

CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO REPEAL EXISTING OPEN SPACE DEVELOPMENT  
REGULATIONS WITHIN CHAPTER 150, ADOPT NEW OPEN SPACE  
DEVELOPMENT REGULATIONS IN CHAPTER 154, AND TO  
IMPLEMENT REFERENCE UPDATES IN CHAPTER 154

**SECTION 1** (Will include definition updates if needed -- TBD)

**SECTION 2** (Will repeal existing OP codes in Chapter 150)

**SECTION 3** (Will replace existing OP codes in Chapter 150 with reserved language)

i.e. "Sections 150.161 through 150.199 – RESERVED"

**SECTION 4** (Will clean up numerous existing problems with numbering in Chapter 154  
to allow for placement of the new ordinance within zoning)

**SECTION 5** Will adopt the new Open Space Planned Unit Development Regulations as follows:

*Article XVI: OPEN SPACE PLANNED UNIT DEVELOPMENTS*

§ 154.650 **PURPOSE.**

The purpose of open space planned unit developments is to provide greater development flexibility within rural portions of the community while still preserving agricultural land, woodlands, corridors, pollinator & wildlife habitat, and other significant natural features consistent with the goals and objectives of the city's Comprehensive Plan. The City reserves the right to deny establishment of an open space PUD overlay district and direct a developer to re-apply under standard zoning provisions if it is determined that proposed benefits of the open space PUD do not justify the requested flexibilities.

§ 154.651 **INTENT.**

It is the intent of the City of Lake Elmo that open space planned unit developments will offer needed development flexibility within the Agricultural, Rural Residential, and Rural Estate zoning districts to provide for:

**Commented [BGA1]:** Section One will include all of the new or updated definitions to be adopted with this ordinance

**Commented [BGA2]:** Because we are proposing a significant reorganization of the current regulations, the cleanest approach is to simply start with a clean slate. Section two of the ordinance will delete the current OP regulations in their entirety.

**Commented [BGA3]:** Current OP regulations are housed in Chapter 150, but the more appropriate location (given the current code framework) is Chapter 154. This new ordinance will facilitate that move.

Once complete, sections 150.161 through 150.199 will no longer exist. City Code should never skip over section numbers or readers are left wondering if they're missing portions of the code. To address this problem, the existing OP section numbers will be marked with the word "reserved."

**Commented [BGA4]:** Placing the new OP language into Chapter 154 will require that we complete some general organizational clean up that is long overdue. This section will make sure that all Articles in Chapter 154 have numbers (some do not), and that existing Article numbers are updated to accommodate these new additions. Finally, all article references—and many references that currently point to nowhere or to incorrect sections—will also be updated.

**Commented [BGA5]:** Section 5 of the ordinance will house all of the new language being adopted.

**Commented [BGA6]:** This section simply states what the City is trying to accomplish when it reviews and approves "open space planned unit developments."

**Commented [BGA7]:** As requested, we have beefed up the purpose statement to stress the City's intent to provide flexibility through this process.

**Commented [BGA8]:** This section outlines specific things the City wants to accomplish with open space planned unit developments including allowing for a variety of housing types in the rural areas of the city, allowing for increased density, reducing infrastructure costs, protecting open space, and creating distinct but interconnected rural neighborhoods.

- (A) A variety of lot configurations and housing styles that may not otherwise exist within the City’s rural areas;
- (B) An avenue to provide a development density equal to or greater than what could be achieved via underlying zoning;
- (C) A reduction in the costs to construct and maintain public facilities and infrastructure in a rural setting;
- (D) Protected open space to enhance and preserve the natural character of the community; and
- (E) The creation of distinct neighborhoods that are interconnected within rural areas.

**§ 154.652 DEFINITIONS.**

Unless specifically defined in §§ 154.009 *et seq.*, common definitions, words, and phrases used in §§ 154.009 *et seq.* shall be interpreted so as to give them the same meaning as they have in common usage throughout this code and are found in § 11.01.

**Commented [BGA9]:** This section references 11.01 as the City’s location for applicable definitions. New definitions (or updated definitions) created by Section One of this ordinance will be placed in Section 11.01

**§ 154.653 INITIATION OF PROCEEDINGS.**

The owner of property on which an open space PUD is proposed shall file the applicable application for a PUD by paying the fee(s) set forth in \_\_\_\_\_ of this Code and submitting a completed application form and supporting documents as set forth on the application form and within this Section. Complete applications shall be reviewed by City Commissions as deemed necessary by the Director of Planning, including a public hearing before the Planning Commission, and be acted upon by the City Council. If a proposed PUD is denied, any subsequent application for a substantially similar PUD within one (1) year of the date of denial shall fully address all findings which supported the denial prior to being accepted as complete.

**Commented [BGA10]:** This section simply outlines how a landowner can begin the open space PUD process.

**§ 154.654 REFLECTION ON THE OFFICIAL ZONING MAP.**

- (A) PUD provisions provide an optional method of regulating land use which permits flexibility from standard regulating provisions. Establishment of a PUD shall require adoption of an ordinance creating an overlay zoning district atop the boundaries of the development area. For each PUD District, a specific ordinance shall be adopted establishing all rules which shall supersede underlying zoning. Issues not specifically addressed by the PUD Overlay district shall be governed by the underlying zoning district regulations.
- (B) All Open Space Preservation developments approved prior to [date of ordinance publication] shall be allowed to continue per the original conditions of approval.

**Commented [BGA11]:** This is our first reference to the fact that OP regulations for each development will now be incorporated into an overlay district. Importantly, issues not addressed by the OP ordinance will be handled by underlying zoning regulations, so the City will never have to worry about missing details during the approval process.

**§ 154.655 PREREQUISITES FOR OPEN SPACE PUDs.**

- (A) Only land zoned as Agricultural, Rural Residential, or Rural Estate may be considered for establishment of an open space planned unit development.
- (B) The minimum land area for establishment of an open space planned unit development is a nominal contiguous (40, 30, 20, 10) acres.
- (C) Establishment of an open space planned unit development will be considered only for areas of land

**Commented [BGA12]:** This section sets the minimum requirements that must be met before someone can request an Open Space PUD.

The listed prerequisites are existing criteria.

**Commented [BGA13]:** Staff has prepared maps and land calculations (provided in the packet) to show how each of these minimum land areas impact the potential for Open Space PUDs. Council will need to determine which is the proper threshold.

in single ownership or control. Alternatively, multiple party ownership, in the sole discretion of the City, is acceptable when legally sufficient written consent from all persons and entities with ownership interest is provided at the time of application.

§ 154.656 **USES WITHIN OPEN SPACE PUDs.**

**(A) Primary Uses.**

**(1) Permitted.**

- (a) Single-family, detached;
- (b) Preserved open space;
- (c) Conservation easements;
- (d) Agriculture;
- (e) Suburban farms;
- (f) Private stables;
- (g) Single-family, attached;
- (h) Townhouses (no more than 25% in any development)
- (i) Wayside stand; and
- (j) Public parks and trails.

**(2) Conditionally Permitted.**

None

**(3) Interim Permitted.**

None

**(B) Accessory Uses.**

**(1) Permitted.**

Uses deemed by the Director of Planning to be typically accessory to an established permitted use on the property as listed in 154.656(A)(1).

**(2) Conditionally Permitted.**

None

**(3) Interim Permitted.**

None

**(C) Prohibited Uses.**

All other uses not listed in 154.656(A)(1) or 154.656(A)(2) are hereby prohibited.

**Commented [BGA14]:** Here we've maintained existing language. The only transition proposed is to allow the overlay district regulations to amend specific use provisions that may otherwise be in code. For example, if wayside stands are limited to one per lot, the overlay district regulations may specifically identify an area within preserved open space where up to three wayside stands may be erected at any point in time. The use has not changes, but the specific rules governing the use may be amended if deemed appropriate as part of the PUD approval.

**Commented [BGA15]:** The Planning Commission had a split opinion on whether Townhomes should continue to be allowed in OP developments. Some felt townhomes were not appropriate in rural areas, while others felt they had been very successful in such developments to date and helped to created more open space than could otherwise be provided by all single family homes. Others pointed out that modern townhomes include detached units on zero setback "unit lots" which are surrounded by association owned and maintained property.

**(D) Use Restrictions**

Adopted PUD overlay district regulations may include specific provisions governing uses which supersede the general regulations herein or that which may otherwise be required by underlying zoning.

**§ 154.657 OPEN SPACE PUD DESIGN**

Open space PUDs shall comply with all of the following minimum design standards unless modifications are authorized by the City Council at the time of PUD Sketch Plan review. Authorization of such modifications resulting from a PUD Sketch Plan review shall not be construed as approvals for the change(s), but rather as an authorization to present such modifications as a component of the plan during the PUD Preliminary Plan review.

**(A) Density**

The maximum dwelling unit density within an open space planned unit development shall be 20 units per 40 acres of buildable land; however, the total number of dwelling units shall not exceed the density limitations contained in the Comprehensive Plan for Opens Space Preservation Development.

**(B) Lot Design**

Lot locations and configurations within open space planned unit developments shall be derived utilizing the following methodology. An applicant must be able to demonstrate how these steps resulted in the plan being proposed.

**(1) Soils Analysis Conducted**

A certified septic designer or soils scientist shall complete a review of the soils on the site, and categorize all areas as highly suitable for septic systems, moderately suitable for septic systems, or poorly suited for septic systems.

**(2) Septic Design Identification**

Based on the soils analysis, an applicant must identify whether the proposed development will be serviced by individual septic tanks and drain fields, or via a system of individual septic tanks which utilize one or more communal drain fields.

**(a)** If individual septic tanks and drain fields can be supported by the available soils and is the chosen methodology to serve the development, all proposed lots must be able to provide primary and secondary drain field sites, and must meet a minimum lot size requirement as outlined herein.

**(b)** If individual septic tanks which utilize communal drain fields is the chosen methodology to serve the development, then the location(s) for communal drain fields shall be identified within the area(s) deemed the most suitable on the site for supporting septic utilities according to the soils analysis. All such areas shall be clearly denoted on provided plan sets.

**Commented [BGA16]:** This section will require ample examination as it completely reorganizes the City's existing regulations governing lot design. As presented, the language is intended to ensure the City's goals are met, and requires lots to be created utilizing the process pioneered by Randall Arendt in his book Rural by Design. While I believe that has always been the intent, the current guidance on lot design is unorganized, difficult to follow, and has no connection to how developers actually approach the creation of a development plan. What we've tried to accomplish in this section is to maintain the existing regulations (updated as requested and/or as necessary), but to structure them in a logical order that will result in the end product desired by the City.

**Commented [BGA17]:** Super-majority vote requirement eliminated in favor of new review criteria in Section 154.660

**Commented [BGA18]:** As requested, staff double checked the language within the comprehensive plan. The current text reads:

*"Densities are allowed up to 0.45 dwelling units per buildable acre when planned as part of an Open Space Preservation development."*

*40 acres \* 0.45 d.u./acre = 18 units*

Regardless of how Council massages the density language in code to increase allowable units, it cannot be implemented until this comp plan language is also amended.

**Commented [BGA19]:** Requiring a developer to analyze soils followed by choosing a septic design will actually achieve the City's goal of ensuring proper septic design drives developments.

**Commented [BGA20]:** The Planning Commission is recommending the City consider adopting a minimum number of units before a community septic system can be used. Based on some commissioner's personal experiences, the number 40 was suggested as a potential starting point. If Council concurs with this recommendation, the City Engineer should be asked to provide guidance on an appropriate number.

**(3) Identification of Required Buffers**

No build zones from each property boundary shall be derived as follows:

- (a) A two-hundred (200) foot buffer from all adjacent property lines that abut an existing residential development or a parcel of land not eligible for future development as an open space planned unit development due to insufficient parcel area.
- (b) A one-hundred (100) foot buffer from all adjacent property lines that abut land that is eligible for future development as an open space planned unit development.
- (c) If the development site is adjacent to an existing or approved OP development, the required buffer shall be equivalent to the buffer that was required of the adjacent development (see Section 154.659).

**(4) Identification of Preferred Building Pad Locations**

Building pad locations [up to the maximum number of units permitted by 154.657(A)] which preserve natural topography and drainageways (in as much as possible), minimizes tree loss, protects historic sites or structures, and limits the need for soil removal and/or grading shall then be identified. The orientation of individual building sites shall strive to maintain maximum natural topography and ground cover.

- (a) Building pads shall be located outside of required buffers, and shall be cited so as to provide ample room for accessory structures on future lots.
- ~~(b) Whenever possible, building pads shall be oriented in small clusters often referred to as rural hamlets.~~
- (c) If individual septic tanks and drain fields for each lot are to be utilized, locations for primary and secondary facilities for each proposed building pad shall also be identified. Generalized locations for such may be shown during the PUD Sketch Plan phase, but all such sites must be verified as being viable as a component of PUD Preliminary Plan review.
- (d) If individual septic tanks utilizing communal drain fields is intended, the plan must clearly identify which communal drain field will service each of the proposed building pads.

**(5) Placement of Streets**

- (a) Streets shall then be designed and located in such a manner as to:
  1. Maintain and preserve natural topography, groundcover, significant landmarks, and trees;
  2. Minimize cut and fill;
  3. Preserve and enhance both internal and external views and vistas;
  4. Promote road safety;
  5. Assure adequate access for fire and rescue vehicles; and
  6. Assure and promote adequate vehicular circulation both within the development and with adjacent neighborhoods.

**Commented [BGA21]:** As currently constructed, subsections (a) and (b) are existing requirements.

Subsection (c) is new, and states that if an adjacent OP development was granted lesser setbacks (see section 154.659), then that same lesser setback would apply in a new OP development.

Subsection (d) is also new, and is intended to give the City Council full authority to reduce or eliminate buffers when conditions don't require a buffer (i.e. topography provides a buffer, woodlands provide a visual barrier, etc).

**Commented [BGA22]:** We slightly amended this language to state the full 100 foot buffer is only needed adjacent to land that could develop as another OP in the future. Subsection (c) then handles all buffers from existing or approved OP developments.

Additionally, because deviations may be approved from any PUD development standard using the criteria in Section 154.660, we have eliminated the previous buffer language that allowed for the elimination of buffers altogether. Now Council will ask whether "the overall design provides appropriate solutions to eliminate adverse impacts" when considering buffer reductions, and/or when determining what can be done within buffers (something that can be specifically written into the overlay district ordinance governing the lots being created).

**Commented [BGA23]:** Both staff and the planning commission are recommending striking this provision.

**Commented [BGA24]:** Note that even up front, we will be requiring the developer to identify general locations that can accommodate primary and secondary septic sites. Detailed information would be needed during the Preliminary Plan stage.

(b) The design of streets and the dedication of right-of-way shall be in compliance with the City's standard plates and specifications as may be amended.

**Commented [BGA25]:** Rather than list allowable ROW widths and paved street widths, staff is recommending simply referring to the City's standard plates and specifications. Again, if deviations are requested, the PUD review criteria will guide Council as to whether such deviations are warranted.

We elected to stay silent on how signage can or cannot be used (i.e. no parking signs) to allow Council to make individual determinations depending upon the circumstances.

(c) Streets shall not encroach into a required buffer area unless it can be demonstrated that such an alignment is necessary to achieve the goals outlined above, and that no equivalent option exists outside of the buffer. Driving surfaces that cross the buffer area at a 90 degree angle to provide current or future access to an adjacent property or boundary road shall be the only exception.

**(6) Lot Creation**

Based on the street location(s), building pad locations, and septic system location(s); lines to delineate individual lots shall then be identified in accordance with the following:

**(a) Lot Size**

1. Single-family lots being served by individual septic tanks and drain fields shall be a minimum of one (1) acre in size;
2. Single-family lots being served by individual septic tanks utilizing communal drain fields shall be a minimum of 1/2 acre (21,780 square feet) in size;
3. Base lots for townhomes shall be large enough such that individual unit lots can meet all required structure setbacks contained herein.

**Commented [BGA26]:** We have amended this language to reinstitute the existing minimum lot sizes of one acre and one-half acre depending upon the septic system approach being used.

**(b) Buildable Area to be Shown**

1. Buildable area on each proposed lot shall be shown. Buildable area shall exclude land within the following areas:
  - a. Required buffers from adjacent lands [see section 154.657(3)]
  - b. Steep slopes;
  - c. Drainage swales;
  - d. Easements; and
  - e. Land within the following setbacks:

**Commented [BGA27]:** This language was clarified to ensure developers understood what constituted buildable land on each lot.

**Commented [BGA28]:** "Easements" assumes that all stormwater ponds, rain gardens, wetlands, etc. will be protected by easements. If not, those features will also need to be listed here.

	HOUSING TYPE		Additional Requirements
	Single Family Homes	Townhomes	
Front Yard	30	20	xxx
Side Yard	15 feet or 10% of lot width		xxx
Corner Lot Front Yard	30		xxx
Corner Lot Side Yard	30		xxx
Rear Yard		20	xxx
Well from Septic Tank		50	xxx

2. Proposed buildable area on each lot shall be sufficient to accommodate primary and accessory structures that are normal and customary to the type of development being proposed.

(7) **Open Space and Parkland Adjustments**

(a) **Open Space**

1. The total preserved open space area within an open space planned unit development shall be no less than 50% of the total gross land area, as defined by § 11.01. If this threshold is not achieved after following the first six steps of lot design, the proposed lot areas will need to be adjusted or lots eliminated until this requirement is met.
2. **Not less than 60% of the preserved open space shall be in contiguous parcels which are ten (10) or more acres in size.**
3. Preserved open space parcels shall be contiguous with preserved open space or public park land on adjacent parcels.

(b) **Parkland**

1. Parks and recreational facilities shall be provided in addition to preserved open space as specified in the Lake Elmo Parks Plan.
2. Determination of whether a land or cash dedication will be required to fulfil parkland requirements will be at the discretion of the City Council, with direction to be provided as a component of PUD Sketch Plan review. If a required parkland dedication causes overall open space to drop below the minimum threshold, the proposed lot areas will need to be adjusted or lots eliminated until the open space requirement is once again met.
3. Any dedication shall be consistent with the dedication and fee-in-lieu standards specified in Chapter 153.

**Commented [BGA29]:** The overall seven (7) step design process we have laid out now both emphasizes what is important to the City while recognizing and embracing how a developer will approach the site anyway.

At this final step, the developer may need to shrink lot sizes or eliminate lots to meet open space and parkland requirements.

**Commented [BGA30]:** The open space provisions are existing requirements. The Planning Commission would like additional requirements or changes that would eliminate the use of thin strips of land to connect open spaces. A minimum dimension could be considered.

**Commented [BGA31]:** **Until we know what minimum land area will be authorized to apply for an open space PUD, we did not want to spend time trying to ascertain whether this standard needs to be amended. This will be addressed in the final version of the ordinance that goes before the planning commission.**

**§ 154.658 OPEN SPACE PUD DEVELOPMENT STANDARDS**

Open space PUDs shall comply with all of the following development standards **unless modifications are authorized by the City Council at the time of PUD Sketch Plan review.** Authorization of such modifications resulting from a PUD Sketch Plan review shall not be construed as approvals for the change(s), but rather as an authorization to present such modifications as a component of the plan during the PUD Preliminary Plan review.

(1) **Preserved Open Space Standards**

- (a) All preserved open space within an open space planned unit development shall be subject to a conservation easement and used for the purposes as defined **by §§ 150.175 et seq.**
- (b) Preserved open space land shall be controlled in one or more of following manners as determined at the sole discretion of the City Council:
  1. Owned by an individual or legal entity who will use the land for preserved open space purposes as provided by permanent conservation restrictions (in accordance with M.S. Ch. 84C.01-.05, as it may be amended from time to time), to an acceptable land trust as approved by the city; and/or
  2. Conveyed by conservation easement to the city.

**Commented [BGA32]:** While Section 154.657 lays out the regulations that dictate how a development is laid out, Section 154.658 tells the applicant how the development must be constructed and improved.

Here again we maintain the city's existing *development* standards for open space developments (i.e. regulating open space, septic systems, building standards, landscaping standards, impervious surface standards, and trail standards).

**Commented [BGA33]:** **Super-majority vote requirement eliminated in favor of new review criteria in Section 154.660**

- (c) Preserved open space land shall be maintained for the purposes for which it was set aside. If preserved open space was set aside for agricultural purposes or for natural habitat, a plan shall be submitted which will indicate how the land will be maintained or returned to a natural state and who will be responsible for plan implementation. Developers shall provide copies of common interest community (CIC) declarations to prospective purchasers, and conservation easements to the city, describing land management practices to be followed by the party or parties responsible for maintaining the preserved open space.
- (d) Where applicable, a Common Interest Community association shall be established to permanently maintain all residual open space and recreational facilities. The Common Interest Community association agreements, guaranteeing continuing maintenance, and giving lien right to the city if there is lack of the maintenance shall be submitted to the city as part of the documentation requirements of §§ 150.175 *et seq.* for a final plan.

(2) **Septic System Design Standards**

(a) **In General**

All septic systems shall conform to the performance standards of the Minnesota Pollution Control Agency’s standards for sewage treatment systems WPC-7080 and its appendices, or the M.P.C.A. standards in effect at the time of installation and septic system regulations of the Lake Elmo Municipal Code.

(b) **Individual Septic Drain fields**

Sites for individual septic drain fields, both primary and secondary, must be located entirely within each lot and cannot be located within any other easement.

(c) **Communal Drain Fields.**

- a. Communal drain fields may be partially or completely located in an area designated as preserved open space provided:
  - i. The ground cover is restored to its natural condition after installation; and
  - ii. Recreational uses are prohibited above or within 50 feet of communal drain fields, or as approved by the City Engineer.
- b. Communal drain fields, if installed, shall be professionally maintained; and are acceptable once legally sufficient documentation has been provided by the developer to ensure such maintenance will continue in perpetuity.

(3) **Building Standards**

- (a) Principal structures within open space planned unit developments shall not exceed 2 and ½ stories or 35 feet in height.
- (b) Accessory structures within open space planned unit developments shall not exceed 22 feet in height.

**Commented [BGA34]:** The Planning Commission would like the City Attorney to provide guidance on proper lien language to protect against community septic systems from failing, and an HOA that is unwilling or unable to act.

**Commented [BGA35]:** City staff will need to ensure these existing references are still accurate based on how the City current regulates septic systems. Does Washington County need to be referenced?

**Commented [BGA36]:** This new requirements would mandate that all individual septic systems be located on private property.

**Commented [BGA37]:** Existing language regarding wetland treatment systems has been eliminated as directed. The new ordinance would be silent on such systems, and Engineering would be looked at for guidance if such a system is proposed in the future.

**Commented [BGA38]:** The Planning Commission questioned whether we should specifically exclude historic structures from this requirement. Staff would say “no.” Historic structures taller than 22 feet would be legal nonconforming structures subject to protections of State Statute. We strongly recommend not creating special provisions based on the age of a building.



(c) It is desired that the structures within neighborhoods convey a particular architectural style with similar building components, materials, roof pitches. The PUD Overlay ordinance crafted for each individual development should establish minimum architectural standards for the neighborhood.

(4) **Landscaping Standards**

(a) A landscape plan for the entire site is required and shall consist of at least 10 trees per building site; and trees shall not be not less than 1.5 inch in caliper measured at 54 inches above grade level.

(b) Boulevard landscaping is required along all streets to consist of at least 1 tree per every 30 feet or placed in clusters at the same ratio.

**Commented [BGA39]:** As directed, the optional landscaping standards have been eliminated in favor of the existing standards.

(5) **Impervious Surface Standards (still needs work)**

The maximum impervious surface allowable within an open space planned unit development shall be 20% of the land area not dedicated as preserved open space subject to the following:

(a) Impervious surfaces created by roads, trails, and other planned impervious improvements shall count against the maximum allowed impervious coverage.

(b) Remaining allowed impervious surface acreage may be distributed between the planned building sites, and maximums for each lot shall be clearly documented within the overlay district ordinance governing the development.

(c) On individual lots, areas covered by pervious pavers or comparable systems may receive a 25% credit against the lot's hardcover if the system is installed consistent with the *City of Lake Elmo Engineering Standards Manual*, and adequate storm water mitigation measures (as may be necessary) are installed to mitigate potential runoff created by the additional coverage above the allowed impervious surface threshold. All such credits shall be at the discretion of the City Engineer.

**Commented [BGA40]:** This standard will be looked at in the future.

(6) **Trail Standards**

A trail system or sidewalks shall be established within open space planned unit developments in accordance with the following:

(a) The linear footage of trails provided shall be at least equal in length to the sum of the centerline length of all public roads within the development.

(b) All trails shall be constructed of asphalt or concrete in compliance with the standard city design plate for trails.

(c) Proposed trails shall provide connections between and access to the buildable land areas and preserved open space land being created by the development.

(d) Proposed trails shall connect to existing, planned, or anticipated trails or roads on adjacent parcels.

(e) If applicable, trails shall be linked (or be designed to provide a future link) to the "Old Village" to emphasize the connection between existing and new development.

**Commented [BGA41]:** The "pathway" standards that are currently lumped into a single paragraph are now broken apart in this new ordinance.

**Commented [BGA42]:** From current Section 150.180(B)(2)(f), sentence 3

**Commented [BGA43]:** From current Section 150.180(B)(2)(f), sentence 4

**Commented [BGA44]:** From current Section 150.180(B)(2)(f), sentence 1

**Commented [BGA45]:** From current Section 150.180(B)(2)(f), sentence 1

**Commented [BGA46]:** From current Section 150.180(B)(2)(f), sentence 2

§ 154.659 **BUFFER SETBACKS IN OP DEVELOPMENTS**

Buffer setbacks shall be applied from the edge of the existing open space preservation developments as follows.

**Commented [BGA47]:** This Section will likely need to be relocated to a more appropriate location in Chapter 154, but is included here as a place-holder for now.

<i>Buffer Setbacks in OP Developments (in feet)</i>					
	<i>North Edge</i>	<i>South Edge</i>	<i>West Edge</i>	<i>East Edge</i>	<i>Exception Parcel(s)</i>
St. Croix's Sanctuary	200	50	50	100	
Discover Crossing	200	100	50	100	
Whistling Valley I	25	200	N/A	N/A	
Whistling Valley II	25	100	85	N/A	
Whistling Valley III	50	100	100	N/A	
Farms of Lake Elmo	100	50	100	25	
Prairie Hamlet	200	50	50	100	
Fields of St. Croix I	50	N/A	200	100	
Fields of St. Croix II	N/A	200	200	N/A	N/A
The Homestead	50	50	200	50	
Tapestry at Charlotte's Grove	50	50	200	50	100
Tamarack Farm Estates	100	100	100	100	
Sunfish Ponds	100	100	100	200	
Hamlet on Sunfish Lake	50	100	50	50	
Cardinal Ridge	100	200	50	50	
Wildflower Shoves	100	200	100	200	
Heritage Farms	50	N/A	N/A	50	N/A
Tana Ridge (Res. 2009-033)	N/A	N/A	50	50	
Parkview Estates (Res. 2009-033)	50; except Lot 9, Block 5 use 20 ft	N/A	N/A	50	

**§ 154.660 OPEN SPACE PUD REVIEW CRITERIA**

The following findings shall be made by the City Council prior to approval of a new or amended open space planned unit development:

- (1) The proposed development is consistent with the goals, objectives, and policies of the Comprehensive Plan.
- (2) All prerequisites for an open space PUD as outlined in § 154.655 are met.
- (3) All open space PUD design standards (as outlined in § 154.657) and all open space development standards (as outlined in § 154.658) are met; or if deviations are proposed, that all such deviations are supported because:
  - a. The deviation(s) allow for quality building and site design that will enhance aesthetics of the site;
  - b. The deviation(s) help to create a unified environment within the project boundaries by ensuring one or more of the following: architectural compatibility of all structures, efficient vehicular and pedestrian circulation, enhanced landscaping and site features, and/or efficient use of utilities;
  - c. The overall design provides appropriate solutions to eliminate adverse impacts that proposed deviations may impose on surrounding lands.
- (4) If the proposed PUD involves construction over two or more phases, the applicant has demonstrated that each phase is capable of being a stand-alone development independent of other phases.

**Commented [BGA48]:** Lists the questions the City will ask when reviewing these types of developments. These criteria have been updated since the last review by Council in response to the super-majority vote for deviations being removed.

Rather than keeping such decision-making open-ended, we are proposing a set of criteria (in subdivision 3) by which Council may judge proposed deviations:

1) Do the deviations allow for a quality design that enhances the aesthetics of the site?

2) Do the deviations help to tie the development together to achieve one or more of the listed benefits?

3) Does the site design include appropriate solutions to mitigate adverse impacts of the proposed deviation?

By including a framework for decision making on deviations, we eliminate some of the subjectivity that can arise as PUDs are reviewed. Additional criteria can be added as Council may see fit.

We have also added subdivision 4 which introduces a new review criteria requiring that phased developments result in pieces that can stand-alone should the development go belly-up prior to completion.

**§ 154.661 OPEN SPACE PUD REVIEW PROCEDURE**

All requests to establish an open space Planned Unit Development shall be initiated by following the steps below.

- (1) **Open Space PUD Sketch Plan**
  - (a) **Purpose**

The open space PUD Sketch Plan is the first step in the development process which gives the applicant an opportunity to present their ideas to the City Council and public so as to gain general feedback on areas that will require additional analysis, study, design, changes, etc. Feedback gained during the open space PUD Sketch Plan phase should be addressed within the subsequent PUD Preliminary Plan.

**(b) Specific open space PUD Sketch Plan Submittal Requirements**

Except as may be waived by the Director of Planning, the following information shall constitute a complete application for an open space PUD Sketch Plan.

- 1. A listing of contact information including name(s), address(es) and phone number(s) of: the owner of record, authorized agents or representatives, engineer, surveyor, and any other relevant associates;

**Commented [BGA49]:** This lengthy section outlines the process to be used to review open space PUDs from beginning to end. In general, this current draft follows the standard City platting process with specific PUD requirements thrown in.

Boiled down to its core, the review will require a sketch plan proposal, a preliminary plan, and then a final plan.

2. A listing of the following site data: Address, current zoning, parcel size in acres and square feet and current legal description(s);
3. A narrative explaining the applicant's proposed objectives for the open space PUD, a listing of the proposed modifications from standard in § 154.657 as may be applicable, and an explanation of how the proposal addresses the PUD review criteria in § 154.660.
4. A listing of general information including the following:
  - a. Number of proposed residential units.
  - b. Calculation of the proposed density of the project showing compliance with § 154.657(A).
  - c. A listing of all proposed land uses (i.e. preserved open space, buildable sites, parkland, etc).
  - d. Square footages of land dedicated to each proposed land use.
5. An existing conditions exhibit, including topography, that identifies the location of the following environmental features along with calculations (in acres) for each:
  - a. Gross site acreage;
  - b. Existing wetlands;
  - c. Existing woodlands;
  - d. Areas with slopes greater than 12%, but less than 25%;
  - e. Areas with slopes of 25% or greater;
  - f. Woodlands;
  - g. Other pertinent land cover(s).
6. An open space PUD Sketch Plan illustrating the nature of the proposed development. At a minimum, the plan should show:
  - a. Existing zoning district(s) on the subject land and all adjacent parcels;
  - b. Layout of proposed lots and proposed uses denoting Outlots planned for public dedication and/or preserved open space;
  - c. Area calculations for each parcel;
  - d. General location of wetlands and/or watercourses over the property and within 200 feet of the perimeter of the subdivision parcel;
  - e. Location of existing and proposed streets within and immediately adjacent to the subdivision parcel;
  - f. Proposed sidewalks and trails;
  - g. Proposed parking areas;

- h. General location of wooded areas or significant features (environmental, historical, cultural) of the parcel;
  - i. Location of utility systems that will serve the property;
  - j. Calculations for the following:
    - i. Gross land area (in acres);
    - ii. Number of proposed residential units.
    - iii. Proposed density of the project showing compliance with § 154.657(A).
    - iv. Acreage & square footage of land dedicated to each proposed land use (i.e. preserved open space, buildable sites, parkland, etc).
    - v. Acreage & square footage of land proposed for public road right-of-way;
    - vi. Acreage & square footage of land dedicated to drainage ways and ponding areas;
    - vii. Acreage & square footage of land for Trails and/or sidewalks (if outside of proposed road right-of-way);
  - k. Other: An applicant may submit any additional information that may explain the proposed PUD or support any requests for modifications (i.e. a landscaping plan to support the lessening or elimination of an otherwise required buffer).
7. The outline of a conceptual development schedule indicating the approximate date when construction of the project, or stages of the same, can be expected to begin and be completed (including the proposed phasing of construction of public improvements and recreational & common space areas).
  8. A statement of intent to establish a Common Interest Community association with bylaws and deed restrictions to include, but not be limited to, the following:
    - a. Ownership, management, and maintenance of defined preserved open space;
    - b. Maintenance of public and private utilities; and
    - c. General architectural guidelines for principal and accessory structures.
  9. If applicable, a historic preservation plan for any historic structures on the site shall be submitted.

**(c) Open Space PUD Sketch Plan Proposal Review**

**1. Planning Commission**

- a. Upon receiving an open space PUD Sketch Plan proposal, the City shall schedule a date upon which the Planning Commission will review the proposal.
- b. Upon completing their review, the Planning Commission shall adopt findings and recommendations on the proposed open space PUD as soon as practical.

**Commented [BGA50]:** The need for a sketch plan public hearing before the Planning Commission was eliminated as requested.

- c. The Director of Planning may forward an application to the City Council without a recommendation from the Planning Commission only if it is deemed necessary to ensure compliance with state mandated deadlines for application review.

**2. City Council**

- a. The City Council may listen to comments on the proposed development if they deem such necessary prior to taking action on the proposed open space PUD Sketch plan.
- b. After consideration of the Director of Planning’s recommendation, the Planning Commission recommendation, and the comments received at the public hearing, the City Council may comment on the merit of the request, needed changes, and suggested conditions that the proposer should adhere to with any future application.
- c. For each of the identified modifications to the minimum standards outlined in § 154.657, the City Council shall take a vote to instruct the applicant as to whether the modification can be pursued as a component of the PUD Preliminary Plan review. The ability to pursue approval of modified standards may only be authorized via a super-majority vote of the City Council.

**(d) Effect of a PUD Sketch Plan Review**

The City Council and Planning Commission’s comments during the PUD Sketch Plan review are explicitly not an approval or denial of the project, and are intended only to provide information for the applicant to consider prior to application for an open space PUD Preliminary Plan.

**(e) Limitation of Approval**

The City Council’s review of an open space PUD Sketch Plan shall remain valid for a period of six (6) months. The City Council, in its sole discretion, may extend the validity of their findings for an additional year.

**(2) PUD Preliminary Plan**

**(a) Prerequisite**

No application for an open space PUD Preliminary Plan will be accepted unless a distinctly similar proposal has completed the open space PUD Sketch Plan review process which is valid upon the date of application.

**Commented [BGA51]:** Under this process, Council would take individual votes on each modification proposed by the applicant. Approval at this stage ONLY authorizes the applicant to make the request at the Preliminary stage; it does NOT grant any rights to the modification. Again, modifications can only be pursued IF Council allows such via a super majority vote.

**Commented [BGA52]:** This subsection clarifies EXACTLY what a developer gets as a result of the sketch plan process.

**Commented [BGA53]:** Sketch Plan reviews may remain valid for up to 1.5 years.

**Commented [BGA54]:** The City will not accept a preliminary plan application unless a valid sketch plan is in place.

**(b) PUD Preliminary Plan Submittal Requirements**

Except as may be waived by the Director of Planning, the following information shall constitute a complete application for an open space PUD Preliminary Plan.

1. All required information for a preliminary plat per Chapter 1102, Section 1102.01(C) and Section 1102.02.
2. A written summary of the required Developer Open House meeting as required by Chapter 1102, Section 1102.01(B)(5).
3. A separate open space PUD Preliminary Plan which includes the following information:
  - a. Administrative information (including identification of the drawing as an “Open Space PUD Preliminary Plan,” the proposed name of the project, contact information for the developer and individual preparing the plan, signature of the surveyor and civil engineer certifying the document, date of plan preparation or revision, and a graphic scale and north arrow);
  - b. Area calculations for gross land area, wetland areas, right-of-way dedications, and proposed public and private parks or open space;
  - c. Existing zoning district(s) on the subject land and all adjacent parcels;
  - d. Layout of proposed lots with future lot and block numbers. The perimeter boundary line of the subdivision should be distinguishable from the other property lines. Denote Outlots planned for public dedication and/or open space (schools, parks, etc.);
  - e. The location of proposed septic disposal area(s);
  - f. Area calculations for each parcel;
  - g. Proposed setbacks on each lot (forming the building pad) and calculated buildable area;
  - h. Proposed gross hardcover allowance per lot (if applicable);
  - i. Existing contours at intervals of two feet. Contours must extend a minimum of 200 feet beyond the boundary of the parcel(s) in question;
  - j. Delineation of wetlands and/or watercourses over the property;
  - k. Delineation of the ordinary high water levels of all water bodies;
  - l. Location, width, and names of existing and proposed streets within and immediately adjacent to the subdivision parcel;
  - m. Easements and rights-of-way within or adjacent to the subdivision parcel(s);
  - n. The location and orientation of proposed buildings;
  - o. Proposed sidewalks and trails;

- p. Vehicular circulation system showing location and dimension for all driveways, parking spaces, parking lot aisles, service roads, loading areas, fire lanes, emergency access, if necessary, public and private streets, alleys, sidewalks, bike paths, direction of traffic flow and traffic control devices;
  - q. Lighting location, style and mounting and light distribution plan.
  - r. Proposed parks, common areas, and preservation easements (indicate public vs. private if applicable);
  - s. Location, access and screening detail of large trash handling and recycling collection areas
4. Colored renderings which detail the building materials being used and clearly communicate the look and design of the proposed building(s);
  5. Proposed architectural and performance standards for the development;
  6. A grading drainage and erosion control plan prepared by a registered professional engineer providing all information as required by Public Works, the City Engineer, and/or the Director of Planning;
  7. A utility plan providing all information as required by Public Works, the City Engineer, and/or the Director of Planning;
  8. Results of deep soil test pits and percolation tests, at the rate of no fewer than 2 successful test results for each proposed septic disposal area;
  9. A landscape plan, including preliminary sketches of how the landscaping will look, prepared by a qualified professional providing all information outlined in Section **<insert applicable section here>** ;
  10. A tree preservation plan as required by Section **<insert applicable section here>**;
  11. The location and detail of signage providing all pertinent information necessary to determine compliance with Section **<insert applicable section here>**;
  12. A traffic study containing, at a minimum, the total and peak hour trip generation from the site at full development, and the effect of such traffic on the level of service of nearby and adjacent streets, intersections, and total parking requirements;
  13. A plan sheet or narrative clearly delineating all features being modified from standard open space PUD regulations;
  14. Common Interest Community Association documents including bylaws, deed restrictions, covenants, and proposed conservation easements.
  15. Any other information as directed by the Director of Planning.



**(c) PUD Preliminary Plan Review**

1. As part of the review process for an open space PUD Preliminary Plan, the Director of Planning shall generate an analysis of the proposal against the expectations for PUDs, and make a recommendation regarding the proposed overlay district for Planning Commission and City Council consideration.
2. The Director of Planning shall prepare a draft ordinance to establish the potential overlay district to be established as a component of the PUD Final Plan.
3. The Planning Commission shall hold a public hearing and consider the application's consistency with the goals for PUDs, the PUD review criteria, and applicable comprehensive plan goals. The Planning Commission shall make recommendations to the City Council on the merit, needed changes, and suggested conditions to impose on the PUD.
4. In approving or denying the PUD Preliminary Plan, the City Council shall make findings on the PUD review criteria outlined in Section 1023.08.
5. As a condition of PUD Preliminary Plan approval; finalization, adoption, and publication of an overlay district ordinance shall need to occur prior to the filing of any future final plat.

**Commented [BGA55]:** Rather than allowing the applicant to draft an overlay district, we are proposing that staff begin the process at preliminary plan. The cost for this work will need to be incorporated into the fee for a Preliminary Plan application.

Note that staff will ONLY be creating a draft now for feedback and direction. The actual code language will be reviewed during the Final Plan phase.

**(d) Effect of a PUD Preliminary Plan Review**

Preliminary Plan approval governs the preparation of the PUD Final Plan which must be submitted for final approval in accordance with the requirements of this Article.

**Commented [BGA56]:** This subsection clarifies EXACTLY what a developer gets as a result of the Preliminary Plan process.

**(e) Limitation of Approval**

The City Council's review of an open space PUD Preliminary Plan shall remain valid for a period of one (1) year. The City Council, in its sole discretion, may extend the validity of their findings for an additional year.

**Commented [BGA57]:** Preliminary Plan approvals may remain valid for up to 2.0 years.

**(3) PUD Final Plan**

**(a) Application Deadline**

Application for an open space PUD Final Plan shall be submitted for approval within ninety (90) days of City Council approval of the open space PUD Preliminary Plan unless a written request for a time extension is submitted by the applicant and approved by the City Council.

**Commented [BGA58]:** To ensure the process continues to move forward, we are recommending a 90 day time-frame in which the final plan application must be submitted.

**(b) PUD Final Plan Submittal Requirements**

Except as may be waived by the Director of Planning, the following information shall constitute a complete application for an open space PUD Final Plan.

1. All required information for a final plat per <insert applicable section here>;
2. All required PUD Preliminary Plan documents, other than the preliminary plat, shall be updated to incorporate and address all conditions of PUD Preliminary Plan approval.
3. Any deed restrictions, covenants, agreements, and articles of incorporation and bylaws of any proposed homeowners' association or other documents or contracts which control the use or maintenance of property covered by the PUD.
4. A final staging plan, if staging is proposed, indicating the geographical sequence and timing of development, including the estimated start and completion date for each stage.
5. Up-to-date title evidence for the subject property in a form acceptable to the Director of Planning.
6. Warranty deeds for Property being dedicated to the City for all parks, Outlots, etc., free from all liens and encumbrances.
7. All easement dedication documents for easements not shown on the final plat including those for trails, ingress/egress, buffer establishment, etc., together with all necessary consents to the easement by existing encumbrancers of the property.
8. Any other information deemed necessary by the Director of Planning to fully present the intention and character of the open space PUD.
9. If certain land areas or structures within the open space PUD are designated for recreational use, public plazas, open areas or service facilities, the owner of such land and buildings shall provide a plan to the city that ensures the continued operation and maintenance of such areas or facilities in a manner suitable to the city.

**Commented [BGA59]:** Here we denote that easements may be created to memorialize buffer areas on individual lots.

**(c) PUD Final Plan Review**

1. The Director of Planning shall generate an analysis of the final documents against the conditions of the open space PUD Preliminary Plan approval, and make a recommendation as to whether all conditions have been met or if additional changes are needed.
2. Staff should once again identify any information submittals that were waived so Council may determine if such is needed prior to making a final decision.
3. The Director of Planning shall finalize the ordinance to establish the proposed overlay district for consideration by the Planning Commission and City Council.

4. The Planning Commission shall hold a public hearing on the proposed Overlay District ordinance and open space Final PUD Plans, and shall submit a recommendation to the City Council for consideration. Because an open space PUD Preliminary Plan was previously approved, the Planning Commission's recommendation shall only focus on whether the Ordinance and open space PUD Final Plan are in substantial compliance with the open space PUD Preliminary Plan and the required conditions of approval.
5. The City Council shall then consider the recommendations of the Director of Planning, the public, and the Planning Commission; and make a decision of approval or denial, in whole or in part, on the open space PUD Final Plan. A denial shall only be based on findings that an open space PUD Final Plan is not in substantial compliance with the approved open space PUD Preliminary Plan and/or the required conditions of approval.
6. As a condition of PUD Final Plan approval, publication of the overlay district ordinance shall be required prior to filing of the approved final plat.
7. Planned Unit Development Agreement.
  - a. At its sole discretion, the City may as a condition of approval, require the owner and developer of the proposed open space PUD to execute a development agreement which may include but not be limited to all requirements of the open space PUD Final Plan.
  - b. The development agreement may require the developers to provide an irrevocable letter of credit in favor of the City. The letter of credit shall be provided by a financial institution licensed in the state and acceptable to the City. The City may require that certain provisions and conditions of the development agreement be stated in the letter of credit. The letter of credit shall be in an amount sufficient to ensure the provision or development of improvement called for by the development agreement.
8. As directed by the City, documents related to the PUD shall be recorded against the property.

**Commented [BGA60]:** Unlike most platting processes, we must hold a public hearing at this point in the process as the City must adopt the final ordinance language that will govern the PUD.

**(d) Time Limit**

1. A Planned Unit Development shall be validated by the applicant through the commencement of any necessary construction or establishment of the authorized use(s), subject to the permit requirements of Title 9 of this Code, in support of the Planned Unit Development within one (1) year of the date of open space PUD Final Plan approval. Failure to meet this deadline shall render the open space PUD Final Plan approval void. Notwithstanding this time limitation, the City Council may approve extensions of the time allowed for validation of the Planned Unit Development approval if requested in writing by the applicant; extension requests shall be submitted to the Director of Planning and shall identify the reason(s) why the extension is necessary along with an anticipated timeline for validation of the Planned Unit Development.
2. An application to reinstate an open space PUD that was voided for not meeting the required time limit shall be administered in the same manner as a new open space PUD beginning at open space PUD Preliminary Plan.

**§ 154.662 OPEN SPACE PUD AMENDMENTS**

Approved open space PUDs may be amended from time to time as a result of unforeseen circumstances, overlooked opportunities, or requests from a developer or neighborhood. At such a time, the applicant shall make an application to the city for an open space PUD amendment.

**(A) Amendments to Existing Open Space PUD Overlay District(s)**

Amendments to an approved open space PUD Overlay district shall be processed as one of the following:

**(1) Administrative Amendment**

The Director of Planning may approve minor changes in the location, placement, and height of buildings if such changes are required by engineering or other circumstances, provided the changes conform to the approved overlay district intent and are consistent with all requirements of the open space PUD ordinance. Under no circumstances shall an administrative amendment allow additional stories to buildings, additional lots, or changes to designated uses established as part of the PUD. An Administrative Amendment shall be memorialized via letter signed by the Community Development Director and recorded against the PUD property.

**Commented [BGA61]:** This section will deal with how the City will process amendments to both open space PUDs and existing OP developments.

**(2) Ordinance Amendment**

A PUD change requiring a text update to the adopted open space PUD overlay district language shall be administered in accordance with adopted regulations for zoning code changes in Section xxx. Ordinance amendments shall be limited to changes that are deemed by the Director of Planning to be consistent with the intent of the original open space PUD approval, but are technically necessary due to construction of the adopted overlay district language.

**(3) PUD Amendment**

Any change not qualifying for an administrative amendment or an Ordinance amendment shall require an open space PUD amendment. An application to amend an open space PUD shall be administered in the same manner as that required for a new PUD beginning at open space PUD Preliminary Plan.

**(B) Pre-existing OP Developments (work in progress)**

Pre-existing OP developments authorized prior to [date this ordinance is effective] shall continue to be governed per the original conditions of approval until the OP development is cancelled by the City, or the OP development is converted to an open space PUD overlay district. An application to amend an existing OP development shall be administered in the same manner as that required for a new open space PUD beginning at open space PUD Preliminary Plan.

**Commented [BGA62]:** This section will be written if these amendments continue to move forward.

**§ 154.663 PUD CANCELLATION**

An open space PUD shall only be cancelled and revoked upon the City Council adopting an ordinance rescinding the overlay district establishing the PUD. Cancellation of a PUD shall include findings that demonstrate that the PUD is no longer necessary due to changes in local regulations over time; is inconsistent with the Comprehensive Plan or other application land use regulations; threatens public safety, health, or welfare; or other applicable findings in accordance with law.

**Commented [BGA63]:** This section outlines the process for cancelling a previous PUD approval.

**§ 154.664 ADMINISTRATION**

In general, the following rules shall apply to all open space PUDs:

**Commented [BGA64]:** This section includes some final rules and regulations deemed important by staff.

**(A) Rules and regulations**

No requirement outlined in the open space PUD review process shall restrict the City Council from taking action on an application if necessary to meet state mandated time deadlines;

**(B) Preconstruction**

No building permit shall be granted for any building on land for which an open space PUD plan is in the process of review, unless the proposed building is allowed under the existing zoning and will not impact, influence, or interfere with the proposed open space PUD plan.

**(C) Effect on Conveyed Property**

In the event that any real property in an approved open space PUD is conveyed in total, or in part, the new owners thereof shall be bound by the provisions of the approved overlay district.

**SECTION 6 (Will update the list of overlay districts in Chapter 154 to include the Open Space Planned Unit Development Overlay District)**