

**RESOLUTION NO. 1246**

**A RESOLUTION OF THE CITY OF DES MOINES, WASHINGTON** approving the minor deviations to the preliminary Blueberry Lane Planned Unit Development (PUD) Subdivision subject to conditions specified herein.

**WHEREAS**, the City Council, in a public hearing on December 14, 2006, adopted Resolution No. 1023 thereby approving the Blueberry Lane PUD Subdivision, the environmental documents, and recommendations from the Planning Agency and Administration, and

**WHEREAS**, Civil Engineering & Surveying NW, on behalf of the Bank of Washington (hereinafter, the Applicant), and the owners of the real property in the City of Des Moines, filed an application for a Minor Deviation from the preliminary Blueberry Lane PUD Subdivision on November 19, 2013, and

**WHEREAS**, minor deviations to the preliminary plat are allowed in accordance with DMMC 17.16.190(3) and DMMC 17.16.230(2), and

**WHEREAS**, pursuant to DMMC 17.16.190(3), if consistency with the minor deviation criteria is not clear, the Planning, Building and Public Works Director or planning official shall request a determination from the City Council, and

**WHEREAS**, consideration of the minor deviation by City Council is a Type IV Land Use Action that is appealable to the Superior Court of King County, Washington as set forth in DMMC 18.94.300, and

**WHEREAS**, notice of the public meeting was provided to the Seattle Times on December 2, 2013 and a 15-day public comment period was provided, and

**WHEREAS**, the public meeting notice was mailed to residents and property owners within 300 feet of the property and a public information sign was posted at the site, and

**WHEREAS**, the Des Moines Planning, Building and Public Works staff reviewed the minor deviation request for the preliminary Blueberry Lane PUD Subdivision and provided comments and recommendations as set out in the Findings of Facts; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:**

**Sec. 1. Findings of Fact.** The Findings of Facts set forth in Exhibit 1, attached hereto and incorporated by this reference, are adopted in full by the City Council in support of its decision to approve the minor deviations to the Blueberry Lane project subject to specific conditions.

**Sec. 2. Minor deviation decision criteria.** The criteria used in making the decision to approve the minor deviation presented by the Applicant are those required by DMMC 17.16.230(2). The City Council finds that the Blueberry Lane request for minor deviations are in compliance with the required criteria, as set forth in the Findings of Fact in Exhibit 1, adopted above.

**Sec 3. Approved Deviations.** Consistent with the provisions of DMMC 17.16.230(2) the following deviations to the preliminary Blueberry Lane PUD Subdivision are approved:

**Subdivision Layout and Design Deviations (Chapter 17.36 DMMC)**

(1) The overall number of lots has been reduced from 67 lots to 62 lots, and

(2) The alleys have been removed and affected lots have been reoriented along a realigned 11th Avenue South, and

(3) The townhome units have been removed, and

(4) The pedestrian path has been modified to shift the southern connection from Des Moines Memorial Drive to 11th Avenue South, and

(5) The residential design deviates from the following design guidelines stipulated in the SEPA Environmental Mitigation Agreement:

(a) Criteria 2.a. All front loaded garages shall be offset a minimum of 10 feet from the front of the building façade or 7 feet from the back of the porch;

(b) Criteria 2.e. Single family residential structures on interior lots will have windows that do not directly face the windows on the single family residential structure located on the adjacent lot;

(c) Criteria 2.g. All porches and stoops must have a permanent walkway which connects to the back of the public sidewalk, and

(6) The stormwater detention facility design has been revised from a one (1) pond tract (Tract J) to two (2) pond tracts (Tract C and Tract J) to better mitigate the stormwater

flow and volume as it is released to offsite wetlands and better mimic pre-developed conditions, and

(7) The internal roadway network has been revised to provide a better transportation design with the re-designed connection to 197th, removal of an interim dead end at the south end of 11th Ave South, removal of some on-street parking, and removal of alleys.

**Sec. 4. Approval subject to conditions.** The minor deviations to the preliminary Blueberry Lane PUD Subdivision are approved subject to the following conditions and modifications:

(1) Except where otherwise stated herein, the Applicant shall comply with the conditions of preliminary plat approval established through Resolution No. 1023 adopted on December 14, 2006.

(2) A revised hydrology model for the revised stormwater detention pond is necessary to determine whether the area provided in Tract C is sufficient to meet the required flow control standard while maintaining the water elevation of Wetland A without the wetland being a closed depression.

(3) The Applicant shall make modification to the approved civil plans as determined necessary by the Planning, Building, and Public Works Director.

**Sec. 5. Compliance with other law.** Nothing in this Resolution shall be construed as excusing the Applicant from compliance with all federal, state, or local statutes, ordinances, or regulations applicable to this subdivision other than as expressly set forth herein.

**Sec. 6. Resolution attached to approval documents.** A certified copy of this Resolution, along with the herein referenced Findings of Facts and preliminary plat, shall be attached to and become a part of the evidence of the approval of said preliminary Planned Unit Development subdivision to be delivered to the Applicant.

**Sec. 7. Distribution of Resolution following Council action.** Certified or conformed copies of this Resolution shall be delivered to the following:

(1) City of Des Moines Planning, Building and Public Works Department;

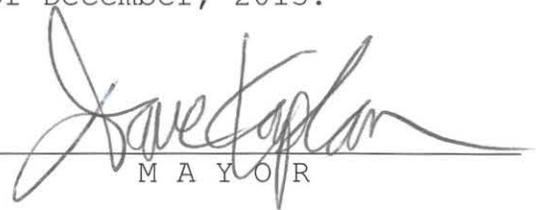
(2) South King Fire and Rescue; and

(3) City Clerk of the City of Des Moines.

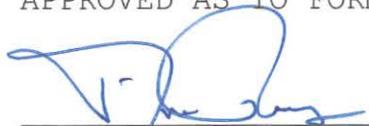
**Sec 8. Distribution of resolution by Planning, Building and Public Works Director.** Within five days following adoption of this Resolution, the planning official shall distribute the Resolution to the Applicant, and to each person who submitted timely written or oral testimony to the City Council for inclusion in the record.

**Sec. 9. Reconsideration.** A request to reconsider this decision of the City Council may be made by the Applicant, or by any person who submitted timely written or oral testimony to the City Council for inclusion in the record. The request for reconsideration, in the form of a letter, shall be delivered to the Planning, Building, and Public Works Department within 10 days following the date of adoption of this Resolution. The request shall contain a clear reference to the preliminary subdivision to be reconsidered and a statement of the specific factual findings or conclusions of the City Council disputed by the person filing the request for reconsideration. The City Council shall reconsider a decision if the Council finds that an error of fact, law, or procedure that is more likely than not to affect the outcome of the decision has been made; or if the person requesting reconsideration is seeking to enter previously unavailable information that is more likely than not to effect the outcome of the decision. The request for reconsideration shall be processed in conformance with City Council Rules of Procedure, chapter 4.12 DMMC.

**ADOPTED BY** the City Council of the City of Des Moines, Washington this 19th day of December, 2013 and signed in authentication thereof this 19th day of December, 2013.

  
M A Y O R

APPROVED AS TO FORM:

  
Assistant City Attorney

ATTEST:

  
City Clerk

**FINDINGS OF FACTS AND CONCLUSIONS**

**RESOLUTION NO. 1246, EXHIBIT 1**

**December 19, 2013**

**FINDINGS OF FACT**

The Des Moines City Council, upon review of an application requesting minor deviations for the Blueberry Lane Preliminary Planned Unit Development (PUD) Subdivision and in consideration of the record presented to the City Council in the City Council Agenda, including but not limited to the Draft Resolution No. 13-272 (Attachment 1), the Preliminary Blueberry Lane PUD Subdivision (Attachment 2), the Environmental Mitigation Agreement (Attachment 3), Minor Deviation Request Submittal (Attachment 4), Surface Water Management Review Comments (Attachment 5), are referenced and incorporated hereto as though fully set out, the files and records of the City and information communicated to the Council during the public meeting held on December 19, 2013 hereby finds:

(1) On November 19, 2013, the City received a request for Minor Deviations (Attachment 4) from the approved preliminary plat of the Blueberry Lane PUD Subdivision.

(2) The Minor Deviation request is being requested pursuant to DMMC 17.16.190(3) and DMMC 17.16.230(2)

(3) The Applicant is seeking a minor deviation to the approved preliminary PUD under Des Moines Municipal Code 17.16.320(2). The proposed site plan associated with the deviation request complies, or will comply, with all provisions in the Agreement, with the exception of three design standards cited in section 2 of the Agreement.

(4) The application packet (Attachment 4) includes a project narrative describing the proposed deviations and how the Applicant feels the proposed deviations meet the criteria stipulated in DMMC 17.60.230(2). The Applicant states that the deviations are intended to improve the engineering design and affordability of the development, while still retaining the fundamental components of the PUD as summarized below:

(a) Reduce the number of proposed lots from 67 lots to 62 lots to reduce the road length and total impervious surface area by approximately two-thirds of an acre;

(b) Eliminate alley-load units and townhome units to provide a more cohesive design theme and reduce inefficiencies associated with building only three townhomes;

(c) Deviate from the following design criteria 2.a., 2.e., and 2.g. as stipulated in the SEPA Environmental Mitigation Agreement:

(i) Criteria 2.a. All front loaded garages shall be offset a minimum of 10 feet from the front of the building façade or 7 feet from the back of the porch. The Applicant has proposed a site plan that will have a front setback of 10 feet, a side setback of 5 feet, and a garage setback of 20 feet. This is consistent with the setbacks required in the original PUD approval.

(ii) Criteria 2.e. Single family residential structures on interior lots will have windows that do not directly face the windows on the single family residential structure located on the adjacent lot. The Applicant has proposed that windows on interior lots will offset from windows on structures located on the adjacent lot to the maximum extent practicable.

(iii) Criteria 2.g. All porches and stoops must have a permanent walkway which connects to the back of the public sidewalk. The Applicant has proposed that it will comply with the intent of this condition by ensuring that all porches and stoops will have a permanent connection to the sidewalk, via a driveway or other walkway.

(d) Revise the stormwater design from a one (1) pond tract (Tract J) to two (2) pond tracts (Tract C and Tract J) to better mitigate the stormwater flow and volume as it is released to offsite wetlands and better mimic pre-developed conditions;

(e) Revise internal roadways and eliminate alleys to improve internal circulation and pedestrian access. This includes realignment of reducing the pedestrian path from 1,600 feet to 1,460 feet; adjusting the alignment of 11th Place S and modifications to the intersections at South 195th Street and 11th Place South and at South 197th Street and 11th Avenue South.

(f) Increase the size of the open space and stormwater/utility tracts. This includes redesigning the storm/utility Tract J into two tracts as described under item 3.

(5) The City Council approved the preliminary Blueberry Lane Planned Unit Development ("PUD") subdivision ("Project") on December 14, 2006 via Resolution No. 1023, subject to certain conditions. The review and approval process included review under the State Environmental Policy Act (SEPA), which resulted in a Mitigated Determination of Nonsignificance ("MDNS") for the Project issued July 20, 2006.

(6) In addition to the MDNS, the City and developer entered into an Environmental Mitigation Agreement ("Agreement") pursuant to chapter 43.21 RCW and Title 16 of Des Moines Municipal Code to provide for mitigation of impacts associated with the proposal. The Agreement was executed on July 20, 2006 and included as a condition of the PUD approval. See Condition 2 of Resolution No. 1023.

(7) Based on a preliminary review of the documents submitted and proposed deviations to the PUD the administration offers the following comments:

(a) Removing the townhome element seems reasonable provided the Applicant can demonstrate a diversity of housing price points comparable to townhomes.

(b) Although the alleys were identified as a design element to de-emphasize the visual impact of the automobile and garages for small lot development, their removal allows nine lots that front Des Moines Memorial Drive to be reoriented and better integrated into the development along a realigned 11th Avenue South.

(c) The pedestrian path deviations may not meet the initial intent to provide a connection from South 194<sup>th</sup> Street through the neighborhood to Des Moines Memorial Drive given the location of the SR 509 right of way. As currently shown on the proposed revised plans, the pedestrian path dead ends on 11th Avenue South and does not extend the full length of

the roadway to the west. Staff recommends that the pedestrian path be maintained as initially approved.

(d) Proposed design deviations do not appear to meet the intent of the conditions of approval for the PUD which were stipulated through the SEPA Environmental Mitigation Agreement that are intended to result in a more desirable and aesthetic development and to de-emphasize the automobile and establish a streetscape that is more human scale by putting street facing garages back behind the front porch.

(e) Comments and clarifications related to how the requested deviations might impact the stormwater system design are highlighted below:

(i) Staff concurs that the design deviation will reduce the pond outflow through the reduction of impervious surface (by two-thirds of an acre).

(ii) The proposed design deviation indicates two separate detention facilities with one facility discharging to Wetland A and the other facility discharging to Wetland C. This design assumes that Wetland A is a closed depression (no outlet or correlation to Wetland C) and therefore the detention facility discharging to Wetland A would be subject to higher flow control standard (Level 3). Without reviewing a revised hydrology model, it is uncertain whether the area provided in Tract C, as shown on the revised plat map, is sufficient to provide a larger facility for the higher flow control standard. In addition, further evaluation would be necessary to determine the feasibility of an overflow from Wetland A to the adjacent detention facility in Tract J, thereby maintaining the water elevation of the wetland without the wetland being a closed depression.

(f) The proposed revisions to roadway network appear to provide a better transportation product with the re-designed connection to 197th and the lack of an interim dead end at the south end of 11th Ave South.

(g) South King Fire and Rescue commented that the proposed lot configuration may require sprinklers in some

residences where dead end streets are longer than 100 feet without a turnaround such as a cul-de-sac.

(8) Except where otherwise stated herein, the proposed plat is consistent with the applicable provisions of the Comprehensive Plan, Zoning Code, and other City policies and regulations that were in place at the time of preliminary plat approval.

(9) The developer has submitted the requisite application materials for a minor deviation from the preliminary plat utilizing the provisions of a PUD subdivision codified in chapter 17.16 and 18.52 of the Des Moines Municipal Code.

(10) The application requests the following deviations as a means to improve the engineering design and affordability, while still retaining the fundamental components of the PUD. The requested deviations are outlined in Exhibit 2 and summarized below:

(a) Reduce the number of proposed lots from 67 lots to 62 lots to reduce the road length and total impervious surface area by approximately two-thirds of an acre; and

(b) Eliminate alley-load units and townhome units to provide a more cohesive design theme and reduce inefficiencies associated with building only three townhomes; and

(c) Revise the pedestrian path; and

(d) Deviate from the design criteria 2.a., 2.e., and 2.g. established in the SEPA Environmental Mitigation Agreement; and

(e) Revise the stormwater design from a one (1) pond tract to two (2) pond tracts to better mitigate the increased stormwater flow and volume as it is released to offsite wetlands; and

(f) Revise the internal roadway network to eliminate the alleys and improve the internal circulation and

pedestrian access. This includes realignment of reducing the pedestrian path from 1,600 feet to 1,460 feet; adjusting the alignment of 11th Place South and modifications to the intersections at South 195th Street and 11th Place South and at South 197th Street and 11th Avenue South; and

(g) Increase the size of the open space and stormwater/utility tracts. This includes redesigning the storm/utility Tract J into two tracts.

(11) The zoning for the property is B-P Business Park; however, under State vesting laws the subdivision would vest under the RS-7200 zone provided that all civil improvements are completed and the final plat is recorded in accordance with RCW 58.17.140.

(12) PUD's are authorized in all single family residential zoned areas.

(13) The Des Moines Planning, Building, and Public Works Department provided a notice of public meeting on December 2, 2013 and provided a 15-day public comment period from December 2, 2013 to December 17, 2013. The notice of public meeting was mailed to residents and property owners within 300 feet of the property and a public information sign was posted at the site in accordance with DMMC 16.04.160(1).

### CONCLUSIONS

The Des Moines City Council approves the Applicant's request for minor deviations to the Blueberry Land PUD based on the Findings of Fact set out above and incorporated herein by this reference:

(1) Proposed deviations from the approved preliminary PUD are consistent with the intent of chapters 17.16 and 18.52 DMMC and maintain adequate provisions for drainage ways, rights-of-way, sidewalks, easements, water supplies, sanitary waste, fire protection, power service, parks, playgrounds and schools.

(2) The proposed plat design will serve the public use and interest and is consistent with the public health, safety, and welfare.

(3) Pedestrian amenities in the PUD are maintained.

(4) The evidence submitted by Richmond Homes at the December 19, 2013 public meeting demonstrated that compliance with Sections 2.a, 2.e., and 2.g of the Agreement is not feasible, and that the proposed site plan will incorporate standards that are equivalent or superior to the design standards required by Sections 2.a, 2.e, and 2.g of the Agreement.

(5) Accordingly, the City Council concludes that, in addition to approving the request for a minor deviation, it is also appropriate to waive the requirement to comply with Sections 2.a, 2.e, and 2.g of the Agreement, subject to Richmond's commitment to ensuring an equivalent or superior design as described in Findings 1.5 - 1.7.

(6) SEPA review was completed for the Blueberry Lane PUD on July 20, 2006. The proposed alterations to the site plan constitute a minor deviation to the approved preliminary PUD, and they do not pose substantial new impacts. Similarly, waiver of the three design standards described above will not result in new or different environmental impacts. In fact, the environmental impacts of the approved preliminary PUD and the proposed site plan are substantially similar. Accordingly, the City may rely on its existing SEPA review; it need not require a new SEPA checklist or issue a new threshold determination. Pursuant to WAC 197-11-600, it will use the existing environmental documents unchanged for this proposal.

(7) In reaching its decision, the City Council considered the entire record, including the MDNS, the Agreement, and the submittals and argument of the Applicant.

(8) The SEPA determination of the responsible official is entitled to substantial weight. RCW 43.21C.057(3); WAC 197-11-680(3).

Resolution No. 1246

Page 8 of 8

Exhibit 1

(9) Modifications to the infrastructure design improve the engineering design and affordability of the development, while still retaining the fundamental components of the PUD.

(10) A revised hydrology model for the revised stormwater detention pond is necessary to determine whether the area provided in Tract C is sufficient to meet the required flow control standard while maintaining the water elevation of Wetland A without the wetland being a closed depression.