

# FOWLER VILLAGE COUNCIL



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Vernon J. Thelen  
President Pro-Tem  
Mike Porter  
Trustees  
Codi Schrauben  
Brad Rhynard  
Dan Schmitt  
Rick Fink  
Melissa Humphrey

Treasurer  
John C. Rademacher  
Clerk  
Rhonda Feldpausch  
DPW Employees  
Vern Feldpausch  
Brad Smith

DATE: AUGUST 31, 2020

The Fowler Village Council met for a Special Meeting on Monday, August 31, 2020 at 7:00 PM with President Vernon J. Thelen presiding.

PLEDGE OF ALLEGIANCE AND ROLL CALL

The pledge of allegiance was given to the flag. Roll was called and a quorum reported. Present were: Codi Schrauben, Brad Rhynard, Dan Schmitt, John Rademacher, Rick Fink, Melissa Humphrey, and Mike Porter. Absent: None.

VILLAGE PERSONNEL

None.

VISITORS

None.

AGENDA

**BOARD ACTION:** Trustee Humphrey moved, supported by Trustee Schrauben, to approve the agenda. Motion carried.

COMMUNITY DEVELOPERS, INC. SPECIAL LAND USE PERMIT APPLICATION

**BOARD ACTION:** Trustee Fink moved, supported by Trustee Rhynard, to adopt Resolution #2020-04; a resolution approving the Special Land Use Permit submitted by Community Developers, Inc. which reads as follows:

RESOLUTION NO. 2020-04

RESOLUTION TO APPROVE A SPECIAL LAND USE PERMIT FOR TWO-FAMILY DWELLINGS AS A PART OF A PLANNED UNIT DEVELOPMENT ("PUD") BY COUNTRY PINES ESTATE II CONDOMINIUMS

WHEREAS, section 5.3 of the Village of Fowler's Zoning Ordinance provides that land and/or buildings in the R-1 District may be used for two-family dwellings when approved as a Special Land Use and developed as part of a PUD under Chapter 10;

WHEREAS, John Rademacher, Secretary/Treasurer for Community Developers, Inc., submitted a Special Use Permit Application to the Village of Fowler on August 11, 2020, for real property located at 900 Norway Drive, parcel number 19-041-011-500-005-67 (the "Application");

WHEREAS, parcel number 19-041-011-500-005-67 is a new parcel number, as of July 14, 2020, combining parcels 19-041-011-500-005-65 and 19-041-011-597-009-00;

WHEREAS, the Application requests a special land use permit to construct one single-family and eight two-family dwellings as a part of the Country Pines Estate II Condominium PUD;

WHEREAS, the Planning Commission conducted a public hearing concerning the Application on August 31, 2020, and issued a recommendation to approve the special land use permit request;

WHEREAS, the Village Council has considered the potential benefits, challenges, and costs of permitting the special land use, as well as the recommendation from the Planning Commission, and has determined that allowing eight two-family dwellings as a part of the Country Pines Estate II Condominium PUD is in the best interest of the public health, safety, and welfare;

WHEREAS, the Village Council has also considered whether the proposed use conforms with the standards for Special Land Uses in Section 12.4 of the Village of Fowler Zoning Ordinance, and

WHEREAS, the Village Council wishes to approve a special land use permit for two-family dwellings as a part of the Country Pines Estate II Condominium PUD.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Application is hereby approved.



COMMUNITY DEVELOPERS, INC PLANNED UNIT  
DEVELOPMENT PERMIT APPLICATION

2. Any and all resolutions or parts of resolutions inconsistent with this Resolution are hereby repealed to the extent necessary to give this Resolution full force and effect.

A roll call vote on the foregoing resolution was taken and was as follows:  
AYES: Schrauben, Rhynard, Schmitt, Porter, V. Thelen, Fink, Humphrey  
NAYS: None. Motion carried.

**BOARD ACTION:** Trustee Fink moved, supported by Trustee Schmitt, to adopt resolution #2020-05; a resolution to amend the Village Zoning Map and conditionally approve preliminary site plan which reads as follows:

**RESOLUTION TO ADOPT ORDINANCE AMENDING THE VILLAGE ZONING MAP AND CONDITIONALLY APPROVING PRELIMINARY SITE PLAN**

WHEREAS, pursuant to the Michigan Zoning Enabling Act, 2006 PA 110, ("MZE") the Village of Fowler ("Village") has authority to adopt and amend zoning ordinances regulating the use of land in the Village; and

WHEREAS, Community Developers, Inc. is the owner of real property located at 900 Norway Drive, Fowler, MI 48835, legally described as: PART OF THE NORTHEAST ¼ OF SECTION 11, T7N, R4W, VILLAGE OF FOWLER, CLINTON COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 11; THENCE S01°09'48"W 708.83 FEET ALONG THE EAST LINE OF SAID SECTION TO THE POINT OF BEGINNING; THENCE S01°09'48"W 372.37 FEET ALONG THE EAST LINE OF SAID SECTION; THENCE N88°50'12"W 208.00 FEET; THENCE S01°09'48"W 105.00 FEET; THENCE N84°52'34"W 170.07 FEET; THENCE N78°13'44"W 67.32 FEET; THENCE N79°40'29"W 172.51 FEET TO THE CENTER OF THE WALTZ AND STURGIS COUNTY DRAIN; THENCE ALONG THE CENTER OF THE WALTZ AND STURGIS COUNTY DRAIN, N03°24'29"E 392.51 FEET, AND N87°57'24"E 599.72 FEET TO THE POINT OF BEGINNING. CONTAINING 5.72 ACRES.

(Parcel ID # 19-041-011-500-005-67 effective 7/14/2020) (the "Property"); an

WHEREAS, the Property is currently zoned as R-1 Single-Family Residential, and John Rademacher, Secretary and Treasurer for Community Developers, Inc. ("Applicant"), has requested approval of a Planned Unit Development project consisting of a condominium development ("PUD Project"), a Special Use Permit, a Preliminary Site Plan, and a zoning map amendment from the R-1 Zoning District to the PUD Zoning District; and

WHEREAS, the PUD application is complete and in compliance with the criteria set forth in Section 10.5 of the Village Zoning Ordinance; and WHEREAS, in compliance with the notice requirements of the Michigan Zoning Enabling Act, Act 110 of 2006, MCL 125.3101 et seq. ("MZE"), the Village of Fowler Planning Commission held a public hearing on August 3, 2020, to consider, review, and allow public comment on the Preliminary Site Plan, PUD Project, and zoning map amendment; and

WHEREAS, following the public hearing, the Planning Commission recommended approving the Preliminary Site Plan, PUD Project and zoning map amendment to the Village Council, subject to certain conditions set forth in the Planning Commission's meeting minutes; and

WHEREAS, the Village Council received the recommendation of the Planning Commission and conducted its own review of the PUD Project, Preliminary Site Plan, and zoning map amendment and record of the Planning Commission proceedings, including the recommendation; and

WHEREAS, the Village Council has determined that the PUD Project, Preliminary Site Plan, and zoning map amendment meet the qualifying conditions contained in Section 10.2, meet the standard for preliminary approval under Section 10.10 of the Village Zoning Ordinance, and are consistent with the Village's Master Plan; and

WHEREAS, the Village Council has determined that preliminarily approving the PUD Project, Preliminary Site Plan, and zoning map amendment is in the best interest of the health, safety and welfare of Village residents.

NOW, THEREFORE, the Village Council of the Village of Fowler, Clinton County, Michigan resolves as follows:

1. The Village Council grants conditional preliminary approval of the PUD Application for Rezoning and the Preliminary Site Plan for a PUD Zoning District



submitted by Community Developers, Inc. The preliminary approval is subject to the following conditions:

- a. The proposed Master Deed for Country Pines Estates II Condominium includes, within the boundary of the condominium project, land which is currently described as Unit 9 of Country Pines Estates Condominium. Therefore, prior to recording any proposed Master Deed for Country Pines Estates II Condominium, the Applicant must cause the existing Master Deed for Country Pines Estates Condominium of record to be properly amended to remove Unit 9 from the existing condominium project before the land comprising Unit 9 can be included in Country Pines Estates II Condominium.
- b. Applicant must obtain a Special Use Permit from the Village for the two-family dwellings in the proposed PUD.
2. The proposed PUD Agreement between the Applicant and the Village is approved, and the Village President is authorized to execute the PUD Agreement following the Planning Commission's approval of the Final Development Plan, and subject to any revisions recommended by the Village Attorney prior to execution.
3. To accomplish the rezoning, an Ordinance Amendment to the Village Zoning Map (the "Ordinance," attached as Exhibit A) is hereby adopted; provided, however, that the rezoning is not effective until (1) Applicant accepts the conditions in Paragraph 1 in writing; and (2) Applicant satisfies all of the conditions in Paragraph 1.
4. The Ordinance shall be filed with the Village Clerk.
5. The Village Clerk shall publish notice of ordinance amendment adoption in a newspaper of general circulation in the Village within fifteen (15) days (Exhibit B).
6. Any and all resolutions that are in conflict with the Resolution are hereby repealed, but only to the extent to give this Resolution full force and effect.

EXHIBIT A  
VILLAGE OF FOWLER  
ZONING ORDINANCE AMENDING  
VILLAGE ZONING MAP  
THE VILLAGE OF FOWLER ORDAINS:

Section 1. Purpose.

The Village of Fowler (the "Village") adopts the following amendments for the health, safety and welfare of Village residents.

Section 2. Amending Zoning District Map.

Subject to Section 3 of this Ordinance, the Village amends the Zoning District Map of the Village Zoning Ordinance ("Zoning Map") to change the zoning symbols and indications as shown on the Zoning Map for certain real property located in the Village, as described and depicted below. Corresponding regulations and land uses are established for the real property described below. Subject to Section 3 of this Ordinance, the Village Zoning Map is amended to change from the R-1 (Single Family Residential) zoning designation and use district to the PUD (Planned Unit Development) zoning designation and use district for Parcel No. 19-041-011-500-005-7, located at 900 Norway Drive, Fowler, MI 48835 and legally described as follows:

PART OF THE NORTHEAST ¼ OF SECTION 11, T7N, R4W, VILLAGE OF FOWLER, CLINTON COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 11; THENCE S01°09'48"W 708.83 FEET ALONG THE EAST LINE OF SAID SECTION TO THE POINT OF BEGINNING; THENCE S01°09'48"W 372.37 FEET ALONG THE EAST LINE OF SAID SECTION; THENCE N88°50'12"W 208.00 FEET; THENCE S01°09'48"W 105.00 FEET; THENCE N84°52'34"W 170.07 FEET; THENCE N78°13'44"W 67.32 FEET; THENCE N79°40'29"W 172.51 FEET TO THE CENTER OF THE WALTZ AND STURGIS COUNTY DRAIN; THENCE ALONG THE CENTER OF THE WALTZ AND STURGIS COUNTY DRAIN, N03°24'29"E 392.51 FEET, AND N87°57'24"E 599.72 FEET TO THE POINT OF BEGINNING. CONTAINING 5.72 ACRES.

Section 3. Effective Date of Zoning Map Amendment.

The rezoning is not effective until the owner of the property ("Applicant") accepts and satisfies all of the following conditions:



a. The proposed Master Deed for Country Pines Estates II Condominium includes, within the boundary of the condominium project, land which is currently described as Unit 9 of Country Pines Estates Condominium. Therefore, prior to recording any proposed Master Deed for Country Pines Estates II Condominium, the Applicant must cause the existing Master Deed for Country Pines Estates Condominium of record to be properly amended to remove Unit 9 from the existing condominium project before the land comprising Unit 9 can be included in Country Pines Estates II Condominium.

b. Applicant must obtain a Special Use Permit from the Village for the two-family dwellings in the proposed PUD.

Section 4. Reversion to Prior Zoning.

If a Final Development Plan for the proposed PUD Project is not submitted and approved within twelve (12) months after the date of this Ordinance, then the zoning of the subject property will automatically revert to R-1, Single-Family Residential.

Section 5. Validity and Severability.

Should any portion of this Ordinance be found invalid for any reason, such holding shall not be construed as affecting the validity of the remaining portions of this Ordinance.

Section 6. Repealer Clause.

Any ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 7. Effective Date.

This Ordinance shall take effect seven days after publication as provided by law.

EXHIBIT B  
NOTICE OF ADOPTION OF  
ORDINANCE AMENDING  
VILLAGE ZONING MAP

To the residents and property owners of the Village of Fowler, Clinton County, Michigan, and all other interested persons:

On August 31, 2020, the Village of Fowler (the "Village") adopted an Ordinance Amending Village Zoning Map ("Ordinance"). The following is a summary of the Ordinance. A true copy of the Ordinance, including all exhibits, is available for inspection at the Village Hall, 225 Main Street, Fowler, Michigan.

Section 1. Purpose. This section provides that the Village is amending the Zoning District Map for the health, safety and welfare of Village residents.

Section 2. Amending Zoning District Map. This section amends the Zoning District Map to change the following parcel from the R-1 (Single Family Residential) zoning designation and use district to the PUD (Planned Unit Development) zoning designation and use district:

Parcel Identification Number:19-041-011-500-005-67

Address or Description: 900 Norway Drive, Fowler, MI 48835

Section 3. Effective Date of Zoning Map Amendment. This section provides that the rezoning will not take effect until certain conditions are accepted and satisfied.

Section 4. Reversion to Prior Zoning. This section provides that if a Final Development Plan is not submitted and approved within 12 months, then the zoning of the subject property will automatically revert to R-1, Single-Family Residential.

Section 5. Validity and Severability. This section provides that if any portion of the Ordinance is found invalid for any reason, such holding shall not be construed as affecting the validity of the remaining portions of this Ordinance.

Section 6. Repealer Clause. This section provides that any ordinances or parts of ordinances in conflict with the Ordinance are hereby repealed only to the extent necessary to give the Ordinance full force and effect.

Section 7. Effective Date. This section provides that the Ordinance shall take effect seven days after publication.

A roll call vote on the foregoing resolution was taken and was as follows:

AYES: Schrauben, Rhynard, Schmitt, Porter, V. Thelen, Fink, Humphrey

NAYS: None. Motion carried.



**BOARD ACTION:** Trustee Fink moved, supported by Trustee Porter, to approve the Planned Unit Development Agreement which will be executed following the Planning Commission's approval of the Final Development Plan, subject to any revisions recommended by the Village Attorney and which currently reads as follows:

PLANNED UNIT DEVELOPMENT AGREEMENT

Country Pines Estates II – Village of Fowler

This Planned Unit Development Agreement is made the 31st day of August, 2020, between the Village of Fowler, a Michigan general law village, of 225 N. Main Street, Fowler, MI 48835, (the "Village") and Community Developers, Inc., a Michigan corporation, of 880 Cedar Trail, Fowler, MI 48835 (the "Developer").

RECITALS

- A. The Developer owns approximately 5.72 acres located in the Village of Fowler, Clinton County, Michigan, legally described in the attached Exhibit A, (the "Property");
- B. The Property is currently zoned R-1, Single-Family Residential;
- C. The Developer applied to the Village to develop the Property as a Planned Unit Development ("PUD") pursuant to Chapter 10 of the Village's Zoning Ordinance;
- D. The Village has preliminarily approved the PUD, subject to certain conditions;
- E. The Developer has submitted the Final Development Plan to the Planning Commission depicting the scope of the development dated \_\_\_\_\_, 2020, and on file with the Village (the "Project," attached as Exhibit B and incorporated by reference);
- F. In preliminarily approving the PUD, the Village Planning Commission (the "Planning Commission") and Village Council (the "Council") adopted certain conditions of approval, which were relied upon by the Village Planning Commission and Village Council in granting approval;
- G. The conditions of approval of the PUD are set forth in the Resolution and Ordinance attached as Exhibit C;
- H. In addition to Exhibit C, additional conditions of approval may also be included within the minutes of relevant meetings of the Planning Commission and/or Council (the "Minutes");
- I. In addition to Exhibit C, any representations and promises made by the developer during the zoning review and approval process for the PUD (whether verbal or in writing) shall also be additional conditions of approval if deemed appropriate by the Village (the "Developer's Representations"; together Exhibit C, the Minutes and Developer's Representations are the "Conditions");
- J. The Developer wishes to develop the Property in accordance with the Final Development Plan and all approvals granted by the Village, subject to the Conditions;
- K. The parties wish to memorialize their understanding in this Agreement.

NOW WHEREFORE, in exchange for the mutual promises set forth hereinafter, it is agreed that:

1. Compliance with all Laws, Ordinances, Approvals, and Permits. The Developer agrees to construct, install, and operate the Project in accordance with the approvals received from the Village and all other governmental entities with applicable jurisdiction. In constructing and operating the Project, the Developer agrees to comply with all state and local laws, ordinances, and regulations, as well as the terms and conditions of this Agreement.
2. Compliance with all Village Approvals. The Developer will design, develop, construct and operate the Project in accordance with all approvals and conditions of approval received from the Village and/or its various bodies, officers, departments and commissions including, without limitation, the Final Development Plan approved pursuant to the Village Zoning Ordinance, as well as the terms and conditions of this Agreement. The parties agree that no variances from the Zoning Board of Appeals may be sought from any approved PUD plan or conditions imposed in the approval granted by the Village.
3. Project.
  - a. Single Phase. The Project shall consist of one phase, as depicted on the Final Development Plan.



- b. Reversion of Zoning. If for any reason the Final Development Plan is not submitted and approved within twelve (12) months from the date of this Agreement, then the zoning of the Property automatically reverts to R-1, Single-Family Residential.
- c. Final Development Plan. No building permits will be issued and no construction or improvements for the Project may commence until the Final Development Plan is approved by the Village and this PUD Agreement is executed by the Village and the Developer.
- d. Amendment to Final Development Plan. Any amendments to the Final Development Plan must comply with the Village Zoning Ordinance, including Section 10.12 ("Changes to an Approved PUD").
4. Master Deed. The Developer has submitted for the Village's approval the Master Deed, including Exhibit A, the Bylaws of the Association (the "Association"), and Exhibit B, the Condominium Subdivision Plan (the "Condominium Documents"). Upon approval by the Village, the Master Deed shall be recorded with the Clinton County Register of Deeds. The Project shall be built in accordance with the Condominium Subdivision Plan.
5. Common Areas and Maintenance. The Condominium Subdivision Plan for the Project includes, as a general common element, open space surrounding the condominium units (the "Common Areas"). The Condominium Documents shall provide for the permanent maintenance of the Common Areas by the Association, minimum insurance requirements by the Association, adequate mechanisms to force financial participation by members of the Association and restrictions on amending the Condominium Subdivision Plan to remove the Common Areas. A minimum of 20% of the Project shall be Common Areas.
6. Streets. Exhibit B shows the proposed public street for the Project (the "Street"). The Developer shall construct the Street. Upon the construction, inspection and approval of the Street by the Village, the Street shall be conveyed to the Village through proper conveyance and recordings. The Developer shall execute and deliver to the Village all documentation necessary to effectuate the conveyance.
7. Stormwater. The Developer shall apply for and obtain all necessary approvals of the Clinton County Drain Commission, Michigan DEQ, and any other required governmental entity relative to the construction of the stormwater drainage system.
8. Public Utilities. Public electricity, telephone, gas water, and sanitary sewer service (the "Public Utilities") shall be provided by the Developer to all Condominium Units in the Project. Public utilities shall be installed and maintained underground as required by the Village. Prior to the issuance of any building permits for the Project, the Developer shall provide all public easements reasonably necessary, in such locations approved in advance by the utility provider and the Village. All reasonably necessary easements for water and sanitary sewer service shall be granted to the Village.
9. Landscaping. Landscaping shall be installed on the Project in accordance with Exhibit B. The Association shall be responsible for maintaining all of the landscaping including the Common Areas, which shall include mowing of all turf areas, trimming trees and shrubs, removing and replacing all deceased or dead plants.
10. Sidewalks. Sidewalks shall be installed in accordance with the Condominium Subdivision Plan.
11. Architecture. Architectural standards shall be in accordance with the Condominium Documents and the PUD.
12. Violation of the Agreement. The parties acknowledge that monetary damages for a breach of this Agreement would be inadequate to compensate the parties for the benefit of their bargain. Accordingly, the parties expressly agree that in the event of a violation of this Agreement, the non-breaching party shall be entitled to receive specific performance. Nothing herein shall be deemed a waiver of the Village's rights to seek enforcement of this Agreement or zoning approvals previously granted, to the extent otherwise authorized by law. Notwithstanding the foregoing, in the event there is a violation(s) or alleged violation(s) of the terms or conditions of this Agreement by the developer, then the Village shall serve written notice upon the Developer setting forth the manner in which the Developer has violated the Agreement, and such notice shall include a demand that the



violation(s) be cured within a reasonable time period. Violation of this Agreement shall be deemed a nuisance per se. Should a court of competent jurisdiction find the Developer to be in breach of any material provision of this Agreement or the PUD approval (in whole or in part) then the Developer shall be required to reimburse the Village reasonable attorney fees and costs in enforcing this Agreement or the PUD approvals. In addition, the Village shall have the right to utilize stop work orders as appropriate for any violations. All of the Village's remedies hereunder shall be deemed cumulative.

13. Amendment. This Agreement may only be amended in writing executed by all parties.

14. Recording. The obligations under this Agreement are covenants that permanently run with the land and shall bind all successors in title in the Property (including any and all portions thereof) including, but not limited to, successor developers, and the purchasers of any individual lot, parcel, or unit within the Property. It is the parties' intent that this Agreement will be recorded with Clinton County Register of Deeds. The Developer shall bear the costs of recording.

15. Headings and Recitals. The parties acknowledge and agree that the headings and subheadings are for convenience only and shall have no bearing or effect. The parties acknowledge and agree, however, that the recitals hereto are and shall be considered an integral part of this Agreement necessary for its correct understanding and interpretation.

16. Miscellaneous.

a. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions and this Agreement shall be construed in all respects as if the invalid or unenforceable provision were omitted.

b. Notices. Any and all notices permitted or required to be given shall in writing and sent by first class mail or personal delivery at the address given above.

c. Waiver. No failure or delay on the part of any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude further exercise thereof or any other right, power or privilege. The rights and remedies provided for in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

d. Governing Law. This Agreement is being executed and delivered and is intended to be performed in the state of Michigan and shall be construed and enforced in accordance with, and the rights of the parties governed by, the laws thereof.

e. Authorization. The parties affirm that their representative executing this Agreement on their behalf are authorized to do so (and can fully bind their respective party) and that all resolutions or similar actions necessary to approve this Agreement have been adopted and approved.

f. Fees. The Developer shall pay and all applicable building permits, zoning and other fees to the Village.

Motion carried.

ADJOURNMENT

**BOARD ACTION:** Trustee Fink moved, supported by Trustee Rhynard, to adjourn the meeting. Motion carried.

Adjournment: 7:23 PM

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Rhonda Feldpausch, Village Clerk