



City of West Allis

Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
R-2003-0181	Resolution	In Committee
Resolution approving a Planned Development Agreement between the City of West Allis and Windsong Village, L.L.C. pursuant to Sec. 12.61 of the West Allis Revised Municipal Code		
Introduced: 6/3/2003		Controlling Body: Safety & Development Committee

COMMITTEE RECOMMENDATION

APPROVE & ADOPT

MOVER: Reinke AYES 5 NOES 0

SECONDER: Weigel EXCUSED _____

COMMITTEE ACTION DATE 6/3/03

SIGNATURES OF COMMITTEE MEMBERS

Chair

Vice-Chair

COMMON COUNCIL ACTION adopted

FINAL ACTION DATE JUN 03 2003

MOVER:

Lajszic

SECONDER:

Reinke

	AYE	NO
1. Barczak	<input checked="" type="checkbox"/>	
2. Czaplewski	<input checked="" type="checkbox"/>	
3. Kopplin	<input checked="" type="checkbox"/>	
4. Lajszic	<input checked="" type="checkbox"/>	
5. Murphy		
6. Narlock	<input checked="" type="checkbox"/>	
7. Reinke	<input checked="" type="checkbox"/>	
8. Sengstock	<input checked="" type="checkbox"/>	
9. Trudell	<input checked="" type="checkbox"/>	
10. Vitale	<input checked="" type="checkbox"/>	
<u>Weigel</u>	<input checked="" type="checkbox"/>	
TOTAL	<u>10</u>	

At Dev. Dept.
Bldg. & Grounds
Planning



City of West Allis

Resolution

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number: R-2003-0181

Final Action:

6-3-03

Resolution approving a Planned Development Agreement between the City of West Allis and Windsong Village, L.L.C. pursuant to Sec. 12.61 of the West Allis Revised Municipal Code

WHEREAS, Windsong Village, L.L.C., (the "Developer"), has submitted an application for a Planned Development District-Commercial/Industrial for an existing 60-unit multi-family residential facility, pursuant to Section 12.60 of the West Allis Revised Municipal Code for certain lands depicted and described as:

All the land of the owner being located in the Southeast $\frac{1}{4}$ of Section 7, Township 6 North, Range 21 East, City of West Allis, Milwaukee County, Wisconsin, described as follows:

Parcel 1 of Certified Survey Map No.3573 more particularly described as follows: Beginning at the Southeast corner of said Parcel 1; thence due North, 590.24 feet along east line of said Parcel 1; thence North $60^{\circ}00'00''$ West, 49.78 feet; thence due West, 362.60 feet; thence South $00^{\circ}02'00''$ West, 415.25 feet; thence North $89^{\circ}59'00''$ East, 365.95 feet; thence due South, 200.00 feet; thence North $89^{\circ}59'00''$ East, 40.00 feet to Point of Beginning.

Said land being located at 11024 W. Oklahoma Ave.

Tax Key No. 520-0155-001

Said land contains 4 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 June 3, 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 12.60 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-Residential Agreement hereinafter identified.

BE IT FURTHER RESOLVED that the Agreement for Planned Unit Development-Residential by and between Windsong Village, L.L.C., located at 11024 W. Oklahoma Ave. 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-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.

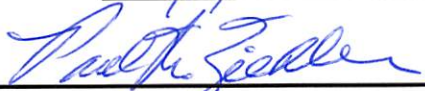
BE IT FURTHER RESOLVED that the Official City Zoning Map be and is hereby amended by overlay of the Planned Development District-Commercial/Industrial approved hereby.

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

ZON-R-382\6-3-03\jmg

ADOPTED

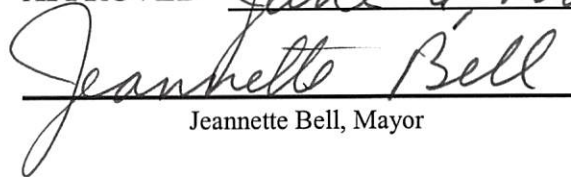
6/3/03



Paul M. Ziehler, CAO, Clerk/Treasurer

APPROVED

June 6, 2003



Jeannette Bell, Mayor

PLANNED DEVELOPMENT DISTRICT 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 **Windsong Village, L.L.C.**, a Wisconsin Limited Liability Company (the "Developer"), with principal offices at Millennium Housing Foundation, c/o Mr. Barry Zuckerman, 8651 N. Port Washington Road, Milwaukee, WI 53217.

W I T N E S S E T H:

WHEREAS, the Developer desires to improve and develop for multi-family residential use, certain lands located at 11024 W. Oklahoma Avenue, Windsong Village Apartments (Tax Key No. 520-0155-001), 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, or shall own upon final execution of this Agreement, in fee or otherwise retains a legal or equitable interest in 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-Residential, pursuant to Section 12.60 of the Revised Municipal Code of the City (the "Application", City Clerk File No. 2003-0316, dated June 3, 2003) to permit the development of a multi-family 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 June 3, 2003; and,

WHEREAS, the Common Council is authorized to establish planned development districts for residential uses pursuant to Section 62.23(7)(b) of the Wisconsin Statutes and Section 12.60 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, landscaping, signage, 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").

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.

Parking - A total of ninety-five (95) parking stalls shall be provided on site with a provision for fifteen (15) future parking stalls as shown on the site plan approved by the Plan Commission. Based upon the number of bedroom units (twenty 3-bedroom, thirty-six 2-bedroom and four ADA 2-bedroom units), a total of one hundred thirty (130) stalls are required by zoning. As part of this agreement, the parking deficiency shall be allowed based upon the following:

A. The existing 60-unit residence was developed and currently operates with a total supply of ninety-three (93) parking stalls for its tenants. The existing parking configuration/supply is underutilized.

B. If necessary to meet demand, additional parking spaces noted as future parking stalls on Exhibit B (the Development Plan), could be provided to meet the zoning requirement of one hundred thirty (130) stalls.

C. The installation of additional paved surface for parking area will impact the aesthetic quality of development by reducing the amount of green space on site. If any future parking stalls are added, the Developer or designee shall purchase and install additional landscaping with screening, after obtaining Plan Commission approval, in accordance with Sec. 12.13 and 12.60 of the Revised Municipal Code.

D. The development is isolated and does not supply parking for any surrounding uses, thereby reducing parking demand.

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. The developer is responsible for planning, providing, installing, maintaining and paying for:

A. Private interceptor main and appurtenances; water, sanitary sewer and storm sewer appurtenances to be in accordance with State of Wisconsin Plumbing Code;

B. Fire hydrants and appurtenances to be in accordance with American Waterworks Association (AWWA) and National Fire Protection Association (NFPA) requirements.

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. 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, or for any other valid reason under law.

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 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, except as set forth in Paragraph 5.

9. **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.

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.** 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.

13. **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.

14. **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 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 competent jurisdiction to be invalid, void or unenforceable, 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. **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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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)

15th day of September, 2003

CITY OF WEST ALLIS

By: Jeannette Bell
Jeannette Bell, Mayor

Attest:

Paul M. Ziehler
City Administrative Officer
Clerk/Treasurer

State of Wisconsin)
) ss
Milwaukee County)

On this 17 day of Sept, 2003, personally came before me Jeannette Bell and Paul M. Ziehler, to me known to be the Mayor and City Administrative Officer, City Clerk/Treasurer, respectively, of the City of West Allis and the persons who executed the foregoing instrument and acknowledged the same.



Jane Schilling
Notary Public, State of Wisconsin
My Commission Expires: *09-12-04*

(SIGNATURES CONTINUED ON NEXT PAGE)

THE STATE OF NEW YORK, County of [illegible]

[Signature]
[illegible]

[Signature]
[illegible]

[illegible]

[illegible]

[illegible]

[Signature]
[illegible]



By: Bryan Zuehlmann
Windsong Village, L.L.C., Member

State of Wisconsin)
) ss
Milwaukee County)

On this 28 day of September, 2003, personally came before me
Bryan Zuehlmann 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.



Julie Benoit
Notary Public, State of Wisconsin
My Commission Expires: 10/29/2006

This Agreement was approved by the Common Council of the City of West Allis by Resolution
No. R-2003-0181 adopted June 3, 2003 and approved on June 6, 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.

q:\p\pdd\w-5-27-03\jmg
h:\p\pdd-w

EXHIBIT A

All the land of the owner being located in the Southeast $\frac{1}{4}$ of Section 7, Township 6 North, Range 21 East, City of West Allis, Milwaukee County, Wisconsin, described as follows:

Parcel 1 of Certified Survey Map No.3573 more particularly described as follows: Beginning at the Southeast corner of said Parcel 1; thence due North, 590.24 feet along east line of said Parcel 1; thence North $60^{\circ}00'00''$ West, 49.78 feet; thence due West, 362.60 feet; thence South $00^{\circ}02'00''$ West, 415.25 feet; thence North $89^{\circ}59'00''$ East, 365.95 feet; thence due South, 200.00 feet; thence North $89^{\circ}59'00''$ East, 40.00 feet to Point of Beginning.

Said land being located at 11024 W. Oklahoma Ave.

Tax Key No. 520-0155-001

Said land contains 4 acres, more or less.

(Exhibit B is set of final plans)

Document Number _____

MEMORANDUM OF AGREEMENT

NOTICE IS HEREBY GIVEN that a Planned Development Agreement has been made and entered into as of the 3th day of June, 2003, by and between the CITY OF WEST ALLIS, a Wisconsin Municipal Corporation, and WINDSONG VILLAGE, LLC., a Wisconsin Corporation, wherein the parties have set forth pursuant to Wis. Stats. §62.23(7)(b) and local ordinance the terms, conditions and restrictions governing the development and use of certain lands located in the City of West Allis, Milwaukee County, State of Wisconsin, legally described on Exhibit "A", attached hereto and made a part hereof.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Agreement.

This space is reserved for recording data

Return to

City Attorney's Office
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214

Parcel Identification Number/Tax Key Number

520-0155-001

CITY OF WEST ALLIS

By: Jeannette Bell
Jeannette Bell, Mayor

Attest: Paul M. Ziehler
Paul M. Ziehler, Acting City Clerk/Treasurer

State of Wisconsin)
) ss
Milwaukee County)

Personally came before me this 32 day of September, 2003, Jeannette Bell and Paul M. Ziehler, the Mayor and Acting City Clerk/Treasurer, respectively, of the City of West Allis, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same on behalf of said City.

(SEAL)

Opene Schilling
)
Notary Public, State of Wisconsin
My Commission Expires: 9-12-04

(Signatures Continued On Next Page)

WINDSONG VILLAGE, LLC.,

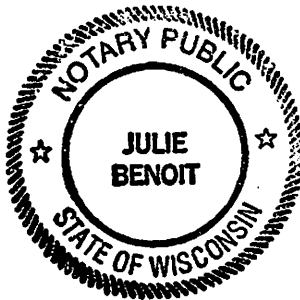
By: _____

Barry Zuckerman
Mr. Barry Zuckerman, President
Millennium Housing Foundation

State of Wisconsin)
) ss
Milwaukee County)

Personally came before me this 18 day of September, 2003, Mr. Barry Zuckerman of the above-named corporation, to me known to be the President of said corporation, acknowledged that he executed the foregoing instrument as such officer as the deed of said corporation, by its authority.

L)



Julie Benoit (SEA
(
Notary Public, State of Wisconsin
My Commission Expires: 10/29/2006

This instrument was drafted by:

Scott E. Post
City Attorney
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214

Lesak/MemAgrmnt-INREAL INC

EXHIBIT A

All the land of the owner being located in the Southeast $\frac{1}{4}$ of Section 7, Township 6 North, Range 21 East, City of West Allis, Milwaukee County, Wisconsin, described as follows:

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Said land being located at 11024 W. Oklahoma Ave.

Tax Key No. 520-0155-001

Said land contains 4 acres, more or less.

**REGISTER
OF DEEDS**

JOHN LA FAVE

09-25-2003 2:13 PM

8635224

AGREEMENT

15.00

0

RECORDING FEE: 15.00

TOTAL: 15.00

CASH: 20.00

REFUND: -5.00

PHONE # 278-4005

169867

