
SUPPLEMENTAL PACKET

Ron Moore

From: Julie Stenberg Zeidel <juliestenbergzeidel@comcast.net>
Sent: Tuesday, December 19, 2017 10:10 AM
To: Ron Moore
Cc: Zeidel, Robert
Subject: letter on lights for meeting tonight, please distribute, thanks!

Dec 18, 2017

Afton City Council

RE: New Streetlights

Dear Persons,

I am writing to you today as a resident personally and significantly affected by the new streetlights. I believe these lights were meant to replace the gas lamps that were used on the main street, which gave off a soft glow and thus a historical feel. However, there was little lighting on my block (the block just south of city hall) prior to the new lights; just a few in city hall parking lot and possibly one on each corner, that illuminated the intersections. There are now, I believe, 4 of the new lights spread throughout the block in addition to the city hall parking lot lights and at least one intersection light. The lights are not comparable to the soft glow of the gas lights; in fact, they are many times brighter than I ever imagined. In addition, the placement and height of the lights mean that they shine directly into bedroom windows. This level of lighting impacts human health. In addition, Afton is a wildlife corridor; I have in the past heard owls at night, and seen bats, deer, frogs, foxes, and other animals. Outdoor lighting can also impact the normal daytime / nighttime (circadian) rhythms of animals and birds.

Finally I think it worth noting that at the times I am frequently out walking at night (5-10 pm during winter; 9pm-1 am summer) there is minimal vehicle traffic and virtually no other foot traffic. So there would not be a need for bright continuous illumination of the streets (and surrounding houses) all night long. Surely dimming the lights, or removing / shielding some of the lights, could save money in the long run and not effect the health and well being of those that live under these spotlights.

For more info on light pollution and its effects on health see this statement from the AMA:

http://darksky.org/wp-content/uploads/bsk-pdf-manager/AMA_Report_2016_60.pdf

Finally, I ask you to give weight to the opinions of those of us most significantly affected by this; namely, the people that live on the main street.

Sincerely,

Julie Zeidel

Ron Moore

From: ward3
Sent: Friday, December 15, 2017 12:21 PM
To: Ron Moore; Nick Guilliams (NGuilliams@wsbeng.com); publicworks
Cc: ward1
Subject: Street Lights

Ron, I spoke to Nick and the electrician that installed the new street lights in the old village. Here is a summary of our discussion.

Global dimming:

- 1) A method for global dimming is available at a cost of around \$30k. This would require disassembling all lights and bases and pulling a control line in the existing conduit the entire length of the village. This would have to wait for warm weather.
- 2) Replacement of the luminaries - there will be a significant cost to replace the luminaries with lower lumen units.

Individual Dimming:

- 1) Individual lights can be dimmed by two methods, with an electronic dimmer or with a light shield.
 - a. Electronic dimmer, according to the electrician the luminaries can be dimmed with a 0 – 10 vdc signal. This method will dim the entire light pattern reducing the light level on the road as well as on the sidewalk side. We would have to purchase the dimmer and have the electrician do the install.
 - b. Light Shield – masking,. Use of a cardboard or opaque plastic cut to size to cut off the light on the sidewalk side. The top of the luminaries is hinged so access should be easy. Public works can do this but they will have to rent a man lift. (\$225 per day).
 - c. Light Shield – painting. The crudest method would be to spray paint the interior glass window on the sidewalk side with black paint. I would be strongly opposed using this method.

Stan

Afton City Council
Ward 3
City of Afton
3033 St Croix Trail S
PO Box 219
Afton, MN 55001
651-436-5090

**City of Afton – CenturyLink High Speed Internet Access Service
Expansion Agreement**

This agreement is made and entered into between the City Of Afton ("Afton" or "City") and Qwest Corporation dba CenturyLink QC (CenturyLink).

WHEREAS, Afton desires to contract for the expansion of high speed internet access in Afton; and

WHEREAS, CenturyLink desires to expand high speed internet access infrastructure and services in Afton in exchange for payments as indicated below.

NOW, THEREFORE, CenturyLink and Afton agree as follows:

- I. Relationship of Parties: The parties to this Agreement are not joint venturers, partners, agents nor representatives of each other, and have no legal relationship other than as contracting parties. CenturyLink shall not act or represent or hold itself out as having authority to act as an agent or partner of Afton or in any way bind or commit Afton to any obligations, without the prior written consent of Afton.
- II. CenturyLink responsibilities:
 - A. CenturyLink shall plan, direct and implement all aspects of the expansion of high speed internet infrastructure and service to provide the entire area of the City with internet service with the minimum speed of 1 MB up and 10 MB down, with the exception of those areas currently provided with this level of service by another hardwire provider.
 - B. CenturyLink provided a proposal on March 15, 2016 to accomplish the expansion described in II.A. This proposal, with revisions that continue to accomplish the expansion described in II.A above, is incorporated into this agreement as Exhibit A.
 - C. The high speed internet expansion project will be completed in phases that directly relate to the installation of DSLAM's and necessary related infrastructure improvements.
 - D. At the completion of the high speed internet expansion project, CenturyLink shall provide documentation sufficient to the City to demonstrate the completion of each phase of infrastructure expansion and the ability to provide at least the minimum required level of service speed (as indicated in II. A. above) to the area necessary to enable the overall project to provide the minimum required speed throughout the entire City (as indicated in II. A. above).

- E. Upon documentation of infrastructure expansion and the required service level at the completion of all of the agreed upon DSLAM installations as reflected in Exhibit A, CenturyLink shall provide the City with an invoice not to exceed 50% of the cost indicated in the proposal. If the overall project cost, as reflected in Exhibit A, exceeds \$250,000, CenturyLink will pay all costs beyond the City's \$125,000 share of the project costs.

III. Afton's responsibilities:

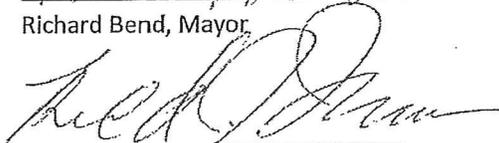
- A. Upon receipt of sufficient documentation of the completion of the infrastructure expansion and the ability to provide the minimum required level of service, and the receipt of an invoice for the City's 50% share of the cost as reflected in Exhibit A, the City will pay to CenturyLink, within 45 days, the City's share of the cost, subject to not exceeding an overall maximum cost to the City of \$125,000 for the entire project.

IV. Miscellaneous:

- A. CenturyLink shall retain all title, interest, ownership and rights, including but not limited to operational and maintenance rights, to its facilities, infrastructure and equipment contemplated by this Agreement, and this Agreement shall in no way provide such title, interest, ownership or rights to the aforementioned to the City.
- B. The parties will work cooperatively to resolve any issues and third-party impediments that may delay the infrastructure expansion.
- C. Afton acknowledges and agrees that this Agreement solely describes the parties' obligations with respect to the internet infrastructure expansion and speed service levels for Afton. Afton further acknowledges and agrees that CenturyLink services, including internet services, are governed by separate terms, regulations, conditions, billing and rates that are not the subject of this Agreement and that Afton and Afton customers will be subject to for ordered services from a CenturyLink affiliate. This Agreement shall not be considered an agreement for CenturyLink services or a commitment by CenturyLink to provide services, but, instead, an agreement to provide the City with the infrastructure as noted in this Agreement, including Exhibit A, capable of delivering a desired level of service.
- A. Each party shall keep Exhibit A confidential and shall not, without the other's prior written consent, disclose Exhibit A, pursuant to Minnesota Statutes 13.591 Subd. 3. (b) and 13.37 Subd. 1. (b).

For Afton


Richard Bend, Mayor


Ronald J. Morse, City Administrator

For CenturyLink

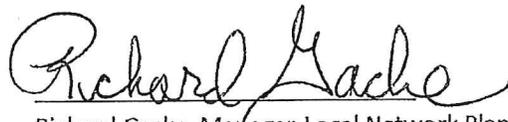
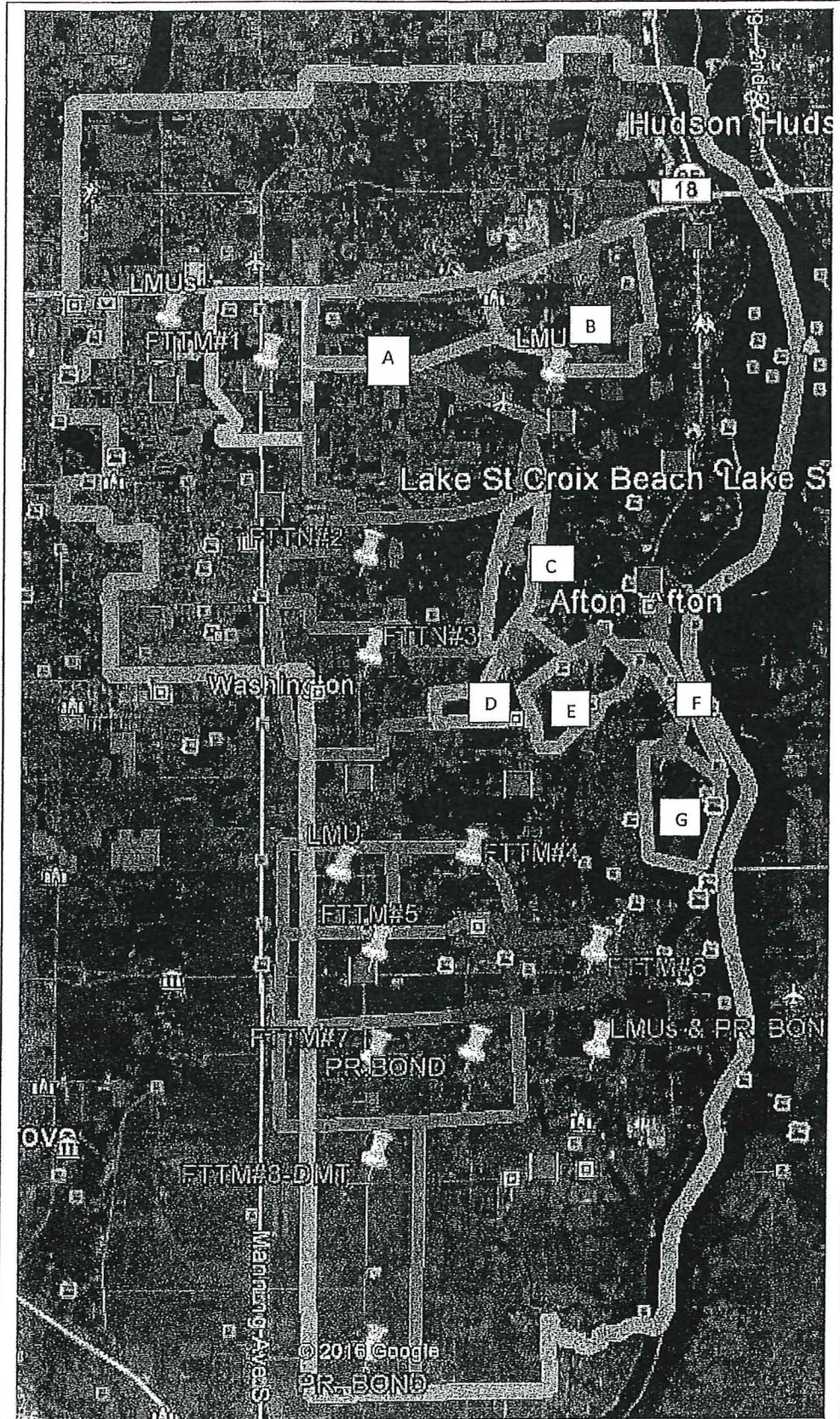

Richard Gacke, Manager-Local Network Planning

EXHIBIT A
AFTON 2016 CAF BUILD-MAGENTA
AFTON PROPOSED CITY/CTL BUILD- GREEN



A

HUDSON RD & INDIAN TRL
 LU= 33
 LF2= 5.1KFT= 11.7Db=12-15M
 TOTAL= no build already has
 CATV

B

STAGECOACH TRL&DIVISION
 STREET
 LU= 45
 LF2= 8.8 KFT=20.39Db=10M
 TOTAL= no build CATV

C

30TH ST&TRADING POST TRL
 LU=36
 LF2=4.7KFT=11.0 Db=12-15M
 TOTAL= \$69,073

D

40TH ST&TRADING POST TRL
 LU= 65
 LF2=6.2KFT=14.2Db=12-15M
 TOTAL= \$28,571

E

42ND ST&PARADOX
 LU= 56
 LF2=3.1KFT= 7.15Db= 40M
 TOTAL= \$60,191

F

RIVER RD & HWY 21
 LU= 26
 LF2=6.6KFT= 19.4Db= 10-12M
 TOTAL= \$40,217

G

50TH ST & QUADRANT AVE S
 LU= 21
 LF2= 5.7KFT=13.3Db= 12-15M
 TOTAL= \$52,655

CENTURYLINK CONFIDENTIAL
 AND PROPRIETARY;
 INTENDED ONLY FOR
 DISCLOSURE TO
 CENTURYLINK EMPLOYEES,
 REPRESENTATIVES AND TO
 THE CITY OF AFTON
 REPRESENTATIVES WITH A
 NEED TO KNOW

(612) 337-6100 F (612) 339-6591
 100 Washington Ave S Suite 1300
 Minneapolis, MN 55401
 siegelbrill.com

**SIEGEL
 BRILL PA**
 ATTORNEYS AT LAW

December 15, 2017

Via U.S. Mail and Email (rmoose@ci.afton.mn.us)

Mayor Richard Bend and
 Members of the City Council
 City of Afton
 3033 St Croix Trail S.
 PO Box 219
 Afton, MN 55001

Re: Afton Creek Preserve application
 Our File No. 28697

Dear Mayor Bend and Council members:

I represent Citizens Concerned for Afton, and I am writing today to address a number of points in Mr. Moose's December 14 Council Action Memo regarding the proposed Afton Creek Preserve PLCD.

The first point I wish to address is the statement in the Memo that the interpretation of ordinance provisions is "within the Council's powers." With all due respect to Mr. Moose and the Council, this statement does not fully address where the ultimate power to interpret ordinances actually lies. It is certainly the case that, *in the first instance*, the authority to interpret ordinances rests with the Council or its designee. But that requires the City to apply its ordinances as they are written and resort to "interpretation" only when an ordinance is unclear or ambiguous. However, it is ultimately the courts that resolve disputed ordinance interpretations, and the Courts perform this function *de novo*, without giving any deference to a city council interpretation. See *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980) ("while issues of fact and legislative policy-making decisions should be left to the city's determination, subject only to the broad limits of the 'arbitrary and capricious' standard, the interpretation of an existing ordinance is a question of law for the court"). The City must therefore apply its ordinances as they are written, or risk reversal by the district court.

Here, the ordinance without question states that PUDs are not a permitted use in shoreland areas. The ordinance does not define the term PUD, but the only possible use it could be referring to is a PLCD; nothing else in the ordinance comes close. The law requires the City to give meaning to every word of an ordinance, see *500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 291 (Minn. 2013), and the only way to do that here is to conclude that the term "PUD" in the use table in Sec. 12-363(B) refers to a PLCD. (It is also worth noting that the legislative history of the PLCD ordinance that is included with the Council Action Memo shows that the PLCD ordinance is largely just the old PUD ordinance with a name change.)

The second issue is the suggestion in the Council Action Memo that in the absence of a definition of PUD in the Afton City Code the City can rely on a definition from a general legal treatise that was provided in a November 30 letter from the City Attorney. Even if this matter could not be resolved based on an interpretation of the prohibition on PUDs in the use table in

Sec. 12-363, reliance on a secondary source like a treatise would be inappropriate because the Minnesota state shoreland rules provide a definition of PUD that is binding on the City:

“Planned unit development” means a type of development characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, whether for sale, rent, or lease, and also usually involving clustering of these units or sites to provide areas of common open space, density increases, and a mix of structure types and land uses.

Minn. R. 6120.2500, subp. 12. The proposed PLCD is plainly a planned unit development under this definition—it involves a unified site design for a number of dwelling units and a form of clustering to provide areas of common open space and increased density.

Finally, the Council Action Memo indicates that the City’s planning consultant has suggested that a PLCD can be distinguished from a PUD based on the fact that a PLCD that does not comply with general zoning provisions requires separate variances, whereas such deviations can be approved as part of a PUD approval, without the need for variances. This argument should not even be considered for the reasons outlined above, because the prohibition of PUDs in the shoreland is plain on its face. In any event, nothing in the City Code supports the planner’s argument, and fact that a PLCD applicant may need a subdivision variance does not take a PLCD outside of the definition of a PUD.

Sincerely,



Mark Thieroff

612.337.6102 | Direct
markthieroff@siegelbrill.com

December 18, 2017

TO: Ron Moorse and Afton City Council
FROM: Citizens Concerned for Afton
RE: PUDs and PLCDs in the Afton Shoreland District

Thank you for the opportunity to provide comments on the above-referenced issue.

1. **Planned Unit Developments (PUDs) are Prohibited in the Afton Shoreland District**

- Afton's ordinance specifically prohibits Planned Unit Developments (PUDs) in its shoreland district at Sec. 12-363(B).
- Minn Rule 6120.3800, subpart 1 (attached) says local governments must consider the use of Planned Unit Developments (PUDs) in their shoreland districts
 - municipalities only have obligation to consider but have no obligation to allow PUDs in shoreland.
 - if they allow PUDs in shoreland, their ordinances must include all the restrictions, procedures, and information requirements set for the state law at Minn. Rule 6120.3800
- Cities can choose to be more protective of their shoreland and not encourage any development near or within their shorelines
- Afton made this choice by specifically prohibiting PUDs in the shoreland district as stated in 12-363(B).
- If Afton now wants to consider allowing PUDs in shoreland, it must follow the procedures set forth in state law to do so and amend its ordinance

2. **A PLCD is a type of PUD and is Prohibited in the Afton Shoreland District**

- No specific definition of a PLCD so next step is to look at the many legal definitions of PUD to see if a PLCD fits within it.
- City Attorney December 1, 2017 opinion on page 7-8 says his research "***strongly suggestive***" that PLCD is PUD as commonly understood in the real estate industry. He relies on a legal treatise to support this view.
- Minnesota law supports the same view without resorting to relying on a treatise but instead looking at the definition in state law. Minn. Rule defines PUD as: "*Planned unit development means a type of development characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, whether for sale, rent, or lease, and also usually involving clustering of these units or sites to provide areas of common open space, density increases, and a mix of structure types and land uses.*" Minn. R. 6120.2500, subp. 12 (attached). The Afton PLCD is plainly a planned unit development under this definition-it involves a unified site design for a number of dwelling units and a form of clustering to provide areas of common open space and increased density.

- MN League of Cities defines PUD as *“A development of contiguous land area that contains developed clusters intermixed with green space or commercial or public development. Often the cluster development allows greater density than normally permitted in the development, in exchange for some other benefit such as green space or open space.”* Mn League of Cities, Information Memo Zoning Guide for Cities, page 7 (attached). This definition also encompasses a PLCD.
- The history of adoption of the Afton PLCD ordinance is also important to consider. Afton’s PUD ordinance was merely replaced by the PLCD ordinance almost verbatim.
 - The actual City resolution approving the PLCD ordinance (attached) shows the markup of the PUD ordinance. It clearly indicates that the word PLCD was merely substituted for the word PUD in the scope and general provisions indicating they are essentially interchangeable terms.
- Afton City Planner says because PLCD applicant may need subdivision variance that the PLCD can’t be a PUD. There is absolutely no authority for that premise. The fact that a PLCD applicant may need a subdivision variance does not take a PLCD outside of the definition of a PUD.
 - Planner’s attempt at ‘interpreting’ the PLCD ordinance beyond its plain meaning is yet another misreading of our ordinances and the law and an attempt to bend over backwards to maximize density in the PLCD.
- The City does not have authority to interpret ordinances beyond its plain meaning. Here PUDs are strictly prohibited in shoreland. Furthermore, the legal definitions in treatises, Minnesota law, and the MN League of Cities Zoning Guide ***all*** point to a PLCD being a type of PUD. Thus, a PLCD can not be included in the Afton Shoreland District.

Minnesota Administrative Rules

Authenticate

6120.3800 PLANNED UNIT DEVELOPMENT.

Subpart 1. Scope of planned unit development provisions. Local governments must consider incorporating, with approval of the commissioner, provisions into shoreland management controls to allow planned unit developments. The provisions may allow planned unit developments for new projects on undeveloped land, redevelopment of previously built sites, or conversions of existing buildings and land. The provisions must be consistent with standards in this part. During the period between adoption of parts 6120.2500 to 6120.3900 and adoption of local government official controls meeting the planned unit development standards in part 6120.3800, preliminary plans for each planned unit development must be reviewed for consistency with part 6120.3800 and approved by the commissioner before final local government approval.

Subp. 2. Land use district designation. If local governments allow planned unit developments, the land use districts in which they are an allowable conditional use must be identified in their official controls and on a zoning map. Designation of the districts must be based on consideration of the criteria in part 6120.3200 and the following criteria:

- A. existing recreational use of the surface waters and likely increases in use associated with planned unit developments;
- B. physical and aesthetic impacts of increased density;
- C. suitability of lands for the planned unit development approach;
- D. level of current development in the area; and
- E. amounts and types of ownership of undeveloped lands.

Expansions to existing commercial planned unit developments involving up to six dwelling units or sites, unless the density determined under subpart 6, item A is exceeded, may be allowed as permitted uses under standards developed by local units of government. The date of effect of official controls adopted by each local government under this part must be the base date for determination of expansions. Expansions exceeding these limits must be processed as conditional uses and meet the standards in this part.

Subp. 3. Information requirements. Provisions for submission of adequate information by project proponents must be included in official controls. The provisions must include at least the following:

- A. a site plan for the project showing property boundaries, surface water features, existing and proposed structures, sewage treatment systems, topographic contours

RELEVANT LINKS:

Cities should strive for zoning that meets their goals as simply and efficiently as possible. Above all, a zoning ordinance should be a practical document that is as enforceable as possible.

Depending upon the individual needs of the city, a zoning ordinance also may contain provisions for the following:

- Mixed use or hybrid districts. Districts that do not neatly meet the traditional district categories of residential, commercial or industrial use, but may contain a blend of uses. For example, a “downtown mixed use district” that features a blend of commercial uses and multifamily residences.
- Planned Use Development (PUD) or cluster development: A development of contiguous land area that contains developed clusters intermixed with green space or commercial or public development. Often the cluster development allows greater density than normally permitted in the development, in exchange for some other benefit, such as green space or open space.
- Overlay district: A district developed to “overlay” one or more existing zoning districts that imposes additional zoning requirements. Overlay districts may be developed with a specific land area in mind or may be developed to “float” until anchored to a suitable development proposal. In some cities, overlay districts may be structured as conditional uses.

Same definition as PUD encompasses

5. Natural resource protection and flood plain provisions

Zoning in cities that contain certain natural resources, such as lakes and rivers, or that sit within a floodplain, also may contain the following:

- Floodplain requirements: Floodplain management ordinances are required by state law. Flood plain ordinances regulate the use of land in the floodplain to preserve the capacity of the floodplain to carry and discharge regional floods and minimize flood hazards.
- Wild and scenic rivers development requirements: Wild and Scenic Rivers development ordinances are required by state law for cities that have shoreland located within the Minnesota Wild and Scenic Rivers System. These ordinances must comply with state standards set by the Commissioner of Natural Resources.
- Shoreland development requirements: For cities that contain shore land, these zoning regulations control the use and development of its shorelands. City shore land regulations must be at least as restrictive as state standards and are subject to the review of the Commissioner of Natural Resources.

Minn. Stat. § 103F.121.
Minn. R. 6120.5000.
See MN DNR sample floodplain management ordinances.
See also MN DNR for more information and resources on floodplain management.

Minn. Stat. § 103F.335.

See also MN DNR website for more information on MN Wild and Scenic Rivers.

Minn. Stat. § 103F.221.
Minn. R. 6120.2500 – 3900.
See shoreland management ordinance, DNR Model.
See also MN DNR website for more information and resources on shoreland management.

Subp. 7b. **Industrial use.** "Industrial use" means the use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items.

Subp. 7c. **Intensive vegetation clearing.** "Intensive vegetation clearing" means the complete removal of trees or shrubs in a contiguous patch, strip, row, or block.

Subp. 8. **Lot.** "Lot" means a parcel of land designated by plat, metes and bounds, registered land survey, auditors plot, or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease, or separation.

Subp. 9. **Lot width.** "Lot width" means the shortest distance between lot lines measured at the midpoint of the building line.

Subp. 10. **Nonconformity.** "Nonconformity" means the same as that term is defined or described in Minnesota Statutes, chapter 394.

Subp. 11. **Ordinary high water level.** "Ordinary high water level" means the boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

§ Subp. 12. **Planned unit development.** "Planned unit development" means a type of development characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, whether for sale, rent, or lease, and also usually involving clustering of these units or sites to provide areas of common open space, density increases, and a mix of structure types and land uses. These developments may be organized and operated as condominiums, time-share condominiums, cooperatives, full fee ownership, commercial enterprises, or any combination of these, or cluster subdivisions of dwelling units, residential condominiums, townhouses, apartment buildings, campgrounds, recreational vehicle parks, resorts, hotels, motels, and conversions of structures and land uses to these uses.

Subp. 13. **Public waters.** "Public waters" means any waters as defined in Minnesota Statutes, section 103G.005, subdivisions 15 and 15a. However, no lake, pond, or flowage of less than ten acres in size in municipalities and 25 acres in size in unincorporated areas need be regulated for the purposes of parts 6120.2500 to 6120.3900. A body of water created by a private user where there was no previous shoreland may, at the discretion of the local government, be exempted from parts 6120.2500 to 6120.3900.

ORDINANCE 06-2008

CITY OF AFTON
WASHINGTON COUNTY, MINNESOTA

AN ORDINANCE TO AMEND CHAPTER 12, LAND USE, BY AMENDING SECTION 12-145
AND AMENDING ARTICLE XII, TO ALLOW PRESERVATION AND LAND CONSERVATION
DEVELOPMENTS IN THE AGRICULTURAL DISTRICT.

THE CITY COUNCIL OF THE CITY OF AFTON, MINNESOTA HEREBY ORDAINS:

SECTION 1. Section 12-145 of the Afton Code of Ordinances is hereby amended to read as follows:

Sec. 12-145. Preservation and Land Conservation Development (PLCD) Planned Agricultural Unit Development (PAUD) Overlay District.

- (a) Purpose. To encourage a more creative and efficient development of land and its improvements through the preservation of agricultural land, natural features and amenities than is possible under the more restrictive application of zoning requirements, while at the same time, meeting the standards and purposes of the comprehensive plan and preserving the health, safety, and welfare of the citizens of the city, in the AG zoning district as provided in Article XII of Chapter 12.
- (b) Permitted uses. As permitted and regulated under Chapter 12.

SECTION 2. Article XII of the Code of Ordinances is hereby amended to read as follows:

ARTICLE XII. AFTON PRESERVATION AND LAND CONSERVATION DEVELOPMENTS
PLANNED AGRICULTURAL UNIT DEVELOPMENTS

Sec. 12-2371. Scope.

This article applies to Planned Agricultural Unit Development (PAUD) Preservation and Land Conservation Developments (PLCD) in the Agricultural (AG) zoning district.

Sec. 12-2372. General provisions.

A PAUD-PLCD is a tract of land that is developed as a unit under single or unified ownership or controls. A Planned Agricultural Unit Development Preservation and Land Conservation Development may be allowed in the AG zoning district to preserve prime agricultural land, woodland, wildlife habitat, vistas, groundwater recharge areas, areas with sensitive soils or geological limitations and areas identified in the Comprehensive Plan. Uses not otherwise allowed in the zoning district are prohibited within a planned development unless specifically permitted by provisions of this ordinance. ~~provisions are made.~~

Sec. 12-2373. Purpose.

The purposes of this article are:

- (1) To permit subdivisions in the Agricultural Zoning District which require the construction of a new public street.
- (2) To encourage a more creative and efficient development of land and its



NORTHWEST ASSOCIATED CONSULTANTS, INC.

4150 Olson Memorial Highway, Ste. 320, Golden Valley, MN 55422
Telephone: 763.957.1100 Website: www.nacplanning.com

MEMORANDUM

TO: Ron Moorese
FROM: Stephen Grittman
DATE: December 18, 2017
RE: Afton – Afton Creek PLCD – PLCD v. PUD
FILE NO:

Background

You have asked for clarification as to our contention that the PLCD District in Afton differs in substantive ways from PUD zoning. As part of this, members of the neighborhood surrounding the proposed Afton Creek project have, along with their attorney, contended that there is no substantive difference, and that by virtue of the City's prohibition of PUD in Shoreland areas, that the Afton Creek project cannot proceed as a PLCD.

In previous correspondence, I have contended that the City's PLCD district is not a PUD, for the following reasons (in summary):

- A PUD is characterized by a zoning process which promotes flexible design, with development standards that are negotiated as part of the PUD review and approval process, rather than set, uniform standards that apply to development within a specific zoning district.

This is contrasted with the PLCD, in that the PLCD incorporates specific development standards that are applicable to any development within the district. This is a characteristic of a zoning district, and not a PUD.

- A PUD incorporates this flexible design process as a part of the general review, with a series of approvals necessary to gain development permitting. There is no statutory or local ordinance process other than the PUD approval for a project to depart from a commonly applied standard. The City's consideration of PUD is whether it is consistent with the City's Comprehensive Plan goals.

In a PLCD, departures from the regulations in the district require consideration of variances, which require specific findings as laid out in Minnesota Statutes, including “practical difficulties” and that the use is, despite the need for variance, a “reasonable use”. This threshold is not required in PUD..

- I believe that the interpretation we provided as to what constitutes a PUD process is a common one, and provided a brief handful of examples that demonstrate this usage. I could supply many more, if necessary.

Neighborhood Comments

In subsequent correspondence, the neighbors and their attorney have raised new objections, and contend that our previous arguments are blunted by their additional information. In the material below, we support our position – and address the neighborhood’s arguments.

1. The neighbors suggest that the definition of PUD in the Minnesota Rules includes the PLCD approach. However, the definition states:

“Planned unit development” means a type of development characterized by a **unified site design for a number of dwelling units or dwelling sites on a parcel**, whether for sale, rent, or lease, and also usually involving clustering of these units or sites to provide areas of common open space, **density increases**, and a **mix of structure types and land uses**.

The PLCD does not require unified site design for “a number of dwellings... on a parcel...”, nor does it accommodate density increases or a mix of structures types and land uses. The PLCD, instead, requires 5-acre parcels exclusively for single family homes, one dwelling per lot, each of which would be sited and constructed based on the unique aspects of the individual lots on which they are located. No unified site design. No more than one dwelling per parcel. No density increase. The definition (which applies to PUDs in a Shoreland area) clearly does not describe the application of PLCD.

2. The neighborhood’s next contention is that the League of MN Cities definition also encompasses a PLCD. The League’s definition includes a comment that such development often includes increased density, which as we have noted, the PLCD does not. However, the neighborhood’s argument appears to be an error in logic. The League’s definition is sufficiently vague to potentially include all manner of development styles, and also is entitled “Planned Use [sic] Development or Cluster Development”. I might agree that the PLCD could be seen as a form of cluster development, but not a form of PUD.

Moreover, the neighborhood (through its attorney) suggests that a legal treatise should not be used as authority. While a legal treatise is not to be commonly used as authority (even though there are many cases where courts cite such

treatises), the vague definition taken from an “Information Memo” of a lobbying group carries even less weight. Nonetheless, the definition we cited previously was not intended as sole authority, but only to buttress the other cited examples as a common definition. Again, we could provide many more than share that definition.

3. The neighbors’ letter suggests that the PLCD ordinance must constitute a PUD as it was only a cursory amendment from a previous ordinance that incorporated the PUD terminology. We would suggest that this says more about the previous ordinance’s status as a true PUD than it says about the current PLCD, with the additional observation that eliminating the PUD language from the PLCD was an appropriate amendment, since it does not function as a PUD, at least as that term is commonly used.
4. The neighbors’ letter takes issue with our previous suggestion that PLCD is distinguished from PUD because of the need for variances, and calls this a misreading of Afton’s ordinances. In this, we are not “reading” Afton’s ordinances. Instead, we are noting the common usage of PUD, and re-emphasizing the fact that PUD processes in almost every jurisdiction we are aware of negotiate standards without variance. Density, lot sizes, height, land use, all manner of standards are reviewed under the PUD umbrella as to whether they meet the intent of the community’s Comprehensive Plan.

Without this PUD allowance, departure from zoning standards requires the processing of a variance for each instance of departure – a process which is specifically identified in state law, and for which the City is required to make specific findings to consider approval. The absence of the need for variance in PUD design is, in fact, a significant characteristic of PUD which distinguishes it from a typical zoning district.

5. The neighborhood suggests that the plain meaning of the ordinance, along with all other references, point to PLCD being a version of PUD. We disagree. Instead, there are several key aspects of PLCD which are clearly not PUD design, as PUD is understood in the industry, and as it is defined in most areas where it is commonly used. Indeed, Afton’s removal of its PUD language from the zoning district that preceded the PLCD is actually further evidence that the City did not intend to create a PUD ordinance when it adopted the PLCD language.
6. The neighbor’s attorney suggests that the City departs from the plain meaning of the ordinance. Again, we disagree. Instead, the neighborhood is attempting to impute a PUD where one does not exist, neither by ordinance definition nor by common industry practice.
7. The attorney suggests that PLCD must be a PUD, since nothing else in the ordinance “comes close”. However much closer than other ordinance language the PLCD may be to PUD, that proximity does not make it so. The attorney’s

suggestion is that since the term PUD comes up in the ordinance, it must exist somewhere in the City's zoning allowances. Instead, however, the City's prohibition to using PUD in Shoreland areas (to which the attorney refers in this objection) is a logical one, in that under the State's model Shoreland regulations, the possibility of PUD design is raised. It is entirely natural for the City to specify that it will not consider PUD design in the Shoreland areas, without making any implication that PUD design need be included elsewhere.

Cluster Development Ordinance

It is a fair question to ask if the PLCD ordinance is not a PUD, then what is it? In our opinion, it stands on its own as a discrete zoning district, with its own uses, standards, and requirements. It is a form of cluster zoning, in which development is restricted to limited locations, and other land features are preserved as open space. It is not uncommon to find that many cluster ordinances are regulated by a PUD process. However, it is not necessary.

Afton applies its cluster zoning under the PLCD by Conditional Use Permit. There is no reason that a City would have to incorporate cluster zoning by PUD, unless it wished to introduce an option for flexible standards and negotiated design goals. PUD is a process, not a district per se.

Similar Examples

As noted, we consider the Afton PLCD ordinance to be a cluster development ordinance, with a series of specific standards to which a developer must adhere to be considered for approval. This type of zoning is easily and commonly distinguished from PUD design. To illustrate this distinction, we note that there are a number of such "cluster development" ordinances in use in the Twin Cities area, and in communities that also employ PUD design as a separate ordinance section and process.

Two examples are provided, attached to this memorandum. First is Rogers, Minnesota. The Rogers ordinance includes a section relating to "Open Space Development", and a separate section relating to "Planned Unit Development". The OSD is a cluster development district similar in structure to Afton's PLCD, with the common components of separate zoning we have cited previously. The PUD section of Rogers' code is similar to those which we have discussed before – no specific standards, primarily a set of policies and procedures for designing and negotiating the details of a project as a PUD.

The second example is the Washington County ordinance, which applies to many of the rural township areas in and around Afton. The County ordinance is actually much closer to PUD than is the Afton PLCD, but the County has seen fit, nonetheless, to adopt both sets of regulations, since they do not have the same goal.

Sec. 125-227. - Open space development overlay district.

(a) *Purpose and intent.* The "OSD", open space development overlay district is established to encourage development of rural housing clusters that meet the following purposes:

- (1) Provide efficient use of the land while maintaining contiguous blocks of economically viable agricultural land, mature woodlands, and open space; and preserving historical features, scenic views, natural drainage systems and other desirable features of the natural environment.
- (2) Allow housing to be concentrated on sites that have low agricultural potential and/or high natural housing appeal.
- (3) Create neighborhoods with direct access to open space, distinct identities, and sense of community.
- (4) To encourage innovation and promote flexibility, economy, and creativity in residential development.
- (5) To provide commonly owned open space areas for passive and/or active recreational use by a variety of age and income groups.
- (6) To provide for diversity of lot sizes, housing choices and building densities to accommodate a variety of age and income groups.
- (7) To preserve scenic views and elements of the community's rural character by minimizing views of new development from existing roads.

(b) *Definitions.*

- (1) *Community garden* means land which is cultivated by the residents of the development for the production of trees, vegetables, fruits, flowers, herbs, and grasses for the residents' use or to be sold directly to consumers through membership in the garden.
- (2) *Conservation easement* means an interest in real property created in a manner that imposes limitations or affirmative obligations in regard to the use of property including the retention, protection, and maintenance of natural resources, open space, and agriculture.
- (3) *Cultural resource* means the historic and archeological characteristics of the land, including buildings, and landscapes, which provide information regarding the history of the community and its people.
- (4) *Historic building and structure* means a structure which has been identified by an historic resources survey or the state historic preservation office as having public value due to its notable architectural features relating to the cultural heritage of the community.
- (5) *Homeowners association* means a formally constituted non-profit association or corporation made up of the property owners and/or residents of the development for the purpose of owning, operating, and maintaining the common open space and facilities.
- (6) *Neighborhood* means an area containing a contiguous group of residential lots where people live in close proximity to one another.

(c) *Applicability.* The OSD development standards are an alternative set of standards for residential development within the RE-5 district. The design standards contained in this section are not applicable in the shoreland overlay district.

The regulations of this Development Code are applicable only to open space developments approved after the effective date of the Development Code.

(d) *Application.*

- (1) A conditional use permit is required for an open space development in the RE-5 zone.
- (2) A conditional use permit application shall be filed, in writing, with the zoning administrator in accordance with [section 125-34](#), conditional uses.
- (3) In addition to the criteria stated in [section 125-34](#), the Planning Commission shall consider the following:
 - a. The open space development is designed to preserve open space and rural character while creating compact residential neighborhoods.
 - b. The open space development is designed in accordance with the standards of the Development Code.
 - c. The open space development supports the goals and policies of the Rogers Comprehensive Plan.
- (4) In addition to those submittal requirements stated in [section 125-34](#), the following items shall be submitted as part of the conditional use permit application for open space development:
 - a. Resource inventory. The plan for an open space development shall include a resource inventory, to include the following, mapped at a scale of no less than one inch equals 100 feet:
 1. Topographic contours at ten-foot intervals, showing rock outcrops and slopes of more than 15 percent.
 2. Soil type locations and identification of soil type characteristics such as agricultural capability, depth to bedrock, and suitability for wastewater disposal systems.
 3. Hydrologic characteristics, including surface water bodies, floodplains, wetlands, natural swales, and drainage ways.
 4. Vegetation of site, according to general cover type (pasture, woodland, etc.), defining boundaries of woodland areas and stand-alone trees with a caliper of more than 18 inches. Vegetative types shall be classified as generally deciduous, coniferous, or mixed, and described by plant community, relative age, and condition.
 5. Current land use and land cover (cultivated areas, paved areas, etc.), all buildings and structures on the land, and all encumbrances, such as easements or covenants.
 6. Visual resources, showing views onto the tract from surrounding roads and public areas, as well as views within the tract.
 7. Cultural resource: Brief description of historic character of buildings and structures, historically important landscapes, and archeological features.
 8. Context: General outlines of existing buildings, land, and natural features such as water bodies or wooded areas, roads, and property boundaries within 500 feet of the tract. This information may be presented on an aerial photograph.
 - b. Yield plan.
 1. The applicant shall submit a "yield plan" showing the maximum number of dwelling units that would be permitted given the minimum lot size and lot widths for a subdivision utilizing the underlying zoning and subdivision regulations. For the purposes of this requirement, the yield plan shall be arrived

by preparing a sketch plan subdivision of the property, accounting for known land features such as wetlands, roads, etc. The yield plan shall establish the maximum number of lots that may then be developed on a smaller area utilizing the open space development process in this section. The yield plan need not be engineered; however, it shall be drawn to scale and it shall identify all the major physical features on the parcel, taking into account the character of the land as closely as possible.

c. Concept subdivision plan.

1. One or more open space design plans meeting the intent of this chapter and including at least the following information shall be prepared:

- (i) Open space areas indicating which areas are to be protected.
- (ii) Boundaries of areas to be developed and proposed general street and lot layout.
- (iii) Number and type of housing units proposed.
- (iv) Areas proposed for stormwater management and on- or off-site sewage treatment.
- (v) Said plans shall be drawn at a scale of one inch equals 100 feet.

d. Phasing plan. Open space development may be phased in accordance with a unified development plan for the entire tract meeting the following requirements:

- 1. A phasing plan identifying the sequence of development showing approximate areas, serially numbered with a description of each phase. Information shall be provided regarding the number of dwelling units, proposed improvements, and common facilities for each.
- 2. The phasing plan shall be made a part of the conditional use permit and is effective for five years from the date of preliminary plat approval. If final plat approval is not received within five years, the permit shall become null and void.
- 3. Any common facilities, including golf courses, shall be constructed prior to the sale of any lots and shall be clearly marked on a site map which shall be an attachment to all sales agreements for individual lots.
- 4. As part of the development agreement, a financial guarantee to ensure completion of the common facilities, trails, and landscaping shall be provided.

e. General location map.

f. Application procedure. Upon submittal of a complete application, the application shall be processed according to the zoning amendment, subdivision ordinance and conditional use permit processes. Approval of any open space development preliminary or final plat shall require a majority vote of the city council as prescribed by state law.

(e) *Uses.* The following uses are permitted within OSD developments. The following uses must meet the standards and criteria specified for those uses, as set forth in and regulated by the City of Rogers Zoning and Subdivision Ordinances:

- (1) *Residential uses.*

- a. Single-family residential, detached.
- b. Bed and breakfast.
- c. Accessory apartment.

(2) *Open space.*

a. The following uses are allowed uses in the designated open space:

- 1. Conservation (i.e. woodland, meadow, prairie).
- 2. Agricultural, except feedlots.
- 3. Equestrian.
- 4. Recreational uses and associated parking intended mainly to serve residents of the development.
 - (i) Non-motorized trails (walking, skiing, cycling, horseback).
 - (ii) Picnic areas.
 - (iii) Community gardens.
 - (iv) Composting (for waste generated by residents of the development).
 - (v) Turf areas for informal play.
 - (vi) Common areas such as greens or squares.
 - (vii) Ball fields.
 - (viii) Playgrounds.
 - (ix) Courts (tennis, basketball, etc.).
 - (x) Swimming pools or beaches.
 - (xi) Common buildings.
- 5. Stormwater management facilities.
- 6. Sewage disposal systems.
- 7. Essential services—Utility substations.

b. The following uses are allowed in the designated open space with an additional conditional use permit:

- 1. Golf course.
- 2. Recreational uses available to the public, including:
 - (i) Ball fields.
 - (ii) Playgrounds.
 - (iii) Courts (tennis, basketball, etc.).
 - (iv) Swimming pools or beaches.
 - (v) Motorized trails.

(f) *Ownership and management of open space.*

(1) The designated open space and common facilities may be owned and managed by one or a combination of the following:

- a. Homeowners association, when the open space is also owned in equal, undivided interests by the individual building lots in the development.
- b. Non-profit organizations, where such organization is established and intended for the purpose of holding open land for purposes of conservation, preservation, or similar reasons.
- c. The city or another governmental body empowered to hold interest in real property (in accordance with Minn. Stats. §§ 84C.01—84C.05).

(g) *Open space.*

(1) The minimum open space required per [section 125-226\(l\)](#) of this chapter may be subject to a permanent conservation easement and used for the purposes as defined by the Development Code. The conservation easement shall be dedicated to the city, an acceptable land trustee, or other similar organization as approved by the city and as permitted by this chapter.

(2) The uses within the open space shall be accessible to the residents of the development in accordance with [section 125-226\(e\)](#) of this chapter. These uses may also be available to the general public providing a conditional use permit has been issued.

(3) A financial guarantee ensuring the construction and completion of the common facilities shall be submitted to the city.

(h) *Homeowners associations.* A homeowners association shall be established if the open space is owned by a homeowners association. Membership in the association is mandatory for all purchasers of homes in the development and their successors.

(1) A homeowner's association agreement, guaranteeing continuing maintenance, shall be submitted to the city as part of the data required for the conditional use permit. The homeowner's association documents or the declaration of covenants, conditions, and restrictions shall contain the following information:

- a. The legal description of the common lands or facilities.
- b. The restrictions placed upon the use and enjoyment of the lands or facilities including the persons or entities entitled to enforce the restrictions.
- c. A mechanism for resolving disputes among the owners or association members.
- d. A mechanism to assess and enforce the common expenses for the land or facilities, including upkeep and maintenance expenses, real estate taxes, and insurance premiums.
- e. The conditions and timing of the transfer of ownership and control of land or facilities to the association or to common ownership.
- f. Any other matter the developer deems appropriate.
- g. The management of collector sewage treatment systems.

(i) *Density standards.*

(1) Minimum development size. To be eligible for open space development, the development must contain no less than 40 acres.

(2) Base density.

- a. Base density is determined by preparing the yield plan as described in this chapter, which includes a comparison of parent parcel size minus all unbuildable acreage, minimum lot size for OSD subdivisions in the applicable zoning district, open space and other requirements of the section.

(j) *Performance standards.*

(1) All structures shall be setback a minimum of 75 feet from unclassified water bodies.

(2) Residential lot requirements. Minimum lot sizes for OSD projects are described as follows:

a. Minimum lot size/frontage.

1. RE-5: 1.5 acres/150 feet (all lots must contain a minimum buildable land area of one acre).

- b. Principal building setbacks from:
 - 1. Front lot line: 50 feet
 - 2. Side lot line: 20 feet
 - 3. Rear lot line: 30 feet
- c. Accessory building setbacks from:
 - 1. Side lot line: 20 feet
 - 2. Rear lot line: 20 feet
- d. Maximum lot coverage: 25 percent
- e. Maximum building height: 35 feet
- f. Setback from collector.
Or higher classified street: 75 feet
- g. Depth to frontage ratio.
(Not to exceed): 3:1
- h. All lots shall take access from interior local streets developed as part of the open space development, including lots with existing homes.
- i. The plat shall be designed to maximize the number of lots with direct frontage on the open space land. Where fewer than half of the lots have such frontage, the developer shall provide additional space for trail development. The city may reject an open space design in which fewer than half of the lots within the plat do not have direct frontage. Frontage shall include those lots for which a local street separates lots from the open space.
- j. Where practical, lots shall be oriented around or toward open space as a central focal point. This may be one or more of the following: A physical amenity such as a meadow, a stand of trees, a stream or other water body, or some other natural feature.

(k) Neighborhood siting standards.

- (1) Neighborhoods shall be located to minimize their impacts on the natural, scenic and cultural resources of the site.
- (2) Neighborhoods shall avoid encroaching on rare plant communities or endangered species identified in the Department of Natural Resources' County Biological Survey for Natural Communities and Rare Species.
- (3) Open space shall be concentrated in contiguous parcels as large and undivided as practical and to serve the open space purposes for which this district is designed. Fragmented open space design may serve as grounds for rejection of the proposed plat.
- (4) Whenever possible, open space shall connect with existing or potential open space lands on adjoining parcels.
- (5) Neighborhoods should be sited to achieve the following goals, to the extent practical. In cases where impact on one or more of the following resources areas is unavoidable, the impact should be minimized through use of landscaping, topography, or other features:
 - a. Minimize disturbance to woodlands, hedgerows, mature trees or other significant vegetation;
 - b. Protect scenic views of open land from adjacent roads;

c. Protect existing historical buildings or incorporate them through adaptive reuse.

(6) More than one neighborhood may be developed if separated by a clear boundary comprised of a combination of two or more of the following elements: street pattern, marked topographical changes, drainageways, ponds, wetlands, streams, greenways and woodlands.

(7) Neighborhoods shall be separated from adjacent residential property by a clear boundary, with a minimum width of 300 feet, comprised of two or more of the following elements: street pattern, marked topographical changes, landscape screening, drainageways, ponds, wetlands, streams, greenways and woodlands.

(l) *Open space design.*

(1) Open space shall be designated as part of the development. The minimum required open space is based on a percentage of the gross acreage:

a. RE-5: 30 percent.

(2) The required open space shall not be remnants or small tracts, and shall insofar as possible be undivided. The required open space shall be restricted from further development, as specified in [section 125-226\(g\)](#).

(3) The following areas or structures may be located within the open space area and shall be counted toward overall open space percentage required:

a. Parking areas for access to and use of the open space.

b. Buildings or structures if they are accessory to the use of the open space.

(4) Road rights-of-way may not be located within the required open space area, and shall not be counted towards the required minimum open space.

(5) No more than 50 percent of the required open space may consist of unclassified water bodies, ponds, areas within the 100 year floodplain (or high water mark as documented by city, county or Hassan Township records), wetlands, or slopes of greater than 25 percent.

(6) Open space shall be suitable for recreational uses such as trails, play fields, or community gardens.

a. A pathway system connecting all parts of those open space areas accessible to neighborhood residents, and connecting these areas to neighborhood streets and to planned or developed trails on adjacent parcels shall be identified in the plan.

b. That portion of the open space designated for the location of sewage treatment facilities shall not be included as part of this accessible open space.

(m) *Street standards.* Streets shall meet all requirements of the Rogers Subdivision Ordinance and engineering standards.

(n) *Sewage and water facilities.* Water for an OSD development shall be provided by individual on-site wells meeting the permit requirements of the Minnesota Department of Health.

All OSD developments shall be provided with adequate sewage treatment facilities meeting the standards of the city and county SSTS regulations and the permit requirements of the Minnesota Pollution Control Agency.

One primary and one alternative septic site must be identified on the site plan and preliminary plat for each building site.

(o) *Golf courses.*

- (1) The golf course shall be regulated by a development agreement that restricts any further development or subdivision of land and requires the land to be retained as open space use if a golf course is no longer used as a golf course.
- (2) The golf course shall be constructed prior to the sale of any residential lots.
- (3) A financial guarantee ensuring completion of the golf course in accordance with the approved plans and permits shall be submitted to the zoning administrator.

DIVISION 4. - PLANNED UNIT DEVELOPMENTS (PUDS)

Sec. 125-244. - Purpose.

The purpose of the planned unit development (PUD) district is to provide flexibility in the application of development code provisions to allow a more creative and effective approach to development which achieves the vision, goals, policies and land use guidance of the comprehensive plan. Use of PUDs is encouraged to:

- (1) Preserve desirable site characteristics and sensitive environmental features including open spaces, trees, steep slopes, wetlands, and historic or cultural resources;
- (2) Provide for appropriate transitions between different land uses and along significant corridors in the community;
- (3) Promote high quality design which is compatible with surrounding land uses, both existing and planned; and
- (4) Allow for the mixing of land uses when appropriate to provide a more efficient and effective use of land, open space and public facilities.

Sec. 125-245. - Minimum requirements for a planned unit development.

In order to apply for a planned unit development, the following are required:

- (1) Projects eligible for a PUD must have a minimum of 80 acres of land that abuts or is contiguous with all common lot lines being no less than 300 feet in length except as listed in subsection (2) of this section. Tracts of less than 80 acres may qualify if the applicant can demonstrate that there are unique features of the site which will be better preserved through the use of a PUD.
- (2) Projects west of County Road 13, North of Territorial Road, east of Willandale Road and south of County Highway 144 must have a minimum of 100,000 square feet of land area.
- (3) Public sewer and water must be immediately available or available through the extension of services as guided by the comprehensive plan and to be constructed as part of the planned unit development within the urban districts.
- (4) The developer shall have a property interest in the site which shall consist of a fee simple title, contract interest, an option to acquire a fee simple title within a specified time period, a leasehold interest in excess of 30 years, or a substantial interest in a joint venture agreement, real estate investment trust or other real estate syndication which has or can obtain a fee simple title, or a marketable title subject to encumbrances which will not substantially restrict its development. If the applicant does not own clear title to all properties within the project area, but has another interest as noted above, all fee title owners shall be required to sign the PUD application.

Sec. 125-246. - Criteria for approving a planned unit development.

The city council may approve a planned unit development in areas proposed to have public sewer and water services provided the proposed development is consistent with the comprehensive plan. In granting approval for a PUD, the city council shall consider how the proposed PUD will impact:

- (1) The health, safety, and general welfare of the occupants of the surrounding lands.
- (2) Existing and anticipated traffic conditions within the PUD and on adjacent streets and land.
- (3) Parks, schools, and other public facilities and utilities.
- (4) Natural resources, scenic views, and historic or cultural resources in the surrounding area.
- (5) The reasonable enjoyment of neighboring property.

Sec. 125-247. - Uses.

The uses within a planned unit development (PUD) are limited to those uses as identified within the future land use designation in the comprehensive plan.

Sec. 125-248. - Development standards.

- (a) The maximum density of the PUD shall not exceed the maximum density specified for the land use designation identified for the area in the comprehensive plan.
- (b) Where a proposed PUD is designated for more than one land use in the comprehensive plan, the city may require that the PUD include all the land uses so designated or such combination of the designated uses as deemed necessary to achieve the intent of the comprehensive plan.
- (c) Planned unit developments may be excluded from certain requirements of the development code. The various standards of the most closely related zoning district shall be considered presumptively appropriate, but may be departed from to accomplish the purposes of the PUD. The applicant shall demonstrate why departure from the standards is in the public interest.

Sec. 125-249. - Administration.

- (a) Prior to the issuance of any building permits for development within a PUD, applications for the following actions must be submitted, reviewed and approved by the city council:
 - (1) Master development plan.
 - (2) Rezoning to a planned unit development.
 - (3) Preliminary plat.
 - (4) Final plat for the entire or specific parts of the PUD. If the applicant requests, and at the discretion of the zoning administrator, the process of reviewing one or more of the applications identified above may be combined and processed concurrently for all or any portion of a planned unit development. Such combined procedure shall generally be reserved for smaller, single stage PUDs, or for any single stage of a multiple stage PUD.
- (b) In its discretion, the applicant may elect to process the planned unit development as a planned and staged development within the meaning of Minn. Stats. § 462.358, subd. 3c. In such instance, the land may be subdivided and developed in stages pursuant to a series of sequenced plans including a master development plan, preliminary plat, final development plan and final plat with outlots for future stages for the entire planned unit development area, the plans, terms and conditions of approval for which are documented in a planned unit development agreement. Thereafter, each stage may proceed through a re-platting procedure of the outlots with any changes or additional requirements, particularly pertaining to streets and utilities installation, documented in a separate development agreement for each stage.

(c) Planned unit developments which are planned in stages or phases may require periodic review of the project and progress. The cost of periodic review shall be the responsibility of the applicant and/or developer.

(d) Approval of a planned unit development shall constitute and have the effect of a rezoning of the approved area, and shall be so designated on the zoning map.

Sec. 125-250. - Concept plan review.

(a) *Submission of concept plan.* The applicant may, in its discretion, seek general guidance, not binding in any manner on the planning commission or city council, by submission of a planned unit development concept plan for informal consideration by the city.

(b) *Application submission.* Applications shall be filed with the zoning administrator and be accompanied by all fees. The applicant shall prepare and submit the required number of copies of a concept plan containing the following information:

(1) Location map showing the property in relation to the city as a whole and important elements, including major roadways, schools, public facilities, parks and commercial areas.

(2) Narrative description of the proposed planned unit development.

(3) Mapping showing existing conditions and current community plans for the property and 500 feet beyond including at a minimum the following:

a. Existing comprehensive plan and zoning designations.

b. Open space corridors, greenways and trail corridors identified on any approved long-range community plans.

c. Present use and existing buildings and structures.

d. Property boundaries, ownership and approximate dimensions.

e. Hydrologic characteristics including surface water, floodplains, wetlands, natural swales and drainageways based on readily available mapping information. A wetland delineation is not required for concept review.

f. Natural resource information including wooded areas, wetlands, steep slopes, and prime habitat areas based on readily available mapping information, such as the Hennepin County Natural Resource Inventory.

g. Location of public utilities.

(4) Map showing the proposed development, including, as appropriate:

a. Proposed land use patterns with a listing of uses, including descriptions of the anticipated housing types and densities. General "bubble" land use diagrams would be considered sufficient for concept review.

b. Road and trail systems.

c. Park and open space systems.

d. Staging and timing of development.

(c) *Planning commission and city council action not required.* No formal action of the planning commission or city council is required. The comments of the planning commission and city council shall be for guidance only and not be considered binding on any future action taken when a formal planned unit development application is submitted. Applications for concept review shall be made to the city consistent with the required deadlines for land use applications. The city will hear the concept review at its first meeting following the planning commission meeting.

Sec. 125-251. - Master development plan review.

(a) *Purpose.* The master development plan provides the general plan for the proposed planned unit development including proposed land uses and their intensities; general development layout and design; and the timing and staging of various phases.

(b) *Application submission.* The application shall be filed with the zoning administrator and be accompanied by payment of all fees and escrow deposits. The application shall include the following information relating to the property, the developer and the proposed development, and may include such further information as the developer deems appropriate to the review of the proposed planned unit development. The applicant shall have the right to request an exemption from the zoning administrator from the requirement of submitting one or more of the items listed in this section. The applicant has the burden of demonstrating that the lack of information will not impair the ability of the planning commission or city council from making a decision. The granting of the exemption by the zoning administrator does not prevent the planning commission or city council from requesting the information during the review process. The zoning administrator also has the ability to require additional information as deemed necessary for the review of the planned unit development. Reports shall be spiral or three-ring looseleaf bound and submitted on 8½-inch by 11-inch or 11-inch by 17-inch size paper format. Larger maps shall be provided at a scale of at least one inch to 200 feet. The following items shall be required for master development plan review:

(1) Location map showing the property in relation to the city as a whole and important elements, including major roadways, schools, public facilities, parks and commercial areas.

(2) Existing conditions map showing the following for the property and all lands within 100 feet, unless determined by the zoning administrator that up to 500 feet is necessary:

- a. Existing comprehensive plan and zoning designations.
- b. Open space corridors, greenways and trail corridors identified on any approved long range community plans.
- c. Present use including location of existing buildings and structures.
- d. Property boundaries, ownership and dimensions.
- e. Hydrologic characteristics including surface water, floodplains, wetlands, natural swales and drainageways.
- f. Natural resource information including wooded areas, wetlands, steep slopes, and prime habitat areas.
- g. Location of public utilities.
- h. Contours, minimum two-foot intervals.
- i. Easements on the property being developed.

(3) Written narrative describing the proposed PUD, the market it is intended to serve and project magnitude, including, but not limited to, dwelling units per net acre for each residential land use; square footage by type for nonresidential land uses; and other data necessary for the calculation of traffic generation, parking requirements, and utility and recreation needs.

(4) Land use plan showing the location and extent of acres devoted to each category of land use proposed. Narrative may accompany plan to provide additional detail.

(5) Open space, parks and community facilities plan showing land dedicated or deed restricted for public or common use showing major trails, acreage and proposed use; location of all recreational facilities; location of all public buildings; and location of any existing historic, cultural or scenic buildings of areas to be preserved. The plan

should include dimensional information as available. Information shall be provided on how the areas are to be maintained.

(6) Grading and drainage plan.

(7) Street and utility plan.

(8) Parking plan for nonresidential areas including a tabular breakdown of parking requirements by use.

(9) Landscape plan.

(10) Signage plan.

(11) Lighting plan.

(12) Plan for timing and phasing of development.

(13) Typical floor elevations and/or building types to illustrate architectural character and intent.

(14) Outline of proposed covenants or other restrictions proposed for the regulation of the development.

(15) Conforming plan to current zoning district.

(c) *Notice and hearing procedure.*

(1) Notice and hearing procedures shall follow requirements listed in the zoning amendment [section 125-32](#).

Sec. 125-252. - Rezoning request review.

(a) Requests to rezone to a PUD will only be considered concurrently with applications for a master development plan or once a master development plan has been approved by the city council.

(b) Rezoning to a planned unit development shall not be effective until a master development plan has been approved by the city council.

Sec. 125-253. - Preliminary plat review.

(a) Requests for a preliminary plat will only be considered concurrently with applications for a master development plan or once a master development plan has been approved by the city council.

(b) Procedures for requesting and reviewing the preliminary plat shall be as outlined in chapter 3 of the development code.

Sec. 125-254. - Reserved.

Sec. 125-255. - Final plat review.

(a) Requests for a final plat will only be considered concurrently with applications for a final development plan or once a final development plan has been approved by the city council.

(b) Procedures for requesting and reviewing the final plat shall be as outlined in chapter 3 of the development code.

Sec. 125-256. - Planned unit development—Method of amending.

(a) Minor changes in the location and heights of structures may be authorized by the zoning administrator if required by engineering or other circumstances which were not foreseen at the time the final development plan was approved.

(b) Major changes in the final development plan, including rearrangement of lots, blocks and building tracts; the enlargement or intensification of use; or changes to the provision of open space shall require a public hearing and the approval of the city council. The applicant shall apply for an amended planned unit development. All procedures shall apply as if a new master development plan is requested, including the need for a public hearing. Any such changes shall be recorded as amendments to the recorded copy of the planned unit development after city council approval.

Sec. 125-257. - Same—Method of revocation.

(a) Any existing, approved planned unit development shall be deemed to be revoked if the owner of the land governed by the PUD applies for and receives a rezoning with respect to said property prior to the time that there is any physical implementation of the matters covered by the previously approved planned unit development.

(b) The city may initiate the revocation of a planned unit development. This revocation includes the rezoning of the property to a zoning district consistent with the comprehensive plan. In considering the revocation, a public hearing must be held in compliance with public hearings required for zoning code amendments. Revocation may be initiated if any of the following occur:

(1) A final development plan and/or final plat is not requested within one year following approval of the master development plan by the city council, unless a petition for an extension has been granted by the city council. Such extension shall be requested in writing and filed with the zoning administrator 30 days prior to the expiration of the time limit. There shall be no charge for the filing of such petition. The request for extension shall state facts justifying the request.

(2) A final plat is not presented to the county recorder/registrar of title within 120 days after approval by the city council, unless a petition for an extension has been granted by the city council. Such extension shall be requested in writing and filed with the zoning administrator 30 days prior to the expiration of the 120-day time limit. There shall be no charge for the filing of such petition. The request for extension shall state facts justifying the request.

(3) If one year after approval of the final development plan was granted no construction has begun or use has not been established, unless a petition for an extension has been granted by the city council. Such extension shall be requested in writing and filed with the zoning administrator 30 days prior to the expiration. There shall be no charge for the filing of such petition. The request for extension shall state facts justifying the request.

Drainfields may be located partially or completely within open space areas provided that:

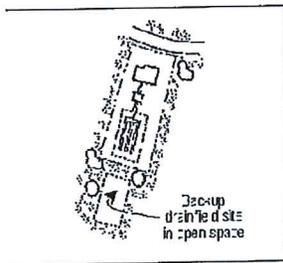
Ground cover of regularly mowed turf or meadows is maintained;

No agricultural activities are permitted within 50 feet of the drainfield area;

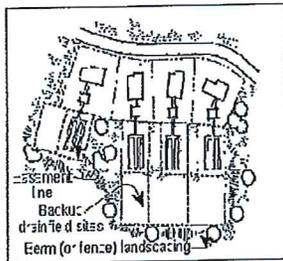
No trails or other recreational facilities are located in drainfield areas.

Alternative wastewater treatment and disposal systems that meet all MPCA permit requirements.

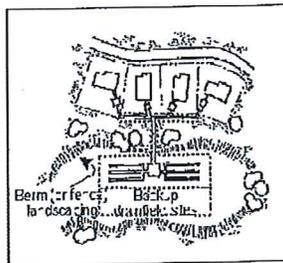
Sketch 6: Sewage Treatment Options



Drainfield on lot



Individual Drains in Open Space



Shared Drainfield in Open Space

7. Where streets will connect with streets having differing standards, the street dimensions shall be the same as those of the connecting street. All street widenings shall occur at the nearest intersection.

(6) Sewage and Water Facilities

Water for an OSD Development shall be provided by individual on-site wells or by one or more community wells meeting the permit requirements of the Minnesota Department of Health. The use of shared or community wells is encouraged.

All OSD Developments shall be provided with adequate sewage treatment facilities meeting the standards of the County Individual Sewage Treatment Standards Regulations and the permit requirements of the Minnesota Pollution Control Agency.

(7) Golf Courses

(A) Golf courses located in the open space must comply with Chapter Two, Part 3, Section 2.12 of this Development Code.

(B) The golf course shall be regulated by a development agreement that restricts any further development or subdivision of land and requires the land to be retained as open space use if a golf course is no longer used as a golf course.

(C) The golf course shall be constructed prior to the sale of any residential lots.

(D) A financial guarantee ensuring completion of the golf course in accordance with the approved plans and permits shall be submitted to the Zoning Administrator.

SECTION 5. PLANNED UNIT DEVELOPMENT

The purpose of this section is to provide design flexibility in land development by incorporating design modifications as part of PUD conditional use permit. The modifications, if granted shall be fully consistent with the general intent and purpose of County Development Codes related to land use, subdivision and development. It is not the intent of this Section to increase the overall density or vary uses.

Planned Unit Development: All developments having two or more principal uses on a single parcel of land; and may include townhouses, multi-use structures, recreational uses, mixed residential and commercial type developments, commercial type developments and industrial type developments.

5.1 Uses

The uses within a planned unit development are limited to those uses permitted in the underlying zoning district.

5.2 Performance Standards

- (1) The maximum density of the Planned Unit Development shall not exceed the maximum density permitted in the underlying zoning districts.
- (2) The uses allowed within the PUD are restricted to those uses which are allowed in the underlying zoning district.
- (3) The impervious surface coverage shall not exceed the maximum lot coverage of the underlying zoning district.

5.3 Exclusion from Requirements

Planned Unit Developments may be excluded from certain requirements of the Development Codes relating to land use, subdivision and development, including the provisions of this Development Code, providing that:

- (1) A general development plan is approved by the Planning Advisory Commission
- (2) The Planning Advisory Commission finds that the proposed development is fully consistent with the purposes of this Development Code relating to land use, subdivision and development and that the development is in conformity to the Comprehensive Plan.
- (3) Adequate performance bonds or other security are given to the County to secure completion of the development as provided by the general development plan.
- (4) A Planned Unit Development permit is granted by the Planning Advisory Commission.

5.4 Administration

- (1) **Application.** Whenever a development requires approval for a planned unit development, a preliminary and final application shall be filed in writing with the Zoning Administrator. Applications shall be accompanied by the required application fee.

- (2) The applicant shall pay costs incurred by the Zoning Administrator for monitoring compliance with the conditions of the planned unit development.

5.5 Criteria for Granting a Planned Unit Development

- (1) The Planning Advisory Commission may grant a planned unit development in any district provided the proposed development complies with the standards and criteria stated in the Washington County Development Code and Subdivision Regulations and that said development is in harmony with the general intent of this Development Code and comprehensive plan.
- (2) In granting approval for a planned unit development, the Planning Advisory Commission shall consider:
- (A) The impact of the proposed use on the health, safety, and general welfare of the occupants of the surrounding lands;
 - (B) Existing and anticipating traffic conditions including parking facilities on adjacent streets and land;
 - (C) The effect of the proposed use on utility and school capacities;
 - (D) The effect of the proposed use on property values and scenic views in the surrounding area;
 - (E) The effect of the proposed use on the County's Comprehensive Plan;
 - (F) The ability of the proposed use to meet the standards of the Development Code; and
 - (G) That the proposed use(s) is (are) permitted in the underlying zoning district

If the Planning Advisory Commission determines that the proposed use will not be detrimental to the health, safety, or general welfare of the County, or that said use is in harmony with the general purpose and intent of the Development Code and Comprehensive Plan, the Planning Advisory Commission may approve such planned unit development.

5.6 Preliminary Review

Before applying for a planned unit development permit, the developer shall first apply for preliminary review of the proposed development. The application shall be accompanied by payment of a preliminary review fee. The application shall be filed with the Zoning Administrator. The application shall include the following information relating to the property, the developer and the proposed development, and may include such further information as the developer deems appropriate to preliminary review the proposed planned unit development. The Planning Advisory Commission may require additional information.

- (1) Reports shall be spiral or three-ring looseleaf bound and submitted on 8½" x 11" size paper, vertical format. The scale of the maps shall be at least 1" to 200'. Maps for sites less than fifty (50) acres shall be at least 1" to 100'.
- (2) A sketch plan shall be submitted showing the location of the site, size of the site, utilization of land adjacent to the site, existing buildings on the site, significant topographical and physical features of the site, proposed site, proposed general street layout and proposed general lot layout.
- (3) If the developer contemplates the retention of existing buildings or extension of facilities or utilities serving adjacent uses, these facts shall be documented.
- (4) The developer shall have a property interest in the site which shall consist of a fee simple title, or an option to acquire a fee simple title within a specified time period, or a leasehold interest in excess of thirty (30) years, or a substantial interest in a joint venture agreement, real estate investment trust or other real estate syndication which has or can obtain a fee simple title, or a marketable title subject to certain restraint which will not substantially restrict its development within a reasonable time. All mortgages including purchase money mortgages, all easements restricting land use, all liens and all judgments which may affect the site shall be documented.

The applicant shall supply proof of existing ownership consisting of an abstract of title, certified currently, a current Certificate of Title, or an attorney's title opinion based thereon, together with any unrecorded documents whereby the applicant acquired a legal or equitable property interest.

- (5) Notice and Hearing Procedure.

- (A) Upon receipt of an application that contains all required information, the Zoning Administrator shall refer the matter to the Planning Advisory Commission and establish a time for hearing on the application. From the date the Zoning Administrator receives the application containing all required information, the Planning Advisory Commission has sixty (60) days to take action on the request or the request shall be deemed approved, provided, however, that the Zoning Administrator may extend this time line by providing written notice of the extension to the applicant before the end of the initial sixty (60) day period. This notification must state the reasons for the extension and its anticipated length, which may not exceed sixty (60) days. The deadline may also be extended as indicated in Minnesota Statute 15.99 Subd. 3.
- (B) Notice of the time, place and purpose of all public hearing shall be given by publication in a newspaper of general circulation in the town, municipality or other area concerned and in the official newspaper of the county at least 10 days before the hearing. Notice shall also be sent to the clerk of the applicable town board not less than ten (10) days in advance of the date of the public hearing. The notice shall state the purpose, time and place of the public hearing. Written notice shall also be given to the affected Board of Town Supervisors and the Municipal Council of any municipality within two (2) miles of the affected property.
- (C) Written notice shall be sent to all property owners of record within 500 feet of the affected property in incorporated areas.
- (D) In the case of conditional use permits, in unincorporated areas, notice shall be mailed to each of the owners of all property located within one-quarter ($\frac{1}{4}$) mile of the affected property, whichever would provide notice to the greatest number of owners.
- (E) In all other cases, including rezoning requests, in the unincorporated area notice shall be sent to owners of record within one-half ($\frac{1}{2}$) mile of the affected property.

- (F) Where required, no less than twenty (20) days prior to the public hearing, the Zoning Administrator shall send notice and copies of the applicant information to the Minnesota Department of Natural Resources for review and comment.
- (G) Defects in the notice shall not invalidate the proceedings provided a bona fide attempt to comply with the provisions of this Section has been made. A copy of the notice and a list of property owners and addresses to which the notice was sent shall be made a part of the record.
- (6) **Planning Commission Action.** Within sixty (60) days after the first regular meeting after the application for a Preliminary Review has been submitted to the Zoning Administrator, the Planning Commission shall give preliminary review approval to the proposed plan, reject the proposed plan or request specific additional information. The Planning Commission shall also establish the process necessary for completion of a general development plan and shall notify the applicant of which alternative process or parts of the development plan process that will be applicable to his project. As soon as is reasonably practical, the Zoning Administrator shall inform the applicant of the action taken by the Planning Commission, in writing, accompanied by a copy of the resolution or minutes of the Planning Commission stating its reasons therefor. If additional information is requested, the Planning Commission shall accept or reject the Preliminary Review within thirty (30) days of such request. If the Preliminary Review is accepted, the developer may proceed to apply for a permit for a Planned Unit Development. Approval of the Preliminary Plan does not guarantee approval of the project.

5.7 Final Review

- (1) The applicant shall have secured preliminary review approval by the Planning Commission within the previous year.
- (2) The application shall be accompanied by development plans of the proposed planned unit development and supporting information as listed below as deemed necessary by the Zoning Administrator or by the Planning Advisory Commission.
- (A) The scale of maps submitted shall be at least 1" to 200'. Maps for sites less than fifty (50) acres shall be at least 1" to 100'. The number of maps and

reports to be submitted shall be specified by the Planning Commission, but shall not exceed twenty-five (25). All maps shall be reduced and included in the applicable reports. One (1) transparent Mylar copy of the final general development plans, should they be approved, shall be filed with the Planning Commission within sixty (60) days of such approval.

- (B) An **environmental impact study** may be required by State, Regional or Federal agencies or by the Planning Commission as regulated by Chapter One, Section 12.
- (C) A **regional location component map** shall be submitted showing the site and its interrelationship with the community. Said map shall include the location and distance in road miles to the following facilities servicing the site:
1. Elementary School(s)
 2. Secondary School(s)
 3. Fire Department
 4. Police Station
 5. Arterial and Limited Access Highways
 6. Recreational Areas
 7. Shopping Areas
 8. Industrial Areas
 9. Public Transportation Routes, including non-vehicle trails and major transportation depots
 10. Churches and Public Buildings

The names of all property owners within five hundred (500) feet of the development site shall be shown on the map.

- (D) A **land evaluation component** which shall consist of a map or maps and accompanying report setting forth the natural limitations on land development, including slopes, drainage systems, vegetation, soil types, soil quality and how these limitations are incorporated in the development plan. Said land evaluation component shall also contain a descriptive statement of objectives, principles and standards used for its formulation.
- (E) A **land use component** which shall consist of a map or maps and report setting forth the distribution, location and extent of the acres of land devoted to each category of land use proposed

as part of the general plan of development. Said land use component shall also contain a descriptive statement of objectives, principles and standards used in its formulation.

- (F) A **circulation component** which shall consist of a map or maps and report setting forth the general location, extent, and nature of all transportation facilities proposed as part of the general plan of development, all proposed points of inter-connecting access to existing transportation facilities and the present use and design capacities of existing transportation facilities. Proposed transportation facilities information shall include:

1. Location of paths or bikeways.
2. Location of major and local thoroughfares.
3. Location and definition of trash removal system.
4. Location and definition of industrial and commercial delivery areas and systems.
5. Identification by function of principal arterials, intermediate arterials, minor arterials, collector streets and local streets.
6. Location and function of one-way street systems, divided roads, left-turn lanes and such other matters as may be related to the provision for the circulation of traffic within the planned area.

The following information pertaining to parking areas shall be shown:

7. Paved areas for all parking compounds.
8. Landscaped areas contained within parking areas.
9. Service estimates which show the number of residential units or gross flow area and the number of parking spaces for each area.

This circulation component shall also contain a descriptive statement of objectives, principles and standards used in its formulation.

- (G) A **population component** which shall contain a report of the standards of population density and building intensity for the various proposed land uses, including estimates of future population, correlated with supporting data, and shall include but not be limited to dwelling (housing) units per

acre for the various residential uses proposed; and square footage by type for the various nonresidential facilities, including sufficient data to calculate traffic generation, parking requirements, water consumption, sewage needs and the necessary capacity of related utilities and services traditionally rendered by public or private organizations for a population of such size as is projected for the completed planned development. This report shall contain an analysis indicating the projected marketability of the development in respect to effective demand specifically relating the size to the community. Any public and/or subsidized housing shall be identified to include an explanation of the assistance program and the number of units affected. Said population component shall also contain a descriptive statement of objectives, principles and standards used for its formulation.

(H) **A services and facilities component** which shall contain a map or maps setting forth the general location and extent of any and all existing and proposed systems for sewage, existing and proposed sewage flows, location of on-site sewage treatment systems and backup areas, domestic water supply and distribution, refuse disposal, drainage, local utilities and right-of-way easements, facilities and appurtenances necessary therefor. Said services and facilities component shall also contain a descriptive statement setting forth objectives, principles and standards used for its formulation, as well as a detailed statement describing the proposed ownership, method of operation and maintenance of each such service and facility.

(I) **An open space and community facilities component map and report** which shall show:

1. All land dedicated or deed restricted for public or common use showing major trails, acreage and proposed use.
2. Location of all play fields, tot-lots, tennis and handball courts, or other recreational facility indicating type and general area of concentrated use.
3. Location of all buildings intended for community, school, religious or institutional use indicating approximate building coverage in square feet.

- 4. Location of all existing buildings, historical areas or scenic areas to be preserved.

The report shall contain an explanation of how the common open space shall be maintained including an estimate of additional charges or costs to be paid by each housing unit. The method by which citizen participation is provided in the maintenance of these facilities shall be specified. All improvements to be placed as fixtures upon the land shall be described. A statement of conformance or lack thereof to the requirements of design ratios and common open space shall be included. Said open space and community facilities component shall also contain a descriptive statement of objectives, principles and standards used for its formulation.

- (J) **A land coverage and drainage component map** or maps which shall include the location and square feet of all areas of the site to be covered by paving or building roofs, and the proportion of each as related to the total site, and the relation to each watershed existing on an off-site location prior to proposed development.

All areas of the site in which the natural vegetative cover will be altered shall be identified and the proportion by type of change shall be identified with the amount of area in acres and the proportion of each as related to the total site shall be indicated on the map legend.

A grading and drainage plan identifying the collection and retention and drainage of stormwater shall be submitted to the Watershed District and the Washington County Soil and Water Conservation District at the time of application. Erosion control structures must be in place before grading begins. On-site drainage shall be directed to a stormwater holding pond prior to leaving the site. Drainage and erosion control systems shall be designed to prevent any increase in site runoff over pre-existing peak flows.

- (K) **A building quality component** which shall consist of a map or maps, schematic drawings and report showing locations of all buildings with floor elevations, typical building types to illustrate architectural intent and character, and the name,

address and certification of the architect approving the exhibit.

(L) A **legal submissions component** which consist of the following:

1. The articles of incorporation and bylaws for any homeowners association, condominium association or other form of nonprofit corporation to maintain or advise in the operation of any common space.
2. Any agreement by which an organization is to serve in the capacity of a trustee.
3. Typical deed or lease agreement specifying all rights and obligations including required fees to be paid to maintain common open space.
4. A signed statement establishing the rights of the County to substitute for the organization to maintain common open space and to collect the necessary funds.
5. Copies of all existing or proposed easements and covenants to permit other persons to utilize portions of land or to maintain facilities and/or utility service lines.
6. Copies of all existing or proposed agreements by which private roads shall be maintained, refuse collected, snow plowed and other supplementary services be provided.
7. Copies of all dedications, restrictions and covenants imposed upon the land including reservations in favor of any homeowners association.

(M) A **construction order component** which shall contain a map or maps setting forth the proposed chronological order of construction relating each proposed use and structure to the construction of the various services and facilities as may be required herein. Said component shall include estimated completion dates and shall specify the proposed order of request for utility release or other authority to occupy complete structures so as to provide a basis for determining the adequacy of the related services and facilities which would not require a variance under existing zoning. Said component shall also contain a descriptive statement of objectives, principles and standards used for its formulation.

- (N) A **Subdivision Design** which shall comply with the provisions of the Washington County Subdivision Regulations.
- (O) A **financial impact component** which shall consist of a report demonstrating the additional taxes generated by the planned unit development for the community and the school district, the additional financial burden generated by the planned unit development on the school system, fire department, police department, road maintenance and other increased financial burden on the community. Said component shall also contain a descriptive statement of objectives, principles and standards used for its formulation.
- (P) A **marketing component** which shall consist of a report demonstrating the economic feasibility of the planned unit development including a marketing survey of proposed residential and apartment units, the impact on existing property values, the impact on any other proposed real estates developments in the surrounding area, the amount of federal, state and local subsidy or loan programs utilized by the planned unit development and the impact of such governmental subsidy or loan programs being curtailed or eliminated.
- (Q) An **air pollution component** which shall consist of a map and report setting forth the location of all air pollution sources including areas of heavy traffic, parking lots, incinerators and smokestacks. The report shall include the amount of pollution expected from each source and the abatement procedures to be used to control such air pollution. Said component shall also contain a descriptive statement setting forth objectives, principles and standards used for its formulation.
- (R) The **general plan of development** may include as additional components: A Recreation Component, a Public Building Component, Noise Component, Lighting Component providing for consideration for administrative and public safety quarters, and such other components indicated by the nature of the particular proposed development.
- (3) Referrals. Upon receipt of all required information, the Zoning Administrator shall refer the same to the Planning

Commission and shall refer the applicable portions to the Fire Department, County Engineer and Building Official,

Washington County Soil and Water Conservation Service and such other public bodies, agencies and officials as may be interested or affected. Reports on those aspects of the proposed plan which concern such department or body must be filed with the Zoning Administrator within thirty (30) days of the referral thereof.

- (4) **Public Hearing.** Within the period of time the matter is under consideration, the Planning Commission shall hold a public hearing concerning the particular planned unit development application. At least ten (10) days notice of said meeting shall be given by the U.S. Mail to all property owners within five hundred (500) feet of the affected property or the ten (10) properties nearest to the affected property, whichever would provide notice to the greatest number of owners. Written notice shall also be given to the affected Board of Town Supervisors and the Municipal Council of any municipality within two (2) miles of the affected property. At least ten (10) days prior to such public hearing, a notice indicating the time, place and reason for such public hearing shall be published in the official newspaper of the County. Notice shall contain a legal description of the property described in the application. The failure of any property owner to receive notification or defect in such notification shall not invalidate the proceedings. Within the period of time the matter is under consideration by the Planning Commission, the applicant shall be allowed to make such amendments to his application, including any part of the general development plan or any applicable components thereof, as the Planning Commission shall request or permit.
- (5) **Action by the Planning Commission.** The planned unit development general development plans shall be placed on the agenda of the Planning Commission at its next regular meeting following the required public hearing. The Planning Commission shall take action on these plans within sixty (60) days after such meeting. If it shall determine by resolution that the proposed use will not be detrimental to the health, safety, morals or general welfare of the County and that said use is fully consistent with the purposes of the Development Codes relating to land use, subdivision and development, including the provisions of this Development Code and in conformity with the Comprehensive Plan, the Planning Commission may grant such approval. If it approves the plans, the Planning Commission may impose conditions, including time limits it considers necessary. Periodic review of the project and

the final permit may be required; the cost of periodic review shall be paid by the permittee. Each project approval shall be granted for a particular use and development, and not for a particular applicant.

A decision of the Planning Advisory Commission as it relates to a planned unit development shall not take effect for fifteen (15) days from the date the decision was made. During this fifteen (15) day period, an appeal of the decision may be made to the Washington County Board of Commissioners; if not appeal is made within this time period, the decision will take effect and be considered final.

5.8 Method of Amending a Planned Unit Development Permit

Any desired change involving structural alteration, enlargement or intensification of the use not specifically allowed by a particular planned unit development permit, or any request for a variance from the specific terms of a previously passed planned unit development permit, shall require that an application be filed for an amended permit and all procedures shall then apply as if a new permit was applied for.

5.9 Method of Cancellation of a Planned Unit Development Permit

Any existing approved planned unit development permit shall be deemed to be canceled if the owner of the land involved in the permit applies for and receives a rezoning with respect to said property prior to the time that there is any physical implementation of the matters covered by the previously approved planned unit development permit. In addition, an existing planned unit development permit shall be deemed to be automatically canceled in the event that a final plat, if the same is required in connection with the permit, is not filed as required by and in accordance with the terms of the County Subdivision Regulations within one hundred twenty (120) days following final approval of the planned unit development permit by the Planning Commission. The planned unit development permit shall expire and be considered null and void one (1) year after it has been issued if no construction has begun or if use has not been established. In all other situations, an existing planned unit development permit shall be canceled and revoked, short of expiring according to its own terms, only upon the event of the County acting in accordance with law and due process, taking some rezoning action which supersedes the planned unit development.

number of trips made in any one day, the number of passengers carried, the number and type of rolling stock deployed, compliance with insurance requirements, engineer qualifications and other information the Zoning Administrator may require. Fees for the annual report review shall be those established by the Board of County Commissioners.

- (I) Additional performance standards may be added to the conditional use permit if the Planning Advisory Commission finds that they are necessary to protect the public health, safety or welfare.
- (J) Liability insurance, in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 aggregate shall be maintained as a requirement of the conditional use permit.

3.3 St Croix River Overlay District

Properties and uses within this district are regulated in accordance with Chapter Five of this Development Code.

3.4 Shoreland Overlay District

Properties and uses within this district are regulated in accordance with Chapter Six of this Development Code.

SECTION 4. OPEN SPACE DEVELOPMENT

4.1 Purpose and Scope

“OSD” Development is established to encourage development of rural housing clusters that meet the following purposes:

- (1) Provide efficient use of the land while maintaining contiguous blocks of economically viable agricultural land, mature woodlands, and open space, and preserving historical features, scenic views, natural drainage systems and other desirable features of the natural environment.
- (2) Allow housing to be concentrated on sites that have low agricultural potential and/or high natural housing appeal.
- (3) Create neighborhoods with direct access to open space, distinct identities and sense of community.

Sketch 1: Comparison



Conventional Subdivision



Open Space Design Development

OSD Development is designed to preserve open space and rural character while creating compact neighborhoods that have a strong visual and physical access to the open space. This method of development uses the size and shape of the open space as the central organizing element, rearranging the density on each parcel so that less land is cleared, graded, and turned into driveways, streets, lawns and houses.

- (4) To encourage innovation and promote flexibility, economy and creativity in residential development.
- (5) To provide commonly-owned open space areas for passive and/or active recreational use by residents of the development and, where specified, the larger community.
- (6) To provide for a diversity of lot sizes, housing choices and building densities to accommodate a variety of age and income groups.
- (7) To preserve scenic views and elements of the County’s rural character by minimizing views of new development from existing roads.

4.2 Definitions

- (1) Community Garden: Land which is cultivated by the residents of the development for the production of trees, vegetables, fruits, flowers, herbs and grasses for the residents’ use or to be sold directly to consumers through membership in the garden.
- (2) Conservation Easement: An interest in real property created in a manner that imposes limitations or affirmative obligations in regard to the use of property including the retention, protection and maintenance of natural resources, open space and agriculture.
- (3) Cultural Resource: The historic and archeological characteristics of the land, including buildings and landscapes, which provide information regarding the history of Washington County and its people.
- (4) Historic Building and Structure: A structure which has been identified by the Washington County History Network inventory or the State Historic Preservation Office as having public value due to their notable architectural features relating to the cultural heritage of the County.
- (5) Homeowners Association: A formally constituted non-profit association or corporation made up of the property owners and/or residents of the development for the purpose of owning, operating and maintaining the common open space and facilities.
- (6) Neighborhood: An area containing a contiguous group of residential lots where people live in close proximity to one another.

Open Space Development: A grouping of residential structures on smaller lots than allowed in the specific zoning district, leaving some land dedicated as open space.

OSD Development is permitted as a conditional use in the Agricultural (A-1, A-2, A-4), Residential (RR, SFE, RS), Conservancy (C), and Transition (TZ) zones

The design standards contained in this section are not applicable in the Shoreland Overlay District and the St. Croix River District.

The conditional use permit application must contain a resource inventory, yield plan, concept subdivision plan, phasing plan and general location map.

- (7) Open Space: Land used for agriculture, natural habitat pedestrian corridors and/or recreational purposes, that is undivided and permanently protected from future development.
- (8) Open Space Development: A grouping of residential structures on smaller lots than allowed in the specific zoning district, leaving some land dedicated as open space.
- (9) Perimeter Road: A road lying outside of and abutting the development parcel.
- (10) Plant Community: A grouping of plants with common environmental requirements living within the landscape, i.e., wetlands, grasslands, boreal forests.
- (11) Protective or Restrictive Covenant: A contract entered into between private parties which constitutes a restriction of the use of a particular parcel of property.
- (12) Resource Inventory: A survey of the land's features including its natural resources, cultural resources, scenic views and viewsheds, and physical characteristics.

4.3 Applicability

The OSD Development standards are an alternative set of standards for residential development within the Agricultural (A-1, A-2, A-4), Residential (RR, SFE, RS), Conservancy (C), and Transition (TZ) zones. OSD Development shall be permitted with a conditional use permit within these districts. The design standards contained in this section are not applicable in the St. Croix River District and Shoreland Overlay Districts.

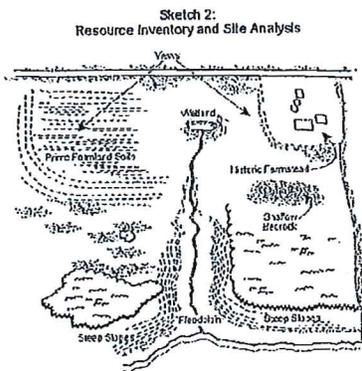
The regulations of this Development Code are applicable only to open space developments approved after the effective date of this Development Code.

4.4 Application

- (1) A conditional use permit is required for an open space design development in the Agricultural (A-1, A-2, A-4), Residential (RR, SFE, RS), Conservancy (C) and the Transition (TZ) zones.
- (2) A conditional use permit application shall be filed, in writing, with the Zoning Administrator in accordance with Chapter One, Section 9, Conditional Uses.

- (3) In addition to the criteria stated in Chapter One, Section 9.3 (2), the Planning Advisory Commission shall consider the following:
 - (A) The open space development is designed to preserve open space and the County's rural character while creating compact residential neighborhoods.
 - (B) The open space development is designed in accordance with the standards of this Development Code.
 - (C) The open space development supports the goals and policies of the County's Comprehensive Plan.
- (4) In addition to those submittal requirements stated in Chapter One, Section 9, the following items shall be submitted as part of the conditional use permit application for open space development:

Resource Inventory



Resources to assist with this inventory include the following:

Soil Conservation Service's Soil Survey for Washington County.

The Minnesota Geological Survey's Geological Atlas for Washington County.

The Department of Natural Resources' County Biological

(A) Resource Inventory

The plan for an Open Space Design Development shall include a resource inventory, to include the following, mapped at a scale of no less than one inch : 100 feet.

1. Topographic contours at 10-foot intervals, showing rock outcrops and slopes of more than 15 percent.
2. Soil type locations and identification of soil type characteristics such as agricultural capability, depth to bedrock, and suitability for wastewater disposal systems.
3. Hydrologic characteristics, including surface water bodies, floodplains, wetlands, natural swales and drainageways.
4. Vegetation of the site, according to general cover type (pasture, woodland, etc.), defining boundaries of woodland areas and stand-alone trees with a caliper of more than 18 inches. Vegetative types shall be classified as generally deciduous, coniferous or mixed and described by plant community, relative age and condition.

Survey Map for Natural Communities and Rare Species.

Washington County Surveyor's Aerial Photography.

5. Current land use and land cover (cultivated areas, paved areas, etc.), all buildings and structures on the land, and all encumbrances, such as easements or covenants.
6. Visual resources, showing views onto the tract from surrounding roads and public areas, as well as views within the tract.
7. Cultural resources: brief description of historic character of buildings and structures, historically important landscapes, and archeological features.
8. Context: general outlines of existing buildings, land use, and natural features such as water bodies or wooded areas, roads and property boundaries within 500 feet of the tract. This information may be presented on an aerial photograph at a scale of no less than 1 inch: 400 feet.

Yield Plan



(B) Yield Plan

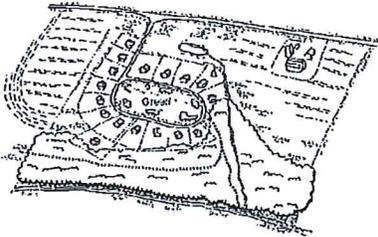
1. The applicant shall submit a “yield plan,” showing the maximum number of dwelling units that would be permitted given the minimum lot size and lot widths for conventional subdivisions and other requirements of the Development Code and Subdivision Regulations. The yield plan need not be engineered; however, it shall be drawn to scale and it shall identify all the major physical features on the parcel.

The minimum lot areas and width for each zoning district are the following:

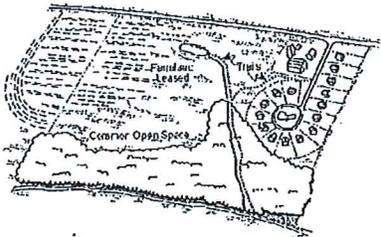
Zoning District	Minimum Lot Size (Acres)	Minimum Lot Width (Feet)
A-1	40	300
A-2	20	300
A-4	10	300
RR	5	300
SFE	2.5	160
TZ	10	300
RS	15,000 sq. ft.	100
C	20	300

Concept Subdivision Plan

Sketch 3B:
Concept Subdivision Plan 1
18 Lots (including Farmstead)
40 Acres
16 Lots + 2 Bonus Lots



Sketch 3C
Concept Subdivision Plan 2
18 Units
1 Farmhouse - 2 In-Entr - 5 New Lots
40 Acres



Phasing Plan

(C) Concept Subdivision Plan

1. One or more open space design plans meeting the intent of this Chapter and including at least the following information:
 - (a) Open space areas indicating which areas are to be protected.
 - (b) Boundaries of areas to be developed and proposed general street and lot layout.
 - (c) Number and type of housing units proposed.
 - (d) Areas proposed for stormwater management and on- or off-site sewage treatment.
 - (e) Said plans shall be drawn at a scale of 1" = 100'.
2. For Open Space Developments in the Transition Zone a "build-out plan" showing the ultimate development of the entire parcel at urban densities is submitted as part of the concept subdivision plan.

(D) Phasing Plan

Open Space Design development may be phased in accordance with a unified development plan for the entire tract meeting the following requirements:

1. A phasing plan identifying the sequence of development showing approximate areas, serially numbered with a description of each phase. Information shall be provided regarding the number of dwelling units, proposed improvements, and common facilities for each.
2. The phasing plan shall be made a part of the conditional use permit and is effective for five (5) years from the date of preliminary plat approval. If final plat approval is not received within five (5)

General Location Map

years, the permit shall become null and void.

- 3. Any common facilities, including golf courses, shall be constructed prior to the sale of any lots and shall be clearly marked on a site map which shall be an attachment to all sales agreements for individual lots.
- 4. As part of the development agreement, a financial guarantee to ensure completion of common facilities, trails and landscaping shall be provided.

(E) General Location Map

(5) Application Procedure. Upon submittal of a complete application, the application shall be processed according to the following:

- (A) Plat Commission. The application will be forwarded to the County Plat Commission for concept review of the proposed subdivision in accordance with the requirements of the Subdivision Regulations.
- (B) Planning Commission. After concept review by the Plat Commission, the application will be forwarded to the Planning Advisory Commission. The commission will review the application in accordance with the requirements of this Development Code.
- (C) Plat Commission. Once a conditional use permit is issued, the applicant will then be directed to submit a plat to the Plat Commission in accordance with the requirements of the Subdivision Regulations.

4.5 Uses

The following uses are permitted within OSD Developments. The following uses must meet the standards and criteria specified for those uses, as set forth in and regulated by the Washington County Development Code.

A variety of residential uses are allowed in an OSD Development.

- (1) Residential. The following uses are allowed uses in the residential portion of the open space development.
 - (A) Single-family Detached

The open space may be used for both passive and active recreation uses, agriculture and may house services needed for the development. The open shall be accessible to residents of the subdivision.

A separate conditional use permit is required for some uses allowed in the open space because of their potential impact on the local community.

- (B) Multi-family Residential
- (C) Bed and Breakfast
- (D) Accessory Apartment
- (E) Community residence

(2) Open Space.

(A) The following uses are allowed uses in the designated open space:

1. Conservation (i.e., woodland, meadow, prairie)
2. Agricultural
3. Equestrian
4. Recreational uses and associated parking.
 - (a) trails (walking, skiing, cycling, horseback riding, snowmobiling)
 - (b) picnic areas
 - (c) community gardens
 - (d) composting (for waste generated by residents of the development)
 - (e) turf areas for informal play
 - (f) common areas such as greens or squares
 - (g) ball fields
 - (h) playgrounds
 - (i) courts (tennis, basketball, etc.)
 - (j) swimming pools or beaches
 - (k) common buildings
5. Stormwater Management Facilities
6. Sewage Disposal Systems
7. Essential Services–Utility Substation

(B) The following uses are allowed in the designated open space with an additional conditional use permit:

1. Golf Course
2. Recreational uses available to the public including:

- (a) ball fields
- (b) playgrounds
- (c) courts (tennis, basketball, etc)
- (d) swimming pools or beaches

4.6 Ownership & Management of Open Space

- (1) The designated open space and common facilities may be owned and managed by one or a combination of the following:
- (A) Homeowners' Association
 - (B) Non-profit Organization
 - (C) The County or another governmental body empowered to hold interest in real property (in accordance with Minnesota Statutes Section 84C.01-.05)
 - (D) An individual who will use the land for open space purposes as provided by the permanent conservation restrictions.

The designated open space shall be subject to a conservation easement restricting its use and development.

4.7 Open Space

- (1) With the exception of Open Space Development in the Transition Zone (TZ), the minimum open space required per Section 4.6 (4) (A) shall be subject to a permanent conservation easement and used for the purposes as defined by this Development Code. The conservation easement shall be dedicated to an acceptable land trustee or other similar organization as approved by the County.
- (2) Permanent protection of the open space in the Transition Zone is not required because these lands are expected to become urban. Developments in the Transition Zone are subject to the following:
- (A) A title declaration shall be provided stating future development could occur at urban densities when the local unit of government rezones the property.
 - (B) Lots oriented around central open space features, such as greens, squares, playgrounds and parkways, and that these features or 10% of the open space, whichever is greater, shall be permanently protected.

- (3) The uses within the open space shall be accessible to the residents of the development in accordance with 4.10 (4) (D). These uses may also be available to the general public providing the proper approvals are received.
- (4) A financial guarantee ensuring the construction and completion of the common facilities shall be submitted to the Zoning Administrator.

4.8 Homeowners' Associations

A Homeowners' Association shall be established if the open space is owned by a homeowner's association. Membership in the Association is mandatory for all purchasers of homes in the development and their successors.

A Homeowners' Association Agreement, guaranteeing continuing maintenance, shall be submitted to the County as part of the data required for the conditional use permit. The Homeowners' Association documents or the declaration of covenants, conditions and restrictions shall contain the following information:

- (1) the legal description of the common lands or facilities;
- (2) the restrictions placed upon the use and enjoyment of the lands or facilities including the persons or entities entitled to enforce the restrictions;
- (3) a mechanism for resolving disputes among the owners or association members;
- (4) a mechanism to assess and enforce the common expenses for the land or facilities including upkeep and maintenance expenses, real estate taxes and insurance premiums.
- (5) the conditions and timing of the transfer of ownership and control of land or facilities to the Association or to common ownership;
- (6) any other matter the developer deems appropriate.
- (7) The Management of collector sewage treatment systems.

4.9 Density Standards

- (1) The number of density units for the parcel shall be determined in accordance with Chapter Two, Part 2, Section 1.
- (2) Base Density

To encourage open space development, this section provides a density bonus that allows developers to increase the density over what would be allowed in a conventional or lot averaging subdivision.

Assuming a tract size of 40 acres, using the maximum potential "OSD" density (yield plan), you get:

	<u>Conventional Density</u>	<u>Base Density</u>	<u>Base & Density Points</u>	<u>Extra Units*</u>
A-1	1	2	2.4	1
A-2	2	4	4.8	2
A-4	4	8	1.6	5
RR	8	10	12	4
SFE	16	18	21.6	5

**The number of extra units is the difference between the conventional density and the maximum density allowed with density bonuses.*

The percentage of single-family attached units is limited to encourage a mix of uses and to ensure that a large percentage of houses are similar to/compatible

(A) The number of density units determined in (1) above may be increased by using the percentage for the zoning district in which the parcel is located:

- 1. A-1 100%
- 2. A-2 100%
- 3. A-4 100%
- 4. RR 25%
- 5. SFE 12.5%
- 6. TZ 50%
- 7. RS (with public sewer) 10%
- 8. RS (without public sewer) 50%
- 9. C 0%

(B) Apply any bonus density, as specified in Section 4.9 (3).

(3) Density Points

The base density may be increased if the development complies with one or more of the following standards. Each standard provides a density increase of 5% over the base density. The maximum bonus permitted is 20%.

- (A) Creating an endowment where the principal would generate sufficient annual interest to cover the conservation easement holder's yearly costs (taxes, insurance, maintenance, enforcement, etc.)
- (B) Providing for access by the general public to trails, parks or other recreational facilities, excluding golf courses.
- (C) Providing affordable housing, to include a minimum of 25 percent of all units that would be affordable to moderate-income households, as defined by the U.S. Department of Housing and Urban Development.
- (D) Reusing historical buildings and structures, including those sites inventoried by the Washington County History Network and the State Historic Preservation Office. The Secretary of Interior's Standards for Rehabilitation shall apply.

4.10 Performance Standards

- (1) General considerations

with surrounding single-family houses.

- (A) For single-family attached and multi-family structures, the maximum number of units per freestanding building is six.
- (B) The residential lot shall be large enough to accommodate a house and two car garage.
- (C) All structures shall be setback a minimum of 75 feet from unclassified waterbodies.
- (D) Multi-family structures shall be setback a minimum of 50 feet from the lot line of a lot designated for single family detached dwelling units.
- (E) A maximum of 40% of the residential dwelling units may be multi-family residential.

(2) Residential Lot Requirements.

(A) Minimum Lot Size

- 1. Septic on-site 32,670 sq. ft. (.75 acre)
- 2. Septic off-site 21,780 sq. ft (.5 acre)

(B) Principal Building Setbacks

- 1. Front lot line 30 feet
- 2. Side lot line 15 feet
- 3. Rear lot line 30 feet

(C) Accessory Building Setbacks

- 1. Side lot line 15 feet
- 2. Rear lot line 10 feet

(D) Maximum Lot Coverage 35%

(E) Maximum Building Height 35 feet

(F) All lots shall take access from interior local streets.

(G) Fifty percent of the lots within a neighborhood shall abut open space on at least one side. A local street may separate lots from the open space.

(H) Lots shall be oriented around a central focal point. This may be one or more of the following:

- 1. A central green or square.

The "focal point" ensures that the central feature of the development is always either a natural feature or

“designed” open space such as a green or parkway.

2. A physical amenity such as a meadow, a stand of trees, a stream or other water body, or some other natural feature.
3. A street designed with boulevards planted with shade trees and with a central “parkway” or median, at least 25 feet wide.

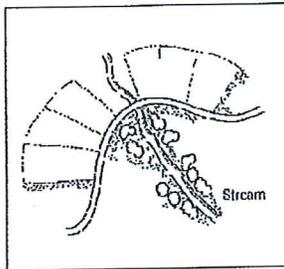
A neighborhood is a contiguous group of residential lots.

(3) Neighborhood Siting Standards

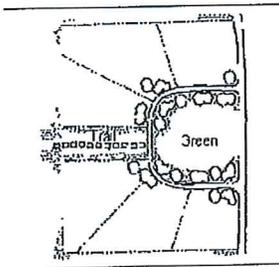
- (A) Neighborhoods shall be located to minimize their impacts on the natural, scenic and cultural resources of the site.
- (B) Neighborhoods shall avoid encroaching on rare plant communities or endangered species identified in the Department of Natural Resources' County Biological Survey for Natural Communities and Rare Species.
- (C) Fragmentation of open space shall be minimized.
- (D) Whenever possible, open space shall connect with existing or potential open space lands on adjoining parcels.
- (E) Neighborhoods should be sited to achieve the following goals, to the extent practicable. In cases where impact on one or more of the following resource areas is unavoidable, the impact should be minimized through use of landscaping, topography, or other features.
 1. Avoid prime farmland soils and large tracts of land in agricultural use, and avoid interference with normal agricultural practices;
 2. Minimize disturbance to woodlands, hedgerows, mature trees or other significant vegetation;
 3. Protect scenic views of open land from adjacent roads.
 4. Protect existing historic buildings or incorporate them through adaptive reuse.

- (F) The maximum number of residential lots permitted in a neighborhood is 50.
- (G) More than one (1) neighborhood may be developed if separated by a clear boundary comprised of a combination of two or more of the following elements: street pattern, marked topographical changes, drainageways, ponds, wetlands, streams, greenways and woodlands.
- (H) Neighborhoods shall be separated from adjacent residential property by a clear boundary, with a minimum width of 300 feet, comprised of two or more of the following elements: street pattern, marked topographical changes, landscape screening, drainageways, ponds, wetlands, streams, greenways and woodlands.

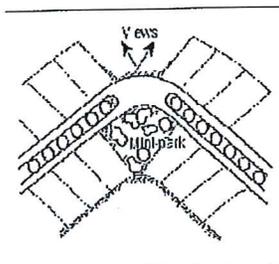
Sketch 4: Orientation



Orientation toward Physical Boundary



Orientation Toward Green



Orientation Toward Railway

(4) Open Space Design

- (A) Open space shall be designated as part of the development. The minimum required open space is based on a percentage of the gross acreage:

1.	A-1	60%
2.	A-2	60%
3.	A-4	60%
4.	RR	60%
5.	SFE	60%
6.	TZ	70%
7.	RS	30%
8.	C	75%
- (B) The required open space shall be undivided and restricted from further development, as specified in Section 4.7.
- (C) The following areas or structures may be located within the open space area and shall be counted toward the overall open space percentage required:
 1. Parking areas for access to and use of the open space.
 2. privately-held buildings or structures unless they are accessory to the use of the open space.

The intent of these requirements is to ensure that residents can actively use or enjoy a reasonable proportion of the open space.

- (D) Road rights-of-way may not be located within the required open space area, and shall not be counted towards the required minimum open space.
- (E) No more than 50 percent of the required open space may consist of unclassified water bodies, ponds, areas within the 100 year floodplain (or high water mark as documented by County records), wetlands, or slopes of greater than 25 percent.
- (F) At least 25 percent of the open space shall be accessible to the residents of the development and shall be owned in common by all residents of the development.
 - 1. At least 25% of the "accessible" open space, shall be suitable for recreational uses such as trails, play fields, or community gardens.
 - 2. A pathway system connecting all parts of those open space areas accessible to neighborhood residents, and connecting these areas to neighborhood streets and to planned or developed trails on adjacent parcels shall be identified in the plan.
 - 3. That portion of the open space designated for the location of sewage treatment facilities shall not be included as part of this accessible open space.

Roads shall be designed to minimize the visual size and scale of the development and help discourage excessive speeds.

Street widths and alignments should be carefully scaled to neighborhood size.

(5) Street Standards

Neighborhood streets may take the form of a two-way street, a pair of one-way streets on either side of a landscaped median, or a one-way loop street around a small neighborhood green. Streets shall be developed according to the following standards that promote road safety, assure adequate access for fire and rescue vehicles, and promote adequate vehicular circulation:

(A) The applicant must demonstrate that access to the development has the capacity to handle traffic generated by the proposed project, and will not endanger the safety of the general public.

(B) Streets shall have the following design standards:

1. Right-of-way widths. The right-of-way width for each road shall be wide enough to provide for all public services, including roadway drainage, trails and walkways, utilities and snow storage. The minimum right-of-way shall be provided in accordance with the following:

Travel Lanes	ADT less than 250	ADT over 250
One-way roadway	30'	30'
Two-way roadway	50'	60'

2. Roadway widths for local roads shall be determined by the expected average daily traffic (ADT) and shall be within the following ranges:

Travel Lanes	ADT less than 100	ADT 100-250	ADT over 250
Two-way roadway	18'-24'	20'-24'	22'-24'
One-way roadway	11'-13'	11'-13'	11'-13'
(urban sections*)	13'	13'	13'
Shoulder width*	2'-4'	2'-4'	2'-4'

*For urban sections, measured from curb face to curb face

3. Additional Standards:

Utilities will be placed underground; either parallel to the sidewalk or under the street.

County ISTS Regulations will include standards for common systems: groundwater monitoring, pretreatment, system management, etc.

Alternatives may include:

Individual septic systems with drainfields located on the individual lot or in adjacent open space areas;

Individual septic tanks with communal drainfields on individual lots or in open space areas.

- (a) Design Speed: Minimum 20 miles per hour
 - (b) Vertical Curves: Minimum 50' (when grade difference less than 1%, no curve is needed)
 - (c) Horizontal Curves: Minimum radius of 125'
 - (d) Road Grades: Maximum grade 8%
 - (e) Super-elevation: Maximum $e = 0.04$ feet/feet
 - (f) Pavement Strength: 7 ton minimum
 - (g) Clear Zones:
Rural sections: 10' from edge of travel lane
Urban sections: 2' from face of curb
 - (h) Bridges: Width shall be traveled way plus 2' each side Design Loading for Structural Capacity HS-20 Sidewalk necessary to maintain pedestrian crossing
 - (i) Cul-de-sacs: Minimum 30' radius
4. If determined necessary by the Zoning Administrator, shade trees shall be planted on both sides of the street at 50-foot intervals or placed in clusters at the same ratio
 5. Street connections to adjacent parcels shall be provided in logical locations to avoid creating landlocked parcels and provide for connecting street patterns.
 6. Streets that serve as collectors, interconnecting subdivisions and other major traffic generators, shall be designed according to the County's standards for collector roads.

Drainfields may be located partially or completely within open space areas provided that:

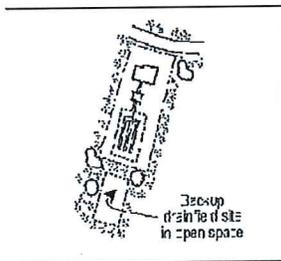
Ground cover of regularly mowed turf or meadows is maintained;

No agricultural activities are permitted within 50 feet of the drainfield area;

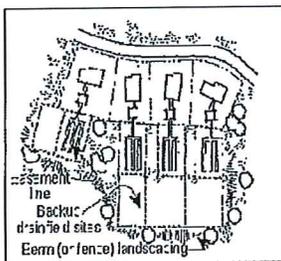
No trails or other recreational facilities are located in drainfield areas.

Alternative wastewater treatment and disposal systems that meet all MPCA permit requirements.

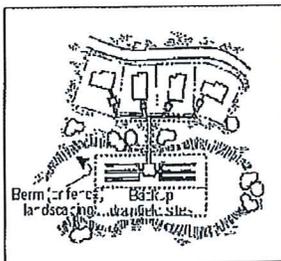
Sketch 6: Sewage Treatment Options



Drainfield on lot



Individual Drainfields in Open Space



Shared Drainfield in Open Space

7. Where streets will connect with streets having differing standards, the street dimensions shall be the same as those of the connecting street. All street widenings shall occur at the nearest intersection.

(6) Sewage and Water Facilities

Water for an OSD Development shall be provided by individual on-site wells or by one or more community wells meeting the permit requirements of the Minnesota Department of Health. The use of shared or community wells is encouraged.

All OSD Developments shall be provided with adequate sewage treatment facilities meeting the standards of the County Individual Sewage Treatment Standards Regulations and the permit requirements of the Minnesota Pollution Control Agency.

(7) Golf Courses

(A) Golf courses located in the open space must comply with Chapter Two, Part 3, Section 2.12 of this Development Code.

(B) The golf course shall be regulated by a development agreement that restricts any further development or subdivision of land and requires the land to be retained as open space use if a golf course is no longer used as a golf course.

(C) The golf course shall be constructed prior to the sale of any residential lots.

(D) A financial guarantee ensuring completion of the golf course in accordance with the approved plans and permits shall be submitted to the Zoning Administrator.

SECTION 5. PLANNED UNIT DEVELOPMENT

Ron Moore

From: Joe Bush <joe@joebushmn.com>
Sent: Monday, December 18, 2017 4:05 PM
To: mayor; Ron Moore
Subject: Afton creek Preserve and PUD, PLCD.

Ron
Attn: City Council members.

I just discovered that the Agenda for December 19th includes, PUD and PLCD discussion.

I was informed prior to the Planning Commission meeting on December 4th that the agenda item related to my proposed development was being removed from the December 19th Council meeting. I was told that a work shop with Council on December 5th was in place of December 19th meeting.

I am very discouraged that such an item would be added at such a late date without properly addressing the developer and the items in progress.

On December 5th The Council instructed the neighbor group to sketch a plan and present it to developer for consideration. That just occurred mid last week. The neighborhood group presented not one, but Three concepts. Within two days of seeing these neighborhood plans I sketched concepts of my own.

I have been working with City Admin, DNR and others to regarding the neighborhood concepts and my reply sketches.

I know Mr. Moore has had discussions with DNR, City Planner, City Attorney regarding these and other issues. Mr. Moore is aware the DNR is putting a answer regarding PUD, PLCD into a letter.

I also understand that City Planner has given information to Ron Moore that has yet to be digested and replied to by City Attorney.

Given facts of on going crucial unfinished reports from DNR, City staff and Developer. Any such agenda item about PUD and PLCD is premature and should be tabled.

1. The developer has yet to reply fully on the Neighbors plans.
2. DNR has not completely replied to City requests for information.
3. City staff is still communicating amongst themselves with undetermined answers.

It has been very clearly stated to me, (the developer) that I am to take much more time to consider all avenues of options. I have been very cooperative to reconsider timing extensions needed per requests.

Because of this information above. I formally request this agenda item be tabled.

Sincerely
Joe Bush

Sent from my iPhone.

Last Update:				
12/6/2017				
Road Bond Financial Summary, 11.27.17				
Bond Available Funds =	\$3,498,903			
Supplier	Amount	Project Phase	Notes	
Buck & Executive =	\$79,273	Added Roads	River Road	
Insite =	\$4,600	Added During Construction	Guard Rails, 15th Street	
Park =	\$1,822,146	Base Bid	Base Bid	
Park =	\$452,997	Added Roads	Initial Quote	
Park =	\$297,010	Added Roads	Change to Reclamation	
Park =	\$103,917	Expense will be in 2018	2018 Oakgreen finalize project	
Park =	\$70,000	Waiting for Park, not invoiced yet	Miscellaneous items to close out 2017 work	
Park =	\$61,672	Added During Construction	Pasture Ridge Road	
Park =	\$12,800	Added Roads	Mobilization	
Park =	\$8,800	Added During Construction	Odell Ave Curb	
Park =	\$5,775	Added During Construction	59th Street Crub	
Park =	\$3,996	Added During Construction	Croixview Turnaround	
Park =	\$2,228	Added During Construction	30th & Afton Hills Drive Curb	
Park =	\$1,625	Added During Construction	Indian Trail Erosin Control	
Rumpca =	\$3,604	Base Bid + Added Roads	Miscellaneous fill and RipRap	
Tri-County =	\$86,400	Base Bid	Culvert Labor	
Tri-County =	\$29,058	Base Bid + Added Roads	Brushing for main prject	
Tri-County =	\$28,800	Added Roads	Culvert Labor Cost	
Tri-County =	\$12,538	Base Bid	Culvert Misc Supplies	
Tri-County =	\$1,980	River Road	Brushing for River Road	
True North Steel =	\$40,483	Base Bid	Culvert Material Cost	
True North Steel =	\$5,991	Added Roads	Culvert Material Cost	
WSB =	\$150,995	Base Bid	Engineering Cost	
WSB =	\$46,490	Added Roads	Surveying / Engineering	
WSB =	\$38,510	Added Roads	Extra Charges	
WSB =	\$31,000	Base Bid	Surveying	
Remaining Funds =	\$96,215.00			