



Meeting Date: June 27, 2011
Agenda Item: 6a (ii)

VILLAGE BOARD STAFF REPORT

REPORT TO: President Burt McIntyre and Village Board Members

REPORT FROM: Dave Wiese, Executive Director of Community Development

AGENDA ITEM: **Review and take action on Resolution 2011-14 releasing and relocating the 12' utility easement and 100' buffer zone easement for the 29/41 Retail Centre Plat.**

ACTION REQUESTED: Approval of Resolution 2011- 14

POLICY ISSUE

Should the Village approve releasing and relocating the buffer zone easement for Menards?

POLICY ALTERNATIVE(S)

The Village Board could take the following action:

- Approve the request.
- Deny the request.
- Table the request until a later meeting date.

RECOMMENDED ACTION BY THE PLAN COMMISSION

The Plan Commission unanimously recommended approval.

BACKGROUND

As part of the Final PDD approval, Menards is requesting to use a portion of the 100' buffer zone that was established as part of the original development when Woodman's was constructed. The current Menards store design/layout is the "P5" (Prototype-5.) Menards has indicated it is very important that they maintain consistency in the merchandising layout in all of its new stores. For example, Menards needs to ensure that a loyal guest at the Wausau store is familiar with the store layout when visiting the De Pere store (currently under construction). Menards has indicated they cannot rearrange the footprint of the building for this very reason.

Menards has also indicated they cannot move the entire store further south (closer to Woodman Drive). The prototypical distance from the south side of the building to the fence line is at least 150'. This distance is established to ensure the garden center has sufficient room for the prototypical merchandising plan. However, Menards has already agreed to compromise their layout within the Garden Center (only 109'-121' proposed) to ensure both the existing height and location of the berm.

ATTACHMENTS

- I. Resolution and Exhibit A**
- II. Existing 29/41 Plat Notes**

RESOLUTION NO. 2011- 14

**A RESOLUTION PARTIALLY RELEASING A UTILITY EASEMENT
AND BUFFER ZONE EASEMENT AND APPROVING THE RELOCATION
OF THOSE EASEMENTS IN THE PLAT OF 29/41 RETAIL CENTRE,
VILLAGE OF HOWARD, BROWN COUNTY, WISCONSIN**

WHEREAS, on March 27, 2000, the Village Board of the Village of Howard, Brown County Wisconsin, approved the Plat of “29/41 Retail Centre” and provided for acceptance of those lands and rights dedicated by said 29/41 Retail Centre to the Village for public use; and

WHEREAS, the Plat of 29/41 Retail Centre was recorded on the 30th day of June, 2000, in Volume 21 of Plats, on pages 129-136, as Document No. 1760927, Brown County Records, Wisconsin; and

WHEREAS, the Village Plan Commission and Village Staff have received, reviewed and recommend those changes to the 29/41 Retail Centre Plat as provided in the Affidavit of Correction by Peter Gartmann, Registered Land Surveyor No. S-2279 which is attached to and made part of this Resolution along with Exhibit A to the Affidavit which calls for the partial release and relocation of part of the buffer zone easement and the twelve foot utility easement as shown in Lots 35, 36, 37 and 38 of the 29/41 Retail Centre Plat which is further depicted on Exhibit A; and

WHEREAS, the current location of the twelve foot utility and buffer zone easements detrimentally affect the beneficial development of the property upon which they are located; and

WHEREAS, the relocation of the twelve foot utility and buffer zone easements will allow for development of the property from which they’ve been relocated.

NOW, THEREFORE, BE IT RESOLVED by the Village Board of the Village of Howard, Wisconsin, as follows:

That the Village Board hereby releases, discharges and abandons all of the rights, title and interest of the Village of Howard in and to the twelve foot utility easement and that portion of the buffer zone easement; and further approves the relocation of the twelve foot utility easement and the buffer zone easement in Lots 35, 36, 37 and 38 of the Plat of 29/41 Retail Centre as depicted and described on Exhibit A.

BE IT FURTHER RESOLVED that such partial release of easements and approval of relocation is being executed pursuant to the provisions of Section 236.293, Wis. Stats., and insofar as such easements in their current location may be viewed as a restriction for public benefit, the Village hereby intends to waive any such public benefit and wishes to release and waive any restriction found thereon whether by covenant or grant of easement and further approves the relocation of the easements on the Plat of 29/41 Retail Centre as depicted and described on Exhibit A.

The Village Attorney upon adoption of this Resolution shall cause a certified Resolution to be submitted to the Surveyor and filed with the Register of Deeds, Brown County, Wisconsin along with and part of the Surveyor's Affidavit of Correction per Section 236.295, Correction Instruments, Wis. Stats., and such recorded Resolution shall have full force and effect as a release for that portion of the platted utility easement and buffer zone easement as described and depicted herein in Exhibit A together with the relocation of said easements.

Approved this this ____ day of June, 2011.

VILLAGE OF HOWARD

Burt R. McIntyre, Village President

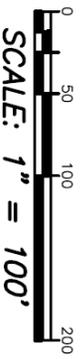
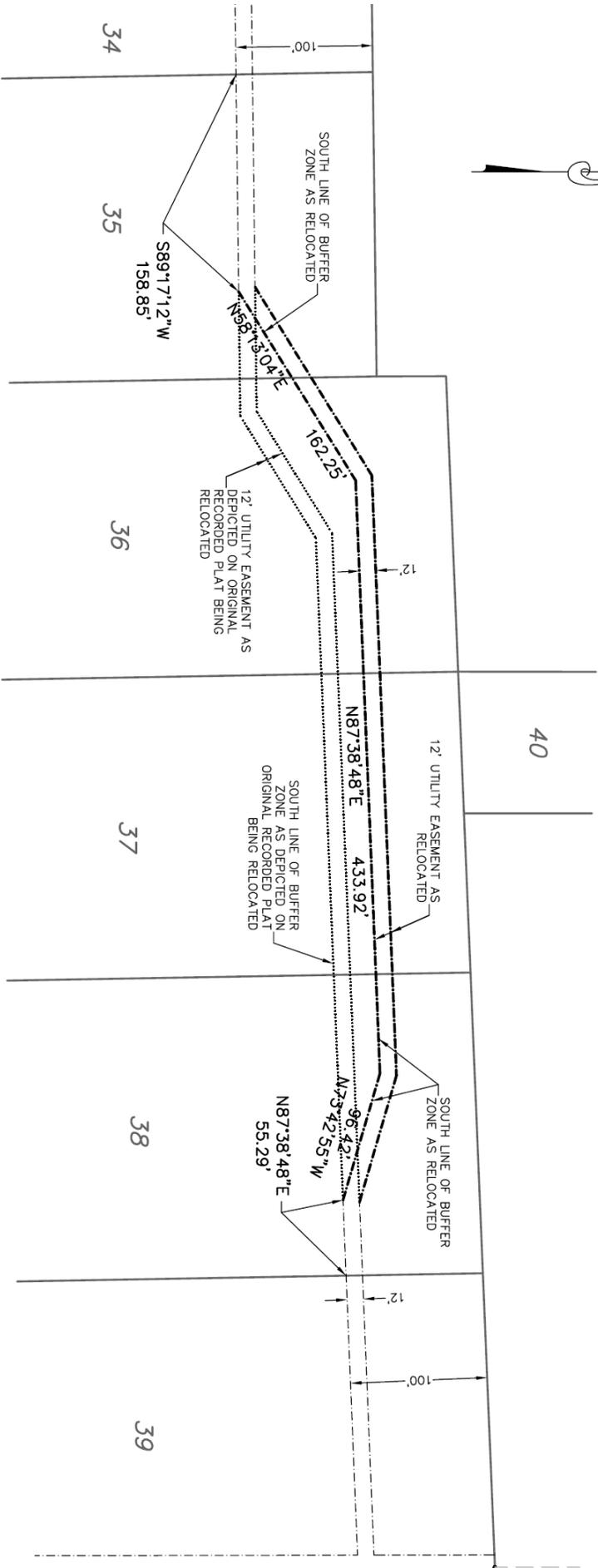
ATTEST:

Robert Bartelt, Village Administrator/Clerk

DATE OF PUBLICATION:

EXHIBIT A

RELOCATED BUFFER ZONE AND UTILITY EASEMENT IN
PART OF THE PLAT OF 29/41 RETAIL CENTRE,
VILLAGE OF HOWARD, BROWN COUNTY, WISCONSIN



AFFIDAVIT

STATE OF WISCONSIN
COUNTY OF EAU CLAIRE ^{SS}

I, PETER J. GARTMANN, Registered Land Surveyor No. S-2279, hereby depose and say:

That I am a land surveyor registered in the State of Wisconsin;

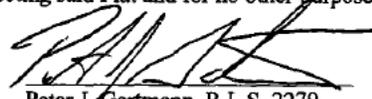
That 29/41 RETAIL CENTRE is a Plat recorded in Volume 21, Page 131 in the Office of the Register of Deeds, Brown County, Wisconsin;

That said Plat is located in the Village of Howard, Brown County, Wisconsin.

That the Village Board of the Village of Howard has approved the relocation of part of the "Buffer Zone" and 12' utility easement as shown in Lots 35, 36, 37, and 38 of said Plat, the relocation of which is shown on the attached Exhibit A.

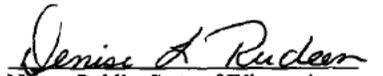
That the "Buffer Zone" and 12' utility easement as depicted as relocated on said Exhibit A is the correct location of said "Buffer Zone" and 12' utility easement.

That I make this Affidavit for the purpose of correcting said Plat and for no other purpose.


Peter J. Gartmann, R.L.S. 2279

Subscribed and sworn to before me

this 23rd day of June, 2011


Notary Public, State of Wisconsin
My commission expires 5-10-15



This instrument drafted by:
Peter J. Gartmann

ATTACHMENT II

NOTES:

- 1 Highway setback restriction:
No improvements or structures are allowed between the right-of-way line and the highway setback line. Improvements and structures include, but are not limited to signs, parking areas, driveways, wells, septic systems, drainage facilities, buildings and retaining walls. It is expressly intended that this restriction is for the benefit of the public as provided in Section 236.293, Wisconsin Statutes, and shall be enforceable by the Wisconsin Department of Transportation or its assigns. Contact the Wisconsin Department of Transportation for more information. The phone number may be obtained by contacting the County Highway Department.
- 2 Woodmans Food Market, Inc. as owner, dedicates and conveys without any warranties, ownership of the following common elements to WRC Howard, Inc., by this plat:
 - A Outlots 2 and 3; the retention ponds, storm and surface water systems and outlet structures, (except the storm sewer pipe located within Outlots 2 and 3); the trees, shrubbery, flowers, and other landscaping from time to time planted on and growing within Outlots 2 and 3.
 - B WRC Howard, Inc., shall be responsible for the maintenance and repair of all of these common elements.
- 3 Outlots 1 and 4 are reserved for possible conveyance to the Department of Transportation for future right-of-way. Compensation for Outlots 1 and 4 will be determined. No improvements are allowed within this area. Improvements include, but are not limited to signs, septic systems, wells, parking lots, drainage facilities, driveways, etc.
- 4 This plat is subject to State Highway Access Restriction.
- 5 No buildings or structures are allowed within the 100 foot buffer zone easement.
- 6 The 100 year flood lines were computed from existing contours and the hydraulic gradient as shown on the Flood Insurance Rate Map of the Village of Howard, Brown County, Wisconsin, Community Panel Number 550023 0005 B, dated Feb. 17, 1982.
- 7 Only single family homes are allowed on lots 1 - 31, and Lot 40.
- 8 The lots of this land division may experience noise at levels exceeding the levels in s. Trans. 405.04, Table 1. These levels are based on federal standards. Owners of these lots are responsible for abating noise sufficient to protect these lots.
- 9 Sidewalk easements on this plat shall have precedence over other overlapping easements.
- 10 The construction of fences along Douerman Street are prohibited on residential lots, unless required for swimming pools.
- 11 All berms and sidewalks shall be maintained by the lot owner.
- 12 The Village of Howard shall have the right to maintain and/or modify the detention/retention ponds if necessary.
- 13 Curb cuts and driveway openings shall be required for the commercial development sites, and shall be approved by the Village Public Works Department.
- 14 Nothing on this plat shall be construed to supersede the State/Municipal Agreements between the Department of Transportation and the Village of Howard signed by Secretary Charles Thompson on February 28, 2000, and recorded in the Brown County Register of Deeds Office as Document Numbers 1750950 and 1750951.
- 15 Additional Covenants, Restrictions and/or Conditions pertaining to this Plat will be filed upon recording of this Plat.

RESTRICTIVE COVENANTS:

- 1 Lot 31, Outlet 2, Outlet 3, and Outlet 4 contain an Environmentally Sensitive Area, (ESA), as defined in the Brown County Sewage Plan. Development and land disturbing activities are restricted within the ESA, unless amendments are approved by the Brown County Planning Commission and the Wisconsin Department of Natural Resources. The Environmentally Sensitive Area includes all wetlands, land within the 100 year flood fringes, and land within 75 feet of Beaver Dam Creek.
- 2 There shall be no vehicular access to Douerman Street from lots 2, 3, 6, 7, 10, 11, 14, 15, 18, 19, 25, 28, and Outlet 1.
- 3 The land on all side and rear lot lines of all lots shall be graded by the lot owner and maintained by the abutting property owners to provide for adequate drainage of surface water.
- 4 There shall be a 20 foot building setback from the top of bank associated with the former meander area of Beaver Dam Creek.