

**CITY OF ELKO NEW MARKET
SPECIAL CITY COUNCIL AGENDA
ELKO NEW MARKET CITY HALL
601 MAIN STREET
ELKO NEW MARKET, MINNESOTA 55054
WEDNESDAY, FEBRUARY 7, 2018**

5:00 PM

1. Call to Order

2. General Business

- a. Consider an appeal to Zoning Administrator decision requiring PUD sketch plan review and sketch plan application fees for the proposed Barsness 1st Addition development.

3. Adjournment



STAFF MEMORANDUM

SUBJECT:	Barsness Appeal to City Staff Decision Requiring PUD Sketch Plan Review and Fees
MEETING DATE:	February 7, 2018
PREPARED BY:	Renee Christianson, Community Development Specialist
REQUESTED ACTION:	Council Direction regarding Appeals

COMMUNITY VISION:

- A mature growing freestanding suburb of the Twin Cities Metropolitan Area, preserving historic landmarks and small town character while providing suburban amenities and services, as well as full range of employment, housing, business, service, social, technology infrastructure and recreational opportunities for citizens and visitors
- Promote a diverse commercial base including light industrial and facilitating planned redevelopment which will be aesthetically pleasing with architectural standards that promotes quality development
- Provide a full range of municipal services to its residents. The City will allocate sufficient resources to meet the growing needs of the community
- A comprehensive park and trails system that will have sufficient facilities, play fields and open space to meet the needs of residents
- An effective and efficient transportation system, including access to the greater metropolitan area, transit opportunities, and improved connectivity to the interstate
- Provide community oriented local government and be financially sound, engaging in long-term financial planning to provide municipal services without undue burden on tax payers

5 YEAR GOALS:

- Diverse tax base, employment opportunities, additional businesses and services, promote high quality broad spectrum of residential development
- Advance "shovel ready" status of areas guided for commercial and industrial development
- Acquisition of land for public purposes, position City to take advantage of land acquisition opportunities
- Enhance quality of life through parks, trails, recreational programming and cultural events
- The development of residential lots and an increase in residential building permit activity

COMMUNITY ORIENTED LOCAL GOVERNMENT:

- Community Involvement
- Organizational Improvement
- Problem Solving
- Performance Measurement
- Professionalism

Request

Warren Barsness and his development team are appealing:

- 1) The Zoning Administrator determination that a proposed Planned Unit Development be reviewed at a “Sketch Plan” level by the City’s Planning Commission and City Council; and
- 2) The need for a “Sketch Plan” application fee and escrow

Section 11-3-1 of the City Code allows an appeal of staff decisions to the City Council. The applicant has requested a special meeting of the City Council on February 7, 2018 because they are unavailable to attend the February 8th regular City Council meeting. The required \$400 special meeting fee has been received and the special meeting has been posted as required by law, at least three days in advance of the meeting. Their letter dated January 30, 2018 appealing the Zoning Administrator determination for Sketch Plan review and fee is attached.

Summary of City Code

Section 11-28C of the City Code contains provisions for a Planned Unit Development (PUD) zoning district. A PUD district is a unique zoning district which allows flexibilities in the development of properties that would not be possible under the conventional zoning district, or more simply stated, allows deviations from certain City Code requirements. In exchange for the deviations from City Code standards, enhanced design elements that exceed City standards are incorporated into the development plan to “off-set” the effect of any deviations.

Section 11-28C-6 of the City Code outlines the procedures required for allowing PUD zoning of a property. There are three steps outlined in the Code as follows:

- Sketch Plan – The applicant shall submit a Sketch Plan of the project to the Zoning Administrator, and that Sketch Plan shall be processed according to the information requirements, standards and procedures identified in Section 11-3-6 of the City Code. The purpose of a Sketch Plan review is to obtain feedback from staff, and potentially the Planning Commission and City Council, regarding the proposed PUD. Ideally, the applicant would incorporate any feedback received during the “Sketch Plan” review process into the formal development stage application. The process establishes a general understanding of the project and what is being given by each party (City and developer).
- Development Stage - Development stage submissions / applications is where formal recommendations and approvals are made. This is the point where very detailed information must be submitted for review. An official public hearing is held before the City’s Planning Commission at this stage, and after considering facts presented by staff and the applicant, and upon hearing public input regarding a project, the Planning Commission would forward a recommendation to the City Council for final consideration and action. This step typically runs concurrently with an application for preliminary plat approval.
- Final Stage – The final stage PUD application occurs after approval of the PUD by the City Council. This review is completed administratively by the Zoning Administrator, and the intent is to ensure that any conditions imposed by the City Council as part of the

approval have been incorporated into the final development plans. This step is typically completed concurrent with a final plat application or building permit application.

Section 11-6-3 outlines the process for Sketch Plan applications, and requires that an application form, application fee, and certain Sketch Plan items must be submitted for review. 11-3-6(C)(2) states “The Zoning Administrator shall have the authority to refer the Sketch Plan to the Planning Commission and/or City Council for discussion, review, and informal comment. Any opinions or comments provided to the applicant by the Zoning Administrator, Planning Commission and/or City Council shall be considered advisory only and shall not constitute a binding decision on the request”.

Historically, the City has always referred PUD Sketch Plans to the Planning Commission and City Council for feedback. Staff’s opinion is that this process allows appointed and elected officials a chance to a) review the deviations / variances being sought as part of a proposed project; b) review the proposed enhanced design elements that a developer is proposing in “exchange” the deviations being sought; and c) give the applicant and staff final feedback regarding the position and level of support for the project as proposed. Most recently, Avant Private Communities submitted a PUD Sketch Plan for review, and their plan was reviewed by both the Planning Commission and City Council.

Barsness Project History

City staff has been working with Warren Barsness and his project team in regards to development of the property at the southeast quadrant of Co Rds 2 & 91 for several years. In July of 2016, staff received the first engineered site plan which was circulated internally for review and high level comment. The July 2016 plans were submitted to staff for review but they were not accompanied by any application or application fee for Sketch Plan review (required under Section 11-6-3 of the City Code). At no time did the developer indicate the submission, or any subsequent submissions, were intended to be the formal Sketch Plan review application. The July 2016 plans were not detailed enough for staff to do a complete detailed review. Staff comments and questions were, however, given to the developer in a memorandum dated August 12, 2016.

Designing the subject property contains many complex issues. Primary challenges include access to the property, the location of wetlands on the property, and managing stormwater on the site. Because of the complexities, the applicant is proposing to develop the property using Planned Unit Development (PUD) zoning. PUD zoning allows flexibilities from the City’s typical design standards in exchange for improved design elements that exceed the City’s standards.

Following the August, 2016 review by City staff, the developer submitted preliminary stormwater calculations and design to Scott County to determine if connecting to / expansion of an existing county stormwater pond would be permissible. City staff understands that there was positive feedback from Scott County in terms of expanding their pond, but no final approvals from the County were received.

The developer also continued to work on wetland issues. A wetland delineation and MnRAM report were completed to determine the extent of the wetlands on the site. The developer worked with the Technical Evaluation Panel to try to determine the amount of wetland on the site that could possibly be filled / mitigated. In August, 2017 there was preliminary consensus

by the TEP in this regard, but a formal application for wetland boundary concurrence and mitigation has not yet been submitted or approved.

On January 4, 2018, staff received an application for Development Stage PUD and Preliminary Plat approval for commercial development of the property. Staff determined that the application was incomplete, and on January 10, 2018 a letter was sent to Mr. Barsness and his representative stating that the application was incomplete and that a) the application fee of \$400 plus \$5,000 escrow had not been received; and b) the application required a "Sketch Plan" review by the Planning Commission prior to making the formal application for zoning and platting the property, and

Barsness Appeal

Mr. Barsness has submitted a detailed letter (attached) explaining the background of his project and the rationale for his appeal to the Zoning Administrator's determination that a Sketch Plan be required and reviewed by the Planning Commission and City Council. He states that he has previously submitted Sketch Plans and received comments from the City and County, and has incorporated them into the development plans now submitted.

Basis For Zoning Administrator Determination

Staff has only provided written feedback to one engineered site plan submitted in July of 2016. Staff considered that review to be cursory in nature, providing mostly high level feedback. The majority of the items cited by staff during the cursory review in 2016 have not been addressed in the current submittal.

The basis for the Zoning Administrator's determination that the Planning Commission and City Council review the Sketch Plan is due to the number and degree of variances being sought as part of the project, and because the applicant has not identified the enhanced project design elements being proposed in exchange for the variances being sought. Below is a list of primary design concerns:

- The project does not meet the intent of the 2030 Comprehensive Plan in that design features of a traditional downtown have not been incorporated into the plan.
- The proposed motor fuel station building does not meet the design requirements under the City Code.
- The proposed buildings do not meet setback requirements from certain lot lines, wetlands and stormwater ponds.
- The drainage and utility easements required under the City's Subdivision Ordinance are not being proposed for the project.
- The proposed project does not contain the required landscaping and green space requirements.
- The minimum number of vehicle stacking spaces for the car wash have not been provided for.
- The vehicle stacking spaces for the car wash will interfere with internal site circulation.
- The required off-street loading space has not been provided for.
- Construction of the pedestrian trail adjacent to the property is not being provided for.
- The required turn lanes into the property have not been depicted on the current submittal.

Staff Recommendation

The Zoning Administrator has opined that a Sketch Plan review by the Planning Commission and City Council is required for this project. Staff has consistently conveyed to the developer that their plan, when updated, must be reviewed by the City's Planning Commission and City Council at a "Sketch Plan" level (see attached email dated August 10, 2017 as one example). Staff's determination for a Sketch Plan review and input by the Planning Commission and City Council is based on 1) the complexity of the project; 2) the number and type of deviations being proposed from City standards; 3) the location of the project at a prime intersection in the community; and 4) staff's concern regarding the overall site design.

A Sketch Plan application has a required \$400 application fee and a required \$5,000 escrow. The \$400 application fee is intended to off-set City staff time in reviewing the concept plan application, coordinating feedback from various parties, coordinating meetings, etc. The \$5,000 escrow is used as financial security for consultant time spent on a project, which typically consists of the City Engineer and City Attorney invoices. It is the Zoning Administrator's recommendation that the required Sketch Plan application fees and escrow be required for the project.

The City has incurred expenses associated with review of the plans and wetland submittals, and coordinating meetings of the TEP. Staff has been tracking accumulated expenses since December, 2016 which currently total \$11,398. There have been no invoices sent to the developer for these expenditures. This figure only include consultant's costs associated with the project and do not account for time spent on the project by City staff.

Council Action

The City Council is being asked to make a determination on the following appeals for the proposed Barsness 1st Addition commercial development:

- 1) The Zoning Administrator's determination that a proposed Planned Unit Development be reviewed at a "Sketch Plan" level by the City's Planning Commission and City Council; and
- 2) The need for a "Sketch Plan" application fee and escrow

Attachments:

Letter re: Appeal to City Staff decision requiring Sketch Plan review and fees dated 1.30.18

Email to Barsness Team dated 8.10.17

Grading permit expenses incurred by the City related to Barsness project

General expenses incurred by the City related to Barsness project (12/16 to present)

January 30, 2018

To: Mayor, City Council and Staff

Re: Appeal to City Staff decision requiring sketch plan review and sketch plan fees

History

I would like to start this request by providing some background information and history of the evaluation of this project prior to the requirement of application for sketch plan review.

For the past one and one-half years, Mr. Barsness and development team has met with City Staff and other government agencies to determine the requirements and items needed to develop the 10 acre parcel located at County Road 2 and Natchez Ave. Prior to a plan, the City and County were contacted to determine access locations for the property. County Road 2 and Natchez Ave. are both County roads, and both access points needed to meet the County guidelines for spacing requirements of 1/8 mile for access onto County roads. In order for access to be considered, we were asked to provide a detailed traffic study to determine the impact of the proposed development would have on the County road system. This traffic study was submitted to the City and County. After review of the traffic study, the County tentatively agreed to provide full public access at the southerly property line on Natchez Ave, and right-in and right-out public access at the easterly property line on County Road 2. The County also agreed to grant a 60' deviation from the standard 660' to 600' for right-in, right- out access.

After access point to the property was established, the next major hurdle was to determine what area of the site could be developed because of the amount of wetland on the property. A wetland specialist was hired to conduct a wetland study. Wetland boundaries were staked on the site, a site plan was prepared, and a wetland mitigation application was submitted to the City. The first plan submitted to the City proposed filling one-acre of wetland. In preparing the site plan or sketch, the City looked at the proposed traffic circulation on the site plan and proposed and required an alteration street or drive to provide traffic circulation around the back of the building to ease congestion at the gas and convenience store location of the site. The plan was submitted to the Technical Evaluation Panel (TEP), consisting of members of the Corp of Engineer, DNR, Board of Water Resources, Scott County Soil & Water, and the City of Elko New Market, to evaluate the development impact on the protected wetland. The plan was denied by the TEP, because of the impact the proposed development would have on the existing wetland.

Mr. Barsness reviewed the comments from the TEP and began to create additional site plans to reduce wetland impact. The last site plan submitted to the TEP reduced the wetland impact from one acre to 13,000 square feet, or 1/3 of an acre. In the TEP review process it was determined any development plan proposed would have some impact on the wetland in order to get to the developable portion of the property. In the preparation of these site plans it was determined that the only way to develop this property was through the P.U.D. process. Wetland regulation and buffer zone requirements pushed the building and parking areas closer to County Road 2 and Natchez Ave; and the setback requirements from County roads pushed the development into the wetland.

The last site plan submitted reduced the building footprint and maintained a 30' average buffer zone between the grading area and the protected wetland. The plan was reviewed by the TEP and agreed to

approved, the wetland mitigation when detailed site plan is submitted showing detailed grading and drainage of storm water plans including hydrology calculations that the ponding area provided meet the ponding requirement of the county and the development portion of the site and did not encroach on the demarcation line of the site plan. Ponding or storm water retention pond modeling has been approved by the County and additional onsite ponding is provided in this last plan. The plans to get the wetland mitigation approved are far more detailed than the sketch plan requirements of the P.U.D. application process. The direction of the TEP and the City was that if this detailed site plan does not affect the proposed wetland protected area, the wetland mitigation is approved.

Ordinance Review

In review of City Code 11-28C-1, the purpose and intent allows flexibility that would not be possible under a conventional zoning district because of the unique characteristics of this parcel, access restrictions, the location of the property at the intersection of two county roads, and comprehensive plan designation of Town Center. This plan incorporates elements that provide creative and efficient use of the property to provide additional service and opportunities not presently available in the City. Section 11-28-C6 of the Code Procedure for Plan Development states “prior to the filing of a formal application, the applicant shall submit a sketch plan of the project to the zoning administrator”. Because of the physical restraints on the parcel detailed site plans had to be prepared to determine the buildability of the parcel. The site plans that have been submitted to the City far exceed the requirement required for the sketch plan submittal. The pre-planning and plans required for the Wetland mitigation approval have provided the detailed information required for the Development Stage Plan 11-3-6-F of the City code.

In reviewing the two sections of the city code we believe there is some ambiguity between 11-28-C- 6 and 11-3-6 of the code. The City is requiring us to submit a Sketch Plan 11-3-6-C “Prior to the formulation of a site plan, applicants may present a sketch plan to the zoning administrator prior to filing a formal application.” Requiring a sketch plan review is an informal process with non-binding recommendations.

Where Are We Now

This development will only work if the plan is reviewed as a proposed P.U.D. Deviations from ordinance standards are needed because of the regulations for the wetland conservation act, the City requirement for green space, major road setbacks for building, and the list goes on. After all the detailed comments and requirements imposed on this 10 acre, this 10 acre parcel has been reduced to 3.43 acres of developable land.

It is our request that the City Council recognize that we have already met or exceeded the requirements for a Sketch Plan Review as required in Section 11-28-C6. We have submitted sketch plans and received comments from the City, County and have incorporated them into the development plans now submitted. The Sketch Plan Review in the P.U.D. process allows for informed comments and does not start any statutory review process. The application fee for a Sketch Plan Review of \$400 and \$5,000 escrow does not provide any information or benefit to the applicant.

The plans submitted to date are detailed, as required in the next step of the Development Stage Plan Review. We believe the submission plans include all the items listed in 11-36F of the Code. The

Development Stage Plan is the formal process that requires detailed analysis by City Staff, a required public hearing by the Planning Commission, and formal action by the City to either approve, approve with conditions or deny the application. This is the step in the process that is binding to both the City and the applicant. This is the step needed to obtain financing for the project and prepare final building plans.

This applicant is requesting 1) the City Council determine that the past sketch plans submitted to the City to have fulfilled the requirements of the Sketch Plan Review. (2) We are requesting the City waive the fee requirement for Sketch Plan Review because the information that will be gained is informal and non-binding and does not start any process for statutory review of the project and instead apply fee to the Development Stage Plan Review. 3) Direct staff to accept application for Development Stage Review.

We thank you for your time to review our Appeal to City Staff decision requiring sketch plan review and sketch plan fees.

Thank you,

Warren Barsness

From: [Renee Christianson](#)
To: "Dale Runkle"
Cc: bbarsness@integra.net; [Eric Fagerberg](mailto:Eric.Fagerberg@jrhinc.com); jgcooper@jrhinc.com; [Michael B. Whitt](#)
Subject: Barsness Project
Date: Thursday, August 10, 2017 12:06:00 PM
Attachments: [Application - Non-Admin Land Use.pdf](#)
[Checklist - Amendments CUP PUD IUP Variance Site Plan.doc](#)
[Development Review Schedule 2017.pdf](#)

Dale & Barsness Team

As a follow up to our meeting yesterday, I am sending the application form, application checklist / submittal requirements, and the development review schedule. The property is currently zoned B1. If you are proposing to rezone the property to PUD (to allow flexibilities from city ordinance requirements), a PUD concept plan review by the Planning Commission is required. Attached is the information that would need to be submitted to move the project forward – to concept review by the Planning Commission and City Council. In addition to the above requirements, we would request a narrative / letter from the applicant that indicates a response to the purpose and intent of PUD as provided in the City Code:

- A. Provide for the establishment of PUD (planned unit development) zoning districts in appropriate settings and situations to create or maintain a development pattern that complies with the city comprehensive plan.*
- B. Allow for the mixing of land uses within a development when such mixing of land uses could not otherwise be accomplished under this title.*
- C. Provide for variations to the strict application of the land use regulations in this title in order to improve site design and operation, while at the same time incorporating design elements (e.g., construction materials, landscaping, lighting, etc.) that exceed the city's standards to offset the effect of any variations.*
- D. Promote a more creative and efficient approach to land use within the city, while at the same time protecting and promoting the health, safety, comfort, aesthetics, economic viability, and general welfare of the city.*
- E. Preserve and enhance natural features and open spaces.*
- F. Maintain or improve the efficiency of public streets and utilities.*
- G. Ensure the establishment of appropriate transitions between differing land uses.*

In regards to the current wetland permit application, we understand that it is your intent to withdraw the current application. We will need a formal notice regarding the withdrawal, if that is your intent. Thanks for meeting yesterday, it seems there was progress in terms of processing the wetland application.

Respectfully,

Renee Christianson

City of Elko New Market | Community Development Specialist
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Number	Date	Description of Transaction	C	Debit (-)	Credit (+)	Balance
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Warren Barsness General City Costs - Project #7

Number	Date	Description of Transaction	C	Debit (-)	Credit (+)	Balance
		Escrow Deposit			\$0.00	\$0.00
(WETLAND)	12/18/16	Bolton & Menk - Wetland Admin - Invoice #0198368		\$2,239.50		\$2,239.50
(WETLAND)	1/20/17	Bolton & Menk - Wetland Admin - Invoice #0199117		\$1,371.50		\$3,611.00
(WETLAND)	2/28/17	Bolton & Menk - Wetland Admin - Invoice #0199944_2.20.17		\$1,200.00		\$4,811.00
(DEVELOPMENT)	4/13/17	Campbell Knutson Invoice 2/28/17		\$60.00		\$4,871.00
(DEVELOPMENT)	4/6/17	Bolton & Menk - Invoice #0201017		\$3,473.50		\$8,344.50
(DEVELOPMENT)	4/27/17	Campbell Knutson Invoice 3/31/17		\$150.00		\$8,494.50
(WETLAND)	6/8/17	Bolton & Menk - Wetland Admin - Invoice #0203230		\$169.50		\$8,664.00
(DEVELOPMENT)	7/13/17	BMI Invoice #0204324_6.15.17		\$69.50		\$8,733.50
(WETLAND)	7/13/17	BMI Invoice #0204324_6.15.17		\$139.00		\$8,872.50
(WETLAND)	8/10/17	BMI Invoice #0205573_7.14.17		\$100.00		\$8,972.50
(WETLAND)	9/14/17	BMI Invoice #0206819		\$1,336.50		\$10,309.00
(WETLAND)	10/12/17	BMI Invoice #0208052		\$950.00		\$11,259.00
(MISC)	1/11/18	BMI Invoice #0211790_12.18.17		\$139.00		\$11,398.00