

C Community Development Committee

For the Metropolitan Council meeting of August 13, 2008

Item: 2008-124

ADVISORY INFORMATION

Date Prepared: July 22, 2008

Subject: Flexible Residential Development Ordinance Guidelines

Proposed Action:

That the Metropolitan Council:

1. Adopt the following guidelines to be used by Diversified Rural Area communities with a Long-Term Wastewater Service Area (*2030 Water Resources Management Policy Plan*) designation if they choose to implement flexible residential development ordinances:
 - a. Provide a purpose within the ordinance that describes the need to reserve land resources for efficient future urbanization when appropriate infrastructure is available to support that development.
 - b. Describe the characteristics of the land required for future urbanization and seek to preserve tracts of land in a size and configuration capable of supporting future development (for example, non-hydric soils, location in relation to existing development, etc.).
 - c. Allow no more than 25% of the developable land in a project to be developed. For the purposes of future urbanization, larger future urbanization parcels should be reserved, limiting the cluster to a development area that covers a minority of the area.
 - d. Require that the parcel(s) set aside for future urbanization be covered by a temporary development agreement or deed restriction, rather than a permanent conservation easement or other permanent restriction.
 - e. Provide for the rezoning of the future urbanization parcel to a residential zoning classification at densities consistent with Council policy at such time that urban services are available to the parcel.
 - f. Encourage the use of community wastewater treatment systems to serve the temporary cluster and to allow for smaller lot sizes within the development.

2. Direct staff:
 - a. to distribute a handout detailing the flexible residential development ordinance guidelines to all affected communities and to work with communities as they develop their individual ordinances; and
 - b. to amend the *Local Planning Handbook* to include the flexible residential development ordinance guidelines and an explanation of the Council's action on this topic.

Summary of Committee Discussion / Questions:

At the Community Development Committee (CDC) meeting on July 21, 2008, Local Planning Assistance Manager Phyllis Hanson presented a brief background of the history on this topic, previous CDC meeting actions, and the proposed guidelines. Committee Chair Natalie Haas Steffen requested that the Committee review the updated report from staff, which contains some wording changes.

Committee Member Georgeanne Hilker asked whether staff has been working with the City of Hugo and how these guidelines will work for them. Hanson responded that staff has had discussions with Hugo regarding their long-term service area for wastewater treatment and will continue to work with them to further refine the appropriate post-2030 urban service area.

Committee Member Tony Pistilli inquired about the reason for removing the word “contiguous” from the guidelines. Chair Steffen and Hanson explained that the word could be confusing because expansion of the MUSA previously required that communities only use land that is contiguous to the existing service area, but the Council now allows for more flexibility.

The Committee voted unanimously to recommend approval of the proposed actions (9-0).

C Community Development Committee

Meeting date: July 21, 2008

ADVISORY INFORMATION

Date:	May 21, 2008
Subject:	Flexible Residential Development Ordinance Guidelines
District(s), Member(s):	All
Policy/Legal Reference:	Metropolitan Land Planning Act (Minn. Stat. § 473.175)
Staff Prepared/Presented:	Phyllis Hanson, Manager, Local Planning Assistance 651-602-1566 Guy Peterson, Community Development Div. Dir. 651-602-1418
Division/Department:	Community Development / Planning & Growth Management

Proposed Action

That the Metropolitan Council:

3. Adopt the following guidelines to be used by Diversified Rural Area communities with a Long-Term Wastewater Service Area (*2030 Water Resources Management Policy Plan*) designation if they choose to implement flexible residential development ordinances:
 - a. Provide a purpose within the ordinance that describes the need to reserve land resources for efficient future urbanization when appropriate infrastructure is available to support that development.
 - b. Describe the characteristics of the land required for future urbanization and seek to preserve tracts of land in a size and configuration capable of supporting future development (for example, non-hydric soils, location in relation to existing development, etc.).
 - c. Allow no more than 25% of the developable land in a project to be developed. For the purposes of future urbanization, larger future urbanization parcels should be reserved, limiting the cluster to a development area that covers a minority of the area.
 - d. Require that the parcel(s) set aside for future urbanization be covered by a temporary development agreement or deed restriction, rather than a permanent conservation easement or other permanent restriction.
 - e. Provide for the rezoning of the future urbanization parcel to a residential zoning classification at densities consistent with Council policy at such time that urban services are available to the parcel.
 - f. Encourage the use of community wastewater treatment systems to serve the temporary cluster and to allow for smaller lot sizes within the development.
4. Direct staff:
 - a. to distribute a handout detailing the flexible residential development ordinance guidelines to all affected communities and to work with communities as they develop their individual ordinances; and
 - b. to amend the *Local Planning Handbook* to include the flexible residential development ordinance guidelines and an explanation of the Council's action on this topic.

Background

The Diversified Rural Area Study Group was formed to provide direction on implementing the *2030 Regional Development Framework* (RDF) policies for Diversified Rural Areas. The study group focused on the role of flexible residential development ordinances, such as cluster ordinances and density bonuses, in the Diversified Rural Area, particularly in areas located in the Long-Term Service Area for regional wastewater.

Of the 51 Diversified Rural communities, 28 communities have land identified within the Long-Term Service Area for regional wastewater treatment. Development in these areas could potentially impact approximately 466,600 acres, or about 729 square miles of land in the region.

Staff recently undertook a study to review existing flexible development ordinances in Diversified Rural communities to better evaluate their impact on planning and development, and to determine whether application of the ordinances results in development patterns that are consistent with the Council's adopted policy plans. The results of this study show that many of the communities have implemented ordinances that are inconsistent with the Council's density policy for the Diversified Rural Area and that may also preclude future urban development and extension of urban services.

Rationale

The *2030 Regional Development Framework* (RDF) identifies 51 communities as wholly or partially falling into the Diversified Rural planning area. The RDF (p. 32) calls for communities in these areas to:

1. Accommodate growth not to exceed forecasts and clustered development not to exceed 1 unit per 10 acres. (The RDF defines density on page 49 as the number of dwelling units per net residential acre of land.)
2. Plan development patterns that will protect natural resources. Preserve areas where post-2030 growth can be provided with cost-effective and efficient urban infrastructure and accommodate growth without requiring the provision of regional urban services.
3. Protect the rural environment. Locally oversee the management and maintenance of alternative wastewater treatment systems such as community drainfields to avoid the environmental and economic costs from failed systems.
4. Adopt conservation subdivision ordinances, cluster development ordinances, or environmental protection provisions in land use ordinances.
5. Promote development practices and patterns that protect the integrity of the region's water supply.

Many communities have adopted flexible development ordinances applicable to areas within the Diversified Rural planning area, but not all of these ordinances are consistent with Council policies. Many allow gross densities greater than 1 unit per 10 acres and allow the development to use the land in a manner that would preclude accommodation of post-2030 growth and hinder the extension of future wastewater treatment. In many cases, flexible development ordinances result in what essentially is large-lot development, but with more residential units than would otherwise be permitted under conventional subdivision standards.

Staff has prepared guidelines to aid communities as they develop their individual flexible development ordinances. These guidelines are applicable to communities in the Diversified Rural Area that have all or part of their community falling within the Long-Term Wastewater Service area as designated in the *2030 Water Resources Policy Plan*. These guidelines will assist communities in ensuring that their flexible development ordinances are consistent with Council policies and metropolitan system plans.

Funding

Not applicable.

Known Support / Opposition

Over the last month, Council staff has met with representatives of the affected communities, Metro Cities, the Builders Association of the Twin Cities (BATC), the Minnesota Pollution Control Agency (MPCA), 1000 Friends of Minnesota, and the Minnesota Department of Natural Resources (DNR).

Council staff presented the proposed guidelines and answered questions about how the guidelines clarify Council policy, how they would fit in with different types of flexible development ordinances, and about the

Council's Long-Term Service Area for wastewater treatment. Staff and community representatives discussed collaborating to help communities to implement the proposed policy guidelines. In addition, Council staff will continue to meet with representatives from the MPCA and the DNR to discuss the different projects on which the agencies are working, where projects can be linked, and to collaborate with one another to help communities develop flexible development ordinances.

Flexible Residential Development Ordinance Guidelines for the Diversified Rural Area

July 2008

Background

The *2030 Regional Development Framework* (RDF)¹ indicates that land use patterns in Diversified Rural Area Communities “include a mix of a limited amount of large-lot residential and clustered housing with agriculture and other uses” (RDF p. 27). The RDF further states the communities in the Diversified Rural Area should preserve areas where post-2030 growth can be provided with cost-effective and efficient urban infrastructure and accommodate growth without prematurely requiring the provision of regional urban services. In addition, the *2030 Water Resources Management Policy Plan* (WRMPP) identifies areas for post-2030 wastewater investment and service. These areas are described in the text of the document as well as illustrated in Appendix E on a map titled *Regional Wastewater System Long-Term Service Areas*.

The existing regional wastewater treatment plants and the broader infrastructure efficiency of contiguous sewered development are predicated on a residential density² of three units per acre or greater (WRMPP p. 54). The Council’s planning strategies for Diversified Rural Areas call for communities in those areas to have land use plans that “[a]ccommodate growth not to exceed forecasts and clustered development not to exceed 1 unit per 10 acres” (RDF p. 32). However, the results of a recent study of “flexible residential development ordinances” employed in Diversified Rural Area communities show that some communities have implemented ordinances that permit activities that are in conflict with metropolitan system plans.³ Density bonuses, large-lot development, and open space preservation ordinances sometimes permit residential development at densities that will severely limit the ability of some communities to achieve (in the future) the minimum density requirement of at least three units per net developable residential acre that is necessary for future cost-effective and efficient regional wastewater treatment services.

The Council has developed guidelines for flexible residential development ordinances applied in communities in the Diversified Rural Area and identified as a Long-Term Service Area (LTSA) for regional wastewater services.

¹ This memorandum references the online versions of the *2030 Regional Development Framework* (as amended through December 14, 2006), the *2030 Water Resources Management Policy Plan* (with revised forecasts as of January 9, 2008), and the *Local Planning Handbook*.

² The Council defines “residential density” as the “number of dwelling units per net residential acre of land” (WRMPP p. 111). For planning purposes, the Council uses a standard calculation of net developable acres and net density to measure a community’s capacity to accommodate residential development.

The minimum density requirement is three units per net developable residential acre. Net residential acreage is calculated by subtracting from gross acres wetlands and water bodies, public parks and open spaces, arterial road right-of-way, and natural and other resources mapped and protected by local ordinances and in the comprehensive plan update. (*Local Planning Handbook* p. 3-5)

³ Under Minnesota Statutes sections 473.858, subdivision 1 and 473.865, subdivision 2, a local governmental unit cannot adopt any official control of fiscal device which is in conflict with its local comprehensive plans “or which permits activity in conflict with metropolitan system plans.” Official controls are:

ordinances and rules which control the physical development of a city, county, or town, or any part thereof or any detail thereof and implement the general objectives of the comprehensive plan. Official controls may include ordinances establishing zoning, subdivision controls, site plan regulations, sanitary codes, building codes, and official maps. (Minn. Stat. § 473.852, subd. 9)

The “metropolitan system plans” are the “transportation portion of the Metropolitan Development Guide, the policy plans, and capital budgets for metropolitan wastewater service, transportation, and regional recreation open space.” (Minn. Stat. § 473.852, subd. 8)

These areas are essentially staging areas for future urbanization, and so development ordinances and land use patterns should reflect as much and not preclude future development on appropriate lands in those areas. A purpose of flexible residential development ordinances in these areas should be to preserve land for post-2030 growth and to accommodate the future extension of regional urban services.

Communities should study and assess their landscapes to refine their development priorities. There may be areas within the community that contain an abundance of sensitive natural resources or that the community has identified as a greenway or conservation corridor. These areas may not be most suitable for future urbanization as the capability of the land to support development is low and constrained. In these cases, open space development or cluster development may be adapted to protect those resources to meet the community's goals.

These guidelines are not intended to replace the work that has been done by numerous communities and organizations in developing flexible development ordinances. Rather, these guidelines are intended to be used along with those methods and standards for the varying types of flexible development ordinances.

Guidelines for Flexible Residential Development Ordinances⁴

Areas immediately beyond the current urban services boundary within the LTSA are considered temporarily rural. Residential development ordinances in these areas should limit densities to one unit per 10 acres, or allow the clustering of dwellings in a manner that will reserve land for future sewered development, in addition to protecting any sensitive resources that may exist. Ordinances providing for residential clustering in the above-described areas should take the following guidelines in consideration when developing or adapting flexible residential ordinances for these areas.

1. Provide a purpose within the ordinance that describes the need to reserve land resources for efficient future urbanization when appropriate infrastructure is available to support that development.

Defining the purpose and intent of any ordinance provides the local unit of government with a basis for the regulations that follow. Clearly stating that a purpose of the flexible residential development ordinance is to reserve land resources for future development will allow potential applicants to better understand the regulations as they apply to individual properties. The local unit of government may also wish to apply aspects of an open space ordinance to other areas within the community that have different characteristics that they wish to set aside or protect; this distinction should also be stated and defined within the purpose section of the ordinance.

2. Describe the characteristics of the land required for future urbanization and seek to reserve tracts of land in a size and configuration capable of supporting future development (for example, non-hydric soils, location in relation to existing development, etc.).

The ordinance should define the lands that are considered "buildable," as these lands are considered the most suitable for development. Removing lands that are restricted due to federal and state regulations, as well as any features that the local government has defined for protection or conservation, will allow the community to preserve sensitive natural features and to ensure the availability of land to accommodate future development.

Density bonuses are commonly used by local communities as a means to encourage developers to use a non-conventional development ordinance. However, without specifying the types of lands that are required for future development, many communities have inadvertently encouraged large-lot development in which the private lots often consume most of the developable land and leave little remaining developable acreage available for future development. The lots within the development are often too large to efficiently extend urban-level services to the development.

3. Allow no more than 25% of the developable land in a project to be developed. For the purposes of future urbanization, larger future urbanization parcels should be reserved, limiting the cluster to a development area that covers a minority of the area.

To ensure that land is available for future development, the local unit of government should specify the

⁴ Minn. Stat. § 473.854 authorizes the Council to "prepare and adopt guidelines and procedures relating to the requirements of sections 462.355, 473.175, and 473.851 to 473.871 [the Metropolitan Land Planning Act] which will provide assistance to local governmental units in accomplishing the provisions of [the Act]."

maximum amount of developable land that is allowed to be used for the initial residential development. For the purposes of future urbanization, communities should limit the initial development envelope to no more than 25% of the total buildable area of the project parcel.

4. Require that the parcel(s) set aside for future urbanization be covered by a temporary development agreement or deed restriction, rather than a permanent conservation easement or other permanent restriction.

In a typical open space development, with the purpose of long-term preservation of natural resources, communities usually ensure the long-term maintenance and protection of sensitive natural resources through the placement of a permanent conservation easement that is often conveyed to a trust or public entity. When seeking to reserve land for future development, however, the community should not place permanent restrictions on the capability of the land to be developed. Instead, communities should place on the future urbanization parcel temporary development agreements or deed restrictions that contain “triggers” for the removal of such restrictions. The restrictions prevent the land from being developed before urban services are available. The ordinance should also detail the “triggers,” or conditions, under which such restrictions would be removed and the parcel made available for development. Such conditions may include the rezoning of the parcel, a change in the comprehensive plan, and the provision of urban infrastructure and utilities, among others deemed appropriate by the local unit of government.

Portions of the development that are designated as undevelopable or are to be set aside for recreational use or conservation purposes, on the other hand, should be either dedicated to the public or covered with a permanent conservation easement or permanent deed restriction.

5. Provide for the rezoning of the future urbanization parcel to a residential zoning classification at densities consistent with Council policy at such time that urban services are available to the parcel.

To ensure the efficient utilization of urban services, communities should allow for the rezoning of the future urbanization parcel to densities that, at a minimum, are consistent with Council policy. This rezoning should only occur in conjunction with or after the provision of urban services, when the land is served by the infrastructure required to support higher density uses.

6. Encourage the use of community wastewater treatment systems to serve the temporary cluster and to allow for smaller lot sizes within the development.

Clustering homes on smaller lots facilitates the connection of those homes to future sewer services and ensures that these services are being efficiently and economically utilized. These small lot sizes, however, are often too small to provide the necessary space for individual sewage treatment systems on each lot, in addition to a back-up site in case of primary system failure. Using a community treatment system resolves that issue: by employing a shared drainfield located in a common open space area, individual lots no longer need to be large enough to accommodate two on-site septic treatment sites. The use of smaller lot sizes will not only facilitate future connection to sewer services, once they become available, but also will reserve more developable land for future development.