

# BARDENWERPER, TALBOTT & ROBERTS, PLLC

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January 4, 2021

Mr. Jay Lockett  
Planning & Design Services  
Louisville, KY 40202

Dear Mr. Lockett,

Mr. Porter forwarded me a copy of his letter to you yesterday, dated January 3, 2022. I just spoke to Steve and he requested a meeting with my client to discuss the binding element issue. We asked him to send a redline proposal to consider, but we simply received this letter instead which intimates further discussion, but no concrete proposals were given.

As you may or may not be aware, we tried in earnest to work this matter out with the Willowhurst Place Residents over the course of months without success. We were sent from pillar to post by their property management company at first. Finally, we were able to speak to John Beam representing the Willowhurst Place Residents on September 3, 2021. Afterwards we communicated through email. Ultimately, we were simply told they had no interest in attempting to resolve the issue, and were opposed to any change to the Binding Elements.

Mr. Porter alleges that restaurants are doing fine without drive-through facilities. He ignores substantial research and data on this subject. In fact, restaurants were some of the first economic activities to suffer severe impacts from the pandemic. Dining-in restaurants virtually stopped overnight as social distancing guidelines took effect. Dramatic declines in sales, employee lay-offs and closings have resulted forcing businesses to pursue alternatives including the take out/delivery model as well as drive-throughs as a safe and efficient means for restaurants to remain open. Even reopening has been a very slow recovery process and studies show that 80% of consumers have not dined in a sit-down restaurant since they have reopened.<sup>1</sup>

Below is the proposal we made to the Willowhurst Place Residents to allow the drive through window, but not allow “fast food restaurants” with the following definition sent on October 25, 2021:

A fast-food restaurant (FFR) derives at least 70% of its sales revenue through drive-through window service. Inside seating may be provided, but table service is minimal and inside food sales are ordered from the counter. An FFR does not have a liquor license. It serves quick service “fast-food”, generally characterized having a limited menu, cooked in bulk and in advance which is kept hot, and then finished and packaged when ordered. FFR are usually part of a chain or franchise providing standardized ingredients and/or partially

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<sup>1</sup> FN Penn State University report (attached); Modern Restaurant Management Report (attached).

prepared foods and supplies to each restaurant through controlled supply channels. Examples would include but are not limited to Wendy's, White Castle, McDonald's, KFC, Burger King, Taco Bell, Dairy Queen, Arby's, and Hardees. Such restaurants which would not be an FFR would include a Panera type restaurants or coffee shops, such as Starbucks, Heine Bros., etc. (The window sales limitation is not applicable during pandemic government restrictions on indoor food service.)

We thought and still do believe that this is a very reasonable proposal. Willowhurst rejected the proposal on November 6, 2021 with Mr. Beam, stating that, "*We do not agree with your proposed changes and you will be hearing from our agent with a formal response to our rejection.*" No formal response was ever given despite our efforts. We are still open to their ideas, but nothing has been received.

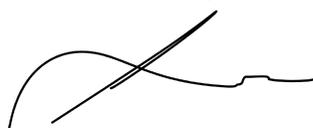
We believe that 27 years is enough time for the purpose of the binding elements at issue. These "out lots" are far from the Willowhurst Place Residents. When the binding elements were put on the out-lots, Hurstbourne Pkwy. was a very different thoroughfare. These lots were part of an undeveloped parcel of 44 acres. Today, Hurstbourne Parkway is a mature, fully developed thoroughfare bustling with every business under the sun. Willowhurst Place was a relatively new development in 1994 without any mature buffering. Today, that is no longer the case and the reasons for the binding elements do not apply.

These properties have been under tremendous economic pressure, and they should not be treated differently than the property immediately across the Hurstbourne Pkwy.

Again, we are open to proposals from Willowhurst Place Residents, as we have been for months, but we need a concrete, reasonable proposal from them. As of today, nothing has been forthcoming.

With kind regards,

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Talbott". The signature is fluid and cursive, with a prominent loop at the beginning and a horizontal line extending to the right.

John C. Talbott