CITY OF
PORTAGE
A Place for Opportunities to Grow

ZONING BOARD OF APPEALS

February 14, 2011

CITY OF PORTAGE ZONING BOARD OF APPEALS

Monday, February 14, 2011
(7:00 pm)
Portage City Hall
Council Chambers

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES:

* January 10, 2011

OLD BUSINESS:

NEW BUSINESS:

* ZBA# 10-11, 8350, 8536 Shaver Road: Clark Peterson, on behalf of Golf Performance Academy, 8536 Shaver Road, is requesting a variance to modify a nonconforming non-accessory sign situated on 8350 Shaver Road, where Wal-Mart is located.

  Election of Officers

STATEMENT OF CITIZENS:

ADJOURNMENT:

MATERIALS TRANSMITTED

Star (*) indicates printed material within the agenda packet

CITY OF PORTAGE ZONING BOARD OF APPEALS DRAFT

Minutes of Meeting – January 10, 2011

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Henry Kerr at 7:00 p.m. in the Council Chambers. Three people were in the audience.

MEMBERS PRESENT: Timothy Bunch, David Felicijan, Rob Linenger, Betty Schimmel, Marianna Singer, Donald Mordas, Henry Kerr, Lowell Seyburn, Daniel Rhodus

IN ATTENDANCE: Jeff Mais, Zoning & Codes Administrator, Charlie Bear, Assistant City Attorney

APPROVAL OF THE MINUTES: Felicijan moved and Singer seconded a motion to approve the December 13, 2010 minutes with the correction that Seyburn be listed as excused. Upon voice vote, motion was approved 7-0.

NEW BUSINESS:

OLD BUSINESS: ZBA #10-10, Greg Dobson, on behalf of Cole Century (GCG, LLC) 6600 South Westnedge Avenue, and 6601 Ring Road: Staff summarized the request for variances to a) modify two nonconforming freestanding signs; and b) to replace 191 square-feet of nonconforming wall signs. Tom Cole was present on behalf of the applicant and stated they were removing Pontiac from their branding, and would also be reducing the size of the two freestanding signs by removing the 'GM' panels. Mr. Cole stated they also needed to change their wall signs to reflect new branding and to that end wished to replace the existing signs with wall signs measuring the same area.

A public hearing was opened. As no one was present to speak for or against the request, the public hearing was closed.

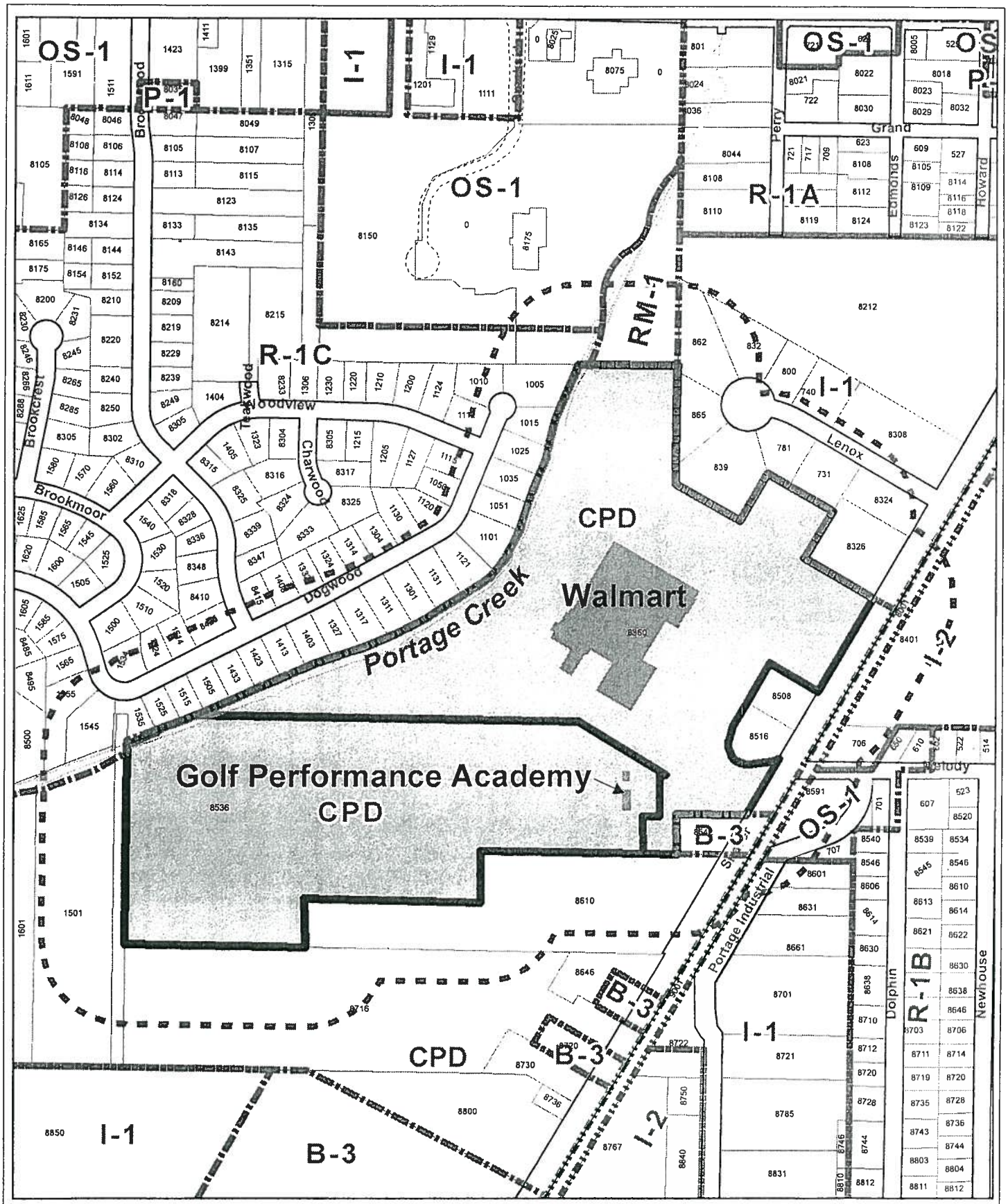
A motion was made by Seyburn, seconded by Singer, to grant variances to a) modify two nonconforming freestanding signs; and b) to replace 191 square-feet of nonconforming wall signs, as the variances represented lesser signage and a reduction in the degree of nonconformity; that the same conditions and practical difficulties cited in previous requests remain present, which include the irregular shape of the zoning lot with significant frontage on private streets, and multiple brands/entities; the variance will not be detrimental to adjacent property and the surrounding neighborhood, and; the variance will not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately. Upon roll call: Felicijan – Yes, Kerr – Yes, Seyburn – Yes, Singer – Yes, Mordas – Yes, Schimmel – Yes, Linenger – Yes. Motion passed 7-0.

STATEMENT OF CITIZENS: None

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 7:14 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator



ZBA 10-11

8350, 8536 Shaver Road

1 inch = 467 feet

Legend

- Zoning Boundary
- Subject Properties
- 300' Notification Boundary

RECEIVED
JAN 17 2011
COMMUNITY DEVELOPMENT

CITY OF **PORTAGE**
A Place for Opportunities to Grow

Department of Community Development

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date _____

Name of Applicant CLARK PETERSON (Print) _____ (Signature)

Applicant's Address 430- PALOMINO DR. Phone No. (C) 720-3627

Name of Property Owner (if different from Applicant) NORMAN & ANNE COLLINS

Address FLORIDA Phone No. (941) 244-0961

Address of the Property that is the subject of this Application:

Street Address 8536 SHAVER RD.

For Platted Property: Lot _____ of _____ Plat

[If The Property Is Unplatted, the Legal Description is needed. Please attach on a separate sheet.]

Applicant's interest in Property that is the subject of this Application: TENANT

Application Fee _____(Residential Uses) _____(All Other Uses)

Type of Appeal (Please check one of the following **bold choices** and provide the requested information):

✓ **Variance from Zoning Ordinance:** Article 42 Section 544 Paragraph B

Regarding: Use _____ Area _____ Yards _____

Setbacks _____ Parking _____ Other _____

Reason for Request (Also complete page 2 of application): _____

_____ **Appeal of Administrative Decision:** Article _____ Section _____ Paragraph _____

Reason for Request: _____

_____ **Interpretation of the Zoning Ordinance:** Article _____ Section _____ Paragraph _____

Reason for Request: _____

_____ **A Temporary Permit for:** Building _____ Use _____ Other Approval _____

Article _____ Section _____ Paragraph _____

Reason for Request: _____

FOR STAFF USE

Application Number: 10-11	**Filing Date:** 1-17-11	**Tentative Hearing Date:** 2-14-11
Previous Application Filed Regarding This Property: ZBA 91-50; ZBA 97-55; ZBA 00-22		

Reason For Variance

1. Please explain how the property has characteristics such as narrowness, shallowness, irregular shape, topography, or natural features that prevent compliance with the Zoning Ordinance. (Attach additional sheets if needed.)
NO FRONTAGE - EXISTING SIGN IS LOCATED ON WALMART PROPERTY

2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.) YES (SATELLITE PICTURE OF PROPERTY ATTACHED)

3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets is needed.)
NO

4. Is the variance the minimum necessary to permit reasonable use of the land and buildings, or would a lesser variance be fair and equitable to the applicant as well as logical and just to other property owners in the area? (Attach additional sheets if needed.)
THIS IS A NON CONFORMING SIGN AS IT DOES NOT SIT ON OWNER'S PROPERTY. A VARIANCE IS REQUIRED TO CHANGE THE INFORMATION ON THIS SIGN WHEN A NEW TENANT MOVES IN.

5. Explain how the variance would <u>not</u> result in adverse affects on adjacent properties or alter the character of the area. (Attach additional sheets if needed.) THIS IS AN EXISTING SIGN THAT HAS BEEN UP FOR ABOUT 20 YEARS. WE ARE ONLY CHANGING THE FACE OF THE SIGN TO REFLECT THE NEW BUSINESS NAME.

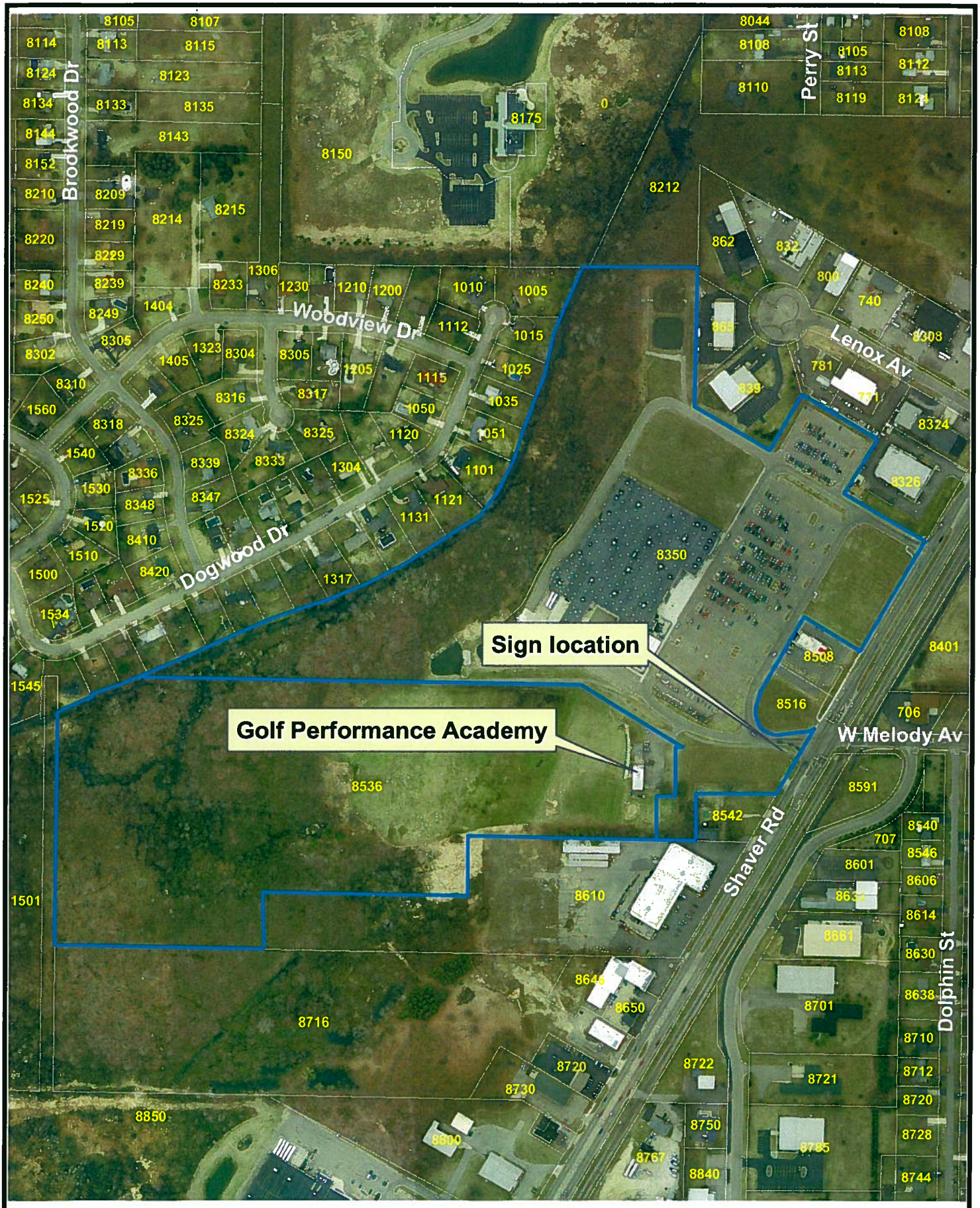
6. Explain how the variance would <u>not</u> result in increased traffic congestion, noise, or other potential concerns, or in dangers from fire, flood or other hazards, that would be detrimental to the property or to the area. (Attach additional sheets if needed.)
SAME AS ANSWER ON QUESTION 5

7. Is the reason for the request, the practical difficulty or the hardship created, due to an act of the applicant or due to an act by the previous property owner? (Attach additional sheets if needed.) DUE TO THE SALE OF THE PROPERTY TO WALMART, THE SIGN IS NOW "NON-CONFORMING" & REQUIRES A VARIANCE EACH TIME THE SIGN FACE IS CHANGED.

8. Explain how the variance <u>would fulfill</u> the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)
SIGN COMPLIES WITH ALL CITY REQUIREMENTS IN REGARDS TO SETBACK, DIMENSIONS, ETC.

Signature of Applicant

1-17-11
Date



Sign Location
8350, 8536 Shaver Road

1 inch = 387 feet
Imagery: March 2009

Name: 10-11_8350_shaver_sign location

96 in

96 in

GPA

Golf Performance Academy

of Southwest Michigan

Clark Peterson

PGA Professional

TPI CERTIFIED

For All Your Golf Needs

2004-014008

Portage, MI
Store No.5280-00

ACCESS AND SIGNAGE EASEMENT AGREEMENT

THIS ACCESS AND SIGNAGE EASEMENT AGREEMENT (this "Agreement") is made as of this 15th day of March, 2004, by and between **NORMAN E. AND ANNE H. COLLINS**, husband and wife ("Collins"), whose address is 8536 Shaver Road, Portage, MI 49024, and **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust, whose address is 702 S.W. 8th Street, Bentonville, AR 72716-0550 ("Wal-Mart").

Preliminary Statement

Wal-Mart is the owner of a certain parcel of land located in the City of Portage, Kalamazoo County, Michigan, which parcel is more particularly described on attached Exhibit A (the "Wal-Mart Parcel");

Collins is the owner of a certain parcel of land located in the City of Portage, Kalamazoo County, Michigan, which parcel is more particularly described on attached Exhibit B (the "Collins Parcel") that is adjacent to the Wal-Mart Parcel;

Collins currently has an access easement across the Wal-Mart Parcel as referenced in a document recorded at Liber 993, page 167, Kalamazoo County Records, and at document nos. 2002-042303 and 2003-045645, Kalamazoo County Records (collectively the "Existing Driveway Easement").

For the mutual benefit of Wal-Mart and Collins, Wal-Mart desires to install on the Wal-Mart Parcel and the Collins Parcel a curb-cut and driveway to provide ingress and egress between the Wal-Mart and Collins Parcels and Shaver Road by means of a Common Access Drive (as this term is defined in Section 1.01, below) and a driveway on the Collins Parcel (as defined in Section 1.01, below), as more particularly set forth on the site plan attached as Exhibit C-1 (the "Driveway Site Plan") in place of the existing driveway. Wal-Mart further desires to grant to Collins an easement to utilize the Common Access Drive on the Wal-Mart Parcel and to terminate the Existing Driveway Easement once the new Common Access Drive is built.

Collins further desires for Wal-Mart to allow Collins to continue to utilize a signage easement area for Collins' sign, in the location indicated on the site plan attached as Exhibit D-1 (the "Signage Site Plan").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Wal-Mart and Collins (each a "Party", collectively "the Parties") hereby grant, covenant and agree as follows:

Article I - Easements

Section 1.01. Perpetual Nonexclusive Access Easement. Subject to Section 4.07, below:

(a) Wal-Mart hereby grants and conveys to Collins, for the benefit of the Collins Parcel, a perpetual nonexclusive easement and right to use the "Common Access Drive" (as this drive is depicted on the Driveway Site Plan and more particularly described in Exhibit C-2) (hereinafter the "Common Access Drive") for the purpose of vehicular and truck ingress and egress between the Collins Parcel and Shaver Road. The driveway connecting the Collins Parcel to the Common Access Drive shall be in the location indicated on the Driveway Site Plan (the "Collins Driveway").

(b) The Parties agree they shall not park, load or unload vehicles or store items on or along the Common Access Drive or the Collins Driveway, or allow any construction traffic to block the Common Access Drive, or otherwise interfere with Wal-Mart's or Collins' use of or free flow of traffic on the Common Access Drive or the Collins Driveway. This perpetual, nonexclusive easement is for the benefit of the Collins Parcel owner, and Collins may grant the benefit of such easement to its tenants and other occupants of its Parcel for the duration of such occupancy, and to the customers, employees, agents, licensees, sublessees, concessionaires and business invitees thereof, but this easement is not intended nor shall it be construed as creating any rights in or for the benefit of the general public or any adjacent property owner.

(c) Wal-Mart shall have the right, at its sole option and expense, to modify and/or relocate the Common Access Drive, provided that access to the Collins Parcel is not unreasonably hindered or prohibited as a result of the modification or relocation. Upon any such relocation or modification of the Common Access Drive by Wal-Mart, notwithstanding anything herein to the contrary, Wal-Mart may record an amendment to this Agreement changing the depiction and/or legal description of the location of the Common Access Drive to correspond to the relocated Common Access Drive without the necessity of obtaining the consent of Collins to such amendment.

Section 1.02. Temporary Construction Easement. Collins hereby grants and conveys to Wal-Mart a temporary construction easement to go upon the Collins Parcel and, consistent with the Driveway Site Plan, perform the following activities (collectively, the "Access Improvements"):

(a) Remove the portion of Collins' existing parking lot shown on the attached Driveway Site Plan, grade and level the surface of the parking lot where the asphalt is removed, and install paving (standard duty asphalt) to replace the removed paving, as well as the Collins Driveway

to connect the Collins Parcel to the Common Access Drive (at the location indicated on the Driveway Site Plan); and

(b) Once the Common Access Drive and the Collins Driveway have been installed, remove the existing gravel driveway to the Collins Parcel, level and grade the area and place grass seed over the area where the existing driveway was removed (when and as the weather permits). Upon such removal, the Existing Driveway Easement shall be deemed to be terminated.

In connection with the performance of the Access Improvements, Collins hereby grants to Wal-Mart an easement for encroachment on and over the Collins Parcel that will occur as a result of such work, so long as such encroachments are kept within the reasonable requirements of construction work expeditiously pursued and so long as customary insurance is maintained protecting Collins from the risks involved.

The foregoing temporary construction easement shall expire upon the completion of the Access Improvements or twenty four (24) months from the Effective Date of this Agreement, whichever is earlier.

In connection with the Access Improvements, Wal-Mart shall cooperate with Collins to ensure that the business on the Collins Parcel is not interrupted during Collins' business hours, including, but not limited to, avoiding blocking access to the buildings located on such Parcel while it is open for business. As reasonably necessary, Wal-Mart shall install temporary signs directing Collins' patrons toward the entrance to the Collins Parcel if the construction of the Access Improvements blocks the sight line to the entrance.

Section 1.03. Signage Easement. Wal-Mart grants to Collins a perpetual, non-exclusive easement to install, use and maintain one (1) sign advertising the business conducted on the Collins Parcel in the Signage Easement Area identified on the Signage Site Plan attached hereto and as legally described on the attached Exhibit D-2, provided the sign meets the requirements of the City of Portage and the terms of this Agreement. No other sign may be erected by Collins on the Wal-Mart Parcel. In no event may Collins' sign exceed the height and size of the Wal-Mart's sign or block the visibility of the Wal-Mart store, and such sign shall comply with all local signage ordinances. Collins' sign shall not obstruct the ingress and egress shown on the Signage Site Plan. All costs to install, use and maintain the sign shall be Collins' sole responsibility.

Article II - Construction and Maintenance

Section 2.01. Construction of Access Improvements and Common Access Drive. Subject to Section 4.07, below, Wal-Mart shall be responsible, at its sole cost and expense, to complete, or cause the completion of, the Access Improvements and the Common Access Drive in accordance with Section 1.02, above and the Driveway Site Plan attached hereto.

Section 2.02. Access Improvements Maintenance. Upon completion of the Collins Driveway, Collins shall be responsible, at its sole cost and expense, for the maintenance, repair and replacement of the Collins Driveway. In performing such maintenance, repair and replacement, Collins shall not unreasonably interfere with the free flow of vehicular traffic along the Common

Access Drive or the Collins Driveway or unreasonably otherwise interrupt the conduct of business on the Wal-Mart Parcel. Notwithstanding the foregoing, any maintenance, repair or replacement costs arising out of damage caused by the negligent or intentional acts or omissions of Wal-Mart or Wal-Mart's guests or invitees shall be the sole responsibility of Wal-Mart.

Section 2.03. Common Access Drive Maintenance. Upon completion of the Common Access Drive, Wal-Mart shall be responsible, at its sole cost and expense, for the maintenance, repair and replacement of the Common Access Drive. In performing such maintenance, repair and replacement, Wal-Mart shall not unreasonably interfere with the free flow of vehicular traffic along the Common Access Drive or the Collins Driveway or otherwise unreasonably interrupt the conduct of business on the Collins Parcel. Notwithstanding the foregoing, any maintenance, repair or replacement costs arising out of damage caused by the negligent or intentional acts or omissions of Collins or Collins' guests or invitees shall be the sole responsibility of Collins. In the event Collins' guests or invitees damage the Common Access Drive, Collins agrees to promptly repair the damage. In the event Collins fails to make such repairs promptly, Wal-Mart may make the necessary repairs and receive reimbursement from Collins for the cost of the repairs, which reimbursement shall be made no later than thirty (30) days after an invoice for such costs has been forwarded to Collins.

Article III - Insurance; Indemnification

Section 3.01. Indemnification.

(a) Collins shall defend, indemnify and hold harmless Wal-Mart and its employees, officers and agents, from and against all claims, losses, liens, liabilities, damages and expenses, including reasonable attorney's fees arising out of: (i) the use of the Common Access Drive and/or Signage Easement Area by Collins or Collins' customers, agents, contractors, employees or business invitees; or (ii) any other default under this Agreement by Collins.

(b) Wal-Mart hereby agrees that it shall defend, indemnify and hold harmless Collins and its employees, officers and agents, from and against all claims, losses, liens, liabilities, damages and expenses, including reasonable attorney's fees arising out of: (i) the use of the Common Access Drive and/or Signage Easement Area by Wal-Mart or Wal-Mart's customers, agents, contractors, employees or business invitees; or (ii) any other default under this Agreement by Wal-Mart.

Section 3.02 Insurance. Each Party shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its parcel, each Party's insurance to afford protection to the limit of not less than Two Million and 00/100 Dollars ($2,000,000.00) for injury or death of a single person, and to the limit of not less than Two Million and 00/100 Dollars ($2,000,000.00) for any one occurrence, and to the limit of not less than Two Million and 00/100 Dollars ($2,000,000.00) for property damage. The owner of each Parcel shall provide the other owners with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the Party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without thirty (30) days prior written notice to the other Parties. Policies

of insurance provided for in this Paragraph shall name the other owners as insureds as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained. Notwithstanding anything to the contrary contained in this Paragraph, so long as the net worth of Wal-Mart shall exceed One Hundred Million Dollars ($100,000,000), and so long as Wal-Mart is owner of the Wal-Mart Parcel, Wal-Mart shall have the right to retain the financial risk for any claim by self insuring.

Article IV - Miscellaneous

Section 4.01. This Agreement shall be construed in accordance under the laws of the State of Michigan.

Section 4.02. The Article headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.

Section 4.03. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto and shall run with land and constitute an equitable servitude on the property affected hereby. This Agreement may be amended, modified or terminated at any time by a declaration in writing, executed and acknowledged by all the Parties to the Agreement or their successors or assigns; this Agreement shall not be otherwise amended, modified or terminated.

Section 4.04. This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings among the Parties hereto concerning the Parcels and there are no covenants, promises, agreements, conditions or understandings, either oral or written, among them other than those that are herein set forth.

Section 4.05. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement. The Effective Date of this Agreement shall be the date on which the last party to sign this Agreement has executed the Agreement.

Section 4.06. Time is of the essence under this Agreement.

Section 4.07. Wal-Mart's obligation to construct the Common Access Drive and the Collins Driveway shall not be effective or binding on the Parties hereto in any manner unless and until Wal-Mart commences construction of its store on the Wal-Mart Parcel. If at any time prior to such construction, Wal-Mart determines, in its sole and absolute discretion, not to move forward with the construction of its store on the Wal-Mart Parcel, it may so notify Collins and Wal-Mart's obligation to construct the Common Access Drive and the Collins Driveway shall terminate, and the Existing Driveway Easement shall continue in full force and effect.

Exhibit A

Wal-Mart Parcel

This parcel is situated in the City of Portage, Kalamazoo County, Michigan, and is described as follows:

That part of Section 21, T3S, R11W, City of Portage, Kalamazoo County, Michigan, described as: Commencing at the Center of said Section 21; thence N89°50'06"E 531.77 feet along the E-W 1/4 line of said Section 21 to the Point of Beginning for this Description; thence N29°10'06"E 517.55 feet along the Centerline of Shaver Road (abandoned U.S. Highway 131); thence N60°49'54"W 360.00 feet; thence N29°10'06"E 200.00 feet; thence N60°49'54"W 260.00 feet along the Southerly Boundary of Bel-Aire Industrial Park as recorded in Liber 30 of Plats, on page 48, Kalamazoo County Records; thence S29°10'06"W 200.00 feet along said Southerly Boundary; thence N60°49'54"W 286.09 feet along said Southerly Boundary; thence N00°27'36"W 425.66 feet along the N-S 1/4 line of said Section 21; thence S89°54'56"W 348 feet, more or less, along the North line of the South 1/2 of the NW 1/4 of said Section 21 to the Centerline of Portage Creek; thence Southwesterly 2018 feet, more or less, along said Centerline of Portage Creek to the E-W 1/4 line of said Section 21; thence N89°50'40"E 1352 feet, more or less, along said E-W 1/4 line to a point which is S89°50'40"W 340.00 feet from the Center of said Section; thence S61°36'15"E 361.97 feet; thence S89°50'06"W 17.03 feet to a point which is S00°27'36"E 173.00 feet and S89°50'06"W 40.00 feet from the Center of said Section; thence S00°27'36"E 165.00 feet; thence S89°50'06"W 60.00 feet; thence S00°27'36"E 146.10 feet; thence N89°50'06"E 119.00 feet; thence N00°27'36"W 165.33 feet; thence N89°50'06"E 263.18 feet along a line which is S00°27'36"E 318.77 feet from and parallel with the E-W 1/4 line of said Section; thence N29°10'06"E 365.65 feet along the Northwesterly Right-of-Way line of Shaver Road (abandoned U.S. Highway 131); thence N89°50'06"E 68.82 feet along the E-W 1/4 line of said Section to the Point of Beginning. Except that part thereof, described as: Commencing at the Center of said Section 21; thence N89°50'06"E 213.51 feet along the E-W 1/4 line of said Section 21 to the Point of Beginning for this Description; thence N29°10'06"E 269.32 feet; thence S60°49'54"E 217.45 feet; thence S29°10'06"W 264.09 feet; thence Southwesterly 3.85 feet along the arc of a 45.00 foot radius curve to the right, said curve having a central angle of 4°54'00", and the chord of which bears S47°20'23"W 3.85 feet; thence Southwesterly 29.95 feet along the arc of a 145.00 foot radius curve to the right, said curve having a central angle of 11°50'06", and the chord of which bears S55°42'26"W 29.90 feet; thence Southwesterly 15.08 feet along the arc of a 45.00 foot radius curve to the right, said curve having a central angle of 19°12'17", and the chord of which bears S71°13'38"W 15.01 feet; thence S82°16'49"W 83.18 feet; thence S89°50'40"W 23.52 feet; thence Northwesterly 28.99 feet along the arc of a 45.00 foot radius curve to the right, said curve having a central angle of 36°54'23", and the chord of which bears N71°42'08"W 28.49 feet; thence Northwesterly 29.72 feet along the arc of a 145.00 foot radius curve to the right, said curve having a central angle of 11°44'42", and the chord of which bears N47°22'36"W 29.67 feet; thence Northwesterly 32.57 feet along the arc of a 45.00 foot radius curve to the right, said curve having a central angle of 41°28'14", and the chord of which bears N20°46'08"W 31.86 feet; thence N00°02'01"W 25.64 feet; thence Northeasterly 48.42 feet along the arc of a 95.00 foot radius curve to the right, said curve having a central angle of 29°12'07", and the chord of which bears N14°34'02"E 47.90 feet; thence N29°10'06"E 7.00 feet to the Point of Beginning. Contains 36.8 Acres, more or less, to the Centerline of Portage Creek.

Exhibit B

Collins Parcel

This parcel is located in the City of Portage, County of Kalamazoo, State of Michigan, and is described as follows:

Beginning at a point on the East and West quarter line of Section 21, Town 3 South, Range 11 West, 182 feet East of the Center quarter post of said Section, said place of beginning being at the Northwest corner of the property formerly sold to Maynard Jeffries and Beulah Jeffries, husband and wife; thence South 173 feet, more or less; thence West parallel with the East and West quarter line of said Section, 282 feet, more or less; thence South 311.1 feet, more or less; thence West parallel with the East and West quarter line of said Section, 333.55 feet, more or less; thence South 198.14 feet, more or less; thence West parallel with said East and West quarter line, 896.45 feet, more or less; thence South 180 feet to a point 858 feet South of the East and West quarter line of said Section 21; thence West 696 feet, more or less, to the West line of the East half of the Northwest quarter of the Southwest quarter of said Section 21; thence North to the center of Portage Creek; thence along the center of said Creek in a Northeasterly direction to the point where said Creek intersects the East and West quarter line of said Section 21; thence East along said East and West quarter line to the place of beginning. Also, that part of the South 1/2 of Section 21, T3S, R11W, City of Portage, Kalamazoo County, Michigan, described as: Commencing at the Center of said Section 21; thence S00°27'36"E 173.00 feet; thence S89°50'06"W 40.00 feet parallel with the E-W 1/4 line of said Section to the Point of Beginning for this Description; thence S00°27'36"E 165.00 feet; thence S89°50'06"W 60.00 feet; thence N00°27'36"W 165.00 feet; thence N89°50'06"E 60.00 feet to the Point of Beginning. Except, Beginning 486.46 feet South and 414.56 feet West of the center 1/4 post of Section 21; thence South parallel to the North and South 1/4 line 191.90 feet; thence West parallel with the East and West 1/4 line 240 feet; thence North parallel with the North and South 1/4 line 191.90 feet; thence East parallel with the East and West 1/4 line 240 feet to the point of beginning. Also, except that part of Section 21, T3S, R11W, City of Portage, Kalamazoo County, Michigan, described as: Beginning at the Center of said Section 21; thence N89°50'06"E 57.00 feet along the E-W 1/4 line of said Section 21; thence S00°27'36"E 173.00 feet; thence S89°50'06"W 79.97 feet parallel with the E-W 1/4 line of said Section; thence N61°36'15"W 361.97 feet; thence N89°50'40"E 340.00 feet along said E-W 1/4 line to the Point of Beginning. And, also excepting the East 125 feet of the North 173 feet thereof.

Wal-Mart:

In the presence of:

Glenna S. Duggan
Name: Glenna S. Duggan

WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust

By: _____
Michael E. Gardner
Its: Assistant Vice President

Date: March 10th, 2004

State of ARKANSAS)
)ss
County of BENTON)

The foregoing instrument was acknowledged before me this 10th day of March, 2004, by Michael E. Gardner, Assistant Vice President of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

ROBIN M. LE MEUR
Benton County
My Commission Expires
May 1, 2013

_____
ROBIN M. LeMeur, Notary Public
Benton County, Arkansas
My Commission Expires:

Prepared by and when recorded return to:

Dawda, Mann, Mulcahy & Sadler, PLC
39533 Woodward Avenue, Suite 200
Bloomfield Hills, Michigan 48304
Attn: Jeanne M. DeLorme

Approved as to legal terms
by
WAL-MART LEGAL DEPT.
Date: 3/9/04

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

Collins:

In the presence of:

Bettylou Wragg
Name: Bettylou Wragg

Norman E. Collins
Norman E. Collins

Name: John P. Bush

Anne H Collins
Anne H. Collins

Date: February 8, 2004

State of MICHIGAN)
)ss
County of ST. JOSEPH)

The foregoing instrument was acknowledged before me this 8th day of February, 2004, by Norman E. and Anne H. Collins, husband and wife.

Bettylou Wragg
Bettylou Wragg, Notary Public
St. Joseph County, Michigan
My Commission Expires: 07/16/07

[Signatures continue on next page]

BETTYLOU WRAGG
Notary Public, St. Joseph County, M
My Commission Expires July 16, 20

Exhibit C-1

Driveway Site Plan

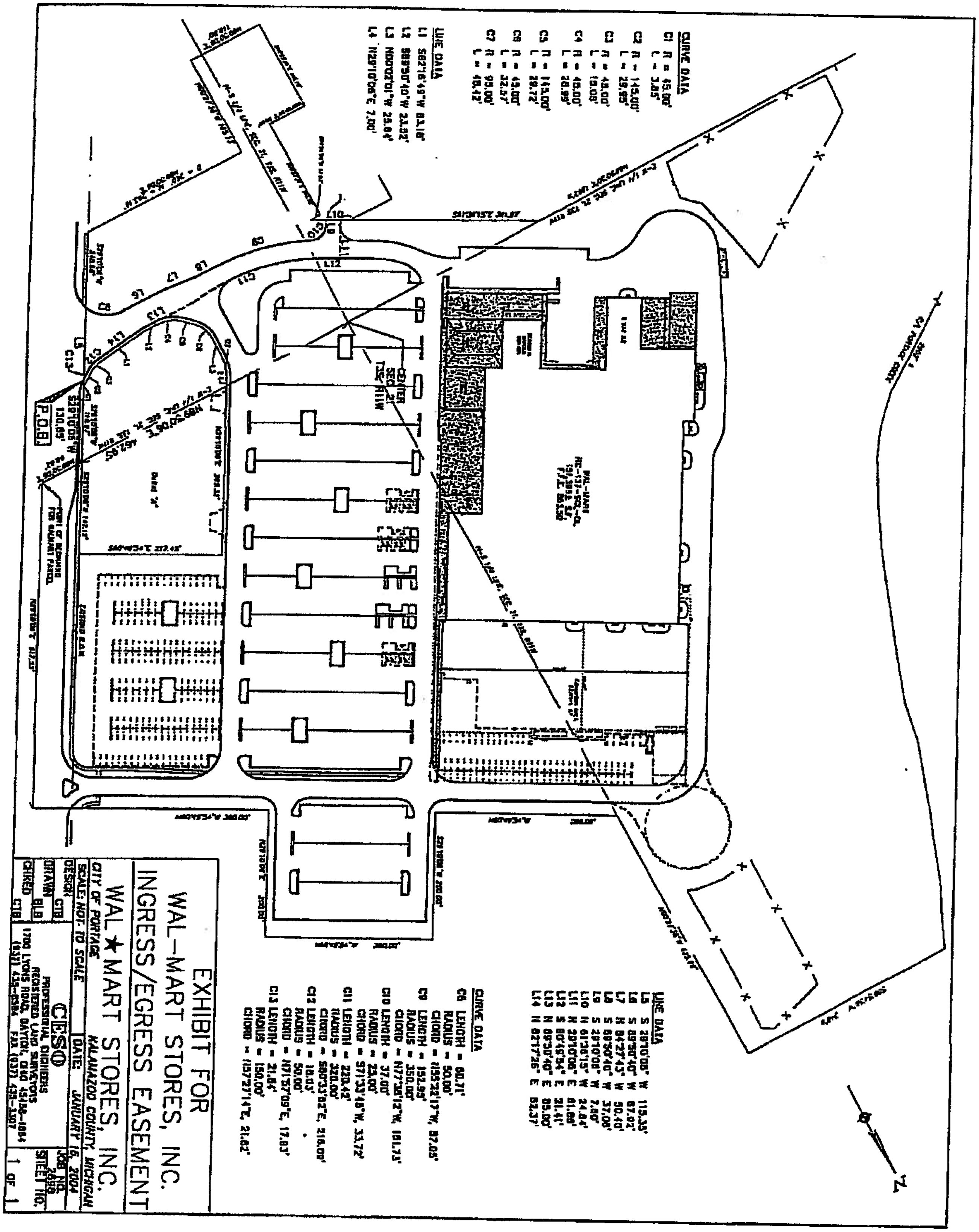


Exhibit C-2

Common Access Drive

An easement for the purpose of access, being located in Section 21, Town 3 South – Range 11 West, City of Portage, Kalamazoo County, Michigan, described as: Commencing at the Center of Section 21; thence N89°50'06"E, along the East-West 1/4 line of Section 21, 462.95 feet to the westerly right-of-way for Shaver Road; thence S29°10'06"W, along said westerly right-of-way, 130.85 feet to the **Point of Beginning;** thence continuing S29°10'06"W, along said westerly right-of-way, 115.35 feet; thence 60.71 feet along a non-tangential curve to the left, having a radius of 50.00 feet and a chord bearing N55°22'17"W, 57.05 feet; thence S89°50'40"W, 67.92 feet; thence N84°27'43"W, 50.40 feet; thence S89°50'40"W, 37.07 feet; thence 152.95 feet along a tangential curve to the right, having a radius of 350.00 feet and a chord bearing N77°38'12"W, 151.73 feet; thence 37.00 feet along a tangential curve to the left, having a radius of 25.00 feet and a chord bearing S71°33'48"W, 33.72 feet; thence S29°10'06"W, 7.60 feet to the southwesterly property line of the Wal-Mart tract; thence N61°36'15"W, along said southwesterly line, 24.84 feet; thence N29°10'06"E, 61.86 feet; thence S60°49'54"E, 21.41 feet; thence 220.42 feet along a tangential curve to the left having a radius of 320.00 feet and a chord bearing S80°33'52"E, 216.09 feet; thence N89°50'40"E, 85.00 feet; thence N82°17'26"E, 82.37 feet; thence 18.03 feet along a tangential curve to the left, having a radius of 50.00 feet and a chord bearing N71°57'09"E, 17.93 feet; thence 21.84 feet along a tangential curve to the left, having a radius of 150.00 feet and a chord bearing N57°27'14"E, 21.82 feet to Point of Beginning.

Exhibit D-1

Signage Site Plan

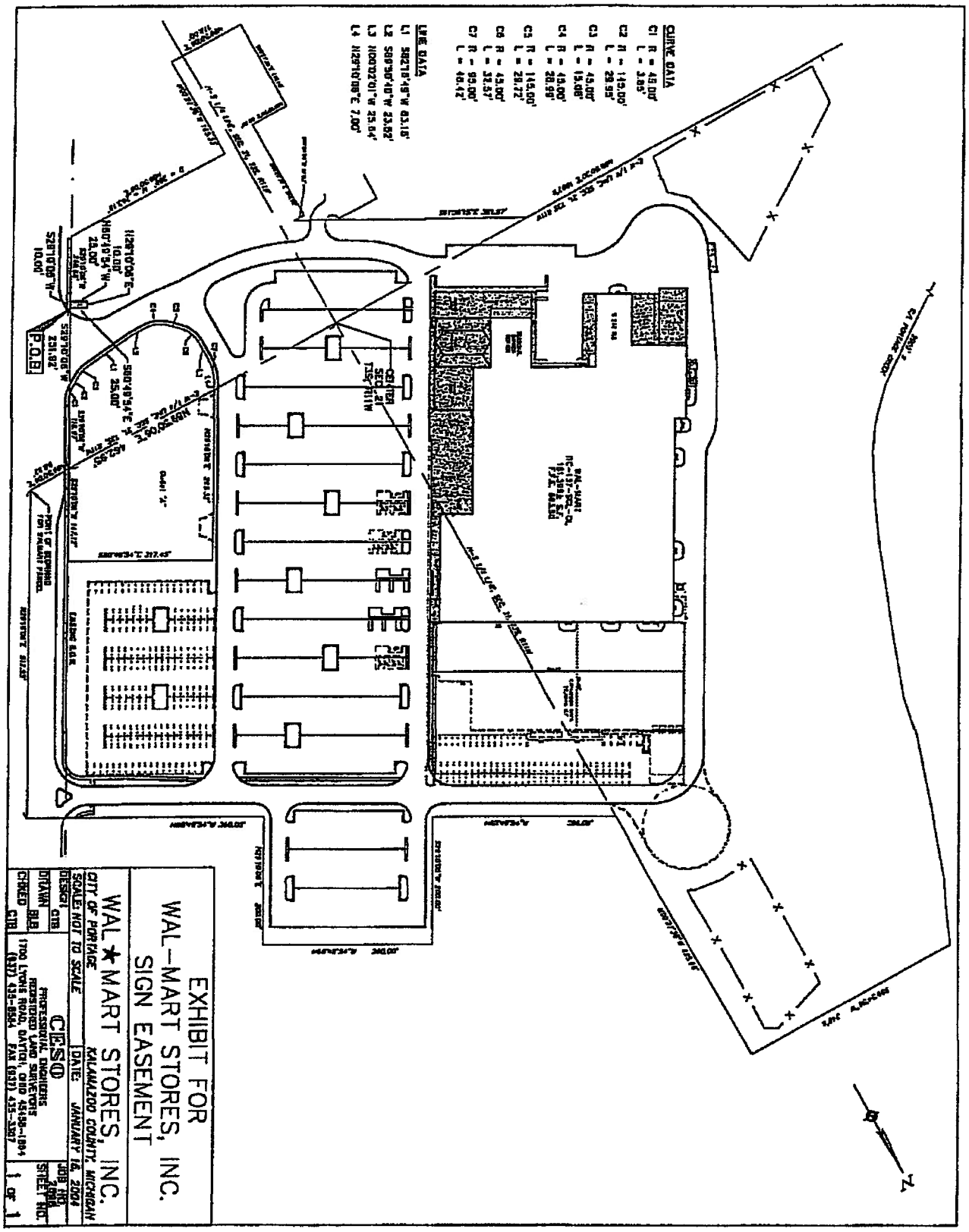


Exhibit D-2

Signage Easement Area

An easement for the continuing maintenance of and the future replacement of an existing sign. Said easement is located in the Southeast 1/4 of Section 21, Town 3 South – Range 11 West, City of Portage, Kalamazoo County, Michigan. Described as commencing at the Center of Section 21; thence N89°50'06"E, along the East-West ¼ line of Section 21, 462.95 feet to the westerly right-of-way of Shaver Road; thence S29°10'06"W, along said right-of-way, 251.92 feet to the **Point of Beginning** of said easement; thence S29°10'06"W, continuing along said right-of-way, 10.00 feet; thence N60°49'54"W, perpendicular to said right-of-way, 25.00; thence N29°10'06"E, parallel with said right-of-way, 10.00 feet; thence S60°49'54"E, perpendicular to said right-of-way, 25.00 feet to the Point of Beginning.

Jeff Mais - Clark Peterson signage request

From: Anne Collins <norms.golf@att.net>
To: <maisj@portagemi.gov>
Date: 1/17/2011 1:53 PM
Subject: Clark Peterson signage request
CC: Clark Peterson <CAP93@aol.com>

January 17, 2011

Portage Dept of Community Development
Attn: Jeff Mais

Hello Jeff,

This is to confirm that Norm and Anne Collins of Norm's Golf Center wish to acknowledge the request by Clark Peterson of Golf Performance Academy for alteration of signage.

We wish to grant permission for changes to the existing sign on Shaver Rd.

Thank you.

Norm and Anne Collins
402 Cardiff Rd
Venice FL 34293
ph 941-244-0961

CITY OF
PORTAGE
A Place for Opportunities to Grow

Department of Community Development

TO: Zoning Board of Appeals **DATE:** February 4, 2011

FROM: Jeffrey M. Erickson, Director of Community Development

SUBJECT: ZBA #10-11; Clark Peterson, on behalf of Golf Performance Academy, 8536 Shaver Road and 8350 Shaver Road; CPD, Commercial Planned Development

CODE SECTION: 42-544(B) Nonconforming Signs; p. CD42:128
42-552 CPD Commercial Planned Development Signs; p. CD42:130

APPEAL: Requesting a variance to modify a nonconforming non-accessory sign located on 8350 Shaver Road.

STAFF RECOM-MENDATION: The applicant requests the above variance per the enclosed application, sign sketch, and related materials. The tenant modified the face of the sign to reflect the new name. The subject sign is nonconforming since it is located on the Wal-Mart zoning lot at 8350 Shaver Road, but identifies the driving range/golf business located at 8536 Shaver Road, and is situated in the CPD zoning district, which does not permit non-accessory signs. The property at 8536 Shaver Road is nonconforming as it has no public street frontage, but access to the property is provided via the common access drive on the Wal-Mart zoning lot. The sign owner maintains an access and sign easement agreement with the property owner permitting maintenance and use the off-premise sign in perpetuity.

As background, the Board initially granted a setback variance permitting a non-accessory (off-premise) sign at the current location in 1992 (ZBA 91-50). The property was then zoned I-1, Light Industrial, where non-accessory signs are permitted. The Board subsequently granted variances in 1998 (ZBA 97-55) and in 2000 (ZBA 00-22) allowing sign face replacements to reflect changes in business identities. The parcel on which the sign is located was subsequently acquired by Wal-Mart and rezoned to CPD, Commercial Planned Development in 2005. The applicant is a new operating tenant who requests approval to change the nonconforming sign to reflect the new business identity, 'Golf Performance Academy'. The sign is 64 square feet in area (which includes 16 square feet of changeable copy board). No change to the sign structure or location has been accomplished or is planned.

The variance is recommended for approval because there are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district, as the property has no public street frontage; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to identify the business, which is similar to that possessed by other properties in the zoning district and vicinity; the variance will not be detrimental to the adjacent property; and the variance would not materially impair the intent and purpose of the Zoning Ordinance.

PRACTICAL DIFFICULTY: No public street frontage options; Pre-existing off-premise non-accessory sign. See Suggested Motion form.

S:\2010-2011 Department Files\Board Files\ZBA\10-11; Shaver 8536\2011 02 04 JME ZBA 10-11 Shaver, 8536 (staff report).doc

SUGGESTED NON-USE VARIANCE MOTION FORM

Mr. Chairman:

I move, in regard to ZBA #_____, the application by _____

for a variance from _____

_____

be:

a. granted for all of the following reasons:

1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include_____
_____;

2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to_____, which is similar to that possessed by other properties in the same zoning district and in the vicinity;

3a. The immediate practical difficulty causing the need for the variance request was not created by the applicant;

4a. The variance will not be detrimental to adjacent property and the surrounding neighborhood, and;

5a. The variance will not materially impair the intent and purpose of the zoning ordinance.

-or-

b. denied for one of more of the following reasons:

1b. There are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district;

2b. The variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity because there are conforming alternatives available such as_____
_____.

3b. The immediate practical difficulty causing the need for the variance request was created by the applicant;

4b. The variance would be detrimental to adjacent property and the surrounding neighborhood, and;

5b. The variance would materially impair the intent and purpose of the zoning ordinance.

c. **In addition**, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, **and that action of the Board be final and effective immediately.**