

**North Oaks Planning Commission  
Special Meeting Minutes  
North Oaks City Council Chambers  
September 10, 2020**

**CALL TO ORDER**

Chair Azman called the meeting to order on September 10, 2020 at 5:00 p.m.

**ROLL CALL**

Planning Commissioners were present in the City Council Chambers or participated **by telephone or other electronic means** pursuant to Minn. Stat. § 13D.021. Residents can view the meeting on the cable access channel and through the website portal just like other public meetings.

Present: Chair Mark Azman, Commissioners Dave Cremons, Jim Hara, Stig Hauge, Nick Sandell, and Joyce Yoshimura-Rank.

Councilmembers present: Mayor Gregg Nelson, Councilmembers Rick Kingston, Marty Long, Kara Ries, and Sara Shah.

Staff Present: Administrator Kevin Kress, Attorney Bridget Nason

Others Present: Videographer Maureen Anderson, North Oaks Company President Mark Houge  
A quorum was declared present.

**PLEDGE OF ALLEGIANCE**

Chair Azman read the Pledge of Allegiance.

**DISCUSSION ITEM**

**a. Review, discussion, and potential action on revised Island Field Concept Plan Submittal from North Oaks Company (NOC)**

Mark Houge asked the Councilmembers and Commissioners if they've had a chance to look at the documents describing the project scope or if it would be helpful for him to explain it first.

Mayor Nelson said because people are watching who haven't seen the documents, it is a good idea to go over them for residents and the public.

Mr. Houge said he'd be happy to and shared his screen. He began with the aerial view of a portion of Eastern North Oaks and noted a parcel labeled D561, which is the location of the Island Field site. Also on the aerial view, is the shape of the building and proposed driveway coming in from Centerville Road. Looking to the North, there is a parcel labeled G561 which is the proposed development of Gate Hill and to the West is the proposed completion of the Red Forest Way area, referred to as Red Forest Way South and is a combination of parcels labeled s F629 and E561. For future reference there are trails marked in red (proposed trails) and green (existing trails), noting the NOC has had conversations with North Oaks Home Owners'

Association (NOHOA) and have asked for final approval on this layout simultaneously with the approval of application of the subdivision.

Mr. Houge went to the actual layout of the Island Fields site, and the concept plan was proposed in December 2019 noting it is a driveway coming into a building which would be future mixed-use which is essentially commercial. He noted the PDA provides the NOC to put commercial uses on several of the subject sites, Island Field being one of them. At the time it was presented, the NOC was uncertain how large the condominium would be, the proposal had a 46-unit condominium building with the idea that additional commercial uses would be placed on the North side of the site with access from a common roadway, and could be things like a daycare, dental office, professional buildings, etcetera. Instead, what the NOC is proposing tonight is a project that encompasses the entire site with a condominium development. He showed a more detailed drawing with a building in two phases, the first phase is proposed to be 37 units with a common area on the East end with the hopes that Phase 2 would include another 37 units, totaling 74 units, all sharing the same common area. He reported it would be the only usage for the site, rather than putting commercial on the property. He noted the advantages include a much more private area without inviting the public in to use the commercial space, as it would be restricted only to the residents of the condominium, and each unit would be owned by the residents. The structure would be a three-story building consistent with the architecture such as Waverly Gardens and similar types of buildings. Mr. Houge showed preliminary images of the building, which would have parking underneath with two cars per unit allowed, along with some overflow visitor parking outside. The building fully conforms to the City's ordinances, the architect's vision of the building is a combination of masonry and stucco and many amenities would be oriented to the conservation area to take advantage of the natural setting, including proposed fire pits and meeting space on the South side of the building face the conservation area.

Mr. Houge said he's happy to answer questions and that Attorney Nason would cover the interpretation of the PDA which allows them to increase the density by shifting housing units from other locations where they weren't used from 35 to 46. He noted Exhibit B 5.1 which was attached to the 7<sup>th</sup> Amendment clearly states that they can add 11 units in a density shift on Island Field and they would also like to take advantage of converting the commercial acres to housing and that Exhibit also illustrates there were 28 units anticipated to be available if that conversion were to take place. Again, it would total 74 housing units and would preclude any additional commercial development on the site, and Mr. Houge reiterated there would be one way in and out and it would have municipal sewer connected to White Bear Township and municipal water. Unlike some previous designs kicked around with City Staff, there is not a connection into the core from Centerville Road through this site; it would be strictly accessed from Centerville Road.

Mayor Nelson asked who the partners are in the project.

Mr. Houge explained Firm Ground is the architectural firm working with the developer HP Holdings and are partnering with the NOC to do the vertical development of the site, and have done several condominium projects throughout the Twin Cities, most recently Myers Place on Lake Street in downtown Wayzata, which is a very first-class building. They are working closely with HP Holdings, noting NOC's responsibility is to put the roads in and prepare the site;

then the site would be sold in two phases to HP Holdings and they would proceed in building the structure and selling the condominiums.

Commissioner Hauge asked Mr. Houge the timeline between Phase 1 and Phase 2.

Mr. Houge replied they will hopefully begin marketing the project within the next 30 days. The hope is they can do the Phase 2 building at the same time as Phase 1, but it will depend upon the market demand. To mitigate some of the risk, they will do it in two phases and most likely Phase 1 would be completed and within 12-24 months Phase 2 will be completed. If sales are brisk and there is a high demand (and they think there will be), they may just go ahead and do Phase 2 as part of the first work effort.

Commissioner Cremons asked concerning Phase 2, is NOC saying commercial will never occur on the site, even if Phase 2 is delayed for some period of time...are they committing that it's only going to be condos on the site.

Mr. Houge responded saying the agreement with the developer of the condominium is that they have up to two years to execute an option to build Phase 2. If that time passes and they don't proceed with Phase 2, the NOC will have to decide whether to extend that period or come back to the City with a proposal to develop it as commercial or another type of housing.

Councilmember Shah asked regarding market demand, obviously there is a shift in thinking from the high-level concept plan, and asked if there is additional data or evidence to show the demand for the condos.

Mr. Houge replied yes, one of the outcomes of COVID-19 is an effort to flee the urban areas, including Minneapolis and St. Paul, and NOC has engaged Jim Seabold, a part of Coldwell Banker who has probably done more in the Twin Cities in selling condominiums than any other firm in the area. Mr. Seabold has done extensive research on the market and has been working with both the developer and NOC to determine that a 74-unit building has very strong demand and they are trying to mitigate the risk by doing it in two phases.

Councilmember Kingston asked approximately how much each unit might sell for.

Mr. Houge said the units will probably start at \$500,000 and they will offer a variety of size ranges, with the smallest unit being 1,100 square feet up to 2,800 square feet. The price is a function of square footage and noted they could get even larger if someone wanted to exceed the 2,800. He thinks they will probably be in the 1,600-1,900 square foot range.

Commissioner Cremons asked regarding management of the condo, will there be a sub-association managing the site, and what is the proposal concerning controlling rentals and other things as the project evolves over time.

Mr. Houge replied there will be a sub-association and it will be dedicated to the building and owners; he said they haven't gotten into the detail on whether owners would be allowed to rent their units, although he thinks they would follow suit with the rest of North Oaks and follow that

policy. Each unit would be owned and it would be up to the owners and the City to determine what rental policy might be acceptable.

Commissioner Yoshimura-Rank asked about the remaining number of units to be developed, how the 74 units count.

Mr. Houge asked if she's referring to the total number of units as called out in the PDA.

Commissioner Yoshimura-Rank said that is correct.

Mr. Houge said the PDA is set up to allow for 645 housing units plus 21 acres of commercial, so they would take 46 of the 645 housing units and utilize them at this location, and add the 28 housing units when doing the conversion from commercial acres to housing. He noted it would stay within the requirement of the PDA not to exceed the maximums.

Commissioner Hauge said he is surprised to see there are only 16% three-bedroom units and asked about the thinking behind the mix of two- and three-bedrooms.

Mr. Houge said the short-answer is he'd have to defer to Jim Seabold regarding his market analysis as that is what the analysis is telling NOC. At this stage, they are very flexible and can change in terms of the number of bedroom units but this is currently their best estimate based on the market research.

Chair Azman asked what parts of the PDA the NOC is relying on to add 28 units to site H and how their calculations and interpretations led them to believe that authority exists within the PDA.

Mr. Houge said if he understands the questions, Chair Azman is asking how the PDA allows NOC to do this.

Chair Azman replied that is correct and he understands the conversion rate but he's more interested in understanding the NOC's position on being permitted under the PDA and if he could point the Council and Commission to the place in the PDA where they believe the authority exists to take the converted units and add them to the specific site, for example, H or Island Field.

Mr. Houge replied if they think about the way the PDA was structured, the only way it would work to accommodate the combination of housing units and commercial would be to have them as additive. In other words, there are 645 housing units plus 21 acres of commercial; the commercial use was never identified to be at any specific location, rather it was open to be at one of four different possible locations. Looking at the terms of how the PDA is structured, it talks about both the density shift and the addition of the commercial acres to be put on a site. In this case, they could've put 46 units of housing applying the density shift plus the remaining 5.73 acres of commercial. In NOC's view, they think the proposal to make it all residential at that location, rather than any commercial, is the better use. He noted adding commercial at this

location adds complications for NOHOA as well as the users of both of the buildings and they are very pleased that the developer feels it's a viable site for the 74 units.

Councilmember Shah said Mr. Houge mentioned NOHOA and she sees they are on the call tonight. She heard Mr. Houge say NOC has reviewed the trail system with NOHOA and asked if this is the first time NOHOA has seen this concept or if the company weighed in with them to get their take on it.

Mr. Houge responded NOHOA has seen the concept plan provided some months ago and he's not sure what the distribution is, but generally the company submits these plans to the City and simultaneously they go to NOHOA. He said it's a bit of a unique case in that they're having tonight's meeting before the formal submittal, but NOHOA is aware that it is proposed to be a condominium site, but he is not sure if they've seen the particular drawing on screen and he has not formally presented it to the NOHOA board.

Chair Azman said he understood tonight was to be a discussion on unit counts and an analysis of the PDA with Attorney Nason's help and Mr. Houge's participation. He does not understand exactly what language NOC is relying on so he can understand what allows them to bump up a specific site with a converted amount of units from commercial to residential.

Mr. Houge said he could try to walk through the information put in a letter to City Staff that discusses it, but he said he'd defer to Administrator Kress and Attorney Nason to answer that question.

Chair Azman said he read the letter but thinks it's important to hear what the Company is relying on so they can open up a dialogue about it.

Mr. Houge asked to clarify if Chair Azman read the letter dated August 19, 2020.

Chair Azman replied he did and he'd like to talk about the letter so everyone has a solid understanding of the language NOC is relying on to increase the amount of units at site H.

Mr. Houge said he's not sure how else to explain it besides what he said earlier, the table B5.1 of the 7<sup>th</sup> Amendment clearly shows NOC can shift density onto Island Field to get a total of 46 units, plus they can put 28 units if converting the commercial acres on one of several sites, including Island Field. When you add those together, it is 74 units and there are some very detailed references in the PDA but he's not sure he's prepared to go through each of those specifically, however, he thinks it's all covered in the memo from Attorney Nason.

Commissioner Hara said if the 28 units are on roughly 5¾ acres, they're getting 3 additional lots for the ¾ acres, but doesn't the 7<sup>th</sup> Amendment say "for each full acre" of commercial.

Mr. Houge acknowledged that is confusing, and if they look at that language versus what is in the Table, they do not align, so NOC is asking that it be interpreted as the table states, which is 28 units.

Councilmember Ries asked if the table Mr. Houge is referring to is the one that NOC developed.

Mr. Houge replied no, it is the table agreed to by the City and NOC in the 7<sup>th</sup> Amendment B5.1.

Chair Azman said looking at the 7<sup>th</sup> Amendment, Table 1 on page 11 it talks about conversion of permitted uses and it seems that NOC is talking about paragraph A where they calculate the conversion. He said it seems the language NOC is relying on is “the number of permitted dwelling units within the development sites will be increased at the rate of 5 dwelling units.” He asked if that is correct and that is the language NOC is relying on to add all of those units to one site, which is site H.

Mr. Houge put the table up on screen and said it is an exhibit of the 7<sup>th</sup> Amendment which they labored over earlier in the year, noting Attorney Nason gave her opinion that it is a valid agreement to apply to the 7<sup>th</sup> Amendment. He noted on site H, taking the 30% it gets them to 11 units and down below it says PDA conversion to dwelling units is 5 per acre equals 28. He stated if you take 5.73 times 5, the number is greater than 28, so they rounded down. He acknowledged it is confusing as in the same amendment it talks about 5 units per whole acre, but the exhibit on screen is how they’d prefer it be interpreted.

Councilmember Ries noted Section 8 states 5 dwelling units for each full acre of commercial development foregone. The language in the agreement is clear and when looking at the conversion of permitted use it states the limits of 645 dwelling units at the beginning of the amended language in the 7<sup>th</sup> Amendment and goes on to clarify that it can be 5 dwelling units for each full acre. She said it’s quite clear in the 7<sup>th</sup> Amendment that it needs to be a full acre when converting.

Commissioner Hauge said this is an area they need City Council clarification on the interpretation of it.

Chair Azman said the next step would be to hear from Attorney Nason and then ultimately the Council makes the call as there must be an agreement with the developer and the applicant. To backtrack a bit regarding each full acre, he and Councilmember Ries have talked about it in the past and he now wonders if it means if there is a full acre you get 5 units, it doesn’t necessarily state that they wouldn’t get a fractional if there’s a fractional acreage applied. He thinks having some guidance from the Council on that would also be helpful. It says full acre, but it doesn’t say fractional acres are not to be counted. He asked to hear from Attorney Nason at this time.

Attorney Nason apologized that the memo she put together got to them this afternoon as she was out of the office on vacation over the long weekend and it was pulled together a bit quickly, but she thought it was important to get some information in front of both the City Council and Planning Commission. She noted it’s not to make any final conclusions or determinations, but more of a list of some issues spotted in conversations between Staff and NOC and to get it on everyone’s radar in anticipation of a preliminary plan submission related to this site. In talking about site H, the Island Field site, the revised concept plan before them this evening shows that 74-unit condominium development as proposed for the site. In looking through the PDA to ascertain what type of development and how many dwelling units would be allowed on the site, a

few issues have arisen. She said the biggest question is how the calculation is done with respect to density bonuses; in Appendix 1 of the PDA as well as B1, which is C1, it shows 35 planned dwelling units allocated to this particular site and there is a 30% density bonus which would get to 45.5 units. The PDA is silent as to how they'd deal with fractional units; for example, there are density bonuses allowed on a number of different sites and there is nothing that says whether to round up or round down. The second area of issue is when they add the density bonus in and as seen in the NOC's correspondence, the calculation they're proposing is to have the density bonus applied which gets to the 46 units and then to add on the conversion units which would be 28 residential units. She noted that is the interpretation NOC is proposing that would lead to the result being a 74-unit, 2-Phase condo development on site H. She copied and pasted some information from the PDA that deals with the maximum density of each of the development sites and information from Appendix 1 and Table 1 regarding how dwelling units are adjusted with respect to the density of bonus question. The real issue is whether or not the PDA permits or contemplates or requires...when there is this conversion, does it allow them to add dwelling units above and beyond what would be allowed under Table 1 development sites plus any applicable density bonus, or does it instead imply they could take the additional density converted from commercial units and distribute them across the development sites up to the dwelling unit number plus any applicable density unit bonus. She said there is language in the PDA that states "permitted density increase percentages shall be applied before any permitted conversion or transfer of units."

Attorney Nason said it's a little unclear at first reading what that means but ultimately the Council will need to determine whether or not the language of the PDA as currently written would permit the proposed construction of the 74 dwelling units on site H. Additional issue-spotting (of which they've already had conversations) is 1) how to handle fractional units as there is nothing in the contract regarding how fractional units are handled; and 2) the commercial acreage calculation issue that has been raised, which is trying to determine what the language of the PDA means when it reference the 5 dwelling units for each full acre of commercial development foregone. Whether it means NOC would essentially lose or forfeit any fractional commercial acre that is not developed, or it means they would apply 5 times whatever the acreage is or something else. She noted the references in Exhibit B5.1, Appendix 1 and the Comprehensive Plan language that contemplate an additional 28 residential units if that commercial acreage was foregone. Attorney Nason said it leads to potential paths for development as proposed on the Island Field site, noting she is providing an overview and issue-spotting and no opinion is being expressed regarding any of the issues. The first issue is how this development could potentially occur on the site as proposed. For example, they could have a 2-tract development and on one of the tracts (RLS subdivision process), they would have 46 unit condo building and on the adjacent tract there would be something called commercial development that could not exceed 5.73 acres; if that commercial development were treated like site E3 as commercial acreage and not counting toward dwelling units, the condo building located on that tract could be established and in theory that would keep the site within the parameters of the PDA regarding dwelling units. Secondly, there is an interpretation piece and Attorney Nason has identified three different areas where the Council would need to interpret the PDA in order to permit the development as proposed. First they would need a determination related to the fractional dwelling units, second the Council would need to concur that in fact there are 28 additional dwelling units that are allowed for the commercial conversion and third,

there would need to be an acceptance of the interpretation positive by NOC with respect to the maximum site density, which would permit the additional of the full commercial conversion on top of the dwelling unit allocation number plus density bonus to get to the 74 number. The third path forward would be an amendment to the PDA, as they've already identified there are conflicting provisions located within the PDA. There isn't language within the PDA itself that tells how to respond to ambiguities or conflicts except where different documents would conflict. For example, under PDA controls it will tell if there is a conflict between the final plan, preliminary plans, the PUD, etcetera, and which of those documents trumps. However, in this case the conflicting language is within the same document so there's not an ability to have one document trump another. An 8<sup>th</sup> Amendment could be compared that would address the ambiguities and conflicting provisions and could specifically amend the PDA to permit the development as proposed with 74 dwelling units and no commercial development. She stated those are the three ways forward if the Council and Commission are looking for, and again this meeting is as she understands it, an opportunity for the developer to provide that revised concept plan and answer any questions and receive feedback regarding the proposed amended concept plan from both City Council and Planning Commission. Attorney Nason opened the floor for questions.

Councilmember Ries noted she hadn't previously seen Attorney Nason's memo and asked if Ms. Nason could cite where in the PDA the 645 absolute maximum is allowed to be exceeded, under which conditions and through conversion you are allowed to exceed the 645.

Attorney Nason said she would initially turn to page 11 of Appendix 1 (the back of Table 1) and stated there is language that says conversion of permitted uses "the limit of 645 dwelling units and 21 commercial use acres may be varied as follows," followed by a conversion calculation for the commercial acreage which says, "should the developer elect to forgo development of some or all of the 21 commercial acres, the number of permitted dwelling units within the development site will be increased at the rate of 5 dwelling units for each full acre of commercial development foregone." Attorney Nason noted there is a reverse calculation stating should the developer elect not to develop all of the dwelling units, they could conversely gain additional commercial acreage and it is a rate of 1 acre of commercial use for each 5 dwelling units foregone.

Councilmember Ries asked if that would also be considered conflicting language because where it talks about the conversion it says the 645 is not to be exceeded, or does Attorney Nason consider that consistent with the other language in the PDA. She noted the 7<sup>th</sup> Amendment only amends the portion of the PDA related to Waverly.

Attorney Nason said she'd have to check but her understanding is the 645 number is found all within Appendix 1 and related documents, as well as Exhibits B1 and B5. For example, looking at the original PDA, when it references the dwelling units, it references Exhibit B, which is the math showing the different development sites with the "maximum" dwelling units per site and that was Amended as part of the 7<sup>th</sup> Amendment where site E was broken into three sites, but was restated again for Island Field is 35 units. As she reads the PDA it does permit 645 dwelling units but would allow in excess of those if there was a commercial conversion, commercial acreage foregone and converted into residential dwelling units and vice versa. In theory, it's possible the developer could come back and say they want to flip the equation and forego certain



dwelling units and instead seek to treat the site as commercial acreage, although that hasn't been discussed in any capacity, however it is a two-way conversion street.

Mayor Nelson asked Attorney Nason if that would be consistent with a plan intended to exist for 30 years to allow some flexibility in the plan, 645 acres more or less depending on where they find themselves 20 years out.

Attorney Nason said at the time this document was drafted back in 1999, it wasn't sure exactly how the development would occur; therefore, some flexibility was built in so the developer could choose to focus more on the residential or commercial side of development. That is her understanding of why the conversion rates are found, and again, the conversion rates for those units date back to the 1999 PDA, noting an Appendix 1 to the original PDA, which includes a conversion of permitted uses calculation and has the exact same language in the 1999 agreement and has been carried through the 7<sup>th</sup> Amendment.

Chair Azman saw that Attorney Nason quoted Section 2.3 of the PDA regarding density and that seems to refer the reader to the Exhibits more or less and Table 1. He noted that language hasn't changed throughout the various amendments as far as he can tell, however the particular Exhibits have been modified and really the devil is in the details, the Council and Commission must look at the Exhibits and asked if that seems fair.

Attorney Nason replied that is correct, the language regarding density found in Section 2.3 of the PDA in and of itself was not amended, however as Chair Azman mentioned, it references a number of different defined terms which she has included in the endnotes, such as "future land use plan," and "development guidelines," and noted those are all documents that have evolved over the 20+ years that the PDA has been in existence.

Chair Azman said he doesn't want to monopolize, but following up on that, if he looks at Exhibit 7, on the last page is a table with densities listed, including site H, it shows 30% equals 11, which when added to the 35 would give 46 units. His question is, have the parties as of 2010 when this was executed, already determined how the fractional share would be managed. In other words, he asked if this is binding on the City and if they even have a choice at this point, unless the NOC wants to revise it down one as they're not dealing with fractional shares. Is the inclusion of this number in that table confirming that the parties agreed that it is 46 and is there some ambiguity there.

Attorney Nason responded saying there is conflicting language within the PDA and there is a strong argument to be made that when there are repeated references to the number of dwelling units, for example the conversion equals 28 units and the reference to permitted density increasing equals 11 units, to Attorney Nason, the 11 units has to do with the fractional piece, the density conversion tends to differ but seems to appear that it was contemplated some credit for a fractional unit and she referenced the Comprehensive Plan which reiterates the language saying it's anticipated that a commercial development won't occur and instead it will be converted to dwelling units and then would be looking at an additional 28 dwelling units. It appears the City has understood that there would be credit for fractional acreage, unfortunately there is conflicting language within the document itself.

Councilmember Ries said she's looking at Section 2.3 and she still doesn't see how it specifically states, in order to have some type of change or amendment to the original agreement, it would have to be expressed in the amendments and she doesn't see that language saying they can exceed the 645. In the past, she's had conversations with the people who drafted the document in 1997 and 1998 and from her understanding, 645 was meant to be the overall density, as it says in Section 2.3. She said all the conversions throughout the document where it talks about giving the developer the flexibility to shift densities in other areas, conversion when the zoning works out, but it never ever says they can exceed 645, so she still doesn't see where it grants the ability to go over that number.

Mayor Nelson said that was already addressed by Attorney Nason, noting Councilmember Ries may not see it in the document, but Attorney Nason has already said it is in there. He asked not to circle back to keep saying the same thing. He said regarding those who drafted the agreement in 1998, what matters is the actual agreement rather than the intention of the parties. He noted they're trying to figure this out and the ambiguity is very modest, it amounts to a couple of units and the fact that Councilmember Ries wants to go back and ask about 645 units has already been addressed.

Councilmember Ries noted she's heard Attorney Nason say multiple times there are ambiguities.

Mayor Nelson clarified the ambiguities are relative to the conversion ratio on the fractional ratio issue.

Regarding the fractional issue, Councilmember Ries said the fractional ambiguity, she doesn't see an ambiguity in that the actual document itself – and she noted this meeting is about how to interpret the agreement –

Mayor Nelson said no, it's not.

Councilmember Ries said in the actual document or contract, the language is very clear and says full acreage and that is what was intended. As Ms. Nason has brought up, in other parts of the agreement when they intended to do fractional or different type of counting, they added that language in. When this contract was originally drafted, they took particular care and consideration at looking at when things like that would be allowed. The fact that they used the clear and unambiguous term “full” it seems that in this case where they're allowing a change in the development to occur or commercial units versus actual population density increase, it is clear that they put the term “full” in how they wanted it to be counted. She doesn't see the ambiguity in that, but she's asking Attorney Nason for a specific area in the contract or any amendment where it says “to exceed the 645” or something similar where it's clear and unambiguous that the 645 could be exceeded.

Mayor Nelson asked Attorney Nason to address it one more time for Councilmember Ries.

Attorney Nason responded saying the 645 number comes from Exhibit B1, the Appendix, and the Table. The specific language she is referring to is found on the last page of Appendix 1 which references the limits of 645 dwelling units and commercial use acres, it says may be

varied as follows and then there are the two different conversion factors. Attorney Nason reads that as saying that there are 645 dwelling units, that's the limit, but that limit may be varied either up or down, based on whether or not there is additional commercial development or alternatively if the commercial development is foregone, it would allow an increase in the number of permitted dwelling units above and beyond the 645 that is shown on the various exhibits, the map and in the table.

Chair Azman asked Attorney Nason if theoretically 645 is the limit and if NOC wants to convert their remaining 5¾-ish acres, they've now given up their commercial acres. His concern from a fairness standpoint is what happens to those residential units that have been converted if they don't get to utilize them somehow. He said there is language that allows the conversion and asked where do they go and is the City somehow liable or exposed if the City just takes that away from the developer without some compensation or compromise in the arrangement. He noted it concerns him that it doesn't just "poof" go away, the units have to be dealt with in some manner, and if the City just says "well, its 645, it's done, if you don't want your commercial acres, that's your problem."

Attorney Nason said she reads the contract as allowing conversion from dwelling units-to-commercial or commercial-to-dwelling units, and that can be added one on top of the other. For example, they are not in this situation, but say there had been no commercial development and there were still sites with commercial development available...if the developer chose and had extra dwelling units they had not built, they would be allowed to (as Attorney Nason reads it) increase the total number of commercial acreage from the 21 allowed under the PDA and vice versa. In this particular case, it does indicate that they may vary the limit of 645 dwelling units; the word vary means change or alter. The contemplated change or altering would be to have additional dwelling units available across different development sites. As noted previously, that's not to say it necessarily allows them to add those dwelling units pursuant to that conversion on top of any particular development site when dealing with density maximums. It's just to say in the context of the PDA it appears to contemplate that should the developer choose to forgo commercial acreage, they would be able to convert those to residential dwelling units which would be allowed beyond the 645 maximum established within the confines of the PDA.

Councilmember Ries said Attorney Nason brings up an interesting point in using the word "vary," because it seems like a lot of importance is being place on that term. When she reads the PDA where it specifically discusses how to vary in the contract, it talks about every area of the phase development and target densities, it talks about possibly increasing those target densities up to an X% amount, and it talks about a conversion, so there are explicit areas where it discusses how things can be varied throughout the entire agreement, noting it does that in the original 1998 version and to some degree in the 7<sup>th</sup> Amendment, but the term "vary" is interesting because it's actually defined or discussed throughout the agreement. She thinks what is trying to be done now is to discuss the term "vary" in a way that is out of context from where it has been discussed and clarified in the agreement and that is to exceed the 645. Again, Councilmember Ries said she looked at Section 2.3 and she knows Mayor Nelson may get all over this, but she still doesn't see where it expressly says exceeding the density or varying density maximums. As a matter of fact, Councilmember Ries thinks the PDA from the 1998 version in a number of places reiterates the fact that the density must be maintained at this level,

as that was discussed at the time with the community, the residents, and to some degree, perhaps, with NOHOA. She thinks it may be a nice time to get NOHOA's perspective on the condominium building as they play a major role in this as well.

Mayor Nelson asked Attorney Nason regarding her recommendations on page 4 that the fractional issue could be addressed. He noted it talks about two tract development, PDA interpretation and PDA amendment and asked Attorney Nason what the proper path would be on that.

Attorney Nason replied at this point, everyone is having their first look at it and first review of the issues, and the same goes for the NOC – they may have a different interpretation than what has been put before the Councilmember and Commissioners. She'd like to have an opportunity for some digestion and also some feedback from NOC and their legal counsel (if there is any), before going too far down the path of what the City should do. She said there are different approaches and she doesn't know if the developer is going to come back and seek path one, which is to treat it as commercial or conversely look to convert residential to commercial and move forward that way, or if they will proceed with their proposed revised concept plan as submitted, but certainly an amendment to the PDA would avoid the need for this interpretation piece and would provide an opportunity for all parties to agree in writing as to these particular issues. Attorney Nason said that appears to be the recommended route to address these concerns at this time. Having said that, Attorney Nason noted this is all moving a bit quickly and she'd like a little more time and an opportunity for NOC to provide some feedback before making a final recommendation to the Council and Planning Commission regarding how best to address these issues.

Mayor Nelson said that is fine and he appreciates that. He agrees on amendment and that they would not take that lightly so he asked to hear more from NOC when they have a position. He asked Administrator Kress if NOHOA representatives wanted to speak.

Administrator Kress said there are two NOHOA representatives at the table and turned it over to them.

NOHOA President Katherine Emmons said as they're all seeing this at a very early stage, the NOHOA Board has definitely not had a chance to review or discuss any of it but they look forward to that opportunity as part of any piece of the process going forward. She very much appreciates being at the table here and listening to all of the information from NOC and the City Council and Planning Commission. She looks forward to review, discussion, and looking it over as a Board before they comment.

Commissioner Cremons asked a process question, noting some of them have read the PDA and amendments and the extent that they have viewpoints on some of the issues they would like to share with Attorney Nason, what is the most efficient way for them to have her consider some of the points. He thinks as he's read it, some of the things they're talking about are resolved in the document, and he'd like to at least have that in front of Attorney Nason as she's doing her analysis.

Administrator Kress said the easiest way is to send him the comments.

Chair Azman said he thinks it's a good idea, however, they are here and he doesn't know what NOC's plans are – they could submit this tomorrow, and then they'd have two weeks to move forward. His concern is that it is time to get some of these comments out on the table as they are all here and he'd like to hear those comments. He anticipates the Company will be moving forward.

Mayor Nelson said he's all for that and it is fine. He said any comments that City Councilmembers or Planning Commission wish to make to Attorney Nason should send an email to Administrator Kress and then he will transmit it to the appropriate Staff member.

Mr. Houge asked to speak to some of the questions raised. He said the City Attorney referred to some unknowns in terms of what the Company would like to do. He can say tonight that their plan is to submit this application as seen with the 74 units, they would prefer that the site be developed in that matter versus going back and trying to introduce commercial elements to the site. They are pretty bullish on the number of units, thinking that 74 is a realistic number that the market is asking for and he reminded everyone it will be primarily made up of current residents of North Oaks looking for a housing alternative when they sell their homes which are currently in North Oaks. The Company plans to move forward with this concept, they have all drawings prepared and ready to go, and the other thing he'd like to submit is that there are ways of interpreting this as outlined in Attorney Nason's memo which could exceed the 74 units and it depends on how they do the math and they are not asking for that, as they think that would be unrealistic. However, if the City wanted to debate how to interpret the document, they could make an argument that NOC could have 82 units versus 74 units, but again, the Company is not really interested in going there.

Mr. Houge pointed out as questions have been raised about how to interpret the PDA, as most of the Council and Commissioners know, NOC has been having that discussion for going on 12 months, the City has employed their Attorney to give an opinion on what these documents say, the Company has paid for a lot of that work, as well as the City. He thinks it's doing a disservice to the community to revisit information that has been thoroughly vetted with professional opinions of the City Attorney. He hopes the Planning Commission and City Council would honor the work of its City Attorney and take it seriously, and it is a very serious matter when it comes to the Company and in fairness, they abide by the City Attorney's reasoning and interpretation of the documents but they cannot abide by a constant revisiting of the same issue.

Mr. Houge said one thing they haven't talked about is the advantages of developing this site in this manner. By going with a three-story building, this is probably the lowest density type of development envisioned on the site in terms of preserving green space. The height limits to the building conforms to the City's ordinances, which preserves a tremendous amount of green space, and precludes the possibility of people coming into North Oaks of people who are not welcome or invited by virtue of excluding the commercial development. He stated there is no burden on the community relative to the people using this site, they do not have access to the internal roads unless they choose to visit someone else who lives in North Oaks and/or use the facilities, but there is no connecting road into the Western portions of North Oaks. There is a

significant increase in taxes made available to the City and to the extent it's 46, 70, or 74, those taxes have some value to the members of the community to help defer expenses, as well as to NOHOA. He thinks there are many benefits to this design and he'd like that to be considered in their discussion.

Mayor Nelson thanked Mr. Houge and noted earlier Administrator Kress noted how anticipating this development rolling out as permitted by the PDA and as planned, would substantially affect the budget and tax requirements in the City.

Councilmember Long said the Company just raised a point of interest and he said he's not interested in fighting about half-units or going back and revisiting what someone wanted to do 30 years ago. His question is what is more beneficial for the City: is it to have commercial units or housing units. He knows from a privacy issue, he would prefer housing because the commercial brings in the public and he would assume NOHOA would also be happier to have housing units with NOHOA dues than commercial properties. He'd like Staff to look into the maintenance cost of single-family homes versus commercial units with fire, police, and schools. What is better for the City from a cost standpoint? In today's world it appears they don't need as much retail or commercial property as they used to, so he's all for the housing. He asked Administrator Kress to speak to what the City tax/cost benefit would be.

Commissioner Hara said small shop retail in the current environment is not very viable, whereas the plan with housing is a far more leasable and developable property to be successful. Looking at that location, he'd say it's a B or C location at best for a retail setting, the road costs to plow and all that would be similar and you may have the issue of one tenant in there and they don't succeed, then there's an empty retail space. He thinks the commercial direction is not favorable.

Administrator Kress said that was pretty well stated, and generally the commercial holds more value than residential does but it's more volatile, so he agrees with what Commissioner Hara said.

Mr. Houge said along those lines, he just did some quick math and if they take 74 units of condominiums at an average price of \$500,000 that would be \$37,000,000 worth of property value added to the site, whereas if they assume they develop 50,000 square feet of commercial on the site, that would equate to \$9,000,000 of property value, which is the basis for calculating property taxes.

Councilmember Ries asked Administrator Kress to speak about the timing of everything, noting Mr. Houge talked about 15 days but it hasn't actually been submitted yet as plans, as it sounds like there are some ambiguities they need to look at, that NOHOA needs to review and there are issues as she hasn't seen the Attorney's memo yet.

Administrator Kress said they cannot control when the developer delivers applications but if they were to submit today, they would count 15 business days for completeness that the Planning Commission would have to act on. That would put them at October 1, 2020 (if submitted today).

Councilmember Ries asked if that is just to start the review process.

Administrator Kress answered that is correct. Staff would conduct a 15-day review and concur with Chair Azman on when they want to take a look at it.

Councilmember Ries said it would be 15 days to accept the application as complete or not complete and then another 60 days from that point, plus getting the community's input regarding the plans, as well.

Administrator Kress said if it was determined complete, that is when the 60-day clock would start and they'd work through the process of public hearings, that could be one or several, it's up to the Planning Commission. He said usually it's one and if there are additional comments, they will extend it out. If there is additional information required, that is when they have the option to extend it another 60 days, and there are specific statutes that speak to that.

Commissioner Yoshimura-Rank asked if Gate Hill and Red Forest Way come on the heels of Island Field and what is the timing with all three subdivisions.

Administrator Kress said he can't speak too much to Gate Hill or Red Forest Way as they're not part of tonight's agenda, but given that they were submitted on the 3<sup>rd</sup>, they would have to act on those by September 25<sup>th</sup> for completeness.

Commissioner Yoshimura-Rank clarified they would be acting on those first before Island Field.

Administrator Kress answered that is correct, as those applications were submitted first.

Commissioner Yoshimura-Rank asked what the height of the condominium buildings will be.

Mr. Houge said he doesn't have the exact number handy, but it's in the range of 35 feet plus or minus.

Commissioner Yoshimura-Rank asked if when they're talking about 74 units, does 74 get subtracted from the 645 or if there is a different conversion.

Mr. Houge answered from the Company's point of view, they would take 46 units out of the 645 and in addition there would be 28 units that were converted commercial acres.

Administrator Kress said he's interested to see what the opinions are regarding a mix of commercial and residential versus the current residential proposal and asked everyone's take on that.

Councilmember Kingston said he can't imagine they'd want to have any commercial in there, based on the information provided. He said from security aspects, the likelihood of commercial event surviving or thriving in that location, it seems like the housing approach just makes more sense.

Commissioner Hauge agreed that Councilmember Kingston summarized that pretty clearly, this is an area suited for residential and not suited for commercial.

Commissioner Sandell asked how the process works, noting Mr. Houge said there would be a two-year process with the builder and the idea is that Phase 1 and Phase 2 would be simultaneous, however if for some reason there wasn't the demand, Phase 2 could get pushed out for another two years. He said to kick the can down the road a bit and say there isn't as much demand for residential in the future, what would be the protocol for the Company to come back and reconvert to commercial property, is that on the table and does that follow the same process they're following now.

Administrator Kress said he understands from Mr. Houge that it would be one submittal including both phases, so they'd be tied to the 74-unit complex. If things change during the final approval, they'd have to withdraw the application and submit new for two different phases. The other option they'd have it to submit for Phase 1 in one development application and hold off for the remaining two years while they plan to do the additional units, which would be a separate application.

Commissioner Sandell asked if the Company initially submitted with the two phases and built Phase 1, they could do a modification to it to change it.

Administrator Kress clarified if they modify the site, they'd need to reapply because it wouldn't be consistent with the development application. He noted if NOC submitted right now in two phases for 74 units, that is what they'd be allowed to do if authorized by the City Council.

Mayor Nelson said they would not be authorized to do anything else.

Administrator Kress said that is correct, any substantial modification would require a new submission.

Commissioner Yoshimura-Rank asked if the Met Council plays into this at all, because they look at the City's use of transportation and sanitation. She asked if there is a fine point at which they put in too many sewer units.

Mayor Nelson and Administrator Kress said no, they'll be in the same spot 30 years from now if septic systems start to fail and they start to put in new sewer systems, they'd be governed by the existing ordinances at the time rather than the PUD and the PDA.

Mayor Nelson said there were some concerns about the PDA that were raised and asked if anyone had specific questions for Attorney Nason right now or if they'd prefer to send a question to Administrator Kress.

Commissioner Cremons said he'd like to look at the memo first. He said what they're really trying to do here is come up with the beset development plan for this site and there is an issue with a contract from 21 years ago versus trying to make sure this site gets maximized in terms of its utility and benefit for the City. He will send his comments to administrator Kress, but he does



think there is an issue in not getting to lost in the weeds as they look at the project as a whole as opposed to every little sub paragraph of the PDA.

Councilmember Kingston followed up and said the only objection he's heard so far centers around interpretation of the PDA and the numbers as opposed to some inherent reason they need to deny it. He understood Attorney Nason pointed out that there is flexibility to exceed the original 645 number, and secondly as far as the conversion it can be interpreted as 28 development units or not, because it's an ambiguity. From what he understands, all they have to do is come up with an amendment that would essentially take away that ambiguity to allow this to take place in the sense of fairness. To go back to what Commissioner Cremons said, they should be looking at what's best for the community. Is there an inherent reason to deny the Company this opportunity as opposed to what it does for the community, of which everything he's heard so far sounds pretty positive. He said he is struck at the way they're approaching this. He agreed with Commissioner Cremons they shouldn't get stuck in the weeds.

Administrator Kress said he was playing around with the tax levy a bit and if they were to add in the additional \$37,000,000 the tax capacity would increase almost a hundred percent.

Councilmember Shah said she'd like to piggy-back on what Commissioner Cremons and Councilmember Kingston said, the crux of the issue here is what is best for the City in the future, and she continually thinks about the aging population and condos are a housing need they do not have and looking to boost it from 46 to 74. She's made some phone calls and there is a lot of interest in this type of housing, and ultimately, they have to solve the problem of what is best for the City.

Councilmember Long asked Administrator Kress to repeat the tax number.

Mayor Nelson asked what it means that the tax would increase by almost a hundred percent.

Administrator Kress said tax capacity goes up almost a hundred percent.

Councilmember Long asked if his taxes would double or something.

Administrator Kress replied his taxes would essentially go down because they'd have almost 100- times the tax capacity that they have now. For example, if the levy was the same, they'd have a very low tax rate.

Councilmember Long said that sounds like a good thing.

Councilmember Ries asked if they have any data about condo values and maintaining condo values, as they're talking about what they need in their community today, and is there any market value to support values and long-term maintenance of condos for NOHOA and the City. She would like that to play into the consideration as well. She also mentioned that many members of the community were around in 1998 and were part of the discussion back then and the agreement. As the community develops, it was discussed with the community back then and the terms of the agreement, it is a binding agreement and they need to respect that legally, and

maintain and respect what the people did in 1998 going forward. They need to look at their future and where they agree now as a community and the needs today but also have to maintain the respect from 1998 as they are legally bound to that. Going forward in doing what is best for the community, she doesn't want it to be money driven, tax money coming in, it must really be a 40-year outlook on maintaining home values and stability for the community. She said including NOHOA in that discussion as there will be a lot of long-term maintenance so she wants this to be a full discussion and considering all numbers, not just tax income.

Mayor Nelson said he thinks that's what everybody just said and thanked Councilmember Ries.

Councilmember Long said again, they want to get the community involved and asked if they'd move on anything tonight.

Mayor Nelson said there are no motions for the meeting as it's a preliminary meeting.

Administrator Kress said they were looking for perspective from both the City Council and Planning Commission.

Chair Azman said as they move forward, there is some multi-family housing on Ski Hill as well as the West side on Wildflower and it would be interesting to see how those values have been sustainable. He said he thought in the West side those were built in the 1970's.

Administrator Kress asked Mr. Houge if there is any market research on that.

Mr. Houge answered yes, he is sure there is and would consult with the real estate firm marketing the condos to confirm. His understanding is that condominiums in a location like this, because of the scarcity of product available and the quality of construction proposed, would hold their value equally if not better to a single-family home. Part of what determines future value is competition and there is no opportunity for anyone to put competing condominium product in North Oaks, as this would be the one and only. It is in a price point that is more amenable to a large percentage of buyers, given that they're generally under a million dollars, although some could be larger and more expensive but that would be up to the individual homeowner. He said he could get data to back that up, but his understanding of the condo market at this location is that they would hold their value very strong.

Mayor Nelson asked if Mr. Houge would be prepared to talk about construction quality at the Planning Commission level.

Mr. Houge responded he would be happy to go into more detail and would ask that the development partner join him to elaborate on that and answer any questions.

Commissioner Cremons said he understands NOC owns some property across Centerville Road.

Mr. Houge answered yes, they do.

Commissioner Cremons said they just talked about protecting the market for these condos by maintaining their uniqueness. He asked how they avoid an issue with competitive condos being constructed across the road on NOC's property.

Mr. Houge said NOC owns that property which is zoned industrial, so White Bear Township has guided that property in their Comp Plan to be used for industrial development, similar to what you see Heraeus Medical did. As property owner, they would like nothing better than to see another corporate user like Heraeus to come in there and build a corporate-owned facility. The building is positioned about as far west as possible on the site, which gives a lot of geographic separation to Centerville Road and adjoining properties, as well as trees planted along the road as a buffer. White Bear Township would be in control of that.

Commissioner Hara asked Administrator Kress if his math is that the \$37,000,000 add to the property values in North Oaks would double what the current property values cumulatively of all houses and retail is in North Oaks.

Administrator Kress said essentially the tax capacity would go up based on the value of the structure, so if they take into consideration another \$37,000,000 of additional tax revenue, the tax capacity would go up by the same amount. Right now, the tax capacity is right around \$16,000,000 so it would go up to \$53,457,000. He said right now the tax rate is based on the \$16,000,000 tax capacity so if they used the same levy of \$1.9 million or \$2 million or so, the tax rate would go down to essentially zero or a negative tax rate. He noted Staff could show that to the Planning Commission to help understand it.

Commissioner Hara said he'd like to see the math on that as he knows what he pays in taxes and what his home is valued at and it's not making sense to him, but they could talk about that at another time.

Administrator Kress said basically what would happen is there'd be more value within the City, so everyone's taxes would go down because there would be more shares across the City. He said the same thing happens when you add new housing, commercial units, or industrial units, the tax capacity and market value increases.

Commissioner Hara said he gets that but he's just questioning that it's double what they currently have in the community for a tax base.

Mayor Nelson said he doesn't understand that yet either and he'd be interested to hear more. He asked if there was any other discussion. Hearing none, he asked if there is a joint motion to adjourn.

### **ADJORNMENT**

Chair Azman said that concludes the agenda for the evening and asked for a motion to adjourn.

**MOTION by Hauge, seconded by Yoshimura-Rank to adjourn the Special Planning Commission Meeting at 6:34 p.m. Motion carried unanimously by roll call.**

Kevin Kress  
Kevin Kress, City Administrator  
Date approved 10/30/2020

Mark Azman  
Mark Azman, Chair