

September 27, 2013

Capstone Homes, Inc.
Attn: Ben Minks
14015 Sunfish Lake Blvd NW
Ramsey, MN 55303

Re: Preliminary Plat Review—BROOKFIELD 4TH ADDITION

Dear Mr. Minks:

The City of Ramsey has received your application for Preliminary Plat Review for a 77 lot subdivision. City Staff is recommending to the Planning Commission approval of the Site Plan contingent upon the following:

- Required amendments as outlined in the attached Staff Report dated September 27, 2013.
- Execution of a Development Agreement (draft to be forwarded at a later date)

Please note: this is only a recommendation that is subject to review by the Planning Commission and final decision by the City Council. A copy of the Staff Report is attached for your review. The Planning Commission will review the request on **Thursday, October 3rd, at 7:00 p.m.** at the Ramsey Municipal Center in the Council Chambers. You, or a representative of the development, are highly encouraged to attend this meeting. Please contact me at your earliest convenience prior to the meeting to verify if you will be attending. Following the Planning Commission, the request will need to be reviewed for a final decision by the City Council. This hearing would tentatively be scheduled for Tuesday, October 22nd, 2013, at 7:00 p.m. in the Council Chambers.

Also, as a reminder, the City has scheduled an Open House related for the request for interested parties for 4:00 p.m. to 6:30 p.m. at the Ramsey Municipal Center, Alexander Ramsey Room for October 3, 2013.

Please let me know if you have any questions or concerns. I can be reached at (763) 576-4308 or by email at tgladhill@cityoframsey.com.

Sincerely,

CITY OF RAMSEY

Tim Gladhill
Development Services Manager

Enclosures

Cc: 21st Century Bank, Attn: Tom Dolphin, 9380 Central Ave NE, Blaine, MN 55434

**CITY OF RAMSEY LAND USE APPLICATION
TECHNICAL REVIEW FILE**

DATE	9-27-13	PROJECT ADDRESS	
PROJECT TITLE	BROOKFIELD 4 TH ADDITION		
ESCROW #	113790		
DEPARTMENT:	Planning		
TECHNICAL REVIEWER:	Name: Tina Goodroad Phone: 651-967-4537 Email: tina.goodroad@stantec.com		

We offer the following comments regarding your request for a Preliminary Plat for Brookfield 4th Addition:

General: The applicant is requesting Preliminary Plat approval of Brookfield 4th Addition. This plat is a continuation of the Brookfield Addition west of Nowthen Boulevard and generally north of 167th Avenue and will encompass a majority of the remaining lots from the original Preliminary Plat. The current Preliminary Plat includes seventy-seven (77) lots. It is hereby noted that the previous Preliminary Plat has expired. It is further noted that the City had previously approved a Plat entitled BROOKFIELD 4TH ADDITION. However, the Plat was never recorded and has since expired.

The original Preliminary Plat was approved by the City Council on September 13, 2005. In 2009, the City Council approved an Amended and Restated Development Agreement related to the first three phases of BROOKFIELD as well as an Amendment to Water Main and Sanitary Sewer Cost Contribution/Reimbursement Agreement.

To service the BROOKFIELD as well as the SWEETBAY RIDGE developments, the original developer agreed to extend certain trunk lines (sanitary sewer and water) to these subdivisions at the cost of the developer. As the benefit of these trunk lines extends beyond these two (2) subdivisions, the City entered into the Reimbursement Agreement as a way for the developer to recapture a portion of the \$6,000,000 investment in trunk line construction. These credits are factored into the Development Fee calculations attached hereto.

Setbacks: Required	Proposed:
Front yard: 30 feet	Front Yard: 30 feet except for blocks 3 and 4 where 25 feet is proposed. This was approved by the original Preliminary Plat and approved Variance. The Applicant shall include the original Sheet S1 as part of the official review packet.
Side yard uninhabitable: 6 feet	6 feet
Side yard habitable: 10 feet	10 feet
Side yard corner: 30 feet	30 feet
Rear yard: 30 feet	30 feet
Minimum lot width: 80/corner 90	80 at setback (pie shaped lots less than 80 at the street).

**Note: Minimum Lot Width is measured at front yard setback (30 feet from front property line), not front property line, nor at curb line.*

It appears that the proposed Preliminary Plat meets or exceeds minimum standards required by City Code related to the above.

Land Use and Zoning: The site is guided LDR on the Comprehensive Plan and zoned R-1, MUSA. The minimum lot size in the R-1, MUSA zone is 10,800 sq. ft. Each of the proposed lots meets the minimum lot size. *Applicant shall provide total acreage of the proposed preliminary plat.*

Net Density Calculations. The Applicant shall provide gross acreage, as well as net acreage. Net acreage is calculated by subtracting wetlands and rights of way from the gross acreage. The Applicant must also provide Net Density Calculations described as number of units per net acre.

Landscaping: Two trees per dwelling unit are required. Deciduous trees shall be a minimum of one (1) inch caliper and evergreen trees shall be at least five (5) feet in height. *Please update the landscape plan to include a planting schedule that identifies the common and scientific name, root stock and quantity for each proposed species.*

- *While it appears generally that each lot will have two (2) trees planted, many of them indicate that one tree will be planted in the rear yard. Each lot shall have two (2) front yard trees. Please update the landscape plan.*
- *An alternative to Silver Maple should be utilized due to that species tendency to produce surface roots.*
- *A planting detail must be included with the landscape plan (another option is to incorporate the City's tree planting detail). At a minimum, it should state:*
 - *Planting depth shall be such that the 1st set of primary roots is at finished grade*
 - *Only prune out dead/broken/deformed branches at time of installation*
 - *Removal of upper portion of wire basket and burlap after being placed in planting hole if using B & B stock.*
 - *2-4 inches of wood chip mulch shall be included around all trees. Mulch shall not be piled against the trunk of trees.*

Density Transitioning: The proposed plat is adjacent to an existing larger lot residential neighborhood. These lots are also zoned R-1 so density transitioning, as required by the ordinance, does not apply as the zoning districts are the same. However, as the existing lots are of a different size and character, staff requests that the applicant consider providing buffering between these abutting lots. This can be accomplished through new planting or use of existing streets. In addition, a detailed inventory, prepared by an ISA Certified Arborist or a Society of American Foresters Certified Forester, must be submitted identifying all existing significant trees, species, DBH and condition. *Minimum tree size for transitioning plantings are 2.5 inches for overstory (shade) trees, 1.5 inches for ornamental trees, and six (6) feet in height for evergreen trees. A landscape easement or some other legal tool shall be required to ensure long-term maintenance and survival of the plantings. This easement or other tool shall be recorded against each of the lots encumbered with transitioning plantings.*

Tree Preservation: While the majority of the site is devoid of trees, there is some tree cover along the southern and western edges of the proposed plat. A detailed tree inventory (as mentioned above) must be provided for these trees, which may then be beneficial with regard to density transitioning (as suggested by staff). At least forty percent (40%) of the inches of existing significant tree DBH must be preserved on site. The tree preservation plan shall include the following:

- *All oak trees and evergreen trees that are four (4) inches or greater in Diameter at Breast Height (DBH) and all other deciduous trees that are eight (8) inches in greater DBH shall be identified on the tree inventory (cumulatively referred to as significant trees).*
- *Inventory shall include species, DBH, tree condition, whether the tree will be preserved or remove, a tally of total significant tree DBH on site and how many DBH inches will be removed.*
- *Inventory shall also identify location of tree save fencing, which shall be installed at least at the drip line of individual trees or groups of trees and shall be in place prior to any grading or removal work begins.*

Topsoil: Each individual lot will need to have four (4) inches of topsoil meeting the City’s topsoil specification. A topsoil inspection is required prior to landscaping being installed and copies of the load tickets are required as well. This is reviewed at time of Building Permit Application and request for Certificate of Occupancy for each individual lot.

Building Elevations: No elevations of the proposed homes were submitted. Individual models are not included for review. In a single family development, it is difficult to approve every individual potential model at time of Plat. As with the original Preliminary Plat, no enhanced architecture above the minimum City Code requirements of Section 117-111 (R-1 Residential District) is being proposed. The required Development Agreement shall clearly state that additional architectural requirements are not being required at this time, and that the underlying requirements for the R-1 Residential (MUSA) District are required.

Streets: All proposed streets appear to meet the 60 foot width minimum. Proposed street system appears to complete anticipated connections such as with 168th Avenue NW. The connection will result in additional traffic levels on 168th Avenue as well as Garnet Street. Garnet Street currently has a poor pavement condition (Paser Rating of 1) and is subject to reconstruction. The reconstruction of Garnet Street is currently dependent upon implementation of the City’s Long Term Street Maintenance Program currently under consideration.

The Plans shall be revised to clearly articulate the connection of 168th Avenue, including the removal and restoration of the existing cul-de-sac. Please review the Engineering Technical Report for additional details.

Sidewalks and Trails. The plans must be amended to clearly indicated sidewalks on at least one side of each public street.

Grading Corrections on Block 6, BROOKFIELD 3RD ADDITION. Interim grading approval by the City needs to be corrected to comply with the overall grading plan for BROOKFIELD. If the grading is not corrected or is proposed to follow the interim grading solution, the existing Temporary Grant of Drainage and Utility Easement must be re-affirmed before that Plat is released for recording. This applies to Block 3 of BROOKFIELD 3RD ADDITION.

Development Fee Calculations: Development Fees due on the Plat are attached hereto as an exhibit to this review file. Detailed analysis on unique provisions of development fees related to this plat are outlined below.

Park Dedication and Trail Development Fees: Park Dedication shall be due on the Plat. These fees are collected at the time the Final Plat is recorded at the rate in effect when the plat is recorded. The Park and Recreation Commission shall review and make a recommendation. At this time, Staff recommends that a

cash contribution be used to satisfy Park Dedication Requirements. It is further recommended that the Park Dedication be utilized to make the trail connection along Trott Brook to Variolite Street to the west. There is an existing storm water easement on Outlot C, Brookfield 3rd Addition that could be expanded as a trail easement to provide a public trail connection from 170th Trail. This connection would be a nice addition for the existing Brookfield residents and this new 4th Addition, consistent with the City's current Master Park and Trail Plan. The exact timing and level of construction will be dependent upon the number of lots created with the Final Plat (if the 77 lots are phased in over time) and an estimate of the costs to extend and connect the trail. It is further noted that 21st Century Bank has conceptually agreed to convey necessary trail easements and fee-title to areas to make additional connections.

The Parks and Recreation Commission will be meeting on Thursday, October 10, 2013 at 7:00 p.m. to review Park Dedication and Trail Development obligations.

Sanitary Sewer and Water Trunk Fees. Sanitary Sewer and Water Trunk Fees are subject to the existing reimbursement agreement with 21st Century Bank. Per the Reimbursement Agreement, these fees are not due with the Plat and are credited towards the previous investment made. The appropriate fees are listed in the attached exhibit in order to calculate the credits provided to subtract from the overall reimbursement amount. The Development Agreement will clearly articulate that these fees will not be collected, but will be credited against the reimbursement amount.

Development Agreement: *An executed Development Agreement will be required prior to releasing the plat for recording.*

Previous Developer Amenities and Home Owners' Association. As part of the original plat of BROOKFIELD, the original Developer, Oakwood Land Development, proposed several private amenities that were not required by the City. These improvements included, but were not limited to, a pond/water feature, landscaping within public right of way (roundabout/entrance area), landscaping along Nowthen Boulevard, and a private park. The City allowed these amenities to be constructed with the understanding that the City would not accept future maintenance obligations for said amenities. The water feature/pond was created by installing a liner in the development's Stormwater pond. Many of the landscape improvements were constructed within City right of way. Attached to this case report is a Fact Sheet prepared by the City and summarized below.

As these amenities were not required by the City, the City's expectations were that the development itself shall be responsible for the ongoing maintenance of these amenities. It is the City's understanding that the Developer set up a Home Owners' Association (HOA) as a mechanism to address long term maintenance of these features. Maintenance also included irrigation and billing for the utilities necessary to maintain these improvements.

In 2009, Oakwood Land Development transferred its interest in BROOKFIELD to 21st Century Bank. At that time, a large majority of the lots within BROOKFIELD remained undeveloped and under the ownership of 21st Century Bank. During the transfer of ownership and through a request to amend the existing Development Agreement, the City encouraged 21st Century Bank to maintain the HOA, but did not require this to occur, as it did not possess the legal ability to do so (it is not a City requirement). The City commented at that time that the City would not take on the maintenance obligations of these amenities, as clearly articulated when the plat was approved. 21st Century Bank indicated that it would make its best efforts to re-establish the HOA, but lacked the legal ability to require future property owners to participate financially due to the structure of the existing Declaration of Restrictive Covenants. 21st Century Bank has stated that

it was not able to require existing homeowners to contribute financially to the HOA under the existing documents. According to 21st Century Bank, it redrafted and re-recorded the Declaration of Restrictive Covenants to the best of its ability. A more detailed analysis from 21st Century Bank is included in this report. Furthermore, the City understands that it is the intent of the Applicant to not subject the proposed lots to the existing, nor future HOA.

As the HOA, nor the private amenities were required by the City (nor could be required by the City under current City Code provisions), it will be up to the Homeowners to administer the provisions of the HOA. The City will, however, assist by facilitating discussions amongst homeowners by providing a location to meet as a group and continue to provide educational materials related to HOAs and ways to improve water quality of the pond. The City cannot, however, be the legal counsel to establish HOA documents or revisions.

However, the City also reiterates that it is our current position that the City shall not accept maintenance obligations related to the water feature (other than ensuring proper functionality as a Stormwater pond), private park, center median and roundabout landscaping at the entrance from Nowthen Boulevard, or additional landscaping along Nowthen Boulevard that were proposed by the original developer, but not required by the City.

The City acknowledges a number of concerns related to the above amenities and maintenance obligations of said amenities have been submitted to the City. An open house has been scheduled for Thursday, October 3rd at 4:00-6:30 p.m. to provide an opportunity for area residents surrounding the Brookfield 4th Addition to meet with staff and the applicant and discuss plans prior to the public hearing.

Staff became aware of a ‘Town Hall Meeting’ hosted by a resident of BROOKFIELD related to HOA and private amenity concerns. Staff is pleased to see that the neighborhood is organizing in an attempt to revive the HOA, as these private amenities are a benefit to the neighborhood. It is noted that a representative from the City was not at this meeting, so the subject matter is unclear at this time. It is reiterated here that the official City review process begins on October 3, 2013.

**CITY OF RAMSEY LAND USE APPLICATION
TECHNICAL REVIEW FILE**

DATE	SEPTEMBER 27,2013	PROJECT ADDRESS	EAST OF MARBLE STREET, SOUTH OF 170 TH TRAIL
PROJECT. TITLE	BROOKFIELD 4 TH ADDITION		
ESCROW #	113790		
DEPARTMENT:	Engineering		
TECHNICAL REVIEWER:	Name: Leonard Linton Phone: 763 433-9834 Email: llinton@ci.ramsey.mn.us		

We offer the following comments regarding your request for the Preliminary Plat of Brookfield 4th Addition. The submittal consists of 5 sheets prepared by Anderson Passe & Associates dated August 29, 2013. Revised Grading and Utility Plans dated September 24, 2013 were also reviewed.

General: The submitted major subdivision proposes to plat Outlot A, Brookfield 3rd Addition to create 77 urban single family lots. The subject property is generally located south of 170th Trail NW and east of Marble and Limonite Streets. The eastern borders are Brookfield 1st Addition and Now and Then Estates. This development is approximately 26.8 acres.

Streets and Access: The development accesses Limonite Street NW, Marble Street NW, 170th Trail NW, and 169th Lane NW which were constructed in prior phases of Brookfield Addition. The plat will also connect to 168th Avenue NW in the Now and Then Estates Plat.

The streets will be urban section with concrete curb and gutter and bituminous pavement. A sidewalk is generally provided on one side. The existing cul-de-sacs shall be reshaped as follows:

- Remove all of the bituminous pavement.
- Reshape the area outside of the new roadway.
- Relocate drainage structures to align with the new curb.
- Reinstall the curb and pavement.
- This applies to 169th Lane NW and to 168th Avenue NW on the east edge of the plat.
- Extend the driveway from 6950 168th Avenue NW to the new edge of pavement.

Traffic Analysis Report: A traffic generation analysis for the Brookfield development has been prepared by Bolton & Menk Inc. which analyzed the impact of this development on the following intersections:

1. 166th Avenue and Variolite
2. Ramsey Blvd and Nowthen Blvd
3. 167th and Nowthen Blvd.
4. 167th Avenue and Coquina St.
5. 167th Avenue and St Francis Blvd.

All of the above intersections, except for 167th Avenue and TH 47 will continue to operate at acceptable levels of service. No immediate improvements are recommended for these intersections around the development. The intersection at 167th Avenue and TH 47 currently operates below a desirable level of service during the afternoon peak period. Improving the level of service at this intersection will require signalization of this intersection. The intersection must meet traffic warrants before this signalization will be allowed by MnDOT.

The lots in this plat were included in this traffic analysis, a separate study is not required.

Grading and Drainage Plans: A preliminary grading and drainage plan has been prepared for this subdivision by Anderson Passe & Associates, P.A. Staff offers the following comments on this plan:

1. Lot corner elevations need to be provided on all lot corners and along the centerline of drainage swales which do not coincide with common property lines. Drainage and utility easements need to be provided over such swales.
2. The 100 year flood elevations for ponding areas need to be noted on the grading plan. All lowest floor building elevations must be two feet above this elevation.
3. The emergency overflow elevation for each water quality pond must be one foot lower than the lowest adjacent grade of the building structures.
4. The maximum slope should not exceed one foot vertical to four feet horizontal. .
5. The font size/ pen weight of labels must be increased to make plan readable.
6. The existing swale across lots 14 and 15, Block 1 must be backfilled with fill suitable to support a structure. The existing curb and pavement at the intersection of 170th Trail NW and Limonite Terrace NW may need replacement due to undermining of the soil.
7. Sidewalks are generally shown adjacent to the streets. Sidewalks must be added to Kamacite Street NW between 168th Avenue NW and 168th Lane NW and 167th Lane NW between Limonite Street NW and Kamacite Street NW.
8. There are existing homes on lots 1-3, Block 6, Brookfield 3rd Addition. The grading for lots 1-4 and 18-20, Block 3 of Brookfield 4th must maintain the drainage pattern established when the homes were constructed.
9. The high point in 168th avenue must be at the east edge of the plat, drainage from this project cannot flow to the east.
10. Grades and catch basin placement at the intersection of 167th Lane NW and Kamacite Street NW must be revised.
11. The label size/ line width must be adjusted to allow for checking of street profiles and lot grading.

A permit from the Lower Rum River Water Management Organization must be obtained.

Utilities: All lots are proposed to be served by municipal sewer and water. A preliminary utility plan has been prepared which is generally acceptable. Construction plans and specifications are subject to review of the City Engineering Department.

Items that must be updated prior to approval of the Preliminary plat are noted below:

- Storm sewer inverts in Blocks 4 and 6 require adjustment, upstream inverts are lower than downstream inverts.
- Rim and invert labels must be added for all manholes and catch basins.
- Labels must be moved to point to the appropriate structure.
- The font size/ pen weight of labels must be increased to make plan readable.

Stormwater Pollution Prevention Plan: The Stormwater Pollution Prevention Plan must be modified as follows:

Update the disturbed area number.

Change text 'discharg' to discharge.

Change water quality volume from ½ inch to 1 inch per Lower Rum River WMO and the MPCA construction stormwater permit requirements.

Add item 7.11 – 'Remove soils tracked onto City streets with a pickup broom within 3 hours of notification by City.'

Landscaping Plan: The south and east sides of the plat adjoin existing single family rural lots. The landscaping plan does not show screening between the urban and rural lots.

These comments apply to the preliminary plat submittal. The Final Plat documents and construction plans will be subject to further review and comment.

City of Ramsey

2013 Residential Development Fee Calculator - BROOKFIELD 4TH ADDITION

	Units	Unit Type	Unit Price	Total	Notes
Park Dedication and Trail Development					
Park Dedication					
0-12 Units per acre; or	77	per unit	\$2,475	\$190,575	
12-19 Units per acre; or		per unit	\$2,289	\$0	7.5% Density Bonus
20+ Units per acre; or		per unit	\$2,104	\$0	15% Density Bonus
Assisted Living		per acre	\$4,738	\$0	
Trail Development	77	per unit	\$600	\$46,200	
Subtotal Park and Trail Development				\$236,775	
Water and Sewer Fees					
Water Fees - No Cash Collection (to be credited towards Reimbursement Agreement)					
Trunk/Connection	77	per unit	\$1,925	\$148,225	Per Reimbursement Agreement
Lateral		per connection	\$6,143	\$0	If already constructed
Sewer Fees - No Cash Collection (to be credited towards Reimbursement Agreement)					
Trunk/Connection	77	per unit	\$1,137	\$87,549	Per Reimbursement Agreement
Lateral		per connection	\$3,328	\$0	If already constructed
Subtotal Trunk and Lateral				\$235,774	
				Credit per Reimbursement Agreement	\$235,774
Accessibility Charges					
Accessibility Charge (WAC)	77	per SAC Unit	\$1,148	\$88,396	Collected with Building Permit
Accessibility Charge (SAC)	77	per SAC Unit	\$2,435	\$187,495	Collected with Building Permit
SAC Handling Fee	77	per address	\$25	\$1,925	Collected with Building Permit
<small>*SAC is a Metropolitan Council Environmental Services (MCES) Fee; SAC Unit Determined by MCES</small>					
Subtotal Water and Sewer Fees				\$277,816	
Stormwater Management Fees					
Stormwater Management	77	per unit	\$448	\$34,496	
Subtotal Stormwater Management				\$34,496	
Street Light Fees					
Street Light Type					
Cobra; or	10	per light	\$1,300	\$13,000	
The COR		per light	\$2,600	\$0	
Three (3) Years Operating and Maintenance	10	per light	\$294	\$2,940	
Subtotal Street Lights				\$15,940	
Sureties and Inspection Fees					
Sureties (to ensure completion; returned when complete)					
Subdivisions/Plats (public improvements)		cost of improvement	125%	\$0	Cash or Letter of Credit
Site Plans (private improvements)		cost of improvement	150%	\$0	Cash or Letter of Credit
Subtotal Sureties				\$0	
Engineering Inspection Fee		cost of improvement	5%	\$0	Cash Escrow
Subtotal Surety and Inspection Fee				\$0	
GRAND TOTAL FOR DEVELOPMENT FEES				\$287,211	
GRAND TOTAL FOR ENGINEERING INSPECTION FEES				\$0	Separate from Building Permit
GRAND TOTAL FOR SURETIES				\$0	
GRAND TOTAL FOR SAC/WAC				\$277,816	Collected with Building Permit

Brookfield Developer Amenities and Home Owners Association Fact Sheet

What amenities were proposed by the Developer?

The original developer has proposed multiple amenities for the development including, but not limited to:

1. Private pond/water feature (within Stormwater pond)
2. Private park (slated for existing Outlot)
3. Landscaped medians (within City right of way)
4. Boulevard landscaping (within private property along Nowthen Boulevard)

Were these amenities required by the City?

No. The private amenities listed above are not a requirement of the City. The City allowed the developer to construct these amenities, but stated that the City would not accept future maintenance obligations of these private amenities.

Why was the Home Owners Association formed?

Although the City shall not comment on the legal aspects of the HOA or Declaration of Covenants and Restrictions, the HOA was formed in part in order to provide a mechanism to maintain the private amenities. This includes financing for a pump for the water feature and irrigation for landscaping.

Why is the pond not holding water as originally anticipated?

A pond liner was installed in order to maintain a level of water where it would normally infiltrate through the soil into the groundwater aquifer. It is the City's understanding that the pond liner failed, and that a portion of the water is infiltrating through the soil. It should be noted that the City only requires that the pond function as a Stormwater pond to capture surface water runoff from impervious surfaces within the development. The City does not require that the pond maintain a certain water level.

Which parcels are subject to the HOA?

The City is not in a position to comment on the legal aspects of the HOA, nor the accompanying declarations and restrictions. It is the City's understanding that a portion of the existing parcels were removed at least in part from certain obligations of the HOA, or lacked the ability to enforce certain provisions to begin with. Most notably, it has been communicated to the City that the original Declaration of Restrictive Covenants lacked the enforceability to collect HOA dues. This is not an official legal opinion of the City, simply communication provided to the City. Concerned residents should consult a real estate attorney for more information.

The City would, however, assist in facilitating a discussion amongst residents to discuss the future of the HOA. While the City cannot require the HOA, it can create a space for discussion and provide educational and technical information in an attempt to point the HOA in a positive direction related to administration and maintenance of the private amenities.

What happens if the private amenities are not properly maintained?

While the City is cognizant and aware of the benefit of providing these amenities for the neighborhood, the City is not in a financial position, nor a resource position, to take on these additional obligations at this time.

The City will ensure that the pond continues to function as a Stormwater pond in compliance with the approved grading plan. The City will not maintain the pond in such a way that guarantees a certain water level. If the residents of the community desire to maintain a level of water, it shall be their responsibility to do so through appropriate tools and mechanisms.

The City will not construct or maintain the planned private park, as stipulated throughout the platting and Development Agreement process for Brookfield 1st, 2nd, and 3rd Additions and, as it is not part of the City's Master Park and Trail Plan as recommended by the Park and Recreation Commission. The City will, however, continue to develop key connections through linear parks and trails as planned in the Master Park and Trail Map. The City will not maintain the landscape medians at the Nowthen Boulevard entrance and roundabout. In the event the lack of maintenance results in vegetation failure, the City will remove these improvements from the right of way. At this time, the City has no plans to remove the vegetation from the City right of way, so long as the condition of the landscaping remains acceptable. It is noted that said landscaping is beginning to deteriorate, so it is preferred if corrective action is commenced as soon as possible.

Will the future lots being created as part of BROOKFIELD 4TH ADDITION include an HOA?

Based on the materials submitted to date, it does not appear that the Applicant is planning on including itself as part of the existing HOA nor creating a new HOA. According to information provided to the City, the Declaration of Restrictive Covenants was only recorded on individual buildable lots for BROOKFIELD 1ST, 2ND, and 3RD ADDITIONS. The Declaration does not appear to have been recorded on Outlots, which are undeveloped portions anticipated for future development.

What options do we have to ensure the private amenities are properly constructed and maintained?

Interested individuals should consult legal counsel specializing in real estate law. Options include forming or re-forming an HOA or exploring other funding and maintenance alternatives. Again, the City is interested in assisting by facilitating discussion and providing educational materials, but cannot provide legal counsel nor require formation of an HOA.

To Whom it May Concern:

A number of misconceptions have been brought to our attention recently, and it is hoped that the following material will help to clear up some of these matters.

I. Ownership of Brookfield Lake

It has been stated that the Brookfield Homeowners Association (“HOA:”) owns the “Brookfield Lake”. This is not true. The land beneath the pond is owned by the individual lot owners along 107th, and the land beneath the pond is owned by 21st Century Bank on the southeast side. The Bank’s land is the land now being platted by Capstone. The pond area on the northwest side is a dedicated public drainage easement established in the previous Brookfield plats. Capstone will be required to dedicate a public drainage easement over the new lots that are platted on the southeast side of the pond.

II. Homeowner’s Association

An HOA was formed as a non-profit corporation by Oakwood. It has since been administratively dissolved by the Minnesota Secretary of State for non-filing of annual renewals, but it can be re-activated by a simple on-line process at a cost of less than \$50. The HOA has bylaws, and every lot owner in Brookfield is automatically a member.

III. Declarations

There is a recorded Declaration that is in effect that covers all of the existing lots in Brookfield. It excludes undeveloped land in the area. Further information is contained below.

IV. History

A. Brookfield Plats

The existing BF development consists of three plats, the First, Second and Third Additions, which were recorded in 2006-2007. Each had its own recorded development agreement, and a set of Declarations was recorded by the Developer, Oakwood Land Development Co. for each plat. The Declarations established some basic land use controls, made reference to an HOA, gave the HOA the duty to maintain the landscaped berm on County 5, and established an Architectural Control Committee to review house plans. No house standards were adopted and the ACC was free to approve whatever it wanted to approve. No dues or assessment methods

were established by the Declarations. According to the recorded Declarations, they were drafted by Oakwood

BF First Addition included a divided lane entrance road from County 5 (170th Avenue NW), with the lanes separated by a landscaped median area, and a roundabout at 170th and Garnet Street, with the center of the roundabout also containing landscaping. I believe that the median and roundabout center have irrigation systems in them, but are entirely within city right of way.

B. Brookfield Lake

This storm water retention pond was intended to be a sales amenity for the lots abutting the lake, and was also to be available for use by all residents of Brookfield via a small outlot on the north side. The bottom is lined with a synthetic material. At some point in time (estimated to be after the plats were all recorded), it was discovered that the lining did not work properly, and that the pond elevation could not be maintained by normal storm water runoff or groundwater levels. There was some dispute between Oakwood and a contractor, but apparently the damage could not be repaired. Oakwood obtained permission to install a well on the access outlot land to pump groundwater into the lake as needed to maintain an acceptable level. There may be a DNR permit involved, and there may be an annual limit on gallonage used.

C. 21st Century Bank Involvement

The Bank provided all of the construction financing for the BF plats. After 2007, the loans went into default, and the Bank eventually foreclosed its mortgages, taking title on March 30, 2010.

As the foreclosure period came to a close, the Bank, the City and Oakwood negotiated the terms of an agreement designed to allow for an orderly transfer of title to about 78 unsold but completed lots and several large future-development outlots to the Bank. The Bank at this time was obligated to fund some letters of credit, and the agreement that was reached in written form allocated the responsibilities for various items among the parties. It was by that time known to the Bank that the organizational documents and Declarations regarding the HOA were severely lacking in enforceability, establishment of dues and even scope, since there was no mention of the 170th Avenue median maintenance, the roundabout maintenance or the Brookfield Lake well.

One of the provisions of the settlement agreement was that the Bank and Oakwood would make good faith efforts to breathe life into the HOA, but with the disclaimer that neither the Bank nor Oakwood would or could guarantee that dues could be collected from residents. This was due to the fact that owners who had already closed and built on their lots had done so with no actual recorded documents requiring them to pay dues.

The agreement among Oakwood, the Bank and the City did not cover the issue of the pond level. The City took the position that their sole interest in the pond was as a drainage easement, for storm water runoff. The liner was not a City requirement. The Bank, by foreclosure of the

mortgages, had no obligation to complete Oakwood's work and the new agreement replaced the old development agreements.

The Bank now owns 18 lots that are not under purchase agreement. The Bank also owns the land being sold to Capstone, and two other undeveloped parcels to the west.

D. Efforts to Revive the HOA

After researching applicable law on the subject, 21st Century Bank did prepare and record Amended Declarations for the three Brookfield plats. These were recorded March 24, 2010 as Document Number 2014022.001. The amended Declarations included the following:

1. Referenced the Corporate Bylaws and recognized the HOA as a Minnesota Non-Profit Corporation. (The corporation was actually administratively dissolved in 2009 for failure to file annual renewals – a fact not known to me until I looked up the SOS records today. It can be revived on-line for under \$50).
2. Added maintenance of the median and roundabout maintenance, and the pumping apparatus for Brookfield Lake to the HOA duties.
3. Set up a voluntary dues system. We did not feel that we could legally set up an enforceable, mandatory dues system after-the-fact. However, the HOA is allowed to deny usage of Outlot B to lot owners who are delinquent in their dues. That would prohibit access to the pond.
4. Set \$50 per year as per lot annual dues, subject to change.
5. Made the Bank the successor declarant with sole right to amend the Declarations.

The Bank's attorney met with a group of about a dozen property owners and John Peterson, president of Oakwood, shortly thereafter, and explained what we had done. Several of those in attendance were openly hostile to the Bank, blaming the Bank for the Developer's work, and insisting that the Bank should pay for everything. The group was informed that the Bank would agree to turn over management of the HOA to them, subject to the right of the Bank to amend or eliminate the Declarations, and the Bank did in fact turn the HOA management over to this group. We have no idea if they elected a board, officers, or anything else.

In August of 2010, the Bank sent the HOA a check for \$3,900.00 in response to an invoice in this amount, representing \$50 per lot owned by the bank. This check was accompanied by the attached letter, in which the Bank advised the HOA that it would monitor the dealings of the HOA and would base its future participation on that monitoring. Verbally, the HOA was advised that the Bank would contribute in the same ratio as the other lot owners contributed.

The Bank received no response to this letter. The Bank received an invoice about a year later for the full dues, but with no documentation of payment of dues by other lot owners and no accounting for the previous years' expenditures. The Bank has no idea of how their \$3,900.00 contribution was used. Absent this documentation, the Bank has assumed that other property owners are not contributing to the HOA.

The expenses of the HOA include city water to run the irrigation systems, electrical power for the Brookfield Lake Pump, maintenance on these system, and mowing/landscaping labor, gas and equipment. The four areas of HOA responsibility under the present Declarations are:

1. Maintenance of the Berm on the west side of County 5. This area is all on privately owned lots, and we speculate that the individual property owners are mowing and maintaining the portions of the Berm that they own. I have no idea why Oakwood originally came up with this form of maintenance.
2. Maintenance of the median landscaping and roundabout landscaping. These areas are within City right of way, are owned by the City as such, and were not created as common areas. The City can fill them in, maintain them or ignore them. There is no way to force the HOA to maintain them if lot owners do not want to pay their dues.
3. Maintenance of the pump apparatus on Outlot B, BF 3. The plan was to convey this lot to the HOA. However, unless the HOA actually comes forward and re-organizes, there is no point in doing so at this time. For liability purposes, this outlot along with Outlot C have been conveyed to a subsidiary LLC. The Bank is also willing to convey these Outlots to the City if the City wants them. The Bank has been paying the nominal taxes on the outlots. Unless a viable HOA materializes, the outlots will probably eventually go tax forfeit.
4. ACC review of building plans. The Bank has been performing this role, reviewing all proposed new construction. Not all plans have been approved. This is somewhat of a simple review, as the original Oakwood declarations established no architectural standards, square foot minimums, etc. The Bank will continue to play this role as long as it owns any undeveloped lots.

E. Present HOA Status

We have no idea of the present status of the HOA. It was turned over to the other property owners three years ago, and the Bank intended to do no more than pay the same pro rata dues as the other owners, leaving HOA management up to the residents. Communication from those residents has been little or none since 2010. I have at two times in the past 2 years fielded calls from individual lot owners on the status of the HOA and have basically given the same explanation to those individuals. I stated to those callers our willingness to contribute on the lots we owned if the HOA could become a functioning entity collecting dues and communicating annually its financial status to us and other lot owners. As sales of lots have picked up, the Bank has received additional inquiries from new lot buyers regarding an HOA, and for that reason the Bank has now determined that unless a significant number of existing lot owners comes forward to actively and responsibly manage an HOA, it would be best for all concerned if the Declarations were now amended to simply eliminate the HOA. Land use restriction would remain in place, and the Bank would continue to serve as the ACC until the current inventory of vacant lots is sold.

Under this scenario, maintenance of the County 5 berm would go back to the individual lot owners. Maintenance of the median and roundabout landscaping would be left to whoever wanted to do so, if any, and the same is true of the Brookfield Lake pumping apparatus.

The bottom line here is that the original HOA documents and declaration were not properly prepared. Neither the Bank nor the City had anything to do with those documents. The Bank inherited the situation, and has contributed substantial time and money to try to fix what was already broken. The Bank is open to suggestions, and would, as we have been all along, amenable to working with a viable HOA, but that is entirely up to the residents.

RESPECTFULLY,

A handwritten signature in black ink, appearing to read 'T. P. Dolphin', with a long horizontal flourish extending to the right.

Thomas P, Dolphin SR. CEO