

**North Oaks Planning Commission  
Special Meeting Minutes  
City of North Oaks Community Meeting Room  
June 9, 2020**

**CALL TO ORDER**

Chair Azman called the meeting of June 9, 2020, to order at 7:56 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, and Engineer Larina DeWalt.

Others Present: Videographer Maureen Anderson.

A quorum was declared present.

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF AGENDA**

**MOTION by Hauge, seconded by Yoshimura-Rank, to approve the agenda as submitted. Motion carried unanimously by roll call.**

**CITIZEN COMMENTS**

Chair Azman opened the meeting for Citizen Comments, noting that there was a new policy in place recently passed by the City Council where individuals may speak on any topic except items on the agenda. After seeing no one present in the Council room and no hands up on Zoom, he closed Citizen Comments.

**BUSINESS ACTION ITEMS**

**a. Consideration of Nord Preliminary Plan/Plat/Subdivision Application - Continuation from the May 28, 2020 Meeting**

- Chair Azman reminded everyone the public hearing on the Nord application is concluded; there is no more opportunity for public comment. It is now the Commission's opportunity to ask any final questions and deliberate. He said he may ask for a point of clarification from Attorney Nason regarding *Robert's Rules of Order* to make sure the Commission is proceeding correctly. He asked if there needed to be a motion to reconvene the Nord application hearing or if the approval of the agenda took care of that portion.
- Attorney Nason said the approval of the agenda took care of that item.

- Chair Azman stated an appropriate way to begin would be to have Staff discuss their Second Supplemental Report which was submitted with the packet.
- Administrator Kress noted there was a PowerPoint and he would share his screen; and Attorney Nason, Planner Kirmis, and Engineer DeWalt could present Planning Report Addendum Number 2.
- Attorney Nason and Engineer DeWalt began presenting the Planning Report Addendum Number 2 included in the packet.
- Commissioner Hara asked if the subdivision proposed preliminary plat is just the road that comes in off of Sherwood, not the entire site.
- Attorney Nason stated that Commissioner Hara was correct and she would have Brian Corcoran speak to what is the context of the proposed wetland impacts in the subdivision and what the restrictions are on any wetland impacts that may occur by subsequent development of the building sites.
- Attorney Nason continued with the PowerPoint presentation.
- Commissioner Hara stated his understanding with the road is that the soil cannot be disturbed nor intensify use. One of the comments made was that the road has been used forever, and there was a comment from an adjacent neighbor that said they had never seen a vehicle on the road in the 26 years they have lived there. He asked if it would be expected that if the Company is going to build two houses that are going to share this driveway, that road would be improved which would require that there would be dirt moved to flatten the trail out; and the current pervious surface would become an impervious surface. He noted one of the Fire Department requirements is that it be at least 20 feet wide and suitable to carry the weight of firefighting equipment such as firefighting trucks. When Staff says it can be maintained, he thinks it has to be maintained without disturbing the vegetation on it or moving soil, and he is wondering how that could be accomplished in its present state.
- Attorney Nason said the legally established nonconforming use can be maintained, replaced, repaired, or improved. Under the State statute and City Code, improvement of a legally established nonconforming use is allowed. With respect to issues such as the location between wetlands, which is where it is located, and what would be allowed per VLAWMO, she noted Mr. Corcoran could speak to that. Legally speaking, a legally established nonconforming use can be improved; however, you cannot expand or intensify that use.
- Commissioner Hara noted that, at the last meeting, Engineer DeWalt said it could not become an impervious surface, it had to remain pervious, which means it has to stay in a condition of basically dirt and vegetation and what it is currently. He asked how that would be improved. He also referenced North Oaks Ordinance 153.070, which says you cannot displace dirt or vegetation to improve the road. He asked how the road would be improved without displacing vegetation or changing the soil condition.

- Attorney Nason said she would defer to Engineer DeWalt for the first part and would look up the ordinance.
- Engineer DeWalt said she wanted Mr. Corcoran to address the issue of what would be able to be done to the road as far as improvements. She thinks there are grandfathered rights within the policy for the resurfacing of an existing road, but she is not familiar with exactly what would be allowed under the current plan. She noted there is historical evidence of that road being surfaced with gravel. She does not have a soil report or borings along the road to confirm that.
- Commissioner Hara asked what a resurface would look like if there is no surface on it now.
- Engineer DeWalt said she did not have the answer because it has not been proposed at this time. She asked Mr. Corcoran if he had anything to add.
- Administrator Kress stated he is a little concerned by some of Commissioner Hara's comments, that they are falling in line with one of the emails received early in the morning. He said, for transparency purposes, Commissioner Hara should state his relation to the person who sent that email.
- Commissioner Hara said he would be happy to do that. He stated, in full transparency, the Commission should discuss some of the City Councilmembers' relationships with the developer. He noted the person who sent the email was his daughter. He stated the Commissioners' role is not to find exceptions or loopholes to be able to approve this plan; the bigger thing is to maintain the integrity of North Oaks. He referenced the gentleman who has lived in North Oaks for 60 years and said he lives here for the purpose of enjoying the natural setting North Oaks has. He said he feels that setting is being compromised by trying to push another lot or two into the development, which does not seem to be conducive to the additional lots. The public comments the Planning Commission heard from quite a few people have all been opposed, including a petition with 100-some people. The purpose of his comments is representing North Oaks, not himself or his daughter.
- Chair Azman suggested continuing with the PowerPoint presentation, noting there will be opportunities for further discussion regarding Commissioner Hara's concerns and the application.
- Commissioner Hara stated he thought it was the right time to ask the question since it was being talked about.
- Administrator Kress asked if Chair Azman wished to continue with the PowerPoint or have Brian Corcoran speak to a couple of the points.
- Chair Azman asked what would be logistically easier: having Mr. Corcoran jump in and talk about some of the wetland, or getting through the PowerPoint to try and address some of the questions.

- Engineer DeWalt noted the PowerPoint was almost done so it made sense to power through.
- Attorney Nason and Engineer DeWalt continued with the PowerPoint presentation.
- Commissioner Hara said he is still confused about the potential 400-500-foot driveway to serve Lot 1 and its proximity to the wetlands as to how that road, in its current state, serves the properties without being graded or surfaced in some way to accommodate snow-plowing, fire truck access. He asked what a person who would spend this kind of money on a lot would expect for a road.
- Engineer DeWalt suggested the Applicant speak at some point regarding the plan. Although she knows it has been stated previously, she wanted to reiterate the City does not have any performance standards related to driveways except in the commercial district. Driveways in the commercial district are required to be paved; driveways within residential districts are not.
- Chair Azman asked Commissioner Hara to ask his question again.
- Commissioner Hara said he understands that the developer is not proposing to build a driveway or shared driveway, and he understands that it would be an expensive proposition to do so. He has walked the road and it concerns him that the Planning Commission is pushing the application through as, one, not impacting the wetlands; and, two, that the road is a suitable road to access the homes for not just the people living there, but any kind of vehicles that would have to access the road such as an Amazon truck. He said the road is not a plowable road, at least plowable to a point that it would be easily navigable unless someone had a pretty heavy-duty four-wheel drive. If the road is going to be improved, he understands it cannot be made to be an impervious surface, it has to be maintained and the improvement cannot involve moving dirt or the vegetation that exists currently. He asked Mr. Corcoran what level of improvement can be made to the road and still be within the regulations that control it.
- Brian Corcoran, VLA WMO Water Resources Manager, stated that, as far as the road goes, VLA WMO administers the Wetland Conservation Act (WCA). The buffer rules and everything else involved in the water management policy, due to the Joint Powers Agreement (JPA) status of VLA WMO and the six cities and townships, adopt through the local water plans the water management policies, which is where the buffers are located. He said VLA WMO relies on its cities and JPA people to administer the policies. As far as the road goes, per WCA it is considered grandfathered in or permitted fill. Resurfacing is allowed; buffers do not apply, etc. It is considered a road and anybody can do anything to the existing size it is, although he does not know who determines the width of the road or where it goes. He does not know if it is through aerial photos or historical maps. It is considered a road and, per WCA, it is allowed to reconstruct the road to its historical size. It could be resurfaced or left as-is. If it is made any bigger than it historically is, a variance process would have to be involved and approved.

- Commissioner Hara noted, under Ordinance 153.070, alterations, expansion, intensification of use which increase an impervious surface, and land-disturbing activities, including the removal of vegetative covering, and grading, disqualify the exemption and subject the driveway to all setbacks, buffers, and other requirements. He asked if the Commission is back to where they have setback issues.
- Attorney Nason asked Commissioner Hara for the section he was referencing because she was not seeing the same language.
- Commissioner Hara said it was Minnesota Rule 8420.0544D and that North Oaks was adopting that Minnesota requirement.
- Attorney Nason stated she was looking at 8420.0544D which says replacement for public transportation projects, and it deals with wetlands impacted by public transportation projects. She asked if she was in the right spot.
- Commissioner Hara said he may not have it correct. He stated the North Oaks ordinance that he referenced adopts a Minnesota rule, and within the ordinance it references 8420.0544D. He asked if there was a VLAWMO water policy that discusses land-disturbing activities as any change in the land surface. He said to him it would be a change in the land surface if the road gets graded and made into a usable driveway for a resident.
- Attorney Nason noted Mr. Corcoran may want to speak to that as the Local Government Unit (LGU) and she would look for the reference.
- Mr. Corcoran stated VLAWMO policy, adopted by JPA, says the applied buffer width for a linear reconstruction project shall be limited to the extent of buildable right-of-way. A buffer is not required for resurfacing of an existing road, sidewalk, or trail that does not increase the area of impervious surface.
- Administrator Kress noted Mark Houge may have a question and he could be moved as a participant.
- Commissioner Cremons stated, with no disrespect to Commissioner Hara, it seemed to him the issues have been examined by Staff in great detail with impressive analysis. He said the Commission could spend all night going through rules and code sections and comparing City Code to State regulations. The Planning Commission as a group is not prepared to spend a huge amount more time on the shared driveway, in his opinion. He stated he thinks the Commission has beaten it to death and needs to move on.
- Mark Houge, North Oaks Company (NOC), said he wanted to clarify a few things. He noted people may or may not be aware that for years there were numerous dump trucks going back and forth on that road to the burn site and it is interesting going through the spring/early summer season that the road does not look like much once the vegetation takes over. He wanted to make sure members of the Planning Commission understand it has been used continuously, including many dump trucks that have gone back and forth to the burn site,

which is effectively where the new Rapp Place cul-de-sac is for Rapp Farm Place. They have plowed the driveway; the field superintendent has a plow on his truck and has plowed it occasionally. He realizes it does not look like much right now, but it is a very usable road and has been used continuously. He said he would be very interested to know who it is that is living in close proximity that says they have never seen a vehicle on it, because within the last two weeks there have been a dozen vehicles on it.

- Chair Azman asked Mr. Houge to clarify if he was talking about the piece from North Deep Lake Road that extends northerly.
- Mr. Houge indicated Chair Azman was correct, that it would be accessed directly from North Deep Lake Road where the green gate is and is the same section of road the Company is proposing to re-use as a driveway. He pointed out, relative to intensity of use, at one point they were considering putting a street along the path coming from North Deep Lake Road going west. Through many conversations with City Staff and community members, they reversed that. The intensity of the road is probably equal to or less than what it has been in the past. It will be limited to two residents as opposed to a service road for things like the burn site.
- Commissioner Shah asked Mr. Houge to speak to what the Company plans to do for improvements to the current farm road that would be the proposed shared driveway.
- Mr. Houge stated if the Company is successful in subdividing the parcels, they are marketing the road to a buyer. Generally, someone interested in those types of lots, between 6-9 acres overall, are going to want a very natural environment. The Company will encourage them to use a gravel surface similar to what is there today, subject to North Oaks Home Owners' Association (NOHOA) and Architectural Supervisory Committee (ASC) approval. If they prefer to have some hard surface, they would be encouraged to consider pervious bituminous or pervious paving systems for water management. It is not an obligation, but that would be how the Company would approach it.
- Commissioner Shah asked if there are other driveways of this nature that are not paved in North Oaks.
- Mr. Houge said the short answer is yes. In pretty close proximity to this driveway, there is a long gravel driveway into a residence. There is a site with two lots which is known as Tory's Island; that one is improved. He stated there is a wide variety. Everyone tends to approach it differently in terms of if you are a homeowner and what your preference is. There is a combination of gravel as well as bituminous, and he said he would look to the ASC for some guidance on their preference.
- Commissioner Yoshimura-Rank noted that relatively recently the Commission had decided not to have any more gravel driveways and the existing gravel driveways had been grandfathered in.

- Chair Azman stated Engineer DeWalt commented that there is no ordinance currently in place that mandates paved driveways within the residential areas of North Oaks. He asked for confirmation from Staff.
- Administrator Kress indicated Chair Azman was correct.
- Chair Azman said he recalled there was some past discussion about expanding that requirement to residential areas but he did not think it passed.
- Administrator Kress stated that chances are high that the Company would not have to comply with the ordinance, anyway.
- Chair Azman noted that the PDA predates the change.
- Administrator Kress said Chair Azman was correct.
- Chair Azman asked if the PowerPoint had been finished and if there were questions that should be addressed to Mr. Corcoran regarding wetlands. He noted Mr. Corcoran had addressed some of the nonconforming use issues; he asked if that was the extent of what Mr. Corcoran would be asked to comment on, absent questions from the Commission.
- Engineer DeWalt suggested Mr. Corcoran speak to the concern that once the development is approved, that landowners/homeowners could go in and impact the wetlands on their own.
- Mr. Corcoran said this project was brought to VLAWMO as a 54-acre parcel. The boundary and type/delineation was reviewed and a decision was made in 2015. Per the application, the Applicant is stating there will be no wetland impacts for the subdivision. Because this 54-acre parcel was identified, the wetland boundary/types were done on the parcel, and there are no wetland impacts that can be done moving forward, even after it is subdivided.
- Chair Azman asked Engineer DeWalt if Mr. Corcoran answered the questions.
- Engineer DeWalt noted she wanted it clarified for the Commissioners. She said City Staff had stated in the Memo that was the case and there was concern that was not true, so she wanted Mr. Corcoran to reiterate it.
- Chair Azman asked Mr. Corcoran and Engineer DeWalt what that meant. He noted the Commissioners have the preliminary plan that doesn't appear, at least from VLAWMO's Memo, to impact the wetlands; but when it is an actual homeowner, the homeowner has to site their home and they have to have a septic under the current plan. He asked what that meant from the real-world standpoint, that there can be no further wetland impacts or impacts subject to any of the exceptions that were pointed out in the Staff report.
- Engineer DeWalt referenced Attorney Nason's identification of what a wetland impact means and said there are no future impacts that will be allowed on-site. The development application proposed has accounted for the required buildable area for a home and has

accounted for two required septic site locations within the suitable soil areas, and so the application has fully accounted for the proposed wetland impacts.

- Chair Azman asked Mr. Corcoran if he agreed with what Engineer DeWalt stated.
- Mr. Corcoran indicated that he did agree.
- Commissioner Cremons asked, if someone comes in with a development plan for their actual home that involves filling in some wetland or putting a driveway up against the wetland, if that would be rejected until they corrected that situation. He clarified by asking about the control method applied to keep the individual homeowner from doing anything to impact the wetlands.
- Engineer DeWalt said if the homeowner impacts the wetlands, they are required to obtain a permit and approval. They would not be able to obtain that approval outside of the exemption standards under the WCA, including what is called a “de minimis” which is a very small, incidental wetland impact, probably smaller than most people’s kitchens. She noted there are strict standards involved in the control of that.
- Mr. Corcoran agreed with Engineer DeWalt and said the de minimis exemption is still available; but in that area, he does not foresee any possible scenario where any homeowner could come in and utilize the de minimis exemption in WCA.
- Commissioner Sandell noted that these are the controls for any building in any city, it does not have to be unique to this development. He said he suspects there are controls for any lot in any city to govern that issue.
- Engineer DeWalt said Commissioner Sandell was correct.
- Commissioner Sandell noted he thought he was piggy-backing off of Commissioner Cremons’ earlier comments, that the Commission received expert consultation on engineering, planning, governance, and legal which all seems to support that this fits. He does not think there is a lot more to exhaust other than it is an allowed use.
- Commissioner Yoshimura-Rank noted number 19 in the conditions of approval talks about emergency overflow locations and elevations for all site surface water features, including wetlands, shall be shown on the grading plan based on actual field topographic survey information and stormwater management plan design. She asked, if there ends up at some point being drainage problems or overflow of water, is someone responsible for that or is it the homeowner’s responsibility.
- Engineer DeWalt asked if Commissioner Yoshimura-Rank was saying, for example, if a stormwater pipe overflowed or plugged and a basement flooded. She asked for clarification of the question.



- Commissioner Yoshimura-Rank said it is kind of known that the climate is going to get wetter, and she is wondering, if there is any standing water or unanticipated drainage problems that occur down the road, if it is strictly the responsibility of homeowners to take care of those issues or if there is a City response.
- Engineer DeWalt noted it is not her area of expertise but she would say typically, yes, it would be the homeowner's responsibility in the future. The systems are designed using industry standards to account for all of the requirements, but there are experience issues that don't get accounted for. She asked if Attorney Nason may have something to add from a City liability standpoint.
- Attorney Nason stated it would depend a little on what the specific issue or concern is. She said she knows there are concerns with the stormwater pond maintenance and she is not sure if that is where the conversation is going or if it is other types of pipes. With respect to the stormwater maintenance pond, required conditions include a grant of easement and a maintenance obligation agreement. She noted it is still unresolved as to whether or not NOHOA would eventually take over that obligation. There would be safeguards in place to ensure that is adequately managed. If no one is managing it and doing what they need to do, the City would have the opportunity to come in and do so and seek to collect costs that the City would incur when engaging in the stormwater maintenance activities.
- Chair Azman asked City Staff if one of the conditions is dealing with the stormwater management and that it is going to be part of a future agreement with the developer.
- Administrator Kress said Chair Azman was correct.
- Mr. Houge said he wanted to address Commissioner Yoshimura-Rank's question and said he would dissect it in two ways. Where the new road is being placed coming from Sherwood on the west side of the site, there is a stormwater pond which manages any additional stormwater coming off of the road's impervious surface. There is a very extensive stormwater study that is being done at the request of the City. During the construction process, he trusts that work will be inspected, and the City Engineer as well as NOHOA's engineer may look in on that. There will be great measures taken to ensure there are not any surprises in terms of what would happen with future stormwater events. In addition, when somebody applies for a building permit, the City would require a survey. The survey would have topographical information and information regarding adjoining wetlands and stormwater issues that typically the building official will weigh in on with the resident as they plan their facility.
- Engineer DeWalt stated one of the reasons for the particular condition Commissioner Yoshimura-Rank is referring to is to make sure there are pathways for water that is not planned for. During intense storms or potential flood situations, there will be a place for the water to go rather than towards the homes.
- Chair Azman brought up the NOHOA letters and trail and indicated there are mixed messages from NOHOA and what their position is. He asked Mr. Houge if there has been any indication from NOHOA that they have withdrawn their agreement on the proposed new

trail location within Nord.

- Mr. Houge said he sits on the NOHOA Board with a position that is appointed by the Company, and although he did not participate in the second meeting which discussed crafting the letter, he was able to talk to some fellow Board members to clarify what the intent of the second letter was. He noted the concern was that the letter sent on April 7 implied that NOHOA was approving the design of the development. It was intended to clarify that NOHOA's role is not to approve the design of the development but, per the PDA, to weigh in on the location of the trail and the suitability of the roads going forward for maintenance. The second letter was intended to clarify that NOHOA is not approving this subdivision, that that is the job of the Planning Commission and City Council.
- Administrator Kress stated that he asked Kathy Emmons if basically everything said in the April 7 letter is still in place; specifically, there was a vote of 6-2-2: six for, two against, and two abstained. One abstention was for conflict of interest, Mr. Mark Houge; and the other, due to a planned departure from the Board. Ms. Emmons' response was the understanding described requires one clarification, that they voted in favor of sending the review and comment on the preliminary plan to the Planning Commission and Council as reflected in the April 7 letter; and, yes, nothing has changed in this regard since NOHOA issued the April 7 letter. He noted that from that they are saying they are in favor of the current trail design.
- Chair Azman said the application has been talked about quite a bit and there is not yet a motion on the table, although he was not sure the Commission was ready for that. He asked if there were other questions, concerns, comments, or items Commissioners wanted to flesh out on any aspects of the Nord parcel.
- Commissioner Yoshimura-Rank said Commissioner Hauge and she had been talking about the language having easements for water and sewer also put into the plan.
- Administrator Kress stated that they were included.
- Commissioner Hara commented that this development is navigated more from parcels. The shared driveway, the nonconforming road, wetland setbacks, lack of open space, and the general development criteria is inconsistent with most of North Oaks. There is also the issue of the trail. The Commission has really not taken into consideration that there is a lot of public opposition to the application amongst more than just the few people that spoke but also the people that signed the petition. He predicts in a couple of years the Planning Commission will be convening to deal with hardship residents that have difficulties locating septic systems outside of wetlands and also paving a road that is now pervious to being an impervious one. He thinks the Planning Commission is kicking some issues down the road and he is disappointed that the development wasn't put together with more thought about what the neighbors and community in general was looking to see.
- Commissioner Hauge said he has been part of the Commission for about 16 months, along with Commissioners Shah and Yoshimura-Rank. When the first proposal came to the Planning Commission, they were against a couple of major things: one was the road that

originally proposed to come in from the south, from Deep Lake Road. They suggested it to go according to the PUD from Sherwood Road. They also disliked the proposal about the trail. The Company, together with NOHOA, has found a solution to the trail. He walked the trail a couple of times, and he finds the trail to be a decent, good solution for the community. He said it is important to remember the Planning Commission has not been doing this for a short time; they have been doing it for a fairly long time. The Planning Commission is coming to the point where it has been discussed at length, solutions have been found to the original questions, and the Commission has also discussed at great lengths the wetlands. The Commission has a clear message from VLAWMO about the wetlands. He stated the issues have been resolved. The Company has changed their proposal to what is in front of the Commission. The farm road discussions have also been dealt with. The Commission is at the point where it is time to make a decision. He noted he was a little frustrated at the last meeting because the Commission was hearing things that were kind of undermining facts, or what the Commission thought was facts. He complimented the administration for putting together an excellent report, Addendum 2, that summarizes the questions from the community and the answers given to the questions.

- Commissioner Shah said she wanted to piggy-back on Commissioner Hauge's comments. Some Commissioners have been involved for about 16 months on Nord, and their role was to listen to the residents, who came in droves. There were three major issues. The original proposal had a wetland impact, and this proposal does not. The trail was a massive concern, and there was movement and collaboration with NOHOA. They were able to work with the Company because the trail is in their purview. The road was also deemed unacceptable. She noted all three of the big points were addressed by the Applicant, and she is seeing a completely different response.
- Commissioner Cremons asked if a NOHOA variance is still required on the shared driveway under any circumstance.
- Attorney Nason stated her purview is the City Code and regulations. She knows there is discussion regarding the ASC committee and their standards on shared driveways, so that will be a battle that the developer has to fight in the realm of NOHOA. She did not know what the City said about that or if it was identified as something they need to work through. Ultimately, in terms of the City Council, what needs to be applied is what is in the City Code. The City does not have any specific standards for driveways or things such as that. As to what might happen in trying to obtain approval from NOHOA, that is outside of the purview of what can be done at the Planning Commission. She said if a developer is unable to gain the permissions from NOHOA they need to gain, that might impact the ultimate site design.
- Commissioner Cremons said he is a newbie; he started in January. He stated City Staff works extremely hard and do listen to the people in North Oaks. As a newcomer to the process, it has been very impressive how patient and what good listeners they have been. He does not know what more Staff could have done to examine every miniscule point and made sure they knew what the Planning Commission was up against and what the impact was going to be. He has also been impressed with the Company's willingness to be flexible to help solve some

of these problems.

- Commissioner Yoshimura-Rank said she agreed with Commissioners Hauge, Shah, and Cremons that people have worked hard and there has been a lot of cooperation with the Planning Commission, NOHOA, and the Company. She also thinks the Commission is very appreciative of all of the comments received from the community and the support, the different points of view, and that everyone has one common goal, which is to keep North Oaks as special as it is and to preserve what it has. She noted it has been a very good process.
- Chair Azman said he had a couple of questions for Attorney Nason, noting the Commission was on the cusp of a motion. He said it might be a good idea to take a review of what the legal standard is that the Commission needs to apply when reviewing the application: what are the obligations; what are the duties. He asked Attorney Nason to bring the facts and circumstances back around to what the standard is that the Planning Commission applies when a recommendation is developed one way or the other for the Council.
- Attorney Nason stated the Planning Commission sits in sort of a quasi-judicial capacity: there is a specific application before them; they are not engaged in a legislative function; their job is to review the application to apply all of the standards that would apply to the application itself which include the standards found in the PDA, the standards found in the City Code, and any applicable State statutes or rules. She said she thought those were highlighted on one of the checklists; there was an initial checklist and a compliance checklist provided. She stated the Commission is to apply the standards and criteria that exist to subdivisions; and if the criteria are met, it would be anticipated that there would be a recommendation of approval. If the criteria are not met, it would be anticipated there would be a motion for denial with specific reasons and articulation of what criteria are not met. Ultimately, the Council will make the final determination with respect to the preliminary plan approval. The decision, if it were to be reviewed in a court of law, would be reviewed under an arbitrary and capricious standard. In other words, did the Council have any reasonable or rational basis for its decision one way or the other. She stated she could provide further clarity if requested.
- Chair Azman commented that he thought it was fine, and he wanted it summarized as the Planning Commission looks at the issues in anticipation of a motion. He noted he asked Mr. Hauge at the last meeting /one of the last meetings if they agreed with the counts the Council had passed as a resolution, because as the applications start coming before the Planning Commission, they have to be able to understand what the housing counts are and apply them so the Commission knows how many are left. He asked if it would be appropriate to include a condition that the Applicant recognizes that there are 174 units left and this would account for "X" amount of units that are left. He noted that was not done with Anderson, but wondered if that is something that could be done now so there is a recognition of that somewhere or whether the number is separately tabulated.
- Administrator Kress noted it was an amendment or a change to the PDA.
- Attorney Nason said she thinks it is vitally important that one of the evaluative criteria with respect to the subdivision applications is whether or not it exceeds the density per the PDA.

In this case there are ten dwelling units allowed with density bonus up to 13, so it complies with that criteria. With respect to the issue of what is the ultimate housing count/dwelling unit count that remains as far as what can be spread across the developable undeveloped properties, that is sort of a separate piece. She stated that issue was addressed by Council when they adopted a resolution establishing what the existing housing counts were. She said that while it could not be a condition, the Planning Commission could encourage the Council to meet with the developer to sit down and address the housing count issue to consider an amendment to the PDA that establishes the current updated housing count. She stated if the Planning Commission has a desire to address that, the best way would be to encourage the Council and developer to take that step and address the issue head on, outside of the context of the subdivision application.

- Chair Azman said that was not exactly what he was hoping for but it was understandable. He thought one of the conditions would be, are there sufficient units left to allow this application to proceed in the event there was a vote of approval. He noted there needs to be a way to keep track of that and it would seem logical to have it be part of this process. He indicated it was 9:15 p.m. and there has been a lot of talk about the application. He said there was a possibility to approach things with a straw vote, engage the temperature of the water of where the Commission is going. He stated procedurally those make him nervous but it could be talked about. Alternatively, if someone wanted to make a motion, they could do so now.
- Commissioner Hauge asked Chair Azman why he wanted to do a straw vote. He said they were kind of at the end of the rope and they just had to plunge in.

**MOTION by Hauge that the Planning Commission approve the proposed Nord Preliminary Plan/Preliminary Plat/Subdivision Application subject to the fulfillment of amendment conditions 1-50.**

- Chair Azman noted it is a big application, and without forcing someone's hand, he wanted to put some options on the table. He stated the motion seems to encompass all the conditions recommended by the consultants and addresses a lot of the issues talked about. He asked Staff if there were any items missing as conditions, because he did not want to get into a situation where there will be three motions to undo one motion. He asked for comments from Staff.
- Administrator Kress said he did not have anything from his end.
- Attorney Nason stated she didn't have anything to add.

**Seconded by Cremons.**

- Commissioner Shah noted some Commissioners have been deliberating the Nord application almost 15 months and she recognizes it's a very important vote. There have been comments and characterizations of individuals as "pro-Company" and "anti-Company" and thinks the labels are divisive and unhelpful to their community. She said everyone at the Zoom meeting are residents and all are pro North Oaks, and cannot lose sight of that important fact.

Commissioners may disagree on how to proceed in a given situation, but everyone is coming to their viewpoints with the best interests of North Oaks. Everyone lives in North Oaks and wants to see it for generations to come. As Commissioners vote, it's essential that everyone respects one another regardless if they agree or not.

**Roll call vote: Ayes 6 (Yoshimura-Rank, Shah, Sandell, Hauge, Cremons, Azman), Nays 0, Abstained 1 (Hara). Motion carried.**

- Chair Azman thanked everyone for going through the process, noting it was a lot of work, particularly for the consultants. He also thanked the VLAWMO staff. He said it is important to recognize there are significant opinions in the community that were received and reviewed, and they were happy to have them and consider them as part of the process.

#### **MISCELLANEOUS**

- Administrator Kress stated the next Planning Commission meeting is set for June 25, depending on what is on the agenda for actionable items. Currently, it is likely there will not be a June 25 meeting.
- Chair Azman asked, if there is a meeting, if the meeting would be held via Zoom.
- Administrator Kress said currently the meeting would be held via Zoom, depending on what the State puts out.

#### **ADJOURN**

**MOTION by Yoshimura-Rank, seconded by Sandell, to adjourn the Planning Commission meeting at 9:24 p.m. Motion carried unanimously by roll call.**

*Kevin Kress*  
\_\_\_\_\_  
Kevin Kress, City Administrator

*Mark Azman*  
\_\_\_\_\_  
Mark Azman, Chair

Date approved 7/30/2020