not an issue because it is outside the area under consideration. If it was decided that was not an adequate trail, then the City would have to start looking again at the trail within the proposal area. She thinks the trail is an issue and does not think it is a moot point at all.
- Citizen Comment: Franny Skamser Lewis asked to share her screen because she would be reading some things and thought it would be helpful to be able to read along. After Chair Azman complied, she said there has been a lot of talk about the shared driveway access and the letters coming from NOHOA. She wanted to reiterate a couple of the comments from their letters sent either earlier in 2019, when not everyone who is currently sitting on the Planning Commission was on the Commission, and she is not sure if those letters have been included in recent packets. She wanted to emphasize the shared driveway is not on the Conceptual Street & Access Plan. On May 9, 2019, a letter from NOHOA to the City stated, "East Oaks PDA establishes a consistent road plan in which all roads in the residential areas are non-connecting roads. None of the roads, including the road serving the Nord development, connect to other roads within North Oaks. The City Council approves and the North Oaks Company moves forward with a connecting road in the Nord area. NOHOA will not expand its boundaries to include the Nord area and will not accept any of the roads, trails,

recreational areas within the Nord development.” She stated that as far as she can tell, the City ordinances do not differentiate between a road and a driveway in that a road or street is defined as “a public or private thoroughfare easement, constructed according to the specifications of the City, which affords the principal means of access for vehicular traffic to adjoining land.” She said she did not see any further delineation between a driveway or a road, so it would be helpful to understand that if the Commission and City approve that shared driveway, if it is considered a road. According to NOHOA in their July 8, 2019 letter, “In Section 3 of the City Staff Memo, City Staff states that the street and access plan contained in the East Oaks agreement is conceptual in nature and, therefore, subject to change. NOHOA disagrees. Any changes to the street and access plan contained in the East Oaks agreement without notice or consent will result in the development not being accepted into NOHOA.” She said she specifically cited those two letters because she can echo the Commission’s statements earlier about some confusion existing about the nature of the April 2020 letters and the letter made public via the NOHOA eblast today. It is not clear that there is consensus among the NOHOA Board about how these issues will be handled. She requested of the City Council and Planning Commission that these be interpreted in as strict adherence perspective as possible, because they do not know if it will be accepted by NOHOA until after the decisions have been made. The letters in 2019 were incredibly clear and concise with the perspective of NOHOA and extending its boundaries. She commented that the Comp Plan includes trail-planning concepts that talk about the “connectedness experience” and designing trails for appropriate uses. The trail in Nord is a cross-country ski trail, so when people talk about the trail, she would really like to see discussed how well it conforms to the intention of how trails are planned through the Comp Plan, as well as how the Comp Plan identifies trails along or on roads. She indicated she would like to hear some clarification, if possible, when the PDA says that the developer is responsible, at its expense, for construction costs of all trails shown on the trail plan. It does not say it is limited to primary and restricted trails; rather, it seems to be inclusive of existing trails as well. In talking to people who negotiated that original agreement, it is clear that the reason that that was not excluded was because there were known issues with easements being properly transferred. She noted in Article 19.13(x), it says the existing trails means the trails previously conveyed to NOHOA by the developer or its predecessors prior to the execution of the agreement. It does not note that those are the only trail easements that were properly conveyed. It would be helpful to understand what is the remedy process at the City when all parties have agreed that a trail should have existed there and did not get transferred properly. Displaying a map, she stated she does not think there is a single resident in North Oaks who has suggested that the trail that goes through the V-284 parcel was the actual placement of the trail location. Rather, that is how it was depicted on the map everyone signed and agreed to saying that there was a trail in the area. NOHOA trail maps have shown that as a trail. She pointed out the green line which she said indicates the farm road/trail that everyone has used historically and said, when she moved into her house, it was marked by NOHOA as a trail. The function that this trail provides is continuous connectivity for the entire community, not only for an ideal ski trail, but year-round use. When looking at the proposed trail which is in black on the map, that connectivity is not there; there are obvious places where that is broken up. With the southern wetland boundary having been expanded over the years, everyone knows the southern route brings people really close to homes, which does not conform with the Comp Plan about how trails will be planned, and also is an uncomfortable experience for

everyone involved, as well as disrespectful to the natural topography which is, by all sources, supposed to be included in trail conception. She understands the blue line depicted on the map which was the existing trail could have been trying to depict those easements along the southern boundary. She would like to submit that it is just as reasonable that that was trying to depict the northern route which had been in existence and then it was confirmed as being the intention through things like the EAW in the original concept plans. She said unless a trail is brought forward with that Golden Gate section intact, her understanding is the community has said that is not an equivalent and does not seem to satisfy the requirements that all of the controlling documents put forward have indicated are acceptable criteria for a trail. She displayed several photos and noted that it is an incredibly wet area and high-value wetland. She noted it has also been said that this has been a concern for mostly the residents in the Nord area. She displayed a map which plots out all of the people who have indicated their support for the rejection of the plan based on the trail being a consideration. She hopes the Commission does not feel the residents are harping on this issue. If it were not for the wetland impacts, she could probably live with the southern route because she lives right next to the southern route. The problem exists for all of the homes on the east side and west side that are no longer connected by that historical, functional trail equivalent in the Nord area. She stated as much as she may be willing to deal with a bad trail, she does not know if she is willing to concede her neighborly love for everyone else indicated on the map. She referenced the WCA questions and noted the wetland impacts to the trail can be avoided in a way that it does not inappropriately harm existing homeowners and can create value for the new homeowners of the northern parcels in the Nord parcel. She reiterated all of her support for the rejection of the plan based on those additional parcels as well. She thanked the Commissioners for their time and commitment.

- Administrator Kress requested Ms. Skamser Lewis to send him her PowerPoint, which she agreed to do.
- Chair Azman noted there were no more hands up, nor was anyone in the Council Chambers.
- Administrator Kress stated there were several emails from residents, a lot of which were from the first public hearing. He indicated everything highlighted in yellow is regarding the Nord parcel. He stated Leanne Savereide had spoken earlier in addition to an email. There was an email from Kris Nielsen talking about the trail through the Nord parcel. Cheryl Blackford spoke earlier and went through her email. He noted there was an email talking about the trail, an email talking about the original public hearing setup, an email about the first public hearing when the City was starting to use virtual hearings, the video seen from Ms. Maher, a list of supporters which was shown by Ms. Skamser Lewis previously, another comment by Ms. Blackford, some earlier slideshow pictures, and an email regarding tree inventory. Administrator Kress asked for a motion to accept the emails.

MOTION by Yoshimura-Rank, seconded by Cremons, to close the public hearing at 10:55 p.m. Motion carried unanimously by roll call.

MOTION by Hara, seconded by Yoshimura-Rank, to add the applicable emails into the record. Motion carried unanimously by roll call.

- Chair Azman suggested, given that it was close to 11:00 p.m. and a special meeting was already set for June 9 which is a simple application on a CUP at 7:00 p.m., adjourning the matter until the June 9 special meeting. He asked for Attorney Nason's input.
- Attorney Nason stated the prior meeting and public hearing were both continued until tonight. The Planning Commission could continue the meeting to a set date, time, and location, and it would again be a special meeting. She offered to pull up language if the Planning Commission wanted to entertain that motion.
- Chair Azman asked the Commissioners what their feelings were.
- Commissioner Shah asked for a confirmation date of the City Council meeting.
- Chair Azman stated the City Council meeting is June 11.
- Commissioner Shah stated that it would still be within the 120-day rule.
- Chair Azman stated she was correct.
- Commissioner Cremons noted it would give Staff a chance to figure out the shared driveway issue and give the Planning Commission more clarification on that point. They could also take a look at the conditions relative to Nord such as the tree issue, etc., and brush those up to take advantage of the work that has already been done on Anderson and put the same concepts into the Nord conditions. He stated he would advocate the June 9 date.
- Commissioner Hauge said he agreed with Commissioner Cremons. He noted there are a lot of comments from the public on behalf of others, such as the lengthy presentation about the wetlands. He said he has a letter in the file that says VLAWMO has no issues and asked if it was true or not and that there needs to be an opinion about the issue when a decision is made. Furthermore, the Commission now has NOHOA Board's 6-2 vote on the trail, which he had just walked the day before, and there were a lot of comments about the trail that he did not see when he walked the trail. He suggested everyone walk the trail and make an opinion on their own before the next meeting, because he did not recognize all of the negative comments about the trail, noting that he totally agrees it is a compromise. He may have wanted another solution when the Commission started talking about it 15 months ago or so, but it is a compromise that, as far as he knows, has been agreed to by NOHOA and the Company, and some people have said it is not the case. He said the Commission has to find out, because the next time the Planning Commission discusses it, there has to be a decision.
- Commissioner Shah asked if someone on behalf of the NOHOA Board could speak if the meeting was continued to June 9.
- Chair Azman said he would love to have them come and speak. NOHOA felt that their letters expressed their position and that sufficed; however, he is happy to talk to Ms. Emmons and encourage her to speak to the Board and see if there is an opportunity for her or another

Board member to make an appearance and talk about the letters. He stated he encouraged and invited NOHOA to attend tonight's meeting, noting he was not criticizing NOHOA.

- Commissioner Shah encouraged the entire Planning Commission, if they had not done so, to go to the NOHOA website and watch the April NOHOA meeting and listen to what they discussed about Nord and watch them take the vote.
- Councilmember Kingston said he thinks the Planning Commission knows what the issues are. Speaking for himself, he would prefer the Planning Commission deal with it before it gets to the City Council. He thinks it is a good idea to extend it and make it part of the next special meeting. It will give the Commission enough time to sort out some of the issues and get some answers. That way it will make it a cleaner process when it comes to the Council.
- Commissioner Hara said when he walked the trail, there was a stake that said "center line of trail," and he measured it and it was 44 inches from a house retaining wall and seven feet from a deck of a house. If the trail is six feet wide, that would mean the edge of the trail would be four feet from someone's deck, which he did not find to be acceptable. If that was his house, he would not like that in the least. He asked Commissioner Hauge if he thought that was okay.
- Commissioner Hauge said when he went to the location, he saw there is a trail and a deck; and there is a distance from the deck to where the trail physically is, which is 15 feet or so.
- Commissioner Hara said it is 44 inches to the retaining wall and seven feet to the deck from the stake that said "center line of trail."
- Commissioner Hauge noted there is an existing trail, and that is a distance away from the deck. He understands there isn't any communication with the owner of the house and the subject deck, whether they like/dislike it. He asked Commissioner Hara to share any comments he heard from the house owner.
- Commissioner Hara said he had not heard any, but if someone can be on the trail and be within four feet of someone's deck, especially in the era of six-foot social distancing, it does not seem to be too good.
- Commissioner Hauge stated people are not within four feet of the deck when they walk on the trail. He suggested Commissioner Hara meet him the following day to walk it together.
- Commissioner Hara said there was a stake in the middle of the trail that said "center line of trail" and he has a picture of it.
- Commissioner Hauge stated the center line of the trail is probably something like four feet away from the deck but the trail is about 15 feet away from the deck.
- Chair Azman noted that would be another issue to iron out. He has walked it and knows what Commissioner Hara is talking about. There might be a difference between where people walk

on the trail and where the physical easement sits. He has seen the stakes out there and it's pretty close. He noted Administrator Kress was screensharing and possibly prompting a motion to adjourn to June 9 and suggested the motion include the 7:15 p.m. time frame.

MOTION by Shah to continue consideration of the Review of Nord Parcel - Subdivision Application to June 9, 2020, at 7:00 p.m. in the Community Room, 100 Village Center Drive, North Oaks, Minnesota, unless due to a health pandemic or an emergency declared under Chapter 12 it is not practical or prudent for an in-person meeting to occur, in which case the continued meeting shall occur by telephone or other electronic means.

SUBSTITUTE MOTION by Shah to continue consideration of the Review of Nord Parcel - Subdivision Application to June 9, 2020, at 7:15 p.m. in the Community Room, 100 Village Center Drive, North Oaks, Minnesota, unless due to a health pandemic or an emergency declared under Chapter 12 it is not practical or prudent for an in-person meeting to occur, in which case the continued meeting shall occur by telephone or other electronic means.

- Commissioner Yoshimura-Rank asked what would happen if another CUP came up.
- Chair Azman said there is not time to get it published such that the Planning Commission could hear it, so there would be nothing left to deal with on that date. Unless there was a serious emergency, he did not believe the Commission would hear anything else on that date.
- Commissioner Shah asked if it was prudent for the Commissioners to list some things they want Staff to look into, because between now and June 9, the Planning Commission/Staff needs to be productive and have answers so that on June 9 a decision can be made. She asked if it was worthwhile as a Commission to ask questions that need to be answered at this point.
- Administrator Kress suggested sending the questions to Staff and he can address those with the consultants if they haven't already in the Staff Memo.
- Commissioner Yoshimura-Rank asked if Administrator Kress meant sending questions to him.
- Administrator Kress indicated Commissioner Yoshimura-Rank was correct.
- Chair Azman asked if there were any other housekeeping or procedural matters the Commissioners would like to discuss before there was a second.

Seconded by Yoshimura-Rank. Substitute motion carried unanimously by roll call.

ADJOURN

The Planning Commission special meeting adjourned at 11:09 p.m.

Kevin Kress

Mark Azman

Kevin Kress, City Administrator

Mark Azman, Chair

Date approved____7/30/2020