



MEMORANDUM

TO: North Oaks Mayor and City Council

FROM: Bob Kirmis, City Planner
Mike Robertson, City Administrator

DATE: July 1, 2019

RE: North Oaks - East Oaks Planned Unit Development
Decennial Review

FILE NO: 321.02 - 19.01

BACKGROUND

The purpose of this memorandum is to frame the East Oaks Planned Unit Development decennial review discussion and provide related background information.

On February 11, 1999, the City of North Oaks entered into a Planned Development Agreement with the North Oaks Company LLC, which governs the development of the East Oaks Planned Unit Development project. The Agreement stipulates that the development of the subject 1,650-acre site is to be in accordance with the various controls imposed by the Agreement (and consensual amendments to the Agreement).

Article 6.3 of the Planned Development Agreement states that on or within 30 days before or after the tenth and twentieth anniversaries of the effective date of the Agreement, a decennial review must be conducted. The 20th anniversary of the Agreement occurred on February 11, 2019 and 30 days following such date occurred on March 12, 2019. In this regard, the 20-year review of the project is considered overdue.

DISCUSSION TOPICS

Development Agreement Directives. According to the 1999 Planned Unit Development Agreement, the intent of the decennial review is to provide a forum within which the City and the Developer (North Oaks Company) meet and discuss the current



status of the East Oaks project, as well as past and future functional aspects. Specific discussion topics which are highlighted in the Agreement include the following:

1. *The functioning of the protected land, the active and passive private open spaces and primary and restricted trail easements.*

Staff Comment: Staff believes that the protected land, the active and passive private open spaces and primary and restricted trail easements function well.

One issue which did arise during the City's consideration of the Nord preliminary subdivision application was neighborhood use of a "trail" through the subject property. Representatives of the North Oaks Company contend that such "trail" was never formally designated for such activity and was in fact, a former maintenance road. Staff believes that efforts should be made by the North Oaks Homeowners Owners Association (NOHOA) and North Oaks Company to clarify intended trail routes in the future.

2. *The functioning of the project's "essential improvements."*

Staff Comment: The North Oaks Company considers "essential improvements" to be roads, trails and stormwater facilities, all of which are under the control of (NOHOA). Staff has asked the Executive Director of NOHOA to attend the City Council meeting and advise the City of any desired changes to future "essential improvements" (i.e. cul-de-sacs vs hammerheads, etc.).

3. *The application of the Planned Development Agreement controls to the various development sites which comprise the project and the Master Development Plan.*

Staff Comment: The Master Development Plan is comprised of the following plans:

- Exhibit B-1: Future Land Use Plan
- Exhibit B-2: Conceptual Street and Access Plan
- Exhibit B-3: Park and Open Space Plan
- Exhibit B-4: Trail Map
- Exhibit B-5: Phase Plan

Staff has asked the North Oaks Company to provide the preceding plans for possible display at the City Council meeting.

As part of the City's consideration of the Nord preliminary subdivision application, a question arose related to the intent of the Conceptual Street and Access Plan and whether such plan should be considered "set in stone" or potentially subject to change. In regard to the location and creation of streets, Section 7.1 of the 1999 Planned Development Agreement states the following:

LOCATION AND CREATION OF STREETS. The Conceptual Street and Access Plan shows the neighborhood streets and other roads within the Subject Property that will serve the East Oaks PUD Project. All such streets and roads shall be common area or easements granted to and benefiting a homeowner's lot or lot owner's association of which the owners shall be members, through the filing of a Declaration after recording of the Registered Land Survey for each Development Site.

The City's Zoning and Subdivision Ordinances do not include a definition of a "concept plan." From a planning perspective however, a "concept plan" is typically considered a graphic representation (oftentimes with a supplemental narrative) which illustrates development intentions in a general form. Concept plans are typically subject to refinement as part of design development and are influenced by information which was not available (or considered) at the time the initial concept was conceived.

In consideration of the Nord preliminary subdivision application, many area residents conveyed their belief that the Conceptual Street and Access Plan, and particularly the illustrated Sherwood Road access location, should be taken literally.

Recognizing that the Conceptual Street and Access Plan is "conceptual" in nature, it is the opinion of Staff that changes to the Plan which are determined by City Officials to result in an improved subdivision design **(without adverse impacts upon surrounding properties)** should not require the processing of an amendment to the 1999 Planned Development Agreement. City Council feedback on this issue is requested.

4. The extent to which the East Oaks project remains consistent with the plans and policies of the City and the Developer.

Staff Comment: While the Planned Development Agreement makes a reference to "the plans and policies of the Developer," it is the City's responsibility to ensure

that forthcoming development plans are consistent with the approved Planned Development Agreement. It should be recognized however, that the Developer has the right to request changes (amendments) to the previously approved Agreement.



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In regard to the project's consistency with City plans and policies, it is important to note that, in the case of conflict, the provisions (controls) of the approved Planned Development Agreement supersede the City's Zoning Ordinance, Subdivision Ordinance and Comprehensive Plan.

5. *The effects of applicable laws, regulations and directives adopted or promulgated by federal, state, local or other governmental agencies.*

Staff Comment: Staff is not aware of any changes to federal, state and local laws which impact the provisions of the East Oaks Planned Development Agreement. This issue is specifically addressed in the City Attorney's letter dated June 26, 2019.

6. *Whether the preceding factors, or any others, provide a basis for consideration of modifications to the East Oaks project or amendments to the Planned Development Agreement.*

Staff Comment: Staff does not feel it is necessary to formally process an amendment to the 1999 Planned Development Agreement, absent any major changes made during the decennial review.

Additional Topics. As part of the City's recent consideration of the Nord and Wilkinson Villas (1A) preliminary subdivision applications, several additional issues arose which are considered worthy of discussion as part of the decennial review. These items are referenced below.

Remaining Dwelling Units. The East Oaks Planned Development Agreement and the East Oaks Environmental Assessment Worksheet (EAW) both state that a total of 645 housing units will be allowed within East Oaks area. Question exists how many dwelling units remain from the total 645 units. In recent correspondence, the North Oaks Company has indicated that 178 dwelling units remain for development.

The acceptability of such remaining dwelling unit number, as well as the following issues, should be subject to specific discussion (and agreement):

1. The 7th amendment to the East Oaks Planned Development Agreement allows the conversion of commercial acres into dwelling units in a unique manner. In this regard, the 7th amendment specifically states the following:



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Conversion of Permitted Uses: The limits of 645 dwelling units and 21 commercial use acres may be varied as follows:

- a. Should the Developer elect to forego development of some or all of the 21 commercial acres, the number of permitted dwelling units within development sites will be increased at the rate of 5 dwelling units for each full acre of commercial development foregone.***

Question exists whether the preceding Agreement provision creates a precedent for future commercial conversions into dwelling units and whether City approval of the 7th Amendment results in a change to the maximum 645 dwelling units allowed within the East Oaks project? This issue is addressed in the City Attorney's letter dated June 26, 2019.

2. The North Oaks Company has indicated that Presbyterian Homes retains the right to construct 14 dwelling units in the northwest corner of their land where Wilkinson Boulevard turns from east-west to north-south. Question exists whether these 14 units should be counted as future dwelling units or be considered part of the previously approved dwelling units for Waverly Gardens?

Commercial Land Area. The North Oaks Company has indicated that 15.27 acres of commercial land has been devoted to Waverly Gardens and Tria and 5.73 acres of commercial land remain. In contrast, Ramsey County tax records reference more than 23 acres for the property. In this regard, question exists as to which commercial acreage figure should be used?

The North Oaks Company has indicated that the acreage difference is the result of the inclusion of the road easement for Centerville Road (typically dedicated as public right-of-way) and that such easement acreage should not be counted toward their total commercial acreage allowance.

To be recognized is that the 7th Amendment makes a reference to 15.27 acres of commercial acreage. Specifically, Exhibit B-1.3 (The Gardens of North Oaks) notes that the total developed commercial acreage within Site "E-3" is 15.27 acres.

Trails. A primary issue in the consideration of the Nord and Wilkinson Villas (1A) preliminary subdivision applications was that of trails. While trails within the East Oaks development must be consistent with Trail Map included in the 1999 Planned Development Agreement, a degree of uncertainty exists related to the legal

obligations of the North Oaks Company to provide future trails within trail easements which presently do not exist.

The City Attorney has expressed an opinion that trail dedication requirements for the East Oaks project have already been fulfilled via the following (as required by Article 12.1 of the 1999 Planned Development Agreement):

1. Open space easements (to NOHOA)
2. Conservation easements (to Minnesota Land Trust)
3. Rough grading of park and trail areas as depicted on the Trail Plan
4. Trail easements as depicted on the Trails Plan (to NOHOA)
5. The conveyance of open spaces as depicted on the Park and Open Space Plan (to NOHOA)

As a matter of practice, Staff recommends that trail plans (intended configurations) for future subdivisions be sent to and considered by NOHOA early in the subdivision design process and that such trails be an integral part of future subdivision applications. It is further recommended that proposed trail configurations be subject to informal feedback from both City Officials and the general public as part of the concept plan review process.

Alternative Uses. The North Oaks Company has specifically expressed an interest in providing condominiums and an event center use. While the event center use is not specially allowed by the Planned Development Agreement and was ultimately withdrawn, the decennial review process provides an opportunity for City Officials to provide feedback on the acceptability of certain alternative uses and to suggest any of their own.

CONCLUSION

Staff views the decennial review of the East Oaks Planning Unit Development project as a positive opportunity for interaction between the North Oaks Company and City Officials. It is anticipated that, in consideration of future subdivision applications, conclusions reached from the decennial review will be of benefit and provide clarity to not only the North Oaks Company and City, but North Oaks residents as well.

cc: Dave Magnuson, City Attorney
Mark Houge and Gary Eagles, North Oaks Company
Mikeya Griffin, NOHOA Executive Director North Oaks Company
Stephanie McNamara, Vadnais Lake Area Water Management Organization