

**City of Oconomowoc
Common Council**

**Tuesday, March 03, 2020 - 6:30 PM
City Hall - Council Chambers**



Notice: If a person with a disability requires that the meeting be accessible or that materials at the meeting be in an accessible format, call the City Clerk's office at least 48 hours in advance to request adequate accommodations. Tel: 569-2186

1. Call to Order and Confirmation of Appropriate Meeting Notice

2. Pledge of Allegiance

3. Roll Call

4. Public Hearing Continuations from February 18, 2020

- a. Zoning Ordinance Text Amendment - General Outdoor Recreation, Commercial
The purpose is to hear public comment on amending Section 17.108 of the City of Oconomowoc Zoning Ordinance regarding "Conditional Use Permit - Specific Standards." The request is to amend Subsection (6)(a) pertaining to General Outdoor Recreation, Commercial, which limits the hours of operation to be between 8:00am and 10:00pm daily. The applicant is requesting the allowable hours be changed to 7:00am to 12:00am daily for the proposed Blue Ribbon Baseball development.
- b. Blue Ribbon Baseball Conditional Use Permit
The purpose is to hear public comment on the Conditional Use Permit (CUP) to allow General Outdoor Recreation, Commercial on a vacant site at Blue Ribbon Circle North in the Pabst Farms Commerce Centre. Land is immediately south of I-94, west of Wisconsin Harley Davidson, east of Ace Precision & north of Blue Ribbon Dr. Parcel is identified as Tax Key OCOC 0635.999.008. Per the Table of Allowable Uses listed in §17.106 of the City of Oconomowoc Zoning Code, General Outdoor Recreation, Commercial use requires a CUP in the General Commercial zoning district. If approved the applicant would be allowed to operate a 2,500 seat outdoor ballpark with associated activities which are classified as General Outdoor Recreation, Commercial within the Zoning Code.

5. Approval of Meeting Minutes

- a. Minutes of February 4, 2020

6. Comments/Suggestions from Citizens

7. Consent Agenda (Items listed under the Consent Agenda are considered in one motion - a Council member may request to remove an item):

- a. Licenses
- b. Electric Utility Easement Agreement between City of Oconomowoc and Alexander Lumber Co. (124 S. Worthington St)
- c. Electric Utility Easement Agreement Between City of Oconomowoc and Brittingham & Hixon Lumber Co. (136 S. Worthington St)

8. Committee Reports

- a. Finance - Spiegelberg, Chr; Shaw, Secy; Rosek
 - 1. Consider/act on Budget Amendment for 2019 4th Quarter (10/1/19 - 12/31/19) Grants/Donations Received
 - 2. Consider/act on Budget Amendment for 2019 4th Quarter (10/1/19 - 12/31/19) for Northeast Region Project
- b. Utility - Kowieski, Chr; Zwart, Secy; Shaw
 - 1. Consider/act on Resolution No. 20-R2859 Awarding Biosolids Contract and Authorizing Budget Amendment

9. Plan Commission

- a. Consider/act on Ordinance 20-O976 to Amend §17.108 Conditional Use-Specific Standards of the City of Oconomowoc Zoning Code Relating to (6)a) General Outdoor Recreation, Commercial Hours of Operation
- b. Consider/act on Conditional Use Permit for Blue Ribbon Baseball Requesting General Outdoor Recreation, Commercial Use Located on Blue Ribbon Circle North
- c. Consider/act on Memorandum of Modifications & Variances of the Southwest Business Park at Pabst Farms Declaration of Development Standards & Protective Covenants

10. Unfinished/Old Business

- a. Consider/act on Rescission of Resolution of Necessity - Resolution No. 19-R2832

11. Staff Reports

12. Reports and Comments from the Aldermen

13. Reports and Comments from the Mayor

14. Closed Session

- a. Per Wis. Stats. 19.85(1)(g)
"Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved." (WaterView Condominiums)

15. Adjourn

City of Oconomowoc Common Council Meeting Minutes February 04, 2020 - 7:30 PM



Aldermen Present: Andy Rogers, Matt Rosek, Charlie Shaw, Kevin Ellis, Tom Strey, Lou Kowieski

Absent: Karen Spiegelberg and Derek Zwart

Also Present: David Nold, Sarah Kitsemel, Stan Riffle, Ron Buerger, Diane Coenen, Robert Duffy, Mark Frye, Jason Gallo, Craig Hoepfner, Joe Pickart, D. Stoiser, Laurie Sullivan, Ivan Lam

Mayor Nold called the Common Council Meeting to order at 7:30 PM.

Call to Order and Confirmation of Appropriate Meeting Notice

Pledge of Allegiance

Roll Call

Approval of Meeting Minutes

a. Minutes of December 17, 2019 and January 7, 2020

Motion to approve the December 17, 2019 and January 7, 2020 Council minutes as presented made by Ellis and seconded by Strey.

Motion carried 6-0-0.

Comments/Suggestions from Citizens

Bob Morgan, 409 Linwood Ave feels that partisan politics should not be involved in local non-partisan politics.

Consent Agenda (Items listed under the Consent Agenda are considered in one motion - a Council member may request to remove an item):

Motion to approve the consent agenda made by Rogers and seconded by Strey.

Motion carried 6-0-0.

a. Licenses

b. Sanitary Sewer Utility Easement Agreement between City of Oconomowoc and Lake Country Village, LLC

Committee Reports

a. Finance - Spiegelberg, Chr; Shaw, Secy; Rosek

1. Consider/act on Subordination, Non-Disturbance and Attornment Agreement Between City of Oconomowoc and 85 Oconomowoc, LLC (Berkshire Substitute Loan Document)

Motion to approve the Subordination, Non-Disturbance and Attornment Agreement between City of Oconomowoc and 85 Oconomowoc, LLC made by Ellis and seconded by Kowieski.

Motion carried 6-0-0.

b. Public Services - Strey, Chr; Zwart, Secy; Ellis

1. Consider/act on Resolution Awarding Engineering Services for Bridge Inspections, Bridge Maintenance and Design with Bid Document for Peacock Dam with Municipal Dam Grant Application

Motion to adopt the resolution awarding engineering services for bridge inspections, bridge maintenance and design with bid document for Peacock Dam with Municipal Dam Grant Application made by Ellis and seconded by Kowieski.
Motion carried 6-0-0.

2. Consider/act on Resolution Authorizing Participation in the Department of Natural Resources Municipal Dam Grant Program

Motion to adopt the resolution authorizing participation in the Department of Natural Resources Municipal Dam Grant Program made by Strey and seconded by Rosek.
Motion carried 6-0-0.

New Business

a. Consider/act on Resolution Approving the Increase of Parking Citation Fine Amount

Motion to adopt the resolution approving the increase of parking citation fine amount made by Rosek and seconded by Ellis.
Motion carried 6-0-0.

Staff Reports

a. 4th Quarter Strategic Plan Update - Kitsembel

Kitsembel gave a PowerPoint presentation. Council asked for future Strategic Plan updates that a completed task report be included.

Council asked for an update on the Waukesha County Hwy 67 Underpass Project and Frye stated the County bid the project twice and both bids were over budget with the second bid being \$800K over budget, which was less than the first bid. The County will be resubmitting for a new grant for the 2023 grant cycle. He further reported that the second half of the project was finished in 2016 and he is working with Waukesha County, the Waukesha County Executive and has attended a DOT meeting on this project. Council asked where we are on the Wisconsin Ave property that we are considering for boat launch parking and Kitsembel stated at the end of 2019 we retained an appraiser and are waiting for the report.

Reports and Comments from the Aldermen

Ellis stated Chili Fest was fantastic.

Reports and Comments from the Mayor

Adjourn

Motion to adjourn made by Strey and seconded by Ellis.

Motion carried 6-0-0.

The meeting adjourned at 7:54 PM.

Diane Coenen, City Clerk
City of Oconomowoc

LICENSE APPROVALS

Honorable Mayor and Common Council:

March 3, 2020

The following license applications have been received by the City Clerk, accompanied by the proper fee and approved by the Oconomowoc Police Department:

Bartender (Operator) License Requests: (March 4, 2020 through June 30, 2020)

Splash

Tyler J. O'Connor

Staybridge Suites

Matthew J. Lynch

Special Class "B" Picnic License Requests:

Oconomowoc Columbian Hall Building Corp

Friday, March 13 & March 27, 2020

(Friday Fish Fry's at St. Jerome's School)

Rock River HOG Chapter

Tuesday, March 17, 2020

(St. Patrick's Day at Wisconsin Harley-Davidson)



MEMORANDUM

DEPARTMENT - ELECTRIC UTILITY

Date: February 20, 2020
To: Common Council
From: Lucas Caine, P.E., City of Oconomowoc
Re: City of Oconomowoc Electric Utility Easement Agreement, Alexander Lumber Co. (124 S. Worthington St.)
Tax Key OCOC0560282001

RELATES TO THE STRATEGIC PLAN

n/a

BACKGROUND

This easement is needed to install new underground electrical lines and appurtenances on the property to provide required electric service in conjunction with the voltage conversion project on circuits 203 & 204 in the Second Street area.

ADDITIONAL ANALYSIS

n/a

FINANCIAL IMPACT

n/a

RECOMMENDATION

Staff recommends approval of the Electric Utility Easement Agreement.

SUGGESTED MOTION

Consent agenda item: Move to approve the consent agenda.

**ELECTRIC UTILITY
EASEMENT
AGREEMENT**

Document Number

This Electric Utility Easement Agreement is entered into by Alexander Lumber Co. (the "Owner"), and the City of Oconomowoc (the "City").

RECITALS:

A. The Owner is the fee holder of certain real property in the City of Oconomowoc, Waukesha County, Wisconsin, as more particularly described on Exhibit A attached hereto.

B. The City has requested that the Owner grant a permanent easement (the "Easement") over, under and across a portion of Owner's property, which Easement is described on the attached legal description (Exhibit-B) and shown on the attached sketch (Exhibit B-1), both of which are incorporated herein by reference (the "Utility Easement Area").

Recording Area

Name and Return Address:
City Clerk
City of Oconomowoc
174 East Wisconsin Ave.
Oconomowoc, WI 53066

TAX KEY #
OCOC 0560282001
Parcel Identification Number (PIN)

AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

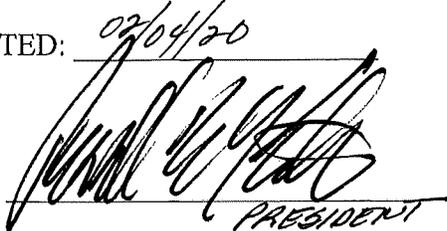
1. Grant of Easement. The Owner grants to the City and its licensees a perpetual easement and right-of-way to construct, reconstruct, maintain, operate, supplement and/or remove electric facilities consisting of cables, wires, and other related fixtures, equipment and appurtenances that may from time to time be required, with the right of ingress and egress for the purpose of this grant. All electric cable shall be located below grade.

2. Indemnification. The City shall indemnify the Owner from and against all loss, costs, injury, death or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with the City's activities conducted on the Property.

3. Consistent Uses Allowed. The Owner reserves the right to use the Easement for purposes that will not interfere with the City's full enjoyment of the Easement rights granted in this Agreement.
4. Restoration of Surface. The City shall restore the surface disturbed by any construction or maintenance activities within the Easement to its condition before the disturbance, excluding colored or stamped concrete. The City is not obligated to replace trees, shrubs, nor decorative landscaping.
5. Covenants Run with Land. All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the Owner and the City and their respective successors and assigns.
6. Non-Use. Non-use or limited use of the Easement rights granted in this Agreement shall not prevent the benefiting party from later use of the Easement rights to the fullest extent authorized in this Agreement.
7. Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
8. Entire Agreement. This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the office of the Register of Deeds for Waukesha County, Wisconsin.
9. Notices. All notices to either party to this Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. If the other party's address is not known to the party desiring to send a notice, the party sending the notice may use the address to which the other party's property tax bills are sent. Either party may change its address for notice by providing written notice to the other party.
10. Invalidity. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstances, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby; and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
11. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.
12. Enforcement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing party.

13. No Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the easements granted under this Agreement to the general public or for any public purpose whatsoever.

14. Severability. If any term or condition of this Declaration or the application of this Declaration to any person or circumstance shall be deemed invalid or unenforceable, the remainder of this Declaration or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

DATED: 02/04/20
By: 
PRESIDENT

RUSSELL W. KATHREIN
Print Name:

By: _____

Print Name:

DATED: _____

CITY OF OCONOMOWOC

By: _____
David Nold, Mayor

ATTEST:

Diane Coenen, Clerk

ACKNOWLEDGMENT

STATE OF ILLINOIS

SS

COUNTY OF KANE)

Personally came before me this 04 day of 02, 2020, the above-named RUSSELL W. KATHKEIN, to me known to be as a member of Alexander Lumber Co, and to me known to be the person who executed the foregoing instrument and acknowledged the same.



[Signature]
Notary Public
~~Waukesha County, Wisconsin~~
My Commission expires: 08/14/22

ACKNOWLEDGMENT

STATE OF WISCONSIN)

SS

COUNTY OF WAUKESHA)

Personally came before me this ____ day of _____, 2020, the above-named David Nold and Diane Coenen, to me known to be the Mayor and Clerk respectively of the City of Oconomowoc, and to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public
Printed Name : _____
Waukesha County, Wisconsin
My Commission expires: _____

Instrument drafted by: City of Oconomowoc Utilities
Instrument Reviewed by : H.Stanley Riffle, City Attorney

EXHIBIT "A"

LOCATED IN PART OF LOT 50 OF WRTHINGTON'S 2ND ADDITION RECORDED AS VOLUME 2 PAGE 56, AND BEING PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 8 NORTH, RANGE 17 EAST, COM SW COR LOT 50 N 140 FT THE BGN; NLY 170FT; NELY 178 FT TO RR R/W; SELY ALG R/W 485 FT TO W LI WORTHINGTON ST; SELY 118 FT; WLY 117 FT; SLY 12FT; NWLY 214; WLY 300FT T BGN: 2.4 AC R676/1198 ALSO PT LOT 5 CERT SURV 6601 VLO 55/39 REC AS DOC# 1685625; COM NW COR LOT 5 S74°56'E 328.17 FT THE BGN; S74°56'E 45.48 FT; S74°47'W 185.13 FT; S 162.02 FT; N89°48'W 249.86 FT; S84°10'W 110.90 FT; N 14.39 FT; NELY ALG CURVE 177.38 FT; N55°07'E 119 FT; NELY ALG CURVE 254.35 FT TO BGN R2128/760: ALSO RECIPROCAL ACCESS EASEMENT AS SHOWN ON DOC# 2073454:: DOC# 4115173, CITY OF OCONOMOWOC, WAUKESHA COUNTY, WISCONSIN

Property Owners Name: Alexander Lumber Co.

Property Address: 124 S. Worthington St. Oconomowoc, WI 53066

Tax Key #: OCOC 0560282001

EXHIBIT "B"

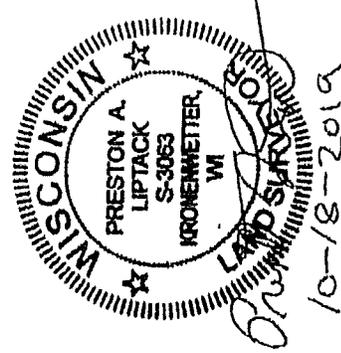
PERMANENT UTILITY EASEMENT

LOCATED IN PART OF LOT 50 OF WORTHINGTON'S 2ND ADDITION RECORDED AS VOLUME 2 PAGE 56,
AND BEING PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 32,
TOWNSHIP 8 NORTH, RANGE 17 EAST, CITY OF OCONOMOWOC, WAUKESHA COUNTY, WISCONSIN

Legal Description of Utility Easement:

Located in part of Lot 50 of Worthington's 2nd Addition recorded as Volume 2 Page 56, and being part of the Southeast Quarter of the Southeast Quarter of Section 32, Township 8 North, Range 17 East, City of Oconomowoc, Waukesha County, Wisconsin, a Utility Easement more particularly described as follows:

Commencing at the South Quarter Corner of said Section 32; thence North 00 degrees 32 minutes 04 seconds East along the West Line of the Southeast Quarter of said Section 32, a distance of 1060.52 feet; thence North 90 degrees 00 minutes 00 seconds East, a distance of 1847.38 feet to the Point of Beginning; thence North 15 degrees 53 minutes 22 seconds East perpendicular with the South Line of the Canadian Pacific Railway Right-of-Way (ROW), a distance of 9.00 feet to said South Line; thence South 74 degrees 06 minutes 38 seconds East along said South Line, a distance of 104.46 feet to the West ROW Line of South Worthington Street; thence South 00 degrees 37 minutes 41 seconds East along said West ROW Line, a distance of 120.30 feet to the South Line of the Parcel described in a deed recorded as Document No. 4115173 at the Waukesha County Register of Deeds Office; thence North 88 degrees 57 minutes 27 seconds West along said South Line, a distance of 5.00 feet; thence North 00 degrees 37 minutes 41 seconds West parallel to said West ROW Line, a distance of 116.42 feet; thence North 74 degrees 06 minutes 38 seconds West parallel to said South Railway ROW Line, a distance of 90.73 feet; thence South 15 degrees 53 minutes 22 seconds West perpendicular to said South Line, a distance of 4.00 feet; thence North 74 degrees 06 minutes 38 seconds West parallel to said South ROW Line, a distance of 10.00 feet to the Point of Beginning.



OCTOBER 10, 2019



PREPARED FOR:
City of Oconomowoc
174 E. Wisconsin Avenue
Oconomowoc, WI 53066

SHEET 2 OF 2

EXHIBIT "B-1"

PERMANENT UTILITY EASEMENT

LOCATED IN PART OF LOT 50 OF WORTHINGTON'S 2ND ADDITION RECORDED AS VOLUME 2 PAGE 56,
AND BEING PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 32,
TOWNSHIP 8 NORTH, RANGE 17 EAST, CITY OF OCONOMOWOC, WAUKESHA COUNTY, WISCONSIN

CENTER 1/4 CORNER
S32 T08N R17E
FOUND 5/8" IRON BAR IN
CONCRETE MON

(S75° 21' 05"E 460.23')
S74° 08' 38"E 459.98'
355.51'

N15° 53' 22"E

1847.38' 9.00' POB

N90° 00' 00"E

UTILITY EASEMENT

CANADIAN PACIFIC RAILWAY

PROPERTY LINE
104.46'

S15° 53' 22"W
4.00'

N74° 08' 38"W 90.73'

FD 0.75" I.B BENT 0.5'
NORTHEAST OF COR

DOC# 4115173

LOT 50
WORTHINGTON'S 2ND ADD
V2 P36

TAX ID# OCOC0560282001
OWNER/GRANTOR
ALEXANDER LUMBER CO.

WEST LINE OF THE SE1/4
(S00° 16' 57"E 2623.52') S00° 32' 04"W 2623.45'
1562.93'
1060.52'

SOUTH 1/4 CORNER
S32 T08N R17E
FOUND BRASS CAP IN CONC



Bearings are referenced to the
WISCRS, Waukesha County System
NAD 83 (2011) and referenced to the
West Line of the Southeast Quarter
S32, T08N, R17E measured as N00°
32' 04"E

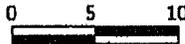
LEGEND

- ◆ GOVERNMENT CORNER
- FD 1" O.D. IRON PIPE
- ▲ SET 3/8" X 12" SPIKE
- COMPUTED POINT
- () "RECORDED AS" DATA
- POB POINT OF BEGINNING
- FD 3/4" O.D. IRON BAR



10-18-2019

SCALE:
1" = 10'



N00° 37' 41"W 116.42'

UTILITY EASEMENT

S00° 37' 41"E 120.30'
(S01° 47' 30"E 120.30')

S. WORTHINGTON STREET (66' ROW)

6'

N88° 57' 27"W
5.00'

ROW

PROPERTY LINE

OCTOBER 10, 2019



SHEET 1 OF 2

PREPARED FOR:
City of Oconomowoc
174 E. Wisconsin Avenue
Oconomowoc, WI 53066



MEMORANDUM

DEPARTMENT - ELECTRIC UTILITY

Date: February 20, 2020
To: Common Council
From: Lucas Caine, P.E., City of Oconomowoc
Re: City of Oconomowoc Electric Utility Easement Agreement, Brittingham & Hixon Lumber Co. n/k/a Alexander Lumber Co. (136 S. Worthington St.)
Tax Key OCOCo560283

RELATES TO THE STRATEGIC PLAN

n/a

BACKGROUND

This easement is needed to install new underground electrical lines and appurtenances on the property to provide required electric service in conjunction with the voltage conversion project on circuits 203 & 204 in the Second Street area.

ADDITIONAL ANALYSIS

n/a

FINANCIAL IMPACT

n/a

RECOMMENDATION

Staff recommends approval of the Electric Utility Easement Agreement.

SUGGESTED MOTION

Consent agenda item: Move to approve the consent agenda.

**ELECTRIC UTILITY
EASEMENT
AGREEMENT**

Document Number

This Electric Utility Easement Agreement is entered into by Brittingham & Hixon Lumber Co. n/k/a Alexander Lumber Co., An Illinois Corporation (the "Owner"), and the City of Oconomowoc (the "City").

RECITALS:

A. The Owner is the fee holder of certain real property in the City of Oconomowoc, Waukesha County, Wisconsin, as more particularly described on Exhibit A attached hereto.

B. The City has requested that the Owner grant a permanent easement (the "Easement") over, under and across a portion of Owner's property, which Easement is described on the attached legal description (Exhibit-B) and shown on the attached sketch (Exhibit B-1), both of which are incorporated herein by reference (the "Utility Easement Area").

Recording Area

Name and Return Address:
City Clerk
City of Oconomowoc
174 East Wisconsin Ave.
Oconomowoc, WI 53066

TAX KEY #
OCOC 0560283
Parcel Identification Number (PIN)

AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

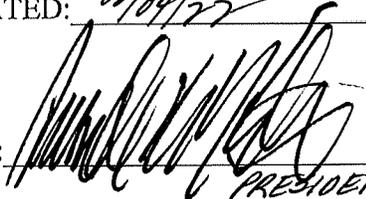
1. Grant of Easement. The Owner grants to the City and its licensees a perpetual easement and right-of-way to construct, reconstruct, maintain, operate, supplement and/or remove electric facilities consisting of cables, wires, and other related fixtures, equipment and appurtenances that may from time to time be required, with the right of ingress and egress for the purpose of this grant. All electric cable shall be located below grade.
2. Indemnification. The City shall indemnify the Owner from and against all loss, costs, injury, death or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with the City's activities conducted on the Property.

3. Consistent Uses Allowed. The Owner reserves the right to use the Easement for purposes that will not interfere with the City's full enjoyment of the Easement rights granted in this Agreement.
4. Restoration of Surface. The City shall restore the surface disturbed by any construction or maintenance activities within the Easement to its condition before the disturbance, excluding colored or stamped concrete. The City is not obligated to replace trees, shrubs, nor decorative landscaping.
5. Covenants Run with Land. All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the Owner and the City and their respective successors and assigns.
6. Non-Use. Non-use or limited use of the Easement rights granted in this Agreement shall not prevent the benefiting party from later use of the Easement rights to the fullest extent authorized in this Agreement.
7. Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
8. Entire Agreement. This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the office of the Register of Deeds for Waukesha County, Wisconsin.
9. Notices. All notices to either party to this Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. If the other party's address is not known to the party desiring to send a notice, the party sending the notice may use the address to which the other party's property tax bills are sent. Either party may change its address for notice by providing written notice to the other party.
10. Invalidity. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstances, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby; and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
11. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.
12. Enforcement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing party.

13. No Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the easements granted under this Agreement to the general public or for any public purpose whatsoever.

14. Severability. If any term or condition of this Declaration or the application of this Declaration to any person or circumstance shall be deemed invalid or unenforceable, the remainder of this Declaration or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

DATED: 02/04/22

By: 
PRESIDENT
RUSSELL W. KATHREIN
Print Name:

By: _____

Print Name:

DATED: _____

CITY OF OCONOMOWOC

By: _____
David Nold, Mayor

ATTEST:

Diane Coenen, Clerk

ACKNOWLEDGMENT

STATE OF ILLINOIS)

SS

COUNTY OF KANE)

Personally came before me this 04 day of 02, 2020, the above-named RUSSEL W. KATREIN, to me known to be as a member of Brittingham & Hixon Lumber Co. n/k/a Alexander Lumber Co., An Illinois Corporation, and to me known to be the person who executed the foregoing instrument and acknowledged the same.

 [Signature]
Notary Public
Waukesha County, Wisconsin
My Commission expires: 08/14/22

ACKNOWLEDGMENT

STATE OF WISCONSIN)

SS

COUNTY OF WAUKESHA)

Personally came before me this ___ day of _____, 2020, the above-named David Nold and Diane Coenen, to me known to be the Mayor and Clerk respectively of the City of Oconomowoc, and to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public
Printed Name : _____
Waukesha County, Wisconsin
My Commission expires: _____

Instrument drafted by: City of Oconomowoc Utilities
Instrument Reviewed by : H.Stanley Riffle, City Attorney

EXHIBIT "A"

LOCATED IN PART OF LOT 50 OF WRTHINGTON'S 2ND ADDITION RECORDED AS VOLUME 2 PAGE 56, AND BEING PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 8 NORTH, RANGE 17 EAST, COM SW COR LOT 50 N 140 FT THE BGN NLY 170FT NELY 178 FT TO RR R/W WELY ALG R/W 485 FT TO W LI WORTHINGTON ST SELY 118 FT SLY 12 FT NWLY 214 WLY 300FT T BGN 2.4 AC R676/1198 ALSO PT LOT 5 CERT SURV 6601 VLO 55/39 COM NW COR LOT 5 S74°56'E 328.17 FT THE BGN S74°56'E 45.48 FT S74°47'W 185.13 FT S 162.02 N89°48'W 249.86 FT S84°10'W 110.90 FT N 14.39 FT NELY ALG CURVE 177.38 FT N55°07'E 119 FT NELY ALG CURVE 254.35 FT TO BGN R2128/760, CITY OF OCONOMOWOC, WAUKESHA COUNTY, WISCONSIN

Property Owners Name: Brittingham & Hixon Lumber Co. n/k/a

Alexander Lumber Co., An Illinois Corporation

Property Address: 136 S. Worthington St. Oconomowoc, WI 53066

Tax Key #: OCOC 0560283

EXHIBIT "B"

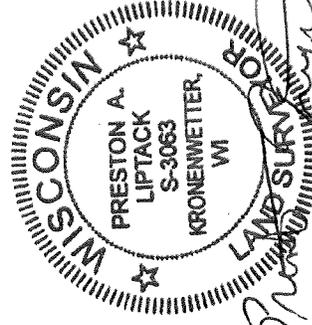
PERMANENT UTILITY EASEMENT

LOCATED IN PART OF LOT 50 OF WORTHINGTON'S 2ND ADDITION RECORDED AS VOLUME 2 PAGE 56,
AND BEING PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 32,
TOWNSHIP 8 NORTH, RANGE 17 EAST, CITY OF OCONOMOWOC, WAUKESHA COUNTY, WISCONSIN

Legal Description of Utility Easement:

Located in part of Lot 50 of Worthington's 2nd Addition recorded as Volume 2 Page 56, and being part of the Southeast Quarter of the Southeast Quarter of Section 32, Township 8 North, Range 17 East, City of Oconomowoc, Waukesha County, Wisconsin, a Utility Easement more particularly described as follows:

Commencing at the South Quarter Corner of said Section 32; thence North 00 degrees 32 minutes 04 seconds East along the West Line of the Southeast Quarter of said Section 32, a distance of 870.71 feet; thence North 90 degrees 00 minutes 00 seconds East, a distance of 1938.95 feet to the Point of Beginning; thence South 89 degrees 02 minutes 53 seconds East parallel to the South Line of Parcel B described in a deed recorded as Document No. 1298880 at the Waukesha County Register of Deeds Office, a distance of 10.00 feet; thence North 00 degrees 37 minutes 41 seconds West parallel to the West Right-of-Way (ROW) Line of South Worthington Street, a distance of 49.82 feet to the North Line of said Parcel B; thence South 88 degrees 57 minutes 27 seconds East along said North Line, a distance of 5.00 feet to said West ROW Line; thence South 00 degrees 37 minutes 41 seconds East along said West ROW Line, a distance of 69.81 feet to said South Line of Parcel B; thence North 89 degrees 02 minutes 53 seconds West along said South Line, a distance of 15.00 feet; thence North 00 degrees 37 minutes 41 seconds West parallel to said West ROW Line, a distance of 20.00 feet to the Point of Beginning.



2-3-2020

OCTOBER 10, 2019

mi-TECH
Fond Du Lac - Green Bay - Madison - New Berlin
800.465.6050

PREPARED FOR:
City of Oconomowoc
174 E. Wisconsin Avenue
Oconomowoc, WI 53066

SHEET 2 OF 2



MEMORANDUM

DEPARTMENT

Date: February 25, 2020
To: Finance Committee, City Council, and Mayor Nold
From: Laurie Sullivan, Finance Director
Re: Budget Amendment for Grants and Donations to the City

RELATES TO THE STRATEGIC PLAN

Strategic Goal- N/A

BACKGROUND

The following unbudgeted grants/donations were awarded and funds received during the fourth quarter of 2019. A budget entry is recommended to allow for the additional revenue and expense.

ADDITIONAL ANALYSIS

N/A

FINANCIAL IMPACT

Donations received include:

Police grants of 17,805, Training reimbursements 2,790, Watershed Grants and Donations of \$43,000, and Donations of 9, 184.60 for Fireworks, Wizard of Oz statues and the Dietzenbach visit.

RECOMMENDATION

Recommend approval of budget adjustment for collection of unbudgeted grants and donations to the City

SUGGESTED MOTION

Motion to approve the 4th Quarter budget amendments for grants and donations to the City.

City of Oconomowoc
Budget Amendments - Grants/Donations Received
10/1/19-12/31/19

The following unbudgeted grants/donations were awarded and funds received during the last quarter. A budget entry is recommended to allow for the additional revenue and expense.

Granting Organization	Description	Grant/ Donation Amount	Revenue Account	Expense Account
WI DOT	Police - Speed Grant	13,825.12	100-403-3523-503	100-503-3300-116
Waukesha County	Police - CIT Training Stipend	1,200.00	100-403-3790-503	100-503-3400-330
SOO Line West Railroad	Police - General Donation	4,635.40	100-408-8501-503	100-36401
WI DOT	Police - Safety Grant	3,979.74	408-403-3523-503	408-503-3300-811
League of Wisconsin Municipalities	Human Resource Training Reimbursement	510.00	100-408-8501-501	100-501-1200-330
Wisconsin Municipal Clerks Association Inc.	IIMC Annual Conference Reimbursement	1,080.74	100-408-8501-502	100-502-2100-330
First Bank Financial Center	Independence Day Fireworks	2,049.20	100-408-8501-507	100-507-7520-210
Schiefelbein Family Foundation	Wizard of Oz Statues	1,000.00	255-408-8505-509	255-509-9100-340
Rogers Behavioral Health	German Dietzenbach Visit	1,500.00	255-408-8505-509	255-509-9100-340
Waukesha County	Wetland Scrapes Project	35,622.73	213-403-3790-576	213-576-3728-820
Tall Pines Conservancy	Mason Creek Area Rent Funding	2,380.50	213-408-8505-576	213-576-3724-730
Tall Pines Conservancy	2019 Aerial Seeding Funding	5,000.00	213-408-8505-576	213-576-3724-210



MEMORANDUM

FINANCE DEPARTMENT

Date: February 25, 2020
 To: Finance Committee, City Council, and Mayor Nold
 From: Laurie Sullivan, Finance Director
 Re: 2019 Budget Amendment for NE Region Project

RELATES TO THE STRATEGIC PLAN

Strategic Goal- N/A

BACKGROUND

The NE Region Joint Development agreement, approved at Council on June 6, 2017, estimated total project costs at \$3,565,295. The original cost share was estimated as \$423,098 City costs and \$3,142,197 billed to other parties. It was agreed that all costs are paid by the City and the Cost Share amounts are then billed to the other participants as laid out in the Agreement. At that time, the Council did not create a budget adjustment for the project, rather, the budget has been amended as contracts and costs come in. Therefore, as part of the year end closing process a budget amendment is required to record the project expenses accrued during the year.

The following table shows the budgeted amounts for the project to date and the requested 2019 budget amendment of \$120,947.53 (City portion \$19,718, Other Parties \$101,230).

Budget	Total Spend to Date	PY Budget Amendments	2019 Amendment
	\$ 3,293,596.08	\$3,172,648.55	\$ 120,947.53

ADDITIONAL ANALYSIS

Below is a recap on the status of the overall project as of December 31, 2019. While the full project is nearing completion, a few remaining projects are scheduled for 2020 including sidewalk, shared use path and some work to the storm water pond with estimated costs of \$235,400.

NE Region Project Recap As of December 31, 2019			
	Project Estimate	Actual To Date	
Land Acquisition-ROW & Stormwater	345,142	345,142	
Project Costs	2,507,094		
Construction Contracts		2,525,739	
Construction Change Orders To Date		266,822	Dewatering (\$83k), CTH P EBS/Stone/Asphalt (\$214k)
Contingency & Soft Costs	713,059		
Engineering/Construction Mgmt		393,668	
Traffic Signal Design		26,772	
Archeological Site Investigation		80,596	
Total Costs To Date	3,565,295	3,638,738	
Estimated Future Construction Costs		235,400	Sidewalk, Shared Use Path, Pond
Estimated Total Final Costs	3,565,295	3,874,138	
Estimated Under/(Over)		(308,843)	

Other costs incurred on this project have totaled \$501,036 and include the design engineering done by Pinnacle Engineering, construction management by R&M, archeological site investigation by Pinnacle & Western Contractors, TADI's work on the CTH P intersection and R&M's work on the cost share agreement and related documents.

FINANCIAL IMPACT

A budget amendment of \$120,947.53 is requested for 2019 to record the project expenses accrued during the year and to align the expenses and budget for the year.

RECOMMENDATION

Recommend approval of budget adjustment the true up of the Northeast Region development project costs.

SUGGESTED MOTION

Motion to approve the 2019 NE Region project budget amendment.

City of Oconomowoc
Budget Amendments - Northeast Region Development
10/1/19-12/31/19

Budget Amendment for NE Project - 2019

Budget amendment to true up expenses related to the Northeast Region Development.

Construction Contract Payment No. 3

Northeast Region Construction	City Share	10,133.82	223-409-9120-507	223-507-7410-820
Northeast Region Construction	St. Matts/Miller/Commercial Share	22,443.82	408-402-2210-500	408-507-7410-820

Construction Contract Approved May 7, 2019

Northeast Region Construction	City Share	16,422.91	223-409-9120-507	223-507-7410-820
Northeast Region Construction	St. Matts/Miller/Commercial Share	59,080.48	408-402-2210-500	408-507-7410-820

Ruekert & Mielke Engineering

Northeast Region Engineering	City Share	787.32	223-409-9120-507	223-507-7410-210
Northeast Region Engineering	St. Matts/Miller/Commercial Share	2,686.16	408-402-2210-500	408-507-7410-210



MEMORANDUM

DEPARTMENT -

Date: 02/18/2020

To: Utility/Council

From: Kevin Freber Wastewater Operations Manager

Re: Consider/Approve Biosolids Contract and Budget Amendment

RELATES TO THE STRATEGIC PLAN

Strategic Goal- II. IMPROVE AND MAINTAIN OUR INFRASTRUCTURE

Objective : II.B. Maintain Our Existing Infrastructure (7)

BACKGROUND

The Wastewater Department requested for proposals (RFP) for the Biosolids Hauling. The RFP was advertised in the local newspaper on January 16, 2020 and January 23, 2020. A total of 3 firms inquired about the project and obtained the documents with one firm providing a response.

The one response received was from Badger State Waste LLC for contract Years 2020-2022 for \$.05/gallon of biosolids hauled.

I discussed with 2 firms that do biosolids hauling the reason they didn't submit. Following are the responses received:

1. Took over contracts that a different hauler dropped in 2019.
2. To purchase more equipment for another customer isn't cost effective.
3. One vendor isn't taking new clients and dropping some customers.

ADDITIONAL ANALYSIS

The services to be provided includes the following. Remove a minimum of 1,200,000 gallons biosolids per calendar year. The maximum volume to be hauled and applied will be 2,000,000 gallons per calendar year. Obtain all WDNR approved application sites, all permits, necessary paperwork, monitoring and soil testing. Calculate and provide loading rate prior to application. Confirm prior year biosolids loading rates are figured in for current year application, prior to hauling send current soil sampling reports, WDNR Field #, approved field photos and field hauling area highlighted. Provide all planning, scheduling, and coordination of biosolids application with landowners and farmers. Incorporate or surface apply biosolids according to field, crop and biosolids conditions. Maintain ongoing records on the application of the biosolids including annual application loading to the sites in accordance with WDNR requirements. Provide year-end report detailing all City of Oconomowoc biosolids application activity. Submit WDNR form 3400-55, Annual Land Application Report, no later than January 15th of the year following the report year. Maintain good rapport with landowners and farmers of the agricultural land being used. Maintain daily logs outlining trucks used, sites used, and gallons hauled to each site/field. Pay all site

fees, permits, and incidental costs associated with obtaining and use of application sites. Conduct all operations and business related to the hauling and application of the City of Oconomowoc wastewater biosolids in strict accordance with WDNR and EPA rules and regulations. Complete WDNR forms 52 and 55 for all sites biosolids were hauled to by January 9th of the year after biosolids are applied.

FINANCIAL IMPACT

In anticipation of sending out the RFP in 2020 for a new contract I increase the budget to 70,000 to haul approximately 1,800,000 gallons of biosolids. This was \$5,000.00 increase. The previous contract hauling cost was \$.035/gallon

The three-year Biosolids contract will require a budget amendment of an additional \$30,500.00 to haul 2,000,000 gallons of biosolids for beneficial reuse. The increase is due to the increased cost from .035/gallon to \$.05/gallon and the storage tank not being emptied in 2019 due to a wet fall

I expect the total financial impact to the utility in 2020 to be around \$100,000.00 to haul approximately 2 million gallons of biosolids

RECOMMENDATION

The staff recommends approval of Badger State Waste LLC for the 3-year contract starting in 2020 for biosolids hauling.

Staff recommends the budget amendment for 2020 in account number 601-576-3618-210 Biosolids Management – Outside /Prof Services (Non-IT) of \$30,500.00 to be taken from Wastewater Reserve Account.

SUGGESTED MOTION

Motion to recommend acceptance of the proposal from Badger State Waste LLC for the Biosolids hauling contract for 3-years at a cost of \$.05/gallon.

Motion to recommend a budget amendment for 2020 in account number 601-576-3618-210 Biosolids Management – Outside /Prof Services (Non-IT) of \$30,500.00 to be taken from Wastewater Reserve Account.

RESOLUTION NO. 20-R2859

RESOLUTION AWARDING Biosolids Contract and Authorizing Budget Amendment

WHEREAS, the wastewater treatment plant needs a contractor to haul biosolids from the plant to land for beneficial reuse; AND

WHEREAS, the wastewater staff prepared a Request for Proposal advertisement, published the same, and based thereon received one proposal; AND

WHEREAS, after review by Wastewater Operation Manger of the proposal; AND

WHEREAS, the quote from Badger State Waste LLC of \$.05/gallon for a three-year contract starting in 2020 is above the 2020 budget amount, a budget amendment is needed;

NOW THEREFORE, BE IT HEREBY RESOLVED, the proposal of Badger State Waste LLC in the amount of \$.05/ gallon for biosolids hauling for year 2020-2022 is hereby accepted, and appropriate City officials are authorized to enter into a contract with Badger State Waste LLC for said work.

BE IT FURTHER RESOLVED, that the City Council recommends and authorizes a Wastewater Fund budget amendment to add \$30,500 to account 601-576-3618-210. Funds will come from Wastewater Fund reserves.

DATED: March 3, 2020

CITY OF OCONOMOWOC

By: _____
David Nold, Mayor

ATTEST:

Diane Coenen, Clerk

Planning Staff Report

Outdoor Recreation – Text Amendment

City of Oconomowoc
Plan Commission – 2/12/20

Pertaining to the Standards for Conditional Uses Section 17.108 – Zoning Ordinance

Summary: The applicant is requesting a Zoning Ordinance text amendment that would amend the allowable hours for General Outdoor Recreation, Commercial uses. The current hours allow this use to only happen between 8:00am and 10:00pm. The applicant is requesting to amend to 7:00am and 12:00am (midnight).

Property Identification: Text Amendment applies to all General Outdoor Recreation Commercial uses.

Property Owner: N/A

Applicant: Tom Kelenic
S20 W27809 Kame Terrace
Waukesha, WI 53188

History:

In 2019, the City created standards for each of the uses that require a Conditional Use Permit. This was in response to the State Legislation passing a law that states communities must have CUP standards. If the applicant can present evidence that they meet the identified use standards, the community is obligated to grant the CUP.

Text Amendment Summary:

For General Outdoor Recreation, Commercial, one of the standards created was dealing with the allowed hours of operation.

17.108(6) General Outdoor Recreation, Commercial

- a) Hours of operation shall be limited to only operation between 8:00am and 10:00pm daily.

Per the request letter dated December 17, 2020, the applicant is requesting the allowable hours be changed to 7:00am to 12:00am (midnight). Reasons they are asking for the amendment can be found within the letter.

Planning Thoughts:

Staff understands the reasons for requesting this change. It makes sense to allow the activity to go later for outdoor uses, if the weather creates delays. Planning feels midnight may be too late, and feels 11:00pm should be the cut-off, unless there was a documented weather delay. The cut-off time of 11:00 PM is consistent with other late activities for other businesses, such as the temporary use permits for Wisconsin Harley Davidson, that is adjacent to this property. Staff suggests the following wording:

- a) Hours of operation shall be limited to only operation between 7:00am and 11:00pm daily. The Common Council may provide for limited extension to the hours of operation for exigent circumstances, such as inclement weather.***

Findings:

Prior to granting of any amendment to the Zoning Text, the Zoning Administrator shall review the standards in 17.802(5)(a) of the Zoning Ordinance:

1. How does the proposed text amendment further the purposes and intent of this Zoning Ordinance?

Answer: The proposed text amendment allows for development to be approved and operate which uses are consistent with the City's Comprehensive Plan.

2. How does the proposed text amendment further the purposes of the general subchapter in which the amendment is proposed to be located?

Answer: The proposed text amendment promotes land uses and operations for uses that are consistent with the similar uses within the City. The proposed text amendment will accommodate a use that will promote economic development within the City.

3. Which of the following factors have arisen that are not properly addressed in the current zoning text?

- a. The provisions of this Ordinance should be made consistent with the Comprehensive Plan;
- b. A change has occurred in the land market, or other factors have arisen which require a new form of development, a new type of land use, or a new procedure to meet said change(s);
- c. New methods of development or providing infrastructure make it necessary to alter this Ordinance to meet these new factors;
- d. Changing governmental finances require amending this Ordinance in order to meet the needs of the government in terms of providing and affording public services.

Answer: B. A change to the Zoning Ordinance allows this parcel to have General Outdoor Recreation which is a change in the land market. This specific use requires activities to go start prior to 8:00am and on occasion go past 10:00pm.

4. If the proposed text amendment is concerned with the provisions of land uses or intensity, how does the proposed amendment maintain the desired overall consistency of land use impacts with the pertinent zoning district?

Answer: There are no other current General Outdoor Recreation Commercial, uses in the City. This amendment will not affect any other existing conditional use permits currently operating in the City. If a similar use is requested in the City sometime in the future, the City will review the hours of operation on a case by case basis. The proposed time frame of cutting off the operations at 11:00 PM, would be consistent with other temporary use permits approved for outdoor recreation type uses.

Plan Commission Options:

1. Recommend changing the zoning ordinance as applicant requested 7am to Midnight.
2. Recommend changing the zoning ordinance as staff requested 7am to 11pm with extensions for inclement weather.
3. Do nothing. Recommend keeping the ordinance as drafted. 8am to 10pm.

Submitted by: _____
Jason Gallo, AICP
City Planner / Zoning Administrator

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND §17.108 CONDITIONAL USE-SPECIFIC STANDARDS
OF THE CITY OF OCONOMOWOC ZONING CODE
RELATING TO (6)a) GENERAL OUTDOOR RECREATION, COMMERCIAL**

The Common Council of the City of Oconomowoc, Waukesha County, Wisconsin, do ordain as follows:

SECTION 1. Section 17.108 Conditional Use – Specific Standards of Chapter 17 of the Municipal Zoning Ordinance, is hereby amended to change the standards for (6) General Outdoor Recreation, Commercial, specifically amending a) ~~Hours of operation shall be limited to only operation between 8:00am and 10:00pm daily to the following:~~

a) Hours of operation shall be limited to only operating between 7:00am and 10:00pm daily for non-athletic related activities. The hours of operation for athletic activities shall be only between the hours of 7:00am and 11:00pm. The Common Council may provide for limited extension to the hours of operation for exigent circumstances, such as inclement weather.

SECTION 2. EFFECTIVE DATE. This ordinance shall become effective upon passage and publication as required by law.

DATED: _____

CITY OF OCONOMOWOC

By: _____
David Nold, Mayor

ATTEST:

Diane Coenen, Clerk

Date Adopted: _____

Date Published: _____

Effective Date: _____

Planning Staff Report

City of Oconomowoc

Plan Commission – 2/12/2020

Blue Ribbon Baseball

Conditional Use Permit / Major Design Review

Summary: The applicant submitted plans for a conditional use permit and site plan approval for the proposed 45,000 SF training facility and outdoor ballpark. The CUP is only need for the outdoor recreation component. If the use is approved, then the Plan Commission may act on the overall site plans.

Property Location: Parcel 3 of certified survey map #9598, Tax Key OCOC 0635.999.008 - Immediately west of Wisconsin Harley Davidson

Property Owner: Pabst Farms Land Co. I, LLC Pabst Farms Land Co. I, LLC
3412 Commercial Avenue 1370 Pabst Farms Cir, #350
Northbrook, IL 60062-1819 Oconomowoc, WI 53066

Applicant: Blue Ribbon Baseball
Attn: Tom Kelenic
S20 W7809 Kame Terrace
Waukesha, WI 53188

Existing Zoning: GC – General Commercial (granted in December 2019)
Existing Land Use: vacant land - farming
Proposed Land Use: Training Facility and Outdoor Recreation (Ballpark)



Location Map

Use:

The City amended the City Comprehensive Plan 2050 and the Zoning for this specific parcel in December 2019. This was at the request of the property owner to allow for the proposed use. The current zoning of General Commercial allows for sports training facilities and the outdoor recreation (ballpark), which is also allowed upon the grant of a conditional use permit.

In order to grant a conditional use permit for outdoor recreation, the Plan Commission and Common Council must determine that the applicant has provided evidence that the proposed use will conform.

What is the intended use?

According to the submitted Plan of Operations, the outdoor field primary purpose would be for a future home for a baseball team in the Northwoods League. This is a wooden bat collegiate baseball league that consists of 36 home games and 36 away games. Currently there are 22 teams from Illinois to Ontario.

Outside of the summer collegiate season, the outdoor facility will be used and made available to same youth-based athletic programs that will be using the indoor training space. Typical events would be soccer, lacrosse, and baseball programs that will use the field in spring, fall and winter months for training and game simulation. In addition, they would expect local high schools to use the facility in spring and fall. The hours of operation for these activities will be determined by the requested text amendment.

The applicant amended the Plan of Operations received on 1-31-20. Potential uses for the outdoor field could include concerts, festivals, ceremonies, company outings, children's movies, political events or other non-sports related activities. Should any of these events occur, all uses that have sound/speaker needs will be connected to the existing acoustical system.

CUP Approval Standards (Outdoor Recreation)

The conditional use permit standards for General Outdoor Recreation, Commercial include the following:

1. Hours of Operation shall be limited to only between 8:00am and 10:00pm daily. (Note: Applicant has requested a text amendment to amend these hours).
2. Applicant shall submit a Dust Control Plan. (Field is proposed AstroTurf- no dust)
3. Applicant shall supply on-site restrooms. (Yes, Plans show indoor restrooms)
4. Applicant shall provide on-site parking. (Yes, Plans show on-site parking)
5. Applicant shall comply with all other zoning & municipal ordinances. (Yes)

Conditional Use Permit Findings

1. How is the proposed conditional use (in general) in harmony with the purposes, goals, objectives, policies and standards of the City of Oconomowoc Comprehensive Plan, the Zoning Ordinance, and any other plan, program, or ordinance adopted by the City?

The subject use is an allowable use listed in the Zoning Ordinance. The use is a business that will serve the general public by providing family entertainment for the residents of the City.

2. How is the proposed conditional use (in its specific location) in harmony with the purposes, goals, objectives, policies and standards of the City of Oconomowoc Comprehensive Plan, the Zoning Ordinance, and any other plan, program, or ordinance adopted by the City?

The site is zoned GC General Commercial which allows outdoor recreation with a conditional use permit. The proposed business maintains the commercial uses in the area with a use that will provide entertainment for the residents of the City.

3. Does the conditional use, in its proposed location and as depicted on the required site plan, result in a substantial or undue adverse impact on nearby property, the character of the neighborhood, environmental factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the provisions of the Zoning Ordinance, the comprehensive plan, or any other plan, program, map, or ordinance adopted by the City or other governmental agency having jurisdiction to guide development?

The proposed use will not cause adverse impacts to the current or future adjacent uses. The applicants have undertaken sound and traffic studies and will adjust their plans and operations to the recommendations listed within the studies. For example, they will cap the decibel levels on the sound system and tilt the speakers a direction to reduce impact to adjacent properties.

4. Does the proposed conditional use maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property?

The property is currently zoned GC, General Commercial District. Outdoor Recreation is an allowable use with a conditional use permit within this zoning district.

5. Is the proposed conditional use located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities or services provided by public agencies serving the subject property?

The outdoor recreation use will not impose an undue burden on public facilities and services in the area as they are provided. The current utilities can serve this property.

6. Do the potential public benefits of the proposed conditional use outweigh all potential adverse impacts of the proposed conditional use, after taking into consideration the

applicant's proposal and any requirements recommended by the applicant to ameliorate such impacts?

The benefits of outdoor recreation use in the City outweigh any adverse impacts in the area.

7. Will the proposed conditional use create adverse impacts such as dust, lighting, air pollution, noise, odor, vibration, glare, heat, hazardous materials, or traffic?

The proposed use will increase the traffic and noise in the area. The applicant has completed studies by outside professional consultants to identify specific strategies to decrease the amount of impacts to the surrounding area.

8. Will the proposed conditional use negatively affect the health, safety, welfare and morals of the general public?

Staff has not seen any reasons to believe the proposed use would negatively affect the health, safety, welfare or morals of the general public.

Site Plan (Major Design Review):

Bulk Requirements:

Setback/Code Requirements	Proposed (ft)	Code (ft)	Compliance
Front (South)	68'	15' min	Yes
Side (East/South)	800'+	20' min	Yes
Side (West)	237'	20' min	Yes
Rear (North)	135'	20' min	Yes
Building Height	46'4"	50' max	Yes
Lot Coverage	45.4%	75% max.	Yes
Paved Surface setback	5'+ (varies)	3'/5' min	Yes
Parking	900	900*	Yes

Parking:

*Parking count for recreation establishments is based on capacity. With a total of 900 parking stalls, the total capacity of BOTH the outdoor field and the training center combined, will be limited to 2700. The outdoor field area has a capacity of 2500 and the indoor training area would then be limited to 200, if the outdoor area is filled to capacity. The parking requirement is one stall for each 3 persons capacity.

Staff is not concerned with the number of parking stalls proposed for the site. Staff feels the number of stalls is adequate for the proposed site uses.

Lighting:

The applicant has provided site lighting photometric plans detailing the number of lighting poles, fixture detail and light levels. For the parking lots they intend on using 25' poles on a 3' base (28' total) and the field will have 8 light poles between 80' and 90' in height. Pole height for outdoor lighting for sports fields is exempt from the zoning requirement. The lighting plan and levels comply with zoning requirements.

The field lighting will use cut-off lighting, so there will be adequate levels of lighting for the playing area, but the light will be cut-off for spectator seating area and other areas other than the field. The applicant provided enlarged copies of the lighting levels along the property lines to ensure the proposed light will not exceed the zoning ordinance requirements.

Landscaping:

The applicant submitted a landscaping plan. The total number of required points for the development is 17,438 and the number of planting points being installed is 17,486. The Plan shows the location, number and planting species type. Staff is impressed that the parking lot islands will contain 3" caliper trees at time of planting.

Stormwater / Drainage:

The plans were reviewed by Staff. Technical items need to be addressed. Once staff is comfortable, the plans will be submitted for review by the Pabst Farms Stormwater District.

Utilities:

The City will provide municipal sewer, water and electric service for this site. The proposed retail use will be considered a low flow water and sewer building.

Architecture:

The Architectural Commission will be reviewing the proposed building architectural design, materials and colors on March 11, 2020.

The current plans have incorporated feedback provided during the projects' preliminary consultation from the Architectural Commission that took place on January 8, 2020. Although the architecture is too be ultimately approved by the Architectural Commission, staff thought it was important for the Plan Commission be aware of the look of the proposed ball park and training facility. Colored building renderings and elevations were included in the Commissioner's packet.

Noise Impacts:

The applicants have hired a professional consultant Richard Talaske of Talaske Sound Thinking to study the noise impacts to surrounding residential uses. The study was originally done in September 2019, for the site 4000' to the west, in the Village of Summit. The Sound Study was updated in January 2020 for the proposed site in the City of Oconomowoc. Mr. Talaske will be attending the Common Council meeting on February 18th to be available to answer any questions regarding the study. Per the

study, the sound coming from the baseball park will be from a permanently installed audio system. There will be multiple speakers resulting in less volume than a festival or concert that brings in limited speakers and must turn up the volume. The net result at the ballpark is a lower event sound levels and the use of a distributed loudspeaker system.

Per the zoning ordinance section 17.212 Noise Standards, there are four types of noise classifications.

Impulsive Noise (noise that lasts 1 second) City allows up to 80 dec in Commercial.
Intermittent Noise (noise that lasts 10 seconds to 5 minutes) up to 60 dec in Commercial
Perpetual Noise (noise that lasts up to 30 minutes) allows up to 55 dec in Commercial.
Continuous Noise (noise lasts longer than 30 mins) allows up to 55 dec in Commercial.

If the City receives a complaint, we would need to determine which category to classify the “noise”.

Then under 17.212(2) Maximum Permissible Sound Levels, it states “Sound measurements shall be made at or inside the property line of the person complaining of excessive noise. The measurement shall be taken from five feet above the ground or floor level.”

Based on the ordinance, the above identified decibels is the maximum allowed; however, for complaint purposes the measurements are taken at the property line of the person complaining.

Under General Exemptions - 17.212(4)

(d) Parades, concerts, festivals, fairs or similar activities may exceed these requirements.
(e) Athletic activities may exceed, conducted under the auspices of public or private schools.

Traffic Impacts:

The applicants are aware this use will bring in additional traffic. The training center will create more even flow traffic, while the ball park will have peak times before the games and immediately after the games. Pabst Farms Commerce Centre was designed to handle non-residential uses. It is anticipated that most traffic will come to the site from I-94, to Summit Avenue (STH 67) and turn left on Blue Ribbon Drive. The State DOT oversees traffic patterns on I-94, as well as STH 67. The applicants have met with the State DOT representatives to determine if any off-site improvements will be required. The applicants have submitted a Traffic Impact Analysis (TIA) for this specific property and specific use. Overall the DOT was satisfied with proposed traffic and intended use. The DOT is requesting that netting be installed at time of construction to prevent balls from traveling (430') onto the I-94 off-ramp to STH 67.

Turf Field Impacts:

The applicants are proposing a synthetic turf baseball field. Current generation synthetic turf fields are typically constructed with a bottom gravel / stone base layer to

allow for drainage. On top of the drainage layer lies the turf component, which is composed of multi-layered polypropylene and urethane backing material with polyethylene fiber blades. On top of this lower layer either will be a tire crumb rubber or a sand/tire crumb rubber mix, topped by additional tire crumb rubber.

Currently there are 12,000-13,000 synthetic turf fields in the US, with 1,200-1,500 new installations each year. Most fields use tire crumb rubber as infill material, sometimes mixed with sand. Parents, athletes, schools, and communities have raised concerns about potential negative health effects. To date numerous studies have been completed including from Center for Disease Control & Prevention Agency for Toxic Substances, Consumer Product Safety Commission and the Environmental Protection Agency.

In 2019, the EPA released the FRAP report, (Federal Research Action Plan on Recycled Tire Crumb Used on Playing Fields and Playgrounds. The FRAP report addresses exposure to tire crumb rubber on turf fields. In general, the findings from the report support the premise that while chemicals are present as expected in the tire crumb rubber, human exposure appears to be limited based on what is released into the air or simulated biological fluids.

**** Information above was taken directly from the EPA website.

Technical Items:

Staff is continuing to work out the final minor technical review items. Approval of the plans should be contingent upon final technical review approval by City Staff.

Planning Comments:

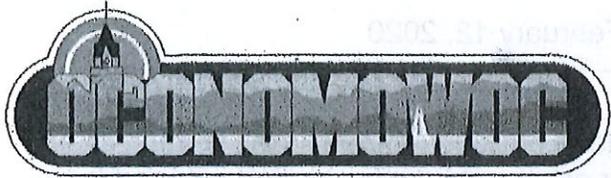
Planning staff feels this set of Conditional Use Permit / Major Design Review plans for the Blue Ribbon Ballpark is consistent with all zoning ordinance requirements. The proposed **Use** conforms to the outdoor commercial recreation standards. The **Site** is consistent with all code requirements. The **Architecture** design plans will blend in with the surrounding context and it is anticipated that the building will be approved by the Architectural Commission.

Recommendation:

The Plan Commission **RECOMMEND** the Conditional Use Permit and **APPROVE** the Major Design Review Plans for Blue Ribbon Baseball located on Blue Ribbon Circle North, conditional upon satisfying the following: (Per Plan Commission – 2-12-20)

1. Move the access southern most driveway to the southern point of the parking lot to gain greater separation distance between the driveways.
2. Add bollard lighting to illuminate the plaza areas between the ballpark exits and the parking lots.
3. Change the location of the landscaping from the north side of the building to around the stormwater management facility.

Submitted by: 
Jason Gallo, AICP
City Planner/Zoning Administrator



STAFF RECOMMENDATION FORM

TYPE OF REQUEST: CUP/MAJOR DESIGN REVIEW

PROJECT NAME: BLUE RIBBON BASEBALL

TAX KEY NO.: 0C0C 0635.999.008

PROJECT ADDRESS/LOCATION: BLUE RIBBON DRIVE

RECOMMENDATION SIGNATURES

CITY PLANNER:

[Signature]

Date:

Comments:

CITY ENGINEER:

[Signature]

Date:

1-21-20

Comments:

PENDING FINAL TECHNICAL REVIEW

DIRECTOR OF PUBLIC WORKS:

[Signature]

Date:

01.27.20

Comments:

UPON COMPLETION OF TECHNICAL REVIEW

WASTEWATER:

[Signature]

Date:

2-3-20

Comments:

WATER:

[Signature]

Date:

2/3/20

Comments:

ELECTRIC:

[Signature]

Date:

2-3-20

Comments:

PARKS, RECREATION & FORESTRY:

[Signature]

Date:

1-21-20

Comments:

POLICE CHIEF:

[Signature]

Date:

1/21/20

Comments:

FIRE:

[Signature]

Date:

1-31-20

Comments:

SEE STAFF COMMENT LETTER

DIRECTOR OF FINANCE:

[Signature]

Date:

1-21-20

Comments:

ECONOMIC DEVELOPMENT DIRECTOR:

[Signature]

Date:

1-21-20

Comments:

CONDITIONAL USE PERMIT
Blue Ribbon Baseball LLC, / Diamond Club Entertainment, LLC
General Outdoor Recreation Commercial
Blue Ribbon Circle North

Updated with changes from Common Council mtg on 2/18/20

A petition having been filed by Tom Kelenic, Blue Ribbon Baseball, for permission to construct and operate an outdoor ball park with a seating capacity of 2500 on Blue Ribbon Circle North, in the City of Oconomowoc, Wisconsin 53066, requesting a conditional use permit, upon which there has been the following proceedings:

- Preapplication meetings between the applicant, the Zoning Administrator and appropriate City staff to discuss the general concept on November 6, 2019.
- Zoning Administrator determination that the application is complete as required by §17.806(5).
- Zoning Administrator evaluation of the written justification for the conditional use and determination if the proposed conditional use is in harmony with the Master Plan of the City as required by §17.806(6)(a).
- After due notice, a public hearing was held before the Common Council on February 18, 2020 **and held over to the March 3, 2020 meeting.**
- Plan Commission has adopted the memorandum report of the City Planner as the Plan Commission's report and has adopted the findings of fact set forth therein (Exhibit A).
- Plan Commission has, by motion duly made, seconded and carried, at its regular Plan Commission meeting of February 12, 2020, recommended to the Common Council of the City of Oconomowoc that a conditional use be granted to Blue Ribbon Baseball, for the use of Outdoor Recreation, Commercial at Blue Ribbon Circle North, in the City of Oconomowoc.
- Plan Commission has forwarded its report and recommendation to the Common Council for final action by the Council.
- Common Council has reviewed the Plan Commission's recommendations and the proposed written conditional use permit.

The Common Council hereby accepts the Plan Commission's recommendation, with several additions and modifications based upon substantial evidence presented at the public hearings.

The Common Council of the City of Oconomowoc does hereby make the

following findings of fact and does hereby grant a conditional use permit to Tom Kelenic, Blue Ribbon Baseball, to allow for the use of general outdoor recreation commercial to the conditions set forth below.

FINDINGS OF FACT

The findings of fact listed in the Oconomowoc Planning Staff Report adopted as the City Plan Commission's report are hereby incorporated herein by reference. See Exhibit A.

CONDITIONS

1. Application / CUP Narrative. The applications and the conditional use permit narratives submitted by Tom Kelenic, Blue Ribbon Baseball, between November 2019 and January 16, 2020, (received January 27, 2020) are hereby approved and incorporated herein by reference. The use shall be operated as provided in the Plan of Operation attached to the application, but limited as provided in section 3 below, and the site shall be developed for this use in accordance with the site development plans on file with the City per Section 17.806(5)(d). If any terms of the plan of operation conflict with provisions of this conditional use permit, the provisions of this conditional use permit shall control.
2. Site & Architectural Plans. The site development plans dated and received in January 2020, and on file in the Office of the City Planner is hereby approved and incorporated herein by reference, including:
 - Development Application received January 27, 2020
 - Plan of Operations – Received January 27, 2020
 - Plan of Operations (Amendment) – Received January 31, 2020
 - Site and Architectural Plan set received January 27, 2020
 - Lighting Plans – Prepared by Lynch & Associates, January 27, 2020
 - Landscaping Plans – Prepared by Premier Landscapes, 1/24/20
 - PowerPoint Presentation (20 slides) – dated January 27, 2020
 - Building Renderings (17 colored sheets)
 - AstroTurf – Product fact sheets (3 pages)
 - Richard Talaske – Qualifications & Company overview (3 pages)
 - Sound Study – Prepared by Talaske Sound Thinking, 1-30-20
 - Stormwater Management Plan – dated January 9, 2020
3. Approved Activities. The applicant may operate an outdoor recreation commercial use, being a 2,500 seat capacity ballpark, a 45,000 SF training facility and a 900 car parking lot at Blue Ribbon Circle North. **The outdoor uses permitted as a matter of right shall be limited to Athletic Events. Athletic events shall include any activities involving physical sports, exercise or games typically conducted on a ball field.**
4. Non-Athletic Events. **Non-Athletic Events such as concerts, corporate and / or group outings, company picnics, children’s movies, municipal or**

political events, non-profit, church or charity activities, educational events, entertainment venues, comedy acts, science fairs, dance competitions, educational use (graduation ceremonies) and the like may be permitted only under a temporary use permit submitted to and approved by the City Common Council.

5. Hours of Operation. The Hours of Operation for the business shall be 7:00am to 10:00pm., subject only to the exceptions permitted under City Ordinance §17.108 (a), adopted herein, which permits the expansion of operating hours for Athletic Events to extend beyond 10:00pm when delayed due to inclement weather, such as rain, wind, and lighting.
6. Tailgating. Tailgating is prohibited for all events.
7. Lighting. The use shall be conducted to comply with the City's outdoor lighting standards per Section 17.211 and will be substantially similar to the lighting plan submitted as part the application. LED lights shall be used Light poles in the parking lot shall not be higher than 20 feet, as provided in the Pabst Farms Restrictions, Covenants and Easements.
8. Noise. The business shall conform with the noise regulations listed in the City Zoning Ordinance. If the City receives any complaints regarding excessive noise, the City will conduct sound measurements on the property of said complaint to determine if the operations are consistent with City requirements and ordinance regulations. In the event of non-compliance, the sound system shall be recalibrated so as to correct any non-compliance within 48 hours. In the event compliance cannot be achieved through recalibration, applicant may be required to submit and implement an alternative noise plan that may include additional measures such as noise barriers to achieve compliance. Unless otherwise permitted under a temporary use permit, any Non-Athletic Event shall be connected to the existing acoustical system.

The sound system installed will be directional to the stadium seating and be substantially similar to the configuration as detailed on page 20 of the Talaske Report.

The applicant also agrees that decibel levels in neighboring residential areas will not experience intermittent or impulsive decibel levels above 55 decibels. The specific neighborhoods where this provision will apply are Briarwood and East Lake Village (including the Kingsway condominium project).

9. Landscaping – The use shall be conducted to comply with the City's landscaping standards per Section 17.503. The proposed plantings along the north side of the building shall be relocated around the stormwater management facility.

10. Construction activity – The construction of the use shall comply with City’s construction standards (hours) per Section 17.212(3)(a). **No construction shall take place outside of the hours of 7:00am to 7:00pm, unless special permission is granted by the City Common Council.**
11. Stormwater / Erosion Control – The use shall comply with City’s Stormwater / Erosion Control standards per Section 19.07.
12. Parking – The use shall comply with the City’s parking standards per Section 17.303. The southern-most driveway serving the parking lot shall be relocated to the south to create a greater separation distance between driveways.
13. Street Parking – **There shall be no off-site street parking for the Blue Ribbon Baseball venue. All parking shall be on-site. Signs will be installed along Blue Ribbon Circle North as designated by the City Public Works Department, at Applicant’s expense, that identify locations and times where no street parking is allowed. Signs will also be posted in the Blue Ribbon parking lot noting “no parking on the streets or on neighboring business lots.”**
14. Netting – Netting shall be installed along the right field outfield wall to prevent balls being hit onto the I-94 off-ramp for STH 67. The netting shall be installed at time of construction and shall be in place prior to occupancy permits being granted. Netting shall be reviewed and approved by the State Department of Transportation.
15. Traffic Management Plan – Applicant shall submit a traffic management plan to detailing how vehicles will enter and exit the site in a safe manner, and to minimize adverse traffic impacts to the nearby properties. Plan shall be reviewed and approved by the Department of Public Works and the Police Department. **In the event it is determined by the City or WisDOT that the approved traffic management plan is insufficient to manage actual traffic, applicant may be required to develop and implement a revised traffic management plan approved by the City and/or WisDOT.**
16. Impact Fees – The use and construction is subject to the payment of impact to facilities fees per Section 27.06.
17. Fire Protection. The applicant shall provide all fire protection items as required by the City of Oconomowoc Fire Department Codes and Ordinances. The use shall comply with all Fire Codes & Ordinances of the Western Lakes Fire District per the NFPA (National Fire Prevention Association Code) and the IBC (International Building Code).
18. Permit Transferability. This approved Conditional Use Permit is transferable to

subsequent permit users provided said users conform to the conditions within this approved permit and the use is consistent with the approved plan of operation. A change in business name or ownership shall not be considered a substantive change and shall not require Plan Commission approval. In order for the use to be transferred, the use shall not discontinue for 12 consecutive months and the use must not exceed the restrictions and conditions listed within the approved conditional use permit.

19. Roadway Improvements / Access Standards – The applicant shall improve roads & site access as per the requirements of the State DOT and the City of Oconomowoc.
20. Alcohol License – No alcohol can be sold or served by the facility unless a liquor license is applied for and approved by the City per Section 12.04(2)(a). **The alcohol license shall identify specific times during which sales of alcohol shall be permitted. No sales be permitted after the 7th inning of baseball games and sales be discontinued at a reasonable times prior to the end of other Athletic Events. Applicant will submit for staff approval and implement a Responsible Alcohol Consumption Plan.**
21. Snow Removal. All snow must be either removed from the property or stored on property. No snow may be pushed on or stored on adjacent properties
22. Garbage / Refuse. The waste hauler will access the site through the site, pick-up the refuse in the dumpster and then exit the site. No garbage pick-up shall be on the adjacent properties.
23. Fireworks. **Fireworks are prohibited on the property, unless applicant obtains a temporary use permit approved by the City Common Council. Any use of any fireworks shall also be reviewed and approved by the Western Lakes Fire District prior to setting off.**
24. Cameras. The applicant / owner shall install cameras as required by the City Police Department. All cameras shall be installed and confirmed with the Police prior to release of occupancy permit.
25. Signage. **Any signage affixed to the ballpark shall not flash, pulsate or rotate. Any digital billboards or signs inside of the ballpark shall be turned off when the field is not in use.**
26. Landscaping. **Additional landscaping will be added along the western side of the ballpark to help eliminate noise and to reduce any disturbance to the adjacent business owners. The additional landscaping will be submitted to Planning staff and approved by them.**

27. **Security.** The applicant shall provide private security for all Northwoods games and large Athletic and Non-Athletic events. Prior to issuance of an occupancy permit for the Athletic events, applicant shall present a security plan, which must be approved by City staff. For Non-Athletic events, the security plan details are to be included as part of the Temporary Use Permit to be reviewed and approved by the City Common Council.

28. **Lawful Operation.** No use is hereby authorized unless the use is conducted in a lawful, orderly, and peaceful manner. Nothing in this conditional use permit shall be deemed to authorize any public or private nuisance or constitute a waiver, exemption or exception of any law, ordinance, order, or rule of the City of Oconomowoc or other duly constituted authorities.

29. **One Year Review – Following one year of operation for this Outdoor Recreation Commercial Use, the applicant shall appear before the Common Council to provide a report. At this time, the City may discuss any complaints or concerns received about the outdoor recreation use. Any concerns raised by the City shall be addressed by the applicant, and may result in amendment of this Conditional Use Permit.**

30. **Acceptance.** The applicant, upon the granting of the Conditional Use Permit, shall agree to accept the same in writing.

DATED: _____

CITY OF OCONOMOWOC

By: _____
David Nold, Mayor

Attest: _____
Diane Coenen, Clerk

ACCEPTANCE

This conditional use is accepted, and applicant / permittee agrees to abide by the terms thereof.

Blue Ribbon Baseball, LLC

By: _____
Tom Kelenic, representative



MEMORANDUM

DEPARTMENT

Date: February 13, 2020
To: Mayor, Common Council
From: Jason Gallo, City Planner / Zoning Administrator
Re: Memorandum of Modifications & Variances, Pabst Farms Southwest Business Park

RELATES TO THE STRATEGIC PLAN

Economic Development Strategic Goal III.A.07. Promote Pabst Farms area Development

BACKGROUND

In 2004, the City approved the Declaration of Development Standards and Protective Covenants for the Southwest Business Park at Pabst Farms. This document controls the development standards for developments that are to occur within the Business Park. These regulation standards include, but are not limited to: uses, architectural design, stormwater, drainage, landscaping, parking, storage, signage, lighting, maintenance, performance standards, and the Owners' Association.

ADDITIONAL ANALYSIS

Per this document, the Developer (Pabst Farms) has the right to vary or modify these standards and covenants and can only be done with the written approval of the Municipality, which is the City of Oconomowoc. The document grants the owner, Diamond Club Entertainment LLC, modifications and variances from the covenants with respect to the owner's operation of a health and wellness training center and outdoor baseball field. Examples of the variances and modifications include lighting, signage, and the outside use not being deemed a nuisance.

FINANCIAL IMPACT

n/a

RECOMMENDATION

Approve.

SUGGESTED MOTION

Motion to **APPROVE** the Memorandum of Modifications and Variances to certain provisions of the Southwest Business Park at Pabst Farms Declaration of Development Standards and Protective Covenants.

**MEMORANDUM OF
MODIFICATIONS AND
VARIANCES**

This MEMORANDUM OF MODIFICATIONS AND VARIANCES TO CERTAIN PROVISIONS of the SOUTHWEST BUSINESS PARK at PABST FARMS DECLARATION OF DEVELOPMENT STANDARDS AND PROTECTIVE COVENANTS is made as of this _____ day of _____, 2020 by PABST FARMS LAND COMPANY I, LLC (the “Company”) for the benefit of DIAMOND CLUB ENTERTAINMENT, LLC (the “Owner”).

RECITALS

1. The Company is the current owner of the real property located at the northeast corner of Blue Ribbon Drive and Blue Ribbon Circle North in the City of Oconomowoc, County of Waukesha, State of Wisconsin, more particularly described on the attached Exhibit A (the “Premises”).

Return to:

Tax Key Number OCO-0635-999-008

2. The Premises is being held, sold, conveyed, occupied, developed and maintained subject to the SOUTHWEST BUSINESS PARK at PABST FARMS DECLARATION OF DEVELOPMENT STANDARDS AND PROTECTIVE COVENANTS recorded in the office of the Waukesha County Register of Deeds on May 12, 2003 as Document No. 2985994 (the “Covenants”) for the purposes set forth therein.

3. On the date hereof, the Company is selling and conveying the Premises to Owner and, in connection with such conveyance and to facilitate Owner’s contemplated development and operation of the Premises, Owner has requested relief from certain provisions of the Covenants as set forth in this Memorandum.

4. Section 13.6 of the Covenants authorizes the Company, in its sole discretion, with written approval from the City of Oconomowoc (the “Municipality”), to grant variances from the strict application of the Covenants where strict application of any provision would result in exceptional or undue hardship to the Premises or where otherwise deemed appropriate by the Company.

5. Section 13.7 of the Covenants authorizes the Company, in its sole discretion, to modify the Covenants as to Building Sites and Lots owned by the Company or to new Improvements on any Site or Lot. Approval of the Municipality is required for modifications of Article II, Sections 3.1, 3.4, 3.5, 3.6, 5.2, 5.3 and 5.4, Article VI, Article VII, Article VII, Article IX, Section 13.6 or Section 13.7 of the Covenants in any manner that makes such provisions less restrictive.

MODIFICATIONS AND VARIANCE

To facilitate Owner's development and operation of the Premises as described in this Memorandum, and in consideration of Owner's commitment to develop and operate the Premises as described below, the Company hereby grants the Owner the following modifications and variances from the Covenants with respect to Owner's development and operation of a 48,000 square foot health and wellness training center and a 2,500 seat outdoor turf baseball field (the "Training Facility") at the Premises:

A. Zoning. Notwithstanding anything in Section 2.1 of the Covenants to the contrary, rezoning of the Premises to the Municipality's GC – General Commercial District and the granting by the Municipality to Owner of a conditional use permit for the Training Facility is hereby approved by the Company.

B. No Nuisances. Operations of the Training Facility within the times allowed by the applicable ordinances and any conditional use or special permit shall not be deemed a nuisance under Section 2.2 of the Covenants. It is expressly acknowledged that alcoholic beverages (including beer, wine and liquor as authorized by any license duly issued to Owner by the Municipality) may be sold and consumed within the Training Facility consistent with applicable laws, ordinances, regulations, conditional use permits and special event permits. No tailgating shall be allowed. It is also acknowledged that noise within the limitations established by the conditional use permit shall not constitute a nuisance under the Covenants. Fireworks will not be allowed during non-holiday weekday baseball games; fireworks will otherwise be allowed subject to a 'Special Event Permit' issued by the Municipality. Owner shall maintain landscaping pursuant to a landscaping plan approved by the Company consistent with Article VII of the Covenants, along the eastern, western and southern boundaries of the Premises in order to reduce the noise transmitted to the adjacent businesses within the lands burdened by the Covenants.

C. Subdivision of Lots. Notwithstanding anything in Section 3.1 of the Covenants to the contrary, the Company consents to Owner's division of the Premises into a total of two lots to enable the development for future use to be approved by the Company, together with the development and operation of the Training Facility at the balance of the Premises. Owner agrees, in addition to the restrictions set forth in Article III of the Covenants, for a period of ten (10) years following the date of this Memorandum, to obtain the Company's prior written consent, which may be withheld in the Company's sole discretion, to change or add any uses other than the Training Facility at the Premises.

D. Proceeding with Work. In addition to Owner's construction obligations under Section 3.2 of the Covenants, Owner agrees to build and operate the Training Facility on the Premises and to commence construction of such Training Facility not later than August 1, 2020.

E. Sign Approval. Notwithstanding anything in Section 9.2 of the Covenants to the contrary, signs advertising the Training Facility on the Premises, including rooftop and exterior wall mounted signs, shall be permitted as approved by the Company consistent with Section 9.1 of the Covenants and as approved by the Municipality consistent with applicable municipal ordinances. Exterior signs shall be permanently affixed to a Building or the ground, and shall not flash, pulsate, rotate or be affixed with moving appurtenances. Any digital signs located on the interior of the baseball field at the Premises shall be turned off when the baseball field is not in use.

F. Lighting Standards. Notwithstanding anything in Section 9.3 of the Covenants to the contrary, LED lights similar to lights customarily found at outdoor baseball fields (including fixtures mounted at heights of up to 90 feet) may be used to illuminate the 2,500 seat outdoor turf baseball field. All lights and fixtures must be approved by the Company consistent with Section 4.1 of the Covenants and remain subject to all applicable ordinances, regulations and conditions of the Municipality.

G. Parking. In addition to the Covenants in Article VIII regarding parking, Owner shall, at its sole expense, create and install permanent signs, subject to the Company’s approval, stating that no parking is allowed on Blue Ribbon Circle North, Blue Ribbon Drive or on any neighboring property or business or of the Premises, and that violators will be towed.

H. Term; Termination. All modifications and variances from the Covenants set forth in this Memorandum shall remain in effect as long as Owner operates the Training Facility at the Premises. All modifications and variances granted in this Memorandum (other than those in paragraph A and C above) shall automatically terminate if Owner fails to open the Training Facility to the general public by May 1, 2021 or if Owner ceases to operate the Training Facility for any period of twelve (12) consecutive months or for any eighteen (18) months over a consecutive twenty-four (24) month period. The recording by the Company or its successor of a notice of termination of modifications and variances in the office of the Waukesha County Register of Deeds shall be deemed conclusive proof that the modifications and variances set forth in this Memorandum (other than those in paragraphs A and C above) have been terminated. Cessation of operations of the Training Facility at the Premises shall not be grounds for the Company to revoke or terminate its consent to the zoning of the Premises under the Municipality’s GC-General Commercial District or to the division of the Premises into two lots to accommodate future development approved by the Company on one of the lots at the Premises.

IN WITNESS WHEREOF, the Company has caused this Memorandum to be executed the day and year first written above.

PABST FARMS LAND COMPANY I, LLC

BY: Lakeland Capital LLC, Manager

Peter Paul Bell, President

STATE OF WISCONSIN)
) SS.
_____ COUNTY)

Personally appeared before me this ____ day of _____, 2020, the above-named Peter Paul Bell, President of Lakeland Capital LLC, Manager of Pabst Farms Land Company I, LLC, to me known to be the person who executed the foregoing agreement and acknowledged the same.

Notary Public, State of Wisconsin
My Commission expires: _____

CONSENTED to this _____ day of _____, 2020.

CITY OF OCONOMOWOC

BY: _____
Its: _____

STATE OF WISCONSIN)
) SS.
WAUKESHA COUNTY)

Personally appeared before me this _____ day of _____, 2020, the above-named _____ of the City of Oconomowoc, to me known to be the person who executed the foregoing agreement and acknowledged the same.

Notary Public, State of Wisconsin
My commission expires: _____

ACKNOWLEDGED AND AGREED to this
_____ day of _____, 2020

DIAMOND CLUB ENTERTAINMENT, LLC

BY: _____
Thomas Kelenic, Manager

Drafted by:
Deborah C. Tomczyk, Esq.
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

EXHIBIT A

Legal Description of the Premises

Lot 3 of Certified Survey Map Number 9598, Tax Key Number OCOC 0635.999.008, Consisting of 21.82 acres, located on the north side of Blue Ribbon Circle North, City of Oconomowoc, Waukesha County, State of Wisconsin.



February 27, 2020

City of Oconomowoc
Common Council
Oconomowoc City Hall
174 East Wisconsin Avenue
Oconomowoc, WI 53066

RE: Blue Ribbon Baseball Conditional Use Permit

Dear Common Council Members:

We write to update Council on matters that have occurred since the Council's February 18, 2020 meeting regarding the proposal by Diamond Club Entertainment to operate an indoor training facility and outdoor baseball field within the Pabst Farms Business Park development.

After the Council tabled consideration of the CUP, we reached out to Pabst Farms Development Inc. ("Pabst Farms") to discuss potential changes to the proposed Memorandum of Modifications and Variances. While Ace Precision previously submitted its objections to this development in the Business Park, we are aware of Pabst Farms' and the City's apparent interest in bringing this development to Oconomowoc. As a result, we were looking for protections from Pabst Farms to better balance the interests of the existing businesses within the Business Park and Diamond Club Entertainment.

We worked with Pabst Farms to develop the changes. Pabst Farms communicated directly with Diamond Club Entertainment. The net result is a revised draft of the proposed Memorandum of Modifications and Variances, which will need the Council's approval should the CUP be approved on March 3, 2020.

As the Council will see from the updated Memorandum of Modifications and Variances, the changes include the following:

- The covenants regarding noise and lighting are specifically tied to any conditions set forth in the CUP, so the documents will be consistent;
- The covenant regarding nuisances specifies that alcoholic beverages will only be served within the training facility and baseball stadium, and no tailgating will be allowed in the parking lots;
- No fireworks will be allowed during weekday baseball games, and fireworks will

ACE PRECISION MACHINING CORPORATION
977 Blue Ribbon Circle North • Oconomowoc, Wisconsin 53066
W146 N5714 Enterprise Avenue • Menomonee Falls, Wisconsin 53051
Phone: 262-252-4003 • Fax: 262-252-4974 • E-Mail: ace@aceprecision.com • Web: www.aceprecision.com

be allowed at other times, including National Holiday dates, only with a special permit issued by the City;

- Diamond Club Entertainment will construct landscaping to reduce noise disturbance to the adjacent commercial businesses located within the Pabst Farms Business Park;
- Signage affixed to the baseball park and training facility will not flash, pulsate or rotate, and digital marketing signs within the baseball stadium shall be turned off when field is not in use;
- The light poles within the parking lots will be subject to the existing covenant restriction of 20 feet;
- The baseball field lights shall be LED lights;
- Diamond Club Entertainment will install permanent signs on its property stating that no parking is allowed on Blue Ribbon Circle North, Blue Ribbon Drive or on any neighboring property or business, and that violators will be towed under the authority of and through action directed by the City.

We believe this revised document, in conjunction with the limitations placed in the CUP and any Special Use Permit, will better encourage a positive working relationship between the existing Business Park businesses and Diamond Club Entertainment. It is our hope that Diamond Club Entertainment is similarly interested in being a good neighbor.

We are grateful to the Council for its careful consideration of the CUP and for its extended discussion at the February 18, 2020 meeting. We expect that Pabst Farms will monitor these covenants in good faith and encourage the City to as well, should the CUP for this project be approved. If the Council, after considering all of the comments and evidence submitted for and against, approves the Blue Ribbon Baseball Conditional Use Permit, we request that the Council also give its approval to the revised Memorandum of Modifications and Variances.

Sincerely,



Sheri Eubanks
Vice President of Operations
Ace Precision Machining Corporation
977 Blue Ribbon Circle North
Oconomowoc, WI 53066-8666





MEMORANDUM

ADMINISTRATION

Date: February 24, 2020
To: Mayor Nold, Common Council
From: Sarah Kitsembel, City Administrator
Re: Rescission of Resolution of Necessity – 311 W Wisconsin Avenue

RELATES TO THE STRATEGIC PLAN

IV.B. Plan and Implement Quality of Life Assets and Community Amenities

BACKGROUND

On November 5, 2019, the Council adopted a Resolution of Necessity (Resolution No. 19-R2832) to pursue potential acquisition of the property at 311 W Wisconsin Avenue in order to provide for the purpose of development for park purposes and public parking. The Council has determined they will not proceed with the acquisition of this parcel.

ADDITIONAL ANALYSIS

n/a

FINANCIAL IMPACT

n/a

RECOMMENDATION

The attached Rescission of Resolution of Necessity should be adopted based on Council’s direction to not pursue the acquisition of this parcel.

SUGGESTED MOTION

Move to adopt the Resolution for Rescission of Resolution of Necessity No. 19-2832

RESOLUTION NO. 20-R2860

RESOLUTION FOR RESCISSION OF RESOLUTION OF NECESSITY NO. 19-R2832

WHEREAS, the City Oconomowoc adopted a Resolution of Necessity in accord with §32.05 and Wisconsin Statutes relating to property located within the City, specifically Tax Parcel # OCOC 0560-117; and

WHEREAS, the City has determined not to proceed with the acquisition of this parcel.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Common Council of the City of Oconomowoc does hereby rescind the Resolution of Necessity No. 19-R2832 dated November 5, 2019.

Date: March 3, 2020

CITY OF OCONOMOWOC

By: _____

David Nold, Mayor

ATTEST:

Diane Coenen, City Clerk