

CITY OF NORTH OAKS

Planning Commission Workshop

Wednesday, April 10, 2019

5:00 P.M., Room 150

100 Village Center Drive

PLANNING COMMISSION WORKSHOP AGENDA

Call to Order

Approval of Agenda

1. Review of Proposed Nord Parcel Development Information

Adjournment

MEMO

Date: April 8, 2019
To: Planning Commission
From: City Administrator Mike Robertson
Re: Information for April 7, 2019 Workshop

We were asked to prepare the following information for the Planning Commission Workshop on the proposed Nord parcel development.

1. Will Ramsey County allow a road connection into Sherwood Road?

The answer is yes, see attached email from Ramsey County.

2. Will Ramsey County Allow two driveways from the East Preserve parcel on to Sherwood Road?

The answer is yes if they meet standards, see attached email from Ramsey County.

3. An opinion from the City Attorney regarding part of the Nord parcel being zoned "R" Recreation.

Attached.

4. An opinion from the City Attorney regarding the 60-day rule.

Attached.

5. An opinion from the City Attorney regarding the role of neighborhood testimony.

Attached.

6. An opinion from the City Attorney on whether the City Can require a trail as part of development approval

Not received yet.

7. Have an EAW specialist from Sambatek at the meeting.

Kristin Mroz-Risse of the Environmental Quality Board (EQB) will be there to answer questions.

8. Have Sambatek address the wetland impacts of the proposal.

They will do so at the meeting.

9. Was a concept plan submitted when some of the other developments were applied for?

It depends on what you think a concept plan is. When Rapp Farm was applied for the North Oaks Company included a copy of the table from the 1999 East oaks PDA showing the future development sites with the amount of planned dwelling units each had.

10. Feedback from Lake Johanna Fire and from the Ramsey County Sheriff.

The Fire Chief said that access from Sherwood Road would provide faster response time. He was also wondering whether a water line could be extended from Rapp Farm to provide him a hydrant for fire suppression.

Under Sheriff Jeff Ramacher said that they typically do not weigh in on road questions and are willing to leave that issue to the City.

11. Other issues?

As part of the review of the EAW and preliminary plans, staff recommends that a Traffic Impact Study (TIS) be completed due to the proposed change from the original plan of roadway connection from Sherwood Road to North Deep Lake Road. The Peak Hour and Daily Trips identified from development of the entire area outlined in the EAW would trigger current EAW requirements for a TIS. Due to EAW rules, the study will include all development areas outlined in the East Oaks PDA, not just the Nord parcel. If the Nord parcel road access is changed back to Sherwood Road, no traffic study will be required because it was studied as part of the original EAW. This recommendation has been shared with North Oaks Company.

Mike Robertson

From: Lux, Joseph <Joseph.Lux@CO.RAMSEY.MN.US>
Sent: Monday, April 1, 2019 7:35 AM
To: Mike Robertson
Cc: Laberee, Erin; Hofschulte, Benjamin P
Subject: RE: County Road access Questions
Attachments: Nord Parcel-sherwood Road Access.pdf

Hi, Mike:

The standard for access spacing on Sherwood Road, a collector street, would be 1/8 mile spacing. Any proposed street access (or any private access, for that matter) needs to meet applicable sight distance standards for the 40 MPH speed limit. We'd also review the need for turn lanes. Private driveways on Sherwood Road could be allowed and would need to meet sight distance standards and probably would be required to be built with a culvert to provide drainage. As long as the accesses are located far enough from the 90-degree bend on Sherwood Road to provide sight distance, they would not seem to be a problem. I've copied Erin Laberee and Ben Hofschulte on this email, as they may have comments on what would be required

Joe Lux

Joseph Lux
Senior Transportation Planner
Ramsey County Public Works
1425 Paul Kirkwold Drive, Arden Hills, MN 55112
651-266-7114



From: Mike Robertson [mailto:MRobertson@cityofnorthoaks.com]
Sent: Friday, March 29, 2019 3:45 PM
To: Lux, Joseph <Joseph.Lux@CO.RAMSEY.MN.US>
Subject: County Road access Questions

External message alert: This message originated from outside the Ramsey County email system. Use caution when clicking hyperlinks, downloading pictures or opening attachments.

Joe,

I'm not sure who to send this question to so I'm sending it to you. Please forward it on if you are not the person to answer these questions. I've attached several maps illustrating a proposed development. Map B on page 2 shows the development, which is 10 large lots on area C. Map B2 on page 3 shows a road connecting to the north-south stretch of Sherwood Road from area C just south of the Ramsey County Compost facility and just north of the curve.

1. The Planning Commission is wondering what standards would a road have to meet to connect to Sherwood Road from area C, i.e., so many feet from the curve in the road, etc.?

MAGNUSON LAW FIRM

LICENSED IN MINNESOTA AND WISCONSIN
5620 MEMORIAL AVENUE NORTH • SUITE E • STILLWATER, MN 55082
TELEPHONE: (651) 439-9464 • FACSIMILE: (651) 439-3641
WWW.MAGNUSONLAWFIRM.COM

DAVID T. MAGNUSON
DTMAGNUSON@MAGNUSONLAWFIRM.COM

April 3, 2019

North Oaks Memo – Designation of part of Nord Site as Zoning District R

The planning commission noted that a small area of land in the southwest corner of the Nord Site appears under the City Zoning Ordinance as in the “R” District. Since the entire Nord site is designed as RSM-PUD in the PDA, the Zoning Ordinance and the PDA are in conflict. Therefore, a determination must be made regarding the Zoning Classification of the entire Nord site. First, it is necessary to examine the PDA of November 19, 1999 (the “PDA”).

Article 2 of the PDA at Section 2.1 states: “The Development Sites are rezoned to Planned Unit Development District under the Zoning Ordinance.” And in Appendix 1 to the PDA, at Section 2. Finding G. the following language: “That the approval of the East Oaks PUD Project complies with the City’s Zoning Ordinance.” Further, the PDA describes the East Oaks PUD Project to mean: “the Development of the Subject Property in accord with the PUD controls.” Finally, the PDA recognizes that there could be inconsistency among the various PUD Controls. Accordingly, the PDA sets forth a list of documents and the order in which each document will be considered controlling. Without a Concept Plan, Preliminary Plan or Final Plan for Nord, the PDA is the controlling document, and controls over inconsistencies in the Comp Plan, Subdivision Ordinance, PUD Ordinance and the East Oaks Project Master Development Plan.

It is therefore my opinion that the entire Nord site, including the small section that is described as zoning district “R” is now zoned, pursuant to the PDA to RSM-PUD.


David T. Magnuson

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LICENSED IN MINNESOTA AND WISCONSIN
5620 MEMORIAL AVENUE NORTH • SUITE E • STILLWATER, MN 55082
TELEPHONE: (651) 439-9464 • FACSIMILE: (651) 439-5641
WWW.MAGNUSONLAWFIRM.COM

DAVID T. MAGNUSON
DTMAGNUSON@MAGNUSONLAWFIRM.COM

April 3, 2019

North Oaks Memo – 60 Day Rule

Mike,

Minn. Stat. Section 15.99 sets a 60 day time limit for “zoning” decisions that can be extended to 120 days by notice to a developer. This statute also allows a notice of “incomplete” applications to be sent to an applicant within 15 days of filing, and this notice allows that the 60 days does not begin to run until the application is deemed complete. Failure to send this notice means that the application is deemed complete when filed and the 60 days begins to run upon the filing. The period can be extended another 60 days by notice to the developer. Projects not decided in 120 days are deemed approved by operation of law.

Minn. Stat. Section 462.358 is the statute that controls subdivisions, and that statute has a deadline of 120 days from the filing of a complete application. This statute does not have a provision that sets a process for determining the completeness of the application. However, failure to approve a preliminary or final plat within 120 days means that the application is deemed approved by operation of law.

The two laws were compared and discussed in *Harstad v. Woodbury*, 902 N.W. 2d 64 (Minn. App. 2017). This case was later reviewed by the Supreme Court, but the comparison of the two notice statutes was not reviewed or decided by the Supreme Court, so the best we have is the Court of Appeals decision. The Court of Appeals held that the “Harstad” “application falls within the ambit of Sections 15.99 and 462.358.” They did not decide in favor of one or the other statute on the basis that both statutes were followed. I read this opinion to require compliance with Section 15.99.

At the planning commission hearing Mark Azman took the position that the 462.358 statute controlled. He advocated for declaring the application incomplete in order to reset the 120 day clock. Arguably, this would have been permitted because 462.358 does not have a deadline for declaring the application incomplete. However, the applications for both Nord and Anderson Woods were filed with the City on January 17, 2019. This meeting of the planning commission was on March 28, 2019, 71 days after the applications were filed. And the planning commission had considered the applications at their January meeting and opened a public hearing on the applications at the February

meeting without mention of the completeness or incompleteness of the January 17, 2019 applications.

It is my opinion that Section 15.99 applies, since under that Statute, the applications would have been deemed complete on January 17, 2019 because a Notice of Incomplete was not sent prior to February 1, 2019. This view, accepted by the planning commission, removed the option to declare the application incomplete. If the application had been declared incomplete and the City depended on that decision to extend the 120 day limit, in all likelihood the applications would have both been approved by operation of law after the filing because the City did not send a notice of incomplete within 15 days of the filing of the application. By following Section 15.99, both 15.99 and 462.358 are followed, and an approval by operation of law is avoided.


David T. Magnuson

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LICENSED IN MINNESOTA AND WISCONSIN
5620 MEMORIAL AVENUE NORTH • SUITE E • STILLWATER, MN 55082
TELEPHONE: (651) 439-9464 • FACSIMILE: (651) 439-5641
WWW.MAGNUSONLAWFIRM.COM

DAVID T. MAGNUSON
DTMAGNUSON@MAGNUSONLAWFIRM.COM

April 3, 2019

North Oaks Memo – Role of the Neighbors in a zoning dispute

The role of neighborhood opposition to a land use application has been considered several times by the MN Supreme Court. Perhaps the most clear holding is found in *Amoco Oil Company v. City of Minneapolis*, 395 N.W. 2nd 115 (Minn. App. 1986). This holding, as well as other holdings are usually made when the Appellate Court reads the verbatim record of a public hearing and are moved to comment. The court held:

“It appears to the court that the real reason the City Council denied granting the permit was because of opposition from the neighborhood and the neighborhood’s council member. The simple fact that community members oppose a landowner using his land for a particular purpose is not a legal basis for denying a special use permit.”

Further, in a 2019 League of Cities memo regarding planning and zoning decisions, the following advice is given:

“Neighborhood opposition is perhaps the most challenging issue for any city council or planning commission to deal with when considering the merits of a particular zoning application. Case law holds that the views of neighbors should not be the sole basis for a particular city action. In this regard, it is helpful to distinguish between what might be termed the “quantity” of the comments, as opposed to the “quality” of the comments. For example, well-supported testimony that brings forth relevant facts is the kind of information upon which a city council can rely. On the other hand, unsupported and unsubstantiated emotional opposition to a particular project should not be the basis for a decision.”

The memo recognizes that neighborhood opposition is “most challenging”. However, “unsupported and unsubstantiated emotional opposition to a particular project should not be the basis for a decision.


David T. Magnuson

From: [Mike Robertson](#)
To: [Gretchen Needham](#)
Subject: FW: Nord Trail Issues
Date: Tuesday, April 9, 2019 12:02:55 PM

Gretchen,
Naturally, soon after everything's been posted Dave adds another memo. Please add this to Wednesday's information packet.
Thanks.
Mike

From: Dave Magnuson <dtmagnuson@magnusonlawfirm.com>
Sent: Tuesday, April 9, 2019 11:56 AM
To: Mike Robertson <MRobertson@cityofnorthoaks.com>; Bob Kirmis <bkirmis@nacplanning.com>
Subject: Nord Trail Issues

Mike and Bob,

You have asked whether the City can require trail easements to be dedicated by the developer as a condition of approval of the development plan for the Nord parcel. The answer would be obvious if it were not for the PDA of 1999, and the Master Development Plan for the East Oaks Project. (the "PDA") Since both the state law granting authority to cities to regulate subdivisions and the North Oaks City Code allow for the City to require the dedication of trails, it is the PDA that prevents that extraction.

Article I of the PDA recites that the dedication of 885 acres as open space, and the trail easements granted to NOHOA "are determined by the City to function as the practical and functional equivalent of open space creation contemplated by Section 462.358, Subd. (2 b), and the Subdivision Ordinance, Section 8.3. (now codified as City Code Section 152.052)." Further, Article 13 of the PDA entitled "Trails" explains the Trail Plan and describes the obligation to convey trail easements and the obligation to construct and maintain the trail system. The documents do not show a trail planned for the Nord parcel.

Lastly, the PDA can be amended by agreement between the North Oaks Company and the City. Perhaps it would be worth the effort to approach the Company on the trail subject in view of the public interest expressed regarding trails at the last planning commission meeting.

Dave

David T. Magnuson
Magnuson Law Firm
5620 Memorial Avenue N., Suite E
Stillwater, MN 55082
Phone: 651-439-9464
Cell Phone: 651-492-0997
Fax: 651-439-5641