



# MEMORANDUM

---

“...meeting community needs...enhancing quality of life.”

TO: Community & Economic Development Committee (CEDC)

FROM: Matt Rehbein, Economic Development Specialist

DATE: December 13, 2023

RE: Request for a Variance to the Deed Restrictions and Covenants – Southpoint Commerce Park – Lot 1 of CSM #3549 (Tax Id #31-9-5712-40) – Oshkosh AAP, LLC

---

The City of Appleton is in the process of acquiring the northern thirty (30) feet of the above-referenced parcel for completion of the “Powerline Trail” (Accepted Offer to Purchase attached). This project is within the Plan and Budget for Parks, Rec and Facilities. As part of these negotiations, Oshkosh AAP, LLC has asked for a twelve (12) month extension under the “Repurchase Rights, Failure to Build” provision in the Southpoint Commerce Park Plats No. 1, 2 & 3 Declaration of Covenants and Restrictions (Section 13).

13. *Repurchase Rights:*

**Failure to Build:** In the event the owner of land purchased from the City of Appleton does not commence construction of a building within one (1) year after the date of purchase, the City has the option to repurchase said property. The City shall pay the following repurchase price: the sum of the original purchase price and all special assessments which may have been paid by the buyer or levied against the property after the date of purchase minus the sum of any unpaid property taxes, pro-ration of the current years property taxes to date of closing, title insurance policy premium, real estate commission paid at time of original closing, and any liens and encumbrances on the property of a definite or ascertainable amount. Further, repurchase price shall be adjusted by the amount equal to the amount of an option fee for that year had the property been under option between the City and the Buyer. Conveyance shall be by warranty deed.

**Resale of Vacant Land:** In the event the owner of land purchased from the City of Appleton elects to sell any portion thereof, which is vacant, the property shall first be offered, in writing, to the City of Appleton. The City of Appleton shall have sixty (60) days from date of receipt of such offer to accept or reject repurchase of the property unless an extension of time may be mutually agreed upon and set forth in writing. The purchase price shall be computed as in the paragraph above (Failure to Build). Conveyance shall be by warranty deed. The seller shall furnish a title insurance policy at the seller's expense. In the event the City does not elect to repurchase the property, the owner may sell the land, but these Declarations of Covenants and Restrictions shall run with the land and be binding on the subsequent owner.

Based on the acquisition date of January 31, 2023, this extension would give Oshkosh AAP, LLC until January 31, 2025 to build on the land before the City would have the option to repurchase under this section of the Deed Restrictions and Covenants.

**Staff Recommendation:**

A twelve (12) month extension to the City's option to repurchase Lot 1 of CSM #3549 in Southpoint Commerce Park from Oshkosh AAP, LLC under Section 13 of the Deed Restrictions and Covenants **BE APPROVED.**