

**PLANNING DIVISION REPORT**  
**DEPARTMENT OF PLANNING AND COMMUNITY**  
**AND ECONOMIC DEVELOPMENT**  
**Of July 18, 2007**

**RE: ID# 06729, Certified Survey Map Referral and ID# 06730, approval of the preliminary and final plat of "Hilldale Phase 2"**

1. Requested Actions: Approval of a two-lot Certified Survey Map creating two lots for portions of the Hilldale Shopping Center redevelopment; and; approval of a preliminary and final plat creating eleven lots for much of the remaining mixed-use development.
2. Applicable Regulations: The subdivision process is outlined in Section 16.23 (5)(b) of the Subdivision Regulations.
3. Report Prepared By: Timothy M. Parks, Planner

**GENERAL INFORMATION**

1. Applicant & Property owner: Hilldale Building Company, LLC, c/o Joseph Freed & Associates; 220 N Smith Street, Suite 300; Palatine, Illinois; Stephen Uhlarik, representative.  
  
Surveyor: Francis Thousand, Arnold & O'Sheridan, Inc., 111 Deming Way, Suite 200; Madison.
2. Development Schedule: Redevelopment of the mixed-use center is ongoing.
3. Parcel Location: The entire Hilldale planned unit development consists of approximately 37 acres generally bounded by N. Segoe Road and Sawyer Terrace on the west, University Avenue on the north, N. Midvale Boulevard on the east and the prolongation of Heather Crest on the south, in Aldermanic District 11; Madison Metropolitan School District; Urban Design District 6.
4. Existing Conditions: The 528,664 square foot Hilldale Shopping Center site is comprised of eleven buildings including the former Humana office park and 349,450 square foot indoor shopping mall (Marshall Field's, Sentry, etc.), Ace Hardware and Hilldale Cinema. Phase I of the redevelopment project focused primarily on the area east of the main retail mall building and includes two parking structures containing 649 parking spaces, four retail buildings opposite the east wall of the mall totaling 71,190 square feet, 40 condominium units in four townhouse buildings located along N. Midvale Boulevard, a 7,900 square-foot restaurant at the corner of University and N. Midvale, and a 13,200 square-foot commercial building containing a 7,000 square-foot restaurant with outdoor eating area located at the southeastern corner of Price Place and Heather Crest. Work to convert the former University Bookstore located at the southern end of the mall building into a six-screen Sundance Cinema was recently completed. Construction of Phase II of the project will commence over the next few months. The next phase contains a 65,000 square-foot grocery store, 25,000 square feet of additional retail space, 13,000 square feet

- of office space, a 40,000 square-foot gym, 238 condominium units and approximately 1,100 structured parking spaces following demolition of the Humana office park, Hilldale Theater and Peking Palace restaurant. A specific implementation plan was recently submitted for construction of a 150-room hotel along the west wall of the mall building in the area of the food court; that application will be reviewed on August 6, 2007.
5. Proposed Land Uses: No changes to the planned unit development plan for the project are proposed. The lots created by the proposed subdivision will allow the conveyance of certain elements of the development.
  6. Land Use and Zoning Surrounding Site:
    - North: Single-family residences, a multi-story condominium building, Border's Books, Walgreen's, McDonald's, Copp's Supermarket and multi-tenant retail, located in the Village of Shorewood Hills; State of Wisconsin office building, zoned C2 (General Commercial District) in the City of Madison;
    - South: M & I Bank, Anchor Bank and various multi-tenant retail/ office buildings, zoned C2;
    - West: Hill Farms State Office Building (Dept. of Transportation), zoned C2; Normandy Apartments, zoned R6 (General Residence District); Karen Arms Condominiums and Rennebohm Park, zoned R5 (General Residence District);
    - East: US Bank, zoned C1 (Limited Commercial District); multi-unit residence buildings, zoned R4 (General Residence District).
  7. Adopted Land Use Plan: The Comprehensive Plan identifies Hilldale as a site for transit-oriented and community mixed-use redevelopment.
  8. Environmental Corridor Status: The property is not located within a mapped environmental corridor.
  9. Public Utilities & Services: The property is served by a full range of urban services.

### **STANDARDS FOR REVIEW**

This application is subject to the standards for Certified Survey Maps, preliminary plats and final plats contained in the Subdivision Regulations.

### **PREVIOUS APPROVALS**

On February 1, 2005, the Common Council approved rezoning of the 37-acre Hilldale Shopping Center and Humana Office complex from C2 (General Commercial District) to PUD-GDP-SIP to allow the addition of two parking structures containing 668 parking spaces, four retail buildings opposite the east wall of the mall totaling 71,190 square feet and 40 condominium units in four townhouse buildings located along N. Midvale Boulevard.

On December 13, 2005, the Common Council approved an amendment to the Hilldale PUD-SIP to allow demolition of the former US Bank office and the construction of the 7,900 square-foot Fleming's restaurant near the southwest corner of N. Midvale Boulevard and University Avenue.

On May 16, 2006, the Common Council approved an amendment to the Hilldale PUD-SIP to allow construction of a 13,200 square-foot commercial building containing the Great Dane Brew Pub and retail space located at the southeastern corner of Price Place and Heather Crest.

On January 2, 2007, the Common Council approved a major amendment to the Hilldale PUD-GDP-SIP to allow demolition of the former Humana office complex and the construction of a 65,000 square-foot grocery store, 25,000 square feet of additional retail space, 13,000 square feet of office space, a 40,000 square-foot gym, 238 condominium units and approximately 1,100 structured parking spaces. The amended GDP also approved a future phase consisting of 220 residential units and one hotel.

### **PREVIOUS HEARING**

These requests were referred by the Plan Commission on July 9, 2007 at the request of the applicant to allow additional discussions with City staff regarding concerns over aspects of the subdivisions proposed.

### **SUBDIVISION REVIEW**

The applicant is requesting approval of two related subdivision requests for the 37-acre Hilldale Shopping Center property generally bounded by N. Segoe Road and Sawyer Terrace on the west, University Avenue on the north, N. Midvale Boulevard on the east and the prolongation of Heather Crest on the south. The intent of the two subdivisions is to divide the property so that portions of the overall development can be sold separately from various future condominium documents that will be recorded for elements of Phase II, which was approved with a total of 238 residential units in three buildings to be located on the site of the former Humana office complex. The applicant is likely to pursue further division of some of the lots proposed on the final plat through future Certified Survey Map submittals, though no such applications have been made at this time.

### **Certified Survey Map Referral**

The first request before the Plan Commission is the division of approximately 35.23 acres of the 37-acre overall Hilldale property into two lots by certified survey map. Lot 1 of the proposed land division will consist of 29.5 acres of land that generally surround proposed Lot 2, which will consist of the remaining 5.73 acres in this request. In general, Lot 2 will include most of the improvements east of Price Place (extended) east of the main mall building, including the four retail buildings constructed opposite the mall building, and the two parking structures. Lot 2 will touch the N. Midvale Boulevard right of way at three locations and will surround two lots created by administratively approved CSM in 2005 for the four townhouse buildings constructed along Midvale frontage of the overall site. Lot 1 of the proposed land division will encompass most of

the remaining improvements on the site, including the main mall building and Sundance Cinema, Great Dane and Fleming's restaurants, and the former Humana office complex located east of N. Segoe Road between Frey Street and University Avenue.

Preliminary & Final Plat of "Hilldale Phase 2"

The second request before the Plan Commission calls for the subdivision of Lot 1 of the above-described certified survey map into eleven lots. Of the eleven lots proposed, four of the lots will generally be located east of Sawyer Terrace, with the remaining seven located west of Sawyer Terrace, including six lots to be created on the sites of the former Humana office complex, Peking Palace restaurant and Hilldale Theater, where the Phase II mixed-use development was approved.

East of Sawyer Terrace, Lot 1 of the proposed Hilldale plat will contain 20.3 acres of land and will comprise the largest of the proposed lots as well as most of the improvements located on the overall 37-acre site. The lot will generally extend east from Sawyer Terrace, encompassing the main mall building, the Fleming's and Great Dane buildings and the Ace Hardware building, and will share a common eastern boundary with N. Midvale Boulevard and the western edge of Lot 2 of the proposed certified survey map.

Other lots east of Sawyer Terrace include a 0.43-acre lot (Lot 9) that will be created surrounding the footprint of the proposed 150-room hotel proposed to be constructed along the western wall of the main mall building in the area of the existing food court following approval of an amended specific implementation plan. (The SIP for the hotel is scheduled for Plan Commission review on August 6, 2007.) Lot 10 is proposed as a 0.8-acre lot located at the southeasterly corner of N. Segoe Road and Sawyer Terrace that is currently developed with a post office branch and that was shown on the general development plan as the site of a future 120-unit mid-rise residential building. Lot 11 will be a 0.84-acre parcel located along the N. Segoe Road frontage adjacent to the private street that extends along the southern edge of the development to connect to Heather Crest. The area of this proposed lot is currently part of the parking field lot of the mall building, which was identified in the general development plan as a future 100-unit mid-rise residential building.

The seven lots generally west of Sawyer Terrace include:

- Lot 2, a 0.27-acre that was approved in the most recent Hilldale specific implementation plan as a one-story, 5,500 square-foot commercial space located at the southeastern corner of the Phase II development along the easterly prolongation of Frey Street;
- Lot 3 will be a 2.5-acre tract that will consist of most of the proposed five-story, 1,100-space parking structure that will be shared by the Phase II development;
- Lot 4 will be a 1.14-acre tract that will contain a nine-story structure to be located at the corner of University Avenue and Mall Drive and will include 19,000 square feet of ground floor retail space, a 40,000 square-foot space for a future gym and a seven-story, 90-unit residential tower;
- Lot 5 will be 1.05-acre tract that will be developed with an eleven-story structure extending along a portion of the University Avenue frontage containing 13,450 square feet of leaseable office space and a ten-story, 144-unit residential tower;

- Lot 6 will be 1.95-acre parcel that will contain the 65,000 square-foot Whole Foods store that will occupy the corner of N. Segoe Road and University Avenue;
- Lot 7 will be a relatively small, oddly shaped parcel located along the Frey Street frontage that will be developed as a four-unit townhouse backing onto the 1,100-space parking structure;
- Lot 8 will be a 0.99-acre parcel located at the southwest corner of Frey Street and Sawyer Terrace that was approved in the Hilldale specific implementation plan as a future privately-maintained greenspace to be constructed for Hilldale residents following its interim use as a staging area for the second phase.

[Note: The preliminary plat exhibit portrays existing conditions on the site of the eleven-lot plat as required by State subdivision statutes and not the proposed improvements listed above. An exhibit containing the most recent general development plan approved for Hilldale is attached.]

In addition to the creation of lots for the Hilldale site, the proposed plat will also dedicate additional right of way along Sawyer Terrace and Frey Street for street improvements related to the approved planned unit development, including the conversion of Sawyer Terrace into a two-way street (it is a one-way street northbound currently). The plat will also dedicate a number of easements, include those for ingress and egress and utilities.

## **ANALYSIS**

The applicants are requesting approval of a unique two-step subdivision approval to allow lots to be created that reflect existing and future elements of the redevelopment of the Hilldale Shopping Center.

### Considerations of State and City Subdivision Regulations

The unique approach, involving first a land division and then a plat, is necessitated as a result of another unique land division that was undertaken by the applicants and approved by the City in 2005. The earlier land division created three lots along N. Midvale Boulevard, including two lots for two townhouse buildings each along Midvale, and a third lot for most of the Hilldale property east of Sawyer Terrace. The 2005 certified survey map, recorded as Certified Survey Map 11595, included a situation where portions of Lot 1, the lot containing the mall, the two Phase I parking structures and other buildings, overlapped with the two townhouse lots, Lots 2 and 3, in essence creating a vertical as well as horizontal division of the land. For all intents and purposes, the normal plane created by a land division, which projects perpendicular to the ground, in this case extends up perpendicularly before running horizontal for a distance over the lot below before continuing perpendicular to the ground and finally running horizontal back to the location of the common property line at the ground. This overlapping situation occurs at two separate locations along the common boundaries between Lots 1 and 2 and Lots 1 and 3.

City staff administratively approved the 2005 CSM. At the time, the overlapping nature of the lots in this survey was not identified as an issue. However, issues do exist. The City Attorney's Office generally believes that vertical subdivisions may be approved consistent with the State subdivision statutes found in Chapter 236 W.S. under certain circumstances. Staff believes that

such subdivisions are very uncommon. However, the City's interpretation of Chapter 236 deviates from the State Department of Administration's, who certifies that all subdivision plats recorded throughout the State are consistent with the requirements of Chapter 236. The State has indicated to the applicants and their surveyor that it will not certify any subdivision plat that contains vertical or three-dimensional elements because it does not feel that such subdivisions meet with the purpose and intent of the Chapter 236. However, the State has not stated an objection to, nor does it have approval jurisdiction over, the use of a certified survey map to accomplish vertical subdivisions.

The purpose of the first request before the Plan Commission, therefore, is to approve a certified survey map to remove the overlapped portions of the Hilldale property created by the earlier CSM from the remainder of the site so that the subdivision plat may proceed. The location of the common boundary between the two lots on the proposed CSM follows the center of the private street that separates the main mall building from the four retail buildings to the east, as well as the center of the private street opposite Heather Crest on the south and a driveway from N. Midvale Boulevard located north of the northernmost townhouse building. Staff believes that the proposed common lot line portrayed on the CSM is appropriately located.

The Planning Division generally believes that the proposed preliminary and final plat of Lot 1 of the proposed CSM can meet the criteria for subdivisions as provided for in Section 16.23 of City ordinances. The lots proposed generally coincide with the footprints of various elements of the project, either existing or proposed, and the plat should not interfere with the implementation of the approved general development and specific implementation plans approved for Hilldale. The applicant will be required however, to submit subdivision documents to the City for review and approval prior to the final approval of the plat and CSM for recording. These documents will need to address the shared access and parking arrangements across the entire 37-acre site, as well as provide language regarding the responsibility for assessments, maintenance and liability for all shared elements of the development. The 37-acre site will ultimately include a significant number of shared facilities (utilities, parking structures, elevator shafts, building entrances, etc.) that will need to be addressed as part of these subdivision documents. Staff believes that the subdivision and land division applications may be able to be conditionally approved subject to the submittal and ultimate approval of these reciprocal documents. Because the proposed plat and CSM include the already approved vertical subdivision of Lots 2 and 3 of CSM 11595, the issues related to this land division must be addressed prior to recording.

Planning staff also asks that proposed Lot 8 encompassing the future greenspace to be located at the southwest corner of Sawyer Terrace and Frey Street be designated as an outlot, which generally has the connotation of being undevelopable. The outlot should be identified on the plat as "private open space" to be maintained by the owners of the Hilldale Shopping Center as called for in the approved planned unit development. A condition of approval of the approved planned unit development requiring that neither the shopping center nor the greenspace be sold separately should also be reflected on the final plat.

### Future Subdivision of Portions of Hilldale Plat

The applicants have held discussions with City staff regarding the future subdivision of some of the lots proposed on the Hilldale final plat to further facilitate the conveyance of portions of the mixed-use development, through both fee simple sales of land and condominium declarations. The subsequent divisions would occur by certified survey map of individual lots created by the plat and in some cases, include the vertical division of lots. The applicant has not submitted any such land divisions for formal comment and to date, has only approached staff with conceptual layouts of some of the lots. However, the future land divisions may create lots that contain different square footages from floor to floor as well as lots that do not have a connection to the ground, which is to say that a "lot" may be located some number of feet (or stories) above ground level.

City staff from various agencies have met to discuss the efficacy of these potential vertical land divisions. To date, a number of concerns have been raised by a variety of agencies about the vertical land division, which was approved in 2005 and the potential future vertical divisions, including the ability for the City to maintain accurate land records with three-dimensional lots, assess parcels without ground area (square footage), and the overall operation and maintenance of subdivision lots that extend as shafts through all or portions of buildings. As a result, City staff does not feel that land divisions that create lots that don't touch the ground or that vary in square and cubic footage as they extend upwards through buildings are in the City's best interest at this time. However, as no new vertical land divisions are proposed with the two applications before the Plan Commission (recognizing that the existing vertical division has already been approved as part of CSM 11595), staff feels that the certified survey map and preliminary/ final plat for Hilldale as submitted can be approved subject to the conditions being met.

### CONCLUSION

The applicants are requesting approval of a certified survey map and preliminary and final plat to subdivide portions of the 37-acre Hilldale Shopping Center site into a total of twelve new lots. The two-step subdivision approach is unique in that a certified survey map is required to precede the subdivision plat so that the proposed plat can be certified by the State of Wisconsin as meeting the requirements of Chapter 236 of Wisconsin Statutes regarding subdivisions. The State has indicated that it would not certify a plat that includes vertical or three-dimensional subdivision elements, which the subject subdivision would if it included elements created by a certified survey map recorded in 2005 following City approval. In the preceding CSM, portions of the three lots created overlapped one another at different locations. The proposed CSM will separate those overlapping portions of the property from the rest of the development parcel so that the subdivision plat can proceed.

The Planning Division believes that the standards for subdivisions could be met with these requests subject to the conditions stated in the "Recommendations" section, including the submittal of all materials requested by the reviewing agencies. The Plan Commission should also give consideration to the recommendation of the reviewing agencies in deciding whether or not to approve the CSM and plats. The alternative Plan Commission action would be to reject both requests.

## **RECOMMENDATIONS**

The Planning Division recommends that the Plan Commission **approve** the two-lot Certified Survey Map of property located at 702 N. Midvale Boulevard and forward the preliminary and final plat of "Hilldale Phase 2" to the Common Council with a recommendation of **approval** subject to input at the public hearing and the following conditions:

1. Comments from reviewing agencies.
2. That the proposed Certified Survey Map be revised to include the vertical section information dated June 19, 2007 related to Certified Survey Map #11595.
3. That the final plat be revised per Planning Division approval as follows:
  - a.) that proposed Lot 8 be renamed "Outlot 1", and that a note be placed on the plat noting the outlot as "private open space" (as identified in the approved PUD-GDP-SIP) to be maintained by the owners of the Hilldale Shopping Center, and that neither the shopping center nor the greenspace be sold separately;
  - b.) the area in square feet of Lot 7;
  - c.) that the name of the plat be shortened to "Hilldale" to better reflect the scope of the subdivision, which will encompass most of the 37-acre Hilldale development (staff feels that the plat name is also misleading as no Hilldale Phase 1 plat was previously recorded to suggest a succession of plats).
4. That all documents that will govern the ownership, access, organizational structure, use, maintenance and continued protection of the development on Lots 2-8 of the proposed final plat and any of its common services, common open areas or other facilities shall be submitted and approved by the Director of the Department of Planning and Community and Economic Development, City Engineer, City Assessor and City Attorney's Office prior to final signoff and recording of the final plat. These documents shall include all the requirements of the agencies noted above in order to ensure that the City can continue to provide all services to the property and the public interest is protected.
5. That a reciprocal cross-access and parking easement agreement be submitted for approval by the Director of the Department of Planning and Community and Economic Development, City Engineer and City Attorney's Office prior to final signoff and recording of the Certified Survey Map and final plat. The agreement shall address shared access and parking between Lots 2-7 and Lots 1, 9, 10 & 11.