

**VILLAGE OF WINDSOR
BOARD RESOLUTION 2016-03**

**CONSIDERATION OF EXTENSION REQUESTED BY
DEWITT REAL ESTATE DEVELOPMENT
(LOT 137, HOLLAND FIELDS, VILLAGE OF WINDSOR)**

WHEREAS, on December 18, 2014, by a vote of 3-2, the Town Board of the Town of Windsor approved Town Board Resolution 2014-75 Recommending Approval of the Site Plan for Lot 137 of the Plat of Holland Fields in the Town of Windsor, Dane County, Wisconsin, a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, on January 27, 2015, by email from Developer to Windsor staff, Windsor was advised that Developer had many steps prior to proceeding and that staff was not to spend any time or money on the project until Developer advised that the project was ready to proceed; and

WHEREAS, Town Board Resolution 2014-75 sets forth requirements that must be met prior to issuance of a building permit for the project and states that the approval expires 12 months from the date of approval, which would be on or about December 17, 2015; and

WHEREAS, on November 9, 2015, following a town-wide referendum where 1817 electors voted for a village and 57 voted against, the Town of Windsor incorporated and became a village under the laws of the State of Wisconsin; and

WHEREAS, on or about December 14, 2015, the Village of Windsor ("Windsor") received an email from John DeWitt dba Windsor Development Corporation ("Developer") requesting an extension of the approval granted by Town Board Resolution 2014-75; and

WHEREAS, the Windsor Village Attorney responded to Developer with the letter attached hereto as **Exhibit B** and incorporated by reference; and

WHEREAS, the Developer submitted an explanatory letter to Windsor which is attached hereto as **Exhibit C** and incorporated herein by reference; and

WHEREAS, the Village Board has considered information provided when Town Board Resolution 2014-75 was approved, Exhibits A, B and C attached hereto, staff recommendations and discussions at the Village Board meeting on January 21, 2016, and hereby takes the actions set forth herein.

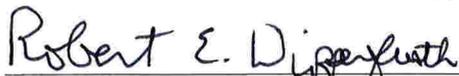
NOW, THEREFORE, BE IT RESOLVED by the Village Board of the Village of Windsor as follows:

1. The site plan approval set forth in Town Board Resolution 2014-75 has expired by its own terms.

2. An extension of Town Board Resolution 2014-75 is not granted, and the Developer's request is denied.
3. Current ordinances do not provide a mechanism for extension of site plan approvals, and thus an extension would not be consistent with current ordinances.
4. Extension would be against the public health, safety and general welfare for a number of reasons including that it does not allow for community input or participation by the newly appointed Plan Commission and Village Board. This is particularly important here because of the intervening change in authority and responsibility as a result of the incorporation of the Village of Windsor.
5. The Village Board recommends that the Developer submit a request for site plan review no more than twelve months prior to the date that the Developer intends to obtain a building permit.

The above and foregoing Resolution was duly adopted at a meeting of the Village Board of the Village of Windsor on the 21st day of January, 2016, by a vote of 5 in favor and 0 opposed.

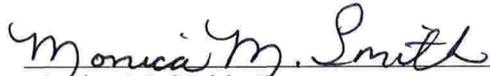
VILLAGE OF WINDSOR



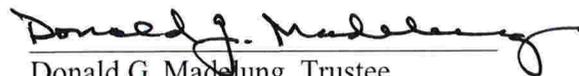
Robert E. Wipperfurth, President



Bruce Stravinski, Trustee



Monica M. Smith, Trustee



Donald G. Madelung, Trustee



Alan Buchner, Trustee

Attested to by:



Tina Butteris, Deputy Village Clerk

Incorporated by Reference:

Exhibit A. Town Board Resolution 2014-75

Exhibit B. Village Attorney Letter to Developer dated December 16, 2015

Exhibit C. Developer Letter to Windsor dated January 5, 2016

EXHIBIT A TO VB RES 2016-03

**TOWN OF WINDSOR
TOWN BOARD RESOLUTION 2014-75**

**RESOLUTION RECOMMENDING APPROVAL OF THE SITE PLAN FOR LOT 137
OF THE PLAT OF HOLLAND FIELDS
IN THE TOWN OF WINDSOR, DANE COUNTY, WISCONSIN**

WHEREAS, John DeWitt dba Windsor Development Corporation (“Petitioner” or “Developer”), by his agent, Scott Anderson, P.E. and Snyder & Associates, Inc., submitted a Site Plan dated August 29, 2014 (“Site Plan”) for the development of Lot 137 of the Plat of Holland Fields (“Windsor Apartments”); and

WHEREAS, the Town Board has reviewed the Site Plan, the December 10, 2014 Staff Report prepared by the Town Planner, information provided by the Developer, Town staff and Town residents, and the recommendations reported by the Plan Commission as set forth in the minutes of the November 18, 2014 meeting, and is fully apprised of the residents’ concerns, the divided response and recommendation from the Plan Commission and the legal issues associated with the Windsor Apartments project; and

WHEREAS, following deliberation and consideration of a range of perspectives, the Town Board has concluded that conditional approval of the August 29, 2014 Site Plan is preferable to the alternatives, and hereby approves subject to the conditions as set forth in this Resolution.

NOW, THEREFORE, the Town Board of the Town of Windsor hereby resolves as follows:

- A. The Town of Windsor **conditionally approves** the August 29, 2014 Site Plan for John DeWitt dba Windsor Development Corporation (“Developer”) to develop Lot 137 of the Holland Fields Plat (“Windsor Apartments”), subject to each and all of the following conditions:
1. The Developer shall develop the Windsor Apartments in accordance with the August 29, 2014 Site Plan, except as modified by these conditions.
 2. The Developer shall address the technical comments set forth in the Planning Comments section of the December 10, 2014 Staff Report to the satisfaction of the Town Planner, including changing the building’s exterior and the landscaping and screening in accordance with the Town Planner’s suggestions.
 3. The Developer shall address the technical comments set forth in the Engineering Comments section of the December 10, 2014 Staff Report to the satisfaction of the Town Engineer.

4. The Developer 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).
5. The Developer shall submit a Stormwater Management Agreement, in a form satisfactory to the Town Board, Attorney and Engineer, for all stormwater management facilities.
6. The Developer shall execute, and the Town shall record, a deed restriction requiring that an appropriate professional management company manage the property. The deed restriction shall be prepared and recorded by the Town Attorney, at the Developer's expense, and shall be in a form satisfactory to the Town Attorney and Town Finance Director.
7. The Developer shall submit to the Town written approval of the building by the Architectural Control Committee, as required by the Restrictive Covenants for Lot 137.
8. The Developer shall construct the apartment building and all public and private improvements in accordance with Federal, State, County and local ordinances, licenses and permits.
9. The Developer 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.
10. The Developer shall comply with Division 8 *Fees, Administrative Charges and Financial Guarantees* of Article IV of Chapter 38 of the Town of Windsor Code of Ordinances, which is specifically incorporated by reference to apply to the Windsor Apartments project for the purpose of guaranteeing the timely payment of all of the Town's charges and fees. The Escrow Deposit set forth in Sec. 38-309 shall be set at \$5,000.00 which amount shall be maintained through issuance of an occupancy permit for Windsor Apartments.
11. The Developer shall promptly¹ reimburse the Town of Windsor for all costs and expenses incurred by Windsor in connection with the review, approval and monitoring of the Windsor Apartments project, 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.
12. The Developer shall not assign any rights or obligations under this Resolution without first obtaining approval of the Town Board.

¹ As used herein, "promptly" means within 45 days from the date of the Town's invoice to the Petitioners.

13. THE TOWN OF WINDSOR SHALL NOT ISSUE A BUILDING PERMIT UNTIL EACH AND ALL OF THE CONDITIONS SET FORTH ABOVE HAVE BEEN MET TO THE TOWN'S SATISFACTION.

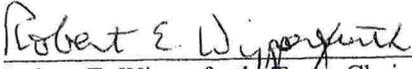
- B. It is the Developer's obligation to satisfy those conditions adopted by the Town Board, and to provide satisfactory verification of compliance to the Town. All submissions to the Town for determinations of compliance shall be made at least ten (10) business days prior to the date upon which verification of compliance is required.
- C. This Resolution, and the conditional approval contained herein, shall expire unless a building permit has been issued within 12 months of the date of approval of this Resolution.
- D. From the date of issuance of the building permit forward, the timeframe established by Sec. 10-70 of Division 2 *Permits and Plans* of Article II of Chapter 10 of the Town of Windsor Code of Ordinances shall apply. Note the following excerpt from Sec. 10-70:

Sec. 10-70. - Duration of permit; lapses.

Permits issued under this chapter shall lapse and be void unless construction or work thereunder has commenced within six months, or if construction has not been completed within 15 months, from the date of issuance. Construction has commenced if the footings or foundation has been excavated to a point where footings or foundation work can begin.

The above and foregoing Resolution was approved by the Town Board of the Town of Windsor on December 18, 2014, by a vote of 3 for, 2 against and no abstentions.

TOWN OF WINDSOR


Robert E. Wipperfurth, Town Chair

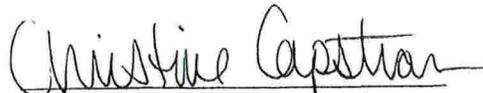

Donald G. Madelung, Town Supervisor

Against
Bruce Stravinski, Town Supervisor


Alan Buchner, Town Supervisor

Against
Monica M. Smith, Town Supervisor

Attested by:


Christine Capstran, Town Clerk

Documents incorporated by reference:
Site Plan Dated August 29, 2014
Staff Report Dated December 10, 2014



Staff Review

TO: Town of Windsor Board

CC: Robert Wipperfurth, Chairman
Tina Butteris, Office Manager
Amy Anderson Schweppe, Planning & Development Coordinator
Kevin Anderson, Engineer
Connie Anderson, Attorney

FROM: Jamie Rybarczyk, Planning Consultant

RPT DATE: December 10, 2014

MTG DATE: December 18, 2014

APRVL DATE: N/A

FOTH FILE: 13W027.01/16

RE: Windsor Apartments – Site Plan Review

BACKGROUND:

1. Developer/Agent: John DeWitt (dba Windsor Development Corporation)
2. Property Owner: John DeWitt (dba Windsor Development Corporation)
3. Location/Address: Lot 137 of Holland Fields
4. Taxkey Number: 0910-203-6579-0
5. Area: 2.66 acres
6. Existing Zoning: R-4, Residential District
7. Proposed Zoning: N/A
8. Future Land Use: Mixed Residential/Traditional Single Family Residential

OVERVIEW:

The Developer is requesting a Site Plan Review for Lot 137 of the Holland Fields Plat. The Developer 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).

PLANNER COMMENTS:

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

1999 Development Agreement - The Development Agreement for the Holland Fields Plat, dated June 18, 1999, includes several provisions for Lot 137. Upon review of the August 29, 2014 submittal, the Windsor Apartments development complies with the provisions of the Development Agreement regarding zoning; density; approved uses; area, setback and bulk requirements; landscaping and screening; and parking spaces.

Site Plan Review for Commercial, Industrial, Governmental and Multi-Family Developments – Chapter 10, Article IX, Division 3 of the Town of Windsor Code of Ordinances, identifies design standards for commercial, industrial, governmental and multi-family developments (i.e. grading, landscaping, building design, building relationship, lighting, etc.).

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Staff Review

Section 10.527, Building Design, requires that building facades visible from public streets shall be designed to have no more than fifty (50) feet in length that is unbroken by changes in colors, materials, wall heights, architectural details, or window placements. The proposed architectural elevations included some material variation and detail; however, it is the opinion of Town Staff that the painted fiber-cement shingle pattern siding dominates the architectural elevations. Some of the projecting/recessed bays may be considered for a change in material type. Altering material types in key areas of the architectural elevations and modifying the roof pitch of the proposed building could further help define the building's scale and massing making it more compatible with the surrounding neighborhood.

ENGINEER COMMENTS:

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

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 location. The applicant has provided additional information regarding armoring the ditch to avoid erosion and also calculations for stormwater flow through the cross-section of the ditch. Details regarding the pond used to treat water retained on-site have also been provided. There is a preliminary determination by the Dane County Land Conservation which states that the Developer appears to comply with Dane County standards; however, it is not an approval letter. Windsor will require an approval letter before erosion control and storm water facilities are approved by Town staff.

TOWN POLICY CONCERNS:

Upon review of the August 29, 2014 submittal, the Windsor Apartments development complies with the "technical" requirements of the 1999 Development Agreement, as well as, Chapter 10, Article IX, Division 3 of the Town of Windsor Code of Ordinances (*Site Plan Review for Commercial, Industrial, Governmental and Multi-Family Developments*). Ultimately, whether the 53-unit apartment building complies with the "compatibility" requirements of the 1999 Development Agreement and Chapter 10, Article IX, Division 3 of the Town of Windsor Code of Ordinances is a Town policy matter relating to the subjective nature in determining "compatibility" of a development within a surrounding context. As mentioned in the Planner Comments, it is the opinion of Town Staff that the Town Plan Commission and Board may consider the building design; building facades (i.e. materials, colors); building elevations; building scale and massing and style; and integration with the surrounding neighborhood (i.e. sidewalks, lighting, landscaping) in determining "compatibility".

On November 18, 2014 the Town Plan Commission discussed the Windsor Apartments development. As directed by the Town Board, the focus of the discussion was on "compatibility". The Town Plan Commission discussion resulted in a 3-3 split vote. The enclosed meeting minutes depict that the Town Plan Commission was unable to provide the Town Board with a recommendation. The Windsor Apartments development has been sent to the Town Board with a 3-3 split vote and specific comments from each Plan Commission Member regarding their opinion of the proposed development.

STAFF RECOMMENDATION:

Depending on confirmation by the Town of Windsor Board of the above described comments, the Town of Windsor Board may take one of the following actions:

- A. The Town of Windsor Board **Conditionally Approves** the August 29, 2014 Site Plan for John DeWitt (dba Windsor Development Corporation) to develop Lot 137 of the Holland Fields Plat ("Windsor Apartments"), subject to each and all of the following conditions:

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Staff Review

1. The Developer shall develop the Windsor Apartments in accordance with the August 29, 2014 Site Plan, except as modified by these conditions.
 2. The Developer shall address the technical comments set forth in the Planning Comments section of the December 10, 2014 Staff Report to the satisfaction of the Town Planner, including changing the building's exterior in accordance with the Town Planner's suggestion.
 3. The Developer shall address the technical comments set forth in the Engineering Comments section of the December 10, 2014 Staff Report to the satisfaction of the Town Engineer.
 4. The Developer 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).
 5. The Developer shall submit a Stormwater Management Agreement, in a form satisfactory to the Town Board, Attorney and Engineer, for all stormwater management facilities.
 6. The Developer shall construct the apartment building and all public and private improvements in accordance with Federal, State, County and local ordinances, licenses and permits.
 7. The Developer 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 Developer shall comply with Division 8 (*Fees, Administrative Charges and Financial Guarantees*) of Article IV of Chapter 38 of the Town of Windsor Code or Ordinances, which is specifically incorporated by reference to apply to the Windsor Apartments project for the purpose of guaranteeing the timely payment of all of the Town's charges and fees. The Escrow Deposit set forth in Sec. 38-309 shall be set at \$5,000.00 which amount shall be maintained through issuance of an occupancy permit for Windsor Apartments.
 9. The Developer shall promptly reimburse the Town of Windsor for all costs and expenses incurred by Windsor in connection with the review and approval of Windsor Apartments, 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.
 10. The Developer shall not assign any rights or obligations under this Resolution without first obtaining approval of the Town Board.
 11. THE TOWN OF WINDSOR SHALL NOT ISSUE A BUILDING PERMIT UNTIL EACH AND ALL OF THE CONDITIONS SET FORTH ABOVE HAVE BEEN MET TO THE TOWN'S SATISFACTION.
- B. It is the Developer's obligation to satisfy those conditions adopted by the Town Board, and to provide satisfactory verification of compliance to the Town. All submissions to the Town for determinations of compliance shall be made at least ten (10) business days prior to the date upon which verification of compliance is required.
- C. This Resolution, and the conditional approval contained herein, shall expire unless a building permit has been issued within 12 months of the date of approval of this Resolution.
- D. From the date of issuance of the building permit forward, the timeframe established by Sec. 10-70 of Division 2 (*Permits and Plans*) of Article II of Chapter 10 of the Town of Windsor Code of Ordinances shall apply. Note the following excerpt from Sec. 10-70:

Sec. 10-70. – Duration of permit; lapses.

Permits issued under this chapter....shall lapse and be void unless construction or work thereunder has commenced within six months, or if construction has not been completed within 15 months, from the

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Staff Review

date of issuance. Construction has commenced if the footings or foundation has been excavated to a point where footings or foundation work can begin.

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.

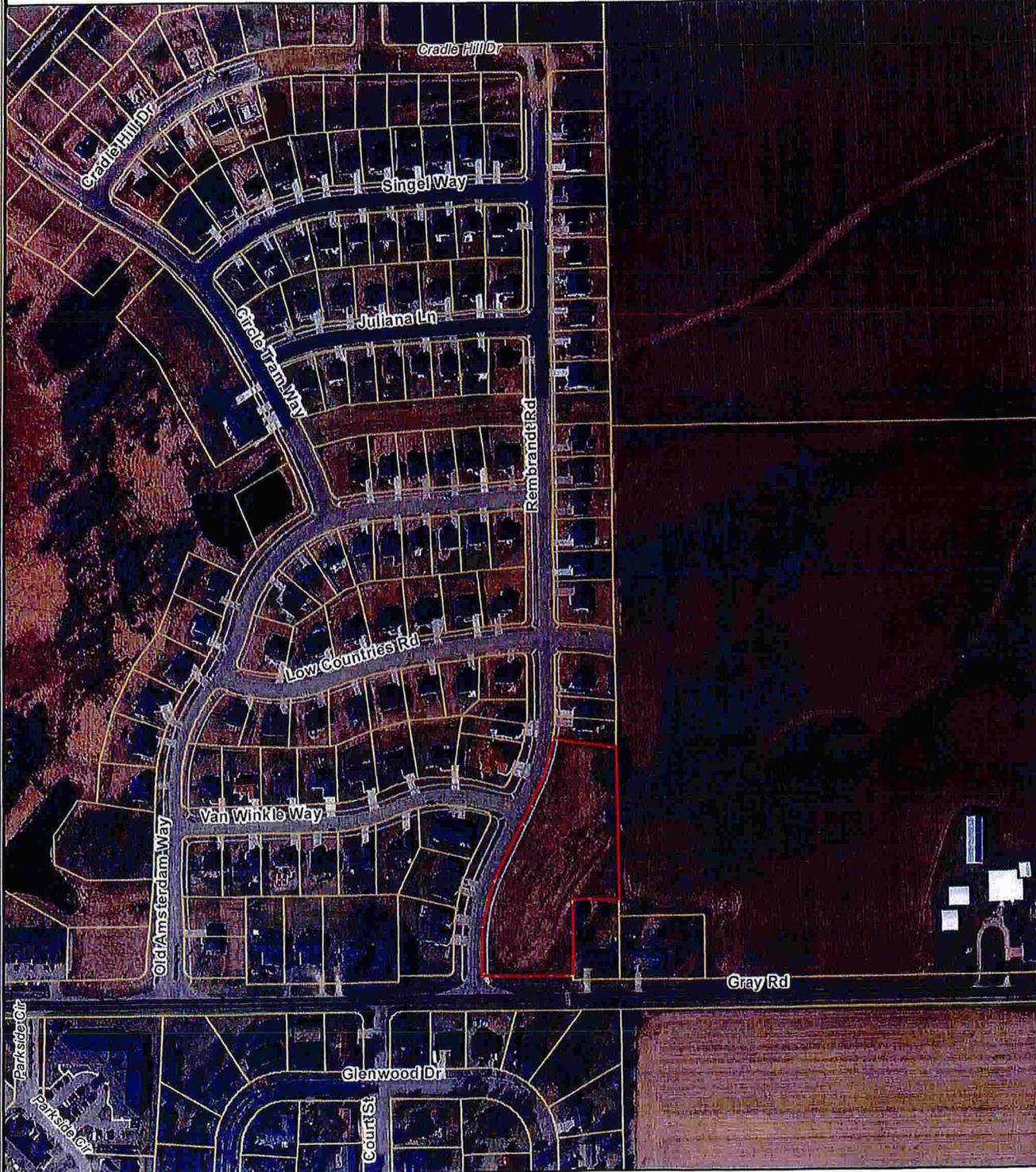
EXHIBITS:

- A. DCiMap
- B. Construction Plan Set (dated August 29, 2014)
- C. November 18, 2014 Plan Commission Meeting Minutes

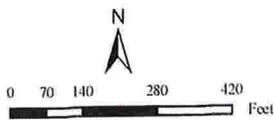
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X:\ML\IE\2013\13W027.01\16 Lot 137, Site Plan Review\10000 Reports\TW-R-Windsor Apartments SP (BD)-2014.12.18.doc
Lincoln Center II • 2514 South 102nd Street, Suite 278 • West Allis, WI 53227 • (414) 336-7900 • Fax: (414) 336-7901

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.



Locator Map

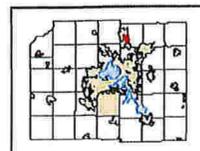


EXHIBIT B TO VB RES 2016-03

ANDERSON CONSULTS, LLC

Attorney Constance L. Anderson
P.O. Box 3004
Madison, WI 53704-0004
connie@andersonconsultswi.com
www.andersonconsultswi.com
608.249.1865 (Direct Dial)

Legal Counsel for Local Governments



December 16, 2015

Via Email Only

John R. DeWitt
DeWitt Real Estate Development
5375 Mariners Cove Dr.
Madison, WI 53704

Re: Request for Extension on Rembrandt Apartment Approval
Lot 137, Plat of Holland Fields

Dear Mr. DeWitt:

As I mentioned in my voice message earlier today, I am following up on your December 14, 2015 email to the Village of Windsor's Director of Planning & Development. In your email, you requested an extension to the approval of the Rembrandt Apartment project that is set to expire on December 18, 2015.

The approval was granted on December 18, 2014 on the terms and conditions set forth in Resolution 2014-75. Resolution 2014-75 was approved by the Windsor Town Board by a 3-2 vote, and expressly states that the approval expires in one year. Additional relevant terms and conditions are also included in Resolution 2014-75. You received Resolution 2014-75 following the approval in 2014, and the Director of Planning & Development tells me that she emailed it to you on December 1, 2015. I am attaching it to this email for your reference.

Only the governing body can make changes to the terms and conditions of Resolution 2014-75. Consequently, your request will need to be presented to the Village Board of the Village of Windsor. The Village will need to provide notice of the meeting to neighbors, particularly given that Windsor has received calls from neighbors as to the status of the project and the date on which the approval expires. To date, Windsor has advised callers that no updates had been received from the developer, no action had been taken to meet the conditions as far as Windsor knew and that the approval was good for one year from December 18, 2014.

You asked in your December 14, 2015 request for an extension if there was anything else that you need to do to make the request for an extension. There is not an ordinance for extensions; however, I do recommend that you provide a more complete explanation of the basis for your

December 16, 2015

Page 2

request. Otherwise, your email to the Director of Planning & Development will be the only information provided to the Village Board.

The Village President will add your request to the January 21, 2016 agenda. Please provide any information that you wish to have the Board consider. If you are providing more than a one or two page letter, please be sure to deliver ten (10) copies of the materials to the Windsor Municipal Building no later than 4:00 pm on Thursday, January 14. Materials provided after that date and time will NOT be included in the Board packets.

Thank you for addressing these issues so that the Village Board can respond to your request.

Very truly yours,

ANDERSON CONSULTS, LLC

/s/ Connie Anderson

Constance L. Anderson

cc: Village Board & Trustees (via email only)
Village Staff (via email only)

DEWITT

REAL ESTATE DEVELOPMENT

January 5, 2016

Via Email Attachment Only

Mr. Robert Wipperfurth
Village President
Village of Windsor
4084 Mueller Rd.
DeForest, WI 53532

Dear Mr. Wipperfurth and Village Board members,

I have requested that the time for commencing construction of the apartment at Rembrandt Rd. be extended. I was requested to submit an explanation for this request, which follows.

After obtaining approval in December of 2014, it was my intent to move forward immediately with the project. The project will cost over \$5,000,000 to build and will require a considerable amount of capital. By the time I obtained approvals I found my advisers quite lukewarm early in 2015. I needed their backing and support in order to raise sufficient capital to begin the project and without it did not feel I could take the project to market and raise the capital. The reasons for reluctance were due to a number of factors. First, there was good deal of uncertainty about the Windsor market, whether it could support the rents necessary to bring a high quality project on line. Additionally, many in the industry were alarmed at the rate of apartment construction in and around Madison and concerned about absorption in general. In the meantime, lending rules have changed significantly disallowing practices that were routine for many years and upon which we have always based our capital requirements making that factor much harder to meet. And generally, apartment professionals were scratching their heads wondering if the rental market in general had peaked out. I did not feel I could pursue the project under those circumstances and had many demands on my capital and on my time in other subdivisions.

Although construction, especially in downtown Madison, has not subsided there seems to be a general feeling that the Madison area can in fact absorb the units. My advisors have recently expressed a greater confidence in the Windsor market and generally the pundits have been expressing continued bullishness on the market nationwide which gives the project a lot more sale-ability.¹ I feel 2016 is going to be a good year to move this project along.

Before putting on the brakes I had found a good deal of interest on the construction side of the project which I am sure is still there, including some willing to be investors as a condition of getting the contract. I had some, but not enough, interest in pure investment which I hope is still there. With all, I think I am in a good position to move the project in 2016 and ask Village Board to approve an extension of the approvals.

Thanks for your consideration. I will look forward to positive action from the Board.

Sincerely,

John R. DeWitt

Pres., Windsor Development Corp.

ⁱ See for example a recent, bullish article from USA Today just yesterday.

<http://usat.ly/1OHUEzt>