

5A 37



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
R-2003-0157	Resolution	In Committee
	Resolution approving a Planned Development Agreement between the City of West Allis and Chr. Hansen, Inc., a Danish limited liability company with principal offices at 9015 West Maple Street, pursuant to Sec. 12.61 of the West Allis Revised Municipal Code	
	Introduced: 5/6/2003	Controlling Body: Safety & Development Committee

COMMITTEE RECOMMENDATION

APPROVE + ADOPT

MOVER: NAMLO ck AYES 5 NOES 0

SECONDER: @ ZAPLEWSKI EXCUSED _____

COMMITTEE ACTION DATE 5/20/03

SIGNATURES OF COMMITTEE MEMBERS

[Signature]
Chair

Vice-Chair

COMMON COUNCIL ACTION adopt

FINAL ACTION DATE MAY 20 2003

MOVER:
Lajsic

SECONDER:
Reinke

	AYE	NO
1. Barczak	✓	_____
2. Czaplewski	✓	_____
3. Kopplin	✓	_____
4. Lajsic	✓	_____
Murphy		_____
6. Narlock	✓	_____
7. Reinke	✓	_____
8. Sengstock	✓	_____
9. Trudell	✓	_____
10. Vitale	✓	_____
Weigel	✓	_____
TOTAL	<u>10</u>	_____



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2003-0157

Final Action:

5-20-03

Resolution approving a Planned Development Agreement between the City of West Allis and Chr. Hansen, Inc., a Danish limited liability company with principal offices at 9015 West Maple Street, pursuant to Sec. 12.61 of the West Allis Revised Municipal Code

WHEREAS, Chr. Hansen, Inc. (the "Developer"), a Danish limited liability company with principal offices at 9015 West Maple Street, has submitted an application for a Planned Development District-Commercial/Industrial pursuant to Section 12.61 of the West Allis Revised Municipal Code for certain lands depicted and described as:

A tract of land located in the Northwest ¼ of Section 4, Township 6 North, Range 21 East, in the City of West Allis, Milwaukee County, State of Wisconsin, more particularly described as follows:

Beginning at the Southeast corner of Assessors Plat No. 255; thence South 88°33'46" West, 615.77 feet along south line of said Plat; thence North 01°05'56" West, 303.15 feet; thence North 88°44'07" East, 13.00 feet; thence North 01°22'15" West, 122.10 feet; thence North 88°44'07" East, 97.00 feet; thence North 01°15'55" West, 0.37 feet; thence North 89°06'19" East, 40.00 feet; thence North 01°15'55" West, 1.00 feet; thence North 88°19'14" East, 214.00 feet; thence South 01°15'55" East, 2.66 feet; thence North 88°44'07" East, 30.00 feet to the centerline of the South 90 Street; thence North 01°15'55" West, 150.00 feet, along said centerline to the centerline of West Mitchell Street; thence North 88°44'07" East, 125.00 feet along said centerline; thence South 01°15'55" East, 30.00 feet, at right angle to the said centerline; thence South 01°15'55" East, 105.24 feet; thence North 88°33'41" East, 54.00 feet; thence South 01°15'55" East, 103.60 feet; thence North 88°33'41" East, 105.00 feet, to the west right-of-way line of South 89 Street; thence North 88°44'06" East, 30.00 feet, to the centerline of said street; thence South 01°15'55" East, 335.00 feet, along said centerline; thence South 88°33'46" West, 92.00 feet, to the Point of Beginning of this description.

Said land contains 7.058 acres, more or less.

Said land being located at:

9015 W. Maple St.	Tax Key No. 451-0264-001
17** S. 91 St.	Tax Key No. 451-0273-000
1719 S. 89 St.	Tax Key No. 451-0401-002
17** S. 89 St.	Tax Key No. 451-0403-005
15** S. 90 St.	Tax Key No. 451-0404-001
8902 W. Maple St. and 1743 S. 89 St.	Tax Key No. 451-0405-000
8908 W. Maple St.	Tax Key No. 451-0406-000
8914 W. Maple St.	Tax Key No. 451-0407-001
89** W. Maple St.	Tax Key No. 451-0454-000

89** W. Maple St.

Tax Key No. 451-0453-000

WHEREAS, the Application was forwarded to the Plan Commission for review and recommendation and its recommendation has been received; and,

WHEREAS, the Common Council has duly noticed and held a Public Hearing on May 6, 2003, on the Application; and,

WHEREAS, the Common Council, after due consideration, finds that the proposed development as set forth in the Application, with certain conditions, meets the standards set forth in Sections 12.61(6) and (7) of the West Allis Revised Municipal Code.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the Application, a copy of which is attached hereto and made a part hereof, be and is hereby approved subject to additional conditions set forth in the Planned Unit Development-Commercial/Industrial Agreement hereinafter identified.

BE IT FURTHER RESOLVED that the Agreement for Planned Unit Development-Commercial by and between Chr. Hansen, Inc. (the "Developer"), a Danish limited liability company with principal offices at 9015 W. Maple St., and the City of West Allis, a copy of which is attached and made a part hereof, be and is hereby approved and that the Mayor and Acting City Clerk/Treasurer are hereby authorized and directed to execute and deliver said Agreement on behalf of the City, together with all such other and further instruments and documents, as may be required by said Agreement, for its full and complete implementation.

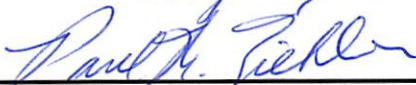
BE IT FURTHER RESOLVED that the Official City Zoning Map be and is hereby amended by overlay of the Planned Development District-Commercial/Industrial approved hereby.

cc: Dept. of Development
Dept. of Building Inspections and Zoning
Div. of Planning & Zoning

ZON-R-375\5-6-03\jmg

ADOPTED

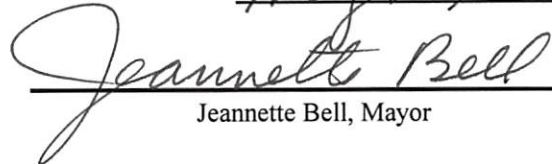
May 20 2003



Paul M. Ziehler, Acting City Clerk/Treasurer

APPROVED

May 21, 2003



Jeannette Bell, Mayor

PLANNED DEVELOPMENT AGREEMENT

This Agreement made and entered into by and between the CITY OF WEST ALLIS, a Municipal Corporation with principal offices at 7525 West Greenfield Avenue, West Allis, Wisconsin 53214 (the "City"), and CHR. HANSEN, INC., a Wisconsin Corporation, having an office at 9015 W. Maple St., West Allis, Wisconsin 53214 (the "Developer")

W I T N E S S E T H:

WHEREAS, the Developer desires to improve and develop for commercial use certain lands in the City of West Allis, Milwaukee County, Wisconsin, depicted and legally described in Exhibit "A", attached hereto and made a part hereof (the "Site"); and,

WHEREAS, The developer owns, in fee or otherwise retains a legal or equitable interest in separate parcels of the Site; and,

WHEREAS, the Developer has made application to the Common Council of the City (the "Common Council") to establish a Planned Development District-Commercial-Industrial pursuant to Section 12.61 of the Revised Municipal Code of the City (the "Application", City Clerk File No. 2003-0138, dated March 4, 2003) to permit the development of a commercial project on the Site (the "Project"); and,

WHEREAS, the Application was referred to the Planning Commission for review and recommendation and its recommendation has been received; and,

WHEREAS, a public hearing on the Application was duly noticed and held by the Common Council on May 6, 2003; and,

WHEREAS, the Common Council is authorized to establish planned development districts for commercial uses pursuant to Section 62.23(7)(b) of the Wisconsin Statutes and Section 12.61 of the Revised Municipal Code of the City; and,

WHEREAS, the Common Council has approved the Application, subject to the terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants hereinafter set forth, the parties agree:

1. **Binding Effect.** It is intended and determined that the provisions of this Agreement shall constitute covenants, which shall run with the land for the benefit thereof, and the provisions hereof shall bind and inure to the benefit of the parties and their respective successors in interests from the effective date of this Agreement.

2. **Site Development.** Subject to the terms and conditions of this Agreement, the Site shall be developed in accordance with the site, landscaping and architectural plans approved

by the Plan Commission pursuant to Section 12.13 of the Revised Municipal Code, copies of which are attached hereto and made a part hereof as Exhibit "B" (the "Development Plan"). One hundred fifty-seven (157) parking spaces are provided on site as required for the office buildings, warehouse/manufacturing buildings and residential buildings located at 9015 W. Maple St. (tax key numbers 451-0273-000, 451-0264-001, 451-0454-000, 451-0453-000), 8902-8914 W. Maple St., 17** S. 89 St. and 17** S. 89 St. (tax key numbers: 451-0407-001, 451-0406-000, 451-0405-000, 451-0403-005 and 451-0404-001), and 1719 W. Mitchell St (tax key number 451-0401-002). S. 90 St. just south of W. Mitchell will be vacated. In the future, the developer will apply to vacate W. Maple St. west of S. 89 St. and S. 91 St. south of W. Mitchell Street if it purchases and clears land around them making them unnecessary for public streets.

3. **District Regulations.** The permitted uses of the Site, the density and intensity of said uses, the maximum height, bulk and size of proposed buildings and structures and their location on the Site shall be as set forth in Chapter 12 of the Revised Municipal Code.

4. **Use, Occupancy and Operation.** Permitted uses shall be used, occupied, operated and maintained in accordance with all applicable federal, state and local laws, statutes, ordinances and regulations, the Application and this Agreement.

5. **Licenses, Permits and Approvals.** In addition to the approval of its Application, the Developer will secure all permits, licenses and approvals from the City, State and other governmental authorities which are required for the construction, use, occupancy and operation of the Project. The Developer agrees that it has sole responsibility for making application for the permits, licenses and other approvals for the Project and will prepare all plans and/or specifications and pay all fees required in connection therewith including the fees for the vacation of the streets. The City, its officers or agents, as the case may be, may, in the exercise of their reasonable discretion, decide in good faith not to issue any required permit, license or approval to permit the construction, use, occupancy and operation of the Site as contemplated by this Agreement because of the Developer's failure to comply with applicable laws, ordinances or regulations.

6. **Development Schedule.** Construction of the Project shall commence no later than one (1) year from the date of approval of the Development Plan by the Plan Commission as provided in Section 12.13(7)(c) of the Revised Municipal Code. This Agreement shall lapse and be of no effect upon failure to commence construction as herein provided.

7. **Not a Joint Venture.** The Developer and the City hereby renounce the existence of any form of joint venture or partnership between among them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

8. **Cooperation.** Each party shall execute and deliver to the other all such other and further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

9. **Amendments.** The parties agree that no changes in the approved Application and related conditions shall be made unless agreed in writing by all parties and authorized by the Common Council in accordance with the procedures set forth in Section 12.61(14) of the Revised Municipal Code of the City. No amendments will be made in the approved Development Plan or related conditions unless such amendments are agreed to in writing by all parties and are shown to be required by changes that have occurred in conditions since the Development Plan and related conditions were approved, or by a change in the development policies of the City.

10. **Subsequent Actions.** This Agreement shall not prevent the Common Council in subsequent actions applicable to the Site from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the Site as set forth herein; and which do not materially alter any obligations of Developer. Nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development applications for the Site on the basis of such existing or new rules, regulations and policies. Nothing in this Agreement shall, in any manner, limit the ability of the Common Council to exercise its legal authority to legislate.

11. **Conveyance.** Until the City certifies that all building construction and other physical improvements specified in the Development Plan have been completed, the Developer shall have no power to convey or otherwise transfer the Site, or any part thereof, without the consent of the City (which consent shall not unreasonably be withheld or delayed) and no such consent shall be given unless the grantee of the Developer is obligated, by written instrument, to the City to carry-out the Development Plan in accordance with the Development Schedule and also that the grantee and the successors and assigns of the grantee, shall have no right or power to convey or otherwise transfer the Site, or any part thereof, or erect or use any building or structure erected thereon free from obligation and requirement to conform to the approved Development Plan and any amendments thereof, as stated in the Development Agreement language.

12. **Assignment.** No party shall assign or transfer any of its interests, rights or obligations under this Agreement without the prior written consent of the others which consent shall not unreasonably be withheld or delayed.

13. **Remedies.** Any party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforcement by a specific performance the obligations and rights of the parties hereto. No consequential, indirect, incidental or exemplary damages of any kind shall be recoverable in any action by any party, whether based on contract, negligence, strict liability or otherwise.

14. **No Waiver.** Failure by any party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall not constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition in this Agreement and breach thereof may be waived, altered or modified except by written instrument executed by the party to be bound. The waiver of any breach by any party shall not affect or

otherwise alter this Agreement, but each and every covenant, agreement, term or condition of this Agreement shall continue in full force and effect with respect to any other than existing or subsequent breach thereof.

15. **Severability.** If any provision of this Agreement, the Development Plan and/or related conditions are held by a court of competence jurisdiction to be invalid, void or enforceable, the remaining provisions thereof shall continue in full force and effect.

16. **Governing Law.** This Agreement shall be construed under and enforced in accordance with Wisconsin Law.

17. **Construction.** City and Developer acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

18. **No Personal Liability.** Under no circumstances shall any alderperson, officer, official or employee of the City have any personal liability arising out of this Agreement, and Developer shall not seek or claim any such personal liability.

19. **Third Parties.** This Agreement is made solely for the benefit of the parties, their respective successors and assigns in interest, and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof.

20. **Memorandum.** The parties agree that at the request of the City they will execute a Memorandum of this Agreement to be recorded in the Office of the Register of Deeds of Milwaukee County, Wisconsin.

21. **Time is of the Essence.** Time is of the essence with regard to all dates and time periods set forth herein and the attached exhibits.

22. **Entire Agreement.** This Agreement, including the exhibits and attachments annexed hereto, constitute the entire Agreement and supersedes all other prior agreements and understandings, both written and oral, by the parties or any of them, with respect to the subject matter hereof.

23. **Common Council Approval.** This Agreement shall be effective only after approval by the Common Council, and the execution and delivery thereof by the parties.

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, the parties here onto set forth their hands and seals this
20th day of June, 2003.

CITY OF WEST ALLIS

By: Jeannette Bell
Jeannette Bell, Mayor

Attest:

Paul M. Ziehler
Paul M. Ziehler
City Administrative Officer
City Clerk/Treasurer

State of Wisconsin)
) ss
Milwaukee County)

On this 20 day of June, 2003, personally came before me Jeannette Bell and Paul M. Ziehler, to me known to be the Mayor and City Clerk/Treasurer, respectively, of the City of West Allis and the persons who executed the foregoing instrument and acknowledged the same.

Hermine Couturier
Notary Public, State of Wisconsin
My Commission Expires: 10-10-04

(SIGNATURES CONTINUED ON NEXT PAGE)

By: Russell A. Jordan
Chr. Hansen, Inc.
Russell A. Jordan
Senior Vice President,
Production and Supply

State of Wisconsin)
) ss
Milwaukee County)

On this 27th day of June, 2003, personally came before me Russell A. Jordan, Senior Vice President, Production and Supply of the above-named company, to me known to be a member of said company, acknowledged that he executed the foregoing instrument as such officer as the deed of said company, by its authority.

Dorothy M. Adams
Notary Public, State of Wisconsin
My Commission Expires: 12/10/06

This Agreement was approved by the Common Council of the City of West Allis by Resolution No.R-2003-0157, adopted May 20, 2003 and approved on May 21, 2003.

NOTE-Per the West Allis Zoning Code: After approval of the Planned Development by the Common Council, the developer shall, at the time of application for building permits, pay a fee to the City Clerk/Treasurer computed on the basis of three hundred dollars (\$300) per unit (residential, commercial or manufacturing). In the event the development consists of more than one billing or more than one phase, the fee shall be for those units for which a building permit is being requested and any credits due for fees previously tendered shall be on a proportional basis.

q\p\dd\hp

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WHEREAS, the Developer has made application to the Common Council of the City (the "Common Council") to establish a Planned Development District-Commercial-Industrial pursuant to Section 12.61 of the Revised Municipal Code of the City (the "Application", City Clerk File No. 2003-0138, dated March 4, 2003) to permit the development of a commercial project on the Site (the "Project"); and,

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14. **No Waiver.** Failure by any party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall not constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition in this Agreement and breach thereof may be waived, altered or modified except by written instrument executed by the party to be bound. The waiver of any breach by any party shall not affect or

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(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, the parties here onto set forth their hands and seals this 20th day of June, 2003.

CITY OF WEST ALLIS

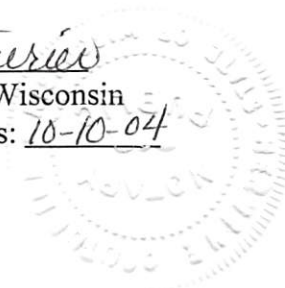
By: Jeannette Bell
Jeannette Bell, Mayor

Attest:
Paul M. Ziehler
Paul M. Ziehler
City Administrative Officer
City Clerk/Treasurer

State of Wisconsin)
) ss
Milwaukee County)

On this 20 day of June, 2003, personally came before me Jeannette Bell and Paul M. Ziehler, to me known to be the Mayor and City Clerk/Treasurer, respectively, of the City of West Allis and the persons who executed the foregoing instrument and acknowledged the same.

Hermiso Couturier
Notary Public, State of Wisconsin
My Commission Expires: 10-10-04



(SIGNATURES CONTINUED ON NEXT PAGE)

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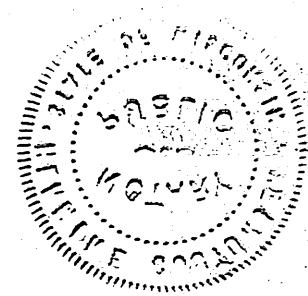
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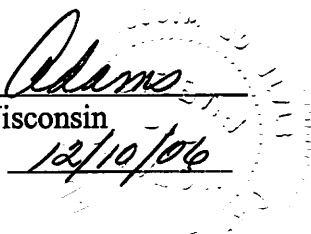
... ..

By: 
Chr. Hansen , Inc.
Russell A. Jordan
Senior Vice President,
Production and Supply

State of Wisconsin)
) ss
Milwaukee County)

On this 27th day of June, 2003, personally came before me Russell A. Jordan, Senior Vice President, Production and Supply of the above-named company, to me known to be a member of said company, acknowledged that he executed the foregoing instrument as such officer as the deed of said company, by its authority.


Notary Public, State of Wisconsin
My Commission Expires: 12/10/06



This Agreement was approved by the Common Council of the City of West Allis by Resolution No.R-2003-0157, adopted May 20, 2003 and approved on May 21, 2003.

NOTE-Per the West Allis Zoning Code: After approval of the Planned Development by the Common Council, the developer shall, at the time of application for building permits, pay a fee to the City Clerk/Treasurer computed on the basis of three hundred dollars (\$300) per unit (residential, commercial or manufacturing). In the event the development consists of more than one billing or more than one phase, the fee shall be for those units for which a building permit is being requested and any credits due for fees previously tendered shall be on a proportional basis.