

EXHIBIT H

Why Is the Baseline High Density Residential and Why is a PUD Proposed?

An important factor as the City Council reviews the application is to understand the baseline for comparison. The staff report properly notes that 2501 Lowry is identified (or more technically “guided”) as high-density residential and a priority for redevelopment. And because state law mandates that *the City’s Comp Plan is its controlling land use document*,¹ The Village is *entitled* to redevelop 2501 Lowry as high-density residential consistent with the Comp Plan’s terms.

This is an essential point. For more than a decade—based on its Comp Plan designation—the City has broadcast to the community, its residents and business owners, and interested real estate developers that multi-family residential of up to 40 units per acre is appropriate for 2501 Lowry (and that such use is compatible with neighboring uses). Accordingly, the community and its residents and business owners have known (because the Comp Plan says so) that the site would—almost certainly—one day see redevelopment with a density of up to 40 units per acre. The issue before the City Council, then, is not what impact 40 units per acre will have; it is whether the density, as proposed, will have any meaningful impact at all that is different from impacts reasonably anticipated at 40 units per acre.

The Parties are sensitive to the community’s input and concerns. And, without question, the Parties agree that developing the Property under a so-called planned unit development (or “PUD”) results in a far superior project than simply relying on what is permitted under the City’s zoning code or Comp Plan. Land planners and municipalities have long recognized that adhering to strict traditional district-wide zoning can, for large developments, “produce significant diseconomies of scale and discourage creativity and flexibility in the development of land.”² The goal of encouraging coordinated real estate development has led many zoning authorities, including Saint Anthony Village,³ to encourage PUDs for projects like this. Flexibility is the most often cited advantage of PUDs.⁴ Indeed:

Without the strict bulk and density restrictions imposed on a lot by lot basis, and freed from the strictures of site plan standards created for the average single lot development, a developer has the flexibility to design the tract as a whole. Other benefits flow from this new found flexibility. For example, the developer can design the development around the various topographical characteristics of the tract such as steep slopes and wetlands.⁵

¹ “A local government unit shall not adopt any fiscal device or official control which is in conflict with its comprehensive plan, including any amendments to the plan, or which permits activity in conflict with metropolitan system plans.” Minn. Stat. § 473.858, subd. 1 (emphasis added).

² Michael Murphy & Joseph Stinson, *Planned Unit Developments*, Pace University School of Law p.6 (1996).

³ Saint Anthony Village’s zoning code states, “**PUD**. A zoning district and development plan which may include single or mixed uses, and 1 or more lots or parcels, and which is intended to create a more flexible, creative, and efficient approach to the use of land. Any PUD shall be subject to the procedures, standards, and regulations contained in this subchapter. A PUD site must be at least 3 acres in size, and applications for PUD approval will not be considered for sites of less than 3 acres.”

⁴ *Id.*

⁵ *Id.*

The PUD allows municipalities, developers, and design professionals to agree on terms of a coordinated development in a binding contract between the City and the developer. Saint Anthony Village's zoning code recognizes that flexibility:

A PUD approval may allow the following:

- (A) *Variety*. Within a comprehensive site design concept, a mixture of land uses, housing types and densities;
- (B) *Sensitivity*. Through the departure from the strict application of required setbacks, yard areas, lot sizes, minimum house sizes, minimum requirements, and other performance standards associated with traditional zoning, a PUD can maximize the development potential of land while remaining sensitive to its unique and valuable natural characteristics;
- (C) *Efficiency*. The consolidation of areas for recreation and reductions in street lengths and other utility-related expenses;
- (D) *Density transfer*. The project density may be clustered, basing density on a number of units per acre in place of specific lot dimensions; and
- (E) *District integration*. The combination of uses which are allowed in separate zoning districts such as:
 - (1) Mixed residential uses to allow both densities and unit types to be varied within the project;
 - (2) Mixed residential uses with increased density based upon the greater sensitivity of PUD projects to regulation; and
 - (3) Mixed land uses with the integration of compatible land uses within the project.⁶

The Comp Plan also encourages use of PUDs for development such as the one at hand. First it states, the City will use a variety of tools to achieve its affordable housing objective (page 2-32 to 2-33), including the following:

Zoning and land use plan incentives such as higher allowable densities or the use of flexible design mechanism such as the planned-unit development provisions of the zoning ordinance.

The Comp Plan also describes the use of a PUD for flexibility under its discussion of Implementation Program/Official Controls on p. 6-1:

The City's Zoning Ordinance includes provisions for Planned Unit Development, permitting increased flexibility in permitted uses, dimensional standards and density. The City's PUD standards allow for a mix of uses, with commercial uses occupying up to 20 percent of the site's buildable area.

The Village has worked diligently with City staff and the Parties have reviewed the Comp Plan in great detail to understand the City's vision for the Property. And, since its very first meeting with City staff, The Village has focused on redeveloping 2501 Lowry as a PUD and with density that the staff—and the City in the EAW and ROD—had found acceptable.

⁶ City Code § 152.202.