

MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP, Director of Community Development

DATE: March 3, 2005

SUBJECT: PC 04-07: 309 & 315 W. St. Charles Road (Walgreens) – Highway Authority Agreement – Additional Information

On the March 3, 2005 Village Board agenda is a resolution and a Highway Authority Agreement (HAA) relative to the proposed Walgreen's development at 309-315 West St. Charles Road. As a supplement to the memorandum included within the Village Board packet, Counsel has suggested that we provide the Board with the following summary of the Agreement.

The HAA is about the only way that a company will be able to leave contamination from a leaking underground storage tank beneath a highway right-of-way. As part of the HAA, the obligations of the Village of Lombard would include the following:

- a. A stipulation by the Village that the Village holds a fee simple interest or dedication for highway purposes in the right-of-way, or the right-of-way is a platted street, and the Village has jurisdiction over the right-of-way and exercises sole control over the groundwater and soil beneath the right-of-way because a permit is required for said access (see paragraph 3);
- b. That groundwater under the right-of-way will not be allowed to be used for potable (drinking, bathing, etc.) or other domestic purposes (see paragraphs 4a and 5). (This issue will also be addressed as part of a separate groundwater supply ordinance that will prohibit the use, or attempt to use as a potable water supply from within a 2,500 foot radius of the boundaries of the property. This ordinance is tentatively scheduled for the April 6, 2005 Village Board Agenda).
- c. That access to contamination will be restricted (see paragraphs 4a and 5);
- d. That the Village will provide Bradford with notice within a reasonable period of time of any claim that is made (see paragraph 6);
- e. The Agreement will be binding on all successors in interest and any jurisdictional transfer will be subject to the Agreement (see paragraph 7);
- f. A breach of its obligations would subject the Village to money damages only (as opposed to injunctive relief) to a maximum of \$10,000.00 (see paragraph 12); and

- g. The Village's sole responsibility under this Agreement with respect to others using the highway right-of-way under permit from the Village is to include the following, or similar language, in the future standard permit provisions and to make an effort to notify its current permit holders of the following:

As a condition of this permit, the permittee shall request the Village to identify sites in the right-of-way where access to contaminated soil or groundwater is governed by Tiered Approach to Corrective-Action Objectives ("TACO") Agreements. The permittee shall take measures before, during and after any access to these sites to protect worker safety and human health and the environment. Excavated, contaminated soil should be managed off-site in accordance with all environmental laws.

In exchange, the obligations to the Village by Bradford under this Agreement provided the Village gives Bradford notice within a reasonable period of time and subject to the cap amount are to:

- (a) indemnify, hold harmless and defend the Village against future claims (see paragraph 6);
- (b) release the Village from liability (see paragraphs 6 and 12);
- (c) reimburse the Village for its future costs in dealing with contamination (see paragraph 10);
- (d) reimburse the Village for its attorney's and consultant's fees.

Also, the Village will have the obligation to inform any current or future permit holder of this Agreement and the existence of the contamination.