

**Village of Somers
7511 12th Street
Somers, WI 53171**

**Village Board Meeting
Agenda
Tuesday, February 28, 2023
5:30 p.m.**

Village Board Meeting:	
Item #	
1	Call to order
2	Pledge of Allegiance
3	Consent and Approval of Minutes of Regular meetings on February 14, 2023, Vouchers dated February 16, 2023, and February 23, 2023
4	Correspondence:
5	Citizens Comments
6	President and Trustee Comments
7	Motion to take from the Table, Plan Commission Recommendation (J&M's Bar & Grill): a. Request by Eclectic LLC, PO Box 78, Somers, WI 53171 (Owner), Justin Traugher, PO Box 78, Somers, WI 53171 (agent), for a Conditional Use Permit amendment to allow for outside amplified music in the B-2 Community Business Dist. on Tax Parcel # 82-4-222-162-0010, located in the NW ¼ of Section 16, T2N, R22E, Village of Somers. (For information purposes only, this property is located at 8013 12th Street.)
8	Plan Commission Recommendation (J&M's Bar & Grill): a. Discussion and possible action on request by Eclectic LLC, PO Box 78, Somers, WI 53171 (Owner), Justin Traugher, PO Box 78, Somers, WI 53171 (agent), for a Conditional Use Permit amendment to allow for outside amplified music in the B-2 Community Business Dist. on Tax Parcel # 82-4-222-162-0010, located in the NW ¼ of Section 16, T2N, R22E, Village of Somers. (For information purposes only, this property is located at 8013 12th Street.)

9	Discussion and possible action on proposed settlement agreement between Nancy Lake (“Appellant”) and the Village of Somers in regard to Case No. 22-CV-625
10	Discussion and possible action on request for partial payment #3 from Globe Contractors, Inc. in the amount of \$329,345.41 for Flint 94 Commerce Center Offsite Public Utility Plans
11	Approval of Operator’s Licenses: Tracy Koster and Michael Stewart
12	Adjourn

I hereby certify that as the designee of the chief elected official of the Village of Somers, I posted this notice of the February 28, 2023 Village Board Meeting Agenda in 1 public place & on the Village website.

Dated this 24th day of February 2023

Brandi Baker, Clerk-Treasurer

Requests from person with disabilities who need assistance to participate in this meeting should be made to the Clerk’s Office at 262-859-2822 with as much notice as possible. **Notice is hereby given that members of the Village Board may participate telephonically. Notice is hereby given that members of the Town Board may be in attendance for the sole purpose of gathering information. A quorum may be present. However, no Board action will be taken.**

Village of Somers

Proceedings from the Regular Board Meeting February 14, 2023

President Stoner called the meeting to order at 5:30 p.m.

President Stoner led the Pledge of Allegiance.

Present: President George Stoner, Trustees Gregg Sinnen, Ben Harbach, Jackie Nelson and Karl Ostby. Trustee Joe Smith was present via phone. Trustee Jack Aupperle was excused. Also present: Administrator Jason Peters, Clerk/Treasurer Brandi Baker, and Attorney Jeff Davison.

Consent and Approval of Minutes of Regular meetings on January 24th, 2023, Vouchers dated January 26th, 2023, February 2nd, 2023, February 9th, 2023 and January 2023 Building Report

Trustee Ostby moved to approve the Minutes of Regular meetings on January 24th, 2023, Vouchers dated January 26th, 2023, February 2nd, 2023, February 9th, 2023 and January 2023 Building Report

Seconded by Trustee Nelson. Motion carried. 6-0 vote.

Correspondence

None

Citizen Comments

Krista Reck- 6007 7th St Kenosha WI 53144 spoke on behalf of Hawthorn Hollow thanking the staff and board for working with them on their compliance issues.

Scott Fredrick-504 13th St Kenosha WI 53140-spoke to the board about pursuing Trustee Sinnen's seat on the Board. Also expressed his appreciation to the Board for all its hard work.

President and Trustee Comments

President Stoner thanked everyone for their prayers on his surgery. He discussed the Plan Commission meeting on February 13, 2023, and the Fire Department's new equipment. Mentioned the meeting with Grouse and hopes it is all worked out.

Trustee Nelson spoke on the Friday night presentation from the Fire Department. Shout out to Captain Strom. Spoke on the new equipment that was presented and how it was all paid for by grants. Expressed how proud she is of Somers Fire and Rescue. Also spoke on moving forward with the auditorium improvements.

Trustee Sinnen spoke on the good press the Friday night presentation had for the Fire Department.

Trustee Ostby expressed his thankfulness for our new Building Inspector. Commented that it has been good working with Hawthorn Hollow. Wished everyone a Happy Valentine's Day.

Trustee Harbach complimented the Fire Department.

Plan Commission Recommendation:

- a. Discussion and possible action on Request by: SRPF D Burlington Rd LLC, 111 E Wacker Drive, Suite 2600, Chicago, IL 60601 (Owner), Drue Stoehr, 2001 Ross Avenue, Suite 400, Dallas, TX 75201 (Agent), for approval of a Certified Survey Map (dated December 19, 2022 and prepared by John P. Konopacki of Pinnacle Engineering Group) to combine Tax Parcel #s 82-4-222-194-0101, 82-4-222-301-0050, 82-4-222-301-0040 & 82-4-222-301-0030 into one (1) 82.5470-acre parcel, located in the SE ¼ of Section 19 and the NE ¼ of Section 30, T2N, R22E, Village of Somers. (For informational purposes only, this property is located at 10610 Burlington Road.)**

Trustee Ostby moved to approve request by: SRPF D Burlington Rd LLC, 111 E Wacker Drive, Suite 2600, Chicago, IL 60601 (Owner), Drue Stoehr, 2001 Ross Avenue, Suite 400, Dallas, TX 75201 (Agent), requests approval of a Certified Survey Map (dated December 19, 2022 and prepared by John P. Konopacki of Pinnacle Engineering Group) to combine Tax Parcel #s 82-4-222-194-0101, 82-4-222-301-0050, 82-4-222-301-0040 & 82-4-222-301-0030 into one (1) 82.5470-acre parcel, located in the SE ¼ of Section 19 and the NE ¼ of Section 30, T2N, R22E, Village of Somers, subject to the following conditions:

1. Subject to final Certified Survey Map being reviewed and approved by Village Planning; and
2. Subject to final Certified Survey Map being reviewed and approved by Village Engineer.

Seconded by Trustee Nelson. Motion carried. 6-0 vote.

Trustee Sinnen inquired about the public road easement.

Administrator Peters showed on GIS map.

Discussion and possible action on approval of hiring of Scott Seymour for the position of Building Inspector

Trustee Ostby moved to approve the hiring of Scott Seymour for the position of Building Inspector with offer tendered.

Seconded by Trustee Sinnen. Motion carried. 6-0 vote.
Trustee Harbach inquired about the vacation and if it will be annual.

Trustee Nelson asked about the compliance officer portion of the job.

Administrator Peters explained that is in the job description.

President Stoner shared his excitement and thanked Scott for choosing to come to Somers.

Action on proposed Resolution 2023-002, A Resolution to amend the 2023 Budget to reference updated Capital Improvement Plan projects for 2023

Trustee Nelson moved to approve the proposed Resolution 2020-014, A Resolution to amend the 2020 Budget to reference updated Capital Improvement Plan projects for 2020.

Seconded by Trustee Harbach.

Trustee Sinnen expressed his disagreement with the resolution.

Trustee Ostby explained we will be doing a more complete 10-year plan in the future with Ehlers.

ROLL CALL: Smith aye, Nelson aye, Sinnen nay, Stoner aye, Ostby aye, Harbach aye.
Motion carried 5-1 vote.

Action on proposed Ordinance No. 2023-004, An Ordinance to Create Section ZN5.03(8)(b)144 of the Code of Ordinances of the Village of Somers Relating to Standard for Conditional Uses for Event Facilities

Trustee Sinnen moved to waive the waive first reading of proposed Ordinance No. 2023-004.

Seconded by Trustee Nelson. Motion carried. 6-0 vote.

Trustee Smith moved to approve the proposed Ordinance No. 2023-004, An Ordinance to Create Section ZN5.03(8)(b)144 of the Code of Ordinances of the Village of Somers Relating to Standard for Conditional Uses for Event Facilities.

Seconded by Trustee Nelson. Motion carried. 6-0 vote.

Trustee Nelson explained what triggered these Ordinances.

Action on proposed Ordinance No. 2023-005, An Ordinance to

Create Section ZN5.03(8)(b)62 of the Code of Ordinances of the Village of Somers Relating to Standard for Conditional Uses for Living Quarters for Watchmen and Caretakers in the M-2 District and PR-1 District

Trustee Sinnen moved to waive the first reading of proposed Ordinance No. 2023-005.

Seconded by Trustee Nelson. Motion carried. 6-0 vote.

Trustee Nelson moved to approve the approve proposed Ordinance No. 2023-005, An Ordinance to Create Section ZN5.03(8)(b)62 of the Code of Ordinances of the Village of Somers Relating to Standard for Conditional Uses for Living Quarters for Watchmen and Caretakers in the M-2 District and PR-1 District.

Seconded by Trustee Sinnen. Motion carried. 6-0 vote.

Krista Reck described the Hawthorn Hollow property to the Board.

Action on proposed Ordinance No. 2023-006, An Ordinance to Create Section ZN4.06(2)(d) of the Code of Ordinances of the Village of Somers Relating to PR-1 Park-Recreational District Conditional Uses

Trustee Ostby moved to waive the Motion to waive first reading of proposed Ordinance No. 2023-006

Seconded by Trustee Nelson. Motion carried. 6-0 vote.

Trustee Sinnen moved to approve proposed Ordinance No. 2023-006, An Ordinance to Create Section ZN4.06(2)(d) of the Code of Ordinances of the Village of Somers Relating to PR-1 Park-Recreational District Conditional Uses.

Seconded by Trustee Nelson. Motion carried. 6-0 vote.

Action on proposed agreement with Ehlers to create an updated Financial Management Plan

Trustee Ostby moved to approve the approve proposed agreement with Ehlers to create an updated Financial Management Plan.

Seconded by Trustee Harbach.

Action on proposed First Amendment to Development Agreement between the Village of Somers and HSA Acquisitions, Inc. for project on Tax Parcel #82-4-222-194-0200

Trustee Harbach moved to approve proposed First Amendment to Development Agreement between the Village of Somers and HSA Acquisitions, Inc. for project on Tax Parcel #82-4-222-194-0200, subject to the following conditions:

1. Subject to updated plans being reviewed and approved by Village Planning.

2. Subject to updated engineering plans being reviewed and approved by Village Engineer.

Seconded by Trustee Sinnen. Motion carried. 6-0 vote.

Action on application for Class “B” (Picnic) Beer License from Shoreland Lutheran High School Booster Club for the Connections We Make: Dinner & Auction Event on March 25, 2023. Event to be held at Shoreland Lutheran High School, 9026 12th Street Kenosha, WI 53144

Trustee Harbach moved to approve the application for Class “B” (Picnic) Beer License from Shoreland Lutheran High School Booster Club for the Connections We Make: Dinner & Auction Event on March 25, 2023. Event to be held at Shoreland Lutheran High School, 9026 12th Street Kenosha, WI 53144

Seconded by Trustee Ostby. Motion carried. 6-0 vote.

Discussion and possible action on application for Temporary Operators License: Amber Wasurick, for the Shoreland Lutheran High School Booster Club for the Connections We Make: Dinner & Auction Event on March 25, 2023.

Trustee Harbach moved to approve the application for Temporary Operators License: Amber Wasurick, for the Shoreland Lutheran High School Booster Club for the Connections We Make: Dinner & Auction Event on March 25, 2023. And waive fees.

Seconded by Trustee Ostby. Motion carried. 6-0 vote.

Approval of Operator’s Licenses: Alexandria Dohgne

Trustee Ostby moved to approve Operator Licenses: Alexandria Dohogne.

Seconded by Trustee Harbach. Motion carried. 6-0 vote.

Adjourn

Trustee Nelson moved to adjourn at 6:02pm.

Seconded by Trustee Harbach. Motion carried. 6-0 vote

Drafted this 16th day of February by Brandi Baker Clerk/Treasurer

These minutes are not official until approved by the Village Board.

Check Date	Bank	Check	Vendor	Vendor Name	Amount
Bank POOL POOLED CASH					
02/16/2023	POOL	61440	A&R001	A & R DOOR SERVICES INC	577.00
02/16/2023	POOL	61441	AED	AED ESSENTIALS	989.00
02/16/2023	POOL	61442	AIR001	AIRGAS USA, LLC	294.07
02/16/2023	POOL	61443	CDWGOV	CDW GOVERNMENT	1,288.20
02/16/2023	POOL	61444	CENTURL	CENTURLINK	15.46
02/16/2023	POOL	61445	SPECTRUM	CHARTER COMMUNICATIONS	139.98
02/16/2023	POOL	61446	DAV001	DAVISON LAW OFFICE, LTD	19,345.10
02/16/2023	POOL	61447	REFUND TAX	FRANCIS HUGHES JR & STEVEN ISELIN	562.57
02/16/2023	POOL	61448	KMCC001	FROEDTERT SOUTH	200.00
02/16/2023	POOL	61449	REFUND TAX	GARRETT & KATHRYN MEADER	2,754.25
02/16/2023	POOL	61450	REFUND TAX	HOWARD VENDRELL	277.61
02/16/2023	POOL	61451	JEF001	JEFFERSON FIRE & SAFETY INC	1,294.62
02/16/2023	POOL	61452	JOHNS	JOHNS DISPOSAL SERVICE INC	64,406.60
02/16/2023	POOL	61453	KTC001	KENOSHA TROPHY COMPANY	500.00
02/16/2023	POOL	61454	KWU002	KENOSHA WATER UTILITY	3,563.11
02/16/2023	POOL	61455	MEN001	MENARDS - RACINE	705.52
02/16/2023	POOL	61456	NAP001	NAPA AUTO PARTS	5.49
02/16/2023	POOL	61457	QUADIENT	QUADIENT FINANCE USA INC	1,003.00
02/16/2023	POOL	61458	PEREZ	SANDRO PEREZ	1,097.29
02/16/2023	POOL	61459	STAPLEAD	STAPLES	66.20
02/16/2023	POOL	61460	THOMPSON	THOMPSON & ASSOC WETLAND SERV	936.50
02/16/2023	POOL	61461	WEE001	WE ENERGIES	195.57
02/16/2023	POOL	61462	WEE001	WE ENERGIES	837.75
02/16/2023	POOL	61463	WIDOA	WI DEPT OF ADMINISTRATION	175.00

POOL TOTALS:

Total of 24 Checks:

101,229.89

Less 0 Void Checks:

0.00

Total of 24 Disbursements:

101,229.89

02/23/2023 02:35 PM
User: jmartin
DB: Somers

CHECK REGISTER FOR VILLAGE OF SOMERS
CHECK DATE FROM 02/23/2023 - 02/23/2023

Page: 1/1

Check Date	Bank	Check	Vendor	Vendor Name	Amount
Bank POOL POOLED CASH					
02/23/2023	POOL	61475	A&R001	A & R DOOR SERVICES INC	390.00
02/23/2023	POOL	61476	T0000234	AARON STROM	155.01
02/23/2023	POOL	61477	ALLSTAR	ALL-STAR INFLATABLES INC	10,370.00
02/23/2023	POOL	61478	BTM001	BOUND TREE MEDICAL LLC	68.33
02/23/2023	POOL	61479	CORE	CORE & MAIN LP	2,970.00
02/23/2023	POOL	61480	REFUND TAX	DANIEL C TORRESIN	284.00
02/23/2023	POOL	61481	EMC	EMC INSURANCE COMPANIES	24,803.00
02/23/2023	POOL	61482	EME001	EMERGENCY MEDICAL PRODUCTS INC	286.16
02/23/2023	POOL	61483	UHS001	FROEDTERT SOUTH INC	567.05
02/23/2023	POOL	61484	GALLS	GALLS LLC	514.01
02/23/2023	POOL	61485	GENCOM	GENERAL COMMUNICATIONS INC	2,190.00
02/23/2023	POOL	61486	JEF001	JEFFERSON FIRE & SAFETY INC	1,380.00
02/23/2023	POOL	61487	SMITHKEN	KENNETH SMITH	30.00
02/23/2023	POOL	61488	KCSHERIF	KENOSHA CO SHERIFF DEPT	40.00
02/23/2023	POOL	61489	KCSHERIF	KENOSHA CO SHERIFF DEPT	40.00
02/23/2023	POOL	61490	KTC001	KENOSHA TROPHY COMPANY	22.00
02/23/2023	POOL	61491	LYN001	LYNCH TRUCK CENTER	48,821.00
02/23/2023	POOL	61492	REFUND TAX	MARSHALL L. & MICHELLE L. MCKEOWN	2,048.67
02/23/2023	POOL	61493	MCDEVITTS	MCDEVITTS TOWING & REPAIR	7,974.04
02/23/2023	POOL	61494	MDMAXX	MDMAXX LLC	1,040.00
02/23/2023	POOL	61495	REFUND TAX	RENO G. & LAURA A. KNUDSEN	472.07
02/23/2023	POOL	61496	RICOHUSA	RICOH USA, INC	193.43
02/23/2023	POOL	61497	SOUTHPORT	SOUTHPORT ENGINEERED SYSTEMS	336.55
02/23/2023	POOL	61498	STAPLEAD	STAPLES	628.51
02/23/2023	POOL	61499	WEE001	WE ENERGIES	7,800.20
02/23/2023	POOL	61500	WEE001	WE ENERGIES	4,691.91
02/23/2023	POOL	61501	WEE001	WE ENERGIES	58.31
02/23/2023	POOL	61502	WIL002	WIL-KIL PEST CONTROL	52.70
02/23/2023	POOL	61503	WSC001	WISCONSIN SUPREME COURT	700.00

POOL TOTALS:

Total of 29 Checks:	118,926.95
Less 0 Void Checks:	0.00
Total of 29 Disbursements:	118,926.95



**VILLAGE OF SOMERS
VILLAGE BOARD
MEETING ITEM MEMORANDUM**

MEETING DATE: February 28, 2023

TO: Village President Stoner and Village Trustees

PREPARED BY: Jason J. Peters, Administrator

AGENDA ITEM: #7 Motion to take from the Table, Plan Commission Recommendation (J&M's Bar & Grill):

- a. Request by Eclectic LLC, PO Box 78, Somers, WI 53171 (Owner), Justin Traughber, PO Box 78, Somers, WI 53171 (agent), for a Conditional Use Permit amendment to allow for outside amplified music in the B-2 Community Business Dist. on Tax Parcel # 82-4-222-162-0010, located in the NW ¼ of Section 16, T2N, R22E, Village of Somers. (For information purposes only, this property is located at 8013 12th Street.)

#8 Plan Commission Recommendation (J&M's Bar & Grill):

- a. Discussion and possible action on request by Eclectic LLC, PO Box 78, Somers, WI 53171 (Owner), Justin Traughber, PO Box 78, Somers, WI 53171 (agent), for a Conditional Use Permit amendment to allow for outside amplified music in the B-2 Community Business Dist. on Tax Parcel # 82-4-222-162-0010, located in the NW ¼ of Section 16, T2N, R22E, Village of Somers. (For information purposes only, this property is located at 8013 12th Street.)

BACKGROUND:

Eclectic, LLC (DBA J&M's Bar & Grill) was granted a Conditional Use Permit (CUP) by the Board in August of 2021. This CUP allowed the business to have an outdoor dining and recreation area. The site is currently zoned B-2. The CUP limits the hours of operations for the outdoor/recreation area to 11 a.m. to 9 p.m.

In May of 2022, J&M's Bar & Grill applied for a cabaret license to hold outdoor music. The applicant was informed that the CUP would not permit these activities as it states,

“There shall be no outside amplified music speakers or live music”. They were advised that if they wished to hold these activities, they would need to seek an amendment to their CUP. They applied for an amendment to their CUP at the end of May.

PRIOR ACTION TAKEN:

The requisite public hearing for the amendment to their CUP held by the Plan Commission in July of 2022. Several residents spoke out against the granting of the amendment. Their main concern was the noise that would be created.

Justin Traugher, with J&M’s Bar & Grill spoke during the public hearing and stated that he did not want to have loud music on the patio. He stated that he was looking to have someone with a guitar and an amplifier. His application states that the “music level will be appropriate to ensure that our customers can conversate and not be uncomfortable with over-loud music.”

The Plan Commission’s main concern was over any noise created by the suggested activities and how this could affect neighboring properties given the proximity of the homes. The Plan Commission’s recommendation (7-0) was to deny the request for an amendment to the CUP.

The Board discussed this at the July 19th, 2022 Work session and directed the Owner to hold a neighbor meeting.

For these activities to take place, J&M’s Bar and Grill also needed to go through the probationary period for a cabaret license. This item was placed on our July 12th, 2022 Board Meeting. The Board tabled the matter.

Owner Justin Traugher held a “neighborhood meeting” at the Village Hall in August of 2022. The purpose of the meeting was to address the concerns held by the surrounding neighbors. Invitations went out to the seventy-four neighbors that received the initial Notice of Public Hearing sent by the Village. There were seven attendees along with Trustee Smith. Concerns about noise occurrences from the parking lot was discussed, along with solutions to minimize future occurrences. After discussing the main reason for the meeting, owners Justin and Megan Traugher proposed the following:

- 1 to 2 artists (vocalist/guitarist)
- 1 to 2 events per month, weather permitting
- Music shall be played in the far east corner of the patio, adjacent to the east commercial building. To help with sound mitigation, speakers and other equipment will be positioned in the direction of the south vacant lot behind the patio; away from the only surrounding residential neighbor
- Music to cease no later than 9 p.m., allowing an appropriate time for all outdoor activities to end and patrons to move inside
- Permit/License is nontransferable

The neighbors suggested a 1-year probationary period with the following added stipulations:

- The immediate neighbors be notified via text/call one week in advance to the event
- All neighbors be provided with a direct/personal phone number to notify of a significant disturbance.

Based on the fact the “neighborhood meeting” was held on August 15th, 2022 the Board again reviewed and discussed this matter at our September 6th, 2022 Work Session. Several Trustees spoke out in favor of granting the request with the stipulated conditions. While several other Trustees spoke out against the granting the of their request for fears that the outdoor music would change the feel of the neighborhood and how this would affect the current homeowners.

At our September 13th, 2022 Board meeting, this matter was tabled. The discussion leading to the tabling of this matter, focused on removal of the condition that no outside amplified music speakers or live music be removed so that the applicant could apply for the events that he is requesting through the special event permit application.

Attorney Davison drafted an amended CUP that was reviewed by the Board. Condition 8 of the amended CUP now reads as follows:

8. There shall be no outside amplified music speakers or live music, except as may be allowed under any Special Events Permit issued by the Village Board pursuant to Chapter 12 of the Code of Ordinances, as may be amended from time to time.

This matter was left on the table at the October 11, 2022, Village Board meeting due to the fact that the Board wanted to wait until the revisions regarding the Cabaret and Special Events Ordinances were in place.

In November of 2022 Staff reviewed the Ordinances we currently have pertaining to Cabaret and Special Events permitting and worked with attorney Davison to better define requirements and guidelines for these permits.

The proposed changes to the Cabaret and Special Events were reviewed at our Work Sessions on December 6, 2022 and January 17, 2023

The Board approved the proposed changes to the Cabaret and Special Events permits at our January 24th Board Meeting through Ordinance 2023-002 and 2023-003. The major changes with the annual Cabaret license exclude any outdoor amplified music, and that the requirements to obtain this license would have the applicant include much more detail.

Special events permits are now to be split into two types, single events, and a recurring permit. The recurring permits will be annual, and the business must submit a list of each event but will be allowed to add events 30 days prior with notice to the Clerk so they may

be reviewed. The recurring permit will only be available to events that are located in the PR-1, A-2 or I-1 zoning districts.

Staff is bringing this CUP amendment back to the Village Board for action now that these changes are in place.

SUGGESTED ACTION/ACTION REQUESTED/COMMENTS:

In the event that the Village Board wishes to move forward with the proposed amendment to the conditional use permit, the suggested motions to approve would be as follows:

- #7 *Motion to take from the Table, Plan Commission Recommendation (J&M's Bar & Grill):*
 - a. *Request by Eclectic LLC, PO Box 78, Somers, WI 53171 (Owner), Justin Traughber, PO Box 78, Somers, WI 53171 (agent), for a Conditional Use Permit amendment to allow for outside amplified music in the B-2 Community Business Dist. on Tax Parcel # 82-4-222-162-0010, located in the NW ¼ of Section 16, T2N, R22E, Village of Somers.*
- #8 *Motion to approve action on request by Eclectic LLC, PO Box 78, Somers, WI 53171 (Owner), Justin Traughber, PO Box 78, Somers, WI 53171 (agent), for a Conditional Use Permit amendment to allow for outside amplified music in the B-2 Community Business Dist. on Tax Parcel # 82-4-222-162-0010, located in the NW ¼ of Section 16, T2N, R22E, Village of Somers, subject to the following conditions:*
 - 1. *Subject to receiving any required licenses/permits (i.e. Special Events) from the Village of Somers regarding the use of outside amplified music speakers.*
 - 2. *Subject to the information and site plan contained in the submitted conditional use permit application dated May 26, 2022.*
 - 3. *Hours of operation may be limited to prevent disturbance to abutting property owners, and final approved hours shall be determined by the Board and incorporated into the recorded Conditional Use Permit and any licenses issued by the Village of Somers.*
 - 4. *All other conditions contained in the previously approved Conditional Use Permit (effective date September 13, 2021 and recorded in the Kenosha County Register of Deeds on September 20, 2021) shall remain in effect.*
 - 5. *It is the responsibility of the applicant to assure and guarantee that the above conditions are fully complied with. This includes, but is not necessarily limited to, meeting conditions established herein,*

providing any applicable letters of credit, providing and following approved plans, obtaining permits prior to construction, making improvements, participating in coordination meetings with governmental officials, following established time frames, meeting deadlines, and providing additional information where deemed necessary. Any unauthorized deviation from the approved plans and conditions shall result in the issuance of a citation and/or applicable stop work order by the Village of Somers or other applicable agencies until the conditional use permit is brought back into compliance. Continued violation of the conditions as set forth herein shall result in a recommendation for revocation of the Conditional Use Permit.

6. *Any substantial change or expansion of the submitted plan of operation, shall require the applicant to reapply for a Conditional Use Permit to the Village of Somers for its review and approval.*
7. *If property ownership and/or tenant shall happen to change then it shall be the responsibility of the person(s) that signed these conditions to notify new owner and/or tenant of all above stated conditions of approval.*
8. *It is the total responsibility of the petitioner to assure and guarantee that the above stated conditions are fully complied with. Any deviation from the approved plans and conditions shall result in the issuance of a citation and associated stop work order until the project is brought back into compliance. Continuance of the project shall result in a recommendation for revocation of the Conditional Use Permit*
9. *Subject to a Kenosha County zoning permit being issued for any proposed structures including principal buildings, signage, fences, accessory buildings, etc.*
10. *There shall be no outside amplified music speakers or live music, except as may be allowed under any Special Events Permit issued by the Village Board pursuant to Chapter 12 of the Code of Ordinances, as may be amended from time to time.*

ATTACHMENTS:

Planning Memo dated 06/30/2022

Plan Commission Meeting Minutes 07/11/2022 – Highlighted

CUP amendment application

Original CUP

Correspondence from Applicant



COUNTY OF KENOSHA

Division of Planning & Development

Andy M. Buehler, Director
Division of Planning & Development
19600 75th Street, Suite 185-3
Bristol, WI 53104-9772
(262) 857-1895

TO: Village of Somers Plan Commission
FROM: Luke Godshall, Kenosha County Planning & Development
RPT DATE: 06-30-22
MTG DATE: 07-11-22
APPLN DATE: 05-26-22

PROJECT/SITE INFO:

1. Petitioner/Agent: Justin Traugher, J&M's Bar & Grill
2. Property Owner: Eclectic LLC
3. Location/Address: 8013 12th ST.
4. Tax key Number(s): 82-4-222-162-0010
5. Area: 0.41 acres
6. Existing Zoning: B-2 Community Business District
7. Proposed Zoning: B-2 Community Business District
8. Future Land Use: Mixed Use

OVERVIEW:

The Petitioner is requesting approval to amend their previously approved Conditional Use Permit, to allow for outdoor music.

PLANNER COMMENTS:

The submitted application is intended to amend the Conditional Use Permit that was previously approved by the Board in 2021 for an outdoor dining and recreational area (copy of recorded CUP attached). The approval of that CUP contained a condition (condition #8) which specifically prohibited outside amplified music speakers or live music on the property. The Petitioner now wishes to amend the previously approved CUP to have such outside music.

The Petitioner's narrative included with the submitted CUP application indicates they would like to provide live music/bands and other entertainment utilizing the exterior patio area. The narrative goes on to state that music levels will be appropriate so as to allow customers to conversate, and that music speakers would be directed southwards and away from the nearest residential neighbor (located approximately 150 feet to the west of the exterior patio area).

The Petitioner's intent is for outside music to conclude by 9pm.

STAFF RECOMMENDATION:

Should the Plan Commission choose to recommend approval of this application, staff would recommend the following conditions:



COUNTY OF KENOSHA

Division of Planning & Development

Andy M. Buehler, Director
Division of Planning & Development
19600 75th Street, Suite 185-3
Bristol, WI 53104-9772
(262) 857-1895

1. Subject to receiving any required licenses/permits (i.e. cabaret license) from the Village of Somers regarding the use of outside amplified music speakers.
2. Subject to the information and site plan contained in the submitted conditional use permit application dated May 26, 2022.
3. Hours of operation may be limited to prevent disturbance to abutting property owners, and final approved hours shall be determined by the Board and incorporated into the recorded Conditional Use Permit and any licenses issued by the Village of Somers.
4. All other conditions contained in the previously approved Conditional Use Permit (effective date September 13, 2021 and recorded in the Kenosha County Register of Deeds on September 20, 2021) shall remain in effect.
5. It is the responsibility of the applicant to assure and guarantee that the above conditions are fully complied with. This includes, but is not necessarily limited to, meeting conditions established herein, providing any applicable letters of credit, providing and following approved plans, obtaining permits prior to construction, making improvements, participating in coordination meetings with governmental officials, following established time frames, meeting deadlines, and providing additional information where deemed necessary. Any unauthorized deviation from the approved plans and conditions shall result in the issuance of a citation and/or applicable stop work order by the Village of Somers or other applicable agencies until the conditional use permit is brought back into compliance. Continued violation of the conditions as set forth herein shall result in a recommendation for revocation of the Conditional Use Permit.
6. Any substantial change or expansion of the submitted plan of operation, shall require the applicant to reapply for a Conditional Use Permit to the Village of Somers for its review and approval.
7. If property ownership and/or tenant shall happen to change then it shall be the responsibility of the person(s) that signed these conditions to notify new owner and/or tenant of all above stated conditions of approval.
8. It is the total responsibility of the petitioner to assure and guarantee that the above stated conditions are fully complied with. Any deviation from the approved plans and conditions shall result in the issuance of a citation and associated stop work order until the project is brought back into compliance. Continuance of the project shall result in a recommendation for revocation of the Conditional Use Permit
9. Subject to a Kenosha County zoning permit being issued for any proposed structures including principal buildings, signage, fences, accessory buildings, etc.

Attachment:

- Existing Conditional Use Permit, recorded 9-20-21 in the Kenosha County Register of Deeds

CONDITIONAL USE PERMIT

Document Number

Document Title

Document #: **1910738**

Date: **2021-09-20** Time: **12:22 PM** Pages: **6**

Fee: **\$30.00** County: **KENOSHA** State: **WI**
REGISTER OF DEEDS: **JOELLYN M. STORZ**

Effective Date September 13, 2021

The Village Board of the Village of Somers, Kenosha County, Wisconsin, hereby grants to the owners of the above referenced parcel, described with more particularity on the legal description attached hereto and incorporated herein by reference, the right for the owner, its lessees, agents or representatives, to utilize the premises known as 8013 12th Street, Kenosha, Wisconsin 53144, to operate on outside dining/recreation area, subject to the following conditions

Recording Area

Name and Return Address

Davison Law Office, Ltd
1207 55th Street
Kenosha, WI 53140 **6**

82-4-222-162-0010

Parcel Identification Number (PIN)

- 1 This Conditional Use Permit is subject to the application of Eclectic, LLC, on file in the office of the Clerk/Treasurer for the Village of Somers and stamped received by the office of Planning and Development on June 23, 2021, including a survey, which indicates an approximately 3,900 sq ft outdoor dining and recreational area surrounded by 4 foot railing enclosure on the southeastern portion of the property directly south of the proposed building and shall affect the premises described on the attached Exhibit "A" which is incorporated herein by reference
- 2 The applicant shall comply with all parking requirements outlined in the Village of Somers General Zoning and Shoreland/Floodplain Zoning Ordinance
- 3 The name of the restaurant shall be "J & M's Bar and Grill" There shall be no other business conducted on the premises covered by this conditional use permit without the advance written consent of the Village and Amendment of this permit
- 4 There shall be no outside storage of any kind
- 5 Any expansion of the conditional use granted herein shall occur only following review by and the consent of the Village Board
- 6 Any new signage shall be in accordance with the aforementioned zoning ordinance
- 7 There shall be no storage of gasoline, other petrohydrocarbons or any other material classified as hazardous at the site or in any building located thereon
- 8 There shall be no outside amplified music speakers or live music

- 9 Refuse containers shall be screened from view from public rights-of-way, adjacent properties or eating area. Screening for waste receptacle shall consist of a solid opaque fence of similar color and materials of main building, or masonry, and shall be a minimum of six (6) feet and maximum of eight (8) feet tall. Waste receptacles shall be enclosed on the fourth side with a gate to contain trash or other debris. The gate side of the waste receptacle shall be oriented toward the parking lot facing Highway E and is required to be always closed except for servicing by the waste management contractor and site users. Prior to the installation of such fencing, the owner shall submit to the Village for approval the description or sample of the fencing which is proposed to be installed. Installation of the fencing shall be completed no later than December 31, 2021.
- 10 Any change of the submitted plan of operation, change in use, and/or a proposed addition(s) to any existing principal building(s) or proposed new principal building(s), shall require the petitioner to reapply for a Conditional Use Permit to the Village Plan Commission for its review and approval.
- 11 The undersigned shall fully cooperate with any law enforcement personnel performing inquiries or investigations. Any substantial change or expansion of the submitted plan of operation (i.e. expansion of the proposed outside dining/recreation area) shall require the applicant to reapply for a Conditional Use Permit to the Village of Somers for its review and approval.
- 12 There shall be no alcohol on any portion of the premises which is not licensed for alcohol consumption.
- 13 The Village Building Inspector shall establish an occupancy permit based upon all of the available circumstances including, but not limited to, the overall space of the premises and such other factors as the Building Inspector may deem relevant.
- 14 No person under the age of 21 shall be allowed to be in the alcohol licensed portion of the subject premises unless accompanied by their parent or by their spouse who is 21 years of age or older. Security measures for the premises, if deemed necessary, to be approved by the Village Building Inspector and Kenosha County Sheriff's Department.
- 15 The undersigned recognizes and acknowledges that the violation of this condition or the violation of the prohibition of alcohol on the outdoor dining/recreation portion of the premises shall, in and by itself, constitute grounds for the immediate revocation of this conditional use permit.
- 16 The undersigned each recognize that in the event that a permit holder fails to comply with the conditions specified in this permit, the permit may be revoked by the Village Board upon ten (10) days notice to the permit holder(s). The permit holder(s) shall be entitled to a hearing before the Village Board on the question of revocation of the

conditional use permit and approval of the Village Board shall be required for the reinstatement of any conditional use permit

- 17 It is the responsibility of the petitioner to assure and guarantee that the above stated conditions are fully complied with If property ownership and/or tenant shall happen to change, then it shall be the responsibility of the person(s) that signed these conditions to notify the new owner and/or tenant of all above stated conditions of approval
- 18 The undersigned agrees to limit the hours of operations of the outdoor dining/recreation area of the premises from 11 00 a m until 9 00 p m
- 19 The area to be utilized for outdoor dining/recreation area shall be as depicted on the attached Exhibit "B" which is incorporated by reference This area shall be completely enclosed by a fence and shall be accessible only from the interior of the licensed premises Provisions shall be made for an emergency exit from the enclosed area, which access shall be kept closed at all times other than in an emergency The fencing enclosing this area as of the date of this permit complies with this requirement
- 20 It is the responsibility of the petitioner to assure and guarantee that the above stated conditions are fully complied with Any deviation from the approved plans and conditions shall result in the issuance of a citation

Dated at Somers, Wisconsin, this 13 day of September, 2021

OWNER
Eclectic, LLC

By [Signature]
Printed Name Justin Traugber, its owner

STATE OF WISCONSIN)
) SS
COUNTY OF KENOSHA)

Personally came before me this 13th day of September, 2021, the above named Justin Traugber, on behalf of Eclectic, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same



Mary A. Cole
Printed Name Mary A. Cole
Notary Public, Kenosha County, WI
My commission expires 6/11/22

DAVIS LAW OFFICE, LTD
55th Street, Kenosha, Wisconsin 53140
Telephone No (262) 657-5165 Fax No (262) 657-5517 Email dmltd@sbeglobal.net

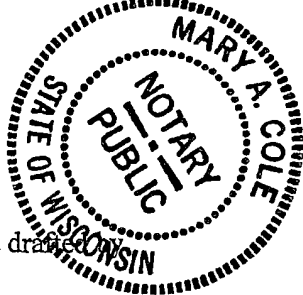
Page 3

TENANT

By [Signature]
Printed Name Justin Traugber, as tenant

STATE OF Wisconsin)
) SS
COUNTY OF Kenosha)

Personally came before me this 18th day of September, 2021, the above named Justin Traugber, on behalf of Eclectik, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same



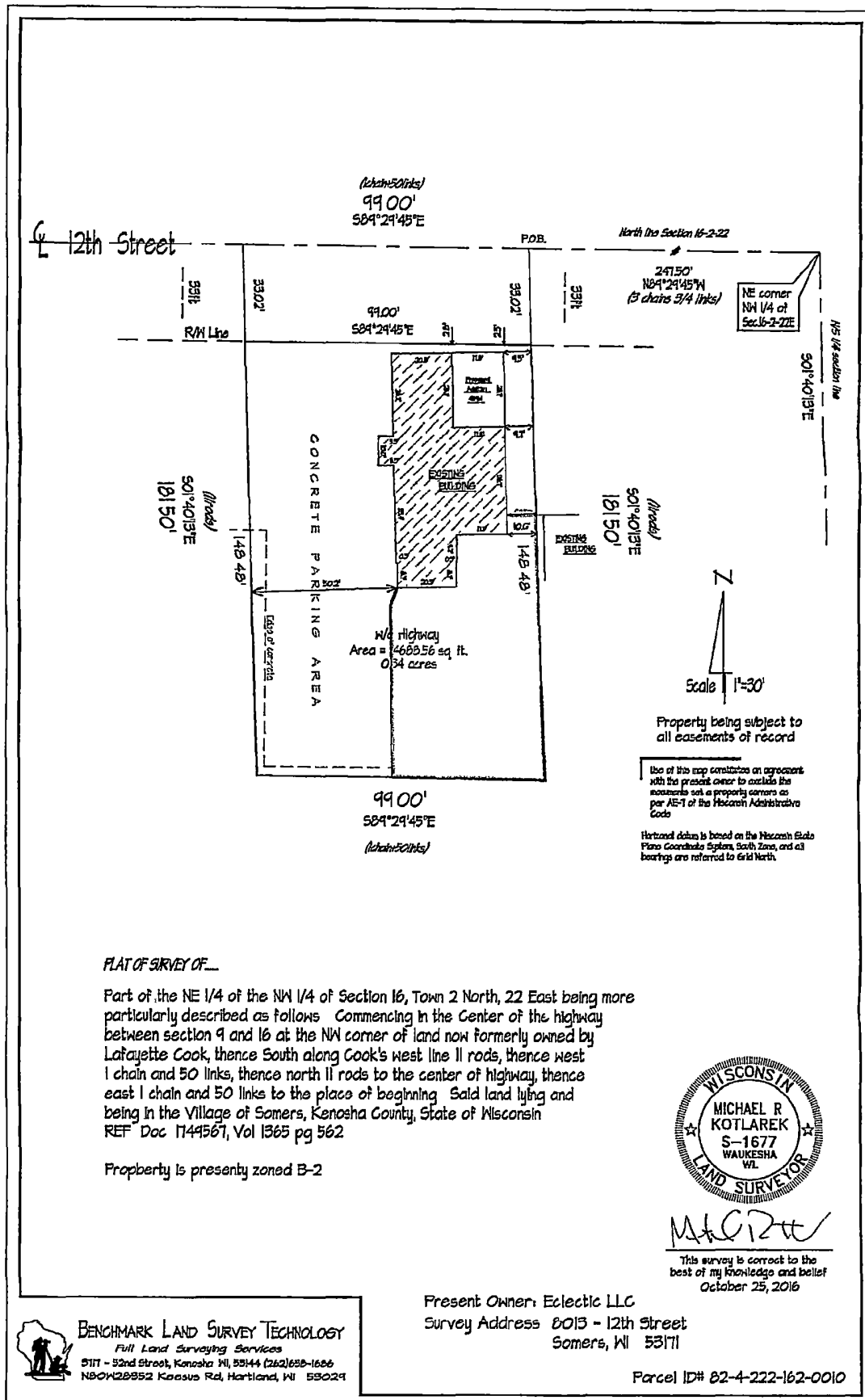
[Signature]
Printed Name Mary A. Cole
Notary Public, Kenosha County, WI
My Commission expires 6/11/22

This instrument was drafted by
Attorney Jeffrey J Davison
DAVISON LAW OFFICE, LTD

LEGAL DESCRIPTION:

Part of Section 16, Town 2 North, Range 22 East of the Fourth Principal Meridian and described as Commencing in the center of the highway 3 chains and 3/4th of a link West of the 1/4 stake between Sections 9 and 16 in the Northwest corner of land now and formerly owned by Lafayette Cook, thence South along Cook's West line 11 rods, thence West 1 chain and 50 links, thence North 11 rods to the center of highway, thence East 1 chain and 50 links to the place of beginning, lying and being in the Village of Somers, County of Kenosha and State of Wisconsin

Tax Key No 82-4-222-162-0010





Village of Somers Proceeding from the Village Plan Commission Meeting July 11, 2022

1. Call to Order

Chairman Stoner called the meeting to order at 5:30 p.m.

Present: Chairman George Stoner, as well as Commissioners Aiello, Gardinier, Boxx, Lee, and Grimes. Commissioner Fredrick came at 5:43 p.m.

Staff Present in person: Administrator Jason Peters, Assistant to the Administrator Cassandra Bodenbach, and Fire Chief Ben Andersen.

Kenosha County Planners: Luke Godshall

2. Pledge of Allegiance

Chairman Stoner led everyone in stating the Pledge of Allegiance.

3. Approve Minutes of June 13, 2022

Commissioner Boxx moved to approve to the Minutes from the June 13th Meeting. Seconded by Commissioner Aiello. Motion carried. 6-0 vote.

4. Correspondence

Email from Steve Lichter.
Letter from Residents with signatures.

5. Citizen Comments

None.

6. Conditional Use Permit:

Public Hearing and Action on Request by: Eclectic LLC, PO Box 78, Somers, WI 53171 (Owner), Justin Traugher, PO Box 78, Somers, WI 53171 (agent), requesting a Conditional Use Permit amendment to allow for outside amplified music in the B-2 Community Business Dist. on Tax Parcel # 82-4-222-162-0010, located in the NW ¼ of Section 16, T2N, R22E, Village of Somers. (For information purposes only, this property is located at 8013 12th Street.)

Public Hearing was opened at 5:31 p.m.

Public Comment:

George Wojtak, 8111 12th Street

Mr. Wojtak brought a letter from June 17, 2022 in response to J&M's letter that is on file with the Clerk. The letter contained complaints about noise, fights, traffic, and parking at the establishment along with eleven (11) signatures of surrounding residents agreeing to said complaints.

Jim Tabbert, 8114 12th Place

Jim's house is directly in the path of the amplified music and current music that drifts from the establishment. He is not in favor of the amplified music being discussed. Mr. Tabbert did not want music to go past 9 pm. The patio conditions as they are, are fine.

Linda Wawiora, 8101 12th Street

Linda is not against the music but has severe concerns with the parking lot situation. Most of the easement is blocked daily as well as burnouts happening past 2 a.m. She understands that what happens in the parking lot after hours is out of the owner's control to a degree.

Justin Traugher, 8013 12th Street

Justin has owned J&M's for two years and been a part of the establishment for twenty (20). In the last two years, there have only been two incidents. There is an annual party hosted and I am just looking for one or two people singing with a guitar and maybe a speaker: possibly Saturday and Sunday afternoons. I submitted a seven-page, detailed letter, site plan, etc., with the application to the Village. I work 67 hours a week and if the music is too loud, I will turn it down. I donate my time to my community and run fundraisers for residents, neighbors, and friends. All these complaints are shocking and slanderous because everyone has been misinformed and interpreting it to others, skewing it more.

Public Hearing was closed as 5:47 p.m.

Commissioner Boxx moved the motion to request a Conditional Use Permit amendment to allow for outside amplified music. Seconded by Lee.

Commissioner's Discussion:

Commissioner Lee supports the neighbors, but if it is not amplified music there is room for compromise. Parking seems to be a bigger issue and where does the Village stand?

Commissioner Fredrick: asked Justin if there were bands. Justin responded, no, there will be none. Fredrick anticipated this may happen after the approvals for the biergarten and received several emails from residents concerned about J&M's request for amplified music. He is in agreement that the parking is an issue, especially if there will be more draw with the entertainment. Will the occupancy limit be exceeded?

Commissioner Aiello: Commission Fredrick addressed his concern on exceeding the occupancy limit. Kenosha is cracking down on it. Bring more patrons which will bring more vehicles, so we need to be cognoscente of homeowners in the area. I am not in favor of every week, but special events seem fine – a few selected days.

Commissioner Boxx: A long-time customer of Justin's, but your neighbors were there long before you and appreciate what you want to do. However, you knew what you were buying. Just giving the location and proximity of neighbors, I could not agree to amplified or live music. Considering the proximity of the neighbors, I wouldn't agree to any music at all.

Commissioner Grimes: Also sensitive to the neighbors. Possibly limit the time and agree to a two-year probationary period? Tell the Sheriffs it is in their CUP if there were any calls.

Commissioner Stoner: Also received several emails and had conversations with residents on this topic. Administrator Peters mentioned, according to the CUP, amplified music is not allowed for tavern or any business with a liquor license, especially in a residential area. Even if the music is only one or two people, it is still amplified with a speaker and live.

Commissioner Gardinier: Questioned the amplified portion. I try to put myself on both sides – is there a way we can satisfy both sides? Is there a way to not have it in the CUP and make it a Special Events Permit?

Amended motion to deny amendment to conditional use permit to allow for amplified music at J&M's Bar and Grill. Moved by Commissioner Boxx. Seconded by Aiello.

Roll Call: Gardinier – deny, Boxx – deny, Aiello – deny, Stoner – deny, Fredrick – deny, Lee – deny, Grimes – deny.

Motion passed 7-0 vote.

7. **Rezone:**

Public Hearing and Action on Request by: Carol F Grohs Trust & Delmar R and Jeanne V Golbricht Trust, 10812 Burlington Rd, Kenosha WI 53144; Deborah K Kahana & John P Parmentier, 10610 Burlington Rd, Kenosha WI 53144-7448; Michael C Sarauer, 10524 Burlington Rd, Kenosha WI 53144 (owners), Joe Podge, Stream Realty, 226 N. Morgan St., Suite 500, Chicago, IL 60607 (Agent), requests a rezoning from A-1 Agricultural Preservation Dist., A-2 General Agricultural Dist., R-2 Suburban Single-Family Residential Dist. & R-3 Urban Single-Family Residential Dist. to BP-1 Business Park Dist. & PUD Planned Unit Development Overlay Dist., on Tax Parcel #s 82-4-222-194-0101, 82-4-222-301-0050, 82-4-222-301-0040 & 82-4-222-301-0030, located in the SE ¼ of Section 19 and the NE ¼ of Section 30, T2N, R22E, Village of Somers. *(For information purposes only, this property is located at 10610 Burlington Road, 10812 Burlington Road, and 10524 Burlington Road.*

Public Hearing opened at 6:04 p.m.

Public Comment:

Gregg Sinnen, 3190 100th Ave.

I spoke on similar projects and this development is getting closer and closer to residential areas. Please be vigilant on the noise, lights, etc. I just ask that all boxes be checked and would like to thank the developers for the neighborhood invitation for the special meeting they had. It shows much caring, and we appreciate you listening to our input.

Stream Realty, Patrick Russo, Market Leader in Chicago for the Midwest

The meeting was equally informational for us and we want to hear from the community and be a part of it. Stream has been around for 25 years and have 32 million feet on our pipeline and want to build a great product for the community.

Public Hearing closed at 6:10 p.m.

Commissioner Boxx made the motion to approve rezoning from A-1 Agricultural Preservation Dist., A-2 General Agricultural Dist., R-2 Suburban Single-Family Residential Dist. & R-3 Urban Single-Family Residential Dist. to BP-1 Business Park Dist. & PUD Planned Unit Development Overlay District. Seconded by Fredrick.

Commissioner's Discussion:

None

Motion passed 7-0 vote.

8. Site Plan & Exterior Fenestration Reviews:

Action on Request by: Carol F Grohs Trust & Delmar R and Jeanne V Golbright Trust, 10812 Burlington Rd, Kenosha WI 53144; Deborah K Kahana & John P Parmentier, 10610 Burlington Rd, Kenosha WI 53144-7448; Michael C Sarauer, 10524 Burlington Rd, Kenosha WI 53144 (owners), Joe Podge, Stream Realty, 226 N. Morgan St., Suite 500, Chicago, IL 60607 (Agent), requests approval of site plan and exterior fenestration on Tax Parcel #s 82-4-222-194-0101, 82-4-222-301-0050, 82-4-222-301-0040 & 82-4-222-301-0030, located in the SE ¼ of Section 19 and the NE ¼ of Section 30, T2N, R22E, Village of Somers.

Commissioner Boxx moved to approve site plan and exterior fenestration. Seconded by Aiello.

Commissioner's Discussion:

There were several discussions on stormwater, storm-sewer, runoff, etc. Adam Artz with Pinnacle Engineering gave detailed explanations and information. He also addressed concern with the Des Plaines river and if it could ever be "tapped out".

Discussions on access points and concerns with Kenosha County's new Access Plan. Commissioner Lee had concerns for safety, if the Village has the capacity to service all the developments with their equipment and staff. Administrator Peters and Chairman Stoner mentioned they have had several meetings with the County about the access points and rules.

Motion passed 7-0 vote.

9. Adjourn

Commissioner Boxx moved to adjourn at 6:50 p.m. Seconded by Aiello.

Motion carried. 7-0 vote.

Drafted this 13th day of July 2022. These minutes are not official until approved by the Plan Commission. Submitted by Cassandra Bodenbach, Assistant to the Village Administrator



VILLAGE OF SOMERS

Department of Planning & Development

May 2015

RECEIVED

MAY 26 2022

CONDITIONAL USE PERMIT APPLICATION

Kenosha County
Planning and Development

(a) Property Owner's Name:

Jtm's Bar + Grill (Eclectic LLC)

Print Name: Justin Traugher

Signature:

Mailing Address: PO BOX 78

City: Somers

State: WI

Zip: 53171

Phone Number: 262 989 8259

E-mail (optional):

Justin8259@gmail.com

Note: Unless the property owner's signature can be obtained in the above space, a letter of agent status signed by the legal property owner must be submitted if you are a tenant, leaseholder, or authorized agent representing the legal owner, allowing you to act on their behalf.

(b) Agent's Name (if applicable):

Print Name: Justin Traugher

Signature:

Business Name: Jtm's Bar + Grill

Mailing Address: PO BOX 78

City: Somers

State: WI

Zip: 53171

Phone Number: 262 989 8259

E-mail (optional):

Justin8259@gmail.com

(c) Architect's Name (if applicable):

Print Name:

Signature:

Business Name:

Mailing Address:

City:

State:

Zip:

Phone Number:

E-mail (optional):

(d) Engineer's Name (if applicable):

Print Name:

Signature:

Business Name:

Mailing Address:

City:

State:

Zip:

Phone Number:

E-mail (optional):

CONDITIONAL USE PERMIT APPLICATION

(e) Tax key number(s) of subject site:

82-4-222-162-0010

Address of the subject site:

8013 12th St. Kenosha, WI 53144

(f) Plan of Operation (or attach separate plan of operation)

Type of structure:

Bar and Grill. Outdoor patio area with seating, fenced (enclosed) area and grass area currently operating under existing C.U.P.

Proposed operation or use of the structure or site:

See Attachment: Cabaret License Application which identifies the Operating Plan, Security Plan and Site Map.

Number of employees (by shift): 2-7 depending on the event/need

Hours of Operation: 11:00 am to 2:30 am Outdoor entertainment from 11:00am to 9pm

Any outdoor entertainment? If so, please explain: Yes, small bands and outdoor/indoor entertainment

Any outdoor storage? If so, please explain: One small plastic shed to house landscaping equipment

Zoning district of the property: B-2 Community Business District

(g) Attach a plat of survey prepared by a professional land surveyor or site plan drawn to scale and approved by the Kenosha County Department of Planning & Development showing all of the information required under section 12.05-1(h)3 for a zoning permit. In addition, the plat of survey or site plan layout shall show the location, elevation and use of any abutting lands and the location and foundation elevations of structures within 50 feet of the subject site; soil mapping unit lines; ordinary high water mark, historic high water marks and floodlands on or within 50 feet of the subject premises, existing and proposed gravel, asphalt and concrete surfaces, existing and proposed signage, existing and proposed buildings, and existing and proposed landscaping.

CONDITIONAL USE PERMIT APPLICATION

For conditional use permit applications that are made within shoreland and floodland areas, such description shall also include information that is necessary for the Village Plan Commission to determine whether the proposed development will hamper flood flows, impair floodplain storage capacity, or cause danger to human, animal or aquatic life. This additional information may include plans, certified by a registered professional engineer or professional surveyor, showing existing and proposed elevations or contours of the ground; fill or storage elevation; basement and first floor elevations of structures; size, location, and spatial arrangement of all existing and proposed structures on the site; location and elevation of streets water supply and sanitary facilities; aerial photographs, and photographs showing existing surrounding land uses and vegetation upstream and downstream; soil types and any other pertinent information required by either the Village of Somers Planning & Development office, Village Plan Commission or Village Board:

(h) The Kenosha County Department of Planning & Development may ask for additional information.

(i) The fee specified in Section 12.05-8 of this ordinance.

Request for Conditional Use Permit (payable to "Kenosha County") \$1,350.00

(For other fees see the [Fee Schedule](#))

Justin Traughber
J&M's Bar & Grill (Eclectic LLC)
262-989-8259
Justin8259@gmail.com

Cabaret License Application

The following application is being submitted to amend the current Conditional Use Permit to include a Cabaret License, located at J&M's Bar & Grill, 8013 12th St. Kenosha, WI 53144. Myself, Justin Traughber (owner) D.O.B. 08/25/1990 and Megan Strandell (co-owner) D.O.B. 04/01/1991 hold managerial capacity of the establishment.

Operating Plan –

To provide live music/bands and other entertainment utilizing the inside interior bar area (capacity 72 people), back dining room (capacity 40 people) of the building and the exterior rear patio area. Majority of events will be held outdoors on the patio and entertainment will be provided during our normal operating time of 11am to 9pm, as identified under the Conditional Use Permit. Limited to the patio space, music levels will be appropriate to ensure that our customers can converse and not be uncomfortable with over-loud music. Music can be played in the far east corner of the patio, adjacent to the east commercial building. To help with sound mitigation, speakers and other equipment will be pointed in the direction of the south vacant lot behind the patio; away from the only surrounding residential neighbor. Scheduling the music to conclude earlier than 9pm, will allow an appropriate time for all outdoor activities to end and our patrons to move inside so that the patio can be closed by 9pm. For indoor entertainment, small bands/solo artists may play after 9pm; where again music levels will be held at an acceptable level to ensure no disruption to the community.

Parking will be available in the traditional parking lot, the south vacant lot (permission already given by owner), the east neighbor's parking lot (permission already given by owner), Neumiller Woods Park across the street and the available parking spaces on 12th Street.

Security Plan –

Consistent with our normal operation, customers, and history, we do not anticipate any issues where additional security personnel (aside from myself and employees) will be necessary. If there are any unruly patrons, fights, or inexcusable disturbances, they will be asked to leave, escorted from the establishment and if necessary, authorities will be notified immediately. Any over-intoxicated patron will be offered a SafeRide and/or Uber/Lyft, sponsored and paid for by the Kenosha Tavern League, to ensure a safe ride home.

Majority of our regular customers are over the legal drinking age, however consistent with our normal day-to-day business, any patron that appears to be under the legal drinking age will be ID'd as appropriate to ensure no false identification and/or underage drinking.

Site Map –

Please see attachment for the highlighted area of the outdoor patio. All indoor entertainment will utilize the bar and dining room space (if applicable).

Thank you for your review and consideration of this license,

Justin Traughber

Kenosha County



1 inch = 100 feet

THIS MAP IS NEITHER A LEGALLY RECORDED MAP NOR A SURVEY AND IS NOT INTENDED TO BE USED AS ONE. THIS MAP IS A REPRESENTATION OF RECORD DATA AND IS NOT A SUBSTITUTE FOR A PROFESSIONAL SURVEY. KENOSHA COUNTY IS NOT RESPONSIBLE FOR ANY INACCURACIES HEREIN CONTAINED. IF DISCREPANCIES ARE FOUND, PLEASE CONTACT KENOSHA COUNTY.

Search

Search by Address:

House #:

Street:

Search Address

Search by Parcel #:

Parcel #: 82-4-222-162-0010

Example:

Village: 37-4-121-053-0405

City: 12-223-31-438-001

Search Parcel

Layers

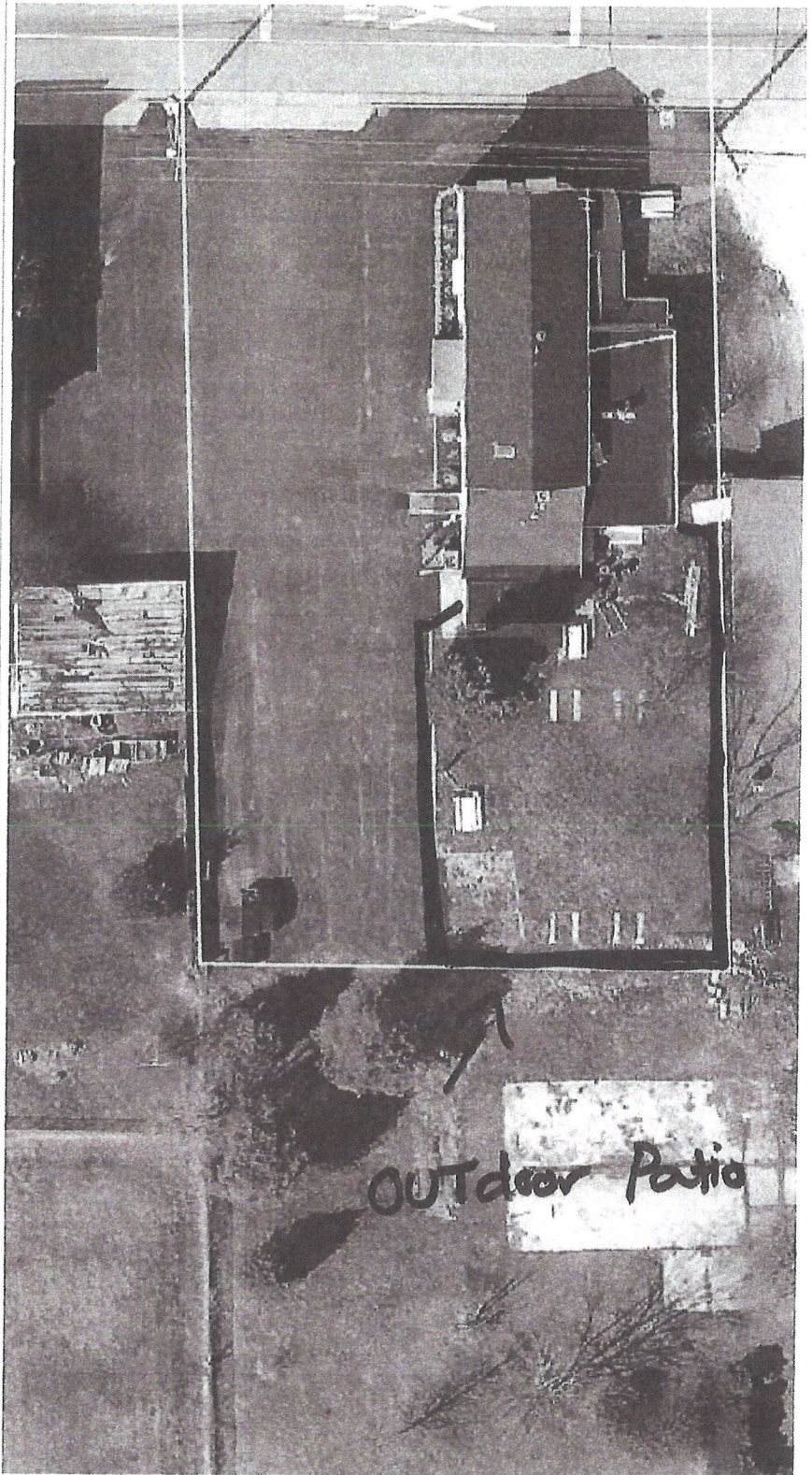
Advanced Tools

Graphics

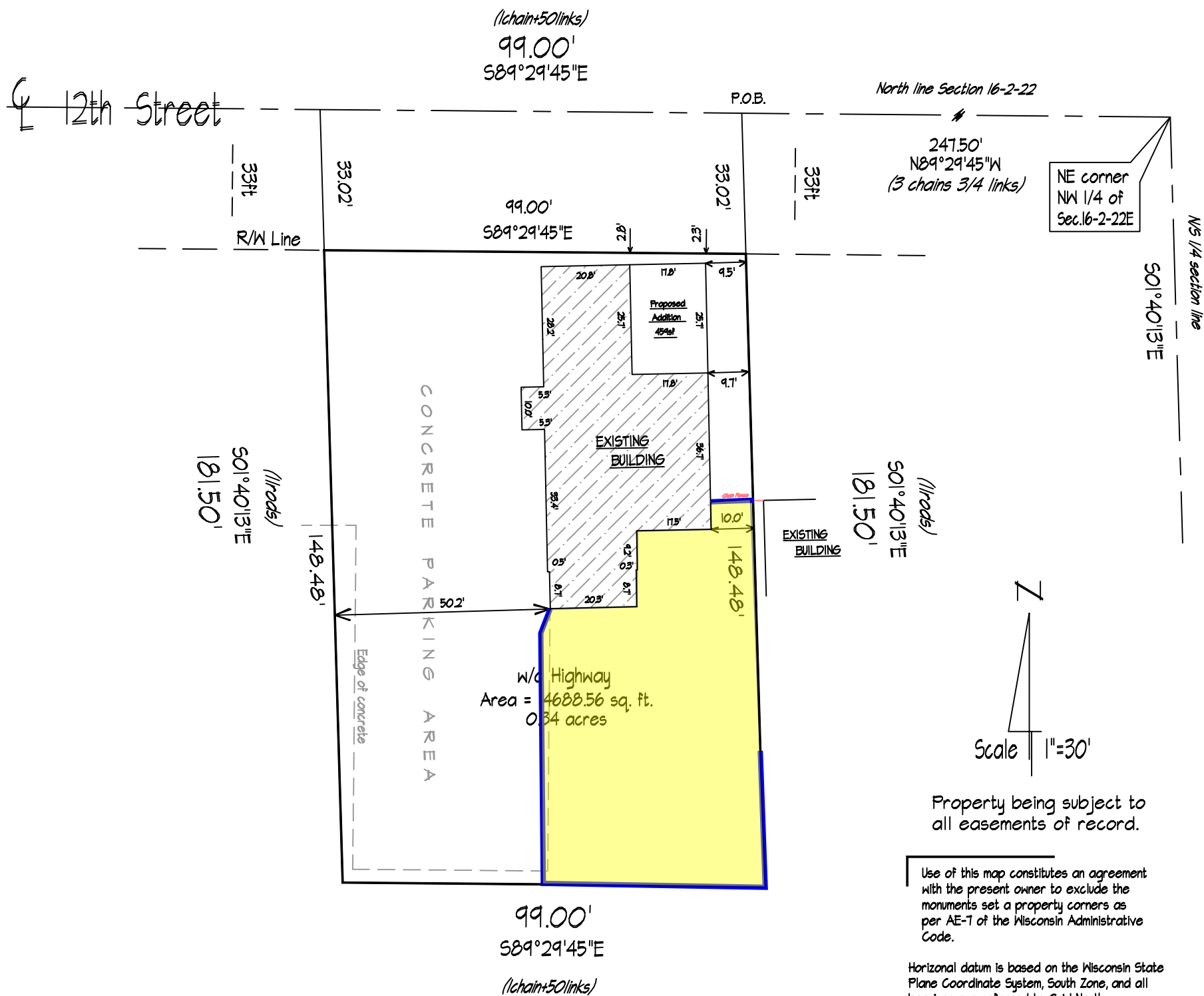
Buffer

Legend

Results







PLAT OF SURVEY OF.....

Part of the NE 1/4 of the NW 1/4 of Section 16, Town 2 North, 22 East being more particularly described as follows: Commencing in the Center of the highway between section 9 and 16 at the NW corner of land now formerly owned by Lafayette Cook; thence South along Cook's west line 11 rods; thence west 1 chain and 50 links; thence north 11 rods to the center of highway; thence east 1 chain and 50 links to the place of beginning. Said land lying and being in the Village of Somers, Kenosha County, State of Wisconsin.
REF: Doc. 1749567; Vol 1365 pg 562

Property is presently zoned B-2



Michael R. Kotlarek

This survey is correct to the best of my knowledge and belief.
October 25, 2016



BENCHMARK LAND SURVEY TECHNOLOGY
Full Land Surveying Services
3717 - 52nd Street, Kenosha, WI, 53144 (262)658-1686
N80W28352 Keesus Rd, Hartland, WI, 53029

Present Owner: Eclectic LLC
Survey Address: 8013 - 12th Street
Somers, WI. 53171

Parcel ID# 82-4-222-162-0010

CONDITIONAL USE PERMIT

Document Number

Document Title

Effective Date: September 13, 2021

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1. This Conditional Use Permit is subject to the application of Eclectic, LLC, on file in the office of the Clerk/Treasurer for the Village of Somers and stamped received by the office of Planning and Development on June 23, 2021, including a survey, which indicates an approximately 3,900 sq. ft. outdoor dining and recreational area surrounded by 4 foot railing enclosure on the southeastern portion of the property directly south of the proposed building and shall affect the premises described on the attached Exhibit "A" which is incorporated herein by reference.
2. The applicant shall comply with all parking requirements outlined in the Village of Somers General Zoning and Shoreland/Floodplain Zoning Ordinance.
3. The name of the restaurant shall be "J & M's Bar and Grill". There shall be no other business conducted on the premises covered by this conditional use permit without the advance written consent of the Village and Amendment of this permit.
4. There shall be no outside storage of any kind.
5. Any expansion of the conditional use granted herein shall occur only following review by and the consent of the Village Board.
6. Any new signage shall be in accordance with the aforementioned zoning ordinance.
7. There shall be no storage of gasoline, other petrohyrdocarbons or any other material classified as hazardous at the site or in any building located thereon.
8. There shall be no outside amplified music speakers or live music.

Document #: **1910738**

Date: **2021-09-20** Time: **12:22 PM** Pages: **6**

Fee: **\$30.00** County: **KENOSHA** State: **WI**

REGISTER OF DEEDS: **JOELLYN M. STORZ**

Recording Area

Name and Return Address

Davison Law Office, Ltd.
1207 55th Street
Kenosha, WI 53140

82-4-222-162-0010

Parcel Identification Number (PIN)

9. Refuse containers shall be screened from view from public rights-of-way, adjacent properties or eating area. Screening for waste receptacle shall consist of a solid opaque fence of similar color and materials of main building, or masonry, and shall be a minimum of six (6) feet and maximum of eight (8) feet tall. Waste receptacles shall be enclosed on the fourth side with a gate to contain trash or other debris. The gate side of the waste receptacle shall be oriented toward the parking lot facing Highway E and is required to be always closed except for servicing by the waste management contractor and site users. Prior to the installation of such fencing, the owner shall submit to the Village for approval the description or sample of the fencing which is proposed to be installed. Installation of the fencing shall be completed no later than December 31, 2021.
10. Any change of the submitted plan of operation, change in use, and/or a proposed addition(s) to any existing principal building(s) or proposed new principal building(s), shall require the petitioner to reapply for a Conditional Use Permit to the Village Plan Commission for its review and approval.
11. The undersigned shall fully cooperate with any law enforcement personnel performing inquiries or investigations. Any substantial change or expansion of the submitted plan of operation (i.e. expansion of the proposed outside dining/recreation area) shall require the applicant to reapply for a Conditional Use Permit to the Village of Somers for its review and approval.
12. There shall be no alcohol on any portion of the premises which is not licensed for alcohol consumption.
13. The Village Building Inspector shall establish an occupancy permit based upon all of the available circumstances including, but not limited to, the overall space of the premises and such other factors as the Building Inspector may deem relevant.
14. No person under the age of 21 shall be allowed to be in the alcohol licensed portion of the subject premises unless accompanied by their parent or by their spouse who is 21 years of age or older. Security measures for the premises, if deemed necessary, to be approved by the Village Building Inspector and Kenosha County Sheriff's Department.
15. The undersigned recognizes and acknowledges that the violation of this condition or the violation of the prohibition of alcohol on the outdoor dining/recreation portion of the premises shall, in and by itself, constitute grounds for the immediate revocation of this conditional use permit.
16. The undersigned each recognize that in the event that a permit holder fails to comply with the conditions specified in this permit, the permit may be revoked by the Village Board upon ten (10) days notice to the permit holder(s). The permit holder(s) shall be entitled to a hearing before the Village Board on the question of revocation of the

conditional use permit and approval of the Village Board shall be required for the reinstatement of any conditional use permit.

17. It is the responsibility of the petitioner to assure and guarantee that the above stated conditions are fully complied with. If property ownership and/or tenant shall happen to change, then it shall be the responsibility of the person(s) that signed these conditions to notify the new owner and/or tenant of all above stated conditions of approval.
18. The undersigned agrees to limit the hours of operations of the outdoor dining/recreation area of the premises from 11:00 a.m. until 9:00 p.m.
19. The area to be utilized for outdoor dining/recreation area shall be as depicted on the attached Exhibit "B" which is incorporated by reference. This area shall be completely enclosed by a fence and shall be accessible only from the interior of the licensed premises. Provisions shall be made for an emergency exit from the enclosed area, which access shall be kept closed at all times other than in an emergency. The fencing enclosing this area as of the date of this permit complies with this requirement.
20. It is the responsibility of the petitioner to assure and guarantee that the above stated conditions are fully complied with. Any deviation from the approved plans and conditions shall result in the issuance of a citation.

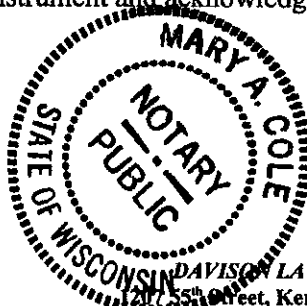
Dated at Somers, Wisconsin, this 13 day of September, 2021.

OWNER
Eclectic, LLC

By: [Signature]
Printed Name: Justin Traugber, its owner

STATE OF WISCONSIN)
) SS.
COUNTY OF KENOSHA)

Personally came before me this 13th day of September, 2021, the above named Justin Traugber, on behalf of Eclectic, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.



Mary A. Cole
Printed Name: Mary A. Cole
Notary Public; Kenosha County, WI
My commission expires 6/11/22

DAVISON LAW OFFICE, LTD.
5th Street, Kenosha, Wisconsin 53140
Telephone No. (262) 657-5165 Fax No. (262) 657-5517 Email: dmltd@sbcglobal.net

Page 3

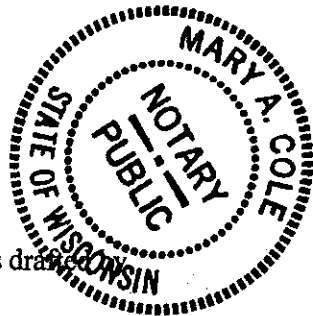
TENANT

By: [Signature]

Printed Name: Justin Traugber, as tenant

STATE OF Wisconsin)
) SS.
COUNTY OF Kenosha)

Personally came before me this 18th day of September, 2021, the above named Justin Traugber, on behalf of Eclectic, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.



[Signature]
Printed Name: Mary A. Cole
Notary Public; Kenosha County, WI
My Commission expires 6/11/22

This instrument was drawn

Attorney Jeffrey J. Davison
DAVISON LAW OFFICE, LTD.

LEGAL DESCRIPTION:

Part of Section 16, Town 2 North, Range 22 East of the Fourth Principal Meridian and described as: Commencing in the center of the highway 3 chains and 3/4th of a link West of the 1/4 stake between Sections 9 and 16 in the Northwest corner of land now and formerly owned by Lafayette Cook; thence South along Cook's West line 11 rods; thence West 1 chain and 50 links; thence North 11 rods to the center of highway; thence East 1 chain and 50 links to the place of beginning, lying and being in the Village of Somers, County of Kenosha and State of Wisconsin.

Tax Key No. 82-4-222-162-0010



Somers Plan Commission / Board,

I, Justin Traugher and Megan Strandell hosted a neighborhood meeting on August 15th, 2022, to have an open discussion to address any of concerns and support of our pending request to allow "amplified music" outside on the patio. We invited the 74 neighbors/addresses vial mail (*Attachment 1*) that received the initial *Notice of Public Hearing* issued June 17th, 2022. Although we received support from many people, we believe this meeting was beneficial for both parties to improve our communication/understanding amongst each other. Below is summary of our meeting/discussion.

Attendees: Jim Tabbert, Teresa Tabbert, Linda Wawiora, George Wojtak, Kathy Wojtak, Steve Nelson, and Shelly Nelson.

Board Member Present: Joe Smith

The meeting began with casual conversation on issues that our immediate neighbors explained to us. Their main concern was the few occurrences of loud noises (laughing, arguing, talking loudly, etc.) in the parking lot during and after bar close. As Megan and I believe those occurrences are rare considering the number of days we are open throughout the year, we respect our neighbors and their concerns. For instance, we have paid for parking poles recently to appease our closest neighbor and show respect for her property. We believe we have tried to minimize noise when applicable in the past, but we acknowledge that we can do more. By adding signage on the doors to the parking lot, training our staff and talking to our patrons we can decrease sound/loitering in hopes to satisfy all. We also believe a lot of this sound is caused by people having to smoke outside and, in the future, we strongly believe we can almost eliminate these issues by building a smoking room. At the end of this discussion, both parties came to a level of understanding and trust that the issues were acknowledged and will be improved.

The focus was then transitioned to the main reason of the gathering to discuss the live music outside on patio. Support was presented on having music and the benefits for our customers and business. We also described the type of music and demographics that we aim to host. Historically, our family business has not been problem with the law, and we take pride in continuing to run a strict, safe, and clean business environment that is enjoyed by many in our community. We emphasized that in almost two years of ownership, we have received zero citations, warnings, violations, underage drinking against our license/establishment.

Megan and I then present the proposal which included the following:

- 1 to 2 artists (vocal/guitarist)
- 1 to 2 events per month while weather permits
- Music will be played in the far east corner of the patio, adjacent to the east commercial building. To help with sound mitigation, speakers and other equipment will be pointed in the direction of the south vacant lot behind the patio; away from the only surrounding residential neighbor
- Music to conclude earlier than 9pm, allowing an appropriate time for all outdoor activities to end and our patrons to move inside.
- Permit/License is nontransferable.

Justin Traughber
J&M's Bar & Grill (Eclectic LLC)
Justin8259@gmail.com



With no disagreement to our proposal above, Jim Tabbert then present a 1-year probationary trial with the following stipulations added/reiterated:

- Maximum of 2 band members
- No more than 2 events a month
- The immediate neighbors to be notified via text/call, one week in advance of the event
- Music only between the hours of 11am to 9pm
- All neighbors asked for our direct/personal phone number(s) to notify us of a significant disturbance

Following Jim Tabbert's proposal, we agreed that those were reasonable requests. We requested that the first notification/disturbance call during an event will mean that we lower and/or modify the event or patrons. If we receive a reasonable second notification from our neighbors during the same event, we will then shut the event down. The 1-year probationary period is not terminated if an event is shut down and after the one-year period, we will review the success rate compared to the number of events for permit renewal.

All neighbors present agreed to the criteria listed above and the meeting was cordially concluded.

Thank you,

A handwritten signature in black ink, appearing to read 'Justin Traughber', is written over a horizontal line.

Justin Traughber

Justin Traughber
J&M's Bar & Grill (Eclectic LLC)
Justin8259@gmail.com



Attachment 1

Somers Neighbors,

I, Justin Traughber, owner of J&M's Bar & Grill (formerly Tina's Somers Inn) am writing you in response/regards to the *Notice of Public Hearing* issued June 17th, 2022 that you received from the Village on our request to amend our current Conditional Use Permit for our new outdoor patio for "amplified music". We've had a tremendous amount of support for this request from many residents of the neighborhood, while at the same time there has been a disruption/discomfort for a couple neighbors/individuals on our request. This has been a long process, which we believe the communication/understanding amongst each other can be better.

I, Megan, and our staff/family work very hard to provide a clean, safe neighborhood Bar & Grill to provide our customers and community an enjoyable experience. This establishment has been a part of the family for over 23 years, and we understand that we own a business in a residential area. I resigned from my career to keep this staple in the family. We are proud to be one of the small businesses in Somers that many enjoy. The Village of Somers is constantly growing with big corporations, housing, museums, and franchises. All the while, us small business owners are thriving for improvement and are desperate to keep up with the changing times.

Many of you have signed our petition in support and read the letter(s) of our true intentions on what we're trying to accomplish; we thank you for that. However, there's still some miscommunication or misunderstanding within our full neighborhood that we are passionate on overcoming.

We are asking for your trust and support to allow us to occasionally hold outside music on our patio. Here is our initial proposal:

Outdoor Amplified Music:

- 1 to 2 artists (vocal/guitarist)
- 1 to 2 events per month while weather permits
- Music will be played in the far east corner of the patio, adjacent to the east commercial building. To help with sound mitigation, speakers and other equipment will be pointed in the direction of the south vacant lot behind the patio; away from the only surrounding residential neighbor
- Music to conclude earlier than 9pm, allowing an appropriate time for all outdoor activities to end and our patrons to move inside.
- Permit/License is nontransferable.

As a recipient of this letter, we request your attendance at the Village of Somers Town Hall at 6:00 pm on Monday, August 15th, to have an open discussion amongst each other to address any concerns and support of this request.

Thank you,

Justin Traughber

Attorney Jeffrey J. Davison

1207 55th Street
Kenosha, WI 53140
Telephone No. (262) 657-5165
Fax No. (262) 657-5517
dmltd@sbcglobal.net

Memorandum

TO: Village Board
FROM: Attorney Jeffrey J. Davison
CC:
DATE: September 21, 2022
SUBJECT: Amendment to J & M Bar & Grill CUP

Attached please find is a proposed Amendment to the J & M Bar & Grill Conditional Use Permit in the event that the Board accepts Trustee Nelson's proposed compromise. I will let her explain that compromise but the essentials are these:

1. As you will recall, the applicant requested and received in September 2021 a Conditional Use Permit which allows for outdoor dining but which specifically excludes any amplified music speakers or live music.
2. The Amended Conditional Use Permit would continue to prohibit outside amplified music or live music except as was granted by the conditions imposed in any special event permit issued by the Village Board. In that manner, each event can be evaluated on its own merits and if there are neighbor complaints, there need be no revocation hearing, the Board could simply refuse to grant further special event permits.
3. The cabaret license for indoor entertainment would remain unchanged and would not be extended to the exterior dining area.

AMENDED CONDITIONAL USE PERMIT

Effective Date: _____, 2023

The Village Board of the Village of Somers, Kenosha County, Wisconsin, hereby grants to the owners of the above referenced parcel, described with more particularity on the legal description attached hereto and incorporated herein by reference, the right for the owner, its lessees, agents or representatives, to utilize the premises known as 8013 12th Street, Kenosha, Wisconsin 53144, to operate on outside dining/recreation area, subject to the following conditions:

Davison Law Office, Ltd.
1207 55th Street
Kenosha, WI 53140

82-4-222-162-0010

1. This Conditional Use Permit is subject to the application of Eclectic, LLC, on file in the office of the Clerk/Treasurer for the Village of Somers and stamped received by the office of Planning and Development on June 23, 2021, including a survey, which indicates an approximately 3,900 sq. ft. outdoor dining and recreational area surrounded by 4 foot railing enclosure on the southeastern portion of the property directly south of the proposed building and shall affect the premises described on the attached Exhibit "A" which is incorporated herein by reference.
2. The applicant shall comply with all parking requirements outlined in the Village of Somers General Zoning and Shoreland/Floodplain Zoning Ordinance.
3. The name of the restaurant shall be "J & M's Bar and Grill". There shall be no other business conducted on the premises covered by this conditional use permit without the advance written consent of the Village and Amendment of this permit.
4. There shall be no outside storage of any kind.
5. Any expansion of the conditional use granted herein shall occur only following review by and the consent of the Village Board.
6. Any new signage shall be in accordance with the aforementioned zoning ordinance.
7. There shall be no storage of gasoline, other petrohyrdocarbons or any other material classified as hazardous at the site or in any building located thereon.
8. There shall be no outside amplified music speakers or live music, except as may be allowed under any Special Events Permit issued by the Village Board pursuant to Chapter 12 of the Code of Ordinances, as may be amended from time to time.

9. Refuse containers shall be screened from view from public rights-of-way, adjacent properties or eating area. Screening for waste receptacle shall consist of a solid opaque fence of similar color and materials of main building, or masonry, and shall be a minimum of six (6) feet and maximum of eight (8) feet tall. Waste receptacles shall be enclosed on the fourth side with a gate to contain trash or other debris. The gate side of the waste receptacle shall be oriented toward the parking lot facing Highway E and is required to be always closed except for servicing by the waste management contractor and site users. Prior to the installation of such fencing, the owner shall submit to the Village for approval the description or sample of the fencing which is proposed to be installed. Installation of the fencing shall be completed no later than December 31, 2021.
10. Any change of the submitted plan of operation, change in use, and/or a proposed addition(s) to any existing principal building(s) or proposed new principal building(s), shall require the petitioner to reapply for a Conditional Use Permit to the Village Plan Commission for its review and approval.
11. The undersigned shall fully cooperate with any law enforcement personnel performing inquiries or investigations. Any substantial change or expansion of the submitted plan of operation (i.e. expansion of the proposed outside dining/recreation area) shall require the applicant to reapply for a Conditional Use Permit to the Village of Somers for its review and approval.
12. There shall be no alcohol on any portion of the premises which is not licensed for alcohol consumption.
13. The Village Building Inspector shall establish an occupancy permit based upon all of the available circumstances including, but not limited to, the overall space of the premises and such other factors as the Building Inspector may deem relevant.
14. No person under the age of 21 shall be allowed to be in the alcohol licensed portion of the subject premises unless accompanied by their parent or by their spouse who is 21 years of age or older. Security measures for the premises, if deemed necessary, to be approved by the Village Building Inspector and Kenosha County Sheriff's Department.
15. The undersigned recognizes and acknowledges that the violation of this condition or the violation of the prohibition of alcohol on the outdoor dining/recreation portion of the premises shall, in and by itself, constitute grounds for the immediate revocation of this conditional use permit.
16. The undersigned each recognize that in the event that a permit holder fails to comply with the conditions specified in this permit, the permit may be revoked by the Village Board upon ten (10) days notice to the permit holder(s). The permit holder(s) shall be entitled to a hearing before the Village Board on the question of revocation of the

conditional use permit and approval of the Village Board shall be required for the reinstatement of any conditional use permit.

17. It is the responsibility of the petitioner to assure and guarantee that the above stated conditions are fully complied with. If property ownership and/or tenant shall happen to change, then it shall be the responsibility of the person(s) that signed these conditions to notify the new owner and/or tenant of all above stated conditions of approval.
18. The undersigned agrees to limit the hours of operations of the outdoor dining/recreation area of the premises from 11:00 a.m. until 9:00 p.m.
19. The area to be utilized for outdoor dining/recreation area shall be as depicted on the attached Exhibit "B" which is incorporated by reference. This area shall be completely enclosed by a fence and shall be accessible only from the interior of the licensed premises. Provisions shall be made for an emergency exit from the enclosed area, which access shall be kept closed at all times other than in an emergency. The fencing enclosing this area as of the date of this permit complies with this requirement.
20. It is the responsibility of the petitioner to assure and guarantee that the above stated conditions are fully complied with. Any deviation from the approved plans and conditions shall result in the issuance of a citation.

Dated at Somers, Wisconsin, this _____ day of _____, 2023.

OWNER
Eclectic, LLC

By: _____
Printed Name: _____, its _____

STATE OF WISCONSIN)
) SS.

COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2023, the above named _____, on behalf of Eclectic, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Printed Name: _____
Notary Public; Kenosha County, WI
My commission expires _____.

COUNTY OF _____)

Printed Name: _____
 Notary Public; _____ County, _____
 My Commission expires _____.

2023-02-23

LEGAL DESCRIPTION:

Part of Section 16, Town 2 North, Range 22 East of the Fourth Principal Meridian and described as: Commencing in the center of the highway 3 chains and 3/4th of a link West of the 1/4 stake between Sections 9 and 16 in the Northwest corner of land now and formerly owned by Lafayette Cook; thence South along Cook's West line 11 rods; thence West 1 chain and 50 links; thence North 11 rods to the center of highway; thence East 1 chain and 50 links to the place of beginning, lying and being in the Village of Somers, County of Kenosha and State of Wisconsin.

Tax Key No. 82-4-222-162-0010



**VILLAGE OF SOMERS
VILLAGE BOARD
MEETING ITEM MEMORANDUM**

MEETING DATE: February 28th, 2023

TO: Village President Stoner and Village Trustees

PREPARED BY: Jason J. Peters, Administrator

AGENDA ITEM: #9 Discussion and possible action on proposed settlement agreement between Nancy Lake (“Appellant”) and the Village of Somers in regard to Case No. 22-CV-625

BACKGROUND:

In June of 2022, the Village was served with a Notice of Appeal in regard to the special assessments that were levied against Nancy Lake property on CTH E. In July of 2022 the Board discussed this appeal in closed session.

Scheduling conferences were scheduled for October of 2022. In December of 2022, Attorney Davison and Administrator Peters met with Ms. Lake’s Counsel to discuss the issues and try to find an amicable solution that would avoid further litigation. Based on this meeting a formal mediation was scheduled. On January 18th, Attorney Davison and Administrator Peters attended a said mediation. The basic parameters for a proposed settlement were set out and language was sent to Ms. Lake’s Counsel.

On February 17th, Attorney Davison received word from Ms. Lake’s Counsel that she has agreed to the proposed settlement agreement that was worked out at the beforementioned mediation.

The attached document represented the proposed settlement. The agreement sets out various triggering events that would cause the remaining balance of the special assessment would need to be paid.

PRIOR ACTION TAKEN:

Our agenda for the February 21st Work Session was amended to discuss this proposed settlement in closed session. The Board was provided with the draft of the settlement agreement for review before the closed session. This matter has not been formally discussed by the Board due to the weather events of February 22nd causing the cancellation of our scheduled Work Session. In an effort to dispose of this litigation in a

timely manner, Administrator Peters and Attorney Davison have conferred and are comfortable with the discussion and possible action taking place in during our regular scheduled meeting on the 28th.

SUGGESTED ACTION/ACTION REQUESTED/COMMENTS:

In the event that the Village Board wishes to move forward with the proposed settlement agreement, the suggested motions to approve would be as follows:

“Motion to approve proposed settlement agreement between Nancy Lake (“Appellant”) and the Village of Somers in regard to Case No. 22-CV-625”

ATTACHMENTS:

Proposed Settlement

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** ("Agreement") is made and entered into as of the _____ day of _____, 2023 ("Effective Date") by and between **NANCY A. LAKE**, an adult resident of the Village of Somers, Kenosha County, Wisconsin ("Appellant") and the **VILLAGE OF SOMERS**, Kenosha County, Wisconsin, a municipal corporation duly organized and existing under the laws of the State of Wisconsin ("Village").

RECITALS

- A. Appellant is the owner in fee simple of, and resides at, 11000 12th Street in the Village ("Appellant's Parcel"). In March, 2022 the Village imposed two special assessments on Appellant's Parcel, one for sanitary sewer and one for water, with a total amount imposed of \$117,159.51.
- B. In June, 2022 Appellant filed a timely appeal of both special assessments in Kenosha County Circuit Court, as Case No. 22-CV-625 ("Appeal").
- C. As required to maintain the appeal, Appellant timely paid the September, 2022 installment payment.
- D. Appellant and Village have agreed that it is mutually beneficial to resolve the issues raised in the Appeal, as provided in this Agreement.

AGREEMENT

Now, in consideration of the Agreement terms and avoidance of both the expense and uncertainty of litigation, Appellant and Village hereby agree as follows:

1. **Recitals.** Appellant and Village represent and warrant that the recitals hereinabove set forth are true and correct and are hereby incorporated herein by this reference.
2. **Dismissal of Pending Litigation:** Appellant and Village agree that the Appeal described above, Kenosha County Circuit Court Case 22-CV-625, shall be dismissed with prejudice and without cost pursuant to §805.04, Wis. Stats., following approval and execution of this Agreement. Both Appellant and Village hereby direct their respective counsel of record to facilitate the dismissal of the pending litigation.
3. **Remaining Balance of Special Assessment:** In the absence of a Triggering Event, as hereinafter defined, Appellant may pay the remaining balance of the special assessment, with 1% annual interest thereafter, on or before September 30, 2031.
4. **Triggering Events:** A Triggering event is any of the following:
 - a. Voluntary connection of Appellant's Parcel to the sanitary sewer.
 - b. Voluntary connection of Appellant's Parcel to water.
 - c. Voluntary rezoning of Appellant's Parcel.
 - d. Subdivision of Appellant's Parcel.
 - e. Combining of Appellant's Parcel with another parcel or parcels.
 - f. Closing of a sale of Appellant's Parcel by Appellant for more than \$600,000.
 - g. Voluntary bankruptcy petition by Appellant.

h. Confirmed foreclosure sale of Appellant's Parcel.

5. If a Triggering Event described in 4(c) – (h) occurs prior to September 30, 2031, the full then remaining balance shall be paid in full.

6. If a Triggering Event described in 4(a) or (b) occurs prior to September 30, 2031, that Special Assessment remaining balance shall be paid in full.

7. If a Closing of a sale of Appellant's parcel by Appellant for less than \$600,000 occurs prior to September 30, 2031, the party to whom Appellant conveys Appellant's parcel may continue to pay the special assessments in installments, as recast under the following formula: the then-outstanding balance of all special assessments shall be recast and amortized over the remaining number of years with interest at the rate of one (1%) percent. This provision only applies to the first transferee and any subsequent sale of the property voids the terms of the agreement and the Village may proceed to exercise any of its rights or remedies available at law or in equity.

8. **Relief from Automatic Stay.** Appellant hereby agrees that in the event Appellant shall (a) file with any bankruptcy court of competent jurisdiction any petition under Chapter 7, 11, or 13 of the United States Code, as amended ("Bankruptcy Code"), (b) file for any order for relief issued under the Bankruptcy Code, (c) file any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state law relating to bankruptcy, insolvency or any other relief for debtors, or (d) have sought, consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator; then, subject to court approval, Village shall thereupon be entitled, and Appellant irrevocably consents, to relief from any automatic stay imposed by Section 362 of the Bankruptcy code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Village as provided at law or in equity, and Appellant hereby irrevocably agrees that it shall not object to and hereby irrevocably waives her rights to object to, Village's request for any such relief.

9. **Authority, Representations and Estoppels.** Each Party represents and warrants to the other Party that (a) she or it has been duly authorized or has legal capacity to execute and deliver this Agreement and to perform its obligations hereunder and (b) upon the execution and delivery hereof, this Agreement shall be valid, binding, and enforceable upon it in accordance with its terms.

10. **Time of Essence.** Time is strictly of the essence of this Agreement and the full and complete performance of each and every term, provision and condition hereof.

11. **Amendments.** No change in the terms of this Agreement shall be valid unless in writing and signed by both Appellant and Village. Nothing contained in this Agreement shall be construed as creating any course of dealing or conduct between the parties.

Printed Name: _____

Notary Public, Kenosha County, WI.

My commission: _____

RESPONDENT
VILLAGE OF SOMERS

By: _____
George Stoner, President

By: _____
Brandi Baker, Clerk/Treasurer

STATE OF WISCONSIN)
) ss.

KENOSHA COUNTY)

Personally came before me this _____ day of _____ 2023, the above-named George Stoner, President and Brandi Baker, Clerk/Treasurer pf the Village of Somers, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Printed Name: _____

Notary Public, Kenosha County, WI.

My commission: _____

February 20, 2023

Brandi Baker, Clerk
Village of Somers
7511 12th Street
Somers, WI 53171

Subject: Offsite Public Utility Plans for Flint 94 Commerce Center-- Payment Recommendation

Dear Brandi,

Enclosed is an Application for Payment from Globe Contractors, Inc., Contractor, for work performed for the Offsite Public Utility Plans for Flint 94 Commerce Center Project. A partial lien waiver and sworn statement are also attached. The following is our opinion of the amount due and payable to the Contractor:

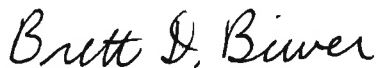
Contract Price	\$1,223,941.50
Work Completed to Date	\$1,199,423.81
Less Amount Retained	<u>(\$30,598.54)</u>
Subtotal	\$1,168,825.27
Less Previous Payments	<u>(\$839,479.86)</u>
Total Amount Due for Partial Payment 2	\$329,345.41

We recommend payment to Globe Contractors, Inc. for \$329,345.41.

Amount attributed to Sanitary Sewer:	\$39,320.00
Amount attributed to Water Main:	\$290,025.41

Sincerely,

BAXTER & WOODMAN, INC.
CONSULTING ENGINEERS



Brett D. Biwer, P.E.

BDB/bdb

Encs.

C/encs.: Jason Peters, Administrator (email)
Doug Snyder, Village Engineer (email)
Brad Huccke, Globe Contractors (email)

P:\SOMEV\211728-MOSCONI - FLINT\CONSTRUCTION\PAY REQUESTS\PAY REQUEST #3\PAY REQUEST #3 RECOMMENDATION.DOC

Contractor's Application for Payment No. 3

		Application Date: 2/15/2023	Application Period: 1/1/2023-2/2/2023
To (Owner): The Village of Somers		From (Contractor): Globe Contractors, Inc.	Via (Engineer): Baxter & Woodman, Inc.
Contact: Jason Peters		Contact: Brad Hucce	Contact: Brett Biwer
Project: Offsite Public Utility Plans For Flint 94 Commerce Center		Address: N50 W23076 Betker Road Pewaukee, WI 53072	Address: 256 South Pine Street Burlington, WI 53105
Owner's Contract No.:		Contractor's Project No.: 1806-22	Engineer's Project No.: 211728.60

Change Order Summary

Approved Change Orders				
Number	Additions	Deductions (Enter as Positive Number)		
			1. ORIGINAL CONTRACT PRICE	\$ 1,223,941.50
			2. Net change by Change Orders	\$ -
			3. CURRENT CONTRACT PRICE (Line 1 + Line 2)	\$ 1,223,941.50
			4. TOTAL COMPLETED TO DATE	
			(Column L Total on Progress Estimates)	\$ 1,199,423.81
			5. RETAINAGE:	
			a. 5% X \$611,970.75 Work Completed	\$ 30,598.54
			6. RETAINAGE REDUCTION TO DATE (Enter as Positive Number) .	\$
			7. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5a. + Line 6)	\$ 1,168,825.27
			8. LESS PREVIOUS PAYMENTS (Line 7 from Prior Application)	\$ 839,479.86
			9. AMOUNT DUE THIS APPLICATION	\$ 329,345.41
TOTALS				
NET CHANGE BY CHANGE ORDERS				

Contractor's Certification	
The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title to all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner per Article 15 of the General Conditions; and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.	
By: Brad Hucce <i>Brad Hucce</i>	Date: 2/15/2023

Payment of:	\$	\$329,345.41 (Line 9 or other - attach explanation of the other amount)
Recommended by:		_____ (Engineer) (Date)
Payment of:	\$	\$329,345.41 (Line 9 or other - attach explanation of the other amount)
Approved by:		_____ (Owner) (Date)

Progress Estimate - Unit Price Work

Contractor's Application for Payment No.

3

For (Project): Offsite Public Utility Plans For Flint 94 Commerce Center								Application Date: 2/15/2023			
Application Period: 1/1/2023-2/2/2023								Engineer's Project No.: 211728.60			
A	B	C	D	E	F	G	H	I	J	K	L
Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Item Value (\$)	Work Completed Previously		Work Completed This Period		Total Work Completed to Date	
						Estimated Quantity Installed	Value of Work Installed (\$)	Estimated Quantity Installed	Value of Work Installed (\$)	Estimated Quantity Installed	Value of Work Installed (\$)
1	MOBILIZATION	LS	1.00	\$72,000.00	\$ 72,000.00	1.00	\$ 72,000.00		\$ -	1.00	\$ 72,000.00
2	CONSTRUCTION LAYOUT & STAKING	LS	1.00	\$5,000.00	\$ 5,000.00	1.00	\$ 5,000.00		\$ -	1.00	\$ 5,000.00
3	REPL OF DRAIN TILES	EA	6.00	\$1,200.00	\$ 7,200.00		\$ -		\$ -		\$ -
4	UTILITY INVESTIGATION POTHOLE	EA	6.00	\$500.00	\$ 3,000.00	20.00	\$ 10,000.00		\$ -	20.00	\$ 10,000.00
5	18" SAN SWR (OPEN CUT)	LF	1,896.00	\$176.00	\$ 333,696.00	1,711.00	\$ 301,136.00	132.50	\$ 23,320.00	1,843.50	\$ 324,456.00
6	18" SAN SWR W/IN 30" (MIN.) STEEL CASING PIPE	LF	426.00	\$798.63	\$ 340,216.38	480.00	\$ 383,342.40		\$ -	480.00	\$ 383,342.40
7	SAN OUTSIDE DROP CONN	EA	1.00	\$25,000.00	\$ 25,000.00	1.00	\$ 25,000.00		\$ -	1.00	\$ 25,000.00
8	48" SAN SWR MH	EA	5.00	\$16,000.00	\$ 80,000.00	4.00	\$ 64,000.00	1.00	\$ 16,000.00	5.00	\$ 80,000.00
9	TELEVISION OF NEW SAN SWR FOR FINAL INSPECTION	LF	2,322.00	\$3.00	\$ 6,966.00		\$ -		\$ -		\$ -
10	12" WM (OPEN CUT)	LF	50.00	\$385.00	\$ 19,250.00		\$ -	31.00	\$ 11,935.00	31.00	\$ 11,935.00
11	12" WM W/IN 24" (MIN.) STEEL CASING PIPE	LF	421.00	\$549.41	\$ 231,301.62		\$ -	440.00	\$ 241,740.41	440.00	\$ 241,740.41
12	WM GRAN BF	LF	25.00	\$79.00	\$ 1,975.00		\$ -		\$ -		\$ -
13	WM CASING VENT PIPE	EA	2.00	\$1,900.00	\$ 3,800.00		\$ -	2.00	\$ 3,800.00	2.00	\$ 3,800.00
14	FIRE HYD	EA	1.00	\$9,500.00	\$ 9,500.00		\$ -	1.00	\$ 9,500.00	1.00	\$ 9,500.00
15	FIRE HYD BARREL EXT	VF	2.00	\$1,300.00	\$ 2,600.00		\$ -	2.50	\$ 3,250.00	2.50	\$ 3,250.00
16	12" GV & BX	EA	2.00	\$4,900.00	\$ 9,800.00		\$ -	2.00	\$ 9,800.00	2.00	\$ 9,800.00
17	12" CONN TO WM (NON-PRESSURE)	EA	1.00	\$10,000.00	\$ 10,000.00		\$ -	1.00	\$ 10,000.00	1.00	\$ 10,000.00
18A	SILT FENCE	LF	2,255.00	\$2.30	\$ 5,186.50	2,000.00	\$ 4,600.00		\$ -	2,000.00	\$ 4,600.00
18B	EROSION CONTROL BLANKET	SY	6,300.00	\$1.50	\$ 9,450.00		\$ -		\$ -		\$ -
18C	CONSTRUCTION ENTRANCE	EA	1.00	\$4,000.00	\$ 4,000.00		\$ -		\$ -		\$ -
19	RESTORATION OF LAWNS & PARKWAYS	LS	1.00	\$39,000.00	\$ 39,000.00		\$ -		\$ -		\$ -
20	TRAFFIC CONTROL & PROTECTION	LS	1.00	\$5,000.00	\$ 5,000.00	1.00	\$ 5,000.00		\$ -	1.00	\$ 5,000.00
							\$ -		\$ -		\$ -
TOTAL BID ITEMS					\$ 1,223,941.50		\$ 870,078.40	-	\$ 329,345.41		\$ 1,199,423.81
ADDITIONAL ITEMS											
					\$ -		\$ -		\$ -		\$ -
					\$ -		\$ -		\$ -		\$ -
TOTAL ADDITIONAL ITEMS					\$ -		\$ -		\$ -		\$ -
TOTAL ALL ITEMS					\$ 1,223,941.50		\$ 870,078.40		\$ 329,345.41		\$ 1,199,423.81

PARTIAL WAIVER OF LIEN

February 20th, 2023

For value received, we hereby waive all rights and claims for lien on land and on buildings about to be erected, being erected, erected altered or repaired and to the appurtenances thereunto,

for **Village of Somers**

owner,

by **Globe Contractors, Inc.**

contractor,

for **Installation of Offsite Public Utilities (Water & Sanitary)**

same being situated in Kenosha County, State of Wisconsin, described as

Offsite Public Utility Plans For Flint 94 Commerce Center

for all labor performed and for all material furnished for the erection, construction, alteration, or repair of said building and appurtenances, except,...

Paid to Date \$839,479.86 plus current amount of \$329,345.41

Globe Contractors, Inc.



Robert D. Olson, President



www.somers.org

P.O. Box 197, Somers, WI 53171 • PH: (262) 859-2822 • FAX: (262) 859-2331

**VILLAGE OF SOMERS
VILLAGE BOARD
MEETING ITEM MEMORANDUM**

MEETING DATE: February 28, 2023

TO: Village President Stoner and Village Trustees

PREPARED BY: Brandi Baker, Clerk/Treasurer

AGENDA ITEM: #11 Action on recommendation to approve operator licenses for Tracy Koster and Michael Stewart

BACKGROUND:

Tracy Koster and Michael Stewart has applied for operators' licenses for the Village of Somers. No discrepancies with the applications.

PRIOR ACTION TAKEN:

None.

SUGGESTED ACTION/ACTION REQUESTED/COMMENTS:

Staff recommends approval. In the event that the Village Board agrees with the recommendation to approve applications, a suggested motion would be as follows:

“Motion to approve Operator Licenses: Tracy Koster and Michael Stewart”

ATTACHMENTS:

NONE