CITY OF STOUGHTON
DEPARTMENT OF
PLANNING & DEVELOPMENT
207 S. Forrest Street, Stoughton, WI. 53589

(608) 873-6619 www.ci.stoughton.wi.us

RODNEY J. SCHEEL
DIRECTOR

Date: February 2, 2021

To: Plan Commissioners and Common Council

From: Rodney J. Scheel
Director of Planning & Development

Michael P. Stacey
Zoning Administrator/Assistant Planner

Subject: Agenda Item for the February 8, 2021 Plan Commission Meeting and Common Council Meeting of February 23, 2021

Request by Kirk Biodrowski for approval of a conditional use permit to allow an Indoor Commercial Entertainment use (restaurant type use) and for an In-Vehicle Sales and Service use (drive-thru) at 1720 US Highway 51-138.
This proposal is to convert/reuse an old bank building for a restaurant type use with a drive-thru. The site plan will also need to be approved contingent on the CUP approval by the Common Council. The site and use meet all zoning requirements. The property is owned by the adjacent property owner and will be leased to Starbucks. There is an access easement in place from when Hardees occupied the space which allows pedestrian and vehicular access etc… A public hearing and recommendation to Council is necessary for the CUP. The resolutions, application information and staff review are provided.

CITY OF STOUGHTON, 207 S. FORREST STREET, STOUGHTON, WISCONSIN

RESOLUTION OF THE COMMON COUNCIL

Approving a Conditional Use Permit request by Kirk Biodrowski for property at 1720 US Highway 51-138, Stoughton, Wisconsin. (Site plan dated 2/1/21)

Committee Action: Plan Commission recommends Common Council approval – 0

Fiscal Impact: None.

File Number:	R- -2021	**Date Introduced:**

The City of Stoughton, Wisconsin, Common Council does proclaim as follows:

WHEREAS, on February 8, 2021 the City of Stoughton Plan Commission held a public hearing and reviewed the proposed conditional use permit application by Kirk Biodrowski for property at 1720 US Highway 51-138, Stoughton, Wisconsin; and

WHEREAS, the conditional use permit is requested for the following:

- Indoor Commercial Entertainment (restaurant use) and for In-Vehicle Sales and Service (drive-thru).

WHEREAS, the Zoning Administrator has determined:

- The proposed conditional use (the use in general and at the proposed specific location) is in harmony with the purposes, goals, objectives, policies and standards of the City of Stoughton comprehensive Plan, zoning ordinance or any other plan;
- The conditional use in its proposed location and as depicted on the required site plan does not result in a substantial or undue adverse impact on nearby property, the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the provisions of this chapter, the comprehensive plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the city of other government agency having jurisdiction to guide development;
- The proposed conditional use maintains the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property;
- The proposed conditional use is located in an area that will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities or services provided by public agencies serving the subject property;
- The potential public benefits of the proposed conditional use outweigh any and all potential adverse impacts of the proposed conditional use, after taking into consideration the applicant's proposal and any requirements recommended by the applicant to ameliorate such impacts; and

WHEREAS, the Plan Commission and Common Council determined the proposed conditional use permit will not create undesirable impacts on nearby properties, the environment, nor the community as a whole; now therefore

BE IT RESOLVED, by the City of Stoughton Common Council that the Conditional Use Permit request by Kirk Biodrowski for property at 1720 US Highway 51-138 is hereby approved as presented subject to:

- Staff review dated February 2, 2021

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

_____

Tim Swadley, Mayor Date

Council Action: _____ ☐ **Override** **Vote** _____

CITY OF STOUGHTON, 207 S. FORREST STREET, STOUGHTON, WISCONSIN

RESOLUTION OF THE PLAN COMMISSION

Approving a Site Plan for 1720 US Highway 51-138, Stoughton, WI.

Committee Action: Plan Commission approves the request – 0

Fiscal Impact:

File Number:	R - 2 - 2021	**Date Introduced:**	February 8, 2021

RECITALS

A. Kirk Biodrowski (the "Applicant") is seeking site plan approval (site plan dated Feb 1, 2021) for the property at 1720 US Highway 51-138 in the City of Stoughton, Dane County, Wisconsin (the "Property").

B. The Property is zoned Planned Business and the use is consistent with the Comprehensive Plan and Zoning requirements.

C. The City Plan Commission reviewed and discussed the proposed site plan at their regular February 8, 2021 meeting and found that the site plan meets all zoning requirements and the intent of the Comprehensive Plan.

RESOLUTION

BE IT RESOLVED, the City of Stoughton Plan Commission approves the site plan for the property at 1720 US Highway 51-138, Stoughton, WI, with the following conditions:

- Appropriate zoning and building permits are necessary prior to any construction or site work.
- Conditioned on meeting all requirements of the staff review letter of February 2, 2021

_____

Mayor Tim Swadley Date
Planning Commission Chair

PUBLIC HEARING NOTICE

The City of Stoughton Plan Commission will hold a Virtual Public Hearing on Monday, February 8, 2021 at 6:00 o'clock p.m., or as soon after as the matter may be heard, to consider a proposed conditional use permit application by Kirk Biodrowski for an Indoor Commercial Entertainment use (restaurant type uses) and for an In-Vehicle Sales and Service accessory use (Drive-thru) at 1720 US Highway 51-138, Stoughton, WI.

The property is more formally described as:
Parcel # 281/0511-063-9840-8
Legal Description: LOT 2 CSM 5317 CS24/144&146-8/4/87 SEC 6-5-11 PRT SE1/4SW1/4 (0.079 ACRES)
This property description is for tax purposes. It may be abbreviated. For the complete legal description please refer to the deed.

Additional information including a location map can be found at: http://stoughtoncitydocs.com/planning-commission/

Due to the COVID-19 Pandemic, this meeting will not be open to the public in an in-person capacity. For those wishing to view the meeting and/or ask questions, you may do so via the following options:

Please join the meeting from your computer, tablet or smartphone.
https://global.gotomeeting.com/join/512452325

You can also dial in using your phone.
United States: +1 (571) 317-3116

Access Code: 512-452-325

New to GoToMeeting? Get the app now and be ready when your first meeting starts:
https://global.gotomeeting.com/join/512452325

If you wish to speak at or have your comments read aloud at the meeting, please register at http://speak.cityofstoughton.com by 5:45 on the day of the meeting. Any comments will be forwarded on to the "Organizer". The public can click on the link or call in and use the access code. When connected the public will have to identify themselves in order for the "Organizer" to rename them on the "Attendee" screen. If you plan to speak, please mute TV or stream volume (if online) and do not use speakerphone, as it creates feedback, there may be a delay. The Public Comment participant will be unmuted by the "Organizer" when it is their turn and have up to 3 minutes to speak. After speaking, the "Organizer" will mute the Public Comment participant. The participant can log out or hang up and stream at WSTO, or watch on Channel 981 on Charter/Spectrum.

For questions regarding this notice please contact Michael Stacey, Zoning Administrator at 608-646-0421.

Published January 21 and January 28, 2021 Hub

Jan 08, 2021

City of Stoughton
Department of Planning & Development
207 S. Forrest St
Stoughton, WI 53589

RE: Plan Commission: Letter of Intent
1720 US Hwy 51 Stoughton, WI

Dear Commission members and Planning and Development Staff:

On behalf of Slow LLC, Sketchworks Architecture, LLC is submitting this letter of intent and application for a conditional use approval at 1720 US Hwy 51 in Stoughton WI. We are seeking conditional use approval for an indoor commercial entertainment (ie a coffee shop/ restaurant) and an in-vehicle sales and service use (ie a drive-thru). In addition, we are seeking conditional use of an outdoor patio area connected with the coffee shop. These uses will be part of a tenant improvement of an existing building that formally housed a bank with a drive-thru.

On Jan 6th, 2021, we presented our concept to the zoning administrator Michael Stacey for initial feedback and advice on the project. The included site and building concept plans are a result of that conversation.

Proposal Summary: This proposal constitutes providing a “white box” building for a national chain coffee shop/ restaurant. The facility will house a coffee shop/ restaurant with a drive-thru and an outdoor patio. The uses are part of a tenant improvement in an existing vacant building along US Hwy 51 in an outlot connected with the Pick-n-Save grocery store. The owner of the lot is also the owner of the Pick-n-Save lot.

Existing conditions:
The site currently contains the existing building, parking, and drive-thru. The existing building is 3,877 SF on the main floor and 1,750 SF in the basement. Outside of some cosmetic changes to the building and the removal of the existing drive-thru canopy the site and building will remain relatively untouched. Site improvements will not result in disturbance >4,000 SF therefore stormwater and erosion control plans will not be required.

The parking lot contains 36 parking stalls, 2 of which are ADA compliant. The estimated building occupant load will be less than 96 so the parking requirement is met. Currently no bike parking is located on the site. We will add at least 4 bike stalls to meet current code requirements.

Proposed use:
The proposed use is a coffee/ shop restaurant with a drive-thru and outdoor patio. The drive-thru will be paved with 6” concrete pad and can support a stacking load of 8 vehicles without interference into any drive aisles.

Hours of Operation (Proposed and subject to change):

M-SU 4:30AM-9:30PM (represents a possible range, exact hours TBD by national chain)
Typical peak hours between 8AM-12PM

In summary, the project will consist of the general criteria listed below:

Project Data:

Project Name:	1720 US-51 TI
Address:	1720 US-51 Stoughton, WI
Land Value:	$178,900
Total value:	$661,800
Lot size:	0.79 acres
Proposed Use:	Indoor commercial entertainment (coffee shop)
Total Building Area:	5,627 GSF
Parking Required:	36 (1/3 per occupant)
Parking Provided:	36
LSR:	28% (25% min)
Number of Jobs:	15 full time (est)

Zoning District:

The property is currently zoned Planning Business (PB)

Project Schedule:

The project construction schedule will be as follows:

Plan Commission Final Approval:	Feb 8th, 2021
Final Site Plan Submittal:	Jan 25th, 2021
Permit Submittal:	April 2nd, 2021 (est)
Demo Permit:	April 2nd, 2021 (est)
Start Demo:	April 5th, 2021 (est)
Start Construction:	May 1st, 2021 (est)

Project Team:

The key individuals and firms involved in this planning and design process include:

Tenant/ Building Owner:
Slow LLC c/o Galway Companies Inc
800 W. Braodway, Ste 400
Monona, WI 53713
Contact Wade Teslow
(608) 327-4000

Architect:
Sketchworks Architecture, LLC
7780 Elmwood Ave Ste 208
Middleton, WI 53562
Contact: Kirk Biodrowski
(608) 836-7570

Please feel free to contact us with any questions you may have regarding this request.

Respectfully,

Kirk Biodrowski
Sketchworks Architecture, LLC

City of Stoughton Application for Conditional Use Review and Approval (Requirements per Section 78-905)

Applicant Name: Kirk Biodrowski

Applicant Address: 7780 Elmwood Ave Ste 208 Middleton, WI

Applicant Phone and Email: 608-836-7570 kbiodrowski@sketchworksarch.com

Property Owner Name (if different than applicant): Slow, LLC (Wade Teslow)

Property Owner Phone: 608-327-4000

Subject Property Address: 1720 US Hwy 51

This form is designed to be used by the Applicant as a guide to submitting a complete application for a conditional use review *and* by the City to process said application. Parts II and III are to be used by the Applicant to submit a complete application. (See conditional use review and approval procedures attached)

I. Record of Administrative Procedures for City Use

Application form filed with Zoning Administrator — Date: 01/08/2021

Application fee of $ 455 received by Zoning Administrator — Date: 01/08/2021

II Application Submittal Packet Requirements

Prior to submitting the final complete application as certified by the Zoning Administrator, the Applicant shall submit an initial draft application for staff review at least 30 days prior to a Planning Commission meeting, followed by one revised draft final application packet based upon staff review and comments. The final application materials are required to be submitted at least 2 weeks prior to the Planning Commission meeting.

Initial Packet
(1 electronic 11 x 17 copy of plans to Zoning Administrator) — Date: 01/08/2021

Final Packet
(1 electronic 11 x 17 copy of plans
and if necessary one large scalable copy of plans to Zoning Administrator) — Date: 01/25/2021

(a) A map of the proposed conditional use:

- ☒ Showing all lands under conditional use consideration.
- ☒ All lot dimensions of the subject property provided.
- ☒ Graphic scale and north arrow provided.

(b) A written description of the proposed conditional use describing the type of activities, buildings, and structures proposed for the subject property and their general locations.

(c) A site plan (conforming to the requirements of Section 78-908(3)) of the subject property as proposed for development OR if the proposed conditional use is a large development (per Sections 78-205(11)). A proposed preliminary plat or conceptual plat may be substituted for the required site plan, provided said plat contains all information required on said site plan per Section 78-908.

(d) Written justification for the proposed conditional use indicating reasons why the Applicant believes the proposed conditional use is appropriate with the recommendations of the City of Stoughton Comprehensive Plan, particularly as evidenced by compliance with the standards set out in Section 78-905(5)(c)1.-6, as follows.

III Justification of the Proposed Conditional Use Request.

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

The conditional use for this proposed project is in harmony with the Stoughton Comprehensive plan by allowing a national well-respected coffee chain into the community. This will help spur economic growth in the area as well as provide a space for community gathering. The building location is along a prominent street entry into the city. The chain's design aesthetic is one of natural looking materials which will act to enhance the introduction to your city. The existing building is currently unoccupied. This new tenant will help provide a new tax revenue for the city.

2. Does the proposed conditional use, in its proposed location and as depicted on the required site plan (see Section 78-905(4)(d)), result in any substantial or undue adverse impact on nearby property, the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the provisions of the Zoning Ordinance, the Comprehensive Plan, or any other plan, program, map or ordinance adopted?

No. The building is located in an outlot of a large parking lot. The owner of the lot also owns the surrounding lot (parking area). The drive-thru is located internal to the parking lot and will not affect regular traffic flow along US-51. The previous tenant had an approved drive-thru.

3. How does the proposed conditional use maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the surroundings of the subject property?

The building parking and drive-thru are existing. The new tenant is re-purposing

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

Yes, the conditional use should be an improvement to the area.

5. Do the potential public benefits of the proposed conditional use outweigh all potential adverse impacts of the proposed conditional use (as identified in Subsections 78-905(5)(c)1-5.), after taking into consideration any proposed options to minimize such impacts?

Yes, the conditional use should be an improvement to the area.

IV. Application Information for City Use

Notified Neighboring Property Owners (within 300 feet) Date: 1/15/21

Notified Neighboring Township Clerks (within 1,000 feet) Date: 2/3/21

Class 2 legal notice sent to official newspaper by City Clerk Date: 1/11/21

Class 2 legal notice published on 1/21/21 and 1/28/21 ~~Date:~~

Conditional Use recorded with the County Register of Deeds Office after approval ☐

1720 US-51 T.I.

1720 US-51
STOUGHTON, WI 53839

PROJECT DATA

LOCATION:
1750 US-51
STOUGHTON, WI 53839

REGULATING MUNICIPALITIES:
CITY OF STOUGHTON
DANE COUNTY
STATE OF WISCONSIN

BUILDING CODE:
CITY OF STOUGHTON ZONING ORDINANCES
WISCONSIN ADMINISTRATIVE CODE
2015 INTERNATIONAL BUILDING CODE
ACCESSIBILITY ANSI A117.1 - 2009

PROJECT DESCRIPTION:
TENANT IMPROVEMENT OF EXISTING BUILDING; "WHITE BOX" PLANS ONLY
TENANT TO PROVIDE OCCUPANCY PLANS

OCCUPANCY TYPE:
PRIMARY: A-2

CONSTRUCTION TYPE:
TYPE VB

ALLOWABLE BUILDING AREA & HEIGHT:
MAXIMUM HEIGHT ABOVE GRADE PLANE = 40 FEET
(IBC TABLE 504.3)
MAXIMUM STORIES ALLOWED = 1 STORY
(IBC TABLE 504.4)
MAXIMUM AREA ALLOWED PER FLOOR = 6,000 SF
(IBC TABLE 506.2)
AREA MODIFICATIONS = 34,200 SF
(IBC SECTION 506)
TOTAL MAXIMUM ALLOWABLE AREA PER FLOOR = 40,200 SF

ACTUAL BUILDING AREA & HEIGHT:
HEIGHT ABOVE GRADE PLANE = 15 FEET
STORIES = 1 STORIES
TOTAL BUILDING AREA = 3,877 SF

AREA AND LEVEL OF ALTERATION:
ALTERATION: LEVEL 3

NUMBER OF OCCUPANTS (TABLE 1004.1.2):
FINAL BY TENANT; 96 OCCUPANTS MAXIMUM BASED ON PARKING

PLUMBING:
"WHITE BOX" IMPROVEMENT ONLY; PLUMBING FIXTURE COUNTS BY TENANT

ALL FIXTURES TO COMPLY WITH ICC A117.1

FIRE CONTROL:
NON SPRINKLERED BUILDING:

EXITS:
EXIT(S) REQUIRED TO MEET EXITING DISTANCES = 2
EXIT(S) PROVIDED TO MEET DISTANCES = 2
MIN 60% OF PUBLIC EXTERIOR DOORS TO BE ON ACCESSIBLE ROUTE

ACCESSIBILITY:
FOLLOW IBC 2015 AND ANSI 117.1 (2009)

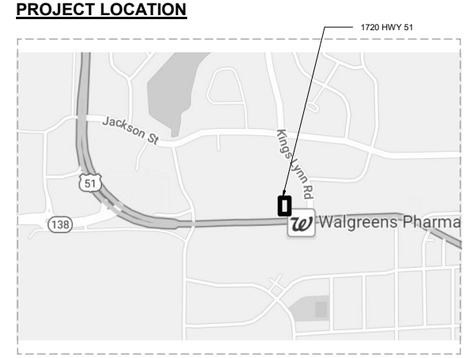
PROJECT GENERAL NOTES:

1. CONTRACTOR SHALL NOTIFY ARCHITECT IMMEDIATELY UPON DISCOVERING ANY DISCREPANCIES OR CONFLICTING INFORMATION IN THESE DOCUMENTS. CONTRACTOR SHALL CAREFULLY REVIEW AND COMPARE ALL DRAWINGS DURING THE BIDDING PERIOD AND BEFORE INSTALLATION OF THEIR WORK. ANY INCONSISTENCIES IN THE DRAWINGS SHALL BE REPORTED PROMPTLY TO THE ARCHITECT AND ENGINEER(S) FOR CLARIFICATION.
2. DO NOT SCALE DRAWINGS. THE DRAWINGS ARE NOT NECESSARILY TO SCALE - USE GIVEN DIMENSIONS. DIMENSIONS TAKE PRECEDENCE OVER SCALE. CONTRACTOR TO VERIFY ALL DIMENSIONS IN FIELD.
3. CONTRACTOR SHALL NOTIFY ARCHITECT AND OWNER IMMEDIATELY UPON DISCOVERING ANY UNANTICIPATED EXISTING SITE CONDITIONS AFFECTING THE EXECUTION OF THESE DOCUMENTS (SUCH AS HAZARDOUS MATERIALS, ETC.).
4. CONTRACTOR SHALL ABIDE BY ALL LOCAL, STATE AND FEDERAL CODES AND REGULATIONS GOVERNING THIS PROJECT.
5. JOB SITE SHALL BE BROOM SWEPT AND CLEAN AT THE END OF EACH DAY. ALL DEBRIS SHALL BE PICKED UP AND DISPOSED OF PROPERLY INTO APPROVED CONTAINER.
6. MAINTAIN DESIGNATED EGRESS ROUTES DURING CONSTRUCTION BY KEEPING CLEAR OF CONSTRUCTION DEBRIS AND CLEARLY MARKING THE PATH OF EGRESS TRAVEL.
7. ALL MECHANICAL (HVAC), ELECTRICAL, PLUMBING AND FIRE PROTECTION (MEP & FP) DESIGN AND CONSTRUCTION TO BE BY A DESIGN-BUILD DELIVERY METHOD AND ARE SUBSEQUENTLY NOT PART OF THESE DOCUMENTS. IT IS THE MEP CONTRACTOR'S RESPONSIBILITY TO COORDINATE WITH THE GENERAL CONTRACTOR AND WITH THESE DRAWINGS THE FINAL DESIGN, RETROFIT AND INSTALLATION OF THESE SYSTEMS. NOTIFY THE ARCHITECT PRIOR TO MAKING ANY REVISIONS TO THE STRUCTURE OR ARCHITECTURAL FEATURES.
8. HVAC CONTRACTOR SHALL SUBMIT PROPER DESIGN DRAWINGS AS NEEDED FOR PLAN APPROVAL AND BUILDING PERMITS.
9. WITHIN THIS DOCUMENT "NORTH, SOUTH, EAST, WEST" ARE REFERRED TO AS PROJECT OR PLAN NORTH AND MAY NOT BE TRUE NORTH.
10. ALL EXPOSED WOOD AND/OR WOOD IN CONTACT WITH CONCRETE OR MASONRY SHALL BE PRESSURE TREATED.
11. PROVIDE GFI OUTLETS NEAR WATER SOURCES AND AS REQUIRED BY IEC.
12. PROVIDE FIRE BLOCKING THROUGHOUT BUILDING PER IBC 717.2.
13. SUBMIT ALL MATERIALS, SHOP DRAWINGS, PLAN MODIFICATIONS TO THE ARCHITECT FOR REVIEW AND APPROVAL.
14. IN SOME CASES, THE SELECTION OF SPECIFIC ACCESSORIES, HARDWARE, MATERIALS OR FINISHES MAY NOT BE AVAILABLE AT ISSUANCE OF THESE DRAWINGS. THESE INSTANCES ARE INDICATED WITH "TBD", OR "TO BE DETERMINED". IN THESE SITUATIONS, THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING APPROPRIATE ALLOWANCES TO COVER THE MATERIAL AND INSTALLATION FOR THAT ELEMENT, BASED ON THE BEST INFORMATION PROVIDED. IF NO INFORMATION IS PROVIDED, ASSUME A MID-RANGE PRODUCT COST TO SATISFY THE INTENT OF THE PROJECT. THE CONTRACTOR SHALL CLEARLY STATE IN THEIR BID PROPOSAL WHAT THE ALLOWANCE VALUE AND UNIT PRICE IS, LISTED SEPARATELY FOR EACH ITEM.
15. IF THE CONTRACTOR ELECTS TO NOT PROVIDE A PRICE FOR ANY ELEMENT CONTAINED IN THESE DOCUMENTS, FOR WHATEVER REASON, THE CONTRACTOR SHALL CLEARLY INDICATE THIS EXCLUSION IN THEIR BID PROPOSAL. IF NO EXCLUSION IS MADE, IT IS THE CONTRACTUAL OBLIGATION OF THE CONTRACTOR TO PROVIDE THE ELEMENT IN ACCORDANCE WITH THE GENERAL INTENT OF THE DRAWINGS.
16. IN THE EVENT OF CONTRADICTION OF DOCUMENTS, SPECIFICATIONS SHALL TAKE PRECEDENT. IF A CONTRADICTION REMAINS, OR IF THE SPECIFICATION DOES NOT CLARIFY, THEN THE CONTRACTOR SHALL ASSUME THE MOST EXPENSIVE OF THE MATERIALS AND INSTALLATION WHEN COMPARING THE CONTRADICTORY ITEMS.
17. CROSS REFERENCE FINISHES WITH STARBUCKS PROTOTYPE MANUAL DATED _____

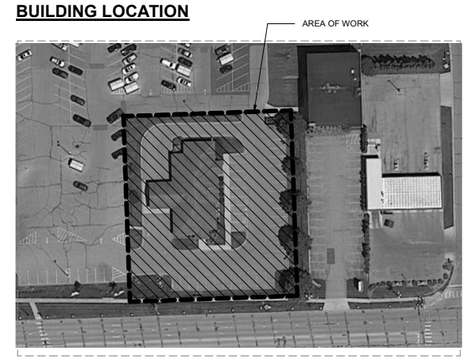
SHEET INDEX

SHEET NUMBER	SHEET NAME	REVISIONS MARK	REVISIONS DATE
GENERAL			
G001	COVER SHEET	CUP REVIEW	02/01/2021
ARCHITECTURAL DEMOLITION			
AD201	DEMOLITION EXTERIOR ELEVATIONS	CUP REVIEW	02/01/2021
ARCHITECTURAL SITE			
AS901	AREA MAP	CUP REVIEW	02/01/2021
AS902	ARCHITECTURAL SITE PLAN	CUP REVIEW	02/01/2021
ARCHITECTURAL			
A201	EXTERIOR ELEVATIONS	CUP REVIEW	02/01/2021

PROJECT LOCATION



BUILDING LOCATION



PROJECT CONTACTS:

OWNER:
SLOW LLC
800 W. BROADWAY, STE 400
MONONA, WI 53713

CONTACT:
WADE TESLOW (OWNER)
608-327-4000

TENANT:
TBD

CONTACT:
TBD

ARCHITECT:
SKETCHWORKS ARCHITECTURE, LLC
7780 ELMWOOD AVE., STE 208
MIDDLETON, WI 53562

CONTACT:
[NAME] (ARCHITECT)
KIRK BIODROWSKI (DESIGNER / CONTACT)
608-836-7570

STRUCTURAL ENGINEER:
ECHELON STRUCTURES LLC
3530 TIMBER LN
CROSS PLAINS, WI 53528

CONTACT:
THOMAS BOEHNEN (OWNER)
[PHONE NUMBER]

LANDSCAPE ARCHITECT:
JEFF DELAURA

CONTACT:
JEFF DELAURA (LANDSCAPE ARCHITECT)

PRELIMINARY

Sketchworks architecture LLC

1720 US-51 T.I.
TENANT IMPROVEMENT
1720 US-51
STOUGHTON, WI 53839

Project Status

A	02/01/2021	CUP REVIEW

PROJ. #: 20074-01

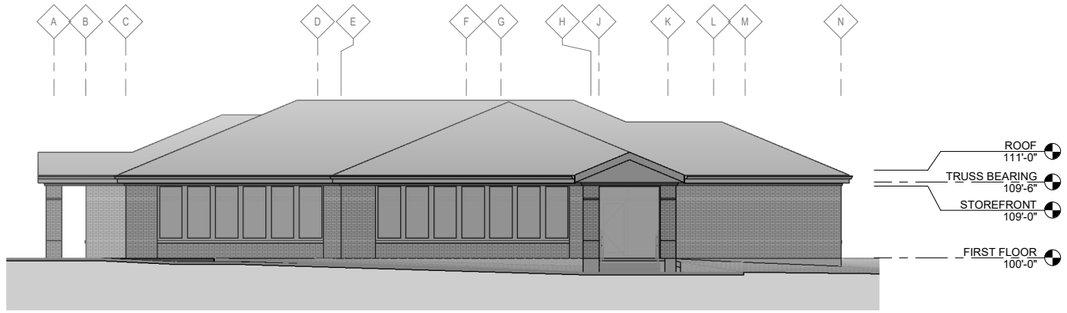
© SKETCHWORKS ARCHITECTURE 2021

COVER SHEET

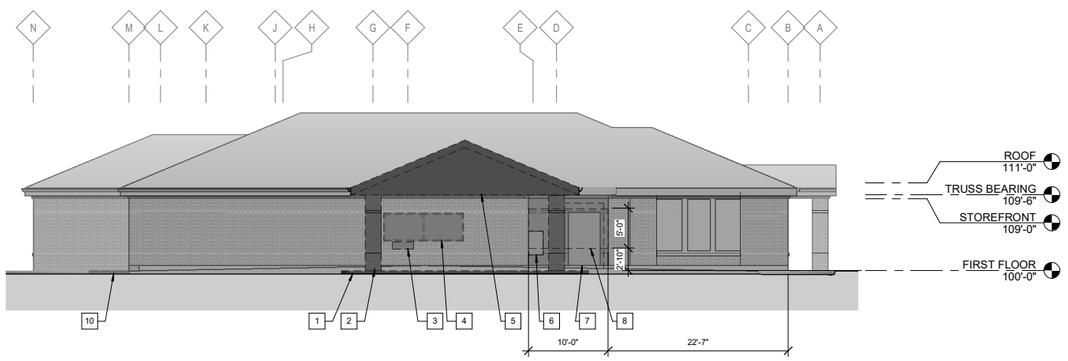
G001

O:\Projects\1720 Hwy 51 Stoughton\Drawings\Revit\1720 Hwy 51 SBL_R21.rvt

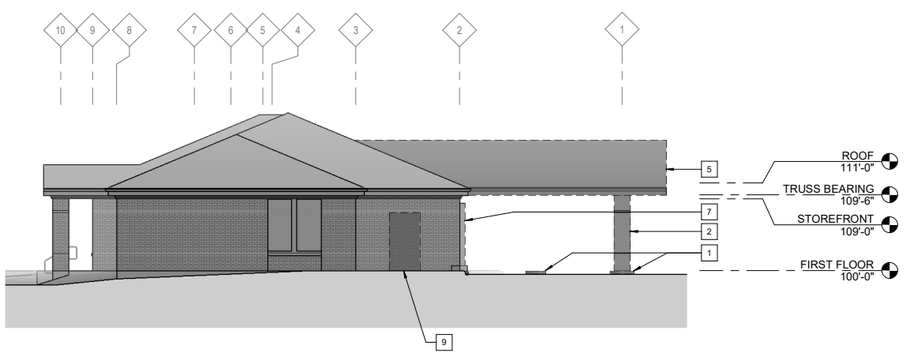
2/1/2021 4:47:43 PM



C1 EAST DEMOLITION ELEVATION
1/8" = 1'-0"



B1 WEST DEMOLITION ELEVATION
1/8" = 1'-0"



A1 NORTH DEMOLITION ELEVATION
1/8" = 1'-0"

A3 SOUTH DEMOLITION ELEVATION
1/8" = 1'-0"

0' 2' 4' 8' 16'
0' 1/4" 1/2" 1" 2"
SCALE: 1/8" = 1'-0"

GENERAL DEMOLITION ELEVATION NOTES:

A. REMOVE ALL "DASHED" WALLS/ELEMENTS (DEMO'D) TO EXTENTS SHOWN. WHERE EXISTING MECHANICAL, PLUMBING, ELECTRICAL OR DATA CONNECTIONS ARE ABANDONED DUE TO DEMOLITION WORK OR REMOVAL OF FIXTURES AND ACCESSORIES, CAP EXISTING CONNECTIONS AS REQUIRED PER CODE OR PROVIDE CONNECTOR FOR NEW FIXTURE AND ACCESSORIES WHERE APPLICABLE

B. EXISTING EXTERIOR WALLS, STRUCTURE AND FLOORS SHALL REMAIN INTACT AND UNDISTURBED, WHERE MODIFICATION IS NECESSARY, RESTORE TO EXISTING CONDITION. INCLUDING EXISTING AIR/ VAPOR BARRIERS AND THERMAL ENVELOPE DESIGN.

C. AREAS OF CONCEALED EXISTING BUILDING STRUCTURE TO BE EXPOSED AND EXAMINED DURING DEMOLITION TO VERIFY PROPOSED STRUCTURAL MODIFICATIONS ARE SUFFICIENT. COORDINATE CONSTRUCTION SCHEDULE WITH ARCHITECT AND ENGINEER TO ALLOW ACCESS FOR VERIFICATION. CONTRACTOR SHALL NOTIFY ARCHITECT, ENGINEER, AND OWNER IMMEDIATELY UPON DISCOVERING ANY UNANTICIPATED STRUCTURAL CONDITIONS OR DISCREPANCIES WITH PROPOSED MODIFICATIONS.

D. PREPARE ALL EXISTING AREAS INVOLVED WITH DEMOLITION TO RECEIVE NEW WORK OR NEW FINISHES PER PLANS AND SPECIFICATIONS. CONTACT ARCHITECT OR ENGINEER BEFORE BEGINNING NEW WORK IF THERE ARE ANY DISCREPANCIES OR QUESTIONS REGARDING EXISTING CONDITIONS NOT CLEARLY DEFINED ON THE DRAWINGS THAT AFFECT NEW CONSTRUCTION

E. GENERAL CONTRACTOR TO SECURE CONSTRUCTION AREA DURING CONSTRUCTION WORK, SEAL ALL DOORS AS REQUIRED. CONSTRUCT AND MAINTAIN A FLOOR TO CEILING DUST BARRIER, TO PROVIDE SEPARATION FOR DUST, DEBRIS AND SOUND

F. GENERAL CONTRACTOR TO COORDINATE CONSTRUCTION SCHEDULE TO MINIMIZE IMPACT ON EXISTING BUILDING OPERATIONS AND PLANNED EVENTS. CONSTRUCTION SPACE MUST BE CLEAN AND AVAILABLE FOR USE PERIODICALLY PER OWNER'S REQUEST. VERIFY SCHEDULED EVENTS WITH OWNER PRIOR TO CONSTRUCTION START AND ARRANGE CONSTRUCTION SCHEDULE TO MEET OWNER'S NEEDS. COORDINATE SYSTEMS AND UTILITY SHUT DOWNS WITH OWNER PRIOR TO COMMENCEMENT OF WORK

EXTERIOR DEMO KEYNOTES:

1 DEMOLISH CURB

2 DEMOLISH COLUMNS

3 DEMOLISH DEPOSIT BOX

4 DEMOLISH EXISTING TELLER WINDOW

5 DEMOLISH ROOF

6 DEMOLISH AFTER-HOURS DEPOSIT BOX

7 DEMOLISH ATM STATION AND FRAMED OPENING

8 DEMOLISH PORTION OF WALL FOR NEW DRIVE-THRU WINDOW; SEE TENANT DRAWINGS

9 DEMOLISH PORTION OF WALL FOR DOOR; SEE PLAN AND DOOR SCHEDULE

10 DEMOLISH PORTION OF CURB FOR SIDEWALK RAMP; SEE SITE PLAN

Sketchworks architecture llc

1720 US-51 T.I.

TENANT IMPROVEMENT

1720 US-51
STOUGHTON, WI 53839

Project Status

A	02/01/2021	CUP REVIEW

PROJ. #:	20074-01

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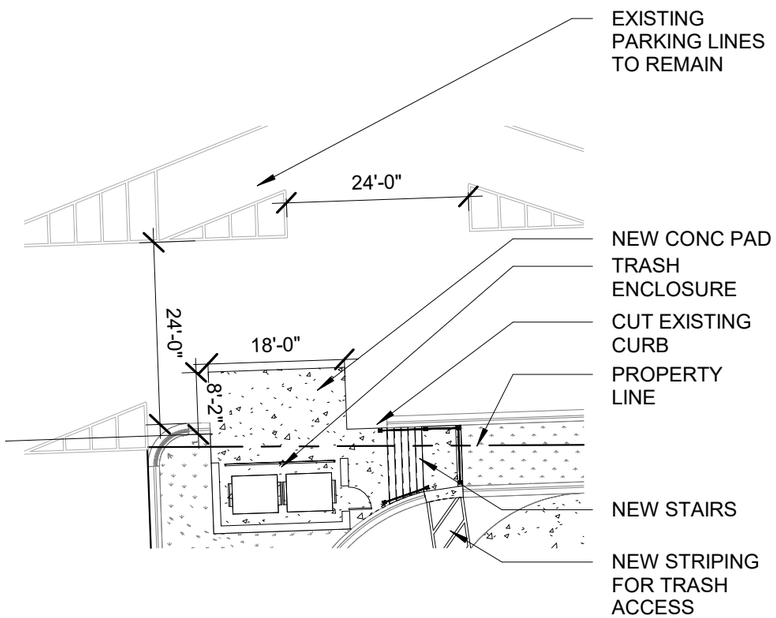
DEMOLITION EXTERIOR ELEVATIONS

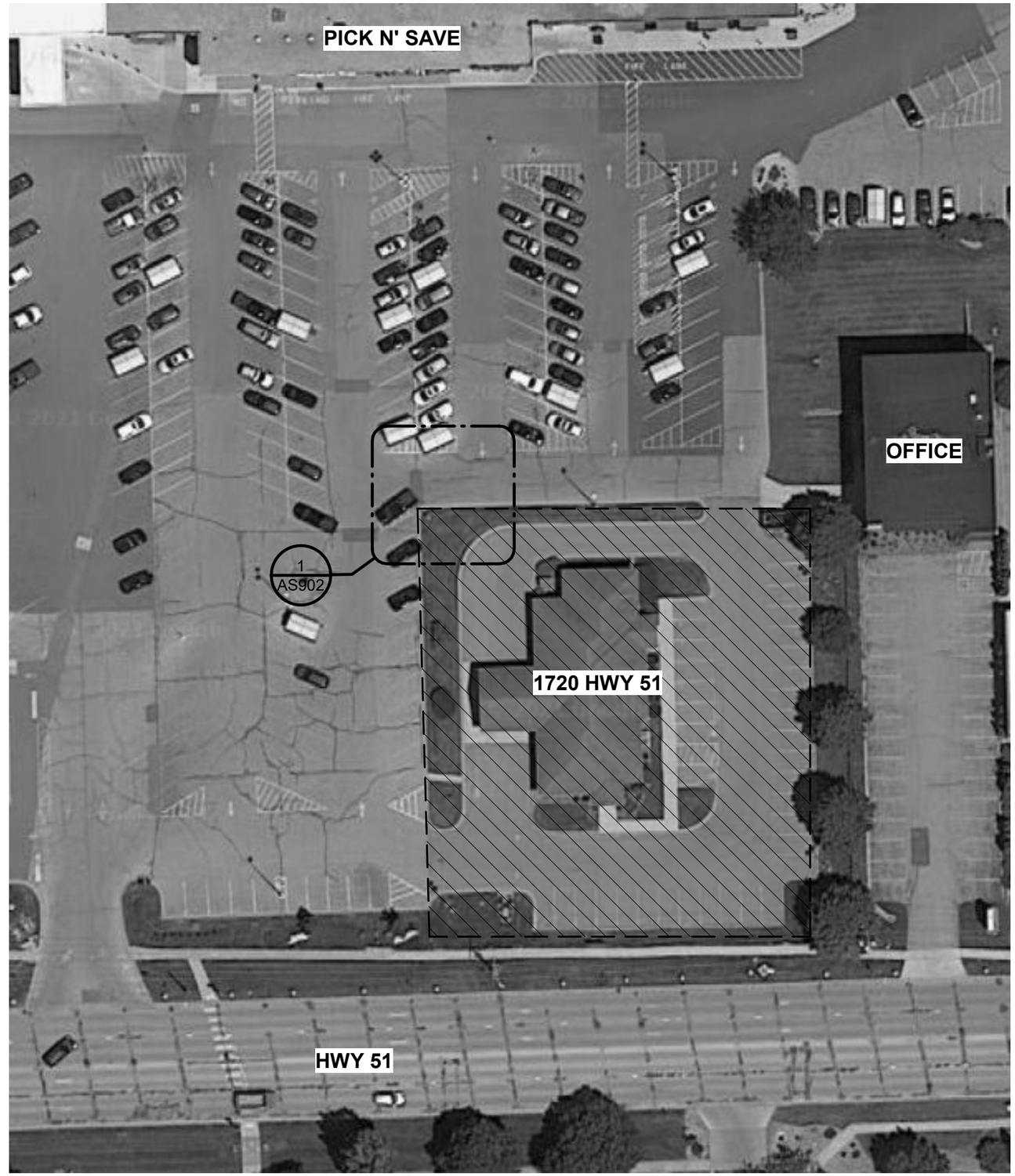
AD201

PRELIMINARY



1 TRASH ACCESS

1" = 20'-0"



PRELIMINARY

Sketchworks architecture LLC
7780 Elmwood Ave., Middleton, WI 53562
(608) 836-7570, www.sketchworksarch.com

1720 US-51 T.I.

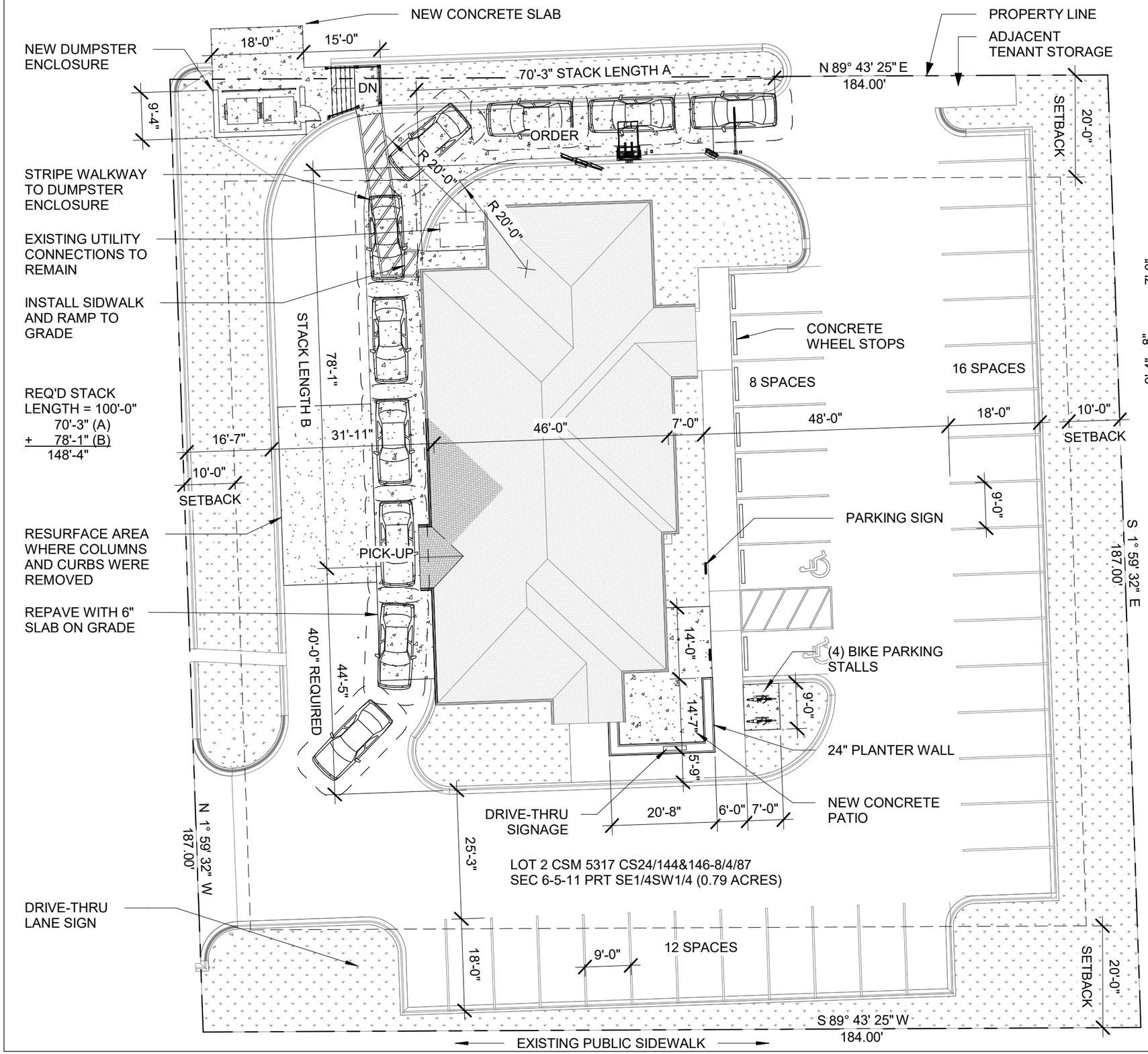
TENANT IMPROVEMENT

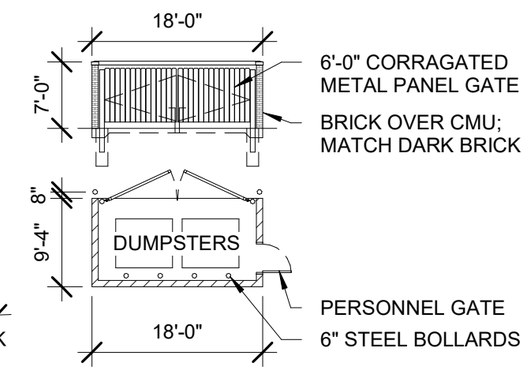
1720 US-51
STOUGHTON, WI 53839

AREA MAP

02/01/2021
CUP REVIEW

AS901





DUMPSTER ENCLOSURE

SCALE: 1/16" = 1'-0"

SITE INFORMATION

USE OF PROPERTY:	ASSEMBLY (A-2)
ZONING:	PLANNED BUSINESS (PB)
SITE AREA:	0.79 ACRES (34,412 SF)
BLDG FOOTPRINT:	3,877 SF
FLOOR AREA RATIO:	11%

SETBACKS:

FRONT AND REAR YARD:	20 FT
SIDE YARD:	10 FT

TOTAL NUMBER OF PARKING STALLS:	36 (EXISTING)
ADA STALLS:	2 (2 REQ'D)
BIKE STALLS:	4 (4 REQ'D)

IMPERVIOUS SURFACE AREA

EXISTING:	23,937 SF
NEW:	760 SF
TOTAL:	24,697 SF

EXISTING PERVIOUS AREA:	9,775 SF
LRS (25% MINIMUM):	28%
DISTURBANCE LIMITS:	2,495 SF

0' 10' 20' 40'

0' 1/2" 1" 2"

SCALE: 1" = 20'-0"

TRUE NORTH

PRELIMINARY

Sketchworks architecture LLC
7780 Elmwood Ave., Middleton, WI 53562
(608) 836-7570, www.sketchworksarch.com

1720 US-51 T.I.

TENANT IMPROVEMENT

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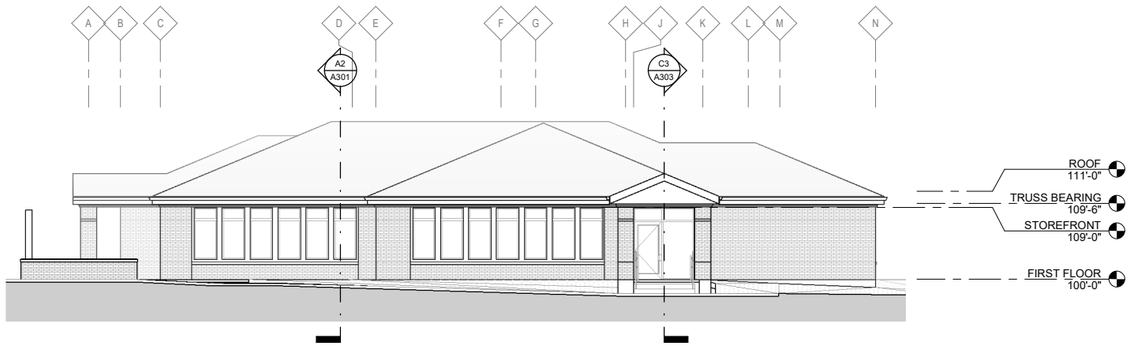
STOUGHTON, WI 53839

ARCHITECTURAL SITE PLAN

02/01/2021
CUP REVIEW

AS902

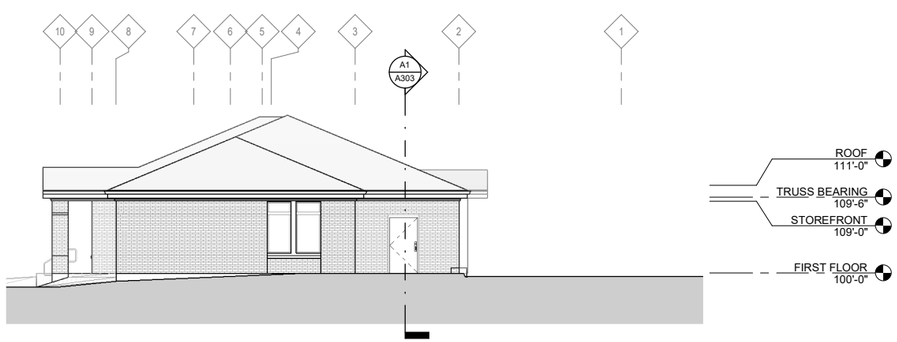


C1 EAST ELEVATION

1/8" = 1'-0"

B1 WEST ELEVATION

1/8" = 1'-0"



A1 NORTH ELEVATION

1/8" = 1'-0"

A3 SOUTH ELEVATION

1/8" = 1'-0"

1

EXTERIOR MATERIAL SCHEDULE

#	DESCRIPTION	MANUFACTURER	TYPE/STYLE	COLOR	HEIGHT	WIDTH	COMMENTS
1							

0' 2' 4' 8' 16'
0' ¼" ½" 1" 2"
SCALE: 1/8" = 1'-0"

PRELIMINARY

Sketchworks architecture llc

1720 US-51 T.I.

TENANT IMPROVEMENT
1720 US-51
STOUGHTON, WI 53839

Project Status

A	02/01/2021	CUP REVIEW

PROJ. #:	20074-01

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EXTERIOR ELEVATIONS

A201

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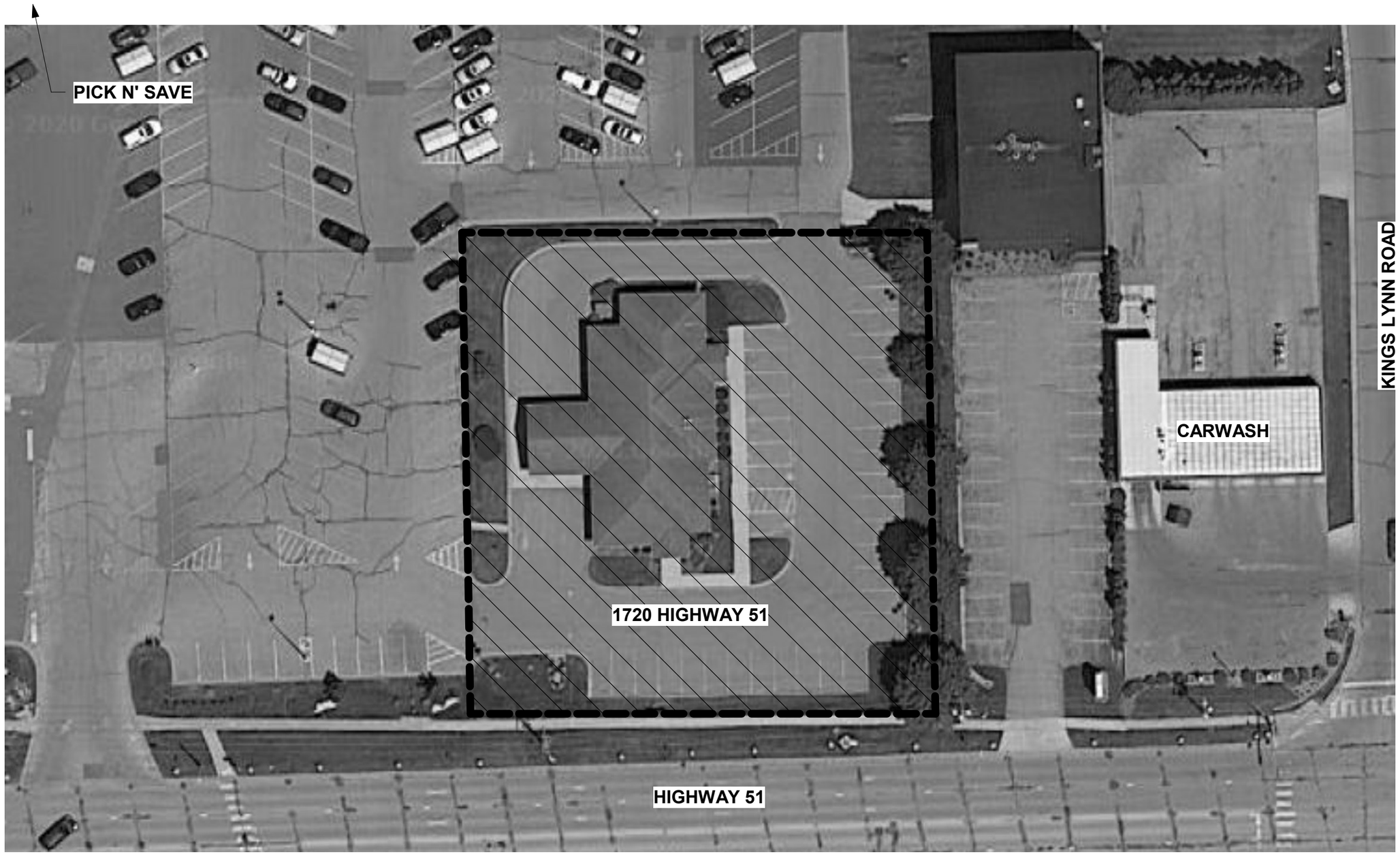

PRELIMINARY

1720 US-51 TI

TENANT IMPROVEMENT

1720 US-51
STOUGHTON, WI 53839

AREA MAP

01/08/2021
CUP REVIEW

AS101

A1 PREDICTED TRAFFIC FLOW
1" = 30'-0"

Sketchworks architecture LLC

1720 US-51 T.I.

TENANT IMPROVEMENT
1720 US-51
STOUGHTON, WI 53839

Project Status

A	02/11/2021	PC ADDN

PROJ. #: 20074-01

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TRAFFIC REVIEW

AS106

PRELIMINARY

CROSS-EASEMENT AGREEMENT WITH COVENANTS & RESTRICTIONS

THIS AGREEMENT is made and entered into this 12th day of December, 1988, by and between STOUGHTON DEVELOPMENT COMPANY, a Missouri general partnership, with a business address of 1101 Walnut, Suite 800, Kansas City, Missouri, 64106 ("Developer") and SEASONS FOUR, INC., a Wisconsin corporation ("Hardee's").

WITNESSETH:

WHEREAS, Developer is the owner of Lot 1 legally described on **Exhibit "A"** attached hereto and incorporated by reference herein ("Lot 1"), and

WHEREAS, Hardee's is the owner of Lot 2 legally described on **Exhibit "A"** attached hereto and incorporated by reference herein ("Lot 2") which Hardee's acquired from Developer, and

WHEREAS, in conjunction with the sale of Lot 2 from Developer to Hardee's, the parties desire that Lots 1 and 2 be subject to the easements, covenants, conditions and restrictions hereinafter set forth,

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Developer and Hardee's hereby agree as follows:

1. Definitions.

(a) "Building Area" shall mean that portion of Lots 1 and 2 on which any buildings exist or upon which any buildings are hereafter constructed and the areas adjacent thereto, the exclusive use of which is required for the operation of such building. Canopies may encroach from the Building Area over the Common Area (hereinafter defined) provided they do not interfere with the use of the Common Area.

(b) "Common Area" shall be all of Lots 1 and 2 except the Building Area.

2. Grant of Easements.

(a) Developer hereby grants to Hardee's the following perpetual non-exclusive easements over portions of the Common Area of Lot 1 for the benefit of Hardee's, its successors, assigns, employees, invitees, licensees, agents, and customers:

(i) Pedestrian Easements. Perpetual non-exclusive easements for the purpose of pedestrian traffic between Lots 1 and 2 over and across that portion of the Common Area of Lot 1 made available by Developer for pedestrian use as the same may be reduced, increased, relocated, modified or changed from time to time by Developer.

(ii) Vehicular Easements. Perpetual non-exclusive easements for the purpose of vehicular traffic for ingress and egress between Lots 1 and 2 and the public streets or alleys now or hereafter abutting on any portion of Lot 1, which easements shall be limited, however, to the portion of the Common Area of Lot 1 which is improved by Developer from time to time for vehicular accessways as such accessways may be relocated from time to time by Developer. Hardee's acknowledges that Lot 2 currently has no direct access to U.S. Highway 51.

(iii) Parking Easements. Perpetural non-exclusive easement for the purpose of automobile parking on Lot 1 which shall be limited to those portions of the Common Area of Lot 1 which are improved by Developer from time to time for automobile parking. Hardee's use of such parking shall be subject to the rules and regulations established by Developer from time to time for use of such parking by all tenants of Lot 1 which rules and regulations shall not be applied by Developer to Hardee's in a manner which unreasonably discriminates against Hardee's.

18

(iv) Utility Easements. Perpetual non-exclusive easements over and across the Common Area of Lot 1 for the purpose of installation, operation, maintenance, repair, replacement and removal of water lines and systems; telephone lines and systems; gas lines and systems; sanitary sewer lines and systems; electrical lines and systems; storm sewers, drainage line and systems; cable television facilities and systems and any other utility lines or systems hereinafter developed to serve Lots 1 or 2; provided, however, that all pipes, wires, facilities, conduits, mains, sewers and systems and related equipment (hereinafter called "Utility Facilities") will be installed underground or otherwise enclosed and will be installed, operated and maintained in the manner which will not unreasonably interfere with the use of Lot 1 or any of the improvements thereon on which such Utility Facilities are located. No Utility Facility shall be installed, located or relocated in or under any Building Area. Hardee's shall bear all costs associated with installation, relocation, maintenance and repair of all Utility Facilities used by it pursuant to its Utility Easement as well as the cost of restoring all paving and landscaping on Lot 1 to substantially the same condition as it was prior to the installation, relocation, maintenance and repair of such Utility Facilities.

(b) Hardee's hereby grants the following perpetual, non-exclusive easements to Developer over the Common Area of Lot 2 for the benefit of Developer, its successors, assigns, employees, invitees, licensees, agents and customers:

(i) Pedestrian Easements. Perpetual non-exclusive easements for the purpose of pedestrian traffic between Lots 1 and 2 over and across that portion of the Common Area of Lot 2 made available by Hardee's for pedestrian use as the same may be reduced, increased, relocated, modified or changed from time to time by Developer.

(ii) Vehicular Easements. Perpetual non-exclusive easements for the purpose of vehicular traffic for ingress and egress between Lots 1 and 2 and the public streets or alleys now or hereafter abutting on any portion of the Common Area of Lot 2, which easements shall be limited, however, to the portion of Lot 2 which is improved by Hardee's from time to time for vehicular accessways as such accessways may be relocated from time to time by Hardee's.

(iii) Parking Easement. Perpetual non-exclusive easements for the purpose of automobile parking on Lot 2 which shall be limited to those portions of the Common Area of Lot 2 which are improved by Hardee's from time to time for automobile parking. Developer's use of such parking shall be subject to the rules and regulations established by Hardee's from time to time for use of such parking which rules and regulations shall not be applied by Hardee's in a manner which unreasonably discriminates against Developer.

(iv) Utility Easements. Perpetual non-exclusive easements over and across the Common Area of Lot 2 for the purpose of installation, operation, maintenance, repair, replacement and removal of water lines and systems; telephone lines and systems; gas lines and systems; sanitary sewer lines and systems; electrical lines and systems; storm sewers, drainage line and systems; cable television facilities and systems and any other utility lines or systems hereinafter developed to serve Lot 1; provided, however, that all Utility Facilities will be installed underground or otherwise enclosed and will be installed, operated and maintained in the manner which will not unreasonably interfere with the use of Lot 2. No Utility Facility shall be installed, located or relocated in or under any Building Area. Developer shall bear all costs associated with the installation, relocation, maintenance and repair of all Utility Facilities used by it pursuant to the Utility Easement as well as the cost of restoring all pavement and landscaping on Lot 2 to substantially the same condition as it was prior to the installation, relocation, maintenance and repair of the Utility Facilities.

3. Sign Easement. Hardee's grants Developer a perpetual, exclusive easement over the south 25 feet of the west 10 feet of Lot 2 (the "Sign Easement Area") for the purpose of installing, maintaining and repairing a monument sign to advertise the

improvements on Lot 1. Hardee's further grants Developer an easement over those portions of the Common Area of Lot 2 necessary for access to the Sign Easement Area for the purpose of constructing, maintaining and repairing said monument sign. Hardee's agrees to cooperate with Developer, at no cost to Hardee's, to obtain any permits from the appropriate government authorities to erect such monument sign.

4. Use. Hardee's agrees that no building constructed on Lot 2 shall be used as a cafeteria, bowling alley, billiard parlor, beauty parlor, discount department store, nightclub, any place of recreation or amusement, any business serving or selling alcoholic beverages (except as an incident to its primary business), theater, liquor store, retail grocery store, store used for the sale or retail of any food products including, but not limited to, meats, produce, fruit, bakery goods or delicatessen items unless sold primarily for consumption upon the premises where sold. Developer and Hardee's agree that Developer will not lease space in the Building Area on Lot 1 to a tenant who will use such space primarily for a restaurant if at least fifty percent (50%) of said restaurant's gross receipts are expected to be generated by the sale of hamburgers, cheeseburgers, and fish. As a means of illustration only such restaurants would include but not be limited to Perkins, Dennys, Country Kitchen, Arbys, Kentucky Fried Chicken, Burger King, McDonalds, A & W, PDQ, Wendy's or Long John Silvers. Hardee's acknowledges that at the date hereof, Developer has leased the improvements constructed on Lot 1 to Wal-Mart Stores, Inc. ("Wal-Mart") and Roundy's, Inc. ("Roundy's") and agrees with Developer that those uses do not violate this restriction. Developer agrees that it will not consent to an assignment or sublease of the Wal-Mart or Roundy's leases to an assignee or sublessee which would use such premises in violation of the restrictions contained in this paragraph nor will Developer consent to the modification or amendment to the Wal-Mart or Roundy's leases that permit a use in the respective Wal-Mart or Roundy's premises which would violate the restrictions contained in this paragraph. Developer agrees that upon termination of the Wal-Mart lease or the Roundy's lease, the Building Area subject to said terminated lease shall be subject to the terms of Developer's covenant to Hardee's. Developer further covenants with Hardee's that Developer will only grant access across Lot 1 to the owner of the land contiguous to Lot 2 on the east and Lot 1 on the south while the use of such property does not violate the restrictions contained in this paragraph.

5. Lot 2 Building Restrictions. No building or other improvements shall be constructed on Lot 2 until each and every of the following conditions has been satisfied by Hardee's:

(a) No improvements to be constructed on Lot 2 may contain more than five thousand (5,000) square feet of gross building area (excluding canopies or related improvements associated with a drive-through facility).

(b) No improvements shall exceed one (1) story in height.

(c) Any improvments constructed on Lot 2 shall maintain at all times a ratio of six (6) parking spaces for each one thousand (1,000) square feet of gross building area constructed on Lot 2.

(d) Hardee's shall submit plans and specifications to Developer for its review and approval. Developer may require Hardee's to modify its plans and specifications to conform the design, exterior appearance and construction materials used for improvements to be constructed on Lot 2 to be architecturally and aesthetically compatible with improvements constructed on Lot 1 and to otherwise meet the requirements of this paragraph and this Agreement. Hardee's shall submit to Developer for its approval the plans and elevations for any sign to which Hardee's plans to erect on Lot 2. Developer shall notify Hardee's of its approval or disapproval of Hardee's plans and specifications or sign plan and elevations ("Plans") within fifteen (15) days of the date the same are received by Developer. If Developer disapproves the Plans, it shall notify Hardee's in writing of such disapproval and specify the matters which must be changed in order for Developer to approve Plans. If Developer fails to approve or disapprove the Plans within said fifteen (15) day period, they shall be deemed disapproved.

6. Lot 2 Covenants.

(a) Hardee's acknowledges that a material part of the consideration for Developer to sell Lot 2 is Hardee's's covenant to immediately construct and continuously operate a Hardee's restaurant on Lot 2. In the event that Hardee's fails within eighteen (18) months of the date hereof to commence

construction of improvements for use as a Hardee's restaurant, Developer may, at its option, repurchase Lot 2 from Hardee's by delivering to Hardee's its written notice of its election to do so within sixty (60) days after the expiration of said 18-month period. The purchase price for Lot 2 shall be the acquisition price of Lot 2 which Hardee's paid Developer plus interest thereon at eight percent (8%) per annum from the date hereof until Developer reacquires Lot 2.

(b) In the event that Hardee's constructs the improvements described in subparagraph 6(a) above but fails to operate the improvements on Lot 2 as a Hardee's restaurant for a continuous six (6) month period at any time thereafter, Developer may, at its option, repurchase Lot 2 from Hardee's by giving Hardee's written notice of such election within sixty (60) days after the determination of the fair market value of Lot 2 as hereinafter provided at a purchase price equal to the fair market value of Lot 2 and the improvements constructed thereon. Within thirty (30) days after the expiration of said six-month period of non-operation, Developer shall notify Hardee's of its breach of this provision, and the parties shall attempt to agree on the fair market value of Lot 2 and the improvements. In the event the parties cannot agree on said fair market value within thirty (30) days after Developer's written notice to Hardee's, the purchase price shall be determined by taking the average of three (3) written appraisals from three (3) MAI appraisers, one chosen by Hardee's, one chosen by Developer and a third chosen by the appraisers chosen by Hardee's and Developer. In no event shall the fair market value of Lot 2 be less than the first mortgage balance on Lot 2, including principal balance, accrued but unpaid interest (but only to the extent such interest is not overdue) and administration/collection expenses. In the event of a sale-leaseback arrangement, whereby Hardee's is lessee of Lot 2 with an option to purchase, Hardee's shall assign to Developer, subject to the consent of the owner of Lot 2, its interest in such lease and option to purchase. Developer shall have the right to approve the amount of Hardee's first mortgage, which approval will not be unreasonably withheld. Failure to object within 48 hours after receipt of notice shall be deemed approval. The closing of such sale shall take place within thirty (30) days after Developers election to repurchase. At such closing Hardee's shall convey good and marketable title pursuant to its warranty deed and pay for a title insurance policy in the amount of the fair market value.

7. Maintenance. Hardee's covenants and agrees with Developer that it will at all times maintain Lot 2 at its own cost and expense in accordance with good shopping center practices.

8. No Dedication. Nothing contained in this Agreement shall be deemed to constitute a gift, grant or dedication of any portion of Lots 1 or 2 to the general public or for any public purpose whatsoever; it being the intention of the owners that this Agreement will be strictly limited to the private use of the owners and their respective successors, invitees, licensees, permitees and assigns. This Agreement is for the benefit of the respective parties hereto, their successors, invitees, licensees, permitees and assigns and is not intended to make any person who is not an owner a third-party beneficiary hereunder or to give any such person any rights hereunder.

9. Indemnity. Developer and Hardee's each agree to indemnify and hold the other harmless from any claims arising from the use of the easements herein created to the extent that such use occurs within the boundaries of the lot owned by such owner. Hardee's and Developer each agree at such time as construction is performed on the respective lot of each to indemnify, defend and hold harmless the other and its respective lot and the improvements located thereon from any and all loss, cost, damage, liability and expense (including reasonable attorney's fees) resulting from the assertion of any mechanic's, materialmen's or other lien. Hardee's and Developer each agree to maintain policies of fire and extended coverage insurance and public liability insurance issued by reputable insurance companies in amounts and upon policy terms customary for the improvements of such owner. Policies of public liability insurance shall name the other owner as an additional insured. Developer and Hardee's each release the other from any liability for any loss or damage of any type provided by fire and extended coverage insurance and grants to the other owner on behalf of any insurer providing such insurance a waiver of any right of subrogation which the insurer of either owner may acquire against the other by virtue of the payment of any loss covered by such insurance.

10. Condemnation. In the event the whole or any part of Lots 1 or 2 are taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or private purchase in lieu thereof, an owner benefitted by

any easement created by this Agreement will not share in such award, compensation or other payment made by reason of the taking of a portion of Lots 1 or 2 which is subject to such easement. Such award, compensation or other payment will belong entirely to the owner of that portion of Lots 1 or 2 which is taken, and such owner will have no further liability to pay any other owner for the loss of any such easement or portions thereof.

11. Release from Liability. Any person acquiring fee simple or leasehold title to Lots 1 or 2 shall be bound by the terms and provisions of this Agreement only as to the lot or portion thereof acquired by such person. In addition, any such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such lot or portion thereof except as to the obligations, liabilities or responsibilities that accrue during such period of ownership. Notwithstanding the foregoing, the easements, covenants and restrictions herein contained shall continue to be benefits to and servitudes upon said lots and shall be deemed to run with the land.

Notwithstanding anything set forth in this Agreement to the contrary, no owner of all or any part of Lots 1 or 2, nor the partners, shareholders, officers, executors, transferees, heirs, successors and assigns of such owner shall be personally liable for any of the obligations arising from this agreement, and any judgment rendered hereon shall be limited to such owner's interest in its respective lot and in any action or proceeding brought hereon, and no deficiency or other personal judgment, order or decree shall be rendered against said owners or its partners, shareholders, officers, executors, transferees, heirs, successors or assigns.

12. Breach. In the event of any violation or breach of any restriction or obligation herein contained on the part of Developer or Hardee's which continues for twenty (20) days after written notice to the party in default (the "Defaulting Party"), the other party (the "Non-defaulting Party") shall have the right, at its option (which right shall be cumulative to and not exclusive of any other rights it may have):

(a) to enter upon the Defaulting Party's lot and perform such obligation at the expense of the Defaulting Party;

(b) to enter upon the Defaulting Party's lot and to summarily abate and remove, at the expense of the Defaulting Party, the thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Agreement; or

(c) to prosecute a proceeding at law or in equity against the Defaulting Party to enjoin or prevent such violation or breach or to cause the same to be remedied or to recover damages therefor.

The Defaulting Party shall pay to the Non-defaulting Party on demand all costs and expenses incurred by the Non-defaulting Party in the exercise of any of the rights or remedies set forth herein including, without limitation, all court costs and reasonable attorney's fees together with interest thereon at the rate of twelve percent (12%) per annum.

13. Notices. Any notices desired or required to be given hereunder shall be deemed validly given by personal delivery or by mailing certified or registered mail return receipt requested to the other party at the following address:

If to Developer: Stoughton Development Company
1101 Walnut, Suite 800
Kansas City, Missouri 64106
Attention: Robert H. Johnson, Jr.

RETURN

If to Hardee's: Seasons Four, Inc.
802 West Broadway, Suite 101
Madison, Wisconsin 53713
Attention: James T. Curran

The parties may change the address to which notice shall be given by giving the other party written notice of such change as herein provided.

14. Benefits. The easements, restrictions, conditions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their respective successors, assigns, employees, invitees, licensees, agents and customers.

15. Modifications and Amendments. This Agreement may not be modified or amended except by written instrument signed by both parties hereto, their successors or assigns.

16. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto. The parties may not rely upon statements, promises or representations not expressed herein; and, once executed and delivered, this Agreement shall not be modified or altered in any way except in writing executed and delivered in the same manner as required by this document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

SEASONS FOUR, INC.

By: _____
Its: _____

STOUGHTON DEVELOPMENT COMPANY

By: _____
Robert H. Johnson, Jr., general partner

STATE OF)
) ss.
COUNTY OF)

On this _____ day of _____, 1988, before me appeared _____, to me personally known, who being by me duly sworn did say that he is the _____ of Seasons Four, Inc., and that said instrument was signed on behalf of said corporation by authority of its board of directors, and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public

My commission expires:

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this _____ day of _____, 1988, before me appeared Robert H. Johnson, Jr., to me personally known to be the person who executed the foregoing instrument, and he acknowledged that he executed the same as his free act and deed, and the said Robert H. Johnson, Jr. further declared that he is a general partner of Stoughton Development Company, a Missouri general partnership, and the execution thereof was authorized on behalf of said partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public

My commission expires:

TERESA [illegible]
Notary [illegible] Missouri
Com[illegible] County
My Commission Expires July 18, 1992

JKM:5056 (11/17/88)

15. Modifications and Amendments. This Agreement may not be modified or amended except by written instrument signed by both parties hereto, their successors or assigns.

16. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto. The parties may not rely upon statements, promises or representations not expressed herein; and, once executed and delivered, this Agreement shall not be modified or altered in any way except in writing executed and delivered in the same manner as required by this document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

SEASONS FOUR, INC.

By: _____
Its: _____

STOUGHTON DEVELOPMENT COMPANY

By: _____
Robert H. Johnson, Jr., general partner

STATE OF)
) ss.
COUNTY OF)

On this 5th day of December, 1988, before me appeared Robert M. Hogan, to me personally known, who being by me duly sworn did say that he is the President of Seasons Four, Inc., and that said instrument was signed on behalf of said corporation by authority of its board of directors, and said President acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand ~~and affixed my official seal~~ the day and year last above written.

_____
Notary Public

My commission ~~expires~~: Unknown

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this _____ day of _____, 1988, before me appeared Robert H. Johnson, Jr., to me personally known to be the person who executed the foregoing instrument, and he acknowledged that he executed the same as his free act and deed, and the said Robert H. Johnson, Jr. further declared that he is a general partner of Stoughton Development Company, a Missouri general partnership, and the execution thereof was authorized on behalf of said partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public

My commission expires:

_____

JKM:5056 (11/17/88)

EXHIBIT "A"

Legal Description

Lot 1:

Lot 1 of Certified Survey Map No. 5317 recorded in Volume 24 of Certified Survey Maps pages 144-146, as Document No. 203686 of the Records of Dane County, Wisconsin (being part of the SE 1/4 of the SW 1/4, Section 6, Town 5 North, Range 11 East in the City of Stoughton, Dane County, Wisconsin.)

Lot 2:

Lot 2 of Certified Survey Map No. 5317 recorded in Volume 24 of Certified Survey Maps, pages 144 through 146 as Document No. 2036861 (being a part of the SE 1/4 of the SW 1/4, Section 6, Town 5 North, Range 11 East, in the City of Stoughton, Dane County, Wisconsin.) Together with an Access Easement in favor of Lot 2 over part of Lot 1 as shown on Page 3 of the Certified Survey Map No. 5317.

DEC 14 11 30 AM '88

Google Maps

Image capture: Jul 2019 © 2021 Google

Google Maps

Image capture: Jul 2019 © 2021 Google

Google Maps

Image capture: Jul 2019 © 2021 Google

Starbucks Site

January 26, 2021

Dane County Mask

Dane County Mask

Parcels

0 50 100 200 Feet

N

CITY OF STOUGHTON
DEPARTMENT OF PLANNING & DEVELOPMENT
207 S. Forrest Street, Stoughton, WI. 53589
www.cityofstoughton.com/planning

RODNEY J. SCHEEL
DIRECTOR
(608) 873-6619
fax: (608) 873-5519

February 2, 2021

Sketchworks Architecture, LLC
Kirk Biodrowski
7780 Elmwood Ave. Ste. 208
Middleton, WI 53562

Dear Mr. Biodrowski:

I have completed a final review of the proposed conditional use and site plan for Starbucks, 1720 US Highway 51-138, Stoughton, WI. (site plan dated 2/1/21) A conditional use public hearing (restaurant and drive-thru uses) and site plan review is planned for the Plan Commission meeting of February 8, 2021. The property owner also owns the Pick and Save property and Starbucks will be leasing.

1. The property at 1720 US Highway 51-138 is zoned PB - Planned Business. **A scalable or fully dimensioned plan including all lot lines has been provided.**

   Indoor Commercial Entertainment uses such as a restaurant type uses are permitted as a conditional use. **Conditional use permit application submitted.**

   In-Vehicle Sales and Services accessory to the Indoor Commercial Entertainment land use is permitted as a conditional accessory use. **Conditional use permit application submitted.**

   The site plan may be approved by the Plan Commission contingent on the conditional use permit being approved by the Common Council. We anticipate Council review/approval on February 23, 2021.

2. Indoor Commercial Entertainment is defined as follows:
   Description: Indoor commercial entertainment land uses include all land uses which provide entertainment services primarily within an enclosed building. Outdoor seating or patio areas associated with a proposed indoor commercial entertainment land use shall be allowed subject to city approval of a site plan showing any such proposed outdoor seating or patio area. Such activities often have operating hours which extend significantly later than most other commercial land uses. Examples of such land uses include restaurants, taverns, theaters, health or fitness centers, all forms of training studios (dance, art, martial arts, etc.), bowling alleys, arcades, roller rinks, and pool halls. **The proposed use meets this definition. An outdoor dining area of approximately 180 square feet is planned and is delineated on the site plan.**

3. Regulations related to Indoor Commercial Entertainment uses are as follows:
    - If located on the same side of the building as abutting residentially zoned property, no customer entrance of any kind shall be permitted within 150 feet, or as far as possible, of a residentially zoned property. **N/A**
    - Facility shall provide bufferyard with minimum opacity of .60 along all borders of the property abutting residentially zoned property (see section 78-610). **N/A**
    - *Parking requirements:* One space per every three patron seats or lockers (whichever is greater); or one space per three persons at the maximum capacity of the establishment; (whichever is greater). **38 parking stalls will allow a maximum capacity of 114 patrons.**

4. In-vehicle sales and service uses are defined as follows:
   Description: In-vehicle sales and service land uses include all land uses which perform sales and/or services to persons in vehicles, or to vehicles which may or may not be occupied at the time of such activity. Such land uses often have traffic volumes which exhibit their highest levels concurrent with peak traffic flows on adjacent roads. Examples of such land uses include drive-in, drive-up, and drive-through facilities, vehicular fuel stations, and all forms of car washes. If performed in conjunction with a principal land use (for example, a convenience store, restaurant or bank), in-vehicle sales and service land uses shall be considered an accessory use. **The proposed use meets this definition.**

5. Regulations related to In-Vehicle Sales and Service uses per 78-206(8)(g) are as follows:
    A. Clearly marked pedestrian crosswalks shall be provided for each walk-in customer access to the facility adjacent to the drive-through lane(s). **No customer access adjacent to the drive-thru.**
    B. The drive-through facility shall be designed so as to not impede or impair vehicular and pedestrian traffic movement, or exacerbate the potential for pedestrian/vehicular conflicts. **Easement agreement provided. Signage to be provided to direct traffic to the drive-thru.**
    C. In no instance shall a drive-through facility be permitted to operate which endangers the public safety, even if such land use has been permitted under the provisions of this section. **Expected.**
    D. The setback of any overhead canopy or similar structure shall be a minimum of ten feet from all street rights-of-way lines, a minimum of 20 feet from all residentially-zoned property lines, and shall be a minimum of five feet from all other property lines. The total height of any overhead canopy or similar structure shall not exceed 20 feet per the measurement of roof height. **The canopy complies with this requirement.**
    E. All vehicular areas of the facility shall provide a surface paved with concrete or bituminous material which is designed to meet the requirements of a minimum four-ton axle load. **Expected.**

F. Facility shall provide a bufferyard with a minimum opacity of .60 along all property borders abutting residentially zoned property. **N/A**

G. Interior curbs shall be used to separate driving areas from exterior fixtures such as fuel pumps, vacuums, menu boards, canopy supports and landscaped islands. Said curbs shall be a minimum of six inches high and be of a non-mountable design. No curb protecting an exterior fixture shall be located closer than 25 feet to all property lines. **Expected if applicable.**

6. The parking requirement for In-Vehicle Sales and Service is as follows: **See also parking requirement for Indoor Commercial Entertainment (#3 above).** Each drive-up lane shall have a minimum stack length of 100 feet behind the pass through window and 40 feet beyond the pass through window. **Details and easement agreement provided.**

7. The property meets all zoning lot width and area requirements.

8. The proposed use and zoning meets the intent of the City Comprehensive Plan.

9. The existing building meets the following height and setback requirements as follows:
   - Minimum front yard setback for principal building: 20 feet
   - Minimum rear yard setback for principal building: 20 feet
   - Minimum side yard setback for principal building: 10 feet
   - Maximum building height: 45 feet

10. Public sidewalk is required along all public frontages and shall be delineated on the site plan. **Shown.**

11. All off-street parking and traffic circulation areas shall be paved with a hard, all-weather surface and completed prior to building occupancy. All parking spaces shall be clearly marked to indicate required spaces. **Expected.**

12. Accessible parking spaces shall be installed at a size, number, location, and with signage as specified by state and federal regulations. **Expected.**

13. Except for accessible parking stalls, the minimum parking stall length shall be 18 feet with a minimum width of 9 feet. **The plan meets this requirement.**

14. The parking aisle width for 90-degree parking shall be a minimum of 24 feet. **The plan meets this requirement.**

15. The minimum landscape surface ratio (LSR) is 25%. **Details provided to verify this requirement.**

16. The maximum floor area ratio is 1. This is calculated by dividing the total floor area of all buildings by the gross site area. **The plan meets this requirement.**

17. All access drives shall have a minimum width of 18 feet. **The plan meets this requirement.**

21. All curb openings for access drives shall have a maximum width of 30 feet for non-residential uses, as measured at the right-of-way line. Access drives may be flared between the right-of-way line and the roadway up to a maximum of five additional feet and may be exceeded with explicit Plan Commission approval. **The access drive is existing.**

22. The minimum paved surface setback from a side and rear lot line is 5 feet while the minimum is 10 feet from a right-of-way line. **The existing paving appears to meet this requirement.**

23. Per section 78-704 (13) (a), bicycle parking is required equal to 10% of the automobile parking space requirement. **Four bike stalls provided.**

24. Off-street loading stall requirements per section 78-705(11)(b). One loading berth shall be required for each building having a gross floor area of 6,000 square feet to 99,999 square feet. **N/A**

18. Except for exposed foundations not to exceed three feet in height from adjacent grade, non-single family development shall employ only high-quality, decorative exterior construction materials on the visible exterior of the following portions of all structures:
    - Any portion of the structure within 50 feet of an adjacent residentially zoned property;
    - Any portion of the structure located within 50 feet of a public right-of-way;
    - Any other portion of the structure visible from a public street… The following exterior construction materials shall not be considered "high quality, decorative": non-decorative concrete or cinder block, non-decorative concrete foundation walls or panels, non-decorative plywood, asphaltic siding, or other materials using exposed fastener systems or non-decorative surfaces as determined by the Planning Commission. However, such materials may be allowed by the Planning Commission as decorative elements.

    Existing brick building.

25. Architectural and design elements shall be compatible with the surrounding area and community standards and shall minimize user specific elements as determined by the plan commission. Metal panels with exposed exterior fasteners of the same color may be used on a maximum of 50 percent of the front side of the building. This material is not allowed within 50 feet of any customer or visitor entrance. **As determined by the Planning Commission. Existing brick building.**

26. We'll need details regarding any changes to the landscaping/plantings. The existing landscaping was previously approved. **Some additional landscaping is planned and a plan will be provided at a later date.**

27. We'll need details about any changes to exterior lighting. The existing lighting was previously approved. **Any changes to outdoor lighting shall meet all zoning standards. No lighting element can be seen from any residentially zoned property.**

28. A gated trash enclosure with 6-foot fencing shall be delineated on the plan for the handling of waste. **Details provided. Garbage trucks will use the adjacent lot to access trash containers.**

29. Any excavation over 4,000 square feet will require an erosion control plan, application and fees. **If applicable.**

30. Proposed utilities-including electrical transformers and HVAC locations shall be shown on the utility plan. **Contact Stoughton Utilities for electric, water and wastewater services.**

31. Required off-street parking shall not be used for snow storage. **Expected.**

32. Any proposed signage will require a detailed plan and zoning permit prior to installation. **Expected.**

33. State of Wisconsin approved building plans may be necessary prior to issuance of a building permit but are not necessary to begin the City review processes.

If you have any questions, please contact me at 608-646-0421

Sincerely,
City of Stoughton

Michael P. Stacey

Michael P. Stacey
Zoning Administrator

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(c) The zoning administrator may also evaluate the application to determine whether the request is in harmony with the recommendations of the comprehensive plan, particularly as evaluated by the standards of subsection (5)(c)1. through 6., below:

1. Is the proposed conditional use (the use in general, independent of its location) in harmony with the purposes, goals, objectives, policies and standards of the City of Stoughton Comprehensive Plan, this chapter, and any other plan, program, or ordinance adopted, or under consideration pursuant to official notice by the city?
2. Is the proposed conditional use (in its specific location) in harmony with the purposes, goals, objectives, policies and standards of the City of Stoughton comprehensive plan, this chapter, and any other plan, program, or ordinance adopted, or under consideration pursuant to official notice by the city?
3. Does the proposed conditional use, in its proposed location and as depicted on the required site plan (see subsection (4)(d), above), result in a substantial or undue adverse impact on nearby property, the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the provisions of this chapter, the comprehensive plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the city or other governmental agency having jurisdiction to guide development?
4. Does the proposed conditional use maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property?
5. Is the proposed conditional use located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities or services provided by public agencies serving the subject property?
6. Do the potential public benefits of the proposed conditional use outweigh any and all potential adverse impacts of the proposed conditional use (as identified in subsections 1. through 5., above), after taking into consideration the applicant's proposal and any requirements recommended by the applicant to ameliorate such impacts?

Changes in Conditional Use Requirements and Proceedings

Stoughton Plan Commission Presentation

Matt Dregne, City Attorney

March 9, 2020

BACKGROUND AND CONTEXT

- For many years municipalities have used conditional use permits (CUP) as a flexible tool to allow otherwise objectionable land uses in certain areas if they met certain standards.
- Then, the *AllEnergy* case came along. *Allenergy Corp., v. Trempealeau County Environment & Land Use Committee*, 2017 WI 52, 375 Wis. 2d 329, 895 N.W.2d 368. This was a case in which Trempealeau County denied a CUP to a frac sand mine.
- The dissent articulated several concerns that were subsequently addressed in 2017 Wis. Act 67 (Act 67).

The Nature of a Conditional Use

Prior to Act 67, municipalities had wide discretion when evaluating a CUP application. The dissent in *AllEnergy* disagreed, and argued that a conditional use should be treated more like a permitted use if the applicant satisfies all ordinance standards. The dissent wrote:

> a conditional use is not a loose end. It is a determination that the identified use is compatible with the zoning district, and is subject only to appropriate conditions to control for the potentially hazardous aspects of the specific proposal under consideration.

AllEnergy, 2017 WI 52, ¶ 147.

The dissent evaluated and limited the circumstances for denying a CUP. The dissent stated:

> [t]his places substantial limitations on the reasons a municipality can give for denying a conditional use permit. Because the types of uses identified as conditional uses are "sanctioned," and either "desirable" or "necessary to the community," an application for such a use may not be denied because the owner proposes to engage in that type of use. . . Such objections are in order when the municipality adopts (or amends) its zoning ordinance and considers which conditional uses (if any) to include in each of its zoning districts.

Id.,¶ 160.

The *AllEnergy* dissent similarly took a restrictive view of municipal authority to create subjective and ambiguous ordinance standards that a CUP applicant must satisfy to earn a CUP:

- But the whole point of requiring a set of knowable standards is to limit the bases on which the County may deny a permit.

- [Our job] is to determine whether the Committee properly measured AllEnergy's specific proposal against knowable and certain standards, and then determined whether the imposition of appropriate conditions would allow implementation of the proposal while simultaneously protecting the public's legitimate interests.

Id., ¶¶ 181, 183.

The *AllEnergy* dissent argued that once a government establishes a conditional use in a zoning district, it determines that the use is consistent for that area. The question then becomes what standards and conditions the municipality imposes to protect against negative externalities.

2017 WISCONSIN ACT 67

CUP Ordinance Standards

The Nature of Conditional Use and the Requirement for Approval

- Pursuant to Wis. Stat. § 62.23(7)(de)2.a., "[i]f an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, *the city shall grant the conditional use permit*."
- This appears to follow the *AllEnergy* dissent. Once the municipality establishes a conditional use in a zoning district, it indicates that the use is consistent within that zoning district. This means that evidence that the use is inappropriate for the area cannot be used to deny the CUP. For example, if a municipality wanted to protect the scenic beauty of a particular area, it should not allow mines as a conditional use.

General Standards vs. Specific Standards

- Wis. Stat. § 62.23(7)(de)2.b. states CUP "requirements and conditions…must be reasonable and, to the extent practicable, measurable…"

- This suggests that standards based on general public health and welfare could be subject to potential challenge.

- However, the Act's language, coupled with its legislative history, implies a limited place for public health, safety, and general welfare requirements in CUP ordinance standards.
  - The original Assembly Bill (2017 Assembly Bill 479) stated "[t]he requirements and conditions … must be reasonable and measurable."
  - Act 67's language differs significantly in that the standards must be "to the extent practicable, measurable" (emphasis added) as opposed to only "measurable."
  - By eliminating the strict measurable requirement from the final bill, it suggests that the legislature left a small window for municipalities to use the public health, safety, and general welfare type standards. The exact scope is yet to be determined, and will likely require a court to clarify this language.

Substantial Evidence for CUP Decisions

Substantial evidence was the standard before Act 67; that is not new. *See, Oneida Seven Generations Corp. v. City of Green Bay*, 2015 WI 50, 362 Wis. 2d 290, 865 N.W.2d 162.

There are however, two things that are new.

1. Limitation on Personal Preferences

- The scope of substantial evidence has been redefined to specifically limit the use of personal preferences or speculation in reaching a decision:

  > "Substantial evidence" means facts and information, **other than merely personal preferences or speculation, directly pertaining to the requirements and conditions** an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion. (emphasis added)

Wis. Stat. § 62.23(7)(de)1.b.

- Thus, the fact that large numbers of people may come oppose a project is not by itself grounds for permit denial.

  This harkens back to *AllEnergy* where the public largely opposed the proposed sand mine. As the dissent put it, some of the testimony at the CUP public hearing "related to the wisdom of Trempealeau County Board's determination that sand mining is a sanctioned and desirable or necessary use in AllEnergy's zoning district." *AllEnergy,* ¶ 169.

  Act 67 was designed to prevent that type of public outcry from influencing the CUP approval process.

- This is not to say that all public hearing testimony is irrelevant. Only public hearing testimony classified as personal preference or opinion, or is unrelated to zoning ordinance standards, is irrelevant to the CUP decision- making body. Indeed, the municipality must hold a public hearing on the CUP application.

Wis. Stat. § 62.23(7)(de)3.

Thus, there is still a role for the public to play in the CUP application process.

2. Requirement of Substantial Evidence

Substantial evidence is now required to be shown at three critical stages of the CUP application process.

A. The CUP Application

- The burden of proof is on the applicant to demonstrate that the criteria in the ordinance are met by substantial evidence.

  The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence.

Wis. Stat. § 62.23(7)(de)2.b.

B. The CUP Decision

- The city's decision to approve or deny the permit must be supported by substantial evidence. *Id.*

This was the law prior to Act 67.

C. CUP Terms and Conditions

- Any terms or conditions imposed must relate to the purpose of the ordinance and be based on substantial evidence. Wis. Stat. § 62.23(7)(de)2.a.

  - This requirement is new to CUPs. Presumably, the legislature intended to prevent municipalities from using creative conditions as a different means of prohibiting a project. Any condition imposed must be in furtherance of the conditional use ordinance standards or requirements and based on substantial evidence.

ACT 67’s IMPLICATIONS FOR THE CUP PROCESS

For the Applicant

CUP applicants need to file an application that demonstrates on its face that a project meets all necessary requirements for a CUP and support the application with substantial evidence.

The applicant must document how each requirement is satisfied.

For the Municipality

- Application of Substantial Evidence

  Municipalities must make determinations based on substantial evidence and not merely local opinion. If the applicant meets the standards then the municipality must grant the CUP

- Impact on Conditions
  - Act 67 makes the conditions of a CUP more important.
  - Decision makers have more limited discretion now in denying a CUP. Therefore conditions will be a more useful tool in preventing or limiting any negative externalities of a project.
  - However, any CUP conditions must be based on substantial evidence and related to the requirements and purposes of the applicable zoning ordinance.

- Impact on Conditions *(cont.)*
  - Act 67 creates an explicit appeal process for the denial of a CUP, but not the imposition of a CUP condition.
  - Wis. Stat. §62.23(7)(de)5. states: **"[i]f a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10."** The reference to section Wis. Stat. §62.23(7)(e)10. allows for an aggrieved applicant to file a petition for certiorari with the local circuit court.
  - However, there is no reference to appealing CUP *conditions*. This may require a court to decide the proper method, if any, for an applicant to challenge a CUP condition.

ACT 67’s IMPLICATIONS FOR CUPs IN ZONING

Reduce Reliance on CUPs

- Meeting these standards is more difficult and fraught with opportunities for challenges. A use should no longer be authorized under a CUP if the municipality would like to use its discretion to determine whether a use is appropriate in a particular location.

- A municipality that relies on general public health safety and welfare to evaluate CUPs may find it fails to meet Act 67 requirements .

Develop Reasonable Standards

- Revised zoning provisions.
  - For uses for which a municipality would like to retain some control, consider removing them from the list of allowable conditional uses and, instead, provide that those uses are only allowed under a different zoning district designation. That way, a proposal to start such a use in a proposed location would require a *zoning change* for that location.
  - Act 67 does not apply to zoning changes, which are still purely legislative decisions. And, since CUPs now require all the notice and hearing a zoning change requires, there is no additional burden with simply making it a zoning change.

Plan Commission Meeting Minutes
Monday, February 8, 2021 at 6:00 pm
Virtual Meeting

Members Present: Mayor Tim Swadley, Chair; Todd Barman; Phil Caravello; Tom Majewski; Tom Robinson; Tom Selsor; and Brett Schumacher
Members Absent: None
Staff: Rodney Scheel, Director of Planning and Development; Michael Stacey, Zoning Administrator
Press: None
Guests: Jim Bricker; Dennis Steinkraus; Kirk Biodrowski; Attorney Rachel Snyder; Attorney Matt Dregne; Mackenzie Krumme; Peter Sveum; Rachel Venegas; C. Perret

1. **Call to order.** Mayor Swadley called the meeting to order at 6:00 pm.

2. **Consider approval of the Plan Commission meeting minutes of January 11, 2021.**
   Motion by **Robinson** to approve the minutes as presented, 2nd by **Caravello**. Motion carried unanimously.

3. **Council Representative Report.**
   Caravello stated on January 26th the Common Council approved ordinances 1, 2, and 3 and resolutions 7 and 8.

4. **Staff Report - Status of Current Developments.**
   Scheel gave an overview of the status of developments as outlined in the packet of materials. There were no questions.

5. **Request by James and Michelle Gerber for Certified Survey Map (CSM) approval to combine the parcels at 404 W. Wilson Street and 900 Bickley Court.**
   Scheel explained the request.

   Motion by **Caravello** to recommend the Common Council approve the CSM resolution as presented, 2nd by **Schumacher**. Motion carried unanimously.

6. **Request by Kirk Biodrowski for approval of a conditional use permit (CUP) to allow an Indoor Commercial Entertainment use (restaurant type use) and for an In-Vehicle Sales and Service use (drive-thru) at 1720 US Highway 51-138.**
   Scheel introduced the request.

   Robinson has concerns about traffic safety and conflicts with the mobile vending use.

   Rachel Venegas questioned the ownership of the lots. Kirk Biodrowski stated the same entity owns the Pick and Save lot and the proposed Starbucks lot. Starbucks will lease the property as outlined in the application and packet of materials.

   Attorney Dregne gave an overview of the requirements to review/approve a conditional use permit application.

   Barman stated there is nothing in the ordinance that allows review of a local vs national business rather this request is for the evaluation of the coffee use. Attorney Dregne agrees.

Mayor Swadley opened the public hearing.

- Rachel Venegas is in favor of mobile vending for more than 180 days per year.
- Phil Harrison is not opposed to Starbucks if they meet all requirements.
- Kirk Biodrowski is in favor of the request and can answer questions if necessary.
- Rachel Venegas questioned access to the site and how traffic would flow. Kirk Biodrowski explained the route of the drive-thru and the exiting toward the south.

Mayor Swadley closed the public hearing.

Majewski is concerned about traffic flow and exiting for traffic wishing to head east on Hwy 51.

Kirk Biodrowski stated the previous bank had the same configuration.

The group discussed safety and traffic flow concerns on the adjacent Pick and Save site.

Caravello stated increasing bike parking spots would be a good idea.

The group discussed conditional use vs site plan review and it was determined the site plan is part of the conditional use review according to the conditional use requirements within the zoning code and as outlined in the resolution.

Attorney Dregne questioned if the Commissioners have enough information from the application to make a decision.

Robinson there are not enough signs or arrows directing traffic out of the site.

Barman stated there is not enough evidence to show how traffic would flow out of the site.

Kirk Biodrowski is concerned about what is being required.

Attorney Dregne stated it sounds like a site plan needs to be provided that demonstrates appropriate traffic flow. Attorney Dregne stated the application and CUP packet materials are part of the record for the CUP application.

Motion by **Majewski** to postpone the conditional use request until an updated site plan is provided to show the appropriate traffic flow, 2nd by **Selsor**.

A discussion took place about what the easement allows. Kirk Biodrowski stated the easement agreement gives the right to use any part of the parking lot for access.

Mayor Swadley stated the Plan Commission could have a special meeting if necessary to review an updated site plan.

Barman stated he would like to see traffic circulation off the Starbucks site including signage and potentially striping.

Schumacher stated if available he'd like to see incident rates of accidents on the site and average volume of traffic.

Dregne stated the resubmittal should speak to the easement for ingress and egress.

Motion carried unanimously.

Motion by **Barman** to postpone the site plan review until the site plan resubmittal for the conditional use review, 2nd by **Majewksi**. Motion carried unanimously.

7. **Request by KPW LLC for Preliminary Plat approval to re-plat Outlot 1, Block 1 of the KPW Meadows Addition.**
Scheel gave an overview of the request.

Mayor Swadley opened the public hearing.

No one registered to speak.

Mayor Swadley closed the public hearing.

Majewski stated cul-du-sac's are discourage by Public Works due to the difficulty to remove snow.

Scheel stated cul-du-sac's were anticipated within this development and is allowable by ordinance.

Motion by **Barman** to recommend the Common Council approve the preliminary plat resolution as presented, 2nd by **Schumacher**. Motion carried unanimously.

8. **Request by KPW LLC for Rezoning approval of the parcels within the re-plat to Outlot 1, Block 1 of the KPW Meadows Addition.**
Scheel gave an overview of the request.

Mayor Swadley opened the public hearing.

No one registered to speak.

Mayor Swadley closed the public hearing.

Motion by **Schumacher** to recommend the Common Council approve the rezoning ordinance as presented, 2nd by **Barman**. Motion carried unanimously.

9. **Future agenda items.**
   Mobile vending ordinance; Kettle Park West final plat; Starbucks CUP and site plan.

10. **Adjournment.** Motion by **Majewski** to adjourn at 7:23 pm, seconded by **Schumacher**. Motion carried unanimously.

Respectfully Submitted, Michael P. Stacey