

**WHITE LAKE TOWNSHIP
INTER-OFFICE MEMORANDUM
COMMUNITY DEVELOPMENT DEPARTMENT**

DATE: October 7, 2024

TO: Rik Kowall, Supervisor
Township Board of Trustees

FROM: Sean O'Neil, AICP
Community Development Director

**SUBJECT: Culver's
Planned development agreement approval**
The property is described as parcel number 12-20-276-035, located on the north side of Highland Road (M-59) and west of Bogie Lake Road, with a project area on the parcel consisting of approximately 1.69 acres, currently zoned (PB) Planned Business District.

The above request is now ready for Township Board Consideration. The Planning Commission considered the matter at their regular meeting on October 3, 2024, when the **Planning Commission recommended approval** of the planned development agreement. The request is now ready to be considered by the Township Board.

Please find enclosed the following related documents:

- Draft minutes from the Planning Commission meeting held on October 3, 2024.
- Planned development agreement prepared by Lisa Hamameh, Township Attorney.

Please place this matter on the next available Township Board agenda. Do not hesitate to contact me should you require additional information.

**WHITE LAKE TOWNSHIP
PLANNING COMMISSION
OCTOBER 3, 2024**

CALL TO ORDER

Chairperson Seward called the meeting to order at 6:30 P.M. He then led the Pledge of Allegiance.

ROLL CALL

Present:

T. Joseph Seward, Chairperson
Merrie Carlock, Vice Chairperson
Mona Sevic
Pete Meagher
Matt Slicker
Steve Anderson

Absent:

Debby Dehart
Robert Seeley
Scott Ruggles, Township Board Liaison

Others:

Sean O'Neil, Community Development Director
Lisa Hamameh, Township Attorney
Michael Leuffgen, DLZ
Hannah Kennedy-Galley, Recording Secretary

APPROVAL OF AGENDA

MOTION by Commissioner Carlock, seconded by Commissioner Meagher to approve the agenda as presented. The motion carried with a voice vote: (6 yes votes).

APPROVAL OF MINUTES

A. September 5, 2024

MOTION by Commissioner Anderson, seconded by Commissioner Sevic to approve the minutes as presented. The motion carried with a voice vote: (6 yes votes).

CALL TO THE PUBLIC (FOR ITEMS NOT ON THE AGENDA)

Evan Whipple, 6450 Teluride, wanted to know when Elizabeth Lake Road would open. Director O'Neil said the road should be open by November.

PUBLIC HEARING

None.

CONTINUING BUSINESS

None.

NEW BUSINESS

A. Culver's

Property described as parcel number 12-20-276-035, located on the north side of Highland Road (M-59) and west of Bogie Lake Road, with a project area on the parcel consisting of approximately 1.69 acres, currently zoned (PB) Planned Business District.

Request: 1) **Final site plan approval**

2) **PDA approval recommendation**

Applicant: Katie Schmitt

Director O'Neil gave a brief review of the applicant's request. He noted that the Township Attorney, Ms. Hamameh, will draft the planned development agreements going forward. The site is shovel-ready, and staff is comfortable approving the site plan subject to the remaining outstanding comments being addressed.

Mr. Leuffgen summarized his review letter. His ultimate recommendation is approval of the final site plan contingent on the few remaining items being addressed. An on-site stormwater maintenance management agreement and easement will be requested by the Township.

Commissioner Meagher asked Mr. Leuffgen about the remaining outstanding comments. Mr. Leuffgen said a response letter from the applicant helps streamline the review, and the outstanding comments are minor.

Director O'Neil said building material samples were available this evening.

Raymond Embach, AMAG, architect, said the exterior building samples were brick, thin stone, and efface paint samples. He wanted to request a change to the building materials from thin brick to hardy board siding due to the costly price of the thin brick. He said the hardy board would be an equal exchange for the thin brick in terms of quality.

Commissioner Anderson asked if other Culver's that have the hardy board siding. Mr. Embach said the restaurants in Waterford and Fenton have the hardy board siding.

Commissioner Anderson expressed his desire to keep the brick over the hardy board. He said the Planning Commission valued the cost-saving effort, but the request was last minute.

Director O'Neil suggested mixing and matching materials so the brick would be front-facing, and the hardy board would be out of plain sight.

Commissioner Slicker added that the west and north sides of the building probably weren't visible.

Commissioner Seward was in favor of the brick, as was Commissioner Carlock.

Commissioner Anderson asked Director O'Neil about the signage. Director O'Neil said the proposed signage was compliant and would be included in the PDA's exhibit B. Meijer would not allow a monument sign.

Attorney Hamameh briefly went over the development agreement. She wanted to confirm a record of the community impact statement being waived. Commissioner Anderson said he remembered a discussion regarding a \$10,000.00 contribution toward the Corridor Improvement Authority instead of a sidewalk as a community benefit.

Director O'Neil added that the CIA plan includes sidewalk connection projects, and the funds could go toward a more meaningful pathway connection.

Bob Hoffman, 2521 Rose Center Road, said the hardy siding will look traditional and match more with Meijer's architecture.

MOTION by Commissioner Anderson, seconded by Commissioner Carlock, to approve the final site plan for Culver's, identified as parcel number 12-20-276-035, subject to addressing staff and consultant comments, and for the exterior thin brick to remain as shown in the plan.

(Slicker/yes, Sevic/yes, Anderson/yes, Seward/yes, Carlock/yes, Meagher/yes).

MOTION by Commissioner Meagher, seconded by Commissioner Anderson, to recommend the Township Board approve Culver's planned development agreement as amended based on the discussion this evening. The motion carried with a voice vote: (6 yes votes).

OTHER BUSINESS

None.

LIAISON'S REPORT

Commissioner Carlock stated Trunk or Treat is October 19, 2024, at Fisk Farm from 6-8 P.M. October 6, 2024, is the Harvest Happenings at Hess Hathaway Park in Waterford. The Phase 1 work at Stanley Park will be re-bid due to the contractor failing to perform.

PLANNING CONSULTANT'S REPORT

None.

DIRECTOR'S REPORT

There has been no activity from Panera or Black Rock. A site plan for River Caddis is under review. The property at the corner of Elizabeth Lake Road and M-59 will be applying for a rezoning request soon.

There is site work underway at the Civic Center property. The Township Board accepted the Capital Improvement Plan.

COMMUNICATIONS

None.

NEXT MEETING DATE: October 17, 2024

ADJOURNMENT

MOTION by Commissioner Anderson, seconded by Commissioner Carlock, to adjourn at 7:22 P.M. The motion carried with a voice vote: (6 yes votes).

DRAFT

PLANNED BUSINESS DEVELOPMENT AGREEMENT
CULVER'S

THIS PLANNED BUSINESS DEVELOPMENT AGREEMENT (the "Agreement"), dated _____, 2024, is made and entered into by and between the **CHARTER TOWNSHIP OF WHITE LAKE**, a Michigan municipal corporation, having the address of 7525 Highland Road, White Lake, Michigan 48383, hereinafter referred to as and called the "Township", and **BLUEPOINT MANAGEMENT, LLC**, a Michigan limited liability company, whose address is 7734 Somerhill Lane, Clarkston, Michigan 48348 ("Culver's").

RECITALS:

A. Culver's is the fee owner of the real property in White Lake Township, Michigan, which is more particularly described on **Exhibit A**, attached hereto and made a part hereof (hereinafter referred to as the "Property").

B. The Property is zoned PB, Planned Business District, and is currently master planned Commercial Corridor and is located within the White Lake Township Corridor Improvement Authority District.

C. This Planned Business Development consists of 1.69 acres of real property as described on Exhibit A. The Property is a vacant outlot located north of M-59, west of Bogie Lake Road, and southeast of Meijer.

D. Culver's has applied to the Township to develop the Property as a 4,085 sq. ft restaurant, including an outdoor seating area and a drive-through, using the Planned Business Development (PBD) process under the Township's Zoning Ordinance (the "Development").

E. The Planning Commission recommended approval with conditions of the Preliminary Site Plan dated March 18, 2024 at its May 2, 2024 Planning Commission Meeting, after having held a public hearing on that date.

F. On May 21, 2024, the Township Board considered and approved the Preliminary Site Plan dated March 18, 2024.

G. A revised Site Plan, dated September 5, 2024, was submitted consistent with Planning Commission's recommendation and Township Board's approval, which is attached hereto as **Exhibit B** and referred to as the "PBD Plan." All references in this Agreement to the PBD Plan shall be deemed to refer to the revised Site Plan attached hereto as **Exhibit B**.

H. The Township considered and relied upon the representations by Culver's of certain public benefits of the Culver's PBD, which benefits were summarized in Culver's Written Statement dated March 18, 2024.

I. Culver's has represented to the Township its objective to be achieved by the Development is to provide a desired service to the community at a convenient location.

J. Culver's has represented to the Township that it has no intention to sell or lease the Development (except for a related-party lease that may be entered into between Culver's and an affiliate that will operate the business on the Property).

K. The Township desires to ensure that the real property that is depicted on the PBD Plan is developed in accordance with, and used for the purposes permitted by the approved PBD Plan, the related documents and undertakings of Culver's, and all applicable laws, ordinances, regulations, and standards; and Culver's desires to proceed with obtaining engineering division approval of the proposed site plan and the issuance of permits required to develop the Property in accordance with the approved PBD Plan.

NOW, THEREFORE, it is hereby agreed as follows:

1. The Township has granted its approval of the PBD Plan and this Agreement under the Planned Development Approval Process of Section 6.7 of the Township's Zoning Ordinance, which approval is subject to the terms and conditions of this Agreement. The parties agree and acknowledge that the Property shall be developed only in accordance with:

- a. all applicable provisions of the White Lake Township Code of Ordinances, including (without limitation) Section 6.7 of the Zoning Ordinance relating to Planned Developments;
- b. the PBD Plan, as such PBD Plan was approved by the Planning Commission on , October 3, 2024, which PBD Plan shall also constitute the approved final site plan, landscape and tree preservation plan for the Development, because Culver's chose to submit the PBD Plan in sufficient detail so as to allow the PBD Plan to act as the final site plan, landscape plan and tree preservation plan for the Development;
- c. engineering construction plan review and approval by the Township's Engineering Consultant, which plans shall be submitted by Culver's in accordance with all applicable laws, ordinances, regulations and standards; and
- d. this Agreement.

The items listed in 1.a. through d. above are referred to in this Agreement as the "PBD Documents."

2. The permitted use of the Property shall be those permitted in the PB, Planned Business District.

3. The Township's approval of the PBD Documents, and the use of the Property and any development thereof, are subject to compliance with this Agreement and the following conditions:

- a. Submission by Culver's of engineering construction plans and approval by the Township's Engineering Consultant. Such plans shall comply with all applicable ordinances, standards, rules, regulations, and requirements of the Township as determined by the Engineering Consultant, including without limitation its comments in the September 24, 2024 correspondence to the Community Development Director relating to the PBD Plan.
- b. The requirements of the Township as determined by the Planning Consultant, including without limitation its comments in the September 19, 2024 letter report issued by Mr. Matteo Passalacqua, of Carlisle Wortman Associates, Inc., the Township's Planning Consultant, relating to the PBD Plan.
- c. Conditions imposed on the Development by the Planning Commission during site plan review, including the hours of operation for the outdoor seating area (limited to 10:00 a.m. to 11:00 p.m.), conditions recommended by the Township's Planning Consultant and Engineer and any other staff, and any other reasonable conditions, which may be subsequently imposed on the site plan, landscape plan, and engineering plans that are not contrary to this Agreement and the approved PBD Plan.
- d. All improvements shown on the PBD Plan and PBD Documents completed at Culver's sole cost and expense, in accordance with applicable ordinances, rules, standards and regulations.
- e. The only deviations from otherwise applicable Township ordinances ~~that shall be permitted are those deviations described below:~~ is a partial waiver of Section 6.7.C.i, which requires the sidewalk be extended along the entire Bogie Lake Road frontage. A _____ portion of the sidewalk extension along the Bogie Lake Road frontage, as depicted on the PBD Plan, is not required due to its significant grade change in that area.
- f. Culver's shall ensure that the proposed use on the Property shall not exceed the performance criteria found in the Township's Zoning Ordinance, Section 4.47.
- g. Prior to commencement of construction of the Development, Culver's will contribute the sum of \$10,000.00 to the Corridor Improvement Authority (CIA) to benefit its Development, which is located within the CIA District, and the community. The contribution is provided to the CIA in lieu of the sidewalk extension as described in Section 3.e., above. The CIA plan includes sidewalk and pathway construction.
- h. Architectural style, elevation features and materials must be consistent with Culver's representations to the Planning Commission at its Planning Commission Meeting on _____, October 3, 2024, and in accordance with the PBD Plan.

- i. The proposed development schedule for the development of the Property is attached as **Exhibit C**, which may be modified by Culver's as necessary or appropriate, with the Township's consent.
- j. The Traffic Impact Study was waived by the Community Development Director, in accordance with Section 6.3 of the Zoning Ordinance.
- k. ~~[unless waived]—The Community Impact Study Statement was waived by the Planning Commission at its October 3, 2024 meeting prepared by _____, dated _____, is incorporated by reference into this Agreement. Culver's acknowledges the reliance by the Township on this study in the approval of the PBD Plan.~~

4. The Zoning Board of Appeals shall have no jurisdiction over the Property or the application of this Agreement.

5. Except for deviations specifically approved by the Township under this Agreement, if any, and the approved PBD Plan, the Township Code of Ordinances, Zoning Ordinance and all applicable regulations of the Township shall apply to the Property, and any violation of such Codes, Ordinances and regulations by Culver's, its successors or assigns, or occupant of the Property shall be deemed a breach of this Agreement, as well as a violation of the Township Code or Ordinance.

6. (a) Any breach of this Agreement shall constitute a nuisance *per se* which shall be abated. The parties therefore agree that, in the event of a breach of this Agreement by Culver's, which is not cured in accordance with this Agreement, the Township, in addition to any other relief to which it may be entitled at law or in equity, shall be entitled under this Agreement to an order of a court of competent jurisdiction providing for relief in the form of injunctive relief or specific performance requiring abatement of the nuisance *per se*.

(b) In the event of a breach of this Agreement, the Township may notify Culver's of the occurrence of the breach and issue a written notice requiring the breach be cured within thirty (30) days; provided, however, that if the breach, by its nature, cannot be cured within thirty (30) days, Culver's shall not be in the breach hereunder if Culver's commences the cure within the thirty (30) day period and diligently pursues the cure to completion. Failure to comply with such notice shall, in addition to the remedy provided in subsection (c) below and any other relief to which the Township may be entitled in equity or at law, render Culver's liable to the Township in any suit for enforcement for actual costs incurred by the Township including, but not limited to, reasonable attorneys' fees, expert witness fees and the like.

(c) In addition to the above described remedies, in the event the breach is due to a failure to maintain the Property in a first class condition, using commercially reasonable standards consistent with the PBD plan and this Agreement, and the Township provided the notice described in subsection (b), above, which notice sets forth the date, time and place of a hearing before the Township Board for the purpose of allowing Culver's to be heard as to why the Township should not proceed to perform the maintenance which has not been undertaken. In that hearing, the time for curing such deficiencies and the hearing itself may be extended. If, following the hearing,

the Township Board shall determine that the deficiency has not been cured within the time specified at the hearing, then upon five (5) days written notice to Culver's, the Township shall thereupon have the power and authority, but not the obligation, to enter upon the Property or cause its agents or contractors to enter upon the Property to cure such deficiency as reasonably found by the Township to be appropriate and/or necessary, in a manner so as to reasonably minimize any interference with the business operations on the Property and the cost and expense of such curative action, including the cost of notices by the Township and reasonable legal, planning, and engineering fees and costs incurred by the Township, shall be paid by Culver's. Such amount shall constitute a lien on the Property and the Township may require such costs and expenses to be paid prior to the commencement of work. If such costs and expenses have not been paid within sixty (60) days of a billing to Culver's, all unpaid amounts may be a) placed on a delinquent tax roll of the Township as to the Property and shall accrue interest and penalties and shall be collected as and shall be deemed delinquent real property taxes according to the laws made and provided for the collection of delinquent real property taxes in the discretion of the Township; or b) assessed against Culver's and collected as a special assessment on the next annual Township tax roll; or c) collected by use of the applicable provisions of Michigan law providing for foreclosure by advertisement, Culver's having specifically granted the Township the required power of sale to do so; or d) collected by suit against the Owner. If suit is initiated, the Owner shall pay all the Township's legal fees and costs. The selection of remedy shall be at the sole option of the Township, and election of one remedy shall not waive the use of any other remedy

7. This Agreement may not be amended except in writing signed by the parties and recorded in the same manner as this Agreement.

8. The parties understand and agree that if any part, term, or provision of this Agreement is held by a court of competent jurisdiction, and as a final enforceable judgment, to be illegal or in conflict with any law of the State of Michigan or the United States, the validity of the remaining portions or provisions of this Agreement shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provisions held to be invalid.

9. This Agreement shall be governed by the laws of the State of Michigan, both as to interpretation and performance. In the event of any litigation relating to this Agreement or the PBD, the parties consent to the venue in and to the exclusive jurisdiction of the courts of and in the State of Michigan, including the federal courts.

10. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. A delay in enforcement of any provision of this Agreement shall not be construed as a waiver or estoppel of the Township's right to eventually enforce, or take action to enforce, the terms of this Agreement. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, all remedies afforded in this Agreement are in addition to every other remedy provided by law.

11. The signers of this Agreement warrant and represent that they have the authority to sign this Agreement on behalf of their respective principals and the authority to bind each party to this Agreement according to its terms. Further, each of the parties represent that the execution of this Agreement has been duly authorized and is binding on such parties.

12. This Agreement shall run with the land described herein as the Property and bind the parties, their heirs, successors, and assigns. This Agreement shall be recorded in the Oakland County Register of Deeds by the Township. The parties acknowledge that the Property is subject to changes in ownership and/or control at any time, but that heirs, successors, and assigns shall take their interest subject to the terms of this Agreement. All references to "Culver's" in this Agreement shall also include its heirs, successors, and assigns.

13. (a) Culver's has negotiated with the Township the terms of the PBD Documents, including this Agreement, and such documentation represents the product of the joint efforts and mutual agreements of Culver's and the Township.

(b) The parties agree that this Agreement and its terms, conditions, and requirements are lawful and consistent with the intent and provisions of local ordinances, state and federal law, and the Constitutions of the State of Michigan and the United States of America. Culver's has offered and agreed to proceed with the undertakings and obligations as set forth in this Agreement in order to protect the public health, safety, and welfare and provide material advantages and development options for Culver's, all of which undertakings and obligations the parties agree are necessary in order to ensure public health, safety, and welfare, to ensure compatibility with adjacent uses of land, to promote use of the Property in a socially, environmentally, and economically desirable manner, and to achieve other reasonable and legitimate objectives of the parties, as authorized under applicable Township codes and ordinances and the Michigan Zoning Enabling Act, MCL 125.3101, *et seq.*, as amended. It is also agreed and acknowledged that the terms, conditions, obligations, and requirements of this Agreement are clearly and substantially related to the burdens to be created by the development and use of the Property under the approved PBD, and are, without exception, clearly and substantially related to the Township's legitimate interests in protecting the public health, safety and general welfare. Furthermore, Culver's fully accepts and agrees to the final terms, conditions, requirements and obligations of the PBD Documents, and Culver's shall not be permitted in the future to claim that the effect of the PBD Documents results in an unreasonable limitation upon uses of all or any portion of the property described in attached Exhibit A, or claim that enforcement of the PBD Documents causes an inverse condemnation, other condemnation or taking of all or any portion of the property described in attached Exhibit A.

14. Culver's acknowledges that, at the time of the execution of this Agreement, Culver's has not yet obtained engineering approvals for the development of the Property. Culver's acknowledges that the Township's Engineering Consultant may impose additional conditions other than those contained in this Agreement during their plan reviews and approvals as authorized by law; provided, however, that such conditions shall not be inconsistent with the PBD Plan or PBD Documents and shall not change or eliminate any development right authorized thereby. The plans approved by the Engineering Consultant and any conditions imposed thereby, shall be incorporated into and made a part of this Agreement automatically upon issuance of the Engineering Consultant's approval of same and without the necessity of amending this Agreement, and shall be enforceable against Culver's in the event it proceeds with the development of the Property.

15. It is understood that construction of some of the improvements included in the PBD Documents may require the approval of other governmental agencies.

16. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between the Developer and the Township.

17. The recitals contained in this Agreement and all exhibits attached to this Agreement and referred to herein shall for all purposes be deemed to be incorporated in this Agreement by this reference and made a part of this Agreement.

18. This Agreement, together with the PBD Documents, are intended as the complete integration of all understandings between the parties related to the subject matter herein. No prior contemporaneous addition, deletion, or other amendment shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion or other amendment shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties required herein, other than additional conditions, which may be attached to site plan approvals as stated in Section 14 above.

19. The parties intend that this Agreement shall create no third-party beneficiary interest except for an assignment pursuant to this Agreement. The parties are not presently aware of any actions by them or any of their authorized representatives that would form the basis for interpretation construing a different intent and in any event expressly disclaim any such acts or actions, particularly in view of the integration of this Agreement.

20. Where there is a question with regard to applicable regulations for a particular aspect of the development, or with regard to clarification, interpretation, or definition of terms or regulations, and there are no apparent express provisions of the PBD Documents which apply, the Township Council, in the reasonable exercise of its discretion, shall determine the regulations of the Township's Zoning Ordinance, as that Ordinance may have been amended, or other Township Ordinances that shall be applicable, provided that such determination is not inconsistent with the nature and intent of this Agreement and the PBD Documents. In the event of a conflict or inconsistency between two or more provisions of the PBD Documents, the more restrictive provision, as determined in the reasonable discretion of the Township Council, shall apply. In the event there exists any conflict between this Agreement and the PBD Plans and current and future Township Zoning Ordinance provisions, this Agreement and the PBD Plan shall apply.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth with the notarization of their signatures.

CULVER'S:

BLUEPOINT MANAGEMENT, LLC, a Michigan limited liability company

By:
Its:

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

On this ____ day of _____, 2024, before me personally appeared _____, the _____ of Bluepoint Management, LLC, a Michigan limited liability company, who acknowledged that he/she signed this agreement on behalf of said company.

Notary Public
Oakland County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: _____

TOWNSHIP:

CHARTER TOWNSHIP OF WHITE LAKE, a Michigan municipal corporation

By: Rik Kowall
Its: Township Supervisor

By: Anthony Noble
Its: Township Clerk

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

On this ____ day of _____, 2024, before me personally appeared Rik Kowall, the Township Supervisor, and Anthony Noble, the Township Clerk, who acknowledged that they signed and attested to this Agreement on behalf of the Township of White Lake.

Notary Public
Oakland County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: _____

Exhibits:

- A –Property Legal Description
- B – PBD Plans
- C – Development Schedule

DRAFT

Drafted Jointly By:
Lisa J. Hamameh, Esq.
Rosati Schultz Joppich & Amtsbuechler, P.C.
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550

When Recorded, Return To:
Township Clerk
Township of White Lake
7525 Highland Road
White Lake, MI 48383

and

Brandon Muller, Esq.
Clark Hill
220 Park Street, Suite 200
Birmingham, MI 48009-3477

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EXHIBIT A

PROPERTY LEGAL DESCRIPTION

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EXHIBIT B

PBD PLANS

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Exhibit C

Development Schedule

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