Richard Wilke, on behalf of Jared Van Lanen, d.b.a. Sturgeon Bay Storage submitted a Petition for Map Amendment to rezone Richard W. Wilke's entire 6.65-acre lot from GA to CC in order to pursue a conditional use permit to establish a multiple-building commercial storage facility, as well as other commercial uses to be determined for two buildings.

The (circle one) Town Board/Planning Committee of the Town of Sturgeon Bay held a legally noticed and posted meeting on 3-1-2021, at which, by a vote of 4 (Yea) to 0 (Nay), the town recommended (check one) X SUPPORT ___ DENIAL for a petition to rezone.

Reason(s) for the town's decision:

Area fits the planned usage.

Would be improvement to the property.

Is the proposal consistent with the Town Comprehensive Plan?

Expected this area would eventually become commercial.

Concerns or objections the town may wish to see potentially addressed through modifications to the proposed amendment:

A buffer screening with evergreen may be appreciated by adjoining properties.

Nancy Krueger 3-2-2021
Town Clerk Signature Date

*See reverse side for map amendment criteria.
Mariah-

See the attached agreement. As this has been amended multiple times, we are very near signature status on this document. I don’t want to assume Marty has sent this to you, so I am forwarding it to you. If you could please include this with the agenda items for the March 4th RPC meeting.

Appreciated!
Jerry

From: Olejniczak, Marty <MOlejniczak@sturgeonbaywi.org>
Sent: Wednesday, February 24, 2021 4:52 PM
To: Richard Wilke <richwilke@yahoo.com>; Jerry VanLanen <jerry@foxvalleystorage.com>; brian@foxvalleystorage.com; Heidi Neubauer <heidisellsre@gmail.com>
Subject: Revised pre-annexation agreement

Attached is what is hopefully the final draft of the pre-annexation agreement. This just came to me and I haven’t even reviewed it myself. This draft is supposed to eliminate the reference to “property owner” for the various rights and obligations and change it to “buyer” since the rights and obligations don’t actually kick in unless/until the property is sold to the VanLanens. I am not sure if anything else changed. Please review the entire agreement and let me know if it is OK. The city administrator and I will do likewise on behalf of the city. Once everyone is in agreement, we can initiate the signatures and recording. Thanks for your patience and understanding through this process. This annexation agreement was more complicated than most due to the impending sale and other factors.

Marty Olejniczak
Community Development Director
City of Sturgeon Bay
920-746-6908
CITY OF STURGEON BAY
PRE-ANNEXATION AGREEMENT

This agreement is entered into among the City of Sturgeon Bay, Wisconsin, a municipal corporation duly created under the laws of the State of Wisconsin (hereinafter known as the "City"), Richard W. Wilke and Robert E. Wilke, the owners of property in the Town of Sturgeon Bay, Door County, Wisconsin (hereinafter known as "Property Owner"), and Jared VanLanen and Brian VanLanen, the intended purchasers of said property (hereinafter known as "Buyer") the City, Property Owner and Buyer will collectively be referred to as "Parties"

RECITALS:

WHEREAS, Property Owner owns property lying adjacent to the City, more particularly described on Exhibit A attached hereto and incorporated herein (the "Property"); and

WHEREAS, Property Owner desires to sell Property to Buyer for development purposes;

WHEREAS, the City operates and maintains municipal sanitary sewer and water systems within its corporate boundaries; and

WHEREAS, the Parties desire to establish certain terms and timing regarding annexing the Property to the City and connecting the Property to the City sewer and water systems; and

WHEREAS, the Parties desire to set forth their understandings concerning future development of the Property and certain municipal services to be provided to the Property;

NOW, THEREFORE, in consideration of the premises and of the covenants and understandings herein expressed, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Condition Precedent.** Property Owner and Buyer shall make a good faith, deliberate effort to reach agreement to convey the Property to Buyer within the next 2 years.
If Property Owner and Buyer fail to reach such agreement and to convey the property to Buyer within 30 months, the rights and obligations of the Parties under this agreement shall not arise or in any way be binding or enforceable until the Property is conveyed to Buyer (including any subset of Buyer or affiliated business enterprise engaged in commercial storage) within two years of the execution of this agreement. Any sale of the Property by Property Owner to Buyer shall be subject to this agreement.

2. **Commitment to Annex Property.** Buyer agrees and commits, on behalf of themselves, their heirs and assigns to take all such actions reasonably necessary to annex the Property as described in Exhibit A attached hereto and incorporated herein, to the City of Sturgeon Bay when and in the manner such annexation is requested by the City of Sturgeon Bay, provided the annexation is not requested by the City prior to the earlier of the following occurrences:

   A. Upon all building permits being issued for the first phase of development and municipal sanitary sewer and water service being extended to the Property.

   B. Five years after the recording of this Pre-Annexation Agreement.

3. **Form of Annexation Petition.** Additional parcels adjoining the Property may be included in the annexation petition, provided that the annexation petition is in compliance with Section 66.0221 of the Wisconsin Statutes. By accepting utility connections and committing to annex such Property to the City, the Buyer binds the Property and future owners thereof to such annexation under the terms set forth herein.

4. **Sanitary Sewer and Water Service.**

   A. **Connection Prior to Annexation.** The utility connection policy of the City of Sturgeon Bay presently states that connection of property outside of the corporate limits of the City of Sturgeon Bay to municipal sanitary sewer and water utilities may occur only when specifically authorized by the Common Council. Therefore, in consideration of the commitment of Buyer to annex such Property to the City of Sturgeon Bay in the future, the City authorizes the connection of the Property to municipal sanitary sewer and water services of the City of Sturgeon Bay prior to the annexation of the Property. The ability to connect to municipal sanitary sewer and water services prior to annexation is contingent upon the availability of sanitary sewer and water mains to serve the Property and is subject to the provisions of Paragraph 2 above.

   B. **Assessment for Sewer and Water Main Installation.** If any part of the Property is served by sanitary sewer and water mains that are extended along or into the property at City expense, the City may, upon annexation, assess the Buyer for the proportional cost of installing such sewer or water main facilities according to its normal assessment policy and procedures. If the Property receives such service prior to annexation, the City shall notify Buyer of the City's intent to bill the proportional cost of the extension, determined in the same manner as if the property was assessed, to the owner to be paid
in six equal annual installments, without interest. Failure to pay the installments when due will constitute a breach of this agreement and will be enforceable through collection action without affecting the annexation obligations of the Buyer. If this provision is breached, and the City commences a successful collection action the City will be entitled to statutory interest and actual attorney’s fees.

C. **Requirement to Connect.** At the time that City sanitary sewer and water services are extended to the Property, the Buyer, or their successors or assigns shall connect any existing building(s) served by private sanitary system(s) or private well(s) to the municipal sanitary sewer and water system. The Buyer shall also connect any future buildings on the Property that Buyer, their successors or assigns desire to be served with sanitary sewer and water services.

D. **Connection Fees and Permits.** There shall be no connection fees charged to Buyer for connecting to sanitary sewer and water service. However, Buyer is responsible for and shall obtain any necessary permits, and pay any permit fees therefor, for the installation of mains and laterals that connect to the sanitary sewer and water system of the City of Sturgeon Bay. Buyer shall allow for inspection of connections by the City.

E. **Construction Costs for Laterals.** The construction costs for the installation of laterals serving the Property that connect to the sanitary sewer and water mains shall be paid for in their entirety by the Buyer. This shall include the cost of materials and installation including any associated excavating, blasting, or affiliated expenses. Buyer shall be responsible to repair or replace any damage caused to the water or sewer mains, curb and gutter or street as a result of such construction.

F. **Additional Municipal Services.** If sanitary sewer or water services are extended to the Property before annexation, the City of Sturgeon Bay is not committed to provide any additional municipal services to Buyer, its heirs, successors or assigns until such time as the Property is annexed into the City of Sturgeon Bay.

5. **Zoning and Use of Property.**

A. **Applications for Door County Zoning Approval for Commercial Storage Facility.** Prior to annexation to the City, the Property is subject to the Door County Zoning Ordinance. The City agrees to not object to petitions under County zoning for either a zoning map amendment or a conditional use permit relating to a commercial storage facility, provided such storage facility complies with the requirements of the Door County Zoning Ordinance.

B. **Future Zoning Classification Upon Annexation.** Upon annexation, the City reserves the right to place any zoning district classification(s) upon the
Property as deemed appropriate by the common council after recommendation by the plan commission. The City agrees to honor any valid non-expired building permits or approvals that were duly issued by the state, county, or Town of Sturgeon Bay prior to annexation of the Property.

C. **Requirement for Building(s) to be Served by Sewer/Water Facilities.** Any building(s) located within 150 feet of the right-of-way of N. 18th Avenue shall be developed with an occupied use that requires sanitary sewer and water facilities, except that if two or more buildings are located within 150 feet of N. 18th Avenue, one of the buildings is exempt from this provision. If municipal sanitary sewer and water facilities are not available at the time of development of such building(s) required to be served by sewer/water facilities, the building(s) may initially be developed using private well and sanitary system, provided, however, that connection to the municipal sanitary sewer and water facilities occurs at the time such facilities are extended to the Property.

D. **Approval of Building Facades Facing N. 18th Avenue.** For any building proposed to be constructed within 150 feet of the right-of-way of N. 18th Avenue, the Buyer agrees to have the proposed design of the facade facing 18th Avenue be reviewed and approved by Sturgeon Bay Aesthetic Design & Site Plan Review Board prior to commencement of construction. The Boards' review shall be limited to the building elevation facing 18th Avenue.

6. **Building Inspection.** As long as the Property remains in the Town of Sturgeon Bay, the Buyer shall obtain all required building permits from the Town and conform to the Town's building inspection protocols. Upon annexation, building inspection of any development under construction shall be performed by the City of Sturgeon Bay building inspectors. After annexation the City agrees to pay for any additional building inspection fees associated with any inspections of ongoing construction work performed under building permits that were received prior to the annexation.

7. **Taxes and Fees.**

   A. **Property Taxes.** As the Property will remain in the Town of Sturgeon Bay until such time as it is annexed to the City of Sturgeon Bay, there shall be no property taxes due to the City from the Buyer until such time as it is annexed into the City of Sturgeon Bay.

   B. **Monthly Utility Bills.** Upon connection to the municipal sanitary sewer and water system, after annexation, fees for monthly usage of sanitary sewer and water services shall be paid directly to the Sturgeon Bay Utilities and subject to enforcement under the utility's normal billing and collection practices. For any usage of sewer and water services prior to annexation, the City shall send monthly invoices of the cost of the usage and the Buyer shall pay such costs within 30 days' of invoice. The City shall set its rates in the same manner as for all other customers. Failure to timely pay the invoices shall be considered
breach of this Agreement and shall be subject to collection in the same manner and terms as provided in Paragraph 4.B. above.

8. **Miscellaneous Provisions.**

A. **Term of Agreement.** The term of this agreement shall be twenty-five (25) years from the effective date described in Paragraph 8.B. below. If the annexation of the Property to the City of Sturgeon Bay occurs during the term of this agreement, then the obligations of this agreement to annex such property to the City of Sturgeon Bay shall be deemed satisfied. If the Buyer, their heirs, successors or assigns have not been requested by the City of Sturgeon Bay to annex the Property to the City of Sturgeon Bay within the term of this agreement, then the obligation under this agreement shall terminate and this agreement shall be null and void.

B. **Effectiveness of Agreement.** This agreement shall, subject to the condition precedent stated in Paragraph 1, become effective on the date this agreement has been executed by both parties hereto.

C. **Authority.** Each person executing this agreement on behalf of a party hereto warrants and represents that he or she has full power and authority to execute and deliver this agreement, and the provisions of this agreement will be binding upon and enforceable against the persons executing their signatures hereto and all trusts, corporations, LLCs, or other entities in which such person is an owner, officer or member.

D. **Amendments.** No modification, alteration or amendment to this agreement shall be binding upon either party hereto until such modification, alteration or amendment is reduced to writing and executed by both parties hereto.

E. **Governing Law.** The terms, conditions and provisions of this agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

F. **Default.** In addition to any other remedies provided in this agreement, if the Buyer fails to take action to annex its property as is required herein, or if the City fails to allow for the connection to sewer and water services as provided herein, then the non-defaulting party shall provide written notice to the defaulting party of the nature of such default. If the default is not cured within thirty (30) days of receipt of such notice, then the non-defaulting party may, at its option, terminate this agreement and all obligations hereunder. If the sewer and water service has already been connected, it may then be disconnected by the City or its agent in the manner provided by law.

G. **Costs of Enforcement.** Any Party incurring expenses necessary to enforce the provisions of this agreement is entitled to recover such expense, including reasonable actual attorney fees, from the defaulting party.
H. **Severability.** The invalidity or unenforceability of any covenant, condition, term or provision of this agreement shall not affect the validity or enforceability of any other covenant, condition, term or provision of this agreement.

**IN WITNESS WHEREOF,** the City of Sturgeon Bay by its authorized representatives **Buyer** and the Property Owner have caused this agreement to be signed, sealed and attested on its behalf.

[SIGNATURES BEGIN ON FOLLOWING PAGE]
CITY OF STURGEON BAY

Dated: ___________________________  By: ___________________________
                  David J. Ward, Mayor

Dated: ___________________________  By: ___________________________
                  Stephanie L. Reinhardt, Clerk

STATE OF WISCONSIN  )  SS
COUNTY OF DOOR      )

Personally came before me this _____ day of ______________, 2021, the above-named David J. Ward and Stephanie L. Reinhardt, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

______________________________
Notary Public, State of Wisconsin
My Commission Expires:______________

PROPERTY OWNER

Dated: ___________________________  By: ___________________________
                  Richard W. Wilke

Dated: ___________________________  By: ___________________________
                  Robert E. Wilke

STATE OF WISCONSIN  )  SS
COUNTY OF DOOR      )

Personally came before me this _____ day of ______________, 2021, the above-named Richard W. Wilke and Robert E. Wilke, to me known to be the person who executed the foregoing instrument and acknowledged the same.

______________________________
Notary Public, State of Wisconsin
My Commission Expires:______________

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BUYER

Dated: ____________________________
By: ________________________________
    Jared VanLanen

Dated: ____________________________
By: ________________________________
    Brian VanLanen

STATE OF WISCONSIN )
COUNTY OF DOOR ) SS

Personally came before me this ___ day of ____________, 2021, the above-named Jared VanLanen and Brian VanLanen, to me known to be the person who executed the foregoing instrument and acknowledged the same.

_____________________________________
Notary Public, State of Wisconsin
My Commission Expires: __________________

This instrument drafted by:

Attorney James M. Kalny
Davis & Kuelthau, s.c.
318 S. Washington Street, Suite 300
Green Bay, WI 54301