

ACTION ITEMS

Council Approved Dec. 3, 2008

Request – Waive Protective Covenants – Lots 1-6, Northeast Business Park Plat #1

J. Van Dyke explained the Gasman's, who currently own two (2) lots in the Business Park, are interested in building a restaurant on one lot and their office on the second. Currently, industrial zoning does not allow the building of a restaurant and they would like a waiver of the Business Park Covenants and a rezoning of the property to commercial to allow the restaurant.

Community Development staff believes this to be a reasonable request, as Badger Sports Park, which is zoned commercial and USA Sports Complex are located across the street from the lot in question. The main concern of staff is to protect the integrity of the industrial park, which they feel can be accomplished by placing a Planned Development Overlay on the C2 zoning. The overlay would incorporate the many requirements of the Protective Covenants such as building materials, signage, etc.

J. Van Dyke also explained that, at the time the attached memorandum was written, staff believed a complete waiver would be the best option, but City Assessor Brosman recommended the City retain its repurchasing rights. The rezoning to commercial would increase the value of the property significantly and felt the Gasman's should not profit if they didn't build the restaurant and decided to sell the land to another party.

J. Clemons offered support for this request, using the example of Beefeaters Restaurant, which lies in the industrial park and seems to fit into the overall landscape quite well.

J. Van Dyke explained another change that would be included in the Planned Development Overlay, which would be a stipulation the property owners can build no more than two restaurants on the four vacant lots.

P. Stueck asked if CDC can vote today to approve this with retaining the repurchasing right. J. Van Dyke responded that could be done.

G. Holzknrecht moved, seconded by J. Hill that the request from Rick and Kerry Gasman for a waiver of the Business Park Protective Covenants, *except for Section 12 Repurchase Rights*, for Lots 1-6 Northeast Business Park Plat #1, BE APPROVED, subject to the rezoning of this area to PD/C-2. (5-0)

CDBG Allocation Recommendations

J. Clemons reminded CDBG applicants in attendance the City admires all of their work, and if there was enough money, the City would fund each one of their organizations. Clemons then asked members of the audience if they would like to speak specifically to the existing staff recommendations.

Christine Cheevers, Executive Director – Fox Valley Literacy Coalition

Ms. Cheevers asked the Committee to consider her organization's request for funding. While relatively new to her position as Executive Director, she better understands why the City has funded the Literacy Coalition for the last 12 years.

Michael Potter, 520 West Atlantic Street

Mr. Potter asked the Committee to please consider funding the request for the Housing Partnership of the Fox Cities based on the number of years they have been working with the City and the good things they have done to rehabilitate buildings and homes for low-income housing.

XI. Approval of Plans:

Before commencing the construction or alterations of any buildings, additions, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to the real estate conveyed hereby, the owner shall first submit its building plans, specifications, site and landscape plans, and an elevation sketch of all improvements to be placed thereon to the Community Development Committee for its written approval. In the event the Committee or its designee shall fail to approve or disapprove in writing such building plans, specifications, site and landscape plans, and elevation sketch within thirty (30) days after they have been submitted to them, such approval will not be required and these covenants and restrictions will be deemed to have been complied with. The Community Development Committee may delegate this review of plans to the Economic Development Department.

XII. 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, ownership shall revert to the City. 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, proration of the current years property taxes to date of closing, title insurance policy premium or cost of warranty abstract, 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. 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. The purchase price shall be computed as in Article XII above. Conveyance shall be by warranty deed. The seller shall furnish a title insurance policy at the seller's expense.

XIII. Subdivision of Lots:

After a lot has been purchased, such lot shall not be further subdivided without the written consent of the Community Development Committee. No owner may sell, lease or rent less than all of the lot without the written consent of the Community Development Committee. The Community Development Committee may, in granting its consent, attach any conditions it deems appropriate. The foregoing prohibition shall not apply to occupancy leases of space in a building made in the ordinary course of business.

XIV. Waiver of Notice:

All land sold before major assessable improvements are completed in the business park site shall be subject to the purchaser's waiving notice of assessments and hearings, and such waiver shall be part of the negotiations.

XV. Variances:

Notwithstanding anything contained herein to the contrary, the City of Appleton expressly reserves the right at any time to authorize in writing variances from the strict applications of these covenants and restrictions, or any one or more of them, where the circumstances, in its sole and exclusive judgement, justifies the granting of same.

XVI. Right to Enter

The Community Development Committee shall have the right to enter upon any building site or other lot within the park for the purpose of ascertaining whether the owner of said site or lot is complying with these covenants and restrictions.

XVII. Enforcement:

In the event that the owner fails to perform in accordance with these covenants and restrictions, the Common Council, upon recommendation of the Community Development Committee, may take whatever corrective measures it deems appropriate and assess the cost thereof against the property in the same manner as a special assessment or special charge. The Common Council shall give at least thirty (30) days notice to the vendee of any violation and the steps required to correct it prior to taking any action to cure such violation.