



## **STAFF REPORT**

DATE: 1/9/2023

**REGULAR**

**ITEM #4A – PUBLIC HEARING**

**MOTION**

**TO:** Planning Commission  
**FROM:** Sophia Jensen, City Planner  
**AGENDA ITEM:** PUD Objectives Text Amendments  
**REVIWED BY:** Ben Hetzel, Prior City Planner

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### **BACKGROUND:**

At the October 11, 2022 City Council workshop, Council directed staff to research the City's Planned Unit Development Objectives listed in Article XVIII Planned Unit Development (PUD) Regulations. The Identified Objectives in Section 105.12.1130 are considered by the City when reviewing PUD requests and are viewed as benefits to the City. Objectives are useful tool to accomplish the priorities and goals of the City. When reviewing PUD requests, the City of Lake Elmo requires the applicant to demonstrate that at least one or more of the identified objectives are being served or achieved. There are concerns that the current identified objectives do not align with the City's current priorities and goals.

The Planned Unit Development ordinance was adopted in 2013. Since 2013, several amendments have been approved to multiple sections of the ordinance, but the Identified Objectives have never been updated. At the December 13, 2022 City Council Workshop, Council directed staff to draft amendments to Section 105.12.1130 Identified Objectives. Below is are the current Planned Unit Development Objectives.

#### 105.12.1130 Identified Objectives

When reviewing requests for approval of a planned unit development, the City shall consider whether one or more of the objectives listed below will be served or achieved. It is the responsibility of the applicant to provide a narrative of how the proposed planned development meets one or more of the City's identified objectives A through J. Planned unit developments should not be allowed simply for the purpose of increasing overall density or allowing development that otherwise could not be approved.

1. Innovation in land development techniques that may be more suitable for a given parcel than conventional approaches.
2. Promotion of integrated land uses, allowing for a mixture of residential, commercial, and public facilities.
3. Provision of more adequate, usable, and suitably located open space, recreational amenities, natural resource protection and other public facilities than would otherwise be provided under conventional land development techniques.
4. Accommodation of housing of all types with convenient access to employment opportunities and/or commercial facilities; and especially to create additional opportunities for senior and affordable housing.
5. Preservation and enhancement of important environmental features through careful and sensitive placement of buildings and facilities.

6. Preservation of historic buildings, structures or landscape features.
7. Coordination of architectural styles and building forms to achieve greater compatibility within the development and surrounding land uses.
8. Creation of more efficient provision of public utilities and services, lessened demand on transportation, and the promotion of energy resource conservation.
9. Allowing the development to operate in concert with a redevelopment plan in certain areas of the City and to ensure the redevelopment goals and objectives will be achieved.
10. Higher standards of site and building design than would otherwise be provided under conventional land development techniques.

City Council has also directed staff to prepare text amendments to the procedure for a PUD in the final plan stage. Considering that many final PUDs and final plat requests typically proceed simultaneously, Council wishes to simplify the process by making the final PUD approval similar to that of a final plat approval.

#### **ISSUE BEFORE THE PLANNING COMMISSION:**

The Planning Commission is being asked to hold a public hearing, review, and make a recommendation on the proposed Planned Unit Development ordinance text amendments.

#### **PROPOSAL DETAILS/ANALYSIS:**

Staff have reviewed and compared the current identified objectives and minimum requirements against other communities and the 2040 Comprehensive Plan. Staff compared Lake Elmo's PUD code to Hugo, Woodbury, Cottage Grove, and Forest Lake. The items in blue are consistent with Lake Elmo's PUD Code and the items in green are recommended for Council consideration to add to the City's PUD code.

#### **Forest Lake**

The City of Forest Lake identifies five benefits that may result from a PUD that are similar to objectives. Forest Lake also states minimum requirements. The identified benefits are shown below.

Benefits resulting from a PUD may include the following opportunities.

- a) To promote more efficient and effective use of land, open space, and public facilities;
- b) To preserve, enhance, and protect desirable site characteristics, open spaces, and valuable natural resources;
- c) To benefit from new technology in building design and construction;
- d) To encourage variety in the organization and site elements, land uses, building densities, and building types and to promote higher standards of site and building design for all PUD projects;
- e) To assure that the development of a complex unit of associated uses is planned as a single entity and to effectuate the policies and standards of the Comprehensive Plan.

#### **Hugo**

The purpose and intent section of the code lists seven criteria that all PUD requests are evaluated against. The applicant is required to demonstrate that the PUD request aligns with any of the following criteria.

- 1) The establishment of PUD zoning districts in appropriate settings and situations, to create or maintain a development pattern that complies with the city's comprehensive plan.
- 2) [The mixing of land uses within a development when such mixing of land uses could not otherwise be accomplished under this chapter.](#)
- 3) Variations to the strict application of the land use regulations in this chapter in order to improve site design and operation, [while at the same time incorporating design elements \(e.g., construction materials, landscaping, lighting, open space, etc.\) that exceed the city's standards to offset the effect of any variations.](#)
- 4) A more creative and efficient approach to land use within the city, while at the same time protecting and promoting the health, safety, comfort, aesthetics, economic viability, and general welfare of the city.
- 5) [Preservation and enhancement of natural features and open spaces](#), including but not limited to the width expansion of greenway corridors, conservation of wooded areas, development of buffer areas, reduction of impervious surface, and utilization of joint facilities and utilities.
- 6) [Maintenance or improvement for the efficiency of public streets and utilities.](#)
- 7) [Establishment of appropriate transitions between differing land uses.](#)

### **Woodbury**

There are a set of six purposes that PUD requests are evaluated against. The Woodbury PUD code does reference objectives which are outlined in the comprehensive plan for bonus density. Bonus density may be granted if the proposed project meets certain objectives outlined in the comprehensive plan.

The purposes of this article are:

- a) To encourage a more creative and efficient development of land and its improvements through [the preservation of natural features](#) and/or desirable site characteristics than possible under strict application of zoning and subdivision requirements.
- b) To meet the goals and policies of the comprehensive plan and adopted master plans of the city while preserving the health, safety, and welfare of its residents.
- c) [To allow for the potential mixture of compatible uses in an integrated and well-planned area.](#)
- d) To increase public open space or greenways and/or to ensure concentration of open space into more usable areas and [preservation or restoration of natural resources.](#)
- e) To facilitate the economical and efficient provision of [streets and public utilities](#) and to prevent development that would burden the existing tax base or in areas without adequate public improvements.
- f) To facilitate developments that provide a benefit to the city as a whole, through, but not limited to, [higher standards of architectural and site design](#), enhanced or innovative public infrastructure, [sustainable design](#), provision of life-cycle and/or affordable housing, [redevelopment or expanded transportation options.](#)

### **Cottage Grove**

The City of Cottage Grove identifies eight purposes that a PUD request can meet that could be considered objectives. Each PUD request is evaluated against the following eight purposes:

- A. Flexibility in land development and redevelopment without the use of the variance process, in order to utilize new techniques of building design, construction and land development, rather than the city establishing rigid maximum limits within which developers must perform;
- B. **Provision of lifecycle housing to all income and age groups;**
- C. **Energy conservation** through the use of more efficient building designs and siting and the clustering of buildings and land uses;
- D. **Protect and preserve valuable natural resources** and amenities to ensure a higher quality of environmental conservation;
- E. **More efficient and effective use of land, open space and public facilities through mixing of land uses** and assembly and development of land into larger parcels;
- F. **High quality of design and design compatible with surrounding land uses**, including both existing and planned;
- G. Sensitive development in transitional areas located between different land uses and along significant transportation or scenic corridors within the city; and
- H. Development which is consistent with the Comprehensive Plan.

### **RECOMMENDED AMENDMENTS**

Overall staff have found that a majority of the City's existing PUD identified objectives are still applicable to the City of Lake Elmo. However, the City should take advantage of the opportunity to update existing objectives and incorporate new objectives to more closely align with the goals of the 2040 Comprehensive Plan. Staff recommends removing ~~strikethrough~~ objectives below and adding those in underline. The *justification* for each change follows corresponding objective.

#### **105.12.1130 Identified Objectives**

When reviewing requests for approval of a planned unit development, the City shall consider whether one or more of the objectives listed below will be served or achieved. It is the responsibility of the applicant to provide a narrative of how the proposed planned development meets one or more of the City's identified objectives A through J. Planned unit developments should not be allowed simply for the purpose of increasing overall density or allowing development that otherwise could not be approved.

- a) Innovation in land development techniques that may be more suitable for a given parcel than conventional approaches.
- b) Promotion of integrated land uses, allowing for a mixture of residential, commercial, and public facilities.
- c) Establishment of appropriate transitions between differing land uses. ***This addition is consistent with the Balanced Development & Growth Goal #2 of the 2040 Comprehensive Plan.***
- d) Provision of more adequate, usable, and suitably located open space, recreational amenities, natural resource protection and other public facilities than would otherwise be provided under conventional land development techniques.

- e) Accommodation of housing of all types with convenient access to employment opportunities and/or commercial facilities; and especially to create additional opportunities for ~~senior and affordable housing~~ lifecyle housing to all income and age groups. *The addition of life cycle housing is consistent with Housing Goal #2 of the 2040 Comprehensive Plan.*
- f) Preservation and enhancement of important environmental features through careful and sensitive placement of buildings and facilities.
- ~~g) Preservation of historic buildings, structures or landscape features. A similar item was removed from the site amenity table.~~
- h) Coordination of architectural styles and building forms to achieve greater compatibility within the development and surrounding land uses.
- i) Creation of more efficient provision of public utilities and services, lessened demand on transportation, and/or the promotion of energy resource conservation.
- j) Establishing measures to protect and preserve groundwater storage. *It should be known that groundwater conservation is a priority of the City with the current groundwater challenges.*
- k) Allowing the development to operate in concert with a redevelopment plan in certain areas of the City and to ensure the redevelopment goals and objectives will be achieved.
- ~~l) Higher standards of site and building design than would otherwise be provided under conventional land development technique. This objective is very subjective and hard to measure. Could mean different levels of achievement depending on who you ask.~~

**105.12.1210(c)(3) PUD final plan review.**

1. The Planning Director shall prepare an analysis of the final documents against the conditions of the PUD preliminary plan approval and shall make a recommendation as to whether all conditions have been met or if the applicant needs to make additional changes to the project plans.
2. The Planning Director shall identify any information submittals that were waived so the City Council may determine if such is needed before making a final decision.
3. The Planning Director 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 PUD overlay district ordinance and final PUD Plans and shall submit a recommendation to the City Council for their consideration. Because the City Council previously approved a PUD preliminary plan for the site, the Planning Commission's recommendation shall only focus on whether the ordinance and PUD final plan are in substantial compliance with the PUD preliminary plan and the required conditions of approval. If the project requires a PUD and a Plat, then the Planning Commission shall only review for the Final PUD if staff determines that there has been substantial change to the Preliminary PUD approved by the City Council.
5. The City Council shall then consider the recommendations of the Planning Director, the public, and the Planning Commission; and make a decision of approval or denial, in whole or in part, on the PUD final plan. A City Council denial shall only be based on findings

that a PUD final plan is not in substantial compliance with the approved PUD preliminary plan and/or the required conditions of approval.

6. As a condition of PUD final plan approval, publication of the PUD ordinance shall be required before filing of the approved final plat.
7. Planned unit development agreement.
  1. At its sole discretion, the City may, as a condition of approval, require the owner and developer of the proposed PUD to execute a development agreement that may include but not be limited to all requirements of the PUD final plan.
  2. 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 installation or development of all improvements called for by the City and outlined in the development agreement.
8. As directed by the City, the applicant or developers shall record with Washington County all documents related to the PUD against the property.

### **RECOMMENDATION**

Staff recommends that the Planning Commission recommend approval of the proposed amendments provided above.

***“Move to recommend approval of the proposed text amendments to Section 105.12.1130 Identified Objectives and Section 105.12.1210(c)(3)d. as provided in the staff report.”***

### **ATTACHMENTS:**

- 1) Article XVIII Planned Unit Development

## **ARTICLE XVIII PLANNED UNIT DEVELOPMENT (PUD) REGULATIONS**

[105.12.1120 Intent](#)

[105.12.1130 Identified Objectives](#)

[105.12.1140 Allowed Development](#)

[105.12.1150 Minimum Requirements](#)

[105.12.1160 Density](#)

[105.12.1170 Coordination With Other Regulations](#)

[105.12.1180 Phasing And Guarantee Of Performance](#)

[105.12.1190 Control Of Planned Unit Development Following Completion](#)

[105.12.1200 Procedures For Processing A Planned Unit Development](#)

[105.12.1210 Application Requirements For Pre-Application Conference, Preliminary Plan And Final Plan](#)

[105.12.1220 PUD Amendments](#)

[105.12.1230 PUD Cancellation](#)

[105.12.1240 Administration](#)

[105.12.1250 City Costs](#)

### **105.12.1120 Intent**

The intent of the Planned Unit Development (PUD) overlay zoning district is to provide greater flexibility in the use of land and the placement and size of buildings within the development of residential and nonresidential areas in order to achieve more creative development outcomes while remaining economically viable and marketable and to better utilize site features and obtain a higher quality of development. Approval of a planned unit development shall result in a zoning change to a specific PUD overlay district, with specific requirements and standards that are unique to that development. The City reserves the right to deny establishment of a PUD overlay district and direct a developer to re-apply for City approval under the standard applicable zoning district if the City determines the proposed benefits do not justify requested flexibilities.

#### HISTORY

*Adopted by Ord. [08-253](#) on 11/3/2021*

### **105.12.1130 Identified Objectives**

When reviewing requests for approval of a planned unit development, the City shall consider whether one or more of the objectives listed below will be served or achieved. It is the responsibility of the applicant to provide a narrative of how the proposed planned development meets one or more of the City's identified objectives A through J. Planned unit developments should not be allowed simply for the purpose of increasing overall density or allowing development that otherwise could not be approved.

- (a) Innovation in land development techniques that may be more suitable for a given parcel than conventional approaches.
- (b) Promotion of integrated land uses, allowing for a mixture of residential, commercial, and public facilities.
- (c) Provision of more adequate, usable, and suitably located open space, recreational amenities, natural resource protection and other public facilities than would otherwise be provided under conventional land development techniques.
- (d) Accommodation of housing of all types with convenient access to employment opportunities and/or commercial facilities; and especially to create additional opportunities for senior and affordable housing.
- (e) Preservation and enhancement of important environmental features through careful and sensitive

placement of buildings and facilities.

- (f) Preservation of historic buildings, structures or landscape features.
- (g) Coordination of architectural styles and building forms to achieve greater compatibility within the development and surrounding land uses.
- (h) Creation of more efficient provision of public utilities and services, lessened demand on transportation, and the promotion of energy resource conservation.
- (i) Allowing the development to operate in concert with a redevelopment plan in certain areas of the City and to ensure the redevelopment goals and objectives will be achieved.
- (j) Higher standards of site and building design than would otherwise be provided under conventional land development technique.

#### HISTORY

Adopted by Ord. [08-253](#) on 11/3/2021

### **105.12.1140 Allowed Development**

Uses within the PUD may include only those uses generally considered associated with the general land use category shown for the area on the official Comprehensive Land Use Plan. Specific allowed uses and performance standards for each PUD shall be delineated in an ordinance and development plan. The PUD development plan shall identify all the proposed land uses and those uses shall become permitted, conditional or interim uses with the acceptance of the development plan. Any change to the development plan will be considered an amendment to the PUD, and will follow the procedures specified in LEC 105.12.280 for zoning amendments. PUDs may allow for flexibility in the following:

- (a) *Uses*. The PUD application shall identify all proposed land uses and those uses shall become permitted, conditional or interim uses upon the approval of the planned unit development. The extent of allowed land uses within a PUD shall be limited to those land uses that are allowed or deemed by the city to be substantially similar to those allowed in the underlying zoning district.
- (b) *Placement of structures*. More than one principal building may be placed on a platted lot within a planned unit development. The appearance and compatibility of buildings in relation to one another, other site elements, and surrounding development shall be considered in the review process.
- (c) *Development intensity*. The PUD may provide for an increase in the maximum impervious surface by up to 20 percent as measured over the entire project site of that allowed in the base zoning district, for the purpose of promoting project integration and additional site amenities. The impact of increased maximum impervious surface must be mitigated through stormwater management techniques approved by city staff and all other applicable agencies.
- (d) *Density*. The PUD may provide for an increase in density of residential development by up to 20 percent of that allowed in the base zoning district, for the purpose of promoting diversity of housing types and additional site amenities. Increased residential densities of varying levels will be awarded based upon the provision of a combination of various site amenities outlined in LEC 105.12, art. VII. In addition, the City retains the right to evaluate all proposals for bonus density in accordance with the overall goals of the City's land use element of the comprehensive plan.
- (e) *Building setbacks*. The PUD may provide for a reduction in or elimination of required setbacks in the base zoning district, provided that a landscaped setback area of the minimum width established for the base zoning district is maintained along the periphery of the adjacent zoning districts.
- (f) *Lot requirements*. The City Council may authorize reductions in the area and width of individual lots within a PUD from that required for the base zoning district, provided that such reductions

are compensated for by an equivalent amount of open space or other public amenities elsewhere in the planned unit development. Any open space shall not include areas designated as public or private streets. The plan may increase the maximum density beyond that permitted in the base zoning district for the purpose of promoting an integrated project with a variety of housing types and additional site amenities.

- (g) *Other exceptions.* As part of PUD approval, the City Council is authorized to approve other exceptions to the zoning controls applicable to the base zoning district, such as the maximum height of structures or the minimum off-street parking requirements. Such exceptions shall only be granted when they are clearly warranted to achieve the objectives identified in LEC 105.12.1130.
- (h) *Trees/landscaping requirements.* The City Council may authorize flexible landscaping approaches and/or tree preservation and replacement standards that better address on-site needs or may require specialized landscaping and/or screening plans that address adjacent property concerns.

#### HISTORY

Adopted by Ord. [08-253](#) on 11/3/2021

### **105.12.1150 Minimum Requirements**

- (a) *Development area.* A PUD must include a minimum of five (5) acres. Tracts of less than five (5) acres may be developed as a PUD only if the City Council determines that the following applies:
  - (1) The proposed project is of superior design and can achieve one (1) or more of the identified objectives listed in LEC 105.12.1130; and
  - (2) That compliance with the City's comprehensive plan goals and policies can be attained through the use of the PUD process.
- (b) *Open space.* For all PUDs, at least 20 percent of the project area not within street rights-of-way shall be preserved as protected open space. Other site amenities may be approved as an alternative to this requirement. Any required open space must be available to the residents, tenants, or customers of the PUD for recreational purposes or similar benefit. Wetlands and other land reserved for stormwater detention facilities and other required site improvements may be applied to this requirement.
- (c) *Street layout.* In existing developed areas, the PUD should maintain the existing street grid, where present, and restore the street grid where it has been disrupted. In newly developing areas, streets shall be designed to maximize connectivity in each cardinal direction, except where environmental or physical constraints make this infeasible. All streets shall terminate at other streets, at public land, or at a park or other community facility, except that local streets may terminate in stub streets when those will be connected to other streets in future phases of the development or adjacent developments.

#### HISTORY

Adopted by Ord. [08-253](#) on 11/3/2021

### **105.12.1160 Density**

The PUD may provide for an increase in density of residential development by up to 20 percent of that allowed in the base zoning district. Applicants seeking increased residential density through a Planned Unit Development are required to provide at least one (1) or a combination of site amenities that equal the required amount of amenity points to achieve the desired density bonus.

- (a) *Amenity points and equivalent density increases.* Increases in density will be awarded through a

1:1 ratio with amenity points. For every increase in amenity points for a planned unit development, the applicant will be allowed an equivalent amount of density increase, up to a maximum increase of 20 percent. Table 16-1 outlines the required amount of amenity points to achieve various density increases.

Table 16-1: Amenity Points and Equivalent Density Increases

<i>Amenity Points</i>	<i>Density Increase</i>
5	5 percent
10	10 percent
15	15 percent
20	20 percent

- (b) *Site amenities.* Site amenities that are eligible for amenity points are listed in Table 16-2, along with their associated standards of implementation. Some of the amenities may be awarded a range of amenity point based upon the quality and magnitude of the amenity. The City is not requiring the installation or use of any of these amenities.
- (c) *Site amenities not listed.* The City may also consider the allotment of amenity points for site amenities that are not otherwise specified within this article as part of the preliminary plan phase of the planned unit development.

Table 16-2: Site Amenities

<i>Points</i>	<i>Amenity</i>	<i>Standards</i>
5--10	Underground or structure parking	Proposed underground or structured parking must be integrated into the primary structure. The purpose of this amenity is to better integrate parking into the site, reduce the amount of surface parking stalls, and reduce the amount of impervious surface. Proposed underground or structured parking must reduce the amount of surface parking stalls located outside of the footprint of the principal structure by a minimum of 25 percent. Amenity points will be awarded based upon the amount of surface parking stalls reduced (between 25--50 percent). For every additional five percent of surface parking stalls reduced above 25 percent, the applicant will be awarded one additional amenity point, up to a maximum of ten amenity points. The facade of any underground or structure parking areas must match the architectural design of the principal structure.
10	Historic preservation	Preservation, rehabilitation or restoration of designated historic landmarks in a manner that is consistent with the standards for rehabilitation of the Secretary of the Interior as part of the development.
10	Additional open space	A minimum of 50 percent of the site not occupied by buildings shall be landscaped outdoor open space. A minimum of 50 percent of the provided open space shall be contiguous. Open space classifications that qualify may include natural habitat, neighborhood recreation, trail corridors or open space buffers.

10	Public right-of-way dedication	Dedication of land and construction of a public road, trail, pathway, or greenway that is part of an approved city plan, but outside the scope of the immediate project area. Right-of-way improvements should be designed per the specification of the city engineer.
5	Fire sprinkler systems	The installation of fire sprinkler systems, per NFPA 13, 13D or 13R, in structures that are not currently required to install these systems under state code. Amenity points will only be awarded in situations where there are a significant proportion of structures in the development that are not required to be sprinkled under the state building code. In addition, the density bonus calculation shall only be applied to the number of structures that do not require fire sprinkler systems.
5	Leadership in energy and environmental design	The proposed development shall meet the minimum standards for LEED Silver certification. The project does not have to achieve actual LEED certification; however, the developer must submit the LEED checklist and documentation to the City, approved by a LEED Accredited Professional (LEED-AP), which shows that the project will comply with LEED Silver requirements.
5	Adaptive reuse	Significant renovation, rehabilitation and adaptive reuse of an existing buildings, rather than demolition.
5	Plaza	The development shall include some form of plaza or public square that is wholly or partly enclosed by a building or buildings. Plazas are landscaped or paved open areas that shall have a minimum area not less than 1,000 square feet. Plazas for commercial or mixed-use development shall be open to the public during daylight hours.
1-5	Enhanced landscaping	A landscaping plan of exceptional design that has a variety of native tree, shrub and plan types that provide seasonal interest and that exceeds the requirements of the Lake Elmo Design Standards Manual. The landscaped areas should have a resource efficient irrigation system. The landscaping plan shall be prepared by a licensed landscape architect. Amenity points shall be awarded based upon the quality and magnitude of the landscaping plan.
3	Enhanced stormwater management	Provide capacity for infiltrating stormwater generated on-site with artful rain garden design that serves as a visible amenity. Rain garden designs shall be visually compatible with the form and function of the space and shall include long-term maintenance of the design. The design shall conform to the requirements per the Minnesota Stormwater Manual and shall meet the approval of the city engineer.
1-3	Theming	Significant utilization of various elements of theming consistent with the 2013 Lake Elmo Theming Project, including, but are not limited to, signage, fencing, landscaping, lighting and site furnishings. Amenity points will be awarded based upon the quality and magnitude of theming elements integrated into the project.
3	Natural features	Site planning that preserves significant natural features or restores ecological functions of a previously damaged natural environment above and beyond that required by city ordinance or engineering standards.

### **105.12.1170 Coordination With Other Regulations**

- (a) *Coordination with subdivision review.* subdivision review under the subdivision regulations shall be carried out simultaneously with the review of the PUD. The plans required under this subchapter shall be submitted in a form that will satisfy the requirements of the subdivision ordinance for the preliminary plat and final plat.
- (b) *Coordination with other zoning requirements.* All of the provisions of this article applicable to the original district within which the planned unit development district is established shall apply to the PUD district except as otherwise provided in approval of the final plan.

#### HISTORY

Adopted by Ord. [08-253](#) on 11/3/2021

### **105.12.1180 Phasing And Guarantee Of Performance**

- (a) *Development schedule.* The city shall compare the actual development accomplished in the various PUD zones with the approved development schedule.
- (b) *Note.* See LEC 105.12.1210(c)(4).
- (c) *Phasing of amenities.* The construction and provision of all of the common open space, site amenities and public and recreational facilities which are shown on the final development plan must proceed at the same rate as the construction of dwelling units, if any. The Planning Director shall review all of the building permits issued for the PUD and examine the construction which has taken place on the site. If the Planning Director finds that the rate of construction of dwelling units is greater than the rate at which common open spaces, site amenities and public and recreational facilities have been constructed and provided, the Planning Director shall forward this information to the City Council for their consideration and possible action.
- (d) *Guarantees.* A financial guarantee or letter of credit shall be required to guarantee performance by the developer. The amount of this financial guarantee or letter of credit, and the specific elements of the development program that it is intended to guarantee, will be stipulated in the development agreement.
- (e) *Note.* See LEC 105.12.1220(a).
- (f) *Rezoning to original district.* If substantial development has not occurred within a reasonable time after approval of the PUD zoning district, the City Council may instruct the planning commission to initiate rezoning to the original zoning district. It shall not be necessary for the City Council to find that the rezoning was in error.

#### HISTORY

Adopted by Ord. [08-253](#) on 11/3/2021

### **105.12.1190 Control Of Planned Unit Development Following Completion**

- (a) *Final development plan controls subsequent use.* After the certificate of occupancy has been issued, the use of the land and the construction, modification or alteration of any buildings or structures within the planned unit development shall be governed by the final development plan.
- (b) *Allowed changes.* After the certificate of occupancy has been issued, no changes shall be made in the approved final development plan except upon application as provided below:
  - (1) Any minor extensions, alterations or modifications of existing buildings or structures may be authorized by the Development Review Committee if they are consistent with the purposes and intent of the final plan. No change authorized by this section may increase the cubic volume of any building or structure by more than ten (10) percent; and

(2) Any building or structure that is totally or substantially destroyed may be reconstructed only in compliance with the final development plan unless an amendment to the final development plan is approved under this chapter.

(c) *Amendment required for major changes.* Any other changes in the final development plan, including any changes in the use of common open space, must be authorized by an amendment of the final development plan under the procedures for Zoning Amendments, LEC 105.12, art. III.

#### HISTORY

Adopted by Ord. [08-253](#) on 11/3/2021

### **105.12.1200 Procedures For Processing A Planned Unit Development**

There are three stages to the PUD process: application conference, preliminary plan and final plan, as described below.

(a) *Application conference.* Before filing of an application for PUD with the city, the applicant of the proposed PUD shall arrange for and attend a conference with the Planning Director, the City Engineer and other City staff. The primary purpose of the conference shall be to provide the applicant with an opportunity to gather information and obtain guidance as to the general suitability of his proposal for the area for which it is proposed and its conformity to the provisions of this subchapter before incurring substantial expense in the preparation of plans, surveys and other data.

(b) *Preliminary plan.* Following the pre-application conference, the applicant may submit a preliminary plan application and preliminary plat, in accordance with the requirements described in LEC 103.00.070. The application shall proceed and be acted upon in accordance with the procedures in this article for zoning changes.

(c) *Final plan.* Following approval of the preliminary plan, the applicant shall submit a final plan application and final plat, in accordance with the requirements described in LEC 103.00.080. The application shall proceed and be acted upon in accordance with the procedures in this article for zoning changes. If appropriate because of the limited scale of the proposal, the preliminary plan and final plan may proceed simultaneously.

(d) *Schedule for plan approval.*

(1) Developer has a pre-application conference with City staff for their review and comment of the proposed PUD.

(2) Following the pre-application conference with City staff, the application may proceed to the preliminary plan phase.

(3) The developer presents the preliminary plan to the Planning Commission for its review and comment.

(4) After verification by the Planning Director that the required plan and supporting data are adequate, the Planning Commission shall hold a public hearing about the proposed preliminary PUD plan, with public notice.

(5) The Planning Commission shall conduct the hearing and report its findings and make recommendations to the City Council.

(6) The City may request additional information from the applicant concerning operational factors or retain expert testimony at the expense of the applicant concerning operational factors.

(7) The City Council may hold a public hearing after the receipt of the report and

recommendations from the Planning Commission. If the Planning Commission fails to make a report within 60 days after receipt of the application, then the City Council may proceed without the report. The City Council may approve the preliminary plan and attach such conditions as it deems reasonable.

- (8) Following City Council approval of the preliminary plan, the application may proceed to the final plan phase.
- (9) The developer must present the final plan to the Planning Director for his or her review and comment.
- (10) After verification by the Planning Director that the required final plan and supporting data are adequate, the Planning Commission shall hold a public hearing, with public notice.
- (11) The Planning Commission shall conduct the hearing and report its findings and make recommendations to the City Council.
- (12) The City may request additional information from the applicant concerning operational factors or retain expert testimony at the expense of the applicant concerning operational factors.
- (13) After the receipt of the report and recommendations from the Planning Commission, the City Council may approve the final plan and attach such conditions as it deems reasonable.

#### HISTORY

Adopted by Ord. [08-253](#) on 11/3/2021

### **105.12.1210 Application Requirements For Pre-Application Conference, Preliminary Plan And Final Plan**

Five copies of the following plans, exhibits and documents shall be submitted to the City before the pre-application conference, and as part of preliminary plan stage and the final plan stage applications:

(a) *Pre-application conference.*

(1) *General information.*

- a. The landowner's name and address and his interest in the subject property.
- b. The applicant's name and address if different from the landowner.
- c. The names and addresses of all professional consultants who have contributed to the development of the PUD plan being submitted, including, but not limited to, attorney, land planner, engineer and surveyor.

(2) *Present status.*

- a. The address and legal description of the property.
- b. The existing zoning classification and present use of the subject property and all lands within 350 feet of the subject property.
- c. A map depicting the existing development of the subject property and all land within 350 feet of the subject property and showing the location of existing streets, property lines, easements, water mains, and storm and sanitary sewers, with invert elevations on and within 100 feet of the subject property.
- d. Site conditions. Where deemed necessary by the City, graphic reproductions of the existing site conditions at a scale of one-inch equals 100 feet shall be

submitted and contain the following:

1. Contours; minimum five-foot intervals;
  2. Location, type and extent of tree cover;
  3. Slope analysis; and
  4. Location and extent of water bodies, wetlands, streams, and floodplains within 300 feet of the subject property.
- e. A written statement generally describing the proposed PUD and showing its relationship to the City Comprehensive Plan.
- f. Schematic drawing of the proposed development concept, including, but not limited to, the general location of major circulation elements, public and common open space, residential and other land uses.
- g. Proposed design features related to proposed streets, showing right-of-way widths, typical cross-sections, and areas other than streets, including, but not limited to, pedestrian ways, utility easements and stormwater facilities.
- h. Statement of the estimated total number of dwelling units proposed for the PUD and a tabulation of the proposed approximate allocations of land use expressed in acres and as a percent of the total project area, which shall include at least the following:
1. Area devoted to residential use by building type;
  2. Area devoted to common open space;
  3. Area devoted to public open space and public amenities;
  4. Approximate area devoted to, and number of, off-street parking and loading spaces and related access;
  5. Approximate area, and floor area, devoted to commercial uses; and
  6. Approximate area, and floor area, devoted to industrial or office use.
- i. When the PUD is to be constructed in stages during a period of time extending beyond a single construction season, a preliminary schedule for the development of such stages or units shall be submitted stating the approximate beginning and completion date for each such stage and overall chronology of development to be followed from stage to stage.
- j. The City may excuse an applicant from submitting any specific item of information or document required in this stage which it finds to be unnecessary to the consideration of the specific proposal.
- k. The City may require the submission of any additional information or documentation which it may find necessary or appropriate to full consideration of the proposed PUD.

(b) *PUD preliminary plan stage.*

- (1) *PUD preliminary plan submittal requirements.* Requests for preliminary PUD plans shall be filed with the Planning Director on an official city application form. The applicant's signatures shall be provided on the application form. If the applicant is not the fee owner of the property, the fee owner's signature shall also be provided on the application form,

or the applicant shall provide separate written and signed authorization for the application from the fee owner. Such application shall be accompanied by the following information. The applicant shall submit a minimum of four (4) large scale copies and ten (10) reduced scale (11-inch by 17-inch) copies of all graphics. The application shall be considered as being officially submitted and complete when the applicant has met all the specified requirements. The applicant will be responsible for all expenses incurred in obtaining the required information.

- a. Preliminary plat and preliminary major subdivision information required by LEC 103.00.090.
- b. General information:
  1. The landowner's name and address and his interest in the subject property.
  2. The applicant's name and address if different from the landowner and the applicant's interest in the subject property.
  3. The names and addresses of all professional consultants who have contributed to the development of the PUD plan being submitted, including but not limited to attorney, land planner, landscape architect, engineer, and surveyor.
  4. Evidence that the applicant has sufficient control over the subject property to effectuate the proposed PUD, including a statement of all legal, beneficial, tenancy and contractual interests held in or affecting the subject property and including an up-to-date title commitment or certificate of title and such other evidence as the City Attorney may require to show the status of title or control of the subject property.

(2) *Present status.*

- a. The address, property identification number (PID) and legal description of the property.
- b. The existing zoning classification and present use of the subject property and all lands within 350 feet of the property.
- c. A map depicting the existing development of the property and all land within 350 feet thereof and indicating the location of existing streets, property lines, easements, water mains and storm and sanitary sewers, with invert elevations on and within 100 feet of the property.
- d. A written statement generally describing the proposed PUD and the market which it is intended to serve and its demand showing its relationship to the city's Comprehensive Plan and how the proposed PUD is to be designed, arranged and operated in order to permit the development and use of neighboring property in accordance with the applicable regulations of the City.
- e. A statement of the proposed financing of the PUD.
- f. Site conditions. Graphic reproductions of the existing site conditions at a scale of one-inch equals 100 feet. All of the graphics should be at the same scale as the final plan to allow easy cross-reference. The use of overlays is recommended for ease of analysis.
  1. Contours; minimum two-foot intervals.
  2. Location, type and extent of tree cover.

3. Slope analysis.
  4. Location and extent of water bodies, wetlands and streams and floodplains within 300 feet of the property.
  5. Significant rock outcroppings.
  6. Existing drainage patterns
  7. Vistas and significant views.
  8. Soil conditions as they affect development.
- g. Schematic drawing of the proposed development concept, including, but not limited to, the general location of major circulation elements, public and common open space, residential and other land uses.
- h. A statement of the estimated total number of dwelling units proposed for the PUD and a tabulation of the proposed approximate allocations of land use expressed in acres and as a percent of the total project area, which shall include at least the following:
1. Area devoted to residential use by building type;
  2. Area devoted to common open space;
  3. Area devoted to public open space and public amenities;
  4. Approximate area devoted to streets;
  5. Approximate area devoted to, and number of, off-street parking and loading spaces and related access;
  6. Approximate area, and floor area, devoted to commercial uses; and
  7. Approximate area, and floor area, devoted to industrial or office use.
- i. When the proposed PUD includes increases in density of residential development above the base zoning district, a statement describing the site amenities to be included within the PUD, and demonstrating that the proposed site amenities sufficiently achieve the desired density bonus. The applicant is required to demonstrate that all site amenity standards have been met in order to be awarded increased density for residential development.
- j. When the PUD is to be constructed in stages during a period of time extending beyond a single construction season, a schedule for the development of such stages or units shall be submitted stating the approximate beginning and completion date for each such stage or unit and the proportion of the total PUD public or common open space and dwelling units to be provided or constructed during each such state and overall chronology of development to be followed from stage to stage.
- k. When the proposed PUD includes provisions for public or common open space or service facilities, a statement describing the provision that is to be made for the care and maintenance of such open space or service facilities.
- l. Any restrictive covenants that are to be recorded with respect to property included in the proposed PUD.
- m. Schematic utilities plans indicating placement of water, sanitary and storm sewers infrastructure and systems.

- n. Applicable plans must meet or exceed the requirements of the City's Engineering Design and Construction Manual.
- o. Any additional information deemed necessary and required by the Planning Director. The Planning Director may waive for good cause certain information requirements not pertinent to the particular request.
- p. The City may excuse an applicant from submitting any specific item of information or document required in this stage which it finds to be unnecessary to the consideration of the specific proposal.
- q. The City may require the submission of any additional information or documentation which it may find necessary or appropriate to full consideration of the proposed PUD.

(3) *PUD preliminary plan review.*

- a. As part of the review process for a PUD preliminary plan, the Planning Director shall review the PUD, and shall prepare a report and make a recommendation about the proposed preliminary PUD plan for Planning Commission and City Council consideration.
- b. The Planning Director shall prepare a draft ordinance to establish the potential PUD overlay zoning district to be established as a component of the PUD final plan.
- c. The Planning Commission shall hold a public hearing and report its findings and make recommendations to the City Council on the merit, needed changes and suggested conditions the City should impose on the PUD.
- d. As a condition of PUD preliminary plan approval; finalization, adoption, and publication of an overlay district ordinance shall need to occur before the filing of any future final plat.

(4) *Effect of a PUD preliminary plan review.* The approved PUD preliminary plan governs the preparation of the PUD final plan. The applicant or developer shall submit the proposed PUD final plan to the City for final approval in accordance with the requirements of this title.

(5) *Limitation of approval.* The City Council's approval of a PUD preliminary plan shall remain valid for a period of 180 days, unless a request for time extension of up to one (1) year is submitted in writing to the City and approved by the City Council. (See subsection (c)(4) of this section about PUD time limits.)

(c) *PUD Final Plan Stage.*

- (1) *Application deadline.* The applicant or developer shall submit an application for a PUD final plan to the City for approval within 180 days of City Council approval of the PUD preliminary plan unless a written request for a time extension is submitted by the applicant and approved by the City Council.
- (2) Development and PUD final plan stage submissions should depict and outline the proposed implementations of the preliminary plan stage for the PUD. Information from the pre-application conference and preliminary plan stages may be included for background and to provide a basis for the submitted plan. The development stage submissions shall include, but not be limited to:
  - a. A final plat and information required by LEC 103.00.080;

- b. Final plans drawn to a scale of not less than one-inch equals 100 feet (or a scale requested by the Planning Director) containing at least the following information:
  1. Proposed name of the development (which shall not duplicate nor be similar in pronunciation to the name of any plat heretofore recorded in the county where the subject property is situated);
  2. Property boundary lines and dimensions of the property and any significant topographical or physical features of the property;
  3. An accurate legal description of the entire area within the PUD for which final development plan approval is sought;
  4. The location, size, use and arrangement, including height in stories and feet, and total square feet of ground area coverage, and floor area of proposed buildings, including manufactured homes, and existing buildings which will remain, if any;
  5. A detailed site plan, suitable for recording, showing the physical layout, design and purpose of all streets, easements, rights-of-way, utility lines and facilities, lots, block, public and common open space, trails, landscaping and screening, structures and uses;
  6. Applicable plans must meet or exceed the requirements of the City's Engineering Design and Construction Manual.
- c. A tabulation indicating the number of residential dwelling units and expected population;
- d. Density calculations, including proposed density bonuses above the base zoning district. To be granted increased density of residential development, the applicant must submit a schedule of site amenities with proposed designs and standards. The applicant must demonstrate that site amenity standards in Table 15-2 have been met to be rewarded additional density;
- e. A tabulation indicating the gross square footage, if any, of commercial and industrial floor space by type of activity (e.g., retail or office);
- f. Preliminary architectural typical plans indicating use, floor plan, elevations and exterior wall finishes of proposed building, including manufactured homes;
- g. Location, dimensions of all driveways, entrances, curb cuts, parking stalls, loading spaces and access aisles, and all other circulation elements including bike and pedestrian; and the total site coverage of all circulation elements;
- h. Location, designation and total area of all common open space;
  - i. Location, designation and total area proposed to be conveyed or dedicated for public open space, including parks, playgrounds, school sites and recreational facilities;
  - j. The location of applicable site amenities, if any;
- k. Proposed lots and blocks, if any and numbering system;
  - l. The location, use and size of structures and other land uses on adjacent properties;
- m. Detailed plans and provisions of proposed landscaping and screening;
- n. Grading, drainage and site alteration plan illustrating changes to existing

topography and natural site vegetation. The plan should clearly reflect the site treatment and its conformance with the approved preliminary PUD plan;

- o. A soil erosion control plan acceptable to watershed districts, the Department of Natural Resources, or any other agency with review authority, clearly illustrating erosion control measures to be used during construction and as permanent measures;
- p. Applicable plans must meet or exceed the requirements of the City's Engineering Design and Construction Manual; and
- q. Any other information that may have been required by the Planning Commission or City Council in conjunction with the approval of the preliminary plan.

(3) PUD final plan review.

- a. The Planning Director shall prepare an analysis of the final documents against the conditions of the PUD preliminary plan approval and shall make a recommendation as to whether all conditions have been met or if the applicant needs to make additional changes to the project plans.
- b. The Planning Director shall identify any information submittals that were waived so the City Council may determine if such is needed before making a final decision.
- c. The Planning Director shall finalize the ordinance to establish the proposed overlay district for consideration by the Planning Commission and City Council.
- d. The Planning Commission shall hold a public hearing on the proposed PUD overlay district ordinance and final PUD Plans and shall submit a recommendation to the City Council for their consideration. Because the City Council previously approved a PUD preliminary plan for the site, the Planning Commission's recommendation shall only focus on whether the ordinance and PUD final plan are in substantial compliance with the PUD preliminary plan and the required conditions of approval.
- e. The City Council shall then consider the recommendations of the Planning Director, the public, and the Planning Commission; and make a decision of approval or denial, in whole or in part, on the PUD final plan. A City Council denial shall only be based on findings that a PUD final plan is not in substantial compliance with the approved PUD preliminary plan and/or the required conditions of approval.
- f. As a condition of PUD final plan approval, publication of the PUD ordinance shall be required before filing of the approved final plat.
- g. Planned unit development agreement.
  - 1. At its sole discretion, the City may, as a condition of approval, require the owner and developer of the proposed PUD to execute a development agreement that may include but not be limited to all requirements of the PUD final plan.
  - 2. 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 installation or development of

all improvements called for by the City and outlined in the development agreement.

- h. As directed by the City, the applicant or developers shall record with Washington County all documents related to the PUD against the property.

(4) Time limit.

- a. A planned unit development shall be validated by the applicant through the commencement of construction or establishment of the authorized uses, subject to the permit requirements of this Code, in support of the planned unit development within one (1) year of the date of PUD final plan approval by the City Council. Failure to meet this deadline shall render the PUD final plan approval void. Notwithstanding this time limitation, the City Council may approve time extensions for validation of an approved PUD of up to one (1) year if requested in writing by the applicant; extension requests shall be submitted to the Planning Director and shall identify the reasons why the extension is necessary along with an anticipated timeline for validation of the planned unit development.
- b. The City shall administer and process an application to reinstate a PUD that was voided for not meeting the required time limit for validation and implementation in the same manner as a new PUD beginning at PUD preliminary plan.

HISTORY

Adopted by Ord. [08-253](#) on 11/3/2021

**105.12.1220 PUD Amendments**

PUDs approved by the City 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 a PUD amendment.

Amendments to existing planned unit development shall be processed as one of the following:

- (a) *Administrative amendment.* The Planning Director may approve minor changes to an approved PUD such as location, placement and height of structures if such changes are required by engineering or other circumstances, provided the changes conform to the approved PUD overlay district intent and are consistent with all requirements of the PUD ordinance. Under no circumstances shall an administrative PUD amendment allow additional residential lots or additional residential units to an approved PUD. The Planning Director may allow changes to designated uses established as part of the PUD if the City determines the proposed use changes would be substantially similar to the permitted uses approved by the City for the PUD. An administrative amendment shall be memorialized via letter signed by the Planning Director and recorded at Washington County against the PUD property.
- (b) *Ordinance amendment.* A PUD change requiring a text update to the adopted PUD overlay district language shall be administered in accordance with adopted regulations for zoning code changes in LEC 105.12.280. Ordinance amendments shall be limited to changes that are deemed by the City to be consistent with the intent of the original PUD approval, but are technically necessary due to construction of the adopted PUD district language.
- (c) *PUD amendment.* Any change not qualifying for an administrative amendment or an ordinance amendment shall require a PUD amendment. The City shall administer and process an application to amend a PUD in the same manner as the City requires for a new PUD beginning at PUD preliminary plan. Such major changes requiring City approval of a PUD amendment are

those that, as determined by the Planning Director, substantially change the basic design, density, open space, similar requirements or provisions of the approved PUD.

HISTORY

Adopted by Ord. [08-253](#) on 11/3/2021

**105.12.1230 PUD Cancellation**

The City shall only cancel and revoke a PUD upon the City Council adopting an ordinance rescinding the PUD district. Cancellation of a PUD by the City Council shall include findings that demonstrate 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; has become void; or other applicable findings in accordance with law.

HISTORY

Adopted by Ord. [08-253](#) on 11/3/2021

**105.12.1240 Administration**

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

- (a) *Rules and regulations.* No requirement outlined in the PUD review process shall restrict the City Council from taking action on an application if necessary to meet state mandated time deadlines.
- (b) *Preconstruction.* The City will not grant or issue a building permit for any building on land for which a 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 PUD plan.
- (c) *Effect on conveyed property.* In the event that any real property in a City-approved PUD is conveyed in total, or in part, the new owners thereof shall be bound by the provisions of the PUD zoning district.

HISTORY

Adopted by Ord. [08-253](#) on 11/3/2021

**105.12.1250 City Costs**

The applicant shall make a deposit of a fee escrow with the City for the purpose of reimbursing any costs directly related to a given development. Such costs include, but are not limited to, professional fees and expenses incurred by the City for consultants (including, but not limited to, planners, engineers, architects, landscape architects and attorneys) who the City determines in its sole judgment are necessary to assist in reviewing, implementing or enforcing the provisions of this article. The amount of the deposit, and any addition to it that the City may later require, shall be established by the Planning Director. The City and the applicant may agree to share the costs of consultants based upon a specific written agreement. Any funds not used by the City shall be returned to the applicant at the conclusion of the project.

HISTORY

Adopted by Ord. [08-253](#) on 11/3/2021