

PLAN COMMISSION MEETING
Monday, September 9, 2013
Earl McGovern Board Room, 7:00 P.M.



PLEASE TAKE NOTICE that a meeting of the Brown Deer Plan Commission will be held in the Earl McGovern Board Room at the Village Hall of the Village of Brown Deer, 4800 West Green Brook Drive, Brown Deer, Wisconsin at the above noted time and date, at which the following items of business will be discussed and possibly acted upon:

- I. Roll Call
- II. Persons Desiring to be Heard
- III. Consideration of Minutes: July 8, 2013 – Regular Meeting
- IV. Report of Staff/Commission Members
- V. Unfinished Business
- VI. Business Items
 - A) Development Agreement for a transportation company with World Care Transit Service, 4685 W. Bradley Road.
 - B) Review and Recommendation of a permanent Conditional Use Permit for a public utility tower at Badger Meter, 4545 W. Brown Deer Road
- VII. Adjournment

A handwritten signature in black ink that reads "Jill Kenda-Lubetski". The signature is written in a cursive, flowing style.

Jill Kenda-Lubetski, Village Clerk
September 5, 2013

PERSONS REQUIRING SPECIAL ACCOMMODATIONS FOR ATTENDANCE AT THE MEETING SHOULD CONTACT THE VILLAGE CLERK AT LEAST ONE BUSINESS DAY PRIOR TO THE MEETING.

**BROWN DEER PLAN COMMISSION
JULY 8, 2013 MEETING MINUTES
HELD AT THE BROWN DEER VILLAGE HALL
4800 WEST GREEN BROOK DRIVE**

The meeting was called to order by President Krueger at 7:00 P.M.

I. ROLL CALL

Present: President Carl Krueger; Trustees: Tim Schilz, Jeff Baker; Commissioners: Ryan Schmitz, Susan Bellehumeur, Dan Bednar, Jeff Jaroczynski, Bill Hoffmann

Also Present: Michael Hall, Village Manager; Steven Rinzel, Police Chief; Nate Piotrowski, Community Development Director; Rebecca Boyle, Village Attorney

Excused: Commissioner: Al Walters

II. PERSONS DESIRING TO BE HEARD

Margaret Jaberg, 8075 N. 37th Street stated that she was concerned about the order of the agenda not allowing citizens the opportunity to speak about operational concerns at the proposed Walmart. Mr. Piotrowski explained the order of the agenda and the need to keep the conditional use public hearings separate. He added that the operational agreement would not approve any of the conditional uses.

Betty Bennett, 6209 W. Plaza Circle stated that she had specific concerns related to the operational aspects of the building and wanted to be heard on those issues when the agenda item was discussed. President Krueger asked if the Plan Commission would be interested in allowing comment to be entertained at that time. It was consensus of the Plan Commission to allow comment during that agenda item.

III. CONSIDERATION OF MINUTES: June 10, 2013 – Regular Meeting

It was moved by Commissioner Schmitz and seconded by Commissioner Bellehumeur to approve the regular meeting minutes of June 10, 2013. The motion carried unanimously.

IV. REPORT OF STAFF/COMMISSION MEMBERS

President Krueger asked for an update on the Citgo gas station at 51st and Brown Deer Road. Mr. Piotrowski replied that the Village Manager and Assistant Village Manager were to meet with the owner later this week to ascertain opportunity and interest in redevelopment of the site.

V. UNFINISHED BUSINESS

None.

VI. NEW BUSINESS

A) Review and Recommendation of a development agreement with JFS Housing for multiple family dwellings at Bradley Crossing Phase Two, 4400 W. Bradley Road

Sig Strautmanis of General Capital Group introduced the proposal and reviewed the changes in the development plan from 2006 through Bradley Crossing Phase One in 2010.

Commissioner Jaroczynski asked about access from the garage to the units. Mr. Strautmanis replied that each garage had an indoor locking door that led to a main hallway.

Commissioner Hoffmann asked if the project was intended to be owner occupied in the beginning. Mr. Strautmanis

replied that the project initially started off as an owner occupied condominiums but evolved over time as the market changed. He added that there was no agreement for the whole site that restricted the project to owner occupied units unlike their project at Beaver Creek.

Commissioner Hoffmann asked if the proposed 4 unit building was designed similar to Beaver Creek. Mr. Strautmanis replied that the floor plan was similar but some architectural forms on the exterior are different.

President Krueger asked if the units of the 4 unit building were two stories each. Mr. Strautmanis replied that they were.

Trustee Baker asked about the rationale behind have such a low parking ratio. Mr. Strautmanis replied that this ratio was based on experience from the earlier Bradley Crossing phase which showed that parking demand was not very high given the type of clients that rent at the facility. He indicated that only half of the underground parking spaces in the building are currently used and much of the surface parking remains available. Commissioner Hoffmann asked how the Village Code handled the parking ratio. Mr. Piotrowski replied that the Village code standard was much higher but that he believed it resulted in an oversupply. He also added that the code allowed for flexibility from the required minimum and the operational agreement for the development conditioned such flexibility.

Trustee Baker asked if the parking calculations accounted for the possibility of parking behind a garage door. Mr. Strautmanis replied that they had not counted this possibility. Mr. Piotrowski stated that the Village had not counted these spaces either and noted that the operational agreement would not prohibit it.

Commissioner Bellehumeur asked how staffing for residents with disabilities would be handled. Sylvan Leabman, Jewish Family Services (JFS) President replied that they would be staffed identically to the first phase with JFS staffers handling about 25% of the residents and other agency case workers handling the rest of the disabled population.

Commissioner Bednar asked if the units would be designed in such a way to accommodate non-disabled users or other renters if JFS was not a part of the project in the future. Mr. Strautmanis replied that the units were designed universally so that they would work well for all possible renters. He also noted that various WHEDA funding stipulations tied JFS to the project for at least 17 years and he indicated that their commitment to the project would likely be much longer.

Commissioner Bellehumeur asked if there was still a waiting list for the project. Mr. Leabman replied that the waiting list for Bradley Crossing was 140 people and 125 people at Deerwood Crossing.

Commissioner Jaroczynski asked if each unit contained laundry. Mr. Strautmanis replied that only the 2 and 3 bedroom units contained in-suite laundry while the other units had common area laundry facilities.

Trustee Schilz asked why Bedrock Group was listed on the applications and no mention of General Capital Group. Mr. Strautmanis replied that Bedrock Group was an affiliate of General Capital and that the principals of General Capital were all involved in the project and that JFS would own the project outright.

It was moved by Commissioner Hoffmann and seconded by Commissioner Bellehumeur to recommend approval of the development agreement with JFS Housing for Bradley Crossing Phase Two to the Village Board. The motion carried unanimously.

B) Review and recommendation of a final site plan and operational development agreement for Walmart, 6300 W. Brown Deer Road

Mr. Piotrowski reviewed the proposal and the concerns of Staff and introduced the Walmart representatives.

Debbie Tomczyk of law firm Reinhardt, Boerner Van Deuren SC, representing Walmart, presented the site plan, building details and operational aspects of the development including hours of operation, delivery and crime

prevention.

Commissioner Bellehumeur asked about the current value of the Lowe's property. President Krueger replied that it is 15 million and Walmart has guaranteed a value of 11 million at a minimum.

Commissioner Bellehumeur asks what the Village allows for holiday hours of other retail establishments in the Village. Chief Rinzel replied that the holiday hours vary by establishment. He added that the Village has an ordinance that requires a special application to the Board for extended hours and that retailers must cover the cost of overtime for police officers. Commissioner Bellehumeur asked about the hours that Walgreens is allowed. Chief Rinzel replied that Walgreens closes at 10 p.m. and does not open before 6 a.m.

President Krueger opened the discussion up to questions and comments from the public.

Charlotte Grimes-Johnson, 9067 N. Bethanne Dr. asked about what the improvements to the bus stop would include. Mr. Piotrowski detailed that it would be a new accessible pad, benches and trash receptacles.

Betty Bennett, 6209 W. Plaza Circle stated that she was not in support of Walmart's request to remain open until midnight and stated that because of the building's setback, noise and light would adversely impact neighbors to the north. She asked whether or not a delivery door was to remain on the northeast side of the building facing the residential properties.

Gary Bond, 8740 N. 68th Street stated that he had no objection to Walmart remaining open until midnight.

Janet Crosby, 6271 W. Plaza Circle stated that she was concerned with noise from employees that would come out of the rear entrances and loading area. She also indicated concerns with security and a desire to move the compactor to the west side of the building.

Fran Jones, 8732 N. 66th Street stated that she was not in favor of extended hours for Walmart. She also asked if Walmart was to maintain the improved bus stop. Mr. Piotrowski replied that the agreement contained language mandating that Walmart maintain the bus stop.

Margaret Jaberg, 8075 N. 37th Street urged the Plan Commission to uphold Village ordinances and standards related to hours, landscaping, site design and crime prevention.

William Wattleton, 9049 N. Bethanne Drive stated that the Village must maintain tight control over the development so that the condition of the store and property does not deteriorate.

Commissioner Schmitz asked why there was a provision for the cleaning of Beaver Creek. Mr. Piotrowski replied that the newly naturalized area of Beaver Creek often received a lot of trash from the adjacent Lowe's parking lot and being a sensitive natural area there should be extra effort taken to maintain it in good condition.

Commissioner Bellehumeur stated that she does not support the extended hours until midnight and Commissioner Schmitz agreed.

President Krueger asked the Commissioners how they felt about the early snowplowing. Commissioner Jaroczynski stated that he did not support allowing snowplowing earlier than the Village ordinance and suggested a 6 a.m. start time would be appropriate.

Commissioner Hoffmann stated that he would like a sound barrier added to the north side of the property. Ms. Tomczyk stated that there is already a ten foot high wood fence on the north side. Mr. Hoffmann stated that was not sufficient and that there were better options for sound buffering.

Commissioner Bellehumeur asked about the porous pavement detail and specification. Mr. Piotrowski explained that he was not familiar with the exact product to be used but that the Village's engineering consultant was confident that

it would be a sustainable product and one that would meet the same quantity and quality standards that Lowe's achieved before they ruined their porous asphalt.

Trustee Baker asked why a 4th loading dock was being added to the project. Ms. Tomczyk replied that it was needed to accommodate Walmart's delivery schedule and plan of operation.

Trustee Baker asked for clarification on the north side grocery delivery location. Ms. Tomczyk responded that an overhead door that Lowe's used was to remain for smaller grocery deliveries to Walmart. Trustee Baker indicated that he was concerned about the noise from deliveries at this location and suggested that the door be moved to the east elevation.

It was moved by Commissioner Hoffmann and seconded by President Krueger to recommend approval to the Village Board of the operational development agreement with Walmart on condition that they add additional landscaping to the parking lot, a pedestrian connection to Brown Deer Road, upgraded cart corrals, a sound barrier along the north side of the property, and that the hours of operation and snow plowing be from 6 a.m. until 11 p.m. The motion carried unanimously.

C) Public Hearing and recommendation for a conditional use permit for a garden center at Walmart, 6300 W. Brown Deer Road

Mr. Piotrowski reviewed the proposal.

Chief Rinzel asked the Walmart representatives if a register was to be located in the garden center and if store officials would meet with the Police Department to ensure that the fenced enclosure area was properly secured. Ms. Tomczyk replied that there would be a register and that Walmart would be open to meeting to discuss crime prevention for this area.

President Krueger opened the public hearing at 9:06 p.m.

There was no public comment.

President Krueger closed the public hearing at 9:07 p.m.

It was moved by Commissioner Bellehumeur and seconded by Commissioner Schmitz to recommend approval of the conditional use permit for a garden center at Walmart, 6300 W. Brown Deer Road to the Village Board. The motion carried unanimously.

D) Public Hearing and recommendation for a conditional use permit for a grocery store at Walmart, 6300 W. Brown Deer Road

Mr. Piotrowski reviewed the proposal.

President Krueger opened the public hearing at 9:10 p.m.

Betty Bennett, 6209 W. Plaza Circle stated that she would like to eliminate the grocery delivery door on the north side of the building or have it relocated so that it causes less disruption to the neighbors.

Randy Zemel, 6239 W. Silverbrook Lane stated that Walmart grocery stores lacked trash receptacles and the departments got very dirty. He suggested that this location be better prepared to handle the trash.

Janet Crosby, 6271 W. Plaza Circle stated that the parking lot areas also need to be managed for trash accumulation.

Chief Rinzel noted his concern about the placement of the pharmacy section at the front of the store. Ms Tomczyk stated that she would work with the Police Department on a more appropriate location.

Mark Krueger, 6353 W. Donges Lane stated that the parking lot entry off the main drive aisle on 64th Street was blocked by a landscape island which led to traffic stacking issues.

President Krueger closed the public hearing at 9:20 p.m.

It was moved by Commissioner Schmitz and seconded by Commissioner Bednar to recommend approval of the conditional use permit for a grocery store at Walmart, 6300 W. Brown Deer Road to the Village Board. The motion carried unanimously.

E) Public Hearing and recommendation for a conditional use permit for a liquor store at Walmart, 6300 W. Brown Deer Road

Mr. Piotrowski reviewed the request and Ms. Tomczyk provided further details on the operation, security and reasoning why Walmart was seeking a liquor store permit.

President Krueger opened the public hearing at 9:26 p.m.

Randy Zemel, 6239 W. Silverbook Lane stated that he is not in support of the liquor store request and believes that Walmart can be successful without it.

Fran Jones, 8732 N. 66th Street stated that she is not in support of the liquor store request and believes that Walmart can be successful without it.

Janine Bechtel, 4344 W. Bradley Road stated that she did not have a problem with Walmart selling liquor.

Margaret Jaberg, 8075 N. 37th Street stated that she also did not have a problem with Walmart selling liquor and noted that this is a common occurrence at grocery store locations in the area. She asked if Walmart would be required to pay for a full price liquor license. President Krueger replied that they would.

President Krueger closed the public hearing at 9:30 p.m.

Commissioner Schmitz stated that he had no issue with Walmart selling liquor and felt that they were taking proactive measures to ensure security. He added that Walmart should continue to work with the Police Department to appropriately locate the liquor section within the store to minimize crime potential.

Trustee Schilz stated that he was opposed to the liquor store permit request because there are too many liquor stores nearby, particularly in the City of Milwaukee and he wanted to remain consistent with the Board's recent action along Brown Deer Road regarding liquor sale requests at the BP gas station and Walgreens.

Commissioner Hoffmann stated that he was opposed to the conditional use permit for a liquor store for the same reasons.

Commissioner Jaroczynski said he was ok with a liquor store as he felt it was a generally accepted component of a grocery store.

Commissioner Bednar asked which Walmarts in the Milwaukee area have liquor sales. Ms. Tomczyk replied that they all do including the new store at Timmerman Plaza.

It was moved by President Krueger and seconded by Commissioner Schmitz to recommend approval of the conditional use permit for a liquor store at Walmart, 6300 W. Brown Deer Road to the Village Board. The motion carried on a 6-2 vote with Trustee Schilz and Commissioner Hoffmann opposed.

F) Public Hearing and recommendation for a conditional use permit for an open sales lot at Walmart, 6300 W. Brown Deer Road

Mr. Piotrowski reviewed the proposal and indicated Staff's concern.

President Krueger opened the public hearing at 9:35 p.m.

Margaret Jaberg, 8075 N. 37th Street stated that the open sales lot would further reduce parking on site which contradicted Walmart's desire to maximize the amount of spaces in the lot. She added that the open sales lot request should be denied.

Janine Bechtel, 4344 W. Bradley Road stated that the area proposed for the open sales lot would adversely impact traffic flow.

President Krueger closed the public hearing at 9:42 p.m.

Commissioner Bellehumeur asked if the sales area could be moved closer to the garden center.

Commissioner Bednar stated that more details about the design and operation of the open sales lot were necessary.

Commissioner Jaroczynski stated that he wanted to wait to see how parking lot traffic was accommodated before considering the open sales lot.

Commissioner Schmitz asked if the Walmart representatives had any response to the stated concerns. Ms. Tomczyk replied that they did not have all the details and it would require more thought before they could offer specifics.

It was moved by Commissioner Schmitz and seconded by Trustee Baker to recommend denial of the conditional use permit for an open sales lot at Walmart, 6300 W. Brown Deer Road to the Village Board. The motion carried unanimously.

VII. ADJOURNMENT

It was moved by Commissioner Schmitz and seconded by President Krueger to adjourn at 9:45P.M. The motion carried unanimously.



Nate Piotrowski, Community Development Director



REQUEST FOR CONSIDERATION

COMMITTEE CONSIDERATION: Plan Commission
ITEM DESCRIPTION: Development Agreement for a Transportation Company at 4685 W. Bradley Rd.
PREPARED BY: Nathaniel Piotrowski, Community Development Director
REPORT DATE: September 9, 2013
Existing Zoning: PD – Planned Development
Applicable Land Use Regulations: Sec. 121-246
VILLAGE ATTORNEY REVIEW: <input type="checkbox"/> Village Attorney has reviewed documents. <input type="checkbox"/> Village Attorney has not reviewed documents. <input checked="" type="checkbox"/> Documents provided to Village attorney.
COMPREHENSIVE PLAN REVIEW: <input checked="" type="checkbox"/> Staff has reviewed request for consistency with the Comprehensive Plan.

BACKGROUND INFORMATION:

The Police Department previously identified World Care Transit Service as operating a transportation company in the parking lot of the Shell Station at 4685 W. Bradley Road. The only current approved use for the property is an automobile service station, car wash and convenience store. Since the property is zoned Planned Development a site specific development agreement (see attached) is needed to authorize the use of the parking lot by the transportation company. The transportation company is operated by the same group that operates the convenience store, car wash and service station.

Attached is a statement of operation from the owner, Mr. Siwan Tiwari. His operation involves the use of up to 11 vehicles (mostly minivans, see attached photo for example) to bring clients to and from various medical appointments. The hours of operation would be limited to 6:00 a.m to 11:00 p.m. Currently, transportation vehicles are parked on the south side of the site (see attached parking lot plan) and would remain should the agreement be approved.

RECOMMENDATION:

Village Staff has not seen significant nuisance issues with the operation nor adverse impacts to the existing businesses. However the property previously has had overnight vehicle storage problems under a different owner. If the Plan Commission is comfortable with a limited number of transit vehicles on site Staff believes the development agreement would provide sufficient protection should problems arise. Please contact Nate Piotrowski with any questions or comments at 371-3061.

World Food & Petro Mart
4685 W Bradley Road ,
Brown Deer, WI-53223.

Date : April,08,2013

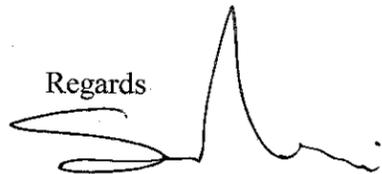
Village of Brown Deer
4800 West Green Brook Drive
Brown Deer, WI 53223.

Subject: Request For the Permission of Over Night Parking on the site.

Dear Village President,

I am writing this letter in requesting for granting us permission for the overnight parking of Company Own Personal Vehicles timing frame **From 11 PM - 5 AM Monday To Sunday.** The Purpose of vehicle are basically used for of Non- Emergency Medical Transportation for Peoples who need to go to hospitals, clinics, therapist , operation follow as like everyday members are picked up from their houses & drop off at the doctor's office & in evening bring them to their houses back , these including dialyses patients , handicapped , general routine check up members etc. & also we have 30% -40 % members are from our Brown Deer Village. So at the end day each driver supposed to fill up their tank of gas at 4685 W Bradley Road, Brown Deer, WI-53223 for next day run everyday & so it is very convenience for us to just park the vehicles in the back parking lot which is behind on building mark on the dawning mark with P in evening timing & then the driver get start from there again. We have total number 8-10 numbers of vehicles which are mainly minivans. We just need only parking space for our company's vehicles so as we are already doing business in Brown Deer as Gas Station & C-store & own the location at 4685 W Bradley Road , Brown Deer, WI-53223 & also these all vehicles are own by us same company & we have only this space we have available for to park . And I would Like to mention that for all vehicles major or minor repairs we have contracted with number of different Repair Shops & Garages so for all repairs we are sending to those shops. We are requesting to the village of Brown Deer please provide us the permission of parking of our vehicles in night time so that we can utilized our own extra space , We hope so that we will get support from Village & we will be really very appreciate to the Village President & Village Council Members.

Regards



Sawan Tiwari

4685 W Bradley Road ,
Brown Deer, WI-53223
Ph: (414)712-8113

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PROJECT NUMBER
 Dave Uttech
 ARCHITECT
 ROB LINDSTROM
 DESIGNER
 FEEB METZGER

REVISIONS

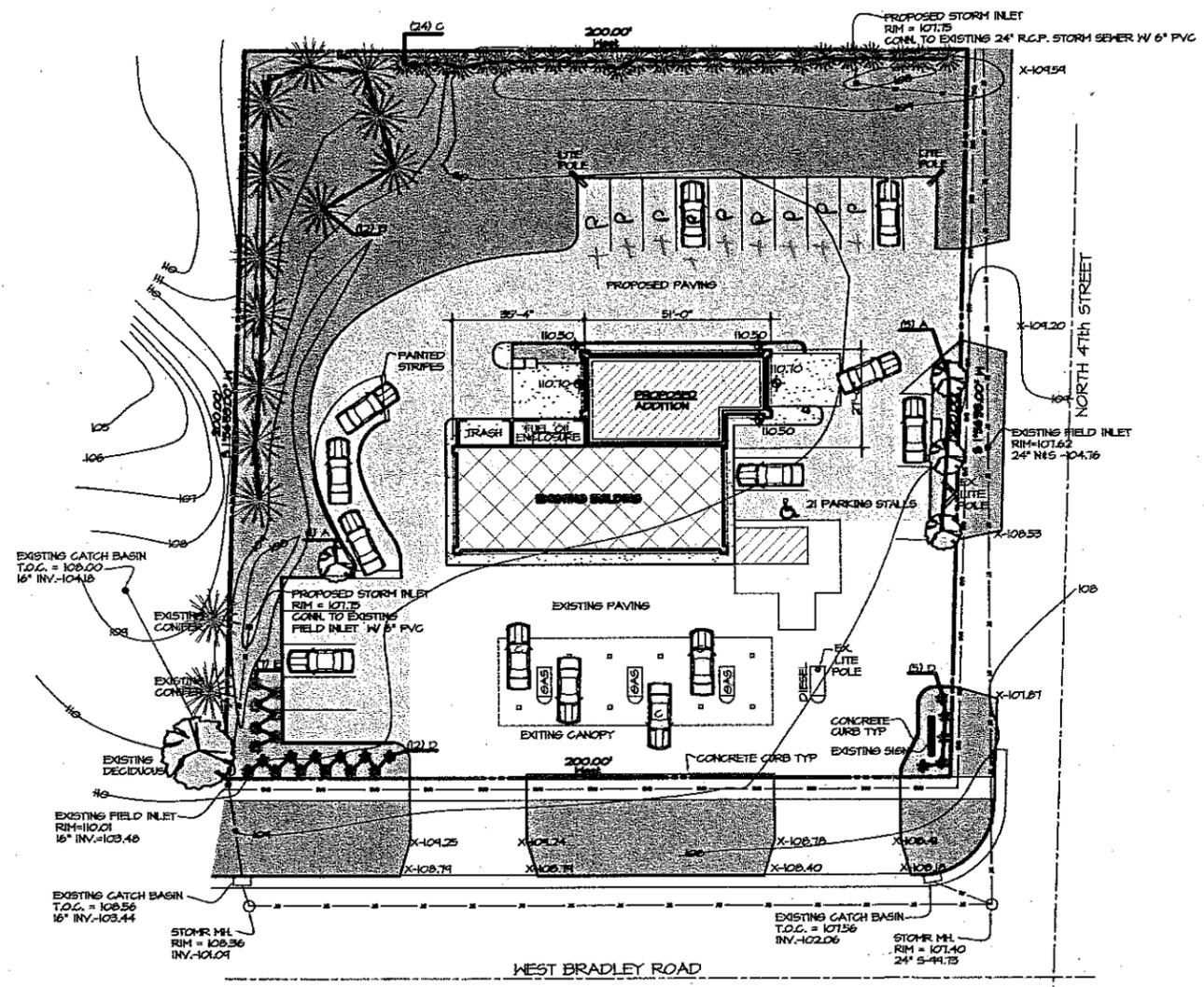
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DESIGN / BUILD CONTRACTOR
 KELLER STRUCTURES
 1000 W. STATE ROAD 50
 KAUKAUNA, WISCONSIN 54901



PROPOSED ADDITION AND REMODELING FOR:
BADGER SHELL
 BROWN DEER, WISCONSIN

PRELIMINARY TO
 PO4041
 CONTRACT NO.
 DATE
 02 FEB 2004
 SHEET
A10



PLANT SCHEDULE

SYM.	PLANT NAME	SIZE & ROOT	QTY.
A	GRABAPPLE TREE	2 1/2" CAL. (MALUS, SP)	4
B	AUSTRIAN PINE	6' HIGH (PINUS NIGRA)	12
C	ISANTI DOGWOOD	30" HIGH (CORNUS SERICEA ISANTI)	24
D	SKANDIA JUNIPER	(JUNIPERUS SABINA SKANDIA)	17
E	ARROW HOOD VIBERNUM	3' HIGH (VIBERNUM BENTANUM)	7

34%	GREEN SPACE	= 13,456 S.F.
50%	HARD SURFACE AREA	= 25,250 S.F.
5%	EXISTING BUILDING	= 2,088 S.F.
3%	PROPOSED BUILDING	= 1,175 S.F.
	TOTAL AREA	= 39,971 S.F.
	21 PARKING STALL	

SCHEMATIC SITE PLAN
 1/2" = 1'-0"
 NORTH

PROPOSED ADDITION AND REMODELING FOR:
BADGER SHELL
 Brown Deer, WISCONSIN

A DESIGN / BUILD PROJECT BY:
KELLER STRUCTURES
 DESIGN / BUILD CONTRACTORS
 100-166-8786
 P.O. BOX 620
 KAUKAUNA, WISCONSIN 54901

**Development Agreement
By and Between
World Care Transit
And
The Village of Brown Deer**

THIS AGREEMENT is entered into as of this ____ day of _____, 2011, by and between **World Care Transit Service LLC**, a limited liability corporation hereinafter called "Operator" and the **VILLAGE OF BROWN DEER**, a municipal corporation in Milwaukee County, Wisconsin.

WITNESSETH:

WHEREAS, World Care Transit Service LLC, owns the property at 4685 W. Bradley Road., located in the NE ¼, Section 14, T8N, R21E, Village of Brown Deer, Milwaukee County, Wisconsin.

Legally described as: (See Exhibit A)

WHEREAS, a request has been made to the Village Board of The Village of Brown Deer, Milwaukee County, Wisconsin, by Operator for approval of a Development Agreement authorizing the establishment of a transportation company and associated vehicle parking at 4685 W. Bradley Road (hereinafter referred to as the "Property"); and

WHEREAS, the covenants contained herein are necessary to provide for the harmonious, orderly and consistent development of the neighborhood involved.

NOW, THEREFORE, following review and consideration by the Plan Commission on August 9, 2013 and after review and consideration by the Village Board of the Village of Brown Deer on August 16, 2013, the World Care Transit Service LLC Development Agreement is hereby approved in accordance with Sections 121-246 through 121-247 of the Village Code of the Village of Brown Deer, the attached Exhibits A and B and covenanted and agreed as follows:

1. Subject to review by the Brown Deer Plan Commission after one year. If there are no documented complaints about the use, or if documented complaints have been resolved to the satisfaction of the Village Board, the approval of the specific project plan for a transportation company becomes continuous pursuant to Section 121-247 of the Village Code of the Village of Brown Deer.
2. Outside storage of merchandise, equipment or inventory beyond the transportation vehicles is strictly prohibited on this site.
3. The property shall be kept free and clear of litter and debris. All vehicles shall also be kept clear of litter, debris and snow.
4. All business signage shall be in accordance with Article IX of the Village Code of the Village of Brown Deer and shall be approved by the Village of Brown Deer Building Board if required.
5. Business activity is limited to the hours of 6:00 a.m. until 11:00 p.m., Monday through Sunday.

6. Any hazardous conditions or deficiencies identified by the Village of Brown Deer shall be corrected by the owner to the satisfaction of the Village within thirty (30) days of written notification.
7. There shall be no more than 11 transportation vehicles, belonging exclusively to World Care Transit Service LLC to be parked on site. The transportation vehicles shall be no larger than a minivan or standard cargo van type vehicle. Only transportation company vehicles may be parked on site overnight. Employee vehicles shall not be parked on site overnight.
8. The parking of the transportation vehicles shall be in the rear of the building as shown on Exhibit B. Should parking demand from the gas station cause conflict for these spaces, the Village reserves the right to review and potentially revoke this agreement.
9. All vehicles must be licensed, registered and in working condition.
10. No major vehicle maintenance (transmission, engine, etc.) shall be performed on site.
11. If crime prevention issues are identified a meeting with the Brown Deer Police Department shall be required to review security on site.
10. That as long as the property is used for the purposes that are authorized by this Agreement, all covenants, agreements, restrictions and provisions herein contained constitute covenants running with the land and shall be binding on all parties, their heirs, assigns and successors having an interest in the land affected hereby for a period of twenty-five (25) years from the date this instrument is recorded, after which time this instrument shall automatically be extended for successive periods of ten (10) years. However, upon a showing of reasonable cause, the Village Board of the Village of Brown Deer may relieve the Operator from such covenants, agreements, restrictions, or any of them, before the expiration of twenty-five (25) years or thereafter by the adoption of a resolution so doing. The covenants herein contained may be enforced by proceedings at law or in equity by the Village against any person or persons violating or attempting to violate the same.
11. Exhibit A, attached, is the legal description of the property.
12. Exhibit B, attached, contains the business operational plan, and site plan approved by the Plan Commission and the Village Board.

Exhibit A
Legal Description

Exhibit B
Site and Operational Plan



 **WORLD CARE**
TRANSIT SERVICE

11



REQUEST FOR CONSIDERATION

COMMITTEE CONSIDERATION: Plan Commission
ITEM DESCRIPTION: Review and Recommendation of a permanent Conditional Use Permit for a public utility tower at Badger Meter, 4545 W. Brown Deer Road
PREPARED BY: Nathaniel Piotrowski, Community Development Director
REPORT DATE: September 5, 2013
Applicable Land Use Regulations: Sec. 121-63
VILLAGE ATTORNEY REVIEW: <input type="checkbox"/> Village Attorney has reviewed documents. <input type="checkbox"/> Village Attorney has not reviewed documents. <input checked="" type="checkbox"/> Documents provided to Village attorney.
COMPREHENSIVE PLAN REVIEW: <input checked="" type="checkbox"/> Staff has reviewed request for consistency with the Comprehensive Plan.

BACKGROUND INFORMATION:

Staff is bringing a Conditional Use Permit back to the Plan Commission for review pursuant to the first year review provision of said permit in order to decide whether or not the land use shall be made permanent.

The applicant, Badger Meter, received a conditional use permit in in June 2012 (see attached) for the establishment of a public utility tower.

Since that time the tower has been established and there have not been any complaints.

RECOMMENDATION:

Village Staff suggests the Plan Commission recommend to the Village Board that the Conditional Use Permit issued to Badger Meter for a public utility tower be made continuous. Please contact Nate Piotrowski with any questions or comments at 371-3061.

**CONDITIONAL USE
PERMIT**

Public Utility Tower

Document Number

Document Title

Before the Village Board of the Village of Brown Deer, in regard to a public utility tower at **4545 W. Brown Deer Rd.**, located in the SW ¼ of the NE ¼ of Section 11, Township 8 North, Range 21 East, in the Village of Brown Deer, Milwaukee County, State of Wisconsin, further described in attached **Exhibit "A"**.

WHEREAS, the Village Code and Zoning District Map of the Village of Brown Deer, pursuant to State Statutes, provide that the premises may not be used of right for the purpose hereinafter described but that upon petition such use may be approved as a Conditional Use in particular circumstances as defined by the standards in the Village Code; and

WHEREAS, a Petition has been made by Badger Meter Inc., and public hearing held thereon, and the Village Board of the Village of Brown Deer having determined that by reason of the particular nature, character, and circumstances of the proposed use, the proposed use with the terms and conditions hereinafter prescribed would be consistent with the requirements of the Village Code.

NOW, THEREFORE, this Conditional Use Permit is granted authorizing that Exhibits A and B to be used for the purpose of a **Public Utility Tower** subject to compliance with the terms and conditions hereinafter stated in this Conditional Use Permit (hereinafter the "Permit").

Recording Area

Name and Return Address:

**Community Development Director
Village of Brown Deer
4800 West Green Brook Drive
Brown Deer, WI 53223**

047-9980-002

Parcel Identification Number (PIN)

GRANTED, by action of the Village Board of the Village of Brown Deer this 18th day of June, 2012

Russell V. Gompel
Russell Van Gompel, Village Clerk

Carl Krueger
Carl Krueger, Village President

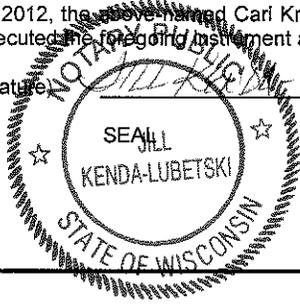
STATE OF WISCONSIN)
) ss
MILWAUKEE COUNTY)

Personally came before me this 13th day of August, 2012, the above named Carl Krueger, Village President and Russell Van Gompel, Village Clerk to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Jessica Lubetski (Notary Signature) Jessica Lubetski (Print name of Notary)

Notary Public, State of WISCONSIN

My commission: 12-23-2012



CONDITIONAL USE PERMIT ACCEPTANCE: This Conditional Use Permit is hereby accepted this 2nd day of August, 2012.

William R. A. Bergum
([Title])

William R. A. Bergum
Vice President - General Counsel & Secretary

STATE OF WISCONSIN)
) SS
MILWAUKEE COUNTY)

This Conditional Permitted Use Permit Acceptance was acknowledged before me this 2nd day of August, 2012, by

William R. A. Bergum [name] as _____ [title] of William R. A. Bergum, Vice President - General Counsel & Secretary, Badger Meter, Inc.

Joan C. Zimmer (Notary Signature)

Joan C. Zimmer (Print name of Notary)

Notary Public, State of WISCONSIN

SEAL

My commission expires: 9-9-2012

Original filed in the Community Services Department of the Village of Brown Deer

CONDITIONAL USE PERMIT
Public Utility Tower

047-9980-002

Document Number

Document Title

Parcel Identification Number (PIN)

THE CONDITIONS of this Permit are:

1. This Permit is granted to Badger Meter Inc., upon the representation that it is the owner of the Premises and shall become effective upon the execution of the acceptance hereof by Badger Meter as the owner of the premises and upon recording shall constitute a covenant running with the land. The Permit may not be assigned until after it has become effective. No assignment of this Permit shall be effective until the assignee delivers written notice of the assignment to the Village Board, duly undertakes in writing to comply fully with the provisions of this Permit, satisfies any monetary security requirements of this Permit and cures any violations of this Permit. This Permit shall not be assignable to any person or entity that is not the owner of the Premises.
2. The Permit shall be void unless, pursuant to the Village Code, the approved use commenced or the building permit is obtained within 12 months of the date of the Village Board approval noted above. Construction shall be completed within 12 months of the date the building permit is issued.
3. This Permit is subject to amendment and termination in accordance with the provisions of the Village Code of the Village of Brown Deer.
4. Operation of the use permitted shall be in strict conformity to the conditions set forth herein.
5. Conditions on the operation.
 - a. Type of operation permitted: **Public Utility Tower**. The use of the Premises as a cellular antenna and equipment shelter location shall be in substantial compliance consistent with the plans set forth in the Site Plans and Elevations submitted to the Village of Brown Deer in support of its request for this Permit, which are attached as Exhibit B and made part of this Permit. No use of the areas of the premises not identified in the site plans for the proposed use may be used without approval by the Village pursuant to its Village Code.
 - b. Hours during which operation is permitted: **24-hour continual operation. Public access is prohibited.**
 - c. Performance standards relating to noise, vibration, odor, smoke, dust, etc., other than applicable Village Ordinances: **Per the Village Code.**
 - d. Duration of Conditional Use: **For an initial period of one year. To be reviewed one year from the date of approval. If there are no documented complaints about the permitted use, or if documented complaints have been resolved to the satisfaction of the Village Board, the Permit, upon petition of the land owner and upon recommendation of the Plan Commission and approval of the Village Board, may be continuous pursuant to Section 121 of the Village Code of Brown Deer.**
 - e. Other:
 - (1) **The applicant shall reimburse the Village for any legal, engineering and other administrative expenses required pursuant the Village Code.**
6. Conditions of the Building other than in accordance with the approved building plans.
 - (1) **The tower shall be constructed and erected to meet all Federal, State and local commercial building codes and requirements.**

CONDITIONAL USE PERMIT

Public Utility Tower

047-9980-002

Document Number

Document Title

Parcel Identification Number (PIN)

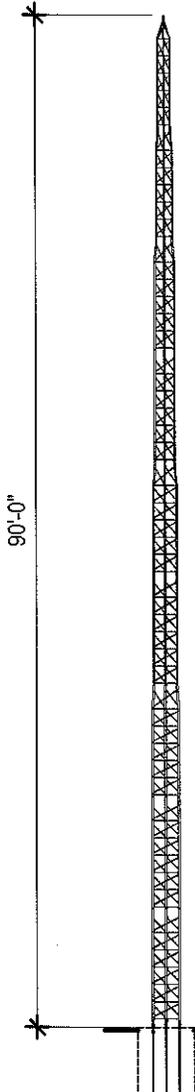
7. Conditions on the Site other than in accordance with the approved site plan.
- a. Outside storage of Materials, Products or Refuse (location and screening thereof):
 - (1) There shall be no exterior storage of supplies, building materials or equipment related to the tower operation.
 - (2) The property shall be kept free and clear of litter and debris.
 - (3) Overnight parking of motor vehicles or maintenance equipment adjacent to the tower shall be prohibited.
 - b. Finished topography and building grades, retaining walls, storm water run-off:
 - (1) None.
 - c. Sign location, size, design:
 - (1) There shall be no signs of any kind on the tower or antenna. One identification decal with emergency contact information is allowed provided that it cover no more than ten percent (10%) of the surface area of the elevation on which it is located.
 - d. Exterior lighting of the site, location, design and power:
 - (1) None.
 - e. Other:
 - (1) Any hazardous conditions or deficiencies identified by the Village shall be corrected by the owner to the satisfaction of the Village within 30 days of written notification.
 - (2) The existing perimeter fencing around the entire property shall be maintained in good repair so as to prevent unauthorized access to the tower.
 - (3) The tower shall meet or exceed any and all applicable Federal Aviation Administration requirements as well as any and all Federal Communication Commission standards or requirements.
 - (4) If the public utility tower is no longer in use, it is the responsibility of the owner to remove the tower and all equipment and support material and restore the site to its pre-construction condition.
 - (5) If any additional equipment is proposed to locate on the tower, beyond the currently envisioned water meter reading antennas, said equipment proposal shall be reviewed and approved by the Village of Brown Deer.

Exhibit A

Exhibit B- Site Plan/ Tower drawing

FREESTANDING ALUMINUM TOWER

MODEL #HD 11-90



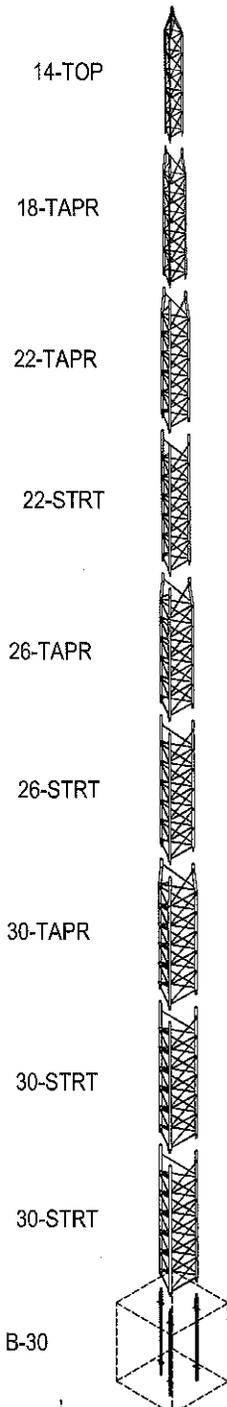
TOTAL WEIGHT: 403 LBS.

WIND LOADING:
10.79 Sq. Ft.

Contact Universal Towers to confirm
geographical location of your tower and
all wind load implications

WARRANTY

UNIVERSAL TOWERS ARE WARRANTED AGAINST DEFECTIVE MATERIAL OR WORKMANSHIP AND ARE SUBJECT TO REPAIR OR TO MATERIAL REPLACEMENT ONLY IF FAILURE RESULTS FROM THESE FACTORS WITHIN ONE YEAR FROM PURCHASE BY USER. THIS WARRANTY DOES NOT EXTEND TO ANY OF OUR PRODUCTS WHICH HAVE BEEN SUBJECTED TO MISUSE, NEGLIGENCE, ACCIDENT, IMPROPER INSTALLATION OR APPLICATION, NOR SHALL IT EXTEND TO UNITS WHICH HAVE BEEN REPAIRED OR SUBSTANTIALLY ALTERED OUTSIDE OF OUR FACTORY. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED.



ELEVATION 2
SCALE: 1/16"=1'-0"

ISOMETRIC 1
SCALE: N.T.S.

ALUMINUM TOWER



UNIVERSAL TOWERS
A DIVISION OF
UNIVERSAL MANUFACTURING CORP.
43900 GROESBECK HWY.
CLINTON TOWNSHIP, MI 48036
PH: (586) 463-2560
FAX: (586) 463-2964

JOB NO.:

COMPONENT:

HD 11-90

