

HUSCH BLACKWELL

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January 29, 2024

VIA ELECTRONIC MAIL
sfarris@milwaukee.gov

Deputy City Attorney S. Todd Farris
Milwaukee City Attorney's Office
Milwaukee City Hall
200 E. Wells Street
Milwaukee, WI 53202

Re: **Legistar File 231146**
Resolution relating to a Minor Modification to the Detailed Planned Development known as Honey Creek Corporate Center, Phase IV, to add college as a permitted use within the building located at 9000 West Chester Street, located on the north side of West Chester Street, east of South 92nd Street, in the 10th Aldermanic District

Dear Deputy City Attorney Farris:

Thank you for taking my call yesterday concerning the above-referenced matter currently pending before the City of Milwaukee Plan Commission. As promised, I am providing you with a letter confirming Husch Blackwell's involvement in this matter, as well as outlining our position concerning the pending Plan Commission application.

Our firm is legal counsel to Greywolf Partners, Inc. ("**Greywolf**") in its application for a minor modification to the Detailed Planned Development ("**DPD**") known as Honey Creek Corporate Center, Phase IV. Specifically, Greywolf seeks to add "College" and "University" as permitted uses within the building located at 9000 West Chester Street (the "**Minor Modification**"). All other aspects of the DPD will remain unchanged.

Our understanding is that, although previously scheduled for Plan Commission deliberation at its January 22, 2024 meeting, Greywolf's Minor Modification request was

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removed from the January 22, 2024 agenda for review by the City Attorney's Office. We believe that, as a matter of law, the Minor Modification should be approved by the City. Our analysis of why this Minor Modification must be approved follows. And accordingly, we ask that this matter be returned to the Plan Commission agenda, with this letter being incorporated as part of the City's record in support of the Minor Modification request.

I. HONEY CREEK HISTORY

Honey Creek Corporate Center ("**Honey Creek**") consists of four Class A office buildings that together make up the 18th largest office park in the Greater Milwaukee area. It was established in 1989 as a General Planned Development ("**GPD**").¹ The GPD sets out the general zoning parameters for the campus and includes, among other items, a permitted use list, which is attached hereto as **Exhibit A**.

Honey Creek initially consisted of three buildings with four stories, with each building known as a Phase. Each Phase is governed by each own DPD, which minors the approved zoning uses of the GPD.

In 2002, however, the City of Milwaukee ("**City**") approved the construction of an additional approximately 63,600 square foot, 3-story office building with associated parking, known as Phase IV.² The DPD for Phase IV also included the permitted use list that was within the GPD.

Throughout the years, the DPD for Phase IV has been modified. In 2004, the City approved a minor modification to allow the removal of 10 surface parking spaces and other site changes on the east side of the building for building code purposes.³ The same year, the City also approved the 1st Amendment to the DPD for Honey Creek Phase IV to allow an increase in the maximum permitted height of signage.⁴ Finally, in 2016, a minor modification was approved to update the signage standards.⁵

¹ File No. 881840 as subsequently amended by Files No. 961721 and 990521.

² File No. 011153

³ File No. 021268

⁴ File No. 030977

⁵ File No. 151837

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II. REASON FOR MODIFICATION

Since its inception, Honey Creek has—and continues to be—leased to various tenants as permitted by the GPD and DPDs. Those tenants have ranged from insurance agencies, manufacturers, staffing firms, providers of educational and health equipment, legal services, banks, to higher education institutions. Indeed, the higher education institutions which have been tenants of Honey Creek have included Strayer University and Lakeland University (f/k/a Lakeland College).

Currently, Honey Creek has entered into a lease with Arizona College of Nursing (“**Arizona College**”) for space in the Phase IV building, located at 9000 W. Chester Ave.

Subsequent to the investment of approximately \$500,000 in the build-out of the Arizona College space, in reliance with the Building Permit (*see* **Exhibit B**), it came to light that the “School, Personal Instruction” category approved under the Phase IV DPD no longer covers “College” and “University” in its zoning classifications—even though previous occupants included Strayer University and Lakeland University (f/k/a Lakeland College). That is because since 1989 the City of Milwaukee updated its Zoning Code and associated classifications. As such, some of the zoning classifications under the DPD are outdated and not properly reflected under the current Zoning Code.

Accordingly, Greywolf is now requesting a Minor Modification to include “College” and “University” in the list of permissible uses for the Phase IV building, to ensure that Arizona College, and any future tenants, are in full compliance with zoning requirements.⁶

In making this request, Greywolf would note that Honey Creek has gained the well-deserved reputation of being a leading corporate park in the Milwaukee area. Honey Creek has upheld high development and land use standards and complied with all applicable state and local code provisions relating to the ongoing operations of a corporate park.

⁶ Greywolf intends to also update the list for all DPDs and the GPD to reflect the new zoning standards. However, because of the strict timeline to get the new tenant settled and the expensive built-up, it is focusing its efforts in getting this Modification done first.

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III. LEGAL STANDARDS FOR A MINOR MODIFICATION

Zoning Ordinance 295-907-3(i) sets out the legal standards for a minor modification. It states: “[t]he common council may by resolution approve modifications to approved detailed plans which are *consistent with the spirit and intent of the general planned development or a previously approved detailed planned development* provided the common council finds that the modification will not:

- i-1. Change the general character of the planned development.
- i-2. Cause a substantial relocation of principal or accessory structures.
- i-3. Cause a substantial relocation or reduction of parking, loading or recreation areas.
- i-4. Cause a substantial relocation of traffic facilities.
- i-5. Increase the land coverage of buildings and parking areas.
- i-6. Increase the gross floor area of buildings or the number of dwelling units.
- i-7. Reduce the amount of approved open space, landscaping or screening.”

The proposed Minor Modification fulfills the criteria of the Zoning Ordinance 295-907-3(i). First, it is “consistent with the spirit and intent of the general planned development or a previously approved detailed planned development” and will “change the general character of the planned development” as illustrated by the historical inclusion of higher education institutions such as Strayer University and Lakeland University (f/k/a Lakeland College). In fact, this is akin to the 2016 minor modification to the DPD that the City Council approved to update the signage standards.⁷

Additionally, the existing DPD already permits operations of a “school/personal instruction” sort, and “College” and “University” can be seen as specific iterations of “personal instruction.” Further supporting this, a “College” and “University” setting inherently encompasses a mix of several use types that the DPD already accommodates, as shown in

⁷ See File No. 151837

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Exhibit A. This implies that such establishments are in fact a natural extension or combination of permitted uses under the current DPD.

Finally, criteria i-2 to i-7 are inapplicable in this instance. Therefore, pursuant to Zoning Ordinance 295-907-3(i), the City should approve the Minor Modification.

IV. OPPOSITION

We are aware that certain parties have submitted letters and comments opposing this Minor Modification.⁸ The City, however, should not consider the oppositional letters and comments as they are not pertinent to the discussion of zoning. Those communications are solely focused on the prospective tenant's educational and business practices, which are irrelevant when it comes to the assessment of whether the Minor Modification should be granted.

According to Zoning Ordinance 295-907-3(i), the criteria set therein should be the sole points of consideration for the City. These criteria are exclusive of any business practices of prospective tenants. The core question for the City, under the Ordinance, is the consistency of the proposed Minor Modification with the DPD, which as discussed above, it is.

It is also important to note that the identity of the tenant should not influence the zoning analysis. Greywolf is unaware of any requirement (or authority) for the City to approve or deny a prospective Honey Creek tenant based upon perceptions of the public on whether a prospective tenant should be afforded the opportunity to lease space from Honey Creek. The Minor Request is for a category of use – not for approval of the particular tenant. The opposition's letters lack any substantive argument related to zoning, focusing instead on allegations against Arizona College that are outside the scope of the City's review.

If there is validity to the concerns raised about the tenant's business operations – which Greywolf disputes – those should rightly be directed to state and federal educational licensing authorities equipped to oversee such issues. Therefore, we ask that the City set aside those

⁸ <https://milwaukee.legistar.com/LegislationDetail.aspx?ID=6431456&GUID=2FA4EB68-AEEE-4300-81C0-653458D552FB&Options=Advanced&Search> (approximately five letters of opposition as of the date of this letter.)

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letters to the extent that they lack any zoning-based arguments and proceed with the evaluation of the Minor Modification on its zoning merits alone.

V. CONCLUSION

For the above reasons, we believe that it is appropriate for the City to approve this Minor Modification.

We appreciate the City's review of the request for Minor Modification, and we ask that the Minor Modification request return to the next Plan Commission agenda.

Thank you for your attention to the forgoing. Please contact us with any questions or reservations the City might have concerning our position.

Respectfully and sincerely,



Rodney W. Carter, *Partner*
Dimitri Zografi, *Attorney*
HUSCH BLACKWELL LLP

RWC/wp
DZ
Enclosures

CC: Greywolf Partners, Inc.

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Exhibit A

EXHIBIT A

*Suggested Permitted Uses for
Honey Creek IV*

Banking (Group 60)

- 6011 Federal Reserve Banks
- 6022 State banks, members of the Federal Reserve System
- 6023 State banks, not members of the Federal Reserve System, insured by the Federal Deposit Insurance Corporation
- 6024 State banks, not members of the Federal Reserve System, not insured by the Federal Deposit Insurance Corporation
- 6025 National banks, members of the Federal Reserve System
- 6026 National banks, not members of the Federal Reserve System, insured by the Federal Deposit Insurance Corporation
- 6027 National banks, not insured by the Federal Deposit Insurance Corporation
- 6028 Unincorporated private banks, not insured by the Federal Deposit Insurance Corporation
- 6032 Mutual Savings banks, members of the Federal Reserve System
- 6033 Mutual Savings banks, not members of the Federal Reserve System, insured by the Federal Deposit Insurance Corporation
- 6034 Mutual Savings banks, not insured by the Federal Deposit Insurance Corporation
- 6042 State non-deposit trust companies, members of the Federal Reserve System, insured and not insured
- 6044 State non-deposit trust companies, not insured by the Federal Deposit Insurance Corporation
- 6052 Foreign exchange establishments
- 6054 Safe deposit companies
- 6055 Clearing house associations
- 6056 Corporations for banking abroad
- 6059 Establishments performing functions closely related to deposit banking, not elsewhere classified

Credit Agencies Other Than Banks (Group 61)

- 6122 Rediscount and financing institutions for credit agencies (other than banks) not primarily associated with agricultural credit
- 6113 Rediscount and financing institutions for credit agencies (other than banks) primarily associated with agricultural credit
- 6122 Federal savings and loan associations
- 6123 State savings and loan associations, insured by the Federal Savings and Loan Insurance Corporation
- 6124 State savings and loan associations, not insured, members of the Federal Home Loan Bank System

- 6125 State savings and loan associations, not insured, not members of the Federal Home Loan Bank System
- 6131 Agricultural credit unions
- 6142 Federal credit unions
- 6143 State credit unions
- 6144 Industrial loan companies not engaged in deposit banking
- 6145 Licensed small loan lenders
- 6146 Installments sales finance companies
- 6149 Miscellaneous personal credit institutions
- 6153 Short-term business credit institutions
- 6159 Miscellaneous business credit institutions
- 6162 Mortgage bankers and loan correspondents
- 6163 Loan brokers

Security and Commodity Brokers, Dealers Exchanges and Services (Group 62)

- 6211 Security brokers, dealers, and flotation companies
- 6221 Commodity contracts brokers and dealers
- 6231 Security and commodity exchanges
- 6281 Services allied with the exchange of securities or commodities

Insurance (Group 63)

- 6311 Life insurance
- 6321 Accident and health insurance
- 6324 Hospital and medical service plans
- 6331 Fire, marine, and casualty insurance
- 6351 Surety companies
- 6361 Title insurance
- 6371 Pension, health, and welfare funds
- 6399 Insurance carriers, not elsewhere classified

Combination of Real Estate, Insurance, Loans, Law Offices (Group 66)

- 6611 Combination of real estate, insurance, loans, law offices

Business Service Equipment (Group 73)

- 7311 Advertising agencies
- 7312 Outdoor advertising agencies
- 7313 Radio, television, and Publishers' Advertising Representatives
- 7319 Advertising, not elsewhere classified
- 7321 Consumer credit reporting agencies, mercantile reporting agencies, and adjustment and collection agencies
- 7331 Direct mail advertising services
- 7332 Blueprinting and photocopying services

- 7333 Commercial photography, art, and graphics
- 7339 Stenographic services, and duplicating services, not elsewhere classified
- 7341 Window cleaning
- 7342 Disinfecting and exterminating services
- 7349 Cleaning and maintenance services to dwellings and other buildings, not elsewhere classified
- 7351 News syndicates
- 7361 Employment agencies
- 7362 Temporary help supply services
- 7369 Personnel supply services, not elsewhere classified
- 7372 Computer programming and other software services
- 7374 Data processing services
- 7379 Computer related services, not elsewhere classified
- 7391 Research and development laboratories
- 7392 Management, consulting and public relations services
- 7393 Detective agencies and protective services
- 7394 Equipment rental and leasing services
- 7395 Photofinishing laboratories
- 7396 Trading stamp services
- 7397 Commercial testing laboratories
- 7399 Business services, not elsewhere classified

Legal Services (Group 81)

- 8111 Legal services

Educational Equipment and Supplies (Group 82)

- 8241 Correspondence schools
- 8243 Data processing schools
- 8244 Business and secretarial schools

In addition to the above (if not listed)

Internally located service businesses which are normally required in a major office complex but will not have direct exterior access or advertising.

These may include an on-site Day Care Provider, News Stand, Travel Agency, Copy Center or similar on-site provider.

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Exhibit B

EXHIBIT B



City of Milwaukee

Department of Neighborhood Services

Commercial Alteration Permit

Permit Number: COM-ALT-23-00075 **Issue Date:** 04/19/2023

Project Location: 9000 - 9000 W CHESTER ST 300 - 300, MILWAUKEE, WI 532141373

Application Name: Arizona College of Nursing Suite 300

Description of Work: COM-ALT 23-00075 – Level 2, type IIB construction, fully sprinklered. Selective demolition of partial first floor and full third floor space including partition walls, doors, and interior finishes. New work includes new partition walls, doors, interior finishes. B occupancy; work area is 9,344 sf. Reviewed for substantial compliance with IEBC-2015, IBC 2015, (as amended by WI SPS 361-366) and ICC/ANSI A117.1-2009).

Issued to:

Matt Bautch
461 River Crest Ct. Mukwonago, WI
53149
Mukwonago, WI 53149

Owner:

GENEVA EXCHANGE FUND L LLC
115 S 84TH ST STE 275
MILWAUKEE, WI 53214-1474

Issued By: SPAGAC

No asbestos project, as defined in Ch. 66 of the Milwaukee Code of Ordinances, is included in the work performed under this permit. I understand that any falsification or misinformation may result in penalties prescribed in the Milwaukee Code of Ordinances

**Permits are non-transferrable.
There is no refund for a minimum fee permit.**



NOTE: The building owner/operator must conduct a thorough inspection for asbestos-containing material BEFORE WORK BEGINS. A State-certified asbestos inspector is required for this inspection. Check on the State of Wisconsin website for a list of certified companies. For more information, call (414) 286-3280.

To obtain more information about this permit or to schedule a required inspection log on to: www.Milwaukee.gov/LMS or call (414) 286-2513

Permits expire if work is not started within 6 months of issuance or if new construction ceases more than 3 months.

**Permits are non-transferrable.
There is no refund for a minimum fee permit.**

