



Meeting Date: 9/24/2012
Agenda Item: # 6c

Mission Statement

Delivering quality services in a courteous, cost-effective and efficient manner

VILLAGE BOARD MEETING STAFF REPORT

REPORT TO: President Burt McIntyre and Village Board of Trustees
REPORT FROM: Dave Wiese, Director of Community Development
AGENDA ITEM: Review and take action on 5th amendment to the Restrictive Covenants, Restrictions and Easements for lots in the 29/41 Retail Centre Plat zoned B-1 Business.

ACTION REQUESTED: ___Ordinance ___Resolution ✓ Motion ___Receive/File

POLICY ISSUE

Does the Village Board want to approve the 5th amendment to the Restrictive Covenants, Restrictions and Easements for lots in the 29/41 Retail Centre Plat zoned B-1 Business?

RECOMMENDED ACTION BY VILLAGE BOARD

Village staff recommends the Village Board approve the 5th amendment to the Restrictive Covenants, Restrictions and Easements for lots in the 29/41 Retail Centre Plat zoned B-1 Business. If the Village Board is in favor of this policy action, the following motion may be made:

"Motion to approve the 5th amendment to the Restrictive Covenants, Restrictions and Easements for lots in the 29/41 Retail Centre Plat zoned B-1 Business."

POLICY ALTERNATIVE(S)

The Village Board could take the following action:

- Amend the Restrictive Covenants or provide additional considerations
- Deny the request
- Table the item and request additional information

POLICY REFERENCE

Wisconsin Statutes: 236

Howard Municipal Code: 46

Policies & Procedure Manual: N/A

FINANCIAL INFORMATION

FISCAL IMPACT:

- | | |
|------------------------------|------------|
| 1. Is There A Fiscal Impact? | <u>Yes</u> |
| 2. Is it Currently Budgeted? | <u>N/A</u> |
| 3. If Budgeted, Which Line? | <u>N/A</u> |

FISCAL SYNOPSIS:

Approving the amendment allows for the development of taxable buildable property.

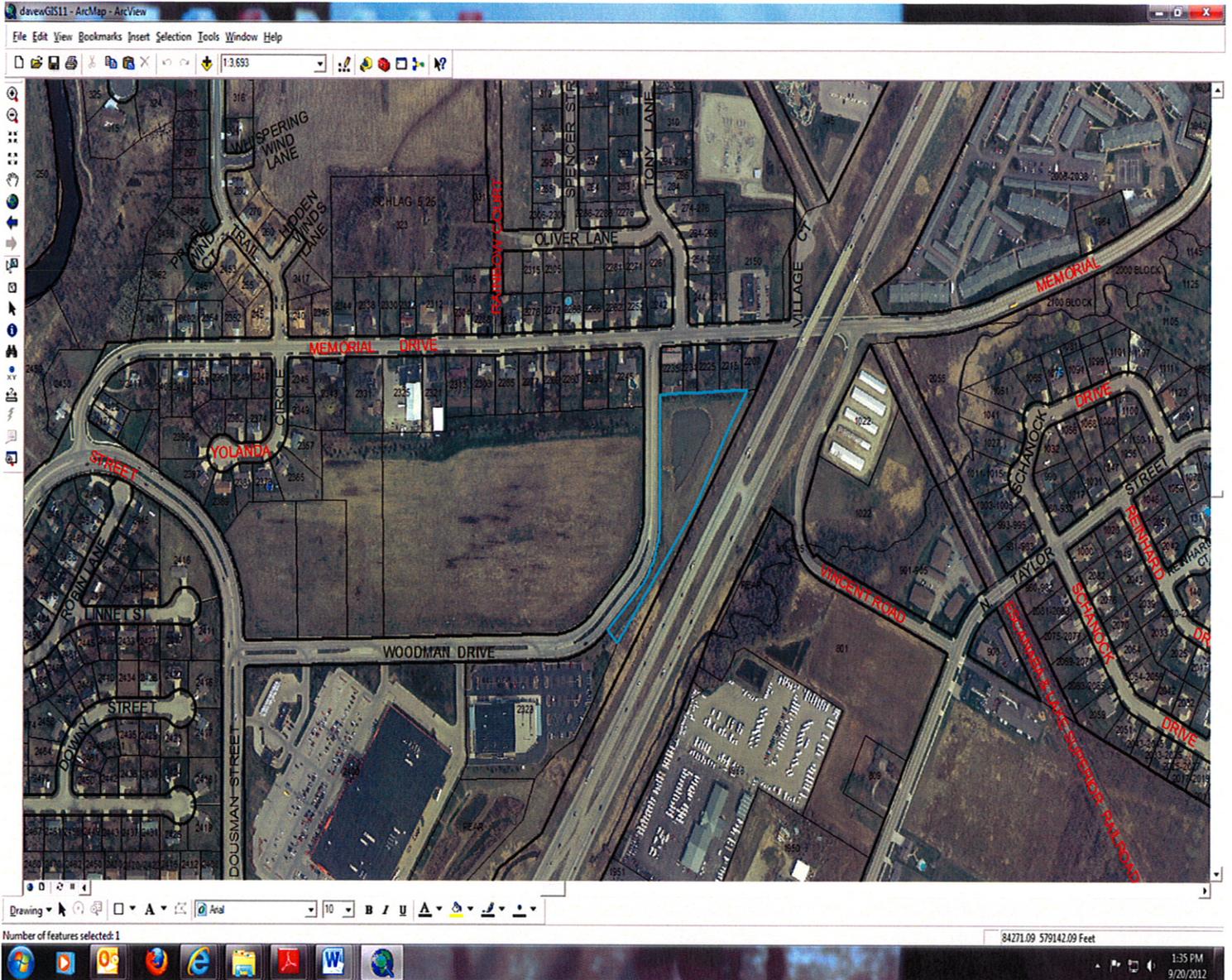
BACKGROUND INFORMATION

Parcel VH-2051 is currently owned by WRC Inc. The property is zoned B-1 Business. The applicant is proposing to take the current stormwater pond and convert it to a buildable parcel. The new lot would meet the minimum setback requirements and lot frontage requirements of the zoning code. The stormwater pond behind Woodmans is being modified in order to handle any future stormwater needs for the area.

ATTACHED INFORMATION

- I. Area Map
- II. Proposed 5th Amendment

ATTACHMENT I



FIFTH AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LOTS IN THE 29/41 RETAIL CENTRE PLAT ZONED BUSINESS, B-1

Name & Return Address:
Woodman's Food Market, Inc.
Attn: Bret A. Backus, President
2631 Liberty Lane
Janesville, WI 53545

Parcel Identification Nos.: See attached Exhibit A

RECITALS

A. Woodman's Food Market, Inc. (Developer), with the consent of the Village of Howard (Village), executed and recorded a declaration of covenants, restrictions and easements for lots in the 29/41 Retail Centre Plat zoned business, B-1, which lots are described on Exhibit A. The declaration was recorded with the Brown County Register of Deeds on July 5, 2000, as Document No. 1761355. The declaration was amended by a first amendment recorded with the Brown County Register of Deeds on March 20, 2001 as Document No. 1800806, a second amendment recorded with the Brown County Register of Deeds on July 7, 2011 as Document No. 2531054, a third amendment recorded with the Brown County Register of Deeds on July 7, 2011 as Document No. 2531097, and a fourth amendment recorded with the Brown County Register of Deeds on July 7, 2011 as Document No. 2531105. The declaration as so amended will be called the "Declaration".

B. Capitalized words and terms used in this fifth amendment shall have the meanings given in the Declaration. Developer is still the Class B member of the Association.

C. As a result of certain developments, Outlot 2 need no longer be used for the operation of the storm water management system for the Lots, but is still currently used for that purpose.

AGREEMENT

I

In accordance with the procedures set forth in Section 13.2(a) of the Declaration, Developer amends the Declaration as follows:

1. The recitals are incorporated and approved.

2. Section 4.2 shall be revised to read:

4.2 The Lots and Outlots 2 and 3 shall be subject to the following use restrictions:

(a) Outlot 3 shall be used exclusively for the construction and maintenance of a storm water management system for the Lots and, effective the Termination Date defined in Section 4.2 (b), for Outlot 2.

(b) The Lots and Outlot 2 are zoned business (B-1) under the Zoning Code. Outlot 2 shall initially be used for the construction and operation of the storm water management system for the Lots. Association shall have the right to cease that initial use of Outlot 2 at any time. Effective the date the Association ceases such initial use (the Termination Date), Outlot 2 shall be used exclusively in compliance with the B-1 zoning. Promptly after the Termination Date occurs Association and Developer shall record an amendment to the Declaration which reports the Termination Date. The Lots shall be used exclusively in compliance with that B-1 zoning.

3. The following second paragraph shall be added to Section 7.1:

Outlot 2 shall not be subject to the payment of assessments of Common Expenses until the occurrence of the Termination Date. Effective the Termination Date, Outlot 2 shall be subject to such assessment, and the Percentage Shares for the Lots and Outlot 2 shall be adjusted in accordance with the definition of Percentage Share.

4. The first sentence in Section 9.2 shall be revised to read:

No parking shall be permitted on any Outlot, except on and after the Termination Date, parking shall be permitted on Outlot 2.

5. Effective the Termination Date, Outlot 2 and its owner shall be subject to all provisions of the Declaration applicable to Lots and Owners. For example only, on the Termination Date, the owner of Outlot 2 shall become an Owner and a

Class A member of Association, and such owner shall be subject to Articles 8, 9 and 10 of the Declaration.

6. The Declaration is ratified and confirmed, except as modified by this fifth amendment.

Dated June ____, 2012

WOODMAN'S FOOD MARKET, INC.

By: _____
Bret A. Backus, Vice President-Real Estate

Signature of Bret A. Backus authenticated this ____ day of June ____, 2012

Notary Public, State of Wisconsin
My commission: _____

Consent of Village of Howard

The Village of Howard hereby consents to the foregoing fifth amendment.

VILLAGE OF HOWARD

By: _____ Dated: June ____, 2012
Burt R. McIntyre, Village President

By: _____ Dated: June ____, 2012
Paul Evert, Village Administrator

By: _____ Dated: June ____, 2012
Dennis M. Duffy, Village Attorney

Signature of Burt R. McIntyre authenticated this ____ day of June ____, 2012

Notary Public, State of Wisconsin
My commission: _____

Signature of Paul Evert authenticated this ____ day of June ____, 2012

Notary Public, State of Wisconsin
My commission: _____

Signature of Dennis M. Duffy authenticated this ____ day of June ____, 2012

Notary Public, State of Wisconsin
My commission: _____

Drafted by T. J. Sobota

EXHIBIT A

Legal Description of Lots in 29/41 Retail Centre Plat Zoned B-1

Lot Number	Parcel Identification Number
32	VH-2037
33	VH-2038
34	VH-2039
35	VH-2040
36	VH-2041
37	VH-2042
38	VH-2043
39	VH-2044
41	VH-2046
42	VH-2047
Lot 3 of Certified Survey Map 6307	VH-2048, 2049
Lots 1 and 2 of Certified Survey Map 6335	VH-2048, 2049