

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
MARCH 2, 2010 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Special Use Amendment for 2125 Ogden Avenue	Resolution ✓ Ordinance Motion Discussion Only	Tom Dabareiner, AICP Community Development Director

SYNOPSIS

An ordinance has been prepared amending the special use for 2125 Ogden Avenue. The special use amendment will extend the timeframe for the submittal of Phase 2 comprehensive redevelopment plans from November 3, 2009 to July 15, 2010.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2014 identified *Strong, Diverse Local Economy*.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the March 9, 2010 active agenda.

BACKGROUND

On November 4, 2008, the Village Council approved Special Use Ordinance #5009 to permit Powermart to complete a two-phase comprehensive redevelopment of 2125 Ogden Avenue. The first phase, which was to last one year as an interim step to a comprehensive redevelopment, included cleaning up the site and opening a convenience store with a drive-through window and a car wash. Phase 2 was to include a comprehensive redevelopment of the site to include a car wash, convenience store, fuel sales, and a restaurant. Phase 2 was to be designed to meet the Ogden Avenue Master Plan by providing a more attractive development including new buildings, curb cut closures and additional green space.

Powermart is requesting an amendment to Special Use Ordinance #5009 to extend the required timeframe to submit Phase 2 comprehensive redevelopment plans. The ordinance contained a condition that required Powermart to submit Phase 2 architectural and engineering plans for Plan Commission review within one year (November 3, 2009) from the original ordinance approval and receive Council approval of the Phase 2 comprehensive redevelopment by November 4, 2010. The petitioner requests the submittal date be extended from November 3, 2009 to July 15, 2010. The petitioner noted the request is due to a delay in receiving a No Further Remediation (NFR) letter from the Illinois Environmental Protection Agency (IEPA). Without receiving a NFR for the site, the petitioner is unable to undertake construction on the site which would disturb the soil.

The petitioner provided staff and the Plan Commission with a narrative letter detailing the steps they have already taken and the steps that remain to receive the NFR. The attachments to the narrative letter detail the access agreement for Exxon Mobil monitoring, the Site Investigation Plan & Budget submitted to the IEPA, and the IEPA letter confirming the proposed remediation for the leaking underground storage tank incident.

The Plan Commission considered the request at their January 4, 2010 and February 1, 2010 meetings and recommended approval of the timeframe extension to July 15, 2010 by a vote of 8:0. The Plan Commission

recommended the Village Council maintain the original Council approval date of November 4, 2010. The petitioner did not object. Staff concurs with the Plan Commission's recommendation.

ATTACHMENTS

Aerial Map

Ordinance

Staff Memo with attachments dated February 1, 2010

Staff Report with attachments dated January 4, 2010

Minutes of the Plan Commission Hearing dated February 1, 2010

Minutes of the Plan Commission Hearing dated January 4, 2010

ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING AN EXTENSION FOR SUBMITTAL OF PHASE 2
COMPREHENSIVE REDEVELOPMENT PLANS FOR
2125 OGDEN AVENUE TO JULY 15, 2010**

WHEREAS, on November 4, 2008, the Village of Downers Grove has previously approved Ordinance No. 5009 entitled “An Ordinance Authorizing Special Uses for 2125 Ogden Avenue to Permit a Convenience Store with Drive-Through and Car Wash”; and

WHEREAS, pursuant to the Downers Grove Zoning Ordinance, Section 28-1904(b), "Prior to or subsequent to the expiration of the approved time period for construction of a Special Use, *or any extension thereof*, the petitioner may request in writing that the time for commencement of such construction be extended for a period of one to two years. Such extensions shall be granted at the sole discretion of the Village Council for an additional period or periods of one to two years each”; and

WHEREAS, the owner of the Property has made a timely request for an extension for submittal of Phase 2 Comprehensive Redevelopment Plans authorized under Ordinance No. 5009; and

WHEREAS, the Village Council has considered such request and has determined that it is in the best interest of the Village of Downers Grove to extend the submittal of Phase 2 Comprehensive Redevelopment Plans for the Special Use to July 15, 2010, as requested.

NOW, THEREFORE, BE IT ORDAINED by the Village Council of the Village of Downers Grove as follows:

SECTION 1. That Section 2(2), as set forth in Ordinance No. 5009 for 2125 Ogden Avenue, shall be amended to extend the submittal of Phase 2 Comprehensive Redevelopment Plans to July 15, 2010.

SECTION 2. That all other provisions set forth in Ordinance No. 5009 shall remain in full force and effect.

SECTION 3. That this ordinance shall be in full force an effect from and after its adoption in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk



0
25
50
75
100
Feet

2125 Ogden Avenue Location Map





DEPARTMENT OF COMMUNITY DEVELOPMENT MEMO

To: Plan Commission
From: Stan Popovich, AICP, Planner
Subject: PC-28-09, Special Use amendment to extend the timeframe for the Phase 2 comprehensive redevelopment plans
Date: February 1, 2010

Background

This petition was originally heard by the Plan Commission on January 4, 2010. During this meeting, the petitioner stated that the delay in submitting Phase 2 comprehensive redevelopment plans was due to a delay in receiving a No Further Remediation (NFR) letter from the Illinois Environmental Protection Agency (IEPA). Without receiving a NFR for the site, the petitioner is unable to undertake construction on the site which would disturb the soil.

The Plan Commission requested the petitioner provide staff and the Commission with documentation regarding this delay. This information could include the executive summary of the Exxon Mobil remediation report and the IEPA response and any other documentation of the IEPA remediation issues that were the cause of the timing issue.

Petitioner's Request

The petitioner has submitted a narrative letter describing the steps they have already taken and the steps that remain to receive the NFR. The attachments to the narrative letter detail the access agreement for Exxon Mobil monitoring, the Site Investigation Plan & Budget submitted to the IEPA, and the IEPA letter confirming the proposed remediation for the leaking underground storage tank incident. Based on the schedule and review timelines, the petitioner estimates a NFR will be issued sometime between October 2010 and January 2011.

Based on this information, the petitioner is requesting the Village Council extend the special use approval for the submission of Phase 2 site plans and elevations for staff review to July 15, 2010. Phase 2 comprehensive redevelopment plans would include 75-80 % complete architectural and engineering drawings for the proposed development. Additionally, the petitioner is requesting the special use approval for Phase 2 be extended to January 2011. If the petitioner were granted his request, the petitioner would have to start construction on Phase 2 no later than January 2012.

Staff Recommendation

Based on the newly submitted materials substantiating a delay based on IEPA mandated remediation, staff believes an extension to the Special Use Ordinance 5009 is warranted to allow extra time for the petitioner to submit Phase 2 comprehensive redevelopment plans. Staff does not believe an extension is warranted to extend the timeframe to receive approval of the Phase 2 comprehensive redevelopment plans. The maintained deadline of November 3, 2010 permits the petitioner to start construction of Phase 2 in 2011 after a NFR has been issued.

As such, staff would recommend the following amendment to Ordinance 5009 which would effectively give

the applicant six more months to prepare plans for Phase 2:

Paragraph 2, Section 2 of Ordinance 5009 is hereby amended as follows:

The applicant shall 1) submit Phase 2 comprehensive redevelopment plans for this site to the Village of Downers Grove ~~within one (1) year from the date of the passage of this Special Use Ordinance~~ on or before July 15, 2010; and 2) shall receive special use approval for Phase 2 within two (2) years of the passage of this Special Use Ordinance #5009 by November 3, 2010. The Village shall not be bound to approve the Phase 2 redevelopment plans; however, the Village shall cause the plans to be reviewed promptly in accordance with the procedures and standards set forth in Section 28.1900 of the Downers Grove Zoning Ordinance.



0 25 50 75 100 Feet

2125 Ogden Avenue Location Map



ORDINANCE NO. 5009

AN ORDINANCE AUTHORIZING SPECIAL USES FOR 2125 OGDEN AVENUE TO PERMIT A CONVENIENCE STORE WITH DRIVE-THROUGH WINDOW AND CAR WASH

WHEREAS, the following described property, to wit:

Lots 4, 5, 6, 7 and 8 in Block 3 in Arthur T. McIntosh and Company's Belmont Country Club Addition, being a subdivision of parts of Section 1, Township 38 North, Range 10 East of the Third Principal Meridian, and Section 6, Township 38 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded May 18, 1927 as Document 235837, in DuPage County, Illinois.

Commonly known as 2125 Ogden Avenue, Downers Grove, IL 60515 (PIN 08-01-405-042)

(hereinafter referred to as the "Property") is presently zoned in the "B-3, *General Services and Highway Business District*" under the Comprehensive Zoning Ordinance of the Village of Downers Grove; and

WHEREAS, the owner of the Property has filed with the Plan Commission, a written petition conforming to the requirements of the Zoning Ordinance, requesting that a Special Use per Section 28-609 of the Zoning Ordinance be granted to allow a convenience store with drive-through and a Special Use per Section 28-609 of the Zoning Ordinance be granted to allow a car wash; and,

WHEREAS, such petition was referred to the Plan Commission of the Village of Downers Grove on September 8, 2008, and said Plan Commission has given the required public notice, has conducted a public hearing respecting said petition and has made its findings and recommendations, all in accordance with the statutes of the State of Illinois and the ordinances of the Village of Downers Grove; and,

WHEREAS, the Plan Commission has recommended approval of the two requested Special Uses, subject to certain conditions; and,

WHEREAS, the Village Council finds that the evidence presented in support of said petition, as stated in the aforesaid findings and recommendations of the Plan Commission, is such as to establish the following:

1. The proposed use at that particular location requested is necessary or desirable to provide a service or a facility which is in the interest of public convenience and will contribute to the general welfare of the neighborhood or community.
2. The proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, or general welfare of persons residing or working in the vicinity or injurious to property values or improvements in the vicinity.
3. The proposed use will comply with the regulations specified in this Zoning Ordinance for the district in which the proposed use is to be located.
4. The proposed use is one of the special uses specifically listed for the district in which it is to be located and, if approved with restrictions as set forth in this ordinance, will comply with the

provisions of the Downers Grove Zoning Ordinance regulating this Special Use.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, in DuPage County, Illinois, as follows:


SECTION 1. That Special Use of the Property is hereby granted to permit a convenience store with drive-through and that Special Use of the Property is hereby granted to permit a car wash.

SECTION 2. This approval is subject to the following conditions:

1. The Phase 1 Special Uses shall substantially conform to the site and building drawings submitted by Nick Scarlatis & Associates, Ltd. dated August 1, 2008, except as such plans may be modified to conform to Village Codes and Ordinances.
2. The applicant shall 1) submit Phase 2 comprehensive redevelopment plans for this site to the Village of Downers Grove within one (1) year from the date of the passage of this Special Use Ordinance; and, 2) shall receive approval for Phase 2 within two (2) years of the passage of this Special Use Ordinance. The Village shall not be bound to approve the Phase 2 redevelopment plans; however, the Village shall cause the plans to be reviewed promptly in accordance with the procedures and standards set forth in Section 28.1900 of the Downers Grove Zoning Ordinance.
3. The proposed redevelopment plans shall meet the standards of the Zoning Ordinance and Ogden Avenue Master Plan.
4. If Phase 2 comprehensive redevelopment plans are not approved within two (2) years of the passage of this Special Use Ordinance, this Special Use Ordinance shall become null and void, and the petitioner shall:
 - a. Close the westernmost Ogden Avenue curb cut per IDOT standards.
 - b. Close the northernmost Belmont Road curb cut per IDOT standards.
 - c. Close the alley access per Village standards.
 - d. Convert all the closed access points to green space to meet the Village's green space requirements.
5. Prior to the issuance of building permits for the drive-through and car wash, the petitioner shall submit to the Village an engineer's cost estimate detailing the costs associated with items 4a through 4d above. Additionally, the petitioner shall submit to the Village a monetary security in an amount equal to the cost of these improvements. The security shall grant the Village the right to make the aforementioned improvements to the property in the event the petitioner is unable to complete the required improvements.
6. All proposed signs shall comply with the Village's Sign Ordinance.
7. The existing stormwater detention basin shall be cleared of debris and the overgrowth shall be cut back so that the detention pond is fully functional, and the entire detention volume is accessible.
8. The existing mini-mart building shall be equipped with a NFPA 72 fire alarm system installed by an U.L. Certified Fire Alarm contractor.
9. Abandoned equipment associated with the previous tenant shall be removed from the site.

SECTION 3. The above conditions are hereby made part of the terms under which the Special Use for a convenience store with drive-through and Special Use for a car wash are granted. Violation of any or all of such conditions shall be deemed a violation of the Village of Downers Grove Zoning Ordinance, the penalty for which may include, but is not limited to, a fine and or revocation of the two Special Uses granted herein.

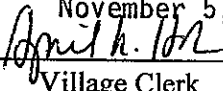
SECTION 4. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

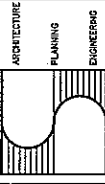


Mayor

Passed: November 4, 2008

Published: November 5, 2008

Attest: _____
Village Clerk



**NICK SCARLATIS
& ASSOCIATES, LTD.**
 8405 West 127th Street
 Chicago, Illinois 60445
 708.653.5000
 fax 708.653.5202

NOTES:

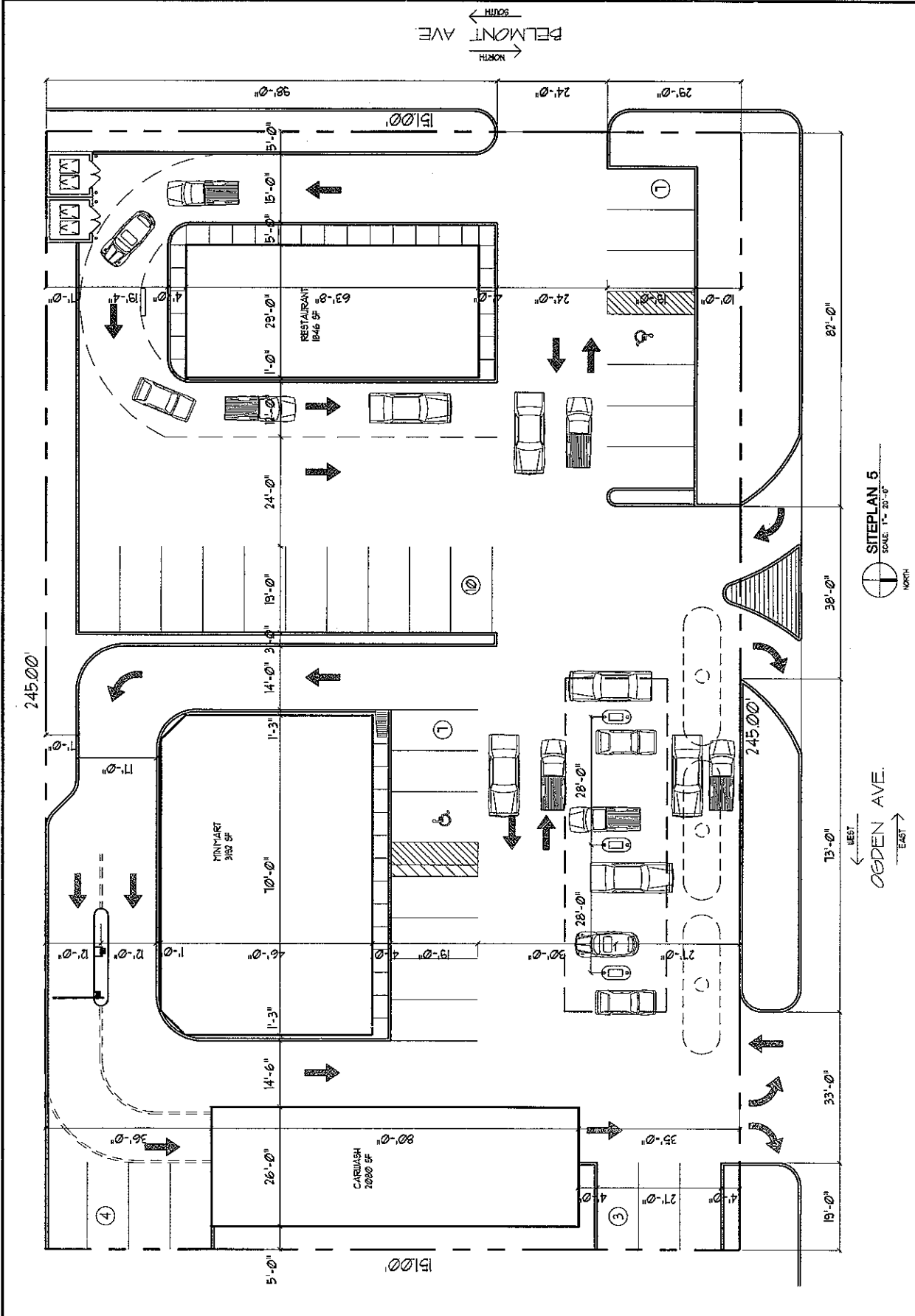
NO. DATE DESCRIPTION
 RECORDED

**PROPOSED
 POWERMART
 DEVELOPMENT**

SW CORNER OF OGDEN &
 BELMONT AVE.
 DOWNERS GROVE, IL

SITE PLAN 5

Scale: AS SHOWN
 Drawn: PK
 Project No: 2007169
 Sheet Number: 1





Power Mart Corporation
2125 Ogden Avenue
Downers Grove, Illinois 60523
Phone: (866) POWRMRT
Fax: (630) 954-2174

January 18, 2010

Jeff O'Brien, AICP
Planning Manager
Village of Downers Grove, IL

Re: Power Mart-Downers Grove, Permit Extension Application
Executive Summary

Dear Mr. O'Brien:

The following summary and attached documents are presented to the your office and the Downers Grove Plan Commission in support of Power Mart's application for extension of special use permits. In November, 2008, the Village Board approved special use permits for 2125 Ogden Avenue. Those permits created permissible uses relating to the drive through sale of convenience items, including tobacco, and the operation of a car wash. Based upon the current economic climate and the status of the environmental remediation of the site, the applicant requests an extension of those permits for an additional period of twelve (12) months.

Executive Summary

1. The current site development plan

PowerMart acquired the property located at 2125 Ogden Ave. (hereinafter referred to as "the site") on April 16, 2007 from Exxon/Mobil Oil Corporation. See Exhibit D. The plan for development includes a two phase development of the land and buildings. Phase One of the development has been completed and included the demolition of the canopy and the rehabilitation of the central building in its current footprint and the car wash. Exhibit E. The purpose of the Phase One development is to maximize the use the property during and until remediation of the site is complete and a No Further Remediation (NFR) letter is issued by the IEPA. The current site has been in operation since April, 2009 and completed its first full month of sales operations in May, 2009. PowerMart has generated gross sales of \$270,328 from May to October, 2009, averaging \$45,054 gross per month and increasing sales 62.40% for the period. Exhibit A. We currently project site sales to increase by year end by an additional 30-45% as our products and services become more widely known in the community. These sales provide critical cash flow necessary for the franchise to expand the development to Phase Two.

Stage Two of the development plan includes the development of a two story structure. The first level will include a fresh deli and bakery and other permitted uses along with common grade and bio-fuel sales. The second story will hold administration and corporate offices for the property owner. The applicant proposes the submission of site plans and elevations for staff review and Plan Commission consideration by July 15, 2010.

2. The environmental remediation plan

The site has been under the supervision of the Illinois Environmental Protection Agency since its acquisition. In December, 2007, PowerMart and Exxon/Mobil entered into an access agreement to permit Exxon/Mobil to perform remediation testing on the site until remediation was completed and a closure letter received from IEPA. See attached Access Agreement as Exhibit B.

In December, 2008, Groundwater & Environmental Services, Inc. (GES), of Aurora, Illinois was contracted by Exxon/Mobil to design and perform a site investigation plan. The Stage 1 report and certification was filed with the IEPA on September 21, 2007. The Stage 2 report and certification was filed with the IEPA on December 24, 2008. In summary, the Site Investigation Plan testing indicated effective remediation of the initiating release as reported by the IEPA LUST division. Contaminants above the IEPA threshold values were detected in the north and west monitors that require continued monitoring. Exhibit C.

In July, 2009 Exxon/Mobil provided PowerMart with a preliminary good faith timeline estimate. Exxon/Mobil estimated that based on the current remediation schedule, an NFR would be issued by October, 2010 to January, 2011. This date was determined based on the submission of GES' Site Investigation Completion Report in November, 2009. In October, 2009 the applicant met with the IEPA and Exxon/Mobil's project manager to assess the completion timeline and the SICR. The applicant was advised that the SICR was accepted by IEPA, which then has 120 days to complete its review. A Corrective Action Plan is anticipated in the second quarter of 2010 and IEPA again has 120 days for review. When the CAP is approved the IEPA will then issue the NFR and soil can be turned on the site.

The SICR is currently in review by the IEPA. All sampling and testing of groundwater has been completed and submitted to the IEPA.

3. Conclusion and Request for Extension

PowerMart has made all good faith efforts to perform its obligations provided by the special use permits. As provided by the Access Agreement and the Illinois Administrative Code, the owner is prohibited from undertaking any activity which would increase the level of contaminants existing on the site. Until such time as the IEPA completes its review of the final SICR and Corrective Action Plan, the best use of the property is as it is currently being used. Therefore, PowerMart requests that the Plan Commission recommend extension of the current special uses to January, 2011.

Respectfully,

PowerMart Corporation

By: 

Sam Odeh, President

Power Mart Express Corporation

Monthly Sales

	April	May	June	July	August	September	October
All Dept Sales	\$ 17,828.29	\$ 30,753.64	\$ 30,661.57	\$ 37,091.21	\$ 46,992.70	\$ 48,163.66	\$ 51,219.95
Carwash Sales	\$ 851.00	\$ 1,534.00	\$ 1,283.00	\$ 963.00	\$ 939.00	\$ 1,530.75	\$ 520.00
Total Sales	\$ 18,679.29	\$ 32,287.64	\$ 31,944.57	\$ 38,054.21	\$ 47,931.70	\$ 49,694.41	\$ 51,739.95
<u>Department Sales</u>							
Cigarettes	\$ 16,528.02	\$ 27,494.84	\$ 28,032.39	\$ 34,094.04	\$ 41,821.47	\$ 45,004.62	\$ 46,774.90
Cigars	\$ 132.71	\$ 476.44	\$ 357.23	\$ 355.95	\$ 334.38	\$ 270.42	\$ 286.31
Chew	\$ 174.68	\$ 208.37	\$ 179.71	\$ 245.15	\$ 262.13	\$ 313.37	\$ 283.14
Beverage	\$ 411.20	\$ 739.96	\$ 810.57	\$ 835.58	\$ 917.15	\$ 935.77	\$ 784.11
General Merchandise	\$ 27.25	\$ 89.49	\$ 73.36	\$ 63.06	\$ 136.95	\$ 120.19	\$ 82.99
HBC	\$ 1.09	\$ 2.08	\$ 9.72	\$ 15.08	\$ 16.92	\$ 11.46	\$ 14.22
Candy	\$ 26.62	\$ 61.30	\$ 70.13	\$ 80.05	\$ 91.83	\$ 69.50	\$ 53.18
Salty Snacks	\$ 28.72	\$ 50.22	\$ 35.46	\$ 35.69	\$ 60.87	\$ 25.33	\$ 24.10
Phone Cards	\$ -	\$ 5.00	\$ 10.00	\$ 5.00	\$ -	\$ -	\$ 10.00
Private Label	\$ -	\$ 11.94	\$ -	\$ -	\$ -	\$ -	\$ -
Lotto Sales	\$ 498.00	\$ 1,614.00	\$ 1,083.00	\$ 1,361.61	\$ 3,351.00	\$ 1,413.00	\$ 2,907.00
Total Monthly Sales	\$ 17,828.29	\$ 30,753.64	\$ 30,661.57	\$ 37,091.21	\$ 46,992.70	\$ 48,163.66	\$ 51,219.95



NON-EXCLUSIVE ACCESS AGREEMENT
Exxon RS#12093 / Mobil SS# 05-AID
2125 Ogden Avenue
Downers Grove, IL

Whereas, ExxonMobil Oil Corporation, formerly known as Mobil Oil Corporation, a New York corporation with an office at 3225 Gallows Road, Fairfax, Virginia 22037 ("ExxonMobil") was the Lessee under the Lease dated November 18, 1985 for the property referenced above ("Premises"), and

Whereas, the Term of the Lease on the Premises ended on April 30, 2007, but ExxonMobil is conducting or plans to conduct environmental testing and/or remediation operations on the Premises at its expense, and

Whereas, Power Mart Real Estate Corporation
672 West Lake Street
Elmhurst, Illinois 60126

("Owners") purchased the Premises on April 16, 2008 and are the current owners of the Premises, and

Whereas, Owners are willing to grant ExxonMobil the right of access to the Premises.

Now, therefore, in consideration of the mutual benefits to the parties and Ten Dollars (\$10.00) and other good and valuable consideration, Owners grant to ExxonMobil the right of access ("Access Rights") over the Premises for the purpose of conducting environmental testing and/or remediation operations on the following terms and conditions:

1. Testing and Remediation -

(a) Owners agree that ExxonMobil or its contractors may carry out any activities deemed appropriate to investigate and/or remediate the Environmental Condition of the Premises (hereinafter defined) and that ExxonMobil may install, maintain, and monitor environmental remediation units (including, without limitation, monitoring and recovery wells) (collectively, the "Activities") on or under the Premises. An approximate non-binding timeline of ExxonMobil's proposed Activities is set forth in the attached Exhibit A. Owners agree to be responsible and reimburse ExxonMobil for any damage Owners, their employees, agents, invitees, lessees, successors, assigns, or contractors cause to the environmental investigation or remediation units and/or associated piping, and equipment. Owners agree to place in any document leasing, transferring, or conveying the property a provision whereby the assignee, lessee, or transferee shall be responsible to ExxonMobil for such damage. As used in this Agreement, "Environmental Condition of the Premises" shall mean any petroleum hydrocarbons remaining on the Premises which result from any leak, spill, or discharge of motor vehicle fuel, petroleum products, or hydrocarbon derivatives (collectively, "Fuel") caused by ExxonMobil.

(b) ExxonMobil will comply with all applicable environmental laws and regulations in conducting testing and remediation on the Premises. If ExxonMobil undertakes any remediation, ExxonMobil will continue such remediation until the earlier to occur of: (1) receipt of written notice from the applicable federal, state, or local governmental agency with jurisdiction over the Premises ("Governmental Authority") that no further remediation or action is required ("Closure Letter") or (2) if, after ExxonMobil's remediation plan as approved by the Illinois Environmental Protection or other Governmental Authority having jurisdiction has been completed, but ExxonMobil using its best efforts to obtain a Closure Letter, fails to obtain such Closure Letter due to the Governmental Authorities lack of responsiveness, remediation will be deemed complete



when ExxonMobil has remediated the Property to the standards required by the Governmental Authority as certified by a mutually acceptable licensed environmental consultant.

(c) ExxonMobil will provide Owners with copies of all test results relating to the environmental investigation and remediation of the Premises which ExxonMobil files with the state or any other Governmental Authority. ExxonMobil does not make any representation or warranty regarding any aspect of any results delivered to Owners.

(d) Owners agree that ExxonMobil may conduct tests on the Premises to establish the baseline condition of the Premises and that the last tests conducted prior to termination of ExxonMobil's Access Rights shall establish the baseline condition of the Premises.

(e) If ExxonMobil conducts an environmental investigation or remediation, Owners agree that they will not conduct any tests or deal with any Governmental Authority on environmental matters relating to any Activities of ExxonMobil on the Premises without the prior written approval of ExxonMobil not to be unreasonably withheld, conditioned or delayed. ExxonMobil retains the sole right to negotiate with any Governmental Authority regarding a remediation plan, any order, or the closure of remediation efforts relating to any Activities of ExxonMobil on the Premises.

(f) ExxonMobil shall, to the extent practicable and consistent with sound remediation practices, undertake the Activities in a manner that will not unreasonably interfere with the operations of Owners or Owners' tenants or users on the Premises.

2. Purpose of Agreement - This Agreement being solely for the purpose of facilitating investigation and/or remediation of the Environmental Condition of the Premises, ExxonMobil shall not use the Premises, nor allow the Premises to be used during the period of time that ExxonMobil has Access Rights over the entire Premises, for the storage or sale of petroleum products and shall not have the right to assign this Agreement without the consent of Owners.

This Agreement is to address ExxonMobil's remediation activity on the Premises involving ExxonMobil's remediation of petroleum hydrocarbons remaining on the Premises which result from any leak, spill, or discharge of motor vehicle fuel, petroleum products, or hydrocarbon derivatives caused by ExxonMobil to applicable Governmental Authority standards ("Covered Contamination").

Covered Contamination The term Covered Contamination shall mean Hazardous Materials which: (i) result from the activities of ExxonMobil prior to or at the expiration of the term of the Lease, as extended; and (ii) are present on the Premises in such amounts as are required to be remediated by a Governmental Authority pursuant to Legal Requirements in effect prior to or at the expiration of the term of the Lease, as extended.

This Agreement supersedes and replaces any prior agreement between the parties with respect to remediation of environmental conditions pertaining to the Premises, including but not limited to access.

3. Notices - Any notice hereunder shall be in writing and shall be deemed given when sent by overnight mail, personally delivered, or deposited in the mail registered or certified or filed as a telegram with the telegraph company, postage or charges prepaid, and addressed to the party for whom intended at such party's address herein specified, or at such other address as such party may have substituted therefore by proper notice to the other.

4. Improvements - In addition to ExxonMobil's rights under the Lease, in order to perform remediation required by any Governmental Authority, ExxonMobil may use, move, remove, or alter any building, structure, curbing, pavement, driveway, improvement, machinery, or other equipment located on the Premises without incurring any liability to Owners therefor. Those

Items which ExxonMobil does not remove shall belong to Owners when this Agreement terminates. With respect to uses, moves, removals and alterations, ExxonMobil shall make a good faith effort to consult with Owner with respect to planned action(s), and possible alternatives to such action(s), prior to the commencement of such action(s). After the completion of any Activities authorized under this Agreement, ExxonMobil will close any groundwater wells or other borings in accordance with all applicable laws and regulations, will fill any excavations with existing on site fill caused by such removal and/or pea gravel, and will grade and relandscape the portion of the Premises where ExxonMobil's equipment or the Improvements were removed as close as reasonably practicable to grade condition or the condition existing prior to the date of such Activities.

5. Use of Premises -

(a) If, while ExxonMobil continues remediation efforts, Owners use or lease the Premises for any purpose whereby Fuel is placed on, in, or under the Premises and if there is any increase in levels of petroleum hydrocarbons or petroleum hydrocarbon derivatives over the last tested levels which is greater than normal seasonal variations, ExxonMobil will notify Owners and Owners will perform at Owners' expense whatever investigation is necessary to determine the cause of the increased levels. Owners will provide ExxonMobil with copies of (i) the results of all such investigations, and (ii) notices provided to any Governmental Authority by Owners or its tenants of any spills, leaks, or discharges of Fuel during the term of this Agreement. If the increased levels are determined to be caused by Owners, its tenants, or assigns, unless the Governmental Authority issues a ruling and directs otherwise, the responsible party shall pay to ExxonMobil the cost of investigation and Owner's share of the remediation costs attributable to the increased levels of petroleum hydrocarbons or other contamination based on the following formula:

Owners share of cost of remediation = $1 - (A \text{ divided by } B)$

A = Estimated cost to complete remediation prior to additional contamination

B = Estimated cost to complete remediation after additional contamination

If Owners do not begin the necessary investigation within fifteen (15) days after receiving written notice from ExxonMobil, ExxonMobil may perform such investigation at Owners' expense and Owners will reimburse ExxonMobil on demand for the cost of such investigation.

(b) ExxonMobil's Indemnity - For a period of time to end upon the earliest to occur of the two remediation undertakings listed above in Section 1 (b) of this Non-Exclusive Access Agreement, ExxonMobil shall be responsible for, and shall indemnify the owner from and against, any Claims to include property damage and personal injury, asserted by any third party (not including owner or the Owner-Related Parties) or public authority to the extent of ExxonMobil's obligations set forth in this Agreement, which occurs directly as a result of Covered Contamination. The foregoing indemnity shall be void and of no further force and effect if owner or any Owner-Related Party fails to comply with all provisions of this Agreement the breach of which interferes with or prevents ExxonMobil from performing its remediation activities or increase ExxonMobil's cost of remediating Covered Contamination or if Owner or any Owner-Related Party actively solicits or encourages the applicable Governmental Authority to expand the scope of ExxonMobil's remediation obligations on or about the Premises. ExxonMobil shall not indemnify from and against Claims due to the intentional acts or gross negligence of Owner and Owner-Related Parties.

(c) Owner's Indemnity - On and after the date upon which Owner acquired its interest in the Premises, Owner shall be responsible for and, on behalf of itself and the Owner-Related Parties, shall assume responsibility for the environmental condition of the Premises including petroleum hydrocarbons on the Premises which result from any leak, spill, or discharge of motor

vehicle fuel, petroleum products, or hydrocarbon derivatives caused by Owner or Owner-Related Parties arising on or after the date upon which Owner acquired its interest in the Premises as a result of Owner's or Owner-Related Parties' actions with respect to the Premises ("Owner Releases") and with respect to said Owner Releases shall indemnify, protect, defend (with counsel acceptable to ExxonMobil) and hold each of the ExxonMobil's Indemnified-Parties harmless from and against, any and all Claims and Losses of any kind or of any nature whatsoever, known and unknown, foreseen and unforeseen, which may at any time be imposed upon, incurred by or asserted or awarded against the ExxonMobil's Indemnified Parties arising from or by reason of or in relation to the environmental condition of the Premises, except for ExxonMobil's obligations relating to Covered Contamination, if any, set forth herein. Owner shall not indemnify from and against Claims due to the intentional acts or gross negligence of ExxonMobil.

6. Responsibility -

(a) ExxonMobil shall be responsible to the applicable Governmental Authority for investigation and remediation required by applicable environmental laws and regulations of any Fuel spilled, leaked, or discharged from ExxonMobil equipment which remains in, on, or under the Premises if said spill, leak, or discharge of Fuel occurred during the term of the Lease and was caused by the actions of ExxonMobil, its employees, or agents.

(b) From the time that Owners use or lease the Premises or any portion thereof or otherwise allow the Premises or any portion thereof to be used, Owners shall be responsible for the investigation and remediation of any Fuel spilled, leaked, or discharged in, on, or under the Premises and caused by Owners or its tenants or users.

7. Release - With the exception of acts and omissions relating to negligence and intentional wrongdoing, Owner hereby releases and discharges ExxonMobil from any liability for damages, claims, causes of action, losses, costs, expenses, lost profits, goodwill, and/or Inconvenience related to ExxonMobil's, its contractors', employees' or agents' access to and use of the Premises for the Activities.

8. No Admission of Liability - No provision of this Agreement nor any payment pursuant to this Agreement nor any actions under or by reason of this Agreement shall in any action, proceeding or litigation operate or be construed as an admission by ExxonMobil or Owners or any other party of any violation of law or regulation, any liability, fault, or past or present wrongdoing, or any breach of duty at any time.

9. Headings - The heading of the paragraphs and subparagraphs of this Agreement are for convenience only and do not in any way limit, amplify, or otherwise affect the covenants and agreements contained in this Agreement.

10. Invalidity - If any sentence, paragraph, clause, or combination of same is in violation of any law, such sentence, paragraph, clause, or combination shall be inoperative and the remainder of this Agreement shall remain binding upon the parties.

11. Third-Party Responsibility - In any agreement with a lessee, tenant, or other third party for occupancy of the released Premises or any part thereof, Owners will require such third party to comply with the terms of this Agreement and will obligate such third party to assume Owners' obligations under this Agreement.

12. Successors and Assigns - Subject to the provisions of Paragraphs 3 and 11, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

13. Insurance - ExxonMobil acknowledges that it is self-insured against claims for bodily injury, personal injury and property damage. If ExxonMobil's net worth should at any time during this agreement fall below \$100,000,000.00, ExxonMobil shall obtain and provide evidence of public liability insurance or other assurances reasonably acceptable to Owner.

14. Coordination - ExxonMobil agrees to coordinate its activities with Owner to minimize any inconvenience to or interruption of the conduct of development, use, operation and/or enjoyment of the Premises by Owner or any future owners, or the employees, tenants, or the successors and assigns of any of them. Should the wells, SVE System or other portions of ExxonMobil's Environmental Equipment interfere with the ability to develop, use or operate the Premises, ExxonMobil shall, upon Owner's request, relocate such equipment at its own cost and expense. After the first relocation of any such equipment, should Owner request the relocation of the remediation equipment a second time, ExxonMobil agrees to perform such relocation, provided Owner bears all the costs associated therewith. Owner recognizes that any obligation ExxonMobil may have with regard to equipment relocation is subject to approval by the applicable Governmental Authority and subject to such relocation being practicably feasible (i.e., such relocation should not unreasonably interfere with the Activities). Owner shall be responsible for any cost or expense to abandon, relocate, repair or replace investigation and/or remediation equipment resulting from the acts or omissions of Owner or Owner's contractors, invitees, or employees and shall pay the costs thereof to ExxonMobil within thirty (30) days after written demand therefor.

Executed on this the 7 day of Dec, 2009 but effective on the 7 day of Dec, 2009.

Power Mart Real Estate Corporation
a Delaware corporation

By: Sam Odeh
Name: Sam Odeh
Title: President
Date: 12-7-2009

EXXONMOBIL OIL CORPORATION, a
New York corporation

By: Ursula A. G. Kelly
Name: Ursula A. G. Kelly
Title: Real Estate Specialist
Date: 12-30-09

EXHIBIT A

Approximate Timeline for ExxonMobil's Remediation Efforts

- August 2009 – Illinois Environmental Protection Agency's (IEPA) review/response to ExxonMobil Site Investigation Plan ("SIP").
- Late November 2009 – Submission of ExxonMobil's Site Investigation Completion Report (SICR) to the IEPA - based on round of groundwater sampling and testing.
- Depending upon the turnaround time of the IEPA in providing their acceptance of the SICR (IEPA have 120 days to review and submit their comments), ExxonMobil anticipates submitting either further information to the IEPA if required, or the Corrective Action Plan (CAP) to the IEPA by the end of the 2nd quarter of 2010.
- IEPA has 120 days to review and respond to the CAP- this is sometimes an interactive process and may require some additional information to be submitted to the IEPA - which would lengthen the ultimate date of the acceptance of the CAP which would then push the submittal of the Corrective Action Completion Report ("CACR") out as well as the IEPA response to the CACR. If no additional information is requested by the IEPA and all submittals are approved it is possible ExxonMobil could submit the CACR for the site by the end of 2010 and potentially obtain an NFR by 1Q2011.

The foregoing is ExxonMobil's good faith estimate of performance times associated with anticipated remediation activities at the site. These times for performance may change based upon actions or inactions on the part of the IEPA and specific site conditions.



**Groundwater
& Environmental Services, Inc.**

1050 Corporate Boulevard • Suite C • Aurora, Illinois 60505 • 866-455-2419 • Fax 630-585-5359

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

December 24, 2008

Ms. Carol Hawbaker
Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

**RE: LPC # 0430305143– DuPage County
Former Mobil Station #05-AID
2125 Ogden Avenue
LUST Incident No. 20070651
LUST Technical File**

Dear Ms. Hawbaker:

Groundwater & Environmental Services, Inc. (GES) on behalf of ExxonMobil Oil Corporation (ExxonMobil) is submitting one original and one copy of the Illinois Environmental Protection Agency (IEPA) Site Investigation Plan and Budget for the above-referenced release.

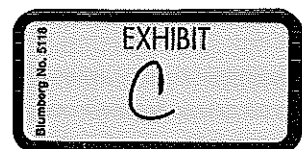
Should you have any questions or concerns regarding this project, please contact the undersigned of our office at (630) 585-5156.

Respectfully submitted,

GROUNDWATER & ENVIRONMENTAL SERVICES, INC.

Brian Jarzyna
Project Engineer

cc: GES, Inc. Project File No. 1402224
Maya Shah, Project Manager – Global Remediation, ExxonMobil Oil Corporation
Encl: Site Investigation Plan (2)





SITE INVESTIGATION PLAN & BUDGET

**Former Mobil Station #05-A1D
2125 Ogden Avenue
Downers Grove, DuPage County, Illinois
LUST Incident No. 20070651
LPC No. 0430305143**

Prepared For:

**Ms. Maya Shah
Project Manager – Global Remediation
ExxonMobil Oil Corporation
Joliet Refinery, P.O. Box 874
Joliet, IL 60434**

Prepared By:

**Groundwater & Environmental Services, Inc.
1050 Corporate Boulevard, Suite C
Aurora, IL 60505**

A handwritten signature in black ink, appearing to read 'Brian Jarzyna', written over a horizontal line.

**Brian Jarzyna
Staff Engineer**

A handwritten signature in black ink, appearing to read 'Thomas Kettinger', written over a horizontal line.

**Thomas Kettinger
Senior Project Manager**

December 24, 2008

TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page</u>
A.	SITE IDENTIFICATION	1
B.	SITE INFORMATION.....	1
C.	SITE INVESTIGATION.....	1
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FIGURES

Figure 1	Well Location Map
Figure 2	Local Area Map
Figure 3	Site Map
Figure 4	Soil Analytical Data Map
Figure 5	Soil Analytical Data Map – UST Excavation
Figure 6	Groundwater Monitoring Map – September 10, 2008
Figure 7	Proposed Soil Boring Location Map

TABLES

Table 1	Soil Analytical Data – BTEX/MTBE
Table 2	Groundwater Elevations and Analytical Data – BTEX/MTBE
Table 3	Soil Characterization Results

APPENDICES

Appendix A	Soil Boring Logs/Monitoring Well Construction Diagrams
Appendix B	Soil Laboratory Analytical Reports
Appendix C	Groundwater Laboratory Analytical Reports
Appendix D	Site Investigation Summary Form
Appendix E	Budget
Appendix F	Budget Certification Form

The Agency is authorized to require this information under Section 4 and Title XVI of the Environmental Protection Act (415 ILCS 5/4, 5/57 -- 57 17). Failure to disclose this information may result in a civil penalty of not to exceed \$50,000.00 for the violation and an additional civil penalty of not to exceed \$10,000.00 for each day during which the violation continues (415 ILCS 5/42). Any person who knowingly makes a false material statement or representation in any label, manifest, record, report, permit, or license, or other document filed, maintained or used for the purpose of compliance with Title XVI commits a Class 4 felony. Any second or subsequent offense after conviction hereunder is a Class 3 felony (415 ILCS 5/57 17). This form has been approved by the Forms Management Center.

**Illinois Environmental Protection Agency
Leaking Underground Storage Tank Program
Site Investigation Plan**

A. Site Identification

IEMA Incident # (6-8 digit): 20070651 IEPA LPC # (10 digit): 0430305143
Site Name: Former Mobil Station #05-A1D
Site Address (Not a P.O. Box): 2125 Ogden Avenue
City: Downers Grove County: DuPage Zip Code: 60515

B. Site Information

1. Will the owner/operator seek reimbursement from the Underground Storage Tank Fund? Yes No
2. If seeking reimbursement, is the budget attached? Yes No

C. Site Investigation

Provide the following:

1. Stage of investigation
- a. Stage 1
- b. Stage 2
2. Summary of Stage 1 or 2 site investigation activities;

This report is intended to serve as a Stage 2 Site Investigation Plan (SIP). The following information was obtained during the activities conducted from the discovery of the release and Stage 1 activities conducted at the Former Mobil Station #05-A1D.

Background

This section presents a chronological summary of events relating to the site incident to date at the Former Mobil Station #05-A1D (subject property). A Well Location Map is included as Figure 1. A Local Area Map showing the site and surrounding properties is included as Figure 2. A Site Map illustrating current site features is included as Figure 3.

Soil:

On March 1 and 2, 2007, Groundwater & Environmental Services, Inc. (GES) directed the installation of eight soil borings (DW1 through DW5 and DB1, DB3 and DB4) at the subject property as part of a Phase II Environmental Site Assessment (ESA). One soil sample from each soil boring was submitted to TestAmerica Laboratories Inc. (TestAmerica) of Nashville, Tennessee for laboratory analysis of benzene, toluene, ethylbenzene, total xylenes (BTEX) and methyl-tertiary-butyl-ether (MTBE) using United States Environmental Protection Agency (USEPA) Method 5035/8260B. Five of the eight soil borings were completed as monitoring wells (DW1 through DW5) to assess the groundwater at the subject property.

On May 15 and 16, 2007, GES collected thirty-two soil samples during UST and product piping removal activities. One soil sample was collected from beneath each former dispenser location (D1 through D4). Nine samples were collected along the former product delivery

LUST Incident #20070651
Former Mobil Station #05-A1D
2125 Ogden Avenue
Downers Grove, IL

lines at approximately twenty-foot intervals (PP1 through PP9). Two to three soil samples were collected from the north, south, east and west walls (NW1, NW2, NW3, EW1, EW2, SW1, SW2, WW1, and WW2), respectively. Eight soil samples were collected from the bottom (B1 through B8) of the UST excavation and two soil samples were collected from backfill returned to the UST excavation area (BF1 and BF2). Each soil sample was submitted to TestAmerica for analysis of BTEX/MTBE using USEPA Method 5035/8260B.

Mr. Bob Kowalski, a storage tank safety specialist for the Office of the State Fire Marshal (OSFM) requested that an incident be reported during the UST removal activities due to observed visual impacts identified in the excavation area. On May 15, 2007, a release was reported to the Illinois Emergency Management Agency (IEMA) and leaking underground storage tank (LUST) Incident Number 20070651 was issued for the subject property.

On November 12, 2007, GES directed the installation of four soil borings (MW6 through MW9) at the property. Upon completion of each soil boring, each location was converted into a 2-inch groundwater monitoring well. Up to three samples were collected from each boring and submitted to TestAmerica for BTEX/MTBE analysis using USEPA Method 5035/8260B. Additional soil samples from MW6 were submitted for physical soil analysis.

On September 3, 2008, GES directed the installation of five soil borings (SB1 through SB4 and MW10). Upon completion of the soil borings, MW10 was converted into a 2-inch groundwater monitoring well. Up to two soil samples were collected from each boring location and submitted to TestAmerica for BTEX/MTBE analysis using USEPA Method 5035/8260B.

Soil analytical results were compared to Tier 1 soil cleanup objectives as promulgated by Illinois Administrative Code Part 742, Tiered Approach to Corrective Action Objectives (TACO). This comparison indicates benzene, ethylbenzene, xylenes and MTBE levels exceed Tier 1 cleanup objectives. Soil laboratory analytical reports are included as **Appendix B**. Soil analytical results are presented in **Table 1** and **Figures 4** and **5**. Soil boring logs/monitoring well construction diagrams from the most recent sampling event are provided in **Appendix A**.

Groundwater:

On September 10, 2008, GES sampled the monitoring well network at the subject property. The wells were developed to establish a hydraulic connection with the surrounding formation, to allow free entry of water, and to minimize clogging. Prior to sampling the monitoring wells, the depth to water was gauged using an electronic oil/water interface probe. The oil/water interface probe was used to measure for the depth and thickness (if any) of separate phase hydrocarbons and to measure the depth to water from the north side of the top of casing for each well. The groundwater gauging information was used to calculate a potentiometric groundwater surface and flow direction for the shallow groundwater system beneath the subject property.

Groundwater samples from monitoring wells MW101 through MW105, DW1, DW4, DW5, and MW1 through MW9 were submitted to TestAmerica for laboratory analysis of BTEX/MTBE using USEPA Method 8260B. No sample was collected from MW10, since the well was dry. Groundwater analytical results were compared to Tier 1 Class II groundwater cleanup objectives (GCOs) as promulgated by Illinois Administrative Code Part 742, TACO. This comparison indicates benzene and MTBE concentrations exceed the

LUST Incident #20070651
Former Mobil Station #05-A1D
2125 Ogden Avenue
Downers Grove, IL

respective Tier 1 GCOs. Groundwater laboratory analytical reports are included as **Appendix C**. Groundwater analytical results are presented in **Table 2** and on **Figure 6**.

3. Characterization of site and surrounding area:

a. Current and projected post-remediation uses;

The subject property is a former retail gasoline station and convenience store. Current site features include a station building, canopy and car wash. The UST system, including the pump islands and product lines have all been removed from the subject property. The local area map and site map showing known utility locations are provided as **Figures 2** and **3**, respectively.

b. Physical setting:

i. Environmental conditions;

Mobil Station #05-A1D has two LUST incident numbers. LUST incident number 933285 was reported on December 23, 1993 and received a no further remediation letter (NFR) dated April 3, 2000. The reports regarding this incident indicated that groundwater beneath the property is considered Class II. Therefore, analytical results regarding the following incident number will be compared to Class II cleanup objectives.

LUST incident number 20070651 was reported during UST removal activities on May 15, 2007. This report was prepared to investigate potential soil and groundwater impacts associated with this LUST incident number.

ii. Geologic, hydrogeologic, and hydrologic conditions; and

GES reviewed the map entitled *Potential for Contamination of Shallow Aquifers by Land Burial of Municipal Wastes* (Circular 532, Plate 2), by Richard C. Berg, *et. al.* This map describes and maps geologic materials to a depth of 50 feet throughout the state. On the map, various geologic materials are differentiated by thickness, texture, permeability, and stratigraphic position in order to rate their relative contamination potential for aquifers in any area of the state. According to the Berg Map, the Subject property is positioned in the "D2" geologic zone, which is relatively impermeable silty or clayey till at least 20 feet (ft) thick, with no evidence of interbedded sand and gravel.

iii. Geographic and topographic conditions;

The subject property is located in the southeast quarter of the northeast quarter of Section 1, Township 38 North, Range 10 East on the Wheaton, Illinois, United States Geological Survey (USGS) 7.5 minute topographic quadrangle (**Figure 1**). The site is located at the southeast corner of the intersection of Ogden Avenue and Belmont Road. The surrounding properties consist of Ogden Avenue, followed by Joe Madden Ford Auto Dealership to the north, a low-lying fenced area and U-Haul Rental Company to the east, vacant lot containing trees and bushes to the south and Belmont Road followed by Fannie Mae Candy Company to the west. A local area map is included as **Figure 2**.

4. Results of Stage 1 or 2 site investigation:

- a. **Map(s) showing locations of all borings and groundwater monitoring wells completed to date and groundwater flow direction;**

Please refer to Figures 3 through 6.

- b. **Map(s) showing locations of all samples collected;**

Please refer to Figures 4 through 6.

- c. **Map(s) showing extents of soil and groundwater contamination that exceeds the most stringent Tier 1 remediation objectives;**

Not applicable, further investigation is required to determine the potential extents of soil impact at the subject property.

- d. **Cross-section(s) showing the geology and the horizontal and vertical extents of soil and groundwater contamination that exceeds the most stringent Tier 1 remediation objectives;**

Not applicable, further investigation is required to determine the horizontal and vertical extents of soil and groundwater impacts at the subject property.

- e. **Analytical results, chain of custody forms, and laboratory certifications;**

Please refer to Appendix B and C.

- f. **Table(s) comparing analytical results to the most stringent Tier 1 remediation objectives (include sample depth, date collected, and detection limits);**

Please refer to Tables 1 and 2.

- g. **Potable water supply well survey (unless provided in previous plan):**

- i. **Map(s) to scale showing:**

- a. **Locations of community water supply wells and other potable wells and the setback zone for each well**

There is one community water supply well located outside the minimum setback zone. Please refer to Figures 1 and 2 for the minimum setback zone.

- b. **Location and extent of regulated recharge areas and wellhead protection areas;**

According to the Illinois Environmental Protection Agency (IEPA) Bureau of Water, the Pleasant Valley Public Water District in Peoria is the only regulated recharge area. The subject property is not located within the regulated recharge area or well protection area. Well information has been provided within the Site Investigation Plan dated September 21, 2007 on file with the IEPA.

- c. **Extent of groundwater contamination exceeding the most stringent Tier 1 remediation objectives;**

Figure 6 illustrates the groundwater analytical results from the most recent groundwater sampling event.

- d. **Modeled extent of groundwater contamination exceeding the most stringent Tier 1 remediation objectives (If performed as part of the site investigation);**

Not applicable.

- ii. **Table(s) listing the setback zones for each community water supply well and other potable water supply wells:**

Under the direction of a Licensed Professional Engineer, a review of well records from the Illinois State Water Survey (ISWS), the Illinois State Geological Survey (ISGS), the Illinois Environmental protection Agency – Bureau of Water, IEPA source water assessment program (SWAP) and DuPage County Health Department have been completed to determine whether the source of the release is located within a setback zone or regulated recharge area of a potable water supply well. Well information has been provided within the Site Investigation Plan dated September 21, 2007 on file with the IEPA.

- iii. **A Narrative identifying each entity contacted to identify potable water supply wells, the name and title of each person contacted, and any field observations associated with any wells identified; and**

In accordance with 35 IAC, Section 734.445(a), GES conducted a well search that included a 2,500-foot radius around the subject property, in order to determine the locations of wells potentially affected by the release. Specifically, GES searched the SWAP database. The report is a collection of the ISGS and the ISWS. GES also requested information from the Illinois Environmental Protection Agency (IEPA) Division of Potable Water Supply for additional information that may not have been included in the SWAP database. According to the information from the SWAP database, there were nine potable water wells identified within 2,500 feet of the subject property (Figure 1).

GES completed a potable well field reconnaissance search of the area surrounding the site on July 20, 2007. The results of the field reconnaissance revealed no private potable wells within 200 feet of the subject property and no community potable well within 2,500-feet of the subject property. The health department for the Village of Downers Grove was also contacted and it was verified that no private or public potable wells were located within 2,500 feet from the subject property. The Village of Downers Grove obtains potable water from Lake Michigan; however, the village maintains multiple public potable wells for emergency use. Well information has been provided within the Site Investigation Plan dated September 21, 2007 on file with the IEPA.

- iv. **A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the survey was conducted in accordance with the requirements and that documentation submitted includes information obtained as a result of the survey;**

The Site Investigation Certification Form was provided in the GES *Site Investigation Plan* dated September 21, 2007 on file with the IEPA.

h. Soil boring logs and monitoring well construction diagrams;

Please refer to **Appendix A**.

i. Proposal for determining the following parameters:

i. Hydraulic conductivity (K);

An in-situ hydraulic conductivity test on a representative well within the groundwater monitoring well network will be performed during the Stage 2 investigation. The slug test data will then be analyzed utilizing the Bouwer and Rice (1976) method to determine a conductivity value for groundwater beneath the site.

ii. Soil bulk density (ρ_b);

On November 12, 2007, a soil bulk density sample was collected from MW6. The soil bulk density sample result indicated 100.1 pound per cubic foot (pcf) for soil bulk dry density and 123.7 pcf for soil bulk wet density. The analytical results are provided on **Table 3**.

iii. Soil particle density (η);

On November 12, 2007, a soil particle density sample was collected from MW6. The soil particle density sample result indicated 2.66 grams per cubic centimeters (g/cm^3). The analytical results are provided on **Table 3**.

iv. Moisture content (w); and

The moisture content will be evaluated with every soil sample obtained and submitted for laboratory analysis during the Stage 2 investigation.

v. Organic carbon contents (f_{oc}); and

On November 12, 2007, two fractional organic carbon (f_{oc}) samples were collected from MW6. The f_{oc} sample results indicated a percentage of 1.49 at two feet and 4.69 at eleven feet. The analytical results are provided on **Table 3**.

j. Site Investigation Summary Form.

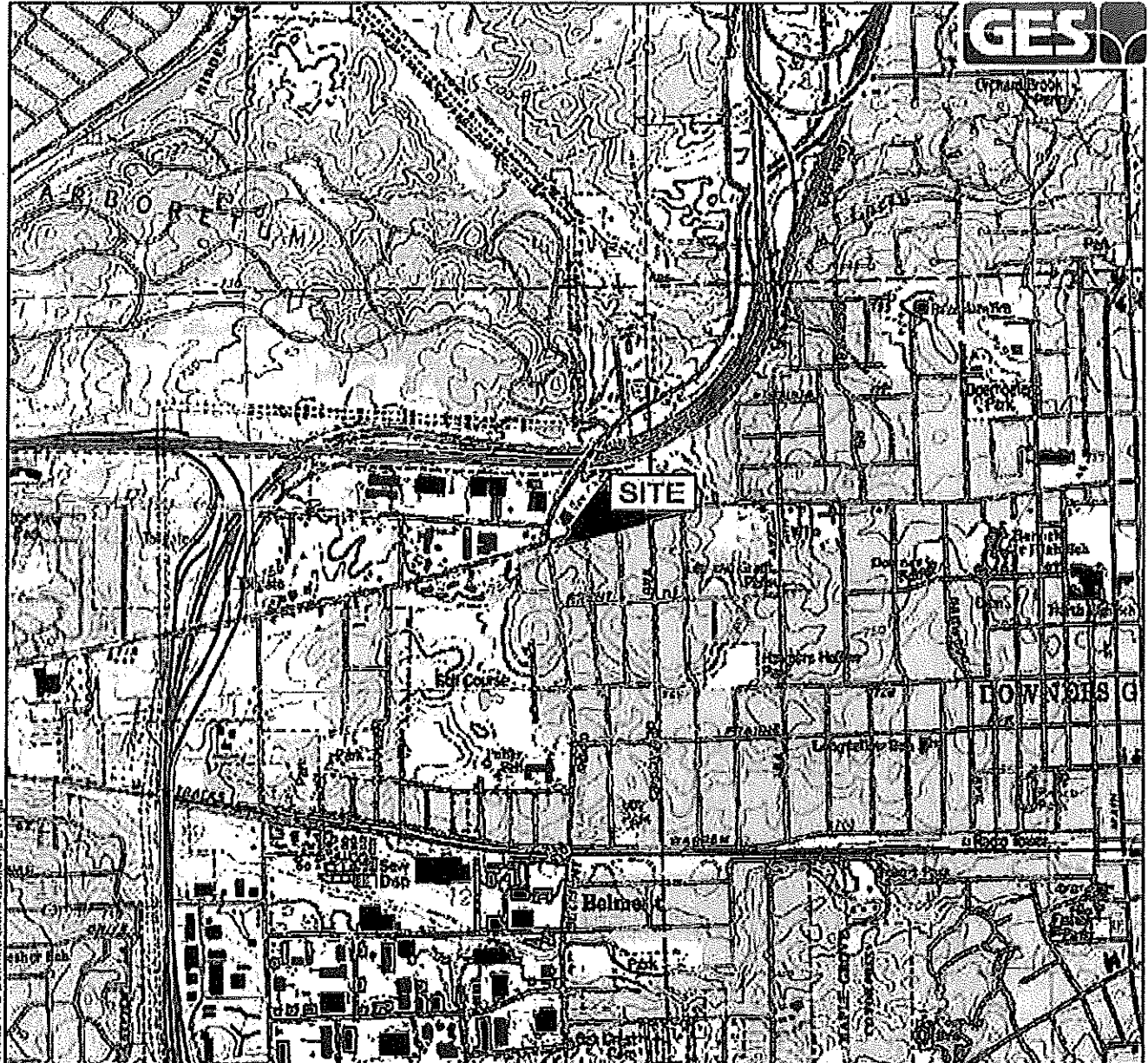
A Site Investigation Summary Form is included in **Appendix D**.

5. Stage 1 sampling plan;

a. Description of and justification for additional activities proposed as part of the plan;

Pursuant to the conversation between GES and Ms. Carol Hawbaker with the IEPA, GES proceeded to install soil borings SB1 through SB4 and MW10 to further delineate sample D2. The analytical results from this sampling event indicated benzene within soil samples SB1, SB2 and SB4 above Class II groundwater. Total Xylenes and MTBE within soil samples SB1 and SB2 were also encountered above Class II groundwater.

The analytical results from this sampling event were compared to the historical data collected from the investigations conducted for the 933285 incident number. Even with the concentrations of BTEX concentrations above Class II groundwater within SB1, SB2 and SB4, these levels are below historical concentrations. Therefore, GES does not believe BTEX concentrations associated with the 20070651 release to pose



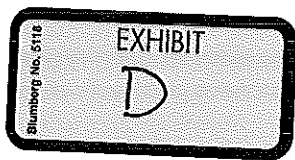
SOURCE: USGS 7.5 MINUTE SERIES
 TOPOGRAPHIC QUADRANGLE NONE
 WHEATON, ILLINOIS
 CONTOUR INTERVAL = 10'
 TOWNSHIP - 10E
 RANGE - 38N
 SECTION - 1



QUADRANGLE LOCATION

M:\Graphics\1406-Chicago\ExxonMobil\2005-A1D Downers Grove\05-A1D Downers Grove S1A.dwg, E:\0509

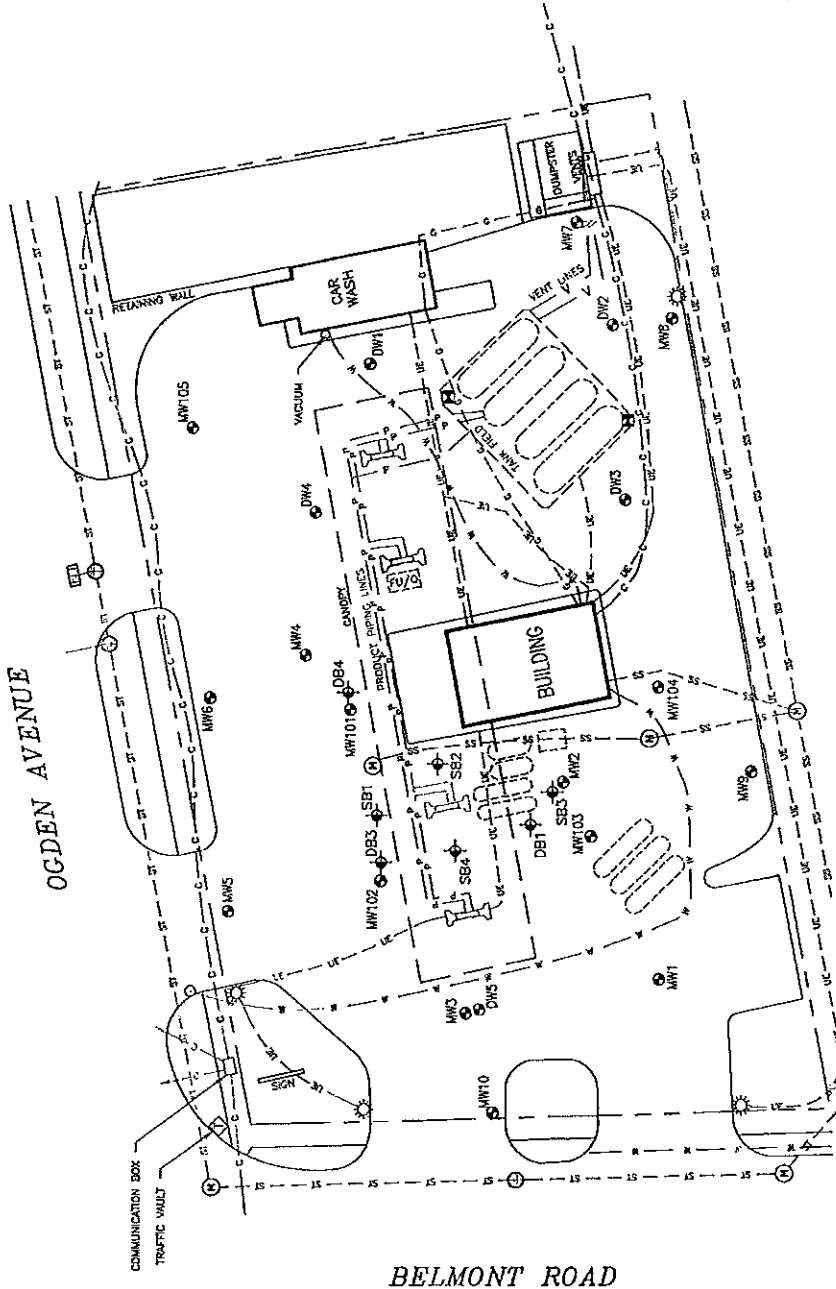
DRAFTED BY: E.V. (N.J.)	SITE LOCATION MAP	
CHECKED BY:	EXXONMOBIL OIL CORPORATION FORMER MOBIL STATION #05-A1D 2125 OGDEN AVENUE DOWNERS GROVE, ILLINOIS	
REVIEWED BY:	Groundwater & Environmental Services, Inc. 1050 CORPORATE BOULEVARD, SUITE C, AURORA, IL 60505	
NORTH 	SCALE IN FEET 	DATE 8-16-07
		FIGURE 1





LEGEND

- PROPERTY BOUNDARY
- STORM DRAIN
- CATCH BASIN
- UTILITY MANHOLE
- LIGHT POLE
- FORMER DISPENSER ISLAND
- FORMER USED OIL UST
- FORMER UNDERGROUND STORAGE TANK
- MONITORING WELL
- SUMP WELL
- UNDERGROUND SANITARY SEWER LINE
- UNDERGROUND STORM SEWER LINE
- UNDERGROUND ELECTRIC LINE
- COMMUNICATIONS UTILITY LINE
- UNDERGROUND WATER LINE
- UNDERGROUND GAS LINE
- SOIL BORING



DRAFTER: BRT M.L.T. (N.J.) CHECKED BY:	SITE MAP	
REVISIONS BY:	EXXONMOBIL OIL CORPORATION FORMER MOBIL STATION #16-A1D 2125 OGDEN AVENUE DOWNERS GROVE, ILLINOIS	
NORTH 	SCALE IN FEET 	DATE 10-22-08
Groundwater & Environmental Services, Inc. 1050 CORPORATE BOULEVARD, SUITE C, AURORA, IL 60505	APPROXIMATE 30	FIGURE 3

Blumberg No. 5118

EXHIBIT

E



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

DOUGLAS P. SCOTT, DIRECTOR

RECEIVED JUL 16 2009

217/782-6762

CERTIFIED MAIL

7008 1830 0001 4717 8274

JUL 14 2009

Exxon Mobil
Attention: Maya Shah
P.O. Box 74
Downers Grove, IL 60515

Re: LPC #0430305143 - Du Page County
Downers Grove / Exxon Mobil
2125 Ogden Avenue
Leaking UST Incident No. 20070651
Leaking UST Technical File

Dear Ms. Shah:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Stage 2 Site Investigation Plan (plan) submitted for the above-referenced incident. This plan, dated May 1, 2009, was received by the Illinois EPA on May 4, 2009. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The Illinois EPA has determined that the activities proposed in this plan are appropriate to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 734 (Sections 57.7(a)(1) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)). Therefore, the plan is approved.

The actual costs for Stage 1 are modified pursuant to Sections 57.7(a)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Be aware that the amount of payment from the Fund may be limited by Sections 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

In addition, the proposed budget for Stage(s) 2 is approved for amounts determined in accordance with Subpart H, Appendix D, and Appendix E of 35 Ill. Adm. Code 734 (35 Ill. Adm. Code 734.310(b)). Costs must be incurred in accordance with the approved plan. Please be advised that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in Subpart H, Appendix D, and Appendix E of Part 734 (Section 57.7(c) of the Act and 35 Ill. Adm. Code 734.510(b)).

NOTE: Pursuant to Section 57.8(a)(5) of the Act, if payment from the Fund will be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

must be submitted. Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be paid from the Fund.

Further, pursuant to 35 Ill. Adm. Code 734.145, it is required that the Illinois EPA be notified of field activities prior to the date the field activities take place. This notice must include a description of the field activities to be conducted; the name of the person conducting the activities; and the date, time, and place the activities will be conducted. This notification of field activities may be done by telephone, facsimile, or electronic mail.

Pursuant to Sections 57.7(a)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, the Illinois EPA requires submittal of a Stage 3 Site Investigation Plan, and budget if applicable, or Site Investigation Completion Report within 30 days after completing the site investigation to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

If you have any questions or need further assistance, please contact Carol Hawbaker at 217/782-5713.

Sincerely,



Harry A. Chappel, P.E.
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAC: CLH

Attachment: A

c: Groundwater & Environmental Services, Inc.
BOL File

Attachment A

Re: LPC #0430305143 – Du Page County
Downers Grove / Exxon Mobil
2125 Ogden Avenue
Leaking UST Incident No. 20070651
Leaking UST Technical File

SECTION 1

STAGE 1 Actual Costs

As a result of the Illinois EPA's modifications in Section 2 of this Attachment A, the following amounts are approved:

\$3,511.81	Drilling and Monitoring Well Costs
\$2,673.00	Analytical Costs
\$1,250.00	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$0.00	Paving, Demolition, and Well Abandonment Costs
\$2,911.52	Consulting Personnel Costs
\$590.00	Consultant's Materials Costs

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

STAGE 2 Proposed Budget

Costs must be incurred in accordance with the approved plan and must be determined in accordance with 35 Ill. Adm. Code 734.Subpart H, Appendix D, and Appendix E.

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

SECTION 2

STAGE 1 Modifications

1. Pursuant to 35 Ill. Adm. Code 734.820 and 734.870, the use of the hollow stem auger maximum allowable rate for drilling may be used when the boring is augered out to install a monitoring well. The following adjustment is made: 79 feet of the direct push

rate of \$19.93 per foot was removed and replaced with 79 feet of the hollow stem auger rate of \$25.08 per foot.

2. The actual number of BTEXM soil samples analyzed during Stage 1 activities is 20, not 17. The costs have been changed to reflect this.
3. \$1,003.00 for costs for Analyses, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

The following costs are deducted: 12 groundwater samples, and 1 foc sample. These samples are not required. The Illinois EPA allows 5 groundwater samples for MW6 – MW10 and 1 foc sample.

Appeal Rights

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the request for an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

For information regarding the filing of an appeal, please contact:

Illinois Pollution Control Board, Clerk
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
312/814-3620



**VILLAGE OF DOWNERS GROVE
REPORT FOR THE PLAN COMMISSION
JANUARY 4, 2010 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
PC-28-09 2125 Ogden Avenue	Special Use amendment to extend the timeframe for the Phase 2 comprehensive redevelopment plans.	Stan Popovich, AICP Planner

REQUEST

The petitioner is requesting approval of a special use amendment to extend the timeframe for the Phase 2 comprehensive redevelopment plans at 2125 Ogden Avenue

NOTICE

The application has been filed in conformance with applicable procedural and public notice requirements.

GENERAL INFORMATION

OWNER: Powermart – Downers Grove
2125 Ogden Avenue
Downers Grove, IL 60515

APPLICANT: Luke A. Casson
Kensington Consultants
204 Industrial Drive
Lockport, IL 60441

PROPERTY INFORMATION

EXISTING ZONING: B-3, General Services and Highway Business
EXISTING LAND USE: Commercial
PROPERTY SIZE: 37,200 square feet (0.854 acres)
PINS: 08-04-405-042

SURROUNDING ZONING AND LAND USES

	ZONING	FUTURE LAND USE
North:	M-1, Light Manufacturing	Office, Research and Manufacturing
South:	R-6, Multiple Family Residential	Residential, 11-25 DU/Acre
East:	B-3, General Services and Highway Business	Commercial
West:	B-3, General Services and Highway Business	Commercial

ANALYSIS

SUBMITTALS

This report is based on the following documents, which are on file with the Department of Community Development:

1. Application/Petition for Public Hearing
2. Project Summary

PROJECT DESCRIPTION

The petitioner is requesting a special use amendment to Ordinance 5009 to extend the timeframe for Phase 2 comprehensive redevelopment plans. In 2008, the applicant presented the Village with a two-phase project for this site. The first phase, which was to last one year as an interim step to a comprehensive redevelopment, included cleaning up the site and opening a convenience store with a drive-through window and a car wash. Phase 2 was to include a comprehensive redevelopment of the site to include a car wash, convenience store, fuel sales, and a restaurant. Phase 2 was to be designed to meet the Ogden Avenue Master Plan by closing curb cuts and adding green space.

The Phase 1 drive-through and car wash required special use approval from the Village Council. The Council approved the petitioner's application for a special use to permit a convenience store with a drive-through window and car wash on November 4, 2008. As a condition of approval, the following condition was included within the ordinance:

The applicant shall 1) submit Phase 2 comprehensive redevelopment plans for this site to the Village of Downers Grove within one (1) year from the date of passage of this Special Use Ordinance; and 2) shall receive approval for Phase 2 within two (2) years of the passage of this Special Use Ordinance. The Village shall not be bound to approve the Phase 2 redevelopment plans; however, the Village shall cause the plans to be reviewed promptly in accordance with the procedures and standards set forth in Section 28.1900 of the Downers Grove Zoning Ordinance.

The petitioner has not met this condition, which according to Ordinance 5009, is a violation of the Village's Zoning Ordinance, the penalty for which may include, but is not limited to, a fine or revocation of the two special uses granted.

The Village sent the applicant notices on July 2, 2009 and September 30, 2009 to remind the applicant of the November 3, 2009 submittal deadline. When nothing was received by the deadline date, the Village sent the petitioner a notice of violation on November 12, 2009 stating that a violation had occurred and the only available remedies were to submit Phase 2 comprehensive redevelopment plans or an application for a special use amendment to extend the timeframe. The applicant submitted an application to amend the special use, but has not provided materials detailing their requested extension. As such, staff is recommending the Village Council revoke the applicants' special use approval. This action will require Powermart to discontinue use of the drive-through and the car wash.

COMPLIANCE WITH FUTURE LAND USE PLAN

The Future Land Use Plan designates the site as Commercial. Staff believes the existing uses are commercial in nature but do not meet the special use conditions of approval which requires Phase 2 comprehensive redevelopment plans to be submitted by November 3, 2009. As such, staff believes the proposal is inconsistent with the Future Land Use Plan.

COMPLIANCE WITH ZONING ORDINANCE

As it currently exists, the Phase 1 development of the site does not comply with all aspects of the Ogden Avenue Master Plan. Specifically, the petitioner has not increased green space or closed curb cuts along Ogden Avenue. The petitioner has made no attempt to submit Phase 2 comprehensive redevelopment plans in accordance with the approved ordinance. Phase 2 is required to meet the standards of the Ogden Avenue Master Plan. These improvements will include new buildings, decreased curb cuts, and additional green space. Staff does not believe the current site conditions are consistent with the Village's Ogden Avenue Master Plan.

ENGINEERING/PUBLIC IMPROVEMENTS

The requested timeframe amendment does not include engineering or public improvements.

PUBLIC SAFETY REQUIREMENTS

The requested timeframe amendment does not require a review by the Fire Prevention Division of the Fire Department.

NEIGHBORHOOD COMMENT

Staff has not received any written neighborhood comment regarding the proposal at this time.

FINDINGS OF FACT

Staff believes the applicant has made no attempt to comply with the condition of Ordinance 5009 which requires Phase 2 comprehensive redevelopment plans to be submitted to staff by November 3, 2009. Phase 1 of the redevelopment does not meet the overall goals of the Village's Ogden Avenue Master Plan. Phase 2 would complete the improvements to the property necessary to comply with the Village's goals for the Ogden Avenue corridor. The intent of the original special use was to facilitate Phase 2. Allowing the existing conditions to continue is not consistent with the original goals of the Ogden Avenue Master Plan and the intent of Ordinance 5009. As such, staff is recommending that the Village Council revoke the approved special uses.

RECOMMENDATIONS

Staff believes the applicant has not met the conditions of Ordinance 5099 and recommends that the Plan Commission forward a recommendation to Village Council that the two previously approved special uses are revoked. The recommendation should include the following conditions:

1. The special uses shall be revoked and use of the car wash and drive-through shall cease within 30 days of Village Council action.
2. The petitioner shall be responsible to complete the following actions by August 1, 2010:
 - a. Close the westernmost Ogden Avenue curb cut per IDOT standards.
 - b. Close the northernmost Belmont Road curb cut per IDOT standards.
 - c. Close the alley access per Village standards.
 - d. Convert all the closed access points to green space to meet the Village's green space requirements.
3. If the petitioner is unable to complete the improvements associated with items 2a through 2d above by August 1, 2010, the Village shall use the previously accepted monetary security to complete these improvements.

If the Plan Commission and Village Council believe more time is warranted, staff believes a short extension would be the best solution. As such, staff would recommend the following amendment to Ordinance 5009 which would effectively give the applicant six more months to prepare plans for Phase 2:

Paragraph 2, Section 2 of Ordinance 5009 is hereby amended to read as follows:

The applicant shall 1) submit Phase 2 comprehensive redevelopment plans for this site to the Village of Downers Grove **on or before July 1, 2010**; and 2) shall receive **special use approval** for Phase 2 within two (2) years of the passage of **Ordinance #5009 (November 3, 2010)**. The Village shall not be bound to approve the Phase 2 redevelopment plans; however, the Village shall cause the plans to be reviewed promptly in accordance with the procedures and standards set forth in Section 28.1900 of the Downers Grove Zoning Ordinance.

Staff Report Approved By:

Jeff O'Brien, AICP
Planning Manager

JWO:sjp
-att

P:\P&CD\PROJECTS\PLAN COMMISSION\2009 PC Petition Files\PC-28-09 2125 OGDEN AVE POWER MART - SU AMEND\Staff Report
PC-28-09.doc



FINLEY RD

BELMONT RD

ARBOR CIR

OGDEN AVE

2125

2105

0 25 50 75 100 Feet

2125 Ogden Avenue Location Map



ORDINANCE NO. 5009

AN ORDINANCE AUTHORIZING SPECIAL USES FOR 2125 OGDEN AVENUE TO PERMIT A CONVENIENCE STORE WITH DRIVE-THROUGH WINDOW AND CAR WASH

WHEREAS, the following described property, to wit:

Lots 4, 5, 6, 7 and 8 in Block 3 in Arthur T. McIntosh and Company's Belmont Country Club Addition, being a subdivision of parts of Section 1, Township 38 North, Range 10 East of the Third Principal Meridian, and Section 6, Township 38 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded May 18, 1927 as Document 235837, in DuPage County, Illinois.

Commonly known as 2125 Ogden Avenue, Downers Grove, IL 60515 (PIN 08-01-405-042)

(hereinafter referred to as the "Property") is presently zoned in the "B-3, *General Services and Highway Business District*" under the Comprehensive Zoning Ordinance of the Village of Downers Grove; and

WHEREAS, the owner of the Property has filed with the Plan Commission, a written petition conforming to the requirements of the Zoning Ordinance, requesting that a Special Use per Section 28-609 of the Zoning Ordinance be granted to allow a convenience store with drive-through and a Special Use per Section 28-609 of the Zoning Ordinance be granted to allow a car wash; and,

WHEREAS, such petition was referred to the Plan Commission of the Village of Downers Grove on September 8, 2008, and said Plan Commission has given the required public notice, has conducted a public hearing respecting said petition and has made its findings and recommendations, all in accordance with the statutes of the State of Illinois and the ordinances of the Village of Downers Grove; and,

WHEREAS, the Plan Commission has recommended approval of the two requested Special Uses, subject to certain conditions; and,

WHEREAS, the Village Council finds that the evidence presented in support of said petition, as stated in the aforesaid findings and recommendations of the Plan Commission, is such as to establish the following:

1. The proposed use at that particular location requested is necessary or desirable to provide a service or a facility which is in the interest of public convenience and will contribute to the general welfare of the neighborhood or community.
2. The proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, or general welfare of persons residing or working in the vicinity or injurious to property values or improvements in the vicinity.
3. The proposed use will comply with the regulations specified in this Zoning Ordinance for the district in which the proposed use is to be located.
4. The proposed use is one of the special uses specifically listed for the district in which it is to be located and, if approved with restrictions as set forth in this ordinance, will comply with the

provisions of the Downers Grove Zoning Ordinance regulating this Special Use.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, in DuPage County, Illinois, as follows:

SECTION 1. That Special Use of the Property is hereby granted to permit a convenience store with drive-through and that Special Use of the Property is hereby granted to permit a car wash.

SECTION 2. This approval is subject to the following conditions:

1. The Phase 1 Special Uses shall substantially conform to the site and building drawings submitted by Nick Scarlatis & Associates, Ltd. dated August 1, 2008, except as such plans may be modified to conform to Village Codes and Ordinances.
2. The applicant shall 1) submit Phase 2 comprehensive redevelopment plans for this site to the Village of Downers Grove within one (1) year from the date of the passage of this Special Use Ordinance; and, 2) shall receive approval for Phase 2 within two (2) years of the passage of this Special Use Ordinance. The Village shall not be bound to approve the Phase 2 redevelopment plans; however, the Village shall cause the plans to be reviewed promptly in accordance with the procedures and standards set forth in Section 28.1900 of the Downers Grove Zoning Ordinance.
3. The proposed redevelopment plans shall meet the standards of the Zoning Ordinance and Ogden Avenue Master Plan.
4. If Phase 2 comprehensive redevelopment plans are not approved within two (2) years of the passage of this Special Use Ordinance, this Special Use Ordinance shall become null and void, and the petitioner shall:
 - a. Close the westernmost Ogden Avenue curb cut per IDOT standards.
 - b. Close the northernmost Belmont Road curb cut per IDOT standards.
 - c. Close the alley access per Village standards.
 - d. Convert all the closed access points to green space to meet the Village's green space requirements.
5. Prior to the issuance of building permits for the drive-through and car wash, the petitioner shall submit to the Village an engineer's cost estimate detailing the costs associated with items 4a through 4d above. Additionally, the petitioner shall submit to the Village a monetary security in an amount equal to the cost of these improvements. The security shall grant the Village the right to make the aforementioned improvements to the property in the event the petitioner is unable to complete the required improvements.
6. All proposed signs shall comply with the Village's Sign Ordinance.
7. The existing stormwater detention basin shall be cleared of debris and the overgrowth shall be cut back so that the detention pond is fully functional, and the entire detention volume is accessible.
8. The existing mini-mart building shall be equipped with a NFPA 72 fire alarm system installed by an U.L. Certified Fire Alarm contractor.
9. Abandoned equipment associated with the previous tenant shall be removed from the site.

SECTION 3. The above conditions are hereby made part of the terms under which the Special Use for a convenience store with drive-through and Special Use for a car wash are granted. Violation of any or all of such conditions shall be deemed a violation of the Village of Downers Grove Zoning Ordinance, the penalty for which may include, but is not limited to, a fine and or revocation of the two Special Uses granted herein.

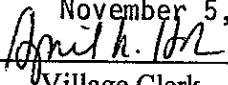
SECTION 4. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.



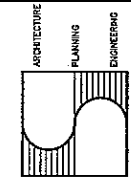
Mayor

Passed: November 4, 2008

Published: November 5, 2008

Attest: 

Village Clerk



NICK SCARLATIS & ASSOCIATES, LTD.
 8405 West 127th Street
 Crestwood, Illinois 60445
 (708) 452-5500
 Fax: 708.653.1302

NOTES:

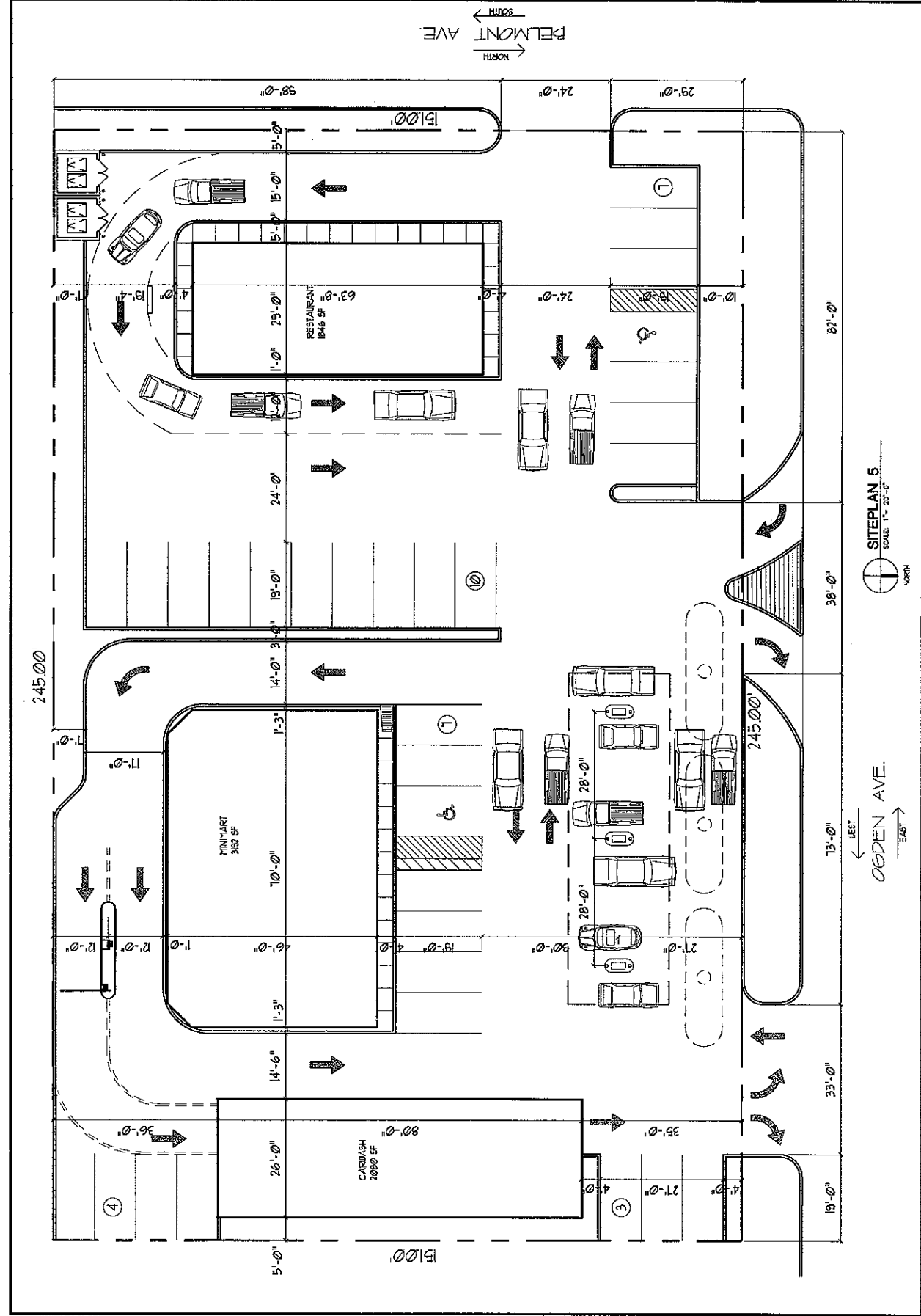
NO.	DATE	DESCRIPTION

**PROPOSED
POWERMART
DEVELOPMENT**

SW CORNER OF OGDEN +
BELMONT AVE.
DOWNERS GROVE, IL

SITE PLAN 5

Scale: AS SHOWN
 Drawn: PK
 Project No. 2007169
 Sheet Number: 1



SITEPLAN 5
 SCALE 1" = 20' 0"
 NORTH

← WEST
OGDEN AVE.
 → EAST

VILLAGE OF DOWNERS GROVE
PLAN COMMISSION MEETING
PUBLIC HEARING

JANUARY 4, 2010, 7:00 P.M.

Chairman Jirik called the January 4, 2010 meeting of the Plan Commission to order at 7:00 p.m. and asked for a roll call:

PRESENT: Chairman Jirik, Mr. Beggs, Mrs. Hamernick, Mr. Matejczyk, Mr. Quirk, Mrs. Rabatah, Mr. Waechtler, Mr. Webster

ABSENT: Mr. Cozzo

STAFF PRESENT: Village Planning Manager Jeff O'Brien and Village Planner Stan Popovich

VISITORS: Mr. Luke Casson, Kensington Consultants, 204 Industrial Drive, Lockport, IL;
Mr. Greg Bedalov, Economic Development Corporation, 2101 Butterfield Road, Downers Grove, IL

Chairman Jirik led the Plan Commissioners in the recital of the Pledge of Allegiance.

DECEMBER 7, 2009 MEETING MINUTES - MR. MATEJCZYK MADE A MOTION TO APPROVE THE MINUTES AS PREPARED, SECONDED BY MR. QUIRK. MOTION CARRIED BY VOICE VOTE OF 8-0.

An explanation of the meeting's protocol followed.

Due to the petitioner not being present at the time, Planning Manager, Jeff O'Brien reviewed the upcoming schedule of cases that would be brought before the commission during the February meeting, i.e., the continuance of the mobile communications tower matter, a rezoning matter, and a physical therapy/boutique gym matter.

MR. BEGGS MADE A MOTION THAT THE PLAN COMMISSION TAKE A 15 MINUTE RECESS. MOTION WAS SECONDED BY MR. MATEJCZYK. MOTION CARRIED.

(Commissioners took a 15 minutes recess; commissioners then resumed their meeting.)

PC-28-09 A petition seeking a Special Use amendment to extend the timeframe for the Phase 2 comprehensive redevelopment plans, at the southeast corner of Ogden Avenue and Belmont Road, commonly known as 2125 Ogden Avenue, Downers Grove, IL (PIN 08-01-405-042); Luke A. Casson, Kensington Consultants, Petitioner; Powermart - Downers Grove, Owner

Village Planner, Mr. Stan Popovich, reported that the petitioner is seeking a special use amendment to extend the timeframe for the Phase 2 comprehensive redevelopment plans for 2125 Ogden Avenue. A history of the project followed. Per staff, the petitioner presented a two-phase project to the commissioners in 2008. Mr. Popovich reviewed Phase 1 and Phase 2 on the overhead. He

called attention to the fact that in Phase 1 Special Use ordinance there was a condition that the petitioner submit Phase 2 redevelopment plans within one year of passage of the ordinance, i.e., November 3, 2009, and then work to have Phase 2 approved by the Village Council two years from the passage of the ordinance, i.e., November 4, 2010.

To date, he reported the petitioner did not meet the condition, which was a violation of the ordinance. Staff sent out notifications to the petitioner in June and September 2009 to remind them of this deadline. The Village send a notice of violation to the PowerMart on November 12, 2009 that offered remedies to the petitioner. The first remedy included an amendment to the special use to extend the timeframe, while the second included that the petitioner submit Phase 2 plans.

As a result, the petitioner submitted an application to amend the special use, but provided the Village with no specific background information as to why additional time is necessary. Therefore, based on staff's understanding that there is no evidence supporting the extension of the timeframe for Phase 2 of the project, Mr. Popovich recommended that the commissioners forward a recommendation to the Village Council to revoke the two special uses which permit the car wash and drive-through as they currently exist, with the conditions listed on page 3 of staff's report. Should the commission feel more time was warranted, Mr. Popovich recommended that a short-term extension be considered which would allow Phase 2 comprehensive development plans to be submitted on or before July 1, 2010 with no extension to the requirement for Council approval.

Per a question, Mr. Popovich explained how the July 1st date was determined, explaining it was done as a courtesy letter to the upcoming November deadline. He further explained the steps the Village takes should the commission not grant the extension, i.e., the special uses are revoked and the site continues to operate as B-3 zoning. The drive-through and the car wash could not be used but the existing offices could. He noted the July 1 date was chosen as it was the shortest, most reasonable time needed to prepare plans and come in front of the Plan Commission. Mr. Popovich noted the July 1st deadline would also keep the petitioner on track for the original approval deadline (November 4, 2010).

As to the staff recommendation, Mr. Waechtler noted some of the conditions that were to occur by August 1, 2010, such as the closing of certain curb cuts and access points, to which Mr. Popovich pointed out that those activities were part of the original ordinance and followed the Ogden Avenue Master Plan. Additionally, Mr. Waechtler noted that if the petitioner were to remain without the special uses, the conditions would still have to be completed by the petitioner. Staff concurred.

Regarding staff's alternative recommendation, wherein if the commission felt an extension were appropriate, Chairman Jirik confirmed with Mr. Popovich, that it is possible for the petitioner to receive Council approval by November 2010 but that the current state of operations could remain through November 2, 2011 if no construction had yet started. Should the petitioner's current scenario remain after Phase 2 were approved, Mr. Popovich explained that the petitioner's special use would expire on November 2, 2011 if construction were not pursued and no revocation would take place. However, if the petitioner wanted to pursue the Phase 2 plans after the Special Use expired, he would have to return to the commission for approval. Furthermore, he explained closing the curb cuts and access points that are to take place under Phase 2 are actions spelled out in the original ordinance. If the petitioner does not close the curb cuts, the Village has a security provided by the petitioner to complete the necessary work. Mr. O'Brien further added that staff wanted certain guaranties before Phase 2 would take place. However, if the petitioner made no

improvements to the site within the required one-year period, certain guaranties were to take place so that certain curb cut improvements were made to the site.

Per Mr. Matejczyk's question, Mr. O'Brien could not recall whether the curb cuts would affect any future petitioner request, should the extension not be granted by the commission. However, Mr. Popovich recalled conversation with engineering staff stating that the curb cut on Belmont Avenue (proposed in the Phase 2) would not work due to its proximity to the intersection and that the two Ogden Avenue curb cuts would have to be approved by IDOT. Some design changes would also have to take place on the Phase 2 plan. Should the plan move forward, Mr. Popovich reminded the commissioners that the security would not be used and would be held by the village until the petitioner met the requirements for the Ogden Avenue Master Plan. Once the requirements were met, the security would be returned.

Dialog followed regarding the four conditions to be satisfied or that another plan be submitted by the petitioner. If the site remained as present, the chairman queried staff on how important it was for staff to have the petitioner meet the items listed under Number 2 (page 3). Mr. O'Brien indicated the Plan Commission could alter staff's recommendation, but staff believes the conditions relating to Ogden Avenue curb cuts and green space are crucial to bringing the site into compliance with the corridor's master plan. The chairman inquired whether there was a way to shorten the deadline so that the proposal was not before this commission again in two years. Mr. O'Brien recommended not shortening the original two-year timeframe because the ordinance was adopted and some of the provisions were based on approval in two years. However, revisions could be made to amend the date to break ground.

Should the commission feel an extension was necessary, Mr. O'Brien explained the commission would be recommending to the Council to extend the time period to submit plans, and, if it chose, it could also extend the time period for the petitioner to meet the requirements for the Ogden Avenue Master Plan.

On behalf of the owner, petitioner Mr. Luke Casson, with Kensington Consultants, 204 Industrial Drive, Lockport, Illinois reminded the commissioners that this process was done previously and one of the main requirements for the proposal was to receive approval by the IEPA, Exxon Mobil, and Powermart. He stated the delay was the final approval from the IEPA and additional time was being requested by Exxon Mobil to monitor the wells on the site. Mr. Casson envisioned the last well reading would take place after the first spring thaw and he did not believe any further remediation on the site would be necessary. He stated that, to date, no remediation had been required. Mr. Casson stated he could not commit to the extent of the redevelopment other than to say that there was a plan for the property and when the IEPA signed off on the site, he could provide more detailed plans, and, if feasible, the plans would be for a larger development.

Mr. Casson added that he had no issues with staff's recommendation to have plan submittals by July 2010. There were some concerns about the curb-cuts, however. As to the security, he agreed that improvements will have to take place during the construction season (end of May through end of August). Mr. Casson confirmed with the chairman that the delay was caused by the process moving slower than expected. He did not anticipate any financing issues to date. Per Mr. Waechtler's question, Mr. Casson reviewed the Powermart site he just completed in Elmhurst, Illinois and Palos, Illinois.

Mr. Waechtler expressed concern that there was no representative from PowerMart present. Mr. Beggs queried Mr. Casson on when he responded to the notifications sent by village staff, wherein Mr. Casson stated he submitted a request to extend the current use on November 3, 2009 and included the fee, the site plan, and a site plan narrative. Mr. Casson's understanding from the Village was that he did not comply with the ordinance and he did not submit site plans for Phase 2 because he did not receive a final sign-off from the IEPA.

Current operations on the site were explained for Mrs. Hamernick. She voiced concern that the petitioner did not provide the village information regarding the IEPA testing, which would have made a difference. Mr. Casson stated it was a business issue and it was not a required piece of information. Per Ms. Hamernick's question, Mr. Casson did not envision leaving the site operating in its current state. He discussed the improvements made to the site already and agreed the site, as it currently sits, was not being used as its highest and best use.

Fielding more questions, Mr. Casson pointed out the location of the corporate office to be located on the site and briefly clarified the bank's current financing requirements for the project.

Per questions about communication between the village and the petitioner regarding the deadline, Mr. O'Brien stated he received an email from the petitioner on November 3, 2009 requesting an extension. He stated the applicant noted the delay in the project was due to the IEPA's extended review. Mr. O'Brien indicated he informed the petitioner that the Plan Commission would need that information. Mr. O'Brien stated the Village has not received any information as to the environmental conditions on the property or the remediation that was to take place. He indicated tonight was the first time he had heard about the reports in more detail.

Chairman Jirik reviewed the scenario that would probably follow from the IEPA, due to his own experience with the IEPA and emphasized that the commission preferred to see documentation from the petitioner to confirm the facts being presented. Mr. Casson offered to obtain that information; however, he stated, "it was Exxon Mobil's plan".

Mr. Waechtler recommended postponing the petition until more information was received by the petitioner. Mr. Casson was fine with the postponement.

Chairman Jirik stated that if a hardship truly existed with the environmental situation and the petitioner could not receive financing due to a contaminated site, he supported staff's Option 2. However, if there was no hardship, the chairman supported staff's Option 1.

Ms. Rabatah queried Mr. Casson on recent communications and documentation from the IEPA and Exxon Mobil. Mr. Casson stated he could not turn over Exxon's documentation without their approval. The chairman stated the commission would probably like to see the Executive Summary and the IEPA's response to the report.

All of the commissioners agreed that more information was needed from the petitioner.

Chairman Jirik opened up the meeting to public participation. No public participation occurred. Public Participation was closed.

Chairman Jirik proceeded to briefly explained the protocol for the next hearing on this case and what information/documentation the commission was seeking from the petitioner for its extension. This documentation would be crucial evidence for the request for additional time. He noted that the petition should include documentation of the IEPA remediation issues that were the cause of the timing issue, correspondence between parties, or something that clearly documents a hardship beyond the control of the petitioner. Mr. Waechtler suggested that a PowerMart representative be present at the next meeting. Mr. O'Brien noted that staff would need the petitioner to submit materials two weeks from tonight's date for staff to complete a review, prepare the staff report and submit the report to the Commissioners.

WITH RESPECT TO FILE PC-28-09, MR. BEGGS MADE A MOTION TO CONTINUE THE HEARING TO A DATE CERTAIN, THAT DATE BEING FEBRUARY 1, 2010. SECONDED BY MR. MATEJCZYK.

ROLL CALL:

**AYE: MR. BEGGS, MR. MATEJCZYK, MRS. HAMERNICK, MR. QUIRK,
MRS. RABATAH, MR. WAECHTLER, MR. WEBSTER, CHAIRMAN JIRIK**

NAY: NONE

MOTION CARRIED. VOTE: 8-0

MRS. HAMERNICK MOVED TO ADJOURN THE MEETING. MRS. RABATAH SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

THE MEETING WAS ADJOURNED AT 8:30 P.M.

/s/ Celeste K. Weilandt
Celeste K. Weilandt
(As transcribed by MP-3 audio)

DRAFT

PC-28-09 (Continued from 1-04-10) A petition seeking a Special Use amendment to extend the timeframe for the Phase 2 comprehensive redevelopment plans, for the property located at the southeast corner of Ogden Avenue and Belmont Road, commonly known as 2125 Ogden Avenue, Downers Grove, IL (PIN 08-01-405-042); Luke A. Casson, Kensington Consultants Petitioner; Powermart – Downers Grove, Owner

Chairman Jirik noted this matter was continued and the public had previously been allowed to speak. However, the matter was continued in order for the petitioner to provide supplemental information regarding the hardship posed by the clean up of the site. The chairman referenced the material received on the matter as well as staff amended recommendation. The chairman suggested opening up the matter to discuss the new information only.

Mr. Popovich, again, reminded the commissioners that the matter was continued from January 4, 2010 and that the petitioner was to provide documentation as to why there was a delay from the Illinois Environmental Protection Agency (“IEPA”) regarding site remediation. Staff reported the petitioner provided a narrative letter outlining the remediation process. The petitioner also provided correspondence from the IEPA and other supporting documentation. The petitioner did outline a request to extend the requirement for submittal of Phase II Comprehensive Redevelopment Plans to July 15, 2010. The petitioner also requested Village Council approval of Phase II be extended to January 2011 which would require the petitioner to begin construction no later than January 2012 based on the special use standards in the zoning ordinance.

Based on the IEPA mandated recommendation and petitioner’s submitted materials, staff felt there was an allowance for the Phase II comprehensive redevelopment plans submittal, that date being July 15, 2010. However, Mr. Popovich explained that staff felt the extension for council approval was not necessary and that staff could maintain the November 3, 2010 council approval date. Staff recommended that the Plan Commission forward a positive recommendation to the Village Council to amend the ordinance as shown on page 2 of staff’s February 1, 2009 memorandum.

No questions followed from the commissioners. The chairman felt staff’s recommendation was appropriate, given the cleanup, because it showed good intent by the petitioner and the plan to develop was moving forward, along with the clean-up, should one be necessary. Per a question, staff explained that the 75% to 80% submittal of drawings was normal and that sometimes minor modifications are made. However, final approval would be required the next time the proposal came forward. Staff offered to bring forward color renderings and signage of the proposal, per Mr. Waechtler’s questions.

Petitioner, Mr. Luke Casson with Kensington Consultants, 204 Industrial Drive, Lockport, Illinois, discussed the packet and its summary and stated he was in substantial agreement with staff’s recommendation regarding the dates for architectural plans in July 2010. Regarding the July, 2010 extension date, he stated he returned to Exxon Mobil and the IEPA and requested them to “tighten” up their schedules, which they agreed to, possibly before the November 2010 election. Mr. Casson was pleased with the remediation taking place already and was hoping to move up the scheduled end date for the project by a month or two. He hoped to submit the final remediation plan by the end of the third quarter or November 3, 2010, at the latest, and be ready to receive an No Further Remediation letter. Mr. Casson stated he had no objections to the November 3rd date, and was pleased to comply with staff’s report.

DRAFT

No questions to the petitioner.

Chairman Jirik opened up the matter to public comment. No comments received. Public comment was closed by the chairman.

Mr. Casson made no closing comment. Mr. Waechtler questioned some tanks located on Exhibit "E" to the left of the site. Mr. Casson stated they were tanks that were removed.

WITH RESPECT TO PC 28-09, MR. BEGGS MADE A MOTION THAT THE PLAN COMMISSION FORWARD A POSITIVE RECOMMENDATION TO THE VILLAGE COUNCIL SUBJECT TO STAFF'S RECOMMENDATION ON PAGE 2 OF ITS REPORT.

SECONDED BY MR. COZZO.

**AYE: MR. BEGGS, MR. COZZO, MRS. HAMERNICK, MR. MATEJCZYK,
MRS. RABATAH, MR. WAECHTLER, MR. WEBSTER, CHAIRMAN JIRIK.**

NAY: NONE

MOTION CARRIED. VOTE: 8-0