

**North Oaks City Council
Meeting Minutes
North Oaks City Council Chambers
September 9, 2021**

1. CALL TO ORDER

Mayor Ries called the meeting to order on September 9, 2021 at 7:00 p.m.

2. ROLL CALL

Present: Mayor Kara Ries. Councilmembers Rich Dujmovic (attended via Zoom), Jim Hara, Sara Shah, Tom Watson (attended via Zoom)

Staff Present: Administrator Kevin Kress, Attorney Jim Thomson, Engineer Tim Korby, Engineer John Morast, City Planner Bob Kirmis

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

A quorum was declared present.

3. PLEDGE OF ALLEGIANCE

Mayor Ries led the Council in the Pledge of Allegiance.

4. CITIZEN COMMENTS

None.

5. APPROVAL OF AGENDA

MOTION by Watson, seconded by Shah, to approve the Agenda. Motion carried unanimously by roll call.

6. CONSENT AGENDA

a. Approval of City Council meeting minutes of August 12, 2021

b. Approval of Licenses: Arborist: North Woods Industries, LLC

c. Resolution approving wage adjustment

d. Resolution approving wage adjustment

e. Approval of City Financials:

EFT: 00464E - 00470E

Check#014079 - #014123

Administrator Kress noted at the last meeting the City approved a permit for Mounds View/Irondale Hockey Foundation and their name is Lake Region Hockey Association, They asked that the correction is in the minutes for approval from the State.

MOTION by Dujmovic, seconded by Hara, to approve the Consent Agenda. Motion carried unanimously by roll call.

7. PETITIONS, REQUESTS & COMMUNICATIONS

a. Deputy Mike Burrell Report

Deputy Burrell was not present and will send Administrator Kress an email report that will be forwarded to the City Council.

8. UNFINISHED BUSINESS

None.

9. NEW BUSINESS

a. Consider approval of application for final plan/plat/subdivision for the Gate Hill Development Site (Site G of the 1999 East Oaks PDA legally described as Tract G, REGISTERED LAND SURVEY NO. 561, RAMSEY COUNTY, MINNESOTA), and associated JPA for water and sewer services with White Bear Township

City Planner Kirmis shared an overview of his memo. On November 12, 2020 the City Council approved the Preliminary Plan/Plat application of the North Oaks Company (NOC) "Gate Hill Parcel" located north of County Road H2 and west of Centerville Road. It calls for the creation of 73 dwelling units on the site and is comprised of 33 detached townhomes and 40 twin homes within 20 buildings. He walked through conditions of approval, noting the Gate Hill Final Plan has been found to be consistent with the approved Preliminary Plan; based on Staff review, Staff recommends approval of the Final Plan/Plat subject to the fulfillment of the 12 conditions listed in the Staff Report and cross-references comments by the City Engineer.

City Engineer Morast spoke about engineering comments such as waterline connections, stormwater pond clarifications, a retaining wall within the wetland buffer, and water pipe materials. Engineers also looked at NOHOA's comments and are clarifying those for finalization.

Mayor Ries believes there are issues with this application, and noted this is a development company and when they provide the City with a plat that is not accurate, that is a problem, when they put information that is not consistent with the City ordinances, that is a problem. She stated there are issues with this application and she thinks it is due time the City Council addresses them rather than kicking these issues down the road. She clarified the plat needs to be correct because builders are building off of the plat; if it is incorrect they should not say "go ahead and correct it at some point in the future." They are approving the mistakes and that needs to be changed. Mayor Ries clarified that State law and case law requires that Planning Commissions and City Councils have the right to deny final plan approvals if they do not comply with regulation.

Attorney Thomson clarified that the Statute says for final plat approval: 1) the plan must be consistent with the preliminary plat, 2) it must comply with all applicable regulations, and 3) it must comply with the conditions that are in the preliminary plat resolution either by doing them

or having an agreement to do them. For example, some conditions cannot be done until after the final plat.

Member Shah asked the City Staff if they feel confident that they have thoroughly reviewed the PDA in regards to Gate Hill.

Mr. Kirmis clarified those standards were reviewed in detail as part of the concept plan and preliminary plan approval. He noted there is a huge debate about housing counts and his point-of-view is that it is a City Council policy issue.

Engineer Korby stated they began reviewing the engineering comments and incorporating the PDA comments; every review looks at the PDA. They have weekly meetings with the Company and noted they were at 120 comments and are now down to 40 comments. There are still changes that need to be made and comments that need to be addressed; the legal question is whether they can still approve the project knowing there are some changes that need to be made and comments that need to be addressed (rules, regulations, easements, setbacks).

Engineer Morast said the comments are engineering clarifications and plan changes; he is comfortable with those.

Member Hara asked where the City is with unit counts after Island Field.

Member Shah asked what other cities typically do when there are conditions.

City Planner Kirmis replied what has been provided this evening is very typical in other cities. He does not think he has ever seen a final plat approval that was not subject to various conditions. He noted in this approval there is probably a bit more detail; technically it is not approved until all of the conditions of final plan approval have been addressed.

The City Council and Staff discussed unit counts and the math, looking at the unit count document from the NOC that says 673 units. They also spoke about parking, emergency vehicles, driveways, NOHOA approvals, zoning regulations, and compliance.

Mark Houge, NOC President, responded to some of the questions brought up. He clarified the difference between a Registered Land Survey (RLS) and a plat, he noted the NOC will comply with the parking ordinance with parking only on one side, he clarified there are no wetland impacts on the project. Finally, he stated the streets are generous-sized to accommodate emergency vehicles with a letter coming from the Fire Marshall who is comfortable with location of hydrants, construction of the roads, and the turning radiuses.

Mayor Ries clarified a comment on the right-turn lane noting there are two ponds at the entrance to the development and they will have to fill in one of those ponds; it is a similar situation as Island Field and a similar concern for Ramsey County.

Mr. Houge asked to show the drawing to demonstrate that there are no wetlands adjacent to the entry to Gate Hill.

Mayor Ries noted the monument drawing, page 64. She is not clear on where the topographical identifiers are to see where the easement and turn lane would go.

Mr. Houge replied NOC can add drawings to clarify that.

Mayor Ries stated it is required by ordinance that easements such as these are indicated on final plat approval.

The City Council and Mr. Houge continued discussion on traffic studies, turn lanes, and the safety of streets with pedestrians, market conditions, and demand for development. The City Council also debated commercial acreage versus residential acreage, what is allowed, unit count calculations, and density, as well as the 4th Amendment, 7th Amendment, and 8th Amendment.

Mayor Ries reiterated that the City Council was told they can only make sure conditions are fulfilled; the Statute says they also have the obligation to make sure regulations are complied with. There is actual law that City Councils have denied at final plan stage because they wanted to follow their zoning, their Comprehensive Plan, or regulation, and that was upheld.

Member Watson noted he has copies of every tract A-J from Site E, he knows how they are zoned in Ramsey County, and shared Section 13 of Article 1 of the PDA and he walked the City Council through documents indicating acreage of the various sites, roads, and Amendments. His conclusion is that there are still 21 acres of commercial at Site E today, verified by how the County has clarified it; his question is if it was fully utilized, how do they move any acres to Island Field? He also concludes that there are 28 residential units that have no basis in fact for having been approved.

Member Shah asked Attorney Thomson if this Council has the grounds to change what was agreed to between the Company and the City in 2010?

Attorney Thomson replied the agreement says what it says, it is an agreement signed by both parties, and if the City wanted to change that agreement they would need agreement from the developer. He hears Member Watson say that perhaps there were mistakes and the agreement is invalid or unenforceable for a variety of reasons – he clarified that is a different issue to him than the issue before the City Council tonight, which is whether or not to approve the plat. If they determine that it should not be approved because it violates provisions of the PDA, they can certainly do that.

[03:16:00] MOTION by Watson to deny Resolution #1433 final plan/plat approval of application for final plan/plat/subdivision for the Gate Hill Development Site (Site G of the 1999 East Oaks PDA legally described as Tract G, REGISTERED LAND SURVEY NO. 561, RAMSEY COUNTY, MINNESOTA), based upon the following findings:

- 1. The unit count transfer from Site E in the PDA to the distribution of Sites E1, E2, and E3 in Amendment 7 do not comply with the PDA and they do not comply with the planning document submitted on the record as part of Amendment 3 (the plan was called “The Gardens of North Oaks”)**

2. **The compliance with Appendix 1, Table 1 of the PDA with respect to the distribution of commercial sites to indicate commercial areas in any other site than Site E was in error.**
3. **The lack of completion of similar other development sites that have received preliminary and final approval in the past year – Nord in particular – where there is not agreement on trails, home owners’ association, or the allocation of 2 lots which by definition of the PDA were outside of East Oaks (Lots 1 and 2)**
4. **The conflict in the preliminary plan approval recommendation by Planning Commission regarding the guest parking stalls between 12-20 units is incomplete.**
5. **The need to recognize the issues raised by NOHOA because of their provision in the PDA under a consent-and-joinder article gives them responsibility over areas in which they have responsibility (trails, roads, recreation, and home owners’ association). A number of items in this plan are assuming that NOHOA will accept or be responsible for and is unsubstantiated.**
6. **There is an error in how Wilkinson Boulevard (4.99 acres) on the record as part of the “Gardens of North Oaks” plan was removed from being a road and included in E2 without any formal action of any kind.**
7. **The minimum unit lot-size per dwelling unit does not comply with the City Ordinance**
8. **Market conditions have not been followed. Article 5, Section 5.1 and Section 5.3 refer to an item called “demand and market conditions.” Mr. Houge noted on record that those are one and the same; Member Watson disagrees.**

Mayor Ries asked if Member Watson would be willing to add “non-compliance with the Comprehensive Plan” because they are exceeding and transferring density that is not in accordance with the PDA.

Member Watson would be willing and believes because the error was in 2010, that would be the 2030 Comprehensive Plan.

MOTION seconded by Ries.

Member Shah believes the path the Council is choosing to take will put the City at risk and she believes it will result in a serious legal situation. She does not think any resident wants a lengthy or expensive lawsuit.

Member Hara noted the math and said at some juncture decisions were made that were perhaps not very well thought out. He asked at what juncture does the City Council decide to correct it and right the ship? He also stated those developments may need to be revisited and perhaps there is still a compromise that makes everyone happy. He does not think it is right to kick the can down the road.

Member Dujmovic noted it is a very complex topic. He has been told that he needs to respect the voting of the former City Council however much he may disagree and tonight he hears that he is also responsible to enforce the City regulations. He does not understand how he can do both of

those things simultaneously. Regarding the road that was moved from E3 to E2, it has been stated that it was never rezoned residential.

Mayor Ries clarified the PDA is a development agreement and there are multiple areas which say the City Council must comply with the Comprehensive Plan. She pointed out that statements were made on record that justified certain opinions expressed by the former City Council that conveniently supported a theory to create additional acreage and additional units. Mayor Ries stated in following the timeline, that does not track as the road was conveyed in its entirety to Presbyterian Homes.

Member Dujmovic clarified the violation of the regulation in 2010 was that they did not have the right to move the tract of land that is 4.99 acres from counting as commercial and moving it out and saying it did not count as commercial; he asked if that is correct.

Mayor Ries replied that is one of a few and there were also some stated regulatory violations noted from Member Watson.

The City Council discussed the history of the road and the changes made previously.

Member Watson clarified that the road that is now incorporated into E2, and the fact that it was a road rather than a residential development site, was eliminated. He stated the fact is that it is not consistent with the PDA and the original document is not consistent with the Amendments up to and including Amendment 6.

Attorney Thomson stated when the Statute says the final plat must comply with applicable regulations – talking about the ones that City has in effect now and at the time of the preliminary plat approval – it is true that the 8th Amendment was added after the preliminary plat approval. Those are the regulations they are talking about rather than regulations back in 2010 or any other time. He wants to clarify that it is the current regulations. In his opinion, the PDA as it exists today and as amended, is a regulation within the meaning of that Statute and if there are violations of it that is a legitimate basis for denial.

Member Dujmovic asked to make it more interpretable to laypeople: does that mean those City Council Members were in error in passing Amendment 7 and Amendment 8 and if in fact what they passed was a violation of the PDA, the current City Council does not need to respect that vote because it violated the PDA. He asked if that is correct.

Attorney Thomson does not think that is correct. What Member Dujmovic said is that because the former City Council erroneously amended it, that it violates the PDA. Attorney Thomson said that is a non-sequitur. The agreement is what it is.

Mayor Ries said Member Dujmovic is pointing out the fact that, if the former City Council was amending things that they do not have the right to amend, then that affects the amendment and the validity of the amendment.

Member Dujmovic agreed and stated, had a wise person been counseling the City Council as they wrote Amendment 7, would they have told them “yes, you can do this” or “it is too late to make that kind of a fundamental change to the plan.”

Attorney Thomson replied the Amendment is an agreement between two parties, it is not the City unilaterally changing a regulation. Therefore, the basic principle of contract law is two parties to an agreement can agree to amend it; that is all he can say. In 2010 the parties to this agreement agreed to amend it.

Mayor Ries asked if she can propose an amendment to the Nord parcel in the development agreement that has been approved but has not transferred yet. She asked what Attorney Thomson would tell her.

Attorney Thomson replied the City does not have the authority to unilaterally amend the agreement or the final plat resolution for Nord because it has already happened.

Mayor Ries said she would like to go into Wildflower Way and change all of the platting, building, all of the homes and properties. She asked what Attorney Thomson would tell her.

Attorney Thomson replied the City Council would not have the authority to do that.

Member Hara noted Attorney Thomson has confirmed what Member Dujmovic is talking about.

Member Dujmovic said the conclusion is a wise person legally would have advised the City Council in 2010 that they did not have the authority to enter that agreement. However, the City Council did that, signed off, and it is an agreement between two parties. His question is: did they have the right to do so? He thinks they just looked at some theoreticals.

Member Shah asked if the City and the Company came to an agreement for the final Amendment to the PDA, is there any basis for the City to renege on the agreement and require the Company to do something different than what they agreed to in the last Amendment.

Attorney Thomson stated the agreement says what it says, and there are some that think there are mistakes or changes. The issue before the City Council tonight is: does this application comply with the agreement and all the regulations.

NOC Attorney Tom Bray stated they object to the proposed resolution, they think the Council is acting arbitrarily, capriciously, and in the breach of its contractual obligations under the PDA. Its actions are not supported by the facts that were discussed at tonight’s meeting, this is a blatant disregard of the 7th and 8th Amendments and the preliminary approval granted by prior City Councils. It is clearly an effort by this Council to substitute its judgment for the judgment of prior Councils. Even if the supposition that the 7th Amendment was somehow defective had merit, that agreement was signed in 2010; the Statute of Limitations for challenging the validity of that is long past. He stated that the 7th Amendment cannot be ignored by this Council and doing so is arbitrary. The conversion of commercial property to residential units has no application to the Gate Hill site; there is no conversion of commercial acres. With respect to the

concerns raised about guest parking and road configuration, those were decided by the prior Council when it granted preliminary approval and this Council does not have the right to go back and change those preliminary plans. Regarding concerns about NOHOA, whatever concerns NOHOA may have is not a violation of State law or a violation of the City Ordinances, regulations, or of conditions of the preliminary plan. Mr. Bray said the City does not have the right to deny approval because of concerns NOHOA may have. Finally, the City does not have the right to dictate to a landowner the timing of when a landowner develops its property. The idea that a City can decide when market conditions are appropriate for the Company to develop its property is ridiculous.

Attorney Thomson wants to make it clear that they will put these findings into written form as part of the Resolution because those are the findings the Council is relying upon tonight.

Member Watson asked if the City Council would be more accurate referring to the PDA and Amendments 1-6 which were in effect before the action that produced Amendment 7.

Attorney Thomson replied in the negative, noting a better approach is to say “the 1999 PDA as amended.”

Member Watson asked the seconder to the motion (Mayor Ries) to concur with a friendly amendment to make that change.

Mayor Ries clarified it would be an actual amendment because it has been seconded.

AMENDMENT TO THE MOTION by Member Watson, seconded by Ries, that the reference to the PDA in his findings be referred to as the PDA as Amended.

Amendment to the Motion carried by roll call as Councilmembers Dujmovic, Hara, Ries, and Watson voted for; Councilmember Shah voted against.

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

b. Approve resolution setting 2022 preliminary budget/levy

MOTION by Watson, seconded by Hara, to approve Resolution #1434 setting the 2022 preliminary budget/levy of \$2,051,403 and call a public hearing on the Truth in Taxation on Thursday, December 9, at 6:45 p.m. Motion carried unanimously by roll call.

Mayor Ries clarified that this is the lowest levy that has been set in a number of years.

Administrator Kress replied that is correct and they would be decreasing the tax rate.

c. Discussion and possible action on joint powers agreement Shoreview, Arden Hills, and North Oaks for Lake Johanna Fire Department

Administrator Kress is asking for City Council to authorize the City Administrator and City Attorney to sign, when appropriate, with the Mayor after agreement between the three parties. They may not even need this as it is dependent upon whether they would get any funding from the State for the building of the Fire Station.

MOTION by Ries, seconded by Dujmovic, to approve and authorize the Attorneys for the three entities to finalize the language of the agreement. Motion carried unanimously by roll call.

10. COUNCIL MEMBER REPORTS

Member Shah reminded everyone that Ramsey County League of Local Governments (RCLLG) Board of Directors meeting is the following morning, anyone can join at 7:30 a.m. and the meeting will focus on mental health and resources within the County. She stated she and Member Dujmovic were tasked to look at communications with Administrator Kress and shared an update on tools available and timing.

Member Shah and Member Dujmovic gave a presentation, summarizing findings of feedback, and stated they would like to have a brief survey to understand what the public finds useful in communication.

Member Shah gave an update on North Oaks Heritage and Preservation Committee (NOHAP) and thinks the City Council needs to ask if this is a priority right now within the City.

Member Dujmovic met with Administrator Kress and another City Administrator regarding policing and budgeting in the contract cities. At \$900,000, policing is the largest item in the City budget and they are asking questions and learning about the policing. He noted there are still a number of sophisticated phone scams happening and he cautioned people to hang up, look up information online, and if you are interested follow up where you are initiating the call rather than them. Deputy Burrell is putting together a presentation on how to make oneself a more difficult target and he hopes to get a forum to share that information. He thanked NOHOA Executive Director Mikeya Griffin for her service and leadership in the community, noting it is a very complex job and City and she will be missed as she moves on to other things.

Hara reiterated a comment he has stated in the past: they have spent almost the entire night on development and that impacts very, very few residents. If he was a resident, he would be frustrated with the amount of resources devoted to that and would like to see time spent on some of the great initiatives and ideas. He has spent time looking at budgets, police, fire, and the comparison between North Oaks and other cities. He believes they run a very lean operation within North Oaks and will spend more time on that before the final levy. He wrote a letter and sent it to Administrator Kress and he suggests sending that to contractors when they get their building permit to reinforce the safety of the 30 mph limit. Member Hara also spent time on deer management. He thanked Mikeya Griffin and noted she will be missed.

Member Watson shared he attended the VLAWMO meeting the previous week. He encouraged a budget workshop in October of November. He spoke about speeding and suggested taking a serious look at the Sherriff's contract before the end of the year.

Mayor Ries noted Farm Fest is looking for volunteers and would love people to sign up. The Guild II donation is September 11 at the sale site in Shoreview. The Civic Ready update emergency notice is another great way to communicate. She stated Mr. Korby has handed out a wetland ordinance draft which is something the DNR has recommended and they will have a public hearing for that ordinance at the next City Council meeting. Mayor Ries thanked Stephanie Marty for working on the budget and noted this is the lowest budget the City has had in a long time. She also thanked Mikeya Griffin, she is a fabulous person, and she wishes Ms. Griffin the best of luck. Mayor Ries announced plans for a joint listening session with NOHOA where the community can come and the two parties will listen, hopefully in early October.

11. CITY ADMINISTRATOR REPORTS

Administrator Kress said regarding fences and landscaping, it looks like it should be exempted from any other conditions as it reads, however there is some contradictory language in the shoreland ordinance and he has had discussions with Member Watson and Mayor Ries on several occasions. He would like feedback from the Council on their interpretation.

Mayor Ries noted NOHOA's Architectural Review Committee covers fences; this is one area where there is double regulation and is that needed? She knows the City more recently did fence ordinances because of State law with pools and safety. She is open to a discussion on the issue.

Engineer Korby updated the City Council on the MS4 permit, the golf course and Met Council work, Red Forest development, the 2040 Comp Plan and Surface Water Management Plan, of which Met Council had some changes and reviews and Staff is working on making those changes.

12. CITY ATTORNEY REPORTS

None.

13. MISCELLANEOUS

a. August 2021 Forester Report

14. ADJOURNMENT

MOTION by Hara, seconded by Shah, to adjourn the meeting at 11:51 p.m. Motion carried unanimously by roll call.

Kevin Kress

Kevin Kress, City Administrator

Kara Ries

Kara Ries, Mayor

Date approved 10/14/2021