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TO: Richard Lyke, Chairperson, Omsted County PAC
 FROM: Robert W. McIntosh *rum*
 DATE: March 22, 1999
 SUBJECT: Flexibility in Interpreting the Land Use Plan

At the PAC meeting of February 25, 1999 I was asked to provide the PAC with a memo dealing with the question of how much flexibility the PAC had in interpreting the Land Use Plan. The issue arose in the context of a discussion of General Development Plan #99-1 by Dan Fitzpatrick, et al. The precise issue concerned the density of development not being consistent with the text of the Land Use Plan.

At page 61 of the Land Use Plan there is discussion of the principles to guide the development of the Plan in Suburban Development Areas. The first principle provides that "The Land Use Plan states that suburban development area density should be determined by site specific conditions...." (Emphasis added) The paragraph goes to read "In no case should the overall density be more than one unit per two acres. Where site limitations do not restrict the development pattern, density should be a minimum of 3.5 acres per unit...." (Emphasis added) The word "should" is not mandatory. Furthermore, the longer underlined portion suggests what is to happen if site limitations do not restrict the development pattern, but it does not suggest what is to be the outcome if site limitations do restrict the development pattern. All this points up the fact that the words themselves suggest an ability to interpret principles that are capable of more than one meaning with some flexibility, depending on facts applicable to the site.

The definition of "comprehensive plan" (which is the statutory description of what we have chosen to call our Land Use Plan) in Minn. Stat. § 394.22, subd. 9 describes the plan as the policies, statements, goals, and interrelated plans ... that constitute the guide for future development. Subd. 6 of that statute defines "official controls" as the legislative enactments based on the principles in the comprehensive plan. They are more specific and often provide penalties for noncompliance. The statutory definitions, thus, give credence to the view that there is more flexibility in interpreting the more general "guides."

Finally, a comprehensive plan's designation of land uses is advisory and does not unalterably bind a city. *Amcon Corp. v. City of Eagan*, 348 NW2d 66,74 (Minn.1984). A comprehensive plan is a guide to community development, rather than a land-use control.

When the facts of a case can lead to different conclusions as to whether particular principles in the Land Use Plan are violated or not, in my opinion the PAC does have the authority to interpret those principles with some flexibility, while preserving the spirit of the guidelines.

Cc: Phil Wheeler, Director, Planning