

ORDINANCE NO. 2330-13
by the Plan Commission

Continuing a Moratorium on Development in the Area of the Waste Management Landfill, location identified in the body of the Ordinance, and certain Outlots in or associated with The Shire subdivision, all in Section 20, Town 7 North, Range 20 East, in the City of Brookfield, County of Waukesha, State of Wisconsin

WHEREAS, City of Brookfield Ordinance No. 1958-04 placed a Moratorium on development considerations or approvals with respect to certain land areas identified in that Ordinance, extending until August 1, 2006 or such other date as the City releases the affected Outlots from restrictions and has adopted measures to define and implement certain development goals; and

WHEREAS, City of Brookfield Ordinance No. 2070-06 continued said moratorium until March 1, 2007; and

WHEREAS, City of Brookfield Ordinance No. 2090-07 continued said moratorium until September 1, 2008; and

WHEREAS, City of Brookfield Ordinance No. 2144-08 continued said moratorium until September 1, 2009; and

WHEREAS, City of Brookfield Ordinance No. 2182-09 continued said moratorium until September 1, 2010; and

WHEREAS, City of Brookfield Ordinance No. 2223-10 continued said moratorium until September 1, 2011; and

WHEREAS, City of Brookfield Ordinance No. 2260-11 continued said moratorium until September 1, 2012; and

WHEREAS, City of Brookfield Ordinance No. 2294-12 continued said moratorium until September 1, 2013; and

WHEREAS, in December 2010, the Wisconsin Departments of Natural Resources (DNR) and Health Services (DHS) co-authored a final report (Report) for Landfill Moratorium Committee consideration. That report concluded that development of the outlots that are the subject of The Shire Addition No. 1 preliminary plat would not be expected to pose a health or safety hazard to residents if the conditions set forth in the Report were met; and

WHEREAS, on September 14, 2011 the Landfill Moratorium Committee (a special Moratorium Committee of the City charged with reviewing the Department's submittal and formulating recommendations to the City Plan Commission) accepted the December 22, 2010

DNR/DHS Report; concluding that the State applied a professional and scientific methodology regarding preparation and issuance of said Report and recommended said Report to the City of Brookfield Common Council as well as recommending that the Landfill Moratorium Committee be dissolved and its acceptance of the Report be binding into the future regarding property-owner initiated requests for development approval or change of platting status of lands in the moratorium area unless new public health conditions arise, as documented by the appropriate state or federal agencies; and

WHEREAS, on May 7, 2012 and on May 15, 2012 the Plan Commission and Common Council respectively approved the Preliminary Plat of The Shire Addition No. 1 with the provision that the building restrictions imposed by the approval of the original Shire subdivision plat and the development moratorium set forth in Ordinance 2260-11 shall be lifted by the City upon the occurrence of the following:

A. Waste Management properly abandons the gas probes and detection gas probes located within the lots of the proposed Shire Addition No. 1, in accordance with a plan approved by the Wisconsin Department of Natural Resources. Plan Commission Minutes May 7, 2012 Page 24

B. Waste Management installs new gas probes along the Waste Management property boundary, in accordance with a plan approved by the Wisconsin Department of Natural Resources.

C. The Wisconsin Department of Natural Resources provides the City a letter documenting that Waste Management is in compliance with the applicable regulatory level for methane at Waste Management's new compliance boundary.

D. Waste Management constructs the gas trench required in the December 22, 2010 DNR/DOH report on Waste Management property.

E. An extension of the existing agreement dated July 21, 2004 between Waste Management of Wisconsin, Inc., NFI Properties, LLC, and the City to the Residential Development of The Shire, Addition No. 1 is executed; and

WHEREAS, as of July 31, 2013 the activities specified in paragraphs A, B, C and D above have been initiated by Waste Management, approved by the Wisconsin Department of Natural Resources but remain incomplete and will not be complete prior to the expiration of Ordinance No. 2294-12.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Brookfield that the moratorium established and in place under Ordinance No. 1958-04 and continued under Ordinances No. 2070-06, 2090-07, 2144-08, 2182-09, 2223-10, 2260-11 and 2294-12 shall be extended to September 1, 2014, within the geographic limits of the Ordinance No. 1958-04 moratorium, subject to the exception provisions of the second Ordained Clause of Ordinance No. 1958-04, which provisions are adopted here by cross reference, and which

Ordinances No. 1958-04, 2070-06, 2090-07, 2144-08, 2182-09, 2223-10 and 2260-11, 2294-12 are attached hereto and incorporated herein as Exhibits A*, B*, C*, D*, E*, F*, G* and H*.

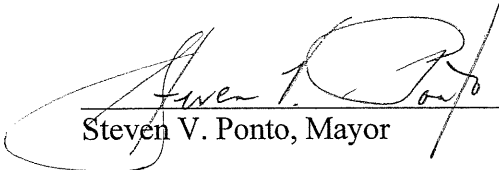
BE IT FURTHER ORDAINED, exceptions to and early termination of this moratorium may be authorized by the Common Council, after recommendation from the Plan Commission, in instances where there has been a demonstrated hardship and a compelling public interest and necessity or fairness and equity for considering and approving requests prior to the ending date of the moratorium are found to exist. Granting of such exceptions or termination may only be done by action of the Common Council and only upon express and technically supported findings on landfill-related health, safety and environmental safety issues or this moratorium terminates, without the need for Council action, when the city staff acknowledges in a written report to the City's Clerk's file that the preconditions for the termination of the moratorium are met as described above and as listed in the May 7, 2012 Plan Commissions minutes (pages 23-24).

BE IT FURTHER ORDAINED, All ordinances and parts of ordinances contravening the provisions of this ordinance are hereby repealed.

ADOPTED AND APPROVED August 20, 2013



Kelly Michaels, City Clerk



Steven V. Ponto, Mayor

* Can be viewed in the City Clerk's Office.

Published: August 29, 2013