

## MAGNUSON LAW FIRM

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

June 26, 2019

Bob Kirmis  
100 Village Center Drive, Suite 230  
North Oaks, Minnesota 55127

Mike Robertson  
100 Village Center Drive, Suite 230  
North Oaks, Minnesota 55127

Re: Decennial Review

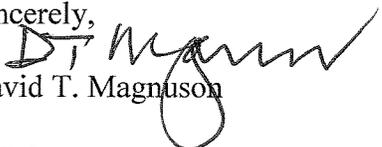
Dear Mike and Bob:

Discussion Topic 5.

The effects of applicable laws, regulations and directives adopted or promulgated by federal, state, local or other governmental agencies.

I am not aware of any changes in the law that would modify the status of the PDA. The law recognizing Planned Unit Development was first discussed and recognized by the Minnesota Supreme Court in Minnesota in *Amcon Corp. v. City of Eagan*, 348 N.W. 2d 66 (1984). Without the protection of a long term plan such as a PUD, the vested rights in a zoning classification is limited to two years from final plat approval. Much longer development rights can be fixed by agreement between a developer and a city and that is what was done with the PDA.

Sincerely,

  
David T. Magnuson

DTM/ss

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Re: Future plans from NOC and the process

Dear Mike and Bob:

Table 1 from the Original PDA that I have states: that 650 dwelling units and 21 acres of commercial use are permitted and these numbers are consistent with the original PDA designation in Amendments 1 through 3. In Amendment 4 the references were changed to 795 dwelling units and 13 acres.

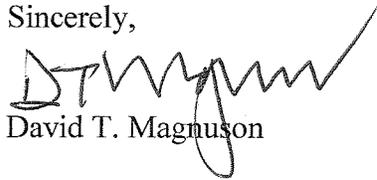
During the 2009 Decennial Review an effort was made to correct references that were made by mistake in prior amendments. According to the company the reference to the number of dwellings and commercial acres in Amendment 4 was made in error in attempting to account for the Pres Homes Initial Development. The city agreed with the company and the initial references for the PDA were restored. Also, I note that the workup that Stieg did showed 23.8 commercial acres with 21 being used, leaving 2.81 acres (forgone?) for an allowance of 14 additional units. The company attachment last updated April 5, 2019 indicates 21 commercial acres with 15.27 remaining. But they make no statement that development of the remaining 15.27 has been "forgone". Using their numbers, and if no more commercial is developed it would be 76 more units. If they develop all of the remaining 15.27 as commercial they would have no extra units. I recommend that as part of this review the remaining commercial acreage should be determined and documented.

With regard to an increase in density, I reviewed the PDA and the updates that were done to the document, in the beginning on an almost yearly basis. Beginning with the Fourth Amendment, dated March 25, 2003, Table 1 indicates that Site C, the Nord area, shown on the original Table 1 to be allowed 10 units, is followed by this phrase: "Density Increase of 30% is allowed". And, Table 1 indicates that Site F, the Anderson Woods area shown on the original Table 1 to be allowed 10 units, is followed by this phrase: "Density increase of 30% is allowed".

Identical language regarding density bonuses granted is found in Amendments Five, Six, and Seven. The last Amendment, number Seven, approved along with the decennial

review on March 18, 2010 contains the same identical language concerning the density bonuses that were allowed. Additionally, beginning in 2003, Table 1 also allows density increases of up to 50% for Sites D and E-1, no increase for Sites I and L, and a 30% increase for all other residential Sites, including Nord and Anderson Woods. Each of the Amendments were signed by the City Attorney, the Administrator, the Mayor and each of the individual council members. So from a legal point of view, an expressly approved agreement, restated 4 times since 2003 but containing the same approval of density increases, can be read in no other way.

Sincerely,

A handwritten signature in black ink, appearing to read 'DTM', with a large, sweeping flourish extending to the right.

David T. Magnuson

DTM/ss