

A G E N D A

SPECIAL MEETING OF THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF WILLOWBROOK, COMMITTEE OF THE WHOLE, TO BE HELD ON MONDAY, APRIL 24, 2023, AT 5:30 P.M. AT THE COMMUNITY RESOURCE CENTER (CRC), 825 MIDWAY DRIVE, WILLOWBROOK, IL, DUPAGE COUNTY, ILLINOIS

THE VILLAGE WILL BE OFFERING A ZOOM WEBINAR FOR THE MEETING TO ALLOW MEMBERS OF THE PUBLIC TO ATTEND BY VIDEO OR AUDIO IF DESIRED. IF A MEMBER IS USING ZOOM, PLEASE EITHER USE YOUR PHONE OR COMPUTER, NOT BOTH.

THE PUBLIC CAN UTILIZE THE FOLLOWING CALL-IN NUMBER:

Dial-in Phone Number: 312-626-6799

Meeting ID: 865 2164 3495

Written Public Comments Can Be Submitted By 5:15 P.M. on April 24, 2023 to aarteaga@willowbrook.il.us

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. VISITORS' BUSINESS - Public Comment is Limited to Three Minutes Per Person
5. UPDATE - PANDA EXPRESS UPDATE
6. ADJOURNMENT

VILLAGE OF WILLOWBROOK

COMMITTEE OF THE WHOLE MEETING AGENDA ITEM - HISTORY/COMMENTARY

ITEM TITLE:

PANDA EXPRESS UPDATE

Discussion regarding a six (6) month Special Use extension request, from another previously approved six (6) month Special Use extension request for a Special Use Permit for a Fast-Food Establishment, and a Special Use Permit for a Drive-Through in the B Community Shopping District, including certain variations from Title 9 of the Village Code for the construction of a one-story, 2,300 square foot building and drive-through with associated on- and off-site improvements for Panda Express.

AGENDA NO. 5

AGENDA DATE: 4/24/23

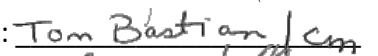
STAFF REVIEW: Michael Krol, Director of Community Development

SIGNATURE:



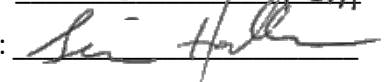
LEGAL REVIEW: Tom Bastian, Village Attorney

SIGNATURE:



RECOMMENDED BY: Sean Halloran, Village Administrator

SIGNATURE:



REVIEWED & APPROVED BY COMMITTEE: YES ☐ NO ☐ N/A ☐

ITEM HISTORY (PREVIOUS VILLAGE BOARD REVIEWS, ACTIONS RELATED TO THIS ITEM, OTHER HISTORY)

Panda Express, Inc. (the "Applicant"), was granted a Special Use for the construction of a 2,300 square foot Panda Express fast-food restaurant with a drive-through, associated site improvements, and fourteen (14) zoning variations under Ordinance 21-O-25. The special use permit was granted to allow for both the fast-food establishment and a proposed drive-through within the Village of Willowbrook's B-2 Community Shopping Zoning District.

The Special Use ordinance was approved by the Village Board May 10, 2021, and Ordinance 21-O-25 Section Four, B states: "the special use permit shall be null and void if construction for the proposed use is not commenced within eighteen (18) months of the date of any approval of the special use by the Village Board." The eighteen (18) month deadline was November 10, 2022. Section 9-14-5(D)2 of the Village Zoning Code states: Special Use Permit, states that, "Upon written application and for good cause shown, the Board of Trustees may, by ordinance, in its sole discretion, grant extensions of time not to exceed one year each from the time limitations set forth in subsection (D)1 of this section."

A six (6) month Special Use extension was granted by the Village Board on October 10, 2022, per Ordinance 22-O-39, moving Special Use Ordinance 21-O-25 to a new expiration date of May 10, 2023. The applicant is seeking another six (6) month extension, maximizing the Special Use extension allowable by Village code.

ITEM COMMENTARY (BACKGROUND, DISCUSSION, RECOMMENDATIONS, ETC.)

The previously approved six (6) month extension under Ordinance 22-O-39 is expiring on May 10th, 2023, and Norr, the project architect, is before the Committee tonight to discuss another extension of six (6) months, making the new expiration date of the Special Use for a drive-through Panda Express Restaurant Nov 10, 2023. No further extensions can be granted beyond a total of twelve (12) months per the Village code.

As part of the previously approved extension, it was said that if the applicant seeks another extension of six (6) months, documentation will need to be provided to justify the request. The current open items that need to be submitted prior to permit approval are:

- A copy of the Approved IDOT ROW permit approval.
- Provide NOI letter filed with the IEPA
- Provide NFR letter from the IEPA
- Draft of the plat of grant of easement (PoGoE)
- Provide a copy of the cross-access easement agreement with Red Roof INN signed by both parties once it has been recorded.

At the September 26, 2022, Committee of the Whole meeting the developer provided a status update on the several outstanding items that are required prior to permit approval, including the status of Condition "O" which states that prior to the issuance of a building permit, the Applicant shall provide the Village with a letter of No Further Remediation (NFR) from the IEPA because the previous site was a gas station.

Village staff obtained a copy of True North Service Station #1990 application and report to the IEPA. The Leaking Underground Storage Tank (LUST) Program application, the Corrective Action Plan (CAP) and the Corrective Action Budget (CAB) was submitted on June 7, 2022, and was rejected by the IEPA on October 7, 2022 with several pages of comments. Some of the comments listed in the CAP were pertaining to missing analytical laboratory reports of soil samples taken and conflicting information on data tables for the potable water supply wells. The CAB was denied because the Budget cannot be approved without CAP approval.

On November 22, 2022, GES, Groundwater & Environmental Service, Inc., resubmitted the CAP and CAB to the IEPA on behalf of the property owner, True North, addressing all the comments.

On March 28, 2023, the IEPA did not approve the Corrective Action Plan and the Corrective Action Budget for a second time, citing a total of three (3) comments on the CAP and again the CAB cannot be approved without CAP approval.

The following documents are attached to the agenda history for your consideration:

1. The Norr extension letter request.
2. Ordinance 21-O-25 Special Use approval for a Panda Express drive-through restaurant.
3. The six (6) month Special Use extension Ordinance 22-O-39 that was approved October 10, 2022.
4. Site Map indicating well locations, boring, and sampling locations.
5. The IEPA review letter of the CAP and CAB, dated March 28, 2023.
 - a. Attachment 1 – Site summary of all LUST incidents dating back to 1998.
 - b. Attachment 4 – Corrective Action Plan (CAP) disapproval reasons.
 - c. Attachment 5 – Corrective Action Budget (CAB) disapproval reasons.
 - d. Attachment 6 – Additional comments.

It is Village staff's opinion that the property owner, True North Service Station #1990, is close to obtaining an NFR letter from the IEPA and once that letter is issued, the remaining items will soon follow. If the Village Board is to consider another six-month extension, staff is requesting a formal update in three (3) months by the applicant if the permit has not been issued. Village staff supports the proposal of extending Ordinance 21-O-25 by six (6) more months, moving the deadline to November 10, 2023, which is the last possible extension date permitted by the Village Code.

A formal vote on another six (6) month extension of the Panda Express Special Use will take place on May 8, 2023.

ACTION PROPOSED: Discuss the proposed six (6) month extension for a previously approved Special Use



April 14, 2022

City of Willowbrook
Community Development
835 Midway Drive
Willowbrook, IL 60527

Attn.: Michael Krol

Dear Mr. Krol:

**Re: Panda Express - 7505 S. Kingery Hwy
JCDT18045300 – D7058
Extension of Planning Variance Approvals**

I am writing to request an extension of Ordinance 21-O-25, Section Four, B “The special use permit shall be null and void if construction for the proposed use in not commenced within eighteen (18) months of the date of any approval of the special use by the Village Board.”

True North Energy and its environmental remediation firm, GES, have been working diligently with the Illinois Environmental Protection Agency’s Leaking Underground Storage Tank Section (IEPA) to achieve final closure of the issues at the Property and obtain a No Further Remediation (NFR) letter. True North submitted a Corrective Action Plan (CAP) to IEPA in June 2022. IEPA responded with comments on October 7, 2022, and GES submitted an Amended CAP on November 22, 2022. IEPA responded with two remaining requests on March 28, 2022, and GES is currently working on a final submission. No additional active environmental remediation is anticipated at the Property. After IEPA approves the CAP, True North will then perform any further required action and submit a Corrective Action Completion Report (CACR). Given that IEPA is allowed, and almost always takes, 120 days to respond to submissions, the issuance of an NFR letter will, as a matter of regulatory process, take more than six months.

Sincerely,

A handwritten signature in dark ink that reads "Valentino G. Mancini".

Valentino Mancini
Studio Manager
T 313 324 3156 M 313 316 7000 | Valentino.Mancini@norr.com

p:\restaurant\panda\jcdt18-0453 - d7058 willowbrook il (nc)\200-design\210-corr\2023-03-24 extension request.docx

ORDINANCE NO. 21-O- 25

**AN ORDINANCE GRANTING SPECIAL USE PERMITS FOR A FAST FOOD ESTABLISHMENT AND DRIVE THROUGH USE AND GRANTING CERTAIN VARIATIONS FROM THE ZONING ORDINANCE – PC 21-01:
7505 KINGERY HIGHWAY – PANDA EXPRESS**

WHEREAS, on or about November 25, 2020, Hakim Yala of Panda Express, 1683 Walnut Grove Avenue, Rosemead, CA 91770, as applicant (“APPLICANT”) with approval from the property owner, True North Energy, LLC, 10346 Brecksville Road, Brecksville, OH 44141, (“OWNER”), filed an application with the Village of Willowbrook (“VILLAGE”), with respect to the property legally described in Exhibit “A” attached hereto which is, by this reference, incorporated herein (“SUBJECT REALTY”); and,

WHEREAS, said application requested that the Village grant special use permits for a fast food establishment and associated drive-through for the SUBJECT REALTY and grant certain waivers from the requirements of the Zoning Ordinance of the Village; and,

WHEREAS, Notice of Public Hearing on said application was published in compliance with Section 9-15-3(A) of the Willowbrook Municipal Code, in the *Doings* newspaper on December 24, 2020 and in the *Chicago Sun Times* newspaper on April 5, 2021, which is more than fifteen (15) days but less than thirty (30) days prior to the public hearing date; a notice was mailed by the Village Zoning Officer to all adjacent owners within two hundred-fifty (250) feet in each direction of the location of the SUBJECT REALTY more than fifteen (15) days but less than thirty (30) days prior to the public hearing date in compliance with Section 9-15-3(B) of the Willowbrook Municipal Code; and public notice was provided by posting on the property signs visible to the general public complying with the requirements of Sections 9-15-3(D) of the

Willowbrook Municipal Code, for at least fifteen (15) consecutive days prior to the public hearing dates; and,

WHEREAS, pursuant to said Notice, the Plan Commission of the Village of Willowbrook conducted a public hearing on or about January 13, 2021, which was continued to February 3, 2021, and a second public hearing on April 21, 2021, all as required by the statutes of the State of Illinois and the ordinances of the Village; and,

WHEREAS, at said public hearing, the applicant provided testimony in support of said application and all interested parties has an opportunity to be heard; and,

WHEREAS, the Plan Commission forwarded its recommendations, including its Findings of Fact, to the Mayor and Board of Trustees on or about April 26, 2021, a copy of which is attached hereto as Exhibit "B" which is, by this reference, made a part hereof; and,

WHEREAS, the Mayor and Board of Trustees of the Village of Willowbrook have received the recommendation of the Plan Commission pursuant to a memorandum dated April 26, 2021.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Willowbrook, DuPage County, Illinois, as follows:

SECTION ONE: That the Zoning Map of the Village of Willowbrook be amended to reflect the granting of special use permits on the SUBJECT REALTY, pursuant to Sections 9-14-5, 9-6B-2-7 and 9-6B-2-10 of the Zoning Ordinance of the Village of Willowbrook, to allow the operation of a fast food establishment and associated drive-through use on the SUBJECT REALTY.

SECTION TWO: That pursuant to Section 9-14-4 of the Village Code, the following variations from the provisions of the Zoning Ordinance be and the same are hereby granted:

- A. A variation from Section 9-3-3(C) to decrease the minimum lot area for two (2) or more special uses from two acres (2 AC) to one acre (1 AC).
- B. A variation from Section 9-3-7(A)(1) to decrease the minimum special setback on Illinois Route 83 from one hundred feet (100') to fifty and two tenths feet (50.2') for the proposed building, to fifty-six and six tenths feet (56.6') for the proposed menu board, and to sixty-two and four tenths feet (62.4') to the order canopy.
- C. A variation from Section 9-6-1(A) to decrease the minimum lot area for two (2) or more special uses (fast food establishment and drive-through) from two acres (2 AC) to one acre (1 AC).
- D. A variation from Section 9-6B-3(A) to decrease the minimum lot area for all uses from two acres (2 AC) to one acre (1 AC).
- E. A variation from Section 9-6B-3(C)(1) to decrease the minimum lot width of 200 feet for restaurants from two hundred feet (200') to one hundred seventy feet (170').
- F. A variation from Section 9-6B-3(E)(1) to decrease the minimum front yard setback on Illinois Route 83 from sixty feet (60') to fifty and two tenths feet (50.2') for the proposed building, and to fifty-six and six tenths feet (56.6') for the proposed menu board.
- G. A variation from Section 9-6B-3(E)(3) to decrease the minimum exterior side yard setback on 75th Street from sixty feet (60') to forty-three and four tenths feet (43.4') for the proposed building, to twenty-five feet (25') to the order canopy, and to thirty-two and seven tenths feet (32.7') for the proposed menu board.
- H. A variation from Section 9-10-5(L)(2)(b)(2)(a) to decrease the radius connecting street pavement edge and driveway edge on 75th street from thirty-five feet (35') to twenty-five feet (25').
- I. A variation from Section 9-10-5(G) to decrease the minimum required interior side yard parking area setback from ten feet (10') to one foot (1') along the south lot line (southern portion of the Route 83 driveway).
- J. A variation from Section 9-10-5(L)(2)(d) to decrease the driveway location on lots for all uses other than single-family residential from seventy feet (70') to sixteen and six tenths feet (16.6') on Illinois Route 83 and to forty-six and eight tenths feet (46.8') on 75th Street.
- K. A variation from Section 9-10-5(L)(2)(e) to decrease the minimum spacing between separate driveway entrances from four hundred feet (400') to three hundred three and nine tenths feet (303.9') between the Illinois Route 83 driveway and the driveway to the south, and to approximately one hundred forty-five and eight tenths feet (145.8') between the 75th Street driveway and the driveway to the east.
- L. A variation from Section 9-10-5(L)(2)(f) to decrease the minimum spacing between driveway entrance and right-of-way of an adjacent intersecting street from five

- hundred feet (500') to one hundred two and four tenths feet (102.4') on Illinois Route 83 and to one hundred sixty-nine and five tenths feet (169.5') on 75th Street.
- M. A variation from Section 9-10-5(L)(2)(g) to eliminate the requirement of a concrete median separation and to reduce the driveway storage from one hundred feet (100') to zero feet on Illinois Route 83 and 75th Street.
- N. A variation from Section 9-14-2(D)(2)(c)(4) to decrease the minimum foundation landscape area from seven feet (7') to three and eight tenths feet (3.8') along the southern façade, to five and two tenths feet (5.2') along the northern portion of the eastern building façade and from seven feet (7') to zero feet along the western building façade and remaining portion of the eastern building façade.

SECTION THREE: That the Findings of Fact made by the Plan Commission in its recommendation attached hereto as Exhibit "B" are hereby adopted by the Mayor and Board of Trustees.

SECTION FOUR: That the relief granted in Section Two of this Ordinance is expressly conditioned upon the SUBJECT REALTY at all times being constructed, used, operated, and maintained in accordance with the following terms, conditions, and provisions:

- A. The SUBJECT REALTY shall be in substantial accordance with the following plans and specifications ("APPROVED PLANS") attached hereto as Exhibit "C", except as modified herein or as part of approval of the FINAL PLANS:
1. Site Layout Plan – 1 sheet, Sheet C04.0, Panda Project No. D7058, Atwell Project No. 18003769.01, bearing a PC Submittal date of 11/20/2020, bearing the latest PC Submittal #2 date of 03/24/2021, bearing the latest Village Plan Revision #5 date of 04/29/2021, and prepared by Atwell Group.
 2. Architectural Drawings – 5 sheets, Sheets A-202, A-200, A-201, A-101, A-300, Panda Project #: D7058, Arch. Project #: JCDT180453, bearing an issue date of 11-04-2020, bearing the latest PC Submittal date of 03-24-2020, and prepared by NORR Architects Engineers Planners.
 3. Proposed Sign Package – 17 pages, Project #: C59897, dated 12.19.2018, bearing the latest revision date of 04.08.2020, and prepared by Priority Sign.
 4. Final Engineering Plans – 23 sheets, Panda Project #: D7058, Atwell Project No. 18003769.01, bearing a PC Submittal date of 11/20/2020, bearing the latest PC Submittal #2 date of 03/24/2021, bearing the latest Village Plan Revision #5 date of 04/29/2021, and prepared by Atwell Group.
 5. Landscape Plan and Landscape Notes and Details – 2 sheets, Panda Project #: D7058, Atwell Project No. 18003769.01, bearing a PC Submittal date of 11/20/2020, bearing the latest PC Submittal #2 date of 03/24/2021, bearing the latest Village Plan Revision #5 date of 04/29/2021, and prepared by Atwell Group.

6. Traffic Plan – 1 sheet, Sheet EX-02, Panda Project #: D7058, Atwell Project No. 18003769.01, bearing a PC Submittal date of 11/20/2020, Village Plan Revision #5 date of 04/29/2021, and prepared by Atwell Group.
 7. Photometric Plan – 1 sheet, dated 3/29/2021, and prepared by Villa Lighting.
 8. Construction Schedule – 1 page, dated 4/8/2021, and prepared by Atwell Group.
-
- B. The special use permit shall be null and void if construction for the proposed use is not commenced within eighteen (18) months of the date of any approval of the special use by the Village Board.
 - C. Approved signage is limited to two hundred ninety square feet (290 SF) of signage including one monument sign and four wall signs in substantial conformance with the sign package included in Exhibit “C”.
 - D. The proposed trash enclosure shall be constructed to look like masonry and shall appear similar to the color and style of the building.
 - E. All landscaped areas shall be constructed, and landscape material installed prior to the issuance of any permanent occupancy permit for the subject realty, or such earlier time, as is reasonably practical.
 - F. The Red Maple tree (or any other tree proposed in that location) located to the northeast of the cross access drive shall be maintained so that its leaves and/or foliage are higher than three and five tenths feet (3.5’) from grade to maintain the sight distances at the proposed access driveway on Kingery Highway and 75th Street and internal site intersections.
 - G. A separate sign permit shall be obtained for the proposed building signage, pursuant to the Village Code.
 - H. Construction on the subject realty is subject to the issuance of building permits, which shall not be authorized by the Village until the Applicant and the Village enter into a “Traffic and Regulation Enforcement Agreement” in a form acceptable to the Village.
 - I. Construction on the subject realty is subject to the issuance of building permits, which shall not be authorized by the Village until the Applicant submits satisfactory evidence to the Village that the subject realty was conveyed by the current property owner (True North Energy, LLC) to EC Development II, LLC and leased to the Applicant for operation of a drive-through restaurant.
 - J. Prior to the issuance of any site/civil engineering/grading and or new building permits, the Applicant shall obtain approval of the site plan for the subject realty by the Illinois Department of Transportation (IDOT) relative to access to Route 83.
 - K. Prior to the issuance of any new building permits the Applicant shall submit an engineer’s estimate of cost to establish a development security.
 - L. Prior to issuance of a building permit, a permit is required from IDOT prior to any work in the IL Route 83 right of way.
 - M. Prior to issuance of a building permit, a permit is required from the DuPage County Public Works Department for the sanitary sewer connection.
 - N. Prior to the start of construction, the Applicant shall file a Notice of Intent with the Illinois Environmental Protection Agency (IEPA).
 - O. Prior to issuance of a building permit, the Applicant shall provide the Village with a letter of No Further Remediation (NFR) from the IEPA.

- P. Prior to issuance of a building permit, the Village will require a Plat of Easement to grant access to the B-Box at the building. This can be a 10-foot-wide non-exclusive easement over the water service from 75th Street to the building.
- Q. Prior to issuance of a building permit, the Applicant shall provide a roadway impact statement from DuPage County Department of Transportation (DuDOT) for the 75th Street driveway.
- R. Prior to issuance of a building permit, EC Development II, LLC shall enter into, and record, a cross access easement agreement with the property owner of 7535 Kingery Highway (Red Roof Inn) in a form to be approved by the Village Attorney.

SECTION FIVE: That the Village Clerk is hereby authorized and directed to note the zoning grants made by this Ordinance upon the official Zoning Map of the Village of Willowbrook.

SECTION SIX: That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, expressly repealed.

SECTION SEVEN: That this Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

PASSED and APPROVED this 10th day of May, 2021.

ROLL CALL VOTE:

AYES: Berglund, Dair, Mustale, Neal, Oggerio, Ruffolo

NAYS: Ø

ABSTENTIONS: Ø

ABSENT: None

APPROVED:

Frank A. Trilla
Frank A. Trilla, Mayor

ATTEST:

Deborah A. Hahn
Deborah A. Hahn,
Village Clerk



ORDINANCE NO. 22-O-39

**AN ORDINANCE GRANTING A SPECIAL USE EXTENSION REQUEST FOR
ORDINANCE NO. 21-O-25, A SPECIAL USE PERMIT FOR A FAST FOOD
ESTABLISHMENT AND DRIVE-THROUGH USE AND GRANTING CERTAIN
VARIATIONS FROM THE ZONING ORDINANCE–PC 21-01:
7505 KINGERY HIGHWAY–PANDA EXPRESS**

WHEREAS, Panda Express, Inc. (the “Applicant”), was granted a Special Use for the construction of a 2,300 square foot Panda Express fast food restaurant with a drive-through, associated site improvements, and fourteen (14) zoning variations under Ordinance No. 21-O-25, approved by the Mayor and Board of Trustees of the Village of Willowbrook, DuPage County on May 10, 2021; and

WHEREAS, Section Four, B, of Ordinance 21-O-25 states “the special use permit shall be null and void if construction for the proposed use is not commenced within eighteen (18) months of the date of any approval of the special use by the Village Board”; and

WHEREAS, the eighteen (18) month deadline is November 10, 2022; and

WHEREAS, a written request for a twelve (12) month extension has been submitted on behalf of the Applicant, and at the September 26, 2022 Committee of the Whole Meeting, the developer, on behalf of the Applicant, provided a summary of the status of the outstanding items that are required prior to permit approval; and

WHEREAS, pursuant to the Village Code of the Village of Willowbrook, upon written application and for good cause shown, the Board of Trustees may, by ordinance, in its sole discretion, grant extensions of time not to exceed one (1) year from the time of the approval of the special use by the Village Board; and

WHEREAS, Village staff has recommended that the Village grant an extension of six (6) months, extending the deadline to May 10, 2023.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Willowbrook, DuPage County, Illinois, as follows:

SECTION ONE. The recitals set forth in the preamble are found to be true and correct and are incorporated herein by reference and made a part of this Ordinance, as if fully recited.

SECTION TWO. That a six (6) month special use extension for Section Four, B, of Ordinance No. 21-O-25 is granted, moving the deadline set in Ordinance No. 21-O-25 to commence construction to May 10, 2023.

SECTION THREE. That the several terms and conditions contained in the Special Use Permit, as passed and approved by Ordinance No. 21-O-25, shall, to the extent not expressly modified by the terms and conditions of this Ordinance, remain in full force and effect as therein provided.

SECTION FOUR. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, expressly repealed.

SECTION FIVE. That this Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

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PASSED and APPROVED this 10TH day of October, 2022.

ROLL CALL VOTE:

AYES: Astellla Berghina Dovi Mistele Neal Ruffolo

NAYS: Ø

ABSTENTIONS: Ø

ABSENT: Ø

APPROVED:

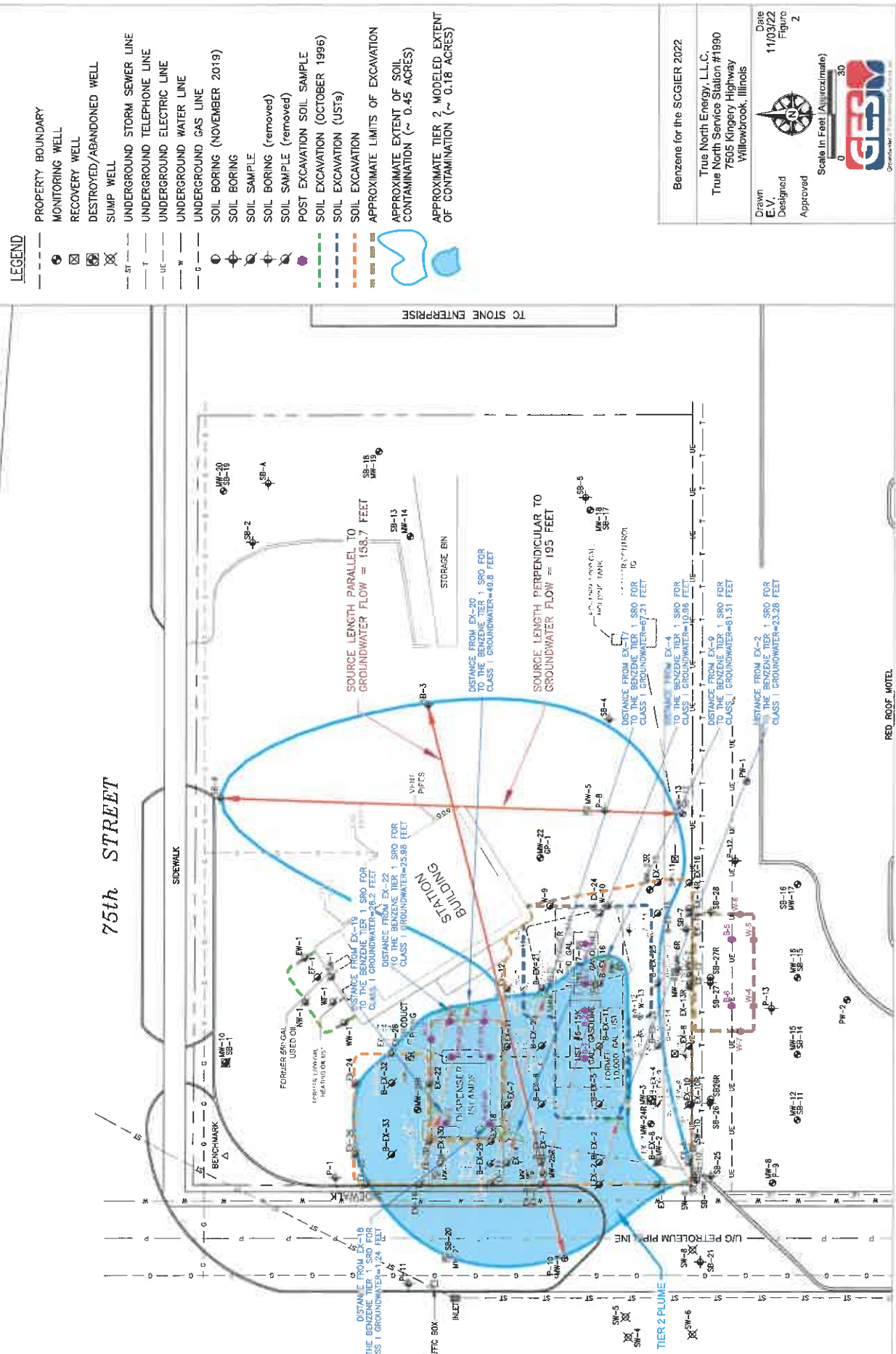
Frank A. Trilla

Frank A. Trilla, Mayor

ATTEST:

Deborah A. Hahn
Deborah A. Hahn, Village Clerk







ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

217-524-3300

CERTIFIED MAIL

MAR 28 2023

7022 2410 0001 5388 1226

David Nye
True North Energy, LLC
10346 Brecksville Road
Brecksville, Ohio 44141-3338

Re: 0431105022 - DuPage County
Willowbrook / True North Energy #1990
7505 South Kingery Highway
Leaking UST Incidents 871649, 20120788 & 20210593
Leaking UST Technical File

Dear Mr. Nye:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan and Budget submitted for the above-referenced incidents. This information was dated November 22, 2022 and was received by the Illinois EPA on November 28, 2022. Citations in this letter are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Illinois Administrative Code).

Site information is summarized in Attachment 1 of this letter. The Corrective Action Plan and Budget are summarized in Attachment 2 of this letter. Site diagrams and tables are presented in Attachment 3 of this letter.

The Illinois EPA does not approve the Corrective Action Plan for the reasons which are explained in Attachment 4 of this letter (Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Illinois Administrative Code 734.505(b) and 734.510(a)).

The Illinois EPA does not approve the Corrective Action Budget for the reasons which are explained in Attachment 5 of this letter (Sections 57.7(b)(3) and 57.7(c) of the Act and 35 Illinois Administrative Code 734.505(b) and 734.510(b)).

The Illinois EPA also has additional comments. These comments are explained in Attachment 6 of this letter.

An underground storage tank system owner or operator may appeal this final decision to the Illinois Pollution Control Board. Appeal rights are explained in Attachment 7 of this letter.

Any questions with regard to this letter should be directed to Michael Piggush via telephone (217-782-3101) or electronic mail (michael.piggush@illinois.gov).

2125 S. First Street, Champaign, IL 61820 (217) 278-5800
1101 Eastport Plaza Dr., Suite 100, Collinsville, IL 62234 (618) 346-5120
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000
595 S. State Street, Elgin, IL 60123 (847) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760

Sincerely,

Michael Piggush

Michael Piggush
Project Manager
Leaking Underground Storage Tank Section
Bureau of Land

SP
SP:TB TB

Attachments (7):

1. Summary of Site Information.
2. Summary of Corrective Action Plan and Budget.
3. Site Diagrams and Tables.
4. Corrective Action Plan Disapproval Reasons.
5. Corrective Action Budget Disapproval Reasons.
6. Additional Comments.
7. Appeal Rights.

Copies (5):

1. Groundwater & Environmental Services, Inc., gesinbox@gesonline.com.
2. Melissa Blaha (Groundwater & Environmental Services, Inc.), mblaha@gesonline.com.
3. Gayle Neal (Village of Willowbrook), gneal@willowbrook.il.us.
4. David Nye (True North Energy, LLC), dnye@truenorth.org.
5. Bureau of Land File.

Attachment 1

Summary of Site Information

Re: 0431105022 - DuPage County
Willowbrook / True North Energy #1990
7505 South Kingery Highway
Leaking UST Incidents 871649, 20120788 & 20210593
Leaking UST Technical File

The basic site information is summarized as follows:

1. The site property is a gas station.
2. Groundwater has been assumed to be Class I.
3. Leaking UST Incidents 871649, 961814, 20120788, 20210593, and 20210986 all exist at this site property.
4. Leaking UST Incident 871649.
 - a. Releases have occurred from the following underground storage tank systems:
 - i. Three 10,000-gallon gasoline underground storage tank systems.
 - b. The Illinois EPA has previously stated that the indicator contaminants are BETX and MTBE.
 - c. The Office of the Illinois State Fire Marshal issued an Eligibility and Deductible Determination on June 29, 2012.
 - i. The Office of the Illinois State Fire Marshal determined that costs associated with the underground storage tank systems were eligible for reimbursement from the Underground Storage Tank Fund.
 - ii. The Office of the Illinois State Fire Marshal determined that the deductible amount was \$50,000.00.
 - iii. The Eligibility and Deductible Determination was issued to True North Energy, LLC.
 - d. The underground storage tank systems have been removed.

- e. Soil remediation, groundwater remediation, free product removal, and site investigation activities have all been performed.
 - f. The Illinois EPA disapproved a Corrective Action Plan and Budget on September 11, 2020.
 - g. Site investigation activities were performed on December 17, 2020.
 - i. Groundwater samples were obtained from 13 groundwater monitoring wells (PW-1, PW-2, MW-8, MW-12, MW-15, MW-16, MW-17, MW-22, MW-6R, MW-23R, MW-24R, MW-25R, and MW-26R) by Groundwater & Environmental Services, Inc. of Aurora, Illinois.
 - ii. The groundwater samples were analyzed for BETX and MTBE.
5. Leaking UST Incident 961814.
- a. The Illinois EPA issued a No Further Remediation Letter for Leaking UST Incident 961814 on March 17, 1998.
6. Leaking UST Incident 20120788.
- a. The Illinois EPA has previously stated that Leaking UST Incident 20120788 is a re-reporting of Leaking UST Incident 871649.
7. Leaking UST Incident 20210593.
- a. Releases have occurred from the following underground storage tank systems:
 - i. One 15,000-gallon gasoline underground storage tank system (system 6).
 - ii. One 8,000-gallon gasoline underground storage tank system (system 7).
 - b. The indicator contaminants are BETX and MTBE.
 - c. Early action activities were performed from June 23, 2021 through July 8, 2021.
 - i. The underground storage tank systems were removed by B & B Construction & Excavating Company of Morris, Illinois.
 - A. The underground storage tank systems were removed in accordance with Office of the Illinois State Fire Marshal Permit 00642-2021REM, which was issued on May 28, 2021.
 - ii. The releases from the underground storage tank systems were discovered at that time.

- iii. The Illinois Emergency Management Agency was notified of the releases from the underground storage tank systems on June 23, 2021.
 - A. Incident 20210593 was assigned at that time.
- iv. It appears that a total of 1,141 cubic yards (1,241 tons) (79 truckloads) of contaminated soil were excavated and disposed of by B & B Construction & Excavating Company of Morris, Illinois. This included contaminated soil from both the on-site property as well as the off-site Red Roof Inn property. This included 654 cubic yards of contaminated soil (60 cubic yards of backfill material and 594 yards of native soil) associated with the removal of the underground storage tank systems as well as 487 cubic yards of contaminated soil (from the off-site Red Roof Inn property) associated with corrective action for Leaking UST Incidents 871649 and 20120788.
- v. A total of 8,000 gallons of contaminated groundwater were removed from the soil excavation area and disposed of by GFL Environmental Services USA, Inc. of Mokena, Illinois.
 - A. The contaminated groundwater was disposed of at Water Integrated Treatment Systems of Dolton, Illinois.
- vi. A total of 24 soil samples (B-1 - B-4, P-1 - P-4, P-1R, P-2R, P-4R, W-1 - W-3, BF-1, BF-2, EX-34, B-5, B-6, W-4 - W-7, and B-5R) were obtained by Groundwater & Environmental Services, Inc. of Batavia, Illinois. This included 16 soil samples associated with the removal of the underground storage tank systems and 8 soil samples (from the off-site Red Roof Inn property) associated with corrective action for Leaking UST Incidents 871649 and 20120788.
 - A. The soil samples were analyzed for BETX, MTBE, and soil moisture content by Pace Analytical Services, LLC of Green Bay, Wisconsin.
 - B. Excavation sidewall soil samples were not obtained in all areas due to the presence of gravel backfill material from former soil excavation areas.
- vii. The soil excavation areas were backfilled.
 - A. The backfill material was supplied by Orange Crush, LLC of Hillside, Illinois.
- d. The Office of the Illinois State Fire Marshal issued an Eligibility and Deductible Determination on September 8, 2021.

- i. The Office of the Illinois State Fire Marshal determined that costs associated with the underground storage tank systems were eligible for reimbursement from the Underground Storage Tank Fund.
 - ii. The Office of the Illinois State Fire Marshal determined that the deductible amount was \$5,000.00.
 - iii. The Eligibility and Deductible Determination was issued to True North Energy, LLC.
 - e. The Illinois EPA approved a 45-Day Report as well as a Stage 1 Site Investigation Plan and Budget Certification on December 2, 2021. The Illinois EPA also noted additional comments.
- 8. Leaking UST Incident 20210986:
 - a. Releases have occurred from the following underground storage tank systems:
 - i. One 1,000-gallon heating oil underground storage tank system (system 8).
 - ii. One 550-gallon waste oil underground storage tank system (system 5).
 - b. Early action activities were performed on November 4, 2021.
 - i. The underground storage tank systems were removed by B & B Construction & Excavating Company of Morris, Illinois.
 - A. The underground storage tank systems were removed in accordance with Office of the Illinois State Fire Marshal Permit 00642-2021REM.
 - B. The underground storage tank systems were disposed of at All American Recycling, Inc. of Joliet, Illinois.
 - ii. The releases from the underground storage tank systems were discovered at that time.
 - A. The releases from the underground storage tank systems were reported to the Illinois Emergency Management Agency at that time.
 - B. Incident 20210986 was assigned at that time.
 - iii. A total of 162 tons of contaminated soil were excavated and disposed of at the Waste Management Laraway Landfill located in Joliet, Illinois.

- iv. Nine soil samples (CSW-1 - CSW-6 and CSB-1 - CSB-3) were obtained from the soil excavation area by Groundwater & Environmental Services, Inc. of Batavia, Illinois.
 - A. The soil samples were analyzed for BETX, MTBE, PNAs, and soil moisture content by Pace Analytical Services, LLC of Green Bay, Wisconsin.
 - B. Soil sample CSB-1 was also analyzed for VOCs, SVOCs, metals, and PCBs.
- v. Groundwater was not encountered in the soil excavation area.
- vi. The soil excavation area was backfilled.
 - A. The backfill material was supplied by both Elmhurst-Chicago Stone Company of Elmhurst, Illinois and Orange Crush, LLC of Hillside, Illinois.
- c. True North Energy, LLC elected not to proceed with corrective action with respect to the reported releases from the one 1,000-gallon heating oil underground storage tank system on December 22, 2021.
 - i. This was based upon the exclusion of heating oil underground storage tank systems which is outlined in Section 57.5(g) of the Act and 35 Illinois Administrative Code 734.100(c).
 - ii. The Illinois EPA approved the election not to proceed on May 23, 2022.
- d. True North Energy, LLC elected not to proceed with corrective action with respect to the reported releases from the one 550-gallon waste oil underground storage tank system on December 22, 2021.
 - i. This was based upon the exclusion of underground storage tank systems taken out of operation prior to January 2, 1974 which is outlined in Section 57.5(g) of the Act and 35 Illinois Administrative Code 734.100(c).
 - ii. The Illinois EPA approved the election not to proceed on May 23, 2022.
 - iii. This appears to be the same 550-gallon waste oil underground storage tank system which was previously mentioned with the Illinois Emergency Management Agency notification dated June 23, 2021 for Leaking UST Incident 20210593.

9. The Illinois EPA disapproved a Corrective Action Plan and Budget for Leaking UST Incidents 871649, 20120788 & 20210593 on October 7, 2022. The Illinois EPA also noted additional comments.

Attachment 4

Corrective Action Plan Disapproval Reasons

Re: 0431105022 - DuPage County
Willowbrook / True North Energy #1990
7505 South Kingery Highway
Leaking UST Incidents 871649, 20120788 & 20210593
Leaking UST Technical File

The Illinois EPA does not approve the Corrective Action Plan, for the following reasons:

1. A site-specific survey of the availability of municipal water supplies must be performed in order to determine if there are any developed properties within the area of the site property that do not receive a water bill from the local public water supply entity. The Corrective Action Plan does not contain this information.

The Illinois EPA is not requesting that additional information be obtained from the Illinois State Geological Survey, Illinois State Water Survey, or local health department with regard to the existence of potable water supply wells in the area. Rather, the Illinois EPA is requesting that information be obtained from the local water company with regard to properties in the area which do or do not receive water bills.

Please refer to 35 Illinois Administrative Code 734.445(a)(3).

2. The Illinois EPA does not agree with the evaluation of the indoor inhalation exposure pathway.

Item 6(d) of the Illinois EPA Indoor Inhalation Review Checklist states that the concentration of benzene in the soil does not exceed 10 mg/kg. However, the concentration of benzene at the location of soil sample EX-9 does exceed 10 mg/kg.

3. Please refer to Figure 2 of the Corrective Action Plan, which is dated November 3, 2022, and titled Benzene for the SCGIER 2022. The Illinois EPA does not agree with the interpretation of the modeled plume of the contamination in the groundwater. The distance X in Equation R26 should be applied in a radial 360-degree pattern in order to take into consideration the possibility that the flow direction of the groundwater may change over time unless the owner or operator can demonstrate the flow direction is consistent. Even then, the modeled plume of the contamination in the groundwater is not a series of line segments.

Attachment 5

Corrective Action Budget Disapproval Reasons

Re: 0431105022 - DuPage County
Willowbrook / True North Energy #1990
7505 South Kingery Highway
Leaking UST Incidents 871649, 20120788 & 20210593
Leaking UST Technical File

The Illinois EPA does not approve the Corrective Action Budget, for the following reasons:

1. The Illinois EPA has not approved the Corrective Action Plan for the reasons which were previously explained in Attachment 4 of this letter. The Illinois EPA cannot approve a Corrective Action Budget without an approved Corrective Action Plan.

Please refer to Section 57.7(c)(3) of the Act and 35 Illinois Administrative Code 734.510(b).

Attachment 6

Additional Comments

Re: 0431105022 - DuPage County
Willowbrook / True North Energy #1990
7505 South Kingery Highway
Leaking UST Incidents 871649, 20120788 & 20210593
Leaking UST Technical File

The Illinois EPA has the following additional comments:

1. The Corrective Action Plan does not contain an updated tabular summary of well survey information which corresponds to the updated well location map (Figure 1 of the Corrective Action Plan).
2. Please note that some areas of the application for a Highway Authority Agreement which was submitted to the Illinois Department of Transportation on July 26, 2022 reference Leaking UST Incident 20210788 rather than Leaking UST Incident 20120788.