



City of Afton

CITY COUNCIL WORK SESSION MEETING AGENDA

**Tuesday, January 9, 2018
At 5:00 p.m.**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF AGENDA – January 9, 2018 Council Work Session**
- 4. CITY COUNCIL BUSINESS**
 - A. PLCD/PUD review with City Attorney and Planning Consultant
- 5. ADJOURN**

A quorum of the City Council or Other Commissions may be present to receive information at this meeting

City of Afton
3033 St. Croix Trl, P.O. Box 219
Afton, MN 55001

Meeting Date Jan. 9, 2018

Council Memo

To: Mayor Bend and Members of the City Council
From: Ron Moorse, City Administrator
Date: January 4, 2018
Re: Preservation and Land Conservation Development (PLCD) and Planned Unit Development (PUD) Discussion with City Attorney and Planning Consultant

The Shoreland Management section of the City's Zoning Code indicates that a Planned Unit Development (PUD) is not allowed in the Shoreland Overlay District. This has raised the legal question of whether the City's Preservation and Land Conservation Development (PLCD) ordinance (and the Proposed Afton Creek Preserve PLCD Subdivision) is a Planned Unit Development (PUD). The City Attorney and the City's Planning Consultant have provided differing opinions regarding this question. Attached is the letter from the City Attorney providing his responses regarding a number of legal questions related to the Afton Creek Preserve PLCD subdivision proposal, including the PLCD/PUD question as item # 9 on pages 6 to 8 of his letter. Also attached is information from the City's Planning Consultant regarding differences between the City's PLCD ordinance and a Planned Unit Development.

To provide background regarding the relationship of the current PLCD ordinance to the Afton's former PAUD and Open Space/PUD ordinances, attached are the initial PAUD ordinance adopted in 1997, the Open Space/CUP-PUD ordinance adopted in 2006, a new PAUD ordinance adopted in January of 2008, and the current PLCD ordinance.

Both the City Attorney and the Planning Consultant agree that both the PLCD ordinance and a PUD involve preserving a portion of a site as open space and locating development on the remainder of the site. The two differ as to whether the difference in the method used to accomplish this under the PLCD ordinance vs. the method used under a PUD makes the PLCD a PUD. The Planning Consultant has indicated that while the PLCD ordinance provides limited and specific flexibility in relation to development regulations, and requires variances for broader flexibility (requiring the demonstration of practical difficulty) a PUD provides broad flexibility in relation to development regulations and the flexibility is gained through the design process, not through a variance process.

While the Council has the ability to interpret its ordinances, including the question regarding whether the PLCD ordinance is a PUD, it is important that the Council has a thorough understanding of the facts related to the PLCD ordinance and a Planned Unit Development as the basis for making a determination regarding whether the PLCD ordinance is a PUD. The discussion with the City Attorney and the Planning Consultant is an opportunity to clarify the facts related to the PLCD ordinance and a PUD.

Because the Council cannot take official action at a work session, the Council's formal determination regarding whether the PLCD ordinance is a PUD will need to be made at a regular City Council meeting.

Frederic W. Knaak*
fknaak@klaw.us

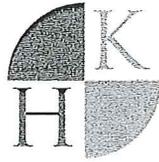
Wayne B. Holstad**
wholstad@klaw.us

Craig J. Beuning
cbeuning@klaw.us

**Also Licensed in
Wisconsin & Colorado*

**Qualified Neutral under Rule 114*

***Also Licensed in Iowa,
Federal Court of Claims,
& US Court of Appeals
Washington, D.C.*



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"Local in character, national in reputation, international in reach"

Of Counsel
Thomas M. Dailey, P.A.
(1943-2015)
Joseph B. Marshall

Paralegal
Michelle E. Hagland
mhagland@klaw.us

Legal Assistant
legalassistant@klaw.us

November 30, 2017

Mr. Ron Moore
Afton City Administrator
3033 St. Croix Trail South
Afton, MN 55001

RE: Legal Opinion re Afton Creek Preserve Subdivision

Dear Mr. Moore:

In your correspondence of November 13, 2017, you raised a number of questions that have come up regarding a proposal from a developer to utilize the City's Preservation and Land Conservation Development section of the Afton City Code as the basis of a new residential development. You have requested a formal opinion regarding the following:

1. *The city's subdivision ordinance, in Sec. 12-1379 B., indicates "No variance may be granted which would allow more than nine lots to be created on a cul-de-sac street." Can the City Council approve a variance to allow more than nine lots on a cul-de-sac?*

Sec. 12-1379 B.

*B. A cul-de-sac street shall not exceed 1,320 feet in length and shall serve no more than nine lots. Every lot platted on a cul-de-sac street shall have frontage and access on the cul-de-sac street and shall be included in the nine lot limit. A variance may be granted on the length limitation only when it is clearly demonstrated that the length greater than 1,320 feet is necessary for reasons of unfavorable land topography. **No variance shall be granted which would allow more than nine lots to be created on a cul-de-sac street.***

Opinion: While it is not a little ironic that one of the provisions that would require a variance would be the prohibition against allowing variances, Minnesota law makes it clear that the City could, if it chose to, grant a variance to the requirements

of its subdivision ordinance.

Minn. Stat. Section 462.358, subd. 6, says:

“Subdivision regulations may provide for a procedure for varying the regulations as they apply to specific properties where an unusual hardship on the land exists, but variances may be granted only upon the specific grounds set forth in the regulations.”

Minnesota statutory law is controlling over the provisions of any local ordinance that conflicts with it in any way. Mangold Midwest Co. v. Village of Richfield, 274 Minn. 347, 143 N.W. 2d 813 (Minn. 1966); City of Birchwood Village v. Simes, 576 N.W. 2d 458 (Minn.App. 1998). In this instance, this would mean the prohibition against variances. Afton’s Code does address the question of variances to its subdivision standards in Afton Code §12-1266, which would be the “regulations” referenced in the state statute. That ordinance provision provides:

Variances. 345 A. The City Council may grant a variance in any particular case where the subdivider can show that by reason of the unfavorable topography or other physical conditions the strict compliance to these regulations could cause practical difficulties. “Practical difficulties” as used in connection with the granting of a variance includes a three-factor test, all three of which must be met in order for a variance to be granted.

1. Reasonableness: The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.
2. Uniqueness: The plight of the landowners is due to circumstances unique to the property not created by the landowner.
3. Essential Character: The variance, if granted, will not alter the essential character of the locality.

Any variance that is granted must go through this process and be based on these criteria. In this instance, this has raised a couple of additional issues.

An argument can be made, for example, that the “practical difficulties” required for the finding of a variance for this development were created by the developer and are not inherent to the land proposed for development.

This is a valid concern. At first blush, it would certainly appear that any hardship exists only because the applicant is asking for higher densities (or longer and more cul-de-sacs) than would otherwise be permitted and it is not something essential to development of

any kind on the site, nor is it a pre-existing condition of the property. If the Council were to choose to do so, case law does exist that would serve as authority for turning down a development based on "self-imposed hardship" essentially caused by the developer (See: VanLandschoot v. City of Mendota Heights, 336 N.W.2d 503 (Minn. 1983))

But it would seem to beg the question of the purpose of the PLCD provision if an applicant created their own hardship by simply applying for a subdivision using that provision. An applicant can make an argument, which the Council *could* accept, that the large portion of the development dedicated to open space around the environmentally sensitive trout stream (in furtherance of city policy) limits the remaining land volume available for development in the parcel and creates the practical necessity for the variance requested, both as to density and the road configuration.

This interpretation is not compelled by the PLCD provision and such a determination would be in the discretion of the Council. Yet, it would appear an approval of such a request could meet the stated purpose of greater "flexibility" in the Preservation and Land Conservation Development, which is intended to:

"encourage a more creative and efficient development of land and its improvements.... than is possible under the more restrictive application of zoning requirements, while at the same time meeting the standard and purposes of the comprehensive plan and preserving the health, safety and welfare of the citizens of the City." Afton City Code§12-2373

A lawyer representing landowners in the City that are opposed to the development suggested in a letter to the planning commission that the greater flexibility provided for in the above language only applies to variances granted "under the more restrictive application of **zoning** requirements" and not to variances under the City's subdivision regulations. The idea in this argument is that while the allowed flexibility could be applied to such things as setbacks, it could not be applied to such things as cul-de-sac limitations.

While it is true that the code language expressly points to the issue of restrictive zoning requirements, there is nothing in that language that limits the encouragement of "more creative and efficient development of land and its improvements" solely to zoning matters. Judicial authority in Minnesota has made it clear that a city council has the same broad authority and discretion in granting or denying variances under the subdivision statute as it exercises under the zoning statute. (See: VanLandschoot, *supra*). The bottom line is that the City Council has the authority to allow variances to its subdivision procedures if it can find the existence of practical difficulties caused by the application of its own ordinances on a particular development.

2. *Can a road serving a subdivision be constructed to provide access to the subdivision from an existing minor street? Specifically, can a loop road be constructed to Odell to serve the proposed Afton Creek Preserve PLCD subdivision?*

Opinion. As a rule, there is nothing that would prohibit the access to a development by way of a pre-existing roadway proximate to the development. In this case, the issue of the use of Odell would center on an analysis of what hazards any increase in use caused by the development might have to the health, safety and welfare of the adjoining property owners and the City as a whole. Description of Odell as a "minor street" implies limitations on its capacity to handle added traffic volumes, possibly creating hazards. This requires a traffic analysis by the City engineer. If it can be demonstrated that the use of Odell creates a hazard to the public based upon these studies, it would not be appropriate to access the development by that route. Conversely, if such a traffic analysis determined there would be no meaningful decrease in public safety, Odell presumably could be used for that purpose.

3. *Is there any local ordinance or State Statute that would prohibit the construction of a road through the 5-acre parcel fronting on Odell to serve the Afton Creek Preserve PLCD, particularly if a 60-foot-wide right-of-way is dedicated for the road and the remainder is dedicated as parkland?*

Opinion. The use of an existing residential lot to provide access to adjoining property via a road easement is unusual, to say the least. Since roads are clearly allowed in residential areas, and in the RR zone (where it is located) in particular, the actual use would not be prohibited and, while the lot used would remain platted in the original development, there does not appear to be any authority that would prohibit the creation of an easement for this purpose. One issue that might be presented is whether, by creating, in effect, at least one corner lot in the adjoining lot or lots, the creation of a new road would restrict the use of those lots in any way because of road setbacks or similar restrictions. This could have the potential of creating a taking from those parcels of existing rights of use that might be compensable.

4. *If the right-of-way for a loop road is put through the 5-acre parcel fronting on Odell, does this parcel need to be a part of the subdivision and a part of the PLCD? If so, does this parcel need to be rezoned, and is it being "joined" to the PLCD? Bob Kirmis has advised that, from a planning standpoint, the parcel needs to be part of the subdivision because access to the subdivision is proposed to run through it. But it is not part of the PLCD and does not need to be joined to the PLCD or rezoned from RR to Ag. The lot does not need to be part of the PLCD because it is not going to be used as a buildable lot in the PLCD, it is only going to be used as a road right-of-way and a park, and it will have no effect on the number of lots or the density of the PLCD. Both the road right-of-way and park uses are allowed in the Rural Residential zone.*

Opinion. Your preliminary assessment of this issue is correct. Access by an adjoining roadway does not require the adjoining roadway to become part of the development **if it is a pre-existing roadway**. Mr. Kirmis would be correct if the existence of the access is to be created contemporaneously with the plat itself. The critical point is that the easement must be in place before final plat approval. If this is the case, there would be no reason to include it.

5. *The PLCD ordinance includes the following language:*

Sec. 12-2377. Coordination with subdivision regulations.

C. Parcels which contain their maximum permitted density or have been previously subdivided to their permitted density may not be joined to a PLCD.

Does this language prohibit the 5-acre parcel in the southeast corner of the PLCD from being included in the PLCD?

Opinion. Yes. While inclusion of the parcel would not affect the number of allowed lots or the permitted density of the proposed development, the language of the code clearly does not authorize the inclusion of a previously subdivided parcel if that was part of a subdivision at its permitted density. Its inclusion in the plat would require a variance.

6. *Is there any local ordinance or State Statute that prohibits a road from being located adjacent to an adjacent property, particularly if it would place an additional setback requirement on the adjacent property beyond the current setbacks on the property?*

Opinion. No. But, as noted above, it may create a situation where the City may be creating compensable damages for any reduction in property values as a result of adding new setback requirements to adjoining lots.

7. *Can the City approve a subdivision that has one or more irregularly-shaped lots? If so, does this approval require a variance?*

(Sec. 12-1387. Lot requirements.

A. *Side lot lines shall be substantially at right angles to straight street lines or radial to curved street lines or radial to lake or stream shores unless topographic conditions necessitate a different arrangement.*

I. *All remnants of lots below minimum size remaining after subdividing of a larger tract must be added to adjacent lots.)*

Opinion. The answer to both questions, referencing the provision of the code you have provided with the question, is "yes."

8. *Can the City approve a subdivision that requires variances?*

Opinion. For the reasons noted earlier, "yes."

In addition to these questions, in subsequent correspondence, you have raised an additional, significant concern:

9. *You forwarded to me correspondence from an attorney representing landowners near the development who has raised the specific question of whether this development runs afoul of the ordinance language of Afton Code § 12-363 which indicates a PUD is not allowed in a Shoreland Overlay District.*

Opinion. It is correct that a PUD (Planned Unit Development) is not allowed in the Shoreland Overlay District. A substantial amount of the land in the proposed development in this instance does, in fact, appear to be located within the Shoreland Overlay District.

The issue of whether a PUD can be allowed in a Shoreland Overlay District is covered under the Minnesota Rules governing the implementation of Shoreland Overlay restrictions. That Rule, MN Rule §6120.3200, subd. 3, provides:

PLANNED UNIT DEVELOPMENT. 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 requirement of the state rule that cities consider incorporating PUD provisions in their Shoreland Overlay Ordinances would appear to directly contradict the strict prohibition of the City Code against such developments in the Shoreland Overlay District in Afton. The State Rule does not require the allowance of a PUD by the City, however, only that the consider incorporating such provisions.

Neither the Code, state statute, the rules or judicial opinions offer any direct guidance on whether the provisions of the Code related to PLCD developments are "PUDs" under the City Code. The term remains largely undefined in Minnesota law, although you correctly note, in Minnesota, it is usually described in terms of higher density developments in more urban environments.

The term "PUD" is widely used, however, in real estate and development.

"The Planned Unit Development (PUD) is a recent and innovative approach to land use development. Its parentage is a union of cluster zoning and

subdivision platting. The definition of a PUD which is most frequently encounter is:

‘Planned unit development’ means an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units.....the plan for which does not correspond in lot size, bulk or type of dwelling.....density, lot coverage and required open space to the regulations established in any one or more (zoning) districts created, from time to time, under the provisions of a municipal zoning ordinance enacted pursuant to the conventional zoning enabling act of the state.” *Jurgensmeyer & Roberts, Land Use Planning and Development Regulation Law*, 2nd Ed., Thompson-West, §7.17, p.431, fn.2, citing U.S. Advisory Commission on Intergovernmental Relations.

The key elements in PUDs, as noted above, are the control of the entire area to be developed by a single owner in a single development utilizing a plan that would not be allowed under “standard” zoning requirements. This would seem to fit, in a general way, what is occurring in the current proposal. In a seminal case, the goals of planned unit developments were expressly listed by the Supreme Court of Oregon as, in part, “to achieve flexibility; ...to encourage developers to use a more creative approach in their development of land; to encourage a more efficient and more desirable use of open land....” *Frankland v. City of Lake Oswego*, 267 Or. 452, 577 P.2d 1042, 1047 (1973). This language almost directly parallels the stated purpose of the Afton PLCD Code provisions.

While the provisions of the Afton PLCD focusing on preservation of natural resources and undeveloped land appear quite unique in this region, these techniques are not new and appear to be gaining currency elsewhere.

“Cluster development and planned unit development are sometimes viewed as the same thing. It is more accurate to define cluster development as a device for grouping dwellings to increase dwelling densities on some portions of the development area in order to have other portions free of buildings. Many planned unit developments use cluster development as a technique but the planned unit development concept typically encompasses more. However,..***the increasing popularity of conservation subdivisions, often called cluster subdivisions, and new urbanism inspired planned cluster developments, has blurred the lines between the two approaches and the two concepts increasingly overlap.***” *Jurgensmeyer & Roberts, supra*, at p. 433. (Emphasis added)

While the above authority is not definitive, it nevertheless is strongly suggestive that the various elements present in the PLCD provisions of the City Code are indicative of a

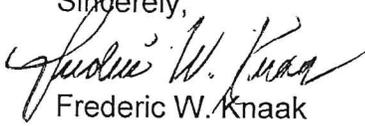
Mr. Ron Moorse
December 1, 2017
Page 8

"PUD" within the meaning of the term as it is understood in the real estate development field. If so, this would prevent this development from occurring as a PLCD in that area.

In the end, however, this, too, is a matter within the City Council's powers to interpret the meaning and reach of the particular provisions of Shoreland Overlay District to various uses and underlying Code restrictions. As noted in Afton Code §12-364, "When an interpretation question arises about whether a specific land use fits within a given "use" category (under the Shoreland Overlay District), the interpretation shall be made by the City Council after a public hearing and a recommendation of the Planning Commission." It would appear that both the issue of the applicability of the Shoreland Overlay District restrictions to developments under the category of PLCD, as well as the State mandate to expand the use of PUDs in such districts, would both be matters for the Council to decide.

Please let me know if we can provide further clarification of these matters or if additional items need be reviewed prior to the Planning Commission and City Council actions on the proposed development.

Sincerely,



Frederic W. Knaak
Afton City Attorney



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:

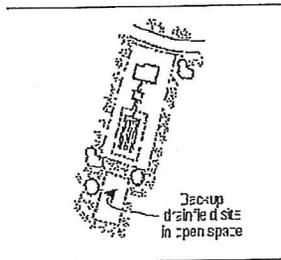
Ground cover of regularly mowed turf or meadows is maintained;

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

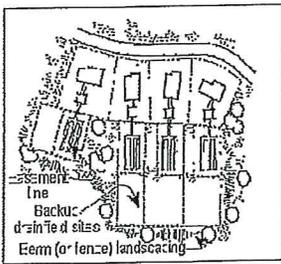
No trails or other recreational facilities are located in drainfield areas.

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

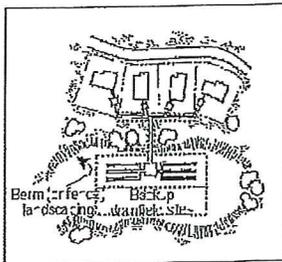
Sketch 6: Sewage Treatment Options



Drainfield on lot



Individual 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

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 (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 (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.

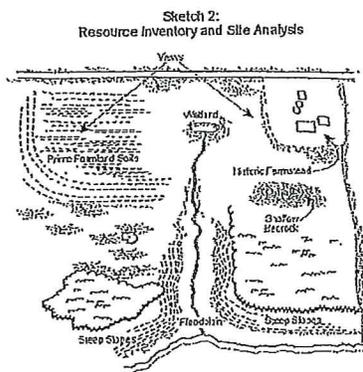
The regulations of this Development Code are applicable only to open space developments approved after the effective date of this Development Code.

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

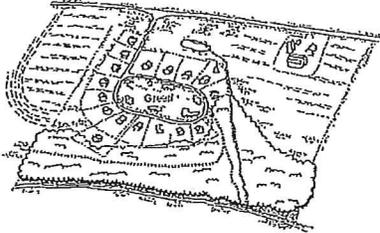
1. The applicant shall submit a “yield plan,” showing the maximum number of dwelling units that would be permitted given the minimum lot size and lot widths for conventional subdivisions and other requirements of the Development Code and Subdivision Regulations. The yield plan need not be engineered; 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:

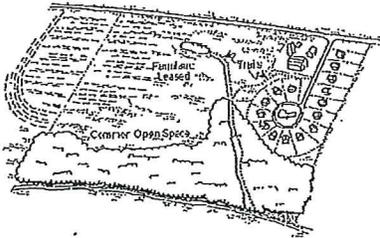
Zoning District	Minimum Lot Size (Acres)	Minimum Lot Width (Feet)
A-1	40	300
A-2	20	300
A-4	10	300
RR	5	300
SFE	2.5	160
TZ	10	300
RS	15,000 sq. ft.	100
C	20	300

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 Err - 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

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

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.

(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
SFB	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.

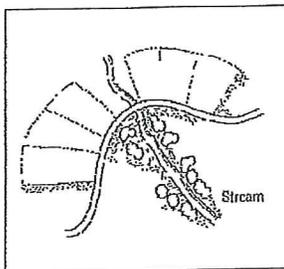
2. A physical amenity such as a meadow, a stand of trees, a stream or other water body, or some other natural feature.
3. A street designed with boulevards planted with shade trees and with a central “parkway” or median, at least 25 feet wide.

A neighborhood is a contiguous group of residential lots.

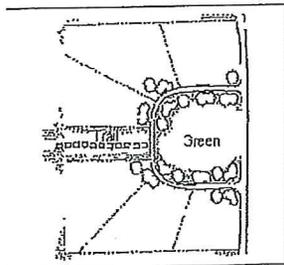
(3) Neighborhood Siting Standards

- (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.

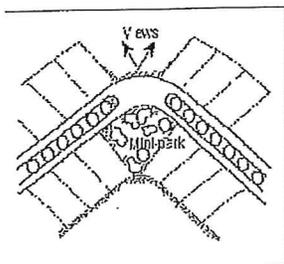
Sketch 4: Orientation



Orientation toward Physical Amenity



Orientation Toward Green



Orientation Toward Pathway

- (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.

(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:

<p><i>Utilities will be placed underground; either parallel to the sidewalk or under the street.</i></p> <p><i>County ISTS Regulations will include standards for common systems: groundwater monitoring, pretreatment, system management, etc.</i></p> <p><i>Alternatives may include:</i></p> <p><i>Individual septic systems with drainfields located on the individual lot or in adjacent open space areas;</i></p> <p><i>Individual septic tanks with communal drainfields on individual lots or in open space areas.</i></p>	<ul style="list-style-type: none"> (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 <p>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</p> <p>5. Street connections to adjacent parcels shall be provided in logical locations to avoid creating landlocked parcels and provide for connecting street patterns.</p> <p>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.</p>
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Drainfields may be located partially or completely within open space areas provided that:

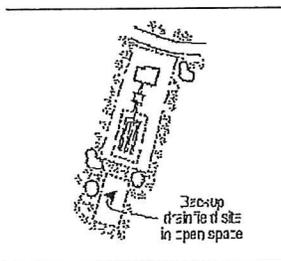
Ground cover of regularly mowed turf or meadows is maintained;

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

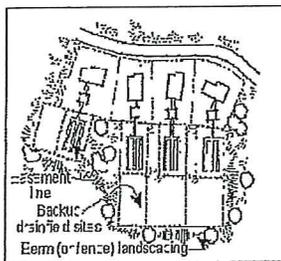
No trails or other recreational facilities are located in drainfield areas.

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

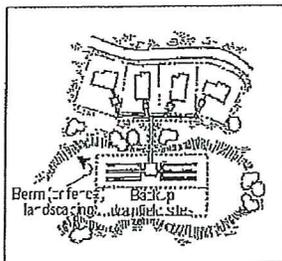
Sketch 6: Sewage Treatment Options



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

ORDINANCE 1997 - 41

**CITY OF AFTON
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE TO AMEND CHAPTER 12, LAND USE,
OF THE AFTON CITY CODE OF ORDINANCES,
BY AMENDING ARTICLE II, DIVISION 3, BY ADDING SECTION 12-145 AND
ADDING ARTICLE XII, PLANNED AGRICULTURAL UNIT DEVELOPMENTS**

WHEREAS, the City of Afton is a municipal corporation organized and existing under the laws of the State of Minnesota; and,

WHEREAS, the City Council of the City of Afton has adopted zoning, subdivision and building regulations as a part of the Afton Code of Ordinances to promote the orderly, economic, and safe development and utilization of land within the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Afton that the Afton Code of Ordinances be amended as follows:

1. Chapter 12, Article II, Division 3, is hereby amended by adding a Planned Agricultural Unit Development Overlay District to read as follows:

Sec.12-145. Planned Agricultural Unit Development Overlay District

(a) *Purpose.* To encourage a more creative and efficient development of land in the AG zoning District as provided in Article XII of Chapter 12.

(b) *Permitted Uses.* As permitted and regulated under Chapter 12.

2. Chapter 12 is hereby amended by adding Article XII to read as follows:

ARTICLE XII. PLANNED AGRICULTURAL UNIT DEVELOPMENTS

Sec. 12-2371. Scope.

This article applies to Planned Agricultural Unit Developments in the Agricultural (AG) zoning district.

Sec. 12-2372. General provisions.

A PAUD is a tract of land that is developed as a unit under single or unified ownership or controls. A Planned Agricultural Unit 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 specific 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 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.
- (3) To ensure concentration of open space into more usable areas, to preserve the natural resources of the site and to preserve wildlife habitat and corridors.
- (4) To facilitate the economical provision of streets and public utilities.
- (5) To allow the transfer of development rights (density) within a subdivision in order to preserve agricultural land, open space, natural features and amenities.

Sec. 12-2374. Permitted uses.

The Permitted Uses are:

- (1) Those uses that are permitted in the underlying zoning district;
- (2) Subdivisions that require the construction of a new public street in the AG zoning district;

Sec.12-2375. General standards for approval.

A special use permit shall be required for all planned agricultural unit developments. The city may approve the planned unit development only if it finds that the development satisfies all of the following standards:

- (1) The planned agricultural unit development is consistent with the comprehensive plan of the city.
- (2) The planned agricultural unit development is an effective and unified treatment of the development possibilities on the project site and the development plan provides for the preservation of unique natural amenities.
- (3) The planned agricultural unit development can be planned and developed to harmonize with any existing or proposed development in the areas surrounding the project site.

- (4) The tract is, at least, a 30 acres in size unless the applicant can show that a PAUD of less acreage meets the standards and purposes of the comprehensive plan and preserves the health, safety and welfare of the citizens of the city and that all of the following conditions exist:
 - (a) The proposal better adapts itself to the physical and aesthetic setting of the site and with the surrounding land uses than could be developed using strict standards and land uses allowed within the underlying zoning district.
 - (b) The proposal would benefit the area surrounding the project to a greater degree than development allowed within the underlying zoning district.
 - (c) The proposal would provide land use and/or site design flexibility while enhancing site or building aesthetics to achieve an overall higher quality of development than would otherwise occur in the underlying zoning district.
 - (d) The proposal would ensure the concentration of open space into more workable or usable areas and would preserve the natural resources of the site than would otherwise occur in the underlying zoning district.

Sec. 12-2376. Exceptions to Density, Frontage on a Public Street and Length of Cul de sac requirements:

- (1) The average density over the proposed PAUD shall not exceed the maximum density permitted in the underlying zoning district except that the property owner shall be granted a bonus of one dwelling unit per forty contiguous acres preserved in the AG zoning district. All development rights from the preserved forties shall be transferred to the other participating parcel(s) unless the permitted number of lots for dwelling units cannot be platted on the remaining parcel(s), in which case a maximum of one dwelling unit may be permitted on the preserved 40-acre parcel.
- (2) The minimum requirement for frontage on an improved public street may be reduced, as long as the minimum lot width at the building setback line is maintained, to encourage and accommodate curvilinear streets that better preserve the rural character or other resources within the PAUD.
- (3) The maximum length of cul de sacs may be exceeded to accommodate curvilinear streets and other design elements that tend to preserve the rural character or other resources within the PAUD.

Sec. 12-2377. Coordination with subdivision regulations.

- (1) It is the intent of this article that subdivision review under Chapter 12 be carried out simultaneously with the review of a planned development under this article.
- (2) The plans required under this article must be submitted in a form that will satisfy the requirements of Chapter 12 for the preliminary and final plats.

Sec. 12-2378. Pre-application meeting.

Prior to the submission of any plan to the planning commission, the applicant shall meet with the city administrator to discuss the contemplated project relative to community development objectives for the area in question and to learn the procedural steps and exhibits required. This includes the procedural steps for a special use permit and a preliminary plat. The applicant may submit a simple sketch plan at this stage for informal review and discussion. The applicant is urged to seek the advice and assistance of the city staff to facilitate the review of the outline plan and preliminary plat.

Sec. 12-2379. General development plan.

- (1) An applicant shall make an application for a Special Use Permit following the procedural steps as set forth in Section 12-78.
- (2) In addition to the criteria and standards set forth in Sec. 12-78 of this article for the granting of special use permits, the following additional findings shall be made before the approval of the outline development plan:
 - (a) The proposed PAUD is in conformance with the comprehensive plan.
 - (b) The uses proposed will not have an undue and adverse impact on the reasonable enjoyment of neighboring property and will not be detrimental to potential surrounding uses.
 - (c) Each phase of the proposed development, as it is proposed to be completed, is of sufficient size, composition, and arrangement that its construction, marketing, and operation are feasible as a complete unit, and that provision and construction of dwelling units and common open space are balanced and coordinated.
 - (d) The PAUD will not create an excessive burden on parks, schools, streets, and other public facilities and utilities that serve or are proposed to serve the district.
 - (e) The proposed total development is designed in such a manner as to form a desirable and unified environment within its own boundaries.
- (3) The following exhibits shall be submitted to the city administrator by the proposed developer as a part of the application for a special use permit:
 - (a) An explanation of the character of the planned development and the manner in which it has been planned to take advantage of the planned development regulations.
 - (b) A statement of the present ownership of all the land included within the planned development and a list of property owners within five hundred (500) feet of the outer boundaries of the property.
 - (c) A general indication of the expected schedule of development including progressive phasing and time schedule.

- (d) A map giving the legal description of the property including approximate total acreage and also indicating existing property lines and dimensions, ownership of all parcels, platting, easements, street right-of-ways, utilities, buildings and use for the property and for the area five hundred (500) feet beyond.
 - (e) Natural features, maps or maps of the property and area five hundred (500) feet beyond showing contour lines at no more than two-foot intervals, drainage patterns, wetlands, vegetation, soil and subsoil conditions.
 - (f) A map indicating proposed land uses including housing units and types, vehicular and pedestrian circulation, and open space uses.
 - (g) Full description as to how all necessary governmental services will be provided to the development.
 - (h) An engineering report presenting results of percolation tests and soil analysis of the site.
 - (i) Any additional information requested by the city administrator, planning commission and city council that might be required for clarification of the proposed project.
 - (j) Twenty-five (25) copies of all required information shall be submitted.
- (4) The applicant shall also submit a preliminary plat and all the necessary documentation as required under Chapter 12 for all or that portion of the project to be platted. For purposes of administrative simplification, the public hearings required for the special use permit and preliminary plat may be combined into one (1) hearing or may be held concurrently.

Sec. 12-2380. Final development plan.

- (1) Within ninety (90) days following the approval of the general development plan with recommended modifications, if any, and the preliminary plat, the applicant shall file with the city administrator a final development plan containing in final form the information required in the general development plan plus any changes recommended by the planning commission and the city council as a result of the public hearing. The applicant shall also submit a final plat for that entire portion to be platted.
- (2) The city administrator shall submit the final development plan and the final plat to the planning commission for review.
- (3) The final development plan and the final plat shall conform to the general development plan and preliminary plat plus any recommended changes by the planning commission or city council to the general development plan and preliminary plat.
- (4) The city council shall review the final development plan and final plat. If the final development plan is approved by the city council, the city administrator shall issue a special use permit to the applicant.

- (5) The applicant(s) shall grant a Conservation Easement to the City of Afton and all of the owners of the lots and parcels to be created in the PAUD which restricts the lots and parcels within the PAUD to the number of dwelling units approved for the PAUD and the land cover and use approved by the City of Afton as a part of this PAUD.
- (6) The applicant(s) shall grant a Conservation Easement to the City of Afton, the Minnesota Land Trust (or similar independent third party approved by the City of Afton) and all of the owners of the lots and parcels to be created in the PAUD which restricts the development rights on the preserved parcels on forty or more acres within the PAUD to the number of dwelling units approved for the preserved parcel and the land cover and use approved by the City of Afton as a part of this PAUD.

Sec. 12-2381. Enforcement of development schedule.

The construction and provisions of all of the common open spaces and public and recreational facilities that are shown on the final development plan must proceed at the same phase as the construction of dwelling units. At least once every six (6) months following the approval of the final development plan, the city administrator shall review all of the building permits issued for the planned development and examine the construction which has taken place on the site. If he shall find that the rate of construction of dwelling units is greater than the rate at which common open space and public and recreational facilities have been constructed and provided, he shall forward this information to the city council, which may revoke the planned unit development permit.

Sec. 12-2382. Conveyance and maintenance of common open space.

- (1) All land shown on the final development plan as common open space must be conveyed to a homeowners association or similar organization provided in an indenture establishing an association or similar organization for the maintenance of the planned development. The common open space must be conveyed to the homeowners association or similar organization subject to covenants to be approved by the city council which restrict the common open space to the uses specified on the final development plan and which provide for the maintenance of the common open space in a manner which assures it continuing use for its intended purpose.
- (2) If a homeowners association is created, the applicant shall submit plans at the time of final plan of development and documents which explain:
 - (a) Ownership and membership requirements.
 - (b) Articles of incorporation and bylaws.
 - (c) Time at which the developer turns the association over to the homeowners.
 - (d) Specific listing of items owned in common including such items as roads, recreation facilities, parking, common open space grounds, and utilities.

Sec. 12-2383. Standards for common or open space.

No open area may be approved as common open space under the provisions of this article unless it meets the following standards:

- (1) The location, shape, size, and character of the common open space must be suitable for the planned development.
- (2) Common open space must be used for amenity or recreational purposes. The uses authorized for the common open space must be appropriate to the scale and character of the planned development, considering its size, density, expected population, topography, and the number and type of dwellings to be provided.
- (3) Common open space must be suitably improved for its intended use but common space containing natural features worthy of preservation may be left unimproved. The buildings, structures and improvements which are permitted in the common open space must be appropriate to the uses which are authorized for the common open space and must conserve and enhance the amenities of the common open space having regard to its topography and unimproved condition.

Sec. 12-2384. Review and amendments.

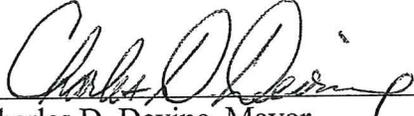
- (1) The city administrator shall review all PAUDs within the city at least once each year and shall make a report to the city council on the status of the development in each of the PAUD districts. If the city administrator finds that the development has not commenced within one (1) year after the original approval of the special use for the PAUD, the city administrator may recommend that the city council revoke the special use permit as set forth in Section 12-78 of this chapter. Prior to cancellation or revocation of this permit, the city council shall hold a public hearing at which time all interested parties will be given an opportunity to be heard.
- (2) For additional phases of the PAUD, if within five (5) years the project has not progressed, the city administrator may recommend that the city council determine what action will be taken with the remainder of the project. Prior to determining the outcome of the PAUD, the city council shall hold a public hearing at which time all interested parties will be given an opportunity to be heard.
- (3) Minor changes in the location, placement, and heights of the buildings or structures may be authorized by the zoning administrator if required by engineering or other circumstances not foreseen at the time the final plan was approved.

ORDINANCE 1997-41

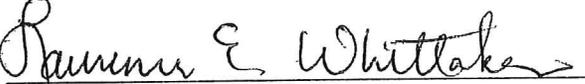
PAGE 8

- (4) Approval of the planning commission and city council shall be required for other changes such as rearrangement of lots, blocks and building tracts. Those changes shall be consistent with the purpose and intent of the approved final development plan.
- (5) Any amendment to the PAUD shall require the same procedures as for the application for a special use permit as set forth in this chapter.
- (6) This Ordinance shall be in full force and effect from the date of the publication of this Ordinance. This Ordinance shall be repealed effective February 1, 2002 unless the City Council adopts an Ordinance prohibiting the re-subdivision of lots of less than ten acres that are platted in the Rural Residential Zoning District by that date.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF AFTON THIS THE 4TH
DAY OF JUNE 2001.**


Charles D. Devine, Mayor

ATTEST:


Laurence E. Whittaker, City Administrator

CITY OF AFTON
WASHINGTON COUNTY, MINNESOTA

ORDINANCE 3-2006

AN ORDINANCE TO AMEND CHAPTER 12, LAND USE, BY AMENDING ARTICLE XII, BY ALLOWING OPEN SPACE DEVELOPMENTS WITHIN THE AGRICULTURAL AND RURAL RESIDENTIAL DISTRICTS WITH A CONDITIONAL USE PERMIT – PLANNED UNIT DEVELOPMENT (CUP – PUD)

The City Council of Afton ordains:

ARTICLE XII. OPEN SPACE PRESERVATION DEVELOPMENTS (CUP-PUD)

SECTION:

- 12-2371: Scope
- 12-2372: Purpose
- 12-2373: Definitions
- 12-2374: Applicability
- 12-2375: Open Space Preservation Development
- 12-2376: Density Bonus
- 12-2377: Open Space Standards
- 12-2378: Open Space Preservation Design Criteria
- 12-2379: Application Procedure and Submittal Requirements
- 12-2380: Severability

Sec. 12-2371. Scope.

This article applies to Open Space Preservation Developments (CUP-PUD) in the Agricultural (AG) zoning district and Rural Residential (RR) zoning district.

Sec. 12-2372. Purpose.

The purpose of this Section is to encourage, protect and preserve open space in perpetuity through the following planning objectives:

- (1) Providing efficient use of the land while maintaining contiguous blocks of agricultural land, mature woodlands and open space, and preserving historical features, scenic views, while providing aesthetic and effective natural drainage systems for surface water runoff, water supply and wastewater treatment systems, which promote water conservation and wastewater pollution discharge reductions of nutrients, and disease causing organisms to our underground aquifers and surface water bodies and other desirable features of the natural environment.
- (2) Preserving contiguous ecological and wildlife corridors, common open spaces for scenic enjoyment, recreational use, and rural identity.
- (3) Creating cohesive neighborhoods in order to establish local identity and community interaction.
- (4) Encouraging sustainable innovation and promote flexibility and creativity in residential development.
- (5) Providing either public or privately owned open spaces for passive or active recreational use by the residents of the neighborhood or the larger community.
- (6) Providing for a diversity of single family home lot sizes and building densities.
- (7) Preserving scenic views and elements of the City's rural character by minimizing views of new development.
- (8) Preserving and protecting the nighttime sky from light pollution through the utilization of sensitive outdoor lighting.

12-2373. Definitions.

The following words, terms, or phrases, when used in this chapter, shall have the meaning ascribed to them in this section, except where expressly defined in another article or the context clearly indicates a different meaning:

Advanced Wastewater Treatment Systems (AWTS): Utilizing third party testing these systems will have to prove that they can exceed National Pollution Discharge Elimination Standards (NPDES) or applicable Minnesota Rules, whichever is the more stringent, in effect at time of application for Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD5), Fecal Coliform (FC), Nitrates (NOx), and Phosphorus (P).

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.

Common wastewater treatment systems means septic on or off-site, communal on or off-site, soil-based on or off-site, partial soil-based on or off site, performance soil-based on or off-site, or advanced on or off-site waste water treatment systems which meet or exceed the standards contained in the applicable Minnesota Rules.

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.

Conservation easement holder means the organization (ie. Washington County, Minnesota Land Trust, Belwin, City of Afton) managing the easement.

Cultural Resources means the historic and archeological characteristics of the land, including buildings and landscapes, which provide information or qualities regarding the history of Afton and its people.

Historic Building and Structure means building(s), structure(s), and/or site(s), which have been identified in the Afton Comprehensive Plan or Afton Natural Resources Inventory and/or by the Afton Historic Preservation Commission, the Washington County Historic Preservation 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 City.

Homeowners Association or HOA means a formally constituted nonprofit 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 facilities.

Neighborhood means an area containing a contiguous group of residential lots where people live in close proximity to one another.

Net Developable area means the gross acreage of the development minus the difference (if a positive number) between the amount of unbuildable acreage and the maximum amount (25 percent) of unbuildable acreage that can be included in an open space designation.

Open Space means land used for agriculture, natural habitat, pedestrian corridors and/or recreational purposes that is undivided and permanently protected from future development.

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

Perimeter Road means a road lying outside of and abutting the development parcel.

Partial Soil-Based Wastewater Treatment System: These systems incorporate some form of "Advance" treatment of the (usually separated) Blackwater and/or Greywater prior to being discharged to the environment subsurface, surface or recycled. Partial soil-based systems do not require the large standard or performance soil-based treatment areas because the pretreated effluent is of higher quality.

Performance Soil Based Waste Water Treatment System means performance based systems are traditionally commingled "Blackwater" streams to a standard septic/trash type of initial collection tank followed by various forms of treatment systems, media or vegetation that have demonstrated through third party testing having the capability of reducing Total Suspended Solids (TSS), Biological Chemical Oxygen Demand (BOD5), Fecal Coliform (F.C) numbers. These systems do not promote water conservation but do reduce some TSS, BOD5, F.C. and nutrient and/or pharmaceutical residual reductions to the environment. These types of systems may be allowed to have smaller separation distances and sizing than a standard septic system when designed and stamped by a registered licensed Minnesota engineer. These systems will need to be maintained on a regular basis and additional space (land area) will be required for a second treatment system.

Plant Community means a grouping of plants with common environmental requirements living within the landscape, i.e., wetlands, grasslands, boreal forests.

Protective or Restrictive Covenant means a contract entered into between private parties which constitute a restriction of the use of a particular parcel of property.

Resource Inventory means a survey of the land's features including its natural resources, cultural resources, scenic views and viewsheds, and physical characteristics.

Soil-Based Wastewater Treatment System: These systems require some form of pretreatment of the Blackwater or Greywater (usually a septic tank) with or without further pretreatment through a partial soil-based or performance soil-based waste treatment system prior to being discharged into the soil by percolation and filtration.

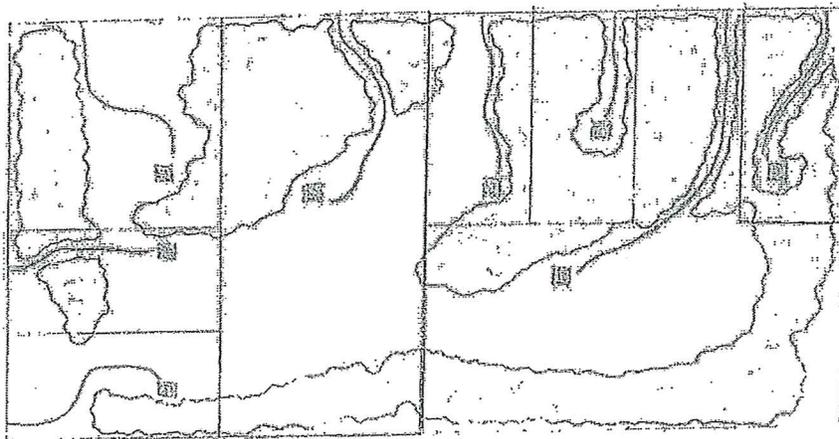
Viewshed means the landscape or topography visible from a geographic point, especially that having aesthetic value.

Wastewater Recycling Systems: Utilizing third party testing these systems have proven to meet or exceed Minnesota Department of Health (MDH) standards for potable well water qualities.

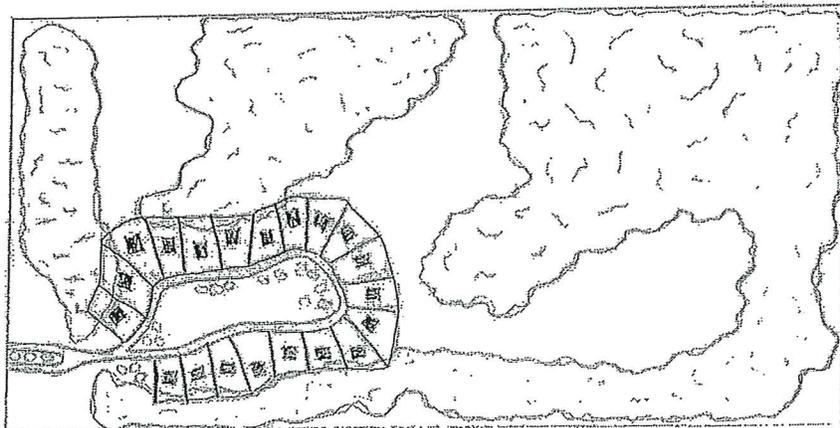
Sec. 12-2374. Applicability.

Open space preservation standards are an alternative set of standards for residential development within the Agricultural and Rural Residential Districts. Figure A illustrates the difference between conventional subdivision and open space preservation development.

Figure A



80 acre Conventional Subdivision



80 acre Open Space Preservation Subdivision

Open space preservation shall be permitted as a planned unit development via a conditional use permit within the Agricultural District. Clustering of homes shall also be

allowed in the Rural Residential District via CUP-PUD with the exception of Density bonuses which only pertain to the Agricultural District. Open space preservation development and their associated design standards in the Lower St. Croix River Shoreland Management District are addressed in Section 12-1497 of the Afton Code of Ordinances and such development and associated design standards governed by Section 12-1497 are not subject to this Article.

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

Sec. 12-2375. Open Space Preservation Development.

To qualify for an Open Space Preservation Development CUP-PUD and related density increases, the following minimum requirements must be met:

Table A

<u>Base District</u>	<u>Acreage (at least)</u>	<u>Acreage (but less than)</u>	<u>Minimum Percentage of Required Open Space (Gross Acreage)</u>
<u>Agricultural</u>	<u>40</u>	<u>80</u>	<u>50%</u>
<u>Agricultural</u>	<u>80</u>	<u>100</u>	<u>55%</u>
<u>Agricultural</u>	<u>100</u>	<u>-</u>	<u>60%</u>
<u>Rural Residential</u>	<u>40</u>	<u>-</u>	<u>50%</u>

- (1) An Open Space Preservation Development CUP-PUD shall only be granted to proposals of forty (40) contiguous acres or more whether owned individually or collectively. Road right-of-way may be included within the contiguous acreage.
- (2) Open Space shall be restricted from further development in perpetuity.
- (3) Road rights-of-way may be located within the required open space area, but shall not be counted towards the required minimum open space.
- (4) No more than twenty five (25) percent of the required open space may consist of areas below the normal ordinary high water mark of water bodies, ponds, areas within the 100 year floodplain, wetlands, or slopes of greater than twenty five (25) percent.
- (5) The purpose of open space is to provide contiguous open area and ecological corridors. The City is trying to avoid narrow boundary strips. Boundary strips shall be defined as open space areas beyond the

recorded residential lot line and/or road right-of-way and shall not be less than 100 feet in width.

- (6) At least twenty (20) percent of the open space shall be open for use to the residents of the development.
 - (a) One hundred (100) percent of the open space useable by residents shall be suitable for recreational uses such as trails, playfields, or community gardens.
 - (b) A pathway system connecting open space area neighborhoods and planned or developed trails on adjacent parcels shall be identified in the plan.
 - (c) That portion of the open space designated for the location of wastewater sewage treatment facilities and/or system(s) treatment area shall not be included as part of this accessible open space.
- (7) Open Space Preservation Development shall preserve, restore, or enhance natural resources, including, but not limited to, lakes, rivers, aquifers, woodlands, prairies or wetlands.
- (8) Open Space Preservation Development shall preserve viewsheds along public rights-of-way.
- (9) Open Space Preservation Development shall develop land in concert with surrounding properties to encourage the creation of continuous ecological and wildlife corridors.
- (10) Only Single family residences shall be permitted.
- (11) A development agreement with required deposit or letter of credit as approved by the City shall be required.

Sec. 12-2376. Density Bonus.

The individual zoning districts shall establish the base residential density for the Open Space Preservation Development. The base density may be increased based on a sliding scale method as described in the following table provided all of the performance standards of this Ordinance are complied with.

Table B

<u>AGRICULTURAL DISTRICT</u>					
<u>Overall Lot Size (in acres)</u>		<u>Units per 40 acres</u>			
<u>Minimum (at least)</u>	<u>Maximum (but less than)</u>	<u>Current</u>	<u>New Base</u>	<u>New Max</u>	<u>Minimum Open Space</u>
<u>40</u>	<u>80</u>	<u>3 (1 per 13.33)</u>	<u>6 (1 per 6.6)</u>	<u>8 (1 per 5)</u>	<u>50%</u>
<u>80</u>	<u>100</u>	<u>3 (1 per 13.33)</u>	<u>7 (1 per 5.7)</u>	<u>10 (1 per 4)</u>	<u>55%</u>
<u>100</u>	<u>100+</u>	<u>3 (1 per 13.33)</u>	<u>8 (1 per 5)</u>	<u>12 (1 per 3.3)</u>	<u>60%</u>
			<i>*note: all calculations shall be rounded down when determining number of allowed lots</i>		

(1) Net Developable Area. Open Space Preservation CUP-PUD's must take into account the "Net Developable Area", as defined in Section 12-2373

when calculating the allowed number of lots. The following is a method for determining both the minimum area of open space designation required and the "Net Developable Area".

- Line 1: Total Acreage = _____
- Line 2: Minimum percent of open space required = _____
- Line 3: Minimum Area (in acres) of Open Space Required (Line 1 x Line 2) = _____
- Line 4: Twenty-Five (25) percent of Line 3 = _____ (maximum allowed unbuildable acreage to be included as open space)

- Line 5: Total Area of land (in acres) below the normal ordinary high water mark of water bodies, ponds, areas within the 100 year floodplain, wetlands, or slopes of greater than twenty-five (25) percent = _____
- Line 6: If line 4 is greater than Line 5, enter 0; otherwise (Line 5 - Line 4) = _____
- Line 7: "Net Developable Area" (in acres) (Line 1 - Line 6) = _____
- Line 8: "Net Minimum Area of Open Space Required" (in acres) (Line 3 + Line 6) = _____
- Line 9: New Base Density (Line 7 / (new base density (per table)) = _____
- Line 10: New Max Density (Line 7 / (new max density (per table)) = _____
- Line 11: Maximum possible bonus lots (Line 10 - Line 9) = _____
- Line 12: Number of bonus lots achieved = # of bonus points (no greater than 100) x .01 x Line 11 = _____ (must round down to the nearest whole #).
- Line 13: Total # of lots allowed (Line 9 + Line 12) = _____

EXAMPLES:

62 Gross Acre Open Space CUP-PUD with 10 acres unbuildable:

- ◆ Step 1: Gross Acreage: (62 acres)

- ◆ Step 2: Minimum Open Space Required (in acres): (50%) = (31 acres)
- ◆ Step 3: Unbuildable acreage - 25% of Step 2: (10 acres – 7.75 acres) = (2.25 acres)
- ◆ Step 4: Net Area of Open Space Required (in acres): if Step 3 is a positive number, add it to Step 2 (2.25 acres) + (31 acres) = 33.25 acres
- ◆ Step 5 Net Developable Acreage: (Step 1 – Step 3) (62 acres – 2.25) = 59.75 acres
- ◆ Step 6: New Base Density: (Step 5 / (new base density)) (59.75 / 6.6 = 9.0 (9 lots)
- ◆ Step 7: New Max Density: (Step 5 / (new max density)) (59.75 / 5 = 11.9 (11 lots)
- ◆ Step 8: The applicant can obtain 2 additional lots based on the number of bonus points that are achieved. (For Example: if the applicant earns 65 bonus points as described in 12-2376(2)., 65 % of 2 is 1.3 or 1 additional bonus lots earned for a total of 10 lots)

97 acre Open Space CUP-PUD with 4 acres unbuildable:

- ◆ Step 1: Gross Acreage: (97 acres)
- ◆ Step 2: Minimum Open Space Required (in acres): (55%) = (53 acres)
- ◆ Step 3: Unbuildable acreage - 25% of Step 2: (4 acres – 13 acres) = (0 acres) (if it is not a positive number it shall be 0.)
- ◆ Step 4: Net Area of Open Space Required (in acres): if Step 3 is a positive number, add it to Step 2 (0 acres) + (53 acres) = 53 acres
- ◆ Step 5 Net Developable Acreage: (Step 1 – Step 3) (97 acres – 0 acres) = 97 acres
- ◆ Step 6: New Base Density: (Step 5 / (new base density)) (97 / 5.7 = 17 (17 lots)
- ◆ Step 7: New Max Density: (Step 5 / (new max density)) (97 / 4 = 24.2 (24 lots)
- ◆ Step 8: The applicant can obtain up to 7 additional lots based on the number of bonus points that are achieved. (For Example: if the applicant earns 65 bonus points as described in 12-2376(2)., 65 % of 7 is 4.55 or 4 additional bonus lots earned for a total of 21 lots)

(2) Bonus Points. As part of the Open Space Preservation Development CUP-PUD, it shall be the responsibility of the applicant to demonstrate how the following requirements have been satisfied in a manner that warrants the additional density bonus lots. The City shall award bonus points applied for by the applicant not to exceed 100 points.

(a) Providing for access by the general public to trails, parks, or other recreational facilities. (25)

(b) Reusing and/or rehabilitating historic buildings(s), structures(s), and sites(s). (25)

- (c) Providing covenants to create an architectural theme to include items such as porches, side or rear loaded or detached garages, landscape theme, lighting theme and/or open space/central meeting place. Four sided architecture shall be provided. A written narrative describing the architectural theme and its continuity with neighborhood and community shall be included with the preliminary plat. (20)
- (d) Preserving agricultural operations on open space parcels for either pasture or crop production. A copy of a lease and/or agreement to farm is necessary at the time of preliminary plat approval. (15)
- (e) Utilization of common (either a partial soil-based or performance soil-based system) on or off-site waste water treatment systems (3 or more). (10)
- (f) Utilization of communal well and water delivery system (3 or more). (10)
- (g) Utilization of landscaped boulevards and/or master landscape plan. (5)
- (h) Inclusion of additional land into the open space designation. (Each additional 5 percent shall receive 5 points)
- (i) Utilization of performance soil-based systems and/or advanced partial soil-based systems, throughout the CUP-PUD. (25)
- (j) Utilizing low impact design methods to significantly minimize the amount of storm water pollutants, throughout the CUP-PUD. (25)
- (k) Utilizing advanced wastewater treatment systems, throughout the CUP-PUD. (35)

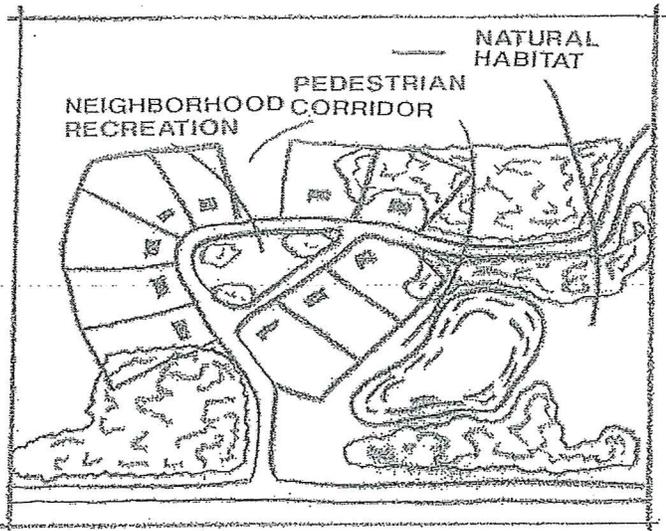
Sec. 12-2377. Open Space Standards.

- (1) **Open Space Classification Designations:** Open space area shall be classified in one or more of the following categories: natural habitat, neighborhood recreation, or pedestrian corridor open space, and shall conform to the type of use, location criteria, and deed restrictions of that classification. (See Figure B)
 - (a) Natural Habitat. The development shall preserve the maximum quantity of natural habitat open spaces in a contiguous, connected configuration. Natural habitat open spaces may include, but are not

limited to greenways, fields, wetlands, slopes, bluffs, dense woods, lakes, ponds, streams, shorelands, and other environmentally sensitive areas or desirable view sheds. Natural habitat open spaces may be preserved via easement.

- (b) Neighborhood Recreation. The development shall locate neighborhood recreation open spaces such that they are an integral part of the neighborhood of surrounding homesites, at an elevation appropriate to their intended recreational use, defined by coherent boundaries, and accessible to all neighborhood residents. Neighborhood recreation open spaces may include, but are not limited to, greens, commons, playgrounds, ballfields, or gardens and shall be maintained by the HOA.
- (c) Pedestrian Corridors. Pedestrian corridor open spaces may include, but are not limited to, established regional trails, local pathways, paved walkways, and shorelines. Pedestrian corridor right-of-way shall be a minimum of twenty (20) feet in width. Pedestrian corridor open space shall be limited to pedestrian, bicycle, and/or equestrian travel unless permitted as part of the CUP/PUD process, and no motorized vehicles except vehicles performing maintenance on the corridor shall be permitted.
- (d) Agriculture. Agricultural use as defined during the planning process and as regulated by the HOA and/or conservation easement.
- (e) Structures shall not be permitted in any open space area unless approved by the City and any easement holder as part of the open space preservation CUP-PUD process.

Figure B



(2) **Ownership and Management:** Each designated open space area shall be owned and managed according to the following means, subject to City approval.

- (a) Open space shall be owned in common by the property owners created through subdivision of the original tract. A HOA shall be established for the subdivision. Management of open space shall be the responsibility of such homeowners association. Membership in the association by all property owners in the subdivision shall be mandatory.
- (b) A conservation easement shall be placed over the open space area. The Minnesota Land Trust shall be the primary holder with the City as the secondary holder of the conservation easement. As an alternative option, should the Minnesota Land Trust choose not to take the easement, the City may, but is not required to, allow Belwin to be the primary easement holder with the City as the backup; subject to the City reserving its right to deny the application in the event that both the Minnesota Land Trust and Belwin decline to be a holder of the conservation easement.
- (c) Deed Restrictions. All deed restrictions shall be maintained in perpetuity. The form and content of the deed or other instrument establishing the restrictions on the open space must be approved by the City prior to the execution and shall be binding on successors and assigns of the property owners.

(d) Stormwater drainage systems located within open spaces shall be covered by utility and drainage easements dedicated on the final plat to the City.

(3) Homeowners Association: Upon establishment, a HOA agreement guaranteeing continued maintenance of all open space and other common areas shall be submitted to the City and approved as a part of the data required for the conditional use permit. The HOA 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) Liability insurance (with a minimum of \$1,000,000 coverage limit) shall be the responsibility of the HOA.

(e) Landowners must pay their pro rata share of the cost and the assessment levied by the association that can become a lien on the property in accordance with Minnesota statute.

(f) The conditions and timing of the transfer of ownership and control of land or facilities to the association or the common ownership.

(g) In case of default, as determined by the City, the City shall have right to assess individual members of the HOA and enforce the shared common expenses for the land or facilities including upkeep and maintenance expenses, real estate taxes and insurance premiums.

(h) Plan for maintenance and upkeep of landscaping.

Sec. 12-2378. Open Space Preservation Design Criteria.

(1) It is the intention of this Article to promote open space preservation development which offers a variety of lot size, configuration, topography, and affordability. Evaluation and subdivision approval by the City shall be subject to demonstration by the applicant that the proposed development plan provides cohesive residential cluster(s) in a site design appropriate to the location of common open spaces.

(2) Residential Design Siting Standards:

- (a) Residential designs 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.
- (i) Minimize disturbance to woodlands, hedgerows, mature trees or other significant vegetation.
 - (ii) Protect scenic views of open land from adjacent roads.
 - (iii) Protect existing historic buildings or incorporate them through adaptive reuse where possible.
 - (iv) Fragmentation of open space shall be minimized.
- (b) Whenever possible, open space shall connect with existing or potential open space lands on adjoining parcels.

(3) Residential Design Subdivision:

- (a) An intent of the Open Space Preservation Development is to create cohesive neighborhoods. In this respect, the Open Space Preservation Development may be subdivided into neighborhoods having no less than five (5) lots.
- (b) A neighborhood design shall be located at an appropriate distance from the City or County road from which the development accesses so as to preserve viewsheds from the road and the rural character of the community.

(4) Residential Lot Requirement:

- (a) Minimum Lot Size: (based on type of On Site Water Supply and Waste Water Treatment System)
- (i) Individual on-site: 2.5 acres
 - (ii) Common water and wastewater treatment system (2 dwelling units): 1 acre
 - (iii) Common water and wastewater treatment system (3 or more dwelling units): .75 acre
- (b) Principal and Accessory Building Setbacks:

- (i) Front lot line -- variable (as defined, approved, and recorded as part of the CUP/PUD)
- (ii) Side lot line -- variable (as defined, approved, and recorded as part of the CUP/PUD)
- (iii) Rear lot line -- variable (as defined, approved, and recorded as part of the CUP/PUD)
- (iv) In the event that placement of housing density abuts property outside of the development, the setbacks on the boundary of the development must meet the requirements of the underlying zoning district.

(c) Maximum Lot Coverage: 35 %

(d) Maximum Building Height: 35 feet

(5) Landscaping: A landscape plan illustrating the following components shall be required with all Open Space Preservation Development Preliminary Plat Applications:

(a) Residential design shall be sited in a manner that preserves existing tree cover.

(b) Boulevard landscaping establishing a streetscape design shall be encouraged, particularly at the entrance to the development.

(c) No monuments or permanent signage identifying the residential development is permitted.

(d) Use of low wattage lights and full cut off lights, both landscape and building lighting, are encouraged wherever possible.

(6) Streets:

(a) All residential design shall have direct access from the interior of the development on either a new or existing public street consistent with the design standards of the City.

(b) All streets within a residential design shall be paved.

(c) Local streets shall be planned to provide street connections to adjoining parcels, neighborhoods and future developments.

(d) Dead-end and Cul-de-sac Streets are permitted. Cul-de-sacs exceeding 1,320 lineal feet shall be reviewed carefully for safety

vehicle access. Connections to adjacent properties shall be considered and required if necessary.

(e) No street lights shall be allowed.

(7) Utilities:

(a) All new subdivisions may be platted to accommodate homesite lots with either individual or HOA managed common water supply and wastewater treatment systems.

(b) All wastewater treatment systems shall conform to the performance standards of Minnesota Pollution Control Agency's Standards for Onsite Wastewater Treatment Systems MWPCA-7080 and its appendices, and Washington County's Onsite Wastewater Treatment Regulations.

(c) All water supply systems shall conform to the performance standards of the Minnesota Department of Health for potable water standards. All water supply systems will need to be tested to meet potable well water standards yearly.

(d) All subdivision proposals shall be reviewed by a certified inspector designated by the County for suitability of platted lots to accommodate individual and/or common water supply and/or wastewater treatment system(s).

(e) A common water supply and wastewater treatment system or an advanced wastewater treatment system shall include an operating financial, and management plan that is controlled by a public or private entity with taxing or required contract billing authority to insure proper maintenance, management and financing that is approved by the City. The management (replacement and repair) plan must clearly identify the following:

(i) The ownership of the common water supply and/or wastewater treatment system.

(ii) An annual schedule for maintenance, inspection and monitoring of the community wastewater treatment system.

(iii) Contingency plan in the event of failure of the community wastewater treatment system.

- (iv) Provisions describing how the water supply and/or wastewater treatment portion of the system will be protected from vehicles, animals, humans and other sources of risk.
- (v) Assignment of responsibility for the management of and payment for the common water supply and/or wastewater treatment system.
- (vi) The name, license number, and authorized signature of the system's designer.
- (f) Communal drainfields shall be designed with sufficient land area for a replacement system.
- (g) A common water supply and/or wastewater treatment system may have all or a portion of their required drainfields in open spaces provided:
 - (i) The ground cover is restored to its natural condition after installation.
 - (ii) Recreational uses are prohibited above or within fifty (50) feet of their installation.
 - (iii) Upon approval of the primary easement holder.
- (h) All homesite lots shall accommodate an individual on-site, if required, or an approved individual or common water supply system in accordance with state specification.
- (i) All existing, proposed or future service lines shall be installed underground within easement locations approved by the City.
- (8) Grading and drainage: The Open Space Preservation Development shall comply with grading and stormwater management performance standards as established by the City. Stormwater management plans shall encourage infiltration of stormwater.

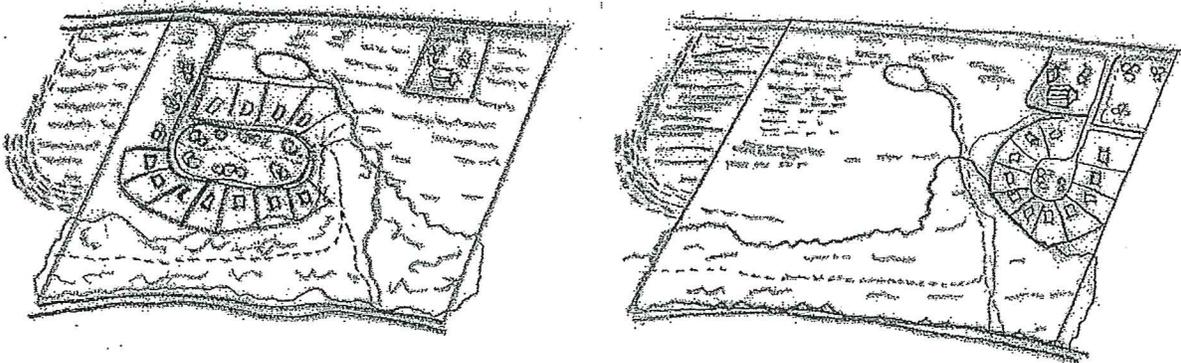
Sec. 12-2379. Application Procedure.

- (1) All procedures for a standard subdivision as provided in Article VI of Chapter 12, Subdivision Regulations, shall be followed for an Open Space Preservation Development, with the addition of the following:

- (a) Pre-application meeting. It is recommended that the applicant shall meet with City staff to review the proposed project and the process for proceeding.
- (b) Meeting with potential easement holders. In addition to a pre-application meeting with City staff, it is recommended that the applicant meet with potential conservation easement holders in order to be made fully aware of any procedures, policies, or other issues regarding the plat.
- (c) Concept Plan Submittal. A concept plan review is recommended for an Open Space Preservation Development. A concept plan does not constitute a complete application and thus is not subject to the time period for review as stipulated in Minnesota State Statute. A public hearing is not required but public input may be received. A concept plan application submittal shall include one or two concepts illustrating the following: (See Figure C)
- (i) Letter of intent from the conservation easement holder.
 - (ii) Topography (minimum of ten-foot contours).
 - (iii) Soil types and characteristics, pursuant to Washington County soil survey.
 - (iv) Hydrological features, including surface water bodies, ordinary high water mark, floodplains, wetlands, and natural swales and drainageways.
 - (v) Vegetation of the site (pasture, woodlands, hedgerows, etc.).
 - (vi) Description of the current land use and structures on the land, and all encumbrances such as easements or covenants.
 - (vii) General outlines of existing buildings, land use, and natural features such as water bodies or wooded areas, roads, driveways and property boundaries within five hundred (500) feet of the tract.
 - (viii) An outline of the land area to be protected as open space, the number and acreage of lots, areas proposed for stormwater management and wastewater sewage treatment.
 - (ix) Park and open space adjacent to the subject property.

- (x) Phasing Plan, if applicable.

Figure C



(d) Conditional Use Permit – Planned Unit Development and Preliminary Plat. Upon concept plan review and comment by both the Planning Commission and City Council, the applicant shall submit an application, for an Open Space Preservation CUP-PUD and Preliminary Plat. A complete application triggers the official review for approval by the City.

(i) Conditional Use Permit. A Conditional Use Permit is required for an Open Space Preservation development in the Agricultural or Rural Residential District pursuant to Article II, Section 12-78 of Chapter 12.

(ii) A conditional use permit application shall be filed with the City in accordance with Article II, Section 12-78 of Chapter 12.

(iii) In addition to the criteria for consideration for reviewing a conditional use permit listed in Article II, Section 12-78 of Chapter 12, the Planning Commission and City Council shall consider the following:

(a) The open space development is designed to preserve open space and the City's rural character while creating compact residential neighborhoods.

(b) The open space preservation development is designed in accordance with the standards of this ordinance.

(iv) *Preliminary Plat.* In addition to the general requirements for preliminary plat submittal as described in Chapter 12, the following information must be submitted to be deemed a complete open space development application.

(a) *Resource Inventory.* An open space preservation development application shall include a resource inventory as illustrated in Figure D. The following information shall be mapped at a scale no less than one (1) inch equals one hundred (100) feet.

(1) Topographic contours at two (2) foot intervals, delineating slopes 13 percent and greater and 25 percent and greater. (available at Washington County Government Center)

(2) Soil types and characteristics, depth to bedrock, and suitability for wastewater disposal systems. (available at Washington County Government Center)

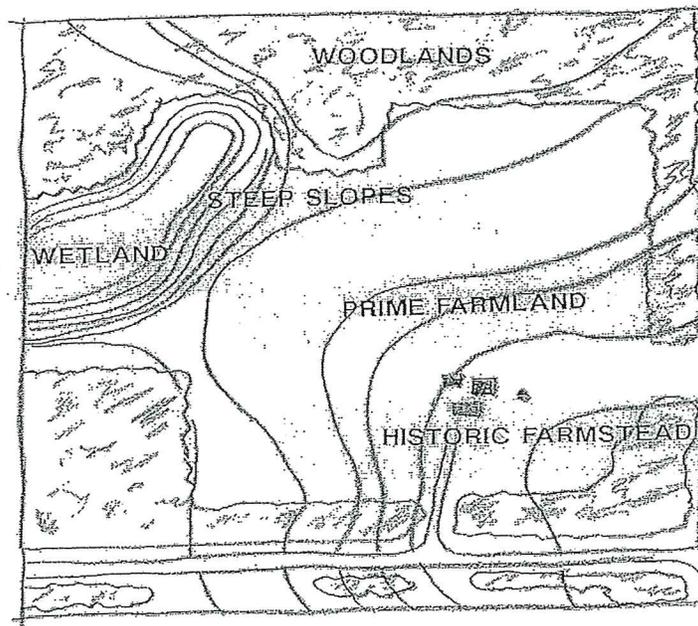
(3) Hydrological characteristics, including surface water bodies, ordinary high water mark, floodplains, wetlands, natural swales and drainageways.

(4) Vegetation inventory identifying the general cover types (woodland, pasture, 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. (National Resource Inventory)

(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, including a brief description and pictures of the historic character of buildings and structures and historically important landscapes.
- (8) Neighborhood context, including general outlines of existing buildings, land use, and natural features such as water bodies or wooded areas, roads, driveways and property boundaries within five hundred (500) feet of the tract. This information may be presented on an aerial photograph at a scale of no less than one (1) inch to two hundred (200) feet.
- (9) Phasing plan, if applicable.
- (10) Setback boundaries (building envelope) for each lot are to be clearly identified.

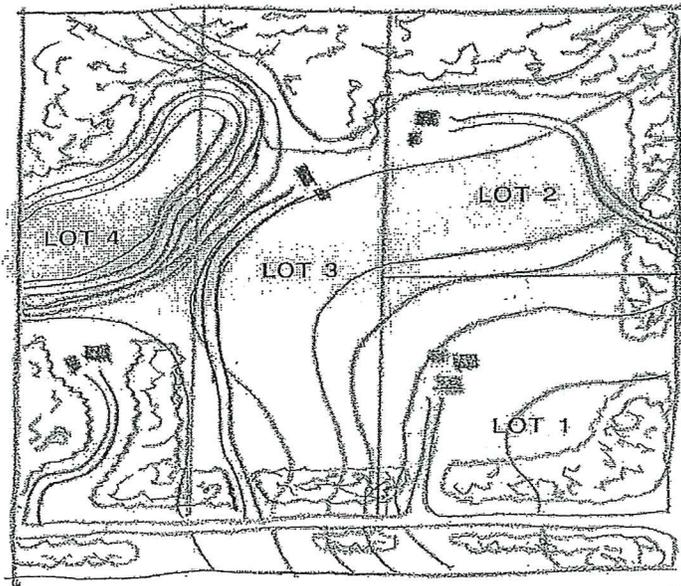
Figure D



- (b) Yield Plan. The applicant for an open space preservation development shall submit a yield plan as illustrated in Figure E, showing the maximum number of dwelling units that would be permitted given the

minimum lot size and lot widths for conventional subdivision and other requirement of the Zoning Ordinance and Subdivision Regulations. The yield plan need not be engineered; however, it shall be drawn to scale and it shall identify all of the major physical features on the parcel. The minimum lot areas and width shall meet performance requirements of Sec. 12-132 of the Afton City Code.

Figure E



- (c) A narrative from the applicant as to the rational behind the proposed layout and open space.
- (d) An itemized list of all documents, agreements and actions necessary to be completed prior to recording of the plat, including land area to be protected with a conservation easement as open space, the number and size of lots, utility easements, road right-of-way, areas proposed for stormwater management and sewage treatment areas.

- (f) HOA documents, including bylaws, deed restrictions, covenants.
- (g) Conservation easements, prepared by the holder(s) of the conservation easement.
- (h) Illustrate the type of open space as described in Section 12-2377
- (i) An acknowledgment that marketing materials must include disclosure that the approved CUP/PUD is within an Agricultural zoning district and activities compliant with zoning may be evident on surrounding properties.
- (v) Final Plat. Final plat submittals and process shall be consistent with general platting procedure as illustrated in Article VI of Chapter 12, Subdivision Regulations.

Sec. 12-2380. Severability.

If any section, sentence, clause or phase of this Article is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions and provisions of this Article. The City council hereby declares that it would have adopted this Article and any section, sentence, clause, or phrase thereof irrespective of the fact that any one or more other sections, sentences, clauses or phrases of this Article is declared invalid.

12-2381 -12-2500. Reserved.

Approved by the City of Afton City Council this 16th day of May, 2006.

Signed:

Dave Engstrom, Mayor

Attest:

Mitchell Berg, City Administrator

ORDINANCE 01-2008

CITY OF AFTON
WASHINGTON COUNTY, MINNESOTA

AN ORDINANCE AMENDMENT TO CHAPTER 12, ARTICLE 7: AN ORDINANCE ALLOWING OPEN SPACE DEVELOPMENTS WITHIN THE AGRICULTURAL AND RURAL RESIDENTIAL DISTRICTS WITH A CONDITIONAL USE PERMIT – PLANNED UNIT DEVELOPMENT (CUP-PUD) AND REPEALING INTERIM ORDINANCE 01-2007

THE CITY COUNCIL OF AFTON ORDAINS THE FOLLOWING AMENDMENTS TO CHAPTER 12 OF THE CITY CODE:

Article XII. Planned Agricultural Unit Development

Division 1. Generally

- Sec. 12-2371. Scope.
- Sec. 12-2372. General Provisions.
- Sec. 12-2373. Purpose.
- Sec. 12-2374. Permitted uses.
- Sec. 12-2375. General Standards for approval.
- Sec. 12-2376. Exceptions to Density, Frontage on a Public Street and Length of Cul de sac requirements.
- Sec. 12-2377. Coordination with subdivision regulations
- Sec. 12-2378. Pre-application meeting.
- Sec. 12-2379. General development plan.
- Sec. 12-2380. Final development plan
- Sec. 12-2381. Enforcement of development schedule
- Sec. 12-2382. Conveyance and maintenance of common open space.
- Sec. 12-2383. Standards for common and open space.
- Sec. 12-2384. Review and amendments.

ARTICLE XII. PLANNED AGRICULTURAL UNIT DEVELOPMENTS

Sec. 12-2371. Scope.

This article applies to Planned Agricultural Unit Developments in the Agricultural (AG) zoning district.

Sec. 12-2372. General provisions.

A PAUD is a tract of land that is developed as a unit under single or unified ownership or controls. A Planned Agricultural Unit 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 specific 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 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.
- (3) To ensure concentration of open space into more usable areas, to preserve the natural resources of the site and to preserve wildlife habitat and corridors.
- (4) To facilitate the economical provision of streets and public utilities.
- (5) To allow the transfer of development rights (density) within a subdivision in order to preserve agricultural land, open space, natural features and amenities.

Sec. 12-2374. Permitted uses.

The Permitted Uses are:

- (1) Those uses that are permitted in the underlying zoning district;
- (2) Subdivisions that require the construction of a new public street in the AG zoning district;

Sec.12-2375. General standards for approval.

A special use permit shall be required for all planned agricultural unit developments. The city may approve the planned unit development only if it finds that the development satisfies all of the following standards:

- (1) The planned agricultural unit development is consistent with the comprehensive plan of the city.
- (2) The planned agricultural unit development is an effective and unified treatment of the development possibilities on the project site and the development plan provides for the preservation of unique natural amenities.
- (3) The planned agricultural unit development can be planned and developed to harmonize with any existing or proposed development in the areas surrounding the project site.
- (4) The tract is, at least, a 30 acres in size unless the applicant can show that a PAUD of less acreage meets the standards and purposes of the comprehensive plan and preserves the health, safety and welfare of the citizens of the city and that all of the following conditions exist:
 - (a) The proposal better adapts itself to the physical and aesthetic setting of the site and with the surrounding land uses than could be developed using strict standards and land uses allowed within the underlying zoning district.
 - (b) The proposal would benefit the area surrounding the project to a greater degree than development allowed within the underlying zoning district.

- (c) The proposal would provide land use and/or site design flexibility while enhancing site or building aesthetics to achieve an overall higher quality of development than would otherwise occur in the underlying zoning district.
- (d) The proposal would ensure the concentration of open space into more workable or usable areas and would preserve the natural resources of the site than would otherwise occur in the underlying zoning district.

Sec. 12-2376. Exceptions to Density, Frontage on a Public Street and Length of Cul de sac requirements:

- (1) The average density over the proposed PAUD shall not exceed the maximum density permitted in the underlying zoning district except that the property owner may be granted a bonus of one dwelling unit per forty contiguous acres preserved in the AG zoning district. All development rights from the preserved forties shall be transferred to the other participating parcel(s) unless the permitted number of lots for dwelling units cannot be platted on the remaining parcel(s), in which case a maximum of one dwelling unit may be permitted on the preserved 40-acre parcel.
- (2) The minimum requirement for frontage on an improved public street may be reduced, as long as the minimum lot width at the building setback line is maintained, to encourage and accommodate curvilinear streets that better preserve the rural character or other resources within the PAUD.
- (3) The maximum length of cul de sacs may be exceeded to accommodate curvilinear streets and other design elements that tend to preserve the rural character or other resources within the PAUD.

Sec. 12-2377. Coordination with subdivision regulations.

- (1) It is the intent of this article that subdivision review under Chapter 12 be carried out simultaneously with the review of a planned development under this article.
- (2) The plans required under this article must be submitted in a form that will satisfy the requirements of Chapter 12 for the preliminary and final plats.

Sec. 12-2378. Pre-application meeting.

Prior to the submission of any plan to the planning commission, the applicant shall meet with the city administrator to discuss the contemplated project relative to community development objectives for the area in question and to learn the procedural steps and exhibits required. This includes the procedural steps for a special use permit and a preliminary plat. The applicant may submit a simple sketch plan at this stage for informal review and discussion. The applicant is urged to seek the advice and assistance of the city staff to facilitate the review of the outline plan and preliminary plat.

Sec. 12-2379. General development plan.

- (1) An applicant shall make an application for a Special Use Permit following the procedural steps as set forth in Section 12-78.
- (2) In addition to the criteria and standards set forth in Sec. 12-78 of this article for the granting of special use permits, the following additional findings shall be made before the approval of the outline development plan:
 - (a) The proposed PAUD is in conformance with the comprehensive plan.

- (b) The uses proposed will not have an undue and adverse impact on the reasonable enjoyment of neighboring property and will not be detrimental to potential surrounding uses.
 - (c) Each phase of the proposed development, as it is proposed to be completed, is of sufficient size, composition, and arrangement that its construction, marketing, and operation are feasible as a complete unit, and that provision and construction of dwelling units and common open space are balanced and coordinated.
 - (d) The PAUD will not create an excessive burden on parks, schools, streets, and other public facilities and utilities that serve or are proposed to serve the district.
 - (e) The proposed total development is designed in such a manner as to form a desirable and unified environment within its own boundaries.
- (3) The following exhibits shall be submitted to the city administrator by the proposed developer as a part of the application for a special use permit:
- (a) An explanation of the character of the planned development and the manner in which it has been planned to take advantage of the planned development regulations.
 - (b) A statement of the present ownership of all the land included within the planned development and a list of property owners within five hundred (500) feet of the outer boundaries of the property.
 - (c) A general indication of the expected schedule of development including progressive phasing and time schedule.
 - (d) A map giving the legal description of the property including approximate total acreage and also indicating existing property lines and dimensions, ownership of all parcels, platting, easements, street right-of-ways, utilities, buildings and use for the property and for the area five hundred (500) feet beyond.
 - (e) Natural features, maps or maps of the property and area five hundred (500) feet beyond showing contour lines at no more than two-foot intervals, drainage patterns, wetlands, vegetation, soil and subsoil conditions.
 - (f) A map indicating proposed land uses including housing units and types, vehicular and pedestrian circulation, and open space uses.
 - (g) Full description as to how all necessary governmental services will be provided to the development.
 - (h) An engineering report presenting results of percolation tests and soil analysis of the site.
 - (i) Any additional information requested by the city administrator, planning commission and city council that might be required for clarification of the proposed project.
 - (j) Twenty-five (25) copies of all required information shall be submitted.
- (4) The applicant shall also submit a preliminary plat and all the necessary documentation as required under Chapter 12 for all or that portion of the project to be platted. For purposes of administrative simplification, the public hearings required for the special use permit and preliminary plat may be combined into one (1) hearing or may be held concurrently.

Sec. 12-2380. Final development plan.

- (1) Within ninety (90) days following the approval of the general development plan with recommended modifications, if any, and the preliminary plat, the applicant shall file

with the city administrator a final development plan containing in final form the information required in the general development plan plus any changes recommended by the planning commission and the city council as a result of the public hearing. The applicant shall also submit a final plat for that entire portion to be platted.

- (2) The city administrator shall submit the final development plan and the final plat to the planning commission for review.
- (3) The final development plan and the final plat shall conform to the general development plan and preliminary plat plus any recommended changes by the planning commission or city council to the general development plan and preliminary plat.
- (4) The city council shall review the final development plan and final plat. If the final development plan is approved by the city council, the city administrator shall issue a special use permit to the applicant.
- (5) The applicant(s) shall grant a Conservation Easement to the City of Afton and all of the owners of the lots and parcels to be created in the PAUD which restricts the lots and parcels within the PAUD to the number of dwelling units approved for the PAUD and the land cover and use approved by the City of Afton as a part of this PAUD.
- (6) The applicant(s) shall grant a Conservation Easement to the City of Afton, the Minnesota Land Trust (or similar independent third party approved by the City of Afton) and all of the owners of the lots and parcels to be created in the PAUD which restricts the development rights on the preserved parcels on forty or more acres within the PAUD to the number of dwelling units approved for the preserved parcel and the land cover and use approved by the City of Afton as a part of this PAUD.

Sec. 12-2381. Enforcement of development schedule.

The construction and provisions of all of the common open spaces and public and recreational facilities that are shown on the final development plan must proceed at the same phase as the construction of dwelling units. At least once every six (6) months following the approval of the final development plan, the city administrator shall review all of the building permits issued for the planned development and examine the construction which has taken place on the site. If he shall find that the rate of construction of dwelling units is greater than the rate at which common open space and public and recreational facilities have been constructed and provided, he shall forward this information to the city council, which may revoke the planned unit development permit.

Sec. 12-2382. Conveyance and maintenance of common open space.

- (1) All land shown on the final development plan as common open space must be conveyed to a homeowners association or similar organization provided in an indenture establishing an association or similar organization for the maintenance of the planned development. The common open space must be conveyed to the homeowners association or similar organization subject to covenants to be approved by the city council which restrict the common open space to the uses specified on the final development plan and which provide for the maintenance of the common open space in a manner which assures its continuing use for its intended purpose.

- (2) If a homeowners association is created, the applicant shall submit plans at the time of final plan of development and documents which explain:
 - (a) Ownership and membership requirements.
 - (b) Articles of incorporation and bylaws.
 - (c) Time at which the developer turns the association over to the homeowners.
 - (d) Specific listing of items owned in common including such items as roads, recreation facilities, parking, common open space grounds, and utilities.

Sec. 12-2383. Standards for common or open space.

No open area may be approved as common open space under the provisions of this article unless it meets the following standards:

- (1) The location, shape, size, and character of the common open space must be suitable for the planned development.
- (2) Common open space must be used for amenity or recreational purposes. The uses authorized for the common open space must be appropriate to the scale and character of the planned development, considering its size, density, expected population, topography, and the number and type of dwellings to be provided.
- (3) Common open space must be suitably improved for its intended use but common space containing natural features worthy of preservation may be left unimproved. The buildings, structures and improvements which are permitted in the common open space must be appropriate to the uses which are authorized for the common open space and must conserve and enhance the amenities of the common open space having regard to its topography and unimproved condition.

Sec. 12-2384. Review and amendments.

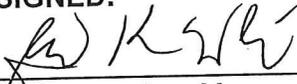
- (1) The city administrator shall review all PAUDs within the city at least once each year and shall make a report to the city council on the status of the development in each of the PAUD districts. If the city administrator finds that the development has not commenced within one (1) year after the original approval of the special use for the PAUD, the city administrator may recommend that the city council revoke the special use permit as set forth in Section 12-78 of this chapter. Prior to cancellation or revocation of this permit, the city council shall hold a public hearing at which time all interested parties will be given an opportunity to be heard.
- (2) For additional phases of the PAUD, if within five (5) years the project has not progressed, the city administrator may recommend that the city council determine what action will be taken with the remainder of the project. Prior to determining the outcome of the PAUD, the city council shall hold a public hearing at which time all interested parties will be given an opportunity to be heard.
- (3) Minor changes in the location, placement, and heights of the buildings or structures may be authorized by the zoning administrator if required by engineering or other circumstances not foreseen at the time the final plan was approved.
- (4) Approval of the planning commission and city council shall be required for other changes such as rearrangement of lots, blocks and building tracts. Those changes shall be consistent with the purpose and intent of the approved final development plan.

- (5) Any amendment to the PAUD shall require the same procedures as for the application for a special use permit as set forth in this chapter.
- (6) This Ordinance shall be in full force and effect from the date of the publication of this Ordinance. This Ordinance shall be repealed effective February 1, 2002 unless the City Council adopts an Ordinance prohibiting the re-subdivision of lots of less than ten acres that are platted in the Rural Residential Zoning District by that date.

This ordinance also repeals interim ordinance 01-2007, which had established a moratorium on land use applications for Open Space Developments and the issuance of permits for Conditional Uses – Planned Unit Developments in the Agricultural and Rural Residential land use districts.

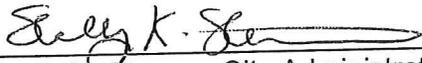
ADOPTED BY THE CITY COUNCIL OF THE CITY OF AFTON THIS 9th DAY OF JANUARY, 2008.

SIGNED:



Julia K. Welter, Mayor

ATTEST:



Shelly K. Strauss, City Administrator

Motion By: Welter
Second By: Nolz
Mucciacciaro: No
Richter: Yes
Nolz: Yes
Nelson: No
Welter: Yes

LAND USE

Secs. 12-2356 – 12-2370. Reserved.⁴⁵²

ARTICLE XII. PRESERVATION AND LAND CONSERVATION DEVELOPMENTS.⁴⁵³

Sec. 12-2371. Scope.

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

Sec. 12-2372. General provisions.

A PLCD is a tract of land that is developed as a unit under single or unified ownership or controls. A 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.

Sec. 12-2373. Purpose.

The purposes of this article are:

- A. To permit subdivisions in the Agricultural Zoning District which require the construction of a new public street.
- B. 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.
- C. To preserve open space, to preserve the natural resources of the site and to preserve wildlife habitat and corridors.
- D. To facilitate the economical provision of streets and public utilities.
- E. To allow the transfer of development rights (density) within a subdivision in order to preserve agricultural land, open space, natural features and amenities.

Sec. 12-2374. Permitted uses.

The Permitted Uses are:

- A. Those uses that are permitted in the underlying zoning district;
- B. Subdivisions that require the construction of a new public street in the AG zoning district;

Sec. 12-2375. General standards for approval.

- A. A Conditional Use Permit shall be required for all preservation and land conservation developments. The City may approve the preservation and land conservation development only if it finds that the development satisfies all of the following standards:
 1. The preservation and land conservation development is consistent with the comprehensive plan of the City.

⁴⁵² Ord. 97-55, 6/18/02, Ord 04-2009, 5/19/2009

⁴⁵³ Ord 06-2008, 4/15/2008; Ord 02-2014, 5/20/2014

AFTON CODE

2. The preservation and land conservation development is an effective and unified treatment of the development possibilities on the project site and the development plan provides for the preservation of unique natural amenities.
 3. The preservation and land conservation development can be planned and developed to harmonize with any existing or proposed development in the areas surrounding the project site.
- B. The tract is a minimum of eighty (80) contiguous acres in size and that all of the following conditions exist:
1. The proposal better adapts itself to the physical and aesthetic setting of the site and with the surrounding land uses than could be developed using strict standards and land uses allowed within the underlying zoning district.
 2. The proposal would benefit the area surrounding the project to a greater degree than development allowed within the underlying zoning district.
 3. The proposal would provide land use and/or site design flexibility while enhancing site or building aesthetics to achieve an overall higher quality of development than would otherwise occur in the underlying zoning district.
 4. The proposal would ensure the concentration of open space into more workable or usable areas and would preserve the natural resources of the site more effectively than would otherwise occur in the underlying zoning district.
- C. At least fifty (50) percent of the total tract is preserved as an undeveloped parcel.

Sec. 12-2376. Density, Frontage on a Public Street and Length of Cul-de-sac requirements.⁴⁵⁴

- A. The average density over the proposed PLCD shall not exceed the maximum density permitted in the underlying zoning district.
- B. The maximum length of cul-de-sacs may be exceeded to accommodate curvilinear streets and other design elements that tend to preserve the rural character or other resources within the PLCD.

Sec. 12-2377. Coordination with subdivision regulations.

- A. It is the intent of this article that subdivision review under Chapter 12 be carried out simultaneously with the review of a planned development under this article.
- B. The plans required under this article must be submitted in a form that will satisfy the requirements of Chapter 12 for the preliminary and final plats.
- C. Parcels which contain their maximum permitted density or have been previously subdivided to their permitted density may not be joined to a PLCD.

Sec. 12-2378. Pre-application meeting.

Prior to the submission of any plan to the Planning Commission, the potential applicant is encouraged to meet with the City Administrator to discuss the contemplated project relative to community development objectives for the area in question and to learn the procedural steps and exhibits required. This includes the procedural steps for an Administrative Permit and a preliminary plat. The potential applicant may submit a simple sketch plan at this stage for informal review and discussion. The potential applicant is urged to seek the advice and assistance of the City staff to facilitate the informal review of the simple sketch plan. The pre-application meeting process is entirely optional for the potential applicant and does not constitute an application within the meaning of this section.

Sec. 12-2379. General development plan.

- A. An applicant shall make an application for an Administrative Permit following the procedural steps as set forth in Section 12-78.
- B. In addition to the criteria and standards set forth in Sec. 12-78 of this article for the granting of Administrative Permits, the following additional findings shall be made before the approval of the outline development plan:

⁴⁵⁴ Ord 02-2014, 5/20/2014

LAND USE

1. The proposed PLCD is in conformance with the comprehensive plan.
 2. The uses proposed will not have an undue and adverse impact on the reasonable enjoyment of neighboring property and will not be detrimental to potential surrounding uses.
 3. Each phase of the proposed development, as it is proposed to be completed, is of sufficient size, composition, and arrangement that its construction, marketing, and operation are feasible as a complete unit, and that provision and construction of dwelling units and common open space are balanced and coordinated.
 4. The PLCD will not create an excessive burden on parks, schools, streets, and other public facilities and utilities that serve or are proposed to serve the district.
 5. The proposed total development is designed in such a manner as to form a desirable and unified environment within its own boundaries.
- C. The following exhibits shall be submitted to the City Administrator by the proposed developer as a part of the application for a Administrative Permit:
1. An explanation of the character of the proposed preservation and land conservation development and the manner in which it has been planned to take advantage of the preservation and land conservation development regulations.
 2. A statement of the present ownership of all the land included within the proposed preservation and land conservation development and a list of property owners within five hundred (500) feet of the outer boundaries of the property.
 3. A general indication of the expected schedule of development including progressive phasing and time schedule.
 4. A map giving the legal description of the property including approximate total acreage and also indicating existing property lines and dimensions, ownership of all parcels, platting, easements, street rights-of-way, utilities, buildings and use for the property and for the area five hundred (500) feet beyond.
 5. Natural features maps or maps of the property and area five hundred (500) feet beyond showing contour lines at no more than two-foot intervals, drainage patterns, wetlands, vegetation, soil and subsoil conditions.
 6. A map indicating proposed land uses including housing units and types, vehicular and pedestrian circulation, and open space uses.
 7. Full description as to how all necessary governmental services will be provided to the development.
 8. An engineering report presenting results of percolation tests and soil analysis of the site.
 9. Any additional information requested by the City Administrator, Planning Commission and City Council that might be required for clarification of the proposed project.
 10. Twenty-five (25) copies of all required information shall be submitted.
- D. The applicant shall also submit a preliminary plat and all the necessary documentation as required under Chapter 12 for all or that portion of the project to be platted. For purposes of administrative simplification, the public hearings required for the Administrative Permit and preliminary plat may be combined into one (1) hearing or may be held concurrently.

Sec. 12-2380. Final development plan.

- A. Within ninety (90) days following the approval of the general development plan with recommended modifications, if any, and the preliminary plat, the applicant shall file with the City Administrator a final development plan containing in final form the information required in the general development plan plus any changes recommended by the Planning Commission and the City Council as a result of the public hearing. The applicant shall also submit a final plat for that entire portion to be platted.
- B. The City Administrator shall submit the final development plan and the final plat to the Planning Commission for review.
- C. The final development plan and the final plat shall conform to the general development plan and preliminary plat plus any recommended changes by the Planning Commission or City Council to the general development plan and preliminary plat.

AFTON CODE

- D. The City Council shall review the final development plan and final plat. If the final development plan is approved by the City Council, the City Administrator shall issue a Conditional Use Permit to the applicant.
- E. The applicant(s) shall grant a Conservation Easement which shall run with the land in perpetuity to the City of Afton, all of the owners of the lots and parcels to be created in the PLCD, all land owners of property within Afton abutting the PLCD and the Minnesota Land Trust (or similar independent third party approved by the City of Afton), which restricts the lots and parcels, as well as the development rights on the undeveloped parcel(s), within the PLCD to the number of dwelling units approved for the PLCD and the land cover and use approved by the City of Afton as a part of this PLCD. If neither Minnesota Land Trust nor any comparable organization will accept the Conservation Easement the City of Afton, in its sole discretion, may upon a specific finding that no conservation organization will accept a Conservation Easement, waive such requirement. In the case of such waiver, the applicant(s) shall be required to extend the grant of a Conservation Easement to the owners of property that abuts all abutting property to the PLCD.

Sec. 12-2381. Enforcement of development schedule.

The construction and provisions of all of the common open spaces and public and recreational facilities that are shown on the final development plan must proceed at the same phase as the construction of dwelling units. At least once every six (6) months following the approval of the final development plan, the City Administrator shall review all of the building permits issued for the planned development and examine the construction which has taken place on the site. If he shall find that the rate of construction of dwelling units is greater than the rate at which common open space and public and recreational facilities have been constructed and provided, he shall forward this information to the City Council, which may revoke the PLCD permit.

Sec. 12-2382. Conveyance and maintenance of undeveloped parcel.

- A. All land shown on the final development plan as an undeveloped parcel must be conveyed to a homeowners association or similar organization provided in an indenture establishing an association or similar organization for the maintenance of the planned development. The undeveloped parcel must be conveyed to the homeowners association or similar organization subject to covenants to be approved by the City Council which restrict the undeveloped parcel to the uses specified on the final development plan and which provide for the maintenance of the undeveloped parcel in a manner which assures its continuing use for its intended purpose.
- B. If a homeowners association is created, the applicant shall submit plans at the time of final plan of development and documents which explain:
 - 1. Ownership and membership requirements.
 - 2. Articles of incorporation and bylaws.
 - 3. Time at which the developer turns the association over to the homeowners.
 - 4. Specific listing of items owned in common including such items as roads, recreation facilities, parking, common open space grounds, and utilities.

Sec. 12-2383. Standards for undeveloped parcel.

No open area may be approved as common undeveloped parcel under the provisions of this article unless it meets the following standards:

- A. The location, shape, size, and character of the undeveloped parcel must be suitable for the planned development.
- B. The undeveloped parcel must be used for amenity or recreational purposes. The uses authorized for the undeveloped parcel must be appropriate to the scale and character of the planned development, considering its size, density, expected population, topography, and the number and type of dwellings to be provided.
- C. The undeveloped parcel must be suitably improved for its intended use but common space containing natural features worthy of preservation may be left unimproved. The buildings, structures and improvements which are permitted in the undeveloped parcel must be appropriate to the uses which are authorized for the

LAND USE

undeveloped parcel and must conserve and enhance the amenities of the undeveloped parcel having regard to its topography and unimproved condition.

Sec. 12-2384. Review and amendments.

- A. The City Administrator shall review all PLCDs within the City at least once each year and shall make a report to the City Council on the status of the development in each of the PLCD districts. If the City Administrator finds that the development has not commenced within one (1) year after the original approval of the conditional use for the PLCD, the City Administrator may recommend that the City Council revoke the Administrative Permit as set forth in Section 12-78 of this chapter. Prior to cancellation or revocation of this permit, the City Council shall hold a public hearing at which time all interested parties will be given an opportunity to be heard.
- B. For additional phases of the PLCD, if within two (2) years of completion of the prior phase, the project has not progressed, the City Administrator may recommend that the City Council determine what action will be taken with the remainder of the project. Prior to determining the outcome of the PLCD, the Planning Commission shall hold a public hearing at which time all interested parties will be given an opportunity to be heard.
- C. Minor changes in the location, placement, and heights of the buildings or structures may be authorized by the Zoning Administrator if required by engineering or other circumstances not foreseen at the time the final plan was approved.
- D. Approval of the Planning Commission and City Council shall be required for other changes such as rearrangement of lots, blocks and building tracts. Those changes shall be consistent with the purpose and intent of the approved final development plan.
- E. Any amendment to the PLCD shall require the same procedures as for the application for an Administrative Permit as set forth in this chapter.
- F. This Ordinance shall be in full force and effect from the date of the publication of this Ordinance.