

***REGULAR ANDOVER CITY COUNCIL MEETING – SEPTEMBER 1, 2020  
MINUTES***

The Regular Bi-Monthly Meeting of the Andover City Council was called to order by Mayor Julie Trude, September 1, 2020, 7:00 p.m., at the Andover City Hall, 1685 Crosstown Boulevard NW, Andover, Minnesota.

Councilmembers present: Sheri Bukkila, Valerie Holthus, Jamie Barthel, and Ted Butler

Councilmember absent: None

Also present: City Administrator, Jim Dickinson  
Assistant City Engineer, Jason Law  
Community Development Director, Joe Janish  
City Attorney, Scott Baumgartner  
Others

***PLEDGE OF ALLEGIANCE***

***PROCLAMATION – DOMESTIC VIOLENCE AWARENESS MONTH***

Mayor Trude declared October Domestic Violence Awareness Month and read the Proclamation.

***RESIDENT FORUM***

No one appeared before the Council.

***AGENDA APPROVAL***

***Motion*** by Barthel, Seconded by Bukkila, to approve the Agenda as presented. Motion carried unanimously.

***APPROVAL OF MINUTES***

*August 18, 2020 Regular Meeting:*

***Motion*** by Butler, Seconded by Butler, to approve the August 18, 2020 Regular meeting minutes as presented. Motion carried 4 ayes and 1 present (Bukkila).

**CONSENT ITEMS**

- Item 2 Approve Payment of Claims
- Item 3 Declare Cost/Order Assessment Roll/20-14, 2020 Mill & Overlay - Jay Street NW (See Resolution R059-20)
- Item 4 Declare Cost/Order Assessment Roll/20-15, 2020 Mill & Overlay - Martin Street NW (See Resolution R060-20)
- Item 5 Declare Cost/Order Assessment Roll/20-16, 2020 Mill & Overlay - Woodland Estates 1<sup>st</sup> & 2<sup>nd</sup> Additions (See Resolution R061-20)
- Item 6 Award Bid/20-17/Public Works Pavement Reconstruction (See Resolution R062-20)
- Item 7 Approve Amendment/16-39B/2018 Comp Plan Update/Transportation
- Item 8 Accept Contribution/CenterPoint Energy Fire Dept. Equipment (See Resolution R063-20)
- Item 9 Adopt Resolution Accepting CARES Act Grant Funding for Elections (See Resolution R064-20)
- Item 10 Rescind Resolution R056-20 and Approve Resolution for Vacation of Drainage and Utility Easements and Acceptance of New Drainage and Utility Easements - 16523 Orchid Street NW/3290 165<sup>th</sup> Lane NW (See Resolution R065-20)

**Motion** by Bukkila, Seconded by Barthel, to approve the Consent Agenda as read. Motion carried unanimously.

**CONSIDER APPROVAL OF AN ORDINANCE AMENDMENT RENAMING A STREET IN SHADOWBROOK NORTH**

The City Council is asked to approve Ordinance 212-I renaming certain streets in Shadowbrook North in the City of Andover. Community Development Director Janish stated staff is recommending changing the street known as Alder Street NW to be renamed Butternut Street NW for the north-south segment and 143<sup>rd</sup> Avenue Northwest for the east-west segment. Mr. Janish stated once approved, the Building Official will notify the changes to the authorities stated in the staff report.

**Motion** by Butler, Seconded by Bukkila, to adopt Ordinance 212I changing/renaming Alder Street NW to Butternut Street NW/143<sup>rd</sup> Avenue NW. Motion carried unanimously.

**CONSIDER 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**

Community Development Director Janish stated the City Council is asked to consider a Conditional Use Permit (CUP)/Planned Unit Development (PUD) Amendment for the Preserve at Petersen Farms. This request will modify the original PUD and the PUD

Amendment that occurred on December 18, 2018.

Mr. Janish reviewed the purpose of a PUD which is to encourage more efficient allocation of density and intensity of land; allows for greater flexibility in environmental design; and demonstrates, to the satisfaction of the City Council that a higher quality development will result due to the use of a PUD.

Mr. Janish stated the property is not in the MUSA and the applicant removed the property from the Agricultural Preserve eight years ago to plan for a development. Mr. Janish explained the developer is seeking to modify the PUD to add Phase 2, deviate from the length of cul-de-sacs, utilize private septic systems instead of shared, permit 5 lots to be 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 stated the Planning and Zoning Commission held a public hearing on August 25, 2020 where they received a presentation from the developer and feedback from residents. Mr. Janish summarized the concerns residents addressed: the project is too dense; deviations of the lot sizes; need more time to review and take public comments; loss of a rural feel; too many trees being cut down; taxes keep going up even while Andover is growing; is it a benefit to Andover; the speed of Inca Street since it is an MSA route; why isn't the City requiring the access to Phase 1 if it's requiring an access to the south; and why are the number of lots increasing around the lake.

Mr. Janish presented the comments and questions brought forth by the Planning and Zoning Commissioners. He said they asked the following:

1. What is the contingency plan if the south connection in Phase 1 does not materialize?
2. Is there any other possible connection besides east/west connector or south option?
3. How many phases are expected?
4. How are septic system locations determined?
5. If individuals have issues with their wells, what do they do?
6. When was the flood mapping completed for this area, and when will it be updated?
7. How did Martins Meadows come to be?
8. Can the approval process be contingent upon the applicant securing a secondary access through property to the south that the applicant does not own?

Mr. Janish informed the Council they have the most recent and updated information in their packet. Mr. Janish explained the City Council is asked to take a look at this request, taking into account the Planning and Zoning Commission recommendation and concerns from the neighbors. He stated the Planning and Zoning Commission, on a 5-2 vote, approved moving this item forward contingent on access to Phase 1 and adding the term "to the satisfaction of staff" on conditions 13 and 14 of the Resolution.

Mayor Trude asked if the Council can require an applicant to address issues on land outside of

plat requirements and on land they don't own.

Mr. Baumgartner said the concept of going off-plat, when you don't have the authority to be there, is difficult. He said he looked at the City Code for direction and found that any conditions placed on the applicant, it must be within the boundary of the plat. Mr. Baumgartner read portions from the City Code that supports his opinion and stated basing approval of a plat on issues outside its own boundaries can leave developments undeveloped. He advised Council to base their decision on issues pertaining to whether the plan functions, is desirable on its own, and meets requirements acceptable to the City Council.

Mayor Trude stated she could see someone stopping a landowner from developing hundreds of acres of their land by creating an obstacle which is not fair to the landowner.

Mayor Trude stated the City is being asked to consider an amendment to the PUD amended in order to proceed with Phase 2. She said the Council discussed the east/west road at a workshop and discussed the soils, the width of road, and the environmental impact. Mayor Trude stated the developer had things come up that were not anticipated.

Mr. Janish suggested the Council could move between Agenda Items 12 & 13 as needed to ensure all were discussed before the Council voted.

Mayor Trude stated she had a list of questions for discussion and would like to see where the Council stands on each item. Mayor Trude asked the Council to comment on the east-west connector road and if it was a reasonable request to remove it.

Councilmember Bukkila stated she is really disappointed they are not getting the road and understands it is impossible. She said the alternative of going south is putting them in the same predicament as the east-west route: that it is not viable. She said there is no guarantee, no matter which direction they go, that there will be a secondary access.

Mayor Trude said there will be continued efforts to connect the development to the south but they can't require it as part of the plat.

Councilmember Bukkila stated even when you own the property, there is no guarantee the soils will support a road.

Mayor Trude explained the development is limited to providing access in other directions because of geography.

Councilmember Bukkila said the developers did have land with the intent of creating a road, however, they did not do the work prior to the proposal to ensure its viability. She said it hurt the developer's credibility.

Councilmember Holthus asked if there can be a footnote or clause for future consideration of

the road going south.

Mayor Trude stated the Council will encourage discussions about road access to the south and asked if Council can make it a condition and not a requirement. She said it would show the City made an effort to make the connection.

Mr. Baumgartner said you can make discussion of a southern access a condition, but the City has no authority to enforce it.

Councilmember Holthus asked how the Council can prevent the secondary access to the south from being forgotten.

Mr. Baumgartner replied the City can add a notation to encourage the developer to continue negotiations, and it may not be enforceable, but it would create a record.

Council consensus was to a condition stating the developer is encouraged to continue the pursuit of a connection to the south.

Councilmember Barthel stated he watched the Planning and Zoning Commission meeting and thanked the Commissioners for their work because it was a long meeting. He said he is disappointed the road isn't going through and understands the Council can't make the developer liable for property they don't own. He said he would like to require some sort of secondary access and state the rest of the development is contingent on access to Phase 1. He said if there is not a secondary access by the time Phase 2 is complete, the City should make them build a road through the swamp.

Mayor Trude said building a road through the wetland was not feasible from an engineering standpoint. She said it would be a denial based on not having an access and effects the people in Phase 1 more than the people in Phase 2.

Councilmember Barthel said the people in Phase 1 deserve another access and the City can't expect everyone to go through 168<sup>th</sup> Avenue.

Mayor Trude said the City always encourages two accesses to neighborhoods but the topography of the land is making it difficult.

Councilmember Butler agrees with the disappointment of not having the road and also agrees with not being able to control something out of the development. He said he would like to see a secondary access road however he cannot prohibit moving forward with phase 2.

Mayor Trude called on Assistant City Engineer Jason Law and asked him to go into greater detail about soil borings and this road. Mr. Law said there was quite a few soil borings taken in the area prior to the study of building the road, however, none were taken in the wetland area where the crossing needed to be. Mr. Law stated the City is now requiring the developer

to take additional soil borings to ensure the feasibility of a road prior to approval. Mr. Law said there are fewer wetland areas as they move to the west, which consists of clay soils which are much more viable.

Mayor Trude said the City is being more aggressive in requiring soil borings and in this case, there was a significant depth of peat. Mr. Law said she is correct and the developer would have to excavate all the peat and bring in clean fill. He said it is a complicated process and would impact the wetlands tremendously.

Councilmember Barthel said it is feasible. Mr. Law said from an engineering standpoint, it is feasible, but the consequences outweigh the benefits.

Councilmember Holthus said the wetlands could be forever changed. Mr. Law agreed it could.

Councilmember Barthel asked if a bridge could be built. Mr. Law replied it would be millions of dollars to build a bridge and the City would own it.

Mayor Trude said the revised plan is to have a public woodchip trail where the farm road was maintained by the HOA. Mr. Janish said if the HOA does not maintain the trail, the City would follow up with the HOA and if all else fails, the City would take over the maintenance of the trail.

Councilmember Barthel stated he is agreeable to Phase 2 moving forward, however his approval of future phases is in question if there is nothing done about the access to Phase 1.

Mayor Trude spoke about the remaining issues: the cul-de-sac length, the width of the lot on the cul-de-sac at 100 feet, and a change to the self-imposed 1.5 acres of upland on each lot. She asked if Council was acceptable to these changes.

Councilmember Bukkila asked Mr. Janish to display the slide comparing the original PUD map with the revised PUD map. Councilmember Bukkila said there were a whole bunch of issues with Phase 1 because of the land. She stated she made a lot of concessions so the project could move forward. Councilmember Bukkila said she was looking forward to bigger lots in Phase 2 and aims for the high bar. She stated she is not seeing what was envisioned 2 years ago. Councilmember Bukkila said the minimums are being met but she is disappointed there is not a road, the lots are smaller, and the development does not look like what she was hoping.

Mayor Trude stated the development does not have rectangular lots over most developments, protects the lake, and has big backyards with the house closer to the road, encouraging neighbors to get to know each other.

Councilmember Bukkila said she would have liked to see lot sizes closer to 2 acres than 1.5

acres. Her expectation was that they were going to be larger lots. Councilmember Bukkila said this development borders neighborhoods with large lots and she would have liked to see the larger lots on the perimeter and the smaller lots in the interior. Mayor Trude said these are items discussed during the sketch phase and the City can't ask them to go back and redraw it. Mr. Janish said if you reduce the length of the cul-de-sacs, the developer will lose lots.

Mayor Trude said the density is the same, the lake is protected, and natural resources are preserved. She said it's a give and take.

Councilmember Barthel said he is fine with the cul-de-sac length. He agrees the lots are smaller than what he would like to see.

Council reached consensus to accept the amendments to the PUD.

**Motion** by Bukkila, Seconded by Butler to table the vote until after addressing the Preliminary Plat item. Motion carried unanimously.

***CONSIDER 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 ANDOVER HOLDINGS***

Community Development Director Janish said the City Council is asked to review a Preliminary Plat for The Meadows at Petersen Farms. Mr. Janish explained staff would like to discuss the street access. He stated a new street would be constructed in alignment with Inca Street so there would be a four-way intersection. He said the County would make improvements on 7<sup>th</sup> Avenue and plans on installing roundabouts instead of realigning the road.

Mr. Janish stated the Planning and Zoning Commission took testimony regarding the Jivaro-Inca Street realignment. He said Council direction was for the parties (the developer and landowners to the north) to resolve the issue. He said staff are aware of several meetings between the two parties and indicated there is not a resolution at this point.

Mr. Janish informed the Council that the number of lots have increased on the shoreline. He said Phase 2 takes down more trees than the developer wanted to take down, but 8 of 34 acres of trees needed to be cleared to accommodate streets. Mr. Janish explained the plat has been reviewed for stormwater drainage.

Mr. Janish stated the Planning and Zoning Commission passed a recommendation of denial in a 5-2 vote with the reason for the denial being the lack of a resolution of access to the north. Mr. Janish reviewed the comments received from residents during the public hearing as written in the staff report. Mr. Janish highlighted the Planning and Zoning Commission comments that all three parties (the City, applicant, and the landowners to the north) must be acceptable of the resolution of access to the north. He said the Planning and Zoning

Commission stated the application was not ready to come to the Planning and Zoning Commission because all the issues had not been worked out.

Diane Park, 1524 – 155<sup>th</sup> Lane NW, came forward and introduced herself as a member of the Petersen family. She stated she is present on behalf of her family and said people are pitting against each other and against the developer on social media. Ms. Park said her grandfather bought 400 acres in the 1950s and raised turkeys. She said all her grandfather wanted was to be a successful business owner. Ms. Park explained there have been three generations of her family farming the land. In addition to farming, she said her father, Fred, wanted to give back to the community. Ms. Park stated the family farm was pushed out by large corporate farms. She said she helped her parents through the change of giving up the farm and is now ensuring their future by developing their land. Ms. Park said her family are stewards of this land and extremely conscientious of how are they going to develop it. She said they interviewed many developers with the goal of preserving the natural land and sharing the beauty with other families. Ms. Park said the family did not have a choice to keep the farm because it was time to develop. She said the priority was to retain the natural beauty, honor the past, and create the future. Ms. Park said the family hired JD Andover Holdings for Phase 1 only and did not commit to Phase 2. Ms. Park stated the family was so pleased with Phase 1 that they hired JD Andover Holdings for Phase 2.

Darren Lazan, JD Andover Holdings, came forward and presented the vision for the development of the Petersen Farm. He said his business has developed a specialty helping farmers with their succession planning. Mr. Lazan said they involve families in the process of developing their property and fulfilling their vision for their land. He said he has been impressed with the Petersen family and said Diane is driven to take care of her family.

Mr. Lazan displayed a map showing the original PUD and the proposed amended PUD. He said the lot sizes of Phase 1 were 2.5 units per acre and the average lot size in Phase 2 is 2 acres with density of .46 units per acre. Mr. Lazan said their design shifts density to preserve the natural features of the land. He stated the project's density is .32 units per acre which is in line with the original PUD. Mr. Lazan explained that developers put a lot of research and detail into the current phase and projects as best they can for the future. He stated as developers begin to work on additional phases, they get more information which leads to changes and amendments to the PUD.

Mr. Lazan summarized the success of Phase 1. Mr. Lazan commented on the density of the development and said the smallest lot in Phase 1 would fit 6 urban lots. Mr. Lazan stated Phase 2, the Meadows, has 46 lots on 100 acres with lot sizes ranging in size from 1.5 to 5 acres.

Mr. Lazan summarized the requests in the amendment including the elimination of the east-west road. He stated they are also disappointed they could not make the road work as it would lend to the accessibility of their development. Mr. Lazan described the reasons why the east-west road was eliminated. He said the City asked them to find an alternate access point which

left only the south because they are bordered by Martins Meadows to the north and wetlands to the east. Mr. Lazan spoke about the alternative access to the south and said they are planning a temporary cul-de-sac that will eventually connect when the properties to the south are developed. He said they are remaining engaged in acquiring the land because the property is going through foreclosure but they are having difficulty contacting the bank.

Mr. Lazan spoke about Jivaro Street and said it is the most contentious item in the development. Mr. Lazan stated Jivaro Street must relocate due to the shoreland setback and MSA standards. He said the solution is to extend Inca Street. Mr. Lazan stated there is a disagreement on property rights between the applicant and the landowners to the north.

Mr. Lazan gave background information on Jivaro Street, the easement, and the trail of documents leading the property owners and the City to their current situation. Mr. Lazan showed excerpts from the private easement agreement between the Luedtkes and the Petersens. Mr. Lazan stated the Petersens and JD Andover Holdings have met the obligation to provide “Equal or Better” access to the Luedtke property and asked the Council to approve the preliminary plat as proposed. Mr. Lazan stated there are alternatives if the City believes an easement is needed across the Petersen property and the applicant can provide an easement of equal terms to the original easement agreement. Mr. Lazan stated if the City believes it is the Petersen’s responsibility to provide a public easement, they can do so through one of the two options. Mr. Lazan presented two options to provide public easement access to the Luedtke and McDonald property.

Mr. Lazan showed a timeline of the efforts the developer has made with the property owners to the north to resolve the Jivaro Street access beginning in July of 2019. He shared the options they presented to the Luedtkes and McDonalds at no cost to the property owners, all of which were turned down.

Mr. Lazan summarized the applicant’s request for the preliminary plat approval. He said the applicant cannot lose a construction season over the lack of an agreement with the property owners to the north. He stated they would like the plat approved with the understanding they will work out an agreement with the property owners to the north and if they don’t, then the Council will provide direction on how they would like this to be resolved.

Mayor Trude recessed the meeting at 9:02 p.m. The meeting reconvened at 9:10 p.m.

Councilmember Butler asked if all the previous options were on the table for resolution. Mr. Lazan stated all options are on the table. Mr. Lazan stated the two options he presented tonight are new proposals contained on the Petersen’s land which gives the McDonalds and Luedtkes the same access as they have now.

Jason Osberg, JD Andover Holdings, came forward and said all the options are still on the table. He said the Luedtkes and the McDonalds have been in communication several times a week over the last few months. He said the dialog has increased and they are moving in the

right direction. Mr. Osberg is confident they can come to an agreement.

Hope Luedtke, 16932 Jivaro St NW, she said 6 generations of her family have lived on this land and they are trying to hang on to their property. She said the conversations between them and the developer did not have “meat” until recently. She did not think the developers thought she and her family had a leg to stand on. She said the documentation the family had was not respected. She strongly believes that if the entire PUD would have been started with giving access to the properties to the north, they wouldn’t be in this position and it’s still a hot mess.

Mayor Trude said the property owners will not be landlocked and the question is where they will have access. She thanked Ms. Luedtke for her family’s contribution to the community.

Jeff Luedtke, 16932 Jivaro Street, came forward and said it is pretty emotional for him. He is not just a property owner wanting his wishes accommodated. He said this property has been in the family since 1933. He said he is trying to replace what they have which is access to his property.

Mayor Trude replied that he will have access to his property, the question is where: the same location it is now or somewhere new. Mr. Luedtke said Option A is new to him, but he is familiar with all the other options. Mr. Luedtke stated he is interested in the land swap, but they have not had time to communicate with their legal counsel.

Mayor Trude said the Council is in a predicament because they have to act within a certain amount of time to approve the development. The City wants the developer to move forward with the project without putting the property owners to the north in a difficult position. She said the Council needs to pick something that is a fall back if negotiations do not work out.

Mr. Luedtke said he understands it. He stated he would like to have a legal lot so he will not have trouble selling it in the future. Mayor Trude stated Options A puts him in the same position he is in today. She said the Council dilemma is how do we get things moving while negotiations happen. Mr. Luedtke said the project will continue if Council makes it contingent on a resolution satisfactory to the developer, the Luedtkes and the McDonalds. Mayor Trude said the City needs a fall back in case they cannot come up with a resolution. She said the resolution would be on Petersen’s land, and the two owners would have the same connection as they did before.

Mr. Dickinson said the fall back Option A gets the property owners access to their property. He stated the City does not like the plan, but it gives them access and allows snowplows and firetrucks to get through. Mr. Dickinson said the lot will still be a legal non-conforming lot and the City would like them to have a conforming lot.

Councilmember Bukkila said she is not interested in Option A if Lot 1 becomes a lot with an occupied dwelling. She said the City has a lot similar to this and she gets calls weekly

because of the problems it creates. Councilmember Bukkila said Option A would be an easement on someone's property not giving them full access to their own property with the intention that a road will be built in the future but if it doesn't, then the individual is stuck with the easement.

Mayor Trude replied that if the Council went with Option A, the purchasers of Lot 1 would buy the lot knowing that it is permanent. Mr. Dickinson said the big difference between the two situations is this is a public easement and the other property referenced is a private easement. He said the road will be paved to the property line.

Councilmember Bukkila said the reasonable thing to do is delay the decision for 2 weeks until the Council's next meeting. Mayor Trude stated she thinks a fall back option is appropriate because the 60-day deadline is the end of the week. Mr. Dickinson said the City would have to put in for an extension if the Council does not approve tonight.

Mayor Trude said the parties are going to make a good faith effort to come to a resolution.

Mr. Luedtke thought they did everything right in 1995 and the McDonald's built their house in 2017 with access to Jivaro Street. He said they just want everything to be legal so they can eventually sell their land and the City continues to maintain the road like they did before. Mayor Trude asked if Mr. Luedtke was acceptable to Option A. Mr. Luedtke replied that he wants legal counsel to look at it. Mayor Trude asked if he could come to a decision within 2 months before the final plat. Mr. Luedtke replied he thought they could.

Darren McDonald, 16927 Jivaro Street, came forward and said there is deep family history in this land and wants it to stay in the family. He said they are standing here because of an easement and he wants Council to fix it so it is not an issue in the future for them or the City.

Mayor Trude said Option A is a fall back option and they have up to 2 months to resolve the issue to their satisfaction. She stated it gives everyone a deadline and allows the development to go forward.

Mr. McDonald says he wants to make sure the developer still pursues negotiations. His concern is that the negotiations will be one sided as they have been so far. Mr. McDonald asked what compels the developer to work with him in good faith if they get the preliminary plat approved?

Mayor Trude stated the developer does not like the resolution either and would prefer to reach a different resolution.

Mr. Dickinson said if they get approval of the preliminary plat and approval of the grading plan, then the developer can begin grading. He stated during this time and during all construction phases, the developer is required to provide access to the Luedtke and McDonald properties.

Mr. Dickinson stated Lot 1 is not desirable with the easement along the side. He said the price will be less and the style of house not in par with the rest of the development. He stated this is not a desirable solution, but it gets everyone the same access they have now. Mr. Dickinson said he believes there is a better solution and is willing to help the parties resolve it.

Mr. Law said from a grading perspective, choosing an Option has minimal grading impact. He said the City would look for Option A to be on the plan and if they come to another solution, the developer can submit a revised plan approved through a change order. He says the difference is if the connection occurs on the developer's land or the McDonalds or Luedtke's land.

Mayor Trude asked if the parties would have some other options available if the Council approved the plat. Mr. Law responded they would but by the time the developer puts curb and paving in, the issue needs to be resolved. Mr. Law said if the Council approved Option A tonight, the City would look for a plan that included Option A.

Mr. McDonald said there has to be negotiations with give and take.

Mayor Trude said the McDonalds would be given access to their land. She said the options are to have the connection exactly where it is at now or take the opportunity to improve their access and have conforming lots. Mr. McDonald said the fact that there is an easement is a problem. He does not want his kids to have to deal with this in 25 years. Mr. McDonald said there are parts of each option that are desirable, but they have not had time to look at them in detail. Mr. McDonald said there are plans that require him to give up land and he does not want to. He said he would have to give up .5 acres to have the Luedtke's have access and he would acquire 2.5 acres of swampland.

Mayor Trude recommend they consult Mr. Dickinson, as he is a great listener and negotiator. Mr. McDonald said he tried to reach out to the City and the City took a neutral position. He said the City did not act as a mediator but told them to work it out.

Mayor Trude said Mr. McDonald is in the driver's seat on where the access it. She said the Council cannot pick one of the options outside of the plat. Mr. McDonald said he appreciates the developer paying for the legal fees and costs of the access; however, he has already spent a lot. He said two years ago they should have dealt with this access and it wouldn't be an issue today. Mr. McDonald said the developer is not even considering phase 3 and 4 without taking into consideration of what it does to the rest of the area. He said Phase 1 only has one access point because due diligence was not done, and due diligence is not being done now to give him access to his property without him giving something up.

Mayor Trude replied that is why the developer presented the Options A and B because none of it is on the McDonald or Luedtke property and it gives him a 25-foot wide road instead of 18 feet. She said everything else on the McDonald property is his decision. Mayor Trude

stated if he wants to improve his situation, he will need to negotiate with the developer. She stated the Council cannot choose one of the options involving the Luedtke or McDonald properties because it is private land off the plat. Mr. McDonald said the Council controls where the access will be. Mayor Trude responded the connection will be exactly where it is now with Options A and B and if he chooses a different option, it will need to be a private agreement.

Mr. McDonald said he does not like any of the options and that is why they want more time to look at it. He said he does not think the developer can work with him to get him what he wants because of the density of Phase 2. He said the developer will not give up a lot to give him what he wants.

Mayor Trude said lot lines can move between preliminary and final plat but to give up a lot is a big gift. She said the developer is willing to work with the families to give them a better option.

Mr. Law informed Council that Option A is the only one that does not require land from the Luedtkes or the McDonalds. He said Option B would need a slight corner of around 500 square feet from McDonald.

Mr. Dickinson summarized the choices the Council could make regarding Items 12 and 13: approve with selecting Option A or Option B and encourage the parties to come up with another solution; table and review in 2 weeks; or deny the preliminary plat. He explained the preliminary plat needs to show a viable access point to the north and allow for a deviation if another solution is found.

Councilmember Butler asked when the Council reviews the final plat, can they hear if the developer fulfilled the commitment of keeping options on the table and negotiating another resolution. Mr. Dickinson replied there would be an expectation of a report card to ensure they have fulfilled their commitment.

Councilmember Butler said the lot lines can shift between preliminary and final plat. Mr. Dickinson stated it has to conform closely to the original and there cannot be significant deviations, but minor ones are acceptable. Councilmember Butler said Council wants to ensure equal or better access to the properties and ideally lot conformity. He said he is concerned that Option A and B would not make the lots conforming.

Mr. Lazan stated today there is an 18-foot easement and what is proposed is 66-foot public right-of-way, paved, with all utilities with a 200-foot public easement which is significantly better than what the property owners have now. He said Inca Street cannot be shifted.

Mayor Trude asked if the Council tabled, where would it put the developer. Mr. Lazan said it would put them in a tough spot because there are a number of things they have to do between preliminary and closing in order to break ground on the 16<sup>th</sup>.

Mayor Trude asked if they would still negotiate in good faith. Mr. Lazan said there are two items: what can occur on the Petersen land and what can occur on the Luedtke and McDonald land. He said a year ago they talked about a land swap because that was the only way they could resolve it and the McDonald's had no interest. Mr. Lazan said he does not like Option A, but it is the only option they have that does not utilize property from the Luedtkes or McDonalds. He said they are committed to finding something that works.

Mayor Trude asked if the developer will still continue to negotiate if the Council approves the preliminary plat. Mr. Lazan said absolutely, without a doubt, or they will be back here for final plat answering to the City Council.

Councilmember Bukkila stated her preference is to table it for two weeks. She said every time one of them come up to talk, the other is shaking their head. She said there is an absence of communication because Option A and B were just presented tonight. She said no one likes the options but Council is looking for approval. Councilmember Bukkila said a two-week delay will motivate the parties to negotiate. She said if she had to vote right now, she would choose a denial.

Mayor Trude said the proposal that would keep things moving, is to choose an option and allow it to be replaced if another solution is reached.

Councilmember Butler said he understands tabling it to buy more time, but he feels if they table it, they will be back here in two weeks discussing the same things. He stated they had a robust discussion and prefers to move forward with Option A and a clear expectation another access is desired along with achieving conformity of the two lots. Councilmember Butler said the Council will have a review at the final plat to determine if the expectations have been fulfilled.

Councilmember Holthus stated she agrees and stressed that access to the northern properties is to be solved before approving the final plat.

Councilmember Barthel said if Council chooses Option A, the Luedtke's and McDonald's access stays the same. He said Option A is not good for either of them. Councilmember Barthel said that private property should not hold up development because it could lock it forever. He said he favors approving the preliminary plat and giving time for the parties to talk and if they cannot agree, then Option A is the resolution.

Councilmember Bukkila asked if there can be consideration to hold back development on Lot 1 until an agreement is reached. Mr. Janish said a building permit is not issued until the final plat is approved. Councilmember Bukkila stated she wants to ensure the developer will negotiate in good faith and wants to hold Lot 1 to make sure it happens. Mayor Trude asked if it makes sense to add that condition. Mr. Janish replied the Council has the ability to do that.

Mr. Dickinson said the public easement with Option A will have a more severe setback on Lot 1 due to a paved road. He said there are restrictions to protect the home and keep a distance from the roadway.

Mr. Lazan said they have about 8 weeks between preliminary and final plat. He said if the Council wants to hold Lot 1, the developer will agree because they are not going to hold back their development for one lot. He said the best solution is going to be a land swap between the developer and the northern landowners, so he is optimistic that Option A will not come to fruition.

Mr. Luedtke said Option A was a surprise to him and he just saw it tonight. He asked when Jivaro Street will be vacated and who is going to do it. Mr. Law replied the developer's intention is to leave Jivaro Street in place until Inca Street is paved and ready to go. He said it is a requirement to provide access to the northern properties at all times.

Councilmember Bukkila asked if Council was at a reasonable point for the Luedtkes to continue to negotiate. Mr. Luedtke replied yes, they are.

Mayor Trude stated the final plat will not be considered until November 4<sup>th</sup>.

Councilmember Butler said he understands the emotions and said the area is beautiful. He stated the goal is to maintain equal or better access and ensure the property rights of the Petersens as well. He said he takes holding everyone accountable at the final plat seriously.

Mr. Janish said the applicant would be open to restricting permits on Lots 1-4 until the final plat and said that can be added as a condition on the PUD and preliminary plat.

Mayor Trude summarized that Council will approve the preliminary plat with Option A and the expectation that the developer and north property owners will negotiate another option before the final plat is approved.

**Motion** by Barthel, Seconded by Bukkila to remove Item #12 from the table. The motion carried unanimously.

Council reached consensus to add Condition #20: to restrict building permits on Lots 1-4, Block 3 until after final plat. Council reached consensus to remove Item 4 on Review #1 from the City Engineer's Comments.

Mayor Trude stated the Council's intent is to not require access to the south in order to move forward with the development. She said the City cannot require a condition off the plat.

**Motion** by Holthus, Seconded by Bukkila to approve Resolution R066-20 approving Conditional Use Permit (CUP)/Planned Unit Development (PUD) Amendment with the changes listed above, "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. Motion carried unanimously.

Mayor Trude asked Mr. Baumgartner to read the condition Council is adding to the Resolution. Mr. Baumgartner stated Condition #13: The Preliminary Plat is approved with Option A, providing access to the property immediately to the north with the understanding that the final plat may be modified with alternative access as to the property north if that option is agreed upon by the developer, the property owners to the north and the City at the time of final plat approval.

Council reached consensus to add Condition #13 to the Resolution and remove Item 4 on Review #1 from the City Engineer's Comments.

**Motion** by Bukkila, Seconded by Barthel, to approve Resolution R067-20 approving Preliminary Plat as typed and amended including condition #20 - 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 Andover Holdings. Motion carried unanimously.

### ***COVID 19 UPDATE***

City Administrator Dickinson updated the Council on the primary changes to the COVID-19 response since the last meeting. He stated the Governor has extended the Executive Order until September 11, 2020. Mr. Dickinson stated staff are working on CARES Act dollars and the EDA has committed \$1.8 million for small business grants. He said Round 1 applications have been reviewed and discussed by the EDA and \$990,000 in grant funds have been approved. Mr. Dickinson stated that Round 2 of grant applications starts September 2<sup>nd</sup> with an application deadline of September 16<sup>th</sup>. He said if all dollars are not used, the City will have a Round 3. Mr. Dickinson indicated the City is complying with the Governor's Executive Order for sports at the Community Center. He said the City has made modifications to the usage of facilities and will be hosting candidate forums.

### ***ADMINISTRATOR'S REPORT***

City Staff updated the Council on the administration and city department activities, legislative updates, updates on development/CIP projects, and meeting reminders/community events.

**(Administrative Staff Activities)** – Mr. Dickinson stated Andover has 84 new home permits this year. Mr. Dickinson updated the Council on the budget, CIP, and insurance negotiations. He said he is working on staffing needs and enhancing staff training. Mr. Dickinson reminded Council of the ribbon cutting ceremony at Margie's Kitchen on Friday, September 4<sup>th</sup>. Mr. Dickinson requested the EDA meeting be cancelled on September 15<sup>th</sup> and a workshop meeting be added to discuss the budget.

**Motion** by Barthel, Seconded by Butler to cancel the EDA meeting and schedule a budget

workshop at 6:00 p.m. on September 15, 2020. The motion carried unanimously.

Mr. Dickinson updated the Council on the progress of the Community Center and Sports Complex construction and said the grand opening is planned for October.

***MAYOR/COUNCIL INPUT***

***(Fish Sunflowers)*** Mayor Trude stated Fish Sunflowers has a field across from Prairie Knoll – Park. She said it is on private land, but people can park in the park’s lot and walk carefully across the street. She said there will be another location in Andover and the location will be revealed on the Fish Sunflower Facebook page.

***(Mrs. Minnesota)*** Mayor Trude announced Andover resident, Jessica Koehler was crowned Mrs. Minnesota and will be in the Mrs. America Pageant, promoting her platform for Minnesota Adult and Teen Challenge, mentoring women in recovery.

***ADJOURNMENT***

***Motion*** by Barthel, Seconded by Butler, to adjourn. Motion carried unanimously. The meeting adjourned at 10:53 p.m.

Respectfully submitted,

Shari Kunza, Recording Secretary

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