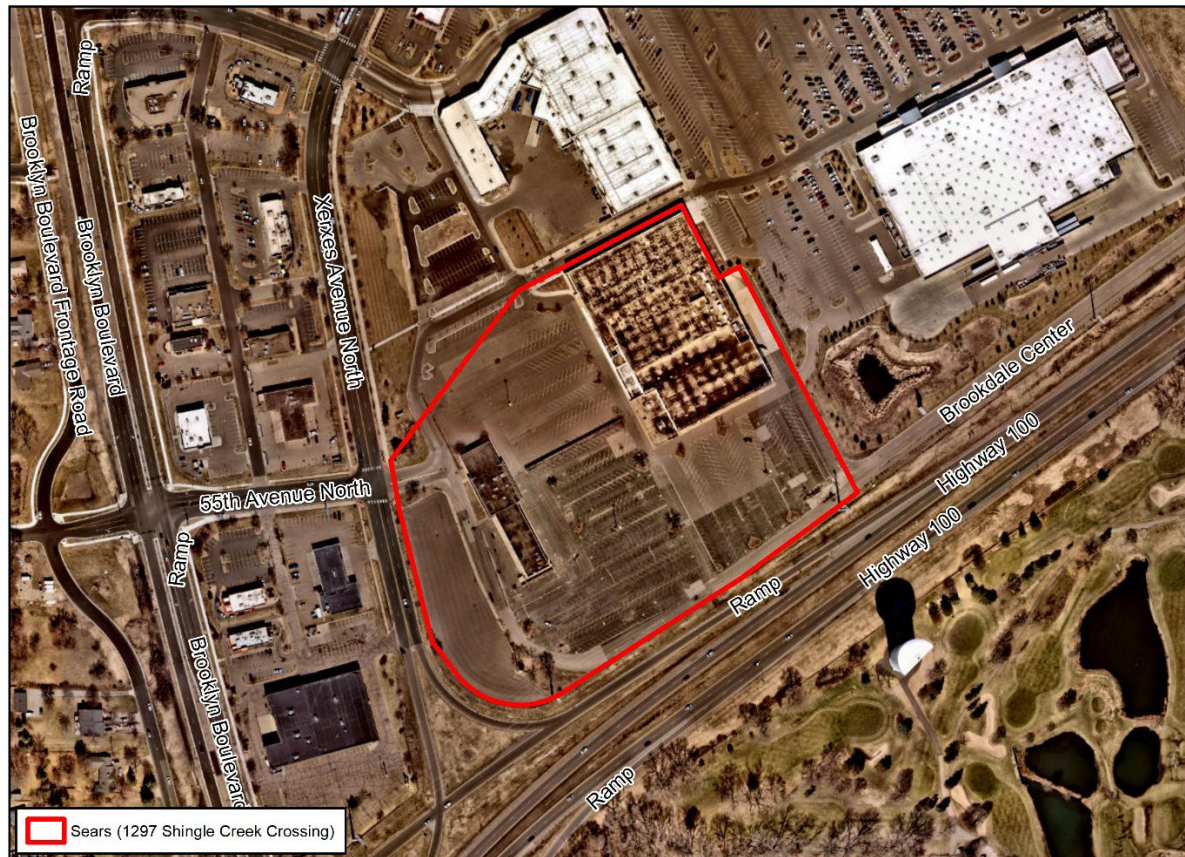


**Planning Commission Report**  
**Meeting Date: June 13, 2024**

- Application Filed: 05/14/2024
- Review Period (60-day) Deadline: 07/13/2024
- Extension Declared: No
- Extended Review Period Deadline:

**Application No.** 2024-009  
**Applicant:** City of Brooklyn Center  
**Address | PID:** 1297 Shingle Creek Crossing | PID: 03-118-21-44-0026  
**Request:** Rezoning



**Map 1.** Subject Property Location.

**BACKGROUND AND REQUESTED ACTION**

The Sears Department Store and Auto Center, located at 1297 Shingle Creek Crossing (“the Subject Property”) closed in 2018, and is the last remaining piece of the former Brookdale Mall. The Property Owner, Transformco, conducted a market analysis in 2020, and in partnership with local brokers, to determine a feasible re-use for the Subject Property. A request for proposals (RFP) was circulated thereafter and Scannell Properties, Inc. was ultimately selected, along with their proposal for a speculative light industrial redevelopment at the Subject Property.

The City of Brooklyn Center City Council held a number of concept reviews with Scannell Properties, Inc. of which emphasized that any reuse provide for a greater mix of uses, a site layout and design that

would add value to the adjacent Shingle Creek Crossing shopping center, and an overall high finish level on the buildings, with four-sided architecture and a focus on enhancing the Highway 100 frontage.

In August 2021, City Council authorized an application to the Metropolitan Council's Tax Base Revitalization Account (TBRA) for funding to assist with environmental remediation on the Subject Property and for asbestos and petroleum remediation. Although the City did not receive funding in the first round, funding was awarded in January 2023 in the amount of \$863,400. Additional funding was also awarded in the amount \$163,000 from the Hennepin County Environmental Response Fund (ERF) for assistance in preparing a Phase I Environmental Site Assessment (ESA), a Phase II ESA, Response Action Plan (RAP), and associated consulting and fees with the Minnesota Pollution Control Agency (MPCA).

In August 2022, City Council approved Planning Commission Application No. 2022-004 (City Council Resolution No. 2022-76), which granted approval to re-zone the Subject Property from what was then PUD/C2 (Planned Unit Development/Commerce) District to PUD/MX-B (Planned Unit Development/Business-Mixed Use) District. This re-zoning, in addition to approvals to re-plat and a recommendation to re-guide the Subject Property under the 2040 Comprehensive Plan, were to provide a path for a speculative light industrial development totaling approximately 230,000-square feet between two buildings.

Although the City of Brooklyn Center had already adopted the 2040 Comprehensive Plan in 2019, which effectively re-guided the Subject Property to a new future land use designation of "Transit-Oriented Development" or "TOD," the City's zoning code, which was in the midst of a major update, had not yet been adopted. It should be noted that, in 2022, **PUDs were still considered re-zonings (ordinance amendments)**. The new Unified Development Ordinance, adopted in January 2023, now considers PUDs to be conditional use permits.

City staff continued to work with Scannell Properties, Inc. following their approval in August 2022; however, communication became more sporadic thereafter. By December 2022, Scannell Properties, Inc. indicated the market had shifted away from speculative light industrial type development projects to user-focused ones. They further indicated a financial infeasibility to forward the project unless a request for consideration of tax increment financing (TIF) were considered by the City. A work session was held with City Council on the requested TIF in July 2023 and a request to ratify the previously approved plat was approved, but contact with Scannell Properties, Inc. again faltered.

Due to the lack of communication and identified potential changes, including contemplated lot line adjustments and alterations to the approved site and building plan to the project following its approval in August 2022, the recommended Comprehensive Plan Amendment was never forwarded to Metropolitan Council. Scannell Properties, Inc. never executed on the Planned Unit Development Agreement approved by Council in August 2022, and the request for TIF was never forwarded.

In March 2024, City staff was contacted by another developer who was interested in taking over the project from Scannell Properties, Inc. and indicated that the Subject Property would be re-listed for sale. City staff was further contacted by other due diligence companies and attorneys seeking information on the project approved in August 2022 and what was needed to take over the project. Given this new information, City staff reviewed the Planned Unit Development provisions with the City Attorney and under the City's preceding zoning code (Section 35-355), which identified the following:

“If within 12 months following approval by the City Council of the development plan, no building permits have been obtained or, if within 12 months after the issuance of building permits no construction has commenced on the area approved for the PUD District, **the City Council may initiate rezoning of the property.**”

City staff held a work session with City Council on May 13, 2024—refer to Exhibit A. Although the discussion was non-binding, there appeared to be a general consensus of the three Councilmembers present that consideration for a re-zoning of the Subject Property from Planned Unit Development/Business Mixed-Use (PUD/MX-B) District to Transit-Oriented Development (TOD) District be forwarded to the Planning Commission.

City Staff and the City Attorney held a meeting on June 6, 2024 with representation of the Property Owner (Transformco) and their attorneys and relayed plans to consider a potential rezoning of the Subject Property. A general hesitancy to re-zone the Subject Property was relayed to the City given certain approvals had been granted in August 2022. City staff indicated at that time the option to relay their concerns at the public hearing scheduled for the June 13, 2024 Planning Commission meeting. As of June 12, 2024, the City is in receipt of a letter of opposition from attorney Patrick Lindmark (Taft Stettinius & Hollister LLP) who represents Property Owner Transformco—refer to Exhibit D.

Due to the nature of the request, a public hearing notice was published in the Brooklyn Center *Sun Post* on May 30, 2024—refer to Exhibit B. Mail notifications were sent to those property owners and residents located within 350 feet of the Subject Property, and a public hearing notice was also uploaded to the City’s website.

## **REZONING**

### ***Background***

Per Section 35-71301 (*Applicability*), an amendment of the City’s Unified Development Ordinance may be initiated by the City Council, Planning Commission, or a City property owner. As noted previously, City staff held a work session with City Council on May 13, 2024 to address the property and gain insight as to whether City Council desired to have the Subject Property re-zoned from PUD/MX-B (Planned Unit Development/Business Mixed-Use) District to TOD (Transit-Oriented Development) District.

In reviewing requests for a rezoning, certain amendment criteria shall be considered as outlined under Section 35-71304 (*Amendment Criteria*). The Planning Commission and City Council shall review the necessary submittal requirements, facts, circumstances for the proposed rezoning, and make a recommendation and decision on the rezoning based on, but not limited to, consideration of the following criteria and policies:

- a. Whether there is a clear and public need or benefit;
- b. Whether the proposed amendment is consistent with and compatible with surrounding land use classifications;
- c. Whether all permitted uses in the proposed zoning district can be contemplated for development of the subject property;
- d. Whether there have been substantial physical or zoning classification changes in the area since the subject property was zoned;
- e. Whether there is an evident, broad public purpose in the case of City-initiated rezoning proposals;
- f. Whether the subject property will bear fully the UDO development restrictions for the proposed

- zoning districts;
- g. Whether the subject property is generally unsuited for uses permitted in the present zoning district, with respect to size, configuration, topography, or location;
  - h. Whether the rezoning will result in the expansion of a zoning district, warranted by:
    - 1) Comprehensive Planning;
    - 2) The lack of developable land in the proposed zoning district; or
    - 3) The best interests of the community.
  - i. Whether the proposal demonstrates merit beyond the interests of an owner or owners of an individual parcel.
  - j. The specific policies and recommendations of the Comprehensive Plan and other City plans;
  - k. The purpose and intent of this UDO, or in the case of a map amendment, whether it meets the purpose and intent of the individual district; and
  - l. If applicable, the adequacy to buffer or transition between potentially incompatible districts.

The Subject Property was originally zoned B-2 (Regional Business District) in 1961, but by 1972 the Subject Property had been rezoned to C2 (Commerce) District. Prior to approval of Planning Commission Application No. 2022-004 in August 2022, the Subject Property, which was once part of the former Brookdale Mall, had been zoned Planned Unit Development/Commerce (PUD/C2) District since the late 1990s.

The PUD was originally approved in 1999 and comprehended, “new site and building plan approvals for the expansion, redevelopment, and rejuvenation of the Brookdale Regional Shopping Center,” and certain variations to allow for reduced green strips, non-major thoroughfare setbacks, parking dimensional standards, parking ratios, and increases in allowable restaurant use and freestanding signage.” Although a new Planned Unit Development was approved in 2011, when the majority of the former Brookdale Mall lands were split off and redeveloped to Shingle Creek Crossing shopping center, the Subject Property retained the PUD/C2 District designation to allow for the continued operations of the then Sears Department Store and Auto Center following demolition of the mall, redevelopment of the surrounding lands, and certain nonconformities.

It should be noted that the C2 (Commerce) District was retired with the adoption of the new Unified Development Ordinance in January 2023. Had no PUD been in place for the Subject Property, the property would have been re-zoned to Transit-Oriented Development (TOD) District.

Similarly, and as noted previously, Planned Unit Developments were considered re-zonings (ordinance amendments) under the preceding zoning code, and in the case of the 2022 approval granted for the Subject Property. With adoption of the new Unified Development Ordinance in January 2023, Planned Unit Developments are now considered “conditional use permits.” Had the development contemplated under Planning Commission Application No. 2022-004 requested and been approved for a Planned Unit Development under the *current* code provisions outlined in Section 35-8305 (*PUD Approval*), the Applicant would have had 12 months following City Council approval to obtain building permits and commence construction; otherwise, City Council is similarly granted provisions to initiate revocation of a conditional use permit.

#### **2040 Comprehensive Plan**

Although the Subject Property is considered a priority site within the City, it is privately owned. During the undertaking of the 2040 Comprehensive Plan, the Subject Property was still in operation as a Sears Department Store and Auto Center. The former Sears Department and Auto Center businesses closed

well into the updating of the City’s Comprehensive Plan and given the properties had (1) continuously operated since 1962, (2) ownership had not provided clear direction as to their potential reuse, and (3) a market study had not yet been completed, the City guided the Subject Property to TOD given its proximity to the Bus Rapid Transit (BRT) line and stops, and its ability to offer a broad mix of land use options, with a minimum of 75% slated for high density residential use, and supporting retail, office, and commercial usage. Additionally, the surrounding properties are, for the most part, guided as Transit-Oriented Development.

The Subject Property is identified within the 2040 Comprehensive Plan as a “potential area of change.” With the adoption of the 2040 Comprehensive Plan in 2019, the City future guided the Subject Property to a new designation of “Transit-Oriented Development” or “TOD,” which allows for a density range of 31.01 to 130 dwelling units per acre. The TOD designation was a direct response to the opening of the Metro Transit C (opened in 2019) and D (opened in 2022) lines and the land use designation specifically guided redevelopment within ¼ mile of the planned station stops and a vision that these areas create a vibrant, accessible and diverse land use pattern. Given the C line only opened the year the City of Brooklyn Center adopted its 2040 Comprehensive Plan and one year following Sears’ closure, and the D line did not open until December 2022 (post approval of Planning Commission Application No. 2022-004), this was very much a time of transition in the City, and for this area.

Table 3-6. Anticipated Developable Acres and Residential Units by Decade

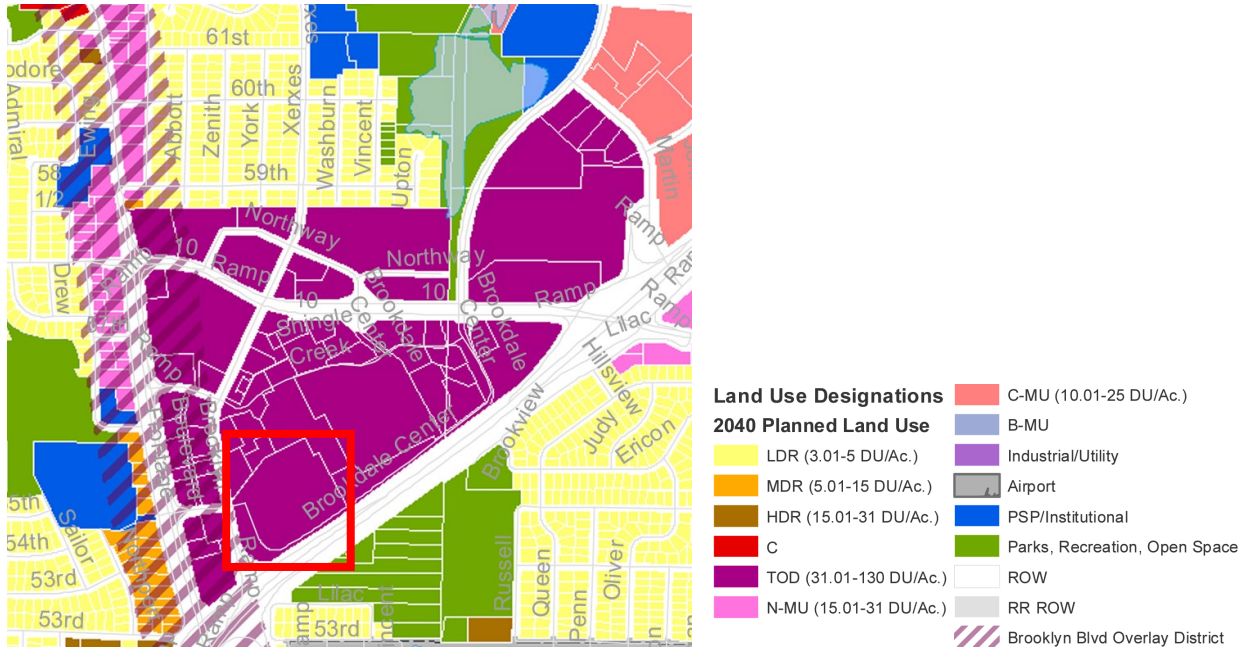
Future Land Use	2019-2020			2021-2030			2031-2040			2019-2040
	Est. Total Acres <sup>a</sup>	Residential Acres <sup>a</sup>	HH (Min)	Est. Total Acres <sup>a</sup>	Residential Acres <sup>a</sup>	HH (Min)	Est. Total Acres <sup>a</sup>	Residential Acres <sup>a</sup>	HH (Min)	Total New HH
Transit Orient Development 31.01-130 DU/A	12	9	279	48	36	1,116	22	17	527	1,922
Neighborhood Mixed-Use 15.01-31 DU/A	26	13	195	12	6	90	5	4	60	345
Commercial Mixed-Use 10.01-25 DU/A	16	8	80	14	7	70	14	10	100	250
Medium Density Residential 5.01-15	2.5	2.5	13	-	-	-	-	-	-	16
<b>TOTAL</b>	<b>56.5</b>	<b>32.5</b>	<b>567</b>	<b>77</b>	<b>66</b>	<b>1,276</b>	<b>41</b>	<b>31</b>	<b>687</b>	<b>2,533</b>

<sup>a</sup> Estimated Total Acres represents the acreage anticipated to redevelop within this Planning Period. As shown, the estimated redevelopment acreage accounts for approximately 50% +/- of the total 2040 guided acreage reflected in Table 3-3. Redevelopment may generally occur anywhere within the land use designation shown on Map 3-3. The guided land uses shown on Map 3-3 and described in Table 3-3 demonstrate an OVERSUPPLY of land for redevelopment based on the estimated market demand for residential units within this Planning Period. The City is open to redevelopment that occurs faster than what is estimated in Table 3-6, and it is therefore important to show through the Future Land Use Plan the ultimate vision for the central core of the City. It is also anticipated that many of the acres NOT included for redevelopment will largely remain in commercial use.

Table 1. Total New Households within the Transit Oriented Development future land use designation.

The majority of the City’s forecasted growth, as outlined in the City’s 2040 Comprehensive Plan, was anticipated to occur within the City’s major redevelopment areas guided primarily as Transit Oriented Development (TOD) and Commercial Mixed-Use (C-MU), and a minimum of 75% of the land within the TOD future land use designation was planned for development into high-density residential uses, with

remaining land developed for supporting retail, office, and commercial uses. The TOD future land use designation is ultimately intended to create a walkable, bikeable, vibrant core within the City of Brooklyn Center, and encompasses properties located within the City’s Opportunity Site, and along Bass Lake Road (County Road 10) and Xerxes Avenue North.



**Map 2.** Subject Property 2040 Future Land Use Designation (2019) in Relation to Surrounding Properties.

The City’s Comprehensive Plan further notes that, increasingly, access of neighborhoods, housing, services, and experience-based retail by efficient and frequent transit services is becoming a highly desirable and sought-after amenity within development and redevelopment areas. Metro Transit’s C and D Bus Rapid Transit (BRT) Lines recently opened lines that begin at the Brooklyn Center Transit Center located at 2900 County Road 10, run down Xerxes Avenue North (adjacent to the Subject Property), before turning at 55<sup>th</sup> Avenue North and Brooklyn Boulevard. These lines terminate in downtown Minneapolis (C Line) and at the Mall of America (D Line).

The Institute for Transportation & Development Policy notes that, “Transit Oriented Developments are inherently intended to integrate urban places designed to bring people, activities, buildings, and public space together, with easy walking and cycling connections between them and near-excellent transit service to the rest of the City.”

**Unified Development Ordinance**

As part of the approvals in August 2022 under Planning Commission Application No. 2022-004, the approved Planned Unit Development outlined additional restrictions to the use of the Subject Property and to the underlying Business Mixed-Use District (MX-B) District designation. Specifically, City Council Resolution No. 2022-076 (Exhibit C) stipulated that the Applicant, Scannell Properties, Inc. would enter into a PUD Agreement with the City of Brooklyn Center, and that said agreement would assure the following as part of the approximately 230,000-square foot speculative light industrial proposal:

1. No outdoor storage or display of materials, equipment, or products accessory and necessary to a principal and permitted use is permitted;

2. Warehousing and wholesaling shall not exceed 80-percent of the total floor area. The remaining 20-percent of the total floor area shall be non-warehouse uses, such as a combination of uses including, but not limited to: office, manufacturing, production, research and development, and lab and/or showroom; and
3. Distribution facilities are not a permitted use. For the purposes of this Planned Unit Development (PUD), a distribution facility is defined as a business that received packages, sorts, and delivers them without product storage. Distribution as an accessory use is permitted only when it occurs from a manufacturing facility or a warehouse where a product is made or packaged on-site.

These restrictions were intended to address concerns regarding the volume of semi-truck traffic anticipated to navigate the entrance and exit points to the Subject Property, and potential conflict points between truck traffic and pedestrians who frequent the adjacent Shingle Creek Crossing shopping center. Further, the entrance to the Subject Property was identified as 55<sup>th</sup> Avenue North, which is a four way stop that also serves the Metro Transit Bus Rapid Transit (BRT) line, and receives traffic entering the slip ramps on and off Trunk Highway (TH) 100. While proximity to transit was identified as a potential perk in providing jobs access for employees, these concerns were nonetheless raised by City staff.

Given the visibility from Trunk Highway 100, there were also concerns raised, and back and forth communication and revisions made, to address the potential visual impacts from the highway of the proposed truck court and screening to mitigate the intensity of use, and requested enhancements to the overall architecture of the two buildings.

Section 35-2402 (*Business Mixed Use*) of the City's Unified Development Ordinance notes that the, "purpose of the MX-B district is to accommodate land for a mix of business and light industrial uses, with allowances for supporting retail/service uses. This designation encourages redevelopment or development of commercial, office, general business, and light industrial uses in coordination with supportive retail/commercial uses towards encouraging a more dynamic and connected experience for workers. This land use does not plan for residential uses may include limited live-work opportunities as established through supporting official controls."

The Business Mixed-Use District, for the most part, replaced the City's longstanding I1 (Business Park) District in January 2023, but offered greater flexibilities in potential use to allow for a more dynamic working environment, instead of the oftentimes isolation found in many business parks across the metro.

Although there are some similarities in uses permitted (either by-right or as a conditional use) for both the Business Mixed-Use and Transit-Oriented Development districts (e.g. certain educational facilities, medical and health uses, eating establishments, hospitality lodging, and indoor recreational centers), a key distinction is that the Business Mixed-Use District, with the exception of limited live-work space, **does not permit any kind of residential use**. Despite being the City's most dense district, the TOD District does allow for townhouses, as well as multi-family residential at a density range of 31-130 dwelling units per acre. The TOD District also allows for indoor amusement centers, and banquet, event, and conference facilities. Conversely, the Business Mixed-Use District allows for manufacturing, assembly, and the processing of products, and wholesale trade, where the TOD District does not.

The City's Transit Oriented Development zoning district was created as a district response to the City's

adoption of the 2040 Comprehensive Plan in 2019. The purpose of the TOD (Transit Oriented Development) district is to support opportunities for dense, transit-supportive and transit-oriented development. The TOD district requires intensities and patterns of development that support vibrant pedestrian activity and discourages land uses and development patterns that could decrease walkability or interfere with future growth of transit-oriented development and transit ridership. To that note, the TOD District, unlike the MX-B District, places restrictions on the maximum percentage (%) of impervious surfacing, the size of a block, emphasis on public spaces, placement of buildings towards the street, and the types of allowable parking (i.e. no open surface parking lots, provisions for structured or covered parking to facilitate walkability).

Section 35-2304 of the City's Unified Development Ordinance notes that the, "purpose of the TOD district is to support opportunities for dense, transit supportive, and transit-oriented development. The TOD district requires intensities and patterns of development that support vibrant pedestrian activity, and discourages land uses and development patterns that could decrease walkability or interfere with future growth of transit-oriented development and transit ridership. The district intends to promote sustainable urban places that include places to live, work, shop, and recreate, reduce reliance on automobiles, and encourage the use of public transit. The district intends to foster job creation and economic growth in near proximity to transit, and provide citizens with new housing and lifestyle choices with a high level of amenities and spaces for social interaction."

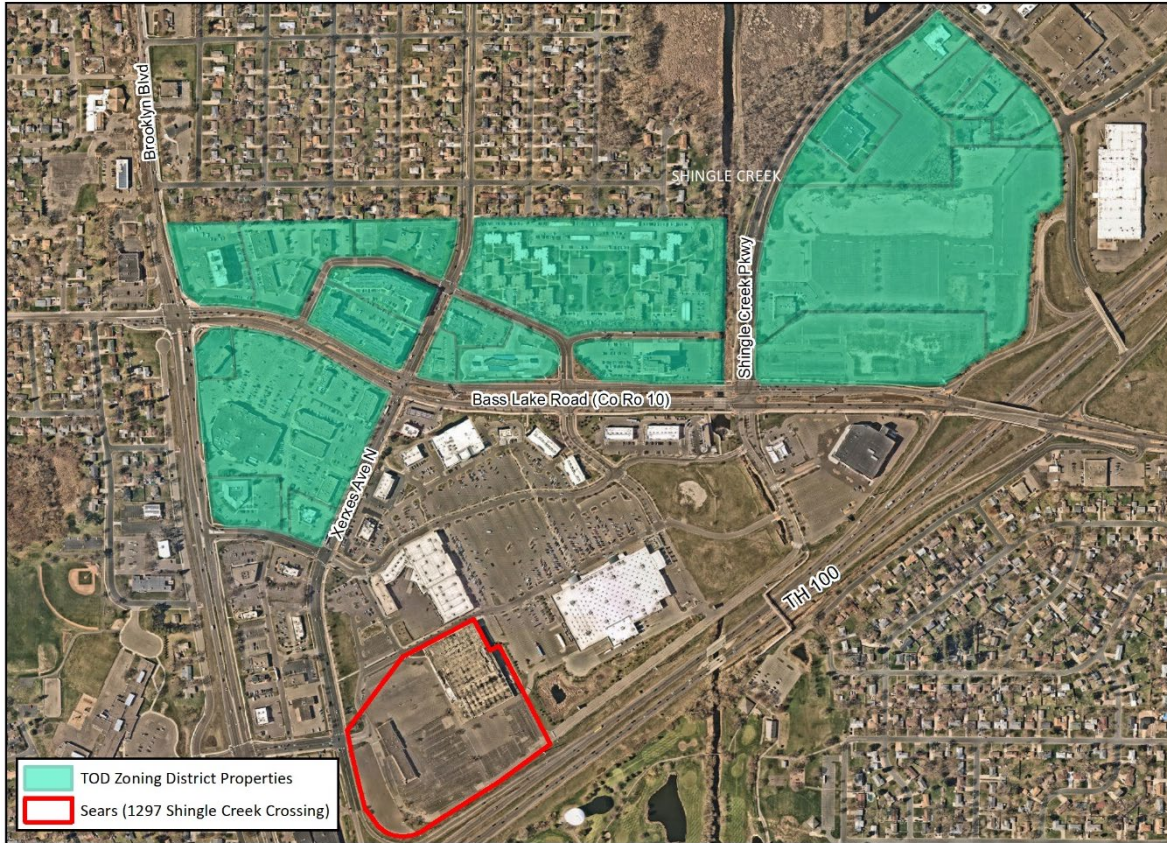
While adjacent Shingle Creek Crossing shopping center was designed with automobiles in mind, it too is future guided as "Transit-Oriented Development" under the 2040 Comprehensive Plan. City staff has been looking at way to increase density and activity within the overall area as the shopping center has yet to fully build out, and given recent activity within the shopping center with the reopening of the former Walmart to Empire Foods, build outs of tenant spaces with more local food options (e.g. Harold's Chicken, 102 Boba, Micholandia, and soon to be re-opening of the former Applebee's with Dos Hermanos Mexican Grill and Bar), as well as the recently approved conversion of the former Discount Tire to an Icon Beauty retail beauty supply store.

With the closure of Walmart in April 2023, City staff has looked at the possibilities of converting the seas of parking into future developable areas that might fuel more foot traffic at those business establishments located within the shopping center. This exercise has been seen all across the country as both indoor and outdoor shopping centers grapple with changes in consumer spending habits, the effects of the pandemic, etc.

The TOD district is intended to promote sustainable urban places that includes places to live, work, shop, and recreate, reduce reliance on automobiles, and encourage the use of public transit. Although job creation and economic growth within close proximity to transit is highly desired, so too are the options to provide citizens with new housing and lifestyle choices with a high level of amenities and spaces for social interaction.

There are currently 23 properties zoned Transit-Oriented Development District—refer to Map 3 below.





**Map 3.** Subject Property in Relation to Existing TOD Zoning District Properties.

**RECOMMENDATION**

*Based on the above noted findings, and in consideration of Section 35-71304 (Amendment Criteria) of the City Code of Ordinances, City staff recommends the Planning Commission recommend City Council approval of Planning Commission Application No. 2024-009, which would rezone the Subject Property commonly addressed as 1297 Shingle Creek Crossing from Planned Unit Development/Business Mixed-Use (PUD/MX-B) District to Transit-Oriented Development (TOD) District.*

**Attachments**

- Exhibit A-** City Council Work Session Memo dated May 13, 2024.
- Exhibit B-** Public Hearing Notice, published in the Brooklyn Center *Sun Post*, and dated May 30, 2024.
- Exhibit C-** City Council Resolution No. 2022-076.
- Exhibit D-** Letter of Opposition, drafted by Patrick J. Lindmark, Taft Stettinius & Hollister LLP.

## Council/EDA Work Session

DATE: 5/13/2024

TO: City Council

FROM: Dr. Reggie Edwards, City Manager

THROUGH: Jesse Anderson, Community Development Director

BY: Ginny McIntosh, Planning Manager

SUBJECT: Project Update and Consideration for Potential Rezoning of 1297 Shingle Creek Crossing (Former Sears)

### Requested Council Action:

- Consider whether the property located at 1297 Shingle Creek Crossing and commonly known as the former Sears site should be re-zoned from Planned Unit Development/Business Mixed-Use (PUD/MX-B) to Transit-Oriented Development (TOD) District

### Background:

Although the Sears Department Store and Sears Auto Center closed their doors in 2018, it was not until late 2020 that the Property Owner initiated a formal process to solicit offers from private parties to acquire or enter into a joint venture agreement on the approximately 15-acre Subject Property. It was during this time that a market analysis was conducted by the Property Owner in partnership with local brokers to determine a feasible re-use for the Subject Property, and a Request for Proposals (RFP) was circulated in late 2020. Ultimately, Scannell Properties, Inc. and their proposal of a speculative light industrial redevelopment on the Subject Property was selected and they entered into an option agreement with the Property Owner to forward the project.

City Council held a number of concept reviews in 2021 with Scannell Properties, Inc. and as part of those discussions requested a greater mix of uses, a site layout and design that would add value to the adjacent Shingle Creek Crossing shopping center, and an overall high finish level on the buildings, with four-sided architecture and focus on enhancing the Highway 100 frontage.

In April 2021, City Council authorized an application to the Metropolitan Council's Tax Base Revitalization Account (TBRA) for funding to assist with the environmental remediation of the Subject Property (e.g. asbestos, petroleum), and despite not receiving funding the first round, TBRA funding was eventually awarded to the City of Brooklyn Center in the amount of \$863,400 in January 2023. An application to the Hennepin County Environmental Response Fund (ERF) was also awarded in the amount of \$163,000 for assistance in preparing a Phase I Environmental Site Assessment (ESA), a Phase II ESA, a Response Action Plan (RAP), and associated consulting and Minnesota Pollution Control Agency fees.

In August 2022, City Council approved Planning Commission Application No. 2022-004 (City Council Resolution No. 2022-76), which was an application request submitted by developer Scannell Properties, Inc. on behalf of Property Owner Transformco for a re-plat, re-zoning, and establishment of a Planned Unit Development, and recommended approval of a Comprehensive Plan Amendment for a speculative, approximately 230,000-square foot light industrial/business park complex at 1297 Shingle Creek Crossing.

Later that month, City Council approved an ordinance amendment to formally re-zone the Subject Property, as PUDs required a formal rezoning under the City's preceding zoning code. The new Unified Development Ordinance and zoning provisions, effective as of January 2023, now consider PUDs as Conditional Use Permits (CUPs). A resolution approving a Planned Unit Development Agreement was also approved by City Council.

In those following months, City staff worked between Scannell Properties, Inc. and neighboring property owner Gatlin Development Company to sort through certain easement parking that was required on the Shingle Creek Crossing property to make the minimum parking for the Subject Property and light industrial development work.

In December 2022, City staff was contacted by Applicant Scannell Properties, Inc. with a request for consideration of tax increment financing (TIF) as the Applicant relayed that construction costs and interest rate increases had made the project financially infeasible. This was despite over \$1 million in grant funding being committed to forwarding the Subject Property's redevelopment.

Following another lull in communication with Scannell Properties, Inc. a City Council work session was held in July 2023 on the request for TIF and the Applicant's initial request for up to \$4 million in a pay-as-you-go (PAYGO) TIF which assumed a 26-year Redevelopment TIF District. It was in those discussions that City municipal financial consultant, Ehlers, indicated that the project was likely to only generate \$3 million in present value assuming a 26-year District and that following a review of the Applicant's proforma, the project would likely be feasible at \$2 to \$2.3 million in total assistance and a 12 to 15-year District. It was later determined after the Council meeting and after new assumptions were provided that any District would likely be less than 10 years.

During the same Council meeting, City staff formally requested and received approval to ratify the plat approved by City Council in August 2022. This request was made as Section 35-8107 (*Final Plat*) stipulates that, "if the final plat is approved by the City Council, the subdivider shall record it with the Hennepin County Recorder or Registrar of Titles within 1 year after the date of approval; **otherwise, the approval of the combine preliminary and final plat shall be considered void.**"

Since July 2023, City staff has had minimal contact with Scannell Properties, Inc. and they never moved forward with the TIF request. Despite a Planned Unit Development Agreement being approved by City Council, the Applicant never executed the agreement. Given the lack of communication and discussions on potentially requesting a major amendment to the approved site and building plan for the Subject Property and lot line adjustments with the neighboring Property Owner, City staff did not formally proceed with the request to re-guide the Subject Property under the 2040 Comprehensive Plan, so the Subject Property, as of today, is still future guided as “Transit Oriented Development.”

#### **Updates**

In March 2024, City staff was contacted by another developer who indicated interest in taking over the project and informed staff that Scannell Properties, Inc. no longer held the option agreement with Property Owner Transformco on the Subject Property. City received no communication from Scannell Properties; however, the Property Owner and their broker, Jones Lang Lasalle (JLL) confirmed the situation and that they were looking to re-list the property and were hoping for a quick sale.

City staff has since received interest from not only industrial developers looking to take over the project, but also other interested parties looking to do other types of projects (e.g. entertainment, grocery, multi-family residential).

#### **Request for Council Direction**

When the project was approved in August 2022, it was in advance of the City’s adoption of the new Unified Development Ordinance, which became effective in 2023. As such, the Subject Property was re-zoned to Planned Unit Development/Business Mixed-Use (PUD/MX-B) to reflect the new zoning district. The Subject Property had been previously been zoned Planned Unit Development/Commerce (PUD/C2) District as the former Sear site is the last piece of Brookdale Mall and as the site had a number of nonconformities given the redevelopment of the surrounding property to what is now Shingle Creek Crossing retail center.

As the Scannell project received approval under the preceding code, City staff reviewed its provisions for Planned Unit Developments with the City Attorney and under the preceding zoning code and determined the following under Section 35-355 (*Planned Unit Development*):

“If within 12 months following approval by the City Council of the development plan, no building permits have been obtained or, if within 12 months after the issuance of building permits no construction has commenced on the area approved for the PUD district, **the City Council may initiate rezoning of the property.**”

If the Subject Property were to follow the future land use designation identified in the City of Brooklyn Center’s 2040 Comprehensive Plan and not the PUD it currently exists under, the Subject Property would have been re-zoned to Transit-Oriented Development (TOD) District.

This particular district is a new zoning district as of January 2023 and is intended to, “support opportunities for dense, transit-supportive and transit oriented development.” This district, “intends to promote sustainable urban places that include places to live, work, shop, and recreate, reduce reliance on automobiles, and encourage the use of public transit. The district intends to foster job creation and economic growth in near-proximity to transit, and provides citizens with new housing and lifestyle choices with a high level of amenities and spaces for social interaction.”

#### **Policy Issues:**

City Council may initiate the rezoning of a property in instances where no building permits have been obtained or construction started within 12 months post Council approval.

- Does City Council still see the Subject Property located at 1297 Shingle Creek Crossing as a viable light industrial property with a zoning designation of Business Mixed-Use (MX-B)? As approved by City Council, the development would have contained certain additional restrictions under the approved Planned Unit Development, including:
  - No outdoor storage or display of materials, equipment, or products accessory and necessary to a principal and permitted use is permitted;
  - Warehousing and wholesaling shall not exceed 80-percent of the total floor area. The remaining 20-percent of the total floor area shall be non-warehouse uses, such as a combination of uses including, but not limited to: office, manufacturing, production, research and development, and lab and/or showroom; and
  - Distribution facilities are not a permitted use. For the purposes of this Planned Unit Development (PUD), a distribution facility is defined as a business that received packages, sorts, and delivers them without product storage. Distribution as an accessory use is permitted only when it occurs from a manufacturing facility or warehouse where a produce is made or packaged on-site.
- If not, does City Council wish to initiate a rezoning of 1297 Shingle Creek Crossing? The Applicant received City Council approval nearly two years ago on August 8, 2022.
  - If a re-zoning is desired by City Council City staff recommends the Subject Property be re-zoned to align with the City’s 2040 Comprehensive Plan future land use designation. Does the Council have any concerns with a re-zoning to Transit-Oriented Development (TOD) District?

#### **Budget Issues:**

None to consider at this time.

#### **Antiracist/Equity Policy Effect:**

#### **Strategic Priorities and Values:**

Strengthen and diversify business development and housing

**ATTACHMENTS:**

Description

[City Council Resolution\\_2022-076](#)

[Section 35-355\\_Planned Unit Development](#)

Upload Date

5/6/2024

5/6/2024

Type

Backup Material

Backup Material

- 3) Signs as permitted in the Brooklyn Center Sign Ordinance.

Section 35-341. O-2 PUBLIC AND PRIVATE OPEN SPACE DISTRICT.

1. Permitted Uses

- a. Public parks, playgrounds, athletic fields and other recreational uses of a noncommercial nature.
- b. Commercial recreational facilities of a semi-open nature such as golf courses and golf driving ranges.
- c. Accessory uses incidental to the foregoing principal uses when located on the same property with the use to which it is accessory but not including any business or industrial uses. Such accessory uses to include but not be restricted to the following:
  - 1) Off-street parking.
  - 2) Public recreational buildings and parks, playgrounds and athletic fields.
  - 3) Signs as permitted in the Brooklyn Center Sign Ordinance.

Section 35-355. PLANNED UNIT DEVELOPMENT.

Subdivision 1. Purpose.

The purpose of the Planned Unit Development (PUD) district is to promote flexibility in land development and redevelopment, preserve aesthetically significant and environmentally sensitive site features, conserve energy and ensure a high quality of design.

Subdivision 2. Classification of PUD Districts; Permitted Uses; Applicable Regulations.

- a. Upon rezoning for a PUD, the district shall be designated by the letters "PUD" followed by the alphanumeric designation of the underlying zoning district which may be either the prior zoning classification or a new classification. In cases of mixed use PUDs, the City Council shall, whenever reasonably practicable, specify underlying zoning classifications for the various parts of the PUD.

When it is not reasonably practicable to so specify underlying zoning classifications, the Council may rezone the district, or any part thereof, to "PUD-MIXED."

- b. Regulations governing uses and structures in PUDs shall be the same as those governing the underlying zoning district subject to the following:
  - 1. Regulations may be modified expressly by conditions imposed by the Council at the time of rezoning to PUD.
  - 2. Regulations are modified by implication only to the extent necessary to comply with the development plan of the PUD.
  - 3. In the case of districts rezoned to PUD-MIXED, the Council shall specify regulations applicable to uses and structures in various parts of the district.
- c. For purposes of determining applicable regulations for uses or structures on land adjacent to or in the vicinity of the PUD district which depend on the zoning of the PUD district, the underlying zoning classification of PUD districts shall be deemed to be the zoning classification of the district. In the case of a district zoned PUD-MIXED, the underlying zoning classification shall be deemed to be the classification which allows as a permitted use any use which is permitted in the PUD district and which results in the most restrictive regulation of adjacent or nearby properties.

Subdivision 3. Development Standards.

- a. A PUD shall have a minimum area of one acre, excluding land included within the floodway or flood fringe overlay districts and excluding existing rights-of-way, unless the City finds that at least one of the following conditions exists:
  - 1. There are unusual physical features of the property or of the surrounding neighborhood such that development as a PUD will conserve a physical or terrain feature of importance to the neighborhood or community;
  - 2. The property is directly adjacent to or across a public right-of-way from property which previously was developed as a PUD and the new PUD will be perceived as and function as an extension of that previously approved development; or
  - 3. The property is located in a transitional area between different land uses and the development will be used as a buffer between the uses.
- b. Within a PUD, overall density for residential developments shall be consistent with Section 35-400 of this ordinance. Individual buildings or lots within a PUD may exceed these standards, provided that density for the entire

PUD does not exceed the permitted standards.

- b. Setbacks, buffers and greenstrips within a PUD shall be consistent with Section 35-400 to 35-414 and Section 35-700 of this ordinance unless the developer can demonstrate to the City's satisfaction that a lesser standard should be permitted with the addition of a screening treatment or other mitigative measures.
- d. Parking provided for uses within a PUD shall be consistent with the parking requirements contained in Section 35-704 of this ordinance unless the developer can demonstrate to the City's satisfaction that a lesser standard should be permitted on the grounds of the complementarity of peak parking demands by the uses within the PUD. The City may require execution of a restrictive covenant limiting future use of the property to those uses which will continue this parking complementarity, or which are otherwise approved by the City.

#### Subdivision 4. General Standards.

- a. The City may allow more than one principal building to be constructed on each platted lot within a PUD.
- b. A PUD which involves only one land use or a single housing type may be permitted provided that it is otherwise consistent with the purposes and objectives of this section.
- c. A PUD may only contain uses consistent with the City's Comprehensive Plan.
- d. All property to be included within a PUD shall be under unified ownership or control or subject to such legal restrictions or covenants as may be necessary to ensure compliance with the approved development plan and site plan.
- e. The uniqueness of each PUD requires that specifications and standards for streets, utilities, public facilities and the approval of land subdivision may be subject to modifications from the City ordinances generally governing them. The City Council may, therefore, approve streets, utilities, public facilities and land subdivisions which are not in compliance with usual specifications or ordinance requirements where it is found that such are not required in the interests of the residents or of the City, except that these subdivisions and plans must be in conformance with all watershed, state, and federal storm water, erosion control, and wetlands requirements.

#### Subdivision 5. Application and Review.

- a. Implementation of a PUD shall be controlled by the development plan. The development plan may be approved or disapproved by the City Council after

evaluation by the Planning Commission.

Submission of the development plan shall be made to the Director of Planning and Inspection on such forms and accompanied by such information and documentation as the City may deem necessary or convenient, but shall include at a minimum the following:

1. Street and utility locations and sizes;
2. A drainage plan, including location and size of pipes and water storage areas;
3. A grading plan, including temporary and permanent erosion control provisions;
4. A landscape plan;
5. A lighting plan;
6. A plan for timing and phasing of the development;
7. Covenants or other restrictions proposed for the regulation of the development;
8. A site plan showing the location of all structures and parking areas;
9. Building renderings or elevation drawings of all sides of all buildings to be constructed in at least the first phase of development; and
10. Proposed underlying zoning classification or classifications.

Such information may be in a preliminary form, but shall be sufficiently complete and accurate to allow an evaluation of the development by the City.

- b. The Planning Commission shall hold a public hearing on the development plan. Notice of such public hearing shall be published in the official newspaper and actual notice shall be mailed to the applicant and adjacent property owners as required by Section 35-210 of this ordinance. The Planning Commission shall review the development plan and make such recommendations as it deems appropriate regarding the plan within the time limits established by Section 35-210 of this ordinance.
- c. Following receipt of the recommendations of the Planning Commission, the City Council shall hold such hearing as it deems appropriate regarding the matter. The City Council shall act upon the development plan within the time limits established by Section 35-210 of this ordinance.



Approval of the development plan shall constitute rezoning of the property to PUD and conceptual approval of the elements of the plan. In addition to the guidelines provided in Section 35-208 of this ordinance, the City Council shall base its actions on the rezoning upon the following criteria:

1. Compatibility of the plan with the standards, purposes and intent of this section;
2. Consistency of the plan with the goals and policies of the Comprehensive Plan;
3. The impact of the plan on the neighborhood in which it is to be located; and
4. The adequacy of internal site organization, uses, densities, circulation, parking facilities, public facilities, recreational areas, open spaces, and buffering and landscaping.

The City Council may attach such conditions to its approval as it may determine to be necessary to better accomplish the purposes of the PUD district.

- d. Prior to construction on any site zoned PUD, the developer shall seek plan approval pursuant to Section 35-230 of this ordinance. In addition to the information specifically required by Section 35-230, the developer shall submit such information as may be deemed necessary or convenient by the City to review the consistency of the proposed development with the approved development plan.

The plan submitted for approval pursuant to Section 35-230 shall be in substantial compliance with the approved development plan. Substantial compliance shall mean that buildings, parking areas and roads are in essentially the same location as previously approved; the number of dwelling units, if any, has not increased or decreased by more than 5 percent; the floor area of nonresidential areas has not been increased or decreased by more than 5 percent; no building has been increased in the number of floors; open space has not been decreased or altered from its original design or use, and lot coverage of any individual building has not been increased or decreased by more than 10 percent.

- e. Prior to construction on any site zoned PUD, the developer shall execute a development agreement in a form satisfactory to the City.
- f. Applicants may combine development plan approval with the plan approval required by Section 35-230 by submitting all information required for both

simultaneously.

- g. After approval of the development plan and the plan approval required by Section 35-230, nothing shall be constructed on the site and no building permits shall be issued except in conformity with the approved plans.
- h. If within 12 months following approval by the City Council of the development plan, no building permits have been obtained or, if within 12 months after the issuance of building permits no construction has commenced on the area approved for the PUD district, the City Council may initiate rezoning of the property.
- i. Any major amendment to the development plan may be approved by the City Council following the same notice and hearing procedures specified in this section. An amendment shall be considered major if it involves any change greater than that permitted by Subdivision 5d of this section. Changes which are determined by the City Council to be minor may be made if approved by the Planning Commission after such notice and hearing as may be deemed appropriate by the Planning Commission.

**CITY OF  
BROOKLYN CENTER  
NOTICE OF  
PUBLIC HEARING**

**TO WHOM IT MAY CONCERN:**

Please take notice that the Planning Commission of the City of Brooklyn Center will hold a public hearing on **June 13, 2024 at 7:00 p.m.** at Brooklyn Center City Hall, located at 6301 Shingle Creek Parkway, Brooklyn Center, MN 55430 to hear from the public, discuss, and make a recommendation upon an ordinance re-zoning the property located at 1297 Shingle Creek Crossing (PID # 03-118-21-44-0026) from Planned Unit Development/Business Mixed-Use District (PUD/MX-B) to Transit Oriented Development (TOD) District.

Public hearing materials, including a copy of the ordinance, can be accessed and will be available in advance of the meeting by visiting the City of Brooklyn Center's website at: <https://www.brooklyncentermn.gov/>. Interested persons are welcome to attend the hearing and be heard regarding this matter.

Comments and questions may be forwarded to [gmcintosh@brooklyncentermn.gov](mailto:gmcintosh@brooklyncentermn.gov) up until 4:30 p.m. on the day of the meeting, or by contacting Ginny McIntosh at (763) 569-3319. Your comments will be included in the record and addressed as part of the meeting. Alternatively, you may participate in the Planning Commission meeting via Webex at: [logis.webex.com](https://logis.webex.com)

Meeting Number (Access Code):  
2634 491 4414  
Password: BCPC06132024  
By Phone: 1 (312) 535-8110  
(Enter Access Code)

Auxiliary aids for persons with disabilities are available upon request at least 96 hours in advance. Please contact the City Clerk at (763) 569-3300 to make arrangements.

Respectfully,  
Ginny McIntosh  
Planning Manager

Published in the  
Sun Post  
May 30, 2024  
1399020

Member Elliott introduced the following resolution and moved its adoption:

RESOLUTION NO. 2022-76

RESOLUTION REGARDING THE RECOMMENDED DISPOSITION OF PLANNING COMMISSION APPLICATION NO. 2022-004 FOR A RE-PLAT, REZONING, AND ESTABLISHMENT OF A PLANNED UNIT DEVELOPMENT AND AMENDMENTS TO THE ZONING CODE AND 2040 COMPREHENSIVE PLAN TO ALLOW FOR REDEVELOPMENT OF THE FORMER SEARS SITE AND CONSTRUCTION OF TWO BUSINESS PARK BUILDINGS OF APPROXIMATELY 230,000-SQUARE FEET COMBINED AND RELATED SITE IMPROVEMENTS (1297 SHINGLE CREEK CROSSING)

WHEREAS, Planning Commission Application No. 2022-004, submitted by Scannell Properties, Inc. and on behalf of Transformco (“the Applicant”) requests review and consideration for the re-plat, re-zoning, and establishment of a Planned Unit Development and an amendment to the City’s Zoning Code that would allow for redevelopment of the former Sears site located at 1297 Shingle Creek Crossing (“the Subject Property”) and subsequent construction of two business park buildings of approximately 110,000 and 120,000-square feet, respectively (230,000-square feet combined), and related site improvements; and

WHEREAS, the Subject Property is situated in the Central Commerce Overlay District and pursuant to a determination by City staff, the proposed use is not clearly defined as a use within the District; and

WHEREAS, on June 23, 2022, the Planning Commission of the City of Brooklyn Center, Minnesota received and reviewed a planning report on the requested re-plat, site and building plan, re-zoning, and establishment of a Planned Unit Development, which would re-zone the Subject Property from PUD/C2 (Planned Unit Development/Commerce) District to a new Planned Unit Development with an underlying Business Mixed-Use District designation (PUD/MX-B), and an amendment to the Zoning Code to remove the Subject Property from the Central Commerce Overlay District for the proposed new construction and related site improvements on the approximately 15-acre Subject Property; and

WHEREAS, said Planning Commission Application No. 2022-004 also addresses a request to re-designate the Subject Property under the City’s 2040 Comprehensive Plan future land use designation from “Transit-Oriented Development (TOD),” which the Subject Property is currently designated as, to “Business-Mixed Use (B-MU),” which guides for a mix of business, light industrial, and supporting retail/service uses, and is intended to create a more dynamic and connected experience for potential workers in these areas; and

WHEREAS, this request is made in light of the fact that the Subject Property was still in operation as a department store and auto center when the 2040 Comprehensive Plan process was initiated, had been in continuous operation since around 1962, and upon closure of the aforementioned businesses, the City of Brooklyn Center was nearing completion of its

RESOLUTION NO. 2022-76

Comprehensive Plan update with no clear direction on a potential re-use of the Subject Property, nor guidance in the form of a market study; and

WHEREAS, given these uncertainties, the City of Brooklyn Center designated the Subject Property to its current TOD future land use designation provided its proximity to Bus Rapid Transit, and its ability to offer a broader mix of land use options; and

WHEREAS, the Applicant conducted a market analysis for a feasible re-use of the Subject Property, held concept reviews with the City Council in May and November 2021, as well as a virtual community meeting to gauge interest in the potential re-development of the Subject Property to accommodate an office/warehouse (business park) use; and

WHEREAS, the Planning Commission of the City of Brooklyn Center, Minnesota held a duly noticed and called public hearing on June 23, 2022, whereby a planning report was presented and public testimony regarding the proposal were received, and notice of such public hearing was published in the official newspaper and mailed to the Applicant and adjacent property owners as required by the City and Minnesota State Statutes, and development proposal signage was installed on the Subject Property by the City; and

WHEREAS, the Planning Commission of the City of Brooklyn Center, Minnesota considered the application requests in light of all testimony received, and the guidelines and standards as outlined under Sections 15 (*Platting*), 35-202 (*Comprehensive Planning*) 35-208 (*Rezoning Evaluation Policy and Review Guidelines*), 35-210 (*Rezoning Application Procedures and Reconsideration*), 35-230 (*Plan Approval*), and 35-355 (*Planned Unit Development*) of the City's Zoning Ordinance, and draft provisions of the Business-Mixed Use (MX-B) District, as contemplated in the City's draft Zoning Code update and forthcoming Unified Development Ordinance, and the request complies with the general goals and objectives of the City's 2040 Comprehensive Plan, with exception to the requested amendment to the Comprehensive Plan to re-designate the Subject Property to move the project forward, and of which requires final determination by the Metropolitan Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brooklyn Center, Minnesota to recommend that Planning Commission Application No. 2022-004, submitted by Scannell Properties, LLC, and on behalf of Transformco, be approved based upon the findings of fact in the June 23, 2022, planning report, and submitted documents and plans as amended by the following conditions of approval:

1. The building plans are subject to review and approval by the Building Official as noted in the memorandum dated June 21, 2022, and with respect to applicable codes prior to the issuance of permits; and the final location or placement of any fire hydrants or other fire-related building code items shall be reviewed and approved by the Fire Inspector.
  - a. Any major changes or modifications made to this Site and Building Plan can only be made by an amendment to the approved Site and Building Plan as approved by

RESOLUTION NO. 2022-76

- the City Council.
- b. The building plans are subject to review and approval by the Building Official with respect to applicable codes prior to the issuance of permits.
  - c. The Applicant shall work to ensure all applicable Minnesota Fire Code requirements have been met as part of any site plan approval.
  - d. A fire sprinkler system is required to be installed and shall be maintained on a consistent basis per City Code requirements.
  - e. A SAC Determination shall be submitted by the Applicant to the Metropolitan Council and any associated fees paid at time of any permit issuance.
  - f. The Applicant shall provide any final site and building plans to City staff for a CPTED review and make alterations as necessary prior to permit release.
  - g. The submitted landscape plans shall be revised to meet City's minimum Landscape Point System policy requirements and an identified "office/industrial" use.
  - h. The Applicant shall install irrigation systems where necessary to facilitate maintenance of site landscaping and green areas, and irrigation shop drawings shall be provided for review and approval prior to installation.
  - i. The Applicant shall revise the submitted photometric plan to reflect minimum, maximum, and average foot-candles per fixture, and clearly identify all property lines.
    - i. The Applicant shall work with the adjacent Shingle Creek Crossing property owner to ensure consistency in lighting and landscaping along the north drive between the Subject Property and Shingle Creek Crossing.
    - ii. Photometric plans shall be revised as needed to incorporate additional pedestrian-level lighting for main building entrance points and sidewalk connections.
  - j. Any outside trash disposal facilities and rooftop or ground mechanical equipment shall be appropriately screened from view per City Code requirements and with materials complementary to the principal building, and an updated details sheet provided.
  - k. The Applicant shall submit a Sign Permit Application for any proposed signage and receive issuance of a permit prior to any installation. All signage shall conform to City requirements.
2. The Applicant agrees to comply with all conditions or provisions noted in the City Engineer's review memorandum, dated June 17, 2022.
- a. Final grading, drainage, utility, and erosion control plans and any other site engineering related issues are subject to review and approval by the City Engineer for City site and building plan approval and prior to the issuance of permits.
  - b. Any requirements as outlined in reviews conducted by Hennepin County, the Minnesota Department of Transportation (MnDOT), and the Watershed Commission.

RESOLUTION NO. 2022-76

3. Agreements:

- a. The Applicant shall enter into a PUD agreement with the City of Brooklyn Center. This agreement is to be reviewed and approved by the City Attorney prior to the issuance of building permits. The agreement shall further assure compliance with the development plans submitted with this application.
  - i. No outdoor storage or display of materials, equipment, or products accessory and necessary to a principal and permitted use is permitted;
  - ii. Warehousing and wholesaling shall not exceed 80-percent of the total floor area. The remaining 20-percent of the total floor area shall be non-warehouse uses, such as a combination of uses including, but not limited to: office, manufacturing, production, research and development, and lab and/or showroom; and
  - iii. Distribution facilities are not a permitted use. For the purposes of this Planned Unit Development (PUD), a distribution facility is defined as a business that receives packages, sorts, and delivers them without product storage. Distribution as an accessory use is permitted only when it occurs from a manufacturing facility or a warehouse where a product is made or packaged on-site.
- b. A Performance Agreement with supporting financial guarantee approved by the City shall be executed upon any approval of the to-be submitted building permit for site improvements, which ensures the Subject Property will be constructed, developed, and maintained in conformance with the plans, specifications, and standards.
- c. The Developer shall submit an as-built survey of the property, improvements, and utility service lines prior to release of any Performance Agreement financial guarantee.
- d. A Utility Facilities Easement Agreement is required for submittal to the City prior to issuance of any permits.
- e. A Construction Management Plan and Agreement and associated escrow are required for submittal prior to the City prior to issuance of any permits.
- f. The Applicant shall coordinate with adjacent property owners and the City to execute any cross access and parking agreements for the proposed site improvements. No building permits shall be issued until such determination is made and any agreements are recorded with Hennepin County.
- g. The Applicant shall work with the City for dedication of the proposed trail easement and provision of trail profile and plans.

4. Platting:

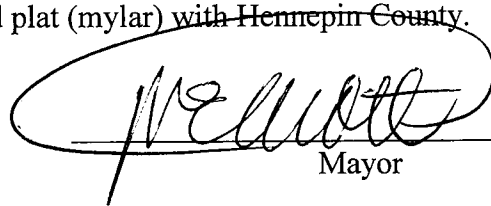
- a. Approval of the preliminary and final plat for NORTH 100 BUSINESS PARK ADDITION are contingent upon the addressing of comments by City Engineer Mike Albers in the memorandum dated June 17, 2022.
  - i. A 10-foot drainage and utility easement shall be dedicated on the plat around the entire perimeter of the Subject Property and centered on other

RESOLUTION NO. 2022-76

- lot lines.
- ii. All utilities and storm water management facilities to be located within said drainage and utility easement.
- iii. Additional dedication of a utility easement is requested on the plat for the private water main and sanitary to allow for maintenance access per the Utility Facilities Easement Agreement.
- b. Final plat and mylar shall be subject to the provisions of Chapter 15 of the City Code of Ordinances (*Platting*).
- c. Any final plat comments and/or requirements as provided by Hennepin County.
- d. Any final plat comments and/or requirements from the City Attorney's office, and specifically regarding an updated certified abstract of title.
- e. The successful recording of said plat (mylar) ~~with Hennepin County.~~

August 8, 2022

Date



Mayor

ATTEST:



City Clerk

The motion for the adoption of the foregoing resolution was duly seconded by member Graves and upon vote being taken thereon, the following voted in favor thereof: Butler, Elliott, Graves, Lawrence-Anderson, Ryan and the following voted against the same: None whereupon said resolution was declared duly passed and adopted.





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Affirmative Action, Equal Opportunity Employer

Patrick J. Lindmark  
612.977.8573  
PLindmark@taftlaw.com

June 12, 2024

**VIA EMAIL**

Ginny McIntosh  
Planning Manager  
City of Brooklyn Center  
6301 Shingle Creek Parkway  
Brooklyn Center, MN 55430-2199

**Re: Planning Commission Application No. 2024-009; Consideration for  
Rezoning of 1297 Shingle Creek Crossing**

Dear Planning Manager McIntosh:

The undersigned, on behalf of TF Brooklyn Center MN LLC (a.k.a. "Transformco"), submits this letter to voice objection to City of Brooklyn Center (the "City") Planning Commission Application No. 2024-009. Planning Commission Application No. 2024-009 recommends the re-zoning of the former Sears site located at 1297 Shingle Creek Crossing (the "Property") from a Planned Unit Development/Business Mixed-Use District (PUD/MX-B) to a Transit Oriented Development (TOD) District. Transformco is the owner of the Property and, in reliance upon historical and well-reasoned approvals granted by the City, intends to develop the Property in accordance with uses permitted within the existing Planned Unit Development/Business Mixed-Use District (PUD/MX-B).

On February 16, 2022, Transformco, through its then-development partner Scannell Properties, submitted an application for planning consideration to the City. Transformco's application formed the basis of Planning Commission Application No. 2022-004, which recommended approval of a preliminary and final plat, site and building plan approvals, a Zoning Code amendment, and a re-zoning and establishment of a Planned Unit Development for the Property. Planning Commission Application No. 2022-004 also recommended a corresponding amendment to the City's 2040 Comprehensive Plan to guide the Property for Business Mixed-Use (B-MU) to accommodate an office/warehouse (business park) use. The recommended re-guiding stemmed from, and followed, the closure of the Sears department store upon the Property, market analysis for the feasible

re-use of the Property, concepts reviews by the City Council, and community input. (See Resolution No. 2022-76).

On August 8, 2022, the City Council approved the totality of Planning Commission Application No. 2022-004, including both the preliminary and final plat approvals, a Planned Unit Development for the Property, and the recommended amendment to the City's 2040 Comprehensive Plan. Of note, on July 24, 2023, the City Council again approved, via ratification, the preliminary and final plat applications. The City's broad approvals concerning the Property were accomplished through adoption of Resolution No. 2022-76, and were based upon clear findings of fact and voluminous material submittals provided in support of Planning Commission Application No. 2022-004 (the "Approval Record"). Both the Planning Commission and the City Council found the Approval Record satisfied the standards and criteria prescribed by City Ordinance and complied with the general goals and objective of the City's 2040 Comprehensive Plan. (See Resolution No. 2022-76).

Planning Commission Application No. 2024-009 now seeks to undermine the historical City findings and approvals concerning the Property, and in a manner that is contradictory to principles contained in applicable law. Foremost, Minn. Stat. § 462.358, Subd. 3c. provides, in pertinent part, that "for two years following final [plat] approval ... no amendment to a comprehensive plan or official control shall apply to or affect the use, development density, lot size, lot layout, or dedication or platting required or permitted by the approved [plat] application. The City granted Transformco final plat approval twice, first on August 8, 2022, and then again on July 24, 2023. Accordingly, pursuant to Minn. Stat. § 462.358, Subd. 3c, the re-zoning proposed in Planning Commission Application No. 2024-009 would neither apply to nor affect the approvals granted by the City via Resolution No. 2022-76 until July 24, 2025.

Furthermore, the City's new Unified Development Ordinance (as well as the City's predecessor zoning ordinance) recognizes and contemplates the need for "procedures and standards to allow more creativity and flexibility in [certain] site plan design than would be possible under conventional zoning standards." (Unified Development Ordinance, Section 35-8301). Likewise, Minn. Stat. § 462.358, Subd. 3c acknowledges the complexity and necessary commitments associated with planned and staged developments. Specifically, Minn. Stat. § 462.358, Subd. 3c provides that "[i]n connection with a subdivision involving planned and staged development, a municipality may by resolution or agreement grant the rights referred to [in § 462.358, Subd. 3c] for such periods of time longer than two years which it determines to be reasonable and appropriate." (emphasis added). The City's findings and approvals concerning the Property, each of which were clearly articulated by the City in Resolution No. 2022-76, acknowledge the need for creativity and flexibility at the Property. Future creativity and

flexibility at the Property will be threatened if the City were to adopt the re-zoning recommendations contained in Planning Commission Application No. 2024-009.

Moreover, at their core, planned unit developments are a form of conditional use permit. See Minn. Stat. §462.3595, Subd. 1. Accordingly, uses permitted in a planned unit development run with the land and remain in effect as long as conditions imposed upon the use are observed. Minn. Stat. §462.3595, Subd. 2; See also *Northpointe Plaza v. City of Rochester*, 465 N.W.2d 686, 689 (Minn. 1991). Just like in the case of the City's historical platting approvals, then, the re-zoning proposed under Planning Commission Application No. 2024-009 would neither apply to nor affect the Planned Unit Development approvals granted to Transformco under Resolution No. 2022-76.

In conclusion, City approval of the re-zoning recommended in Planning Commission Application No. 2024-009 would contradict the City's prior findings and approvals concerning the Property. While such approval would not directly affect the permitted use of the Property as approved under Resolution No. 2022-76, it would inherently remove useful avenues for future creativity and flexibility - which the City has rightly found necessary for the Property. In sum, City approval of Planning Commission Application No. 2024-009 would simply create needless hurdles and unnecessary confusion surrounding the Property at a time when both the City and Transformco should be focused on developing the Property to a productive use. Transformco, accordingly, hereby (i) objects to the recommendations contained in Planning Commission Application No. 2024-009, (ii) requests that the City deny said recommendations, and (iii) asks the City to work in partnership with Transformco on achieving redevelopment of the Property in accordance with the market analysis for the feasible re-use of the Property, concept reviews performed by the City Council, and the community input relied upon in the City's findings of facts and approvals as contained in Resolution No. 2022-76.

Sincerely,

Taft Stettinius & Hollister LLP



Patrick J. Lindmark

PJL:lsd

cc: City Attorney Sarah J. Sonsalla (ssonsalla@kennedy-graven.com)