

<p>APPROVAL</p> <p><i>Slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>04/07/15</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>RESOLUTION CONDITIONALLY APPROVING A 2 LOT CERTIFIED SURVEY MAP, BEING PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN (HILLER FORD, INC. AND DEALERSHIP PROPERTIES, INC., APPLICANTS) (APPROXIMATELY 6381, 6411, 6421 AND 6455 SOUTH 108TH STREET)</p>	<p>ITEM NUMBER</p> <p><i>6.3.</i></p>

At their meeting on March 19, 2015, the Plan Commission recommended approval of a resolution conditionally approving a 2 Lot Certified Survey Map, being part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 6, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin with the revisions recommended by City staff at the March 19, 2015 meeting (Hiller Ford, Inc. and Dealership Properties, Inc., applicants) (approximately 6381, 6411, 6421 and 6455 South 108th Street).

Subsequent to the Plan Commission meeting, the applicant entered into an agreement to purchase the property located at 6431 S. 108th Street, owned by PMP 1, LLC. The applicant has provided staff with a letter signed by Jay Hiller, owner of Hiller Ford, Inc. and Dealership Properties, Inc., and Paulanne Phillips, Managing Member of PMP 1, LLC, requesting that the entire Whitnall Edge Road right-of-way between S. 108th Street to West Forest Home Avenue be vacated.

As such, the applicant has submitted a revised Certified Survey Map that combines the PMP 1, LLC property located at 6431 S. 108th Street to the proposed Lot 1. Accordingly, a revised Public Utility Easement Exhibit has also been provided. Attached are the revised CSM and the original CSM submitted by the applicant. Department of City Development Staff has no objections to the proposed revisions. The right-of-way vacation request was originally for vacating the entire Whitnall Edge Road right-of-way between S. 108th Street and West Forest Home Avenue; therefore, no changes were required to that exhibit.

COUNCIL ACTION REQUESTED

A motion to adopt Resolution No. 2015-_____, conditionally approving a 2 Lot Certified Survey Map, being part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 6, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin (Hiller Ford, Inc. and Dealership Properties, Inc., applicants) (approximately 6381, 6411, 6421 and 6455 South 108th Street).

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2015-_____

A RESOLUTION CONDITIONALLY APPROVING A 2 LOT CERTIFIED SURVEY MAP, BEING PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN
(HILLER FORD, INC. AND DEALERSHIP PROPERTIES, INC., APPLICANTS)
(APPROXIMATELY 6381, 6411, 6421 AND 6455 SOUTH 108TH STREET)

WHEREAS, the City of Franklin, Wisconsin, having received an application for approval of a certified survey map, such map being part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 6, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin, more specifically, of the property located at approximately 6381, 6411, 6421 and 6455 South 108th Street, bearing Tax Key Nos. 704-9974-000, 704-9975-000, 704-9976-003, 704-9976-002, 704-9976-005, 704-9977-000 and 704-9998-004, Hiller Ford, Inc. and Dealership Properties, Inc., applicants; said certified survey map having been reviewed by the City Plan Commission and the Plan Commission having recommended approval thereof pursuant to certain conditions; and

WHEREAS, the Common Council having reviewed such application and City of Franklin Plan Commission recommendation and the Common Council having determined that such proposed certified survey map is appropriate for approval pursuant to law upon certain conditions.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Certified Survey Map submitted by Hiller Ford, Inc. and Dealership Properties, Inc., as described above, be and the same is hereby approved, subject to the following conditions:

1. That any and all objections made and corrections required by the City of Franklin, by Milwaukee County, and by any and all reviewing agencies, shall be satisfied and made by the applicant, prior to recording.
2. That all land development and building construction permitted or resulting under this Resolution shall be subject to impact fees imposed pursuant to §92-9. of the Municipal Code or development fees imposed pursuant to §15-5.0110 of the Unified Development Ordinance, both such provisions being applicable to the development and building permitted or resulting hereunder as it occurs from time to time, as such Code and Ordinance provisions may be amended from time to time.
3. Each and any easement shown on the Certified Survey Map shall be the subject of separate written grant of easement instrument, in such form as provided within the

HILLER FORD, INC. AND DEALERSHIP PROPERTIES, INC. – CERTIFIED SURVEY
MAP

RESOLUTION NO. 2015-_____

Page 2

City of Franklin Design Standards and Construction Specifications and such form and content as may otherwise be reasonably required by the City Engineer or designee to further and secure the purpose of the easement, and all being subject to the approval of the Common Council, prior to the recording of the Certified Survey Map.

4. Hiller Ford, Inc. and Dealership Properties, Inc., successors and assigns and any developer of the 2 lot certified survey map project shall pay to the City of Franklin the amount of all development compliance, inspection and review fees incurred by the City of Franklin, including fees of consults to the City of Franklin, for the 3 lot certified survey map project, within 30 days of invoice for same. Any violation of this provision shall be a violation of the Unified Development Ordinance, and subject to §15-9.0502 thereof and §1-19. of the Municipal Code, the general penalties and remedies provisions, as amended from time to time.
5. The approval granted hereunder is conditional upon Hiller Ford, Inc. and Dealership Properties, Inc., and the 2 lot certified survey map project for the property located at approximately 6381, 6411, 6421, 6431 and 6455 South 108th Street: (i) being in compliance with all applicable governmental laws, statutes, rules, codes, orders and ordinances; and (ii) obtaining all other governmental approvals, permits, licenses and the like, required for and applicable to the project to be developed and as presented for this approval.
6. Applicant shall submit a detailed Natural Resource Protection Plan, prior to recording the Certified Survey Map.
7. Applicant shall submit a revised Certified Survey Map illustrating the protected natural resources upon the face of the Certified Survey Map, prior to recording.
8. Applicant shall submit a written Conservation Easement for review and approval by the Common Council and recorded with the Milwaukee County Office of the Register of Deeds, prior to issuance of an Occupancy Permit
9. Applicant shall submit a revised Certified Survey Map to reflect removal of the entire West Whitnall Edge Road right-of-way located between South 108th Street and West Forest Home Avenue, that proposed Lots 1 and 2 be revised accordingly, that parcel tax key number 704-9976-000 be combined with proposed Lot 1, and that the proposed cross access easement be removed, for staff review and approval prior to recording of the Certified Survey Map with the Milwaukee County Register of Deeds Office.

HILLER FORD, INC. AND DEALERSHIP PROPERTIES, INC. – CERTIFIED SURVEY MAP

RESOLUTION NO. 2015-_____

Page 3

Zoning and Building Appeals for any parking or building setbacks that are not being met, prior to the issuance of a Building Permit.

BE IT FURTHER RESOLVED, that the Certified Survey Map, certified by owners, Hiller Ford, Inc., Dealership Properties, Inc. and PMP 1 LLC, be and the same is hereby rejected without final approval and without any further action of the Common Council, if any one, or more than one of the above conditions is or are not met and satisfied within 180 days from the date of adoption of this Resolution.

BE IT FINALLY RESOLVED, that upon the satisfaction of the above conditions within 180 days of the date of adoption of this Resolution, same constituting final approval, and pursuant to all applicable statutes and ordinances and lawful requirements and procedures for the recording of a certified survey map, the City Clerk is hereby directed to obtain the recording of the Certified Survey Map, certified by owners, Hiller Ford, Inc., Dealership Properties, Inc. and PMP 1 LLC, with the Office of the Register of Deeds for Milwaukee County.

Introduced at a regular meeting of the Common Council of the City of Franklin this

_____ day of _____, 2015.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2015.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

Thursday, March 19, 2015

Mayor Stephen Olson
City of Franklin
9229 West Loomis Road
Franklin, WI 53132

Subject: Whitnall Edge Road Discontinuance
Franklin, WI

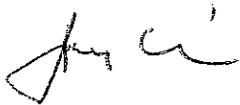
Dear Mayor Olson,

With regard to the application by Hiller Ford, Inc. / Dealership Properties, Inc. presently before the City for discontinuance (vacation) of the current public street right-of-way between South 108th Street and West Forest Home Avenue. This letter shall serve as notice that both parties listed below who own certain properties along this public street right-of-way authorize as such owners the discontinuance (vacation) of the "entire" public street right-of-way known as Whitnall Edge Road between South 108th Street and West Forest Home Avenue.

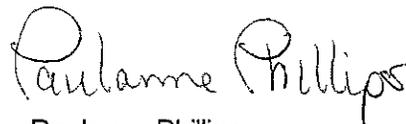
Furthermore this letter will serve as notice that Mr. Jay Hiller has entered into an "Offer to Purchase" with Ms. Paulanne Phillips for her property known as 6431-6434 South 108th Street. Both parties as registered owners of all properties along this public street right-of-way have signed the "Offer to Purchase" today March 19, 2015.

Thank you for your consideration of this matter.

Sincerely,



Jay Hiller
Owner, Hiller Ford, Inc.



Paulanne Phillips
Member, PMP 1 LLC

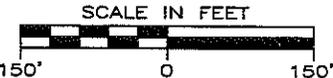
CERTIFIED SURVEY MAP No. _____

BEING A PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN

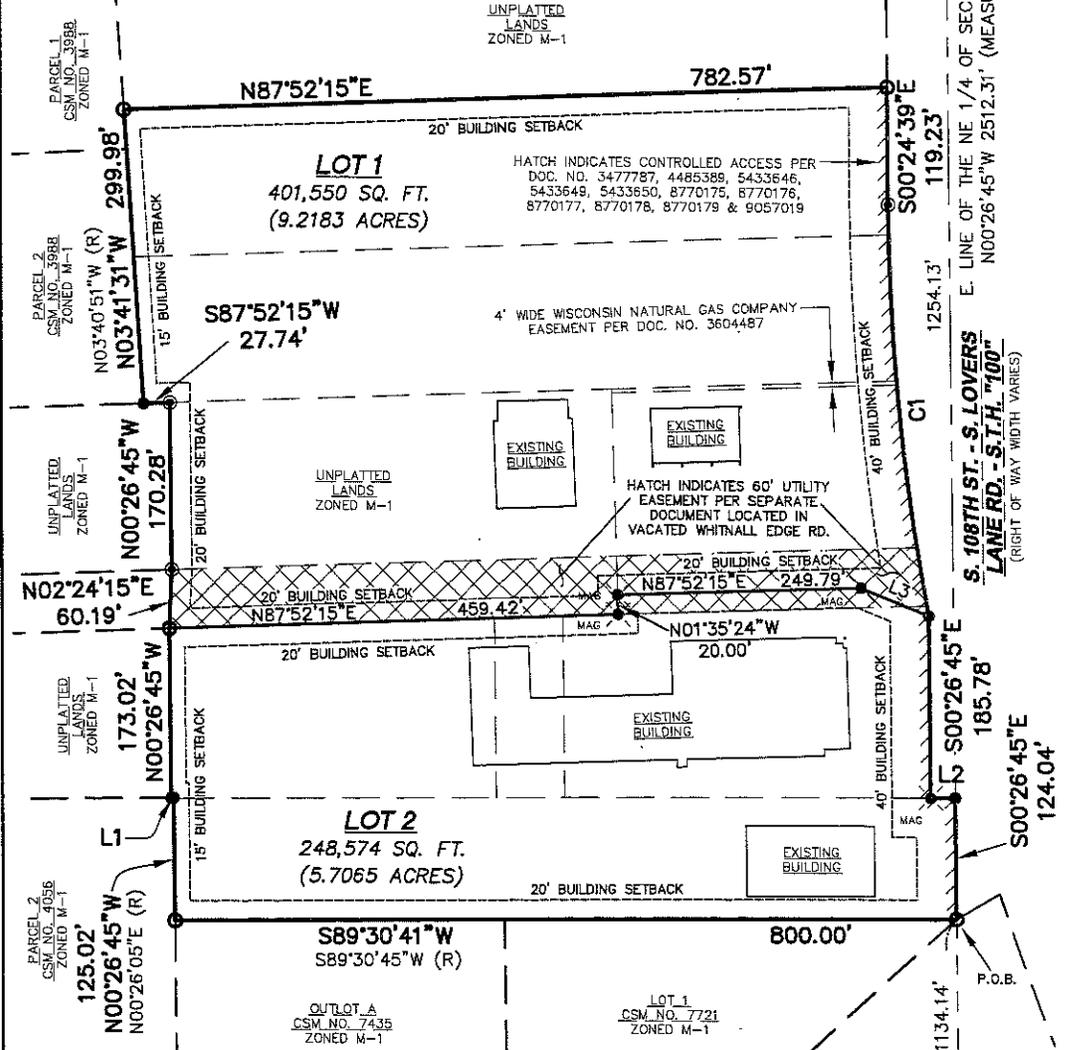
PREPARED BY:

JSD Professional Services, Inc.
Milwaukee Regional Office
122 W2281 HANCOCK COURT SUITE 2
WALKESHA, WISCONSIN 53186
262.513.0668 PHONE | 262.513.1232 FAX

PREPARED FOR:
HILLER FORD, INC.
6381 S. 108TH STREET
FRANKLIN, WI 53132



NE CORNER OF THE NE 1/4 OF SEC. 6-5-21
THE NE 1/4 OF SEC. 6-5-21
CAST IRON PLUG W/ CROSS



- LEGEND:**
- 1" IRON PIPE FOUND & ACCEPTED
 - 3/4" REBAR FOUND AS NOTED
 - ⊙ 3/4" X 18" REBAR SET WEIGHING 1.50 LBS/FT
 - MAG MAG NAIL SET
 - (R) RECORDED AS DIMENSION

THE SUBJECT PROPERTIES ARE ZONED M-1, LIMITED INDUSTRIAL DISTRICT AND THE LAND IS SERVED BY SANITARY SEWER AND WATER.

DATED THIS _____ DAY OF MARCH, 2015
THIS INSTRUMENT WAS DRAFTED BY JOHN P. KONOPACKI, S-2461

CERTIFIED SURVEY MAP No. _____

BEING A PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6,
TOWNSHIP 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN

LINE TABLE		
LINE NO.	BEARING	DISTANCE
L1	S89°30'45"W	2.65'
L2	N89°33'15"E	24.75'
L3	S68°09'08"E	75.00'

CURVE DATA					
CURVE NO.	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	422.68'	2361.83'	010°15'14"	S05°32'16"E	422.12'

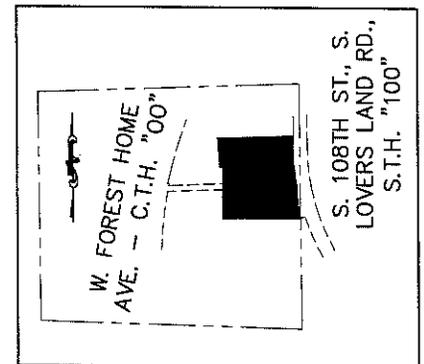
VICINITY MAP

BEARING BASIS
ALL BEARINGS ARE REFERENCED TO THE EAST LINE OF THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 NORTH, RANGE 21 EAST WAS USED AS NORTH 00°26'45" WEST.

ALL MEASUREMENTS HAVE BEEN MADE TO THE NEAREST ONE-HUNDREDTH OF A FOOT.

ALL ANGULAR MEASUREMENTS HAVE BEEN MADE TO THE NEAREST ONE SECOND.

SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.



NE 1/4 SEC. 6, T5N, R21E
SCALE 1" = 1,500'

CERTIFIED SURVEY MAP No. _____

BEING A PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6,
TOWNSHIP 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN

SURVEYOR'S CERTIFICATE

State of Wisconsin)
) SS
County of Milwaukee)

I, John P. Konopacki, Professional Land Surveyor, do hereby certify that I have surveyed, divided and mapped a part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 6, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the southeast corner of the Northeast 1/4 of said Section 6; thence North 00°26'45" West along the east line of said Northeast 1/4, 1134.14 feet to the west right of way line of South 108th Street - South Lovers Lane Road - State Trunk Highway "100" and the point of beginning;

Thence South 89°30'41" West along the north line Lot 1 of Certified Survey Map No. 7721 and then Outlot A of Certified Survey Map No. 7435, 800.00 feet to the east line of Parcel 2 of Certified Survey Map No. 4056; thence North 00°26'45" West along said east line, 125.02 feet to the northeast corner of said Parcel 2; thence South 89°30'45" West along the north line of said Parcel 2, 2.65 feet; thence North 00°26'45" West, 173.02 feet to the south right of way line of Whitnall Edge Road; thence North 02°24'15" East, 60.19 feet to the north right of way line of said Whitnall Edge Road; thence North 00°26'45" West, 170.28 feet; thence South 87°52'15" West, 27.74 feet to the southeast corner of Certified Survey Map No. 3988; thence North 03°41'31" West along said east line, 299.98 feet; thence North 87°52'15" East, 782.57 feet to aforesaid west right of way line of South 108th Street - South Lovers Land Road - State Trunk Highway "100"; thence South 00°24'39" East, 119.23 feet to point of curvature; thence southeasterly along the arc of said curve to the left and said west right of way line 422.68 feet, whose radius is 2361.83 feet and whose chord bears South 05°32'16" East, 422.12 feet; thence South 00°26'45" East along said westerly right of way line, 185.78 feet; thence North 89°33'15" East along said westerly right of way line, 24.75 feet; thence South 00°26'45" East along said westerly right of way line, 124.04 feet to the point of beginning.

Containing in all 650,124 square feet (14.9248 acres) of land, more or less.

All subject to easements and restrictions of record and potential future road widening and government restrictions, if any.

That I have made such survey, land division and map by the direction of Hiller Ford, Inc. and Dealership Properties, Inc. owners of said land.

That such map is a correct representation of all exterior boundaries and the land surveyed and the land division thereof made.

That I have fully complied with the provisions of Chapter 236 of the Wisconsin Statutes and Division 15-7.0700 of the City of Franklin Unified Development Ordinance in surveying, dividing and mapping the same.

DATED THIS _____ DAY OF APRIL, 2015

Michael J. Piering, P.L.S.
Professional Land Surveyor, S-2521

CERTIFIED SURVEY MAP No. _____

BEING A PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6,
TOWNSHIP 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN**CITY OF FRANKLIN COMMON COUNCIL APPROVAL**

This Certified Survey Map is hereby approved by the Common Council of the City of Franklin, on this _____ day of _____, 2015.

By: _____
Stephen Olson, Mayor

Date: _____

By: _____
Sandra L. Wesolowski, City Clerk

Date: _____

LEGAL DESCRIPTION

Being a part of the Northeast 1/4 of the Northeast 1/4 of Section 6, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the southeast corner of the Northeast 1/4 of said Section 6; thence North 00°26'45" West along the east line of said Northeast 1/4, 1455.17 feet; thence South 87°52'15" West, 26.62 feet to a point of intersection with the south right of way line of Whitnall Edge Road and the west right of way line of South 108th Street - South Lovers Lane Road - State Trunk Highway "100" and the point of beginning;

Thence South 87°52'15" West along said south right of way line of Whitnall Edge Road, 1338.95 feet to a point on a curve on the east right of way line of West Forest Home Avenue - County Trunk Highway "O"; thence northerly along the arc of said curve to the right and said east right of way line 61.64 feet, whose radius is 3744.83 feet and whose chord bears North 11°07'52" East, 61.64 feet to the north right of way line of Whitnall Edge Road; thence North 87°52'15" East along said north right of way line, 1316.86 feet to the aforesaid west right of way line of South 108th Street - South Lovers Lane Road - State Trunk Highway "100" and a point on a curve; thence southeasterly along the arc of said curve to the left and said west right of way line 60.53 feet, whose radius is 2361.83 feet and whose chord bears South 09°40'25" East, 60.52 feet to the point of beginning.

Containing in all 79,672 square feet (1.8290 acres) of land, more or less.

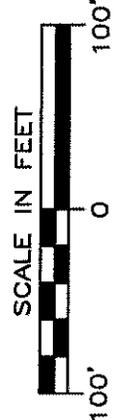
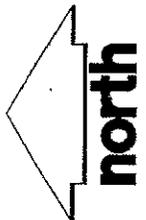
JSD Professional Services, Inc.
 • Engineers • Surveyors • Planners
 MILWAUKEE REGIONAL OFFICE
 N22 W22831 NANCY'S COURT SUITE 3
 WAUKESHA, WISCONSIN 53186
 262.513.0000 PHONE | 262.513.1232 FAX
 www.jsdinc.com

PROJECT:
**WHITNALL EDGE ROAD
 RIGHT OF WAY VACATION
 NE 1/4 SEC. 6, T5N, R21E**
 CITY OF FRANKLIN - MILWAUKEE COUNTY, WI

SHEET TITLE:
**PUBLIC UTILITY
 EASEMENT
 EXHIBIT**

JSD PROJECT NUMBER:
 13-5931A
 DRAWN BY: MJP CHECKED BY: CWR
 DATE:
 03-31-15

SHEET NUMBER:
EX 1 OF 2



NE CORNER OF
THE NE 1/4 OF
SEC. 6-5-21

SE CORNER OF
THE NE 1/4 OF
SEC. 6-5-21

W. FOREST HOME AVE. - C.T.H. "O"
(RIGHT OF WAY WIDTH VARIES)

UNPLATTED LANDS
TAX KEY NO.
704 9980 002

UNPLATTED LANDS
TAX KEY NO. 704 9978 004

UNPLATTED LANDS
TAX KEY NO. 704 9976 003

UNPLATTED LANDS
TAX KEY NO.
704 9980 003

UNPLATTED LANDS
TAX KEY NO. 704 9978 002

UNPLATTED LANDS
TAX KEY NO. 704 9978 005

UNPLATTED LANDS
TAX KEY NO.
704 9977 000

1057.14'

1316.86'
N87°52'15"E
1338.95'

1455.17'

P.O.B.
S87°52'15"W 26.62'

**HATCH INDICATES
PUBLIC UTILITY EASEMENT**
79,672 SQ. FT.
1.8290 ACRES

E LINE OF THE NE 1/4 OF SEC. 6-5-21 N00°26'45"W 2512.31'
S. 108TH ST. - S. LOVERS
LANE RD. - S.T.H. "100"
(RIGHT OF WAY WIDTH VARIES)

CURVE DATA					
CURVE NO.	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	61.64'	3744.83'	000°56'35"	N11°07'52"E	61.64'
C2	60.53'	2361.83'	001°28'06"	S09°40'25"E	60.52'

	PROJECT:	WHITNALL EDGE ROAD RIGHT OF WAY VACATION NE 1/4 SEC. 6, T5N, R21E CITY OF FRANKLIN - MILWAUKEE COUNTY, WI	SHEET TITLE:	PUBLIC UTILITY EASEMENT EXHIBIT
	JSD PROJECT NUMBER:	13-5931A	DRAWN BY:	MJP
		CHECKED BY:	CWR	
		DATE:		
				03-3115
				EX 2 OF 2
				SHEET NUMBER:

MAR 13 2015

City Development

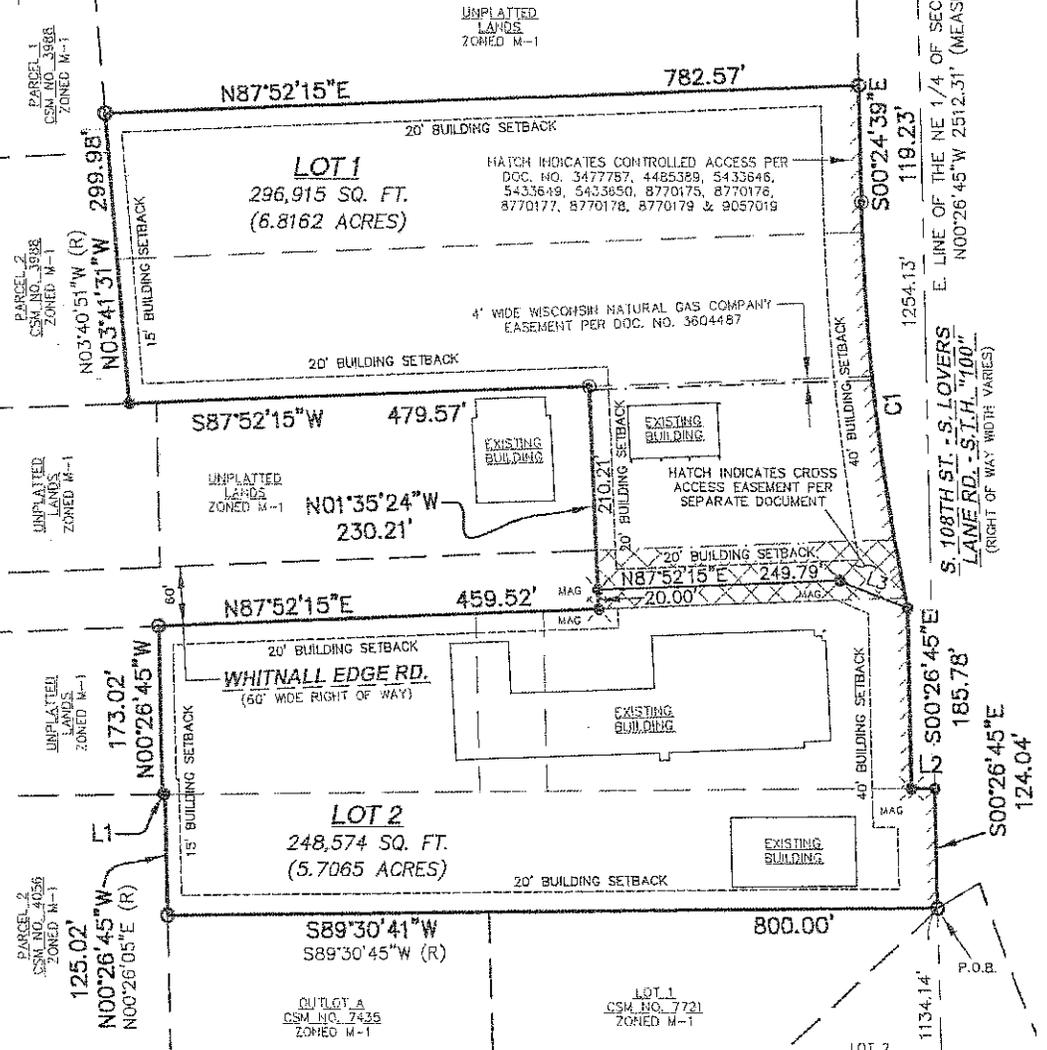
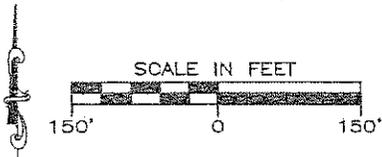
CERTIFIED SURVEY MAP No. _____

BEING A PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN

PREPARED BY:

Professional Services, Inc.
MILWAUKEE REGIONAL OFFICE
1122 W42931 NANCY'S COURT SUITE 3
WAIKESHA, WISCONSIN 53106
262.513.0695 P/PHONE 262.513.1232 F/FAX

PREPARED FOR:
HILLER FORD, INC.
6381 S. 108TH STREET
FRANKLIN, WI 53132



- LEGEND:
1" IRON PIPE FOUND & ACCEPTED
3/4" REBAR FOUND AS NOTED
3/4" X 18" REBAR SET WEIGHING 1.50 LBS/FT
MAG MAG NAIL SET
(R) RECORDED AS DIMENSION



SE CORNER OF THE NE 1/4 OF SEC. 6-5-21 CONC. MON. W/ BRASS CAP N: 342,608.50 E: 2,522,656.35

THE SUBJECT PROPERTIES ARE ZONED M-1, LIMITED INDUSTRIAL DISTRICT AND THE LAND IS SERVED BY SANITARY SEWER AND WATER.

DATED THIS _____ DAY OF MARCH, 2015
THIS INSTRUMENT WAS DRAFTED BY JOHN P. KONOPACKI, S-2461

CERTIFIED SURVEY MAP No. _____

BEING A PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6,
TOWNSHIP 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN

LINE TABLE		
LINE NO.	BEARING	DISTANCE
L1	S89°30'45"W	2.65'
L2	N89°33'15"E	24.75'
L3	S68°09'08"E	75.00'

CURVE DATA					
CURVE NO.	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	422.68'	2361.83'	010°15'14"	S05°32'16"E	422.12'

VICINITY MAP

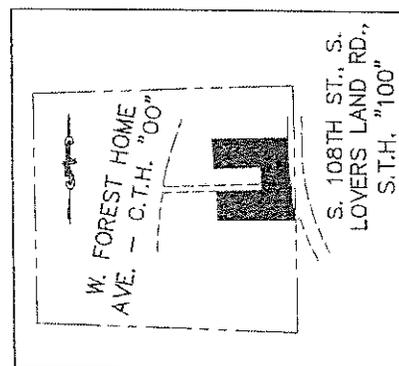
BEARING BASIS

ALL BEARINGS ARE REFERENCED TO THE
EAST LINE OF THE NORTHEAST 1/4 OF
SECTION 6, TOWNSHIP 5 NORTH, RANGE 21
EAST WAS USED AS NORTH 00°26'45" WEST.

ALL MEASUREMENTS HAVE BEEN MADE TO
THE NEAREST ONE-HUNDREDTH OF A FOOT.

ALL ANGULAR MEASUREMENTS HAVE BEEN
MADE TO THE NEAREST ONE SECOND.

SUBJECT TO EASEMENTS AND RESTRICTIONS
OF RECORD.



NE 1/4 SEC. 6, T5N, R21E
SCALE 1" = 1,500'



DATED THIS _____ DAY OF MARCH, 2015
THIS INSTRUMENT WAS DRAFTED BY JOHN P. KONOPACKI, S-2461

SHEET 2 OF 5

CERTIFIED SURVEY MAP No. _____

BEING A PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6,
TOWNSHIP 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN

SURVEYOR'S CERTIFICATE

State of Wisconsin)
) SS
County of Milwaukee)

I, John P. Konopacki, Professional Land Surveyor, do hereby certify that I have surveyed, divided and mapped a part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 6, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the southeast corner of the Northeast 1/4 of said Section 6; thence North 00°26'45" West along the east line of said Northeast 1/4, 1134.14 feet to the west right of way line of South 108th Street - South Lovers Lane Road - State Trunk Highway "100" and the point of beginning;

Thence South 89°30'41" West along the north line Lot 1 of Certified Survey Map No. 7721 and then Outlot A of Certified Survey Map No. 7435, 800.00 feet to the east line of Parcel 2 of Certified Survey Map No. 4056; thence North 00°26'45" West along said east line, 125.02 feet to the northeast corner of said Parcel 2; thence South 89°30'45" West along the north line of said Parcel 2, 2.65 feet; thence North 00°26'45" West, 173.02 feet to the south right of way line of Whitnall Edge Road; thence North 87°52'15" East along said south right of way line, 459.52 feet to the east right of way line (terminus) of said Whitnall Edge Road; thence North 01°35'24" West along said east right of way line and then continuing, 230.21 feet; thence South 87°52'15" West, 479.57 feet to the southeast corner of Certified Survey Map No. 3988; thence North 03°41'31" West along said east line, 299.98 feet; thence North 87°52'15" East, 782.57 feet to aforesaid west right of way line of South 108th Street - South Lovers Lane Road - State Trunk Highway "100"; thence South 00°24'39" East, 119.23 feet to point of curvature; thence southeasterly along the arc of said curve to the left and said west right of way line 422.68 feet, whose radius is 2361.83 feet and whose chord bears South 05°32'16" East, 422.12 feet; thence south 00°26'45" East along said westerly right of way line, 185.78 feet; thence North 89°33'15" East along said westerly right of way line, 24.75 feet; thence South 00°26'45" East along said westerly right of way line, 124.04 feet to the point of beginning.

Containing in all 545,489 square feet (12.5227 acres) of land, more or less.

All subject to easements and restrictions of record and potential future road widening and government restrictions, if any.

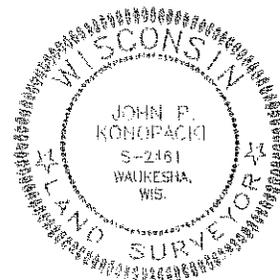
That I have made such survey, land division and map by the direction of Hiller Ford, Inc. and Dealership Properties, Inc. owners of said land.

That such map is a correct representation of all exterior boundaries and the land surveyed and the land division thereof made.

That I have fully complied with the provisions of Chapter 236 of the Wisconsin Statutes and Division 15-7.0700 of the City of Franklin Unified Development Ordinance in surveying, dividing and mapping the same.

DATED THIS _____ DAY OF MARCH, 2015

John P. Konopacki, P.L.S.
Professional Land Surveyor, S-2461



CERTIFIED SURVEY MAP No. _____

BEING A PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6,
TOWNSHIP 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN

CITY OF FRANKLIN COMMON COUNCIL APPROVAL

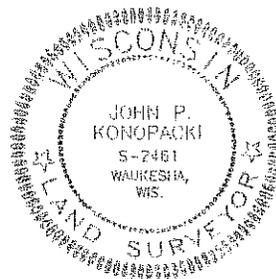
This Certified Survey Map is hereby approved by the Common Council of the City of Franklin, on this _____ day of _____, 2015.

By: _____
Stephen Olson, Mayor

Date: _____

By: _____
Sandra L. Wesolowski, City Clerk

Date: _____



DATED THIS _____ DAY OF MARCH, 2015
THIS INSTRUMENT WAS DRAFTED BY JOHN P. KONOPACKI, S-2461

LEGAL DESCRIPTION

Being a part of the Northeast 1/4 of the Northeast 1/4 of Section 6, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the southeast corner of the Northeast 1/4 of said Section 6; thence North $00^{\circ}26'45''$ West along the east line of said Northeast 1/4, 1455.17 feet; thence South $87^{\circ}52'15''$ West, 26.62 feet to a point of intersection with the south right of way line of Whitnall Edge Road and the west right of way line of South 108th Street - South Lovers Lane Road - State Trunk Highway "100" and the point of beginning;

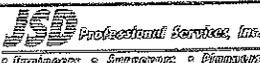
Thence South $87^{\circ}52'15''$ West along said south right of way line, 316.95 feet; thence North $01^{\circ}35'24''$ W, 60.00 feet to the north right of way line of Whitnall Edge Road; thence North $87^{\circ}52'15''$ East along said north right of way line, 308.44 feet to the aforesaid west right of way line of South 108th Street - South Lovers Lane Road - State Trunk Highway "100" and a point on a curve; thence southeasterly along the arc of said curve to the left and said west right of way line 60.53 feet, whose radius is 2361.83 feet and whose chord bears South $09^{\circ}40'25''$ East, 60.52 feet to the point of beginning.

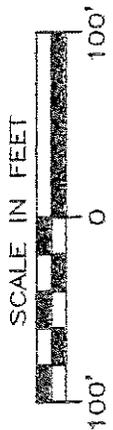
Containing in all 18,754 square feet (0.4305 acres) of land, more or less.

Franklin

MAR 13 2015

City Development

 <p>MILWAUKEE REGIONAL OFFICE N22 W22631 NANCY'S COURT SUITE 3 WAUKESHA, WISCONSIN 53186 262.513.0666 PHONE 262.513.1232 FAX</p> <p>www.jsdinc.com</p>	PROJECT: HILLER FORD, INC. NE 1/4 SEC. 6, T5N, R21E CITY OF FRANKLIN - MILWAUKEE COUNTY, WI	SHEET TITLE: ACCESS AND PUBLIC UTILITY EASEMENT	JSD PROJECT NUMBER: 13-5931A DRAWN BY: JPK CHECKED BY: CWR DATE: 03-12-15	SHEET NUMBER: EX 1 OF 2



NE CORNER OF
THE NE 1/4 OF
SEC. 6-5-21

UNPLATTED LANDS
TAX KEY NO. 704 9980 002

WHITNALL EDGE RD.
(60' WIDE RIGHT OF WAY)

UNPLATTED LANDS
TAX KEY NO. 704 9976 004

UNPLATTED LANDS
TAX KEY NO. 704 9976 003

60.00' N01°35'24"W

N87°52'15"E

308.44'

60'

UNPLATTED LANDS
TAX KEY NO. 704 9980 003

UNPLATTED LANDS
TAX KEY NO. 704 9976 005

HATCH INDICATES
ACCESS AND PUBLIC
UTILITY EASEMENT
18,754 SQ. FT.
0.4305 ACRES

UNPLATTED LANDS
TAX KEY NO. 704 9977 000

316.95' P.O.B.

S87°52'15"W 26.62'

1057.14' E. LINE OF THE NE 1/4 OF SEC. 6-5-21 N00°26'45"W 2512.31'

S. 108TH ST. - S. LOVERS
LANE RD. - S.I.H. "100"
(RIGHT OF WAY WIDTH VARIES)

SE CORNER OF
THE NE 1/4 OF
SEC. 6-5-21

CURVE DATA					
CURVE NO.	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	60.53'	2361.83'	001°28'06"	S09°40'25"E	60.52'

JS&D Professional Services, Inc.
Surveyors & Planners
MILWAUKEE REGIONAL OFFICE
N22 W2851 NANCY'S COURT SUITE 3
WALKERSHA, WISCONSIN 53185
262.513.0056 PHONE # 262.513.1233 FAX

PROJECT:
HILLER FORD, INC.
NE 1/4 SEC. 6, T5N, R21E
CITY OF FRANKLIN - MILWAUKEE COUNTY, WI

SHEET TITLE:
**ACCESS AND PUBLIC
UTILITY EASEMENT
EXHIBIT**

JS&D PROJECT NUMBER:
13-5931A
DRAWN BY: JPK
CHECKED BY: CWR
DATE: 03-12-15
SHEET NUMBER:
EX 2 OF 2

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 04/07/15
REPORTS & RECOMMENDATIONS	<p style="text-align: center;">RESOLUTION TO VACATE APPROXIMATELY 1.8290 ACRES OF RIGHT- OF-WAY WHICH EXTENDS APPROXIMATELY 60 FEET ALONG WHITNALL EDGE ROAD BETWEEN SOUTH 108TH STREET AND WEST FOREST HOME AVENUE ADJACENT TO PROPERTY LOCATED AT 6421, 6431-6435 AND 6455 SOUTH 108TH STREET, 11131 WEST FOREST HOME AVENUE AND PROPERTY ADJACENT TO WEST FOREST HOME AVENUE BEARING TAX KEY NO. 704-9980- 002</p>	ITEM NUMBER <i>G.A.</i>

At its February 17, 2015, meeting the Common Council introduced a resolution to vacate approximately 1.8290 acres of right-of-way which extends approximately 60 feet along Whitnall Edge Road between South 108th Street and West Forest Home Avenue adjacent to property located at 6421, 6431-6435 and 6455 South 108th Street, 11131 West Forest Home Avenue and property adjacent to West Forest Home Avenue bearing Taxkey No. 704-9980-002 and refer the street vacation to the March 19, 2015 meeting of the Plan Commission for a recommendation. The Common Council also moved to set the public hearing upon the proposed vacation of right-of-way for April 7, 2015.

At its March 19, 2015, meeting the Plan Commission recommended approval of the vacation of approximately 1.8290 acres of right-of-way which extends approximately 60 feet along Whitnall Edge Road between South 108th Street and West Forest Home Avenue adjacent to property located at 6421, 6431-6435 and 6455 South 108th Street, 11131 West Forest Home Avenue and property adjacent to West Forest Home Avenue bearing Taxkey No. 704-9980-002, subject to combining the parcel bearing Tax Key No. 704-9976-004 with Lot 1 on the proposed Hiller Ford 2-Lot Certified Survey Map, receiving all such required approvals, and recording the Certified Survey Map with the Milwaukee County Register of Deeds Office, or such lesser amount of area as may be determined reasonable by the Common Council.

COUNCIL ACTION REQUESTED

A motion to adopt Resolution No. 2015-_____, a resolution to vacate approximately 1.8290 acres of right-of-way which extends approximately 60 feet along Whitnall Edge Road between South 108th Street and West Forest Home Avenue adjacent to property located at 6421, 6431-6435 and 6455 South 108th Street, 11131 West Forest Home Avenue and property adjacent to West Forest Home Avenue bearing Taxkey No. 704-9980-002, subject to combining the parcel bearing Tax Key No. 704-9976-004 with Lot 1 on the proposed Hiller Ford 2-Lot Certified Survey Map, receiving all such required approvals, and recording the Certified Survey Map with the Milwaukee County Register of Deeds Office, or such lesser amount of area as may be determined reasonable by the Common Council.

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2015-_____

A RESOLUTION TO VACATE APPROXIMATELY 1.8290 ACRES OF RIGHT-OF-WAY WHICH EXTENDS APPROXIMATELY 60 FEET ALONG WHITNALL EDGE ROAD BETWEEN SOUTH 108TH STREET AND WEST FOREST HOME AVENUE ADJACENT TO PROPERTY LOCATED AT 6421, 6431-6435 AND 6455 SOUTH 108TH STREET, 11131 WEST FOREST HOME AVENUE AND PROPERTY ADJACENT TO WEST FOREST HOME AVENUE BEARING TAXKEY NO. 704-9980-002

WHEREAS, the Common Council of the City of Franklin finds that the public interest requires that approximately 1.8290 acres of right-of-way which extends approximately 60 feet along Whitnall Edge Road between South 108th Street and West Forest Home Avenue adjacent to property located at 6421, 6431-6435 and 6455 South 108th Street, 11131 West Forest Home Avenue and property adjacent to West Forest Home Avenue bearing Taxkey No. 704-9980-002 be discontinued, pursuant to Wis. Stat. § 66.1003(4); and

WHEREAS, such portion of the approximately 1.8290 acres of right-of-way which extends approximately 60 feet along Whitnall Edge Road between South 108th Street and West Forest Home Avenue adjacent to property located at 6421, 6431-6435 and 6455 South 108th Street, 11131 West Forest Home Avenue and property adjacent to West Forest Home Avenue bearing Taxkey No. 704-9980-002 is more particularly described upon Exhibit A annexed hereto and the map annexed hereto as Exhibit B; and

WHEREAS, notice of pendency of proceedings to vacate the subject property was submitted to the Office of the Register of Deeds for Milwaukee County on _____, 2015, by way of a copy of this Resolution as introduced, for recording as may be required pursuant to Wis. Stat. § 840.11; and

WHEREAS, this Resolution was first introduced before the Common Council of the City of Franklin at its regular meeting on February 17, 2015; and

WHEREAS, the Common Council scheduled a Public Hearing upon this Resolution pursuant to Wis. Stat. § 66.1003(4)(b) for April 7, 2015; with notice of such hearing being published as a Class III notice in the Official City Newspaper, with the first publication date being March 12, 2015; and

WHEREAS, a Public Hearing as so duly noticed having been held on April 7, 2015, before the Common Council of the City of Franklin, and a report having been received from

WHITNALL EDGE ROAD – STREET RIGHT-OF-WAY VACATION
 RESOLUTION NO. 2015-_____
 Page 2

the Plan Commission, upon all of the foregoing pursuant to law, the Common Council having been so informed and having made its determinations.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that pursuant to the authority vested in the Common Council

by Wis. Stat. § 66.1003(4)(b), that the portion of the approximately 1.8290 acres of right-of-way which extends approximately 60 feet along Whitnall Edge Road between South 108th Street and West Forest Home Avenue adjacent to property located at 6421, 6431-6435 and 6455 South 108th Street, 11131 West Forest Home Avenue and property adjacent to West Forest Home Avenue bearing Taxkey No. 704-9980-002 as described upon Exhibit A and Exhibit B annexed hereto and incorporated herein, be and the same is hereby discontinued and vacated.

BE IT FURTHER RESOLVED, that the City Clerk be and the same is hereby directed to record a copy of this Resolution with the Register of Deeds for Milwaukee County.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2015.

APPROVED:

 Stephen R. Olson, Mayor

ATTEST:

 Sandra L. Wesolowski, City Clerk

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2015.

APPROVED:

 Stephen R. Olson, Mayor

WHITNALL EDGE ROAD – STREET RIGHT-OF-WAY VACATION
RESOLUTION NO. 2015-_____

Page 3

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

LEGAL DESCRIPTION

Being a part of the Northeast 1/4 of the Northeast 1/4 of Section 6, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the southeast corner of the Northeast 1/4 of said Section 6; thence North 00°26'45" West along the east line of said Northeast 1/4, 1455.17 feet; thence South 87°52'15" West, 26.62 feet to a point of intersection with the south right of way line of Whitnall Edge Road and the west right of way line of South 108th Street - South Lovers Lane Road - State Trunk Highway "100" and the point of beginning;

Thence South 87°52'15" West along said south right of way line, 1338.95 feet to a point on a curve on the east right of way line of West Forest Home Avenue - County Trunk Highway "O"; thence northeasterly along the arc of said curve to the right and said east right of way line 61.64 feet, whose radius is 3744.83 feet and whose chord bears North 11°07'52" East, 61.64 feet to the north right of way line of Whitnall Edge Road; thence North 87°52'15" East along said north right of way line, 1316.86 feet to the aforesaid west right of way line of South 108th Street - South Lovers Lane Road - State Trunk Highway "100" and a point on a curve; thence southeasterly along the arc of said curve to the left and said west right of way line 60.53 feet, whose radius is 2361.83 feet and whose chord bears South 09°40'25" East, 60.52 feet to the point of beginning.

Containing in all 79,672 square feet (1.8290 acres) of land, more or less.

JSD Professional Services, Inc.
 • Engineers • Surveyors • Planners

MILWAUKEE REGIONAL OFFICE
 N22 W22931 NANCY'S COURT SUITE 3
 WAUKESHA, WISCONSIN 53186
 262.513.0886 PHONE | 262.513.1232 FAX

www.jsdinc.com

PROJECT:
**WHITNALL EDGE ROAD
 RIGHT OF WAY VACATION
 NE 1/4 SEC. 6, T5N, R21E**
 CITY OF FRANKLIN - MILWAUKEE COUNTY, WI

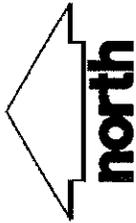
SHEET TITLE:
**RIGHT OF WAY
 VACATION
 EXHIBIT**

JSD PROJECT NUMBER:
 13-5931A

DRAWN BY: JPK CHECKED BY: CWR

DATE:
 02-12-15

SHEET NUMBER:
EX 1 OF 2



W. FOREST HOME AVE. - C.T.H. "O"
(RIGHT OF WAY WIDTH VARIES)

UNPLATTED LANDS
TAX KEY NO. 704 9980 002

N87°52'15"E

S87°52'15"W

UNPLATTED LANDS
TAX KEY NO. 704 9980 003

UNPLATTED LANDS
TAX KEY NO. 704 9976 004

WHITNALL EDGE RD.
(60' WIDE RIGHT OF WAY)

1316.86'

1338.95'

UNPLATTED LANDS
TAX KEY NO. 704 9976 005

UNPLATTED LANDS
TAX KEY NO. 704 9976 002

UNPLATTED LANDS
TAX KEY NO. 704 9976 003

UNPLATTED LANDS
TAX KEY NO. 704 9977 000

**HATCH INDICATES
WHITNALL EDGE ROAD
RIGHT OF WAY
TO BE VACATED**
79,672 SQ. FT.
1.8290 ACRES

NE CORNER OF
THE NE 1/4 OF
SEC. 6-5-21



E. LINE OF THE NE 1/4 OF SEC. 6-5-21
N00°26'45"W 2512.31'

1057.14'

1455.17'



SE CORNER OF
THE NE 1/4 OF
SEC. 6-5-21

S. 108TH ST. - S. LOVERS LANE RD. - S.T.H. "100"
(RIGHT OF WAY WIDTH VARIES)

CURVE DATA					
CURVE NO.	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	60.53'	2361.83'	001°28'06"	S09°40'25"E	60.52'
C2	61.64'	3744.83'	000°56'35"	N11°07'52"E	61.64'

JSD Professional Services, Inc.
Milwaukee • Kenosha • Racine
MILWAUKEE REGIONAL OFFICE
N22 W22531 NANCYS COURT SUITE 3
WAUWATOSA, WISCONSIN 53186
262.513.0886 PHONE | 262.513.1222 FAX

PROJECT:
**WHITNALL EDGE ROAD
RIGHT OF WAY VACATION
NE 1/4 SEC. 6, T5N, R21E**
CITY OF FRANKLIN - MILWAUKEE COUNTY, WI

SHEET TITLE:
**RIGHT OF WAY
VACATION
EXHIBIT**

JSD PROJECT NUMBER:
13-5931A
DRAWN BY: JPK
CHECKED BY: CWR
DATE: 02-12-15

SHEET NUMBER:
EX 2 OF 2

LEGAL DESCRIPTION

Being a part of the Northeast 1/4 of the Northeast 1/4 of Section 6, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows:

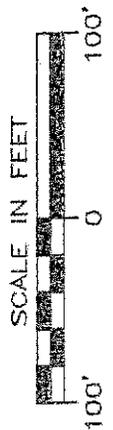
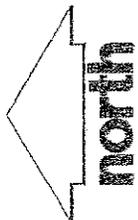
Commencing at the southeast corner of the Northeast 1/4 of said Section 6; thence North 00°26'45" West along the east line of said Northeast 1/4, 1455.17 feet; thence South 87°52'15" West, 26.62 feet to a point of intersection with the south right of way line of Whitnall Edge Road and the west right of way line of South 108th Street - South Lovers Lane Road - State Trunk Highway "100" and the point of beginning;

Thence South 87°52'15" West along said south right of way line, 316.95 feet; thence North 01°35'24" W, 60.00 feet to the north right of way line of Whitnall Edge Road; thence North 87°52'15" East along said north right of way line, 308.44 feet to the aforesaid west right of way line of South 108th Street - South Lovers Lane Road - State Trunk Highway "100" and a point on a curve; thence southeasterly along the arc of said curve to the left and said west right of way line 60.53 feet, whose radius is 2361.83 feet and whose chord bears South 09°40'25" East, 60.52 feet to the point of beginning.

Containing in all 18,754 square feet (0.4305 acres) of land, more or less.

Franklin
 MAR 13 2015
 City Development

 <p>MILWAUKEE REGIONAL OFFICE N22 W22831 NANCY'S COURT SUITE 3 WAUKESHA, WISCONSIN 53186 262.513.0666 PHONE 262.513.1232 FAX</p> <p>www.jsdinc.com</p>	PROJECT: WHITNALL EDGE ROAD RIGHT OF WAY VACATION NE 1/4 SEC. 6, T5N, R21E CITY OF FRANKLIN - MILWAUKEE COUNTY, WI	SHEET TITLE: RIGHT OF WAY VACATION EXHIBIT	JSD PROJECT NUMBER: 13-5931A	SHEET NUMBER: EX 1 OF 2
			DRAWN BY: JPK CHECKED BY: CWR DATE: 03-12-15	



NE CORNER OF THE NE 1/4 OF SEC. 6-5-21

UNPLATTED LANDS
TAX KEY NO. 704 9976 004

WHITNALL EDGE RD.
(60' WIDE RIGHT OF WAY)

UNPLATTED LANDS
TAX KEY NO. 704 9976 003

N87°52'15"E 308.44'

N01°35'24"W 60.00'

60'

UNPLATTED LANDS
TAX KEY NO. 704 9980 003

UNPLATTED LANDS
TAX KEY NO. 704 9976 002

UNPLATTED LANDS
TAX KEY NO. 704 9976 005

HATCH INDICATES
WHITNALL EDGE ROAD
RIGHT OF WAY
TO BE VACATED
18,754 SQ. FT.
0.4305 ACRES

UNPLATTED LANDS
TAX KEY NO. 704 9977 000

S87°52'15"W 316.95'

S87°52'15"W 26.62'

P.O.B.

S. 108TH ST. - S. LOVERS
LANE RD. - S.T.H. "100"
(RIGHT OF WAY WIDTH VARIES)

E. LINE OF THE NE 1/4 OF SEC. 6-5-21 N00°26'45"W 2512.31'

1455.17'

1057.14'

SE CORNER OF THE NE 1/4 OF SEC. 6-5-21

CURVE DATA					
CURVE NO.	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	60.53'	2361.83'	001°28'06"	S09°40'25"E	60.52'

PROJECT:

JSD Engineering & Surveying, Inc.
 MILWAUKEE REGIONAL OFFICE
 N22 W22831 NANCY'S COURT, SUITE 3
 WALKESHA, WISCONSIN 53186
 262.512.0666 PHONE | 262.513.1232 FAX
www.jsdinc.com

SHEET TITLE:
 RIGHT OF WAY
 VACATION
 EXHIBIT

JSD PROJECT NUMBER:
13-5931A
DRAWN BY: JPK
CHECKED BY: CWR
DATE: 03-12-15
SHEET NUMBER:
EX 2 OF 2

<p>APPROVAL</p> <p><i>Slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>04/07/2015</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>STATUS UPDATE FROM THE QUARRY MONITORING COMMITTEE PERTAINING TO THE NON-METALLIC MINING RECLAMATION PLAN AND ORDINANCE, QUARRY MONITORING, AND OF THE IMPLEMENTATION OF VARIOUS QUARRY RELATED RECOMMENDATIONS</p>	<p>ITEM NUMBER</p> <p><i>G.5.</i></p>
<p>This item was tabled at the March 17, 2015 Common Council meeting, for consideration at the first Council meeting in April.</p> <p>Please see the attached Council Action Sheet from the March 17, 2015 meeting for information on the subject Status Update.</p>		

APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE 03/17/2015
REPORTS & RECOMMENDATIONS	STATUS UPDATE FROM THE QUARRY MONITORING COMMITTEE PERTAINING TO THE NON-METALLIC MINING RECLAMATION PLAN AND ORDINANCE, QUARRY MONITORING, AND OF THE IMPLEMENTATION OF VARIOUS QUARRY RELATED RECOMMENDATIONS	ITEM NUMBER

INTRODUCTION

The Common Council, at its meeting of November 18, 2014, had moved to “direct the QMC to prepare a status update to Council in 3 months on any remaining outstanding items.” Furthermore, by memo dated February 16, 2015 to the Common Council from the Planning Manager, it was indicated that the status update would instead be provided to the Council in March in order to allow time for the Quarry Monitoring Committee (QMC) to review the Wisconsin Department of Natural Resources’ comments on the draft update of the City’s Non-Metallic Mining Reclamation Ordinance, and to include that information in the status update as well.

Specifically, this report will identify the current status of: the preparation of an update of the reclamation plan for the Payne & Dolan/Vulcan quarry; the preparation of an update of the City of Franklin Non-metallic Mining Reclamation Ordinance; the quarry monitoring contract for 2015; and implementation by staff, Payne & Dolan, and others, of the recommendations of the Quarry Monitoring Committee as approved by the Common Council at its November 18, 2014 meeting.

QUARRY RECLAMATION PLAN

- Common Council direction: Pursuant to the Council’s motion of October 21, 2014, the Council moved to “notify Payne & Dolan of the need for updating the Reclamation Plan as recommended by the Wisconsin Department of Natural Resources and that the date for completion of the Reclamation Plan is 6 months.”
- Status: Awaiting Payne & Dolan’s updated draft of the Reclamation Plan, to be submitted in April 2015.

NON-METALLIC MINING RECLAMATION ORDINANCE

- Common Council direction: Pursuant to the Council’s motion of October 21, 2014, it was moved that “the Common Council provide direction to staff and the Quarry Monitoring Committee in regard to the City’s Non-Metallic Mining Reclamation Ordinance on using the DNR Model Ordinance and inserting appropriate City language, no later than January 1, 2015.”
- Status: Underway. The draft updated Ordinance was submitted to the Department of Natural Resources on December 31, 2014. Comments on the draft ordinance were received from the Department on January 26, 2015 and February 4, 2015. The City Attorney provided responses to the Department’s comments on March 12, 2015, and received comments back from the Department on March 13, 2015.

The Quarry Monitoring Committee reviewed the Department’s and the City Attorney’s comments at its March 12, 2015 meeting and moved to recommend approval of the updated ordinance incorporating staff’s comments subject to any technical changes by the Chairman of the Quarry Monitoring Committee, the City Attorney, and the Planning Manager.

QUARRY MONITORING CONTRACT FOR 2015

- Common Council direction: Pursuant to the Council’s motion of October 21, 2014, the Council moved to “approve the *Quarry Monitoring Professional Service Agreement* with Attachment A containing service details and costs provided by Stantec Consulting Services Inc. and authorize staff to enter into said agreement

not to exceed \$42,000 subject to minor corrections as determined by the City Attorney.”

- Status: The contract as drafted was approved by the City Attorney, and forwarded for signatures from the Mayor, the City Clerk, and Stantec Consulting Services, Inc., on March 12, 2015.

QUARRY MONITORING COMMITTEE RECOMMENDATIONS

- Common Council direction: Pursuant to the Council’s motion of November 18, 2014, the Council moved to “direct staff to review the Zoning Code as it applies to the Planned Development District, as previously directed by the Mayor...”
- Status: Awaiting review by the Planning Department.

- Common Council direction: Pursuant to the Council’s motion of November 18, 2014, the Council moved to “negotiate survey services of PDD boundaries within the next quarry monitoring contract...”
- Status: On-hold until the next contract negotiation.

- Common Council direction: Pursuant to the Council’s motion of November 18, 2014, the Council moved to “obtain the corresponding survey coordinates from Payne & Dolan for the S. 51st/extraction boundary for City files as a future reference...”
- Status: Completed. This information was received on January 20, 2015.

- Common Council direction: Pursuant to the Council’s motion of November 18, 2014, the Council moved to “direct staff to review the City noise ordinance as it applies to the quarry...”
- Status: Awaiting review by the City Attorney.

- Common Council direction: Pursuant to the Council’s motion of November 18, 2014, the Council moved to “direct staff to verify and place on file the permits required within the PDD...”
- Status: Underway. Information on the City’s original quarry permit was received on January 20, 2015. Awaiting further information from the Planning Department and Payne & Dolan.

- Common Council direction: Pursuant to the Council’s motion of November 18, 2014, the Council moved to “direct staff to review the State law for interpretation and enforcement as it relates to restraint of truckloads.”
- Status: Awaiting review by the City Attorney.

OTHER MATTERS

- Background: A citizen has claimed that Section Z, Biannual Reporting, of Planned Development District No. 23, is incorrect as it states that “the Operator shall report to the Plan Commission approximately every two (2) years...”, whereas common dictionary usage defines ‘biannual’ as twice a year and ‘Biennial’ as once every two years.

The Quarry Monitoring Committee noted at its March 12, 2015 meeting that there is a discrepancy in the spelling of “biannual” and the meaning of the text in parenthesis (i.e. the text of Section Z of Planned Development District No. 23). The QMC requests legal opinion if the word ‘biannual’ or the text of Section Z of Planned Development District No. 23, holds the higher legal weight.

COUNCIL ACTION REQUESTED

Request a legal opinion from the City Attorney in regard to if the word ‘biannual’ or the text of Section Z of Planned Development District No.23 holds the higher legal weight.

-OR-

As the Council deems appropriate.

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<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING¹³¹ DATE</p> <p style="text-align: center;">April 7, 2015</p>
<p style="text-align: center;">REPORTS AND RECOMMENDATIONS</p>	<p style="text-align: center;">Common Council request for legal opinion upon the meaning of "biannual" with regard to the text of Planned Development District No. 23 Section Z. ("every two (2) years")</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>G.6.</i></p>

The above action was taken at the March 17, 2015 Common Council meeting.

Planned Development District No. 23 Section Z. provides:

Biannual Reporting.

To assist the City in the administration of this Ordinance, the Operator shall report to the Plan Commission approximately every two (2) years from and after the effective date of the portions of this Ordinance affecting the Extraction Area.

City Attorney concludes that the specific text of "every two (2) years" controls over the use of "Biannual" in the title, assuming the primary definition of biannual means twice per year.

Merriam-Webster Unabridged defines "biannual" as "occurring, appearing, or being made, done, or acted upon twice a year; *sometimes* : biennial — compare semiannual".

"*Marlowe v. IDS Prop. Cas. Ins. Co.*, 2013 WI 29, ¶ 45, 346 Wis.2d 450, 828 N.W.2d 812 ("It is axiomatic that where a more specific law on a given subject is potentially in conflict with a more general one on the same subject, the former controls.'). . . ." *Bank of New York v. Carson*, 352 Wis.2d 205, 216-217, 841 N.W.2d 573, 578 (Ct.App. 2013).

"*See Pure Milk Prods. Coop. v. Nat'l Farmers Org.*, 64 Wis.2d 241, 253, 219 N.W.2d 564 (1974) ("Although the title is not part of the statute it may be persuasive of the interpretation to be given the statute.')." *Marlowe v. IDS Property Cas. Ins. Co.*, 346 Wis.2d 450, 478, 828 N.W.2d 812, 826 (2013).

COUNCIL ACTION REQUESTED

No action necessary.

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APPROVAL 	REQUEST FOR COUNCIL ACTION	MEETING¹³³ DATE 4/7/2015
REPORTS & RECOMMENDATIONS	Consideration of the Senior Travel Program's CDBG Requirements and Alternative Senior Programming	ITEM NUMBER <i>G.7.</i>

At a recent meeting of the Common Council, Shirley Bird presented the Senior Travel Program's annual report and noted concerns about the constraints placed upon the program, particularly restrictions on the nature of events that can be attended and the need to collect participant data.

For 2015, the Senior Travel Program is budgeted for \$10,000 in appropriations. The budget also anticipates \$5,000 in reimbursement revenue from the CDBG program with the assumption that half of the programs will meet the requirement that the trip is primarily educational in nature. Based on this, the program has, in recent years, been encouraged to incorporate more educational trips, hopefully up to half. A request was made to eliminate this requirement.

Eliminating this expectation does not require a budget modification as the expense appropriation is already set at \$10,000. The result would be a potential loss of expected revenue. In the grand scope of the City's entire General Fund operations, loss of \$5,000 is not a dramatic event. As such, informing the Senior Travel program that they do not have to adhere to an educational component simply means the City's year-end position could be \$5,000 short. In recent years, the City has generally run with a surplus well in excess of \$5,000.

Removing the link between this program and the CDBG program would remove the need to collect income and demographic data from participants as well. This was also a request of the volunteer program director. It is worth noting that the County has set a new training program for later this month specifically on data collection for senior programming based upon a recent HUD audit. It appears the requirement for income data may be reduced for those individuals age 63 and older, but the demographic data requirement will remain mandatory. Again, no longer seeking CDBG reimbursement on the program will eliminate any such requirements.

The City is working with the County to direct the \$5,000 program to other senior programming and service efforts that would be coordinated or administered through the City's Health Department. The initial assessment of the County's CDBG program coordinator is that this could very likely be done. If part of the funding is used to reimburse existing nursing staff for work on senior programming, it would fill part of the revenue hole created by discontinuing its use on the Senior Travel Program. As this expands some of the programming options for the money, as was suggested at budget time by Alderwoman Evans, staff has begun to pursue the matter. A meeting has been set for later this month with the County to pursue this concept and direction.

COUNCIL ACTION REQUESTED

Motion to direct the Director of Administration to inform the Senior Travel Program Director that the travel program does not need to adhere to the CDBG requirements and to direct the Director of Administration and Health Director to work with the County to explore other senior-based programming options for the \$5,000 of potential CDBG funding.

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<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING¹³⁵ DATE 4/7/15</p>
<p style="text-align: center;">REPORTS & RECOMMENDATIONS</p>	<p style="text-align: center;">Park Development and Park Impact Fee Expenditure Options</p>	<p style="text-align: center;">ITEM NUMBER G. 8.</p>
<p>At the July 1, 2014, Common Council meeting, the Council received a report addressing the issue of advancing park projects for the purpose of ensuring park impact fees were spent in a timely manner. The first projects identified, small projects at Ernie Lake Special Park and Lions Legend Community Park, were ultimately completed in 2014. As the scope of the Kayla's Krew project grew and the timing seemed advantageous, other park development ideas were not advanced as it was expected that the Kayla's Krew project would at least postpone certain immediate needs. Expenditures, however, still have not occurred and land transfers that may accelerate application of impact fees have not yet occurred. As such, this report, the result of a review of the budget and staff brainstorming, is submitted to suggest additional projects that could be pursued promptly and that would qualify for a park impact fee component.</p> <p>Following are recommended projects that could be further investigated or initiated.</p> <ol style="list-style-type: none"> 1. Restroom in Market Square near St. Martins Gazebo: Although not previously incorporated into plans for the square, a single-stall, family-style, unisex bathroom could serve a community purpose, both for the regular fairs and for enhancing the gazebos functionality for weddings, for example. It would also eliminate some regular bathroom rental costs. The idea comes as an extension of Engineering's consideration of pre-fab bathrooms as part of the Kayla's Krew investigation. An order could be made with pre-payment while separate site work is addressed. The initial order might be in the \$40,000 to \$60,000 range. <u>RECOMMENDATION</u>: If the Council supports the idea of adding a bathroom structure to Market Square, direct staff to prepare a rough site plan and cost estimate and bring it back as soon as practicable. 2. Mini Park Land Acquisition: The budget anticipates land acquisition for Mini Parks 3, 4, & 5 at \$45,168 each for a 1 to 3 acre parcel. Land acquisition does not happen quickly, but additional park projects may be needed in 2016. As such, it would be appropriate to commence the acquisition steps at this time. As the projects are listed in the "pending approval" portion of the capital budget, staff needs authorization to proceed. Staff would work with the Park Commission and hold a neighborhood meeting to gather further input on the project. <u>RECOMMENDATION</u>: Authorize the Planning Department to commence the planning and public information aspects of the budgeted mini park land acquisition. 3. Purchase of Park Playground Equipment as Commodities for Future Installation. A set of toddler and youth play ground equipment costs approximately \$26,000 and \$30,000, respectively. If three mini-parks are planned and direction is to begin their pursuit, then equipment could be ordered and stored pending the land acquisition. Properly stored there should be no loss in useful life of the equipment. At \$56,000 per park, the potential purchase is \$168,000 to \$224,000. Note: Some additional small equipment pieces (benches, grilles, basket ball poles) could be acquired for various locations but the totals would not be great for the current need. 		

RECOMMENDATION: If the Common Council supports this concept, direct staff to prepare a detailed proposal, cost estimate, and budget modification to address the amended intent for existing appropriations. 136

4. Pleasant View Shelter. Pleasant View Park was designed with the intent that it provide the amenity of a shelter. In fact, the 2015 budget provides \$232,800 as a project pending approval for this purpose. Multiple individuals noted during a recent Common Council meeting that the City was lacking adequate shelter space. At the same time, recent discussions have led to staff contemplating the use and functionality of various shelters. Lions Legend II Vernon Barg Pavilion was recently built and has proven to be a very effective and aesthetic design. Conveniently, bid documents could be issued very quickly as prior documents would only require very slight modifications. The contract could even incorporate an advance payment component to address cash flow issues. Engineering costs were \$35,362 and construction costs were \$373,735 for a total cost of \$409,097. Although this exceeds the anticipated budget, the design results in a shelter with which the City can be exceptionally proud. This project is the single most significant project that could be completed quickly. Although it is already budgeted, a budget modification, shifting available appropriations, would be needed to address the cost difference.

RECOMMENDATION: Direct staff to take the necessary steps to bid out the park shelter project for Pleasant View Park generally meeting the specifications of the Vernon Barg Pavilion.

The following alternatives were discussed but deemed to be less likely to meet the immediate needs.

1. Neighborhood Park Land Acquisition: Two neighborhood parks, Woodview and Hillcrest, are in the Comprehensive Outdoor Recreation Plan. The larger size of a neighborhood park makes it a little harder to site and acquire. Therefore, the mini parks were proposed for acquisition first.
2. North Cape Trail: Although still in the budget, an acceptable location or strategy has not moved forward. The prior reticence for this project makes it not a good strategic option for fast action.
3. Pleasant View Park Development: Basketball, volleyball, and athletic fields are still called for in the park. There is still a stated concern about fully developing the park prior to addressing all traffic issues. Additionally, these items were not viewed as easy or quick to bid as the shelter, which was already in the 2015 budget.
4. Tennis Court Complex: Although gaining interest as a concept, it is currently called for at the Southwest Park, which doesn't yet exist. As such, acquisition or siting issues make this not a quick solution.
5. Southwest Park Land Acquisition: Similar to Neighborhood Park land acquisition, the timeliness of the project would be in question.

COUNCIL ACTION REQUESTED

Based upon the need to move forward with parks projects that qualify for use of park impact fees, staff recommends consideration of the actions indicated above for each of the four potential projects or expenditures.

<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE</p> <p style="text-align: center;">04/07/2015</p>
<p style="text-align: center;">REPORTS & RECOMMENDATIONS</p>	<p>Status of Kayla's Playground at Franklin Woods and Authorization to sign Professional Engineering Contract with Graef.</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>G.9.</i></p>

BACKGROUND

As directed by common council, Staff is working to a develop detail design for Kayla's Krew Playground at Franklin Woods site (S 35th Street and West Puetz Road)

Attached is the latest plan. A more detailed budget estimate will be presented at Common Council Meeting.

ANALYSIS

The existing park has a shelter with no restroom facilities, 26 parking spaces, a paved walking trail around a wetland, and a grouping of play equipment.

The proposed improvements will include expansion of the parking facilities, with the ability to provide curbside bus dropoff, restroom facilities, a 80'x210' fenced playground with a poured in place surface, pavers and sidewalks to facilitate pedestrian activity surrounding the playground, planters with vegetation to attract butterflies, and a recreational splash pad. In addition, the restroom will be equipped with electricity, water, and sewer service.

To supplant City Engineering staff in the development of the project, enclosed is an hourly professional proposal from Graef. Graef provided a "shopping list" of potential services that would be needed for complete design of the park. The items total \$86,650.00. All of those services are not needed. Some services need additional investigation to see if they are needed. It is proposed that Graef be given authorization to proceed on services only if needed.

Given Common Council authorization, Staff and Consultant will continue development of project plans and application of needed permits, variances, and approvals.

At the Common Council Meeting April 21, Staff will present equipment to council that may be pre-purchased. See attached for example of restroom facilities.

In May, Staff will solicit contractors for construction of improvements.

End of May- DPW will remove topsoil for entire area including parking lot, put back gravel over entire site needed for base, remove existing play equipment. install sono tubes in locations needed for posts in play structure, and construct concrete for restroom foundation.

June- City awards bid project to contractor. Immediately, the contractor will install asphalt base for parking lot, extend water main along Crest, bring water service and sewer lateral to the restroom site, electric conduit from RR to shelter and playground (security lights), and construct splash pad. This will be completed prior to September 1.

September 1- WE energies will have electrical drop for restroom and temporary service for use during build.

September 20 build, in addition to construction, some volunteers are enhancing wetland by pulling buck thorn (anticipate requirement for building within setback).

Circa September 25, crane on site to set playground roofs and decks. Move trailer out of way, take delivery of restroom modules and set.

After September 27 (week after build), Contractor will top off, level and recompact gravel (after construction vehicles are gone) and place concrete walks, pavers, etc. Perhaps asphalt surface coat (or may wait until 2016). Another contractor will do poured in place (rubber surface) on playground.

Ribbon cutting first week of October 2015.

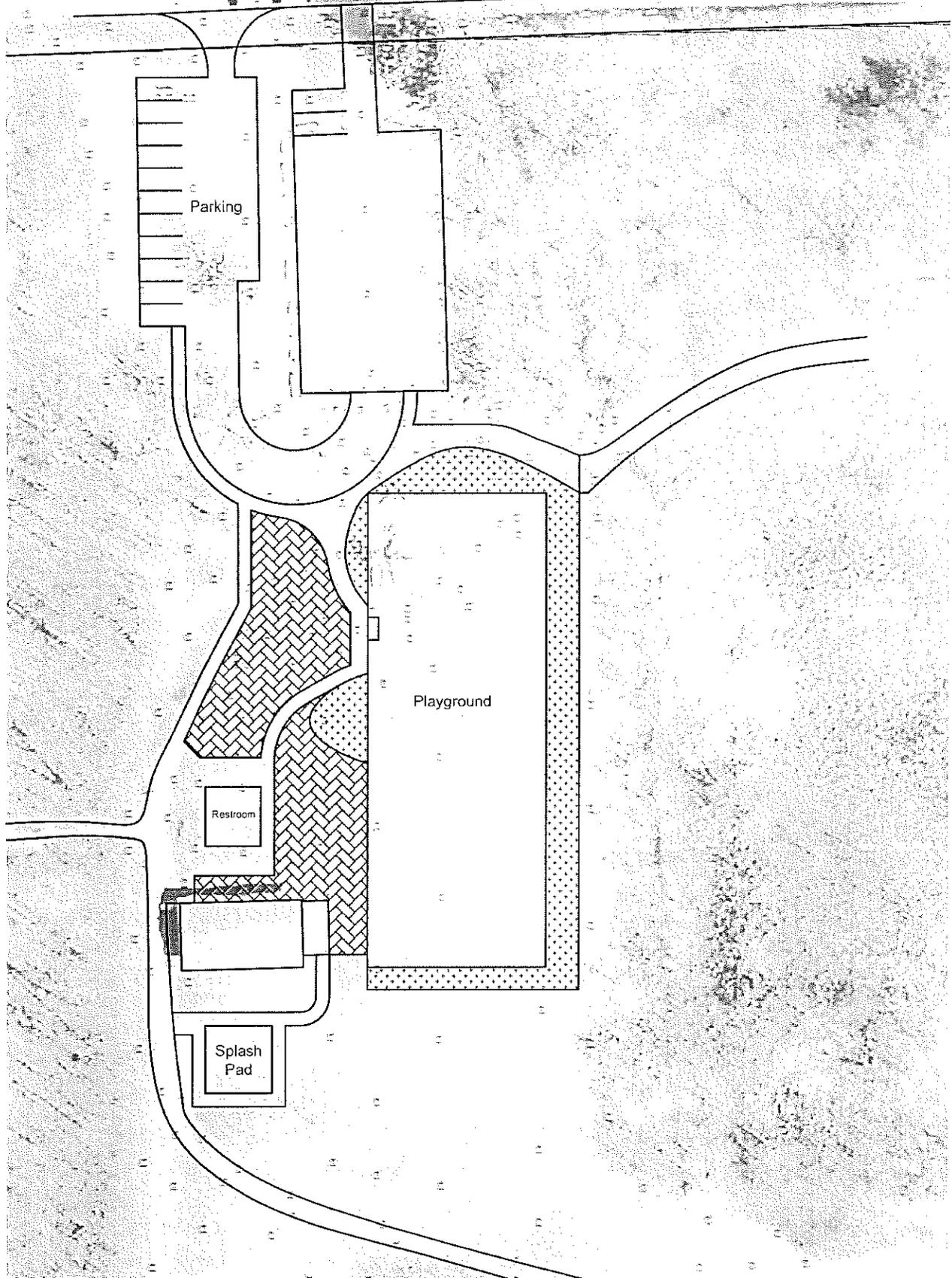
OPTIONS

FISCAL NOTES

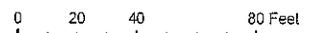
Detailed budget will be presented at Common council Meeting.

REMMENDATIONS

Motion to authorize the Mayor to sign Graef Contract with authorization to proceed on specific items as directed by City Engineer.



Franklin Woods
Potential Kayla Park Site



Scale=1:40

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April 2, 2015

Mr. Glen E. Morrow, P.E.
City Engineer/Director of Public Works
City of Franklin
9229 West Loomis Road
Franklin, WI 53132

Subject: Franklin Woods Park
Professional Services Agreement

Dear Mr. Morrow:

Per your request, Graef-USA Inc. (GRAEF) is pleased to provide this proposal for services to City of Franklin (Client). An executed copy of this proposal will become our Agreement.

This proposal is for professional services for Design Services for the site improvements at Franklin Woods Park in the City of Franklin. This proposal is subject to GRAEF's Standard Terms and Conditions, a copy of which is attached and incorporated by reference.

For this Project, GRAEF proposes to provide the following Basic Services:

- Topographic Survey of Franklin Woods Park- Approximately \$1,950
- Topographic Survey of W. Crest Court for water main design (500 LF) Approximately \$2,200
- Preparation of plan and profile drawings for the extension sanitary sewer and permitting (400 LF) and water main (1,000 LF) and permitting- Approximately \$6,500
- Parking lot design-Approximately \$4,500
- Landscaping Plan- Approximately \$4,000
- Park Site/Grading Plan- Approximately \$6,000
- Paver Design- Approximately \$5,500
- Splash Pad Coordination- Approximately \$5,000
- Wetland Delineation and Report (No permitting)- Approximately \$3,500
- Soil Boring Coordination- Approximately \$2,000
- Prepare stormwater management plan and NOI-Approximately \$4,500
- Foundation and slab design for future precast unit- Approximately \$4,000
- Electrical design stubbed out to the future restrooms, splash pad and playground areas only- Approximately \$4,500
- Prepare opinion of probable construction costs
- Prepare project manual including GRAEF technical sections and bidding and contract forms with City provided front-end documents- Approximately \$8,500



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At your written request, GRAEF will provide the following Additional Services on a Time & Materials basis for additional compensation:

- Public Hearing Attendance
- Assessment Report Preparation
- Additional Meeting Attendance
- Bidding Services
- Alternate bids
- Additional grading plans or site plan revisions
- Prepare an endangered resource review
- Prepare tree survey
- Prepare tree mitigation/wetland mitigation plan
- Presentations to Committees/Council Meetings
- Additional design meetings
- Environmental permitting including wetland permitting (WDNR, Army Corps of Engineers, etc.)
- Park restroom/shelter design
- Playground equipment, fencing, surface material, layout and specifications
- Contract Administration
- Construction Staking
- Construction Inspection
- Preparation of as-built drawings
- Interior precast unit equipment and finishes design/specifications
- Plan Commission/Architectural Review Board attendance
- Prepare precast unit elevations for presentations
- Utility coordination including relocation
- Parking lot and/or roadway lighting
- Assist in applications for utility rebate programs
- Design of low voltage electrical system such as voice/data communications cabling, security systems, etc.
- Boundary Survey

For the Basic Services detailed above, the City of Franklin agrees to compensate GRAEF on an hourly basis of personal assigned to the project, plus reimbursable expenses. Reimbursable expenses include express mail and delivery charges, advertising costs, permit fees, plan reproduction, utility permits and applications for utility service (gas, electric, etc.) soil borings (Approximately \$4,000) and mileage.

To accept this proposal, please sign and date both enclosed copies and return one to us. Upon receipt of an executed copy, GRAEF will commence work on the Project. Graef-USA Inc. looks forward to providing services to the City of Franklin.



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GRAEF-USA Inc.'s TERMS AND CONDITIONS

These Terms and Conditions are material terms of the Professional Services Agreement proposed on April 2, 2015 (Agreement) by and between Graef-USA Inc. (GRAEF) and the City of Franklin (Client):

Standard of Care: GRAEF shall exercise ordinary professional care in performing all services under this Agreement, without warranty or guarantee, expressed or implied. Persons providing such services under this Agreement shall have such active certifications, licenses and permissions as may be required by law.

Client Responsibilities: Client shall at all times procure and maintain financing adequate to timely pay for all costs of the PROJECT as incurred; shall timely furnish and provide those services, items and/or information defined in Agreement, as amended, and shall reasonably communicate with and reasonably cooperate with GRAEF in its performance of this Agreement. GRAEF shall be entitled to rely on the accuracy and completeness of any services, items and/or information furnished by Client. GRAEF shall timely furnish and provide those services, items and/or information defined in Agreement, as amended, and shall reasonably communicate with and reasonably cooperate with Client in its performance of this Agreement. Client shall be entitled to rely on the accuracy and completeness of any services, items and/or information furnished by GRAEF. These terms are of the essence. To the fullest extent permitted by law, GRAEF shall indemnify and hold harmless Client, Client's officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of GRAEF or GRAEF'S officers, directors, partners, employees, and consultants in the performance of GRAEF'S services under this Agreement. To the fullest extent permitted by law, Client shall indemnify and hold harmless GRAEF, GRAEF'S officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Client or Client's officers, directors, partners, employees, and consultants with respect to this Agreement. To the fullest extent permitted by law, GRAEF'S total liability to Client and anyone claiming by, through, or under Client for any injuries, losses, damages and expenses caused in part by the negligence of GRAEF and in part by the negligence of Client or any other negligent entity or individual, shall not exceed the percentage share that GRAEF'S negligence bears to the total negligence of Client, GRAEF, and all other negligent entities and individuals. In addition to the indemnity provided above, and to the fullest extent permitted by law, Client shall indemnify and hold harmless GRAEF and GRAEF'S officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other disputes resolution costs) caused by, arising out of, or resulting from an unexpected Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this Paragraph shall obligate Client to indemnify any individual or entity from and against the consequences of that individual or entity's own negligence or willful misconduct.

Insurance: GRAEF shall, during the life of the Agreement, maintain insurance coverage with an authorized insurance carrier at least equal to the minimum limits set forth below:

A.	Limit of General/Commercial Liability	\$2,000,000
B.	Automobile Liability: Bodily Injury/Property Damage	\$1,000,000
C.	Excess Liability for General Commercial or Automobile Liability	\$5,000,000
D.	Worker's Compensation and Employers' Liability	\$500,000
E.	Professional Liability	\$2,000,000

Upon the execution of this Agreement, GRAEF shall supply Client with a suitable statement certifying said protection and defining the terms of the policy issued, which shall specify that such protection shall not be cancelled without thirty (30) calendar days prior notice to Client, and naming Client as an additional insured for General Liability.



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GRAEF-USA, Inc.'s TERMS AND CONDITIONS (continued)

Contractor Submittals: The scope of any review or other action taken by GRAEF or its subconsultant(s) in respect of any contractor submittal, such as shop drawings, shall be for the limited purpose of determining if the submission generally conforms with the overall intent of the design of the work that is the subject of this Agreement, but not for purposes of determining accuracy, completeness or other details such as dimensioning or quantities, or for substantiating instructions or performance of equipment or systems. GRAEF shall not be liable or responsible for any error, omission, defect or deficiency in any contractor submittal.

Pricing Estimates: Neither GRAEF nor Client has any control over the costs of labor, materials or equipment, over contractors' methods of determining bid prices, or over competitive bidding, market or negotiation conditions. Accordingly, GRAEF cannot and does not warrant or represent that bids or negotiated prices will not vary from any projected or established budgetary constraints.

Construction Observation: Unless expressly stated in this Agreement, GRAEF shall have no responsibility for Construction Observation. If Construction Observation services are performed, GRAEF's visits to the construction site shall be for the purpose of becoming generally familiar with the progress and quality of the construction, and to determine if the construction is being performed in general accordance with the plans and specifications. GRAEF shall have no obligation to "inspect" the work of any contractor or subcontractor and shall have no control or right of control over and shall not be responsible for any construction means, methods, techniques, sequences, equipment or procedures (including, but not limited to, any erection procedures, temporary bracing or temporary conditions), or for safety precautions and programs in connection with the construction. Also, GRAEF shall have no obligation for any defects or deficiencies or other acts or omissions of any contractor(s) or subcontractor(s) or material supplier(s), or for the failure of any of them to carry out the construction in accordance with the contract documents, including the plans and specifications. GRAEF is not authorized to stop the construction or to take any other action relating to jobsite safety, which are solely the contractor's rights and responsibilities.

Dispute Resolution and Governing Law: This Agreement shall be construed under and governed by the laws of the State of Wisconsin. The venue for any actions arising under this Agreement shall be the Circuit Court for Milwaukee County. The prevailing party shall be awarded its actual costs of any such litigation, including reasonable attorney fees.

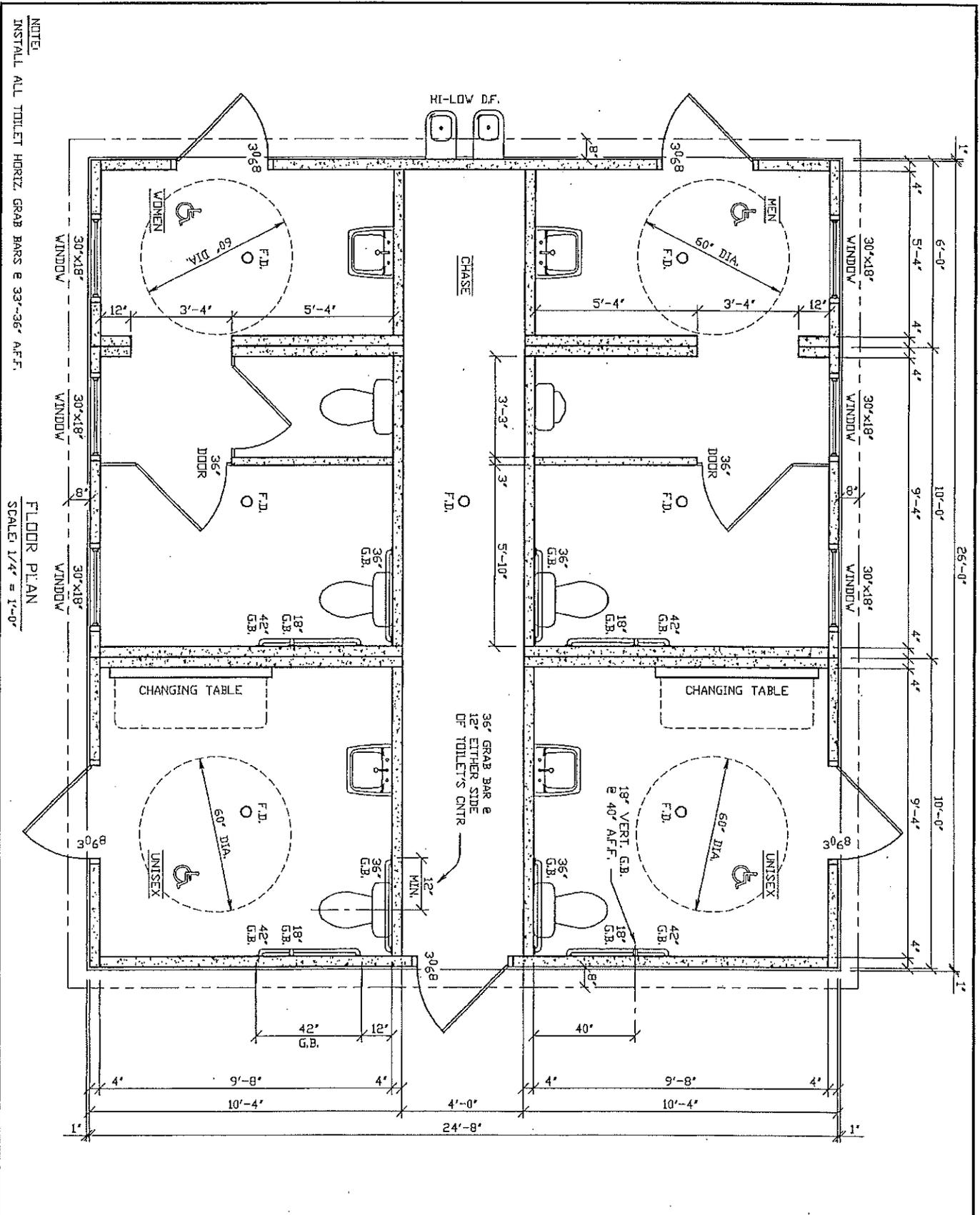
No Assignment: This Agreement is not subject to assignment, transfer or hypothecation without the written consent of both parties expressly acknowledging such assignment, transfer or hypothecation.

Severance of Clauses: In the event that any term, provision or condition of this Agreement is void or otherwise unenforceable under the law governing this Agreement, then such terms shall be stricken and the balance of this Agreement shall be interpreted and enforced as if such stricken terms never existed.

Integrated Agreement: The parties' final and entire agreement is expressed in the attached proposal letter and these Terms and Conditions. All prior oral agreements or discussions, proposals and/or negotiations between the parties are merged into and superceded by this Agreement. No term of the parties' Agreement may be orally modified, amended or superceded.

Termination: This Agreement may be terminated by Client, for its convenience, for any or no reason, upon written notice to GRAEF. This Agreement may be terminated by GRAEF upon thirty (30) days written notice. Upon such termination by Client, GRAEF shall be entitled to payment of such amount as shall fairly compensate GRAEF for all work approved up to the date of termination, except that no amount shall be payable for any losses of revenue or profit from any source outside the scope of this Agreement, including but not limited to, other actual or potential agreements for services with other parties. In the event that this Agreement is terminated for any reason, GRAEF shall deliver to Client all data, reports, summaries, correspondence, and other written, printed, or tabulated material pertaining in any way to Basic Services that GRAEF may have accumulated. Such material is to be delivered to Client whether in completed form or in process. Client shall hold GRAEF harmless for any work that is incomplete due to early termination. The rights and remedies of Client and GRAEF under this section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other article of this Agreement.

Records Retention: GRAEF shall maintain all records pertaining to this Agreement during the term of this Agreement and for a period of 3 years following its completion. Such records shall be made available by GRAEF to Client for inspection and copying upon request.



NOTE:
INSTALL ALL TOILET HORITZ. GRAB BARS @ 33"-36" A.F.F.

FLOOR PLAN
SCALE 1/4" = 1'-0"

1 of 3

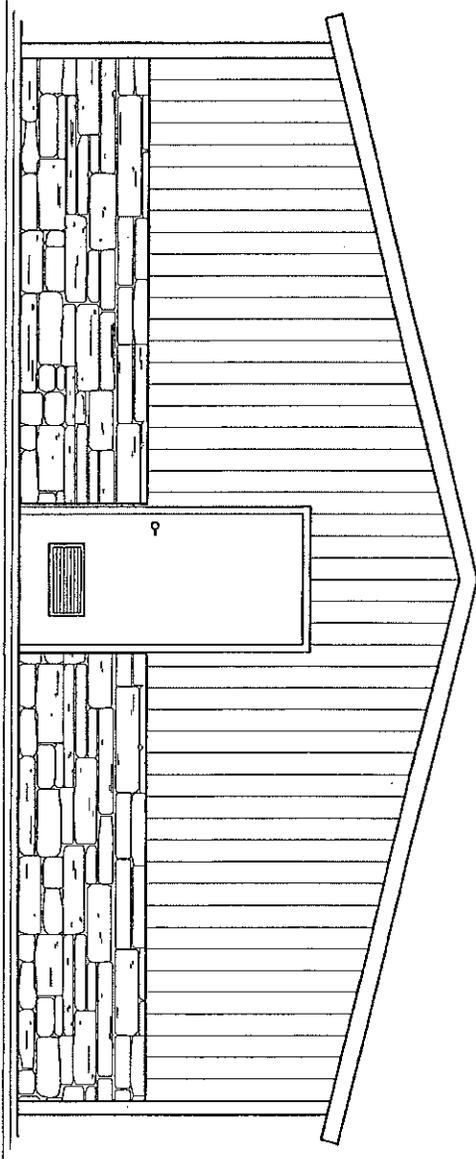
PROJECT:
FRANKLIN PARK
RESTROOM BUILDING



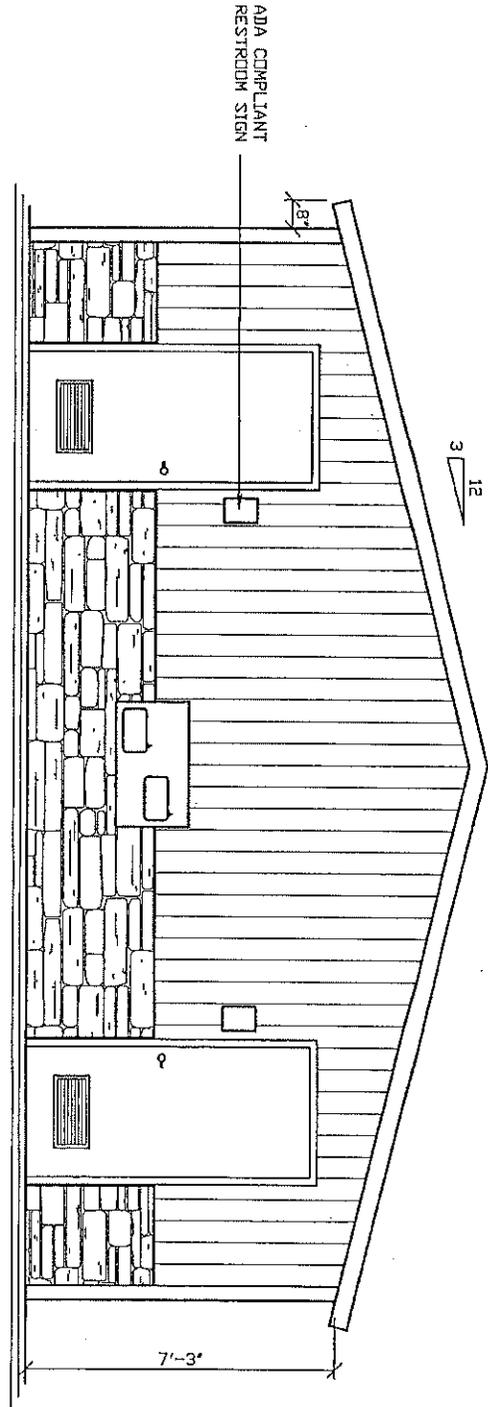
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REAR ELEVATION
SCALE: 1/4" = 1'-0"



FRONT ELEVATION
SCALE: 1/4" = 1'-0"

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PROJECT:
FRANKLIN PARK
RESTROOM BUILDING

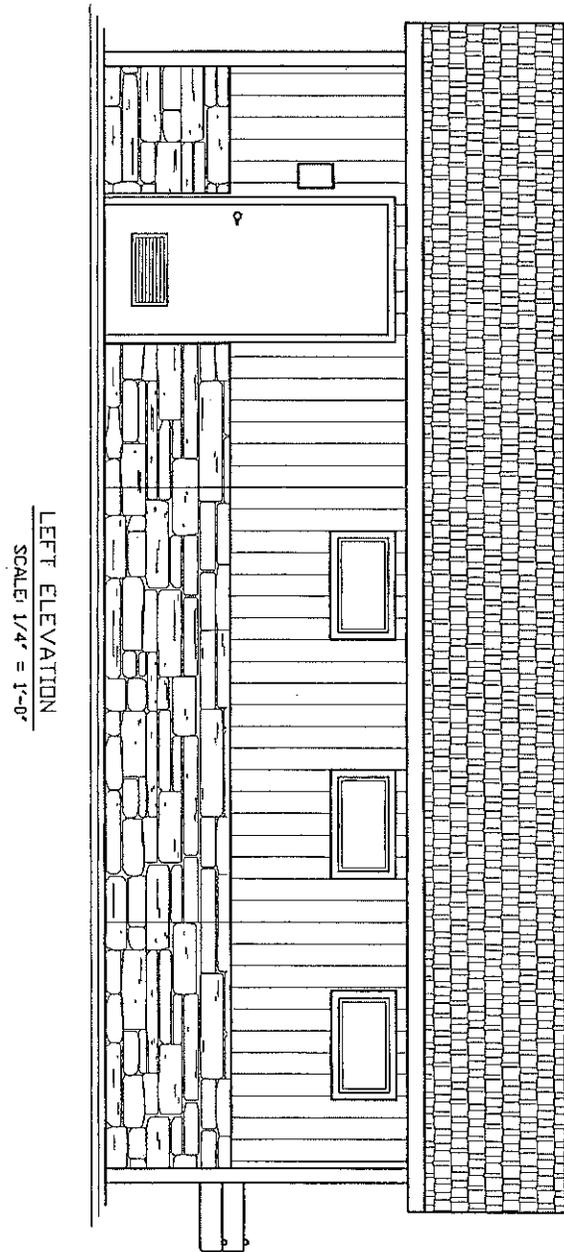
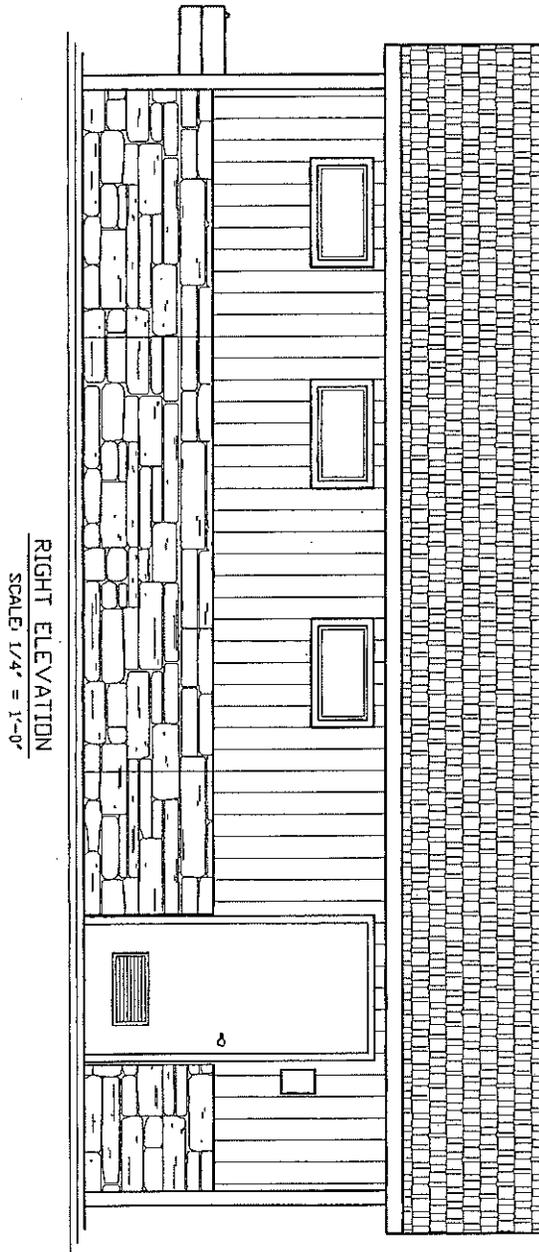


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<p>APPROVAL</p> <p><i>Slaw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING¹⁴⁹ DATE</p> <p>April 7, 2015</p>
<p>REPORTS AND RECOMMENDATIONS</p>	<p>An Ordinance to Create Chapter 238 of the Municipal Code Relating to Pawnbrokers, Secondhand Article Dealers and Secondhand Jewelry Dealers</p>	<p>ITEM NUMBER</p> <p>G.10.</p>

The above regulation is recommended by the Police Department. Staff has reviewed the subject matter, including but not limited to Wis. Stat. § 134.71 (copy attached), which is how the City currently regulates pawnbrokers, secondhand article dealers and secondhand jewelry dealers. Asst. City Attorney Joshi also reviewed many area and beyond local ordinances on the subject matter in preparing the attached draft. The Department of City Development and the Health Department also reviewed an earlier draft ordinance premised on same. The attached draft includes stricter provisions such as the required video surveillance system, as recommended by the Police Department. Chief Oliva will be present at the meeting to address the subject matter. Wis. Stat. § 134.71(14) provides: "Ordinance. A county or municipality may enact an ordinance governing pawnbrokers, secondhand article dealers or secondhand jewelry dealers if that ordinance is at least as stringent as this section." The Police Department has indicated that an ordinance requiring a video surveillance system for pawnbrokers, secondhand article dealers and secondhand jewelry dealers would be a beneficial tool for promoting legitimate business transactions resistant to fraud and assist in the recovery of stolen property.

COUNCIL ACTION REQUESTED

A motion to adopt An Ordinance to Create Chapter 238 of the Municipal Code Relating to Pawnbrokers, Secondhand Article Dealers and Secondhand Jewelry Dealers.

Wis. Stat. § 134.71. Pawnbrokers and secondhand article and jewelry dealers

(1) Definitions. In this section:

(a) "Article" means any of the following articles except jewelry:

1. Audiovisual equipment.
2. Bicycles.
3. China.
4. Computers, printers, software and computer supplies.
5. Computer toys and games.
6. Crystal.
7. Electronic equipment.
8. Fur coats and other fur clothing.
9. Ammunition and knives.
10. Microwave ovens.
11. Office equipment.
12. Pianos, organs, guitars and other musical instruments.
- 12m. Video tapes or discs, audio tapes or discs, and other optical media.
13. Silverware and flatware.
14. Small electrical appliances.
15. Telephones.

(ag) "Auctioneer" means an individual who is registered as an auctioneer under ch. 480 and who sells secondhand articles or secondhand jewelry at an auction, as defined in s. 480.01(1).

(am) "Charitable organization" means a corporation, trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) "Customer" means a person with whom a pawnbroker, secondhand article dealer or secondhand jewelry dealer or an agent thereof engages in a transaction of purchase, sale, receipt or exchange of any secondhand article or secondhand jewelry.

(c) "Jewelry" means any tangible personal property ordinarily wearable on the person and consisting in whole or in part of any metal, mineral or gem customarily regarded as precious or semiprecious.

(d) "Municipality" means a city, village or town.

(e) "Pawnbroker" means any person who engages in the business of lending money on the deposit or pledge of any article or jewelry, or purchasing any article or jewelry with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price.

(f) "Secondhand" means owned by any person, except a wholesaler, retailer or secondhand article dealer or secondhand jewelry dealer licensed under this section, immediately before the transaction at hand.

(g) "Secondhand article dealer" means any person, other than an auctioneer, who primarily engages in the business of purchasing or selling secondhand articles, except when engaging in any of the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show or a convention.
2. Any transaction entered into by a person while engaged in a business for which the person is licensed under sub. (2) or (4) or while engaged in the business of junk collector, junk dealer or scrap processor as described in s. 70.995(2)(x).
3. Any transaction while operating as a charitable organization or conducting a sale the proceeds of which are donated to a charitable organization.
4. Any transaction between a buyer of a new article and the person who sold the article when new which involves any of the following:
 - a. The return of the article.
 - b. The exchange of the article for a different, new article.
5. Any transaction as a purchaser of a secondhand article from a charitable organization if the secondhand article was a gift to the charitable organization.
6. Any transaction as a seller of a secondhand article which the person bought from a charitable organization if the secondhand article was a gift to the charitable organization.

(h) "Secondhand jewelry dealer" means any person, other than an auctioneer, who engages in the business of any transaction consisting of purchasing, selling, receiving or exchanging secondhand jewelry, except for the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show or a convention.
2. Any transaction with a licensed secondhand jewelry dealer.
3. Any transaction entered into by a person while engaged in a business of smelting, refining, assaying or manufacturing precious metals, gems or valuable articles if the person has no retail operation open to the public.
4. Any transaction between a buyer of new jewelry and the person who sold the jewelry when new which involves any of the following:
 - a. The return of the jewelry.
 - b. The exchange of the jewelry for different, new jewelry.
5. Any transaction as a purchaser of secondhand jewelry from a charitable organization if the secondhand jewelry was a gift to the charitable organization.
6. Any transaction as a seller of secondhand jewelry which the person bought from a charitable organization if the secondhand jewelry was a gift to the charitable organization.

(2) License for pawnbroker. No person may operate as a pawnbroker unless the person first

obtains a pawnbroker's license under this section. A license issued to a pawnbroker by the governing body of a municipality authorizes the licensee to operate as a pawnbroker in that municipality.

(3) License for secondhand article dealer. (a) Except as provided in par. (b), no person may operate as a secondhand article dealer unless the person first obtains a secondhand article dealer's license under this section. A license issued to a secondhand article dealer authorizes the licensee to operate as a secondhand article dealer anywhere in the state.

(b) A person who operates as a secondhand article dealer only on premises or land owned by a person having a secondhand dealer mall or flea market license under sub. (9) need not obtain a secondhand article dealer's license.

(4) License for secondhand jewelry dealer. No person may operate as a secondhand jewelry dealer unless the person first obtains a secondhand jewelry dealer's license under this section. A license issued to a secondhand jewelry dealer authorizes the licensee to operate as a secondhand jewelry dealer anywhere in the state.

(5) License application. A person wishing to operate as a secondhand article dealer or a secondhand jewelry dealer and have a principal place of business in a municipality shall apply for a license to the clerk of that municipality. A person wishing to operate as a pawnbroker in a municipality shall apply for a license to the clerk of the municipality. The clerk shall furnish application forms under sub. (12) that shall require all of the following:

(a) The applicant's name, place and date of birth, residence address, and all states where the applicant has previously resided.

(b) The names and addresses of the business and of the owner of the business premises.

(c) A statement as to whether the applicant has been convicted within the preceding 10 years of a felony or within the preceding 10 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of the licensed activity and, if so, the nature and date of the offense and the penalty assessed.

(d) Whether the applicant is a natural person, corporation, limited liability company or partnership, and:

1. If the applicant is a corporation, the state where incorporated and the names and addresses of all officers and directors.

2. If the applicant is a partnership, the names and addresses of all partners.

2L. If the applicant is a limited liability company, the names and addresses of all members.

(e) The name of the manager or proprietor of the business.

(f) Any other information that the county or municipal clerk may reasonably require.

(6) Investigation of license applicant. The law enforcement agency of the county or municipality shall investigate each applicant for a pawnbroker's, secondhand article dealer's or

secondhand jewelry dealer's license to determine whether the applicant has been convicted within the preceding 10 years of a felony or within the preceding 10 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation described under sub. (5)(c) and, if so, the nature and date of the offense and the penalty assessed. The law enforcement agency shall furnish the information derived from that investigation in writing to the clerk of the municipality or county.

(7) License issuance. (a) The governing body of the county or municipality shall grant the license if all of the following apply:

1. The applicant, including an individual, a partner, a member of a limited liability company or an officer, director or agent of any corporate applicant, has not been convicted within the preceding 10 years of a felony or within the preceding 10 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of being a pawnbroker, secondhand jewelry dealer, secondhand article dealer or secondhand article dealer mall or flea market owner.

2. With respect to an applicant for a pawnbroker's license, the applicant provides to the governing body a bond of \$500, with not less than 2 sureties, for the observation of all municipal ordinances relating to pawnbrokers.

(b) No license issued under this subsection may be transferred.

(c)1. Each license for a pawnbroker, secondhand article dealer or secondhand jewelry dealer is valid from January 1 until the following December 31.

2. Each license for a secondhand article dealer mall or flea market is valid for 2 years, from May 1 of an odd-numbered year until April 30 of the next odd-numbered year.

(8) Pawnbroker and dealer requirements. (a) *Identification.* No pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from a customer without first securing adequate identification from the customer. At the time of the transaction, the pawnbroker, secondhand article dealer or secondhand jewelry dealer shall require the customer to present one of the following types of identification:

1. A county identification card.
 2. A state identification card.
 3. A valid Wisconsin motor vehicle operator's license.
 4. A valid motor vehicle operator's license, containing a picture, issued by another state.
 5. A military identification card.
 6. A valid passport.
 7. An alien registration card.
 8. A senior citizen's identification card containing a photograph.
9. Any identification document issued by a state or federal government, whether or not containing a picture, if the pawnbroker, secondhand article dealer or secondhand jewelry dealer obtains a clear imprint of the customer's right index finger.

(b) *Transactions with minors.* 1. Except as provided in subd. 2., no pawnbroker, secondhand

article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from any minor.

2. A pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction described under subd. 1. if the minor is accompanied by his or her parent or guardian at the time of the transaction or if the minor provides the pawnbroker, secondhand article dealer or secondhand jewelry dealer with the parent's or guardian's written consent to engage in the particular transaction.

(c) *Records.* 1. Except as provided in subd. 2., for each transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from a customer, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall require the customer to complete and sign, in ink, the appropriate form provided under sub. (12). No entry on such a form may be erased, mutilated or changed. The pawnbroker, secondhand article dealer or secondhand jewelry dealer shall retain an original and a duplicate of each form for not less than one year after the date of the transaction except as provided in par. (e), and during that period shall make the duplicate available to any law enforcement officer for inspection at any time that the pawnbroker's, secondhand article dealer's, or secondhand jewelry dealer's principal place of business is open to the public or at any other reasonable time.

2. For every secondhand article purchased, received or exchanged by a secondhand article dealer from a customer off the secondhand article dealer's premises or consigned to the secondhand article dealer for sale on the secondhand article dealer's premises, the secondhand article dealer shall keep a written inventory. In this inventory the secondhand article dealer shall record the name and address of each customer, the date, time and place of the transaction and a detailed description of the article which is the subject of the transaction, including the article's serial number and model number, if any. The customer shall sign his or her name on a declaration of ownership of the secondhand article identified in the inventory and shall state that he or she owns the secondhand article. The secondhand article dealer shall retain an original and a duplicate of each entry and declaration of ownership relating to the purchase, receipt or exchange of any secondhand article for not less than one year after the date of the transaction except as provided in par. (e), and shall make duplicates of the inventory and declarations of ownership available to any law enforcement officer for inspection at any time that the secondhand article dealer's principal place of business is open to the public or at any other reasonable time.

3. Every secondhand article dealer shall on a weekly basis prepare a list that contains the name and address of each customer of the secondhand article dealer during the week for which the list was prepared, the date, time, and place of each transaction with each of those customers, and a detailed description of the secondhand article, including the secondhand article's serial number and model number, if any. The secondhand article dealer shall retain the list for not less than one year after the date on which the list was prepared. The secondhand article dealer shall make the list available to any law enforcement officer for inspection at any time that the secondhand article dealer's principal place of business is open to the public or at any other reasonable time.

(d) *Holding period.* 1. Except as provided in subds. 3m. and 5., any secondhand article or secondhand jewelry purchased or received by a pawnbroker shall be kept on the pawnbroker's premises or other place for safekeeping for not less than 30 days after the date of purchase or receipt, unless the person known by the pawnbroker to be the lawful owner of the secondhand article or secondhand jewelry recovers it.

2. Except as provided in subds. 3m. and 5., any secondhand article purchased or received by a

secondhand article dealer shall be kept on the secondhand article dealer's premises or other place for safekeeping for not less than 21 days after the date of purchase or receipt.

3. Except as provided in subds. 3m. and 5., any secondhand jewelry purchased or received by a secondhand jewelry dealer shall be kept on the secondhand jewelry dealer's premises or other place for safekeeping for not less than 21 days after the date of purchase or receipt.

3m. If a pawnbroker, secondhand article dealer, or secondhand jewelry dealer is required to submit a report under par. (e) concerning a secondhand article or secondhand jewelry purchased or received by the pawnbroker, secondhand article dealer, or secondhand jewelry dealer and the report is required to be submitted in an electronic format, the secondhand article or secondhand jewelry shall be kept on the pawnbroker's, secondhand article dealer's, or secondhand jewelry dealer's premises or other place for safekeeping for not less than 7 days after the report is submitted.

4. During the period set forth in subd. 1., 2., 3., or 3m., the secondhand article or secondhand jewelry shall be held separate and apart and may not be altered in any manner. The pawnbroker, secondhand article dealer, or secondhand jewelry dealer shall permit any law enforcement officer to inspect the secondhand article or secondhand jewelry during this period. Within 24 hours after a written request of a law enforcement officer during this period, a pawnbroker, secondhand article dealer, or secondhand jewelry dealer shall make available for inspection any secondhand article or secondhand jewelry that is kept off the premises for safekeeping. Any law enforcement officer who has reason to believe any secondhand article or secondhand jewelry was not sold or exchanged by the lawful owner may direct a pawnbroker, secondhand article dealer, or secondhand jewelry dealer to hold that secondhand article or secondhand jewelry for a reasonable length of time that the law enforcement officer considers necessary to identify it.

5. Subdivisions 1 to 4 do not apply to any of the following:

- a. A coin of the United States, any gold or silver coin or gold or silver bullion.
- b. A secondhand article or secondhand jewelry consigned to a pawnbroker, secondhand article dealer or secondhand jewelry dealer.

(e) *Report to law enforcement agency.* Within 24 hours after purchasing or receiving a secondhand article or secondhand jewelry, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall make available, for inspection by a law enforcement officer, the original form completed under par. (c) 1 or the inventory under par. (c) 2, whichever is appropriate. Notwithstanding s. 19.35(1), a law enforcement agency receiving the original form or inventory or a declaration of ownership may disclose it only to another law enforcement agency.

(f) *Exception for customer return or exchange.* Nothing in this subsection applies to the return or exchange, from a customer to a secondhand article dealer or secondhand jewelry dealer, of any secondhand article or secondhand jewelry purchased from the secondhand article dealer or secondhand jewelry dealer.

(9) Secondhand article dealer mall or flea market. (a) The owner of any premises or land upon which 2 or more persons operate as secondhand article dealers may obtain a secondhand article dealer mall or flea market license for the premises or land if the following conditions are met:

1. Each secondhand article dealer occupies a separate sales location and identifies himself or herself to the public as a separate secondhand article dealer.

2. The secondhand article dealer mall or flea market is operated under one name and at one address, and is under the control of the secondhand article dealer mall or flea market license holder.

4. Each secondhand article dealer delivers to the secondhand article dealer mall or flea market license holder, at the close of business on each day that the secondhand article dealer conducts business, a record of his or her sales that includes the location at which each sale was made.

(b) The secondhand article dealer license holder and each secondhand article dealer operating upon the premises or land shall comply with sub. (8).

(10) License revocation. A governing body of a county or municipality may revoke any license issued by it under this section for fraud, misrepresentation or false statement contained in the application for a license or for any violation of this section or s. 943.34, 948.62 or 948.63.

(11) Fees. The license fees under this section are:

(a) For a pawnbroker's license, \$210.

(b) For a secondhand article dealer's license, \$27.50.

(c) For a secondhand jewelry dealer's license, \$30.

(d) For a secondhand article dealer mall or flea market license, \$165.

(12) Applications and forms. The department of agriculture, trade and consumer protection shall develop applications and other forms required under subs. (5)(intro.) and (8)(c). The department shall make the applications and forms available to counties and municipalities for distribution to pawnbrokers, secondhand article dealers, and secondhand jewelry dealers at no cost. The department may make the applications and forms available to counties and municipalities by placing the applications and forms on an Internet Web site.

(13) Penalty. (a) Upon conviction for a first offense under this section, a person shall forfeit not less than \$50 nor more than \$1,000.

(b) Upon conviction for a 2nd or subsequent offense under this section, a person shall forfeit not less than \$500 nor more than \$2,000.

(14) Ordinance. A county or municipality may enact an ordinance governing pawnbrokers, secondhand article dealers or secondhand jewelry dealers if that ordinance is at least as stringent as this section.

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

ORDINANCE NO. 2015-____

AN ORDINANCE TO CREATE CHAPTER 238 OF THE MUNICIPAL CODE
RELATING TO PAWNBROKERS, SECONDHAND ARTICLE DEALERS AND
SECONDHAND JEWELRY DEALERS

WHEREAS, the City of Franklin recognizes the inherent financial and environmental value of commerce in recycling valuable products; and

WHEREAS, best practices have been established by the pawnbroker and secondhand dealer industry; and

WHEREAS, the City of Franklin Police Department has recommended that a video surveillance requirement would supplement these practices and promote legitimate business transactions resistant to fraud and assist in the recovery of stolen property.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1: Chapter 238 of the Municipal Code of the City of Franklin is hereby created to read as follow:
“Chapter 238: Pawnbrokers, Secondhand Article Dealers and Secondhand Jewelry Dealers.”

SECTION 2: §238-1. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:
“§238-1. Definitions.
As used in this chapter, the following terms shall have the meanings indicated:
‘Adequate Identification’ means one of the following types of identification:
(a) A valid Wisconsin motor vehicle operator’s license;
(b) A valid state identification card;
(c) A valid government-issued passport;
(d) A military identification card;
(e) A valid motor vehicle operator’s license, containing a picture, issued by another state.
‘Article’ means any of the following:
(a) Audiovisual equipment
(b) Bicycles
(c) Bullion
(d) China

- (e) Coin
- (f) Computers, printers, software, and computer supplies
- (g) Computer toys and games
- (h) Crystal
- (i) Electronic equipment and appliances
- (j) Firearms, knives, and ammunition
- (k) Fur coats and other fur clothing
- (l) Furniture
- (m) Golf clubs
- (n) Genuine designer handbags and designer sunglasses
- (o) Jewelry
- (p) Lawn decorations
- (q) Lawn equipment
- (r) Leather coats or other leather clothing
- (s) Motors
- (t) Office equipment
- (u) Paper money
- (v) Pianos, organs, guitars, and other musical instruments
- (w) Silverware and flatware
- (x) Snow removal equipment
- (y) Sports memorabilia with a resale value greater than \$100
- (z) Telephones
- (aa) Tools

(bb) Video tapes or discs, audio tapes or discs, and other optical media
'Charitable Organization' is defined as a corporation, trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

'Customer' is defined as a person with whom a pawnbroker, secondhand article dealer or secondhand jewelry dealer, or an agent thereof engages in a transaction of purchase, sale, receipt, or exchange of any secondhand article or secondhand jewelry.

'Pawnbroker' is defined as any person who engages in the business of lending money on the deposit or pledge of any article or jewelry, or purchases any article or jewelry with an expressed or implied agreement of understanding to sell it back at a subsequent time at a stipulated price.

'Secondhand Article Dealer' is defined as any person, other than an auctioneer, who engages in the business of purchasing or selling secondhand articles and is not a "pawnbroker" or a "secondhand jewelry dealer" as defined under this subsection.

'Secondhand Jewelry Dealer' is defined as any person, other than an auctioneer, who engages in any business of any transaction consisting of purchasing, selling, receiving, or exchanging secondhand jewelry, who is not a "pawnbroker" as defined under this subsection.

'Reportable transaction' means every transaction conducted by a pawnbroker, secondhand article dealer or secondhand jewelry dealer in which an article or articles are received by a pawnbroker, secondhand article or secondhand jewelry dealer through purchase, consignment, or trade, or in which a previous pawn agreement is renewed, extended, voided, or redeemed, or for which a unique transaction number or identifier is generated by their point-of-sale software, or an item is confiscated by law enforcement, except:

1. The bulk purchase or consignment of new or used articles from a merchant, manufacturer, or wholesaler having an established permanent place of business, and the subsequent retail sale of said articles, provided the pawnbroker, secondhand article dealer or secondhand jewelry dealer must maintain a record of such purchase or consignment that describes each item, and must mark each item in a manner that relates it to that transaction record.

2. Retail and wholesale sales of articles originally received by pawnbrokers, secondhand article dealers or secondhand jewelry dealers purchase, and for which all applicable hold and/or redemption periods have expired.

'Secondhand article' means an 'article' listed under subs. (1)(b), owned by any person, except a wholesaler, retailer, or licensed secondhand article dealer or secondhand jewelry dealer, immediately before the transaction at hand.

'Person in Charge' means an employee who has undergone the background check requirements of §238-6. of the Municipal Code."

SECTION 3: §238-2. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

"§238-2. License Required.

A. License required. No person may engage in business as a pawnbroker, secondhand article dealer or secondhand jewelry dealer in the City of Franklin without first having obtained a license under this Section.

B. Exceptions. The requirements of this section do not apply to the following:

1. Transactions involving occasional garage or yard sales, estate sales, coin, gem, antique or stamp shows, conventions or auctions.

2. Transactions entered into by a person engaged in the business of junk collector, junk dealer, or scrap processor, as described in Wis. Stat. § 70.995(2).

3. Transactions between pawnbrokers or secondhand dealers licensed under this Section.

4. Any transaction between a buyer of a new article or jewelry and the person who sold the article or jewelry when new which involves a return or exchange of the article or jewelry for a different, new article or jewelry.

5. Any transaction as a purchaser or seller of a secondhand article which the person bought from a charitable organization if the secondhand article was a gift to the charitable organization.

6. Any transaction while operating as a charitable organization or conducting a sale the proceeds of which are donated to a charitable organization.”

SECTION 4: §238-3. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

“§238-3. License Application.

Any person seeking to obtain a license to conduct business as a pawnbroker, secondhand article dealer or secondhand jewelry dealer must submit an application to the City Clerk. The Clerk shall provide the applicant with application forms approved by the Police Department.”

SECTION 5: §238-4. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

“§238-4. License Issuance.

A. The City shall grant the license if the applicant, including an individual, a partner, a member of a limited liability company or an officer, director or agent of any corporate applicant, has not been convicted within the preceding ten (10) years of a felony or within the preceding ten (10) years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of being a pawnbroker, secondhand jewelry dealer, secondhand article dealer or secondhand article dealer mall or flea market owner.

B. No license issued under this subsection may be transferred.

C. Each license is valid from July 1st until the following June 30th.

D. License fee. The annual license fee for a license issued under this Section shall be in the amount of \$500.00.”

SECTION 6: §238-5. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

“§238-5. Display of License.

Each license issued under this Section must be displayed in a conspicuous place visible to anyone entering a licensed premise.”

SECTION 7: §238-6. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

“§238-6. Investigation of License Applicant.

The Police Department shall investigate each applicant for a pawnbroker license, secondhand article dealer license or secondhand jewelry dealer license to determine whether the applicant has been convicted of a felony, misdemeanor, statutory violation punishable by forfeiture, or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor, or other offense substantially relate to the circumstances of the licensed activity and, if so, the nature and date of the offense and the penalty assessed. The results of the investigation shall be furnished to the City Clerk in writing.”

SECTION 8: §238-7. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

“§238-7. Recordkeeping, Electronic Reporting, and Holding Requirements.

A. Records to be Maintained.

(1) Identification of seller. No pawnbroker, secondhand article dealer, or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from a customer without securing adequate identification from the customer at the time of the transaction.

(2) Declaration of seller's ownership.

(a) For each purchase, receipt, or exchange of any secondhand article or secondhand jewelry from a customer, every pawnbroker, secondhand article dealer, and secondhand jewelry dealer licensed under this Section shall require the customer to complete and sign, in ink, a property transaction form, in compliance with Wis. Stat. § 134.71(12). No entry on such a form may be erased, mutilated, or changed. The pawnbroker, secondhand article dealer, or secondhand jewelry dealer shall retain an original and a duplicate of each form for not less than one (1) year after the date of the transaction.

(b) For each purchase, receipt, or exchange of any secondhand article or secondhand jewelry from a customer, every pawnbroker, secondhand article dealer, and secondhand jewelry dealer licensed under this section shall keep a permanent record and inventory in such form as the Police Department shall prescribe, in which the dealers shall record legibly in English the name, address and date of birth of each customer and driver's license number or number of other adequate

identification presented. The dealer shall also record the date, time, and place of the transaction and an accurate and detailed account and description of each article being purchased, including, but not limited to, any trademark, identification number, serial number, model number, brand name, description by weight and design of such article, and other identifying marks, identifying descriptions of the personal nature, and when applicable, whether the article is a male or female item. The book shall be kept in ink, and no entry in such book shall be erased, mutilated, or changed. The pawnbroker, secondhand article dealer, or secondhand jewelry dealer shall retain an original and a duplicate of each record and inventory for not less than one (1) year after the date of transaction.

(c) Every pawnbroker, secondhand article dealer, and secondhand jewelry dealer shall on a weekly basis prepare a list that contains the name and address of each customer during the week for which the list was prepared, the date, time, and place of each transaction with each of those customers, and a detailed description of the secondhand article or secondhand jewelry, including the serial number and model number, if any. The dealer or pawnbroker shall retain the list for not less than one (1) year after the date on which the list was prepared.

(d) The dealer or pawnbroker shall also obtain a written declaration of the seller's ownership which shall state whether the article or jewelry is totally owned by the seller, how long the seller has owned the article or jewelry, whether the seller or someone else found the article or jewelry and, if the article or jewelry was found, the details of its finding. The dealer or pawnbroker shall retain an original and duplicate of the declaration for not less than one (1) year after the date of the transaction.

(e) The seller shall sign, in ink, his or her name in such inventory register and on the declaration of ownership.

(f) Such inventory registers and declarations of ownership shall be made available to any police officer for inspection at any time that the dealer's principal place of business is open or within one (1) business day of an officer's request.

(3) Digitized photographs.

(a) Effective sixty (60) days from the date of notification by the Police Department of acceptable photographic or video standards, the licensee must also take a color photograph, color video recording of every item a pawnbroker, secondhand article dealer or secondhand jewelry dealer has purchased that does not have a unique serial or identification number permanently engraved or affixed. This requirement does not apply to computer software, computer or video games, DVDs or video games, and golf clubs.

(b) When a photograph is taken, it must be maintained in such a manner that the photograph can be readily matched and correlated with all other records of the transaction to which they relate.

(c) Photographs must be available to any police officer upon request.

(d) Items photographed must be accurately depicted.

(e) Effective sixty (60) days from the date of notification by the Police Department, licensees must fulfill this photograph requirement by submitting them as digital images, in a format specified by the Police Department, electronically cross-referenced to the reportable transaction they are associated with.

(4) Digital video system.

The licensee shall maintain a digital video system that records all transactions as they occur and captures the entire transaction. The video also must capture a full face shot of the person conducting the transaction, and must be maintained in such a manner that the video can be readily matched and correlated with all other records of the transaction to which they relate. Such videos must be available to any police officer upon request. Entries of required digital images shall be retained a minimum of ninety (90) days.

B. Firearms and Jewelry Records to be Maintained.

(1) Report of receipt. Every pawn broker, secondhand article dealer, or secondhand jewelry dealer in the City of Franklin who obtains by pawn, purchase or exchange any secondhand firearm, whether smooth bore, shotgun, rifle or handgun, shall, within one (1) business day after receiving such firearm, report to Police Department the fact that the same has been received, with the name, address, date of birth, and description of the person from whom such firearm was received, together with a description of such firearm.

(2) Every pawnbroker, secondhand article dealer, or secondhand jewelry dealer in the City of Franklin who obtains in pawn, purchase or exchange any secondhand article made in whole or in part of platinum, gold, silver, copper, brass, bronze or other precious metal, or precious or semi-precious stones or pearls, shall, within one (1) business day after receiving such article, report to the Police Department the fact that same has been received, with the name, address, date of birth, and description of the person from whom such jewelry was received, together with the description of such article.

C. Inspection of Records.

Records must at all reasonable times be open to inspection by any police officer. Data entries shall be retained for at least one (1) year from the date of transaction. Digital images or video recordings shall be retained a minimum of thirty (30) days.

D. Electronic Reporting.

(1) Daily reports to Police Department. A licensee must submit every reportable transaction to the Police Department within twenty-four (24) hours of the transaction. A licensee must provide to the Police Department all reportable transaction information by transferring it from licensee's computer to the Northeastern Wisconsin Property Reporting System ("NEWPRS"). All required records must be transmitted completely and accurately in accordance with standards and procedures established by the issuing authority.

(a) If a licensee is unable to successfully transfer the required reports to NEWPRS within twenty-four (24) hours of the transaction, the licensee must provide the Police Department, upon request, printed copies of all reportable transactions along with the video recording(s) for that date, no later than noon the next business day after the failure occurred.

(b) If the problem is determined to be in the licensee's system or with the licensee's internet connection, and is not corrected by the close of the first business day following the failure, the licensee must continue to provide the required reports as detailed in this section and shall be charged a \$100.00 reporting failure penalty, daily, until the error is corrected.

(c) If the problem is determined to be outside the licensee's system, the licensee must continue to provide the required reports in this section and resubmit all such transactions via the internet when the error is corrected.

(d) If a licensee is unable to capture, digitize or transmit the photographs required under this section the licensee must immediately take all required photographs with a still camera, cross-reference the photographs to the correct transaction, and make the pictures available to the Police Department upon request.

(e) Regardless of the cause or origin of the technical problems that prevented the licensee from uploading the licensee's reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day the problem had existed.

(f) The Police Department may, upon presentation of extenuating circumstances, delay the implementation of the daily reporting penalty.

E. Holding.

(1) Any secondhand article or secondhand jewelry purchased or received by a pawnbroker shall be kept on the pawnbroker's premises or other place for safekeeping for not less than thirty (30) days after the date of purchase or receipt, unless the person known by the pawnbroker to be the lawful owner of the secondhand article or secondhand jewelry recovers it. Any secondhand article or jewelry purchased by a secondhand article dealer or secondhand jewelry dealer shall be kept on the dealer's premises or other place for safekeeping for not less than

twenty-one (21) days after the date of purchase or receipt. Any article or jewelry shall be held separate and apart from any other transaction and shall not be changed or altered in any manner. The dealer shall permit the Chief of Police or any other police officer designated by the Chief to inspect the article or jewelry during the holding period within one (1) business day of an officer's request.

(2) Section 238-7E(1) above, does not apply if the secondhand article or secondhand jewelry transaction is submitted to the police electronically as described in Section 238-7D(1). Any secondhand article or secondhand jewelry purchased or received by a pawnbroker, secondhand article dealer, or secondhand jewelry dealer that is submitted to the police electronically as described in Section 238-7D(1) shall be kept on the pawnbroker's, secondhand article dealer's or secondhand jewelry dealer's premises or other place for safekeeping for not less than fifteen (15) days after the date the report is electronically submitted. Any secondhand article or secondhand jewelry shall be held separate and apart from any other transaction and shall not be changed or altered in any manner. The dealer shall permit the Chief of Police or any other police officer designated by the Chief to inspect the article or jewelry during the holding period within one (1) business day of an officer's request.

(3) Any coin or bullion purchased by a pawnbroker, secondhand article dealer, or secondhand jewelry dealer shall be kept on the dealer's premises or other place for safekeeping for not less than forty-eight (48) hours after the date of purchase or receipt. Any coin or bullion shall be held separate and apart from any other transaction and shall not be changed or altered in any manner. The dealer shall permit the Chief of Police or any other police officer designated by the Chief to inspect the coin or bullion during the holding period.

(4) No holding periods apply to any secondhand articles or secondhand jewelry consigned to a pawnbroker, secondhand article dealer, or secondhand jewelry dealer.

(5) The Chief of Police, or any police officer designated by the Chief, in his or her discretion, may cause any object which has been exchanged or purchased by a dealer licensed under this section, which he or she has reason to believe was not sold or exchanged by the lawful owner, to be held for the purposes of identification or investigation for such additional reasonable length of time as the Chief of Police or designee deems necessary.

(6) Redemption period. Any person pledging or depositing an item for security must have a minimum of sixty (60) days from the date of that transaction to redeem the item before it may be forfeited and sold. During the sixty (60) day holding period, items may not be removed from the licensed location except as provided in Section 238-7E.(5).

Licensees are prohibited from redeeming any item to anyone other than the person to whom the receipt was issued or, to any person identified in a written and notarized authorization to redeem the property identified in the receipt, or to a person identified in writing by the pledger at the time of the initial transaction and signed by the pledger, or with approval of the Chief of Police, or Chief's designee. Written authorization for release of property to persons other than original pledger must be maintained along with original transaction record in accordance with Section 238-7A., above. An individual may redeem an item seventy-two (72) hours after the item was received on deposit, excluding Sundays and legal holidays."

SECTION 9: §238-8. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

"§238-8. Person in Charge.

Every pawnbroker, secondhand article dealer or secondhand jewelry dealer shall have on premises a Person in Charge at all times that the pawnbroker, secondhand article dealer or secondhand jewelry dealer is open to the public."

SECTION 10: §238-9. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

"§238-9. Transactions with Minors Prohibited.

No pawnbroker, secondhand article dealer, or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from an unemancipated minor unless the minor is accompanied by his or her parent or guardian at the time of the transaction or the minor provides written consent from his or her parent or guardian to engage in the transaction."

SECTION 11: §238-10. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

"§238-10. License Revocation.

The City may, upon sufficient cause, suspend, revoke, or deny renewal of any license issued under this Section. Cause for suspending, revoking or denying renewal of such license shall include, but not be limited to, the following:

(a) Violations of this Section; violations of secs. 134.71, 943.10 (Burglary), 943.11 (Entry into Locked Vehicle), 943.12 (Possession of Burglariou Tools), 943.20 (Theft), 943.201 (Unauthorized Use of an Individual's Personal Identifying Information or Documents), 943.203 (Unauthorized Use of an Entity's Identifying Information or Documents), 943.34 (Receiving Stolen Property), 943.37 (Alteration of Property Identification Marks), 943.38 (Forgery), 943.39 (Fraudulent

Writings), 943.392 (Fraudulent Data Alteration), 943.40 (Fraudulent Destruction of Certain Writings), 948.62 (Receiving Stolen Property from a Child), 948.63 (Receiving Property from Children) of the Wisconsin Statutes, or local ordinances in conformity with such provisions.

(b) Any fraud, misrepresentation, or false statement contained in the application for a license.”

SECTION 12: §238-11. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

“§238-11. Penalties.

A. Any person, firm or corporation violating this section shall, upon conviction for a first offense, forfeit two hundred and fifty dollars (\$250), and in default of payment shall be imprisoned in the House of Correction until such forfeiture is paid, but not more than the number of days set forth in Wis. Stat. § 800.095(4).

B. Any person, firm or corporation violating this section shall, upon conviction for the second offense, forfeit five hundred dollars (\$500), and in default of payment shall be imprisoned in the House of Correction until such forfeiture is paid, but not more than the number of days set forth in Wis. Stat. § 800.095(4).

C. Any person, firm or corporation violating this section shall, upon conviction for the third offense, be ordered to cease business operations for a period of ten (10) days and shall also forfeit five hundred dollars (\$500), and in default of payment shall be imprisoned in the House of Correction until such forfeiture is paid, but not more than the number of days set forth in Wis. Stat. § 800.095(4). In addition, upon any third offense, without regard to citation proceedings or a conviction thereupon, the license may be subject to revocation proceedings.

SECTION 13: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION 14: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 15: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this
_____ day of _____, 2015, by Alderman _____.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2015.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

<p>APPROVAL</p> <p><i>Slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING¹⁶⁹ DATE</p> <p>April 7, 2015</p>
<p>REPORTS AND RECOMMENDATIONS</p>	<p><i>State of Wisconsin vs. Wofford, Jr., Milwaukee County Circuit Court Case No. 95CF950391 March 26, 2015 Order regarding Milwaukee County municipalities' sex offender residency restriction ordinances; intergovernmental cooperation agreement for legal services in relation to same</i></p>	<p>ITEM NUMBER</p> <p><i>G. 11.</i></p>

Attached is a copy of the above Order. In reference to the existing Milwaukee County municipal ordinances, the Order in part concludes: "[t]he ordinances, acting in concert, are preempted by state law,..." The City Attorney will report upon same and potential actions with regard thereto, including, but not limited to a potential intergovernmental cooperation agreement among Milwaukee County municipalities (all 19 have adopted sex offender residency restriction ordinances), and the Crivello Carlson, S.C. law firm. Also attached is a copy of an April 1, 2015 news article regarding the Order.

COUNCIL ACTION REQUESTED

As the Common Council deems appropriate.

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 20

MILWAUKEE COUNTY

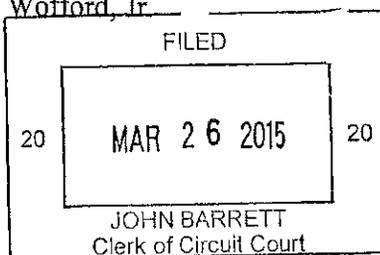
In Re: The Commitment of Joe L. Wofford, Jr.

State of Wisconsin, Petitioner,

vs.

Joe L. Wofford, Jr.,

Respondent.



Case No. 95CF950391

ORDER

The issue before the Court is whether municipal ordinances prohibiting the placement of individuals, committed under Wis. Stat. Ch. 980, on supervised release in their communities is enforceable. For the reasons stated below, the Court rules that the municipal ordinances of Milwaukee County, acting in concert, are preempted by Wis. Stat. Ch. 980 and one or more of the ordinances must give way. The Department of Health Services ("DHS") is ordered to find placement for Joe L. Wofford, Jr. in Milwaukee County.

ANALYSIS

An order for commitment of a sexually violent person can only allow placement in either institutional care or supervised release. *In re Commitment of Miller*, 229 Wis.2d 567, 600 N.W.2d 224 (Ct. App. 1999). If an individual committed under Wis. Stat. Ch. 980 meets the criteria for supervised release, "the court shall select a county to prepare a report under par. (e). Unless the court has good cause to select another county, the court shall select the person's county of residence as determined by the department under s. 980.105." Wis. Stat. § 980.08(4)(cm).

The home rule provisions of the Wisconsin Constitution, Article XI, § 3(1)¹ and Wis. Stat. § 62.11(5)² establish a city's power to regulate through ordinances but make clear that such power is

¹ Article XI, § 3(1) provides,

limited by the superior authority of the state. The constitutional authority of cities only extends to local affairs and does not cover matters of statewide concern. *Wis. Assoc. of Food Dealers v. City of Madison*, 97 Wis. 2d 426, 432, 293 N.W.2d 540 (1980). However, a city ordinance may be authorized Wis. Stat. § 62.11(5), notwithstanding statewide concern. *Anchor Sav. & Loan Ass'n v. Equal Opportunities Comm'n*, 120 Wis.2d 391, 395, 355 N.W.2d 234 (1984). As the Supreme Court explained:

If a municipality acts within the legislative grant of power but not within the constitutional initiative, the state may withdraw the power to act; so if there is logically conflicting legislation, or an express withdrawal of power, the local ordinance falls. Furthermore, if the state legislation does not logically conflict, or does not expressly withdraw power, it is possible that the local ordinance nevertheless must fall if an intent that such an ordinance not be made can be inferred from the fact that it defeats the purpose or goes against the spirit of the state legislation.”

Wisconsin's Envtl. Decade, Inc. v. Dep't of Natural Res., 85 Wis. 2d 518, 534, 271 N.W.2d 69, 71 (1978)

Thus, there are two steps in the analysis of whether state law preempts a local ordinance: (1) whether the legislature has declared a subject area to be of “statewide concern,” and if so, (2) whether the legislature nonetheless permitted local authorities to act, and to what extent they may act. *U.S. Oil v. Fond du Lac*, 199 Wis.2d 333, 339-40, 544 N.W.2d 589 (Ct. App. 1996). To make the second determination, the court applies four tests: (1) the legislature has expressly withdrawn the power of municipalities to act; (2) the ordinance logically conflicts with state legislation; (3) the ordinance defeats the purpose of state

Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature.

² WIS. STAT. § 62.11(5) provides,

Powers. Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language.

legislation; or (4) the ordinance violates the spirit of state legislation. *DeRosso Landfill Co. Inc. v. City of Oak Creek*, 200 Wis. 2d 642, 651-52, 547 N.W.2d 770 (1996). "Should any one of these tests be met, the municipal ordinance is void." *Id.*

The Court holds that the placement and supervision of sex offenders in the community is a matter of statewide concern. Although the Legislature has not made such an express declaration, it has enacted a substantial number of statutes to regulate the area. *See* Wis. Stat. § 301.03(19)-(20) (a goal is "to minimize, to the greatest extent possible, the residential population density of sex offenders who are...placed on supervised released as a sexually violent person under ch. 980, Stats"); Wis. Stat. § 301.48 (GPS tracking and residency requirements for certain sex offenders); Wis. Stat. § 304.06(1q)(a)-(2m) (where serious sex offenders may be placed); and Wis. Stat. Ch. 980 (civil commitment procedure for treatment of sex offenders and public protection). From these statutes, the Court infers that the Legislature is focused on treating and effectively reintegrating offenders into the community.

Applying the four *DeRosso* tests, the Court concludes that the ordinances of the municipalities of Milwaukee County, acting in concert, are preempted by state law. Although the Legislature has not expressly withdrawn the power of municipalities to act in this area, the ordinances, acting together, logically conflict with state legislation and defeat the purpose and violate the spirit of such legislation. As discussed above, the Legislative purpose behind Wis. Stat. Ch. 980 is to protect the public and treat convicted sex offenders until they are no longer sexually violent. *See* Wis. Stat. § 980.06.

The municipal ordinances at issue, if examined individually, are consistent with these goals, most particularly the interest in promoting public safety. However, none of these goals are achievable if every municipality in Milwaukee County precludes supervised release of a person committed under Wis. Stat. Ch. 980. Together, the ordinances logically conflict with and defeat the purpose and spirit of Wis. Stat. Ch. 980. If an individual cannot be placed on supervised release in Milwaukee County, higher concentrations of such individuals will result in other communities, causing an increased threat to public safety in those areas. This would also effectively transfer Milwaukee County's problems on other

counties. Additionally, placement in a county that is not an individual's county of residency will deprive him or her of potential support systems, thereby hampering treatment. There has not been shown good cause to this court so as to justify the selection of a county other than the county of residence of the person, *supra*.

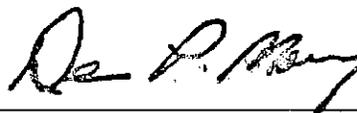
Finally, the circuit court may "fashion a remedy...when no suitable placement for a ch. 980 committed individual eligible for supervised release can be located." *In re Alternative Placement of Morford*, 2006 WI App 229, ¶ 41, 297 Wis. 2d 339, 724 N.W.2d 916 (citing *In re Commitment of Schulpius*, 2006 WI 1, ¶ 43, 287 Wis. 2d 44, 707 N.W.2d 495). DHS has told the Court that it cannot find suitable placement for Joe L. Wofford, Jr., due to municipal ordinances in Milwaukee County prohibiting such placement. Since the ordinances are preempted by state law, and the Court has the inherent power to fashion a remedy in this situation, the Court orders DHS to place Joe L. Wofford, Jr., in Milwaukee County.

CONCLUSION AND ORDER

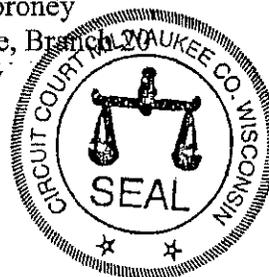
Together, the ordinances effectively prohibit supervised release in Milwaukee County, which is in direct violation of Wis. Stat. Ch. 980. The ordinances, acting in concert, are preempted by state law, and one or more of the ordinances must give way so that Ch. 980 individuals may be placed on supervised release in Milwaukee County. DHS is ordered to place in Milwaukee County at an appropriate location, as same existed prior to the local ordinances now existing making such placement unworkable.

Dated this 26th day of March, 2015, in Milwaukee, Wisconsin.

BY THE COURT:



Hon. Dennis P. Moroney
Circuit Court Judge, Branch 20
Milwaukee County





Judge casts cloud over web of sex offender residency restrictions

By Bruce Vielmetti of the Journal Sentinel
April 1, 2015

Starting in 2005, Milwaukee suburbs began, one by one, adopting strict rules on where sex offenders could live. As they did, more and more of the released inmates wound up in the city and a shrinking number of places without bans.

Now a judge has declared that the local restrictions, while legally acceptable in isolation, collectively act to defeat the state law meant to manage sex offenders after release from secure state treatment.

City attorneys expect to challenge the ruling, which could have implications far beyond the placement of the offender in question in the case.

"We're certainly aware of it, and are evaluating an appropriate response," Deputy Assistant City Attorney Danielle Bergner said. "Every municipality in Milwaukee County is doing the same thing."

District Attorney John Chisholm said he and others have warned about such a consequence.

"This is the logical end game of the restrictive ordinance process in conjunction with not enough state focus on a resolution," he said.

In a written order last week, Milwaukee County Circuit Judge Dennis Moroney found that all the local restrictions, in aggregate, "conflict with and defeat the purpose and spirit" of Wisconsin's Chapter 980 law, which allows the continued civil commitment of certain sex offenders beyond their completed prison terms.

"The municipal ordinances at issue, if examined individually, are consistent with these goals, most particularly the interest in promoting public safety," the order reads.

"However, none of these goals are achievable if every municipality in Milwaukee County precludes supervised release of a person committed under Wis. Stat. Ch. 980," the order says.

Chapter 980 allows prosecutors to seek indefinite civil commitment for certain sex offenders when they complete their prison terms. They become patients of the Department of Health Services and reside and undergo treatment at a secure facility in Mauston.

When doctors decide subjects are no longer more likely than not to reoffend, the offenders can seek discharge or supervised release back in the community.

But where to place Chapter 980 offenders became a hot-button issue in 2003, when Billy Lee Morford was quietly moved into a home on the northwest side of Milwaukee. Protests led to a search for

alternative sites, each of which encountered its own resistance from neighbors. There was talk of making the state build a group facility somewhere in the county for sex offenders released under Chapter 980.

Morford ultimately satisfied his conditions of supervised release and was removed from Chapter 980 jurisdiction in 2006. He is still listed on the state's sex offender registry, which includes offenders who were not deemed sexually violent and held under Chapter 980.

Even Shawn Schulpius, one of the earliest and most notorious Chapter 980 commitments, finally won release into Milwaukee. His case once threatened the constitutional underpinning of the 1994 law, when the state Supreme Court warned in 2005 that if offenders who deserved release couldn't get it, the law might have to be tossed out.

Joe Wofford case

Moroney's ruling came in the case of 49-year-old Joe L. Wofford Jr. He was convicted of sexually assaulting a 15-year-old girl in 1985 and a 7-year-old girl in 1986 and then absconding from parole in 1992 when he was accused of sexually assaulting a 21-year-old girlfriend and holding her and her child hostage for five days.

It was at the end of a three-year sentence in the last case that prosecutors had Wofford committed under the Chapter 980 law. After 19 years of treatment, he sought supervised release. At a trial last August, four experts testified he was no longer likely to reoffend, and Moroney ordered him released under supervision.

But the Department of Health Services claimed it couldn't find an acceptable residence in Milwaukee County, citing the municipal ordinances, prompting Moroney's order to disregard them and find a placement for Wofford by May 29.

In the meantime, Wofford remains at the state's Sand Ridge Secure Treatment Center, where some 350 offenders live at a public cost of \$100,000 a year each.

In a related development Wednesday, Milwaukee Mayor Tom Barrett vented frustration that state officials are allowing a man convicted of sexually assaulting children to serve his supervised release at a home across from an elementary school on the south side.

Luis Martinez was recently released after serving 15 years in prison for the sexual assaults of two young girls in 2000. He was not subjected to Chapter 980 civil commitment proceedings, so he remains under the supervision of the Department of Corrections.

Though corrections records list Martinez as homeless, Barrett said city officials were notified that Martinez will be moving into his brother's apartment across the street from Allen-Field Elementary School near S. 7th St. and Latham Blvd. on the south side.

But at a community meeting Wednesday night, neighbors learned that Martinez will not live at that location, but will be allowed to visit during off-school hours, WTMJ-TV (Channel 4) reported.

Common Council President Michael Murphy has been a vocal proponent of getting the Department of Corrections more involved in establishing a statewide standard about where sex offenders may serve supervised release.

Last year he pointed to data analysis by the city's Legislative Reference Bureau that showed that 90% of sex offenders living in the county were in the city because they had been banned from other communities.

Milwaukee wound up narrowly approving its own severe restrictions on where registered sex offenders may live, nine years after Franklin started the trend in 2005.

"It was a chain reaction after that," Perez said Wednesday. "We were one of only four places without it," and felt they had little choice.

Find this article at:

<http://www.jsonline.com/news/crime/judge-casts-cloud-over-web-of-sex-offender-residency-restrictions-b99472821z1-298378831.html>

Check the box to include the list of links referenced in the article.