

LAW OFFICES OF  
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June 16, 2014

**Via E-mail Only (sreilly@ci.waukesha.wi.us)**

Mayor Shawn N. Reilly  
City of Waukesha  
Waukesha City Hall  
201 Delafield Street  
Waukesha, WI 53188

Re: Robert F. Smart and Carol O. Smart Revocable Trust of 2010, Carol O. Smart, Trustee  
Sunset Drive Improvements East of the Proposed Meijer Site

Dear Mayor Reilly:

As you know, at its June 10, 2014 meeting, the City's Finance Committee considered Item Number ID 14-0499 relative to inclusion of certain monies in the City's capital improvement budget for improvements to Sunset Drive, east of the proposed Meijer Site. The agenda for that meeting suggests that these improvements are "required in conjunction with the Meijer development".

During the course of its meeting, the Finance Committee was provided with a reconstruction estimate prepared by my client's engineering consultant. During the discussion on this item, the City Administrator and the City Engineer indicated that the estimated costs of these improvements were \$1.4 million. The Finance Committee decided to table the item to its next regularly scheduled meeting or hold a special meeting of the committee prior to the next Common Council meeting. As I understood it, the Finance Committee deemed it necessary to table the item because the amount to potentially be added to the CIP exceeded the amount on the agenda by approximately \$400,000.00. The Committee also requested additional information from the City Engineer and City Planner to consider relative to this item.

As you are aware, as part of its proposed development, the Meijer Corporation has committed to improvements along portions of Sunset Drive and Tenny Avenue, which are immediately adjacent to its site. Through its review of a traffic impact analysis, the City has concluded that, as a result of anticipated traffic that may be generated by Meijer customers (and other proposed redevelopment in the area), Sunset Drive will need to be expanded to four lanes from the Eastern boundary of the Meijer Site, all the way to the Highway 59 intersection. Of course, a large portion of Sunset Drive along this stretch lies outside of the City's jurisdictional limits.

As I indicated, estimates provided to and reviewed by the City suggest the cost of these off-site improvements will be approximately \$1.4 million. These off-site improvements are a substantial upgrade to the existing facilities in that they include four new lanes with medians, new bike lanes, new sidewalks and new storm water facilities.

Mayor Shawn N. Reilly  
June 16, 2014  
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The City has suggested that results of the traffic study warrant these substantial upgrades and they are necessary as a result of the proposed Meijer development. However, as the attached traffic counts show, in the year 2000, the annual average daily traffic (AADT) count along Sunset Drive between the East Avenue intersection and the Tenny Avenue intersection was shown by the Wisconsin Department of Transportation to be approximately 20,800 vehicles per day. In 2009, the DOT measured the AADT at 17,500 vehicles per day and, thus, a reduction of approximately 3,300 vehicles. In 2012, the attached image clip from DOT shows the traffic count on Sunset Drive to again be down to 14,100 AADT (i.e., another reduction of 3,400 vehicles). With no significant changes to the roads, activities or occupants in this area, it seems safe to assume that the traffic counts along Sunset Drive (to the immediate east of the Tenny Avenue intersection) also closely mirror these numbers.

The traffic impact analysis that the City requested (and that Meijer paid for) show the same numbers for 2009. The analysis provides that the Meijer project (at full build out with the highest traffic contributors for the outlot development) will have a projected net impact of an additional 13,200 trips per day on average. The study reasons that approximately 25% of the trips will come to and from Sunset to the east and State Highway 59 to the north. This equates to an additional 3,300 vehicle trips per day on Sunset between State Highway 59 and Meijer development. Adding these vehicle trips to the 2012 figures would bring the traffic quantity back to where it was in 2009 but still well below where it was fourteen years ago in the year 2000.

Thus, the City (and Town) are now going on nearly two decades where Sunset Drive has performed to a level that apparently did not warrant any other developer in the immediate area to rebuild Sunset to the standards that the City Department of Public Works is now requiring in this instance.

Section 22.15 of the City Code, provides that, in determining whether to approve site and architectural plans for all new structures, uses and changes, the Planning Commission shall consider whether "there shall be adequate provisions for safe traffic circulation and safe driveway locations". Likewise, Section 22.52 of the City Code provides that the Planning Commission shall apply certain standards, including whether "the proposed development will be accessible from roads that are adequate to carry the traffic that can be expected to be generated by the proposed development".

The attached traffic figures clearly show that, even with the Meijer Development (at full build out and with the highest traffic figures), Sunset Drive is already adequate to carry the traffic that can be expected to be produced by the proposed development. Sunset Drive, as it currently sits, appears to be adequate for the provision of safe traffic circulation in the area.

Nonetheless, the City has taken the position that the improvements to East Sunset Drive are necessary and that they should be considered "in conjunction with the Meijer development". This conclusion is not borne out by the historical traffic counts or those that are expected to be generated by this development.

For these reasons, my client sincerely questions whether the City has the authority to now require it or Meijer to make any such improvements. As stated, Sunset Drive has performed adequately for nearly two decades, during which time, no other developer has been required to contribute to its improvement.

Having said all that, as you are aware, my client has already committed to an amount not to exceed \$700,000.00 to be paid to the City for the design and construction of these off-site improvements. A copy of our letter, dated February 28, 2014, which defines that commitment is attached. The Smart Revocable Trust stands by its commitment, but, under no circumstances, shall it agree to add any more money to this commitment. Its commitment is – and always has been – completely voluntary. Its commitment is the

Mayor Shawn N. Reilly

June 16, 2014

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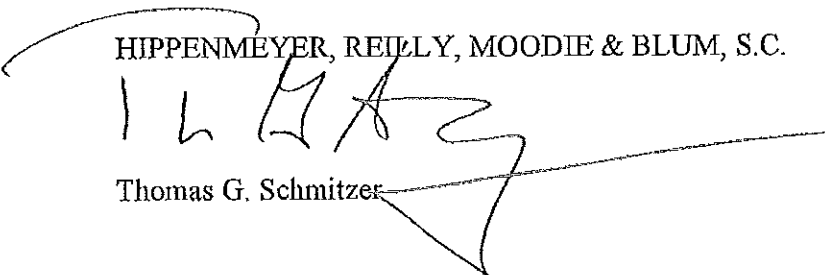
equivalent of nearly one-half of the cost of the reconstruction, including a large portion of Sunset Drive over which the City has absolutely no jurisdiction. As my client expressed at the Finance Committee meeting (and on many previous occasions), it makes this voluntary contribution because it is dedicated to the City, its citizens and the highest quality development within (and even outside) the City's borders.

We would ask that you please supply this letter to the Common Council before its next meeting. By copy of this letter, we are providing the same to the members of the Finance Committee. We would urge that the Finance Committee recommend – and that the Common Council approve – adding the amounts necessary to the City's CIP budget to see that these improvements are completed by the end of 2016.

Thank you for your attention to the above and the enclosed.

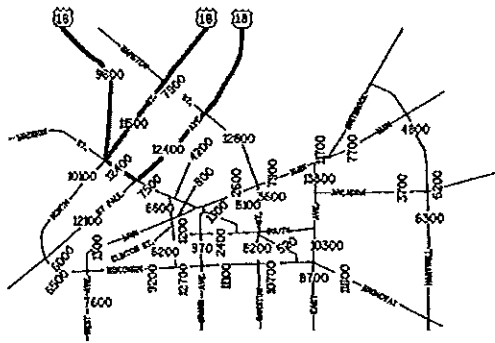
Sincerely,

HIPPENMEYER, REILLY, MOODIE & BLUM, S.C.

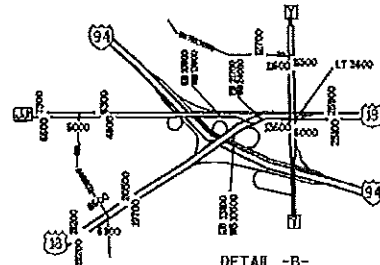
  
Thomas G. Schmitzer

TGS/mm  
Enclosures

Cc: Robert F. Smart and Carol O. Smart Revocable Trust of 2010, Carol O. Smart, Trustee  
David L. R. Smart  
Paul Smart  
Josh Pudelko  
Eric Obarski  
Ed Henschel, City Administrator  
Members of the Finance Committee  
City Clerk

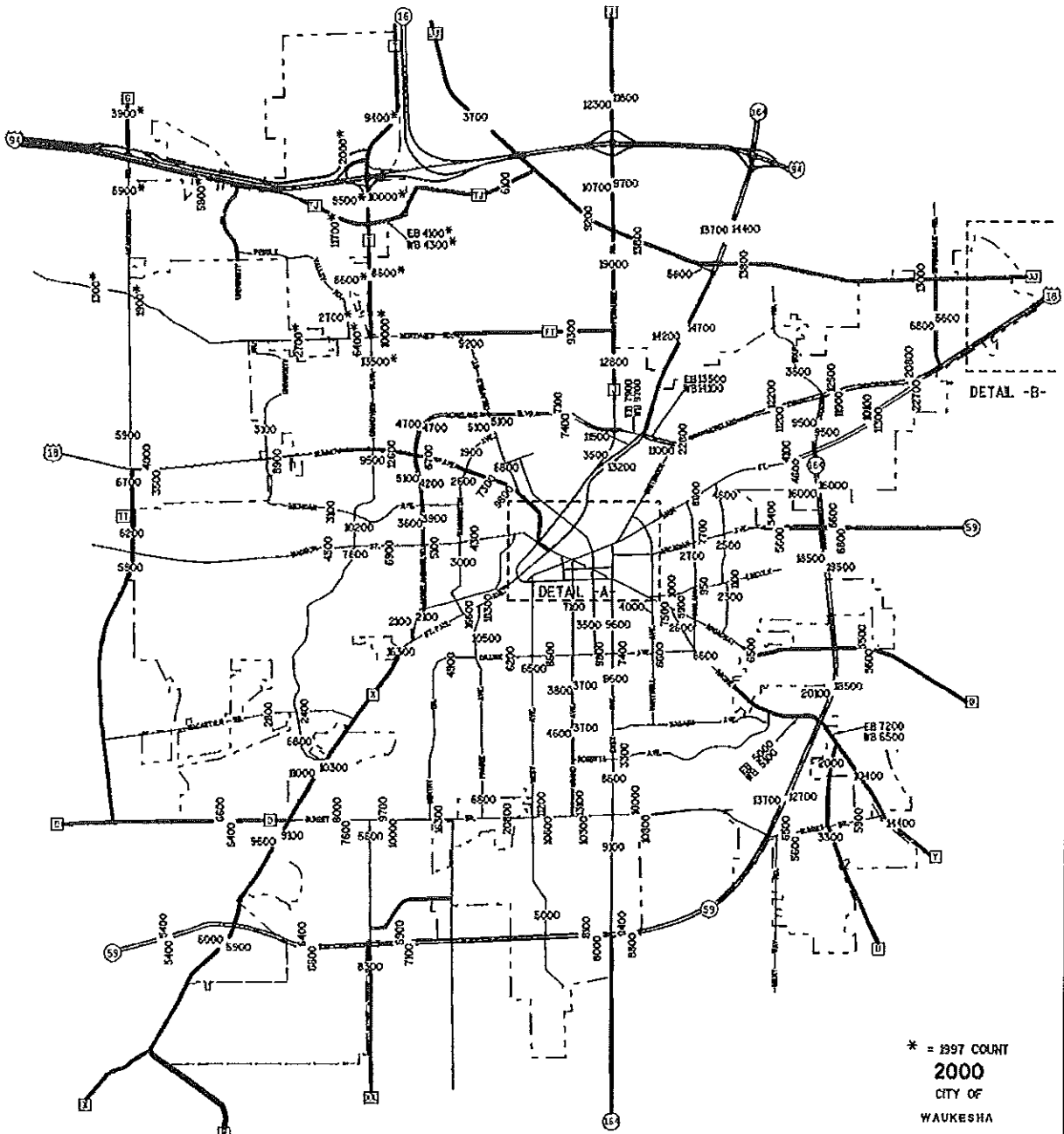


DETAIL -A-



DETAIL -B-

N



\* = 1997 COUNT

2000

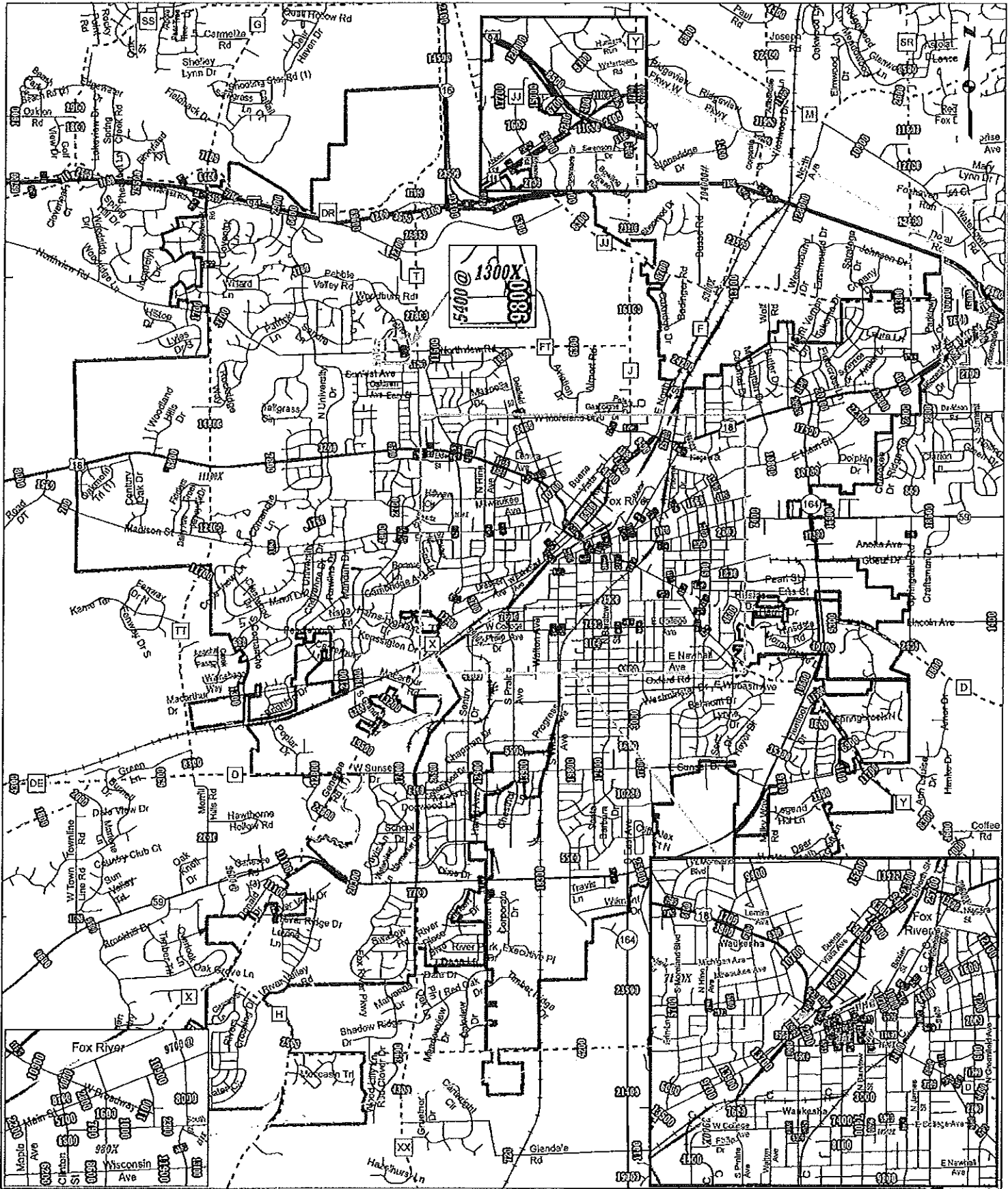
CITY OF

WAUKESHA

WAUKESHA CO.

ANNUAL AVERAGE DAILY TRAFFIC

PREPARED BY DISTRICT 2



2009  
 City of WAUKESHA  
 WAUKESHA County

9999 = 2009  
 9999# = 2008    9999^ = 2005  
 9999\* = 2007    9999~ = 2004  
 9999@ = 2006    9999x = 2003 or older

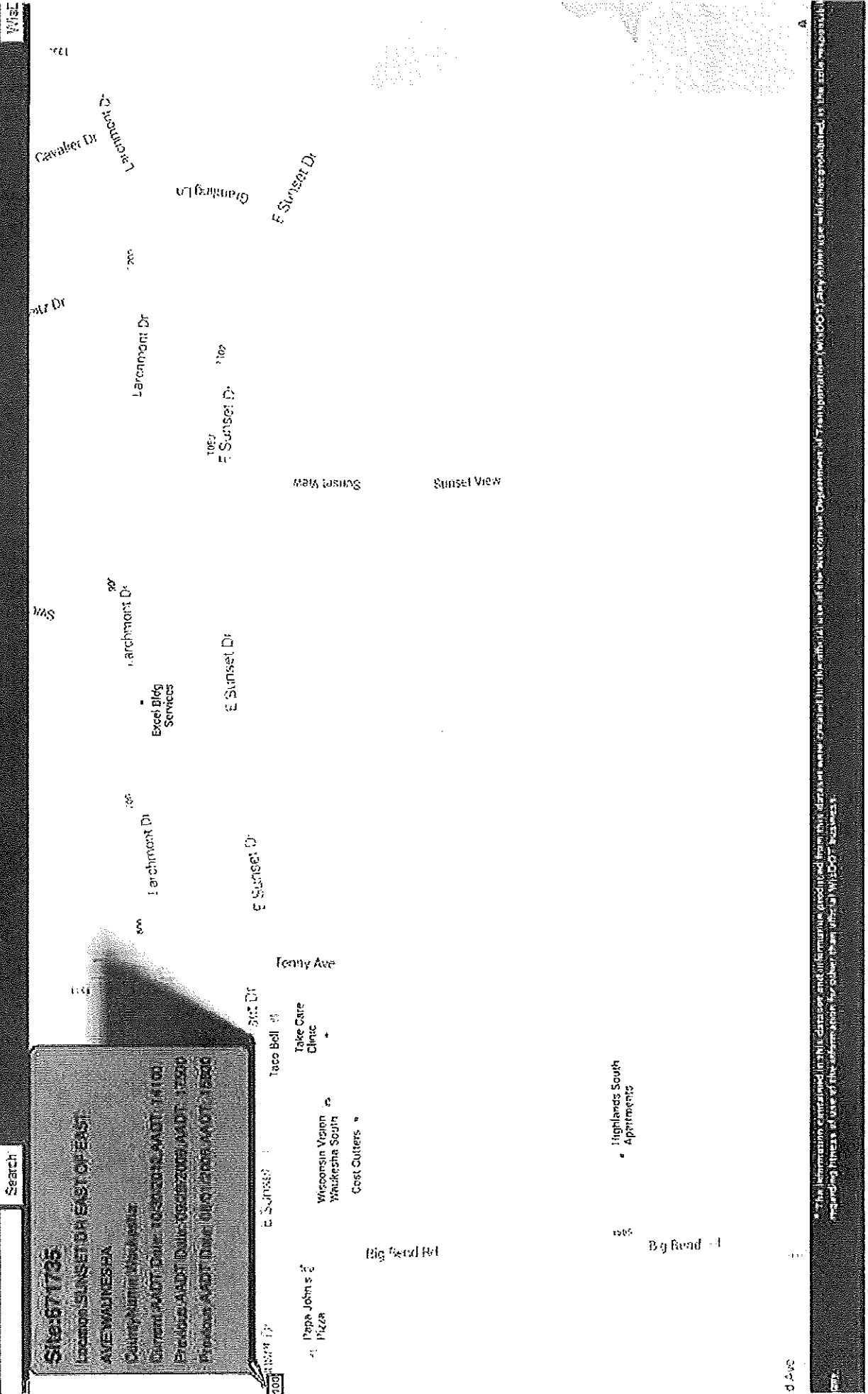
- Character following count value designates the year the count was taken  
 - Ramp counts lie parallel to road  
 - AADT for Roads lie perpendicular to road

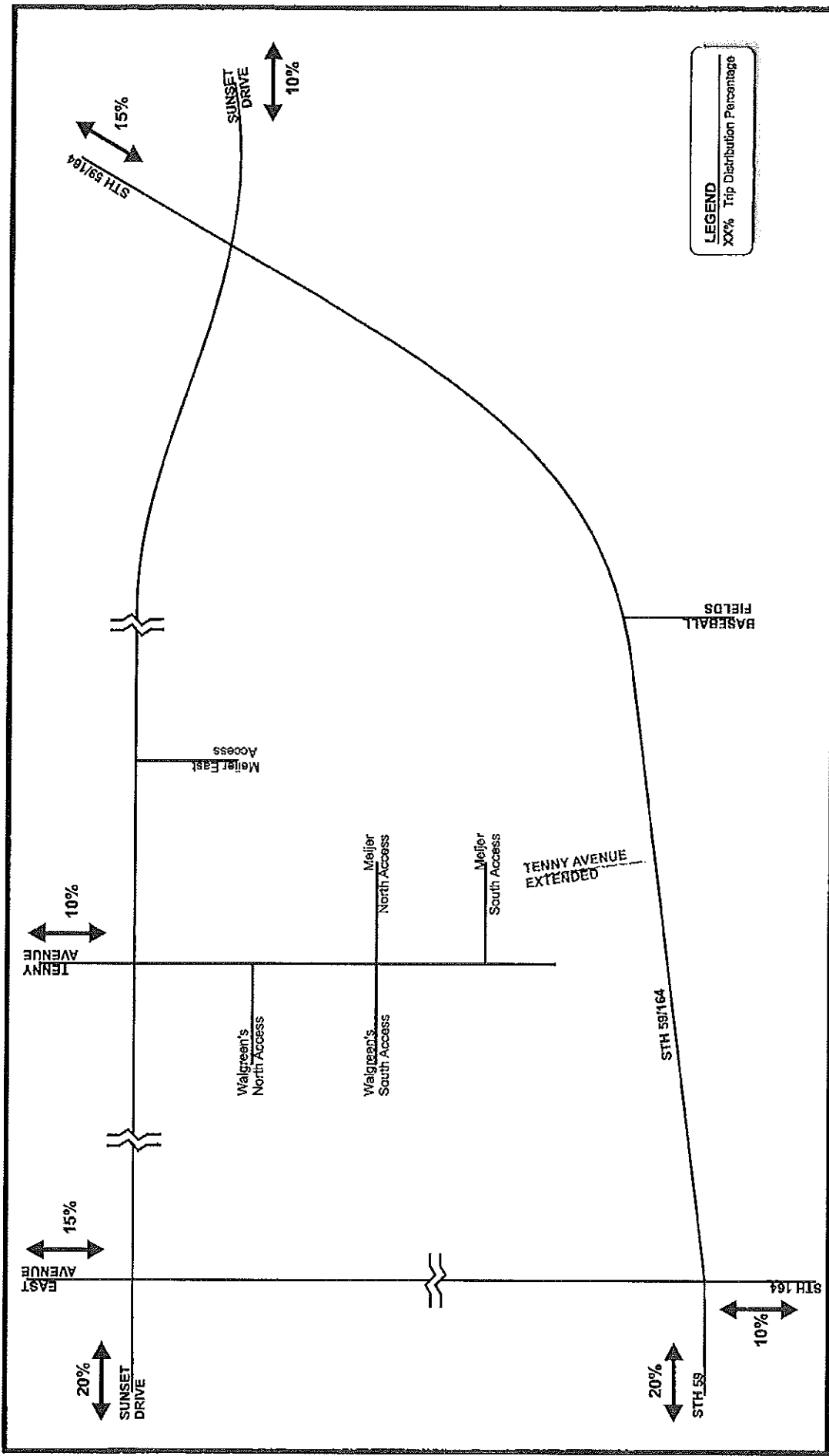
**Legend**  
 — IH  
 — USH  
 — STH  
 - - - CTH  
 — Local Roads  
 — Railroads

# Department of Transportation

Search

**Site 571735**  
 Location: SUNSET DR EAST OF EAST AVE, WAINESHA  
 County: Miami-Dade  
 Current PAUDT Date: 10-28-2009, PAUDT: 141100  
 Previous PAUDT Date: 03-23-2009, PAUDT: 132206  
 Previous PAUDT Date: 01-09-2009, PAUDT: 125206





**LEGEND**  
 XX% Trip Distribution Percentage



**EXHIBIT 4-4**  
**TRIP DISTRIBUTION DIAGRAM**  
 CITY OF WAUKESHA, WISCONSIN



**Mellor On-Site Phase One Trip Generation Table**

Land Use	ITE Code	Proposed Size	Weekday			AM Peak			PM Peak			SAT Peak		
			Daily	In	Out	In	Out	Total	In	Out	Total	In	Out	Total
Free-Standing Discount Superstore (Mellor)	813	214,307 x 1,000 SF	10,880 (50.7%)	220 (44%)	395 (1,185)	455 (49%)	475 (51%)	530 (4.35)	605 (50%)	605 (50%)	1,210 (5.64)	805 (50%)	805 (50%)	1,610 (5.64)
Gasoline Station with Convenience Store	945	10 Fueling Positions	1,630 (50%)	30 (60%)	100 (50%)	70 (35%)	85 (42.5%)	135 (13.51)	100 (50%)	100 (50%)	195 (19.46)	100 (50%)	100 (50%)	195 (19.46)
<b>Total Trips</b>			12,510	270	225	495	523	540	1,005	705	1,415	705	705	1,415
<b>Minus Linked Trips</b>		15%	240	10	20	10	10	20	20	15	30	15	15	30
<b>Total Driveway Trips</b>			12,270	260	215	475	513	520	985	690	1,385	690	690	1,385
<b>Minus Pass-by Trips</b>		50%	200	20	20	40	30	60	30	40	80	40	40	80
<b>Total New Trips</b>			11,370	240	195	435	483	460	955	650	1,305	650	650	1,305

**TRIP DISTRIBUTION, To/From:**

West on STH 59	2310	45	40	95	100	130
North on STH 59/164	1740	35	30	75	75	100
West on Sunset	2310	50	40	85	100	130
East on Sunset	1160	25	20	50	50	65
North on East	1730	35	25	70	75	95
South on STH 164	1160	25	20	50	50	65
North on Tenny	1160	25	20	50	50	65
<b>Total</b>	11570	240	195	485	500	645

**Mellor On-Site Full Build Trip Generation Table**

Land Use	ITE Code	Proposed Size	Weekday			AM Peak			PM Peak			SAT Peak		
			Daily	In	Out	In	Out	Total	In	Out	Total	In	Out	Total
Free-Standing Discount Superstore (Mellor)	813	214,307 x 1,000 SF	10,880 (50.7%)	220 (44%)	395 (1,185)	455 (49%)	475 (51%)	530 (4.35)	605 (50%)	605 (50%)	1,210 (5.64)	805 (50%)	805 (50%)	1,610 (5.64)
Gasoline Station with Convenience Store	945	10 Fueling Positions	1,630 (50%)	30 (60%)	100 (50%)	70 (35%)	85 (42.5%)	135 (13.51)	100 (50%)	100 (50%)	195 (19.46)	100 (50%)	100 (50%)	195 (19.46)
Fast Food Restaurant with Drive-Thru	934	4,000 x 1,000 SF	1,860 (48.12%)	90 (51%)	180 (49%)	70 (32%)	85 (46%)	155 (32.85)	110 (51%)	110 (49%)	220 (51.81)	110 (51%)	110 (49%)	220 (51.81)
Bank with Drive-Thru	912	3 Drive-Thru Lanes	420 (139.25%)	20 (40%)	30 (60%)	50 (49%)	50 (51%)	100 (33.24)	100 (49%)	100 (51%)	200 (28.78)	100 (49%)	100 (51%)	200 (28.78)
<b>Total Trips</b>			14,310	380	325	205	205	845	850	1,235	1,705	850	850	1,705
<b>Minus Linked Trips</b>		15%	240	10	20	10	10	20	10	10	20	10	10	20
<b>Minus Pass-by Trips</b>		20%	300	15	15	30	20	40	20	20	40	20	20	40
<b>Total Driveway Trips</b>			13,810	355	300	175	175	785	820	1,235	1,665	820	820	1,665
<b>Minus Pass-by Trips</b>		20%	340	15	15	30	20	40	20	20	40	20	20	40
<b>Minus Pass-by Trips</b>		20%	70	0	0	0	0	0	0	0	0	0	0	0
<b>Total New Trips</b>			13,200	320	285	145	145	745	785	1,195	1,625	785	785	1,625

Land uses 934 and 912 are assumed and may not occur. Included for a higher-traffic volume scenario in case such land uses do occur.

**TRIP DISTRIBUTION, To/From:**

West on STH 59	2840	65	55	115	115	150
North on STH 59/164	1980	50	40	85	85	115
West on Sunset	2840	65	55	115	115	150
East on Sunset	1320	30	25	60	60	75
North on East	1980	50	40	85	85	115
South on STH 164	1320	30	25	60	60	75
North on Tenny	1320	30	25	60	60	75
<b>Total</b>	13200	320	285	585	570	750



07-19-2013



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RICHARD S. HIPPENMEYER  
(1911-1979)

WILLIAM F. REILLY  
(1932-2007)

February 28, 2014

Mr. Ed Henschel, City Administrator  
City of Waukesha  
201 Delafield Street  
Waukesha, WI 53188

RE: Robert F. Smart and Carol O. Smart Revocable Trust of 2010, Carol O. Smart, Trustee

Dear Mr. Henschel:

Following our many discussions in regards to this matter, the Robert F. Smart and Carol O. Smart Revocable Trust of 2010, by its Trustee, Carol O. Smart, hereby commits an amount not to exceed \$700,000.00 towards the design and construction of improvements to Sunset Drive (the "Improvements") that the City has determined are necessary to accommodate increased traffic from a nearby redevelopment project and the proposed development of Trust's land. As we have discussed, the Improvements related to this commitment shall be from the eastern line of the proposed Meijer property to Sunset Drive's easternmost intersection with Camden Way, including those portions of Sunset Drive which lie outside of the City's jurisdictional limits. The funds that are being committed by the Trust shall be used exclusively by the City of Waukesha for the construction of those Improvements.

This is a commitment for a defined level of funding only. The City of Waukesha shall be solely responsible for the actual construction of the Improvements, and the Trust shall take no part in that construction, nor shall it have any further obligation to commit additional funds to the construction of those Improvements. It shall be the City's sole responsibility to obtain the necessary approvals from the Town of Waukesha to enable the City to construct those Improvements within the Town's jurisdiction. The City shall also be solely responsible for obtaining any required permits from the proper authorities.

As we have indicated, the Trust will commit a total amount not to exceed \$700,000.00 towards the design and construction of the Improvements. As an initial step, the Trust will engage the necessary professionals for the design of those Improvements. Once the plans for those Improvements have been completed, those plans will be submitted to the City for its review and acceptance, and in order that the City may be able to determine the costs of constructing the Improvements. However, please understand that the costs incurred by the Trust for the initial engineering and design of the Improvements will be deducted from the amount not to exceed \$700,000.00.

Of course, the Trust's commitment of these funds is conditioned upon funds actually being available to the Trust for its use. Accordingly, this commitment is conditioned upon the successful closing on the sales contract between the Trust and Meijer. Assuming that sale transaction successfully closes, the Trust shall then place the remaining balance of the committed funds in an escrow account to be utilized by the City for its construction activities. It is expected that construction will take place by no later than the end of 2016 and the escrowed funds will be available for the City's use until that time. For example, if the design costs are \$50,000.00, following the successful closing of the sale transaction, the Trust will then place the remaining \$650,000.00 in escrow for the City's use until the end of 2016. Any monies remaining in escrow at the conclusion of the construction or the end of 2016 – and/or any interest earned thereon – shall be returned to the Trust.

Mr. Ed Henschel, City Administrator  
February 28, 2014  
Page 2

If the Trust's commitment is acceptable, it is expected that the City and Trust will work towards a more formal agreement which incorporates the contents of this letter.

If you have questions regarding this matter, please do not hesitate to contact us.

ROBERT F. SMART AND CAROL O. SMART REVOCABLE TRUST OF 2010

By: Carol O. Smart, trustee  
Carol O. Smart, Trustee

Sincerely,

HIPPENMEYER, REILLY, MOODIE & BLUM, S.C.

  
Thomas G. Schmitzer

TGS/akg

Cc: David Smart (via email)  
Paul Smart (via email)  
Eric Obariski (via email)  
Josh Pudelko (via email)