TOWN OF WINDSOR
TOWN BOARD RESOLUTION 2014-45

RESOLUTION RATIFYING ACTION OF PLAN COMMISSION ON JULY 15, 2014, AND DENYING DEVELOPMENT PLAN PRESENTED TO PLAN COMMISSION ON JULY 15, 2014 REGARDING LOT 137, PLAT OF HOLLAND FIELDS

[Windsor Development Corporation, Petitioner and Owner of Lot 137, Plat of Holland Fields, Town of Windsor, Dane County, Wisconsin]

RECITALS

WHEREAS, John DeWitt, president of Windsor Development Corporation, as petitioner and owner ("Petitioner") of Lot 137, Plat of Holland Fields, Town of Windsor, Dane County, Wisconsin ("Property") requested approval of a development plan[1] for lot 137 ("Development Plan"), which lot is zoned R-4 in the Plat of Holland Fields ("Plat");

WHEREAS, the Property is subject to a development agreement executed in 1999 by and between the Petitioner and the Town ("Development Agreement"), a copy of which is attached hereto as **Exhibit B** and incorporated herein by reference;

WHEREAS, the Town Planner reviewed the request and prepared a Staff Report dated July 3, 2014 ("Staff Report"), which Staff Report was reviewed by the Plan Commission at its meeting held on July 15, 2014, and which is attached hereto as **Exhibit C** and incorporated by reference;

WHEREAS, following review of the Petitioner's Development Plan, the Staff Report and relevant provisions within the Development Agreement, and consideration of public input from members of the public in attendance at the Plan Commission meeting held on July 15, 2014, the Plan Commission found that the application was filed and complete at the Town on June 13, 2014 and recommended denial of Petitioner's Development Plan, as presented;

WHEREAS, following review of the information set forth above, the Town Board hereby recommends denial, all as set forth herein.

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[1] See **Exhibit A,** which includes the Petitioner's submission to the Town. Full size plans are available at the Town Hall and are incorporated by reference.

Now, therefore, following consideration of the above recitals, which are incorporated by reference, **THE TOWN BOARD OF THE TOWN OF WINDSOR HEREBY RESOLVES AS FOLLOWS:**

1. The Town Board hereby finds as follows:
   1.1. The Petitioner's application was filed and complete at the Town on June 13, 2014; and,
   1.2. The Plan Commission received copies of the Development Plan prior to the Plan Commission meeting, thereby allowing for review of same prior to the July 15, 2014 meeting; and,
   1.3. The Petitioner, by its President, architect and engineer, presented its Development Plan to the Plan Commission at an open meeting duly noticed and held on July 15, 2014; and,
   1.4. The presentation, public input and recommendations of the Plan Commission are more fully set forth in the minutes of the July 15, 2014 meeting; and,
   1.5. The Property is zoned R-4 (which permits multi-family housing) under Dane County Zoning Ordinance, excerpts of which are set forth in **Exhibit D**, attached hereto and incorporated by reference; and,
   1.6. The Development Agreement states that the Property may have *up to* 53 units, subject to the provisions set forth therein[2] for approval of Development Plans and compliance with Town Ordinances; and,
   1.7. Based on recommendations of the Plan Commission, Town staff and the Town Attorney, it is prudent for the Town Board to take formal action regarding the Development Plan submitted by the Petitioner to avoid any allegation that the Development Plan has been inadvertently approved by the passage of the 45 day review timeline set forth in the Development Agreement.

2. The Town Board hereby denies the Petitioner's Development Plan, as presented to the Plan Commission on July 15, 2014.

3. The Town Board hereby recommends that Petitioner consider the input from the Plan Commission and town residents, and submit alternate development plans that meet the Petitioner's objectives and satisfy the requirements set forth in the Development Agreement[3] and the Town Ordinances.

4. The Petitioner shall reimburse the Town of Windsor for all costs and expenses incurred by Windsor in connection with the review and approval/denial of the Development Plan, including, but not limited to, the cost for professional services incurred by the Town of Windsor for the review and preparation of required documents, attendance at meetings or other related professional services.

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[2] *See*, in particular, pages 6, 9, 10 and 11 of the Development Agreement.
[3] *See*, in particular, pages 10 and 11 of the Development Agreement.

5. It is the Petitioner's obligation to timely satisfy those conditions adopted by the Town Board, and to submit information and alternate development plans in a time and manner that allows for due diligence review. At a minimum, all submissions to the Town for review shall be made at least ten (10) business days prior to the date upon which review is requested.

6. The Town Board's action as set forth in this Resolution is a final legislative determination of the Town with respect to the Petitioner's Development Plan, as submitted on June 13, 2014. The Town Planning and Development Coordinator shall provide a copy of this Resolution to the Petitioner.

The above and foregoing Resolution was duly adopted at the regular meeting of the Town Board of the Town of Windsor on the 17th day of July, 2014.

TOWN OF WINDSOR

Robert E. Wipperfurth

Robert E. Wipperfurth, Town Chairperson

Donald G. Madejung

Donald G. Madejung, Town Supervisor

Bruce R. Stravinski

Bruce Stravinski, Town Supervisor

Alan Buchner

Alan Buchner, Town Supervisor

Excused Absence

Monica M. Smith, Town Supervisor

Attest:

Christine Capstran

Christine Capstran, Town Clerk

3491342

Exhibit B

TOWN DEVELOPMENT AGREEMENT

THIS AGREEMENT, made and entered into by and between the Town of Windsor, a body corporate and politic (the "Town") and Windsor Development Corporation, Madison, Wisconsin, a Wisconsin corporation, (the "Developer").

WITNESSETH:

WHEREAS, Developer has applied for and received conditional rezoning and Preliminary Plat approval of the property to be developed as the Holland Fields Subdivision located in Section 20, Township 9 North, Range 10 East, Town of Windsor, Dane County, Wisconsin, (the "Subdivision") the form of which is shown on Exhibit A attached hereto; and

WHEREAS, the Town has conditionally recommended approval of the petition for rezoning of the Subdivision and has conditionally approved the Preliminary Plat, subject to approval and execution of this Agreement and which rezoning will carry a delayed effective date of the recordation of the final plat of any part of the Subdivision; and

WHEREAS, the Town's Land Division and Subdivision Ordinances requires among other things that as a condition of approval, a developer must enter into a contract with the Town agreeing to make and install and dedicate all public improvements required by the Town Land Division and Subdivision Ordinances without cost to the Town;

NOW, THEREFORE, in consideration of the covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby mutually agree as follows:

1. Approval of Final Plat. The Town hereby approves the Final Plat for Holland Fields attached hereto as Exhibit "A" together with the engineering plans and specification which have been approved by the Town Engineer and attached hereto as Exhibit "B".

2. Construction of Public Improvements.

A. The Developer shall submit complete plans for said public improvements fully describing such improvements and the cost of such improvements. The plans shall be reviewed and approved by the Town's engineer for their conformity to Town standards for such improvements. Developer shall be responsible for all costs or charges related to the installation of the improvements enumerated in the approved plans and specifications filed with the plan, including the reasonable costs of the Town engineer's review of the plans and inspection of the improvements, unless the Town and the Developer expressly agree by addendum to this contract that a particular cost shall not be paid for in its entirety by the Developer.

B. Following completion of the improvements, all such improvements shall be inspected

and approved by the Town Engineer prior to acceptance by the Town for public use. Developer shall dedicate without cost to the Town all improvements constructed in accordance with the Town Land Division and Subdivision Ordinances.

C. Unless an extension is granted by the Town, Developer shall make and install required improvements for each phase of the plat in accordance with this agreement, or any Addendum to the original Development Agreement, no later than 12 months after recording of the final plat for all or part of the subdivision. In the event Developer shall request an extension, the Town shall objectively consider the reasons for delay and the reasons for the request and based upon such considerations, approval shall not be unreasonably denied.

3. Utilities. Water, sewer, gas, electric, telephone, and if available, cable television facilities shall be provided by the Developer in such a manner as to make adequate service available to each lot pursuant to plans and specifications approved by the Town Engineer. The Developer shall be responsible for making all arrangements for such service with the utility services and, if necessary, the Wisconsin Public Service Commission. Easements shall be provided for as necessary by the Developer and shall be shown on the face of each final plat and dedicated as public utility easements without cost to the Town or utilities.

The Town hereby agrees to provide reasonable assistance to the Developer, but not including expenditure of Town funds, obtaining an easement for storm water drainage from the Subdivision across the property known as CSM 621 to a Town bridge or culvert under Gray Road.

4. Conditions Preceding Construction. Developer shall not commence construction of the required improvements prior to the time that:

A. Copies of all specifications for the construction and installation of the required improvements have been filed with and approved by the Town Engineer; and

B. All preliminary and final plat approvals have been obtained and the final plan for such phase of the subdivision is recorded with the Dane County Register of Deeds; and

C. The required security described herein has been determined by the Town Engineer approved as to form by the Town Attorney and filed with the Town's Business Manager, and

D. Developer has obtained any and all contracts and permits required by any other governmental body; and

E. Developer has provided a satisfactory general liability insurance policy with limits of $2,000,000.00 per occurrence, naming the Town as an "Additional Insured" for any vicarious liability it may have for any losses, claims, liabilities, expenses and costs

allegedly caused by Developer, its agents, contractors, sub-contractors or assigns.

Notwithstanding the above, Developer, at its own cost and risk, may "rough-in" roads, provided Town and County approved drainage and erosion and sedimentation control measures are constructed concurrently with the road(s), or do any other such construction or work that may not require permits, or which may be done under permits otherwise available for such things as, inter alia, temporary private roadways to provide access into the land or to demonstrate the various development areas.

5. Security.

A. Prior to recording the final plat, the Developer shall file an irrevocable Letter of Credit to the benefit of the Town, in an amount determined by the Town Engineer. The final plat shall not be signed or released for recording by the Town until the developer has deposited the letter of credit with the Town Clerk in acceptable amount and form. This Letter of Credit is security which shall guarantee that the construction and installation will be completed in accordance with the approved plans and specifications, that all payments shall be made by the Developer as they come due, including any payment to or on behalf of the Town, and that any construction or materials reasonably determined by the Town Engineer to be defective will be repaired or replaced by the Developer. The security furnished shall be held by the Town until all required construction and improvements have been approved and accepted by the Town Engineer and the Town, which approval shall not be unreasonably withheld; provided, however, that the Developer may periodically apply to reduce the security in a sum equal to the completed and approved construction to date of application. Improvements which are so certified shall be considered to be open and available for public use and the Town shall provide reasonable maintenance thereof.

B. Upon certification of completion and submittal to the Town Engineer of proof of payment to contractors, an amount of at least 15 percent of the original security shall be retained as security for a 12 month guarantee period unless the Town Engineer determines, based upon date of acceptance of the improvements, that the guarantee should extend beyond 12 months. In no event may the guarantee period extend beyond 18 months from the date of acceptance of the improvements. This security shall be held to guarantee all required improvements against defects in workmanship and materials. If any defects appear during the period of the guarantee, the Developer shall, at its expense, install replacements or perform acceptable repairs. In the event that the Developer fails to install the required replacements or perform the repairs, the Town shall do so, deduct the cost thereof from the security and recover any deficiency from Developer. Unless defects have appeared and have not been repaired, the Town will release the security to the Developer upon expiration of the guarantee period.

C. In accordance with the Town Land Division and Subdivision Ordinance, the amount of security shall be the amount of the estimated construction cost of improvements

required therein, as provided by the Developer and approved by the Town Engineer, except as amended by this agreement, multiplied by 125 percent.

D. Developer may construct and install improvements and dedicate land and improvements to the Town in phases. Attached hereto as Exhibits "A" and "B" are maps depicting the lots and the areas of public improvements in each of the phases covered by this Developemnt Agreement. There is imposed a restriction on the sale of any lot or lots or any lands in bulk which comprise any part of the Subdivision unless released by the Town. The Town shall approve the installation of improvements and shall impose the security requirements of the section 5 on a phase-by-phase basis. Each phase subsequent to the first phase shall require an addendum to this Development Agreement prior to commencement of improvements therein. Developer may not develop, sell or dispose of any part of the platted lands except within an approved phase unless otherwise specifically released from this restriction by the Town. This restriction shall be recorded as deed restriction.

6. Building Permits. The Town shall not issue any Building Permits until the final plat has been recorded, an Addendum to the Original Development Agreement has been executed covering the phase involved and streets and utilities are installed or are under construction. In no case shall a building permit be issued for a lot until the Town determines that the lot is accessible by emergency vehicles. Occupancy Permits shall not be issued until all public utilities serving the lot in question have been certified to be complete by the Town Engineer and the binder coat for roads installed.

7. Administrative Charge.

A. In accordance with the Town Land Division and Subdivision Ordinances, Developer agrees to pay to the Town the reasonable expenses incurred by the Town in connection with the review and approval of the development, including but not limited to engineering and attorney costs for review of rezoning, preliminary platting, final platting, the review of preliminary and final plans and specifications for construction of public improvements, the preparation of this Agreement, and the construction inspection of the public improvements. Except as expressly provided by this agreement, this provision shall not expand Developer's responsibility to pay fees as limited by law.

B. As a condition to the execution of this agreement Developer shall pay to the Town all current charges accrued for the review and preparation of this Agreement, and the rezoning and preliminary and final plat for the Subdivision. Subsequent costs shall be payable to the Town within fifteen (15) business days of certification by the Town Clerk-Treasurer of the amounts thereof. If said fees are not paid by the Developer within the fifteen days provided, the Town shall place the amount, plus interest, on the Tax Roll as a special charge pursuant to Wisconsin Statutes sec. 66.60(16).

8. Miscellaneous Provisions. The Developer represents and agrees that as of the date of this Agreement:

A. It is the lawful owner and is now lawfully seized and possessed of the real estate to be improved;

B. It has attained any and all easements or rights of way necessary to gain access to the property or to provide drainage or utility easements from the property, with the exception of a drainage easement from CSM 621 which may be necessary, and which is referred to in Paragraph 3 herein.

C. It shall be financially responsible for its liability for all losses, claims, liabilities, expenses and costs arising from damages to property or injuries to person occurring in connection with the making of improvements, including any vicarious liability for its agents or assigns.

9. SPECIAL PROVISIONS:

A. Zoning. The development consists of approximately 114.6 acres and shall be zoned into the following Dane County Zoning Districts as shown on the Holland Fields Zoning Map attached hereto as Exhibit C, and subject to the provisions of this Agreement.

Area of District		
R-2	Residential District (Single family residences)	53.22 acres
R-3a	Residential District (Duplexes)	6.49
R-4	Residential District (Attached single family residences, multi-dwelling units)	18.13
RE-1	Parks (Public Parkland)	4.68
CO-1	Conservancy (Wetlands)	31.66
		114.18 acres

B. Density. The developed density of the subdivision has been reviewed by the Town Plan Commission and Town Board and has been determined to be in conformance with the maximum limits of 4 dwelling units per gross acre (total acres) and 6 dwelling units per gross residential acre (total acres less other uses and wetlands) as established by the Town's Comprehensive Plan.

-- The gross density permitted by the Plan is 456 dwelling units

-- The gross density of the residential area permitted by the Plan is 460 dwelling units

Notwithstanding the above permissible densities, unless subsequently amended and approved by the Town, Developer agrees to limit the maximum number of dwelling units that may be constructed on the subject realty to 410 dwelling units and the maximum

number of units on the lots as numbered on the Final Plat of Holland Fields shall be as follows:

			Intended Use	Max. Units
(1)	Lot 1	2.94 acres	Apartments	57 units
(2)	Lot 10	1.66 acres	Town homes	15 units
(3)	Lot 64	5.15 acres	Apartments	100 units
(4)	Lot 70	0.3 acres	Duplex	2 units
(5)	Lot 74	0.29 acres	Duplex	2 units
(6)	Lot 71	1.27 acres	Apart./Town homes	24 units
(7)	Lot 137	2.66 acres	Apartments	53 units
(8)	Lot 138	0.54 acres	4-plex	4 units
(9)	Lots 65, 66, 67, 68, 69, 91, 92, 93, 133, 134, 136, 139 and 140 shall be duplex lots, a total of 26 units.			26 units
(10)	All other lots, a total of 127, shall be detached single family units.			127 units
			TOTAL UNITS	410 units

C. Approved Uses and Setback Requirements

(1) R-2 District

(a) Approved Uses: All uses as permitted in the R-2 Residential District (Dane County Zoning). Minimum finished living space per dwelling unit shall not be less than 1,100 square feet for a single story house, and the main living areas of split level or raised ranches and 1,600 square feet for 2-story houses.

(b) Accessory Uses: All uses listed as accessory uses in the R-2 Residential District (Dane County Zoning).

(c) Area, Setbacks and Bulk Requirements: The setback and area requirement of the R-2 District shall be the minimums except as stipulated below.

Minimum Lot Area: 12,000 square feet.

Minimum Lot Width: 85 feet at the front setback line.
Exception: Cul-de-sac lots shall have a minimum width of 55 feet at the front setback line.

Front Setback: 30 feet from Street ROW.

Side Setback: 10 feet from the side property line.

Rear Setback: 30 feet from the rear property line.

Corner Lot: 30 feet from Street ROW.

Gray Road: 30 feet from Street ROW.

Wetland Setback: no Principal Building or accessory structure or accessory use shall be located closer than 25 feet from the Wetland Boundary Line.

Lot Coverage: No building, together with its accessory buildings and structures, shall cover in excess of 40% of the total lot area.

Front Yard and Corner Yard Coverage: No accessory buildings, structures or driveways shall cover more than 40% of the front yard, which is defined for purposes of this provision as the area between the Principal Building and the street right of way, ("ROW").

Side Yards Coverage: No part of the yard created by a side yard setback may be covered by buildings, structures or pavement, except for walkways and the area paved to permit a side-entry or rear entry garage.

Rear Yard Coverage: No accessory buildings structures or driveways shall cover more than 40% of the yard located between the rear of the Principal Building and the rear property line.

Garages: Each unit shall include an attached garage capable of serving a minimum of two cars and a maximum of three cars.

(2) R-3a District

(a) Approved Uses: All uses as permitted in the R-3a Residential District (Dane County Zoning). Minimum finished living space shall not be less that 1,100 square feet for a single family detached residence and 850 square feet per each single family attached unit.

(b) Accessory Uses: All uses listed as accessory uses in the R-3a Residential District (Dane County Zoning).

(c) Area, Setbacks and Bulk Requirements: The setback and area requirement of the R-3a District shall be the minimums except as

stipulated below.

Minimum Lot Area: 12,000 square feet.

Minimum Lot Width: 85 feet at the front setback line.

Front Setback: 30 feet from Street ROW.

Side Setback: 10 feet from the side property line.

Rear Setback: 30 feet from the rear property line.

Corner: 30 feet from Street ROW.

Gray Road: 30 feet from Street ROW.

Wetland Setback: No Principal Building or accessory structure or accessory use shall be located closer than 25 feet from the Wetland Boundary Line.

Lot Coverage: No Building, together with its accessory buildings and structures, shall cover in excess of 40% of the total lot area.

Front Yard and Corner Yard Coverage: If the Principal Building is a single family detached residence, no accessory buildings, structures or driveways shall cover more than 40% of the front yard, which is defined for purposes of this provision as the area between the Principal Building and the street ROW. If the Principal Building is a Duplex, no accessory buildings, structures or driveways shall cover more than 50% of the front yard.

Side Yards Coverages: No part of the yard created by a side yard setback may be covered by buildings, structures or pavement except for walkways and the area paved to permit a side-entry or rear entry garage.

Rear Yard Coverage: No accessory buildings structures or driveways shall cover more than 40% of the yard located between the rear of the Principal Building and the rear property line.

Garages: Each unit shall include an attached garage capable of serving a minimum of two cars.

(3) R-4 District

(a) Approved Uses: All uses as permitted in the R-4 Residential District (Dane County Zoning) except for single family detached residences. Minimum finished living space shall not be less than the following:

Lot #1	- studio	- 450 square feet
	- 1 bedroom	- 600 square feet
	- 2 bedroom	- 800 square feet
	- 3+ bedroom	- 900 square feet
Lot #10	- All	- 1000 square feet
Lot #64	- studio	- 450 square feet
	- 1 bedroom	- 600 square feet
	- 2 bedroom	- 800 square feet
	- 3+ bedroom	- 900 square feet
Lot #70	- duplex	- 900 square feet
Lot #71	- studio	- 450 square feet
	- 1 bedroom	- 600 square feet
	- 2 bedroom	- 800 square feet
	- 3+ bedroom	- 900 square feet
Lot #74	- duplex	- 900 square feet
Lot #137	- studio	- 450 square feet
	- 1 bedroom	- 600 square feet
	- 2 bedroom	- 800 square feet
	- 3+ bedroom	- 900 square feet
Lot #138	- 4-plex	- 900 square feet

(b) Accessory Uses: All uses listed as accessory uses in the R-4 Residential District (Dane County Zoning).

(c) Area, Setbacks and Bulk Requirements: The setback and area requirement of the R-4 District shall be the minimums except as stipulated below.

Minimum Lot Area: 2,000 square feet per dwelling unit.

Minimum Lot Width: 100 feet at the front setback line.

Setback from all property lines: All structures: 30 feet

Wetland Setback: No Principal Building or accessory structure or accessory use shall be located closer than 50 feet from the Wetland Boundary Line. Exception: Swimming pools and appurtenant patios

or decks may be located not closer than 25 feet from the Wetland Boundary Line.

Lot Coverage: No Building, together with its accessory buildings and structures, shall cover in excess of 60% of the total lot area.

Front Yard and Corner Yard Coverage: If the Principal Building is a single family detached residence, no accessory buildings structures or driveways shall cover more than 40% of the front yard, which is defined for purposes of this provision as the area between the Principal Building and the street ROW. If the Principal Building is a Duplex, no accessory buildings, structures or driveways shall cover more than 50% of the front yard. If the Principal Building is multi-unit then not more than 20% of the front yard shall be covered.

Side and Rear Yard Coverages: If the principal use of the lot is for apartments, condominiums or townhouses, side and rear yards may be used for accessory uses including parking areas and private recreation facilities provided that in no case shall such improvements be located closer than 10 feet from the side or rear property line and provided such uses do not violate minimum lot coverage standards of this section.

Landscaping, Screening: All open parking lots shall be screened from any property line by deciduous and coniferous landscape plantings to provide a minimum of 75% opacity for a visual buffer of the parking area from adjoining properties.

Parking Spaces: A minimum of 2 spaces per each unit. Except as otherwise provided, there shall be one enclosed parking space per unit. There shall be total parking spaces calculated as follows:

1 Bedroom studio	- 1.10/unit
1 Bedroom apartments	- 1.75/unit
2 or more bedroom apartments	- 2.20/unit

Owner occupied condominiums, townhouses or "zero lot line" residences shall have two enclosed parking spaces per dwelling unit. For any unit with a private garage and driveway, the driveway shall be included in the calculation for surface parking.

(d) Development Plan Review: The Town is granted and shall retain review powers over each and any R-4 lot within the subdivision. The

Town shall not issue any permit for construction on any R-4 lot unless and until the Town has reviewed and approved a Development Plan therefore. This power of approval shall pertain to issues of compatibility of uses with any adjoining lot or use, aesthetic quality of building and landscaping design, and impact of the proposed R-4 development on the surrounding neighborhood, which is defined for purposes of this agreement to include any parcel within 200 feet of the subject R-4 lot unless excluded by the Town at its sole discretion. This authority shall encompass the site plan, landscaping plan, management of storm water drainage, lighting, signage, building materials and exterior elevations, which together shall make up the Development Plan for the lot. The Town's approval shall not be unreasonably withheld. If the Town fails to act on a request for a Development Plan approval within 45 days of filing, the plan shall be irrevocably deemed approved. The plan shall be filed with the Town along with such application fee as established by the Town. The Development Plan shall be filed in a commercially reasonable and acceptable form and drawn at a scale not less than 1" to 50 feet, and shall include at a minimum: all elevations of building and description of materials and colors, locations of all buildings and accessory uses, landscape plantings and species, final grades and drainage engineering data if needed, lighting, signage, and public utilities located within the lot. The plan shall also include a site plan encompassing all of the surrounding neighborhood lots and the structures thereon. The Town may approve the plan conditioned upon the owners acceptance of modifications consistent with the Town's approval powers Approval of the Development Plan shall not constitute Town approval of building construction plans or the issuance of a Building Permit for the subject lot or buildings. No rights shall vest in the owner of any neighborhood lot or any other nor shall any duty exist on the part of the Town or the Developer to any other, as a result of this provision.

10. Parks and Conservancy Areas

A. Parkland Dedication: Developer shall improve and dedicate to the Town two park sites for public park and open space purposes. The sites are identified as Outlots 2 and 3 on the Final Plat and the total square footage identified thereon. Such dedication shall conform to Town ordinances concerning title, including sec. 4.4(a)(1).

B. Park Site Improvement:

(1) Outlot 2 shall remain in undisturbed wooded state to be subsequently

planned and improved by the Town.

(2) Outlot 3 shall be finish graded to a minimum 1% and maximum 2% slope with a minimum of 4 inches topsoil, fertilized (in conformance with the Restrictive Covenants for this subdivision) and seeded with "Madison Parks" grass seed mixture applied at recommended rates and which has been established in good growth condition for at least two months prior to transfer of title. Improvements shall be completed within 18 months of the recording of a final plat which includes lot 91, lot 64 or both. Acceptance of the condition of the park site shall be the decision of the Business Manager which acceptance shall not be unreasonably withheld. In addition, the developer shall improve this park area by installing playground equipment chosen by the town, not to exceed $20,000 for purchase and installation. This value limitation shall adjusted annually by a factor of 4% compounded.

(3) The developer shall improve the park at Outlot 3 and provide security for the same as required under section 5 above along with any phase which includes any of the following:

(a) Any part of Rembrandt Road north of Lot 96, and/or

(b) Any part of Zieder Zee Street north of the south west corner of lot 71, and/or

(c) Any part of any road northerly of either A or B above.

11. Wetland Conservancy: Developer shall dedicate at no cost to the Town a conservancy area as designated on the attached Final Plat. The Town shall accept the dedication and perpetually own and maintain the area as a wetland conservancy area open to the public, except as provided herein:

A. Those areas within the dedicated conservancy may be used by the Town in any manner permitted by law.

B. Subject to the approval of other governmental bodies, the Developer may improve limited parts thereof for purposes of storm water management and/or wetlands enhancement prior to or after dedication to the Town. Such improvements shall be approved by the Town as part of the public facility requirements of plat approval.

C. In the event the Town should abandon or discontinue use of the property as a wetland conservancy, the property shall revert to a not for profit entity, mutually selected by the Developer and the Town, for purposes of owning and maintaining the area as a nature preserve.

D. The Town shall maintain the Wetland Conservancy by employing and applying reasonable standards of husbandry, reasonably calculated to maintain the area as an open wetland area except for park and bicycle path potentials. The Town's husbandry shall not be subject to review except for gross mismanagement which threatens the area's utility as a wetland.

E. Other Conservancy Improvements and Preservation: Developer shall improve the conservancy area, as follows:

1. Developer shall, withing five (5) years of recording the final plat, improve the upland area (approximately 2 acres) by building a covered rest area of not less than 400 square feet. The construction costs therefore are estimated at $20,000.00

2. Developer shall, within five (5) years of recording the final plat and to the extent permitted by law, build an observation deck within the conservancy area. The deck shall be handicapped accessible from within 10' thereof and not less than 144' square feet in area. (12' x 12' square; 13 ½' diameter circle) The estimated cost therefore is $25,000.00.

3. The upland area within the conservancy shall not now or in the future be reseeded except to the extent necessary to repair damage to the existing ecology.

4. Developer or its successor shall provide a permanent easement for purposes of ingress and egress into the conservancy area across lot No. 1. The exact description thereof shall be set by the Developer or its successor prior to commencing construction on lot 1.

5. Any pathway into the conservancy area shall be reasonably maintained by the Town.

6. The Developer shall have and retain an easement over any and all Outlots for the purpose of performing the improvements required under this agreement. Developer's sole responsibilities in the exercise of the easement rights shall be to reasonably restore the lands to their pre-existing condition prior to entry.

7. The estimated costs at paragraphs 1 and 2 above are estimates only. The developer's obligation to construct the improvements set forth in paragraphs 1 and 2, above, relate to the specific improvements described therein. Developer shall construct the improvements set forth in paragraphs 1 and 2, above, regardless of whether the construction costs at the time of construction are less than or more than the good faith estimates set forth herein.

12. Street Trees: Developer shall provide for street trees for every 50 lineal feet of street frontage per Town Ordinance. The Town shall determine the location and species of trees to be planted within fifteen (15) days of filing request for approval of a phase as an Addendum to the original Development Agreement. As a condition for approval of a final plat, the Developer shall deposit with the Town cash sufficient for the Town to purchase and plant such trees. The cash deposit shall be established at the time of each phase approval by determining the lowest cost available for purchase and planting by mutually acceptable contractors. The Town shall arrange for the installation of street trees within 24 months of the completion and acceptance of the public improvements in the final plat.

13. Temporary Cul-de-sacs: Developer shall construct temporary cul-de-sacs at the terminus of each dead-end street contained within any phase. Except as provided herein, such cul-de-sac shall be constructed in accordance with the requirements of the Town Subdivision Ordinance and shall be located entirely within the final plat. Unless required for storm water management such temporary cul-de-sac does not require curb and gutter around its circumference. Developer shall dedicate such easements necessary to accommodate the cul-de-sac and the security provided to the Town under paragraph 5 above shall secure the removal of excess pavement and construction of curb and gutter upon the extension of the street at a future date. The temporary cul-de-sac does not preclude Developer's obligation to extend all public utilities to the border of the final plat.

A. "T" turn-arounds permitted: At the developers option, a "T" turn-around may be constructed in lieu of a temporary cul-de-sac. Such turn-around shall have a paved leg at least 20 feet in width and extending at least 30 feet beyond the lefthand curb line. The intersection of the turn-around shall have not less than a 15 foot corner radius. Such turn-around shall be constructed according to standards required in the Town Subdivision Ordinance. Developer shall provide appropriate easements for the turn-around and to permit adequate area for the deposition of snow by the Town.

B. Developer is permitted to not construct improvements for the portion of Low Countries Road east of Rembrandt Road and that portion of Johann De Witte Road north of Hague Court as part of the required improvements of the respective phase provided that Developer deposits with the Town sufficient monies to be held in escrow for the Town to construct such improvements in the future.

C. Notwithstanding the foregoing the Developer may at any time elect to pay to the town a sum at the time sufficient to extend or complete construction of improvements to the subdivision limits and satisfactory to the Town, at which time the Developer's obligation to extend or complete the construction shall terminate and any future costs of construction shall be borne by the Town.

14. Driveways:

A. In order to accommodate the deposition of snow during snow plowing situations, effective location of fire hydrants, and the reservation of vision triangles for traffic safety, it is necessary to restrict driveways and other improvements such as mailbox locations from certain specific locations. Developer shall establish such restrictions which shall be shown on the face of each final plat and recorded as a part of the restrictions and covenants of the subdivision and shall be submitted to the town for approval, which shall not be unreasonably withheld.

B. Developer is hereby permitted to make driveway cuts into curbs to provide access to each lot. That portion of a driveway constructed within the public ROW shall not exceed a slope of 8%. Developer and/or lot owner shall be responsible for repair of any damage to the curb and gutter resulting from any driveway cut or due to ingress and egress of construction vehicles.

C. No driveway access is permitted onto Gray Road except from Lot 1 which may have a maximum of 2 access drives, which restriction shall appear on the face of the final plat.

15. Public Improvements Required.

A. In addition to the terms of this agreement, Developer shall comply in all respects with the requirements of the Windsor Subdivision Ordinance.

B. Gray Road ROW and Reconstruction. Developer agrees that its development may have an impact on vehicular traffic on Gray Road and that it is the intention of the Town that in the future Gray Road may be improved and widened to accommodate future traffic volumes. Developer shall dedicate 50 feet of right of way measured from the existing center line of the Gray Road to accommodate future improvements which the Town may choose to complete. As part of the public improvements for this subdivision, Developer shall improve the intersections of Gray Road with both Rembrandt Road and Old Amsterdam Road per the approved plans.

C. Curb and gutter is required along both sides of all public streets included in or adjoining this subdivision, except for Gray Road and cul-de-sacs.

D. Sidewalks are required on both sides of all streets within the subdivision except Gray Road. Walks shall be ramped at curb crossings and extend to the road pavement in compliance with ADA requirements. Developer and/or lot owner shall be responsible for repair of any damage to the sidewalk resulting from ingress and egress of construction vehicles.

E. Developer is required to provide and install all traffic control signs and pavement markings including but not limited to: stop signs, crosswalk striping and no parking

restrictions, per WISDOT uniform manual of traffic control. Developer shall also provide and install all street name signs.

15.(a) Gray Road Water Main. It is necessary to construct a water main in the Gray Road right of way to provide public water service to the Subject Realty. Public water shall be provided to the Subject Realty via a public water main in the Gray Road right of way designed, constructed and installed by Windsor Sanitary District No. 1, with funding provided by the Town of Windsor. The parties agree that the Developer's pro rata share for the water main shall be computed in accordance with the methodology set fort in Schedule A to the First Amendment to January 21, 1999 Intermunicipal Cooperation Agreement between the Town and Windsor Sanitary District No. 1 as dated April 30, 1999. The preconstruction estimate of Developer's share of said costs, exclusive of engineering and inspection costs, was $67,226. Developer's final cost shall be in the same proportion to the total construction costs as was its pro rata share of the preconstruction costs set forth on the said Schedule A. Developer shall pay said pro rata share prior to commencement of construction in the Subject Realty. In the event that commencement of construction occurs later than November 15, 1999, the Developer's pro rata share shall bear interest at 1% per annum (simple rate) over the Town's actual interest rate on its loan to finance the Gray Road water main. To the extent legally necessary, the Town releases Developer from any obligation to construct the Gray Road water main itself.

16. Entryway Landscaping. Developer may install and shall maintain any special landscaping or other special or unique amenity (including sculptures, decorative walls or fences and subdivision signage) at each of the Gray Road entryways into the subdivision provided such landscaping or amenity does not obstruct any traffic "vision triangle" (defined by the hypotenuse line connecting points on each road's centerline that are 150 feet from the intersection of both centerlines).

17. Utility District. Developer shall not object to the creation of a Town Utility District. Such District shall be co-terminus with the boundary of the subdivision and shall be utilized by the Town for collecting revenues for providing, *inter alia,* street light operations and repairs and wetland detention basin maintenance, as determined by the Town and not paid by the Town's general property tax levy.

18. Fees and Land Dedications. Developer shall provide to the Town the fees and land dedications as legally required by the Town. The agreements and stipulations stated herein represents the Developer's complete and total obligation for contribution of fees and land except for those as may in the future be mandated by county, state or federal requirements and those as may be required by a separate and binding agreement between the Developer and the Windsor Sanitary District Number One.

19. No Waiver. Except as expressly provided herein, nothing set forth in this agreement shall be construed as, nor is intended to be, a waiver or release of any obligations

imposed upon the Developer by the Town's Land Division and Subdivision Ordinances or other Town Ordinances or regulations and requirements promulgated by Dane County, the State of Wisconsin, or other government of competent jurisdiction.

20. Amendment. The parties may amend this contract only by express mutual written agreement.

21. Assignment. This agreement shall not be assigned by any party without the express written approval of the other party, which approval shall not be unreasonably withheld, except that Developer may transfer to another entity subject to similar control (50% or greater control by the same control group at the time of transfer).

22. Binding Effect. This agreement shall be binding upon the parties, upon their personal representatives and heirs, and upon the successors and assigns of the parties.

23. Delegation of Authority. Wherever it is provided herein that a matter is subject to Town approval it shall be deemed for purposes of this agreement that such approval may be given by the Town's Business Manager and any such approval may be relied upon by the Developer. To the extent required, approval of this contract by the Town or any appropriate Town committee shall constitute the necessary delegation of authority to permit such action by the Business Manager. This provision shall not affect any matter which may not be legally delegated by the Town.

24. Costs of Enforcement. Notwithstanding any provision herein to the contrary, the prevailing party shall be reimbursed for all reasonable costs, including reasonable attorneys fees, incurred in enforcing this agreement against the other.

25. No Private Cause of Action. Nothing herein shall be construed as giving any person or entity not a party to this agreement a right of action either under or derivative from this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the 1st day of July, 1999.

WINDSOR DEVELOPMENT CORPORATION

By: _____
John R. DeWitt, President

TOWN OF WINDSOR

By: _____
Alan J. Harvey, Town Chair

Attest:

Attest:

_____

(name)

~~Cheryl L. Theis~~ JAMES BRICKER

Dep. Town Clerk-Treasurer

Exhibit C

Foth

Staff Report

TO:	Town of Windsor Plan Commission
CC:	Robert Wipperfurth, Chairman Tina Butteris, Office Manager Amy Anderson Schweppe, Planning & Development Coordinator Kevin Richardson, Engineer Constance Anderson, Attorney
FROM:	Jamie Rybarczyk, Planning Consultant
RPT DATE:	July 01, 2014
MTG DATE:	July 15, 2014
FOTH FILE:	13W027.01/16
RE:	**Windsor Apartments – Site Plan Review**

BACKGROUND:

1. Petitioner/Property Owner: John DeWitt (d.b.a. Windsor Development Corporation)
2. Agent: Scott Anderson, P.E. (d.b.a. Snyder & Associates, Inc.)
3. Location/Address: Lot 137 of Holland Fields
4. Taxkey Number: 0910-203-6579-0
5. Area: 2.66 AC
6. Existing Zoning: R-4, Residential District
7. Proposed Zoning: N/A
8. Future Land Use: Mixed Residential/Traditional Single Family Residential

OVERVIEW:

The petitioner is requesting a Site Plan Review for Lot 137 of the Holland Fields Plat. The petitioner is proposing a 3-story, 53-unit apartment building with a mix of studio, one bedroom, and two-bedroom units targeted to young professionals and empty nesters. The building will include underground parking and an elevator servicing all floors. Several of the units will include front walk-in accessibility. The estimated construction cost is $6,000,000 (or just over $113,000 on average per unit).

PLANNING COMMENTS:

Staff has the following planning comments regarding the proposed Site Plan Review for Windsor Apartments:

Development Agreement - The Development Agreement for the Holland Fields Plat, dated June 18, 1999, includes a series of special provisions for Lot 137. Upon review of the Development Agreement, the following special provisions have not been addressed:

1. All open parking lots are to be screened from any property line by deciduous and coniferous landscape plantings to provide a minimum of 75% opacity for a visual buffer from adjoining properties. The Landscape Plan provided by the petitioner includes only a few deciduous trees around the perimeter of the surface parking area which does not satisfy this requirement. (Note: The Northern Red Oak is labeled as QR on the plan, but AR in the plant schedule.)
2. A total of 97 parking spaces are required (1.10 per studio, 1.75 per one bedroom, and 2.20 per two-bedroom unit. The Site Plan provides 54 underground parking spaces and 37 surface parking spaces for a total of 91 spaces; in addition, the calculations depicted on the Site Plan show 0 spaces provided for the 8 studio units.

Site Plan Review for Commercial, Industrial, Governmental and Multi-Family Developments – Chapter 10, Article IX of the Town of Windsor Code of Ordinances includes design standards (i.e. grading, landscaping, building design, building relationship, lighting, etc.) for multi-family developments. Upon review of the Chapter 10, Article IX, the following design standard has not been addressed:

1. Architectural Elevations – Section 10.527, Building Design, requires building facades visible from public streets shall be designed to have no more than 50 feet in length that is unbroken by changes in colors, materials, wall heights, architectural details, or window placements. The proposed architectural elevations (north and south) are 66 feet in length, but consist of a single unbroken surface of the same material. These elevations should include additional architectural detail through changes in colors, materials, wall heights, or architectural details. It is the opinion of Staff that window placement alone is not sufficient enough to address the intent of this provision.

   The proposed architectural elevations include a significant amount of variation and detail; however, Staff offers the following suggestions regarding the building's exterior. Though the architectural elevations include limited material variation, the painted fiber-cement shingle pattern siding dominates the elevations. Some of the projecting /recessed bays may be considered for a change in material to add additional variety and a greater sense of scale. Alternately material changes could further help define the building's base, middle, and top composition, adding scale to the building's height/massing.

2. Architectural Floor Plans – The unit sizes exceed the minimum requirements identified in the Development Agreement. It is unclear; however, how the mezzanine depicted on the building section (A3.01) is accessed from the third floor units as no internal staircases are indicated on the floor plans.

ENGINEERING COMMENTS:

Staff has the following engineer comments regarding the proposed Site Plan Review for Windsor Apartments:

1. The Grading Plan (C3.00), Erosion Control Plan (C3.10), and Landscape Plan (C7.00) depict the parking lot and landscaping encroaching on the public storm water management easement and drainage ditch. In addition, the Grading Plan (C3.00) and Erosion Control Plan (C3.10) propose altering (or rerouting) the drainage ditch from its current. It is uncertain if the proposed cross-section of the drainage ditch is capable of handling storm water flow without causing flooding upstream of Lot 137. Furthermore, the drainage ditch slopes are engineered steeper which may increase the possibility of erosion along the drainage ditch and the edge of the parking lot.

STAFF RECOMMENDATION:

Depending on confirmation by the Town of Windsor Plan Commission of the above described comments, the Town of Windsor Plan Commission may take the following action:

The Town of Windsor Plan Commission recommends to the Town of Windsor Board **Conditional Approval** of the Site Plan Review for John DeWitt (d.b.a. Windsor Development Corporation) located on Lot 137 of the Holland Fields Plat, subject to the following conditions:

1. The petitioner shall address the technical comments set forth in the Planning Comments section of this Staff Report to the satisfaction of the Town Planner including:

   a. The petitioner providing additional deciduous and coniferous landscape plantings for a visual buffer (75% opacity) screening the surface parking lot from adjoining properties per the Holland Fields Development Agreement.

   b. The petitioner providing a total of 43 off-street surface parking spaces (in addition to the proposed 54 underground parking spaces) to meet the requirements of the Holland Fields Development Agreement.

   c. The petitioner providing vertical break through changes in colors, materials, wall heights, or architectural details on the north and south architecture elevations to address the requirement of Chapter 10, Article

IX of the Town of Windsor Code of Ordinances which limits uninterrupted façades to a maximum of 50 feet in length.

d. The petitioner incorporating a greater material variety (or less of the shingle style material) in the architectural elevations to add variety to the building projections/recesses or to further accentuate the building's base/middle/top composition.

e. The petitioner revising the 3rd floor plans to include stairways to the mezzanine level.

2. The petitioner shall address the technical comments set forth in the Engineering Comments section of this Staff Report to the satisfaction of the Town Engineer.

3. The petitioner shall obtain approval of an Erosion & Sedimentation Control Plan and Stormwater Management Plan by the Town of Windsor, Dane County, and the Wisconsin Department of Natural Resources (WDNR).

4. The petitioner shall submit a Stormwater Management Agreement, in a form satisfactory to the Town Board, Attorney and Engineer, for all stormwater management facilities.

5. The petitioner shall construct the apartment building and all public and private improvements in accordance with Federal, State, County and local ordinances, licenses and permits.

6. The petitioner shall provide letters of no objection to the Town regarding the proposed development from the following entities:

   a. DeForest Area Fire & EMS

   b. Windsor Sanitary District No. 1 (Note: the Town received an email from Jeff Bartosiak dated June 10, 2014 stating the WSD#1 has available capacity and has no concerns with the project)

   c. DeForest Area School District (Note: the Town received an email from Diane Pertzborn on June 30, 2014 stating "no objections")

7. The petitioner shall obtain all required licenses / permits needed to construct the apartment building, and documentation of said licenses / permits shall be provided to the Town prior to commencement of work. This includes a copy of the State approved Construction Plans.

8. The petitioner has reimbursed the Town of Windsor for all costs and expenses incurred by Windsor in connection with the review and approval of the CSM, including, but not limited to, the cost of professional services incurred by the Town of Windsor for the review and preparation of required documents, attendance at meetings or other related professional services.

COMPREHENSIVE PLAN CONSISTENCY:

The Future Land Use Plan Map shows Lot 137 of Holland Fields as a combination of Mixed Residential and Traditional Single Family Residential. The Town is currently updating the Comprehensive Plan and Lot 137 is intended to be planned for Mixed Residential making it consistent with the proposed development.

ZONING ORDINANCE CONSISTENCY:

The proposed development is consistent with Dane County Zoning Ordinance.

BUILDINGS AND BUILDING REGULATIONS CONSISTENCY:

Excluding the planning comments above, the proposed development is consistent with Chapter 10, Article IX of the Town of Windsor Code of Ordinances.

EXHIBITS:

A. DCiMap

B. Construction Plan Set (only hard copy available at meeting)

C. Project Summary

D. Lighting Specifications

E. Application

F. Development Agreement

Holland Fields, Lot 137

This map was prepared by the Dane County Land Information Office from records and data located in various public offices. Map information is believed to be accurate but is not guaranteed to be without error. Source data used to compile this map is dynamic and in a constant state of maintenance, correction and update. This map does not represent a field survey and is not intended to be used as one. For general cartographic and reference purposes only.

N

0 70 140 280 420 Feet

Locator Map

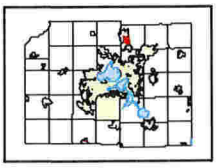

EXHIBIT D
EXCERPT* FROM DANE COUNTY ZONING ORDINANCE
As of July 16, 2014

10.08 R-4 RESIDENCE DISTRICT.

(1) *Permitted uses.*

(a) All uses permitted in the R-3A Residence District.

(b) Multiple family dwellings, condominiums.

(c) Community living arrangements for from nine (9) to fifteen (15) persons.

(2) *Conditional uses permitted in the R-4 Residence District.* **(**

a) All conditional uses permitted in the R-1 Residence District, except community living arrangements for from nine (9) to fifteen (15) persons.

(b) Nursing homes, extended care facilities, hospitals, medical clinics, veterinary clinics, professional offices, community living arrangements for more than fifteen (15) persons.

(c) Mobile home parks subject to special conditions as provided for in section 10.08(10).

(3) *Building height limit.*

(a) Single family and duplex dwellings, two and one-half (2-½) stories or 35 feet.

(b) Multiple family dwellings, 4 stories.

(c) Accessory buildings shall not exceed twelve (12) feet in height.

(4) *Lot width and area.*

(a) Unsewered lots for single family, duplex dwellings and multiple family dwellings shall be not less than 100 feet in width at the building setback line and have an area of not less than 20,000 square feet.

(b) Sewered lots.

1. Lots for single family and duplex dwelling units shall be the same as the R-3A Residence District.

2. Lots for multiple family dwellings shall be not less than 60 feet in width at the building setback line and have an area of not less than 8,000 square feet.

10.071(5) – 10.08(7)(b)

(5) *Lot area and coverage.*

(a) For single family and duplex dwellings the *lot coverage* shall be the same as for R-3A Residence District.

(b) Unsewered lots for multiple family dwellings shall provide a minimum of 5,000 square feet of lot area for each dwelling unit.

(c) Sewered lots for multiple family dwellings shall provide a minimum of 2,000 square feet of lot area for each efficiency, one bedroom and two bedroom dwelling unit and a minimum of 2,250 square feet of lot area for each three bedroom or more dwelling units. If a building contains a mixture of efficiency, one and two bedroom and three or more bedroom dwelling units the lot area requirements shall be pro-rated. In computing lot areas for multiple family dwelling complexes, private roads, driveways, parking areas, recreational areas common to all of the buildings in the complex shall be considered as part of the total area of the complex.

(6) *Setback and front yard requirements.*

(a) Setback from both the front lot line and any road right-of-way lines shall conform to the requirements of section 10.17 of this ordinance.

(b) Private roads or driveways within a multiple family dwelling complex shall not be considered a road for determining setback.

(c) Multiple family dwelling buildings located in the interior of a complex shall provide a front yard of not less than 15 feet, each building shall be provided with its own front yard area irrespective of the yards required for other buildings.

(7) *Side yard requirements.*

(a) For single family and duplex buildings the side yards shall be a minimum of 10 feet on each side.

(b) Multiple family dwelling buildings shall adhere to the following requirements:

1. Buildings which are 2 stories or less in height shall have a minimum 10 foot side yard on each side of the building.

2. Buildings which are more than 2 stories in height shall have side yards as follows:

a. If the side of a building does not include any windows for apartment dwellings a minimum side yard of 10 feet on that side is required.

b. If the side of a building does include windows for apartment dwellings an additional 5 feet of side yard for each story over 2 stories is required on that side.

3. Buildings located within a complex shall each be provided with their own side yard areas irrespective of the yards required for other buildings.

(8) *Rear yard.*

(a) For single family dwellings and duplex buildings the rear yards shall be a minimum of 25 feet.

(b) For multiple family dwellings not exceeding 2 stories the rear yard shall be not less than 25 feet. For buildings exceeding 2 stories, the rear yard shall be increased by 5 feet for each story over 2 stories.

(9) *Off-street parking.* Off-street parking shall be provided as required in section 10.18.

**See Dane County's Planning and Development website for full Zoning Ordinance.*