

<p>APPROVAL <i>slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE 11/19/19</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT A CONSERVATION EASEMENT FOR AND AS PART OF THE REVIEW AND APPROVAL OF A SPECIAL USE UPON PROPERTY LOCATED AT 11141 WEST FOREST HOME AVENUE (STAR TRUCKING REAL ESTATE LLC, APPLICANT)</p>	<p>ITEM NUMBER <i>G.4.</i></p>

City Development staff recommends approval of a resolution authorizing certain officials to accept a Conservation Easement for and as part of the review and approval of a Special Use upon property located at 11141 West Forest Home Avenue, Star Trucking Real Estate LLC applicant, subject to technical corrections by City staff.

COUNCIL ACTION REQUESTED

A motion to adopt Resolution No. 2019-_____, authorizing certain officials to accept a Conservation Easement for and as part of the review and approval of a Special Use upon property located at 11141 West Forest Home Avenue, Star Trucking Real Estate LLC applicant, subject to technical corrections by City staff.

RESOLUTION NO. 2019-_____

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO
ACCEPT A CONSERVATION EASEMENT FOR AND AS PART
OF THE REVIEW AND APPROVAL OF A SPECIAL USE
(UPON PROPERTY LOCATED AT 11141 WEST FOREST HOME AVENUE)
(STAR TRUCKING REAL ESTATE LLC, APPLICANT)

WHEREAS, the Plan Commission having recommended approval of a Special Use and Site Plan upon the application on November 6, 2018, and the Plan Commission having conditioned approval thereof in part upon Common Council approval of a Conservation Easement to protect the stream, shore buffer, wetlands, wetland buffers, and wetland setbacks on the site; and

WHEREAS, §15-7.0102G. and §15-7.0103Q. of the Unified Development Ordinance requires the submission of a Natural Resource Protection Plan in the Site Plan review process and the Unified Development Ordinance requires conservation easements to be imposed for natural resource features identified within such Plans to protect such features, all as part of the approval process for Site Plans; and

WHEREAS, the City Engineering Department, Department of City Development and the Office of the City Attorney having reviewed the proposed Conservation Easement and having recommended approval thereof to the Common Council.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Conservation Easement submitted by Star Trucking Real Estate LLC, in the form and content as annexed hereto, be and the same is hereby approved; and the Mayor and City Clerk are hereby authorized to execute such Easement as evidence of the consent to and acceptance of such easement by the City of Franklin.

BE IT FURTHER RESOLVED, that the City Clerk be and the same is hereby directed to obtain the recording of the Conservation Easement in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2019.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2019.

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS
TO ACCEPT A CONSERVATION EASEMENT
STAR TRUCKING REAL ESTATE LLC
RESOLUTION NO. 2019- _____

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APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

CONSERVATION EASEMENT

STAR TRUCKING REAL ESTATE LLC

This Conservation Easement is made by and between the City of Franklin, a municipal corporation of the State of Wisconsin, hereinafter referred to as "Grantee," and Star Trucking Real Estate LLC, a Wisconsin Limited Liability Company, hereinafter referred to as "Grantor," and shall become effective upon the recording of this Grant of Conservation Easement, together with the Acceptance following, with the Office of the Register of Deeds for Milwaukee County, pursuant to § 700.40(2)(b) of the Wisconsin Statutes

WITNESSETH

WHEREAS, Grantor is the owner in fee simple of certain real property, located within the City of Franklin, Milwaukee County, Wisconsin, described in Exhibit A attached hereto and hereby made a part hereof (protected property), and

WHEREAS, the Grantor desires and intends that the natural elements and the ecological and aesthetic values of the protected property including, without limitation, The area of shore buffer that will be used for the proposed semi-trailer parking is composed of nonvegetated existing gravel. The topography of the graveled area is generally flat with a berm separating the proposed parking area and drainage way stream. , which Plan is on file in the office of the City of Franklin Department of City Development, be preserved and maintained by the continuation of land use that will not interfere with or substantially disrupt the natural elements or the workings of natural systems, and

WHEREAS, Grantee is a "holder", as contemplated by § 700.40(1)(b)1. of the Wisconsin Statutes, whose purposes include, while exercising regulatory authority granted to it, *inter alia*, under § 62.23 and § 236.45 of the Wisconsin Statutes, the conservation of land, natural areas, open space and water areas; and

WHEREAS, the Grantor and Grantee, by the conveyance to the Grantee of the conservation easement on, over and across the protected property, desire to conserve the natural values thereof and prevent the use or development of the protected property for any purpose or in any manner inconsistent with the terms of this conservation easement, and

WHEREAS, the Grantee is willing to accept this conservation easement subject to the reservations and to the covenants, terms, conditions and restrictions set out herein and imposed hereby;

WHEREAS, U.S. BANK, mortgagee of the protected property ("Mortgagee"), consents to the grant of this conservation easement by Grantor to Grantee and Mortgagee's consent is attached hereto and identified as "Mortgage Holder Consent".

NOW, THEREFORE, the Grantor, for and in consideration of the foregoing recitations and of the mutual covenants, terms, conditions, and restrictions subsequently contained, and as an absolute and unconditional dedication, does hereby grant and convey unto the Grantee a conservation easement in perpetuity on, over and across the protected property.

Grantee's rights hereunder shall consist solely of the following

1. To view the protected property in its natural, scenic, and open condition;
2. To enforce by proceeding at law or in equity the covenants subsequently set forth, including, and in addition to all other enforcement proceedings, proceedings to obtain all penalties and remedies set forth under Division 15-9.0500 of the Unified Development Ordinance of the City of Franklin, as amended from time to time, any violation of the covenants subsequently set forth being and constituting a violation of such Unified Development Ordinance, as amended from time to time, or such local applicable ordinance as may be later adopted or in effect to enforce such covenants or the purposes for which they are made, it being agreed that there shall be no waiver or forfeiture of the Grantee's right to insure compliance with the covenants and conditions of this grant by reason of any prior failure to act; and
3. To enter the protected property at all reasonable times for the purpose of inspecting the protected property to determine if the Grantor is complying with the covenants and conditions of this grant

And in furtherance of the foregoing affirmative rights of the Grantee, the Grantor makes the following covenants which shall run with and bind the protected property in perpetuity, namely, that, on, over or across the protected property, the Grantor, without the prior consent of the Grantee, shall not:

1. Construct or place buildings or any structure,
2. Construct or make any improvements, unless, notwithstanding Covenant 1 above, the improvement is specifically and previously approved by the Common Council of the City of Franklin, upon the advice of such other persons, entities, and agencies as it may elect; such improvements as may be so approved being intended to enhance the resource value of the protected property to the environment or the public and including, but not limited to animal and bird feeding stations, park benches, the removal of animal blockage of natural drainage or other occurring blockage of natural drainage, and the like;
3. Excavate, dredge, grade, mine, drill or change the topography of the land or its natural condition in any manner, including any cutting or removal of vegetation, except for the removal of dead or diseased trees;
4. Conduct any filling, dumping, or depositing of any material whatsoever, including, but not limited to soil, yard waste or other landscape materials, ashes, garbage, or debris;
5. Plant any vegetation not native to the protected property or not typical wetland vegetation,
6. Operate snowmobiles, dune buggies, motorcycles, all-terrain vehicles or any other types of motorized vehicles.

To have and to hold this conservation easement unto the Grantee forever Except as expressly limited herein, the Grantor reserves all rights as owner of the protected property, including, but not limited to, the right to use the protected property for all purposes not inconsistent with this grant. Grantor shall be responsible for the payment of all general property taxes levied, assessed or accruing against the protected property pursuant to law.

The covenants, terms, conditions and restrictions set forth in this grant shall be binding upon the Grantor and the Grantee and their respective agents, personal representatives, heirs, successors, and assigns, and shall constitute servitudes running with the protected property in perpetuity. This grant may not be amended, except by a writing executed and delivered by Grantor and Grantee or their respective personal representatives, heirs, successors, and assigns. Notices to the parties shall be personally delivered or mailed by U.S Mail registered mail, return receipt requested, as follows.

To Grantor:
 STAR TRUCKING REAL ESTATE LLC
 11141 W FOREST HOME AVE
 FRANKLIN WI 53132

To Grantee
 City of Franklin
 Office of the City Clerk
 9229 West Loomis Road
 Franklin, Wisconsin 53132

In witness whereof, the Grantor has set [his/her/their/its] hand[s] [and seal[s]] on this date of _____, 20__.

[Grantor]

By. _____
 [Name and if applicable, Title]

STATE OF WISCONSIN)
) ss
 _____ COUNTY)

This instrument was acknowledged before me on the _____ day of _____, 20__, by _____ [Name] _____, as _____ [Title] _____ of _____ [Grantor] _____, a _____ [entity type, e g , Wisconsin Limited Liability Company] _____, to me known to be the person[s] who executed the foregoing conservation easement and acknowledged the same as the voluntary act and deed of said _____ [Grantor] _____.

 Notary Public

My commission expires _____

Acceptance

The undersigned does hereby consent to and accepts the Conservation Easement granted and conveyed to it under and pursuant to the foregoing Grant of Conservation Easement. In consideration of the making of such Grant Of Conservation Easement,

Exhibit A

<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;">11/19/19</p>
<p style="text-align: center;">REPORTS & RECOMMENDATIONS</p>	<p style="text-align: center;">STANDARDS, FINDINGS AND DECISION OF THE CITY OF FRANKLIN COMMON COUNCIL UPON THE APPLICATION OF WILLIAM BODNER, MANAGING MEMBER OF BODNER PROPERTY MANAGEMENT, LLC, APPLICANT, FOR A SPECIAL EXCEPTION TO CERTAIN NATURAL RESOURCE PROVISIONS OF THE CITY OF FRANKLIN UNIFIED DEVELOPMENT ORDINANCE</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>G. 5.</i></p>

At their meeting on October 23, 2019, the Environmental Commission recommended approval of the subject Special Exception to certain natural resource provisions of the Unified Development Ordinance with conditions as presented at their meeting and as set forth in the attached final draft City of Franklin Environmental Commission document dated November 4, 2019.

At the regular meeting of the Plan Commission on November 7, 2019, following a properly noticed public hearing, the following action was approved: motion to recommend approval of the Bodner Property Management, LLC Natural Resource Features Special Exception pursuant to the Standards, Findings and Decision recommended by the Plan Commission and Common Council consideration of the Environmental Commission recommendations, mitigation of six (6) trees is required to be placed on street adjacent to the proposed development, species at the discretion of the City Forester.

The Plan Commission's recommendation has been reflected in the Decision section of the attached draft Standards, Findings, and Decision document.

COUNCIL ACTION REQUESTED

Adopt the standards, findings and decision of the City of Franklin Common Council upon the application of William Bodner, Managing Member of Bodner Property Management, LLC, applicant, for a special exception to certain natural resource provisions of the City of Franklin Unified Development Ordinance.

City of Franklin Environmental Commission

TO: Common Council
DATE: October 23, 2019
RE: Special Exception application review and recommendation
APPLICATION: William Bodner, Managing Member, Bodner Property Management, LLC, Applicant, dated: May 24, 2019 (generally South Scepter Drive and West Church Street)

I. §15-9.0110 of the Unified Development Ordinance Special Exception to Natural Resource Feature Provisions Application information:

1. Unified Development Ordinance Section(s) from which Special Exception is requested:

15-4.0103(B)(1) Woodlands and Forests- Natural Resource Mitigation

2. Nature of the Special Exception requested (description of resources, encroachment, distances and dimensions):

For the proposed Knollwood Legacy Apartment development, a Natural Resource Special Exception is being requested to allow the removal of Young Woodland above the allowed 50%. [The young woodlands] are listed as WD-1 and WD-2 in the report and are shown as 0.60 acres and 0.98 acres respectively in the report for a total of 1.58 acres. The developer is proposing to remove the invasive plant material in the Young Woodland areas identified to enhance the development and clear some areas for development. The clearing of invasive plant material in large areas would include the removal of some trees used to delineate the area as a Young Woodland and thus remove the Young Woodland.

3. Applicant's reason for request:

The Young Woodlands identified on the property are made up of predominantly Box Elder, Cottonwood, and Siberian Elm with underbrush of invasive buckthorn and honeysuckle

Section 240-8 of the City code (Cottonwood and Box Elder trees prohibited) would suggest that the owner of the property shall remove the existing Cottonwood and Box Elder trees. The WD-2 area identified has 43 of the 45

trees identified as either Cottonwood or Box Elder. If these trees are destroyed, the WD-2 area would not exist, so the developer asks that the WD-2 area of 0.98 acres be eliminated as Young Woodland and removed from the required preservation, or the exception is granted for this reason. The WD-1 area also contains 5 Box Elder trees, so the developer asks that those areas be eliminated as Young Woodland or the exception is granted for this reason.

4. Applicant's reason why request appropriate for Special Exception:

The City requires that 50% of the Young Woodland for the development be preserved or mitigated. The actual area on the subject property for each delineated Young Woodland areas (some of the delineated area is in Right of Way and neighboring parcels) is WD-1 is 0.54 acres and WD-2 is 0.97 acres, and the area of overlap with wetland and wetland buffer is not counted as part of the required 50% preserved. Thus there is a total of 1.31 acres of Young Woodland to have 50% preserved, or a total of 0.66 acres required to be preserved. As stated above, the developer is willing to preserve 0.16 acres within the WD-1 area if so directed and enhance it with the removal of the invasive species at the ground level. If the WD-2 area that is predominantly Cottonwood and Boxelder is not considered in the required 50% preserved area of Young Woodland, then the area of WD-1 that would be used for that calculation is 0.34 total acres of Young Woodland requiring 0.17 acres to be preserved. As stated previously there is an area of 0.16 acres within the Conservation Easement that can be preserved and enhanced to meet this requirement

II. Environmental Commission review of the §15-9.0110C.4.f. Natural Resource Feature impacts to functional values:

1. Diversity of flora including State and/or Federal designated threatened and/or endangered species: *Not Applicable*
2. Storm and flood water storage: *Not Applicable. Proposed project will meet storm water requirements of the City and State.*
3. Hydrologic functions: *Not Applicable. The applicant has received and exemption from the WI Department of Natural Resources for an artificial wetland on the property which will be removed as part of construction. This project does not impact other wetlands or water features.*
4. Water quality protection including filtration and storage of sediments, nutrients or toxic substances: *Not Applicable. The applicant has received and exemption from the WI Department of Natural Resources for an artificial*

wetland on the property which will be removed as part of construction. This project does not impact other wetlands or water features

5. Shoreline protection against erosion: *Not Applicable. This natural resource is not present*
6. Habitat for aquatic organisms: *Not Applicable. This natural resource is not present*
7. Habitat for wildlife: *Not Applicable*
8. Human use functional value: *Not Applicable. The project's footprint is condensed on the property with allowances for necessary items like storm water facilities.*
9. Groundwater recharge/discharge protection: *Not Applicable. The applicant has received and exemption from the WI Department of Natural Resources for an artificial wetland on the property which will be removed as part of construction This project does not impact other wetlands or water features.*
10. Aesthetic appeal, recreation, education, and science value: *Not Applicable The project's footprint is condensed on the property with allowances for necessary items like storm water facilities.*
11. State or Federal designated threatened or endangered species or species of special concern: *Not Applicable*
12. Existence within a Shoreland: *Not Applicable This natural resource is not present*
13. Existence within a Primary or Secondary Environmental Corridor or within an Isolated Natural Area, as those areas are defined and currently mapped by the Southeastern Wisconsin Regional Planning Commission from time to time: *Not Applicable. This natural resource is not present.*

III. Environmental Commission review of the §15-10.0208B.2.d. factors and recommendations as to findings thereon:

1. That the condition(s) giving rise to the request for a Special Exception were not self-imposed by the applicant (this subsection a. does not apply to an application to improve or enhance a natural resource feature):

The developer requests the Special Exception to not have to preserve or mitigate the areas of Young Woodland lost due to the removal of invasive plant material due to City Code Section 240-8 that seems in conflict.

*Additional to the code section above, the Young Woodland areas are identified in the report as having shrub layers of invasive species like common buckthorn and honeysuckle; again, these species are typically desired to be removed and thus the developer is asking for permission to remove these species. The Young Woodland report identifies as the other dominant tree species *Ulmus pumila* (Siberian Elm), which is not listed in Code Section 240-8, but the developer would ask for the City Forester's opinion on the value of that tree. If the City Forester or your Commission wants this tree species preserved, than the developer will not remove it as an alternate option. This species is found mostly in the area the developer is proposing a Conservation Easement, such that an area of 0.36 acres of Young Woodland WD-1 can be preserved, this includes 0.20 acres of wetland and wetland buffer. The developer would still like permission to remove other invasive species at the ground level to enhance this area even if the trees are asked to be saved.*

2. That compliance with the stream, shore buffer, navigable water-related, wetland, wetland buffer, and wetland setback requirement will:
 - a. be unreasonably burdensome to the applicants and that there are no reasonable practicable alternatives. ; or
 - b. unreasonably and negatively impact upon the applicants' use of the property and that there are no reasonable practicable alternatives:

The applicant has received an exemption from the WI Department of Natural Resources for an artificial wetland on the property which will be removed as part of construction. This project does not impact other wetlands or water features.

3. The Special Exception, including any conditions imposed under this Section will:
 - a. be consistent with the existing character of the neighborhood: ; and

The project's footprint is condensed on the property with allowances for necessary items like storm water facilities, we don't feel it can be made smaller to allow for more saving of the Young Woodland.

- b. not effectively undermine the ability to apply or enforce the requirement with respect to other properties: ; and

Section 240-8 of the City code (Cottonwood and Box Elder trees prohibited) would suggest that the owner of the property shall remove the existing Cottonwood and Box Elder trees. The WD-2 area identified has 43 of the 45 trees identified as either Cottonwood or Box Elder. If these trees are destroyed, the WD-2 area would not exist, so the developer asks that the WD-2 area of 0.98 acres be eliminated as Young Woodland and removed from the required preservation, or the exception is granted for this reason. The WD-1 area also contains 5 Box Elder trees, so the developer asks that those areas be eliminated as Young Woodland or the exception is granted for this reason.

- c. be in harmony with the general purpose and intent of the provisions of this Ordinance proscribing the requirement: ; and

The developer is proposing to remove the invasive plant material in the Young Woodland areas identified to enhance the development and clear some areas for development. The clearing of invasive plant material in large areas would include the removal of some trees used to delineate the area as a Young Woodland and thus remove the Young Woodland.

- d. preserve or enhance the functional values of the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback in co-existence with the development (*this finding only applying to an application to improve or enhance a natural resource feature*):

IV. Environmental Commission review of the §15-10.0208B.2.a., b. and c. factors and recommendations as to findings thereon:

1. Characteristics of the real property, including, but not limited to, relative placement of improvements thereon with respect to property boundaries or otherwise applicable setbacks:

The proposed development is an apartment community consisting of (5) 8-unit buildings for a total of 40 units. It is new construction.

2. Any exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district:

The Young Woodlands identified on the property are made up of predominantly Box Elder, Cottonwood, and Siberian Elm with underbrush of invasive buckthorn and honeysuckle.

The developer is proposing to remove the invasive plant material in the Young Woodland areas identified to enhance the development and clear some areas for

development. The clearing of invasive plant material in large areas would include the removal of some trees used to delineate the area as a Young Woodland and thus remove the Young Woodland.

3. Existing and future uses of property; useful life of improvements at issue; disability of an occupant: *New construction.*

4. Aesthetics: *Not applicable The project's footprint is condensed on the property with allowances for necessary items like storm water facilities.*

5. Degree of noncompliance with the requirement allowed by the Special Exception:

The Young Woodlands identified on the property are made up of predominantly Box Elder, Cottonwood, and Siberian Elm with underbrush of invasive buckthorn and honeysuckle

6. Proximity to and character of surrounding property: *Commercial to the north and east, single-family to the south, multi-family to the west.*

7. Zoning of the area in which property is located and neighboring area:

The property is R-3 Suburban/Estate Single Family Residence District. Neighboring properties are R-3 to the south, R-8 Multiple-Family Residence District to the west, CC Civic Center to the east, and B-1 Neighborhood Business District to the north.

8. Any negative affect upon adjoining property: *none*

9. Natural features of the property: *For the proposed Knollwood Legacy Apartment development, a Natural Resource Special Exception is being requested to allow the removal of Young Woodland above the allowed 50%. [The young woodlands] are listed as WD-1 and WD-2 in the report and are shown as 0.60 acres and 0.98 acres respectively in the report for a total of 1.58 acres. The developer is proposing to remove the invasive plant material in the Young Woodland areas identified to enhance the development and clear some areas for development. The clearing of invasive plant material in large areas would include the removal of some trees used to delineate the area as a Young Woodland and thus remove the Young Woodland*

10. Environmental impacts: *There is 1.31 acres of Young Woodland that is outside the wetland and wetland buffer areas on the property, this requires 0.66 acres to be protected. The proposed development is willing to protect 0.16 acres of the Young Woodland which is adjacent to the Young Woodland that overlaps with the wetland and wetland setback if directed by the City. The request is to not preserve or mitigate the Young Woodlands.*

V. Environmental Commission Recommendation:

The Environmental Commission has reviewed the subject Application pursuant to §15-10.0208B. of the Unified Development Ordinance and makes the following recommendation:

1. The recommendations set forth in Sections III. and IV. Above are incorporated herein.
2. The Environmental Commission recommends approval of the Application upon the aforesaid recommendations for the reasons set forth therein.
3. The Environmental Commissions recommends that should the Common Council approve the Application, that such approval be subject to the following conditions:
 - a. Mitigation of six (6) trees, species at the discretion of the City Forester, to be placed at Ernie Lake Park;
 - b. Creation of a conservation easement as defined on the Natural Resource Protection Plan;
 - c. Remove all noxious plant material from the two designated woodland areas, listed as WD-1 and WD-2;
 - d. Receipt of all other required permits and approvals.

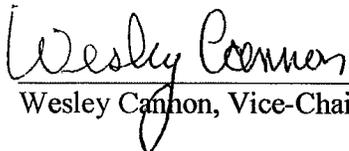
The above review and recommendation was passed and adopted at a regular meeting of the Environmental Commission of the City of Franklin on the 23rd day of October, 2019.

Dated this 4th day of NOVEMBER 2019.



Arthur Skowron, Chairman

Attest:



Wesley Cannon, Vice-Chairman



Standards, Findings and Decision
of the City of Franklin Common Council upon the Application of William Bodner,
Managing Member of Bodner Property Management, LLC, applicant, for a Special
Exception to Certain Natural Resource Provisions of the City of Franklin
Unified Development Ordinance

Whereas, William Bodner, Managing Member of Bodner Property Management, LLC, applicant, having filed an application dated May 24, 2019, for a Special Exception pursuant to Section 15-9.0110 of the City of Franklin Unified Development Ordinance pertaining to the granting of Special Exceptions to Stream, Shore Buffer, Navigable Water-related, Wetland, Wetland Buffer and Wetland Setback Provisions, and Improvements or Enhancements to a Natural Resource Feature; a copy of said application being annexed hereto and incorporated herein as Exhibit A; and

Whereas, the application having been reviewed by the City of Franklin Environmental Commission and the Commission having made its recommendation upon the application, a copy of said recommendation dated October 23, 2019 being annexed hereto and incorporated herein as Exhibit B; and

Whereas, following a public hearing before the City of Franklin Plan Commission, the Plan Commission having reviewed the application and having made its recommendation thereon as set forth upon the report of the City of Franklin Planning Department, a copy of said report dated November 7, 2019 being annexed hereto and incorporated herein as Exhibit C; and

Whereas, the property which is the subject of the application for a Special Exception is generally located at South Scepter Drive and West Church Street, zoned R-8 Multiple-Family Residence District, and such property is more particularly described upon Exhibit D annexed hereto and incorporated herein; and

Whereas, Section 15-10.0208B. of the City of Franklin Unified Development Ordinance, as amended by Ordinance No. 2003-1747, pertaining to the granting of Special Exceptions to Stream, Shore Buffer, Navigable Water-related, Wetland, Wetland Buffer and Wetland Setback Provisions, and Improvements or Enhancements to a Natural Resource Feature, provides in part: “The decision of the Common Council upon any decision under this Section shall be in writing, state the grounds of such determination, be filed in the office of the City Planning Manager and be mailed to the applicant.”

Now, Therefore, the Common Council makes the following findings pursuant to Section 15-10.0208B.2.a., b. and c. of the Unified Development Ordinance upon

the application for a Special Exception dated May 24, 2019, by William Bodner, Managing Member of Bodner Property Management, LLC, applicant, pursuant to the City of Franklin Unified Development Ordinance, the proceedings heretofore had and the recitals and matters incorporated as set forth above, recognizing the applicant as having the burden of proof to present evidence sufficient to support the following findings and that such findings be made by not less than four members of the Common Council in order to grant such Special Exception.

1. That the condition(s) giving rise to the request for a Special Exception were not self-imposed by the applicant (this subsection a. does not apply to an application to improve or enhance a natural resource feature): *but rather, The developer requests the Special Exception to not have to preserve or mitigate the areas of Young Woodland lost due to the removal of invasive plant material due to City Code Section 240-8 that seems in conflict.*

*Additional to the code section above, the Young Woodland areas are identified in the report as having shrub layers of invasive species like common buckthorn and honeysuckle; again, these species are typically desired to be removed and thus the developer is asking for permission to remove these species. The Young Woodland report identifies as the other dominant tree species *Ulmus pumila* (Siberian Elm), which is not listed in Code Section 240-8, but the developer would ask for the City Forester's opinion on the value of that tree. If the City Forester or your Commission wants this tree species preserved, than the developer will not remove it as an alternate option. This species is found mostly in the area the developer is proposing a Conservation Easement, such that an area of 0.36 acres of Young Woodland WD-1 can be preserved, this includes 0.20 acres of wetland and wetland buffer. The developer would still like permission to remove other invasive species at the ground level to enhance this area even if the trees are asked to be saved.*

2. That compliance with the stream, shore buffer, navigable water-related, wetland, wetland buffer, and wetland setback requirement will:

- a. be unreasonably burdensome to the applicant and that there are no reasonable practicable alternatives; *or*
- b. unreasonably and negatively impact upon the applicant's use of the property and that there are no reasonable practicable alternatives:

The applicant has received and exemption from the WI Department of Natural Resources for an artificial wetland on the property which will be removed as part of construction. This project does not impact other wetlands or water features.

3. The Special Exception, including any conditions imposed under this Section will:

- a. be consistent with the existing character of the neighborhood: *the proposed development with the grant of a Special Exception as requested will be consistent with the existing character of the neighborhood; the project's footprint is condensed on the property with allowances for necessary items like storm water facilities, we don't feel it can be made smaller to allow for more saving of the Young Woodland, and;*
- b. not effectively undermine the ability to apply or enforce the requirement with respect to other properties: *Section 240-8 of the City code (Cottonwood and Box Elder trees prohibited) would suggest that the owner of the property shall remove the existing Cottonwood and Box Elder trees. The WD-2 area identified has 43 of the 45 trees identified as either Cottonwood or Box Elder. If these trees are destroyed, the WD-2 area would not exist, so the developer asks that the WD-2 area of 0.98 acres be eliminated as Young Woodland and removed from the required preservation, or the exception is granted for this reason. The WD-1 area also contains 5 Box Elder trees, so the developer asks that those areas be eliminated as Young Woodland or the exception is granted for this reason; and*
- c. be in harmony with the general purpose and intent of the provisions of this Ordinance proscribing the requirement: *The developer is proposing to remove the invasive plant material in the Young Woodland areas identified to enhance the development and clear some areas for development. The clearing of invasive plant material in large areas would include the removal of some trees used to delineate the area as a Young Woodland and thus remove the Young Woodland; and*
- d. preserve or enhance the functional values of the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback in co-existence with the development: *(this finding only applying to an application to improve or enhance a natural resource feature).*

The Common Council considered the following factors in making its determinations pursuant to Section 15-10.0208B.2.d. of the Unified Development Ordinance.

1. Characteristics of the real property, including, but not limited to, relative placement of improvements thereon with respect to property boundaries or otherwise applicable setbacks: *The proposed development is an apartment community consisting of (5) 8-unit buildings for a total of 40 units. It is new construction.*
2. Any exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district: *The Young Woodlands identified on the property are made up of predominantly Box Elder, Cottonwood, and Siberian Elm with underbrush of invasive buckthorn and honeysuckle.*

The developer is proposing to remove the invasive plant material in the Young Woodland areas identified to enhance the development and clear some areas for development. The clearing of invasive plant material in large areas would include the removal of some trees used to delineate the area as a Young Woodland and thus remove the Young Woodland.

3. Existing and future uses of property; useful life of improvements at issue; disability of an occupant: *New construction.*

4. Aesthetics: *The project's footprint is condensed on the property with allowances for necessary items like storm water facilities.*

5. Degree of noncompliance with the requirement allowed by the Special Exception: *The Young Woodlands identified on the property are made up of predominantly Box Elder, Cottonwood, and Siberian Elm with underbrush of invasive buckthorn and honeysuckle.*

6. Proximity to and character of surrounding property: *Commercial to the north and east, single-family to the south, multi-family to the west.*

7. Zoning of the area in which property is located and neighboring area: *Residential.*

8. Any negative affect upon adjoining property: *No negative affect upon adjoining property is perceived.*

9. Natural features of the property: *For the proposed Knollwood Legacy Apartment development, a Natural Resource Special Exception is being requested to allow the removal of Young Woodland above the allowed 50%. [The young woodlands] are listed as WD-1 and WD-2 in the report and are shown as 0.60 acres and 0.98 acres respectively in the report for a total of 1.58 acres. The developer is proposing to remove the invasive plant material in the Young Woodland areas identified to enhance the development and clear some areas for development. The clearing of invasive plant material in large areas would include the removal of some trees used to delineate the area as a Young Woodland and thus remove the Young Woodland.*

10. Environmental impacts: *There is 1.31 acres of Young Woodland that is outside the wetland and wetland buffer areas on the property, this requires 0.66 acres to be protected. The proposed development is willing to protect 0.16 acres of the Young Woodland which is adjacent to the Young Woodland that overlaps with the wetland and wetland setback if directed by the City. The request is to not preserve or mitigate the Young Woodlands.*

11. A recommendation from the Environmental Commission as well as a review and recommendation prepared by an Environmental Commission-selected person

knowledgeable in natural systems: *The Environmental Commission recommendation and its reference to the report of November 4, 2019 is incorporated herein.*

12. The practicable alternatives analysis required by Section 15-9.0110C.4. of the Unified Development Ordinance and the overall impact of the entire proposed use or structure, performance standards and analysis with regard to the impacts of the proposal, proposed design solutions for any concerns under the Ordinance, executory actions which would maintain the general intent of the Ordinance in question, and other factors relating to the purpose and intent of the Ordinance section imposing the requirement: *The Plan Commission recommendation and the Environmental Commission recommendation address these factors and are incorporated herein.*

Decision

Upon the above findings and all of the files and proceedings heretofore had upon the subject application, the Common Council hereby grants a Special Exception for such relief as is described within Exhibit C, upon the conditions:

- 1) that the natural resource features and mitigation areas upon the properties to be developed be protected by a perpetual conservation easement to be approved by the Common Council prior to any development within the areas for which the Special Exception is granted prior to the issuance of any Occupancy Permits;*
- 2) that the applicant obtain all other necessary approval(s) from all other applicable governmental agencies prior to any development within the areas for which the Special Exception is granted;*
- 3) that all development within the areas for which the Special Exception is granted shall proceed pursuant to and be governed by the approved Natural Resource Protection Plan and all other applicable plans for William Bodner, Managing Member of Bodner Property Management, LLC, applicant, and all other applicable provisions of the Unified Development Ordinance;*
- 4) that prior to issuance of any Occupancy Permits the applicant provide mitigation of six (6) trees, species at the discretion of the City Forester, to be placed to be placed on street adjacent to the proposed development and maintained for two years;*
- 5) that the applicant remove all noxious plant material from the two designated woodland areas, listed as WD-1 and WD-2 prior to the issuance any Occupancy Permit.*

The duration of this grant of Special Exception is permanent.

Introduced at a regular meeting of the Common Council of the City of Franklin this 19th day of November 2019.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2019.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____



CITY OF FRANKLIN
REPORT TO THE PLAN COMMISSION

Meeting of November 7, 2019

Natural Resource Special Exception

Project Name:	Knollwood Legacy Apartments - Natural Resource Special Exception (NRSE)
Project Address:	Scepter Drive and Church Street/ Tax Key 759-9999-008
Applicant:	William Bodner, Bodner Property Management LLC
Property Owner:	122nd Street Land Company, Michael J. Seeland, President
Current Zoning:	R-3 Suburban/Estate Single Family Residence District
2025 Comprehensive Plan:	Mixed Use
Use of Surrounding Properties:	Commercial to the north and east, single-family to the south, multi-family to the west
Applicant's Action Requested:	Recommendation to the Environmental Commission, Plan Commission, and Common Council for approval of the proposed Natural Resource Special Exception (NRSE)

INTRODUCTION:

On May 24, 2019, the applicant, William Bodner of Bodner Property Management, LLC, submitted several applications related to the construction of a 40-unit multi-family residential apartment development upon property generally located on the east side of South Scepter Drive, just south of the intersection of West Church Street and South Lovers Lane Road (STH 100). Among these is a request for a Natural Resource Special Exception.

Pursuant to Section 15-10.0208 of the UDO, all requests for a Natural Resource Special Exception shall be provided to the Environmental Commission for its review and recommendation. The applicant is requesting approval to impact young woodlands on the subject land.

PROJECT DESCRIPTION:

The applicant is proposing to remove two areas of young woodlands totaling about 1.58 acres to allow for the grading and construction of a 40-unit multi-family residential development.

Two (2) wetland areas totaling approximately 0.44 acres were delineated and mapped by an assured delineator. Wetland 1 (W-1) is a 0.33-acre wet meadow within the northeastern portion of the Study Area. The applicant has provided a letter dated January 24, 2019 from the Wisconsin Department of Natural Resources indicating that the wetland is artificial and exempt from State wetland regulations. The applicant is not requesting an exception for W-2, located in the southwest corner of the property. This wetland will be protected by a conservation easement.

The applicant has provided the attached Natural Resource Special Exemption Application including Project Description, Natural Resource Special Exception Question and Answer Form, Natural Resource Protection Plan (NRPP) map and associated information. Staff would note:

- The applicant has agreed to mitigation of six (6) trees, species at the discretion of the City Forester, to be placed at Ernie Lake Park;
- The applicant has agreed to create a conservation easement to protect the remaining wetland.
- The wetland delineation was prepared by an Assured Delineator.
- Young woodland are defined by ordinance § 15-11.0103 as “an area or stand of trees whose total combined canopy covers an area of 0.50 acre or more and at least 50% of which is composed of canopies of trees having a diameter at breast height (DBH) of at least three inches.” Tree species are not considered in the determination of whether a stand of trees meets the definition of young woodland.

ENVIRONMENTAL COMMISSION:

Pursuant to Section 15-10.0208 of the UDO, all requests for a Natural Resource Special Exception shall be provided to the Environmental Commission for its review and recommendation. Attached is a document titled, “City of Franklin Environmental Commission” that the Environmental Commission has completed and must forward to the Common Council. The questions and statements on this document correspond with the Natural Resource Special Exception (NRSE) application questions and statements that the applicant has answered and addressed.

The Environmental Commission, at its October 23, 2019 meeting, has recommended approval of the NRSE as presented at their meeting, with conditions as set forth in Section V. of the City of Franklin Environmental Commission Special Exception application review and recommendation memo.

CONCLUSION:

Staff concurs with the Environmental Commission recommendations, which are contained in the decisions section of the attached draft Standards, Findings and Decision of the City of Franklin document.

Draft 11/7/19

**Standards, Findings and Decision
of the City of Franklin Common Council upon the Application of William Bodner,
Managing Member of Bodner Property Management, LLC, applicant, for a Special
Exception to Certain Natural Resource Provisions of the City of Franklin
Unified Development Ordinance**

Whereas, William Bodner, Managing Member of Bodner Property Management, LLC, applicant, having filed an application dated May 24, 2019, for a Special Exception pursuant to Section 15-9.0110 of the City of Franklin Unified Development Ordinance pertaining to the granting of Special Exceptions to Stream, Shore Buffer, Navigable Water-related, Wetland, Wetland Buffer and Wetland Setback Provisions, and Improvements or Enhancements to a Natural Resource Feature; a copy of said application being annexed hereto and incorporated herein as Exhibit A; and

Whereas, the application having been reviewed by the City of Franklin Environmental Commission and the Commission having made its recommendation upon the application, a copy of said recommendation dated October 23, 2019 being annexed hereto and incorporated herein as Exhibit B; and

Whereas, following a public hearing before the City of Franklin Plan Commission, the Plan Commission having reviewed the application and having made its recommendation thereon as set forth upon the report of the City of Franklin Planning Department, a copy of said report dated November 7, 2019 being annexed hereto and incorporated herein as Exhibit C; and

Whereas, the property which is the subject of the application for a Special Exception is generally located at South Scepter Drive and West Church Street, zoned R-8 Multiple-Family Residence District, and such property is more particularly described upon Exhibit D annexed hereto and incorporated herein; and

Whereas, Section 15-10.0208B. of the City of Franklin Unified Development Ordinance, as amended by Ordinance No. 2003-1747, pertaining to the granting of Special Exceptions to Stream, Shore Buffer, Navigable Water-related, Wetland, Wetland Buffer and Wetland Setback Provisions, and Improvements or Enhancements to a Natural Resource Feature, provides in part: “The decision of the Common Council upon any decision under this Section shall be in writing, state the grounds of such determination, be filed in the office of the City Planning Manager and be mailed to the applicant.”

Now, Therefore, the Common Council makes the following findings pursuant to Section 15-10.0208B.2.a., b. and c. of the Unified Development Ordinance upon

the application for a Special Exception dated May 24, 2019, by William Bodner, Managing Member of Bodner Property Management, LLC, applicant, pursuant to the City of Franklin Unified Development Ordinance, the proceedings heretofore had and the recitals and matters incorporated as set forth above, recognizing the applicant as having the burden of proof to present evidence sufficient to support the following findings and that such findings be made by not less than four members of the Common Council in order to grant such Special Exception.

1. That the condition(s) giving rise to the request for a Special Exception were not self-imposed by the applicant (this subsection a. does not apply to an application to improve or enhance a natural resource feature): *but rather*, _____.

2. That compliance with the stream, shore buffer, navigable water-related, wetland, wetland buffer, and wetland setback requirement will:

a. be unreasonably burdensome to the applicant and that there are no reasonable practicable alternatives: _____; *or*

b. unreasonably and negatively impact upon the applicant's use of the property and that there are no reasonable practicable alternatives: _____.

3. The Special Exception, including any conditions imposed under this Section will:

a. be consistent with the existing character of the neighborhood: *the proposed development with the grant of a Special Exception as requested will be consistent with the existing character of the neighborhood; and*

b. not effectively undermine the ability to apply or enforce the requirement with respect to other properties: _____; *and*

c. be in harmony with the general purpose and intent of the provisions of this Ordinance proscribing the requirement: _____; *and*

d. preserve or enhance the functional values of the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback in co-existence with the development: *(this finding only applying to an application to improve or enhance a natural resource feature).*

The Common Council considered the following factors in making its determinations pursuant to Section 15-10.0208B.2.d. of the Unified Development Ordinance.

1. Characteristics of the real property, including, but not limited to, relative placement of improvements thereon with respect to property boundaries or otherwise applicable setbacks: _____.

2. Any exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district: _____.
3. Existing and future uses of property; useful life of improvements at issue; disability of an occupant: _____.
4. Aesthetics: _____.
5. Degree of noncompliance with the requirement allowed by the Special Exception: _____.
6. Proximity to and character of surrounding property: _____.
7. Zoning of the area in which property is located and neighboring area: *Residential*.
8. Any negative affect upon adjoining property: *No negative affect upon adjoining property is perceived.*
9. Natural features of the property: _____.
10. Environmental impacts: _____.
11. A recommendation from the Environmental Commission as well as a review and recommendation prepared by an Environmental Commission-selected person knowledgeable in natural systems: *The Environmental Commission recommendation and its reference to the report of _____ is incorporated herein.*
12. The practicable alternatives analysis required by Section 15-9.0110C.4. of the Unified Development Ordinance and the overall impact of the entire proposed use or structure, performance standards and analysis with regard to the impacts of the proposal, proposed design solutions for any concerns under the Ordinance, executory actions which would maintain the general intent of the Ordinance in question, and other factors relating to the purpose and intent of the Ordinance section imposing the requirement: *The Plan Commission recommendation and the Environmental Commission recommendation address these factors and are incorporated herein.*

Decision

Upon the above findings and all of the files and proceedings heretofore had upon the subject application, the Common Council hereby grants a Special Exception for such relief as is described within Exhibit C, upon the conditions:

- 1) *that the natural resource features and mitigation areas upon the properties to be developed be protected by a perpetual conservation easement to be approved by the*

Common Council prior to any development within the areas for which the Special Exception is granted prior to the issuance of any Occupancy Permits;

2) that the applicant obtain all other necessary approval(s) from all other applicable governmental agencies prior to any development within the areas for which the Special Exception is granted;

3) that all development within the areas for which the Special Exception is granted shall proceed pursuant to and be governed by the approved Natural Resource Protection Plan and all other applicable plans for William Bodner, Managing Member of Bodner Property Management, LLC, applicant, and all other applicable provisions of the Unified Development Ordinance;

4) that prior to issuance of any Occupancy Permits the applicant provide mitigation of six (6) trees, species at the discretion of the City Forester, to be placed at Ernie Lake Park and maintained for two years;

5) that the applicant remove all noxious plant material from the two designated woodland areas, listed as WD-1 and WD-2 prior to the issuance any Occupancy Permit.

The duration of this grant of Special Exception is permanent.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2019.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2019.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

City of Franklin Environmental Commission

TO: Common Council
DATE: October 23, 2019
RE: Special Exception application review and recommendation
APPLICATION: William Bodner, Managing Member, Bodner Property Management, LLC, Applicant, dated: May 24, 2019 (generally South Scepter Drive and West Church Street)

I. §15-9.0110 of the Unified Development Ordinance Special Exception to Natural Resource Feature Provisions Application information:

1. Unified Development Ordinance Section(s) from which Special Exception is requested:

15-4.0103(B)(1) Woodlands and Forests- Natural Resource Mitigation

2. Nature of the Special Exception requested (description of resources, encroachment, distances and dimensions):

For the proposed Knollwood Legacy Apartment development, a Natural Resource Special Exception is being requested to allow the removal of Young Woodland above the allowed 50%. [The young woodlands] are listed as WD-1 and WD-2 in the report and are shown as 0.60 acres and 0.98 acres respectively in the report for a total of 1.58 acres. The developer is proposing to remove the invasive plant material in the Young Woodland areas identified to enhance the development and clear some areas for development. The clearing of invasive plant material in large areas would include the removal of some trees used to delineate the area as a Young Woodland and thus remove the Young Woodland.

3. Applicant's reason for request:

The Young Woodlands identified on the property are made up of predominantly Box Elder, Cottonwood, and Siberian Elm with underbrush of invasive buckthorn and honeysuckle.

Section 240-8 of the City code (Cottonwood and Box Elder trees prohibited) would suggest that the owner of the property shall remove the existing Cottonwood and Box Elder trees. The WD-2 area identified has 43 of the 45

trees identified as either Cottonwood or Box Elder. If these trees are destroyed, the WD-2 area would not exist, so the developer asks that the WD-2 area of 0.98 acres be eliminated as Young Woodland and removed from the required preservation, or the exception is granted for this reason. The WD-1 area also contains 5 Box Elder trees, so the developer asks that those areas be eliminated as Young Woodland or the exception is granted for this reason.

4. Applicant's reason why request appropriate for Special Exception:

The City requires that 50% of the Young Woodland for the development be preserved or mitigated. The actual area on the subject property for each delineated Young Woodland areas (some of the delineated area is in Right of Way and neighboring parcels) is WD-1 is 0.54 acres and WD-2 is 0.97 acres, and the area of overlap with wetland and wetland buffer is not counted as part of the required 50% preserved. Thus there is a total of 1.31 acres of Young Woodland to have 50% preserved, or a total of 0.66 acres required to be preserved. As stated above, the developer is willing to preserve 0.16 acres within the WD-1 area if so directed and enhance it with the removal of the invasive species at the ground level. If the WD-2 area that is predominantly Cottonwood and Boxelder is not considered in the required 50% preserved area of Young Woodland, then the area of WD-1 that would be used for that calculation is 0.34 total acres of Young Woodland requiring 0.17 acres to be preserved. As stated previously there is an area of 0.16 acres within the Conservation Easement that can be preserved and enhanced to meet this requirement.

II. Environmental Commission review of the §15-9.0110C.4.f. Natural Resource Feature impacts to functional values:

1. Diversity of flora including State and/or Federal designated threatened and/or endangered species: *Not Applicable*
2. Storm and flood water storage: *Not Applicable. Proposed project will meet storm water requirements of the City and State.*
3. Hydrologic functions: *Not Applicable. The applicant has received and exemption from the WI Department of Natural Resources for an artificial wetland on the property which will be removed as part of construction. This project does not impact other wetlands or water features.*
4. Water quality protection including filtration and storage of sediments, nutrients or toxic substances: *Not Applicable. The applicant has received and exemption from the WI Department of Natural Resources for an artificial*

wetland on the property which will be removed as part of construction. This project does not impact other wetlands or water features.

5. Shoreline protection against erosion: *Not Applicable. This natural resource is not present.*
6. Habitat for aquatic organisms: *Not Applicable. This natural resource is not present.*
7. Habitat for wildlife: *Not Applicable*
8. Human use functional value: *Not Applicable. The project's footprint is condensed on the property with allowances for necessary items like storm water facilities.*
9. Groundwater recharge/discharge protection: *Not Applicable. The applicant has received and exemption from the WI Department of Natural Resources for an artificial wetland on the property which will be removed as part of construction. This project does not impact other wetlands or water features.*
10. Aesthetic appeal, recreation, education, and science value: *Not Applicable. The project's footprint is condensed on the property with allowances for necessary items like storm water facilities.*
11. State or Federal designated threatened or endangered species or species of special concern: *Not Applicable*
12. Existence within a Shoreland: *Not Applicable. This natural resource is not present.*
13. Existence within a Primary or Secondary Environmental Corridor or within an Isolated Natural Area, as those areas are defined and currently mapped by the Southeastern Wisconsin Regional Planning Commission from time to time: *Not Applicable. This natural resource is not present.*

III. Environmental Commission review of the §15-10.0208B.2.d. factors and recommendations as to findings thereon:

1. That the condition(s) giving rise to the request for a Special Exception were not self-imposed by the applicant (this subsection a. does not apply to an application to improve or enhance a natural resource feature):

The developer requests the Special Exception to not have to preserve or mitigate the areas of Young Woodland lost due to the removal of invasive plant material due to City Code Section 240-8 that seems in conflict.

*Additional to the code section above, the Young Woodland areas are identified in the report as having shrub layers of invasive species like common buckthorn and honeysuckle; again, these species are typically desired to be removed and thus the developer is asking for permission to remove these species. The Young Woodland report identifies as the other dominant tree species *Ulmus pumila* (Siberian Elm), which is not listed in Code Section 240-8, but the developer would ask for the City Forester's opinion on the value of that tree. If the City Forester or your Commission wants this tree species preserved, than the developer will not remove it as an alternate option. This species is found mostly in the area the developer is proposing a Conservation Easement, such that an area of 0.36 acres of Young Woodland WD-1 can be preserved, this includes 0.20 acres of wetland and wetland buffer. The developer would still like permission to remove other invasive species at the ground level to enhance this area even if the trees are asked to be saved.*

2. That compliance with the stream, shore buffer, navigable water-related, wetland, wetland buffer, and wetland setback requirement will:
 - a. be unreasonably burdensome to the applicants and that there are no reasonable practicable alternatives: _____ ; or
 - b. unreasonably and negatively impact upon the applicants' use of the property and that there are no reasonable practicable alternatives:

The applicant has received an exemption from the WI Department of Natural Resources for an artificial wetland on the property which will be removed as part of construction. This project does not impact other wetlands or water features.

3. The Special Exception, including any conditions imposed under this Section will:
 - a. be consistent with the existing character of the neighborhood: _____ ; and

The project's footprint is condensed on the property with allowances for necessary items like storm water facilities, we don't feel it can be made smaller to allow for more saving of the Young Woodland.

- b. not effectively undermine the ability to apply or enforce the requirement with respect to other properties: _____ ; and

Section 240-8 of the City code (Cottonwood and Box Elder trees prohibited) would suggest that the owner of the property shall remove the existing Cottonwood and Box Elder trees. The WD-2 area identified has 43 of the 45 trees identified as either Cottonwood or Box Elder. If these trees are destroyed, the WD-2 area would not exist, so the developer asks that the WD-2 area of 0.98 acres be eliminated as Young Woodland and removed from the required preservation, or the exception is granted for this reason. The WD-1 area also contains 5 Box Elder trees, so the developer asks that those areas be eliminated as Young Woodland or the exception is granted for this reason.

- c. be in harmony with the general purpose and intent of the provisions of this Ordinance proscribing the requirement: _____ ; and

The developer is proposing to remove the invasive plant material in the Young Woodland areas identified to enhance the development and clear some areas for development. The clearing of invasive plant material in large areas would include the removal of some trees used to delineate the area as a Young Woodland and thus remove the Young Woodland.

- d. preserve or enhance the functional values of the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback in co-existence with the development (*this finding only applying to an application to improve or enhance a natural resource feature*):

IV. Environmental Commission review of the §15-10.0208B.2.a., b. and c. factors and recommendations as to findings thereon:

1. Characteristics of the real property, including, but not limited to, relative placement of improvements thereon with respect to property boundaries or otherwise applicable setbacks:

The proposed development is an apartment community consisting of (5) 8-unit buildings for a total of 40 units. It is new construction.

2. Any exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district:

The Young Woodlands identified on the property are made up of predominantly Box Elder, Cottonwood, and Siberian Elm with underbrush of invasive buckthorn and honeysuckle.

The developer is proposing to remove the invasive plant material in the Young Woodland areas identified to enhance the development and clear some areas for

development. The clearing of invasive plant material in large areas would include the removal of some trees used to delineate the area as a Young Woodland and thus remove the Young Woodland.

3. Existing and future uses of property; useful life of improvements at issue; disability of an occupant: *New construction.*

4. Aesthetics: *Not applicable. The project's footprint is condensed on the property with allowances for necessary items like storm water facilities.*

5. Degree of noncompliance with the requirement allowed by the Special Exception:

The Young Woodlands identified on the property are made up of predominantly Box Elder, Cottonwood, and Siberian Elm with underbrush of invasive buckthorn and honeysuckle.

6. Proximity to and character of surrounding property: *Commercial to the north and east, single-family to the south, multi-family to the west.*

7. Zoning of the area in which property is located and neighboring area:

The property is R-3 Suburban/Estate Single Family Residence District. Neighboring properties are R-3 to the south, R-8 Multiple-Family Residence District to the west, CC Civic Center to the east, and B-1 Neighborhood Business District to the north.

8. Any negative affect upon adjoining property: *none*

9. Natural features of the property: *For the proposed Knollwood Legacy Apartment development, a Natural Resource Special Exception is being requested to allow the removal of Young Woodland above the allowed 50%. [The young woodlands] are listed as WD-1 and WD-2 in the report and are shown as 0.60 acres and 0.98 acres respectively in the report for a total of 1.58 acres. The developer is proposing to remove the invasive plant material in the Young Woodland areas identified to enhance the development and clear some areas for development. The clearing of invasive plant material in large areas would include the removal of some trees used to delineate the area as a Young Woodland and thus remove the Young Woodland.*

10. Environmental impacts: *There is 1.31 acres of Young Woodland that is outside the wetland and wetland buffer areas on the property, this requires 0.66 acres to be protected. The proposed development is willing to protect 0.16 acres of the Young Woodland which is adjacent to the Young Woodland that overlaps with the wetland and wetland setback if directed by the City. The request is to not preserve or mitigate the Young Woodlands.*

V. Environmental Commission Recommendation:

The Environmental Commission has reviewed the subject Application pursuant to §15-10.0208B. of the Unified Development Ordinance and makes the following recommendation:

1. The recommendations set forth in Sections III. and IV. Above are incorporated herein.
2. The Environmental Commission recommends approval of the Application upon the aforesaid recommendations for the reasons set forth therein.
3. The Environmental Commissions recommends that should the Common Council approve the Application, that such approval be subject to the following conditions:
 - a. Mitigation of six (6) trees, species at the discretion of the City Forester, to be placed at Ernie Lake Park;
 - b. Creation of a conservation easement as defined on the Natural Resource Protection Plan;
 - c. Remove all noxious plant material from the two designated woodland areas, listed as WD-1 and WD-2;
 - d. Receipt of all other required permits and approvals.

The above review and recommendation was passed and adopted at a regular meeting of the Environmental Commission of the City of Franklin on the 23rd day of October, 2019.

Dated this ____ day of _____, 2019.

Arthur Skowron, Chairman

Attest:

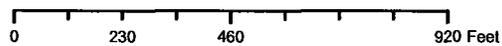
Wesley Cannon, Vice-Chairman



TKN: 795 9999 008



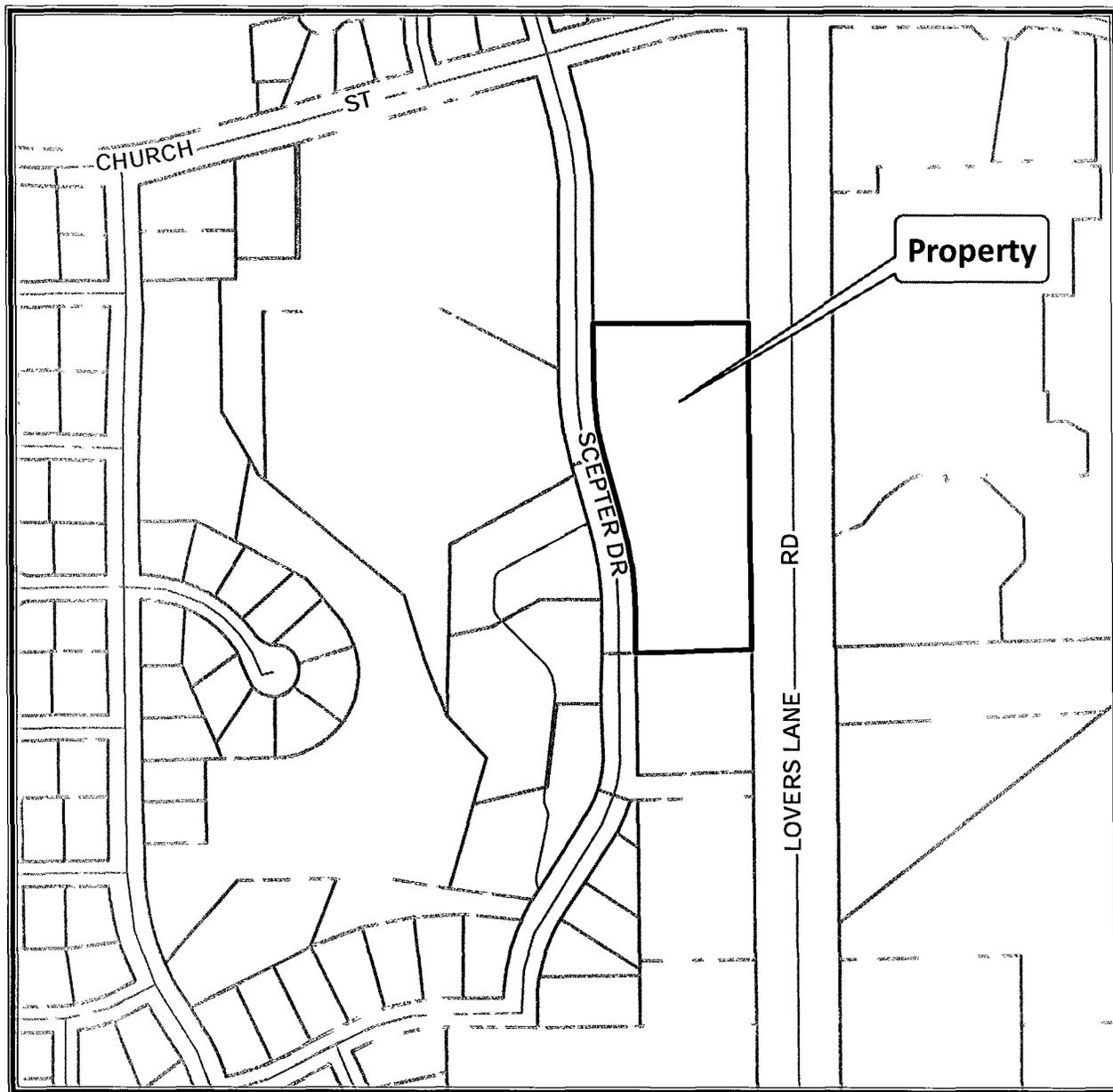
Planning Department
(414) 425-4024



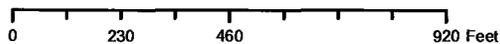
2017 Aerial Photo

This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. This map is provided for informational purposes only and may not be sufficient or appropriate for legal, engineering, or surveying purposes.

TKN: 795 9999 008



Planning Department
(414) 425-4024



This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. This map is provided for informational purposes only and may not be sufficient or appropriate for legal, engineering, or surveying purposes.

BODNER PROPERTY MANAGEMENT, LLC

11514 N. PORT WASHINGTON ROAD

SUITE 1

MEQUON, WI 53092

(262) 241-9101

FAX 241-9087

October 24, 2019

Marion Ecks
Assistant Planner
Department of City Development
City of Franklin
9229 W. Loomis Road
Franklin, Wisconsin 53132

Dear Ms. Ecks:

Please be advised that we are in agreement with the recommendation received last night from the Environmental Commission for the KnollWood Legacy Apartment development.

The wetland delineation report was prepared by Heartland Ecological Group, an assured delineator, and is therefore not included in this submittal package.

Upon your review, please contact me with any questions.

Thank you for your assistance.

Sincerely,

BODNER PROPERTY MANAGEMENT LLC



William A. Bodner
Managing Member

Natural Resource Special Exception Question and Answer Form.

Questions to be answered by the Applicant

Items on this application to be provided in writing by the Applicant shall include the following, as set forth by Section 15-9.0110C. of the UDO:

A. Indication of the section(s) of the UDO for which a Special Exception is requested. _____
15-4 0103(B)(1) Woodlands and Forests- Natural Resource Mitigation

B. Statement regarding the Special Exception requested, giving distances and dimensions where appropriate.
There is 1.31 acres of Young Woodland that is outside the wetland and wetland buffer areas on the property, this requires 0.66 acres to be protected. The proposed development only protects 0.16 acres of the Young Woodland which is adjacent to the Young Woodland that overlaps with the wetland and wetland setback. The request is to not mitigate the remaining 0.50 acres required.

C. Statement of the reason(s) for the request.
The Young Woodlands identified on the property are made up of predominantly Box Elder, Siberian Elm, and Cottonwood, with under brush of invasive buckthorn and honeysuckle. These plant species are undesirable and can't be purchased to replant for mitigation as required by the UDO 15-4 0103(B)(1)(c).

D. Statement of the reasons why the particular request is an appropriate case for a Special Exception, together with any proposed conditions or safeguards, and the reasons why the proposed Special Exception is in harmony with the general purpose and intent of the Ordinance. In addition, the statement shall address any exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district, including a practicable alternative analysis as follows: **See Attached cover letter.**

1) Background and Purpose of the Project.

(a) Describe the project and its purpose in detail. Include any pertinent construction plans.
The proposed development is an apartment community consisting of (5) 8-unit buildings for a total of 40 units

(b) State whether the project is an expansion of an existing work or new construction.
New construction

- (c) State why the project must be located in or adjacent to the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback to achieve its purpose.

None of these areas are being disturbed

2) Possible Alternatives.

- (a) State all of the possible ways the project may proceed without affecting the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback as proposed.

The proposed project does not affect any of these items

- (b) State how the project may be redesigned for the site without affecting the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback.

The proposed project does not affect any of these items

- (c) State how the project may be made smaller while still meeting the project's needs.

The project's footprint is condensed on the property with allowances for necessary items like storm water facilities, we don't feel it can be made smaller to allow for more saving of the Young Woodland

- (d) State what geographic areas were searched for alternative sites.

None

- (e) State whether there are other, non-stream, or other non-navigable water, non-shore buffer, non-wetland, non-wetland buffer, and/or non-wetland setback sites available for development in the area.

The proposed project does not affect any of these items

- (f) State what will occur if the project does not proceed.
Loss of development opportunity on the parcel

3) Comparison of Alternatives.

- (a) State the specific costs of each of the possible alternatives set forth under sub.2., above as compared to the original proposal and consider and document the cost of the resource loss to the community.

Not applicable due to not affecting the areas identified in sub 2

- (b) State any logistical reasons limiting any of the possible alternatives set forth under sub. 2., above.

Not applicable due to not affecting the areas identified in sub 2

- (c) State any technological reasons limiting any of the possible alternatives set forth under sub. 2., above.

Not applicable due to not affecting the areas identified in sub 2

- (d) State any other reasons limiting any of the possible alternatives set forth under sub. 2., above.

Not applicable due to not affecting the areas identified in sub 2

4) Choice of Project Plan.

State why the project should proceed instead of any of the possible alternatives listed under sub.2., above, which would avoid stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback impacts.

Not applicable due to not affecting the areas identified in sub 2

5) Stream or Other Navigable Water, Shore Buffer, Wetland, Wetland Buffer, and Wetland Setback Description.

Describe in detail the stream or other navigable water shore buffer, wetland, wetland buffer, and/or wetland setback at the site which will be affected, including the topography, plants, wildlife, hydrology, soils and any other salient information pertaining to the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback.

The proposed project does not affect any of these items

6) Stream or Other Navigable Water, Shore Buffer, Wetland, Wetland Buffer, and Wetland Setback Impacts.

- a) Diversity of flora including State and/or Federal designated threatened and/or endangered species. Not Applicable Applicable
- b) Storm and flood water storage. Not Applicable Applicable
- c) Hydrologic functions. Not Applicable Applicable
- d) Water quality protection including filtration and storage of sediments, nutrients or toxic substances. Not Applicable Applicable
- e) Shoreline protection against erosion. Not Applicable Applicable
- f) Habitat for aquatic organisms. Not Applicable Applicable
- g) Habitat for wildlife. Not Applicable Applicable
- h) Human use functional value. Not Applicable Applicable
- i) Groundwater recharge/discharge protection. Not Applicable Applicable
- j) Aesthetic appeal, recreation, education, and science value. Not Applicable Applicable
- k) Specify any State or Federal designated threatened or endangered species or species of special concern. Not Applicable Applicable
- l) Existence within a Shoreland. Not Applicable Applicable
- m) Existence within a Primary or Secondary Environmental Corridor or within an Isolated Natural Area, as those areas are defined and currently mapped by the Southeastern Wisconsin Regional Planning Commission from time to time. Not Applicable Applicable

Describe in detail any impacts to the above functional values of the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback:

The proposed project does not affect any of these items

7) **Water Quality Protection.**

Describe how the project protects the public interest in the waters of the State of Wisconsin.

Proposed project will meet storm water requirements of the City and State

Natural Resource Protection Plan

Unified Development Ordinance (UDO) Requirements

27. Please provide the following information on the Natural Resource Protection Plan per Section 15-7.0201 of the Unified Development Ordinance.
- a. Easements and Neighboring Property Boundaries. The location and dimensions of all permanent easements on the subject property boundary lines and adjacent to the site. - - Pleas show the Conservation Easement boundary around the remaining Young Woodland, wetland, wetland buffer, and wetland setback. See revised Plan
 - b. Method of Natural Resource Preservation. Graphic illustration and notes relating to how those natural resource features, which are to be preserved, will actually be preserved in perpetuity (conservation easements, deed restrictions, protective covenants, etc.). - - Again, a Conservation Easement is recommended. The City's template is attached for your review. See revised Plan. We agree to enter into a Conservation Easement once it can be properly prepared.
 - c. Site intensity Calculations. Please provide complete site intensity calculations on the Natural Resource Protection Plan, using the procedure in Section 15-3.0504 of the Unified Development Ordinance. See revised Plan

Additional City Development Department Comments

28. The Wetland Setback is listed twice on the NRPP Map. It appears one is meant to be 'Impacted' Wetland Setback. Please revise accordingly. See revised Plan
29. A NRPP Map dated May 16, 2019 indicates the total acreage of young woodlands onsite as 1.58 acres. The more recent NRPP Map, dated May 22, 2019, indicates the total acreage as 1.38 acres. As these plans are so closely dated, please confirm that 1.38 acres is correct. See revised Plan. The proper amount is 1 31
30. Include the total Acres of Land Impacted on the NRPP Map. See revised Plan
31. If areas of young woodland or other natural resources such as wetlands overlap, show or note the area of overlap on the map. See revised Plan

Natural Resource Special Exception

Additional City Development Department Comments

32. It is recommended that the attached NRSE Question and Answer Form be completed and submitted as part of this request. This form assists in demonstrating that the findings under Section 15-10.0208B.2. are met. Please provide complete responses to:
- a. Question and Answer Section, Item D: Statement of Appropriateness
 - b. Section 2, Possible Alternatives: Items A through F.
 - c. Section 3, Comparison of Alternatives: Items A through D.
 - d. Section 4, Choice of Project Plan
 - e. Section 5, Stream or Other Navigable Water, Shore Buffer, Wetland, Wetland Buffer, and Wetland Setback Description.

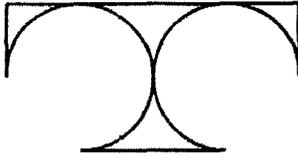
f. Section 6, Stream or Other Navigable Water, Shore Buffer, Wetland, Wetland Buffer, and Wetland Setback Impacts: Items A through M and narrative section.

If items are not applicable, please describe why. We believe we have updated the form to answer all sections

33. Please provide maps of young woodlands to be protected. If areas of young woodland or other natural resources such as wetlands overlap, show the area of overlap on the map.

See revised Plan

34. It is recommended that mitigation be provided for the impacts to the young woodlands. See Section 15-4.0103B. of the UDO for recommended mitigation standards. We request this be waived. The quality of the Young Woodlands is poor and made up of mostly invasive plant material. As the UDO requires you to mitigate with the same plant material that is removed, it becomes difficult as you can't buy the plants that are growing here due to no one would plant them



TDI ASSOCIATES, INC.

ARCHITECTS & PLANNERS

EMPLOYEE OWNED

N8 W22350 JOHNSON DR., SUITE B-4, WAUKESHA, WI 53186

PHONE 262/409-2530

FAX 262/409-2531

September 11, 2019

City of Franklin -Environmental Commission

Subject: Knollwood Legacy Apartments NRSF request

Dear Commission

Franklin**OCT 28 2019****City Development**

For the proposed Knollwood Legacy Apartment development, a Natural Resource Special Exception is being requested to allow the removal of Young Woodland above the allowed 50% Heartland Ecological Group did the Woodland Determination and Delineation and their report dated April 19, 2019 was submitted to the City as part of the request. The Woodland Determination and Delineation report identified two areas of Young Woodland on the property. They are listed as WD-1 and WD-2 in the report and are shown as 0.60 acres and 0.98 acres respectively in the report for a total of 1.58 acres. The developer is proposing to remove the invasive plant material in the Young Woodland areas identified to enhance the development and clear some areas for development. The clearing of invasive plant material in large areas would include the removal of some trees used to delineate the area as a Young Woodland and thus remove the Young Woodland.

The developer requests the Special Exception to not have to preserve or mitigate the areas of Young Woodland lost due to the removal of invasive plant material due to City Code Section 240-8 that seems in conflict.

- 1) Section 240-8 of the City code (Cottonwood and Box Elder trees prohibited) would suggest that the owner of the property shall remove the existing Cottonwood and Box Elder trees. The WD-2 area identified has 43 of the 45 trees identified as either Cottonwood or Box Elder. If these trees are destroyed, the WD-2 area would not exist, so the developer asks that the WD-2 area of 0.98 acres be eliminated as Young Woodland and removed from the required preservation, or the exception is granted for this reason. The WD-1 area also contains 5 Box Elder trees, so the developer asks that those areas be eliminated as Young Woodland or the exception is granted for this reason.

Additional to the code section above, the Young Woodland areas are identified in the report as having shrub layers of invasive species like common buckthorn and honeysuckle; again, these species are typically desired to be removed and thus the developer is asking for permission to remove these species.

The Young Woodland report identifies as the other dominant tree species *Ulmus pumila* (Siberian Elm), which is not listed in Code Section 240-8, but the developer would ask for the City Forester's opinion on the value of that tree. If the City Forester or your Commission wants this tree species preserved, then the developer will not remove it as an alternate option. This species is found mostly in the area the developer is proposing a Conservation Easement, such that an area of 0.36 acres of Young Woodland WD-1 can be preserved, this includes 0.20 acres of wetland and wetland buffer. The developer would still like permission to remove other invasive species at the ground level to enhance this area even if the trees are asked to be saved.

The City requires that 50% of the Young Woodland for the development be preserved or mitigated. The actual area on the subject property for each delineated Young Woodland areas (some of the delineated area is in Right of Way and neighboring parcels) is WD-1 is 0.54 acres and WD-2 is 0.97 acres, and the

area of overlap with wetland and wetland buffer is not counted as part of the required 50% preserved. Thus there is a total of 1.31 acres of Young Woodland to have 50% preserved, or a total of 0.66 acres required to be preserved. As stated above, the developer is willing to preserve 0.16 acres within the WD-1 area if so directed and enhance it with the removal of the invasive species at the ground level. If the WD-2 area that is predominantly Cottonwood and Boxelder is not considered in the required 50% preserved area of Young Woodland, then the area of WD-1 that would be used for that calculation is 0.34 total acres of Young Woodland requiring 0.17 acres to be preserved. As stated previously there is an area of 0.16 acres within the Conservation Easement that can be preserved and enhanced to meet this requirement.

If there are any questions, I can be reached at 262-409-2530.

Sincerely,

Rob Williams, RLA
Project Manager

Heartland

ECOLOGICAL GROUP INC

506 Springdale Street, Mount Horeb, WI 53572

April 19, 2019

Mr. William Bodner
Bodner Property Management, LLC
11514 North Port Washington Rd.
Suite 1
Mequon, WI, 53092

RE: Woodland Determination and Delineation Summary – South Scepter Drive Site, City of Franklin, Milwaukee County, Wisconsin

Dear Mr. Bodner:

Heartland Ecological Group, Inc. ("Heartland") completed woodland survey at the Project Site on April 17, 2019 at the request of Bodner Property Management, LLC. Fieldwork was completed by Eric C. Parker of Heartland Ecological Group, Inc. The 5.80-acre site (the "Study Area") is southwest of the intersection of State Trunk Highway (STH) 100 (Lovers Lane Road) and West Church Street, in the southwest ¼ of Section 8, T5N, R21E, City of Franklin, Milwaukee County, WI (Attachment 1, Figure 1). The purpose of the woodland delineation was to determine the location and extent of woodlands within the Study Area. Two (2) woodland areas were identified within the Study Area (Attachment 1, Figure 6).

Methods

Woodlands were determined and delineated based on the City of Franklin's Unified Development Ordinance ("UDO") for inclusion in the natural resource protection plan (NRPP). The UDO defines Young and Mature Woodlands as follows:

MATURE WOODLAND

An area or stand of trees whose total combined canopy covers an area of one acre or more and at least 50% of which is composed of canopies of trees having a diameter at breast height (DBH) of at least 10 inches; or any grove consisting of eight or more individual trees having a DBH of at least 12 inches whose combined canopies cover at least 50% of the area encompassed by the grove. However, no trees planted and grown for commercial purposes should be considered a mature woodland.

YOUNG WOODLAND

An area or stand of trees whose total combined canopy covers an area of 0.50 acre or more and at least 50% of which is composed of canopies of trees having a DBH of at least three inches. However, no trees planted and grown for commercial purposes shall be considered a young woodland.

Determinations and delineations were completed in the field and utilized available resources including aerial imagery available through the U.S. Department of Agriculture (USDA) Farm



Service Agency’s (FSA) National Agriculture Imagery Program (NAIP), Google Earth™, and Milwaukee County’s interactive mapping.

The boundary of woodlands was determined based on the outer drip-line of the component trees within each defined woodland. Pink flagging was used to mark the woodland boundary (Attachment 2, Site Photos).

Individual healthy trees within UDO-defined young and mature woodlands that were equal to or greater than eight (8) inches DBH were identified. Identifications included species, DBH size, and location using a Global Positioning System (GPS) capable of sub-meter accuracy.

Results

Two young woodlands, WD-1 and WD-2 were determined and delineated in the Study Area (Attachment 1, Figure 6). Table 1 below summarizes the woodlands. Photos of the woodlands are provided in Attachment 2. Individual tree sizes, species and coordinates that are equal to or greater than eight (8) inches DBH are provided in Attachment 3.

Table 1 Summary of Woodlands within the Study Area

Woodland Name	Young or Mature	Dominant Tree Species	Trees >= 8 inches DBH	Size (Acres)
WD-1	Young	Ulmus pumila, Acer negundo	27	0.60
WD-2	Young	Acer negundo, Populus deltoides	45	0.98

Woodland 1 (WD-1) is a 0.60-acre young woodland in the southern portion of the Study Area. Dominant tree species observed in WD-1 included Siberian elm (*Ulmus pumila*) and box elder (*Acer negundo*, FACW). Dominant associating shrubs were invasive and included common buckthorn (*Rhamnus cathartica*) and hybrid bush honeysuckle (*Lonicera x bella*).

Woodland 2 (WD-2) is a 0.98-acre young woodland in the northern half of the Study Area. Dominant tree species observed in WD-2 included box elder and cottonwood (*Populus deltoides*). Dominant associating shrubs were invasive and included common buckthorn and hybrid bush honeysuckle.

Two other potential areas of woodland were identified (Attachment 1, Figure 6) but were determined not to meet the definition of mature or young woodland based on the requirements of the UDO. Both areas were too small (less than 0.5 acre) and/or lacked the necessary number of mature trees greater than or equal to 12 inches DBH to be a mature woodland grove.

Heartland recommends that all applicable regulatory agency reviews and permits are obtained prior to beginning work within the Study Area. Heartland can assist with evaluating the need for additional environmental reviews, surveys, or regulatory agency coordination in consideration of the proposed activity and land use as requested but is outside of the scope of the woodland determination.

Experienced and qualified professionals completed the woodland determination using standard practices and professional judgment. Woodland determinations may be affected by the health of individual trees and other conditions present within the Study Area at the



Bodner Property Management, LLC
South Scepter Drive
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time of the fieldwork. All final decisions on woodlands are made by the City of Franklin. Woodland determination reviews by the City may result in modifications to the findings presented to the Client. These modifications may result from varying conditions between the time the woodland determination was completed and the time of the review. Factors that may influence the findings may include but are not limited to tree health, growth, and size of individual trees.

Please feel free to contact me if you have any questions regarding this wetland determination.

Regards,

Eric C. Parker, Principal Scientist
Heartland Ecological Group, Inc.
eric@heartlandecological.com
414.380.0269

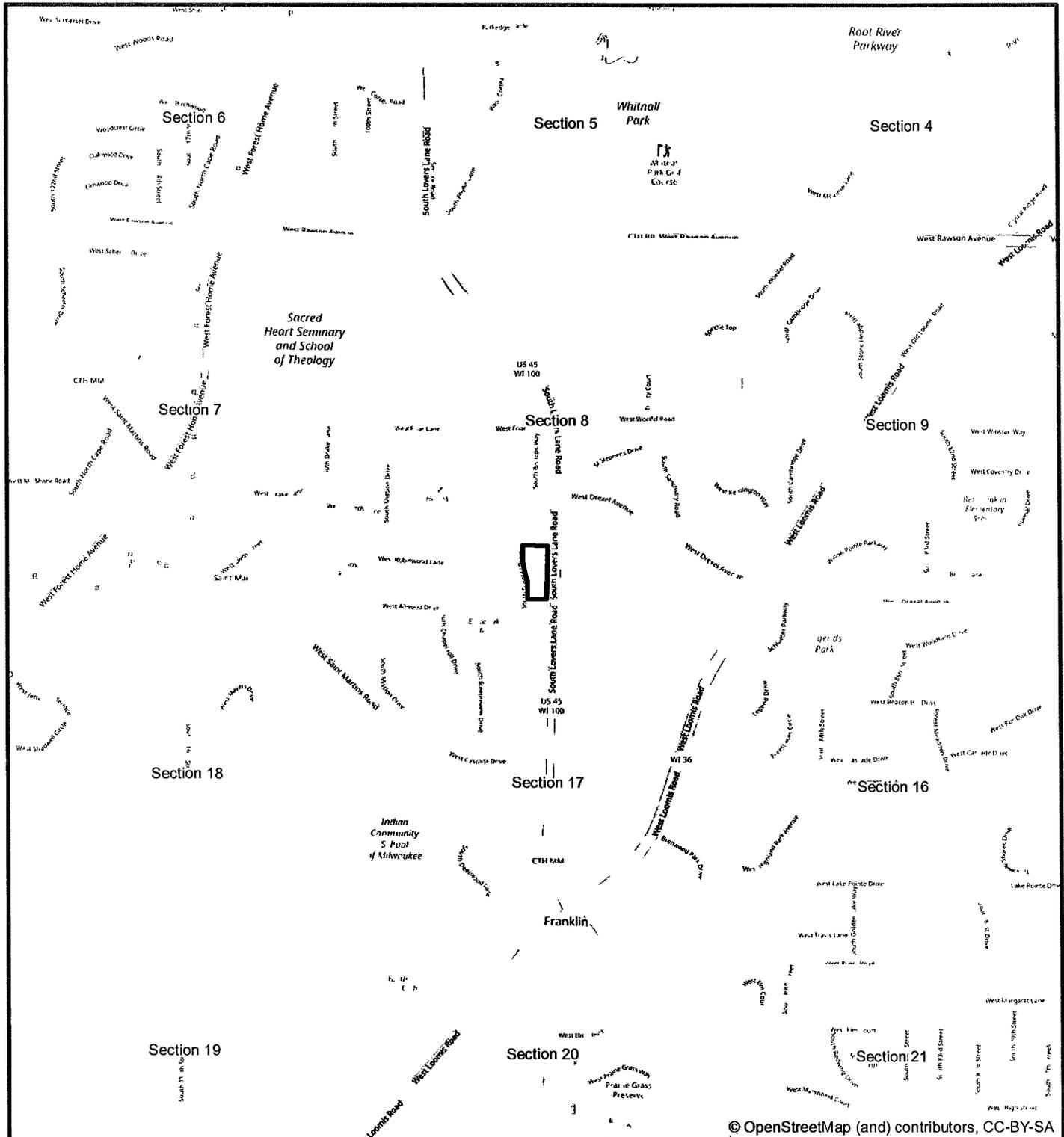
Attachments:

- 1 – Figures 1 and 6
- 2 – Tree Table
- 3 – Wetland Determination Data Sheets
- 4 – Site Photographs

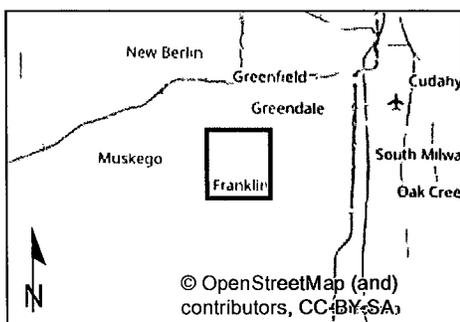


Bodner Property Management, LLC
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April 19, 2019

Attachment 1 | Figures

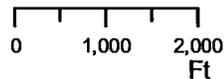


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- Study Area
- Township
- Section

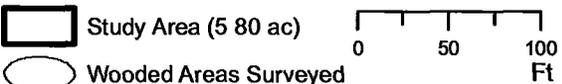
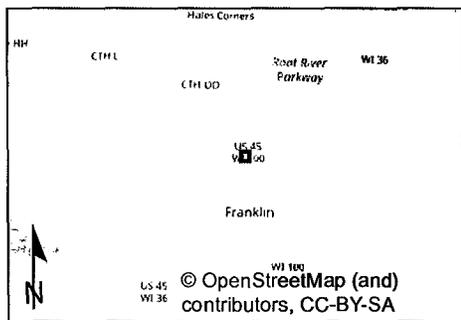


Heartland
ECOLOGICAL GROUP INC

Figure 1. Project Location

S Scepter Road Parcel
Project #20180136
T5N, R21E, S08
C Franklin, Milwaukee Co, WI

OpenStreetMap
Data HEG 11/2/2018



- Tree Locations (> 8in DBH)**
- Acer negundo (box elder)
 - Acer saccharinum (silver maple)
 - Populus deltoides (cottonwood)
 - Ulmus pumila (Siberian elm)

Heartland
ECOLOGICAL GROUP INC

Figure 6. Woodland Survey

S Scepter Road Parcel
Project #20180136
T5N, R21E, S08
C Franklin, Milwaukee Co, WI

2017 NAIP
Data Milwaukee Co, HEG 4/18/2019



Bodner Property Management, LLC
South Scepter Drive
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Attachment 2 | Site Photographs

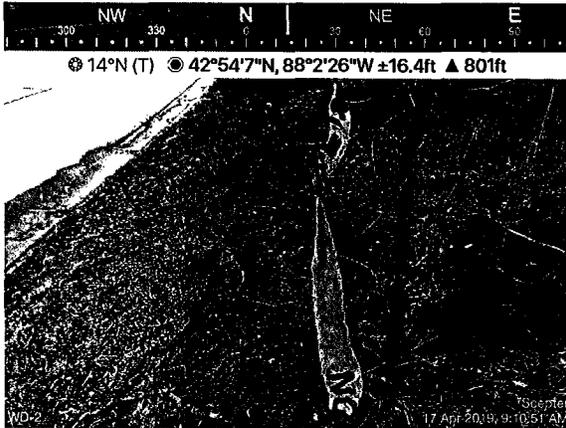


Photo #1 Ribbon flagging used to mark the edges of woodland, typical.



Photo #2 Woodland WD-1, view northeast within woodland.

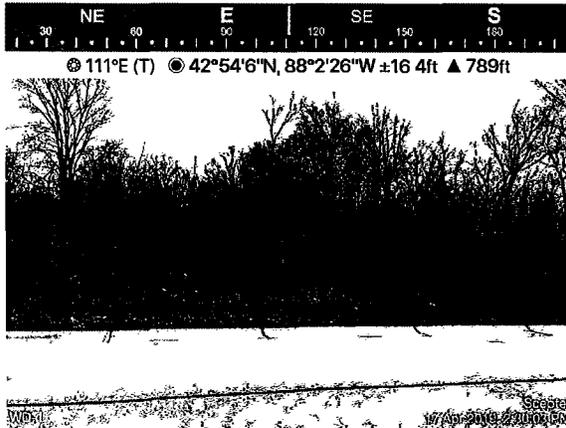


Photo #3 Woodland WD-1, view east from exterior.

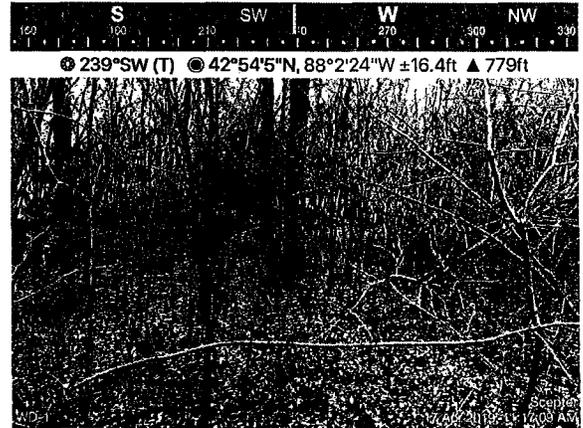


Photo #4 Woodland WD-2, view southwest within woodland.



Photo #5 Woodland WD-2, view north within woodland.



Photo #6 Woodland WD-2, view southeast from exterior.



Bodner Property Management, LLC
South Scepter Drive
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Attachment 3 | Tree Survey Table

South Scepter Drive Woodland/Tree Survey

Heartland Ecological Group 4/17/2019

OBJECTID	Tree Number	Tree Size(s) (Inches)	Stem #	Species	x_coordinates	y_coordinates
1	1-1	8in		Acer negundo (box elder)	-88 0226194406	42 5405582750
2	1-2	12in		Acer negundo (box elder)	-88 0226111453	42 5405614843
3	1-3	14in		Acer negundo (box elder)	-88 0225840518	42 5405651289
4	1-4	8in		Acer negundo (box elder)	-88 0225982676	42 5405856187
5	1-5	8in		Acer saccharinum (silver maple)	-88 0225839469	42 5406039705
6	1-6	11-8-9in	Triple stem	Ulmus pumila (Siberian elm)	-88 0225658444	42 5406556918
7	1-7	9in		Ulmus pumila (Siberian elm)	-88 0224724302	42 5406199955
8	1-8	9-12in	double stem	Ulmus pumila (Siberian elm)	-88 0223343000	42 5406650710
9	1-9	9in		Ulmus pumila (Siberian elm)	-88 0223174786	42.5406673033
10	1-10	8in		Ulmus pumila (Siberian elm)	-88 0223156922	42.5406545383
11	1-11	14in		Ulmus pumila (Siberian elm)	-88 0222790294	42.5406137564
12	1-12	9in		Ulmus pumila (Siberian elm)	-88 0223258228	42 5406085002
13	1-13	9in		Ulmus pumila (Siberian elm)	-88 0223256975	42 5405958148
14	1-14	16in		Ulmus pumila (Siberian elm)	-88 0223413644	42.5405795972
15	1-15	16in		Acer negundo (box elder)	-88 0223430324	42 5405675952
16	1-16	8in		Ulmus pumila (Siberian elm)	-88 0223728846	42 5405862475
17	1-17	12in		Ulmus pumila (Siberian elm)	-88 0224008808	42 5405860254
18	1-18	8in		Ulmus pumila (Siberian elm)	-88 0224178129	42 5405671067
19	1-19	16in		Ulmus pumila (Siberian elm)	-88 0224299142	42 5405748882
20	1-20	8-12in	double stem	Ulmus pumila (Siberian elm)	-88 0224372949	42 5405654520
21	1-21	8in		Ulmus pumila (Siberian elm)	-88 0224576355	42.5405876448
22	1-22	9-8in	double stem	Ulmus pumila (Siberian elm)	-88 0224692230	42 5405639404
23	1-23	8in		Ulmus pumila (Siberian elm)	-88 0225080087	42.5405746790
24	1-24	8in		Ulmus pumila (Siberian elm)	-88 0225133957	42 5405672572
25	1-25	10in		Ulmus pumila (Siberian elm)	-88 0225398135	42 5405595473
26	1-26	12in		Ulmus pumila (Siberian elm)	-88 0225426742	42 5405613960
27	1-27	14in		Ulmus pumila (Siberian elm)	-88 0225834707	42 5405582322
28	2-1	10in		Ulmus pumila (Siberian elm)	-88 0226772417	42 5409555594
29	2-2	9-10in	double stem	Acer negundo (box elder)	-88 0226541583	42 5409785118
30	2-3	10in		Ulmus pumila (Siberian elm)	-88 0226201998	42 5409937655
31	2-4	18in		Populus deltoides (cottonwood)	-88 0225657587	42 5409653304
32	2-5	11in		Acer negundo (box elder)	-88 0225857367	42 5410161416
33	2-6	10-12in	double stem	Acer negundo (box elder)	-88 0226189197	42 5410197431
34	2-7	27in		Populus deltoides (cottonwood)	-88 0226794141	42 5410289523
37	2-8	9in		Acer negundo (box elder)	-88 0227083660	42 5410728756
35	2-9	16in		Populus deltoides (cottonwood)	-88 0227036385	42 5410529575
36	2-10	12in		Populus deltoides (cottonwood)	-88 0227049213	42 5410546051
38	2-11	8in		Acer negundo (box elder)	-88 0227147417	42.5410632918
39	2-12	8in		Acer negundo (box elder)	-88 0227116699	42 5410698608
40	2-13	10in		Acer negundo (box elder)	-88 0226353357	42 5410653321
41	2-14	11in		Acer negundo (box elder)	-88 0226371747	42 5410637803
42	2-15	9in		Acer negundo (box elder)	-88 0226339941	42 5410877917
43	2-16	9in		Acer negundo (box elder)	-88 0226378086	42 5410825711
44	2-17	8in		Acer negundo (box elder)	-88 0226512917	42 5411042434
45	2-18	9in		Acer negundo (box elder)	-88 0226659776	42 5411180292
46	2-19	8in		Acer negundo (box elder)	-88 0226322024	42 5411238973
47	2-20	10in		Acer negundo (box elder)	-88 0225801719	42 5411494539
48	2-21	8in		Acer negundo (box elder)	-88 0225964601	42 5411608599
49	2-22	12in		Populus deltoides (cottonwood)	-88 0226937138	42 5412074111
50	2-23	15in		Populus deltoides (cottonwood)	-88 0226990451	42 5412106989
51	2-24	18in		Populus deltoides (cottonwood)	-88 0226572893	42 5412056321
52	2-25	10in		Acer negundo (box elder)	-88 0225517093	42 5411441171
53	2-26	9in		Acer negundo (box elder)	-88 0225455657	42 5411444322
54	2-27	8in		Acer negundo (box elder)	-88 0225618046	42 5411282602
55	2-28	13in		Populus deltoides (cottonwood)	-88 0225383475	42.5411674878
56	2-29	8in		Acer negundo (box elder)	-88 0224851985	42 5411764740
57	2-30	9-9in	double stem	Acer negundo (box elder)	-88 0224165580	42 5411581818
58	2-31	8in		Acer negundo (box elder)	-88 0223868204	42 5411478591
59	2-32	14in		Acer negundo (box elder)	-88 0223763860	42 5411487896
60	2-33	9in		Acer negundo (box elder)	-88 0224087425	42 5411311485
61	2-34	9in		Acer negundo (box elder)	-88 0224062428	42 5411456003
62	2-35	8in		Acer negundo (box elder)	-88 0224197221	42 5411461066
63	2-36	12in		Acer negundo (box elder)	-88 0224882259	42 5411533241
64	2-37	8-9-9in	Triple stem	Acer negundo (box elder)	-88 0224970576	42 5411481401
65	2-38	21in		Populus deltoides (cottonwood)	-88 0225541666	42 5411099217
66	2-39	9in		Acer negundo (box elder)	-88 0225689535	42 5410935510
67	2-40	9in		Acer negundo (box elder)	-88 0225795720	42 5410967044
68	2-41	12in		Acer negundo (box elder)	-88 0226030644	42 5410742367
69	2-42	8-8in	double stem	Acer saccharinum (silver maple)	-88 0225402085	42 5410750891
70	2-43	8-10-10-11in	quadruple stem	Acer negundo (box elder)	-88 0225043800	42 5410636567
71	2-44	8in		Acer negundo (box elder)	-88 0225739205	42 5410441601
72	2-45	11in		Acer negundo (box elder)	-88.0225983369	42.5410507356

Chapter 240. Trees

§ 240-8. Cottonwood and Box Elder trees prohibited.

Each and every female tree of the species *Populus deltoides*, variety *Populus balsamifera* or other pistillate form of the genus *Populus*, commonly known as "Cottonwoods," every female tree of the species *Acer negundo*, commonly called the "seed-bearing Box Elder," which is now or may hereafter become infested with *Leptocoris trivittatus*, commonly known as the "Box Elder" bug, or any other tree or shrub whose seeds, fruits or flowers shall fall in such manner as to interfere with the storm drainage system is hereby declared to be a public nuisance, and any person having any such tree on his or her premises shall cause the same to be destroyed.

Chapter 178. Nuisances

§ 178-3. Public nuisances affecting health

The following acts, omissions, places, conditions and things are hereby specifically declared to be public health nuisances, but such enumeration shall not be construed to exclude other health nuisances coming within the definition of § 178-2

A Adulterated food All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public ⁽¹⁾

(1) *Editor's Note See also Ch 138, Food and Drink Establishments Camps and Campgrounds Swimming Pools, Hotels, and Vending Machines*

B Unburied carcasses. Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within 24 hours after death

C Breeding places for vermin, etc Accumulations of decayed animals or vegetable matter, trash, rubbish rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed

D Stagnant water All stagnant water, in which mosquitoes, flies or other insects can multiply

E Privy vaults and garbage cans Privy vaults and garbage cans which are not flytight

F. Noxious weeds

[Amended 6-22-1999 by Ord No 99-1560; 4-18-2000 by Ord No 2000-1598; 7-9-2002 by Ord No 2002-1720]

(1) Purpose The purpose of this subsection is to promote the preservation, restoration and management of native plant communities and wildlife habitats within the City limits, while recognizing that landowners may have an interest in maintaining managed turf grass landscapes The use of wildflowers and native plants in managed landscape design is encouraged, is economical, reduces maintenance, conserves water and soil, reduces use of pesticides, herbicides, and fertilizers, sustains butterflies, birds, and other wildlife, and preserves rapidly disappearing species

(2) Definitions. As used in this subsection, the following terms shall have the meanings indicated

DESTROY

The complete killing of weeds or the killing of weed plants above the surface of the ground by the use of chemicals, cutting, tillage, cropping system, pasturing livestock or any or all of these in effective combination, at a time and in a manner as will effectually prevent the weed plants from maturing to the bloom or flower stage

NOXIOUS WEEDS

Canada thistle, leafy spurge and field bindweed (creeping Jenny) and such other vegetative material as is set forth under this definition The growth of noninvasive native plants, including but not limited to ferns, grasses, forbs, aquatic plants, trees and shrubs

in a managed and maintained landscape is permitted under this Subsection F, provided such plants were not obtained, planted or maintained in violation of any federal, state or other local law and further provided that such landscape or vegetated area is not unmanaged in appearance or overgrown, when such growth indicates a condition of neglect that may adversely affect human health, safety or welfare or property values, the latter conditions of illegal or unmanaged growth constituting noxious weeds. All noxious weeds shall be kept cut to a height not to exceed 18 inches, and in platted subdivisions which have buildings on more than 50% of the lots, noxious weeds shall be kept cut to a height of not to exceed six inches. Noxious weeds also include: Bull thistle (*Cirsium vulgare*), Crown Vetch (*Coronilla varia*), Queen Anne's Lace (*Daucus carota*), Purple loosestrife (*Lythrum salicaria*) Garlic mustard (*Alliaria petiolata*), White sweetclover (*Melilotus alba*), Yellow sweetclover (*Melilotus officinalis*), Periwinkle (myrtle) (*Vinca minor*), Teasel (*Dipsacus sylvestris*), Common burdock (*Actium minus*) and Giant burdock (*Actium lappa*).

[Amended 9-24-2002 by Ord. No. 2002-1726]

PERSON

Every individual, association, firm, corporation or entity of any kind whatsoever.

SUBNOXIOUS WEEDS

Plants which have the potential to invade wild areas, out-compete native species and degrade habitats. Subnoxious weeds are prohibited within any landscape plan as may be required by the City of Franklin Unified Development Ordinance; however, the removal or destruction of existing subnoxious weeds by a landowner is encouraged, but not required. Subnoxious weeds include: Autumn olive (*Elaeagnus umbellata*), Barberry (*Berberis* spp.), Multiflora Rose (*Rosa multiflora*), Buckthorn Common buckthorn (*Rhamnus cathartica*), Glossy "Tall hedge" buckthorn (*Rhamnus frangula*), European alder (*Alnus glutinosa*), Privet (*Ligustrum vulgare*), Siberian elm (*Ulmus pumila*), Norway maple (*Acer platanoides*) and European honeysuckle (*Lonicera tartarica*, *L. japonica*, *L. maakii*, *L. morrowi*, *L. x-morrowi*, *L. x-bella* and their cultivars).

- (3) Destruction required. Every person shall destroy all noxious weeds on land which such person owns, occupies or controls.
- (4) Enforcement.
 - (a) Weed Commissioner appointment. Annually on or before May 15, the Mayor shall appoint a Weed Commissioner for each aldermanic district. If an Alderperson wishes to be the Weed Commissioner for that district, the Mayor shall appoint the Alderperson.
 - (b) Weed Commissioner's duties. The Mayor delegates to the City Clerk the responsibility to annually publish on or before May 15 a Class 2 notice under Ch. 985, Wis. Stats., that every person is required to destroy noxious weeds on land within his or her control, ownership or occupancy. The Weed Commissioner shall carefully investigate the existence of noxious weeds and cause such noxious weeds to be destroyed by cutting. The Weed Commissioner may also be the weed cutter. The Weed Commissioner and/or cutter is authorized to enter upon any lands not exempt under § 66.0407(5), Wis. Stats., pursuant to § 66.0517(3), Wis. Stats.
 - (c) Procedure Upon discovering the existence of noxious weeds, the Weed Commissioner may notify the office of the Clerk to give five days' written notice by mail to the owner or occupant of the land containing noxious weeds to destroy such weeds. If such weeds are not destroyed after five days, the Weed Commissioner shall cause all noxious weeds on the identified land to be destroyed by cutting. The cutter shall keep a written record of the time devoted to weed destruction for each parcel of land.
 - (d) Payment The cutter shall make and present to the City Clerk an account verified by oath and approved by the Weed Commissioner. The account shall specify by separate items

the hours and amount chargeable to each parcel of land For private land, the City shall enter the amount chargeable and an investigative notice charge of \$35 to each parcel of land in the tax roll as a tax on the land, which shall be collected as a tax For public land, the City may collect the amount due by other available means
[Amended 4-2-2013 by Ord. No. 2013-2104]

- (e) **Certain complaints prohibited** No person shall make or aid and abet in the making of a written or oral complaint to the City or the Weed Commissioner under this Subsection F with the intent to obtain weed cutting work for monetary compensation for the person or for a person other than the Weed Commissioner Any person violating this Subsection F(4)(e) shall be subject to the penalty provision set forth under § 1-19 of the Municipal Code
- (5) **Appeals** A person owning, occupying or controlling land which is the subject of a determination of the existence of noxious weeds by the Weed Commissioner may object to and appeal such determination Such person shall have a right of appeal, provided that the person files a written objection and request for an appeal with the City Clerk within three days of the date of the notice to the person to destroy weeds set forth under Subsection F(4)(c), above. Upon receipt of the written objection and request for appeal, the City Clerk shall deliver copies of the objection and request to the Weed Commissioner and the Alderperson of the district in which the property is located. The Alderperson may attempt to mediate the dispute, and upon notice from the Alderperson to the City Clerk that the Alderperson will not mediate the dispute or that mediation has failed or upon the expiration of five days from the date of delivery without notice that the dispute has been resolved, the City Clerk shall place the objection and request upon an agenda for Common Council determination The person appealing shall provide written and photographic or video evidence to the Common Council that the subject vegetation is not noxious weeds and the burden of proof of such issue shall be on the appellant
- G **Water pollution.** The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage creamery or industrial wastes or other substances
- H. **Noxious odors etc.** Any use of property, substances or things within the City emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, gases, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the City
- I. **Street pollution.** Any use of property which shall cause any nauseous or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the City.
- J **Air pollution.** The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash and industrial dust or other atmospheric pollutants within the City limits or within one mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property in the City.



January 24, 2019

EXE-SE-2019-41-00005

Bodner Property Management, LLC
C/O William Bodner
11514 N Port Washington Rd, Suite 1
Mequon, WI 53092

RE: Artificial wetland exemption determination for an area described as W-1, located in the SE1/4 of the SW1/4 of Section 08, Township 05 North, Range 21 East, City of Franklin, Milwaukee County

Dear Mr. Bodner:

This letter is in response to your request for an artificial wetland exemption determination for the above-mentioned wetlands.

According to 281.36 (4n), State Statutes, a landscape feature where hydrophytic vegetation may be present as a result of human modification to the landscape or hydrology and for which no definitive evidence exists showing a prior wetland or stream history before August 1, 1991, may be exempt from state wetland regulations. The following types of artificial wetlands cannot be exempted from state wetland regulation:

- 1) A wetland that serves as a fish spawning area or that is passage to a fish spawning area
- 2) A wetland created as a result of a wetland mitigation requirement

In addition, DNR must also consider whether the artificial wetland is providing significant flood protection to adjacent or downstream properties and infrastructure, and/or significant water quality functions to adjacent or downstream water bodies.

The Department reviewed the following materials to aid in our exemption determination:

- The request narrative
- A wetland delineation completed in 2018
- Natural Resources Conservation Service (NRCS) soil mapping
- Historical maps, including the original land survey plat and United States Geological Survey (USGS) topographic quad maps
- Pre-construction and post-construction aerial photographs
- Site photographs

Below is a summary of our findings:

Request Narrative

Heartland Ecological Group, Inc. was retained by Bodner Property Management, LLC to provide professional wetland consulting services for the above referenced property as part of this request

for an artificial wetland exemption determination. The requestor has reason to believe the area identified as W-1 (see enclosed map) meets the definition of an artificial wetland. Justification for this statement is due to decommissioning and demolition of buildings within and adjacent to W-1, as well as widening of South Lovers Lane Road, commercial development to the west, expansion of South Scepter Drive and additional residential development to the east all around 2007. W-1 has an area of 0.33 acres.

Wetland Delineation

A wetland delineation completed in 2018 by DNR assured delineator Jeff Kraemer, and the accompanying data form for wetland sample point P1, describe W-1 as a wet meadow depression connected to the ditch line and an east west culvert underneath STH 100. W-1 does not appear to be contiguous with any other waterway or wetland.

NRCS Soil Mapping

NRCS soil maps from 1918, 1971 and most currently indicate W-1 consists of the Miami silty clay loam, Morley silt loam and Blount (BIA)/Ozaukee (OzaB2) silt loam soil series, respectively. The Miami series is described as having good drainage, the Morley series consists of well drained/moderately well drained soils and the Blount/Ozaukee series are listed as predominately non-hydric.

Historical Maps

The original land survey section line notes indicate areas of marshland near the southern border of the delineation limits, but the associated plat map does not depict waterways or wetlands in the vicinity of W-1. The USGS topographic quad maps from 1891, 1959, 1971 and 1976 do not exhibit streams or marshland in the area of W-1.

Aerial Photography

A review of orthophotography from 1937 to 1970 indicate W-1 was historically farmed and occupied by buildings, with only the 1963 aerial photograph showing a wetness signature in the vicinity of W-1. Evidence of the decommissioning of the farmstead was first observed in the 1975 aerial photograph, and faint wetness signatures/color tone differences can be seen in the 1980, 1985 and 1990 aerial photographs.

Site Photographs

Photographs included in the delineation report, taken from multiple vantage points, confirm W-1 is located near a culvert outlet which appears to be conveying stormwater runoff from the adjacent property to the east.

Conclusion

Based upon the information provided above, the area described as W-1 lacked definitive evidence of wetland history prior to August 1, 1991, and fulfills all artificial wetland exemption standards.

Therefore, W-1 is exempt from state wetland regulations.

This letter describes DNR's decision regarding the jurisdictional status of W-1, and is only valid for state jurisdictional purposes. **For decisions regarding the federal jurisdictional status of W-1, you will need to contact the U.S. Army Corps of Engineers.** The U.S. Army Corps of Engineers contact for Milwaukee County is April Marcangeli. April Marcangeli can be reached at (651) 290-5731.

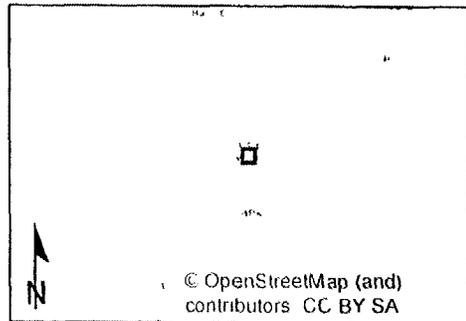
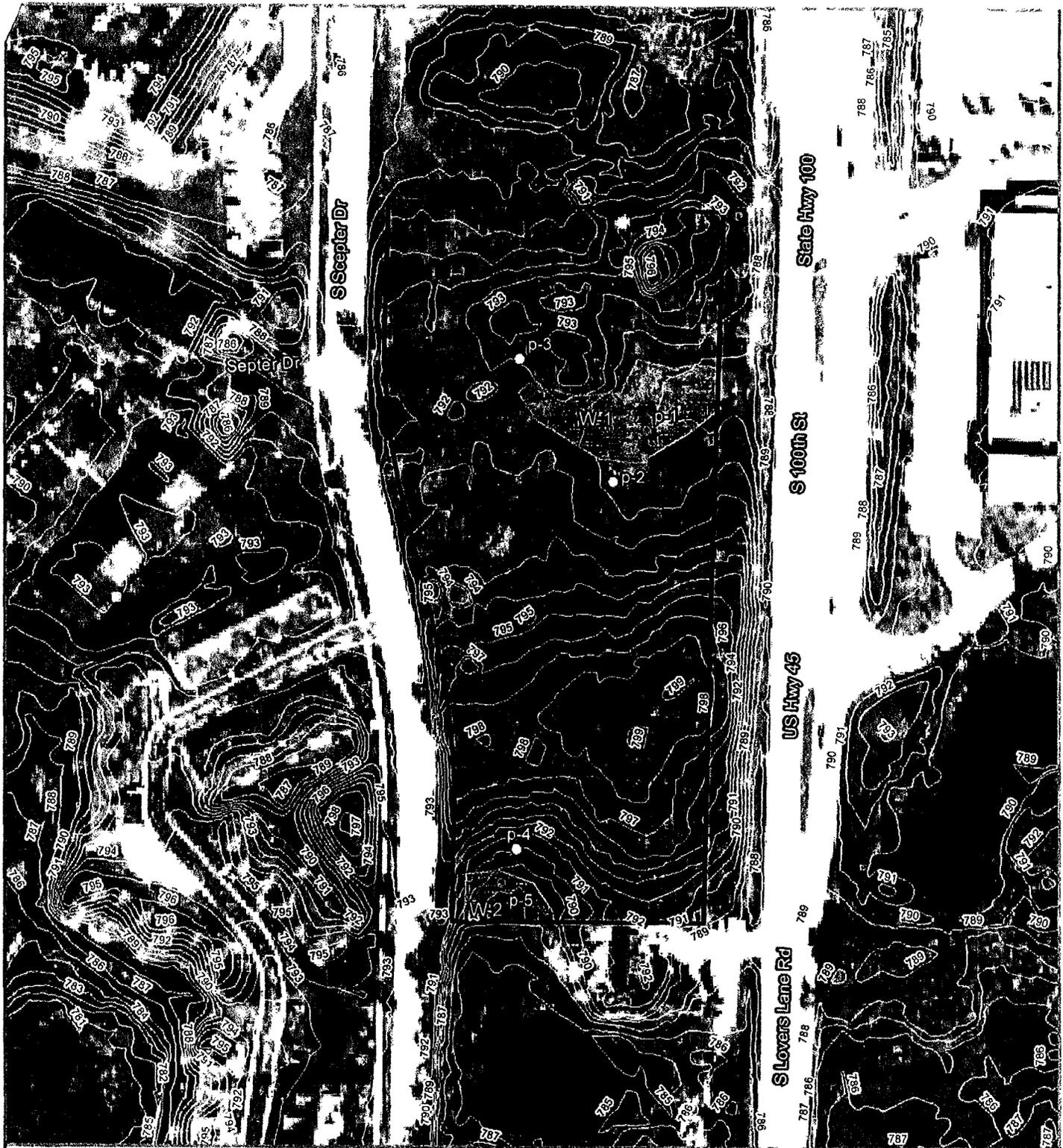
If you have any questions about this determination, please contact me at (608) 935-1920 or email James.Brodzeller@wisconsin.gov.

Sincerely,

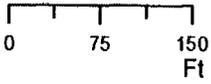
A handwritten signature in black ink, appearing to read 'J Brodzeller', written in a cursive style.

James Brodzeller
Wetland Exemption Specialist

cc: April Marcangeli U.S. Army Corps of Engineers
Josh Wied DNR Water Management Specialist
Scott Fuchs Heartland Ecological Group
File



- Study Area (5.80 ac)
- Milwaukee Co Contours
- Field Delineated Wetlands (0.44 ac)
- Sample Points**
- Upland
- Wetland



Heartland
 ECOLOGICAL GROUP INC

Figure 5. Field Delineated Wetlands
 S Scepter Road Parcel
 Project #2J180136
 T5N R21E S08
 C Franklin, Milwaukee Co WI

2017 NAIP
 Data Milwaukee Co HEG 11/15/2018



**DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL, MN 55101-1678**

REPLY TO ATTENTION OF
REGULATORY BRANCH

August 7, 2019

Regulatory File No. MVP-2019-00048-RJH

Scott Fuchs
Heartland Ecological Group
506 Springdale Street
Mount Horeb, Wisconsin 53572

Dear Mr. Fuchs:

This letter is in response to your request for an approved jurisdictional determination for a property adjacent South Scepter Drive. The project site is in Section 08, Township 05 North, Range 21 East, Milwaukee County, Wisconsin. The review area for our jurisdictional determination is identified on the enclosed figures, labeled MVP-2019-00048-RJH Pages 1 of 2 through 2 of 2.

The review area contains no waters of the United States subject to Corps of Engineers (Corps) jurisdiction. Therefore, you are not required to obtain Department of the Army authorization to discharge dredged or fill material within these areas. The rationale for this determination is provided in the enclosed Approved Jurisdictional Determination form. This determination is only valid for the review area shown on the enclosed figures.

If you object to this approved jurisdictional determination, you may request an administrative appeal under Corps regulations at 33 CFR 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Mississippi Valley Division Office at the address shown on the form.

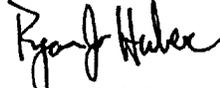
In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR 331.5, and that it has been received by the Division Office within 60 days of the date of the enclosed NAP. It is not necessary to submit an RFA form to the division office if you do not object to the determination in this letter.

This approved jurisdictional determination may be relied upon for five years from the date of this letter. However, the Corps reserves the right to review and revise this determination in response to changing site conditions, information that was not considered during our initial review, or off-site activities that could indirectly alter the extent of wetlands and other resources on-site. This determination may be renewed at the end of the five year period provided you submit a written request and our staff are able to verify that the limits established during the original determination is still accurate.

Regulatory Branch (File No. MVP-2019-00048-RJH)

If you have any questions, please contact me in our Green Bay office at (651) 290-5859 or ryan.j.huber@usace.army.mil. In any correspondence or inquiries, please refer to the Regulatory file number shown above.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan J. Huber". The signature is written in a cursive style with a large initial "R".

Ryan Huber
Project Manager

Enclosures

cc:
WDNR- Ryan Pappas

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): August 7, 2019

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2019-00048-RJH Wetland 1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State **Wisconsin** County/parish/borough **Milwaukee** City **Franklin**
Center coordinates of site (lat/long in degree decimal format) Lat. **42.902643° N**, Long **-88.040139° W**
Universal Transverse Mercator **Zone 16**

Name of nearest waterbody **Unnamed Tributary to the Root River**

Name of watershed or Hydrologic Unit Code (HUC) **04040002**

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination Date **July 10, 2019**
 Field Determination Date(s)

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.: N/A

2. Non-regulated waters/wetlands (check if applicable):¹

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional
Explain **The review area contains 1 wetland: W-1 (0.33 acre). This feature is identified as landscape depression, described as a disturbed fresh wet meadow/scrub shrub wetland, with no hydrologic connection to another water of the U.S. The boundaries of W-1 continue outside of the study area and potential connections were considered. Contour data provided by the applicant was evaluated and no surface water connection to another jurisdictional feature could be identified. The wetland is not adjacent (bordering, contiguous, or neighboring) to another water of the U.S. and is not separated from another water of the U.S. by man-made dikes or barriers, natural river berms, or beach dunes. The review area is a rapidly developing commercial/ residential area and the wetland within the review area is 3,502 linear feet from the nearest tributary, precluding any ecological interconnection with another jurisdictional water. There is no link to interstate or foreign commerce and the wetland is not used by interstate or foreign travelers for recreation or other purposes. The wetland does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce, and is not used for industrial purposes. Therefore, the Corps has determined that the subject wetland is isolated and not regulated by the Corps under Section 404 of the Clean Water Act.**

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs: N/A

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY): N/A

C. SIGNIFICANT NEXUS DETERMINATION: N/A

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY): N/A

¹ Supporting documentation is presented in Section III F

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY): N/A

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR)
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain
- Other (explain, if not covered above)

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply)

- Non-wetland waters (i.e., rivers, streams) linear feet width (ft)
- Lakes/ponds acres
- Other non-wetland waters acres List type of aquatic resource
- Wetlands 0.33 acres

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply)

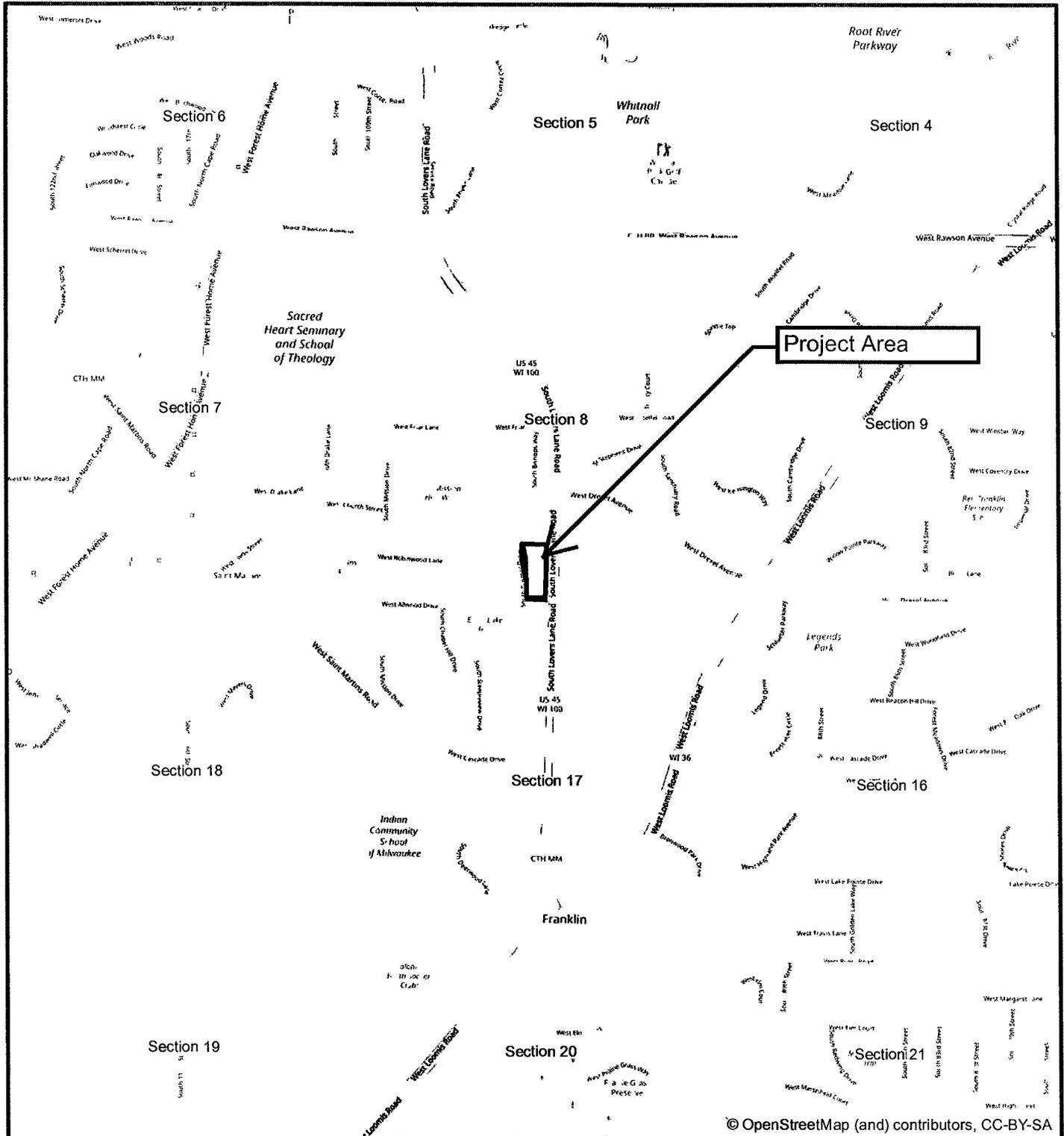
- Non-wetland waters (i.e., rivers, streams) linear feet, width (ft)
- Lakes/ponds acres
- Other non-wetland waters acres List type of aquatic resource
- Wetlands acres

SECTION IV: DATA SOURCES.

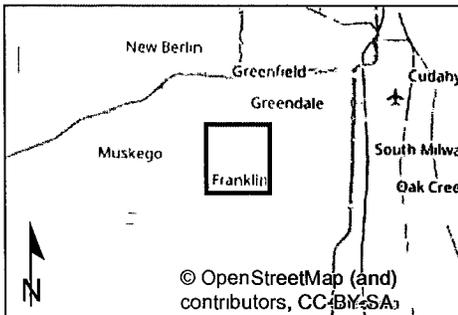
A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below)

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant Heartland Ecological Group Inc.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps
- Corps navigable waters' study
- U.S. Geological Survey Hydrologic Atlas
 - USGS NHD data
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s) Cite scale & quad name 1:24K WI- Hales Corners
- USDA Natural Resources Conservation Service Soil Survey Citation SoilWeb
- National wetlands inventory map(s) Cite name
- State/Local wetland inventory map(s)
- FEMA/FIRM maps
- 100-year Floodplain Elevation is (National Geodetic Vertical Datum of 1929)
- Photographs Aerial (Name & Date) Applicant submitted photos
 - or Other (Name & Date) Google Earth
- Previous determination(s) File no and date of response letter
- Applicable/supporting case law
- Applicable/supporting scientific literature
- Other information (please specify)

B. ADDITIONAL COMMENTS TO SUPPORT JD:

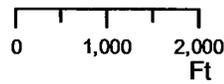


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© OpenStreetMap (and) contributors, CC-BY-SA

- Study Area
- Township
- Section

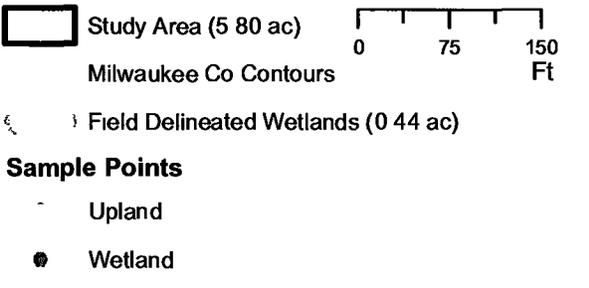
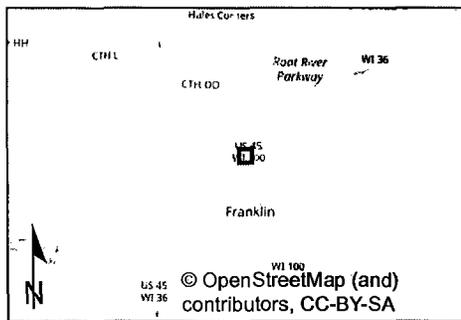
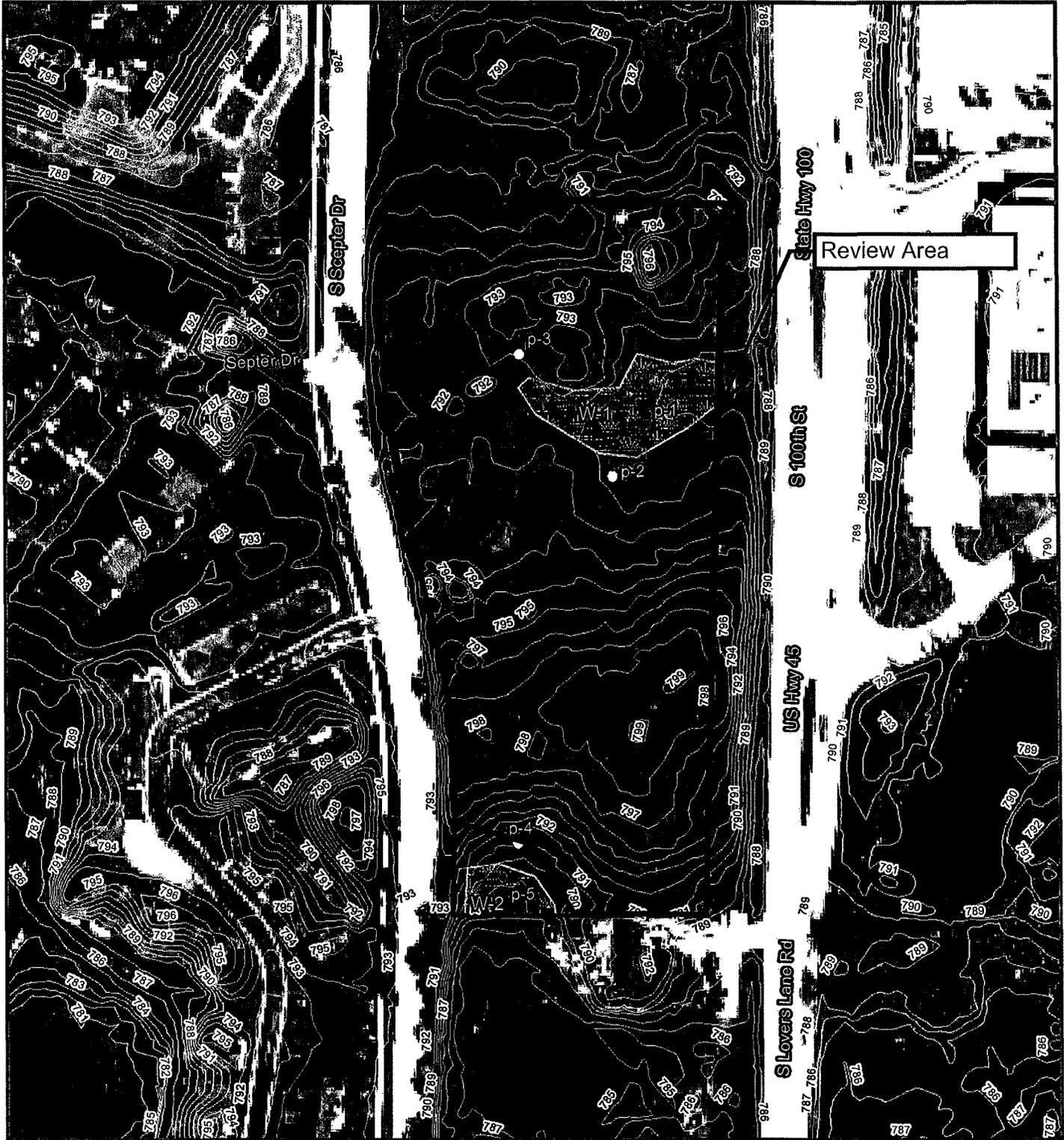


Heartland
ECOLOGICAL GROUP INC

Figure 1. Project Location

S Scepter Road Parcel
Project #20180136
T5N, R21E, S08
C Franklin, Milwaukee Co, WI

OpenStreetMap
Data HEG
11/2/2018



Heartland
ECOLOGICAL GROUP INC

Figure 5. Field Delineated Wetlands
S Scepter Road Parcel
Project #20180136
T5N, R21E, S08
C Franklin, Milwaukee Co, WI

2017 NAIP
Data Milwaukee Co, HEG 11/15/2018

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: Scott Fuchs	File No.: MVP-2019-00048-RJH	Date: August 7, 2019
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

- A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.**
- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
 - **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.
- B: PROFFERED PERMIT: You may accept or appeal the permit**
- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
 - **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.**
- D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.**
- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
 - **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.**

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact

U.S Army Corps of Engineers
Attn: Ryan Huber
211 North Broadway Street Ste. 221
Green Bay, Wisconsin 54303-2757

If you only have questions regarding the appeal process you may also contact the Division Engineer through:

Administrative Appeals Review Officer
Mississippi Valley Division
P.O. Box 80 (1400 Walnut Street)
Vicksburg, MS 39181-0080
601-634-5820 FAX: 601-634-5816

RIGHT OF ENTRY Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent

Date: _____

Telephone number: _____

ALTA/ACSM LAND TITLE SURVEY

Survey No. 080208
Property Resources Corporation

LEGAL DESCRIPTION Title Commitment:

All that part of the Southwest One-quarter (1/4) of Section Eight (8), in Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Southeast corner of the Southwest 1/4 of said Section 8, Thence South 88° 13' 55" West along the South line of said 1/4 Section, 375.00 feet;
Thence North 00° 26' 16" West 101.17 feet to a point of a curve;
Thence Northwesterly 224.40 feet along the arc of a curve, whose center lies to the West with a radius of 831.91 feet and a chord bearing North 08° 09' 56.5" West 223.72 feet;
Thence North 16° 53' 35" West 152.00 feet to a point of a curve;
Thence Northwesterly 195.72 feet along the arc of said curve, whose center lies to the East with a radius of 720.00 feet and a chord bearing North 08° 03' 57" West 196.10 feet;
Thence North 00° 14' 19" West 107.85 feet;
Thence North 80° 45' 41" East 473.80 feet to the East line of said Southwest 1/4 Section;
Thence South 00° 14' 19" East along the East line of said Southwest 1/4 Section 781.22 feet to the point of beginning, except the East 100 feet thereof.

TAX KEY NO. 795-9999-605

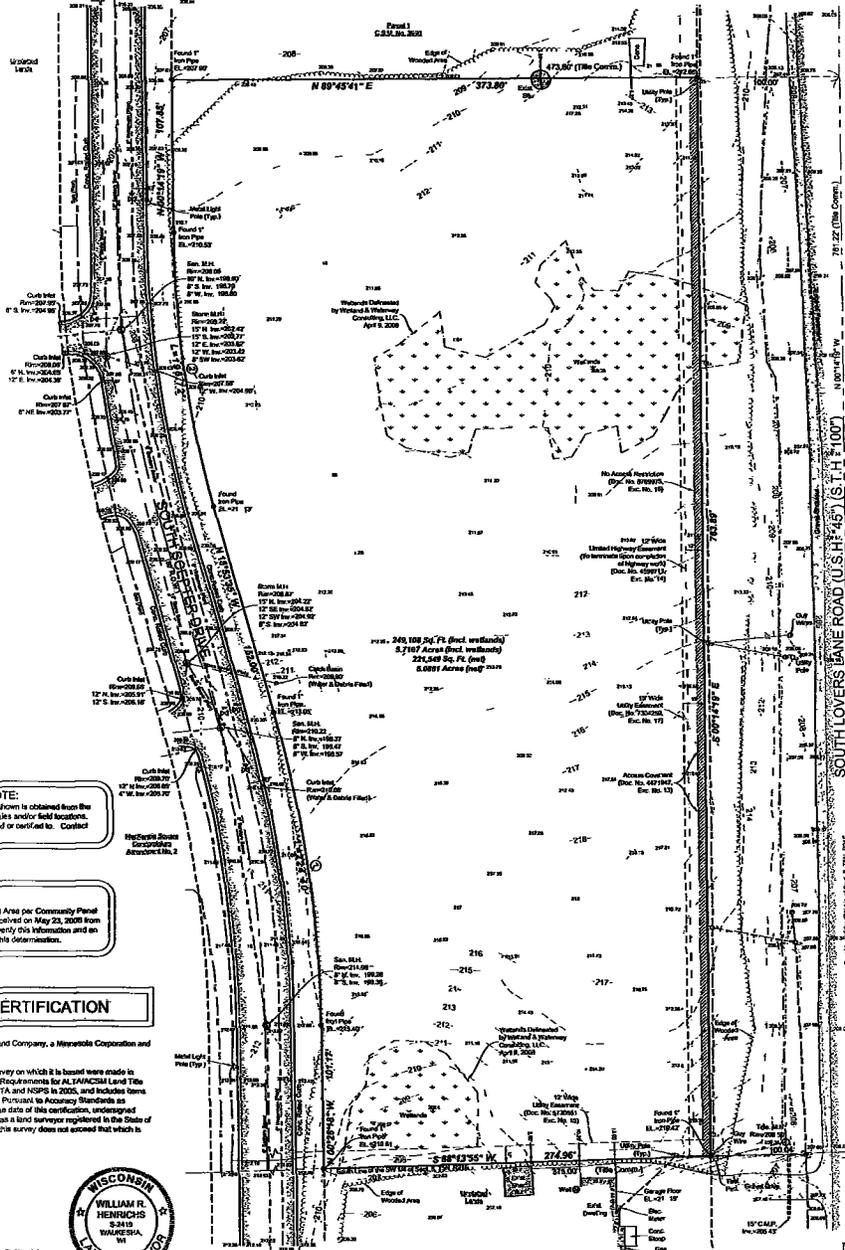
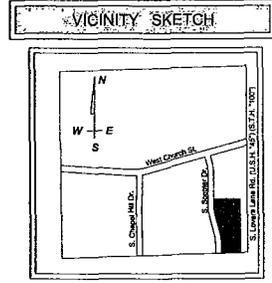
The above described parcel is the same land as described in WISCONSIN TITLE SERVICE COMPANY INC. commitment number 0805R0215 bearing an effective date of April 11, 2008 at 8:00 A.M.

LEGAL DESCRIPTION Field Survey:

Being a part of the Southeast 1/4 of the Southwest 1/4 of Section 8, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Southeast corner of said Southwest 1/4;
Thence S 88° 13' 55" W, a distance of 100.04 feet to the west right-of-way line of South Lovers Lane Road (U.S.H. 45) (S.T.H. 100) and the POINT OF BEGINNING;
Thence continuing S 88° 13' 55" W, a distance of 274.96 feet to the east right-of-way line of South Scepter Drive;
Thence N 00° 26' 16" W along said right-of-way line, a distance of 101.17 feet to the arc of a curve;
Thence northerly along said right-of-way line, 224.40 feet along the arc of a curve whose center is S 89° 33' 43" W a radial distance of 831.91 feet and whose chord bears N 08° 09' 56.5" W 223.72 feet;
Thence N 16° 53' 35" W along said right-of-way line, a distance of 152.00 feet to the arc of a curve;
Thence northerly along said right-of-way line, 196.72 feet along the arc of a curve whose center is N 74° 06' 26" E a radial distance of 720.00 feet and whose chord bears N 08° 03' 57" W 196.10 feet;
Thence N 00° 14' 19" W along said right-of-way line, a distance of 107.85 feet;
Thence N 80° 45' 41" E, a distance of 473.80 feet to the west right-of-way line of South Lovers Lane Road (U.S.H. 45) (S.T.H. 100);
Thence S 00° 14' 19" E along said right-of-way line, a distance of 783.89 feet to the POINT OF BEGINNING.

Containing 249,108 square feet, 5.7187 acres (incl. wetlands); 221,549 square feet, 5.0861 acres (net).



UNDERGROUND UTILITIES NOTE:
Underground sewer and utility information as shown is obtained from the records of the municipality, local utility companies and/or field location. The accuracy of which can NOT be guaranteed or certified to. Contact Digging Notice.

FLOOD NOTE:
This property is not in a Special Flood Hazard Area per Community Panel No. 502773 0005 B. This information was received on May 23, 2008 from FEMA. No field surveying was performed to verify this information and an elevation certificate may be needed to verify this determination.

ALTA/SURVEY CERTIFICATION

To: Property Resources, Corp., 122nd Street Land Company, a Hershey Company and Wisconsin Title Service Company, Inc.
This is to certify that this map or plan and the survey on which it is based were made in accordance with the Wisconsin Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS in 2005, and include items 1-6, 7(a), 8, 11(a) and 11(b) of Table A thereof. Pursuant to Accuracy Standards as adopted by ALTA and NSPS, and in effect on the date of this certification, undersigned further certifies that every professional opinion, as a land surveyor registered in the State of Wisconsin, the Relative Positional Accuracy of this survey does not exceed that which is specified therein.

William R. Henrichs
Registration No. S-2419
Within the State of WI
Date of Survey: May 20, 2008
Date Printed: May 27, 2008



Survey Prepared by: William R. Henrichs
Field Work / This instrument Drafted by: William R. Henrichs
Landcraft Survey and Engineering, Inc.
2077 South 110th Street
West Allis, WI 53227
Phone: 414-604-0674
Fax: 414-604-0677

CURVE	RADIUS	LENGTH	CHORD	CHORD BEARING
1	831.91'	224.40'	223.72'	N 08° 09' 56.5" W
2	720.00'	196.72'	196.10'	N 08° 03' 57" W

LEGEND OF SYMBOLS & ABBREVIATIONS

- Bolt
- Light Pole
- Utility Pole
- Guy Wire
- Sign
- Traffic Light
- Sprinkler
- Ground Light
- Gate Valve
- Overhead Wires
- Underground Electric
- Underground Gas
- Underground Watermain
- Underground Telephone
- ⊕ Water Valve
- ⊕ Water Shutoff
- ⊕ Hydrant
- ⊕ Storm Sewer Manhole
- ⊕ Catch Inlet
- ⊕ Row of Catch Basin
- ⊕ Sanitary Sewer Manhole
- ⊕ Electric Manhole
- ⊕ Communication Manhole
- ⊕ Telephone Manhole
- ⊕ Handicap
- ⊕ Deciduous Tree
- ⊕ Coniferous Tree
- Conc. - Concrete
- Dia. - Diameter
- Enc. - Encroachment
- Exist. - Existing
- M.H. - Manhole
- San. - Sanitary
- Elev. - Elevation
- Rec. - Record
- Calc. - Calculated
- Meas. - Measured
- Typ. - Typical

NOTES CORRESPONDING TO SCHEDULE B - II

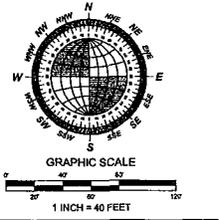
13. Access Easement recorded on June 26, 1969 in Real 498, Image 231, as Document No. 4471947 as shown on survey.
14. Easement created in an instrument recorded on June 16, 1971 in real 552, Image 1019, as Document No. 4599711 as shown on survey.
15. Utility Easement recorded on July 3, 1984 in Real 1855, Image 191, as Document No. 5730551 as shown on survey.
16. Right-of-way for access contained in Notice of Homeowners to access a Controlled-Access Highway recorded on April 28, 2004 in Real 5824, Image 4586, as Document No. 8169975 as shown on survey.
17. Utility Easement recorded on December 18, 1996 in Real 3950, Image 8, as Document No. 7304250 as shown on survey.
18. Authorization for Access to or Across a Controlled-Access Highway recorded on August 23, 1980 in Real 1319, Image 923, as Document No. 5420085 does not affect subject property.

NOTES:
ZONING REQUIREMENTS:
Zoned: R-3 (Suburban/Estate)
Single-Family Residence District
Max. Building Height: 30' (2.5 Stories)

SETBACK REQUIREMENTS:
Front: 40'
Rear: 30'
Side: 40'
Wetland: 30'

*Please refer to City of Franklin Unified Development Ordinance (UDO) for further details and conditions.
City of Franklin
Department of City Development
9229 West Loomis Road
Franklin, WI 53132
Phone: (414) 425-7510

PROJECT BENCHMARK:
Concrete monument w/ aluminum WADOT cap located at the Southeast corner of the Southwest 1/4 of Sect. 8-5-21, E. 17th St. (NGVD, 1929), 208.388 (City Datum).



LANDCRAFT SURVEY AND ENGINEERING, INC.
REGISTERED LAND SURVEYORS AND CIVIL ENGINEERS
2077 South 110th Street, West Allis, WI 53227
PH: (414) 604-0674 FAX: (414) 604-0677
INFO@LANDCRAFT-SE.COM

<p>APPROVAL</p> <p><i>slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>11/19/2019</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>Review and Consideration of Proposals Received for Quarry Survey Services</p>	<p>ITEM NUMBER</p> <p><i>G.6.</i></p>

The Quarry Plan Development District's (PDD's) 23 & 24 set the required blasting area boundaries, which have not completely been field verified for compliance. On July 16, 2019 the Council motion unanimously approved Alderwoman Wilhelm to work with staff on a solution to determine the Quarry north/south boundary along S. 51st Street and the east/west boundary along W. Drexel Avenue and stake them out.

Alderman Barber provided Alderwoman Wilhelm with a list of preferred survey contacts. After a discussion of the matter with legal Council, Aldw. Wilhelm prepared the attached Request for Proposal, requested and incorporated Staff's input and finalized the City Agreement with the Director of Administration. The attached proposal for survey services was sent to the following three survey firms with the results now returning for Council consideration.

1. C3E Geomatics, LLC.
2. Metropolitan Survey Services
3. Lynche Associates, Inc.

FINANCIAL:

Funds have been budgeted based on a previous Council motion. Funding may require carry over if not already accommodated and/or the project cannot be completed this year. Depending on the costs, additional funds may need to be allocated.

OPTIONS

- Accept a proposal for Quarry Survey Services with a date for signing the agreement
- Deny any proposal for Quarry Services with reason.
- Other action as deemed appropriate by the Council

COUNCIL ACTION REQUESTED

Move to accept a proposal for Quarry Survey Services as outlined in the proposal from (Survey firm) _____ with proper signatures on the City Agreement and any funding adjustments addressed by the next meeting of the Common Council.

ALDW WILHELM

provide a reasonable easement for ingress and egress to Rawson Avenue for the benefit of the property bearing Tax Key No. 757-9977, as required under the Special Use Resolution No. 97-4562 for the Asphalt Plant Operators and Facilities on the Property without cost to the Owner of such property.

3. When Operator's Extraction activities require the relocation of the Asphalt Plant Operations and Facilities, Operator shall either eliminate such operations and facilities on the Property or relocate them to the Floor of the Extraction Area.

Q. Concrete Ready-Mix Plant Operations and Facilities.

The Concrete Ready-Mix Plant Operations and Facilities, as previously defined, may be established on the Property, at any time after the Effective Date of the portions of this Ordinance affecting the Nonextraction Area. If established on grade, such operations and facilities may be relocated to the Floor of the Extraction Area, provided that those portions of this Ordinance affecting the Extraction Area shall have first taken effect. Prior to establishment of the use under this subsection anywhere on the Property, prior site plan approval shall be obtained from the Plan Commission.

R. Extraction Area Boundaries.

1. The ultimate boundaries of the Extraction Area shall be as follows:
 - a. From current centerline of 51st Street: 650 feet.
 - b. From current centerline of Rawson Avenue (C.T.H. BB): 200 feet.
 - c. From the current centerline of 68th Street: 1,350 feet, except as otherwise limited by the 200 foot setback from the centerline of the Root River.

- d. From the property line separating the Operator's Property from the Vulcan quarry site to the west and south: 0 feet.
 - e. From the centerline of the Root River: 200 feet to the east, except where and only to the extent Extraction has previously taken place, and except for minor Extraction to create an access road into the Extraction Area. There will be no extraction west of the Root River.
 - f. From the centerline of Drexel Avenue: 850 feet
2. Notwithstanding anything to the contrary within this Ordinance, upon the date of adoption of this Ordinance affecting the Nonextraction Area, Operator shall cease all horizontal expansion of the Extraction operations north of the quarry highwall existing on the date of adoption of this Ordinance, within 200 feet from the current center line of Rawson Avenue, regardless of any legal nonconforming use rights which may be vested in the Operator. This prohibition shall remain in effect until the Effective Date of the portions of this Ordinance affecting the Extraction Area or the date upon which such portions of the Ordinance expire and fail to become effective due to the lack of satisfaction or waiver of any condition precedent set forth under subsection FF hereof. Such prohibition shall not be deemed to result in any cessation of use which would serve to terminate any of Operator's nonconforming use rights.
3. Any Extraction for shoreline contouring that may be required as part of the detailed reclamation plan under subsection S of this Ordinance may take place outside of the Extraction Area boundaries. Further, Stripping Operations may occur outside of the Extraction area boundaries to provide a safety and access shelf, as a safety and access shelf is generally exposed at the top of rock, outside the Extraction limits, and the overburden is sloped upward and outward from the safety and access shelf at a slope generally not steeper than 1-1/2:1.

2. Upon the Effective Date of the portions of this Ordinance affecting the Extraction Area, the requirement under the aforementioned resolutions for a bi-annual renewal of the Asphalt Plant special use approval shall be automatically repealed and eliminated, but the Asphalt Plant Operations and Facilities shall be included in the biannual reporting to the Plan Commission by the Operator pursuant to subsection AA of this Ordinance. All other terms and conditions of the approving special use resolutions shall remain in full force and effect and are incorporated herein by reference.
3. When Operator's Extraction activities require the relocation of the Asphalt Plant Operations and Facilities, Operator shall either eliminate such operations and facilities on the Property or relocate them to the Floor of the Extraction Area.

R. Concrete Ready-Mix Plant Operations and Facilities.

The Concrete Ready-Mix Plant Operations and Facilities, as previously defined, may be established on the portion of the Property previously zoned M-3 Quarrying District, as shown on Exhibit 3, at any time after the Effective Date of the portions of this Ordinance affecting the Nonextraction Area. If established on grade, such operations and facilities shall be relocated to the Floor of the Extraction Area prior to January 1, 2004, provided that those portions of this Ordinance affecting the Extraction Area shall have first taken effect. Prior to establishment of the use under this subsection anywhere on the Property, prior site plan approval shall be obtained from the Plan Commission.

S. Extraction Area Boundaries.

1. The ultimate boundaries of the Extraction Area shall be as follows:
 - a. From current centerline of 51st Street: 650 feet.
 - b. From current centerline of Rawson Avenue (C.T.H. BB), west of the real property on the south side of Rawson Avenue that is not owned by the Operator as of the date of adoption of this Ordinance (e.g., the Rawson Pub, etc.): 200 feet.

**REQUEST FOR A PROPOSAL FOR PROFESSIONAL SERVICES TO SURVEY AND MAP
THE QUARRY EXTRACTION BOUNDARIES AS DEFINED IN
PDD'S 23 & 24, IN THE CITY OF FRANKLIN**

Submittal Deadline: November 15, 2019 4:00 p.m. (CST)

PROFESSIONAL SURVEY AND MAPPING SERVICES

THE CITY OF FRANKLIN seeks the submittal of responses from 3 qualified firms to provide services for the survey and mapping of Quarry blasting area limits.

The Quarry, owned and operated by Payne & Dolan, is located in the City of Franklin between West Rawson Avenue and West Drexel Avenue and is bounded by South 51st Street on the east, and for this purpose, approximately the Root River on the west.

I. PURPOSE, OBJECTIVES AND METHODS

The Quarry extraction area is limited as defined in Planned Development District's (PDD's) 23 & 24. The relevant pages are within Attachment A. The full document is available by request but should not be needed for this survey. The City is interested in surveying and defining those limits by setting markers of a permanent nature that will provide knowledge of the remaining area available for extraction and the degree of future compliance of the PDD extraction limits. The purpose and objectives include:

- Use of an independent resource to field identify the PDD's extraction limits and variances from the setback limits.
- Provide a detailed exhibit that identifies the limits to the east and south from the current centerline of South 51st Street and South Drexel Avenue.
- Place survey markers of a permanent nature at or offset from the quarry extraction area to indicate the setback limits from current road centerline in accordance with the PDDs.
- Provide a visual map (PDF or other computer compatible source) of the limits including coordinates for each permanent marker and a summary of results, which outline any excavation exceeding the setbacks.

Interested respondents are required to have the resources to survey in relationship to established benchmarks, place markers of a permanent nature identifying the extraction limits, and transpose the survey results onto aerial or other available photography that will indicate the current and future area of the PDD blasting limits. In locations where footing could be unstable to measure and set future blasting limit markers, respondents are requested to offset such markers and clearly indicate the distance of any offset within written survey data and required visual map.

The respondents should specify both their independence from and/or previous work with the Quarry operator in the last 5-years.

II. SELECTION PROCESS AND PAYMENT FOR SERVICES

The City, at a regular meeting of the Common Council, will review and make a selection based on the proposal that best meets the survey service needs as defined within the limits of PDD's 23 & 24, the respondent's stated independence from the Quarry operator, the cost of services, and any other factor the City, in its sole discretion, determines is appropriate. The City shall not be obligated to enter into any contract with a respondent on any terms or conditions.

Following Council selection of a proposal, the selected respondent shall execute a Professional Services Agreement (Attachment B).

Payment will be made, in accordance with Attachment B, after receipt of the requested information in compliance with the needs within this proposal.

IMPORTANT NOTE: The City reserves its right to reject all proposals. See Reservation of Rights.

III. PROJECT TIMING

Submittal Deadline: November 15, 2019 4:00 p.m. (CST). The selected respondent will be required to perform the extraction limit survey services as defined in the selected language found within Attachment A1 & A2 of this RFP with written data and mapping completed and provided electronically to the Office of the City Clerk no later than January 31, 2020.

IV. SUBMITTAL INSTRUCTIONS

All proposal submissions must be received to the City of Franklin via email, Attention to: The Office of Clerk Services at SWesolowski@franklinwi.gov no later than 4:00 p.m. (CST) November 15, 2019.

Submissions shall contain the email subject line "*Request for Quarry Survey Services*" with an attached, dated cover letter and other attachments as the proposer determines to the City of Franklin indicating:

- The name of the Project ("*Request for Quarry Survey Services*").
- A statement of qualification and licensing for those performing the work.
- The name of the firm and key persons assigned to the project.
- The expected method or approach used in identifying the extraction limits.
- An indication of any association with the Quarry operator in the last 5 years.
- The assurance the project timing can be met.
- Specifications as to the format of the final product delivery, such as but not limited to, type of document(s) or image(s), media(s) format, etc.
- The fixed, not to exceed cost for services.

Respondents are encouraged to include details that would clarify any scope of work performed to set markers of a permanent nature on site and develop quality data at the lowest possible cost. However, the scope of work proposed must accomplish the goals and work specified in this RFP.

V. ATTACHMENTS

Attachments A1 & A2 - Pertinent pages of PDD's 23 & 24

Attachment B – Professional Services Agreement

Attachment C – Area map indicating approximate extraction survey areas.

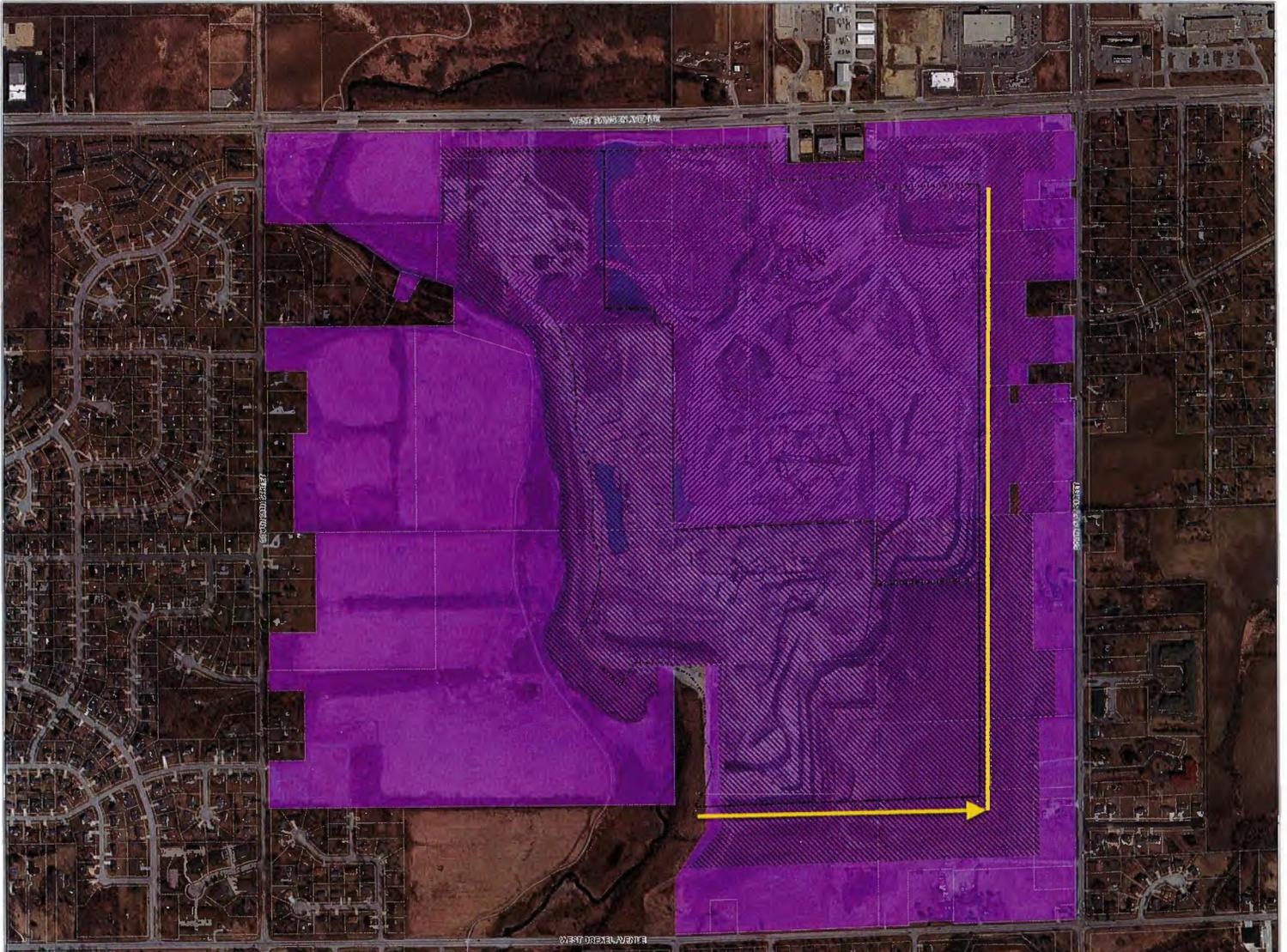
VI THE CITY OF FRANKLIN'S RESERVATION OF RIGHTS

This project does not constitute a Public Works project as defined by Wisconsin Statutes, therefore, the City is under no obligation to engage in a sealed bid process or to select the lowest qualified bidder. Nonetheless, the information provided and process described herein is established to help the City to identify a contractor who can, as determined solely by the City, best provide the City with the desired surveying services under terms and conditions acceptable to the City but mutually negotiated with the successful consultant.

The final decision on the selected consultant shall remain with the City of Franklin Common Council. The City of Franklin reserves the right to waive any or all formalities, to reject any or all proposals at the sole discretion of and for the benefit of the City of Franklin, or to negotiate special or specific terms or scope with a consultant, that may deviate from those referenced herein, for the sole benefit of the City of Franklin.

Additionally, the City reserves the right to alter or change any or all aspects of the submittal requirements and the submittal and selection process, as the City shall solely determine is in its best interest. In such event, the City shall strive to notify all participating consultants of such alterations or changes but is under no obligation to do so.

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**Payne & Dolan Quarry
City of Franklin, WI**



0 250 500 1,000 Feet

Notes

1. The Payne & Dolan PDD does not extend west of the Root River. The City's Zoning Map will be revised accordingly.
2. This map is provided for informational purposes only and may not be sufficient or appropriate for legal engineering or surveying purposes. Refer to Ordinance Nos. 97-1446 and 97-1437 for the precise boundaries of

Legend

-  Approved Extraction Area Limits
-  Payne & Dolan PDD Area
-  Vulcan PDD Area
-  Payne & Dolan Property

By: TRN on 8/14/2013
 \\Projects\Planning\Quarries\PDD_Quarry_Boundaries_David
 Quarry Project PSD_Vulcan-PDD update 8/14/2013.mxd

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A G R E E M E N T
[Attachment B, as listed in Section V. of the RFP]

]

This AGREEMENT, made and entered into this ___ day of _____, between the City of Franklin, 9229 West Loomis Road, Franklin, Wisconsin 53132 (hereinafter "CITY") and _____ (hereinafter "CONTRACTOR"), whose principal place of business is _____

W I T N E S S E T H

WHEREAS, the CONTRACTOR is duly qualified and experienced to provide professional surveying and mapping services and has offered services for the purposes specified in this AGREEMENT, and

WHEREAS, in the judgment of the CITY, it is necessary and advisable to obtain the services of the CONTRACTOR to provide professional surveying and mapping services,

NOW, THEREFORE, in consideration of these premises and the following mutual covenants, terms, and conditions, the CITY and the CONTRACTOR agree as follows

I. BASIC SERVICES AND AGREEMENT ADMINISTRATION

- A The CONTRACTOR shall provide services to the CITY for professional surveying and mapping services, as described in the CITY'S Request for Proposals and the CONTRACTOR's proposal to the CITY dated _____, both of which are hereby incorporated herein by reference
- B The CONTRACTOR shall serve as the CITY's professional representative in matters to which this AGREEMENT applies The CONTRACTOR is not guaranteed to be the CITY's sole representative in such matters, and the CITY is not restricted from engaging other professional service consultants to address such matters as the CITY shall determine is appropriate
- C The CONTRACTOR may not employ the services of outside consultants and subcontractors to complete work under this AGREEMENT
- D The CONTRACTOR is an independent contractor and all persons furnishing services hereunder are employees of, or independent subcontractors to (if allowed for herein), the CONTRACTOR and not of the CITY All obligations under the Federal Insurance Contribution Act (FICA), the Federal Unemployment Tax Act (FUTA), and income tax withholding are the responsibility of the CONTRACTOR as employer The CITY understands that express AGREEMENTS may exist between the CONTRACTOR and its employees regarding extra work, competition and nondisclosure

II. FEES AND PAYMENTS

The CITY agrees to pay the CONTRACTOR, for and in consideration of the performance of Basic Services further described the CITY'S Request for Proposals and the CONTRACTOR's proposal to the CITY, [at our standard billing rates] [with a not-to-exceed budget of \$ _____] [a fixed fee of \$ _____], subject to the terms detailed below

Commented [ML1]: Method based upon proposal or as negotiated

- A The CONTRACTOR may bill the CITY and be paid for all work satisfactorily completed hereunder following submission of all documents and data to fully accomplish the terms of this AGREEMENT and submission of an invoice and appropriate supporting documentation The CITY agrees to pay the CONTRACTOR's invoice, if undisputed, within 30 days of invoice date for all approved work.
- B In consideration of the faithful performance of this AGREEMENT, the CONTRACTOR will not exceed the fee for Basic Services, which is inclusive of all expenses, without written authorization from the CITY to perform work over and above that described in the original AGREEMENT
- C Should the CITY find deficiencies in work performed or reported, it will notify the CONTRACTOR in writing within thirty (30) days of receipt of invoice and documents, and the CONTRACTOR will remedy the deficiencies within thirty (30) days of receiving the CITY's notice, which period may be extended by mutual agreement of the CONTRACTOR and the CITY's representative identified in Subsection IV A below This subsection shall not be construed to be a limitation of any rights or remedies otherwise available to the CITY

III. MODIFICATION AND ADDITIONAL SERVICES

- A This AGREEMENT may only be amended by written instrument signed by both the CITY and the CONTRACTOR
- B The CITY may, in writing, request changes in the Basic Services required to be performed by the CONTRACTOR and require specification of incremental or decremental costs or the basis for such incremental or decremental costs prior to change order agreement under this AGREEMENT Upon acceptance of the request of such changes, the CONTRACTOR shall submit a "Change Order Request Form" to the CITY for authorization, notice to proceed, and signature The CITY may return such to the CONTRACTOR to finalize acceptance of the change order Any claim by the CONTRACTOR for an adjustment hereunder that applies the basis for any cost changes must be made to the CITY in writing, and with appropriate supporting documentation, no later than fifteen (15) days after receipt by the CONTRACTOR of approved change order from the CITY, unless a different deadline is provided for within the approved change order

IV. ASSISTANCE AND CONTROL

- A Regulo Martinez-Montilva, AICP, Associate Planner, Department of City Development, acting on behalf of the CITY, will be responsible for communication within the CITY's organization as related to all issues originating

under this AGREEMENT and will monitor, evaluate, and coordinate the work of the CONTRACTOR

- B The CITY will timely provide the CONTRACTOR with information in its possession related to the PROJECT as mutually deemed necessary and pertinent
- C The CONTRACTOR will appoint, subject to the approval by the CITY, _____ (Name and Title) as the CONTRACTOR's Project Manager and may appoint other key providers of the Basic Services. Substitution of other staff may occur only with the consent of the CITY

Commented [ML2]: Negotiable, but we prefer to have some control over who the contractor uses on our premises

V. TERMINATION

- A This AGREEMENT may be terminated by the CITY, for its convenience, for any or no reason, upon written notice to the CONTRACTOR. This AGREEMENT may be terminated by the CONTRACTOR upon thirty (30) days written notice. Upon such termination by the CITY, the CONTRACTOR shall be entitled to payment of such amount as shall fairly compensate the CONTRACTOR for all approved and performed work 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
- B In the event that this AGREEMENT is terminated for any reason, the CONTRACTOR shall deliver to the CITY all data, reports, summaries, correspondence, and other written, printed, or tabulated material pertaining in any way to Basic Services that the CONTRACTOR may have accumulated. Such material is to be delivered to the CITY whether in completed form or in process
- C The rights and remedies of the CITY and the CONTRACTOR 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
- D Failure to maintain the designated staff (as identified herein and in the CONTRACTOR'S original proposal) or such similarly qualified staff as determined by the CITY may lead to termination of the agreement, as determined by the CITY

VI. INSURANCE

The CONTRACTOR 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 General/Commercial Liability	\$1,000,000 per each occurrence \$2,000,000 per annual or general
--------------------------------	--

	<p>aggregate, and \$2,000,000 products/completed operations aggregate</p> <p>CITY shall be named as an additional insured</p>
B Automobile Liability	\$1,000,000 combined single limit (together with excess or umbrella coverage with a combined minimum limit of at least \$4 000,000)
C Umbrella or Excess Liability Coverage for General/Commercial and Automobile Liability	<p>\$3,000,000 or in the event the general/commercial liability coverage limits exceed the minimum amount stipulated in "A" above, such lesser amount as is necessary to achieve a total of \$4,000,000 in coverage between the general/commercial liability and umbrella or excess liability coverage</p> <p>CITY shall be named as an additional insured</p>
D Worker's Compensation and Employers' Liability	<p>CONTRACTOR shall maintain at levels as required by the State of Wisconsin,</p> <p>The coverage shall provide a waiver of worker's compensation subrogation and/or any rights of recovery allowed under any worker's compensation law, both in favor of the Owner</p>
E Errors and Omissions (Professional Liability)	<p>\$1,000,000 per claim \$2,000,000 annual aggregate</p>

Upon the execution of this AGREEMENT, the CONTRACTOR shall supply the CITY with a suitable statement (Certificate of Liability Insurance) and any Additional Insured Policy Endorsements, in a form acceptable to the CITY, certifying said protection and defining the terms of the policy issued and naming the CITY as an additional insured for General/Commercial Liability and Umbrella or Excess Liability. The CITY shall be listed as "The City of Franklin, including its employees and its elected or appointed officials."

If said policies are thereafter canceled, permitted to expire, or changed, the CONTRACTOR shall immediately notify the CITY and shall immediately cease all work until such replacement policies meeting the requirements of this AGREEMENT and of the CITY are fully in place and in force and all required documentation and certificates are provided to the CITY.

The CITY'S acceptance of certificates or original insurance policies or both and the allowance to commence work does not release the CONTRACTOR, nor the CONTRACTOR'S unauthorized subcontractors, from the required level of insurance and required level of security and protection provided the CITY by the insurance requirements set forth herein. In the event the CONTRACTOR fails to ensure the CONTRACTOR and all unauthorized subcontractors are insured and continue to remain insured, the CONTRACTOR shall indemnify and hold the Owner and its officers and

employees harmless against any claim or suit and against any costs, losses, and damages (including but not limited to reasonable fees and charges of attorneys or other professionals and reasonable court or arbitration or other dispute resolution costs) The entire obligation to ensure required coverage for all subcontractors, unauthorized or otherwise, shall remain with the CONTRACTOR and the CITY, for any reason including but not limited to not being in possession of documentation or certificates of liability, shall not, in any way, have or share any obligation or responsibility to ensure CONTRACTOR and subcontractors have the required insurance coverage

Acceptability of Insurers Insurance shall be placed with insurers who are authorized as an admitted insurance company in the State of Wisconsin Insurance shall be placed with insurers who have a Best's Insurance Reports rating of no less than A and a Financial Size Category of no less than Class VI

VII. INDEMNIFICATION AND ALLOCATION OF RISK

- A Nothing contained within this AGREEMENT is intended to be a waiver or estoppel of the CITY or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including but not limited to, those contained within Wisconsin Statutes §§893.80, §895.52, and §345.05 To the extent that indemnification is available and enforceable, neither the CITY nor its insurer shall be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law
- B The CONTRACTOR warrants each of the following
 - 1 No document(s) used for the project requires the CITY or its insurer to indemnify and/or hold harmless any party to the contract for any reason
 - 2 No document(s) used for the project requires the CITY or its insurer to waive subrogation for any liability, workers compensation or property policy
 - 3 The documents used for the project shall not contain any wording limiting the financial responsibility of the CONTRACTOR
- C The CONTRACTOR shall well and truly save and indemnify and keep harmless the CITY against all liability, judgments, costs and expenses, which may in any way result from the carelessness or neglect of the said CONTRACTOR, or the agents, employees or workmen of said CONTRACTOR in any respect whatsoever

VIII. TIME FOR COMPLETION

The CONTRACTOR shall commence work promptly and diligently upon execution of this AGREEMENT

The CONTRACTOR shall commence work within _____ days following receipt of a Notice to Proceed from the CITY

The CONTRACTOR shall complete the work [ADD TEXT]

IX. DISPUTES

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

Sandra L. Wesolowski, City Clerk Dated

Paul Rotzenberg, Director of Finance Dated
And Treasurer

APPROVED AS TO FORM

Jesse A. Wesolowski, City Attorney Dated
And Treasurer

PRINT NAME _____

TITLE _____

BY _____
Dated

PRINT NAME _____

TITLE _____

BY _____
Dated

PRINT NAME _____

TITLE _____

Sandi Wesolowski

From: Dan Meier <DMeier@lynch-engineering.com>
Sent: Thursday, November 14, 2019 3:38 PM
To: Sandi Wesolowski
Subject: Request for Quarry Survey Services
Attachments: 2019-11-15 Proposal Franklin - Request for Quarry Survey Services.pdf

Attention to: The Office of Clerk Services.

Attached please find our proposal for Quarry Survey Services.

Thanks,

Daniel E. Meier, P.E.
Principal

Lynch & Associates
Engineering Consultants, LLC
5482 S Westridge Drive
New Berlin, WI 53151
O. 262.402.5040
D. 262.402.5044
C. 262.751.1873
dmeier@lynch-engineering.com
www.lynch-engineering.com



LYNCH & ASSOCIATES
ENGINEERING & CONSULTANTS, LLC

Innovative Impact on Everyday Lives



LYNCH & ASSOCIATES
ENGINEERING CONSULTANTS, LLC

November 15, 2019

City of Franklin
Attention to: The Office of Clerk Services
9229 W Loomis Road
Franklin, WI 53132
SWesolowski@franklinwi.gov

Re: Request for Quarry Survey Services
Franklin, WI

Attention: The Office of Clerk Services.

It is our understanding that the City of Franklin is seeking a qualified survey firm to provide services for the survey and mapping of the Quarry blasting area limits. The City is interested in surveying and defining the limits of the Quarry by setting permanent markers that will define the limits of remaining area available for extraction to ensure future compliance with extraction limits established in the Planned Development District (PDD). The Quarry's extraction limits are defined by Section 24 – S 1 a of the PDD and defined in both PDD 23 and 24.

The Quarry is located in the City of Franklin between West Rawson Avenue and West Drexel Avenue and is bounded by South 51st Street on the east, and approximately the Root River on the west as depicted in Attachment C of the RFP. The Quarry is currently owned and operated by Payne & Dolan, A Walbec Group company.

Lynch and Associates is a small firm based in Burlington, WI with an office in New Berlin, WI and we feel our background in land surveying and municipal engineering would make us an ideal candidate to assist the City in preparing the survey and setting the permanent markers. We work with many municipalities throughout southeast Wisconsin on survey projects and are currently working in the City of Franklin on a sub-division project with a municipal road extension.

We appreciate your time in reviewing our proposal and would enjoy speaking with you about your vision for the project and how we can help. Please contact Dan Meier at 262-402-5040 with any questions.

Sincerely,

LYNCH & ASSOCIATES –
ENGINEERING CONSULTANTS, LLC

Daniel E. Meier, P.E.
Vice President

440 M Iwaukee Avenue
Burlington, WI 53105
262 402 5040



www.lynch-engineering.com

5482 S Westridge Drive
New Berlin, WI 53151
262 402 5040

Request for Quarry Survey Services

LYNCH & ASSOCIATES
ENGINEERING CONSULTANTS, LLC

Corporate Headquarters
440 Milwaukee Avenue
Burlington, WI 53105
262.402.5040



LYNCH & ASSOCIATES
A E K A N

Quarry Survey Services City of Franklin

Approach and Scope

1 Project Kickoff and Work Plan

Prior to beginning work, Lynch & Associates will meet with City staff to hold a project kickoff meeting. During the kick-off meeting, the project documents, PDD extraction limits, scope, issues, and concerns will be discussed to ensure the City's direction is understood. This will assist Lynch in ensuring that the final product meets the City's expectations and ensure the success of the project.

2 Field-identify the PDD's extraction limits

Prior to the Kickoff meeting, Lynch would propose preparing a preliminary document depicting the limits set in the PDD and any known variances for our discussion at the Kickoff meeting.

After the Kickoff meeting, Lynch shall incorporate the City's comments into the preliminary limits study and begin boundary and topographic surveys to identify the PDDs extraction limits and the current limits of excavation.

3 Extraction Limits Exhibit

After the extraction limits are field-identified, or surveyed, Lynch shall prepare a detailed exhibit in the format of an AutoCAD drawing and PDF. The detailed exhibit shall identify the limits to the East and South from the current centerline of South 51st Street and West Drexel Avenue. The exhibit shall show the proposed location of the permanent survey markers.

The detailed exhibit shall be presented to the City staff for review, and once approved Lynch shall begin the next phase of the project, Survey Marker Placement.

4 Survey Marker Placement

Lynch shall place survey markers of a permanent nature at or offset from the edge of the quarry extraction area to indicate the setback limits from the current road centerline in accordance with the PDD, variances, and approved exhibit.

The permanent survey markers are anticipated to be 1"x18" iron pipe with Berntsen aluminum survey caps or as approved by the City of Franklin, within reason based on cost and difficulty of installation.

5 Visual Map Preparation

Lynch shall finalize the maps previously presented to the City for review. The final map shall depict and include the following items:

- Limits of Extraction as established by the PDD
- Easements and Variances to the Extraction limits
- Surveyed Excavation limits
- Locations of permanent markers with coordinates and any offsets (Wisconsin State Plan Coordinate System (South Zone) NAD '27 with elevations based on NAVD '29 Datum)
- A geo-referenced areal image

The map shall be provided to the City as a hard copy and in the following electronic formats: PDF and AutoCAD drawing.

Key Project Personnel

The Lynch survey and design team assigned to this project will consist of:

- Daniel Meier - Project Manager
- Peter Nielson - Professional Land Surveyor
- Lee Gunderson - Survey Crew Chief

The resumes for the key project personnel have been attached to the end of this document.

Relationship with Payne & Dolan

Lynch is independent from and has no interests in Payne & Dolan, its parent or subsidiaries. Lynch has contracted with Payne and Dolan in the past five years. In addition to past projects, Lynch is currently under contract for WisDOT projects for which the work has been completed, but the final retainer has not been received. The projects include the following:

- 2016 – St. Martins Road - Construction Staking (Complete)
- 2017 – County Trunk Hwy. V - Construction Staking (Complete)
- 2017 – State Trunk Hwy. 142 - Construction Staking (Complete)
- 2018 – Ballpark Commons - Construction Staking (Complete)
- 2018 – County Trunk Hwy H/120 - Construction Staking (Complete and Outstanding Retainer)
- 2019 – State Trunk Hwy 24 - Construction Staking (Complete and Outstanding Retainer)



Project Schedule

Lynch and the design team proposes the following as a preliminary schedule. The schedule is anticipated to adjust based on City input and project demands, but should be easily completed by the project deadline of January 31, 2020 and in general should follow the schedule listed below:

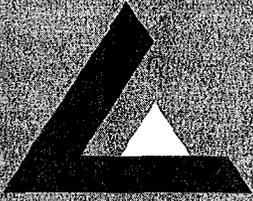
Notice To Proceed	Week of December 2, 2019
Kick-off Meeting	Week of December 9, 2019
Boundary Survey	Week of December 16, 2019
Preliminary Map	Week of December 30, 2019
• (City Review, 2 Weeks)	
Set Permanent Markers	Week of January 13, 2020
Final Map/Proj Complete	Week of January 20, 2020

Project Fees

Once written authorization is received, Lynch & Associates – Engineering Consultants, LLC will proceed with the work. Lynch shall invoice the client every 4 weeks approximately, based on project progress.

Lump Sum Not to Exceed Cost: \$6,400.00





Daniel E. Meier

Director of Land Development

EDUCATION:

B.S., Civil Engineering
University of Wisconsin
Platteville

REGISTRATIONS:

Professional Engineer: CA, FL,
IL, IN, KY, MI, MN, NM, ND,
OH, OK, TX, WI

AFFILIATIONS:

NCEES
ICSC



Areas of Expertise:

Private Land Development
Site Design and Review
Project Management
Client Communication
Stormwater Management
Due Diligence
Entitlements

Professional Summary:

Mr. Meier is a Senior Project Manager, as well as the Director of Private Development, with over 19 years of experience specializing in private and retail developments throughout the United States. He has significant experience in all stages of the development process including planning, due diligence, entitlements, design, and construction management.

Mr. Meier has been the Project Manager for several local and nationally recognized projects including Santa Monica Place, Oakbrook Center, Westfield Culver City, SOHI building, Ambassador Hotel, and Tellabs Headquarters.

Professional Experience:

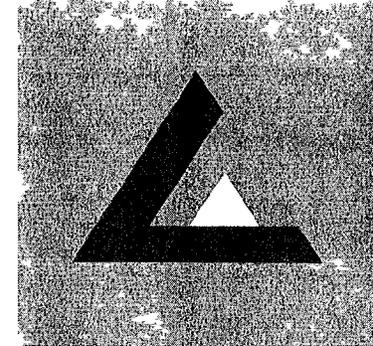
Trek Bicycle, Maunasha Pedestrian Bridge Waterloo, WI: Mr. Meier prepared plans and calculations for the bridge abutments for a pre-fabricated bridge structure that is planned for a future bike trail system for Trek Bicycle at their headquarters in Waterloo, WI. Mr. Meier was the Project Manager for the project, which completed designs in 2015.

USH 12 Bridge Rehabilitation, Walworth County, WI: Mr. Meier is currently serving as the project manager for the bridge rehabilitation project on USH 12. The project involves preparing preliminary and final structural plans for bridges on USH 12 between STH 67 and STH 50.

GGP, Multiple Locations, U.S.: Mr. Meier has worked with GGP as Senior Project Manager on several projects nationwide since 1997. The project scopes range from ground-up centers to small additions and renovations. Mr. Meier is very familiar with the special needs and attention to timelines associated with retail planning and design. His experience includes numerous developments in Wisconsin, Illinois, Texas, Ohio, Kentucky, Indiana, Iowa, Colorado, Missouri, Minnesota, Oklahoma, Arizona, and California.

SOHI Building, City of Milwaukee, WI: Mr. Meier served as Senior Project Manager for this redevelopment project. In 2007, the City of Milwaukee commissioned a master plan to improve the SOuth of Highland (SOHI) District in Milwaukee to create a safe, pedestrian-friendly environment. The historic SOHI building was the first development to undergo a renovation. The existing under-utilized building was renovated to accommodate restaurants and retail on the first floor with residential and office above. The site design included upgrading the utilities to the building and designing improvements to the parking. The project won a design award from the Mayor of Milwaukee in 2011.

Watermain Design – Wauwatosa, WI: Mr. Meier served as the senior project manager and designed sixteen inch transmission mains and multiple relays throughout the City of Wauwatosa.



Peter J. Nielson
Survey Project Manager

REGISTRATIONS:

Professional Land
Surveyor, WI

PROFESSIONAL

AFFILIATIONS:

Wisconsin Society of
Land Surveyors



LYNCH & ASSOCIATES
ENGINEERING CONSULTANTS, LLC

Areas of Expertise:

Re-Establish PLSS Section Corners
Subdivide PLSS Sections
Construction Staking
Certified Survey Maps
Subdivision Plats
ALTA Surveys
Right-Of-Way Plats and Staking
Control Surveys
Topographic & Design Surveys
Settlement Monitoring
Deformation Surveys

Professional Summary:

Mr. Nielson has 25 years of experience providing project survey support for design, construction, and boundary projects using GPS, Robotic and conventional methods. Project activities have included right-of-way plat preparation, Certified Survey Map preparation, section corner recovery and monumentation, construction staking and layout of complex facilities, topographic and cross-section surveys, settlement monitoring and control surveys. He is experienced in the use of MicroStation and AutoCAD, In-roads, both survey software and design software, Civil3D, Trimble Geomatics, and Microsoft Project.

Professional Experience:

USACE/Government of Iraq – Mosul Dam, Ninevah Province, Iraq: Lead surveyor for the monthly Deformation Survey to provide monitoring of the World's Most Dangerous Dam. Conducted monthly surveys of over 350 specific monitoring points throughout the dam site to identify movement or changes. Surveys were done in accordance with United States Army Corps of Engineers (USACE) Specifications. Field work and QA/QC was provided for the six monthly survey observations as well as QA/QC and oversight on subcontractors. Also provided survey support to the contractor for the drilling and grouting operations.

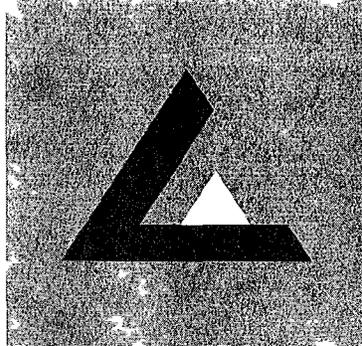
Wisconsin Department of Transportation-Lake Parkway Arterial – Milwaukee, WI: Responsible for layout of slope stakes, over 300 storm sewer structures, subgrade crushed aggregate base course, and concrete pavement for over 2 miles of roadway, retaining walls, and curb and gutter. Monitored approximately 80 building structures for settlement during construction.

Wisconsin Department of Transportation-STH 153 Right-of-Way Plat – Mosinee, WI: Professional Land Surveyor responsible for design survey and Right-of-Way Plat preparation. Conducted topographic, wetland, cross-section field survey, deed take-off, and research and development of existing and proposed right-of-way and preparation of legal descriptions for a 12-mile long project affecting over 300 parcels.

Milwaukee Metropolitan Sewerage District-Harbor Siphon – Milwaukee, WI: Responsible for field survey, research, and right-of-way plat preparation for tunnel easement acquisition. Activities also included project management and client communications and meetings.

City of Milwaukee-6th Street Viaduct – Milwaukee, WI: Responsible for management of field crews and Quality Assurance and Quality Control procedures for construction staking of two Cable-Stay bridges, two Bascule bridges and the accompanying roadways.

Southeast Wisconsin Baseball Park District-Miller Park – Milwaukee, WI: Conducted survey work throughout construction. Construction staking included caissons, structural steel, sewer and water, track beam construction, and roadway staking. Other survey work included monitoring of roof picks, layout of crane locations, roof inspection, and post-accident analysis.



Lee M. Gunderson

Survey Crew Chief

EDUCATION:

BB.S., Geography &
Urban Planning
University of Wisconsin
Whitewater, WI

REGISTRATIONS:

Certified Survey Technician
(CST)

PROFESSIONAL

AFFILIATIONS:

NSPS Survey Technician
Certification Board



Areas of Expertise:

- Re-Establish PLSS Corners
- Subdivide PLSS Sections
- Ground Control for Aerial Mapping
- Construction Inspection Services
- C.S.M. and Subdivision Platting
- Setting Control for Construction
- Right-of-Way Staking
- Topographic Surveys
- Right-of-Way Plats
- LiDAR Surveys
- Utility Location
- ALTA Surveys

Professional Summary:

Mr. Gunderson has experience providing project survey support for design and construction projects. His repertoire includes construction staking, layout of complex facilities, topographic surveys, utility surveys, control surveys, and monumentation. Mr. Gunderson is efficient using GPS and total station/robotic survey equipment.

During his Internship with the Racine County Surveyor's Office, Mr. Gunderson assisted on numerous projects. He became proficient at completing tie sheets. He set several monuments and re-established property corners throughout the County during this time.

As a Certified Survey Technician, Mr. Gunderson has spent most of his career providing survey for SE Region WisDOT projects. He understands and delivers what the WisDOT SE Region Survey Group wants. In addition to the IH 41 job for which he also provided topo survey, level loop for entire corridor, control at select bridges, and utility surveys, he has also worked on the following:

- Zoo Interchange Study Survey – data gathering, utility surveys, topographic surveys
- STH 83, Washington County – section and property corner recovery/survey, topographic survey, utility survey
- High Speed Passenger Rail – utility survey, coordination and leading field survey
- I-94 N-S Corridor, Milwaukee, Racine, Kenosha – utility survey, topographic surveys, drainage surveys, boring locations
- STH 190 (Capitol Drive) – topographic survey, control survey, utility survey, wetland delineation survey
- Menomonee Valley Passage/Hank Aaron State Trail – utility survey, topographic survey, control survey
- IH 41 Zoo Freeway Bridge Rehabilitation– topographic surveys, control survey, and collection of bridge data using LiDAR

In addition to these highlighted projects, Mr. Gunderson has also provided master contract survey work for the WisDOT SE Region on STH 83 & 16, Capitol Drive, STH 165, STH 142, Ryan Road (STH 100), STH 60 & CTH Y, USH 45, I-94, STH 31, and STH 32.

Mr. Gunderson has also provided construction inspection on STH 11, Durand Avenue in Racine County. The project included milling and resurfacing of STH 11, storm sewer repairs, sidewalk and curb replacement, and significant traffic control staging. Mr. Gunderson provided this inspection under the mentorship of WisDOT staff.

Sandi Wesolowski

From: Kristen Wilhelm
Sent: Friday, November 15, 2019 12:57 AM
To: Sandi Wesolowski
Cc: Regulo Martinez-Montilva
Subject: FW: City of Franklin Survey RFP Attn: Lori

The decline email.

Kristen Wilhelm
3rd District Alderwoman
City of Franklin
9229 West Loomis Road
Franklin, WI 53132
City Hall 414.427.7603
kwilhelm@franklinwi.gov
www.franklinwi.gov

From: survey survey [survey@metropolitansurvey.com]
Sent: Wednesday, November 13, 2019 2:38 PM
To: Kristen Wilhelm
Subject: Re: City of Franklin Survey RFP Attn: Lori

Hi Kristen, sorry for the delay on reviewing this project. Unfortunately we will not be able to accommodate this job at this time.

Thank you,
Stephanie Sauer

On Tue, Oct 29, 2019 at 10:16 PM Kristen Wilhelm <KWilhelm@franklinwi.gov> wrote:
Lori,

Please find attached a Request for Proposal and background documents for a field survey of quarry extraction limits in accordance with the identified sections of the City of Franklin Planned Development District's (PDD's) 23 and 24.

The survey areas are located along S. 51st Street between Rawson Blvd and Drexel Avenue and along Drexel Avenue west of 51st Street. The survey area is to include only the east and south extraction boundaries as indicated on the mapping and as highlighted in the PDD's.

The not to exceed cost proposal is due November 15, 2019 with deliverables due by January 31, 2020. The City's boilerplate contract is provided for your review so you can determine if it is acceptable prior to your proposal.

Questions concerning the proposal may be directed to:

Regulo Martinez-Montilva, AICP
Department of City Development

RMartinez-Montilva@franklinwi.gov
414-427-7564

Or, if not available:
Kristen Wilhelm, District 3 Alderwoman
KWilhelm@franklinwi.gov
414-427-7603

Thank you for your timely consideration of this work.

Attachments: 5

Kristen Wilhelm
3rd District Alderwoman
City of Franklin
9229 West Loomis Road
Franklin, WI 53132
City Hall 414.427.7603
kwilhelm@franklinwi.gov<<mailto:kwilhelm@franklinwi.gov>>
www.franklinwi.gov<<http://www.franklinwi.gov/>>

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Metropolitan Survey Service, Inc.

9415 W Forest Home Ave Suite 202
Hales Corners, WI 53130
Phone: 414-529-5380
survey@metropolitansurvey.com
www.metropolitansurvey.com

<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>slu</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;">November 19, 2019</p>
<p style="text-align: center;">REPORTS AND RECOMMENDATIONS</p>	<p style="text-align: center;">von Briesen & Roper, s.c Attorneys Request for Potential Conflict of Interest Informed Consent Waiver with Regard to the Performance of Legal Services for the City Upon Labor Matters, and also for Franklin Mobile, LLC Upon an Application for Approval from the City for a Replacement Bridge at 6361 South 27th Street in the Franklin Estates Mobile Home Park</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>6.7.</i></p>

Annexed hereto is a copy of an informed consent request letter from Atty. Kyle J. Gulya, who performs labor matters legal counsel representation for the City. The request arose upon the retainer of Atty. Alan H. Marcuvitz by Franklin Mobile, LLC regarding a pending application for a special use approval (Atty. Marcuvitz also previously performed legal services for the City, but those services have been completed). Both Attorneys work within the von Briesen & Roper, s.c law firm. The City Administrator and the City Attorney have no objection to a grant of the waiver.

COUNCIL ACTION REQUESTED

A motion to authorize the Mayor to execute the informed consent letter in the form and content as annexed hereto.



TAGLaw International Lawyers

Kyle J. Gulya
Direct Telephone
414-287-1377
kgulya@vonbriesen.com

November 14, 2019

VIA EMAIL

Mark Luberda
Director of Administration
City of Franklin
9229 West Loomis Road
Franklin, WI 53132

Re: **Waiver of Conflict of Interest**

Dear Mr. Luberda,

We are writing to advise you of a potential conflict of interest between our representation of Franklin Mobile, LLC and our representation of the City of Franklin (“City”). We are requesting the City’s informed consent to, and a written waiver of, that potential conflict pursuant to the Wisconsin ethics rules governing attorneys so that we may continue rendering services to the City.

von Briesen & Roper, s.c. (the “Firm”) performs legal services for the City regarding labor and employment matters, open records matters, and related matters on request, at times that are unrelated to the requested matters our Firm performs for Franklin Mobile, LLC. Franklin Mobile, LLC has requested that we advise it with respect to matters involving obtaining approval from City for a replacement bridge at 6361 South 27th Street. We desire to advise Franklin Mobile, LLC on this issue that would have little likelihood of creating a conflict with City and we will do so. Our Firm is not advising City with respect to matters involving Franklin Mobile.

I do not currently, nor is there an expectation that I would, represent Franklin Mobile, LLC with respect to the replacement bridge matter. Certainly, during the time I and our other labor and employment attorneys would represent City, those attorneys could not represent Franklin Mobile, LLC regarding these matters. Our work that we are asked to perform for the City does not, nor will it, involve advising Franklin Mobile, LLC with respect to the replacement bridge matter.

We are writing to ask for City’s consent to our representation of Franklin Mobile, LLC in the above mentioned matter related to the replacement bridge. The City’s consent is necessary so that we may continue representing the City on the City’s request which occurs from time to time. Under Wisconsin Supreme Court Rule 20:1.7, where there is a potential for a conflict of interest, our Firm

may only represent both clients if: (1) we reasonably believe that we can provide competent and diligent representation to each affected client; (2) the representation of each client is unrelated; (3) the representation of both clients is not prohibited by law; and (4) each client gives informed consent to the representation, in writing.

We have analyzed this Supreme Court Rule and under the present circumstances, our Firm reasonably believes that we can provide competent and diligent representation to both the City and Franklin Mobile, LLC. The work which we perform for the City is unrelated to the work which we are being asked to perform for Franklin Mobile, LLC. We are not prohibited by law from representing either of you.

While we do not anticipate that this situation will adversely affect our representation of City, Wisconsin Supreme Court Rule 20:1.7 requires that your informed consent be in writing. Accordingly, we would appreciate your confirming your waiver and consent to our concurrent representation of Franklin Mobile, LLC and City as described in this letter by signing a copy of this letter and returning it to me as soon as possible. By signing a copy of this correspondence and returning it, you are providing the Firm with consent to our representation of Franklin Mobile, LLC with respect to the issues involving the replacement bridge, as outlined in this letter.

We appreciate your understanding of our professional obligations with respect to matters of conflict. If you have questions or concerns, please call me. We very much appreciate your courtesy in considering this request for a waiver of any potential conflict of interest.

Very truly yours,

von BRIESEN & ROPER, s.c.

– S –

Kyle J. Gulya

KJG:amk

City of Franklin waives the potential conflict and consents to von Briesen & Roper, s.c.'s concurrent representation of Franklin Mobile, LLC as described in the foregoing letter.

Dated this _____ day of November, 2019.

CITY OF FRANKLIN

By: _____
Its: _____