



## MINUTES OF AN OFFICIAL MEETING:

Regular Meeting: Plan Commission

Date and Time: Monday, March 13, 2023, at 6:30 pm

Location: City Hall Council Chambers, 2000 N. Calhoun Road, Brookfield WI 53005

Members Present: Mayor Steven Ponto (Chairman), Alderman Gary Mahkorn, Alderman Rick Owen, Citizen Commissioner Mike Franz, Citizen Commissioner Scott Thomas

Members Excused: Citizen Commissioner Austin Moore

Others Present: Director of Community Development Dan Ertl, Fire Chief Dave Mason, Director of Public Works Tom Grisa, City Engineer Dan Erickson, Planning Administrator Richard VanDerWal, Associate Planner Emily Zandt, Alderman Chris Blackburn, Waukesha County Supervisor Jacob LaFontain; Assistant City Attorney Julie Aquavia

### 1. Roll Call

Mayor Steven Ponto noted a quorum present and called the Plan Commission to order at 6:31 pm

### 2. Announcements

- a. The Next Regularly Scheduled meeting will be held on Monday, April 10, 2023, at 6:30 pm.

### 3. Meeting Minutes

- a. **Minutes of the February 13, 2023, Plan Commission meeting.**

***Motion by Alderman Rick Owen, second by Alderman Mike Hallquist to approve the minutes of the February 13, 2023, Plan Commission meeting. Motion carried 6-0.***

### 4. Unfinished Business

- a) **Request of Noby West Capitol, LLC, 2360 N 124th Street, Suite 30, Wauwatosa, WI 53226 – Ram Subedi, Member, for approval of a new plan and method of operation, approval of a development agreement, and approval of temporary limited easement for landscaping, permitting razing of an existing building, new building construction of approximately 2,818 square feet, application of trade dress, landscaping, site parking and outdoor use improvements in association with the development of a fast food restaurant, Raising Cane’s, with drive-thru and pick-up/delivery services at 12660 W Capitol Drive. (SE ¼ of Sec. 1) – RV **\*\*Requires Common Council Action\*\*****

#### Report:

1. The site consists of one lot located in the 124<sup>th</sup> – Capitol Node Targeted Investment Area (TIA), one of eleven areas identified in the *City of Brookfield 2050 Comprehensive Plan* (Comp Plan) that foster community

reinvestment by supporting new economic development and sustainable, mixed-use redevelopment with sensitivity to surrounding neighborhoods. The adopted node plan is *The Development Plan for Brookfield’s 124<sup>th</sup> Street Corridor – 2011* (Neighborhood Plan). The adopted land use of the Neighborhood Plan for the site is “Higher Density Shopping”. The adopted land use of the Comp Plan is “Shopping/Services Focused – Higher Density”. The site is zoned B-2 General Business District, §17.60 (B-2), including Modified Suburban Overlay (MSO) Parking Setback Overlay District (§17.98.060) which permits parking setback of ten (10) feet. The proposed site development configuration and associated operation of a standalone fast food restaurant with drive-thru, pick-up/delivery services, and outdoor dining improvements is permitted by the zoning.

2. Proposed Site Development Characteristics:

Lot Area:	41,306 sq. ft. (0.94825 ac)
Building Setback:	100’ (100’ min.)
Pavement Setback:	10’ (10’ min.)
Building Offset:	35’ North (10’ min.) 78’ East (10’ min.) 72’ West, Trash Enclosure 39’ (10’ min.)
Pavement Offset:	10’ North (10’ min.) 10’ East (10’ min.) 10’ West (10’ min.)
Building Height:	20.5’ (35’ max.)
Building Size:	2,818 sq. ft. (7,354 sq. ft. existing razed)
Parking Spaces:	32 surface (32 req.)
Floor Area Ratio:	6.82% (30% max)
Impervious Surface Area:	28,374 sq. ft. (30,482 sq. ft. existing)
Greenspace Area:	12,932 sq. ft.
Lot Coverage:	68.69% (70% max)
Landscape Area Ratio:	31.31% (30% min)

3. Submitted site plan indicates existing ingress/egress of the site is reconfigured to remove existing easterly most drive connection (ingress only) with Capitol Drive, and to adjust westerly most drive to become both ingress and egress access with Capitol Drive for the site. Northwesterly drive onto 127th Street is widened slightly to meet Fire Department access needs and would function as a two-way drive. Parking lot is reconfigured: to accomplish reciprocal site access with adjoining properties along Capitol Drive; to meet the City’s *Site Development and Landscape Standards*; to accommodate drive-thru use wrapping along the east, north, and west sides of the principal building; and to locate collective site trash and recycling bins in conforming enclosures which open to the northwest. A traffic impact analysis was performed per WisDOT and City code requirements (Municipal Code §17.100.070.H) and resultant report was reviewed by WisDOT, the Engineering Division, and acting City Engineer at the time, Director of Public Works, Tom Grisa. A copy of the December 22, 2022, WisDOT letter identifying necessary on-site and off-site improvements to accommodate the development has been attached to this report. Though the letter acknowledges notification and improvements to be carried out by “municipality/developer,” **City staff recommends all such listed City of Brookfield/Developer items are the responsibility of the developer to fulfill as a condition of approval.** The most significant WisDOT required improvement is the closure of the “Shopping Center Median Opening” on Capitol Drive. Left turn lanes at 128th Street (westbound) and Batteries Plus (eastbound) would be extended to accommodate the added vehicle trips resulting from the closure of the shopping center median. City staff advises the Plan Commission, and likewise the Common Council, that continued increases in traffic volumes for this area of Capitol Drive may create conditions that necessitate reconstruction of the 128th Street and Capitol Drive intersection so that it performs to current City standards for traffic delay times during peak hours.

4. Proposed architecture and building materials, absent trade dress elements, are consistent with the *Site Development and Landscape Standards* (SDLS). Vision glass and perforated metal treatments along the south, front, façade create a strong visual identification of the primary building entry. Brick coursings and detailing align with the detailing of vision glass and metal awnings for a consistent execution of “base, middle, and top,” resulting in appropriate four-sided architectural design solution. Overall, the proposal achieves a cohesive design. ~~However, northern building elevation is lacking in fenestration.~~ Building materials used throughout are:

**Building Materials**

1. Belden Brick in “Medium Range” (brown, rust, buff and other earth tones with iron spotting) of Norman size at building entry
  2. Nichiha wood-look panels in “Vintage Cedar” (cedar)
  3. McNichols perforated metal panel in black powder coat
  4. Metal panels, copings, and awnings in black
  5. Clear vision glass storefront window, and door systems in black aluminum (exceeds minimum 20% on public facing façade).
5. Applicant is requesting approval to apply trade dress element and colors to the building. The principal trade dress element is a ground to parapet numerical symbol “one” clad in a red and rusted “reclaimed car hood” finish on the south façade at the west edge of storefront vision glass. Per Ordinance No. 2296-12, the Plan Commission will consider the application of trade dress or branding to individual buildings if the applicant can demonstrate investment in and commitment to a trade dress/branding program. Corporate trade dress/branding program was submitted with application materials that successfully demonstrates such commitment. **In staff’s opinion, the requested application of trade dress is consistent with the industrial character/heritage of the neighborhood and is not a detriment to the architectural or aesthetic goals outlined in the SDLS. However, staff advises approving such trade dress would establish precedent for other restaurant chains to seek similar solutions, which the Plan Commission may find undesirable City-wide. For example, a crown designed into the corner of building parapet for a Burger King would be a consistent approval, or a running stick figure similar in scale and solution to the applicant’s request on a Dunkin’ Donuts building. Request is limited (i.e. not full building trade dress such as a red-roofed Pizza Hut) but represents a strong signage element of branding. City staff acknowledges the “chop sticks” columns which used to occupy the entry awning at Stir Crazy (now removed and replaced with Lou Malnati’s pizza) as a comparable trade dress approval achieved in the past.** Staff recommends the Plan Commission opine on the requested elements of trade dress and either approve, approve conditioned upon specific modifications, or deny the elements of trade dress with specific findings for denial.
  6. The applicant submitted a landscape plan for review and compliance with City standards.
  7. The applicant is in receipt of a missive dated February 13, 2023 by Fire Chief David Mason identifying fire prevention, suppression, and life safety code compliance requirements.
  8. Grading, drainage, erosion control, and SWMP application have been submitted to the Engineering Division.
  9. A standard form City of Brookfield commercial development agreement will secure necessary public improvements, access, grading, drainage, landscaping, and stormwater management in the project. Associated reciprocal access easements to be reviewed by the City Attorney prior to execution.
  10. Perpetual municipal utility easement is necessary for water main installation, alongside temporary limited easement for street yard landscaping in the project. A temporary water service connection from the water main in 127th street can be achieved and permitted, subject to the applicant paying fee in lieu of construction of future water main along Capitol Drive, and that the temporary service connection be abandoned per code

once service connection along Capitol Drive is available. Conditions regarding water service to be secured through development agreement. City would install water main along Capitol Drive.

**Recommendation:** The Plan Commission approves the new plan and method of operation permitting razing of existing building, new building with drive-thru, pick-up/delivery services, application of trade dress, site landscaping, parking, and outdoor use improvements in association with the development of an approximate 2,818 square foot fast food restaurant use, Raising Cane’s, at 12660 W Capitol Drive, subject to items 1-14 below, because it determines:

- a. Will not have a substantial adverse effect on traffic safety provided the identified improvements listed in the WisDOT letter, dated December 12, 2022, are completed, which WisDOT determined were necessary upon review of the submitted traffic impact analysis report dated November 1, 2022, by Traffic Analysis & Design, Inc., which was also reviewed by the Engineering Division and City Engineering, as required under §17.100.070.H where development generates more than 100 vehicles per peak hour.
  - b. Will be consistent with the Municipal Code because it meets the requirements therein.
  - c. Will be adequately served with present or planned municipal services based upon demand for such services in comparison to existing conditions for the subject property – parcel is served by City sewer and can be served after plans for the extension of City water main to serve the parcel are executed.
  - d. It is substantially in conformance with the Site Development and Landscape Standards, April 19, 2022, where applicable, because the proposed site improvements, building architecture, and landscaping fulfill the stated standards therein, which includes requested application of trade dress/branding, subject to directed modifications, based upon successful demonstration of investment in and commitment to a trade dress/branding program.
1. Statement of operations dated February 1, 2023 by LuAron Foster, Senior Property Development Manager, Raising Cane’s Restaurants, LLC, including technical corrections.
  2. Site plan dated August 26, 2022, by Benchmark Design Group including technical corrections.
  3. Building plans, elevations, and material samples dated February 3, 2023 by ADA Architects including technical corrections. All wall mounted meter boxes and cabinets are to be painted to match the building and are limited to the north, east, or west building elevations. If stainless steel meter boxes are used they will be etched and painted to match the building.
  4. Application of requested trade dress, subject to any design modification directed by the Plan Commission.
  5. Compliance with site access, fire suppression, and alarm requirements specified in a missive dated February 13, 2023, by Fire Chief David Mason.
  6. WisDOT conditions, approval of designs, and improvements required within WIS 190 right of way for site access onto WIS 190 (Capitol Drive), including costs to complete, to be the responsibility of the developer.
  7. Site utility, grading, drainage, and erosion control plans, including technical corrections, subject to final approval of the city of Brookfield Engineering Division prior to the issuance of building permits.
  8. Payment of applicable fees to the Community Development Department prior to issuance of a building permit.
    - \$ TBD Engineering Review Fee
    - \$ TBD Development Agreement
  9. Lighting in compliance with sections 15.16.080 and 17.120.070 of the City of Brookfield municipal code.

10. All signage subject to separate review by Zoning and Building Administrator.
11. Landscape plan dated February 3, 2023 by ADA Architects, subject to City of Brookfield consultant review and technical corrections secured with a letter-of-credit (City forms available from the Department of Community Development) equal to \$11,411.25 (\$2,550 per 1,000 sq. ft. street yard) for installation, \$1,969.00 for four (4) years of maintenance (\$440 per 1,000 sq. ft. of street yard) and a four (4) year temporary landscape easement for street yard maintenance (using forms available from the Department of Community Development) all deposited with the Department of Community Development prior to issuance of a building permit (4,475) sq. ft. of street yard).
  - a. A recertification "as-built" survey must be performed by a licensed landscape architect indicating that all elements of the approved Streetyard Landscape Plan has been completed within tolerance as approved by staff per the approved plan. The recertification documents must be wet stamped and signed by said professional.
12. Execution of a Development Agreement and associated easements using the City's forms subject to final approval by the City Attorney prior to execution.
13. Once a building permit is issued by Inspection Services, the owner shall receive an occupancy permit within eighteen (18) months or the owner of the property may be subject to the penalty provisions of the Zoning Code, Section 17.100.130 or the owner shall remove construction equipment and debris from the site, fine grade and seed the site, and stabilize surface water drainage leaving the site to City Engineering Department specifications within four (4) months or the owner of the property may be subject to the penalty provisions of the Zoning Code – Section 17.100.130. (Ordinance #2134-08).
14. Plan and method of operation approval expires on March 21, 2025 unless a building permit is obtained prior thereto.

Refer to video and audio recording of this item [here](#) for the discussion.

#### Topics Discussed

- Clarification on the application of trade dress, prevalence of different manifestations of trade dress, the potential for future issues, and conclusions that the requested trade dress is acceptable
- Concerns regarding additional fast-food restaurants and the impact on traffic
- Clarification on the capacity of cars that can queue in the drive-thru, drive-thru operations, and the handling of overflow
- Traffic calming or other measures on 127th Street given traffic congestion at 124th Street and Capitol Drive
- Site and building lighting proposed in the project, particularly the consistency of color temperature of the overall exterior illumination
- Building materials in the project, particular clarification on the material and finish of the trade dress element

***Motion by Alderman Rick Owen, second by Alderman Gary Mahkorn to approve staff recommendation, noting no modifications are necessary to approve requested trade dress, recommending approval of new plan and method of operation permitting razing of existing building, new building with drive-thru, pick-up/delivery services, application of trade dress, site landscaping, parking, and outdoor use improvements in association with the development of an approximate 2,818 square foot fast food restaurant use, Raising Cane's, at 12660 W Capitol Drive. Motion carried 6-0.***

- b) Request of Winter Fields, LLC, 18620 Pleasant Street, Brookfield, WI 53045 – Scott Simon, Owner, to

**schedule a public hearing to amend the zoning of four lots, property tax keys BRC1070051, BRC1070052, BRC1070053, and BRC1070059 from Planned Development District General Plan - Residential No. 30 to M-1 Multi-Family Residence District for the purpose of redeveloping the site with three multifamily fourplex condominium buildings and one duplex condominium, for a total of sixteen dwelling units, at the northeast corner of 186<sup>th</sup> Street and Pleasant Street. (NW 1/4 of Sec. 16) – RV**

**Report:**

1. The site is four lots located in the Village Area Targeted Investment Area (TIA), one of eleven areas identified in the *City of Brookfield 2050 Comprehensive Plan* (Comp Plan) that foster community reinvestment by supporting new economic development and sustainable, mixed-use redevelopment with sensitivity to surrounding neighborhoods. The adopted neighborhood plan is the Village Area Neighborhood Plan – 2012 (Village Plan). The recommended land use of the Village Plan is “Multiple Family Residential.” The adopted land use of the Comp Plan is “Housing Focused – Medium Density.”
2. The applicant successfully completed a Planned Development District (PDD) rezoning of the land as part of the “Cottage Commons” General and Specific Plan development proposal, last approval being April 19, 2022. Applicant now seeks to rezone the land back to M-1 Multi-Family Residence District (M-1). §17.08.070.B.2.b.ii. of the Municipal Code requires property owners seeking a zoning amendment to submit:
  - ii. A written explanation of how the proposed rezoning complies with the City’s comprehensive plan, including a general description of how the intended land use is in compliance with the comprehensive plan and citation to the comprehensive plan, neighborhood plan or other document incorporated into the comprehensive plan.Property owner’s submitted letter with explanation is attached to this report. It acknowledges the Comp Plan’s future land use designation of the site as medium density residential. It also references the historic zoning of the site as M-1 and its consistency with the existing zoning of surrounding parcels.
3. Figure 7 in the Comp Plan provides a matrix of policies regarding the various future land use designations in the City. For the “Housing Focused” future land use category and “Medium Density” subcategory, the “Typical Implementing Zoning Categories” list includes “M-1” as an applicable zoning district which achieves the associated density range of “2-6 housing units per net acre.” Given the medium density categorization of the Comp Plan and Neighborhood Plan for the site, reverting the zoning back to M-1 Multi-Family Residence District is consistent with the adopted plans.
4. A Certified Survey Map (CSM) combining the four lots into one lot was last approved by the Common Council on May 17, 2022. Such land reconfiguration would be required to execute the development proposal sought by the applicant associated with the M-1 rezoning. No revisions are necessary regarding the approved CSM in relation to the M-1 zoning request. The applicant may execute the CSM with the City and submit for recording at any time while it remains valid.
5. The development sought through the M-1 rezoning would demolish all existing structures on the lots for the developer to construct four multifamily condominium buildings surrounding the wetland on the site, three being fourplexes and the last being a duplex. Architecture of proposed buildings is similar to the Glen at Woodside Creek condominium complex near Lisbon Road. Traffic impact analysis report is not required for the proposal, and preliminary plans demonstrate that compliance with the municipal code could be achieved.
6. The applicant is in receipt of a missive dated February 13, 2023 by Fire Chief David Mason identifying Fire Code compliance requirements, including fire suppression of buildings.
7. Preliminary grading, drainage, erosion control, and SWMP report and application have been submitted to the Engineering Division.

8. In terms of procedure, the applicant will consider the comments and recommendations of the Plan Commission with regard to the rezoning and may alter details of the development proposal accordingly, prior to noticing the public hearing and the required neighborhood information meeting (NIM). The Plan Commission's recommendations regarding the rezoning are reported to the Common Council by the Community Development Department for consideration at the public hearing. After the public hearing, the applicant may submit required materials for a new plan and method of operation request to the Plan Commission for review and recommendation on the specifics of the development proposal, which could be acted on concurrent with recommendation from the Plan Commission regarding the rezoning request. Both the rezoning and new plan and method of operation would proceed to the Common Council for action on an ordinance to amend the zoning of the site and a resolution on the development plan.

**Staff Recommendation:** The Plan Commission should discuss the proposed rezoning and associated development, providing direction to the applicant regarding any modifications the Commission recommends. Staff recommends that the Commission finds the requested rezoning is consistent with the objectives and land use recommendations stated in the Village Plan and *2050 Comprehensive Plan*, directing the Department of Community Development to schedule a public hearing regarding the request and for approval of the rezoning. It is also recommended that the Mayor directs that the Common Council agenda be scheduled for action on the rezoning the night of the public hearing, unless new issue arise

Refer to video and audio recording of this item [here](#) for the discussion.

#### Topics Discussed

- History of the site and the past proposal "Cottage Commons"
- Acknowledgement that the current proposal is a desirable outcome, despite the pocket neighborhood development no longer being feasible
- Clarification on the strategy for greenspace and future implementation of landscaping in the proposal following rezoning
- Confirmation that the preliminary plans submitted are not being authorized and that the current request is limited to rezoning the property back to M-1

***Motion by Alderman Gary Mahkorn, second by Alderman Mike Hallquist to approve staff recommendation that the Plan Commission finds the requested rezoning is consistent with the objectives and land use recommendations stated in the Village Plan and 2050 Comprehensive Plan, directing the Department of Community Development to schedule a public hearing regarding the request, and recommending the Chairman, Mayor Ponto, direct the Common Council to schedule action regarding adoption of an ordinance on the rezoning the night of the public hearing. Motion carried 6-0.***

- c) Request of Howard Company, 1375 N Barker Road, Brookfield, WI 53045 – c/o Sara Sina, Vice President of Operations, for approval of a minor revision to plan and method of operation and temporary limited easement for street yard landscaping permitting a 14,040-square-foot addition to the existing building located at 1375 N Barker Road. (SE ¼ of Sec. 19) – EZ \*\*Requires Common Council Action\*\*

#### ***Request Withdrawn***

- d) Request of Sawall Development, N63 W23217 Main Street, Suite 200, Sussex, WI 53089 – c/o Matt Bailey, Civil Engineer, Trio Engineering, **to schedule a conditional use public hearing** permitting construction of Anita's Gardens, a 62-suite (up to 70 residents) Community Based Residential Facility (CBRF) to be located at the SW Corner of W Lisbon Road and Pilgrim Road. (NE ¼ of Sec. 3) – EZ \*\*Requires Common Council Approval\*\*

#### **Report:**

1. The site consists of one lot not located in a Targeted Investment Area (TIA), one of eleven areas identified in the City of Brookfield 2050 Comprehensive Plan (Comp Plan) that foster community reinvestment by supporting new economic development and sustainable, mixed-use redevelopment with sensitivity to surrounding neighborhoods. The adopted land use of the City of Brookfield 2050 Comprehensive Plan (Comp Plan) is "Shopping/Services Focused - Lower Density". The site is zoned B-1 Local Business District. The proposed development in association with the construction of a Residential care facility may be permitted as a conditional use in any zoning district except the conservancy and upland conservancy districts on a lot greater than one hundred twenty thousand (120,000) square feet in size.
  
2. Proposed Site Development Characteristics:
 

Lot Area:	138,943 sq. ft. (3.19 ac)
Building Setback:	104.5' West Lisbon Road (100' min.) 105.4' Pilgrim Road/C.T.H. YY (100' min.)
Pavement Setback:	25' West Lisbon Road (25' min.) 25' Pilgrim Road/C.T.H. YY (25' min.)
Building Offset:	27.6' south (25' min.) 26.4' west (25' min.)
Pavement Offset:	59.5' south 26.4' west
Building Height:	26'2.5" (35' max., 15' max. accessory buildings)
Building Size:	39,851 sq. ft.
Parking Spaces:	36 surface (29 req.)
Floor Area Ratio:	28.68% (30% max. including accessory buildings)
Impervious Surface Area:	67,556 sq. ft.
Lot Coverage:	48.6% (70% max., all buildings and impervious surfaces)
Landscape Area Ratio:	52.39% (30% min.)
  
3. Submitted site plan indicates one ingress/egress access points from West Lisbon Road and one ingress/egress access point to Pilgrim Road (right in and right out only). Trash and recycling receptacles are proposed to be stored in the northwest corner of the building, screened from view. Details will be provided by the applicant prior to the Neighborhood Information Meeting (NIM). A traffic impact analysis was not required for the request. The number of employees, patrons, and/or visitors identified in the applicant's peak traffic hour of proposed operation will generate less than the 100 vehicles per peak hour where the City requires a traffic analysis under §17.100.070.H. Waukesha County is requiring a westbound left turn lane along W. Lisbon Road as a part of the development.
  
4. Proposed architecture and building materials are consistent with the City's *Site Development Standards for Non-Residential Uses*. The proposed building façade includes LP Smartside treated engineered wood siding (tundra gray) and trim (quarry gray). The soffit will match the proposed trim color. Weathered wood-colored Landmark asphalt singles from CertainTEED will highlight the earth tones of the Everset Gray brick base. Vision glass on all facades of the building articulates the interior program. The building's main entrance is defined with a gable roof and covered porch area. Two interior courtyards will provide enclosed outdoor recreation space for residents.
  
5. Applicant has been informed that: **All vision glass is to remain vision glass and cannot be obstructed or modified with window film or other opaque techniques or substances except that operable window blinds, or shades are permitted.** All plans specifying the location and installation of vision glass shall memorialize this language into the associated plan set prior to Planning signing off to Inspection Services.
  
6. The applicant submitted a landscape plan for review and compliance with City standards. Street yard landscaping is required along West Lisbon Road and Pilgrim Road.



7. The applicant is in receipt of a missive February 13, 2023 by Fire Chief David Mason identifying preliminary fire alarm, suppression, and code compliance requirements.
8. Grading, drainage, erosion control, and SWMP have been submitted to the Engineering Division.
9. A preliminary concept map has been submitted to create a lot from the existing metes and bounds property description.
4. A standard form City of Brookfield commercial development agreement will secure necessary public improvements, access, grading, drainage, landscaping, and stormwater management in the project. A temporary limited easement for street yard landscaping using the City's standard form is necessary to secure installation and maintenance of such landscaping.
5. The standards for conditional use permit issuance, Section 17.108.050.I. of the Municipal Code, are attached to this report for Plan Commission reference.

**Recommendation:** The applicant's conditional use is not prohibited in the base-zoning district and does not exceed the thresholds for conditional use of a non-residentially zoned site. Staff recommends that the Plan Commission approve scheduling a conditional use public hearing subject to conducting a neighborhood information meeting prior to the hearing.

Refer to video and audio recording of this item [here](#) for the discussion.

#### Topics Discussed

- Clarification on the operations and living arrangements of Community Based Residential Facilities
- Acknowledging the windows in the proposal are preferable as submitted

***Motion by Alderman Gary Mahkorn, second by Alderman Mike Hallquist to approve staff recommendation approve scheduling a conditional use public hearing subject to conducting a neighborhood information meeting prior to the hearing. Motion carried 6-0.***

- e) **Request of Milwaukee Electric Tool Corporation, c/o Jeremy A. Ferch, Sr. VP, Business Operations for approval of a revision to plan and method of operation permitting exterior building modifications, including application of Trade Dress, for Milwaukee Electric Tool Corporation Headquarters at 13135 W. Lisbon Road, Brookfield, WI 53005 (SE ¼ of Sec. 1) – EZ \*\*Requires Common Council Action\*\***

#### Report:

1. The site consists of one lot which is located in the 124<sup>th</sup> – Capital Node Targeted Investment Area (TIA), one of eleven areas identified in the *City of Brookfield 2050 Comprehensive Plan* (Comp Plan) that foster community reinvestment by supporting new economic development and sustainable, mixed-use redevelopment with sensitivity to surrounding neighborhoods. The adopted neighborhood plan is The Development Plan for Brookfield's 124<sup>th</sup> Street Corridor – 2011 (Neighborhood Plan). The future land use designation as identified in the Comp Plan is "Employment Focused – Higher Density". The site is zoned "O&LI" Office & Limited industrial District with "MSO" Modified Suburban Overlay. The proposed exterior building modifications are part of an overall project to bring consistency to Milwaukee Tools' Buildings and branding through trade dress. The proposed modifications in association with the continued office use of the building is permitted by the zoning.
2. Proposed Site Development Characteristics:  
There are no proposed changes to the Site Development Characteristics.

3. Proposed architecture and building material updates, absent consideration for application of Trade Dress, are consistent with the *Site Development and Landscape Standards* (SDLS). The modifications to the building architecture and colors are limited to a portion of the north façade at the main entrance of the building and are sought for consistency with the Milwaukee Corporation branding on the east facing entry and other buildings in southeast Wisconsin. The vision glass requirement on the north façade continues to be met despite the replacement of a portion of glazing with the red metal composite accent. Overall, the proposal achieves a cohesive design. The proposed red metal composite is an existing and previously approved building material.
4. Trade Dress Application: The applicant can demonstrate investment in and commitment to a trade dress/branding program.
  - A. The trade dress/branding is not a detriment from building form or architecture in centers characterized by uniform architecture.
  - B. The trade dress/branding is consistent with or complimentary to the forms, colors and textures in use at the center or building cluster.
 (D-E of Ord. 2296-12 do not apply.)

**Staff Recommendation:** The Plan Commission recommends the Common Council approves the revised plan and method of operation permitting exterior building architecture modifications, including application of Milwaukee Tool Trade Dress at 13135 W. Lisbon Road, subject to items 1-6 below, because it determines, as the Plan Commission has determined, that the proposed structure and use:

- A. Will not have substantial adverse effect on traffic safety because traffic is unaffected.
  - B. Will be consistent with the Municipal Code because it meets the requirements therein.
  - C. Will be adequately served with present or planned municipal services based upon demand for such services in comparison to existing conditions for the subject property – parcel is adequately served by existing City sewer and City water.
  - D. Will be substantially in conformance with the Site Development and Landscape Standards, April 19, 2022, where applicable, because the proposed building architecture fulfills the stated standards therein, including requested application of trade dress.
1. Statement of Operations/Application Letter dated February 13, 2023 by Milwaukee Tool, Jeremy Ferch, Sr. VP, Business Operations.
  2. Elevation drawings, site renderings, and material board provided by SPS Architects
  3. Lighting in compliance with sections 15.16.080 and 17.120.070 of the City of Brookfield municipal code.
  4. All signage subject to separate review by Zoning and Building Administrator.
  5. Once a building permit is issued by Inspection Services, the owner shall receive an occupancy permit within eighteen (18) months or the owner of the property may be subject to the penalty provisions of the Zoning Code, Section 17.100.130 or the owner shall remove construction equipment and debris from the site, fine grade and seed the site, and stabilize surface water drainage leaving the site to City Engineering Department specifications within four (4) months or the owner of the property may be subject to the penalty provisions of the Zoning Code – Section 17.100.130. (Ordinance #2134-08).
  6. Revised plan and method of operation approval expires on March 21, 2025 unless a building permit is obtained prior thereto.

Refer to audio recording of this item [here](#) for the discussion.

## Topics Discussed

- Thoroughness of submitted application materials and agreement that request is a desirable improvement and outcome
- Given site is the corporate world headquarters, request seems warranted
- Clarification on the conversion of glass to metal composite and the spaces impacted on the interior of the building
- Clarification on illumination in the project and its coordination with other illumination of the Milwaukee Tool campus

***Motion by Alderman Mike Hallquist, second by Alderman Rick Owen to approve staff recommendation to recommend the Common Council approves the revision to plan and method of operation permitting exterior building modifications, including application of Trade Dress, for Milwaukee Electric Tool Corporation Headquarters at 13135 W. Lisbon Road. Motion carried 6-0.***

- f) **Hearing per §15.16.070 – Request of Milwaukee Electric Tool Corp, c/o of Jeremy Ferch (Sr. VP, Business Operations), 13135 W. Lisbon Rd., Brookfield, WI 53005 for a variance granted under the provisions of the Sign Code.**

## Report:

1. 13135 W. Lisbon Rd. is zoned Office and Limited Industry with a Modified Suburban Overlay (MSO- Ord. 2449-16 & Ord. 2451-16) and is occupied by Milwaukee Electric Tool Corporation. Company management is requesting approval to install a new wall sign on the north façade of the building, over the main entrance, at a size of 186 sq ft. The proposed wall sign will be internally illuminated.
2. At their September 9, 2019 meeting, the Board of Zoning Appeals approved a variance to allow two (2) monument signs (48 sq. ft. each) to be located within the required setback from the front property line. Therefore, Milwaukee Tool currently has a total of 96 sq. ft. of signage on the property.
3. The proposed wall sign does not comply with the City's current Sign Code, specifically the total area permitted for a non-retail use as listed under Section 15.16.110(A)(1). With the existing 96 sq. ft. signage on the property (monument signs mentioned in paragraph 2), the total square footage of signage on the property would exceed the 100-square foot maximum for a non-retail use by 182 square feet.
4. Section 15.16.070 of the Sign Code defines the Variance procedure to allow flexibility from sign regulations while fulfilling their purpose. The Plan Commission shall evaluate the applicant's request based on the following criteria, per §15.16.070(B.)(3.), when applicable:
  - a. *Area. The proposed sign will not make it difficult or confusing to read it or existing signs in the vicinity.*
  - b. *Design. The proposed sign is unique or of exceptional design or style so as to enhance the area.*
  - c. *Site Difficulties. Unusual site factors, not created by the applicant, that preclude construction of a sign in accordance with this chapter which would be visible to the roadway adjacent to the site frontage.*
5. The Plan Commission shall issue a final determination based upon its evaluation of the above-listed criteria within ten days of the hearing to the applicant and the zoning and building administrator.

***The Chairman, Mayor Ponto, opened the meeting to public hearing, asking if any members of the public wish to speak on the matter.***

No members of the public provided comment.

Refer to audio recording of this item [here](#) for the discussion.

**Motion by Alderman Gary Mahkorn, second by Alderman Mike Hallquist to close the public hearing. Motion carried 6-0.**

- g) Plan Commission Determination per §15.16.070 – Request of Milwaukee Electric Tool Corporation, c/o Jeremy A. Ferch, Sr. VP, Business Operations, 13135 W. Lisbon Road, Brookfield, WI 53005 for a variance granted under the provisions of the Sign Code. (SE ¼ of Sec. 1) – EZ**

**Report:**

1. 13135 W. Lisbon Rd. is zoned Office and Limited Industry with a Modified Suburban Overlay (MSO- Ord. 2449-16 & Ord. 2451-16) and is occupied by Milwaukee Electric Tool Corporation. Company management is requesting approval to install a new wall sign on the north façade of the building, over the main entrance, at a size of 186 sq ft. The proposed wall sign will be internally illuminated. The total square footage of signage on the property would exceed the 100-square foot maximum for a non-retail use by 182 square feet.
2. *Section 15.16.070* of the Sign Code defines the Variance procedure to allow flexibility from sign regulations while fulfilling their purpose. The Plan Commission shall evaluate the applicant’s request based on the following criteria, per *§15.16.070(B.)(3.)*, when applicable:
  - a. *Area. The proposed sign will not make it difficult or confusing to read it or existing signs in the vicinity.*
  - b. *Design. The proposed sign is unique or of exceptional design or style so as to enhance the area.*
  - c. *Site Difficulties. Unusual site factors, not created by the applicant, that preclude construction of a sign in accordance with this chapter which would be visible to the roadway adjacent to the site frontage.*

**Staff Recommendation:** The staff recommends that the Plan Commission approve the proposed variance to Section 15.16.100(B.)(2.) because it has determined that the required criteria for a variance per Section 15.16.070 have been met, as stated below:

- a. *Area. The proposed sign will not make it difficult or confusing to read it or existing signs in the vicinity.*

The proposed wall sign is set back nearly 400’ from the W Lisbon Road right-of-way. There are no other wall signs on the property, therefore the proposed sign at 186 square feet will not make it difficult or confusing to read the proposed sign or other signs in the area.

- b. *Design. The proposed sign is unique or of exceptional design or style so as to enhance the area.*

The proposed sign is complementary and proportional to the Trade Dress improvements proposed for the same exterior wall. The sign, in combination with the trade dress, will help to identify the property as Milwaukee Tool’s World Headquarters.

- c. *Site Difficulties. Unusual site factors, not created by the applicant, that preclude construction of a sign in accordance with this chapter which would be visible to the roadway adjacent to the site frontage.*

The Board of Zoning Appeals approved two monument signs totaling 96 sq.ft.at their September 12, 2019

meeting. Therefore, a sign no larger than 4 square feet could be permitted under the sign code without a variance. A 4-square-foot sign would not be visible to the roadway adjacent to the site frontage, particularly setback at a distance of approximately 400 feet.

Refer to audio recording of this item [here](#) for the discussion.

#### Topics Discussed

- Variance does not jeopardize the sign code
- Similar variances have been granted near I-94
- Viewing distances and perception of signage by traveling public
- Size of the building, scale of the building, and setback from the road make this appropriate size of signage

***Motion by Alderman Gary Mahkorn, second by Alderman Rick Owen to approve staff recommendation to approve the proposed variance to Section 15.16.100(B.)(2.) because it has determined that the required criteria for a variance per Section 15.16.070 have been met. Motion carried 6-0.***

- h) Request of Milwaukee Electric Tool Corporation, c/o Chris Carr, The Sigma Group, Inc. for approval of a preliminary concept map, final Certified Survey Map, subdividers agreement, revised plan and method of operation, temporary limited easement for street yard landscaping permitting the construction of a 450-stall parking lot expansion to the east of the building located at 12930 W. Lisbon Road, Brookfield, WI 53005. (SE ¼ of Sec. 1) – EZ \*\*Requires Common Council Action\*\***

#### Report:

1. The site consists of two lots located in the 124<sup>th</sup> – Capital Node Targeted Investment Area (TIA), one of eleven areas identified in the *City of Brookfield 2050 Comprehensive Plan* (Comp Plan) that foster community reinvestment by supporting new economic development and sustainable, mixed-use redevelopment with sensitivity to surrounding neighborhoods. The adopted neighborhood plan is The Development Plan for Brookfield’s 124<sup>th</sup> Street Corridor – 2011 (Neighborhood Plan). The future land use designation as identified in the Comp Plan is “Employment Focused – Higher Density”. The site is zoned “NEI” Northeast Industrial District with “MSO” Modified Suburban Overlay. The proposed redevelopment in association with the parking lot expansion is a permitted use in the district with a principal use – i.e. a building.
2. The applicant is seeking a land reconfiguration to combine two parcels, both owned by Milwaukee Electric Tool Corporation: Lot 2 of CSM 10111 (3.53 acres at 12930 W. Lisbon Road ) and the 4.63-acre parcel immediately to the east (formerly owned by Lakeshore Burial Vault Company). The proposed land reconfiguration is to allow the expansion of the existing parking lot to add 450 additional stalls for the Milwaukee Tool Campus. There are currently no structures on the 4.63-acre parcel, which was formerly used for outdoor storage of machinery by Lakeshore Burial Vault Company.
3. Proposed Preliminary Concept Map Characteristics:  
Lot 1  
Combined Lot Size: 332,526 sq. ft. (7.63375 acres) (O&LI min. 80,000 sq. ft.)  
Lot Depth: 796.26’ (Min. 130’ §16.16.040.C.2)  
Lot Width: 766.65’ (O&LI average min. 200’)
4. Municipal Code §16.12.040.B. enforces the following standards for land reconfigurations by certified survey maps (emphasis added):
  - All land reconfigurations shall adhere to the official map and the standards and requirements set forth in this code;

- The land reconfiguration does not result in the deterioration of any natural environment such as a wetland or floodplain per an expert opinion procured and paid for by the subdivider if a wetland or floodplain exists on the parcel or is adjacent; and
  - If the land reconfiguration lies within a subdivision the following also apply:
    1. The land reconfiguration should be in relationship to the average size and width of existing lots in the subdivision. If the average size and width of the lots contained within the subdivision exceed current minimum dimensions required in the subdivision and zoning codes, this subsection supersedes those provisions; and
    2. The land reconfiguration does not create a material and detrimental departure from the prevailing lot configuration of the subdivision; and
    3. The land reconfiguration does not unfavorably impact the public utilities in the subdivision or create drainage problems.
5. The proposed land reconfiguration adheres to the official map and code. The proposed land reconfiguration is not located within a subdivision. Dedication of 30' along the east boundary of the property is being required as a part of the reconfiguration for future improvements to N. 128<sup>th</sup> Street, as identified in the 2050 Comp Plan. A drafted subdivider's agreement will be required prior to the execution of the Certified Survey Map.
  6. There are four small wetland areas identified by Evergreen Consultants LLC totaling 0.036 acres located along the east side of the former Lakeshore Burial Vault property. Evergreen Consultants have determined that none of the identified wetlands have a connection to surface water and all four meet the definition of exempt wetlands as defined in WI Statute 281.36(4n)5(b). The identified wetlands are not identified in the 2050 Comprehensive Plan or the City map documents as planned for acquisition. Said wetlands are located within the proposed area to be dedicated for road right-of-way and are likely to be filled as a part of the planned road improvements. As such, the wetlands can be considered de minimis and exempt from the code requirement to create separate outlots for the wetland areas.
  7. The combining of the two properties into one lot, with appropriate technical corrections made to the preliminary concept map, would achieve compliance with the NEI Northeast Industrial zoning district in the associated final Certified Survey Map for the site. The combination would also allow the expansion of the parking lot, as the lot would include a principal permitted use (the existing Milwaukee Tool Research & Development Building). A title report with copies of all exceptions shall be submitted to the City of Brookfield Engineering Division for review prior to the execution of the Certified Survey Map.
  8. The parking lot addition requires a revised plan and method of operation for Milwaukee Tool at this property. The improvements will take place in three general phases, which was requested by Milwaukee Electric Tool Corporation due to timing associated with corporate needs.
  9. Phase 1 - The first phase will be a 163-stall (maximum) temporary parking area on the north side of the former Lakeshore Burial Vault property. Lakeshore Burial Vault formerly used the north portion of the property (compact gravel) for outdoor storage of machinery and vehicles. Milwaukee Tool is proposing to use the property in a similar way (parking of employee vehicles) on the existing substandard conditions for a temporary period, no longer than 1 year following approval. Access will be taken from the existing parking lot to the west. See Phase 1 Site plan.pdf & Phase 1 Fire Truck Turning Movement Exhibit.pdf. TADI will complete a modified traffic study to determine the maximum number of stalls that can be added and still accommodated by the existing entrance to the west of the existing building. The temporary parking stall count will be adjusted per the results of this study.
  10. Phase 2 - The second phase would include full construction of the parking lot expansion (450 stalls). The improvements under this phase will meet the Site Development and Landscape Standards. Minor revisions to the parking lot layout will be required to meet the limit of 20 stalls between each island per side. See Phase 2

Site Plan.pdf The Traffic Study completed by TADI and submitted by Milwaukee Tool for the proposed parking lot expansion indicated that an additional ingress/egress driveway is required to accommodate the additional vehicles upon full build out of the parking lot (all 450 stalls). Phase 2 would include access to the expanded parking lot via W. Lisbon Road. The exact location of the additional driveway will be reviewed and approved at an administrative level prior to the construction of the parking lot. Phase 2 will likely require the installation of a westbound right turn lane on Lisbon Road to be coordinated with the City plan to rebuild Lisbon Road. A development agreement will require removal of the Lisbon Road driveway if access to 128<sup>th</sup> Street is required under Phase 3.

11. Phase 3 - The existing neighborhood plan for this area, last updated in 2011, requires review and updating in the near future. If, following the plan update, 128th Street is still planned to be extended further north of W. Lisbon Road, the third phase would require Milwaukee Tool to construct said extension at their cost and provide access to the new parking lot from 128<sup>th</sup> Street and removal of the Lisbon Road access and right turn lane. Details of the phased agreement will be outlined in the subdividers agreement recorded as a part of the Certified Survey Map (CSM). Final improvements to the property and N. 128<sup>th</sup> Street shall take place within 4 years of CSM approval and will require a Development Agreement.
12. The applicant submitted a landscape plan for review and compliance with City standards.
13. The applicant is in receipt of a missive dated March 8, 2023 by Chief David Mason identifying fire prevention, alarm, suppression, and life safety code compliance requirements.
14. Grading, drainage, erosion control, and SWMP application and report have been submitted to the Engineering Division.
15. A City of Brookfield subdividers agreement and subsequent Development Agreement will secure necessary public improvements, access, grading, drainage, landscaping, and stormwater management in the project. A temporary limited easement for street yard landscaping using the City's standard form is necessary to secure installation and maintenance of such landscaping.
16. Staff has reviewed the preliminary concept map request and finds the following:
  - It conforms with Sections 236.34 and 236.45, Wisconsin Statutes, the official map, and the comprehensive plan.
  - Water service lateral to the property from Lisbon Road needs to be abandoned.
  - There is no existing sanitary sewer service to this property.

**Staff Recommendation #1:** The Plan Commission recommends the Common Council approves the preliminary concept map to combine two properties owned by Milwaukee Electric Tool Company at 12930 W. Lisbon Road for the purposes of a parking lot expansion, subject to

1. Any technical corrections to the preliminary concept map required by the Engineering Division.
2. Submittal of a title report with copies of all exceptions prior to the execution of the Certified Survey map.
3. A draft subdivider agreement completed prior to the execution of the Certified Survey Map, subject to requirements of Engineering and the City Attorney and any technical corrections thereof.
4. Abandonment of the existing water service lateral from W. Lisbon Road or a security and notation for abandonment thereof in the subdivider's agreements for any City utilities prior to the execution of the Certified Survey Map.

**Staff Recommendation #2:** The Plan Commission recommends the Common Council approve the certified survey map, combining two properties owned by Milwaukee Electric Tool Company at 12930 W. Lisbon Road for the

purposes of a parking lot expansion, subject to any technical corrections to the certified survey map required by the Engineering Division and dedication of 128<sup>th</sup> Street right-of-way due to increased intensity of land use.

**Staff Recommendation #3:** Staff recommends that the Plan Commission approves the revised plan and method of operation and the temporary limited easement for street yard landscaping, for the 450-stall parking lot expansion for Milwaukee Tool at 12930 W. Lisbon Road subject to items 1-15 below, because it determines that the proposed improvements and use:

- a. Will not have substantial adverse effect on traffic safety because per the recommendation of the Traffic Study completed by TADI and submitted by Milwaukee Tool, an additional ingress/egress access will be required as a part of the final site development of the parking lot (phase 2).
- b. Will be consistent with the Municipal Code because it meets the requirements therein.
- b. Will be adequately served with present or planned municipal services based upon demand for such services in comparison to existing conditions for the subject property – no city services are requested.
- c. Will be substantially in conformance with the Site Development and Landscape Standards, April 19, 2022, where applicable, because, subject to minor corrections, the final proposed parking lot improvements and landscaping will fulfill the stated standards therein.

1. Statement of operations submitted on February 3, 2023 by Chris Carr, The Sigma Group.
2. Preliminary Concept Map dated March 8, 2023, subject to Engineering Division Review and approval, including technical corrections, and abandonment of existing water service lateral from Lisbon Road.
3. Certified Survey Map dated March 2, 2023 subject to Engineering Division review and approval, including technical corrections.
4. Temporary Site Plan (Phase 1) dated March 8, 2023 by the Sigma Group, including technical corrections, and necessary stall-count modifications based on the results of a revised traffic study for the property using the existing entrance.
5. Final Site plan dated March 3, 2023 by the Sigma Group, including technical corrections, and revisions to the layout to meet the maximum 20 stalls between landscaping islands per the Site Development and Landscape Standards.
6. Compliance with site access, fire suppression, and alarm requirements specified in a missive dated March 8, 2023 by Chief David Mason
7. Site utility, grading, stormwater management and erosion control plans subject to technical corrections and final approval of the city of Brookfield Engineering Division prior to the issuance of building permits.
8. Payment of applicable fees to the Community Development Department prior to issuance of a building permit.
  - \$ TBD Engineering Review Fee
  - \$ TBD Development Agreement
9. Lighting in compliance with sections 15.16.080 and 17.120.070 of the City of Brookfield municipal code.
10. All signage subject to separate review by Zoning and Building Administrator.



11. Landscape plan dated December 13, 2022 by raSmith subject to City of Brookfield consultant review and technical corrections secured with a letter-of-credit (City forms available from the Department of Community Development).
12. Execution of a Subdividers Agreement subject to final approval by the City Attorney prior to the recording of the Certified Survey Map (CSM), or combined with #13 (below).
13. Execution of a Development Agreement subject to final approval by the City Attorney prior to execution that outlines the three-phase parking lot installation and includes sureties as needed.
14. Once a building permit is issued by Inspection Services, the owner shall receive an occupancy permit within eighteen (18) months or the owner of the property may be subject to the penalty provisions of the Zoning Code, Section 17.100.130 or the owner shall remove construction equipment and debris from the site, fine grade and seed the site, and stabilize surface water drainage leaving the site to City Engineering Department specifications within four (4) months or the owner of the property may be subject to the penalty provisions of the Zoning Code – Section 17.100.130. (Ordinance #2134-08).
15. Plan and method of operation approval expires on March 21, 2023 unless a building permit is obtained prior thereto.

Refer to audio recording of this item [here](#) for the discussion.

#### Topics Discussed

- Clarification on abandonment of existing water service
- Concerns and comments related to the integration and/or impact of the proposed parking lot addition with surrounding public rights-of-way
- Update to area neighborhood plan and impacts of a complete conversion of 128th Street to City public roadway standards
- Appropriateness of the phased approach

***Motion by Alderman Rick Owen, second by Alderman Mike Hallquist to approve staff recommendation to recommend the Common Council approves the preliminary concept map to combine two properties owned by Milwaukee Electric Tool Company at 12930 W. Lisbon Road. Motion carried 6-0.***

***Motion by Alderman Gary Mahkorn, second by Alderman Mike Hallquist to approve staff recommendation to recommend the Common Council approves the certified survey map to combine two properties owned by Milwaukee Electric Tool Company at 12930 W. Lisbon Road. Motion carried 6-0.***

***Motion by Alderman Mike Hallquist, second by Alderman Rick Owen to approve staff recommendation to recommend the Common Council approves the revised plan and method of operation, and authorize the Mayor to execute the temporary limited easement for street yard landscaping and subdivider's agreement on behalf of the City, for the 450-stall parking lot expansion for Milwaukee Tool at 12930 W. Lisbon Road. Motion carried 6-0.***

- i) Request of The Heimat Group, 5150 N. Port Washington Road, Suite 115, Glendale, WI 53217 – c/o Jim Sedgwick and Joseph Lak, Jr., Partners, to schedule a public hearing regarding request for City financial assistance via the creation of an Environmental Remediation Tax Increment District (ERTID) for a redevelopment project including environmental remediation and public improvements located at the southeast corner of Capitol Drive and Lilly Road – 13925 W. Capitol Drive and 3950 Lilly Road.

## I. Background

**The Heimat Group** and **Wheel and Sprocket**, as partners, (herein “Developer”) are proposing to redevelop a brownfield site located at 13925 W CAPITOL DRIVE AND 3950 LILLY ROAD. The properties currently consist of a single-story bicycle shop and an abandoned automobile service station and associated parking lots and driveways. Most of the sites have levels of contaminated soils that need to be remediated if any reasonable new future is envisioned for these dated buildings (circa 1960s). No excavation of the sites or removal of buildings could occur without remediating the contamination in a manner acceptable to the Wisconsin Department of Natural Resources (WDNR). THE WDNR has approved a remedial action plan for cleanup of the sites. In addition, a public sanitary sewer runs diagonally through the sites in a manner that prevents exaction of a basement for new buildings without the relocation of the sewer and associated remediation of soils near the sewer. The staff is unsure how or why this public sewer was laid where it is as such sewers typically run along the edges of properties in public right-of-way. Nevertheless, the sewer is an existing condition that needs to be addressed if the sites are redeveloped. See Contamination Map and excerpts from the Remedial Action Plan.

The Developer plans to demolish the two existing buildings located on the site and remove the associated parking lots and driveways and construct a single mixed-use building with underground parking consisting of approximately 19,000 square feet of commercial retail space and, 75 apartment units, or hereafter called the “**Project**”. The 19,000 square feet of retail will included approximately 16,000 square feet for a bicycle store and 3,000 square feet for a specialty food retailer/ service provider. See attached plan sheets.

#### **Request for ERTID Financial Assistance**

The **Developer** has proposed a “**Pay As You Go**” form of tax increment district under which the Developer will pay for the needed environmental remediation listed in the District “Project Costs” and will be reimbursed from new taxes created in the District. The Developer’s *Statement of Need* is attached and will be presented at the meeting.

The City of Brookfield created the attached **DRAFT Project Plan for TID No. 9** in order to address the environmental remediation and rehabilitation needs of a portion of the Capitol Drive and Lilly Road area including associated street improvements in an area that may have contaminated soils. The City identified strategies and actions that can be taken to achieve this goal in the report entitled Lilly Road & Capitol Drive Neighborhood Plan City of Brookfield, WI, dated December 4, 2001. This area has also been identified in the City’s *2050 Comprehensive Plan* as a priority area (“Target Investment Area” or “TIA”) for consideration of public-private partnerships such as the creation of tax increment districts.

As a result of the creation of this District, the City projects that net, new tax value of improvements will be approximately **\$ 18,000,000** of equalized assessed value as a result of redevelopment of existing properties.

The City anticipates reimbursing the Developer for costs incurred as listed in the District or “Project Costs” equaling **\$3,524,163** (not including the Developer’s issuance expenses and interest cost to undertake the projects listed in this Project Plan). In addition, it is recommended that the City fund 50% of the road improvement costs associated with the Project plus include a contingency for unforeseen costs in the public right-of-way that may be encounter. The ERTID would include **\$490,000** of City costs which would be recovered as an eligible Project Costs.

The District would be expected to remain open **18 years** generating enough tax increments to recover all Project Costs by 2041. The base value of the current equalized property tax of the two properties of approximate \$2.5m will be reduced to \$1.00 upon creation of the ERTID since it is an ERTID.

#### **Financial Feasibility**

A presentation of a *Summary of Financial Feasibility Analysis of and Recommendations about TID Assistance for the Revised Proposed Wheel & Sprocket Redevelopment in Brookfield, Wisconsin*, January 13, 2023 prepared by Gruen Gruen + Associates for the City of Brookfield will be made at the March 13, 2023 meeting by Aaron Gruen, GG+ Associates. GG+ Associates reviewed the real estate proforma of the Developer for the project and opined: “.....Given the feasibility risks, GG+A recommends accepting the TID incentive request of \$3,524,163 on a Pay As

*Go basis so that no TID incentives are provided upfront and only after the development of the project is completed.....” p 5.* See attached. The agenda item is noted for the Plan Commission to potentially enter a closed session to discuss the conclusions of the study and the financial assistance request in confidence with City staff and Mr. Gruen.

### **Comparison to the City’s Plan’s and CDA Guidelines**

The redevelopment is consistent with the goals and objectives of 2050 *Comprehensive Plan* and is generally consistent with the TIA Plan as noted below. Some amendments to the TIA Plan are needed as noted and are being processed under a zoning entitlement track in the next item on the March 13 agenda. Below is supplemental excerpts from each of these plans.

#### 2050 Comprehensive Plan (Comp Plan.)

The Project is consistent with the Comp Plan. It retains a high-quality local business which is poised to succeed in the changing national and regional economy (Jobs and Shopping implementation objective p.65). The development pattern promotes environmentally-conscious building and site design within a Targeted Investment Area (Sustainability implementation objective p.91) with mixed use which promotes 24/7 activity and increases safety from more “eyes on the street” (Sustainability Policies, Programs, and Recommendations - Development p.95). It converts aging retail into mixed use development (Destinations implementation objective p.101) that will establish a vibrant community activity center supporting live-work-shop-play environments in executing the identified land use (Mixed Use Future Land Use Categories p.38). Finally, the proposal provides a broader range of housing types, densities, and costs in the TIA, while preserving the integrity and overall composition of the existing neighborhoods (Housing and Neighborhoods Objectives p.53), and helps to fulfill lifecycle housing options to serve changing demographics (Housing and Neighborhoods Programs and Initiatives p.57).

#### Lilly Road and Capitol Drive Neighborhood Plan – 2001 (Neighborhood Plan)

Several elements of the Project are consistent with the TIA or Neighborhood Plan. The Southeast Quadrant in the plan calls for a land use mix including office, retail, and office/residential above retail/office (p. 34). The plan also identifies the appropriate proportions for the streetscape of Capitol Drive. It acknowledges, “A preferred feeling of enclosure is building height to street width (building façade to building façade) ratio ranges from 1:4 through 3:1,” and that, “To feel a sense of enclosure the buildings on the north and south side would need to be approximately 71 feet tall.” (p.20). The proposal would nearly accomplish the appropriate proportions for the streetscape identified in the plan. The Neighborhood Plan requires the following amendments for a proposed rezoning to be consistent:

- Amend the recommended land uses map on page 26 to allow for Higher Density Mixed Use with Residential above Retail/Office (consistent with Comp Plan)
- Amend the description for “District I” under “Southeast Quadrant” on page 45 to read, “redevelopment of the property should have buildings located approximately 20 feet from the right-of-way along Capitol Drive and function as the eastern side of a gateway to southbound Lilly Road. The massing of this building – or these buildings – should be four stories along Capitol Drive, stepping down to three floors in height adjacent to residential property to the South.”

### **CDA Public Policy Guidelines and Supporting Resolution**

On January 24, 2023 the City’s Community Development Authority (CDA) met to review the request and moved approval of a supporting Resolution. See the attached CDA resolution and meeting minutes.

The Project meets many of the public policy guidelines established by the CDA. The most direct guidelines – as established in the *2050 Comprehensive Plan*- met by the Project are:

“16. Working with the CDA, promote the identification, clean-up, and reuse of environmentally contaminated sites for economic development purposes, where consistent with the City’s land use plans.

17. Of particular challenge is how to address sites that contain aging retail centers (i.e., older “strip malls” and similar uses). These circumstances sometimes suggest the need for redevelopment—in other words, removing the existing building(s) and constructing new ones. Other times, reinvestment in the existing building(s) seems more appropriate. Further, when redevelopment seems the appropriate course, the economics of redevelopment often lead to a private interest in seeking public financing support, usually via TIF, as a means to close funding gaps”.

#### **CDA Project Metrics**

Currently, Wheel and Sprocket has 12 FTE employees who will be retained. Additional construction jobs and retail jobs are expected to be created. **(City Goal 2 & Guideline 8).**

The equalized assessed value is projected to increase from \$2.5m to \$18m for the two properties over a two year period. **(Guideline 8.)**

The form of the TID would be “Pay as You Go” which meets the intent of **Guideline 12** as no City debt is incurred for the amount to be distributed to the Developer:

*“ 12 . Applicants that include larger percentages of equity contributions to the project will be viewed more favorably by the CDA..... The awarded grant or TIF dollars should not be disbursed until the entire capital structure needed for the agreed-upon budget (equity, debt and assistance) is fully committed”.*

#### **CDA Checklist:**

Also attached is a checklist as how the Project compares to all the CDA’s “Guidelines for the Community Development Authority to recommend City assistance in a development or redevelopment project and the establishment of a Tax Increment District (TID)” .See below -Attachment 1.

#### **Economic Development Committee (EDC):**

The EDC approved a resolution on March 6, 2023 endorsing the Project and that the Plan Commission and Common Council should take steps to approve the Project as such is consistent with City economic development goals and objectives. See attached Resolution.

## **II. Staff Recommendation**

**Recommendation:** The Request is consistent with the Community Development Authority’s guidelines in their role of providing recommendations to the Brookfield Common Council in reviewing the granting of City financial assistance and creation of Tax Increment Districts and as informed by the independently prepared financial analysis by Gruen Gruen + Associates as evidenced by the supporting resolution adopted by the CDA and the EDC. Staff recommends the Plan Commission schedule a public hearing to establish an ERTID as requested by the Heimet Group or a “Pay As You Go” ERTID allocation via reimbursement made to Heimet/Wheel and Sprocket in an amount of **\$3,524,163** and for the City to finance **\$490,000** of public improvements associated with the ERTID for the Project as described in the above report and Draft Project Plan for TID No. 9.

Refer to audio recording of this item [here](#) for the discussion.

#### Topics Discussed

- Findings of the City’s hired consultant, Gruen Gruen & Associates
- Clarification on the recommendation of fixed, not-to-exceed, figure
- Conditions and relative costs involved in remediating the site under alternative redevelopment scenarios
- Concerns regarding viability of alternative redevelopment scenarios that generate enough value in an ERTIF that could also meet the parameters for limited development submitted by the community
- Concerns that the site would remain a blighted property into the foreseeable future without TIF assistance
- Endorsements by the CDA and EDC, and recommendation of City’s hired consultant on the soundness of

the requested ERTIF

- Addressing comments of transparency regarding process and request
- Compromise of the developer to proceed with a “pay as you go” ERTIF and the resulting reduced risk to the City
- Reasonableness of developer’s ask and evidence supporting the notion that the developer and owner are seeking less than the typical minimum return on investment for such development including the ERTIF
- Clarification on upcoming process

***Motion by Alderman Mike Hallquist, second by Alderman Gary Mahkorn to approve staff recommendation to schedule a public hearing to establish an ERTID as requested by the Heimat Group or a “Pay As You Go” ERTID allocation via reimbursement made to Heimat/Wheel and Sprocket in an amount of \$3,524,163 and for the City to finance \$490,000 of public improvements associated with the ERTID for the Project as described in the above report and Draft Project Plan for TID No. 9. Motion carried 6-0.***

- j) **Request of Kegel Real Estate, LLC, 187 East Becher Street, Milwaukee, WI 53207 – c/o Jim Sedgwick and Joseph Lak, Jr., Partners of The Heimat Group, for approval of a resolution and ordinance amending the Lilly Road and Capitol Drive Neighborhood Plan, and approval of a General Plan PDD ordinance amending the zoning of two lots addressed 13925 W. Capitol Drive and 3950 Lilly Road, property tax keys BRC1054035 and BRC1054038 respectively, from B-1 Local Business District to Planned Development District General Plan – Mixed Use No. \_\_ for the purpose of redeveloping the southeast corner of Lilly Road and Capitol Drive with a mixed-use project of commercial retail space and apartment units with Wheel & Sprocket to operate from new commercial space on the site. (NW ¼ of Section 12) – RV \*\*Requires Common Council Action\*\***

**Report:**

1. Refer to the following links to review the previous staff reports, minutes, and meeting videos related to the proposed redevelopment:
  - [July 11, 2022 Plan Commission Meeting Packet](#)
  - [July 11, 2022 Plan Commission Meeting Minutes](#)
  - [July 11, 2022 Plan Commission Meeting Video Recording](#)
  - [September 20, 2022 Common Council Meeting Video Recording \(Public Hearing\)](#)
  - [November 7, 2022 Plan Commission Meeting Packet](#)
  - [November 7, 2022 Plan Commission Meeting Minutes](#)
  - [November 7, 2022 Plan Commission Meeting Video Recording](#)
  - [January 17, 2023 Common Council Meeting Video Recording \(Public Hearing\)](#)
2. At its November 7, 2022, meeting, the Plan Commission voted unanimously in favor of the revised PDD rezoning request advancing to public hearing. The reduction in building height, the revised access to underground parking, the increase in landscaping, and the overall strategy for laying out the uses across the site were noted as being successful executions of compromise on the comments received by the public regarding the project. Discussion on the applicant’s updates to building architecture included acknowledgement by the Commission on the preference for: the pitched roofs in the design; added sensitivity to the character of the surrounding neighborhood; the incorporation of building architecture and materials from nearby surrounding development; and the strategy of stepping back building facades on upper floors. The overall application of building materials across the various facades, the design of the interior courtyard in the project, and the hung balconies on the third floor overlooking properties on the south side of the building were mentioned as areas that have room for further improvement as the project advances.
3. A neighborhood information meeting regarding the revised proposal was held on January 11, 2023, in the Multi-Purpose Community Room of Parks, Recreation & Forestry at City Hall. Representatives of the applicant and their development team professionals were in attendance alongside Community Development

Department staff. Forty-eight (48) property owners recorded their attendance on the sign in sheet including Alders Anderson, Blackburn, Carnell, and Owen. Eight (8) comment sheets were submitted at the meeting, one (1) additional comment sheet was submitted after the meeting, and nine (9) additional comments submitted by email prior to the scheduled public hearing. Three (3) comments were submitted by email after the public hearing. A copy of the attendance sheet and all submitted comments and emails pertaining to the request have been attached to this report.

4. A public hearing on the request was conducted at the January 17, 2023, Common Council meeting. Fifty (50) members of the public spoke, or submitted a speaking form, against the proposed development. Fifteen (15) members of the public spoke, or submitted a speaking form, in favor of the proposed development. The Common Council asked questions of clarification regarding: play areas for children living in the proposed development; driveway alignments; stormwater runoff and storage; added traffic on Fiebrantz Drive as a result of the project; potential traffic calming measures; site trash collection and storage; potential to shift residential units to lower the building by one story; and remaining process regarding City approvals.
5. See the Economic Development Committee (EDC) supporting resolution regarding the project as attached in Item 4.i.
6. The development proposal is restated below for sake of clarity in the record:

The site consists of two lots located within the Lilly – Capitol Node Targeted Investment Area (TIA). The adopted neighborhood plan is the *Lilly Road and Capitol Drive Neighborhood Plan – 2001* (Neighborhood Plan). The recommended land use of the Neighborhood Plan for the site is “Local Business/Office”. The adopted land use of the *City of Brookfield 2050 Comprehensive Plan* (Comp Plan) is “Mixed Use – Higher Density”. The site is zoned “B-1” Local Business District (B-1) including Modified Suburban Overlay Zoning (MSO) ordinance 1693. MSO ordinance 1693 applies the “New Suburban” overlay district requirements (§17.98.030.A.2. of the Municipal Code) which require building setback minimum of twenty-five (25) feet and maximum of seventy (70) feet, and parking offset of 25 feet. The site currently features two primary buildings, one on each lot, which include an auto service station, previously occupied by Aamco Transmissions, and a commercial strip retail building, occupied by Wheel & Sprocket.

The development sought through the PDD zoning request would demolish existing structures on the site. Existing contamination under and surrounding the auto service station, throughout the retail lot, and present in areas proposed to be reconstructed in the adjacent Lilly Road right-of-way would be remediated and public sanitary sewer that bifurcates the site would be relocated to the ROW of Lilly Road, wrapping north along the perimeter of the site adjacent to Capitol Drive (colocated with existing public utilities in easement). The applicant would construct a new four-story mixed-use building along Capitol Drive featuring first floor commercial retail uses, predominantly occupied by Wheel & Sprocket, and three floors of market rate apartments with approximately 75 units, a mix of one-bedrooms, two-bedrooms, and three bedrooms, and approximately 108 underground parking spaces. The project wraps the site, stepping down from four stories along Capitol Drive to three stories along Lilly Road with a smaller retail space and vehicular access on the west nestled within the continuation of three stories of apartments along the south end, creating an internal “street” between the north and south portions of the building. This internal street is flanked by surface parking spaces. Balconies and unit entries front on the internal street, alongside featured artwork on building surfaces, generating a more positive destination and neighborhood character. The mixed-use building concentrates the commercial activity of the site along Capitol Drive while the internal street and dwelling units along the south transition down to the scale of the single-family residential properties. Internalized street and site landscaping provide a buffer for the single-family neighborhood immediately to the south.

7. The design aesthetic for shallower building setbacks has been a relatively long tradition embraced in the City's Targeted Investment Area Neighborhood Plans. Although consensus on an exact distance may change depending on immediate circumstances, building setbacks of twenty feet are typically considered the maximum distance, with regard to zoning regulations, that would still enable a pedestrian oriented development pattern to emerge in urban and suburban communities. The Lilly Road and Capitol Drive neighborhood has been identified as one of the nodes along Capitol Drive that would achieve walkable, mixed-use development that supports the daily needs of the surrounding community. In addition to these considerations which promote shallower building setbacks, the depth of commercial properties along State Highway 190 (Capitol Drive) have been reduced over the years due to highway takings by the WisDOT or City on behalf of WisDOT, resulting in shallower building setbacks for existing development along Capitol Drive. The overall design aesthetic and development pattern of the request is consistent with the established public policies adopted, which were reached through the consensus of the elected officials at the time.
8. Proposed architecture and principal building materials are unchanged from what was previously reviewed by the Plan Commission on November 7, 2022. Any refinement to architecture, building materials, and color palate that the Plan Commission would seek in a PDD Specific Plan request should be identified now so that the applicant can adjust elevations and plans accordingly.
9. Preliminary site civil and utility calculations have been submitted to the Engineering Division and are consistent with the submitted and reviewed plans by the Plan Commission. Local and regional sanitary sewer infrastructure can accommodate the added dwelling units at the proposed density.
10. PDD Zoning Characteristics:
  - Permitted uses.
    1. Those listed within the B-1 Local Business District;
    2. 75 multifamily residences in a mixed-use building;
    3. Resident amenity spaces including community room and outdoor patio seating.
  - Building and Parking Locations.
    1. Setbacks: eighteen (18) feet minimum.
    2. Offsets: thirty-five (35) feet minimum for buildings, zero (0) feet minimum for pavement from East property line, twenty-five (25) feet minimum for buildings and parking from South property line.
    3. Accessory structures with foundations in association with the creation of "third places" within the building setback include pergolas, permanent seating, band shells, decks, gazebos or similar structures as determined by the plan commission.
  - Height regulations.
    1. Principal building: sixty (60) feet maximum for mixed-use building, except for the first one hundred twenty feet (120) feet adjacent to single family residential zoning district where fifty (50) feet is the maximum for mixed-use building. Thirty-five (35) feet maximum all other buildings.
    2. Accessory building: fifteen (15) feet maximum.
  - Area regulations.
    1. Floor Area: 1.40.
    2. Lot coverage: seventy-five (75) percent maximum.
    3. Landscape Surface Ratio: twenty-five (25) percent.
  - Parking ratios.
    1. Two (2) spaces per 1,000 sq. ft. retail/office area;
    2. One (1) space per one-bedroom dwelling, Two (2) spaces per two-bedroom dwelling and per three-bedroom dwelling in mixed-use building plus twelve (12) underground visitor parking spaces, with access to available surface parking of forty (40) spaces.

11. PDD zoning ordinance has been drafted by staff for consideration by the Plan Commission to recommend to the Common Council. Additionally, a draft Plan Commission resolution and Common Council ordinance accomplishing the Neighborhood Plan amendments, changing recommended land use of 13925 W. Capitol Drive and 3950 Lilly Road in the map on page twenty-six to become “Higher Density Mixed Use – Local Business/Office/Multiple Family”, and updating description for “District I” under “Southeast Quadrant” on page 45 to become “redevelopment of the property should have buildings located approximately 20 feet from the right-of-way along Capitol Drive and function as the eastern side of a gateway to southbound Lilly Road. The massing of this building – or these buildings – should be four stories along Capitol Drive, stepping down to three floors in height adjacent to residential property to the South.”, have been distributed for Plan Commission consideration in approving said resolution and recommending ordinance to the Common Council.

**Staff Recommendation:** The Plan Commission:

- adopts resolution amending the recommended land use of 13925 W. Capitol Drive and 3950 Lilly Road in the map on page twenty-six of the *Lilly Road and Capitol Drive Neighborhood Plan* to become “Higher Density Mixed Use – Local Business/Office/Multiple Family” and amending the description for “District I” under “Southeast Quadrant” on page 45 to read, “redevelopment of the property should have buildings located approximately 20 feet from the right-of-way along Capitol Drive and function as the eastern side of a gateway to southbound Lilly Road. The massing of this building – or these buildings – should be four stories along Capitol Drive, stepping down to three floors in height adjacent to residential property to the South.”, and recommends the Common Council adopt ordinance accomplishing the same;
- and recommends the Common Council adopts ordinance amending the zoning of lands encompassing 13925 W. Capitol Drive and 3950 Lilly Road, property tax keys BRC1054035 and BRC1054038 respectively, to “PDD” Planned Development District – Mixed Use No. \_\_\_\_ (TBD);

subject to:

1. Developer commitment with the City on Lilly Road improvements, to be reviewed and approved by WisDOT, necessary to offset traffic pattern and volume impacts of the proposed development, secured through PDD Development Agreement.
2. Compliance with requirements in a missive dated January 9, 2023 by Fire and Emergency Medical Services Department – David Mason, Fire Chief.
3. Approval of the rezoning to a PDD shall conditionally entitle the applicant to apply to the city for approval of a specific plan for the area in conformity with the general plan as previously approved by the common council, but all rights to commence development shall be conditioned upon city approval of the specific plan, and shall not make permissible any of the uses or developments until the specific plan is approved for all or a portion of the area included in the general plan.
4. If the approved general plan is not followed within six months of the date of approval by the common council by submittal of an application for approval of a specific plan, the approval shall be null and void and a new application and approval process shall be required to obtain general plan approval. The zoning of the property shall revert without hearing to the prior zoning classification. The six-month deadline may be extended for good cause for up to six additional months by the director of community development.
5. Submittal of a land instrument combining the two parcels of land for approval.

Refer to audio recording of this item [here](#) for the discussion.

Topics Discussed

- Addressing disappointment in the prevalence of jeering at hearings on the request; and acknowledgement for those that remain respectful when listening to opposing opinions



- Favorability of previous design and current design of the project
- History and changes of the project as it has proceeded through the process
- Height of the proposal and whether it fits the Capitol Drive corridor
- Consistency of the proposal with the Comprehensive Plan
- Consistency of the proposal with the Neighborhood Plan and past Capitol Drive corridor plans
- Characteristics of the Lilly and Capitol TIA from planning documents
- Direction and input from the Capitol Drive Corridor studies, and to what degree certain elements have been discussed and are applicable
- The contemporaneousness of the 1999 Capitol Drive Corridor Study and the Lilly and Capitol Neighborhood Plan Concerns as listed by Alderman Owen relative to precedents and potential conflicts of the project with prior city plans and policies
- Pursuit of mixed use in the Capitol Drive Corridor being more successful as horizontal mixed use rather than vertical mixed use developments
- Comparisons to other projects, including Sutter Creek, particularly on the concept of fitting within the context of the location
- Concerns and comments regarding large, dense development becoming more prevalent along Capitol Drive, particularly whether the current request would set precedent for sites further west in the corridor
- Clarification on the manner in which the Comprehensive Plan supersedes the various, previously adopted plans

***Motion by Alderman Gary Mahkorn, second by Alderman Mike Hallquist to go into closed session. Motion carried 6-0.***

***Motion by Alderman Mike Hallquist, second by Alderman Rick Owen to go into open session. Motion carried 6-0.***

***Motion by Alderman Mike Hallquist, second by Alderman Gary Mahkorn to approve staff recommendation adopting a resolution amending the recommended land use of 13925 W. Capitol Drive and 3950 Lilly Road in the map on page twenty-six of the Lilly Road and Capitol Drive Neighborhood Plan to become “Higher Density Mixed Use – Local Business/Office/Multiple Family” and amending the description for “District I” under “Southeast Quadrant” on page 45 to read, “redevelopment of the property should have buildings located approximately 20 feet from the right-of-way along Capitol Drive and function as the eastern side of a gateway to southbound Lilly Road. The massing of this building – or these buildings – should be four stories along Capitol Drive, stepping down to three floors in height adjacent to residential property to the South.”, and recommends the Common Council adopt ordinance accomplishing the same; and recommending the Common Council adopts an ordinance amending the zoning of lands encompassing 13925 W. Capitol Drive and 3950 Lilly Road, property tax keys BRC1054035 and BRC1054038 respectively, to “PDD” Planned Development District – Mixed Use No.\_\_(TBD). Motion carried 5-1, with Alderman Rick Owen dissenting.***

## 5. Adjournment

***Motion by Alderman Mike Hallquist, second by Alderman Rick Owen to adjourn the meeting at 9:58 pm.***

***Motion carried unanimously.***

Respectfully Submitted:

Daniel F. Ertl

Director of Community Development