

## STAFF REPORT

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**Application:** Final Plat of Roosevelt Shores

**Applicant:** North County Development

**Agenda Item:** 3(e)

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**Background Information:** The City Council received the Planning Commission's recommendation at their regular September meeting. That recommendation for approval was made with the following conditions:

1. Part I, Subdivision B, of the development agreement shall be modified to include the following additional documents:
  - a. Exhibit B: Detailed Design of Lot 16
  - b. Exhibit C: Detailed design of roadway adjacent to Lots 11, 12 and 13.
2. The development agreement shall be modified to indicate that the structure on lot 12 to be moved or removed and that a security amount shall be added for the removal.
3. Part V, Subpart B of the development agreement shall be updated to reflect the security amount of \$216,178.71.
4. Part VII of the development agreement shall be updated to reflect a park dedication payment of \$11,296.
5. The development agreement shall be modified to indicate that the construction limits for all construction and the maintained portion of all yards shall be outside of the vegetative buffer.

At the Council meeting, representatives for the applicant objected to Condition 2 and Condition 5. The City Council remanded the application back to the Planning Commission for additional review on those specific items.

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**Applicable Regulations:** A review of the two conditions in dispute is provided in the following:

Condition 2

As part of the final plat process, the Planning Commission is required to find that "*the applicant compiled with all conditions and requirements upon which the preliminary approval is expressly conditioned wither through performance or execution of appropriate agreements assuring performance.*" (Section 11.9, Subdivision 5C(i)) In short, the applicant needs to meet the conditions of preliminary plat approval.

A rough reciprocal is generally held to also be true; the applicant needs only meet the conditions of preliminary plat approval, along with fulfilling the requirements for final platting, to receive approval. Your staff agrees with the notion that we are not allowed a "second review" of the plat.

Condition 19 of the preliminary plat approval stated the following:

19. The applicant shall provide a detailed restoration, access and docking plan for Lot 12 or shall indicate that the structure on Lot 12 is to be removed.

This would provide the applicant with the option to either remove the structure or provide a detailed plan for restoration of the site. They have chosen to restore the site and maintain the structure. In our opinion, this puts the Planning Commission in the position of reviewing the site plan that has been submitted for restoration of Lot 12.

#### Condition 5

The applicant is arguing that the requirement for a 75-foot vegetative buffer constitutes a regulatory taking of the applicant's property.

We will request an opinion from the City Attorney regarding this claim, but the issue seems fairly straightforward. Consider:

- The City, as well as various state agencies, has identified this portion of Roosevelt Lake as sensitive and subject to environmental impacts from unregulated development.
- This is a unique piece of property, unlike others typical of Roosevelt Lake.
  - It has a large amount of emergent vegetation along the shoreline.
  - It has a number of lots which are essentially part of a large ice ridge formation, with lake on one side and wetland on the other.
  - It has steep slope conditions between many of the building sites and the lake.
- State agencies recommended a 100-foot natural buffer in this part of the lake. The 75-foot buffer is a compromise with this recommendation.
- The restriction of a 75-foot buffer allows the properties to be put to use for residential purposes, including lake access and shoreline docking.

In short, there is a relationship (nexus) between the condition (75-foot buffer) and the unique situation of the property (unique environmental concerns). Reasonable use of the property has not been restricted as the properties can all be used for normal residential development. This is an area they cannot build in already (due to the 75-foot setback). Requiring it to remain as part of a natural buffer – in addition to excluding building - is not disproportional to the environmental concerns raised on this site.

Keep in mind as well that every other property on Roosevelt Lake is required to maintain or restore a 37.5 foot buffer. The only difference between the use and enjoyment of riparian properties within this subdivision and other properties on the lake is the requirement that the Roosevelt Shores properties maintain an additional 37.5 feet to their buffer.

There is no requirement that the City treat each property the exact same, regardless of condition or circumstance. Failing to do so obviously does not constitute a taking. Each property is unique and we place unique requirements on properties all the time. The applicant's argument that they are not being treated the same is not applicable to the discussion of a taking.

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**Staff Findings:** The Staff provides the following updated findings of fact for consideration:

1. All of the conditions of preliminary plat approval have been met or are included in the documents accompanying the final plat. Specifically:
  - a. A detailed design for the construction of the driveway on Lot 16 has been provided and will be included in the development agreement as Exhibit B.

- b. A design for a sewage treatment system on Lot 16 has been submitted. The designer is Bob Bartel.
  - c. A security of \$14,750 has been provided for in the development agreement for the installation of the sewage treatment system on Lot 16.
  - d. A security of \$18,272.97 has been provided for in the development agreement for the preparation of the house site on Lot 16.
  - e. A security of \$8,600 has been provided for in the development agreement for the construction of boardwalks.
  - f. Lot 15 and 16 are not being consolidated.
  - g. The applicant has applied for a rezoning, which is scheduled for public hearing following the hearing for final plat.
  - h. Section 3.1.2 of the declaration restricts Lot 2 through 6 from constructing an access to Roosevelt Lane.
  - i. Vista Way is being constructed as a private road, within Outlot A, which is to be managed by an access easement.
  - j. A security of \$113,000 has been provided for in the development agreement for the construction of the roadway and abandonment and restoration of the existing driveway.
  - k. A detailed design for steep slope areas adjacent to Lots 11, 12 and 13 has been provided and will be included in the development agreement as Exhibit C.
  - l. A homeowner's association is established as part of final plat documents. This has been reviewed and accepted by the City Attorney.
  - m. Section 3.1.3 of the declaration establishes a vegetative buffer consistent with condition 14 of the preliminary plat approval.
  - n. Section 3.1.4 of the declaration establishes the dock locations consistent with condition 15 of the preliminary plat approval.
  - o. A security of \$380 has been provided for the removal of the culvert on Lot 16.
  - p. The applicant has indicated that Lot 12 is to be restored and the cabin is to remain. They have provided a plan for this, which is include in the development agreement as Exhibit D.
  - q. Section 3.1.5 of the declaration establishes restrictions on vegetation removal and disposal consistent with condition 20 of the preliminary plat approval.
2. The final plat is consistent with the agreed upon preliminary plat.
  3. The City Attorney has reviewed the title work and is in agreement that all parties with an interest in the property are included on the plat document.
  4. The City Engineer has reviewed the proposed improvements and concurs that the financial security is adequate.
  5. An independent plat check has been provided and accepted by the Planning Commission.
  6. Financial security will be posted at the time the development agreement is executed.

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**Planning Commission Direction:** The Planning Commission is requested to recommend how to address concerns regarding Condition 2 and Condition 5 of the prior recommendation. This needs to be done in October as the time limit for review of this application will expire prior to the November meeting.

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**Staff Recommendation:** We have attached an updated development agreement, with exhibits, for your review.

We recommend that the applicant's request to keep the structure on Lot 12 be accepted and that a plan to fully restore the site be included as Exhibit D in the development agreement. We also recommend the applicant's request to reduce the natural buffer be denied. These recommendations have been incorporated into the findings of fact in this report.

We recommend that the application be forwarded to the City Council for approval, with the updated development agreement, based on the findings of fact in this report and the following conditions:

1. The declaration shall be modified to indicate that the construction limits for all construction and the maintained portion of all yards shall be outside of the vegetative buffer.
2. Exhibit D (restoration or Lot 12) shall be modified as follows:
  - a. A notation shall be added indicating that the contours represent finished ground topography.
  - b. The 75-foot buffer shall be identified.
  - c. The shoreline access corridor shall be identified.
  - d. The docking plan, including boardwalk access, shall be indicated.