

Supplement to the Multi-Family Commercial PUD Application of Jeff Maxwell

University Heights Zoning Ordinance 79, as modified by amendments thereto specifically including Ordinance 180, sets out the submittal and procedural requirements for a Multi-Family Commercial PUD. This memorandum is for the purpose of initially addressing the submittal and approval requirements as pertains to certain legal documentation.

The following references are to provisions of Ordinance 180.

A. Section 13.B includes certain development regulations and restrictions, most of which will be inherent in the design of the buildings and improvements shown on the PUD Plan.

Additionally, Section 13.B(4) provides:

No more than one person not a member of the family as defined in Section 3 of this Ordinance may occupy each dwelling unit as part of the Individual Housekeeping Unit.

By the inclusion of this provision in the Zoning Ordinance, it has become an enforceable requirement in connection with the use and enjoyment of all properties subject to a Multi-Family Commercial PUD Zone. However, in addition to such inclusion, it is anticipated that the same language will be repeated in the Development Agreement required for the Multi-Family Commercial PUD. Furthermore, this same language will be incorporated into the Condominium Declaration for the Multi-Family Commercial project. It is reasonable that the Development Agreement require such inclusion.

B. Section 13.C(4) indicates that no building permit will be issued for the Multiple-Family Commercial PUD development until the City Council has approved the Plan Application and a Development Agreement has been entered into pursuant to Section 13.E of the Ordinance. Section 13.E of the Ordinance enumerates the various items that might be contained in the Development Agreement, including the following:

- 1. Design standards applicable to the project.*
- 2. Development covenants, easements and restrictions, including a prohibition on further subdivision of the property developed pursuant to the multi-family commercial PUD. Restrictions may also include the types of businesses and hours of operation of businesses located in the commercial space portion of the multi-family commercial PUD and whether and on what conditions some or all dwelling units may be leased.*
- 3. Site improvements, including sidewalks, that will be constructed following approval of the Site Development Plan.*
- 4. Timing of commencement and completion of construction of buildings and improvements pursuant to the multi-family commercial PUD Plan.*

5. *Payment by the Developer of the costs and fees, including engineering, legal, administrative, publication and recording fees incurred by the City of University Heights in considering the PUD Plan.*

While the Developer fully contemplates entering into a Development Agreement with the City of University Heights pertaining to this PUD application, the exact terms and conditions of that agreement are not yet evident because most will be developed during the course of the City's review of the submitted application. As such, rather than proposing an agreement at the threshold of the application process, it is more rational to develop the agreement as the process progresses and to have the agreement finalized near the end of that process.

In anticipation of this Development Agreement process, the following is in preliminary response to the various elements to be addressed in the Development Agreement.

1. *Design Standards.* The design standards for the project will, for the most part, be reflected on submitted PUD Plan documents. To the extent that the documents do not adequately address certain design standards, those can be incorporated into the Development Agreement.

One area of anticipated interest will be project lighting to keep it appropriate for safety and functional purposes, as well as in keeping with the surrounding properties.

Other design standards will likely be highlighted through the plan review process.

2. *Development covenants, easements, restrictions, etc.* The entire property will be submitted to a Horizontal Property Regime pursuant to Chapter 499B of the Iowa Code. As such, the covenants, easements and restrictions applicable to the property shall be incorporated, for the most part, in the Condominium Declaration. This is typical for condominium projects.

Necessary easements for public utilities, as will be identified through the PUD Plan review process will likely be granted separately and should be addressed in the Development Agreement for future implementation.

Submitting the property to a Horizontal Property Regime will, for all practical purposes, preclude the property from being further subdivided. However, it is anticipated that the Condominium Declaration will also include a prohibition against further subdivision.

The Condominium Declaration is difficult to prepare, and not likely appropriate to record, until final construction plans for at least a portion of the project have been completed. We are anticipating a fairly boilerplate Declaration appropriate for a multi-use condominium project, and then special provisions to reflect any unique features of this project and any specific requirements of the City of University Heights identified in this PUD review process. The boilerplate provisions will include, but not be limited to, the following matters:

- i) description of the condominium regime;
- ii) description of general and limited elements, and of the units;
- iii) granting of easements for access, utilities and repairs and maintenance for the mutual benefit of all condominium unit owners;

- iv) information regarding insurance and the respective responsibilities of the association of owners and of individual unit owners for maintaining insurance;
- v) the respective responsibilities of the unit owners and the association for maintenance, repairs and replacements;
- vi) provisions relating to partial damage or total destruction of the project;
- vii) provisions relating to the association of co-owners and its authority and obligations in connection with assessments and the operation of the condominium project;
- viii) specification of each unit owner's voting interest, percentage interest in the common elements and responsibility for participating in common maintenance, repair and replacement activities; and
- ix) other matters appropriate to the project.

The association of co-owners will be incorporated as a nonprofit corporation under Iowa law and as such will have basic Articles of Incorporation and Bylaws specifying governance, procedures and participation of owners in the association.

It is further anticipated that the Condominium Declaration will anticipate the possible phasing of the condominium project to allow, for example, for the commercial/residential building to be built and operated first, and then for the second building to be built and become operational.

Rather than having the Condominium Declaration and the homeowner association documents prepared prematurely at this time, a more rational approach is to enumerate in the Development Agreement those matters arising from the PUD review process that are agreed upon between the City of University Heights and the Developer, and to specify therein those that are required for inclusion in the future Condominium Declaration. The City's control over the issuance of building and occupancy permits can certainly provide enforcement for the subsequent inclusion of any such agreed to requirements.

Ordinance 180 provides that matters relating to the types of business and hours of operation of occupants in the commercial portion of the project will be addressed in covenants, easements, and restrictions (or, in this instance, more appropriately the Condominium Declaration). It is anticipated that all of the uses specified in the Ordinance 180, Section 6.F(2)(b) will be permitted, along with any such further uses as may be identified during the course of the PUD Application review process. In terms of hours of operation, it is anticipated that there should be a balancing of the interests of commercial activities choosing to locate in the facility with the interests of the residential units and the adjacent neighborhood, much in the same way as those interests have been reasonably balanced in connection with other commercial areas within the City of University Heights and elsewhere. The PUD Application review process should include such discussions with the outcome being incorporated into the Development Agreement as future requirements for inclusion in the Condominium Declaration.

The other item under Section 13.E(2) of Ordinance 180 to be included in the development covenants (or again, in this case, the Condominium Declaration) is to be "whether and under what conditions some or all dwelling units may be leased". At the present time it is intended by the Developer, in the commercial/residential building, that the residential units will be a mixture of owner-occupied and rental units, thereby being able to respond to market demand for each within the City of University Heights. It is correspondingly anticipated that the circumstances (size, finish and price) associated with the residential building will likely favor owner-occupied

units as opposed to rental units, but the Developer at this time would not choose to preclude any possibility of leasing. As such, it is anticipated that the Condominium Declaration will include provisions that will i) protect all unit owners and occupants in both buildings from undesirable circumstances constituting nuisances, and ii) protect the integrity of the residential units for pleasant residential use regardless of whether the occupants are owners or tenants. Certainly the Developer is willing to receive the Council's input on such matters and to consider mechanisms for assuring peaceful enjoyment and use of residential units by all occupants provided such mechanisms are not inappropriately discriminatory.

The Development Agreement should also contain a provision that any matter required by such document to be included in the Condominium Declaration shall not be amended by the condominium Owners' without the prior approval of the City. In addition to or as an alternative to incorporating any one or more of such requirements into the Condominium Declaration, where appropriate the Developer is willing to implement them through covenants or easements. The PUD Review process and the specific nature of any such requirements will likely illuminate the most appropriate form of documentation if not in the Condominium Declaration. These determinations can then be included in the Development Agreement.

3. Site Improvements.

For the most part, the site improvements are shown on the PUD plan. To the extent additional requirements for site improvements may be appropriate, they can be identified through the review process for inclusion in the Development Agreement.

4. Timing of Commencement and Completion of Construction.

As is well understood, the current owner of the land has certain control over contingencies which will ultimately determine when the project might be commenced and completed. It is difficult for the Developer to pinpoint dates at this time. However, it would appear more critical that the Development Agreement include understandings as to the length of the construction process from commencement to completion. In this regard it is the Developer's intention, once construction commences, to complete the process as efficiently and in as timely a manner as the parameters of the project permit. This would apply to each phase of the project.

5. Payment by the Developer of Costs and Fees.

The Developer has already agreed to, and has already reimbursed the City for, certain costs and fees associated with this PUD Application. The developer has recently submitted to the City a modified agreement for further reimbursement. To the extent necessary, additional provisions, consistent with those already agreed to, can be included in the Development Agreement.

The foregoing constitutes a basic outline of the documentation that is anticipated for this project for compliance with Zoning Ordinance requirements. The Developer looks forward to the City's review process and to mutually formulating appropriate provisions to be included within the anticipated Development Agreement.