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February 13, 2017

Michael A. West  
Village President  
Village of Fox Point  
7200 N. Santa Monica Blvd.  
Fox Point, WI 53217

**Re: Village of Fox Point  
Possible Dunwood Site Redevelopment  
Regulatory Review Procedures  
Updated Outline**

Dear Mr. West:

I received your request that I provide you with a copy of an outline of procedures that I provided to the Village Manager on February 29, 2016. You asked me to ensure that the memorandum addresses all of the standards that will be applied by the governing bodies, in addition to describing the applicable procedures. You also asked me to ensure that the memorandum that I provided approximately a year ago, continues to apply to the project that we now understand is being planned. In that regard, it is my understanding that a developer (Mandell Group, Inc.) is considering submitting an application to develop the Dunwood site for multi-family residential purposes, along with certain institutional uses. I have had an opportunity to carefully consider this matter.

Based upon my research, I note that the following procedures would apply:

1. Pre-Petition Conference with Plan Commission. The Developer must meet with the Plan Commission, and must pay a fee of \$300.00, before filing an application. (Section 745-21(C)(1), and 63-8(F) of the Village Code.) This is a conceptual review and the planning commission should make no substantive conclusions regarding the potential application. Instead the Plan Commission can answer procedural questions and assist

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the developer in identifying issues that may need to be further considered if the developer would file the application.<sup>1</sup>

2. Petition to Village Board. After meeting with the Plan Commission, the Petition can be filed with the Village Board. The Petition must include a specific project plan, including all of the requirements of Section 745-21(C)(2) of the Village Code, and the list of details that must be provided is extensive.<sup>2</sup>
3. Referral to Plan Commission. The Village Board then refers the matter to the Plan Commission for the Plan Commission to make a recommendation to the Village Board. Specifically, the planning commission must advise the Village Board concerning:

“The appropriateness and desirability of the proposed development plans, and any changes or additional conditions applicable to such plans which it may feel necessary or appropriate.” (Section 745-21(C)(3), FPC.)

The Plan Commission also must consider the standards included in Section 745-21(E) of the Village Code. I have attached the standards of the ordinance that the planning commission must consider as Exhibit A.

- a. Building Board Recommendations. Before the Plan Commission can make a recommendation to the Village Board, the Plan Commission must receive a recommendation from the

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<sup>1</sup> This conceptual review is the first step in our ordinance, when a particular applicant seeks to rezone their property for planned development. Be very careful with the conceptual review, because this comes before the hearing is held. You must confine the conceptual review to the most basic considerations under the currently existing laws, consideration of procedures for example, and do not say things that reflect bias for or against. Please keep in mind that when property is proposed for rezoning you should act in your quasi-judicial capacity. You (you being the Plan Commission, Village Board, and their members) ultimately will be tasked with making findings based on the facts presented at the hearing. Due process and fairness in our proceedings requires that you maintain your neutrality and withhold judgment until after the public hearing is held so that your findings are fairly made upon the information received, with no impropriety and no appearance of impropriety in the proceedings.

<sup>2</sup> If it is a residential development, the application may be solely for the PDO Planned Development Overlay. If they intend to conduct commercial uses as well, such as was proposed in Option 2 from the Vandewalle study, they may need to rezone the property from F-Institutional to D-Business, for the part of the parcel that will contain the commercial uses. The PDO Overlay District is quite restrictive regarding commercial uses, unless the underlying land is zoned for commercial.

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Building Board per 745-21(E)(3) of the Village Code, regarding this standard:

“That the size, quality and architectural design of all buildings within the project will be compatible with the general character of the Village and specifically to the surrounding neighborhood.”

This portion of the Building Board process should occur before the Plan Commission takes action, therefore.

4. Public Hearing. The Village Board must hold a public hearing. (Section 745-21(C)(4).) Notice of the public hearing must be provided by Class 2 notice. (Section 62.23(7)(d), Wisconsin Statutes.)
5. Village Board Findings. The Village Board should consider the basis for approval shown in Section 745-21(E), and these findings should be included in the rezoning ordinance preamble, to document that these extensive considerations have been made. The Village Board standards are the same as the standards that apply to the Plan Commission, as shown in attached Exhibit A. The Village Board also must consider Section 745-21(F)(2)

“The approval of the planned development shall be based on and include as conditions thereto the building, site, and operational plans for the development as approved, as well as all other commitments offered or required as regard to project value, character, or other factors pertinent to an assurance that the proposed development will be carried out basically as presented in the official submitted plan presented in the official submittal plan. Detailed construction and engineering need not necessarily be completed at the time the project is approved but the approval of such preliminary plans is conditioned upon the subsequent submittal and approval of specific and detailed plans as the development progresses.”

6. Village Board Determination. Upon the findings described above, the Village Board can make its determination. (Section 745-21(F), FPC.) The

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rezoning ordinance should be approved conditionally, if it is approved, with conditions that are appropriate to the project that would likely include: A Developer's Agreement is required, a financial guarantee is required, the final development plans must be submitted and receive approval prior to construction, Building Board approval is required, Staff approval is required, etc. This determination should be made, if it is granted, by an ordinance, which rezones the property to include this PDO Planned Development Overlay District.

7. Developer's Agreement. A Developer's Agreement should be drafted and negotiated, along with a financial guarantee, to ensure timely completion of the project pursuant to the necessary negotiated terms. (Section 745-21(F)(3), FPC.)
8. Other. Depending upon what is proposed, there may be other approvals required. Storm water plans are likely to be required, along with a storm water agreement, for example. Signage plans may also be required. These issues will need to be considered based on the particular project that is proposed.
9. Building Reviews. Ordinary building permit procedures will need to be followed, including Building Board review and approval, before any construction can begin.

If you should have any questions or concerns in this regard, please do not hesitate to contact me.

Yours very truly,

ARENZ, MOLTER, MACY,  
RIFFLE & LARSON, S.C.



Eric J. Larson

EJL/egm

cc: Scott Botcher, Village Manager  
Kelly Meyer, Village Clerk/Treasurer

EXHIBIT A  
PLANNED UNIT DEVELOPMENT STANDARDS  
Section 745-21(E), Fox Point Village Code

E. Basis for approval. The Plan Commission in making its recommendations and the Village Board in making its determination shall give consideration and satisfy themselves to the following:

- (1) That the proposed development is consistent with the spirit and intent of this chapter, is in conformity with the general character of the Village and would not be contrary to the general welfare and economic prosperity of the Village or of the immediate neighborhood, but rather that the benefit from improved design of the resultant development justifies the variation from the normal requirements of this chapter through the approval of a planned development.
- (2) That the proponents of the proposed development have demonstrated that they intend to start construction within a reasonable period following the approval of the project, that the project appears economically sound, that the proponents of the proposed development have the financial capacity to carry out the project as proposed and intend to commence and complete construction within a reasonable time from the date of approval.
- (3) That the size, quality and architectural design of all buildings within the project will be compatible with the general character of the Village and specifically to the surrounding neighborhood. To arrive at such determination, the recommendation of the Building Board shall be obtained prior to the Plan Commission's report to the Village Board. Approval of individual building plans by the Building Board is not supplanted by this section.
- (4) That the specific project plans have been prepared with competent professional advice and guidance.
- (5) That setbacks shall be maintained along any boundary street of the project area as required by the basic zoning district.
- (6) That no building shall be permitted closer to a side or rear boundary line of the project area than required by the applicable side or rear yard requirements of the adjoining zoning district abutting along a side or rear property line of the project.
- (7) That no building shall exceed the height limitation of the basic zoning district.
- (8) In the case of proposed residential developments:
  - (a) That such development will create an attractive residential environment of sustained desirability and economic stability, compatible with the character of the Village and where the economic impact of the development in terms of income levels, property values, and service demands is substantially as beneficial to the community as that which could be anticipated under the basic zoning.
  - (b) That the population composition of the development will not substantially alter adversely the impact upon school or other municipal service requirements as anticipated under the basic zoning.

(c) That the project will not create traffic beyond the capacity of the street system to serve it, and shall provide adequate off-street parking based upon the need generated by the development.

(d) That the total average residential density of the planned development based upon the specific design characteristics of the development proposed will be compatible with the previously stated criteria. Specifically, the allowable density for a given development shall be computed by dividing the gross area of the proposed development exclusive of existing public right-of-way by the appropriate density factor as follows:

[1] Single-family dwelling: 10,000 square feet per dwelling.

[2] Single family attached or multiple-family dwellings as follows:

[a] One-bedroom: 4,000 square feet per dwelling unit.

[b] Two-bedroom: 4,500 square feet per dwelling unit.

[c] Three-bedroom: 5,000 square feet per dwelling unit.

(e) Where the proposed development area includes more than one dwelling type, the density computation shall be made on the basis of the proportionate ratio involved. An increase in the computed allowable maximum density not to exceed 20% may be permitted as an incentive reward where in the opinion of the Plan Commission the character and quality of the development and of the amenities provided justify the additional density allowance.

(f) That the plan would result in the preservation of open land in a manner which would enhance the total environmental setting and desirability of the development and compensate for any reduction in individual lot area requirements which are allowed.

(g) That adequate guarantee is provided for permanent preservation of the residual common open land area resulting from the application of these regulations by private reservation, as an enhancement to the development.

(h) The common open area to be reserved shall be protected against building development by conveying to the municipality as part of the conditions for project approval an open space easement over such common open areas restricting them against any future building or use except as is consistent with that of providing natural or landscaped open space for the esthetic and recreational satisfaction of the surrounding residences. Buildings or uses for noncommercial recreational or cultural purposes compatible with the open space objective may be permitted only where specifically authorized as part of the development plan or subsequently with the express approval of the Village Board following approval of building, site, and operational plans by the Plan Commission and the Building Board.

(i) The care and maintenance of such common open space reservations shall be insured either by establishment of appropriate management organization for the project or by agreement with the municipality for establishment of a special service district for the project area on the basis of which the municipality shall provide the necessary maintenance service and levy the cost thereof as a special assessment on the tax bills of

properties within the project area. In any case, the Village shall have the right to carry out and levy an assessment for the cost of any maintenance which it feels necessary if it is not otherwise taken care of to the satisfaction of the Village. The manner of assuring maintenance and assessing such cost to the individual properties shall be determined prior to the approval of the final project plans and shall be included in the title to each property.

(j) Ownership and tax liability of private common open space reservations shall be established in a manner acceptable to the municipality and made a part of the conditions of the plan approval.

(9) In case of proposed commercial developments:

(a) That the economic practicality of the proposed development can be justified on the basis of purchasing potential, competitive relationship and demonstrated tenant interest.

(b) That the proposed development will be adequately served by off-street parking and truck service facilities.

(c) That the locations for entrances and exits have been designed to prevent unnecessary interference with the safe and efficient movement of traffic on surrounding streets, and that the development will not create an effect upon the general traffic pattern of the area substantially incompatible with that anticipated under the basic zoning.

(d) That the architectural design, landscaping, control of lighting, and general site development will result in an attractive and harmonious service area compatible with and not creating a substantially adverse effect upon the property values of the surrounding neighborhood.