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Planning

COMMITTEES OF THE WEST ALLIS COMMON COUNCIL 2003

ADMINISTRATION AND FINANCE

Chair: Alderperson Czaplewski
V.C.: Alderperson Kopplin
Alderpersons: Barczak
Lajsic
Reinke

ADVISORY

Chair: Alderperson Reinke
V.C.: Alderperson Vitale
Alderpersons: Kopplin
Lajsic
Narlock

LICENSE AND HEALTH

Chair: Alderperson Barczak
V.C.: Alderperson Sengstock
Alderpersons: Kopplin
Trudell
Vitale

SAFETY AND DEVELOPMENT

Chair: Alderperson Lajsic
V.C.: Alderperson Weigel
Alderpersons: Czaplewski
Narlock
Reinke

PUBLIC WORKS

Chair: Alderperson Narlock
V.C.: Alderperson Trudell
Alderpersons: Sengstock
Weigel
Vitale



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2003-0368

Final Action:

DEC 16 2003

Resolution approving a Planned Development District-Commercial PDD-2 between the City of West Allis and both Shecterle Commercial Properties 2, LLC and Akash Real Estate, Inc. to establish a Planned Development Agreement for new construction of various retail commercial uses at 10601 and 10635 W. Greenfield Ave., pursuant to Sec. 12.61 of the West Allis Revised Municipal Code

WHEREAS, Shecterle Commercial Properties 2, LLC and Akash Real Estate, Inc. (the "Developers"), with principal offices at 19280 Haydon Court, P.O. Box 1205, Brookfield, WI 53008-1205 and 10233 W. Greenfield Ave., West Allis, WI 53214, c/o Mr. Ron DeGroot, respectively, have submitted an application for a Planned Development District-Commercial pursuant to Section 12.61 of the West Allis Revised Municipal Code for certain lands depicted and described as:

A tract of land being located in the Northwest $\frac{1}{4}$ of Section 5, Township 6 North, Range 21 East, City of West Allis, Milwaukee County, State of Wisconsin, describes as follows:

Parcel 1 of Certified Survey Map No. 3612 and East 220.00 feet of the West 736.25 feet of the North 136.24 feet of the Northwest $\frac{1}{4}$ of said Section 5, subject to the rights of the owners adjacent to the east, due to the overlapping deed description.

Said land contains 2.690 Acres, more or less.

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 December 16, 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 Development Agreement hereinafter identified.

BE IT FURTHER RESOLVED that the Agreement for Planned Unit Development-Commercial by and between Shecterle Commercial Properties 2, LLC and Akash Real Estate, Inc. principal offices

at 19280 Haydon Court, P.O. Box 1205, Brookfield, WI 53008-1205 and 10233 W. Greenfield Ave., West Allis, WI 53214, c/o Mr. Ron DeGroot, respectively, 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 City Administrative Officer-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 approved hereby.

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

ZON-R-407-12-16-03\jmg

ADOPTED

December 16, 2003



Paul M. Ziehler, CAO, Clerk/Treasurer

APPROVED

December 19, 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 Shecterle Commercial Properties 2, LLC, (Culver's and Office/Retail) with principal offices at 19280 Haydon Court, P.O. Box 1205, Brookfield, WI 53008-1205 and Akash Real Estate, Inc. (Gas Station/Restaurant) with principal offices at 10233 W. Greenfield Ave., c/o Mr. Ron DeGroot (the "Developers")

WITNESSETH:

WHEREAS, the Developers desire 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 Developers own in fee or otherwise retains a legal or equitable interest in the Site; and,

WHEREAS, the Developers have made application to the Common Council of the City (the "Common Council") to establish a Planned Development District-Commercial pursuant to Section 12.61 of the Revised Municipal Code of the City (the "Application", City Clerk File No. ~~2003-67116~~, dated ~~November 7~~, 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 December 16, 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 interest 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 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 A (the "Development Plan").

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 the special conditions enumerated in Exhibit B, which is attached hereto and made a part hereof.

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.

5A. Licenses, Permits and Approvals. In addition to the approval of its Application, the Developers 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, including any license necessary for the sale of packaged fermented malt beverages and intoxicating liquor. The Developers agree 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. 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 Developers' failure to comply with applicable laws, ordinances or regulations, or for any other valid reason under law.

5B. 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.

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

7. 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, except as set forth in Paragraph 5.

8. Amendments. The parties agree that no changes in the approved Application and related conditions shall be made unless 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 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.

9. 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 Developers. 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.

10. Conveyance. Until the City certifies that all building construction and other physical improvements specified in the Development Plan have been completed, the Developers 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 Developers are 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.

11. Assignment. Neither party shall assign or transfer any of its interests, rights or obligations under this Agreement without the prior written consent of the other, which consent shall not unreasonably be withheld or delayed.

12. Remedies. Either 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 either party, whether based on contract, negligence, strict liability or otherwise.

13. No Waiver. Failure by either 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 either 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 then existing or subsequent breach thereof.

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

15. Governing Law. This Agreement shall be construed under and enforced in accordance with Wisconsin Law and any action concerning this Agreement shall be filed in Milwaukee County, WI.

16. 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 Developers shall not seek or claim any such personal liability.

17. 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.

18. 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.

19. 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.

20. 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.

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

22. Construction. The parties 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.

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, the parties here onto set forth their hands and seals this
19th day of December, 2003.

CITY OF WEST ALLIS

By: Jeannette Bell
Jeannette Bell, Mayor

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

State of Wisconsin)
) ss
Milwaukee County)

On this 19th day of December, 2003, personally came before me Jeannette Bell and Paul M. Ziehler, to me known to be the Mayor and City Administrative Officer- Clerk/ Treasurer, respectively, of the City of West Allis and the persons who executed the foregoing instrument and acknowledged the same.

Don Walig
Notary Public, State of Wisconsin
My Commission Expires: 4-16-06

(SIGNATURES CONTINUED ON NEXT PAGE)

Shecterle Commercial Properties 2, LLC

By: _____

Member

State of Wisconsin)
) ss
Milwaukee County)

On this _____ day of _____, 2003, personally came before me _____ 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: _____

Akash Real Estate, Inc.

By: _____

Member

State of Wisconsin)
) ss
Milwaukee County)

On this _____ day of _____, 2003, personally came before me _____ 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: _____

This Agreement was approved by the Common Council of the City of West Allis by Resolution No. _____, adopted _____, 2003 and approved on _____, 2003.

NOTE: A fee of \$300.00 per commercial unit is payable to the City Clerk/Treasurer at the time of application for building permits.

h\p\p-c-1&g\jmg
December 11, 2003

Exhibit C Special Conditions

1. General Provisions

Anything not addressed in the Planned Development Agreement should be addressed as per the underlying zoning district.

2. Setbacks

All building setbacks from the established property line shall be in accordance with the C-3 Community Commercial District.

3. Permitted and Special Uses

Uses permitted within the Planned Development District shall be in accordance with Permitted and Special Uses in the C-3 Zoning District of the Revised Municipal Code for the City of West Allis (unless listed below as a Permitted Use).

The following will be permitted uses not requiring a special use permit. The following uses will be subject to Plan Commission approval in accordance with Section 12.13 of the Revised Municipal Code (Site, Landscaping, Architectural, Signage review):

1. Restaurants
2. Gas Stations with retail sales
3. Outdoor Dining
4. Dry Cleaners
5. Medical Clinics
6. Bakeries
7. Physical health and culture, including fitness centers, day spas, beauty salons, tanning beds and nail technicians.
8. Any combination of the above-listed uses.

4. Prohibited Uses

Uses not mentioned above (Permitted Uses) are not permitted within the District. The following uses are specifically also not permitted within the Planned Development District:

1. Outdoor storage and display (including sidewalk sales)
2. Vehicle service and repair shops
3. Vehicle sales, display or storage
4. Public self-storage or warehousing
5. Telecommunication and radio towers
6. Adult-oriented establishments, including Adult Video Sales, under the provisions of Sec. 9.28 of the Revised Municipal Code.
7. Tobacco stores
8. Variety stores, thrift/consignment stores, pawn brokers, check-cashing

5. Site, Landscaping and Architectural

All Site, Landscaping and Architectural improvements shall be in accordance with the approved set of plans (Exhibit B) approved by the Plan Commission on December 3, 2003. Any modification to the approved set of plans will require resubmission and approval by the West Allis Plan Commission.

6. Site and Rooftop Screening

A solid screen fence and landscaping shall be installed in areas abutting residential zoning districts or land uses. Refuse enclosures shall be four sided with personnel doors and shall be large enough to contain all refuse and other waste materials. The construction of said enclosures shall be designed of masonry materials to match the principal building.

Rooftop equipment shall be screened or located so as to be not visible from street grade. Rooftop equipment includes, but shall not be limited to, satellite dishes, telecommunication equipment, heating, ventilating and air conditioning units.

7. Required Conditions for Culver's Restaurant and Gas Station/Restaurant/Convenience Store

1. Unique architectural lighting will be used throughout the site.
2. All lighting and fencing shall have a uniform style throughout the entire site.
3. The use of pennants, special lighting, flags, streamers or other signage and marketing displays, whether permanent or temporary, hanging, floating, freestanding or attached to a vehicle or structure shall not be permitted.
4. The use of outdoor pagers, intercoms or loudspeakers shall not be permitted on site excepting drive-thru speakers.
5. A solid screen fence and landscaping shall be installed in areas abutting residential zoning districts or land uses.
6. Refuse enclosures shall be four sided with personnel doors and large enough to contain all refuse and other waste materials. The construction of said enclosures shall be designed of masonry materials to match the principal building.
7. There will be six parking spaces that the Gas Station/Restaurant employees can utilize on the Culver's site, as agreed upon between the two parties.
8. There will be a cross easement agreed upon between the parties which allows internal access between all of the subject properties.
9. Visible pedestrian linkages will be placed from the public sidewalk to the main entrances of each building and internally throughout the site.

8. Monument Signage

Existing non-conforming signage shall be removed from the property and/or brought into compliance in accordance with Section 13.21 of the Revised Municipal Code. Specific allowances for this Planned Development District will permit a maximum of three tenants from the adjacent retail building (parcel 2) to advertise within the approved monument sign. The approved monument sign for parcel 2 shall be limited to identifying the building name, and two tenants. All tenants that advertise within the approved monument signage facia will have a coordinated color theme to be approved by Plan Commission. All tenant panels within the approved monument sign shall be fabricated with an opaque background and have routed copy. The City's Signage Code will determine size limitations of all signage included in the Planned Development District.

9. Wall Signage

One wall sign is allowed per business tenant. The City's Signage Code will determine size limitations.

10. Directional Signage

Directional signage will not exceed 6 square feet in size and will be in accordance with the City's Signage Code.

11. Amendments

Any modification to this Special Conditions exhibit will require resubmission and approval by the City of West Allis Plan Commission and Common Council.

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