

PLANNING AND ZONING COMMISSION MEETING – AUGUST 25, 2020

The Regular Bi-Monthly Meeting of the Andover Planning and Zoning Commission was called to order by Chairperson Bert Koehler IV on August 25, 2020, 7:00 p.m., at the Andover City Hall, 1685 Crosstown Boulevard NW, Andover, Minnesota.

Commissioners present: Karen Godfrey, Scott Hudson, Nick Loehlein (remote), Mary VanderLaan, Marni Elias and Dawn Perra (remote)

Commissioners absent:

Also present: Community Development Director Joe Janish
City Planner Peter Hellegers
Associate Planner Jake Griffiths
City Attorney Scott Baumgartner
Others

PLEDGE OF ALLEGIANCE

Chairperson Koehler asked City Attorney Baumgartner to explain the rules regarding mask wearing at the Commission meeting. Mr. Baumgartner stated masks must be worn at all times except when the Commissioners are at the dais and participating in the meeting. He stated the audience must wear a mask at all times except when they are at the podium speaking to the Commission.

PUBLIC HEARING: CONDITIONAL USE PERMIT (CUP)/PLANNED UNIT DEVELOPMENT (PUD) AMENDMENT “THE PRESERVE AT PETERSEN FARMS” PHASE 2 - PIDS 07-32-24-42-0002, 07-32-24-43-0003, 07-32-24-34-0002, 07-32-24-34-0003, 07-32-24-33-0001, 07-32-24-31-0001, 07-32-24-32-0001, 07-32-24-23-0002, 07-32-24-24-0001 - JD HOLDINGS

Mr. Janish stated the Planning and Zoning Commission is asked to review a Conditional Use Permit (CUP)/Planned Unit Development (PUD) Amendment for the Preserve at Petersen Farms. Mr. Janish reviewed the definition of a Planned Unit Development which gives the developer the opportunity to use the land more efficiently and greater flexibility to build a higher quality development.

Mr. Janish showed the Master Plan and stated it is outside of the MUSA area. Mr. Janish said Phase 2 consists of building 46 homes on 100 acres of land. He said the applicant is looking to deviate from the length of the cul-de-sacs, utilize private septic systems, have

5 lots under 1 acre of usable net land area, remove the east/west connector roadway, and make adjustments to the Master Plan. Mr. Janish provided additional details for each of the applicant's requests as provided in the staff report. Mr. Janish reviewed the items in the packet that the Commission and residents can use for reference.

Commissioner Godfrey asked Mr. Janish to explain the three properties with the gray dots. Mr. Janish stated the gray dots are pad elevations.

Commissioner VanderLaan asked Mr. Janish if he can address the comments in Mr. Berkowitz's memo that were listed as not completed. Mr. Janish stated 83 comments have been addressed, 19 comments carried over to review #3, and there are 20 new comments. He said the two larger items that need to be addressed are the east/west connection/south access and the access to the 2 residences to the north.

Commissioner VanderLaan stated approval of the project was contingent on a secondary access. She asked if the City could set that contingency or should it be a guideline. Mr. Janish replied the Engineering Department is asking that the secondary access be a condition of approval.

Chairperson Koehler asked if the 5 properties below 1-acre net area have a lot size of at least 1.5 acres. Mr. Janish stated the lot sizes are 1.5 acres or greater.

Motion by Godfrey, seconded by VanderLaan, to open the public hearing at 7:33 p.m.

Motion was taken by roll call:

VanderLaan - aye

Koehler - aye

Hudson - aye

Godfrey - aye

Elias – aye

Loehlein - aye

Perra- aye

Motion carries unanimously

Darren Lazan, JD Andover Holdings, came forward and stated the gross size of the 5 lots identified is over 2 acres. Mr. Lazan presented the development at Petersen Farms and identified Phase 1 as the Preserve and Phase 2 as the Meadows. He said Phase 1 has been a tremendous success and he showed photos of the completed lots.

Mr. Lazan spoke on the details of Phase 2, the Meadows, showing aerial photos of the 100- acre, 46 lot property. Mr. Lazan explained they decided to eliminate the proposed east/west connector roadway because it went through wetland and they wanted to preserve the wetland as much as possible. He said the company is working on acquiring a property to the south that is in foreclosure but have not had success in connecting with the bank or property owner. He explained their goal is to acquire the property, divide it into 3 lots, and construct a road through it to provide the second access. He stated he does

not want the secondary access as a condition of approval because it is contingent on them acquiring property they have not been able to get.

Mr. Lazan defined the net land area as usable land, taking out the acreage of wetland and bluff. He said there are 5 lots that are under 1 acre of net land area but contain a gross lot size of 2 acres or greater.

Jim Stiller, 15250 Verdin Street, came forward and identified himself as a representative of Sharper Homes and Keller Williams. Mr. Stiller spoke on the quality of the homes and the value they bring to Andover.

Commissioner Loehlein asked about the east-west connector road and what could have been done to anticipate this. Mr. Lazan stated they are pursuing a connector road to the south due to the urgings of City staff and Council. He explained the topography and surrounding properties make it difficult to find a second access. Mr. Lazan stated the developer has taken soil borings on the proposed roads in the future phases to make sure the roads are feasible.

Commissioner Loehlein stated the City requires gross density in the R-1 zone at .4 units per acre and the applicant is proposing .46 units per acre. Commissioner Loehlein asked why. Mr. Lazan stated the gross density of the development is .32 units per acre which is well under the City requirement of .40 units per acre. Commissioner Loehlein stated he is referring to Phase 2 which is .46 units per acre. Mr. Lazan stated Phase 2 does not have as many natural resources, so it is slightly denser than Phase 1 and Phase 3, but the overall average is .32 units per acre and the City looks at the entire development to determine density.

Bud Holst, 4276 – 165th Avenue NW came forward and thanked the Commission for originally denying the PUD. He stated he felt the PUD should not be decided in a one-night hearing but should be a longer process. He stated the revised Master Plan is vastly different from the original and he thinks it has nothing to do with the natural resources. He said if the developer did not do their homework, Andover residents should not have to deal with it. He said there are more lots than originally planned and there are no parks.

Hope Luedtke, 16932 Jivaro St NW, came forward and asked how the sewer and septic is going to affect her water pressure and quality. She felt the developer did not do their homework on the road that was proposed to go through the property. She stated the process is moving too fast and feels the City should pull back. She said the homes do not look rural and look more like a Monopoly board. She is concerned about the number of trees being taken down. She thinks they should not plan for that many homes in Phase 2. She said the development will add to light pollution. She asked the Commission to remember why people were drawn to Andover: for the rural aesthetic.

Bryan Kost, 4460 – 198th Lane, Oak Grove, came forward and stated he is concerned about County Road 7 and would like to see it straightened out and not have roundabouts. He stated roundabouts are cheap, dangerous, and disrupt traffic.

Ben Reichers, 15844 Martin St NW, came forward and stated people move to Andover and create costs. He stated the City should consider other things that are needed because people move in, such as roads and schools. Mr. Reichers said taxes keep going up no matter how many people move into Andover. He feels there should be a fee for roads when a development is built.

Adi McDonald, 16927 Jivaro St NW, came forward and said the density is too high and feels the City should keep Andover as it is if they are not going to change the road system. She pointed out the notice of the public hearing had a map that shows walking paths and a connection to Martins Meadows. She said the map is inaccurate as it is showing it goes over her property and she is upset that the City did not check the map before sending it out.

Chairperson Koehler asked if Ms. McDonald had contacted the City about the trail. She said the trail has been an issue prior to the mailing and City staff has been well aware of it.

Diane Park, 1524 – 155th Lane NW, and Kevin Petersen, 1901 – 140th Lane NE, Ham Lake, came forward and stated they are the property owners of Petersen Farms. She said the primary goal was to preserve the natural beauty of the land and having new families move to the area to enjoy nature. She stated the reason the family chose JD Andover Holdings, was because of the PUD and the ability to work with the natural beauty instead of cutting everything down and having cookie cutter lots. She said her family is very satisfied with the development and has received many positive comments from community members. Mr. Petersen stated he has received requests for them to show him around the farm and see the lots. He said Phase 1 was perfect and then residents wanted it changed. He said many residents were not aware of where the property lines were so when trees were cut down, the neighbors were upset thinking it was on their property.

Diane Holst, 4276 – 165th Ave NW, came forward and asked if the PUD is a benefit to Andover and something the City needed. She does not believe the PUD is a benefit and said the density is something that should not be considered.

Darren McDonald, 16927 Jivaro St NW, came forward and asked how the park dedication fee is helping the development. He said Inca is a State Aid road and the speed limit is 35 mph. He said there should be discussion about the density proposed and the speed of the road.

Commissioner Godfrey asked if there was contingency plan if the access to the south fails to occur. Mr. Lazan stated the access to the south was the last option to make a second connection. He said the connection to the north was blocked by Martins Meadows and

the west is blocked by the topography. He said there is not a contingency plan. He said he would like the option to put a temporary cul-de-sac in and extend the road when it is feasible.

Commissioner Godfrey asked how the inability to add a second access to the south impacts the Master Plan. Mr. Lazan stated Phase 1 can sit on its own because it is nearly complete.

Commissioner Godfrey asked Mr. Lazan to clarify the plan for the trail access from Phase 1 to Phase 2, and then to Martins Meadows. Mr. Lazan stated his role is to provide access to the edge of the development and they did. He explained they drafted a map showing an easement through the McDonald's property and City staff approached the McDonalds to arrange an agreement. He said he would love the trail to go through and that was the intent.

Commissioner Hudson asked how many phases are in the Master Plan. Mr. Lazan replied the development is done in small bites to not overwhelm the market. He said Phase 1 went really well, and Phase 2 is a bit larger. He is expecting there to be 5 phases, but it could be 4, depending on the market.

Commissioner Elias asked Mr. Lazan what studies they have done to see how the development affects the water serving the existing homes. Mr. Lazan stated the development is not high density. He said the minimum lot size of 1.5 acres would fit 6 single family urban homes. Mr. Lazan said well and septic are analyzed by State licensed inspectors and they have done 6 samples on each lot testing the soils and verified each one to be adequate to have well and septic.

Chairperson Koehler asked Mr. Lazan why there is not a park in the revised plan. Mr. Lazan said the Andover Parks Commission decided to take cash in lieu of land. Mr. Lazan said they allocated 40 acres of open space including the lake, upland, and community space using some of the existing structures on the farm. He said there is more open space in the revised plan.

Commissioner Godfrey asked if the 46-acre open space is being deeded to the City or under control of the homeowners association. Mr. Lazan said it is uncertain as to who is going to manage it. He stated the homeowners association could maintain it and they would install woodchip trails. He said the City and developer will come to an agreement and maintain the area as open space and not an active park.

Commissioner Hudson asked what the average gross density was in the original proposal. Mr. Lazan stated the original and the revised have the same average gross density of .32 units per acre.

Hope Luedtke, 16932 Jivaro St NW, came forward and stated the City and developer did not do their homework about the 20 feet that belonged to the McDonalds when the trail was proposed 2 years ago.

Jeff Luedtke, 16932 Jivaro St NW, came forward and asked if the City is going to let developers come in and do what they want after they have received an initial PUD. He stated roads are missing, connections are not made, major density changes, cul-de-sac lengths and it seems like a trend. He said the City is giving and what are residents getting in exchange. Mr. Luedtke said the City is taking the developers word for a lot of things like environmental impact, a future road connection, and more items.

Adi McDonald, 16927 Jivaro St NW, came forward and said the City is looking at the Master Plan for average density. She said Mr. Lazan stated Phase 1 can stand on its own and she asked whether the City and developer are looking at the project as a whole or as phases because it does not appear consistent.

Mr. Lazan came forward and stated he said Phase 1 can stand on its own for traffic purposes. Mr. Lazan stated there are issues that are being raised which were raised before the PUD was approved. He clarified that this is an existing PUD and they are asking for flexibility to add amenities to the development to include ponds and floodplains. Mr. Lazan said there are a number of areas in Phase 2 that required the removal of natural resources in spite of the developer trying their best to retain them. He stated the Park Dedication fees are paid in full. He said Inca is an MSA road and the City can set the speed limit. Mr. Lazan spoke about the density of the development and stated some lots have been moved around, however, the gross density has stayed the same. Mr. Lazan stated the project has not been rushed; it has been in process for 3 years. He showed a map of the development displaying the roads. He stated they wanted County 7 realigned even though it would cut their project in half. He said they worked with the County for 4 months on a plan to realign County 7 and the County decided not to pursue realignment but install roundabouts. He said these are examples of work they have done over the past two years and they have come to the City when they have had problems with the plan.

Ben Reichers, 15844 Martin St NW, asked if certification of the land for well and septic comes with liability or if it is just a piece of paper. Chairperson Koehler replied that he had the same question and will ask staff after the break.

Motion by VanderLaan, seconded by Elias, to close the public hearing at 9:04 p.m.

Motion was taken by roll call:

VanderLaan - aye

Koehler - aye

Hudson - aye

Godfrey - aye

Elias – aye

Loehlein - aye

Perra- aye

Motion carries unanimously

Motion by Godfrey, seconded by VanderLaan, to recess the meeting for 10 minutes at 9:04 p.m.

Motion was taken by roll call:

VanderLaan - aye

Koehler - aye

Hudson - aye

Godfrey - aye

Elias – aye

Loehlein - aye

Perra- aye

Motion carries unanimously

Chairperson Koehler reconvened the meeting at 9:15 p.m.

Chairperson Koehler asked if the City received copies of the engineering reports from the soil borings for the wells and septic system. Mr. Janish stated the City gets copies of the septic systems reports. Chairperson Koehler asked what people should do if the septic system does not hold up after they move in. Mr. Janish stated residents usually call the City and talk to the Building Department. The Building Department finds out who designed it and installed it. Mr. Janish stated the burden usually falls on the licensed installer who holds liability for a certain time period. Mr. Janish said there could be multiple parties involved including the installer, designer, and inspector.

Chairperson Koehler asked who residents should contact if they had issues with their water such as discoloration or water pressure, after a new development comes in. Mr. Janish replied they should contact a well technician to determine why that would happen. Chairperson Koehler asked if they could contact the City if it was caused by the new development. Mr. Janish agreed and said the City can offer guidance to a resident.

Chairperson Koehler asked what it will take to fix a map with a trail that goes across someone's property. Mr. Janish stated there is a 20-foot gap, but at the scale of the maps, it is not discernable. He stated the trail can be removed from the map and the developer can have it removed from the plans.

Chairperson Koehler asked Mr. Janish to explain how traffic is managed in this area: when is the City, County, or developer involved and have all the boxes been checked. Mr. Janish replied County 7 was running at 50% capacity 3 years ago and everything is operating well according to the studies.

Chairperson Koehler asked how the park dedication fees the developer paid are used. Mr. Janish stated the Park and Recreation Commission has a Master Plan and Capital Improvement Fund which guides the development of parks and trails. Chairperson Koehler stated the Park Commission may take cash in lieu of land for a variety of reasons

such as cost of a park, parks in close proximity, or access to parks via a trail. Mr. Janish stated the Parks and Recreation Commission review developments and can make recommendations; however, it is the Parks Master Plan that guides their decisions.

Chairperson Koehler asked how the City measures the density of a development: is it by phase or by the whole project? Mr. Janish replied the practice is to look at the entire project (400 acres) to establish density. He stated he agreed with the developer that some areas will have more density but overall, the density is lower. He stated that contributes to the efficiency of the PUD in order to keep more open space.

Commissioner Godfrey asked Mr. Janish to address the floodplain, when the map was revised, and when it is scheduled for revision. Mr. Janish replied the floodplain was mapped this year and the developer made financial contributions to get it done.

Commissioner VanderLaan asked about Martins Meadows, a dedicated piece of open space. She gave options of including Martins Meadows in the trail system or cutting it off, so it is more protected. She asked how that land was acquired. Mr. Janish replied the City went out to referendum for open space and Martins Meadows was acquired from a family member.

Commissioner Godfrey asked if the Commission recommends approval to the City Council, do the 200 items noted in the City Engineer's report need to be resolved before it is official. Mr. Janish stated the items need to be resolved. He said of all the comments, there are two important ones which include access to the properties north of the development and the access to the south.

Chairperson Koehler stated it is quite common to see a memo from Mr. Berkowitz addressing unresolved issues. He stated it is very uncommon to see issues of the magnitude of access points. He said the project has not been rushed, but he believes it came to Planning and Zoning earlier than it should have. He said he is uncomfortable making a decision without the issues being resolved and there is a need for contingencies placed upon the recommendation.

Commissioner Perra informed the Commission that the Parks Commission has struggled to replace outdated parks equipment and maintain the current park system, so they have become very conservative in accepting park land and lean towards cash in lieu.

Commissioner Loehlein stated he has two major hang-ups on approval of this amendment. He said not having a connection makes this appear like two separate developments. Commissioner Loehlein stated there is a massive list of unresolved comments that it's hard to know where it's going to fall.

Chairperson Koehler asked why the east/west connection is being eliminated. He inquired if it was due to the developer not wanting additional costs or the City wanting to preserve the land. Mr. Janish stated the developer brought the item to the Council at a

workshop and discussed the impact to the wetland and showed a drone video of the land. The Council reached a consensus that the feasibility of the road and the environmental impact was too significant.

Chairperson Koehler asked the Commission how they felt about the longer cul-de-sacs. He stated they have approved longer cul-de-sacs and the main issue is snow removal. The Commission did not have any issues regarding the length of the cul-de-sac.

Chairperson Koehler asked the Commission how they felt about the connection to the south. He stated his opinion is that everything is contingent on constructing the access road. Chairperson Koehler would approve the PUD contingent on the south access road. Commissioner Loehlein stated there are too many unresolved issues and the practice has been that these issues are resolved before they come to the Planning and Zoning Commission.

Commissioner VanderLaan stated she attended the Council workshop when the east/west road was discussed. Commissioner VanderLaan stated the Council decided to hand the decision to the Planning and Zoning Commission to vet out. She stated she is okay with approving the CUP and make it contingent on the southern access point.

Chairperson Koehler stated he agrees with Commissioner VanderLaan and said if the developer can figure out how to build the southern access point, then go ahead. He said if they cannot figure it out, then wait until they do.

Commissioner Godfrey asked if there was a ghost plat for the future phases that identifies ways to get in and out of the development. Mr. Janish displayed the Master Plan map and identified the other access roads into the development. Commissioner Godfrey stated due to environmental factors, it is impossible to meet the requirement to extend the road as originally planned, however there is a future option to make access to the development more workable.

Chairperson Koehler asked Commissioner Godfrey if she thought the development did not need the southern access road because the future phases would provide enough access. Commissioner Godfrey said no, although she is trying to find some glimmer of hope that there is a solution should the situation with the landowner to acquire the property for the road were to fall through.

Commissioner VanderLaan said the issue is how firm of a stance does the Commission want to take in requiring the second outlet. Commissioner VanderLaan read the line from Mr. Berkowitz's memo stating the developer needs to provide a secondary roadway and the developer is pursuing land to provide the access. She said Mr. Berkowitz recommended the approval be contingent on providing a second access to the development.

Motion by VanderLaan, seconded by Elias, to recommend to the City Council approval of Conditional Use Permit (CUP)/Planned Unit Development (PUD) Amendment “The Preserve at Petersen Farms” Phase 2 - PIDs 07-32-24-42-0002, 07-32-24-43-0003, 07-32-24-34-0002, 07-32-24-34-0003, 07-32-24-33-0001, 07-32-24-31-0001, 07-32-24-32-0001, 07-32-24-23-0002, 07-32-24-24-0001 - JD Andover Holdings.

Commissioner Elias seconded with an amendment making the approval contingent on providing a second access to the development. Commissioner VanderLaan accepted the friendly amendment.

Commissioner VanderLaan added an amendment adding the following phrase to Conditions 13 and 14: “to the satisfaction of staff”. Commissioner Elias accepted the friendly amendment.

Motion was taken by roll call:

VanderLaan - aye

Koehler - aye

Hudson - nay

Godfrey - aye

Elias – aye

Loehlein - nay

Perra- aye

Motion carries 5-2 (Hudson and Loehlein)

Mr. Janish announced the recommendation will be on the City Council’s agenda on Tuesday, September 1, 2020.

PUBLIC HEARING: PRELIMINARY PLAT - THE MEADOWS AT PETERSEN FARMS (46 SINGLE FAMILY RURAL LOTS) - PIDS: 07-32-24-42-0002, 07-32-24-43-0003, 07-32-24-31-0001, 07-32-24-34-0002 – JD HOLDINGS

Mr. Janish presented the Preliminary Plat for the Meadows at Petersen Farms. Mr. Janish stated the Preliminary Plat is comprised of 47 pages. He reviewed the easements and street access maps. Mr. Janish presented a slide depicting Jivaro Street and stated the Council directed the two residents and the developer to discuss realignment of Jivaro Street. Mr. Janish stated the City is not aware of any resolution to this matter. Mr. Janish spoke briefly about shoreline access, tree removal, and stormwater information. Mr. Janish summarized the documents available for the Commission to review in making their decision.

Motion by Hudson, seconded by Godfrey, to open the public hearing at 9:58 p.m.

Motion was taken by roll call:

VanderLaan - aye

Koehler - aye

Hudson - aye

Godfrey - aye

Elias – aye

Loehlein - aye

Perra- aye

Motion carries unanimously.

Mr. Lazan came forward and stated this is the most contentious item of the development. He said currently there is not an agreement between the property owners and the developer. Mr. Lazan said they do not know the history of the area, but they have acquired the written record. Mr. Lazan stated Jivaro street exists on GIS but not in title. Mr. Lazan stated there is a private agreement between two parties granting non-exclusive access to the Luedtke Property and how the easement will terminate. He stated the agreement was made with the full intention of being able to develop the property at a later date.

Diane Park, 1524 – 155th Lane NW, and Kevin Petersen, 1901 – 140th Lane NE, Ham Lake, came forward and said they had conversations with their father about the agreement between Anoka Independent and the Luedtkes. Ms. Park stated the agreement was for the 40-acre parcel. Ms. Park stated Anoka Independent was not approached about extending the easement over two parcels when the Luedtkes split their lot. She explained the original agreement has never been changed and it was between Anoka Independent and the Luedtkes' 40-acre parcel.

Mr. Lazan stated the easement was assigned to the City of Andover as part of a lot split in 1995. He explained the easement was converted from a private agreement to a public easement without the knowledge of the Petersen family. Mr. Lazan showed the easement on the map and identified the proposed street going through the development, Inca Street. He explained Inca Street cannot be shifted and must go through the properties as shown on the map because it is an MSA road and approved by staff. Mr. Lazan quoted language from the agreement stating when the easement will be vacated. Mr. Lazan stated they have worked on the issue for the past year and have brought forward 10 options for access to the property owners. He explained every proposal has the developer paying all costs for the driveway and putting in a cul-de-sac at the end of the development until the properties to the north are developed. He said all offers have been turned down and there is no resolution at this time. He stated the development is ready to move forward and the developer is asking the City to honor the easement agreement and vacate the easement.

Bud Holst, 4276 – 165th Avenue NW came forward and said he heard the intent of the easement agreement was to serve one 40-acre parcel. He said it does not matter what the intent was, what the document says is what matters. He said there is no place in this agreement that identifies the acreage, it identifies the Luedtkes. He said since the City of Andover approved the easement means precedence is set and the City should honor the easement.

Mr. Lazan clarified the easement agreement does not directly say 40-acre parcel, but it does say the Luedtke property in Exhibit B which shows 40 acres.

Robert Petersen, 4239 - 165th Ave, came forward and said he is the grandson of Mr. Petersen and was actively involved in the business when this agreement was written up and he was involved in writing it up. He stated his grandfather was very lax in putting things in writing. He said the agreement with the Luedtkes was access to their home, whether they had 40 acres, 10 acres, or 5 acres. He stated the road should go to the Luedtke's property the way it is going in now.

Ben Reichers, 15844 Martin St NW, came forward and said the City took responsibility for Jivaro Street and it became a City street. He stated the City cannot go back and say now it is an easement and not a street. He said the City should take responsibility.

Jeff Luedtke, 16932 Jivaro St NW, came forward and said Diane and Kevin were not there when he and Hope talked to Fred Petersen. He said there was a lot of work done so the City would allow them to build a house on their property. Mr. Luedtke presented a letter from Todd Haas stating Jivaro was established as a minimum maintenance road. Mr. Luedtke presented Statutes for how to vacate a minimum maintenance road. Mr. Luedtke explained the intent of the easement agreement was not to give him access to his property because he had that with Jivaro Street. He said the intent of the agreement was so they could fulfill the requirements the City was putting on them to build a house. He said the agreement identified the Luedtke property because at some point they would sell part of the property and still needed access to their home. Mr. Luedtke stated the City would not acknowledge the lot split until all the conditions were met: Jivaro Street surveyed, agreement with the Petersens, and sign over the easement rights to the City, so Jivaro would become an official road. He stated this proves the intent of the agreement. He said the lot split was not officially recorded. He said all he is asking is that the Commission members put themselves in his position.

Mr. Lazan came forward and stated this entire situation is a mess. He stated they are looking for a solution and it comes down to a couple hundred feet. He said they tried to resolve this in an amicable way but could not come up with an agreement so now they are deferring to the City. He said it is the Petersen's property and they have the right to develop along the edge of their property. He explained he wants to resolve the issue of a couple hundred feet in the most amicable way and they have 10 options which will work.

Adi McDonald, 16927 Jivaro St NW, came forward and said the options the developer presented required her to give up land so her neighbor can have access to their property. She said the last option was a land swap that benefited her but did not benefit the Luedtkes. She stated there was not a lot of homework done and if they did do their homework, this would not be an issue.

Hope Luedtke, 16932 Jivaro St NW, came forward and said it is true the developers have tried to work with them. She said the land swap may be something they can work with,

but they are not going to say yes until everything is on paper and the lawyers have looked at it. She said 25 years ago, they put a lot of work into building a home and it took them three years. She stated this has been rushed and it is not ready to go to Planning and Council because no agreement has been reached. She said the developer just needs to reduce their plan by one lot to accommodate her access. She stated changing her access to Inca is a headache and costs are involved. She said she thinks they will be able to work something out, but they are not ready to make that happen yet.

Diane Park, 1524 – 155th Lane NW, came forward and wanted to be clear that she is speaking on behalf of her father and speaks of his intent. She said he has no recollection of a lot split and he has said his intent was to Hope and Jeff Luedtke on the 40-acre parcel.

Chairperson Koehler stated he is keeping the public hearing open as the Commission discusses the item in order to gather feedback.

Commissioner VanderLaan said fundamentally, the City was never granting anyone to have a shared driveway. She asked staff if building permits are valid and if they are not valid, the City needs to rectify the issue.

Mr. Baumgartner said this is not a simple matter and is difficult going back in history. He said the question is what the intent of the City Council at the time was. He said the City Attorney at that time reported the easement was not necessary because the road was a dedicated roadway. Yet, the Council accepted the easement and allowed buildings to be constructed. He said in order for a structure to be built, it must have access to a public roadway. He said the purpose of accepting the easement was to allow for the access to permit construction of the properties. He said the easement is clearly defined and his opinion is that the intent of the easement is to service the Luedtke property. He said the Council at the time understood the intent and the location of the easement. He said that by accepting the easement, the City put themselves in a difficult situation as a holder of the road and acceptor of the easement. He asked: is the City vacating a road or vacating an easement? He said his job is to protect the City and he always takes the conservative approach first. He said if the City is bound by the easement, then the City is the grantee of the agreement. He said the City, as the grantee and Anoka Grain and Feed as the grantor, amend the document in any way they want. If the City allowed the Luedtke's to build their home and this particular easement was going to provide access, and the City changed the conditions of the easement agreement, the Luedtkes could have a case against the City if they take away access. He said the bottom line is this: there is an established location for the easement, it is there for a purpose, the City accepted the easement with the understanding it is there for a purpose, and the current Council has no desire to damage the Luedtkes' access. He stated if the City is to vacate the easement, they are creating a land-locked parcel. He said the parties need to figure this out, or the City will have to. He said the two parties have control over the outcome and if they come to the City for a decision, they relinquish control.

Commissioner VanderLaan said she remembers Jivaro Road does not serve the McDonald property very well. She said the road is substandard and the City has not maintained it, except as a minimum maintenance road. She said the solution is to continue negotiating so the City's interest does not dominate them. She said the road must move away from the lake. She said if they try to sell their home, it may be difficult because of the shared driveway and the condition of the roadway. She encouraged the two parties to come to an agreement.

Motion by Elias, seconded by Godfrey, to recess the meeting for a five-minute break.

Motion was taken by roll call:

VanderLaan - aye

Koehler - aye

Hudson - nay

Godfrey - nay

Elias – aye

Loehlein - nay

Perra- nay

Motion fails 3-4 (Godfrey, Loehlein, Perra, Hudson)

Chairperson Koehler asked if the driveways came off a cul-de-sac and the homes do not have frontage, what is the City's stance. Mr. Janish said there is not 300 feet of continued right-of-way on the McDonald property as it stands now. Mr. Janish referred to a survey that shows the McDonalds have 100 feet of easement. Mr. Baumgartner stated the original agreement was for 18 feet of easement and the document shows 66 feet. Mr. Baumgartner said at the worst, what the McDonalds have is a legal non-conforming property which means it can continue to exist and if at some time a roadway is built through the property, it can become a legal conforming property.

Chairperson Koehler stated he agrees with Mr. Baumgartner and Commissioner VanderLaan that the last thing the parties need is someone making up their minds for them. Chairperson Koehler said an arbitrator may be beneficial.

Mr. Lazan proposed that they give 18 feet of easement to Inca Street to get the Preliminary Plat approved and then work something out prior to bringing forth the Final Plat. He requested a recommendation to approve the Preliminary Plat with that condition.

Chairperson Koehler asked what happens if the Commission does that and an agreement is not reached. Mr. Lazan stated the property owner is in the same position they are today, with an 18-foot easement with access to the road. Mr. Lazan displayed a visual of the option and stated it provides the homeowners exactly what they have today.

Mr. Baumgartner stated that decision locks the property owners in if there is not a better solution. He said he would rather see the Commission make an approval contingent upon a solution acceptable to the City.

Chairperson Koehler suggested the Commission approve the plat with the condition that the parties reach an agreement acceptable by the City. Chairperson Koehler stated they have until it comes before Council on September 1 to reach an agreement. Mr. Lazan stated that was enough time for the developer.

Commissioner Hudson stated a solution acceptable to the City is not the appropriate language. He said it should be what is acceptable to the McDonalds, Luedtkes and the developer and the City should not be dictating that.

Hope Luedtke, 16932 Jivaro St NW, came forward and said her family is on vacation and they would not have the time to review the proposal and come to a decision by September 1.

Chairperson Koehler replied to Commissioner Hudson stating if the solution has to be acceptable to all three, then one person can hold out and kill the project. Mr. Baumgartner stated the worst scenario is the City making the decision.

Commissioner VanderLaan proposed making a motion to discontinue discussion of the Preliminary Plat pending a meeting among the parties. She believes the parties are reasonable and can solve it.

Mr. Lazan said they are on an extremely tight timeframe and he will commit what he can in the next two days, but he would rather have a recommendation for denial than a delay.

Darren McDonald, 16927 Jivaro St NW, said they have been working with the developers and it has been a long and emotional process.

Chairperson Koehler stated they have the option to deny, approve, or table. He said if the Commission tables the decision, it throws a monkey wrench in the whole thing.

Mr. Janish received a phone call from a resident strongly supporting the use of roundabouts and recommends approval of the plat contingent of roundabouts on 7th Avenue.

Jason Osberg, JD Andover Holdings, came forward and thanked the McDonalds and Luedtkes for working with them and thanked the City staff for coordinating meetings to try and resolve this issue. He said there is no easy answer and believes they are close to a resolution.

Jeff Luedtke, 16932 Jivaro St NW, came forward and said it is a mess because of requirements and lawyers. He said even if there is an agreement for a land swap, he is not doing anything until it is in writing and the lawyers have gone over it. He said having the documents drafted is not going to be done in two or three days. He does not want to be in this position again.

Motion by Hudson, seconded by Godfrey, to close the public hearing at 11:35 p.m.

Motion was taken by roll call:

VanderLaan - aye

Koehler - aye

Hudson - aye

Godfrey - aye

Elias – aye

Loehlein - aye

Perra- aye

Motion carries unanimously.

Chairperson Koehler stated he does not want to table the item, but he also does not want to rush it because what Mr. Luedtke stated is true. He suggested recommending approval with the condition that the parties reach an agreement and give them the time to come to an agreement.

Commissioner Loehlein stated he thinks it is outrageous that they are at this point. He said the City has developments going on all over and there are disagreements between property owners and developers all the time that get worked out. He said the Luedtke's and McDonalds should not be put out or inconvenienced because of the development. He stated the developers should be giving more than the Luedtke's and the McDonalds to leave them as happy neighbors.

Commissioner Godfrey said she feels that they approve it with contingencies, it puts undue pressure on the property owners to reach a solution. She said it is not appropriate for the Commission to put pressure on the residents and says she thinks the Commission should recommend denial of the application because it is not ready.

Chairperson Koehler stated the Commission should decide either way, so it goes to City Council.

Motion by Loehlein, seconded by Elias, to recommend to the City Council denial of Preliminary Plat - The Meadows at Petersen Farms (46 Single Family Rural Lots) - PIDs: 07-32-24-42-0002, 07-32-24-43-0003, 07-32-24-31-0001, 07-32-24-34-0002 - JD Holdings due to the developer has not provided reasonable access to the properties on the north.

Chairperson Koehler asked Mr. Baumgartner to comment on the motion. Mr. Baumgartner stated if approval creates a landlocked property, then it is appropriate to deny. In addition, Mr. Baumgartner stated approval would eliminate access to a property that the City previously provided access to.

Motion was taken by roll call:

VanderLaan - nay

Koehler - nay

Hudson - aye

Godfrey - aye

Elias - aye

Loehlein - aye

Perra - aye

Motion carries 5-2 (Koehler, VanderLaan)

Commissioner VanderLaan stated she is voting nay because she feels stating the project is moving forward will motivate the parties to come to a resolution.

Mr. Janish stated the item will be presented to City Council on September 1, 2020.

Chairperson Koehler stated this has been a difficult four hours and he cannot imagine what the parties are going through. He wished the parties good luck and hoped for the best for them.

OTHER BUSINESS

Chairperson Koehler thanked staff individually and stated they are phenomenal.

No other business.

ADJOURNMENT

Motion by Hudson, seconded by Elias, to adjourn the meeting at 11:47 p.m. Motion was taken by roll call:

VanderLaan - aye

Koehler - aye

Hudson - aye

Godfrey - aye

Elias – aye

Loehlein - aye

Perra- aye

Motion carries unanimously.

Respectfully Submitted,

Shari Kunza, Recording Secretary
TimeSaver Off Site Secretarial, Inc.