

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE) ss

**BEFORE THE CITY OF NAPERVILLE
PLANNING AND ZONING COMMISSION**

In re the Matter of:)
)
NAPER COMMONS) Case Nos. 20-1507, 20-1509, 20-1510
Nokia Campus, Lot 4)
Pulte Home Company, LLC)

NOW COME the “Fairmeadow Neighbors,” JEFFREY AND JEN BANOWETZ, JAMES AND SANDRA BUTT, and TIMOTHY AND KAREN FELDBALLE, and submit the following as their opposition to the petition of PULTE HOME COMPANY, LLC for the Naper Commons Preliminary PUD and approval of a PUD plat with deviations and for a conditional use for single family attached units, all situated on Lot 4 near Naperville and Warrenville Roads (the “Subject Property”):

PARTIES

1. JEFFREY AND JEN BANOWETZ are the owners of 3S718 Delles Road, Naperville, DuPage County, Illinois 60563 (Permanent Index No. 05-32-401-006), situated in unincorporated DuPage County and a part of Fairmeadow Unit 2 Subdivision recorded as Document No. 1957-833256 (the “Banowetz Parcel”).

2. JAMES AND SANDRA BUTT are the owners of 25W130 Fairmeadow Lane, Naperville, DuPage County, Illinois 60563 (Permanent Index No. 05-32-402-012), situated in unincorporated DuPage County and a part of Fairmeadow Unit 1 Subdivision recorded as Document No. R1956-800545 (the “Butt Parcel”).

3. TIMOTHY AND KAREN FELDBALLE are the owners of 3S634 Delles Road, Naperville, DuPage County, Illinois 60563 (Permanent Index No. 05-32-401-001), situated in

unincorporated DuPage County and a part of Fairmeadow Unit 1 Subdivision recorded as Document No. R1956-800545 (the “Feldballe Parcel”).

FAIRMEADOW SUBDIVISION

4. Fairmeadow Subdivision is a 36-lot two-unit single family detached residential subdivision that lies directly east of most of the Subject Property and between 415 feet and 740 feet from the southeasterly extension of the Subject Property to Naperville Road:



5. All the homes in Fairmeadow Subdivision rely on private wells for water service and, on information and belief, all but two of the homes in Fairmeadow Subdivision rely on private septic/sewerage systems for sanitary wastewater.

6. Fairmeadow Subdivision relies on the intersection of Fairmeadow Lane for its access to public rights of way outside of the subdivision. The intersection features an automated

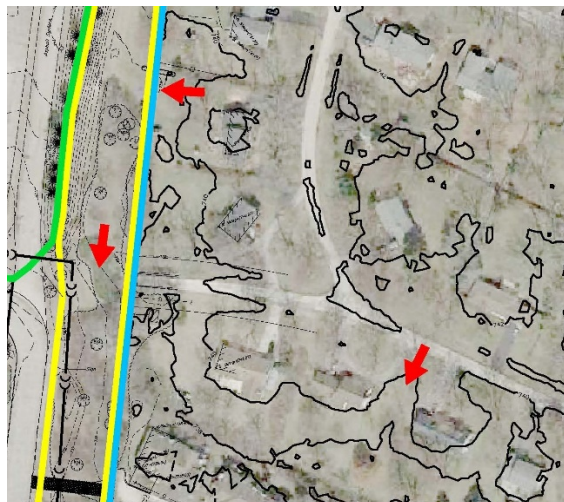
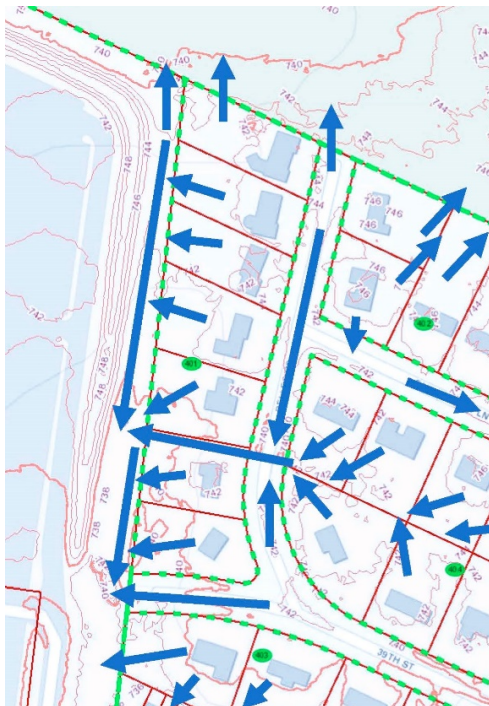
detection system that allows for connectivity with the signalized intersection of Naperville Road with the DuPage County Forest Preserve main entrance to the north.

7. Internally, Fairmeadow connects with a north-south street (Delles Road) that also connects with 39th Street, a right of way dedicated from the lots in the southeast corner of the subdivision to its west terminus at the Subject Property.

8. Fairmeadow Subdivision does not have sidewalks and its streets have a width of between 18 feet (internal width) and 24 feet (width approaching Naperville Road).

9. The streets are a combination of asphalt and stone (at the edges) and a system of pipes, street grading and soft culverts adjacent to the streets operates with two Delles drains to the Subject Property in order to direct stormwater out of Fairmeadow Subdivision.

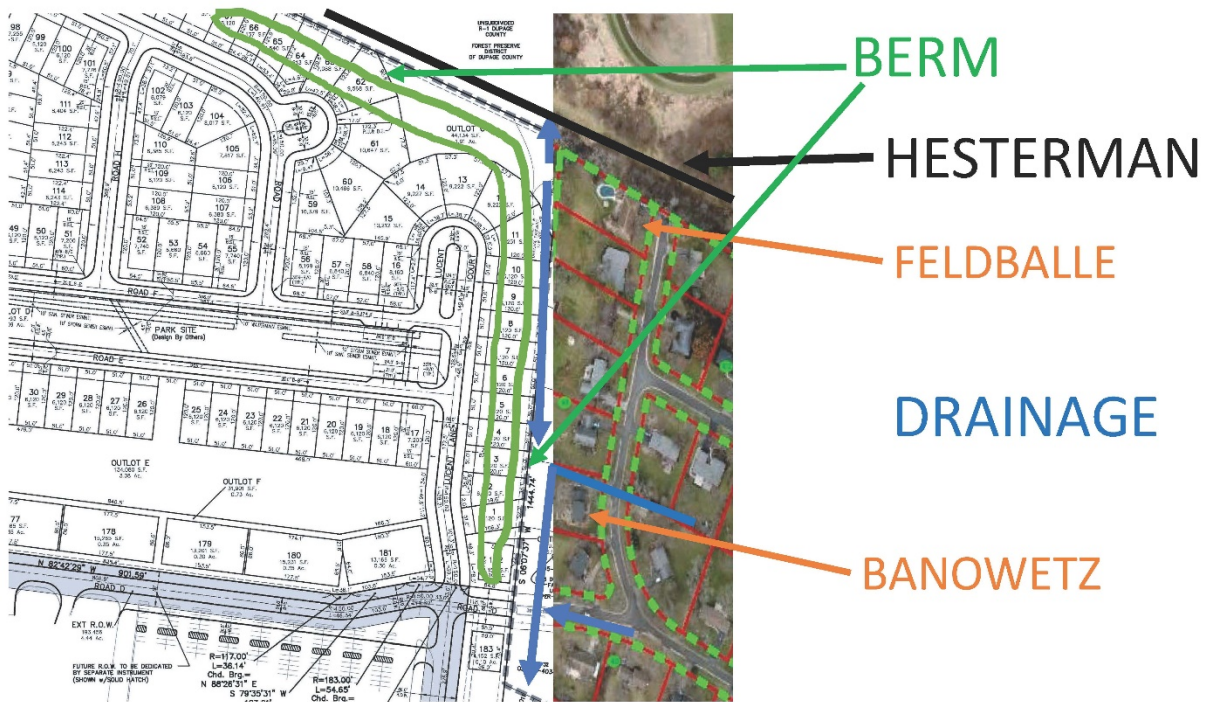
10. Fairmeadow Subdivision generally drains to its north, east, south and west perimeters. Lots situated along the west side of Delles Road drain to the west, south or north. The center and internal streets drain to the west then to the south over the Subject Property:



11. The average lot size in Fairmeadow Subdivision is roughly 0.60 acres.
12. Fairmeadow Subdivision has a density of 1.4 dwelling units per acre.

THE BANOWETZ PARCEL

13. The Banowetz Parcel is situated on Lot 30 in Fairmeadow Unit 2—the second lot north of 39th Street on the west side of Delles Road.
14. The Banowetz Parcel hosts a two-story residence situated 95 from the west lot line abutting the Subject Property.
15. The berm (depicted below) and its plantings fully screen the Subject Property from upper and lower elevations on the Banowetz Parcel as well as the Feldballe Parcel:



16. The Banowetz Parcel benefits from streetside stormwater lines required for its protection. The lines take stormwater from the Delles Road and areas east through Banowetz Parcel into the stormwater systems on the Subject Property and elsewhere within the Nokia Campus.

17. The Banowetz Parcel has an area of 0.51 acres and a rear lot line that is 126 feet long.

18. Since the 1950's it has been impacted only by residential use of a similar scale to Fairmeadow Subdivision to the north, east and south and by open space to the west:

- a. Until the expansion of the temporary parking lot, there was no berm, but the acreage west of the Banowetz Parcel comprised pervious greenspace with ball fields and recreation space;
- b. The berm arose roughly twenty years ago with the expansion of parking to include a temporary parking area west of the berm; and
- c. Over the past twenty years, the berm and its attendant landscaping full screened the parking area so that it was not visible to the southwest, west and northwest.

19. The berm to the east lot line of the Subject Property and from the east lot line of the Subject Property to Delles Road contains underground pipes believed to be 18 inches in diameter.

20. Due to the two drains on the parcel, the Banowetz Parcel does not flood frequently, but the Banowetz Parcel conveys a large volume of stormwater onto the Subject Property from the center of Fairmeadow Subdivision and the Banowetz Parcel.

THE BUTT PARCEL

21. The 0.62 acre Butt Parcel is three lot frontages west of Naperville Road on the north side of Fairmeadow lane.

22. The Butt Parcel shares topographic features with the adjacent Forest Preserve District property to the north and the adjacent residential lot to the east that amounts to 0.62 acres at or below an elevation of 740, covering much of the rear yards of the two residential lots and

extending into the interior side yard between the two residential lots and often topping over into the front yard.

23. The frequency of flooding on the Butt Parcel has increased from once per year to two or three times per year, with two occasions per year during which the front and rear yard are flooded as rising waters from the north encroach through the rear and interior side yard and into the front yard. Indeed, Applicant's exhibits include old and new FEMA maps that indicate the impact of drainage problems on the Forest Preserve Headquarters site on the Butt Parcels.

THE FELDBALLE PARCEL

24. The 0.57 acre Feldballe Parcel is situated at the furthest northwest corner of Fairmeadow Subdivision and adjacent to the Subject Property.

25. The very west rear of the Feldballe Parcel is roughly the same elevation as the area of the Subject Property east of the berm on the Subject Property.

26. The rear yard of the Subject Property is roughly level with three homes to the south.

27. The Feldballe Parcel, its neighbor to the south and the Banowetz Parcel host residences with architectural features designed to take advantage of views to the west and northwest, including substantial open space and natural areas.

28. The Feldballe Parcel does not experience frequent flooding since the parcel is at a higher elevation than large surrounding areas and much of the stormwater is directed away from the Feldballe Parcel, either to the north or to the south. However, during heavier rain events, a portion of the rear yard will flood in a fashion that is similar to flooding on the Subject Property east of the berm.

THE SUBJECT PROPERTY

29. In 1987, the Subject Property was part of the Bell Laboratories complex and hosted open space comprised of baseball and other sports fields and areas for passive activities and recreation:



30. With building expansion in the center and south portions of the Bell Laboratories complex, the area of the playing fields and open space gradually diminished as the Subject Property became the host of expanded parking that occurred in phases (most of which was, on information and belief, approved as temporary parking):



31. By 2002, the parking expanded nearly to the north line of the Subject Property:



32. Bell Pond remained of a similar size and no independent stormwater capacity was added during the parking expansion.

33. On information and belief, the parking lots themselves and underground stormwater improvements were planned to contain stormwater.

34. Since 2002, a large 8'-12' berm has extended from west of the west line of Fairmeadow Subdivision for a distance of 800 feet before turning west.

35. The berm provides a complete terrain screen, and it is extensively planted in a fashion that provides year-round landscape screening between for the large residential lots in Fairmeadow Subdivision due to scores of large trees on and east of the berm.

36. The berm also maintains a drainage separation between the Subject Property and Fairmeadow Subdivision.

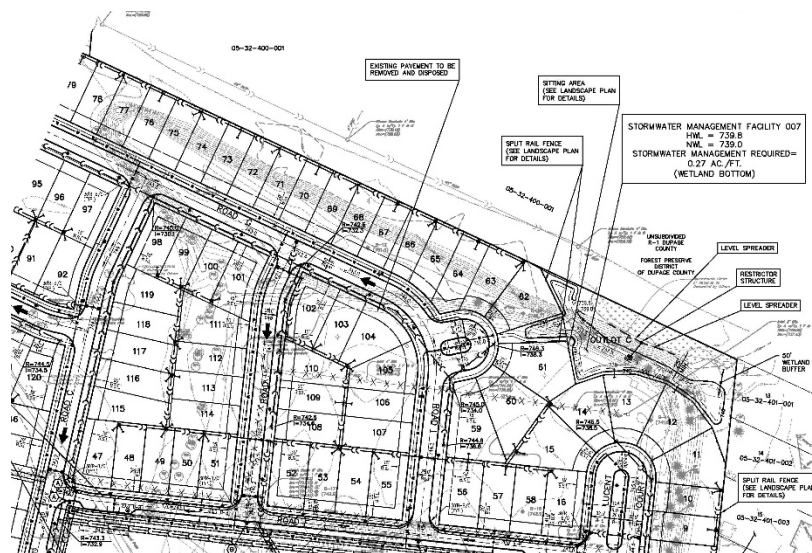
37. The parking lots north of Lucent Lane generally drain from north to south before water reaches Lucent Lane and flows west or further south then southeast.

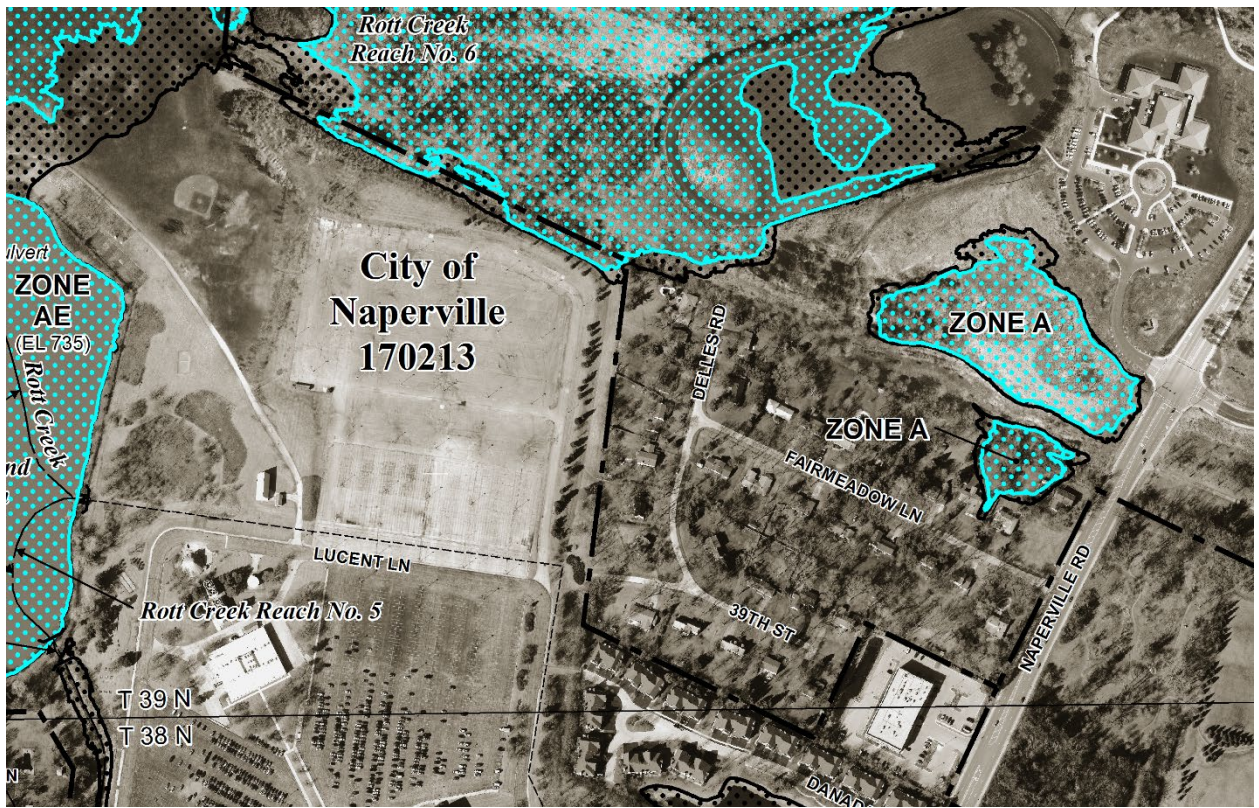
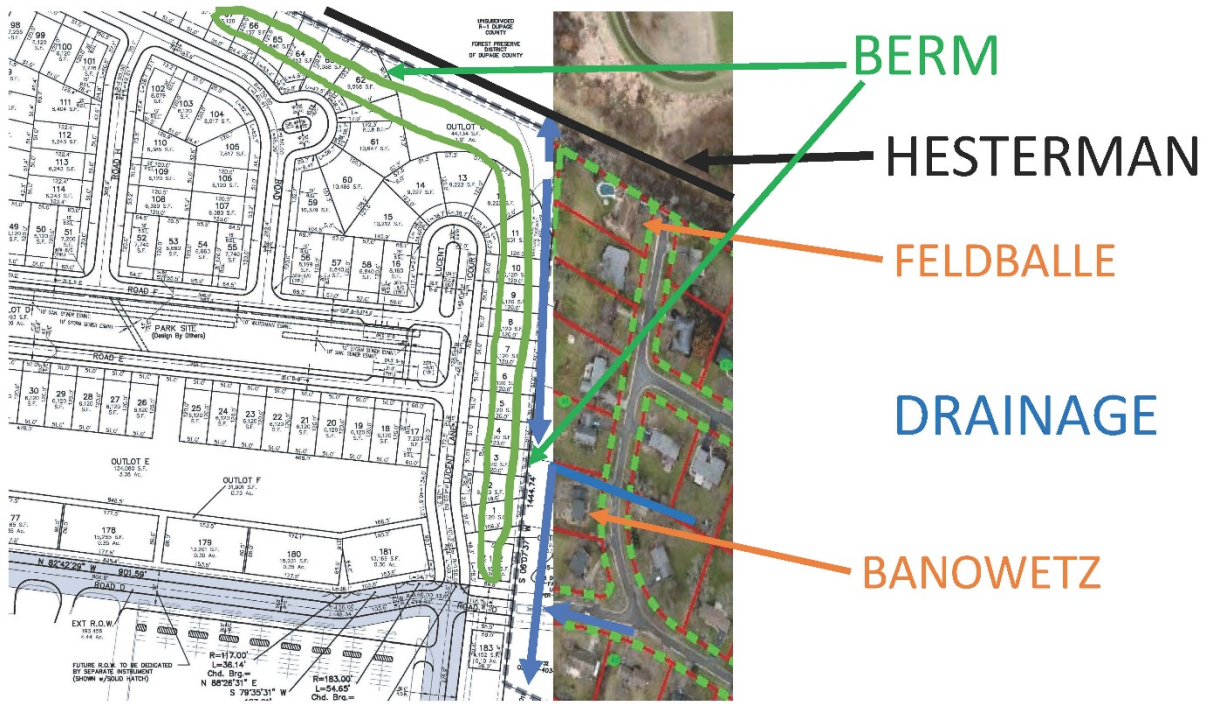
38. The elevations of the Subject Property along the west line of Fairmeadow Subdivision range from 738 near the southwest corner to 742 roughly 70 feet south of the Forest Preserve District property.

39. The berm, with its elevation of 748 (to 750) and its large evergreens, pines and other trees, has been a part of the environmental since the late 1980's or early 1990's.

THE HESTERMAN DRAIN

40. An improvement known as the Hesterman Drain created a ridgeline north of Fair Meadow Subdivision that causes flooding of properties in the subdivision. The Hesterman Drain is a large drain system that serves territory from Butterfield Road south to Warrenville Road, traversing private and public land from northwest to southeast along a route that runs across the northernmost part of the Subject Property and along a line parallel to the north line of Fairmeadow Subdivision before crossing Naperville Road, turning south, and eventually daylighting at the northeast corner of Naperville and Warrenville Roads:





Without the Hesterman Drain, conditions may not permit either the project or continued maintenance of Fairmeadow Subdivision, but the Hesterman Drain has created problems by imposing a flood hazard on the Butt Parcel and on the Subject Property among others.

41. The above-referenced berm is a key component of area stormwater improvements since it was constructed as an emergency overflow berm that would direct overland storm flow during a 100-year storm to a catch basin west of the berm and to Bell Pond (the detention basin situated west and south of proposed Outlot B on the Subject Property) and away from Fairmeadow Subdivision -- an area that cannot incur additional stormwater burdens.

42. The berm has existed for parts of three decades to direct stormwater from points less than 100 feet west of the Banowetz Parcel and the Feldballe Parcel to locations west of the Subject Property that are more than 2,000 feet west of Fairmeadow Subdivision.

TRAFFIC

43. Streets in Fairmeadow Subdivision serve only the homes in Fairmeadow Subdivision. As of this submittal, it appears that connection over Road D and 39th Street will be for pedestrian/bicycle use only.

44. Fairmeadow Lane, Delles Road and 39th Street are narrow roads under Milton Township jurisdiction and, though constructed and maintained for the limited purpose of serving 35 homes (one home had a driveway onto Naperville Road), are neither designed, constructed, nor maintained for a broader population or residential density.

45. Area school districts have been comfortable with plans for busing students from Fairmeadow Subdivision.

46. The apparent indication from local schools indicating that a vehicular interconnection between the Subject Property and Fairmeadow was not approved by Milton Township.

47. On information and belief, there is correspondence in the zoning file for the project on the Subject Property that indicates that no school district desires a vehicular interconnection between Fairmeadow Subdivision and the Subject Property for any purpose, including purposes relating to student safety and busing.

48. Roads in Fairmeadow Subdivision do not allow for cut-through traffic in order to reach other developments.

RECITATION OF SPECIFIC OBJECTIONS TO THE PETITION

49. BANOWETZS, BUTTS and FELDBALLES oppose any vehicular interconnection between Fairmeadow Subdivision and the Subject Property for purposes other than pedestrian or bike path purposes, including but not limited to the extension of any road from Lucent Lane east to the line between the Subject Property and Fairmeadow Subdivision. An adjustment of plans should address this.

50. BANOWETZS, BUTTS and FELDBALLES oppose the removal of the berm that is currently situated on proposed Outlot C, Outlot G, Lots 1-78 and Lot 182. At a minimum, the east portion of the berm, adjacent to Fairmeadow Subdivision should be preserved as open space.

51. BANOWETZS, BUTTS and FELDBALLES oppose the replacement of the berm on Outlot C with Stormwater Facility No. 7 which has a high-water line of 739.8 and specifically conveys stormwater to the north and east across the north lot line of the Subject Property into an area identified as a critical wetland through which a 2,400-foot stretch of the Hesterman Drain passes. The Cemcon preliminary engineering plans (Sheet 3 of 4) only show part of the

Hesterman Drain but omits the stretch that extends from north of proposed Lot 62 southeast to the northeast corner of Fairmeadow Subdivision. Plans should avoid conveying any water to areas north of the Subject Property because doing so increases stormwater burdens for homes on Fairmeadow Lane.

52. BANOWETZS, BUTTS and FELDBALLES oppose the development of duplexes or attached single-family residences on Lots 181, 182 and 183. The plan should be modified to allow for single-family detached homes on Lots 182-183 and more open space on Lot 181.

53. BANOWETZS, BUTTS and FELDBALLES oppose the proposed project density of 3.73 dwelling units per acre (241 units on 64.63 acres) with zero transition from the lower density development of Fairmeadow Subdivision.

54. BANOWETZS, BUTTS and FELDBALLES oppose the proposed single-family detached project density of 3.4 dwelling units per acre (175 units on roughly 51.5 acres) with zero transition from the lower density development of Fairmeadow Subdivision.

55. BANOWETZS, BUTTS and FELDBALLES oppose the severe restriction of stormwater flowing across the Subject Property and Fairmeadow Subdivision when the Subject Property is not only highly susceptible to flooding at all areas, but there is no current restriction on the rate, volume or direction of flow from points west of the berm across the Subject Property to the overflow or Bell Pond. The City cannot legally authorize a change in drainage from Fairmeadow Subdivision onto and through the Subject Property.

ZONING EVALUATION

56. Attention to the objections noted in Paragraphs 49-55 will meet the purpose and intent of the Zoning Title as noted in Section 6-1-2:

- a. Eliminating the extension of any roadway from the Subject Property to Fairmeadow Subdivision will lessen congestion on the public streets, facilitate the provision of adequate public services such as transportation, conserve the value of buildings and encourage the most appropriate use of land, protect Fairmeadow Subdivision from harmful encroachment by incompatible uses for which its roads were not constructed and are not maintained, and foster a more rational pattern of relationship between uses for the mutual benefit of all;
- b. Maintaining the berm that is currently situated on proposed Outlot C, Outlot G, Lots 1-78 and Lot 182 will avoid undue concentration of population, prevent the overcrowding of land (thereby insuring proper living conditions), maintain existing adequate standards for the provision of light, air and open spaces, facilitate the provision of adequate public services such as sewerage, open space and parks, conserve the value of buildings and encourage the most appropriate use of land, protect areas from harmful encroachment by incompatible uses and insure that land allocated to a class of uses shall not be usurped, avoid the inappropriate development of lands and provide for adequate drainage, curbing of erosion, and reduction of flood damage, and foster a more rational pattern of relationship between residential uses for the mutual benefit of all;
- c. Avoiding the replacement of the berm on Outlot C with Stormwater Facility No. 7 which will divert roughly 1.5 acres of drainage into a critical wetland at the same elevation as wetlands on and along the respective north lines of the Subject Property and Fairmeadow Subdivision will maintain existing adequate standards for the provision of light, air and open spaces, facilitate the provision of adequate

public services such as sewerage, open space and parks, conserve the value of buildings and encourage the most appropriate use of land, protect areas from harmful encroachment by incompatible uses and insure that land allocated to a class of uses shall not be usurped, avoid the inappropriate development of lands and provide for adequate drainage, curbing of erosion, and reduction of flood damage, and foster a more rational pattern of relationship between residential uses for the mutual benefit of all;

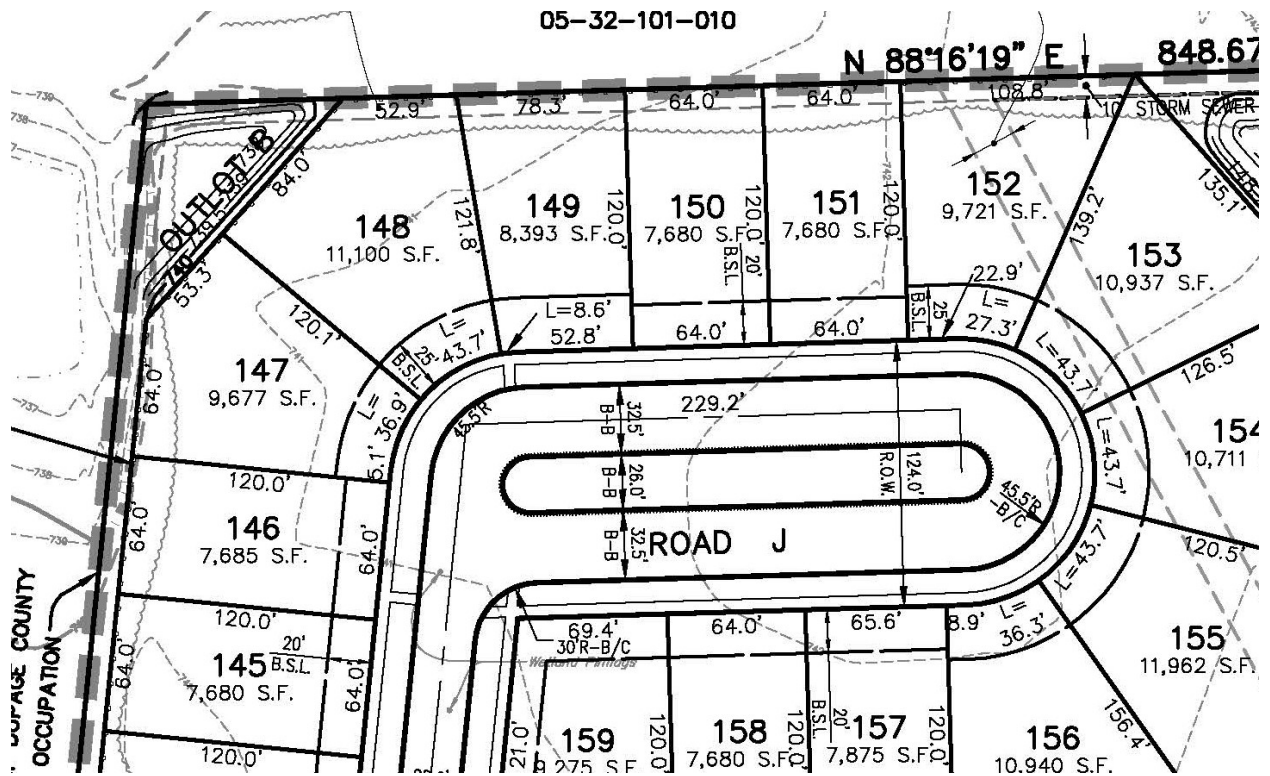
- d. Avoiding attached single family residences on Lots 181, 182 and 183, in part by modifying attached single-family homes on Lots 176-181, will lessen congestion on the public streets, avoid undue concentration of population, prevent the overcrowding of land (thereby insuring proper living conditions), maintain adequate standards for the provision of light, air and open spaces, facilitate the provision of adequate public services such as transportation, open space and parks, conserve the value of buildings and encourage the most appropriate use of land, protect areas from harmful encroachment by incompatible uses and insure that land allocated to a class of uses shall not be usurped by inappropriate use, avoid the inappropriate development of lands and provide for adequate drainage, curbing of erosion, and reduction of flood damage, and foster a more rational pattern of relationship between residential uses for the mutual benefit of all.
- e. Reducing the project density (3.73 dwelling units per acre (241 units on 64.63 acres)) and the single family detached project density (3.4 dwelling units per acre (175 units on roughly 51.5 acres)) will lessen congestion on the public streets, avoid undue concentration of population, prevent the overcrowding of land

(thereby insuring proper living conditions), establish adequate standards for the provision of light, air and open spaces, facilitate the provision of adequate public services such as transportation, open space and parks, conserve the value of buildings and encourage the most appropriate use of land, protect areas from harmful encroachment by incompatible uses, insure that land allocated to a class of uses shall not be usurped, avoid the inappropriate development of lands and provide for adequate drainage, curbing of erosion, and reduction of flood damage, and foster a more rational pattern of relationship between residential uses for the mutual benefit of all.

57. Section 6-4-1 of the Zoning Title provides that “The planned unit development shall conform to the intent and character of the zoning district in which it is located.” The project proposed for the Subject Property calls for development inconsistent with the City’s R-2 zoning regulation in several respects:

- a. The Outlot F attached single family dwellings on Lots 176-181 are too dense inasmuch as 32 units are proposed and 28 are permitted under the 4,000 SF per dwelling unit area requirement in Section 6-6C-5(2);
- b. Lot 1 does not meet the 6,000 SF minimum in Section 6-6C-5(1);
- c. Petitioner seeks deviations from the front yard requirement and from the side yard requirement under a threat (or hint) that it will not provide amenities common to single family living in Naperville (such as front porches or eaves) without this relief—admitting that the planned development is too dense when the 191 cannot fit on a generally flat parcel:

- i. Of 175 single family detached residential lots, only 44 comply with front yard regulations (Lots 1-15, 37-38, 59-63, 84, 120, 125-130, 135-137, 147-149, 152-156, 163-165), and the 25% that meet the regulation generally occur where it is only convenient to the Petitioner (along curved or entry street where the reduced front yard would leave insufficient lot width):



- ii. There are 66 units in 16 attached single family buildings and only four of these are planned in an environment deemed proper by the City;
- iii. A mere 25% of the dwelling units in the development will be in a block face environment that the City views as suitable in the R-2 zoning classification;

- iv. Note that the percentage of people living in a proper residential environment falls rapidly once one considers the interior yard setback relief; and
- v. The narrative refers to front porches that can extend six inches into the front yard, but assuming that Petitioner will extend front porches up to five (5) feet into the front yard, this leaves 15 feet of green space below homes that are up to 35 feet tall and townhomes that are 35-40 feet tall;
- d. Buildings 186 and 187 and Buildings 188 and 189 do not appear to meet the 12' primary structure separation requirement in Section 6-6C-7(3);
- e. Buildings 176-181, 182, 183, 185, 187 and 189 do not meet the 25' front yard requirement in Section 6-6C-7(1)(3);
- f. Buildings 186, 188 and 190 appear not to meet the rear yard requirement in Section 6-6C-7(1)(3);
- g. Even with the benefit of Section 6-2-3(4), allowing an election of which yard is the corner side yard, Building 182 appears to violate the 25' rear yard requirement in Section 6-6C-7(1)(3) and its excessive corner side (west) yard appears only because Petitioner plans a monument sign west of the building;
- h. Buildings 176-181 appear to offer decks that appear to extend further than ten (10) feet into the rear yard setback in violation of Section 6-2-3(3.2);
- i. Section 6-9-3(1) mandates 542 parking spaces, and the ability to select one of a number of single car garage/driveway designs amid an environment with no identified residential street parking other than the 18 spaces adjacent to Outlot D leaves doubt as to whether the balance of parking in the development will meet

the minimum number or remotely justify an administrative reduction in required parking;

- j. Section 7-3-5(1) of the Subdivision Regulations requires 8.6 acres of park space per 1,000 residents, but while eliminating existing open space, Petitioner proposes only 2.02 acres of the 5.0-5.5 acres of park land that could be required (the plans provided do not allow an accurate population count).

58. Section 6-4-2 provides that a planned unit development is intended “to provide an alternate zoning procedure under which land can be developed or redeveloped *with innovation, imagination, and creative architectural design when sufficiently justified*. . . .” The PUD does not offer a higher level of design and amenity than is possible under otherwise applicable zoning regulations or a design that fulfills the objectives of the comprehensive plan and planning policies of the City.” There is no basis for relief from the strict application of the use and bulk regulations of the Zoning Title and the design standards of the subdivision control regulations.

59. The planned unit development is intended to permit and encourage such flexibility and to accomplish the following purposes, but the proposed development fails the listed purposes in Section 6-4-2:

- a. To stimulate creative approaches to the residential, commercial, and industrial development of land.
- b. To provide more efficient use of land.
- c. To preserve natural features and environmental resources, and provide outdoor common area, open space and recreation areas in excess of that required under existing zoning regulations.

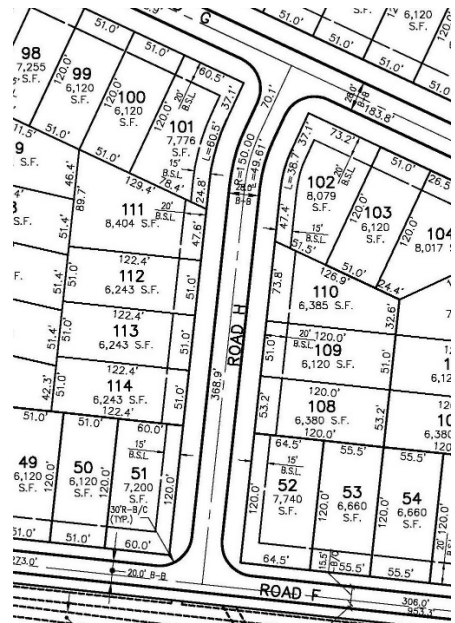
- d. To develop new approaches to the living environment through variety in type, design and layout of residential structures, commercial and industrial buildings, transportation systems, and public facilities.
- e. To unify buildings and structures through design.

60. Section 6-4-7 sets out the criteria for approval and the Planning and Zoning Commission shall not recommend approval ***unless the proposed development or change complies with all ordained criteria***. The project fails the following Section 6-4-7 criteria:

- a. (1.1.The design of the planned unit development presents an innovative and creative approach to the development of land and living environments.)
 - i. The flexibility allowed in the PUD context is not intended to allow deviations from requirements under a threat to proceed with planning without customary design features; rather, the PUD requires innovation and creative approaches that actually add to what is customarily planned;
 - ii. There is little innovation or creativity in creating a stratified living area with townhomes facing Road D and Lucent Lane and placing the next two more expensive housing level a step further from the non-residential uses (townhomes could wrap the southwest corner of the Subject Property and open space could be created in the dense southeast corner);
 - iii. There is no innovation in managing stormwater and wetlands as has been proposed because (a) Petitioner does not solve any issues other than those on site and, even those issues are solved with efforts to claim detention areas are open space and an intent to alter longstanding Fairmeadows drainages, (b) an entire common stormwater management area does not

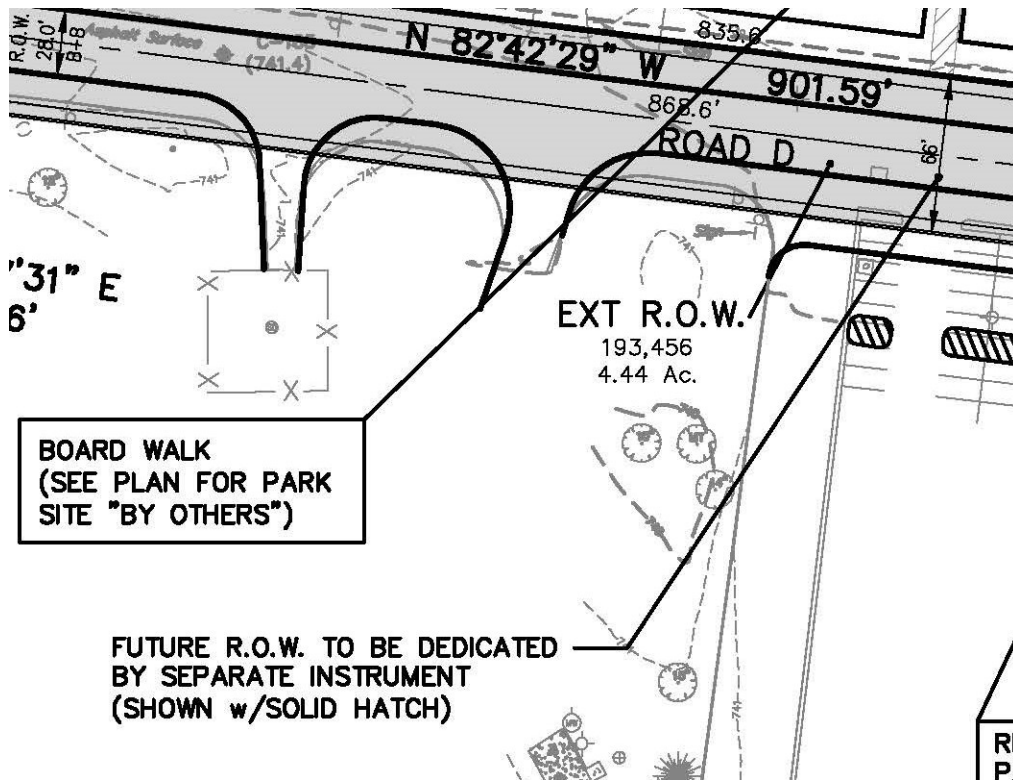
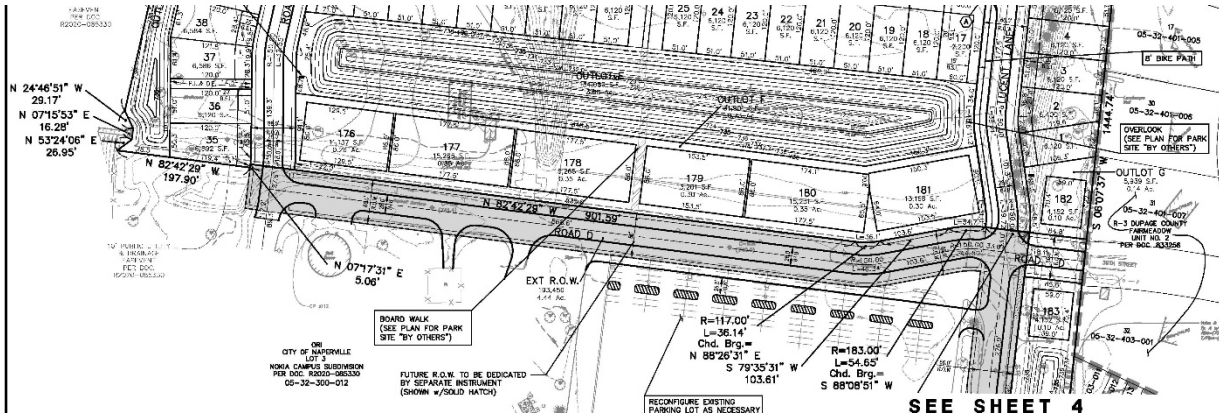
become active recreation through the mere placement of a bench and a walking path, (c) interior wetland issues (3 exist) and perimeter wetland issues (3 exist, with four PUD boundaries affected) are not the subject of any resolution tied to a single deviation;

- iv. The claim that the creation of the 2.09 acre central park area justifies front yard or side yard relief anywhere is simply unreliable and unsupported because the PUD density requires more park land and, further, the developer provides compliant front yards only where it is convenient to do so (it readily admits that lot width would be a problem on curved roads if the setback were closer than 35 feet);
- v. Placement of a home in the front yard view of another homeowner (such as on Lots 15, 48, 93, 107, 108, 110, 111, 114, 115 and 119) is not innovative and, in fact, it is one of the earliest foundational reasons for zoning and yard regulation in the first instance:



- vi. The landscape plan sheets contain zero indication of the use of planting and other landscape installation and maintenance techniques that will serve the Forest Preserve District property that abuts nearly a mile of the PUD boundary (2,100 feet of which is adjacent to a critical wetland) and there are unaddressed opportunities to address this innovation on Lots 62-79 and Lots 137-153;
 - vii. There is no indication that Petitioner intends to compensate for the mapped wetlands on the Subject Property that are being lost;
 - viii. Petitioner plans to do away with a large berm and scores of trees and to eliminate this natural and open space amenity in favor of homes with triple the density of homes in Fairmeadow Subdivision and it will do so when it fails to contribute sufficient park land necessary as a result of the project density;
 - ix. Plans for the development indicate that Petitioner will eliminate substantial trees and tree buffer areas and that there will be a substantial thinning of other tree buffers that benefit abutting land in the City and County;
- b. (1.2.The planned unit development meets the requirements and standards of the planned unit development regulations.)
- i. The PUD does not comply with Section 6-4-3(1) inasmuch as it appears that the PUD plat includes more land than is under the control of Petitioner by placing restrictions on Lot 3 in the Nokia Campus

Subdivision (see notes concerning future dedicated right of way and elimination of parking on Nokia Campus Lot 3):



- ii. The PUD does not comply with Section 6-4-3(2) inasmuch as:
 - 1. Merely 25% of the lots are designed to comply with the front yard requirement;

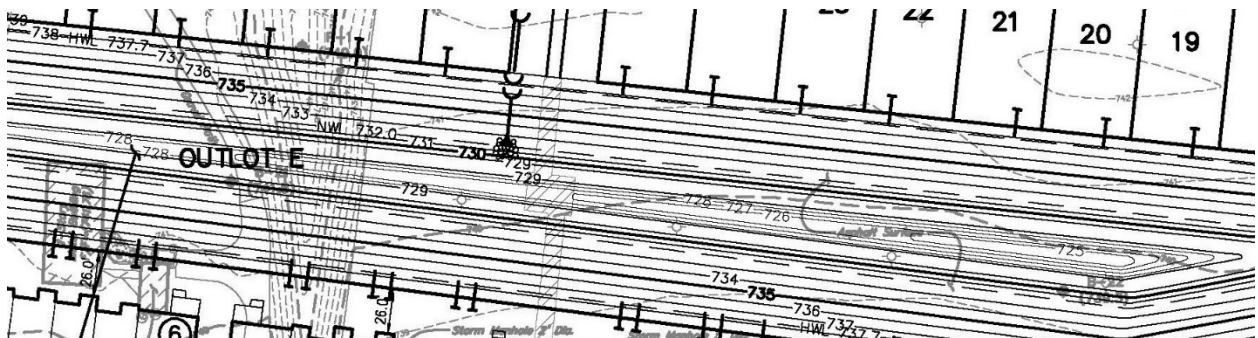
2. Far fewer than 25% of the lots will meet the interior side yard requirement;
 3. Lots are not designed to meet the minimum lot area requirement (Lot 1 and the uses on the interior of Outlot F);
 4. Attached single family buildings are too close to one another; and
 5. There is nowhere near the 25 parking spaces that should be required for a 2.09-acre park with playing surfaces (see Section 6-9-3(7)).
- iii. The circumstance that the Preliminary PUD Open Space Exhibit does not remotely track either the preliminary plat, the Nokia plat or the PUD provisions in the ordinance is a strong sign that the project does not comply with Section 6-4-3(3) inasmuch as:
1. Petitioner uses the area of Lot 4 of the Nokia Campus Plat (67.6388 acres) but the engineer's report on the final plat table states that the total area is 64.63 acres;
 2. Petitioner uses 15.05 for "internal ROW" but the engineer reports 11.92 acres of gross public right of way;
 3. There is no differentiation between land use areas in calculating the required open space (30% for attached single family and 25% for detached single family) which is between 13.27 acres and 16.91 acres;
 4. Using the engineer's preliminary plat data, the total area of the attached single family area (Outlots E, F, G, H and Lots 176-191)

is 12.37 acres and this area includes no public right of way, so a minimum of 3.71 acres of open space is required for the attached single family housing component;

5. The area of Lots 1-175 and Outlots A, B and C is 38.2 acres (there are no public rights of way in these areas), so, a minimum open space area of 9.56 acres is required for the detached single family housing component.
6. Petitioner claims Area 1, comprised of 4.75 acres, is open space, but none of Outlot A is creditable as open space under Section 6-4-3(3.2.4)(3.2.6)(3.3.4) as it is a typical stormwater facility and has no active recreational area;
7. Petitioner claims Area 2, comprised of 3.11 acres, is open space, but none of Outlot B is creditable as open space under Section 6-4-3(3.2.4)(3.2.6)(3.3.4) as it is a typical stormwater facility and has no active recreational area (indeed it bends credulity to think that a substantial portion of Outlot B beyond the unapproved bicycle connection into the Forest Preserve would constitute open space despite the attempt to label a 10-foot deep stormwater facility and its northerly extension behind Lots 136-148 open space);
8. Petitioner claims Area 3, comprised of 1.01 acres, is open space, but none of Outlot C is creditable as open space under Section 6-4-3(3.2.4)(3.2.6)(3.3.4) as it is a typical stormwater facility and

existing wetland area with a standard plan for division of the two and has no active recreational area;

9. Petitioner claims Area 4, comprised of 3.08 acres, is open space, but none of Outlot E is creditable as open space under Section 6-4-3(3.2.4)(3.2.6)(3.3.4) as it is a typical stormwater facility (testimony concerning fish and fishing opportunity is not supported by plans that show mere compliance with detention design regulations) and has no active recreational area other than a boardwalk with an overlook that is not a standard sidewalk which may be independently creditable for the area of the 50' x 120' area of the path and the actual area of the path south of this lot for a total of up to 8,000 SF;



10. Petitioner claims Area 5, comprised of 0.56 acres, is open space, but much less area from within Outlot F is creditable as open space under Section 6-4-3(3.2.3);
11. Petitioner claims Area 6, comprised of 4.40 acres, is open space, but very little of Outlot H is creditable as open space under Section 6-4-3(3.2.3)(3.2.4)(3.2.6)(3.3.4) and the area does not qualify as a

non-sidewalk path to a recreation area or common area not located within five feet of structures, etc. or as a non-typical stormwater facility;

12. As a result there are only 5.23 acres of the required 13.6 (+/-) acres of open space.

- iv. The PUD does not comply with Section 6-4-3(4) inasmuch as it fails to provide sufficient park space (5.53 acres are required for the likely 640-plus residents, but only 2.09 acres are provided)—also note that preservation of the berm and conversion of Lots 1-15 and Lots 182-183 to a park with Outlot C would make up some of the shortfall;
- v. The PUD does not comply with Section 6-4-3(5) inasmuch as it violates Section 10-5-3(5.2.1) because the parking lot closest to Naperville Road (in Outlot H) omits the minimum five-foot wide landscape area which shall be provided around that part of the perimeter of all parking lots with 10 or more spaces which abut another parcel or the public right-of-way;
- vi. The PUD does not comply with Section 6-4-3(8) because it cannot provide for the required width of right of way along Road D (west of Lucent Drive) without including land from Nokia Campus Lot 3 that has not been dedicated for street purposes (technically, the street plan should be part of the process because most of Road D is not on the Subject Property);
- vii. The PUD does not comply with Section 6-4-3(10) because the design does not recognize prior open views and because it offers three strata of home

areas in three neighborhoods divided not only by design and wealth but also by unnecessary signage;

viii. The PUD falls short under Section 6-4-3(11) because the PUD is not designed in accordance with applicable provisions of the comprehensive master plan as contained in Section 1-11-1 (none of the 11.1.1 through 11.1.9 factors are met except at the boundaries of wetlands governed by federal and state law and, perhaps, on attainability of housing if numbers were provided and available); and

ix. The deviations proposed as well as deviations that have not been noticed fail to meet the standards for deviation under Section 6-4-3(12).

c. (1.3. The physical design of the planned unit development efficiently utilizes the land and adequately provides for transportation and public facilities while preserving the natural features of the site.)

i. While there can be little doubt that the developer has efficiently utilized the land to create homebuilding opportunities, efficiency must be considered in light of the capacity of the site to host such a dense development;

ii. Developer admits in its proposed preliminary PUD plat that Lot 4 for in the Nokia Campus subdivision is incapable of sustaining 191 buildable lots and providing dedicated rights of way required by the Subdivision Regulations (indeed, the five-foot jog in the westerly part of the south lot line is necessary as part of a right of way to be dedicated later whenever

Lot 3 and, possibly Lot 2, in the Nokia Campus proceed to permitting or to amend their development entitlements and engage in further platting);

iii. The plans reflect an utter waste of the east portion of the Subject Property abutting Fairmeadow Subdivision as an opportunity to engage in transitional planning so that the external effects of the rapid increase in density and visual massing of homes can be minimized (the PUD should include this land as active recreational space, park space or, at a minimum, lots planned more similarly to those in Fairmeadow Subdivision);

d. (1.4. Open space, outdoor common area, and recreational facilities are provided.)

i. Such areas are provided, but the park land contribution is less than half of what may be required;

ii. The open space planning falls short of providing the combined open space area that amounts to 30% of the attached single family area and 25% of the detached single family area; and

iii. Common fences on the east line should be solid fences.

e. (1.5. The modifications in design standards from the subdivision control

regulations and the waivers in bulk regulations from the zoning regulations fulfill

the intent of those regulations.)

i. Petitioner approached the front yard relief purely from a profit perspective and without regard to meeting the intent of the R-2 district inasmuch as it proposes compliant front yards only near the entrance to the residential area before one reaches the cavernous areas to the west and northwest and,

- in those areas, Petitioner determined to comply only where it could not have a reasonable or lawful lot width (see most lots on curved roads);
- ii. Petitioner ignores that Naperville's yard regulations serve the purpose of avoiding too much lot coverage (there is no lot coverage regulation) and building massing;
 - iii. Petitioner openly admits that it incorrectly believes side yards are irrelevant except for the purpose of connecting front and rear yards for access purposes;
 - iv. Petitioner has ignored the 25% and 30% open space regulations applicable to the unit mix;
 - v. Applicant has not dedicated sufficient park space under circumstances where park space in addition to the linear 2.09-acre park is readily available;
- f. (1.6.The planned unit development is compatible with the adjacent properties and nearby land uses.)
- i. The single family lots in Fairmeadow Subdivision will lose the benefit of a long standing, planted berm area with mature trees that serves stormwater management purposes and also serves to screen the Subject Property at upper and lower levels;
 - ii. Each single family lot on the west line of Fairmeadow Subdivision will individually abut either the duplex townhomes (on Lots 182 and 183) or as many as three or four residential lots (Lots 1-11) while the two homes at

the northwest corner of Fairmeadow Subdivision will view as many as six or seven homes;

- iii. While the R-2 regulations allow homes on the Subject Property to be constructed with smaller front and side yards than exist in Fairmeadow, the reduction of yards operates as a wholesale abandonment of the lot coverage planning in an area with wetlands (some critical) that was formerly a farm that benefitted from multiple drain tiles (the removal of which remains a serious concern when planning stormwater facilities);
- g. (1.7.The planned unit development fulfills the objectives of the comprehensive plan and planning policies of the City.)
 - i. The “Naperville Comprehensive Master Plan, 1998 East Sector Update” sets forth land use policies under “Future Land Use Goals – Residential” various goals (Pages 39-43):
 1. The diminished front yard on 75% of the lots, the side yard relief, the lack of sufficient open space, and the small amount of park space does not satisfy the plan provision that residential developments should include adequate open spaces, in either private yards or common areas, to provide for residents’ open space and recreational needs;
 2. Fairmeadow Subdivision is one of the area subdivisions that should be protected from the encroachment of incompatible activities or land uses which may have a negative impact on a residential development, and the failure to plan appropriately for

the east line of the Subject Property removes existing protections that serve to screen a change in the intensity of land use and serve stormwater purposes for an area already challenged in stormwater management; and

3. The project does not resemble the overall low density residential character of this sector indicated on the future land use map (Existing Land U, at 16-17; Future Land Use Map, at 62-63);
 - ii. While there is a mixture of housing types, the townhomes and duplexes are not blended in a way that is either unified (neighborhoods are divided by housing type, affordability, design, and signage) or imaginative (the layout is typical);
 - iii. There is no reason other than profit for placement of two duplexes on Lots 182-183, townhomes could wrap the southwest corner, density could be softened a bit on the east line and a townhome mix could avoid the misalignment of yards between Lots 14-16, 45-46 and 120;
 - iv. While 6,000 square foot lots may be viewed by many as allowed as of right, the reality is that they are not allowed because the pressure to attain such a lot size throughout the development (again, a typical effort) leads to intra-block lot and yard relationships that conflict as a result of forcing so many units with interior lots bookended by corner lots that can be constructed such that rear yards appear in front yard environments;

- v. “Predominantly low density” (see page 40) is encouraged, but not attained and the front yard deviations leaving a mere 10-15 feet of green space in many instances will leave an impression that the area is not low density;

61. Perhaps most telling on the issue of the claimed rights under R-2 zoning is the principle set forth on Page 41 of the 1998 East Sector Update:

When changes to the residential densities indicated on this plan are proposed, the City should consider such factors as neighborhood character; compatibility of land uses; and impacts on livability, services, community facilities, schools, and traffic levels. ***Because most new residential developments will occur as infill development, they must be compatible with surrounding properties and exhibit extreme sensitivity to the preservation of natural features and existing residential developments. The City will take into consideration the prevalent characteristics of an area when reviewing individual development projects.***

As a result, as of right development hinges more on zoning regulations. Though large, the project is infill development occurring on a challenging site adjacent on five of its sides to sensitive areas, one being Fairmeadow Subdivision.

62. The project proposed for the Subject Property fails the standards for deviation set forth in Section 6-4-3(12).

63. The requested deviations are so widespread that they undermine the intent and purpose of the underlying zoning district and Petitioner admits that the side yard relief relies on the argument that side yards provide no practical purpose. (Resp. to Standards at 10)

64. As noted above, the front yard variations cover 75% of the proposed lots, the side yard variations likely cover many additional lots, and all the yard variations affect lot coverage, drainage and storm management in the area has proven to be a complex problem for many decades—due in part to public and private land management that preceded Petitioner’s interest both on the Subject Property and on other public and private properties.

65. The omitted deviations include the park contribution because the population of the development calls for a contribution of at least five acres of park land.

66. The omitted deviations include apparent rear yard dimension and rear yard encroachment issues along areas claimed by the Petitioner to be open space.

67. The omitted deviations include a shortage of open space.

68. The omitted deviations include a significant uncertainty relating to required parking for the detached and attached components of a development with limited street parking and pavement widths that may not meet the required widths

69. Section 12.1.2 regarding deviations touches on detriments to the provision of municipal services and infrastructure. In this regard the Commission needs to consider that fire ratings on walls as close as they might limit the number of windows in side yards and create a sense of monotony. Further, the administrative adjustment for available guest parking may be available, but parking should be considered as a whole at this point—at least based on Petitioner’s anticipated unit blend, driveway locations and all other relevant elements. Lastly, Fairmeadow Subdivision’s experience with the office development, stormwater planning and with the Hesterman Drain has it pinched by two government efforts promising improvement but not delivering. The conversion of so much open space to impervious surface causes great concern in the area for the proper planning of oversized facilities, as-built review, and follow-up lookback review for performance.

70. The deviations do not meet the Section 12.1.3 demand for a “planned unit development which offers a superior level of design, amenity enhancement, or environmental benefit; or would enhance community vitality through the inclusion of attainable or barrier free housing.” While attainable or barrier free housing might be viewed as available, it is stacked in

an overly dense area adjacent to the remainder of the Nokia Campus development on Lots 2-3. There is a clear divide between the townhomes and single-family use when these uses could be blended on some of the perimeter curves to allow at least some townhomes near the natural amenity west and north of the Subject Property.

71. Section 12.2 addresses outdoor common area and site amenity deviations. There is no request for a deviation to reduce the minimum required percentage of outdoor common area for a planned unit development. Petitioner does not meet the outdoor common area or open space requirement of Sections 6-4-3.1.2 and 6-4-3.1.3. No reduction of the required common open space (between 13.27 acres and 16.91 acres) may be offered because the requested deviation is not in harmony with the intent and purpose of the zoning ordinance and 1998 East Corridor plan and it is not consistent with the low-density residential that the 1998 East Corridor plan calls for. Other than the park (to be dedicated to the Naperville Park District and excluded from the lower end of the range in parentheses above), limited acreage is active or passive recreational space not situated in or at a stormwater facility. Environmental benefits from the project do not exceed those that would result as a matter of the application of law and ordinance during the permitting process, and recreational interconnectivity between neighborhoods and resources is not an environmental benefit that justifies a reduction in common open space planning under Section 12.2.2 or Section 12.2.3. Under Section 12.2.4, the planned unit development achieves ordinary and expected pedestrian amenity, but not special amenity. The level of environmental design is limited even though Cemcon's work is complex and extensive. The work is unrelated to providing additional measures that enhance the area beyond what is expected for this development. Indeed, there are no off-site solutions or benefits that would justify the waiver or

reduction of open space or the misattribution of allowable common open space to entire stormwater facilities.

72. Petitioners have not reviewed the project for signage purposes because there is no noted deviation that is subject to Section 12.3. There should be no deviation for signage as regulated under Title 5, Chapter 4. The interior signage is simply another means through which to segregate the housing, and signage should not be required for each sub-area within the development.

73. Considering Section 6-4-5, the Fairmeadow Neighbors note that much information was provided in the preliminary engineering. The landscape plan was lacking in any effort to preserve meaningful trees or description of the basis for removing trees (based on health or damage or other factors). The planned unit development plat does not provide necessary current detail on how a half-street is not planned for the Road D area roughly 200 feet east of the southwest corner of the Subject Property where a five-foot offset exists for a length of roughly 1,000 feet extending east. The central-south line of the PUD plat does not match the same line of Lot 4 in the recent Nokia Campus development. While this may be explained, it should be under the purview of the Commission during this process. The plat under review lacks some of the necessary detail and conflicts in some respects with the preliminary engineering (townhome information, lot area conflicts, yard measurements, density calculation by use area, parking supply and demand calculation). The plat omits total and footprint square footage for accessory structures and for outdoor common area by type. There is no phasing plan. While building information is provided, site specific lot design criteria are not provided for the mixed-use residential development or the single-family attached planned unit development. Landscape Plan information appears to be lacking when compared to Title 5.

74. Section 6-3-8 offers standards in relation to the conditional use application for townhomes upon which the Commission's recommendation must be predicated:

- a. Contrary to Section 6-3-8(2.1), the establishment, maintenance or operation of the conditional use *will* be detrimental to, or endanger the public health, safety, and general welfare because:
 - i. The townhomes surround an otherwise single-family environment at the southeast corner of Fairmeadow Subdivision;
 - ii. The townhomes are massed in a walled grouping along Road D when they could share in the benefit of surrounding open space to the north and west;
 - iii. The duplexes are on the opposite side of Lucent Lane from the larger townhomes and, as a result, invade across a reasonable line of demarcation between single family or open space use and townhome use;
 - iv. Walks and bikeways near the townhomes are not wide enough (see typical sections) for bike routes;
 - v. The townhomes along Road D appear to lack guest parking spaces and none of the parking spaces near the park on which they may rely are designed to provide an accessible route (or an accessible space);
 - vi. There appears to be a conflict in townhome rear deck planning and Comment 17 on Sheet 1 of the PUD plat; and
 - vii. Guest parking appears to be insufficient.
- b. Contrary to the required finding in subsection 2.2, the townhome conditional use *will* be injurious to the use and enjoyment of other property in the immediate area for the purposes already permitted because the townhomes envelope the two lots

in the southwest corner of Fairmeadow Subdivision. The circumstance of rear lot line transition to townhomes is not out of the ordinary, but allowing expansion to front and side yard impacts to any home is poor planning.

- c. In derogation of subsection 2.3, the establishment of the conditional use will impede the normal and orderly improvement of adjacent Fairmeadow Subdivision property for uses permitted in the district because:
 - i. The elimination of the berm unnecessarily destroys open space without any basis and replaces it with a different residential use and density that is many times greater than abutting blocks;
 - ii. The reduction of front yards creates visual annoyance and unnecessarily increases the apparent height of buildings that are as tall as 40 feet due to their location closer to the sidewalk;
 - iii. The townhomes east of Lucent Lane and the close massing of townhomes on Road D, when viewed from the east, northeast and southeast, leave the impression of a continuous wall absent significant on-site and off-site landscaping.
- d. Contrary to subsection 2.4, and as noted above, the establishment of the conditional use conflicts with the adopted comprehensive master plan because it does not comprise low density housing, particularly with the planned massing of the townhomes.

RESPONSE TO HEARING TESTIMONY

CONCLUSION

There is no reason that the development of the Subject Property cannot proceed in line with the recent Pulte developments that provide more open space. Even though some open space decisions may have been compelled by the physical parameters of the development, Petitioner has shown that it is fully capable of providing a better product than that which is presently under review for this difficult site that is quite highly visible not only to Fairmeadow Subdivision, but also to thousands of visitors and tens of thousands of passersby who will easily observe the density from open space, County highways and Forest Preserve District areas.

WHEREFORE, the Fairmeadow neighbors respectfully request that the Planning and Zoning Commission refer this matter to the City Council with a negative recommendation or with a favorable recommendation only upon the presentation of revised plans that accomplish the following:

Dated: January 28, 2021

Respectfully submitted,

JEFFREY AND JEN BANOWETZ,
JAMES AND SANDRA BUTT, and
TIMOTHY AND KAREN FELDBALLE

/s/ Mark W. Daniel

By: _____
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