



MEMORANDUM

Date: September 6, 2016

To: Common Council
From: David Buck, CDD

RE: Development Agreement Between The City of Menasha and Woodland
Developments, LLC

On September 8, 2015, The City of Menasha entered into a development agreement with Woodland Developments, LLC (Mike Hagens) for the development of residential property adjacent to STH 114. The agreement included certain performance measures that have not been met including:

1. Woodland would install infrastructure associated with the development on or before September 1, 2016 (line item 1); and
2. Woodland would file a Subdivision Plat of the subject property by June 1, 2016 (line item 16); and

Since these terms of the Development Agreement have not been met, the Development Agreement has expired and is no longer in force. It is the recommendation of the Community Development Department to enter into a new Development agreement with Woodland Developments, LLC that is essentially an amendment to the previous agreement including alterations as follows (attached please find an updated strike-through version of the Development Agreement):

1. Adjust the timeframe for the infrastructure installation from September 1, 2016 to July 31, 2017 as electric service, final paving, and cul-de-sac design/construction are yet to be completed (line item 1);
2. Adjust reference to the use of a "subdivision plat" to "certified survey map or other land division instrument" as Woodland has divided the property through use of three (3) certified survey maps (line items 7, 10 & 15);
3. Adjust timing for the transfer of lands to be used for green space and trail purposes to be "within 30 days of the execution of this development agreement" as a subdivision plat has not be used to divide the property (line item 7);
4. Adjust the number of homes to be constructed no later than September 1, 2021 from "eleven (11)" to "nine (9)" because there was discovery of a small presence of wetlands on the subject property and the necessity to increase lot frontage on

- one (1) of the proposed lots to meet subdivision code requirements (line item 10);
5. Remove necessity for a for a variance to right-of-way width and cul-de-sac length/radius as they have been designed and included on the CSM to meet subdivision code requirements (line item 11);
 6. Adjust the termination date of the new Development Agreement necessitating the recording of the land division instruments for the subject property from June 1, 2016 to December 31, 2016 (line item 15).

As mentioned, these alterations to the previously approved Development Agreement will not substantially change the terms except to “clean up” items that are no longer needed or have been addressed through alternate means and to extend the timeframe of the performance measures.

Staff recommends the City of Menasha reenter into a Development Agreement with Woodland Developments, LLC for the development of a new residential neighborhood and the construction of nine (9) homes, associated infrastructure and the transfer of lands to the City for future use as green space and/or trail purposes.

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MENASHA AND WOODLAND DEVELOPMENTS, LLC

THIS AGREEMENT is entered into on this _____ day of _____, ~~2015~~ **2016** between the City of Menasha (City) and Woodland Developments, LLC (Woodland).

WHEREAS, the City has determined that the development of residential property adjacent to STH 114 shown in the attached Exhibit A (Development Property) is desirable for the City of Menasha; and,

WHEREAS, Woodland has agreed to develop this property within the City of Menasha;

NOW THEREFORE, the parties mutually agree as follows:

1. On or before ~~September 1, 2016~~ July 31, 2017, Woodland shall cause the installation of all infrastructure. City has the authority to inspect such infrastructure during construction.
2. The City will pay to Woodland the actual cost of the infrastructure within 15 days of the receipt of any billing for such infrastructure. The cost of infrastructure will not exceed that the price which the City would have paid had it installed the infrastructure. Woodland shall advise the City as to the firm cost within 90 days after installation of the infrastructure. This total amount shall not exceed \$100,000.
3. The City shall, pursuant to its deferred assessment policy under sec. 3-2-16 levy an area special assessment for the costs of the infrastructure identified in #1 and #2 against the benefited properties consisting of the remaining unsold lots in the Development Property owned by Woodland.
4. The City shall determine what portion of the area assessment is assigned to each lot as a special assessment, which shall be due and payable at the time of the sale of that lot.
5. For purposes of this agreement, the term "infrastructure" shall include the following:
 - a. Cost to relocate sanitary sewer laterals, water laterals and storm sewer laterals located within the street right of way and only if necessitated as a result of the plat approval; and
 - b. Final street paving; and
 - c. All engineering costs to design and plat the subdivision, bid and let all construction work, oversee construction to City specifications, land surveying, etc.; and
 - d. Installation of electric service to the lots by Menasha Utilities.
6. Parkland dedication fees in the amount of \$550 for each lot shall be collected from the applicant upon issuance of a building permit.
7. Within 30 days of ~~recording the subdivision plat~~ execution of the Development Agreement for the Development Property, Woodland shall transfer lands shown on Exhibit B, proposed to be used for green space/trail purposes, to City, by warranty deed free and clear of all liens and encumbrances, covenants and restrictions, at a cost of \$110,000.
8. Woodland shall notify in writing each lot purchaser of the proposed trail location and the purchaser shall acknowledge receipt of said notice, a copy of which shall be transmitted to the Community Development Department. The written notice shall be in a form acceptable to the City. In addition, notification to each lot purchaser of the proposed trail location shall be included in the title policy. Failure

to provide such notices and copies of all such notices to the Community Development Department shall constitute a serious and material breach of this Agreement by Woodland.

9. City shall relocate at its expense the street and curb and gutter on the western leg of the proposed development to accommodate the proposed trail ~~except that design relocation shall be included as part of the plat to be the responsibility of Woodland.~~
10. On or before September 1, 2021, Woodland shall cause construction of residential homes on at least all 9 of the ~~11-9~~ lots created by the ~~subdivision plat~~certified survey maps or other land division instrument to be completed. Construction is considered complete when an occupancy permit has been issued.
- ~~11. Woodland's obligations described in this Agreement require the granting of a variance for right of way width and cul de sac length and radius. Woodland's obligations are conditioned upon the obtaining of such approvals from applicable governmental bodies in the manner required by law.~~
- ~~12.~~11. The various specific undertakings of the City described in this Agreement require approvals from the City's Common Council and/or Planning Commission as well as from governmental bodies external to the City, some of which approvals may require public hearings and other legal proceedings. The City's obligations are conditioned upon the obtaining of all such approvals in the manner required by law. The City cannot assure that all such approvals will be obtained, but will use good faith efforts to obtain such approvals on a timely basis.
- ~~13.~~12. The rights, duties and obligations of the parties hereunder shall not be assigned without the prior written consent of both parties to the assignment.
- ~~14.~~13. This agreement shall be binding upon all successors, heirs, and assigns of the parties and shall run with the land.
- ~~15.~~14. The State of Wisconsin and Calumet County are designated as jurisdiction and venue in the event of any legal dispute concerning this agreement.
- ~~16.~~15. This agreement shall terminate if a certified survey map or other land division instruments ~~subdivision plat~~ of the subject property ~~has~~ have not been recorded in the office of the Calumet County Register of Deeds by ~~June~~ December 31, 2016. Said certified survey maps or other land division instrument~~plat~~ must include:
 - a. Dedication of the street right of way adjacent to the lots in the subdivision and the area to be occupied by the proposed trail including any terrace area associated therewith on the western leg of the development; and
 - b. Establishment of an ingress, egress and maintenance easement on the driveway section between USH 10/STH 114 and the dedicated street right of way; and
 - c. All other improvements as required by the City of Menasha subdivision regulations.
- ~~17.~~16. The parties agree that this constitutes the complete agreement of the parties. Any amendments shall not become effective until agreed to in writing and signed by all parties.

CITY OF MENASHA

WOODLAND DEVELOPMENTS, LLC

Donald Merkes, Mayor

Michael H. Hagens, Member

Deborah A. Galeazzi, City Clerk

Exhibit A - Development Property

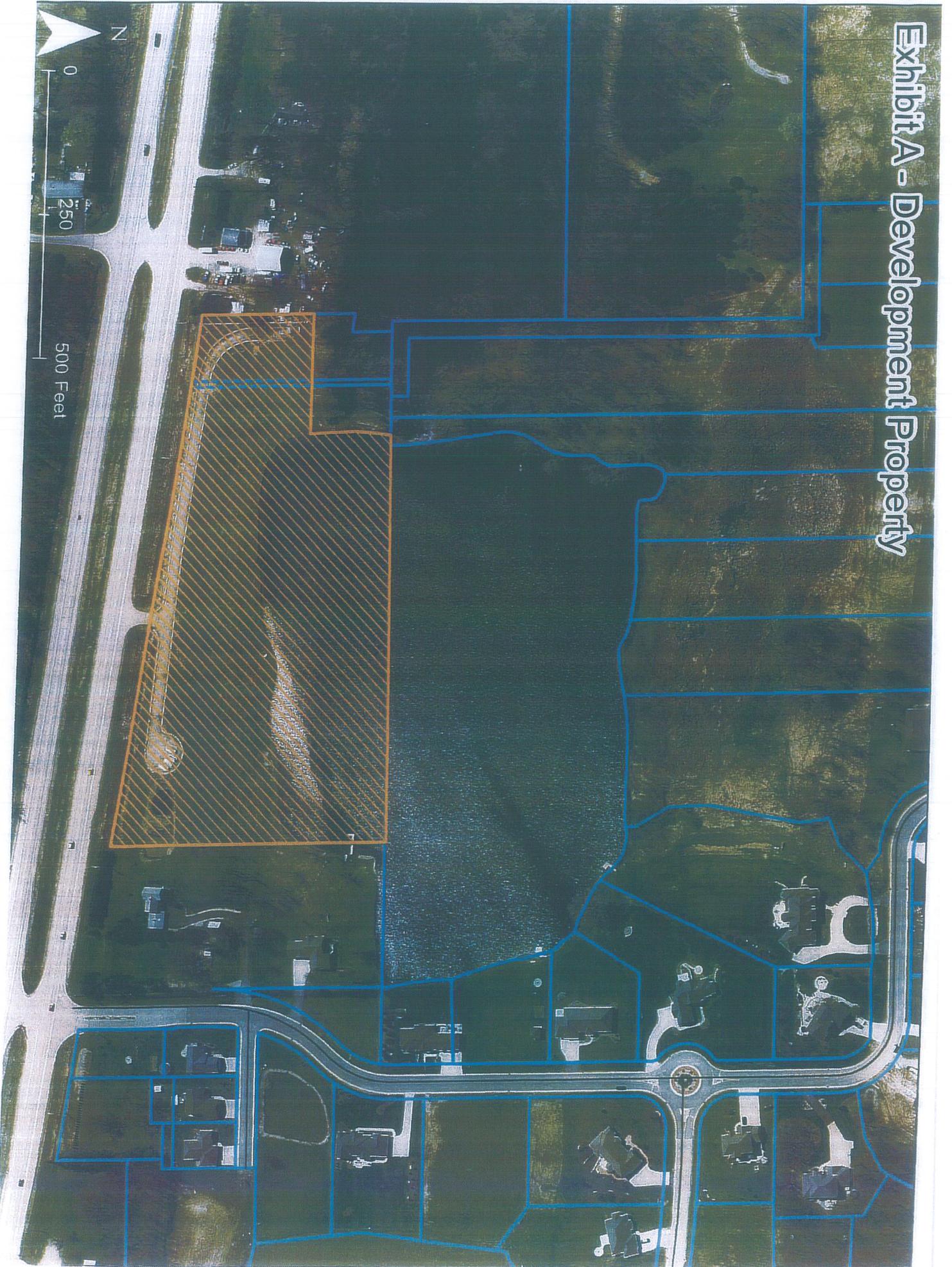


Exhibit B - Proposed Property Acquisition

