SUPPLEMENTAL PACKET

PC 10-2-17

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

Planning Commission Memo

Meeting: October 2, 2017

To: Chair Ronningen and members of the Planning Commission

From: Ron Moorse, City Administrator

Date: September 27, 2017

Re: Will Carlson Rezoning, Preliminary Plat and Conditional Use Permit Application (for a Preservation and Land Conservation Development - PLCD) on 218 acres of land at 14220 60th Street and parcels with PID Numbers 33.028.20.33.0005, 33.028.20.33.0004, 33.028.20.32.0001, 32.028.20.41.0002, 32.028.20.42.0004, and 32.028.20.43.0001.
Supplemental

Attached are letters of comment from the Neighborhood Group adjacent to the PLCD site. One item of comment relates to the inclusion of unbuildable land in the calculation of density for a PLCD. Also attached are comments from the Planning Consultant and the City Attorney in response to the comments regarding the inclusion of unbuildable land in the calculation of density.

Also attached is an email from Karen Weiss, Parks Committee Chair, regarding the Parks Committee's recommendation concerning the park dedication requirement for the PLCD subdivision.

To: Ron Moorse

Date: September 21, 2017

From: Carlson PLCD Neighborhood Group and Citizens Concerned for Afton

RE: Carlson PLCD-Preliminary Plat Application

This provides preliminary comments on the Preliminary Plat Application map dated August 14, 2017 and associated materials that were provided to us in early September, 2017. We understand evaluations of the application are underway by the City Planner and City engineer regarding road safety and slopes but we have not had the opportunity to review those and may have additional comments.

We note that the August 17, 2017 plat map shows different slope information than the previous iterations of the plat maps. In particular, the pink areas that previously denoted 18 percent slopes are either missing or are no longer visible compared with previous maps. The developer should be required to provide a map with 18 percent slopes clearly identifiable and provide acreage calculations of all land in these areas.

In summary, as currently configured, the preliminary plat does not meet the requirements of the PLCD ordinance. Specifically, under 12-2373.B, C and E, it does not preserve the health and safety of the citizens nor does it fully protect open space because of the unaddressed storm water problems, road safety issues and density considerations further discussed below. It also does not meet 12-2375. 1, 2 and 4 because it does not meet all the requirements of the Comprehensive Plan and it will have an adverse impact on the reasonable enjoyment of neighboring property and surrounding land uses because of the unaddressed issues discussed below. It will also have an excessive burden on streets because of the existing safety issues associated with the location of its access road.

Density. First, the PLCD site is located in an area that is simply too sensitive to allow 19 homes. It is located in Landscape Unit 28 and 29 identified in the Afton Natural Resources Inventory dated June 2001 (NRI) by Emmons & Oliver. This Landscape Unit 28 is ranked as "High" for rare features potential on Page II-2 of the NRI. The site is also located in an area with many steep slopes, many in excess of 18 percent, and half the site has soil types that have a "severe" erosion hazard ranking according to the USDA soil maps included in EAW Figure 7. PLCD Lots 2, 3, 9, 12 and 13 (former PLCD Lots 3, 4, 10, 13, and 14) appear to be completely within the area identified with a "severe" erosion hazard. The PLCD is also adjacent to Trout Brook and wetlands adjacent to Trout Brook, a DNR protected water identified as a candidate for stream restoration for a trout fishery. Further, much of the property is in an Afton Conservation and Shoreland Overlay District.

There are few sites in Afton, if any, that have this combination of environmentally sensitive features. The City has wide discretion in the PLCD ordinance to reduce density and should do so. All land is not created equal--the ordinance is a guide and the City has the discretion within it to address the unique features of this site.

As previously mentioned, we agree with the DNRs comments to the EAW where it suggested elimination of current Lots 3 and 4 partly because of the extreme slopes adjacent to Trout Brook. Although there

may be no evidence of surface water springs, the DNR letter also notes as support for its recommendation that this area is highly likely to have shallow groundwater migrating towards Trout Brook. The Natural Resources and Groundwater Committee (NRGC) also expressed concerns about lots formerly identified as Lots 3, 4, 13 and 14. The NRGC recommended consolidation of Lots 3 and 4 into one lot and the consolidation of Lots 13 and 14 into one lot. Based on the new plat map, this would translate to the consolidation of current Lots 2 and 3 and the consolidation of Lots 12 and 13 into one lot. Comments by the NRGC in January 2017 (see S. Winsor and A. Perkins thoughtful narrative comments) also recommended the elimination of Lots 1 and 2 given these lots are in the Trout Brook stream corridor. At the City Council meeting on June 20 there was also discussion about elimination of Lots 1 and 2 and we have been told that these concerns were primarily about viewshed looking into and from the proposed conservation easement. We agree that viewshed is an important consideration and is shared by the Minnesota Land Trust. But there are environmental considerations as well given the location of the lots in the Trout Brook corridor and the particularly steep slopes on proposed Lot 2. In the preliminary plat application, Bush has now removed Lot 2 but Lot 1 remains. Lot 1 should also be removed and be considered as part of the developer's park dedication requirement.

Second, as stated before, we believe that Afton Ordinance 12-2375 does not allow the developer to take credit for land that would be undevelopable under the existing Agricultural zoning district when determining how much land he must put in the conservation easement under the PLCD ordinance. A more thorough legal analysis of this interpretation was provided under separate cover and is also attached hereto as Attachment A. We understand this concept was a foundational principal during the development of the PLCD ordinance because the developer is asking for the special privileges under this ordinance. For example, he should not be able to count the acres with slopes in excess of 18 percent towards the acreage equaling 50 % of the total development he must put in the conservation easement under 12-2375.C. This is because under the underlying district these lands are subject to a scenic easement and could not be developed anyway so there is no benefit to the City to give him credit for these lands to maximize development elsewhere. Allowing them to be considered so that he can maximize density in the remaining portions of the development, would have a negative effect on the surrounding area in violation of 12-2375.B. and be inconsistent with the Comprehensive Plan. Acres of other undevelopable land such as wetland, stream, and shoreland should be treated the same way. Until we have detailed slope, wetland, stream, and shoreland acreage information, we do not know how many acres might be affected under this analysis.

Buffer Strips.

The proposal evaluated in the EAW Appendix B suggested there would be native grass plantings in addition to woody buffer strips to address erosion or runoff. The plan mandated a minimum of 12 trees and 8 bushes of any size and native grasses throughout the site. Mr. Bush has also at various times represented that he would plant a buffer of trees along the eastern boundary of the PLCD in an area that abuts the properties of existing homes. Currently, the landscape plan only has native grasses planted on the site and a minimum of trees and bushes as landscaping around the homes. The 'buffer strip' of trees/bushes to address erosion and runoff as stated in the EAW and the trees along the eastern boundary should be required as previously promised.

Stormwater Drainage. As highlighted by the community many times before, overland sheet flow drainage during snowmelt and heavy rainfalls currently presents a drainage problem on existing

properties to the east of the project site and adjacent to proposed PLCD Lots 16, 17, and 18. These impacted adjacent properties border Odell Avenue and are located at 5650 and 5680 Odell. The developer ignored this issue in the EAW and the stormwater drainage plan submitted in the preliminary plat application also ignores it.

Drainage from the proposed Carlson PLCD flows downhill and overland to a low point where it intersects with the boundary line of existing adjacent properties at the eastern edge of PLCD Lot 17 and 18. The erosion from this runoff has cut a drainage channel at this intersection as it flows east and the runoff ultimately flows in a large swath between these adjacent properties during snowmelt and rainfall. Rocks have been placed in this channel to try to prevent continuing erosion. See attached map showing approximate location and pictures showing runoff during a May 2017 rain event. In addition to runoff into this low point, sheet flow and erosion flows down a strip of land owned by Will Carlson and currently used as a farm access road on the southern boundary of 5680 Odell. This runoff ultimately flows onto the property at 5680 Odell. See attached pictures. All of this runoff ultimately flows into a tributary of Trout Brook identified by the Minnesota DNR that flows under Odell Avenue.

In addition to the drainage channels above, stormwater from the Carlson property also flows over the property just north of 5650 Odell owned by the Dickes family.

The proposed development needs to specifically address this drainage problem and present a plan by a qualified engineer to retain its storm water on the project site and away from these adjacent properties. The stormwater plan provided the developer suggests that mere planting with native grasses will prevent this overland sheet flow. However, even during the heavily vegetated times of the year, stormwater still flows onto these properties from the Carlson property. Further, many times the crop of plantings on the eastern side of PLCD are totally washed out during rains so it will take extra maintenance efforts to get ensure native grasses grow in this area. At a minimum, in addition to native grasses, special vegetative buffer strips, corrective grading, berms and stormwater ponds should be considered to address erosion and overland sheet flow on the eastern portions of proposed PLCD lots 16, 17, 18 and 19.

The developer should be required to address this problem at early development stages given the erosion and stormwater runoff risk being aggravated without a cover crop on the property.

Fish, wildlife, plant communities, and sensitive ecological resources (rare features). The City must address the Afton NRI when making land use decisions as required by the Comprehensive Plan. The EAW did not address the rare features potential of the site as identified in the Afton Natural Resources Inventory dated June 2001 by Emmons & Oliver (NRI). The project site is located in a highly sensitive area of Afton. It is located in Landscape Unit 28 and 29 identified in the Afton NRI. Landscape Unit 28 is rated "High" for rare features potential on Page II-2 of the NRI. This has been pointed out to the developer and his consultants on numerous occasions but he has ignored it. The Afton Comprehensive Plan Environmental Resources Goals and Policies on page 19, paragraph 12 states "Utilize data from the Natural Resources Inventory when considering all land use applications." The City's consultant should update the NRI at the developer's expense. Given the lack of professionalism in the EAW prepared by the developer's consultant, the City must take control over this evaluation at the developer's expense.

Farm Access Road. Carlson, the owner of the PLCD site, owns a 16.5-foot wide farm access driveway between two existing adjacent properties contiguous to the eastern boundary of PLCD Lot 18. The owner has previously illegally cleared land on these adjacent properties he does not own to widen this access to over 25 feet in certain areas. Based on a recent survey, the entire farm access driveway was illegally constructed on one of these adjacent properties at its intersection with Trading Post. Carlson does not own the property where the farm access driveway was constructed at Trading Post and he has not been given permission to use it. Any use of this illegal farm access road during construction would have a substantial negative impact on these adjacent properties from vehicle emissions, dust, odor and noise. The developer should be prohibited from using this illegal road for any purpose during construction to avoid these impacts.

Further, the developer continues to try to use the farm access road to negotiate resolution of neighborhood concerns about the PLCD. He has inappropriately tried to get the neighbors to forgo expressing concerns about the PLCD in exchange for resolving the farm access road. He continues to do so by highlighting it on his preliminary plat map but leaving his intentions for the land unclear. He has at various times in the past had different proposals for this land including a bike trail, emergency access, and most recently park dedication. We have addressed in separate correspondence the neighborhood objections to the bike trail and emergency access. We also voiced our objection to use of this land to satisfy the developer's park dedication obligation. This is unusable land from a City parks standpoint (goes no where and too narrow for use) and its value is only $400 on the Washington County property tax records website which is not a meaningful park fee for a development of this size. Further, if donated and not maintained by the City, it will become a dense buckthorn strip because of the illegal clearing the owner did without proper treatment of buckthorn.

The farm access road has no value to the PLCD and it is worth only $400 market value based on County records. The use of the farm access road should be abandoned and the strip conveyed to adjacent property owners so that it can be restored to native vegetation.

Road Access and Transportation. The EAW wrongly concludes there would be no measurable effect on transportation related issues. The approaches along Trading Post and 60th street to the proposed road access point for the PLCD are some of the most dangerous existing road areas in Afton given a combination of reduced site lines, sharp curves, steep grade, several high adjacent road embankments, inadequate road width, and gravel road surface. The development is expected to add 200 plus car trips a day onto Trading Post to the north and 60th street to the south. Within a few feet of this access on Trading Post, traffic must travel around a blind curve that does not meet current DOT or AASHTO standards, plus the road width at certain areas in this location is only 18 feet in width requiring cars to stop before going around the bind curve. Without significant modifications and removal of large hillsides to eliminate the blind curve and widen the road, the addition of proposed PLCD road access point here would present substantial safety hazards. Further, there are environmental impacts at this location because of the associated runoff from over 200 cars per day over the highest quality area of Trout Brook. An access farther west on 60th at or near proposed PLCD Lots 1 is a better alternative overall from a safety and environmental standpoint and the developer has stated that it is no more expensive for him.

The surface of 60th Street is currently gravel and the City has indicated that it may pave it to encourage traffic to stay away from the safety problems for cars exiting/enterring the proposed development from

the north on Trading Post. However, there is no assurance that cars will avoid going north if it is an inconvenience to the driver. Further, it is poor public policy in the face of a safety problem, to hope that drivers will avoid an unsafe area instead fixing the safety problem in the first place.

The burden of presenting a safe access road falls on the developer. The PLCD ordinance at Sec. 12-2373.B states the proposal must preserve the health and safety and welfare of the citizens of the City. Sec. 12-237f9.4 states the PLCD must not create an excessive burden on streets. Here, the citizens will be put at greater safety risk and there is an excessive burden on an already unsafe road. The community should not be burdened by an unsafe access road at the proposed location just because an owner/developer has not purchased land with good access especially when the owner/developer has safer alternatives available farther west along 60th street.

Culdesac Length. Sec 12.1379.B states "A cul-de-sac street shall not exceed 1,320 feet in length and shall serve no more than nine lots. 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." (emphasis added) While Sec. 12-2376.B allows a variance on the length of the cul-de-sac, it does not allow a variance for more than nine lots that is strictly prohibited by 12-1379.B. The lots submitted on the PLCD proposal do not appear to comply with ordinance 12-1379.B. because there are more than 9 lots on the cul-de-sac and, therefore, the proposed culdesac can not be allowed under the ordinance.

Miscellaneous

The Shoreland and Conservancy overlay boundaries are not delineated on the south side of Trout Brook. Lot 1 on the south side of Trout Brook appears to be in the Shoreland district and subject to its requirements.

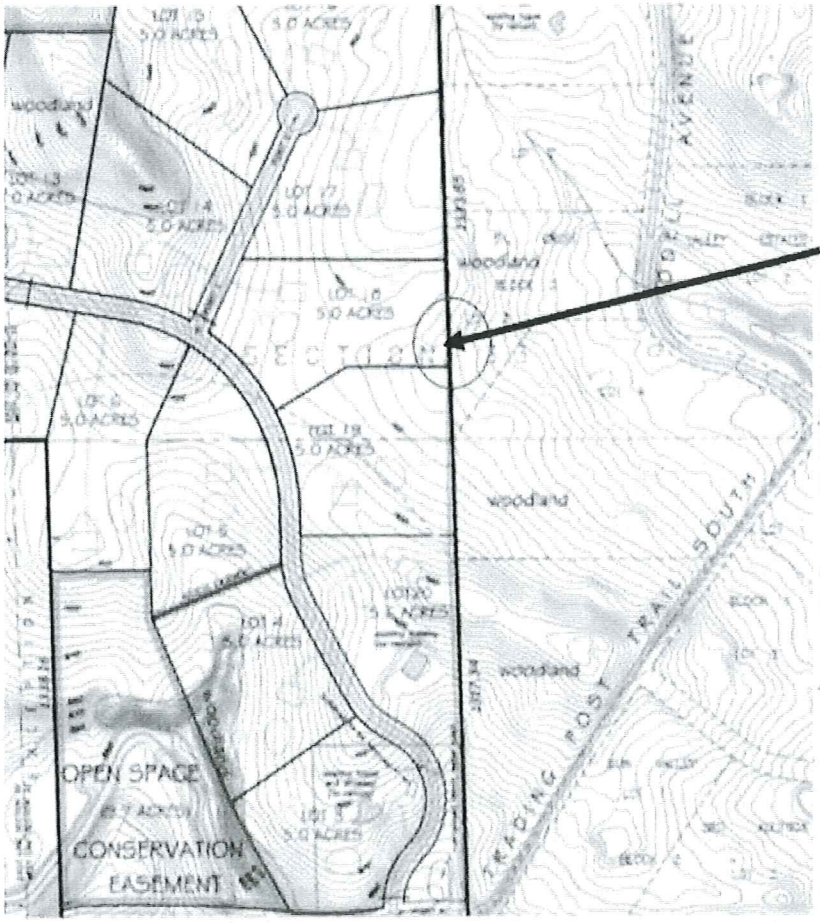
Lot 1 septic system is shown outside of Lot 1.

Lots 1, 2, and 3 show septic systems in the Shoreland district. Verify that all structures are set back a minimum of 20 feet from the crest of all slopes exceeding 18 percent as required by Sec. 12-46.

Lot 19 is a highly irregular-shaped lot with a stormwater pond on the south side. An easement for maintenance of this pond should be created in favor of the homeowners' association for the development.

The roads through the development appear to travel through slopes in excess of 12 and 18 percent. We understand roads in the development must be at 8 percent grade or lower. Clarify how road grades of 8 percent or lower will be met on these slopes.

Verify that wells for 19 homes will not affect aquifer and wells in adjacent areas.



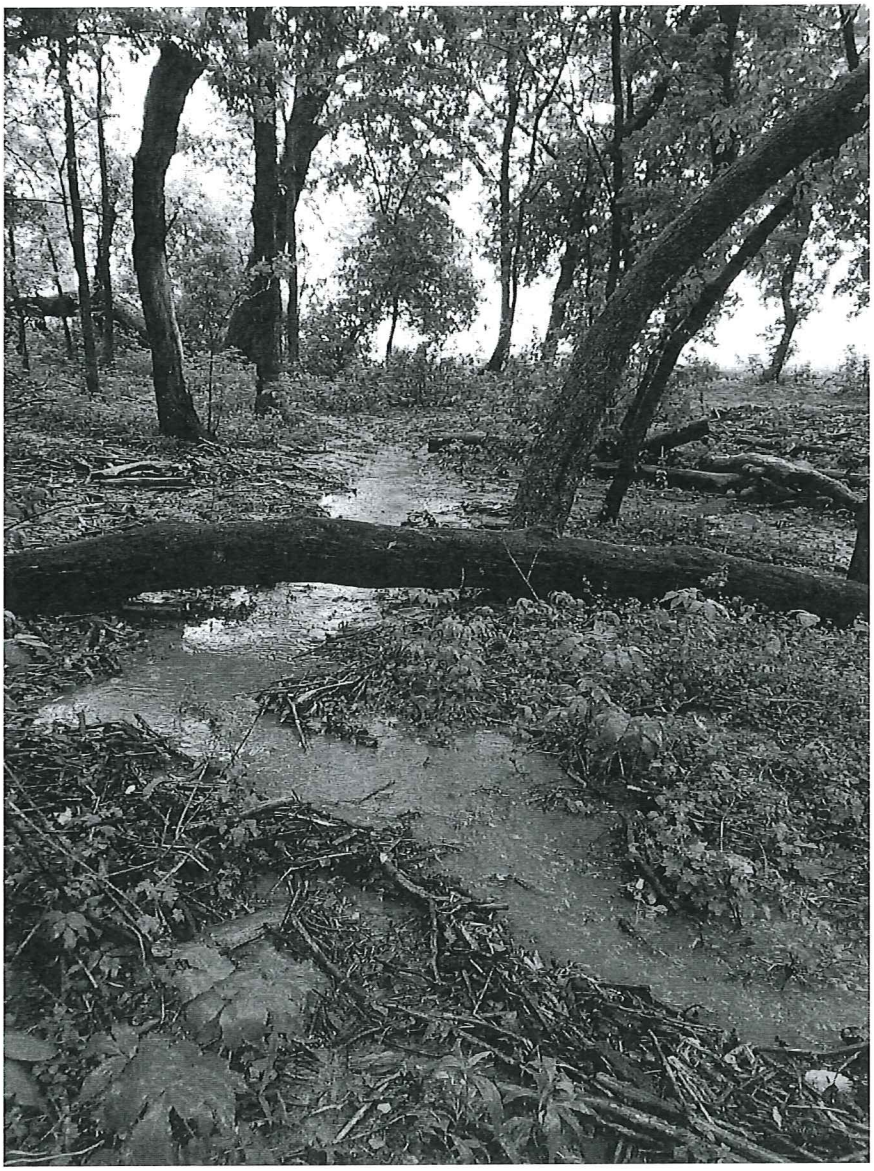
Current flowage from property to 5650 Odell Avenue South

Approximately 400 ft. South of northern property Line at 5650 Odell Ave. S

Acknowledged on Drawing by blue arrow

Approximate location of start of drainage channel created by overland flow from Carlson property

Start of drainage channel from proposed PLCD onto 5650 Odell property



Drainage from proposed Carlson PLCD onto 5650 Odell property looking towards Carlson property

Drainage from proposed Carlson PLCD looking towards Odell

Drainage and erosion from proposed Carlson PLCD flowing towards farm access strip and 5680 Odell

Stormwater drainage flowing from proposed Carlson PLCD down farm access road and onto 5680 Odell

Attachment A to Comments on Carlson PLCD Preliminary Plat Application

Carlson PLCD—Density Determination under Afton PLCD Ordinance

1. First, a developer should not be allowed to include existing undevelopable land under Afton ordinances (for example, land in excess of 18% slopes, wetlands, streams, etc.) in the proposed conservation easement to satisfy the PLCD requirement that "50 percent of the total tract be preserved as an undeveloped parcel." To do so defeats the purpose and provisions of the PLCD ordinance.

The stated purpose of the PLCD ordinance is to preserve open space as set forth in 12-2373.C and E (See PLCD ordinance provisions below highlighted in yellow). It allows a developer of a parcel to put a portion of land that would otherwise be developable into conservation easement in exchange for allowing greater density on the remaining portion of the parcel. This makes sense and is consistent with the City's Comprehensive Plan because it overall protects open space for Afton by preserving land that would otherwise be developable while still allowing wise development on the remaining parcel.

However, allowing a developer to take credit for undevelopable land in a conservation easement to maximize density on the remaining parcel is a net loss of open space for Afton and a windfall for the developer. This land is already undevelopable and "preserved" under Afton ordinances. The only way the open space preservation purpose of the PLCD ordinance is met is if land that is currently at risk for development is preserved. To do otherwise gives a developer credit for land he can't develop anyway so that he can maximize density on the remaining parcel—a win-win for a developer but a net loss for Afton. Thus, all undevelopable land that is proposed for the conservation easement under the PLCD ordinance must be excluded from the calculation determining whether 50 percent of the total tract is preserved as an undeveloped parcel.

Some may argue that in other land use decisions in Afton, undevelopable land is included in determining overall lot sizes. However, in those instances, the landowner is not seeking the special privileges under the PLCD ordinance. Under the PLCD ordinance a developer is seeking permission to gain the benefit of greater density on a portion of his parcel in exchange for giving something up in the form of a conservation easement on the other portion of a parcel. The City of Afton only benefits from this exchange if the developer actually gives something up in the bargain and preserves land that is otherwise developable. Likewise, the preservation of open space purposes of the PLCD ordinance is only met if the exchange preserves land that is otherwise developable.

In the instance of the Carlson PLCD, the developer is attempting to take credit for acres of undevelopable land in a conservation easement in order to maximize density on the remaining developable parcel. Specifically, he includes in his 50 percent conservation easement calculation wetlands, the Trout Brook stream corridor, and slopes in excess of 18%, all of which are already preserved under Afton ordinance and undevelopable. To comply with the PLCD ordinance he should be required to exclude all undevelopable land under Afton ordinance from the calculation to determine if he has met the 50 percent preservation requirement.

Of note, in most instances of agricultural land, this type of analysis would make no difference because typical agricultural land has low to moderate slopes and no water features. As appropriate because of the sensitivity of this particular parcel, it would make a difference here because so much of the site is unique with a trout stream, wetlands, steep slopes, and highly erodible soils.

2. Second, PLCD ordinance 12-2375.B.2 states that the development must benefit the area surrounding the project to a greater degree than development allowed within the underlying zoning district. See highlighted area below.

In the instance of the Carlson PLCD, the underlying zoning district is agricultural allowing one home per ten acres. Given large portions of the parcel are already undevelopable because they include the stream corridor of Trout Brook, wetlands, and slopes in excess of 18 percent, there seemingly is little to no benefit to the surrounding area to allow the developer to use the PLCD ordinance to maximize density with 5-acre lots on the developable portions of the parcel. This is particularly true if the developer is allowed to include the already undevelopable portions of his parcel in the conservation easement to demonstrate he has met the 50 percent test.

Furthermore, the Carlson PLCD parcel is surrounded primarily by large parcels in excess of 5 acres. To the east the abutting parcel acreages are as follows: Dawson/Lewandowski 6.5, Graham 9.2, McConnell 5.45, Rickard 5, Dickes 5. To the south the abutting parcel acreage is: Rhode/Turner 23.5. To the west the abutting parcel is: Wallace 160 acres plus. To the north the abutting parcel acreages are: Swanson 78, Forbes 19.8, Berggren 68.4, Belz 14, and Brannan 5.96. So, the Carlson PLCD will not benefit the surrounding area. In fact, it will have a negative affect on the density of the surrounding area to a greater degree than if the development was restricted to one home per ten acres allowed under the underlying agricultural zoning district. This is particularly true when taking into account the large portions of the property that are not developable at all.

Excerpts from Afton PLCD 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. <u>To preserve open space</u>, 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. 12-2375. 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.

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

Hi Ron.

Ms. McConnel's correspondence (attached) contends that "unbuildable" land should be excluded from the minimum 50 percent open space requirement for PLCD developments for the purpose of determining allowed density. Specifically, Ms. McConnel raises a concern that the developer of the Afton Creek Preserve subdivision is attempting to take credit for undevelopable land in a conservation easement to maximize to number of lots proposed within his subdivision.

In consideration of the issue, the following comments are offered:

1. The Ordinance does not include a definition of "unbuildable" land. Section 12-55 of the Ordinance does however, include the following definition of "buildable area" from which features considered "unbuildable" may be determined.

   Buildable area means all land having a slope of 13 percent or less having enough suitable soil : two on-site sewage treatment systems and that land having a slope between 13 and 18 requirements of Section 12-132(B)(11). Buildable area does not include floodplains, wetlands, p bodies of water; parks, scenic and conservation easements or other unbuildable easements; stee way. Buildable area may include required building setbacks.[10]

   Based on the preceding definition, the proposed Afton Creek Preserve subdivision includes a significant amount of land area considered "unbuildable."

2. Section 12-2372 of the Ordinance states that PLCDs may be allowed in the A, Agricultural zoning district to preserve the following:

   - Prime agricultural lands
   - Woodlands
   - Wildlife habitat
   - Vistas
   - Groundwater recharge areas
   - Areas with sensitive soils
   - Areas with geological limitations

   Based on the preceding provision, it is considered typical for PLCDs to include and preserve unbuildable lands such as groundwater recharge areas, areas with sensitive soils and geological limitations etc.

3. Section 12-2375.C of the Ordinance states that 50 percent of the total tract of land which comprises the PLCD must be preserved as an undeveloped parcel. Section 12-2383 specifically lists the various standards which must apply to the undeveloped parcel. These standards are as follows:

Sec. 12-2383. Standards for undeveloped parcel.

No open area may be approved as common undeveloped parcel under the provision following standards:

A. The location, shape, size, and character of the undeveloped parcel n development.

B. The undeveloped parcel must be used for amenity or recreational purpo undeveloped parcel must be appropriate to the scale and character of the p its size, density, expected population, topography, and the number and typ

C. The undeveloped parcel must be suitably improved for its intended use but features worthy of preservation may be left unimproved. The buildings, st are permitted in the undeveloped parcel must be appropriate to the us undeveloped parcel and must conserve and enhance the amenities of the to its topography and unimproved condition.

The PLCD standards do not reference a required exclusion of unbuildable land from that area of a PLCD devoted to open space (for the purpose of determining allowable density). With this in mind, the City lacks the formal authority to impose such a requirement.

4. The underlying A, Agricultural zoning district (applicable to the Afton Creek Preserve project) imposes a minimum lot size of 5 acres. Of the provided 5 acres, the Ordinance states that at least 2.5 acres of the lot must be buildable. With this in mind, the Ordinace recognizes the likelihood that a portion of all proposed lots will include unbuildable areas. Therefore, the presumption that only buildable land would be considered when calculating the 50% open space requirement would appear to be contrary to the way that the Ordinance normally treats land parcels. Gross land area is used for overall lot size, and only buildable land may be disturbed for building purposes, but both buildable and unbuildable land is used as the overall baseline.

5. Should the City wish to impose a requirement that only "buildable" land be considered in the dedication of open space within PLDC projects, an Ordinance amendment would need to be processed which specifically imposes such a standard.

I hope this helps.

Let me know if you have any questions.

Bob

Bob Kirmis
Northwest Associated Consultants, Inc.

4150 Olson Memorial Highway, Suite 320
Golden Valley, MN 55422

Hi, Ron.

You tasked this with me earlier and asked for an opinion by Tuesday.

Looks to me like Bob nailed it. My review gives me the same conclusion: the City would need express authority to impose such a restriction and there is no such language in any its ordinances or state law.

In other words, otherwise unbuildable land can be included in overall calculations for purposes of determining allowed densities unless the City's ordinances ***expressly*** provide for a different method being used.

I just saw one up in Stillwater where a developer was able to use what was, in effect, a platted lake bottom in order to calculate density, which is probably the most extreme example of this I can think of.

Frederic W. ("Fritz") Knaak, Esq.
Attorney in Minnesota, Wisconsin and Colorado
HOLSTAD & KNAAK, PLC
4501 Allendale Drive
North Oaks, MN 55127

Ron Moorse

From: Karen LFF email <karen@littlefootfarm.com>
Sent: Thursday, September 28, 2017 11:27 AM
To: Ron Moorse; publicworks; lkaye71@msn.com; ward3
Cc: sdorgan@cresa.com; Nittie8@yahoo.com; rickpung4@gmail.com; Randy
Subject: PLCD Park Comittee Recommendation

Ron,

Park Committee recommendation for PLDC Sketch Plan (preliminary Plat- Afton Creek Preserve)

The Park Committee discussed the PLCD Preliminary Plat at its September 27, 2017b meeting. In our discussions prior to a vote, we assumed a land value of the entire property to be 2.8 million (based on Washington Co. property records for the 7 individual plats that make up this development). The following recommendation was made.

"Based on the current development plan presented, the committee recommends that the required Park Dedication Payment be in the form of a cash fee. This assumes the developer will provide, as stated on the plat drawing, public access via a walking path at the end of the cul-de-sac, and "overlook" access along 60th st, to the 102 ac. Open Space Conservation Easement. Access points will have infrastructure, to include: benches, parking and natural informational signage." Approved unanimously by the Committee.

Members in attendance

Karen Weiss, Nathan Shaw, Rick Pung, Lynne Kaye, Ken Johnson, Randy Nelson