



STAFF REPORT

DATE: 03/05/2019

REGULAR

TO: Mayor and City Council

FROM: Ken Roberts – Planning Director

ITEM: **House Moving and Relocation Agreement - Wyndham Village**

REVIEWED BY: Sarah Sonsalla, City Attorney

BACKGROUND:

The Applicant, JP Bush Homes, is requesting City Council approval to move a house and a house relocation agreement. He is proposing to move the existing house located at 11580 30th Street North approximately 250 feet to the southwest to a new location within the Wyndham Village subdivision. Section 151.019 of the City Code requires City Council approval of a moving permit or relocation agreement to move a building or structure into or within the City.

The City approved the Wyndham Village Preliminary Plat on July 3, 2018 with conditions. The proposed subdivision will create 10 single-family residential lots that will be accessed from a single cul-de-sac. At that time, staff noted and the project plans showed there was an existing home on the subject site that would be moved and relocated onto Lot 7 as described and approved during the Preliminary Plat process.

On December 4, 2018, the City Council approved the final plat for Wyndham Village, subject to the applicant meeting all conditions of approval.

PROPOSAL DETAILS/ANALYSIS:

General Information.

Applicant: JP Bush Homes, 1980 Quasar Ave S, Lakeland, MN 55043

Property Owners: James McLeod, 11580 30th St N, Lake Elmo, MN 55042

Location: Part of the southwest quarter of the southeast quarter of Section 13, Township 29 North, Range 21 West

PID: 13-029-21-43-0001

Request: Approval to move a house and the required House Relocation Agreement for an existing single-family home in the Wyndham Village subdivision.

Surrounding: North – Northport (Urban Low Density Residential); East – Northport (Urban Low Density Residential); West – Rural Single Family Residential; South – the Homestead (Open Space Preservation Development)

Regulations: Chapter 151.019 – Moving Buildings into City.

ISSUE BEFORE CITY COUNCIL:

Should the City Council approve the proposed house moving and house relocation agreement with JP Bush Homes?

Consistency with the Approved Final Plat and Conditions.

The City’s Subdivision Ordinance requires that a Final Plat be substantially compliant with the approved Preliminary Plat. If it is determined that the Final Plat is inconsistent or a substantial departure from the approved Preliminary Plat then additional review and approval may be required. If it is determined that the Final Plat is consistent with the Preliminary Plat, and the conditions as noted within the Preliminary Plat have been completed, then the Final Plat should be granted after Planning Commission review and City Council approval.

Staff reviewed the proposed house moving onto Lot 7 in the Wyndham Village Final Plat and have made the following conclusions:

- The lot and block configuration of the Final Plat are consistent with the Preliminary Plat;
- The proposed site, grading and landscape plans for building on Lot 7 and the supplemental materials should meet the conditions of approval for the Wyndham Village preliminary and final plats; and
- The proposed house relocation onto Lot 7 of the subdivision is consistent with the approved preliminary and final plats for Wyndham Village.

PRELIMINARY PLAT CONDITIONS FOR FINAL PLAT APPROVAL:

City approval of the Preliminary Plat included conditions required to be addressed by the Applicant before City approval of the Final Plat. These include the following:

- 1) Homes within lots in which the Northern Natural Gas Company Easement (Document 384029) (“Northern Easement”) is located shall maintain a 20-foot principal building rear yard setback from the Northern Easement.

The Final Plat identifies the required Northern Easement area along the rear (west) yards of Lots 6, 8, 9 and 10 and along the front (east) yard of Lot 7. Building setback dimensions are not shown on a Final Plat. Staff would recommend carrying the principal building setback requirement forward to the Development Agreement to ensure the appropriate setbacks from the easement area are applied at time of building permit review.

- 2) All required modifications to the plans as requested by the City Engineer in a review letter dated May 30, 2018 shall be incorporated into the plans, and plans shall be approved prior to consideration of a Final Plat.

The City Engineer reviewed and accepted an updated set of preliminary plans in response to the Engineer's memo dated May 30, 2018. Though preliminary plans have been accepted, there remain several outstanding issues with the Construction Plans as noted in the City Engineer's memo. At the Planning Commission meeting the Applicant testified that supplemental materials and information has been submitted to the City Engineer for additional review and consideration. At the time of this memo, no additional formal review has been completed regarding the updated information. As such, Staff recommends that the City Engineer's Construction Plans memo be included as a condition of Final Plat approval.

- 3) Preliminary plat and plans should be revised to dedicate additional right-of-way along 30th Street and/or to expand the storm water to the 100-year High Water Level (HWL) flood area.

Right-of-way along 30th Street maintains a consistent distance of 16 feet between the paved roadway and right-of-way line, which is consistent with changes required by the City Engineer during Preliminary Plat approval. Outlot A contains storm water storage and infiltration basins and have been designed to a HWL of 917, which also meets requirements.

- 4) Written easement owner permission must be obtained, and copies provided to the City, for work to be completed within the Northern [Natural Gas] Easement. The City must receive copies of the written permission prior to approval of the Final Plat.

No written documentation or information was submitted for review during this Final Plat process regarding the Northern Easement. This should be restated as a condition of Final Plat approval and no site work, or any other construction activity shall be permitted until this condition has been met.

- 5) Written landowner permission must be submitted as part of the Final Plat development applications for any off-site grading work and storm water discharges to adjacent properties.

Off-site grading work is not anticipated with the development of this project. The City Engineer has addressed this condition in their review memo attached. If this changes then the appropriate permissions must be acquired and furnished to the City prior to completing any associated work.

- 6) The developer shall pay a cash contribution in lieu of land for park dedication equal to 10% of the fair market value of the entire parcel.

As a condition of Final Plat approval, the developer will appraise the land value and pay a cash contribution to the City in lieu of park dedication prior to any building permits issued. As stated in the Preliminary Plat process and per the City's ordinance, the Applicant shall furnish an appraisal from a licensed real estate appraiser indicating the fair market value from which the final Park Dedication fee can be calculated. The determined fee shall be included within the Development Agreement as well as a schedule for payment.

- 7) The developer shall obtain all required permits from Northern Natural Gas to perform construction work over the gas line that runs from north to south across this site.

As stated in condition #2, the Applicant shall obtain approval from Northern Natural Gas to perform any work within, or over, the gas line easement. Any required permits shall be obtained, and copies furnished to the City prior to the start of any site work.

- 8) The preliminary landscape plan shall be approved by the City prior to recording of the Final Plat.

The City's Landscape Architect has reviewed the submitted plans and determined that they have not been updated for consistency with the Final Plat. His review and recommended conditions are included in his staff report dated November 27, 2018. Staff recommends that this condition be carried forward and that the landscape plan must be updated to the satisfaction of the City's Landscape Architect prior to recording the Final Plat.

- 9) The lot width of Lot 1 shall be increased to 70 feet, and all other lot dimension and bulk requirements of the Village Urban Low Density zoning district must be met.

Lot 1 has been revised to include 70.49 feet lot width. As depicted on the Final Plat, the remaining lots comply with all other lot dimension standards. Since the Final Plat does not include building footprints, setback or other bulk standards, staff would recommend that this portion of the condition be incorporated into the Development Agreement to ensure all future development complies with the V-LDR bulk standards.

- 10) The applicant shall provide a disclosure statement to all first homeowners in the development advising of the airport and associated over-flights as well as its proximity to the railroad and associated noise and vibration.

This condition will be incorporated into the Development Agreement.

- 11) All builders shall be encouraged to incorporate interior noise reduction measures into single family residential structures within the subdivision based on the Metropolitan Council's Builder Guide.

This condition will be incorporated into the Development Agreement.

- 12) All easements as requested by the City Engineer and Public Works Department shall be documented on the Final Plat prior to the execution of the final plat by City Officials.

The City Engineer has reviewed the Final Plat and provided his comments in the attached memo. While most easement areas comply with the City Engineering Design Standards Manual there are a few outstanding issues as noted. The Applicant should note that any changes to the site plan or plat as a result of the VBWD, State and City process may be subject to additional City review if alterations to the Final Plat are needed. The City Engineer also identifies that additional easements are required to match the drainage swales identified on Lots 8,9,10 and 15 as noted in the staff memo. As stated previously, staff recommends that both of the City Engineer's memos be incorporated as a condition of Final Plat approval.

- 13) Prior to recording the Final Plat, the Developer shall enter into a Developers Agreement acceptable to the City Attorney that delineates who is responsible for the design, construction, and payment of public improvements.

Staff is preparing a draft Development Agreement that will incorporate the conditions as noted within this staff report. The Development Agreement will be presented to the City Council for its review and consideration.

- 14) The Applicant shall provide a detailed site plan for Lot 7 showing the proposed house location and screening/buffering to be approved by Council and protected by a landscape easement.

The City received a detailed site plan of Lot 7 on Oct 7, 2018 that is consistent with the Preliminary Plat with the exception of the attached garage (accessory building) to the principal structure. The condition also states that Lot 7 must include a dedicated landscape easement to buffer adjacent property. The Final Plat does not indicate a landscape easement on Lot 7. The Lot 7 Detail-Preliminary Plat illustrates the location of buildings that meet required setbacks and drive access, but it is not consistent with the Tree Preservation Plan (Landscape Plan) also submitted.

The City's Landscape Architect provided additional review and comments dated November 27, 2018. Staff recommends that the Landscape Architect's memo and drafted conditions for Lot 7 be incorporated as a condition of the house relocation approval.

HOUSE MOVING REQUEST:

The proposal to move the existing house from its location at 11580 30th Street North to Lot 7, Block 1 of Wyndham Village is consistent with the approved preliminary and final plat plans. The City will want to ensure that house moving and its new location will meet all City conditions of approval and will not negatively affect any of the neighbors. The proposed house relocation agreement outlines the responsibilities of the applicant for the house moving, including the need for city approvals, permits and the payment of fees.

RECOMMENDED FINDINGS:

Staff recommends the following draft findings about the proposed house relocation:

- 1) That the Wyndham Village Final Plat is consistent with the approved Preliminary Plat; the Lake Elmo Comprehensive Plan and its Future Land Use Map; and the amended zoning for this property.
- 2) That the Wyndham Village Final Plat complies with all other applicable zoning requirements, including the City's landscaping, storm water, sediment and erosion control and other ordinances, and is consistent with the City's engineering design standards with the corrections as noted by the City Engineering Review Comments and Construction Plan Review Memos dated November 5, 2018.
- 3) That the Wyndham Village Final Plat complies with the City's subdivision ordinance.

- 4) That the proposed house relocation to Lot 7, Block 1 in the Wyndham Village subdivision would be consistent with the City's preliminary and final plat approvals for the development.

RECOMMENDED CONDITIONS OF APPROVAL:

Staff recommends the following conditions of approval for the proposed house relocation:

1. All relevant, required modifications to the construction plans as requested by the City Engineer in the review letter dated November 5, 2018 shall be incorporated into the plans. The plans shall be approved by the City before the City issues any permits for the house moving and before the recording of the Final Plat.
2. Written easement owner permission must be obtained, and copies provided to the City, for work to be completed within the Northern Natural Gas Easement. The City must receive copies of the written permission before any site work or construction activity commencing on site.
3. If applicable, written landowner permission must be submitted for any off-site grading work and storm water discharges to adjacent properties.
4. The developer shall obtain all required permits from Northern Natural Gas to perform construction work over the gas line that runs from north to south across this site before any site work or construction activity commencing on site.
5. The landscape plan shall be amended to include landscape easement on Lot 7 and shall be approved by the City before moving the house and before recording of the Final Plat.
6. If applicable, all easements as requested by the City Engineer and Public Works Department shall be documented on the plans for the house relocation and on the Final Plat before the execution of the Final Plat by City Officials.
7. Before the City issues any building or house moving permits, the applicant or Developer shall enter into a House Relocation Agreement with the City that is acceptable to the City Attorney that is consistent with City Code requirements and shall delineate all costs and responsibilities for the relocation of the house by the Developer within the subdivision.
8. The Applicant shall amend the Lot 7 Detail to show screening/buffering consistent with the City's ordinances, which shall be reviewed and approved by the City's Landscape Architect before starting any site work or before the City issues any permits to move the house onto Lot 7.

FISCAL IMPACT:

There would be no fiscal impact to the City, as the developer would be required to pay for all costs to relocate the house including sewer and water connection charges, building permit fees and any other fees as required per the City's ordinances.

RECOMMENDATION:

Staff recommends that the City Council approve the House Relocation Agreement with JP Bush Homes, Inc. and approve the relocation of the existing house at 11580 30th Street North in Lake Elmo to Lot 7, Block 1 of Wyndham Village with the findings and conditions as noted herein.

“Move to approve the requested house relocation and the house relocation agreement for JP Bush Homes, Inc. to move the existing house at 11580 30th Street North in Lake Elmo to Lot 7, Block 1 of Wyndham Village. This approval is based on the findings of fact and is subject the conditions outlined in the Staff Report.”

ATTACHMENTS:

1. Project Plans and Maps
2. House Relocation Agreement

HOUSE RELOCATION AGREEMENT

This **HOUSE RELOCATION AGREEMENT** (this “Agreement”) is made this ____ day of March, 2019 (the “Effective Date”), by and between The James R. McLeod Revocable Trust (the “Owner”), J.P. Bush Homes, Inc., a Minnesota corporation (the “Developer”), and the City of Lake Elmo, a Minnesota municipal corporation (the “City”).

RECITALS

WHEREAS, the Owner is the fee owner of certain real property located at: 11580 30th Street North in Lake Elmo, Washington County, Minnesota, legally described on the attached Exhibit A (the “Property”); and

WHEREAS, a house currently exists on the Property (the “Structure”); and

WHEREAS, the Owner and the Developer have received preliminary and final plat approval from the City to plat the Property into 10 residential lots, to be known as Wyndham Village; and

WHEREAS, as part of the preliminary and final plat approval process, the Owner and the Developer requested that the Structure be relocated by the Developer to a new location on the Property that is to be known as Lot 7, Block 1, Wyndham Village and shown on the plans submitted to the City dated _____, 2018 (the “New Location”); and

WHEREAS, the relocation of the Structure to the New Location was discussed by the Planning Commission during its review of the preliminary and final plats for Wyndham Village; and

WHEREAS, public hearings were also held by the Planning Commission during its review of the preliminary and final plats for Wyndham Village that included the discussion of the relocation of the Structure to the New Location; and

WHEREAS, the City Council reviewed and approved the preliminary and final plats for Wyndham Village; and

WHEREAS, before recording the final plat and before commencing the development of the Property, the Owner and the Developer have requested that the City allow the Developer to relocate the Structure to the New Location; and

WHEREAS, the City has agreed to allow the Owner and the Developer to relocate the Structure to the New Location before recording the final plat and before commencing the development of the Property, subject to the following conditions; and

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree and stipulate as follows:

1. RELOCATION REQUIREMENTS. The City agrees to permit the Owner and the Developer to relocate the Structure to the New Location upon the Owner and the Developer satisfying the following requirements:

- a. Obtaining a building moving permit from the City in accordance with Section 151.091 of the City Code;
- b. Paying to the City any application fees associated with the building moving permit;
- c. Providing the City with the security that is required by this Agreement;
- d. Providing the City with a copy of a certificate of insurance that indicates that they have obtained liability coverage and property damage coverage in amount of at least \$1,000,000;
- e. Providing the City with photos of all sides of the Structure;
- f. Providing the City with a complete description of the Structure including its age and physical condition, if they have not already done so;
- g. Providing the City with a site plan, if they have not already done so;
- h. Providing the City with written approval from utility companies, if they have not already done so;
- i. Providing the City with proof of a state license for house and building moving;
- j. Providing the City with an erosion control plan that must be approved by the City Engineer;
- k. Providing the City with a grading plan for the site that must be approved by the City Engineer; and
- l. Providing the City with a landscape and screening plan for the site to be approved by the City as required by the conditions of plat approval for Wyndham Village.

2. WORK TO BE PERFORMED. The Owner and the Developer must relocate the Structure to the New Location and connect the Structure to all utilities (electric, sewer, water, and gas). The Owner and the Developer must construct a foundation for the Structure at the New Location and grade the New Location in accordance with the grading plans that are on file with the City dated _____. The Owner and the Developer must also remove and fill in the foundation of the previous location of the Structure. The Owner and the Developer must also construct a temporary access on the Property so that the Structure at the New Location can be accessed off of Liberty Court North instead of 30th Street North. This temporary access is to be removed after the streets in the Wyndham Village plat are constructed. The work to be performed by the Owner and Developer pursuant to this paragraph is to be referred to collectively in this Agreement as the “Work.” In performing the Work, the Owner and the Developer must comply with all federal, state, and local regulations, including, but not limited to, Minnesota Statutes Section 221.81 and Section 151.019 of the City Code.

3. EROSION CONTROL. The Owner and the Developer must also complete the Work in a manner designed to control erosion and in compliance with the City Code, the City’s Engineering Design and Construction Standards Manual, all watershed district permits, the Minnesota Pollution Control Agency’s best management practices, and other requirements including the City’s permit with the Minnesota Pollution Control Agency for the municipal separate storm sewer system program. The City may impose additional erosion control requirements at any stage in development

as deemed necessary to maintain a compliant site. If the Owner and the Developer do not comply with the erosion control plan and schedule or supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Owner and the Developer in advance of any proposed action, but failure of the City to do so will not affect the Owner and the Developer's and the City's rights or obligations hereunder. If the Owner or the Developer does not reimburse the City for any costs the City incurred for such work within 10 days, the City may draw down the security required under this Agreement to pay any costs. No certificate of occupancy will be issued by the City for the Structure unless the site is in full compliance with the approved erosion control plan.

4. DEADLINE FOR THE WORK TO BE COMPLETED. The Owner and the Developer agree to perform the Work within one year of the effective date of this Agreement. The Owner or the Developer may request an extension to this deadline; however, the City is under no obligation to grant an extension. If the Owner or the Developer fails to complete any of the Work by the deadline set forth in this Agreement, the Owner grants permission to the City, its employees, and contractors to enter upon the Property for the purpose of completing the Work.

5. REPRESENTATIONS OF THE OWNER. The Owner represents that the Structure to be relocated to the New Location is the exact structure that is currently located on the Property; that it is the fee owner of the Property, that its representative signing this Agreement on its behalf has full legal power and authority to encumber the Property as provided in this Agreement; that in doing so the Owner is not in violation of the terms or conditions of any instrument or agreement of any nature to which the Owner is bound or which relates in any manner to the Property.

6. SECURITY. The Owner and the Developer agree to deposit with the City a cash deposit or letter of credit in the amount of \$_____, which represents 150 percent of the estimated cost of completing the Work. In the event that the Owner and the Developer fail to complete all of the Work within the time specified by this Agreement, the City may complete the Work and draw from the deposit or letter of credit any expenses that it incurs that are associated with this work.

7. SPECIAL ASSESSMENT WAIVER. In the event that the City must complete the Work and the expenses incurred by the City exceed the amount of the deposit or letter of credit, the Owner consents to the City levying a special assessment against the Property for the remaining amount in accordance with Minnesota Statutes Section 429.061. The principal amount of the special assessment shall be the actual costs incurred by the City to complete the Work that exceeded the letter of credit or deposit amount. The special assessment shall not exceed \$25,000. In the event that the City must complete the Work and its expenses exceed the letter of credit or deposit amount, the Owner waives its notice of hearing and hearing on the special assessment levied by the City to finance the Work, pursuant to Minnesota Statutes Section 429.061 and specifically requests that the special assessment be levied against the Property by the City without a hearing. The Owner also waives its right to appeal the levy of the special assessment in accordance with this Agreement pursuant to Minnesota Statutes Section 429.081. The Owner further specifically agrees with respect to this special assessment against the Property that: 1) all requirements of Minnesota Statutes Chapter 429 with which the City does not comply with are hereby waived; and 2) the increase in fair market value of the Property resulting from the Work will be at least equal to the amount of the special assessment levied against the Property and that such increase in fair market value is a special benefit to the

Property. The special assessment levied against the Property shall be payable over such period as the City may determine, but not less than five years, and shall bear interest at a rate determined by the City, but not more than eight percent per year. The first installment of the principal and interest shall be included in the first tax rolls completed after the adoption of the City Council resolution levying the special assessment.

8. INDEMNIFICATION. The Owner and the Developer agree to defend, protect, indemnify, and hold harmless the City from any and all claims, litigation, causes of action, and any other obligation imposed upon or asserted against upon the City, or its officials, agents, contractors, or employees arising out of this Agreement or the City's exercise of its rights hereunder. The Owner and the Developer acknowledge that they are relocating the Structure at their own risk and that the Structure may need to be moved from the New Location in the event that the Property is not developed as set forth in the plans for the plat of Wyndham Village.

9. COSTS. The Owner and the Developer agree to pay to the City any costs or expenses, including without limitation, engineering and attorneys' fees, incurred by City in enforcing any provision of this Agreement.

10. WAIVER. Nothing in this Agreement shall constitute a waiver or limitation of the City's immunities or limitations on liability as set forth in Minnesota Statutes Chapter 466 or otherwise. The Owner and the Developer further agree and acknowledge that, except as expressly set forth in this Agreement, nothing in this Agreement shall constitute a waiver of any right the City has to enforce any federal, state, or local law, rule, or regulation or any other right to which the City is entitled.

11. NOTICE. Any notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) In the case of the Owner, is addressed to or delivered personally to the Owner at:

The James R. McLeod Revocable Trust
11580 30th Street North
Lake Elmo, MN 55042

(b) In the case of the Developer, is addressed to or delivered personally to the Developer at:

J.P. Bush Homes, Inc.
1980 Quasar Avenue South
Lakeland, MN 55043

(c) in the case of City, is addressed to or delivered personally to the City at:

City of Lake Elmo
3880 Laverne Avenue North, Suite 101

Lake Elmo, MN 55042
Attn: City Administrator

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other.

12. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

13. CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

14. TERMINATION. Failure by the Owner and the Developer to obtain house moving permit from the City within 180 days of the date of the City Council's approval of this Agreement, shall result in automatic termination of this Agreement. Upon the Owner and the Developer obtaining a house moving permit, this Agreement will terminate upon the completion of the Work by the Owner and issuance of the certificate of occupancy by the City for the Structure in the New Location or upon final payment by the Owner of the special assessment levied against the Property for the Work, whichever occurs first.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date written above.

OWNER
THE JAMES R. MCLEOD REVOCABLE TRUST

By: _____

Its: _____

DEVELOPER
J.P. BUSH HOMES, INC.

By: _____

Its: _____

DRAFT

CITY OF LAKE ELMO

By: _____
Mike Pearson
Its: Mayor

By: _____
Julie Johnson
Its: City Clerk

DRAFT

EXHIBIT A

Legal Description of the Property

The east 460.50 feet of the West 1273.00 feet of the south 498.60 feet, and also the east 139.50 feet of the west 812.50 feet of the south 219.30 feet of the Southwest Quarter of the Southeast Quarter of Section 13, Township 29, Range 21 West, County of Washington, State of Minnesota.

DRAFT