



Via Video/Phone Conference Only

Oak Creek, WI 53154

(414) 766-7000

Daniel Bukiewicz - Chair

Dawn Carrillo

Chaucey Chandler

Donald Oldani

Chris Guzikowski

Matt Sullivan

Gregory Loreck

Fred Siepert

Christine Hanna

Vacant - ex-officio

Doug Seymour - ex-officio

## PLAN COMMISSION

Via Video/Phone Conference Only

August 11, 2020

6:00 P.M.

### The City's Vision

*Oak Creek: A dynamic regional leader, connected to our community, driving the future of the south shore.*

### IMPORTANT NOTICE

This meeting will be held by video/phone conference only. Persons wishing to participate in the video conference, including applicants and their representatives, must register via <http://ocwi.org/register> prior to the meeting. The video conference will begin at 5:55 PM to allow participants to log in.

Attendees who wish to participate by phone may do so by calling the City Hall, (414) 766-7000, before 4:00 PM on the day of the meeting (August 11, 2020) to obtain a meeting call-in number. To make a public comment, press \*9 on your phone. The conference moderator will state when your line has been unmuted.

Persons who wish to view the meeting live without participating may visit the City of Oak Creek YouTube page at <http://ocwi.org/livestream>.

Persons requiring other reasonable accommodations may contact the City at 414-766-7000. Requests should be made as far in advance as possible, preferably a minimum of 48 hours.

Find more information on agenda items at [oakcreek.zoninghub.com](http://oakcreek.zoninghub.com).

1. Call Meeting to Order
2. Roll Call
3. Approval of Minutes – July 28, 2020
4. Significant Common Council Actions – NONE
5. New Business
  - a. RELEASE OF EASEMENT DOCUMENT – The Plan Commission will be asked to approve and sign a consent to release a private easement for access to existing tennis courts between Brandywood Apartments, 8900 20 S. Wood Creek Dr. and Riverwood Arms Estates, 500 W. Riverwood Dr. (Tax Key Nos. 859-9017-000 & 859-9030-000).

Visit our website at [www.oakcreekwi.org](http://www.oakcreekwi.org) for the agenda and accompanying Plan Commission reports.

- b. ZONING CODE UPDATE DISCUSSION – The Plan Commission will review and discuss draft Articles 2-4 of the proposed Zoning Code with staff and consultants from Houseal Lavigne Associates. No action will be taken.

Adjournment.

Dated this 6th day of August, 2020

Posted 8-6-2020 JF

**Public Notice**

Upon reasonable notice, a good faith effort will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aid at no cost to the individual to participate in public meetings. Due to the difficulty in finding interpreters, requests should be made as far in advance as possible, preferably a minimum of 48 hours. For additional information or to request this service, contact the Oak Creek City Clerk at 766-7000, by fax at 766-7976, or by writing to the ADA Coordinator at the Oak Creek Health Department, 8040 S. 6<sup>th</sup> Street, Oak Creek, Wisconsin 53154.

It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

**MINUTES OF THE  
OAK CREEK PLAN COMMISSION MEETING  
TUESDAY, JULY 28, 2020**

Mayor Bukiewicz called the meeting to order at 6:00 p.m. The following Commissioners were present at roll call: Commissioner Hanna, Commissioner Sullivan, Commissioner Carrillo, Commissioner Loreck, Mayor Bukiewicz, Alderman Guzikowski, Commissioner Oldani, Commissioner Siepert and Commissioner Chandler. Also present: Kari Papelbon, Planner. IT Manager Kevin Koenig, facilitated the video conference.

**Minutes of the July 14, 2020 meeting**

Alderman Guzikowski moved to approve the minutes of the July 14, 2020 meeting. Commissioner Siepert seconded. On roll call: all voted aye. Motion carried.

Planner Papelbon read the following into the record:

The City of Oak Creek is authorized to hold this public meeting remotely during the COVID-19 public health emergency under the March 16 and March 20 advisories from the Office of Open Government in the Wisconsin Department of Justice. Per the advisories, this meeting being conducted via Zoom video conference with telephone conferencing capabilities was duly noticed per the City of Oak Creek Municipal Code and Statutory notice requirements more than 24 hours in advance of the meeting. Members of the public have been advised of the options for participation via direct mailing to property owners within 300 feet of a proposal, via the COVID-19 information page on the City's website, via social media, and via the information contained on the meeting agenda. This meeting may also be viewed at the City's YouTube page, the link for which was contained in all aforementioned notice methods. The meeting recording will also be accessible on the City's YouTube page within 48 hours.

Plan Commissioners and participants are initially muted upon joining the meeting. Plan Commissioners and staff have the ability to mute and unmute their microphones throughout the meeting. Please mute at all times except for roll call, motions, voting, and when recognized by the Chair. Roll call and voting will occur per the usual and customary procedure, starting from Plan Commissioner seating positions south to north in the Common Council Chambers (e.g., Hanna, Sullivan, Carrillo, Loreck, Bukiewicz, Guzikowski, Oldani, Siepert, Chandler). The Chair will facilitate questions and comments by calling on each Plan Commissioner, or by requesting the use of the "raise hand" function in the Zoom webinar control panel. Only speak once you have been recognized by the Chair or moderator.

Applicants, their representatives, and all other participants who wish to speak will be unmuted

- When there is a direct request for information from the Plan Commission or staff;
- When the participant utilizes the "raise hand" function within the Zoom webinar control panel, and the moderator verbally indicates that they are unmuted;
- When a phone participant dials \*9 to indicate they wish to speak, and the moderator verbally indicates that their line is open.

When unmuted, all participants must state their name and address for the record, then proceed with comments or questions.

Questions and comments may also be entered into the Q&A function within the Zoom webinar control panel. Staff and/or the moderator will monitor this function during the meeting, and provide the information requested. There shall be no private messages or side conversations during the meeting utilizing the chat or Q&A functions. Chat and Q&A messages are part of the public record.

There is one or more public hearing scheduled as part of this meeting. After the Chair announces the public hearing, staff will read the public hearing notice into the record, state that the hearing is open and subject to the meeting procedure above, and provide a brief overview of the proposal. The Chair will then proceed with the hearing by making calls for public comment. Following the third call for public comment, the Chair will close the public hearing and proceed to consideration of the remaining agenda items.

## **PUBLIC HEARING**

### **SIGN APPEAL**

#### **REQUEST FOR A VARIANCE**

#### **BILL GUST, MILWAUKEE YARD**

**7727 S. LONGWATER DR. (Formerly part of 7869 S. 13<sup>th</sup> St.)**

**TAX KEY NO. 784-9027-000**

Planner Papelbon read the public hearing notice into the record (see Public Hearing Notice for details).

Mayor Bukiewicz made three calls for public comment with no response. The hearing was closed.

### **SIGN APPEAL**

#### **BILL GUST, MILWAUKEE YARD**

**7727 S. LONGWATER DR (formerly part of 7869 S. 13<sup>th</sup> St.)**

**TAX KEY NO. 784-9027-000**

Planner Papelbon provided an overview of the request for variance allowing the applicant to install two (2) wall signs up to a cumulative maximum of 200 square feet on the west elevation, two (2) wall signs up to a cumulative maximum of 200 square feet on the east elevation, two (2) wall signs on the southwest portion of the building up to a cumulative maximum of 96 square feet (non-tenant), and one (1) wall sign up to a maximum of 378 square feet on the south elevation (principal tenant) for the multitenant building on the property at 7727 S. Longwater Dr. (formerly part of 7869 S. 13<sup>th</sup> St.) (see staff report for details).

Commissioner Carrillo stated that her understanding was those retailers who were not the main tenants should not be included in the sign appeal, so she questioned whether “child care,” “after school sports,” and the “birthday parties” were separate entities or part of the Milwaukee Yard as a whole.

Planner Papelbon stated the Milwaukee Yard had several programs and offerings that were part of the main tenant agreement, including the child care, after school sports and the birthday parties. Planner Papelbon explained that the retail signage on the southeast would belong to future tenant spaces, which would not be affiliated with the Milwaukee Yard.

Commissioner Carrillo stated her opinion that extra signage for events such as child care, after school sports, and birthday parties does not look visually appealing on the side of the building. Commissioner Carrillo also stated that other business do not get special signage to advertise

extra services that are offered within their businesses. Commissioner Carrillo said she does not like the idea of giving extra signage to advertise certain elements that are offered within the Milwaukee Yard.

Mayor Bukiewicz asked whether the tenant spaces would have entrances separate from the Milwaukee Yard entrance.

Planner Papelbon stated that each retail space would have their own separate entrance on the south, and the tenant on the southeast corner could have an entrance on both the south and the east. Planner Papelbon stated that although the programs Commissioner Carrillo mentioned were a part of the Milwaukee Yard, they were administered somewhat independently of each other, operating under the umbrella of the Milwaukee Yard. After lengthy discussions with the applicant, staff were supportive of the signage suggestions as presented. Planner Papelbon stated that these particular programs would only be accessed through the main entrance to the Milwaukee Yard, although there were emergency exits on the south.

Mayor Bukiewicz equated the situation to a store anchored by Pick 'n' Save with other entities such as a bank, a phone store, etc., and said it was no different than a strip mall.

Commissioner Oldani stated his confusion over why staff would work with the applicant on acceptable signs, but would not recommend a motion for the Sign Appeal.

Planner Papelbon explained that staff does not make a recommendation on Sign Appeals because staff is considered a party to the appeal. Planner Papelbon stated staff must abide by Code; however, there is a motion presented for Plan Commission consideration and that motion is always made in the affirmative. Planner Papelbon stated if the Commission wished to approve each sign individually, that would require several motions, or a motion in the affirmative and a vote against for the entirety. Planner Papelbon said that staff always works with the applicant to find something staff is comfortable presenting to the Commission. Planner Papelbon further explained that a sign appeal is a quasi-judicial ruling; thus, it is an official action that staff has to be impartial to, even though they have worked with the applicant to prepare a submission to the Commission. If approved, staff would not be wholly objectionable to the proposal as presented.

Commissioner Siepert said he shared the same concerns as Commissioner Carrillo, and had concerns for the potential effect other tenant signs may have on the facility.

Commissioner Chandler asked the applicant to address the signage location in relation to where the tenant will actually reside inside the building.

Bill Gust, HB Investments, LLC. 233 W 63<sup>rd</sup> St., Westmont, IL, 60559, responded. Mr. Gust stated that the two signs on the southwest aligned with where the child care would be located; however, if they put an after-school sports sign there, it would not align with the program location as that tends to exist throughout different parts of the building. Mr. Gust said that the signs on the east and west elevations match up with the locations of the programs.

Commissioner Chandler asked Mr. Gust about potential future retail signs.

Mr. Gust stated there could be a maximum of eight retail spaces, or there could also be one person who rents out the whole space. Mr. Gust explained that the size of the sign was dependent on the size of the retail space rented, but that the maximum size was 100 square feet.

Commissioner Chandler questioned if a monument sign was included in the plan and whether it would also have all of these same signs.

Mr. Gust stated there was not a monument sign on his property, but there was talk that the Highgate development may have one. Mr. Gust explained it was critical for his business to get his signs out there, particularly since the location of his building does not have direct access to Drexel Ave. or 13<sup>th</sup> St. Mr. Gust also stated that he felt the signs were proportional to the size of the building.

Planner Papelbon added that there may be a monument sign or multiple monument signs for the Highgate development as a whole at some point in the future. Planner Papelbon did not think that such a monument sign would include all of the offerings available at the Milwaukee Yard, and the requested signs were an opportunity for the Milwaukee Yard to advertise what services they actually offered.

Commissioner Chandler asked about the uniformity of the signage on the building.

Mr. Gust replied that all of the signs would be done using led channel letters and the individual tenant logos.

Commissioner Hanna stated that she felt a monument sign would be more marketable and conducive to the kind of advertising that would best benefit the Yard, as well as easier to change if tenant spaces changed.

Mayor Bukiewicz said although he does not disagree, there is no monument sign on this agenda.

Commissioner Carrillo asked why the diagram showed the tenant signs on the southwest portion of the building appearing larger than the retail signs on the southeast corner.

Planner Papelbon explained that the tenant signs were included in the request for variance up to an area of 96 square feet in total, where the square footage of the signs for the retail spaces were determined by the lineal frontage of the space as per Code. So, the tenant signs would potentially be larger if this variance were approved.

Commissioner Carrillo questioned the sizes and locations of the signage - why the signs on the west side of the building were not all in a row to match the placement of the retail signs on the front of the building. Commissioner Carrillo wondered why the signs were not similar in size so that it looked like there were three entities on the left side of the building and then retail on the right front, presenting more of a storefront appearance. Commissioner Carrillo offered a comparison to Pick 'n' Save, where the signs were similar in size on the front of the building and none were particularly larger on the side of the building.

Mayor Bukiewicz said that businesses on the end cap traditionally have the option for signage on two sides.

Commissioner Carrillo concurred, but stated the approved signs were generally more uniform in size and height.

Planner Papelbon addressed the location of the Milwaukee Yard within the Highgate site, explaining the building would eventually be blocked by others in the development. Planner Papelbon clarified the signs on the west were designed to be seen from I-94, and on the east to

be seen from the interior development road. Planner Papelbon said that the Milwaukee Yard only comprised approximately 3.5 acres of a 25-acre site. Planner Papelbon also explained that the tenant signs on the east and west of the building were actually designed to sit on protrusions that were architectural elements of the building. Planner Papelbon added that aligning the signs horizontally rather than vertically would cause signs on the end column to step out further than signs on the main portion of the building.

Commissioner Carrillo stated that she did not think the view of the signs from I-94 adequately reflect what is in the building, making it seem like it is simply the “Milwaukee Yard Active Childcare Center.”

Planner Papelbon reiterated that the Plan Commission does not regulate sign content, only the size and location of the signs being requested.

Alderman Guzikowski supported Planner Papelbon’s assertion that only sign size and location were an issue for the Plan Commission, not sign content. Alderman Guzikowski stated his approval of the signs as presented, given the size of the building and the importance of having visibility for the brand.

Commissioner Chandler asked Mr. Gust to clarify that the intent was to have the signs visible from I-94.

Mayor Bukiewicz answered that only applied to the signs on the west of the building.

Commissioner Chandler asked whether there were entry doors specific to the tenant signs on the building.

Planner Papelbon responded that each retail component had an individual door on the south side of the building, but the entities comprising the Milwaukee Yard did not have dedicated entrances.

Mayor Bukiewicz stated that he did not have an issue with the size of the signage facing the interstate or on the south, particularly given the size of the building, and that retail tenants requiring individual signs could be dealt with as they appeared before the Plan Commission. Mayor Bukiewicz stated that he personally supported the sign appeal. He asked for confirmation from Planner Papelbon that any suggested motion should be made in the affirmative and voted against if a Commissioner opposed.

Planner Papelbon agreed that a motion should always be made in the affirmative, and if the Commission would like to consider the signs individually rather than as an entire package, then individual motions could be made for each of the signs.

Mayor Bukiewicz added that the signs are there not only for customers, but emergency services as well.

Mr. Gust spoke to Commissioner Carrillo’s point about signage on the south of the building, saying that if he didn’t put the tenant names on the west side, the building would appear off balance.

Alderman Guzikowski asked Planner Papelbon if the suggested motion on page three of the packet encompassed all of the signs that had just been discussed.

Planner Papelbon confirmed, pointing out if the motion fails, all of the signs requested for variances also fail. Planner Papelbon also reminded Commissioners that they are not voting on signs for the retail component, and the decision the Commission makes regarding this sign appeal affects the Master Sign Plan proposed by the applicant.

Commissioner Carrillo stated that she would like to see only one main sign on the west elevation, and three signs for the individual entities of the Milwaukee Yard on the left side of the south elevation with all of the retail signs to the right on the south elevation.

Planner Papelbon clarified with Commissioner Carrillo that she was suggesting one sign on the west elevation, three signs on the southwest elevation and one sign on the east elevation each up to a certain square footage.

Commissioner Carrillo stated that was correct.

Mr. Gust explained how critical the signs on the west were for visibility from I-94, especially the daycare sign.

Commissioner Chandler asked Mr. Gust to explain how the signs at his other locations were oriented.

Mr. Gust described the signage at both of his locations, stating that there was actually more signage on his Westmont location than on this one. The Naperville location had window decals for the retail signage noting that this building is in an office complex.

Commissioner Chandler asked who the signs on the south elevation were being directed at.

Mr. Gust said those signs face the parking lot, so although their marketing value was not high, he felt they provided a more balanced look to the building.

Alderman Guzikowski moved that the Plan Commission approve sign variances allowing the installation of two (2) wall signs up to a cumulative maximum of 200 square feet on the west elevation, two (2) wall signs up to a cumulative maximum of 200 square feet on the east elevation, two (2) wall signs on the southwest portion of the building up to a cumulative maximum of 96 square feet (non-tenant), and one (1) wall sign up to a maximum of 378 square feet on the south elevation (principal tenant) for the multitenant building on the property at 7727 S. Longwater Dr. (formerly part of 7869 S. 13<sup>th</sup> St.). Commissioner Siepert seconded. On roll call: Commissioner Carrillo and Commissioner Chandler voted no, all others voted aye. Motion carried.

**PUBLIC HEARING  
SIGN APPEAL  
REQUEST FOR A VARIANCE  
RICHARD BARRETT, BARRET LO VISIONARY DEVELOPMENT  
8001 S. 6<sup>TH</sup> ST.  
TAX KEY NO. 813-9060-000**

Planner Papelbon read the public hearing notice into the record.

Planner Papelbon provided an overview of the request for variances allowing the applicant to install one (1) 16'2" x 4'4.5" ground sign less than 10 feet from the east property line/street right-of-way for the ParTerre multifamily residential development on the property at 8001 S. 6<sup>th</sup> St.



Mayor Bukiewicz made three calls for public comment with no response. The hearing was closed.

**SIGN APPEAL**  
**RICHARD BARRETT, BARRET LO VISIONARY DEVELOPMENT**  
**8001 S. 6<sup>TH</sup> ST.**  
**TAX KEY NO. 813-9060-000**

Planner Papelbon provided an overview of the request for variances allowing the applicant to install one (1) 16'2" x 4'4.5" ground sign less than 10 feet from the east property line/street right-of-way for the ParTerre multifamily residential development on the property at 8001 S. 6<sup>th</sup> St.

Commissioner Chandler asked the applicant for more information on the location of the sign and access to passing either in front of or behind it.

Katie Monachos, RINKA, 756 N. Milwaukee St., Suite 250, Milwaukee, WI, 53202, explained the massing was pushed away from the street to create a grand motor court drop-off area for the 240 units that essentially acted as a front door. Ms. Monachos further explained that in order to meet the parking requirements for the development, they were pinched on offsets, but this was a location where they were able to dip in to the building and make room for both the cars and the monument sign. Ms. Monachos stated that she felt the size and location of the sign were appropriate for the overall project.

Commissioner Chandler questioned who the sign was directed at, as it appeared to be very low.

Ms. Monachos answered it was designed for residents and passersby alike.

Commissioner Chandler asked for clarification that this would be the only sign on the development.

Ms. Monachos replied in the affirmative.

Commissioner Siepert expressed his concerns about the sign being right on top of the sidewalk, and the safety issues it could present to pedestrians. Commissioner Siepert also questioned the visibility of the sign from the road when cars were parked in front of it.

Ms. Monacos pointed out that there was no parking allowed in front of the sign, although she acknowledged the sign was tight to the sidewalk.

Commissioner Oldani said that the Commission has a list of 4 criteria for a Sign Variance, and felt this request was no different than the other Sign Variance requests presented to the Commission.

Alderman Guzikowski asked for clarification of the sign location in relation to the sidewalk.

Ms. Monacos pointed out the sign relative to the sidewalk on the site map.

Alderman Loreck questioned whether any consideration had been given to moving the sign closer to the building.

Ms. Monacos stated they had looked at several options, and that this was the most balanced and centered option.

Commissioner Carrillo expressed her approval of the signage and its placement.

Commissioner Sullivan stated that the sign met with the approval of the Engineering Department, and he had no objections or concerns.

Mayor Bukiewicz agreed with both Commissioner Carrillo and Commissioner Sullivan. He added that ParTerre was always meant to have a distinct, different feel and he approved of the motor court design.

Assistant Fire Chief Havey stated that he had no objections to the location of the address numbers on the building face as presented.

Commissioner Oldani moved that the Plan Commission approve sign variances allowing the installation of one (1) 16'2" x 4'4.5" ground sign less than 10 feet from the east property line/street right-of-way for the ParTerre multifamily residential development on the property at 8001 S. 6<sup>th</sup> St. Alderman Loreck seconded. On roll call: Commissioner Siepert voted no, all others voted aye. Motion carried.

**SIGN PLAN REVIEW  
BILL GUST, MILWAUKEE YARD  
7727 S. LONGWATER DR (formerly part of 7869 S. 13<sup>th</sup> St.)  
TAX KEY NO. 784-9027-000**

Planner Papelbon provided an overview of the proposed Master Sign Plan for the multitenant building on the property at 7727 S. Longwater Dr. (see staff report for details).

Commissioner Chandler asked Planner Papelbon to clarify that the Master Sign Plan includes all proposed and allowed wall signs for tenants and retail space, and does not include a monument sign.

Planner Papelbon confirmed that was correct.

Commissioner Siepert moved that the Plan Commission approve the Master Sign Plan submitted by William Gust, HB Investments LLC, for the Milwaukee Yard multitenant building at 7727 S. Longwater Dr. Alderman Guzikowski seconded. On roll call: all voted aye. Motion carried.

**CERTIFIED SURVEY MAP  
MICHAEL FABER, RYAN BUSINESS PARK, LLC  
1001 AND 1199 W. RYAN RD AND 9540 S.13<sup>TH</sup> ST.  
TAX KEY NOS. 905-9995-001, 905-9993-004, 905-9010-001**

Planner Papelbon provided an overview of the request to reconfigure the properties at 1001 and 1199 W. Ryan Rd., and 9540 S. 13<sup>th</sup> St. (see staff report for details).

Commissioner Chandler asked for more information on what constitutes a pocket park.

Planner Papelbon replied that it was a small-scale park with no playground equipment. This particular park would have a seating area and an open-air pergola-like structure, as well as an

historic element specific to the railroad history of the parcel. Planner Papelbon stated that the park plans would come before the Plan Commission in the near future, and that the parkland would eventually be transferred to the City.

Mayor Bukiewicz stated that he thought this was a good and thoughtful use of the property.

Alderman Guzikowski moved that the Plan Commission recommends to the Common Council that the Certified Survey Map submitted by Michael Faber, Ryan Business Park, LLC, for the properties at 1001 & 1199 W. Ryan Rd., and 9540 S. 13<sup>th</sup> St. be approved with the following condition:

That all technical corrections, including, but not limited to spelling errors, minor coordinate geometry corrections, and corrections required for compliance with the Municipal Code and Wisconsin Statutes, are made prior to recording.

Commissioner Siepert seconded. On roll call: all voted aye. Motion carried.

#### **PLAN REVIEW**

**DRS. BRAD AND BRETT OSGOOD, BRENTWOOD ANIMAL HOSPITAL  
318 W. RYAN RD.  
TAX KEY NO. 875-9994-001**

Planner Papelbon provided an overview of the site, building, landscaping, and related review for a proposed animal hospital with kennel and boarding facilities (see staff report for details).

Brad Egan, Keller Inc., W204 N11509 Goldendale Rd., Germantown, WI, 53022, experienced technical difficulties. He was instructed by Planner Papelbon to use the Q & A function and she would relay his comments.

Alderman Guzikowski questioned whether the fiber cement board or LP SmartSide were distinguished in the suggested motion, and asked for clarification on the nuances between them.

Mr. Egan responded that they chose LP SmartSide because it allowed them to get a dual tone wood-look stain.

Planner Papelbon stated that staff expressed concerns with the composition of the LP SmartSide, and had more familiarity with the durability of fiber cement board. Planner Papelbon stated that LP SmartSide was relatively new to the City, and had only been approved for one other project at Sunset Options Funeral Home. Planner Papelbon described the LP SmartSide as more of a compressed, engineered wood where the fiber cement board seemed to have a harder texture. Planner Papelbon reiterated that staff preferred the fiber cement board.

Alderman Guzikowski asked if staff's preference was for fiber cement board on the entire building or just the trash enclosure, and if it would be a deal breaker if the applicant were required to use fiber cement board.

Planner Papelbon replied that fiber cement board was offered as an option by the applicant, and although both products were fire resistant, staff preferred that neither material be used around the trash enclosure due to potential fire risk. Planner Papelbon provided an example of such a fire, and reiterated that staff prefers a masonry product around the trash enclosure.

Mr. Egan said he would like to work with staff to convey the differences between LP SmartSide and fiber cement board. Mr. Egan explained that siding was chosen for the trash enclosure due to it not being visible from the street.

Planner Papelbon explained that the use of LP SmartSide was a modification for materials request that the Plan Commission would have to make a ruling on. Planner Papelbon further explained the Commission would have to first determine if either the LP SmartSide or cement fiber board were acceptable for this project, and second, which of the two they would approve for use.

Alderman Guzikowski asked Assistant Fire Chief Havey for his concerns with the use of either building product.

Assistant Fire Chief Havey concurred that the trash enclosure should be constructed of a fire-resistant material.

Commissioner Chandler asked for clarification that the building would consist more than 75% LP SmartSide.

Planner Papelbon estimated approximately 80-90 percent of the building would be covered in LP SmartSide. Planner Papelbon shared the results of an internet search which described the composition of fiber cement board (a composite material made of cement reinforced with cellulose fiber cements) versus LP SmartSide (an engineered wood product that has wood strands coated with resin binder, compressed to create a board).

Commissioner Chandler asked how much of the building should be covered in this type of material per Code.

Planner Papelbon stated that by Code, 75% of the building's visible perimeter is required to be brick, glass or decorative masonry material, meaning anything that could be seen from Ryan road going both directions. A second component of the Code states that because neither the fiber cement board or the LP SmartSide are listed as acceptable primary building materials, they would only be allowed as accents comprising 25% of the visible perimeter.

Mr. Egan communicated via chat that although fiber cement and LP SmartSide have nearly identical appearances, fiber cement board has a history of class action lawsuits due to delamination, and that his company has been using LP SmartSide for years.

Planner Papelbon commented that staff was not aware of any concerns with fiber cement products used locally, and that staff had no experience with LP SmartSide.

Commissioner Chandler asked if there was a way to reduce the percentage of LP SmartSide on the building.

Planner Papelbon stated that staff did not raise concerns with the percentage of siding on the building, that there had never been alternative plans to either the fiber cement board or the LP SmartSide, and that it was up to the Commission to determine if this was acceptable.

Mr. Egan commented that they had concentrated higher end materials such as brick, lots of windows, a higher roof, and a waterfall entry canopy on the street elevation, in exchange for the use of lap siding in 3 different colors on the remainder of the building.

Mayor Bukiewicz stated that he thought it was a sharp-looking building. Mayor Bukiewicz expressed familiarity with fiber cement products, but not as much with the LP SmartSide. Mayor Bukiewicz continued that products such as these would likely be addressed, and possibly incorporated, into future Code updates.

Alderman Guzikowski asked Mayor Bukiewicz which material he preferred to see on the building.

Mayor Bukiewicz stated he preferred fiber cement board, and that he felt it would be appropriate for the trash enclosure also.

Planner Papelbon said that staff is not recommending the use of fiber cement on the trash enclosure.

Commissioner Hanna wondered if either the fiber cement board or the LP SmartSide was easier to maintain.

Planner Papelbon replied that both products were supposed to be relatively maintenance-free.

Mr. Egan stated the LP SmartSide had a 30-year warranty, and is power washable, but had no information on the fiber cement product.

Mayor Bukiewicz asked whether Hardie board was a fiber cement product.

Planner Papelbon replied that it was, and went on to explain that single family residential homes did not have the same masonry requirements as a commercial building. Planner Papelbon acknowledged that fiber cement board has been approved in the past as fulfilling the requirements of a masonry product, and that most multifamily residential buildings now use it.

Mr. Eagan added that LP SmartSide has a similar appearance to Hardie board, with some different color options, and that most people would not perceive a difference between the two.

Mayor Bukiewicz asked the Commissioners to express their opinion on the use of material they preferred for the siding and the trash enclosure. Each agreed that the trash enclosure should be made of a masonry material, and voiced no objections to the LP SmartSide, except Commissioner Chandler, who expressed that she needed more information before she was comfortable approving it.

Assistant Fire Chief Havey stated he would not like to see fiber cement board treated as a masonry product for the trash enclosure, and expressed a preference for actual masonry block.

Alderman Guzikowski moved that the Plan Commission approve the site and building plans submitted by Drs. Brad and Brett Osgood, Brentwood Animal Hospital, for the property at 318 W. Ryan Rd., with the following conditions:

1. That all relevant Code requirements are in effect.
2. That all mechanical equipment, transformers, and utility boxes (ground, building, and rooftop) are screened from view.
3. That all required floodplain and green infrastructure approvals are provided to the Engineering Department prior to the submission of building permit applications.

4. That all revised plans (site, building, landscaping, etc.) are submitted in digital format for review and approval by the Plan Commission or Department of Community Development prior to the submission of building permit applications.
5. That the trash enclosure shall be comprised of exterior masonry building materials.

Commissioner Siepert seconded. On roll call: Commissioner Chandler voted no, all others voted aye. Motion carried.

**TEMPORARY USE  
TASOS TSOPELAS  
8950 S. 27<sup>TH</sup> ST.  
TAX KEY NO. 856-0070-006**

Planner Papelbon provided an overview of the request for a temporary use permit for an outdoor dining area on the north side of the existing building within a portion of the existing parking lot (see staff report for details).

Mayor Bukiewicz invited the residents who wished to address the Commission to speak first.

Samuel Crawford, 9013 S. 26th St., Oak Creek, WI 53154

*I just wanted to touch on a few things, and actually, they've already been touched on (in the staff report), but I just wanted to get a little more clarification on one more thing. I wanted to bring up the fence. It is in disrepair. All it takes is one good wind storm and all the vertical planks blow out. About three years ago I did have some patrons from Bootz [Saloon & Grille] business, two occupants ago, running through my lawn screaming and that was one thing I really wanted to bring up and I'm glad it was already brought up. Another thing I wanted to bring up was music. I don't know if this was talked about already, but is there going to be any music played at this patio and if there is not going to be any this year, when it, or if it does become a permanent fixture, will it possibly become a thing next year?*

Mayor Bukiewicz replied that music was not being requested at this time, and if the applicants did request it, the City would need to make sure they were abiding by Code, particularly if the music was outside. Mayor Bukiewicz stated the City was aware of the history of the property, and was sensitive to the neighborhood concerns, but as the property is zoned B-4, the City must work with the applicants to reinvent the wheel, particularly during this time of COVID 19. Mayor Bukiewicz asked Mr. Crawford if that answered his question.

Mr. Crawford:

*It did. And then, just to make sure I heard correctly, the fence should be fixed before occupancy and before customers are allowed to come in.*

Mayor Bukiewicz stated that Planner Papelbon could address this question, and added that Zoning Administrator Miller was aware of the situation and working on it. Mayor Bukiewicz also said that the last time he drove by he noticed the fence was kicked in towards the neighbor's yard and in bad shape, and stated that it should be repaired.

Planner Papelbon responded that the fence is an ongoing issue which the Zoning Administrator is working with the landowner on in order to correct. Planner Papelbon noted that as of Thursday,

it had still not been repaired, and staff were all very much aware of it and were working towards a resolution.

Steven Vieira, 8981 S. 26th St., Oak Creek, WI 53154

*We are the property that literally is dead behind where this new patio will be. Kind of as you guys have talked about, this is something that just, I mean we lived through Bootz [Saloon & Grille], we've lived through, you know, other things that have happened there and it's, I mean, honestly, at least for me and my family we're dead against a patio there. I understand the whole COVID thing, but they have not been a responsive neighbor. I mean, we had so many problems with Bootz [Saloon & Grille] that just kind of dragged on and on and on. I've been working with Chris Guzikowski since April in getting the fence fixed and it's as of today, it's still not fixed. They've been talked to a couple times about it that I've seen in email, and my fear is with this patio, it's just going to lead us down another path like we had with, you know, the previous tenant which is obviously not this person's fault. Another concern is they just, they don't take care of their property on the east side of their fence, which is, you know, adjacent to our property, they don't maintain that property. The grass is probably five feet tall. They used to cut the grass when it was the tenant three tenants ago, but they just, they let it go. There's trash all over the place and I just don't think until these problems are resolved and the fences should be, it should really be an easy fix, the boards are just laying right where they fall, those things should be done before we even think about giving them different, you know, rewarding this property owner with additional use permits. And as I mentioned, the screening on the roof, that fell down a year or two ago and you know, they just, they don't seem to keep up the building. I don't know if there's conflict between or lack of communication between the owner and the tenants, but as you guys mentioned, bad taste. I mean we fought for years, for a lot of you that are on the City Council that know me, we fought for years with Bootz [Saloon & Grille] and I just don't want to go down that path again. It was designed to be a restaurant, not a bar, not a music venue. So that's kind of what I had to say so.*

Mayor Bukiewicz thanked Mr. Vieira for his input. Mayor Bukiewicz said that Mr. Viera brought up a lot of history. Mayor Bukiewicz stated that he could not speak as to why repairs were not being done, and he was unsure as to who even owned the building. Mayor Bukiewicz expressed that although it is nice to see someone trying to take the property over and make a go of it, this has always been a challenging property. Mayor Bukiewicz added that he has no idea how the new tenants will conduct themselves, and agreed that this was an opportunity to be used to bring the building up to par. Mayor Bukiewicz said this Temporary Use Permit appeared to be a way for whomever assumed the lease to make something out of nothing after COVID hit.

Steven Vieira:

*Can I make another comment still? I guess my other concern would be, you know, obviously being so close, I want to say we're 75 yards to 100 yards away from this outdoor speaker even if there isn't music. As you know, when people over serve themselves, they get loud and obnoxious, maybe not in July, when the air conditioning is on, but September and October when we want to keep our windows open, we don't need, you know, people, you know, getting a little rowdy outside and I would hope that this tenant would be in much more control of the people outside as previous tenants. And I'll go back several tenants, they were good, up until Bootz [Saloon & Grille] and then after that, and Agave was fine, but it left a bad taste, like you said, so I hope if this does turn permanent, this is something that can be worked out.*

Mayor Bukiewicz concurred that Bootz [Saloon & Grille] was a whole different business model. Mayor Bukiewicz asked Planner Papelbon if there were hours of operation for the outside dining, or if they were the same as the bar hours.

Planner Papelbon responded that there was no previous outdoor use on the property to compare to, but perhaps the outdoor dining hours of operation for this request could be limited.

Mayor Bukiewicz stated that it gets dark, and there is no lighting available for an outdoor patio other than parking lot lighting, so maybe attaching hours to the patio would help the situation.

Steven Vieira:

*That would be the least, I would ask for because you know obviously the noise ordinances with 10:00 p.m.*

Mayor Bukiewicz responded he thought that was fair.

Commissioner Carrillo stated she thought the noise ordinance time was 11:00 p.m.

Steven Vieira:

*It's 10:00 p.m. to 8:00 a.m. I'm looking at it right here. "No one in the City can create or maintain loud noise that is prolonged or unusually loud. Some of the noises that are restricted between the hours of 10 :00 p.m. to 8:00 a.m..."*

Mayor Bukiewicz replied that 10:00 p.m. would be a fair start. Mayor Bukiewicz added that although the applicants were not here to represent themselves, it would be a pretty fair compromise with the neighborhood.

Alderman Guzikowski stated that he had a whole plethora of concerns and thoughts with regards to the Temporary Use Permit. Alderman Guzikowski stated he knows the applicant/owner as Tom, and that Tom has not been a good neighbor, although he has owned the building the whole time. Alderman Guzikowski agreed that the owner has not done anything to keep up with the maintenance on at least the exterior of the building. Alderman Guzikowski concurred with Mr. Crawford and Mr. Vieira about the state of the fence, the weeds, the grass and the trash, and stated that it is disgusting the neighbors on the other side of the street have to look at it, and that it is frustrating that these issues continue to get overlooked. Alderman Guzikowski stated that although he would really want to see this new business succeed, he did not think the owner/applicant was being fair to the neighbors. Alderman Guzikowski shared that Breakerz Bar and Grill never reached out to him to talk about the concerns he had because he would have shared his thoughts with them before tonight. Alderman Guzikowski expressed his disappointment that the applicant/owner was not at the meeting to speak. Alderman Guzikowski added that the maintenance issues were not getting any better, and that it was really bothering him and he wondered how to correct this going forward.

Mayor Bukiewicz said he understood Alderman Guzikowski's concerns, and asked Planner Papelbon whether conditions could be attached to the Temporary Use Permit which would cause it to be revoked if there were noise violations or if the property was not being adequately maintained.



Planner Papelbon replied that she was crafting some conditions of approval, although she was unsure about including revocation language in the motion itself. Planner Papelbon continued by saying if it were determined and proven that the conditions of approval were not being adhered to, staff would look at all options, including whether or not the Temporary Use Permit was invalidated.

Mayor Bukiewicz stated he would like to “leverage” the Temporary Use Permit to get some compliance from the owner on the fence maintenance, the litter, the yard maintenance and potential noise issues. Mayor Bukiewicz also expressed that if Zoning Administrator Miller deemed any of these to be a nuisance, he would like to see the Temporary Use revoked.

Alderman Guzikowski added that to the Mayor’s point of people reinventing themselves during COVID-19, he would want to see this property make a go of it, but they also have to take care of themselves by being a good neighbor and taking care of their own property for the other neighbors.

Commissioner Carrillo commented that she loved Agave, and wanted it to succeed and that she assumed they had nothing to do with the fence as the renter. Commissioner Carrillo also acknowledged that outdoor seating in the City of Oak Creek is a great idea with COVID-19, and expressed her full support of the applicant’s ideas and hoped that they come through this. Commissioner Carrillo shared that as a resident of Drexel Town Square, Cubanitas and Pizza Man both have outdoor music right next to each other and she cannot hear it a few floors up. Commissioner Carrillo stated there was a way to do things tastefully where there can be music outside and the neighbors do not even need to hear it at all, especially if there is a fence. Commissioner Carrillo noted that her one concern is the safety of the outdoor seating area. She provided her experience with the farmers market, stating that Police and Fire have asked her to use cars to block entrances since barricades aren’t enough in the case that somebody takes a wrong turn or hits the gas instead of the brake. Commissioner Carrillo commented that the applicant should make the seating area smaller if they were worried about the trash enclosure in the back, but rent something through October such as a big beer case that they could fill with water, to make that area more secure.

Mayor Bukiewicz stated that he thought the applicant was going to put out concrete Jersey barriers.

Commissioner Carrillo replied that the barriers have to be removable so they can get the garbage out, so they could not be concrete. Commissioner Carrillo stated that concrete barriers would be good if they rented those and put them in place in a smaller footprint for safety.

Mayor Bukiewicz concurred with Commissioner Carrillo’s suggestion that parking an employee’s car for use as a barrier was a very good suggestion.

Commissioner Hanna questioned the working hours for the outside portion.

Mayor Bukiewicz replied that he did not know what time they would be opening, but that they would have to shut the outside down by 10:00 p.m. to match the noise ordinance.

Commissioner Hanna responded that if they were going to do outdoor seating in the parking area, that would require lighting. Commissioner Hanna then asked what type of lighting and connections were going to be needed outside.

Mayor Bukiewicz answered that they would not have any light other than the existing parking lot lighting.

Commissioner Hanna then expressed her concern that the non-concrete barriers were not safe.

Mayor Bukiewicz asked Planner Papelbon what material the proposed barriers were going to be.

Planner Papelbon replied there was nothing within the proposal that said what the barriers were made out of. Planner Papelbon continued by saying that staff have the exact same safety concerns that everybody else has, which is why staff are saying that if this were going to be allowed at all, it would have to be temporary with an expiration date of this year. Planner Papelbon stated that staff were not going to be supporting this as a permanent solution for outdoor dining. Planner Papelbon continued that if the applicant wants a permanent outdoor dining area, they would have to incorporate those elements that were included in the original proposal, so that would include a fenced-in area with access gates to a sidewalk rather than in the parking lot itself. Planner Papelbon stressed another safety factor to consider regarding the concrete blocks was access for emergency services. Planner Papelbon stated the concrete barriers were not going to be allowed because they can block access for both the Fire department and, if need be, the Police Department, to that particular area.

Commissioner Hanna stated that the movable barriers staff is suggesting for emergency access are not shock-resistant, so if any cars hit them, they would not sustain or absorb the shock. Commissioner Hanna added that the barriers were going to move towards the customers on impact, unlike a concrete barrier, where if they get hit, they push back on the vehicle to go back on the road.

Commissioner Oldani stated that he is not concerned with the specifics of the Temporary Use application because it is a pet peeve of his that somebody with a controversial proposal like this does not even bother to show up - whether it's the owner or the business owner - to at least give their take and defend themselves. Commissioner Oldani stated that the applicant should take care of the stuff that has been an issue for months pre-COVID-19, then come back with a proposal. Commissioner Oldani added that he understood enforcing adherence to the Zoning Code, and that there was nothing worse than a bad neighbor. Commissioner Oldani reiterated that until the applicants fix things that were an issue before this application, he cannot support the Temporary Use. Commissioner Oldani said that he would like to hear the applicant's side of the story were they to appear before the Commission.

Mayor Bukiewicz agreed with Commissioner Oldani that it was good to hear from the neighbors and that there was much work to be done.

Assistant Fire Chief Havey spoke regarding emergency access. He stated there are three points of entry to the building which he would call "A" side (front entrance), "B" side (side door), and "C" side (rear door). Assistant Fire Chief Havey explained that with the reach of the Fire Department hoses and their technical operations that would be deployed, they would need access to any access points depending on where the fire was located. Assistant Fire Chief Havey said the Fire Department would not advocate for any permanent barriers that could impede their access into the building. Assistant Fire Chief Havey also stated that he had not seen the proposed barricades, but for emergency access and to gain entry for tactical priorities, he would require unimpeded entry.

Alderman Loreck said that his take was pretty much the same as everybody who had already spoken. Alderman Loreck stated that originally when he saw the proposal, he thought it was a great thing to have more outdoor seating in Oak Creek, and that we should just move forward with the approval of the Temporary Use. However, after hearing the neighbors and a little bit more of the history, he stated that he felt there needed to be more thought put in to the proposal. Alderman Loreck said the only way that he would currently support the proposal is if it was temporary and could be used as a kind of a trial period. Alderman Loreck expressed his concern that the applicant wasn't available, but without knowing the reason why, he did not want to hold that against them. Alderman Loreck said he also did not want to hold history from a previous tenant against somebody else who is trying to make a go of the business. Alderman Loreck stated that he was glad to see that the proposal looked like all outdoor seating without a bar, which would raise his concerns as far as noise levels and things outside. Alderman Loreck said that he was not too concerned with the barriers as long as they were heavy enough but could still be moved. Alderman Loreck stated that he could be supportive of this proposal being that it is temporary with an expiration dated, and that it would definitely be a very stringent trial period to see how they do. Alderman Loreck concluded by saying if the applicants turn out to be great neighbors in that short time, then this is something that he would continue to support on a more permanent basis.

Commissioner Sullivan stated that Engineering shared some of the other concerns with the barricades, but understanding they were temporary, he stated he would have to make some concessions. Commissioner Sullivan echoed the concerns of the Commission with regards to property maintenance. Commissioner Sullivan stated that in conversations with Zoning Administrator Miller, she has relayed there have been talks about screening their upper units on the roof because they are not compliant and a number of things like that. Commissioner Sullivan agreed that the applicant just needs to take care of the property first, and that this application is an item that should be put on hold or disregarded until those points are taken care of.

Commissioner Siepert stated that he really thinks the applicant needs to fix the property up before the Commission should issue a Temporary Use Permit for the outdoor facility. Commissioner Siepert reiterated that you want to make sure that you are being a good neighbor first, and that he would hold off on a permit until the improvements on the outside of the building were completed.

Mayor Bukiewicz stated that he hated to use the word "leverage," but felt all of the Commissioner's points regarding building maintenance were valid. Mayor Bukiewicz stated that he felt the barrier issue could be worked through, although he did not understand why the applicant chose the north end of the building when they could have easily gone to the south without limiting access for emergency services. Mayor Bukiewicz agreed with Alderman Loreck that although he did not want to hold it against the applicants for not appearing before the Commission, the owners have been in the thick of this for a long time, and should have made an effort to show up.

Planner Papelbon provided information with regard to the questions that Commissioners had raised. Planner Papelbon stated that first off, staff was not made aware there would not be a representative at tonight's meeting, but that could be for any number of reasons. Secondly, the reason the applicant did not pursue the south parking lot location was because of the issues regarding the 30% open space requirements. Planner Papelbon explained that locating the patio in the south parking lot would mean the removal and relocation of required on-site landscaping, but that this may be pursued as a permanent solution in the future. Planner Papelbon stated the applicant wanted to be able to have an outdoor seating area as part of this season, so they were looking for a Temporary Use and this was kind of a compromise that staff agreed could be pursued. Planner Papelbon said that staff wanted to present it to the Plan Commission with

several conditions of approval for the Commissioners to consider. Planner Papelbon added that staff had already raised a lot of the same concerns that the Commission had raised tonight with the applicant. Planner Papelbon explained that she had amended the conditions for approval as the Commission discussion was unfolding, adding Conditions 7 (“That all outstanding property maintenance issues, including, but not limited to fence repair, grass maintenance, rooftop mechanical screening repair/replacement, are resolved as verified by the Department of Community Development prior to issuance of Occupancy Permits for the outdoor dining area.”) and 8 (“The use of the outdoor dining area shall be limited to between the hours of 10:00 a.m. and 10:00 p.m.”) for consideration. Planner Papelbon said a motion should always be made in the affirmative, and if the Commission did not agree with the proposed use or if they would like to amend the motions or the conditions of approval in the suggested motion, they could certainly do that. Planner Papelbon stated if the Commission wished to deny the Temporary Use outright, then a motion would be made in the affirmative, and Commissioners would vote against.

Mayor Bukiewicz questioned the wording in Condition 3 (“That all barricades used for the exterior dining area be temporary and movable for emergency access.”), and asked who would determine the safety factor of the barricades.

Planner Papelbon responded that as far as what barriers would be considered temporary and movable for emergency access, staff would rely heavily on the expertise of the Fire Department and the Police Department for input.

Mayor Bukiewicz asked whether Police and Fire approval of the barricades should be included as a part of Condition 3.

Planner Papelbon agreed that Condition 3 could have wording added to the effect of: “That all barricades used for the exterior dining area be temporary and movable for emergency access as approved by the Department of Community Development in conjunction with Protective Services (Police and Fire).”

Assistant Fire Chief Havey commented that the layout of the applicant’s barricades could be modified to allow access for Protective Services, but he was not certain of the space they intended to use because it was not clearly indicated on the map - it is just a parking lot on the north side. Assistant Fire Chief Havey said he thinks there is a configuration where if the outdoor seating were more confined to the outdoor space they wanted to close off, it could be possible. Assistant Fire Chief Havey explained that the barricades on the far north side and on the far east side could be aligned to give the exterior lanes access for emergency vehicles, and the current configuration could be modified depending on the applicant’s intent.

Mayor Bukiewicz said that staff could work with the applicant if the Commission deemed it that way.

Planner Papelbon responded that staff would not feel comfortable with that kind of a solution without the Temporary Use coming back to the Plan Commission for final approval. Planner Papelbon reiterated that there are too many other things going on here, and there are too many concerns that have been raised for staff to feel comfortable in proceeding without Plan Commission approval.

Commissioner Oldani asked for clarification as to who actually submitted the Temporary Use application: the property owner or the business owner.

Planner Papelbon confirmed the property owner submitted the application, but that she had been corresponding with the architect/consultant for the operator of the restaurant.

Commissioner Oldani then asked who would be responsible for all of the conditions attached to the permit.

Planner Papelbon answered that the ultimate responsibility for the property is with the landowner, but that responsibility is shared by the tenant. Planner Papelbon said if there was a violation that was issued, it would be to the landowner.

Commissioner Oldani stated that the application was way too convoluted, and that the property owner and the business owner needed to get together.

Mayor Bukiewicz agreed that the Commissioner's concerns should go back to the applicant to figure out, particularly if they were going to change the configuration of the barriers. Then the architect would need to have an idea of what would be acceptable to Police and Fire.

Planner Papelbon stated that staff would work directly with the operator as they were the ones who were going to be setting this, but ultimately the responsibility for the property and the maintenance of it and making sure that their tenants are doing what they were supposed to be doing is with the landowner. Planner Papelbon added that staff tries to make sure that everybody has an opportunity to resolve the issues before proceeding to a violation.

Commissioner Loreck questioned whether the applicants would need to address the concerns before obtaining occupancy if the Commissioner's concerns were in the conditions of approval (if approved).

Planner Papelbon stated that she struggled with this particular condition of approval for consideration because she was not entirely certain what the occupancy requirement was, if any, for putting tables and chairs in a parking lot. Planner Papelbon added that she was not sure what her authority would be for tying this to an occupancy permit for the building, which may have already been received for interior renovations, and which is a separate process from this Temporary Use request. Planner Papelbon stated it would have been a lot simpler had the applicant just gone forward with the original proposal on the south side, and found some place to put the extra landscaping. But unfortunately, the Commission is in a Temporary Use situation right now.

Mayor Bukiewicz asked how many parking spots the applicant proposed they were going to take.

Planner Papelbon replied that they did not specify. The applicant just said that the outdoor dining area could accommodate up to 96 patrons.

Mayor Bukiewicz said that looking at the plans, it appeared they could have come to the far west side and blocked off that island and parking lot.

Planner Papelbon stated that the drawing may not be entirely to scale, and that she didn't think it showed all accommodations for 96 patrons.

Mayor Bukiewicz stated they could have blocked between the islands and just had no parking in front of the building at all. Mayor Bukiewicz added that he would advise telling the applicants to come back to the drawing board to address Plan Commission concerns and questions. Mayor

Bukiewicz stated that he felt the Commission was going to see more and more of this type of application the longer the pandemic goes on. Mayor Bukiewicz agreed with Commissioner Carrillo's assessment that businesses will look for these dining options to get some consumer confidence back.

Alderman Guzikowski asked whether it would be prudent to hold this particular item.

Mayor Bukiewicz asked Planner Papelbon what would happen if the Commission were to vote "no:" would it go back to staff and then back before the Commission in another two weeks?

Planner Papelbon stated that the Commission could certainly hold the application to a date and time; however, she stated that two weeks to address all the issues raised by the Commissioners may not be sufficient.

Commissioner Hanna suggested making a motion and having the applicants come back for an appeal after they addressed all of the issues.

Commissioner Hannah moved that the Plan Commission approve the Temporary Use Permit for an outdoor dining area on the north side of the existing building within a portion of the existing parking lot on the property at 8950 S. 27<sup>th</sup> St. with the following conditions:

1. That all relevant Code requirements remain in effect.
2. There shall be no outdoor entertainment or exterior speaker systems.
3. That all barricades used for the exterior dining area be temporary and movable for emergency access.
4. Plans for any exterior lighting, permanent or temporary, for the outdoor dining area shall be submitted for review and approval by the Electrical Inspector and Department of Community Development prior to the submission of permit applications.
5. That final plans (site, patio, landscaping, etc.) are submitted in digital format to the Department of Community Development prior to the submission of permit applications.
6. That the Temporary Use Permit shall expire October 31, 2020,
7. That all outstanding property maintenance issues including but not limited to; fence repair, grass maintenance, rooftop mechanical screening repair/replacement are resolved as verified by the Department of Community Development prior to issuance of occupancy permit to the outdoor dining area
8. The use of the outdoor dining area shall be limited to between the hours of 10:00 a.m. and 10:00 p.m.

Commissioner Loreck seconded. On roll call: Alderman Loreck voted aye, all others voted no. Motion denied.

Alderman Guzikowski asked if the applicants needed to wait a specific time frame before reappearing before the Commission.

Planner Papelbon answered that what the applicants could do is substantially revise their application submission and resubmit something new. Planner Papelbon stated that the applicants would receive a formalized letter outlining the Plan Commission's concerns.

Mayor Bukiewicz concluded with thanking the Commission for their hard work, saying it had been a long meeting with a lot of heavy stuff. Mayor Bukiewicz invited Commissioner Carrillo to give an update on the Farmer's Market.

Commissioner Carrillo reported the market was in week 8 of 20.

Mayor Bukiewicz: encouraged meeting attendees to wear a mask, if not for themselves, then out of respect for others. Mayor Bukiewicz also encouraged attendees to vote during early voting and to practice social distancing and abide by best safety practices.

Commissioner Carrillo moved to adjourn the meeting. Commissioner Siepert seconded. On roll call: all voted aye. Motion carried. The meeting was adjourned at 9:07 p.m.

ATTEST:

\_\_\_\_\_  
Douglas Seymour, Plan Commission Secretary

8-5-20

\_\_\_\_\_  
Date

DRAFT



## PLAN COMMISSION REPORT

Proposal: Release of Easement Document – Brandywood Apartments and Riverwood Arms Estates

Description: City approval and consent to release a private easement between Brandywood Apartments and Riverwood Arms Estates.

Applicant(s): Bernard Kearny, Quarles & Brady on behalf of landowners

Address(es): 8900 20 S. Wood Creek Dr. & 500 W. Riverwood Dr.

**Suggested Motion:** That the Plan Commission approves and recommends Common Council approval of the Agreement for Release of Easements and Consent to Release of Easements submitted by Bernard Kearny, Quarles & Brady, on behalf of Brandywood Estates LLC & Legacy/Riverwood LLC, for the properties at 8900 20 S. Wood Creek Dr. & 500 W. Riverwood Dr.

Owner(s): BRANDYWOOD ESTATES LLC & LEGACY/RIVERWOOD LLC

Tax Key(s): 859-9017-000 & 859-9030-000

Lot Size(s): 4.452 & 4.464 ac

Current Zoning District(s): Rm-1, Multifamily Residential

Overlay District(s): PUD

Wetlands:  Yes  No Floodplain:  Yes  No

Comprehensive Plan: Multifamily

### Background:

In 1991, an agreement between the Brandywood Apartments and Riverwood Arms Estates (formerly Wood Creek Development Corp.) for the shared use of tennis courts on the Brandywood property was executed and recorded between the two parties. Per Section 7 of the agreement:

The provisions of this agreement may be modified, terminated or released (1) with the consent of the parties which then own more than 50% of the square footage of the Wood



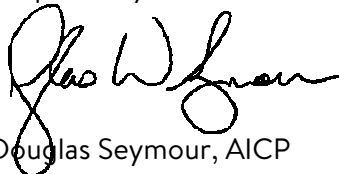
Creek Property; (2) with the consent of the parties which then own more than 50% of the square footage of the Brandywood Property; and (3) with the approval of the Plan Commission of the City of Oak Creek.

As the shared tennis courts were part of a plan approved by the Plan Commission on March 26, 1991, and per the aforementioned Section 7, the City was signatory to the agreement. Both owners of the properties are requesting to release that agreement as the tennis courts are disused and would benefit the Brandywood Apartments development as potential future parking area. Copies of the original agreement and the Release for approval and signature are included with this packet. Staff have no objection to the release, although Plan Commissioners should be aware that the motion includes both Plan Commission and Common Council approval.

**Options/Alternatives:** The Plan Commission has the discretion to approve the proposal and recommend approval to the Common Council.

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Respectfully submitted:



Douglas Seymour, AICP  
Director of Community Development

Prepared:



Kari Papelbon, CFM, AICP  
Planner

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**Attachments:**

Location Map

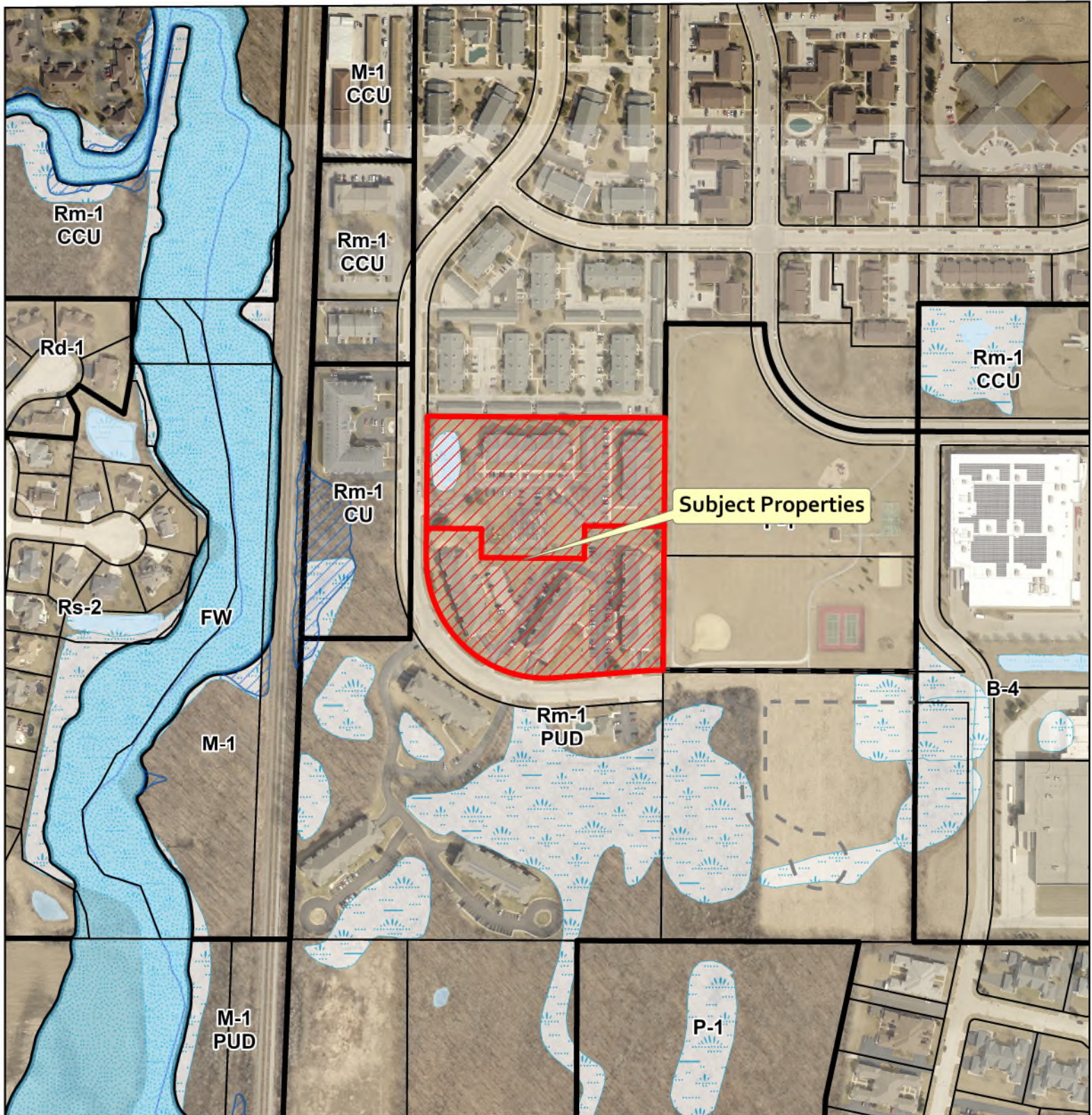
Original Agreement (5 pages)

Proposed Release of Easement (7 pages)

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# LOCATION MAP

## 8900 S. Wood Creek Dr. & 500 W. Riverwood Dr.



This map is not a survey of the actual boundary of any property this map depicts.



Community Development



### Legend

- |              |                    |
|--------------|--------------------|
| Parcels      | Streams            |
| Official Map | Zoning_w_floodway  |
| Flood Fringe | Waterbodies        |
| Floodway     | Subject Properties |

REEL 2560 IMAG 1709

6477072  
REGISTER'S OFFICE } 3:40 PM  
MILWAUKEE COUNTY, WI }  
RECORDED AT 3:40 PM }  
APR 29 1991 17096  
REEL 2560 IMAGE 1713 INCL.  
Blair Campbell REGISTER OF DEEDS

AGREEMENT

This agreement is made and executed this 19th day of APRIL, 1991, by and between Wood Creek Development Corp., a Wisconsin business corporation ("Wood Creek"), and Brandywood Limited Partnership, a Wisconsin limited partnership ("Brandywood").

WHEREAS, Brandywood is the owner of the real estate located in Milwaukee County, Wisconsin, described on Exhibit A (the "Brandywood Property"), which adjoins the Wood Creek Property;

WHEREAS, Wood Creek is the owner of the real estate located in Milwaukee County, Wisconsin, described on Exhibit B (the "Wood Creek Property").

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth, the parties hereby agree as follows:

6477072  
RECORD 16.00

1. Brandywood agrees to construct on the Brandywood Property tennis courts as provided in the general development plan covering the property approved by the City of Oak Creek Plan Commission on March 25, 1991 (as it may be amended from time to time) (the "General Development Plan") and as provided in a development agreement between Brandywood and the City of Oak Creek dated January 15, 1991 (the "Tennis Courts"). A copy of said plan is attached hereto and incorporated herein by reference. Brandywood and Wood Creek acknowledge that development of the Wood Creek and the Brandywood Properties shall substantially comply with the General Development Plan.
2. Brandywood agrees to maintain the Tennis Courts in their condition upon completion of construction, excepting ordinary wear and tear. Brandywood and Wood Creek shall each contract for and be responsible for snow plowing and yard maintenance on their respective properties.
3. Individuals living on the Wood Creek Property shall be allowed to use the Tennis Courts in common with individuals living on the Brandywood Property. Brandywood may establish reasonable rules and regulations relating to the time and frequency of use of the Tennis Courts provided that such rules shall provide for equal treatment of the individuals living on the Wood Creek Property as compared to the individuals living on the Brandywood Property.
4. The individuals living on the Wood Creek Property shall have an easement for ingress and egress from the Wood Creek Property to the Tennis Courts over those portions of the

16.00

Brandywood Property which are laid out and used as driveways and pedestrian walkways, which easement shall be limited to such use as may be necessary to allow the use of the Tennis Courts as provided herein.

5. Wood Creek agrees that Brandywood shall not be liable for any loss, destruction or damages to property or injuries to persons from any source or cause whatsoever sustained by any person or any property arising from the exercise of the rights to use the Tennis Courts as granted hereunder.

6. Wood Creek agrees that as a condition to the granting of the rights to use the Tennis Courts and the easement described in paragraph 4, it will indemnify and hold Brandywood harmless against and from any and all claims, demands, actions, damages and expenses, including reasonable attorney fees and disbursements, arising out of or on account of any damages or injuries to any person or to any property by reason of any accident in or upon the Brandywood Property and arising from the exercise of the rights granted hereunder. This indemnification obligation shall not arise so long as Wood Creek obtains and maintains the insurance described in the following sentence. Wood Creek, at its election as an alternative to the foregoing indemnification obligation, may provide Brandywood with a certificate of insurance evidencing that Wood Creek has obtained general liability coverage with limits of at least \$500,000.00 per person, \$1,000,000.00 per accident for bodily injury or death and \$100,000.00 for damage to property, and naming Brandywood as an additional insured. The certificate shall provide that Brandywood shall be given at least 10 days' notice prior to cancellation of any such policy.

7. The covenants, rights and easements granted in this agreement shall be binding on and be for the benefit and use of Wood Creek and Brandywood and their respective successors and assigns. This agreement shall run with the land and be binding upon the parties hereto and their successors and assigns. The provisions of this agreement may be modified, terminated or released (1) with the consent of the parties which then own more than 50% of the square footage of the Wood Creek Property; (2) with the consent of the parties which then own more than 50% of the square footage of the Brandywood Property; and (3) with the approval of the Plan Commission of the City of Oak Creek.

8. Mark H. Paszko, David Stauffacher and Mark Stauffacher each have an interest in the Brandywood Property as land contract vendors and they join in this agreement for the purpose of consenting to the provisions hereof as they relate to the Brandywood Property and their interests as vendors.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first above written.

BRANDYWOOD LIMITED PARTNERSHIP (SEAL)

WOOD CREEK DEVELOPMENT CORP. (SEAL)

By: [Signature]  
Mark H. Paszko, General Partner

By: [Signature]  
William J. Svoboda, President

[Signature]  
Mark H. Paszko

[Signature]  
Mary E. Devitt, Secretary

[Signature]  
David Stauffacher

[Signature]  
Mark Stauffacher

Signatures of Mark H. Paszko, David Stauffacher, Mark Stauffacher, William J. Svoboda and Mary E. Devitt authenticated this 29 day of April, 1991.

Signatures of Mark H. Paszko, David Stauffacher, Mark Stauffacher ~~and~~ authenticated this 23 day of April, 1991.

[Signature]  
Thomas L. Frown  
Member, State Bar of Wisconsin

[Signature]  
Member, State Bar of Wisconsin

Approved as to form:

City of Oak Creek, Wisconsin

By: [Signature] for Paul Milewski  
Paul Milewski  
Director of Community Development

(1/ms:D11)BWC-A-C

Return to Wisconsin Title Service  
MC # 242263  
(Box 198)

REEL 2560 IMAG 1712

Exhibit "A" 88

Parcel One (1) of CERTIFIED SURVEY MAP NO. 5537, being a part of the Northwest One-quarter (1/4) and the Southwest One-quarter (1/4) of the Northeast One-quarter (1/4) of Section Twenty (20), in Township Five (5) North, Range Twenty-two (22) East, in the City of Oak Creek, and recorded in the Register of Deed's Office for Milwaukee County on April 22, 1991, as Document No. 6474693.

REEL 2560 IMAG 1713

Exhibit "B"

That part of the Northeast One-quarter (1/4) of Section Twenty (20) and the Northwest One-quarter (1/4) of Section Twenty (20), in Township Five (5) North, Range Twenty-two (22) East, in the City of Oak Creek, bounded and described as follows: Commencing at the Northwest corner of the Northeast 1/4 of Section 20 aforesaid; thence South 00° 30' 08" West along the West line of the Northeast 1/4 of Section 20 aforesaid 1294.75 feet to the point of beginning of the land to be described; thence South 89° 37' 03" East 655.94 feet to a point; thence South 00° 27' 44" West 1357.16 feet to a point on the South line of the Northeast 1/4 of Section 20 aforesaid; thence North 89° 44' 56" West along the South line of the Northeast 1/4 of Section 20 aforesaid 656.88 feet to the 1/4 corner; thence North 89° 46' 40" West along the South line of the Northwest 1/4 of Section 20 aforesaid 305.30 feet to a point on the East line of the Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way; thence North 02° 09' 20" East along the East line of said right-of-way 786.06 feet to a point; thence South 89° 46' 40" East 281.20 feet to a point on the 1/4 Section line; thence North 00° 30' 08" East along the 1/4 Section line 576.56 feet to the point of beginning.

Excepting therefrom those lands described as Parcel One (1) in Certified Survey Map No. 5573, recorded on April 22, 1991, as Document No. 6474693.

Recording Requested by  
and when recorded mail to:

Mallery & Zimmerman S.C.  
731 North Jackson Street  
Suite 900  
Milwaukee, Wisconsin 53202  
Attention: Jacqueline G. Hrovat

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### **AGREEMENT FOR RELEASE OF EASEMENTS**

**THIS AGREEMENT FOR RELEASE OF EASEMENTS** ("Agreement") is entered into as of the date set forth below by and between **LEGACY/RIVERWOOD, LLC**, a Wisconsin limited partnership ("Legacy"), and **BRANDYWOOD ESTATES LLC**, a Wisconsin limited liability company ("Brandywood").

#### **RECITALS:**

WHEREAS, Legacy owns the real property described on Exhibit A attached hereto.

WHEREAS, Brandywood owns the real property (the "Brandywood Property") described on Exhibit B attached hereto.

WHEREAS, Wood Creek Development Corp., predecessor in interest to Legacy, and Brandywood Limited Partnership, predecessor in interest to Brandywood, are parties to that certain (i) Agreement dated April 19, 1991 and recorded with the Milwaukee County Register of Deeds (the "Register") on April 29, 1991 as Document No. 6477072 ("Easement 1"), and (ii) Agreement dated February 12, 1991 and recorded with the Register on June 19, 1991 as Document No. 6492918 ("Easement 2", Easement 2, collectively, with Easement 1, is referred to herein as the "Easements").

WHEREAS, each of Legacy and Brandywood have agreed to forever release the Easements and the parties' rights and obligations as set forth therein.

#### **AGREEMENT:**

NOW, THEREFORE, for and in consideration of the mutual covenants herein made, the parties agree as follows:

1. Release of Easements. For good and valuable consideration, the receipt and sufficiency is hereby acknowledged, each of Legacy and Brandywood agree to release the Easements.

EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES TO RELEASE THE OTHER PARTY, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS,



MEMBERS, PARTNERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN CONDITION OF THE EASEMENTS AND THE AREA SURROUNDING THE EASEMENTS (THE "EASEMENT AREA"), INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL CONDITION OF THE EASEMENT AREA OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO.

2. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3. Costs. Brandywood shall pay to Legacy the amount of Three Thousand and 00/100 Dollars as consideration for entering into this Agreement.



**BRANDYWOOD ESTATES LLC**

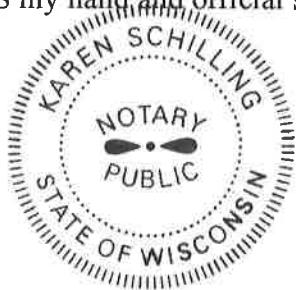
By: RED SKY PARTNERS LLC  
Its: Manager

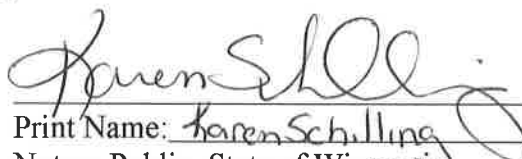
By:   
Steven Johnson, Manager

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF ~~MILWAUKEE~~ )  
 Waukesha

On July 22 2020, before me, Karen Schilling, a Notary Public in and for said County and State, personally appeared Steven Johnson, who is the Manager of Red Sky Partners LLC, the Manager of Brandywood Estates LLC, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacities, and that by his signature on the instrument the persons, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



  
Print Name: Karen Schilling  
Notary Public, State of Wisconsin  
My Commission expires: 7-6-24

(SEAL)

**EXHIBIT A**

**LEGAL DESCRIPTION—LEGACY PROPERTY**

Parcel 1 of Certified Survey Map No. 6711 recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin, on September 16, 1999 in Reel 4649, Images 188 to 193 inclusive, as Document No. 7803557, being part of the Southeast 1/4 of the Northwest 1/4 and part of the Southwest 1/4 of the Northeast 1/4 of Section 20, Township 5 North, Range 22 East. Said land being in the City of Oak Creek, Milwaukee County, Wisconsin.

Parcel 2 of Certified Survey Map No. 6711 recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin, on September 16, 1999 in Reel 4649, Images 188 to 193 inclusive, as Document No. 7803557, being part of the Southeast 1/4 of the Northwest 1/4 and part of the Southwest 1/4 of the Northeast 1/4 of Section 20, Township 5 North, Range 22 East. Said land being in the City of Oak Creek, Milwaukee County, Wisconsin.

**EXHIBIT B**

**LEGAL DESCRIPTION—BRANDYWOOD PROPERTY**

Parcel One (1), Certified Survey Map No 5537, recorded in the Register of Deeds Office for Milwaukee County on April 22, 1991 on Reel 2558, Images 803 to 805, inclusive, as Document No. 6474693, said map being a part of the Northwest Quarter (NW 1/4) and the Southwest Quarter of the Northwest Quarter (SW 1/4 of NW 1/4), Section Twenty (20), Township Five (5) North, Range Twenty-two (22) East, in the City of Oak Creek, Milwaukee County, Wisconsin.

**CONSENT TO RELEASE OF EASEMENTS**

**THIS CONSENT TO RELEASE OF EASEMENTS**, is hereby made on this \_\_ date of August, 2020, by the City of Oak Creek, Wisconsin (the “City”).

**RECITALS:**

A. Legacy/Riverwood LLC (“Legacy”) and Brandywood Estates LLC (“Brandywood”) are parties to that certain (i) Agreement dated April 19, 1991 and recorded with the Milwaukee County Register of Deeds (the “Register”) on April 29, 1991 as Document No. 6477072 (“Easement 1”), and (ii) Agreement dated February 12, 1991 and recorded with the Register on June 19, 1991 as Document No. 6492918 (“Easement 2”, Easement 2, collectively, with Easement 1, is referred to herein as the “Easements”).

B. Legacy and Brandywood desire to terminate and release such releasement pursuant to the instrument attached hereto as Exhibit A (the “Release”).

C. The City desires to memorialize its consent to the Release.

**ACCORDINGLY**, the City hereby consents to the Release.

**CITY OF OAK CREEK**

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_