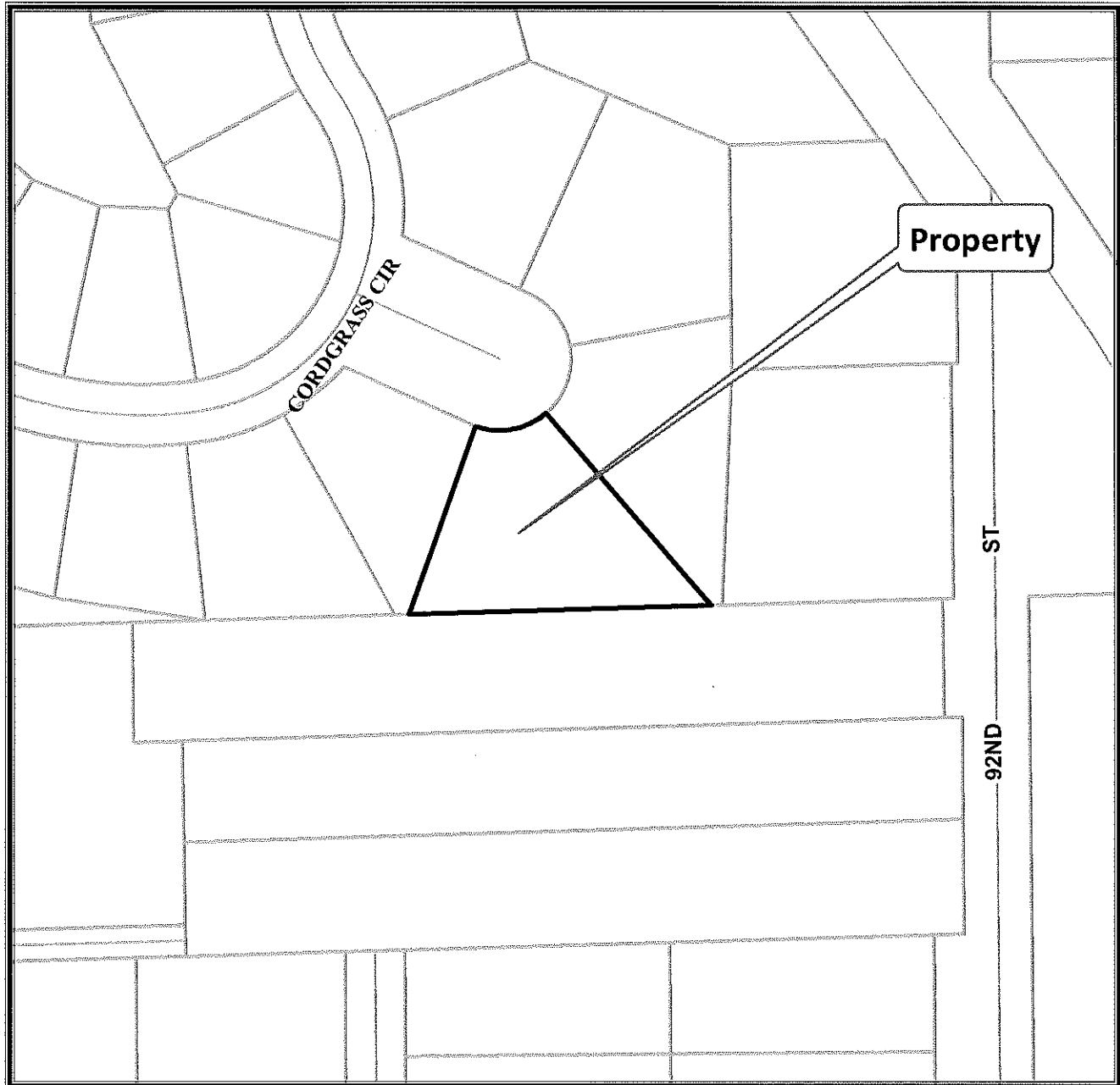


APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 04/03/17
REPORTS & RECOMMENDATIONS	RESOLUTION CONDITIONALLY APPROVING A CONDOMINIUM FINAL PLAT FOR LOT 42 IN PRAIRIE GRASS PRESERVE SUBDIVISION (AT 9062 AND 9064 SOUTH CORDGRASS CIRCLE EAST) (DAN KANITZ, MEMBER OF WYNDHAM HOMES, LLC, APPLICANT)	ITEM NUMBER <i>G. 7.</i>
<p>At its March 23, 2017, meeting, the Plan Commission recommended approval of a resolution conditionally approving a condominium Final Plat for Lot 42 in Prairie Grass Preserve Subdivision (at 9062 and 9064 South Cordgrass Circle East) (Dan Kanitz, member of Wyndham Homes, LLC, Applicant).</p> <p style="text-align: center;">COUNCIL ACTION REQUESTED</p> <p>A motion to approve Resolution 2017-_____, conditionally approving a condominium Final Plat for Lot 42 in Prairie Grass Preserve Subdivision (At 9062 and 9064 South Cordgrass Circle East) (Dan Kanitz, member of Wyndham Homes, LLC, Applicant).</p>		

Department of City Development: OPS



9062 - 9064 S. Cordgrass Cir
TKN 847 0081 000



Planning Department
(414) 425-4024

0 95 190 380 Feet

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.



2017 Aerial Photo

RESOLUTION NO. 2017-_____

A RESOLUTION CONDITIONALLY APPROVING A
CONDOMINIUM FINAL PLAT FOR LOT 42 IN PRAIRIE
GRASS PRESERVE SUBDIVISION
(AT 9062 AND 9064 SOUTH CORDGRASS CIRCLE EAST)
(DAN KANITZ, MEMBER OF WYNDHAM HOMES LLC, APPLICANT)

WHEREAS, the City of Franklin, Wisconsin, having received an application for approval of a Condominium Final Plat for lot 42 in Prairie Grass Preserve Subdivision, such plat being a Redivision of Certified Survey Map No. 6462, and unplatted lands in the Southwest 1/4 and the Southeast 1/4 of the Northeast 1/4 of Section 20, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin, more specifically, of the property located at 9062 and 9064 South Cordgrass Circle East, bearing Tax Key No. 847-0081-000, Dan Kanitz, member of Wyndham Homes LLC, applicant; said Condominium Final Plat having been reviewed by the City Plan Commission following the reviews and recommendations or reports of the City Planning Department and the City Engineering Department, and the Plan Commission having recommended approval thereof at its meeting on March 23, 2017, pursuant to certain conditions; and

WHEREAS, the Common Council having reviewed such application and Plan Commission recommendation and the Common Council having determined that such proposed Condominium Final Plat is appropriate for approval pursuant to law upon certain conditions.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Condominium Final Plat for lot 42 in Prairie Grass Preserve Subdivision, as submitted by Dan Kanitz, member of Wyndham Homes LLC, as described above, be and the same is hereby approved, subject to the following conditions:

1. That any and all objections made and corrections required by the City of Franklin, by Milwaukee County, and by any and all reviewing agencies, shall be satisfied and made by the applicant, and that all minor technical deficiencies within the Condominium Final Plat be rectified, all prior to the recording of the Condominium Final Plat.
2. That all land development and building construction permitted or resulting under this Resolution shall be subject to impact fees imposed pursuant to §92-9. of the Municipal Code or development fees imposed pursuant to §15-5.0110 of the Unified Development Ordinance, both such provisions being applicable to the development and building permitted or resulting hereunder as it occurs from time to time, as such Code and Ordinance provisions may be amended from time to time.

DAN KANITZ, MEMBER OF WYNDHAM HOMES LLC – CONDOMINIUM FINAL
PLAT FOR LOT 42 IN PRAIRIE GRASS PRESERVE SUBDIVISION
RESOLUTION NO. 2017-_____

Page 2

3. Pursuant to §236.13(1) and (2), Stats., pertaining to conditions of plat approval and the provision of public improvements reasonably necessary, respectively, and §§15-8.0101 and 15-2.0303 of the Unified Development Ordinance, pertaining to required improvements and the financial security to be provided therefore as conditions of plat approval, the required improvements prescribed in the Unified Development Ordinance for land divisions are required as a condition of the approval of the Condominium Final Plat for lot 42 in Prairie Grass Preserve Subdivision; a Subdivision Development Agreement (“Subdivider’s Agreement”), as may be approved by the Common Council upon the recommendation of the City Engineer and as secured by a letter of credit in form as approved by the City Attorney, shall provide for the furnishing, construction and installation of the required improvements and such other matters as set forth therein, and shall be entered into and executed by Dan Kanitz, member of Wyndham Homes LLC prior to the recording of the Condominium Final Plat.
4. Each and any easement shown on the Condominium Final Plat shall be the subject of separate written grant of easement instrument, in such form as provided within the *City of Franklin Design Standards and Construction Specifications* and such form and content as may otherwise be reasonably required by the City Engineer or designee to further and secure the purpose of the easement, and all being subject to the approval of the Common Council, prior to the recording of the Condominium Final Plat.
5. That any and all submissions, reviews and approvals, for any and all matters required to be submitted, reviewed and/or approved within the Condominium Final Plat application process as specified within the Unified Development Ordinance, which may not have been submitted, reviewed and/or approved as of the date of adoption of this Resolution, if any, including for matters of utility easements, a declaration of deed restrictions and protective covenants, conservation easements, other public purpose easements, stormwater management agreements, and homeowners’ association legal instruments, shall be so submitted, reviewed and/or approved, prior to the recording of the Condominium Final Plat.
6. Wyndham Homes LLC, successors and assigns and any developer of the Prairie Grass Preserve two unit condominium construction project shall pay to the City of Franklin the amount of all development compliance, inspection and review fees incurred by the City of Franklin, including fees of consults to the City of Franklin, for the Prairie Grass Preserve two unit condominium construction project, within 30 days of invoice for same. Any violation of this provision shall be a violation of the Unified Development Ordinance, and subject to §15-9.0502 thereof and §1-19. of the

DAN KANITZ, MEMBER OF WYNDHAM HOMES LLC – CONDOMINIUM FINAL
PLAT FOR LOT 42 IN PRAIRIE GRASS PRESERVE SUBDIVISION
RESOLUTION NO. 2017-_____

Page 3

Municipal Code, the general penalties and remedies provisions, as amended from time to time.

7. The approval granted hereunder is conditional upon Dan Kanitz, member of Wyndham Homes LLC and the Prairie Grass Preserve two unit condominium construction project for the property located at 9062 and 9064 South Cordgrass Circle East: (i) being in compliance with all applicable governmental laws, statutes, rules, codes, orders and ordinances; and (ii) obtaining all other governmental approvals, permits, licenses and the like, required for and applicable to the project to be developed and as presented for this approval.
8. The Prairie Grass Preserve two unit condominium construction project shall be developed in substantial compliance with the terms and provisions of this Resolution.

BE IT FURTHER RESOLVED, that the Condominium Final Plat for lot 42 in Prairie Grass Preserve Subdivision, be and the same is hereby rejected without final approval and without any further action of the Common Council, if any one, or more than one of the above conditions is or are not met and satisfied within 180 days from the date of adoption of this Resolution.

BE IT FINALLY RESOLVED, that upon the satisfaction of the above conditions within 180 days of the date of adoption of this Resolution, same constituting final approval, and pursuant to all applicable statutes and ordinances and lawful requirements and procedures for the recording of a Condominium Final Plat, the City Clerk is hereby directed to obtain the recording of the Condominium Final Plat for lot 42 in Prairie Grass Preserve Subdivision with the Office of the Register of Deeds for Milwaukee County.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017.

APPROVED:

Stephen R. Olson, Mayor

DAN KANITZ, MEMBER OF WYNDHAM HOMES LLC – CONDOMINIUM FINAL
PLAT FOR LOT 42 IN PRAIRIE GRASS PRESERVE SUBDIVISION
RESOLUTION NO. 2017-_____

Page 4

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

**CITY OF FRANKLIN****REPORT TO THE PLAN COMMISSION****Meeting of March 23, 2017****Condominium Plat**

RECOMMENDATION: City Development Staff recommends approval of the Condominium Final Plat for Lot 42 in Prairie Grass Preserve Subdivision located at 9062 and 9064 South Cordgrass Circle East, subject to the conditions in the attached draft resolution.

Project Name:	Cordgrass Condominium
Project Address:	9062-9064 South Cordgrass Circle East
Applicant:	Wyndham Homes, LLC
Owner:	Wyndham Homes, LLC
Zoning:	R-7 Two-Family Residence District
Use of Surrounding Properties:	Multi-family residential to the north, east and west, and single-family residential to the south.
2025 Comprehensive Plan:	Residential – Multi-Family
Applicant Action Requested:	Recommendation of approval to the Common Council for the proposed Condominium Plat Application upon property located at 9062-9064 South Cordgrass Circle East.

INTRODUCTION AND ANALYSIS:

On February 9, 2017, Dan Kanitz submitted a Condominium Plat Application on behalf of Wyndham Homes, LLC for the property located at 9062-9064 South Cordgrass Circle East. The applicant is proposing to build a new two-family condominium on the vacant property, which requires a Condominium Plat to be reviewed and approved by the Plan Commission and Common Council pursuant to the Unified Development Ordinance.

The subject property is Lot 42 of the Prairie Grass Preserve Subdivision, which is approximately 33,860 square feet. Lot 42, and the adjacent lots are zoned R-7 Two-Family Residence District. The proposed Condominium Plat is consistent with the 2025 Comprehensive Master Plan, as the future land use designation for the property is Residential – Multi-Family.

According to the Milwaukee County Automated Mapping and Land Information System (MCAMLIS), eighteen (18) out of twenty-nine (29) lots in the portion of the Prairie Grass Preserve Subdivision zoned R-7 Two-Family Residence District have already been converted to condominiums. This includes Lot 41 to the east, which is part of the 9074-76 Cordgrass Condominium and Lot 43 to the west, which comprises the Cordgrass Condominiums.

STAFF RECOMMENDATION:

City Development Staff recommends approval of the Condominium Final Plat for Lot 42 in the Prairie Grass Preserve Subdivision located at 9062 and 9064 South Cordgrass Circle East, subject to the conditions in the attached draft resolution.

March 16, 2017

To The city of Franklin. Planning Commission and Common Council

Wyndham Homes owns the property located at 9062 & 9064 s. Cordgrass Circle located in the Prairie Grass Reserve subdivision.

It is our intention to build a side by side town home on speculation and sell each individual unit as separate condo units.

The design is a Prairie style inspiration, designed fit on this unique parcel. The Units are just over 2000 sq. ft. each with attached 2 car garages.

Both units are 3 bedrooms, 2 up and the master bedroom with private 3 piece master bath is conveniently located on the first floor in both units. Granite will be the material of choice for kitchen and bath vanity countertops.

The front elevation is stunning and will certainly complement the existing homes in the area. On the rear elevation there is a partial exposure on both units that allows for larger windows in the basement. Access to the spacious backyard will be via a small elevated deck on both units with steps leading to a small patio for each unit.

We look to being part of the Prairie Grass Reserve subdivision.

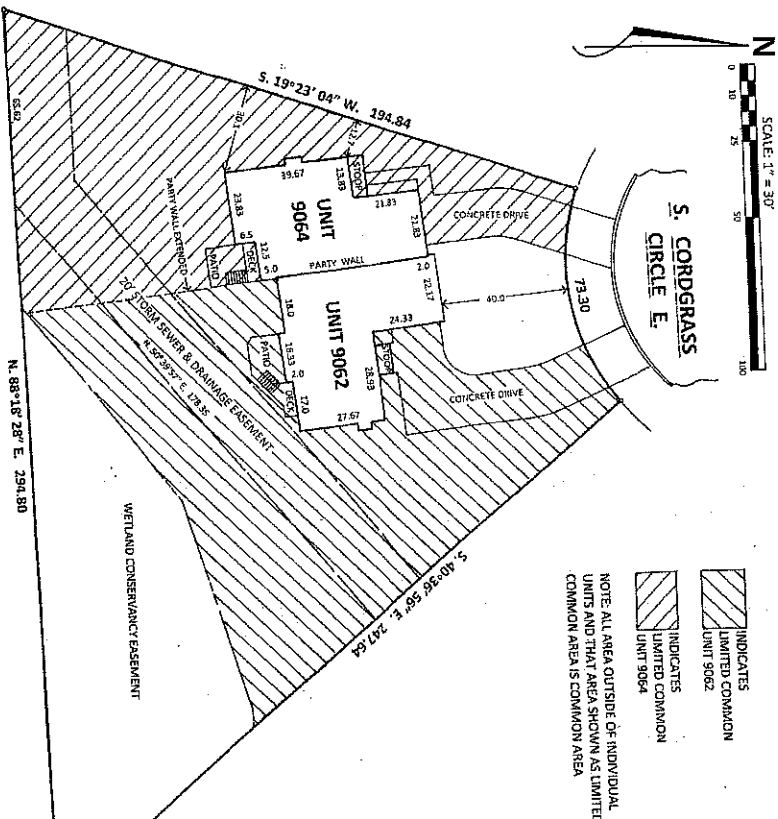
Signed

Dan Kanitz owner Wyndham Homes

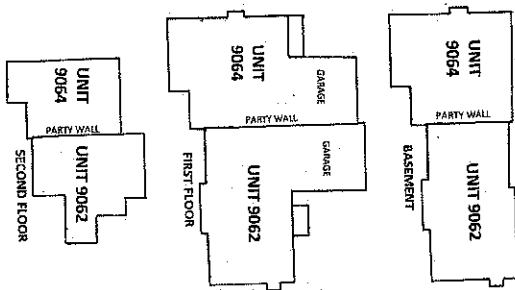
Dara Atlija owner Wyndham Homes

CORDGRASS CONDOMINIUM CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN

LOCATION OF PROPERTY: 9062 / 9064 South Cordgrass Circle East, Franklin, Wisconsin
DESCRIPTION OF PROPERTY: Lot 42, PRAIRIE GRASS PRESERVE, being a subdivision in part of the Southeast 1/4 of the Northeast 1/4 of Section 20, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.



INDICATES LIMITED COMMON UNIT 9062
INDICATES LIMITED COMMON UNIT 9064
NOTE: ALL AREA OUTSIDE OF INDIVIDUAL UNITS AND THAT AREA SHOWN AS LIMITED COMMON AREA IS COMMON AREA



I, James E. Sulkowski, do hereby certify that I have surveyed the above described property and that this is an accurate representation of the exterior boundary lines and the location of the buildings and improvements upon said property.
This condominium plat is a correct representation of CORDGRASS CONDOMINIUM and the identification and location of each unit and the common elements can be determined from the plat.

James E. Sulkowski, RLS-1866

DATE:

PREPARED BY:
Mortgage Survey Service
6617 West Coldspring Road
Greenfield, WI 53220
(414) 327-4400

City Development

MAR 18 2012

Franklin

SHEET 1 OF 1

APPROVAL <i>Shw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 04/03/17
REPORTS & RECOMMENDATIONS	RESOLUTION IMPOSING CONDITIONS AND RESTRICTIONS FOR THE APPROVAL OF A SPECIAL USE FOR PROPERTY LOCATED AT 11307 WEST FOREST HOME AVENUE TO EXPAND THE OPERATION OF A LAWN MAINTENANCE, LANDSCAPING AND SNOW REMOVAL BUSINESS (MARK LIBAN, PRESIDENT OF LIBAN'S LAWN SERVICE, INC., APPLICANT)	ITEM NUMBER G. 8.

At the March 23, 2017 meeting of the Plan Commission the following action was approved: move to recommend approval of a resolution to amend Resolution No. 2002-5350, imposing conditions and restrictions for the approval of a Special Use for property located at 11307 West Forest Home Avenue to expand the operation of a lawn maintenance, landscaping and snow business, subject to amending the time-frames for Conditions No. 4 and No. 8 to within 60 days and Conditions No. 5 and No. 6 to 30 days, as well as adding a condition stating that gaps within the existing fence shall be repaired and/or filled within 60 days of the date of adoption of the resolution.

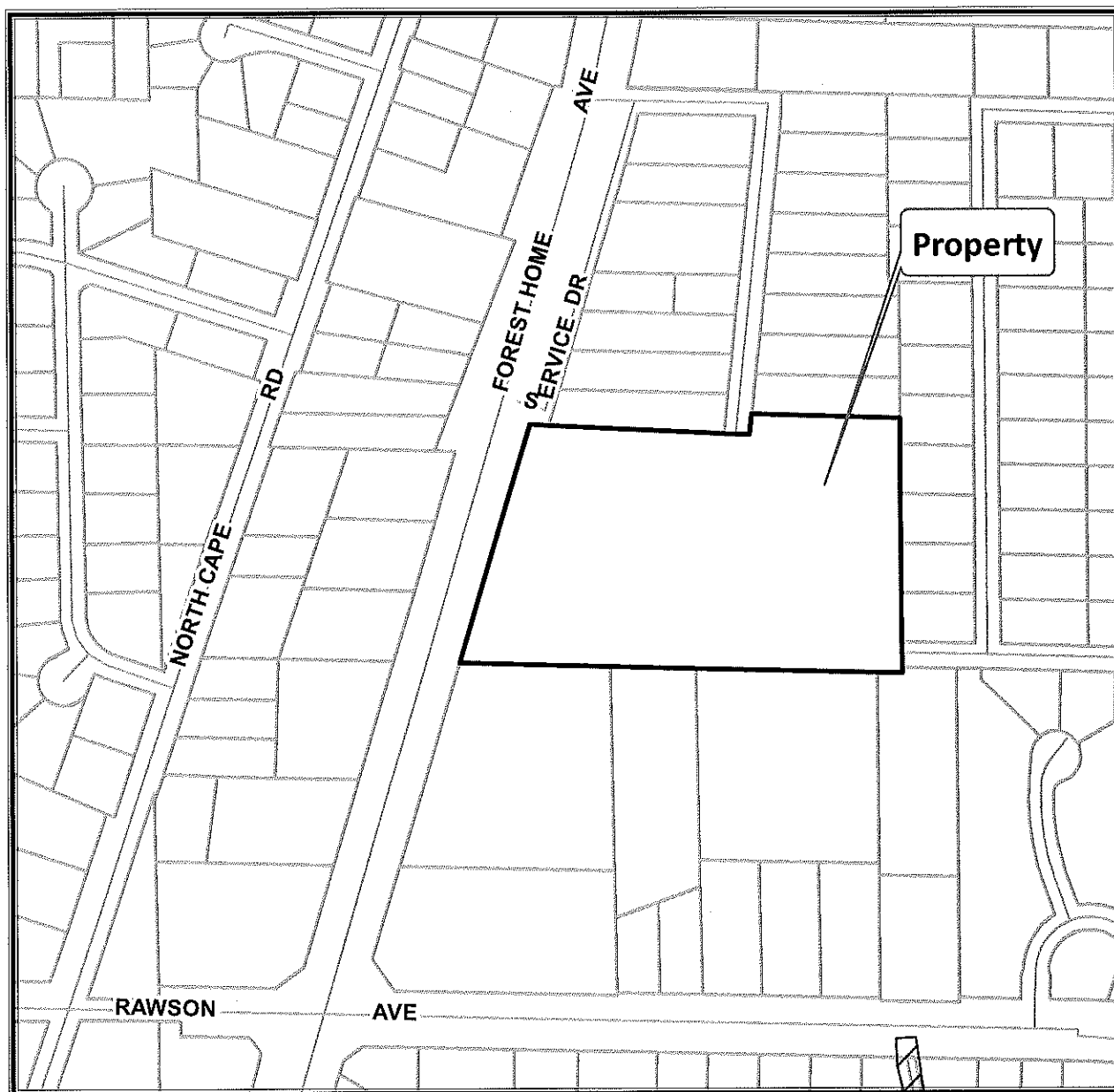
Per the above motion, Staff added the following condition to the draft resolution: "Gaps within the existing fence shall be repaired and/or filled within 60 days of the date of adoption of this Resolution." Staff also amended the time-frames for Condition Nos. 4, 5, 6 and 8 of the draft resolution accordingly.

COUNCIL ACTION REQUESTED

A motion to adopt Resolution No. 2017-_____, a resolution imposing conditions and restrictions for the approval of a Special Use for property located at 11307 West Forest Home Avenue to expand the operation of a lawn maintenance, landscaping and snow removal business (Mark Liban, President of Liban's Lawn Service, Inc., Applicant)



11307 W. Forest Home Avenue
TKN 748 9994 003



Planning Department
(414) 425-4024

0 225 450 900 Feet



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.

RESOLUTION NO. 2017-_____

A RESOLUTION TO AMEND RESOLUTION NO. 2002-5350,
IMPOSING CONDITIONS AND RESTRICTIONS FOR THE APPROVAL OF A
SPECIAL USE FOR PROPERTY LOCATED AT 11307 WEST FOREST HOME
AVENUE TO EXPAND THE OPERATION OF A LAWN MAINTENANCE,
LANDSCAPING AND SNOW REMOVAL BUSINESS
(MARK LIBAN, PRESIDENT OF LIBAN'S LAWN SERVICE, INC., APPLICANT)

WHEREAS, Mark Liban, President of Liban's Lawn Service, Inc. having petitioned the City of Franklin for the approval of an amendment to Resolution No. 2002-5350, conditionally approving a Special Use, such prior Resolution authorizing a landscaping and lawn service business upon property located at 11307 West Forest Home Avenue, such property being zoned M-1 Limited Industrial District, more particularly described as follows:

All of Outlot A of Block 1; all of Lot 9 and 10 of Block 2; of the North Cape Industrial Park, and part of the Southeast 1/4 of Section 6, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin, more fully described as follows: Beginning at the Northeast corner of Lot 9, Block 2 of the North Cape Industrial Park as platted; thence South 00 degrees 24'00" East, along the Easterly line of said North Cape Industrial Park and Westerly line of Block 8, North Cape Estates Addition and as extended, 598.15 feet to a point being on the North line of the Southerly 50 acres of said 1/4 section; thence North 88 degrees 37'56" West, along said North line, 1035.79 feet to a point being on the Easterly right-of-way line of West Forest Home Avenue; thence North 16 degrees 39'13" East, along said Easterly right-of-way line, 582.97 feet to a point being at the Southwesterly corner of the North Cape Industrial Park as platted; thence South 87 degrees 19'58" East, along said Southerly plat line, 453.13 feet to a point being at the Northeast corner of Outlot A of said Block 1, said point being on the Westerly right-of-way line of south 112th Street; thence North 88 degrees 15'51" East, 60.15 foot to a point being at the Northwest corner of the South 1/2 of said Lot 9, Block 2, as platted; thence South 88 degrees 30'10" East, along the North line of said Lot 9, 346.90 feet (recorded as 346.92 feet) to the place of beginning; Tax Key No.: 748-9994-003; and

WHEREAS, such proposed amendment being for the purpose of expanding the operation of a lawn maintenance, landscaping and snow removal business use; and

WHEREAS, such petition having been duly referred to the Plan Commission of the City of Franklin for a public hearing, pursuant to the requirements of §15-9.0103D. of the Unified Development Ordinance, and a public hearing having been held before the Plan

MARK LIBAN, PRESIDENT OF LIBAN'S LAWN SERVICE, INC. – AMENDMENT TO
SPECIAL USE
RESOLUTION NO. 2017-_____

Page 2

Commission on the 23rd day of March, 2017, and the Plan Commission thereafter having determined to recommend that the proposed amendment to Special Use be approved, subject to certain conditions, and the Plan Commission further finding that the proposed amendment to Special Use upon such conditions, pursuant to §15-3.0701 of the Unified Development Ordinance, will be in harmony with the purposes of the Unified Development Ordinance and the Comprehensive Master Plan; that it will not have an undue adverse impact upon adjoining property; that it will not interfere with the development of neighboring property; that it will be served adequately by essential public facilities and services; that it will not cause undue traffic congestion; and that it will not result in damage to property of significant importance to nature, history or the like; and

WHEREAS, the Common Council having received such Plan Commission recommendations and also having found that the proposed amendment to Special Use, subject to conditions, meets the standards set forth under §15-3.0701 of the Unified Development Ordinance.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the petition of Mark Liban, President of Liban's Lawn Service, Inc., for the approval of an amendment to Special Use for the property particularly described in the preamble to this Resolution, be and the same is hereby approved, subject to the following conditions and restrictions:

1. That this amendment to Special Use is approved only for the use of the subject property by Mark Liban, President of Liban's Lawn Service, Inc., successors and assigns, for the Liban's Lawn Service, Inc. operation expansion project, which shall be developed in substantial compliance with and constructed, operated and maintained by Mark Liban, President of Liban's Lawn Service, Inc., pursuant to those plans City file-stamped March 13, 2017 and annexed hereto and incorporated herein as Exhibit A.
2. Mark Liban, President of Liban's Lawn Service, Inc., successors and assigns, shall pay to the City of Franklin the amount of all development compliance, inspection and review fees incurred by the City of Franklin, including fees of consultants to the City of Franklin, for the Liban's Lawn Service, Inc. operation expansion project, within 30 days of invoice for same. Any violation of this provision shall be a violation of the Unified Development Ordinance, and subject to §15-9.0502 thereof and §1-19. of the Municipal Code, the general penalties and remedies provisions, as amended from time to time.

MARK LIBAN, PRESIDENT OF LIBAN'S LAWN SERVICE, INC. – AMENDMENT TO
SPECIAL USE
RESOLUTION NO. 2017-_____

Page 3

3. The approval granted hereunder is conditional upon Mark Liban, President of Liban's Lawn Service, Inc. and the Liban's Lawn Service, Inc. operation expansion project for the property located at 11307 West Forest Home Avenue: (i) being in compliance with all applicable governmental laws, statutes, rules, codes, orders and ordinances; and (ii) obtaining all other governmental approvals, permits, licenses and the like, required for and applicable to the project to be developed and as presented for this approval.
4. The overhead garage door on the building located at 11307 West Forest Home Avenue shall be repaired or replaced, within 60 days of the date of adoption of this Resolution.
5. Construction debris, junk, wood utility poles and a boat located in the field north of the building at 11307 W. Forest Home Avenue shall be removed from the property within 30 days of the date of adoption of this Resolution.
6. The rusty cargo container shall be removed from the property within 30 days of the date of adoption of this Resolution.
7. A minimum of two (2) ditch checks shall be installed in the drainageway on the east side of the property, in locations to be reviewed and approved by Engineering Department Staff.
8. The off-street parking areas shall be striped in accordance with Section 15-5.0202 of the City of Franklin Unified Development Ordinance, within 60 days of the date of adoption of this Resolution.
9. Gaps within the existing fence shall be repaired and/or filled within 60 days of the date of adoption of this Resolution.

BE IT FURTHER RESOLVED, that in the event Mark Liban, President of Liban's Lawn Service, Inc., successors or assigns, or any owner of the subject property, does not comply with one or any of the conditions and restrictions of this amendment to Special Use Resolution, following a ten (10) day notice to cure, and failure to comply within such time period, the Common Council, upon notice and hearing, may revoke the additional Special Use permission granted under this Resolution.

BE IT FURTHER RESOLVED, that any violation of any term, condition or restriction of this Resolution is hereby deemed to be, and therefore shall be, a violation of the Unified Development Ordinance, and pursuant to §15-9.0502 thereof and §1-19. of the Municipal Code, the penalty for such violation shall be a forfeiture of no more than \$2,500.00, or such other maximum amount and together with such other costs and terms as

MARK LIBAN, PRESIDENT OF LIBAN'S LAWN SERVICE, INC. – AMENDMENT TO
SPECIAL USE
RESOLUTION NO. 2017-_____

Page 4

may be specified therein from time to time. Each day that such violation continues shall be a separate violation. Failure of the City to enforce any such violation shall not be a waiver of that or any other violation.

BE IT FURTHER RESOLVED, that this Resolution shall be construed to be an amendment to such Special Use Permit as is contemplated by §15-9.0103 of the Unified Development Ordinance, and that all of the terms and conditions of Resolution No. 2002-5350, not specifically and expressly amended by or in direct conflict with this Resolution, shall remain in full force and effect.

BE IT FURTHER RESOLVED, Pursuant to §15-9.0103G. of the Unified Development Ordinance, the additional Special Use permission granted under this Resolution shall be null and void upon the expiration of one year from the date of adoption of this Resolution, unless the Special Use has been established by way of the issuance of an occupancy permit for such use.

BE IT FINALLY RESOLVED, that the City Clerk be and is hereby directed to obtain the recording of a certified copy of this Resolution 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 _____, 2017.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

**CITY OF FRANKLIN****REPORT TO THE PLAN COMMISSION****Meeting of March 23, 2017****Special Use Amendment**

RECOMMENDATION: City Development Staff recommends approval of the proposed special use amendment for the expansion of a lawn maintenance, landscaping and snow removal business upon property located at 11307 West Forest Home Avenue, subject to the conditions of approval in the attached draft resolution.

Project Name:	Liban's Lawn Service, Inc. Special Use Amendment
Project Address:	11307 West Forest Home Avenue
Applicant:	Liban's Lawn Service, Inc.
Owners (property):	FHCC, LLC
Current Zoning:	M-1 Limited Industrial District
2025 Comprehensive Master Plan	Industrial
Use of Surrounding Properties:	Industrial (to the north), industrial and single-family residential (to the south), single-family residential (to the east) and commercial (to the west).
Applicant Action Requested:	Recommendation of approval for the proposed Special Use Amendment for Liban's Lawn Service, Inc. to expand their operation at 11307 West Forest Home Avenue.

Please note:

- Staff recommendations are underlined, in italics and are included in the draft ordinance.
- Staff suggestions are only underlined and are not included in the draft resolution.

INTRODUCTION & BACKGROUND:

On February 8, 2017, Mark Liban submitted a Special Use Amendment application on behalf of Liban's Lawn Service, Inc. requesting approval to expand the operation of his existing lawn maintenance, landscaping and snow removal business at 11307 West Forest Home Avenue. The proposed use corresponds to Standard Industrial Classification (SIC) Title No. 0782, Lawn and Garden Services (with outdoor storage), which is allowed within the M-1 Limited Industrial District as a Special Use.

On February 19, 2002, the Franklin Common Council adopted Resolution No. 2002-5350 granting Special Use approval to Liban's Lawn Service, Inc. to operate in the rear of the property located at 11305 W. Forest Home Avenue. The building Liban's Lawn Service, Inc. leases has since been readdressed to 11307 W. Forest Home Avenue.

PROJECT DESCRIPTION AND ANALYSIS:

The applicant is requesting a Special Use Amendment to expand the operation of an existing lawn care, landscaping and snow removal business at 11307 West Forest Home Avenue. The property is approximately 12.5 acres or 544,500 square feet. Mr. Liban's company leases space within a storage building and the surrounding land at the northeast corner of the site. Hours of operation for the business are Monday through Friday from 7:00 a.m. to 7:00 p.m. and occasionally on Saturdays. Winter hours vary according to snowfall events. According to the Project narrative, there are nine (9) commercial vehicles over 8,000lbs gross vehicle weight parked on the property overnight. There are ten (10) full time employees presently working for Liban's Lawn Service, Inc.

The applicant is not proposing any changes to the building at this time. However, the metal siding, trim and gutters are visibly rusting in several locations. Therefore, Staff suggests painting the storage building located at 11307 West Forest Home Avenue. Furthermore, the bottom of the overhead garage door associated with Liban's lease space is broken. Therefore, Staff recommends repairing or replacing the overhead garage door on the storage building located at 11307 West Forest Home Avenue. There is an open field north of the storage building Liban's Lawn Service, Inc. leases, which is strewn with construction debris, wood utility poles, a boat and other miscellaneous junk. This grassy area is on the same property as Liban's Lawn Service, Inc. Staff recommends the construction debris, junk, wood utility poles, and boat located in the field north of the building at 11307 W. Forest Home Avenue be removed within one year of the date of adoption of the Special Use Amendment Resolution.

Outdoor Storage:

Liban's Lawn Service, Inc. has an outdoor storage yard located north of the storage building they lease. This area has historically been screened to the east and west by a six-foot solid wood fence. As part of this Special Use Amendment, the applicant is proposing to expand the outdoor storage yard further north, to the north lot line of the property. The applicant's Site Plan depicts the six-foot solid wood fence being extended to the north lot line accordingly. The applicant is also proposing to add concrete block storage bins within the outdoor storage area to organize landscaping materials. As proposed, the outdoor storage is properly screened from the street and the residential properties to the east in accordance with Section 15-3.0803(F) of the City of Franklin Unified Development Ordinance. There is currently a rusty cargo container located on the south side of the company's company vehicle parking area. The cargo container is in poor condition and is visible from the West Forest Home Avenue right-of-way. Therefore, Staff recommends removing the rusty cargo container from the property.

Drainage:

There is a drainageway located along the east side of Liban's outdoor storage yard, which drains into a stormwater pond for the development on an adjacent property immediately to the south. The Engineering Department raised concerns with sediment runoff from the outdoor storage yard getting into the pond. Therefore, Staff recommends installing a minimum of two (2) ditch checks in the drainageway, in locations to be reviewed and approved by Engineering Department Staff.

Parking:

Table 15-5.0203 of the City of Franklin Unified Development Ordinance (UDO) defines requirements for off-street parking. According to this section, a contractor shop is required to provide 1.0 space per 1,000 square feet of gross floor area (GFA), plus required parking spaces for offices, or similar uses where those uses exceed 10% GFA. If one applies this standard, then the 2,750 square feet of storage space leased by the lawn care, landscaping and snow removal business would be required to provide a minimum of three (3) off-street parking spaces. The proposed site plan identifies three (3) off-street parking spaces and one (1) accessible off-street parking space on the south side of the leased building, which meets the minimum UDO requirements. The site plan also depicts six (6) parking spaces along the east side of the tenants lease space. Staff recommends striping the off-street parking areas in accordance with Section 15-5.0202 of the City of Franklin Unified Development Ordinance.

Section 15-3.0701(A) and (C) of the UDO contains the General Standards and Considerations that must be examined for each proposed Special Use prior to granting approval. The applicant has provided a written response to these standards, which is included in your packet.

STAFF RECOMMENDATION:

City Development Staff recommends approval of the proposed special use amendment for the expansion of a lawn care, landscaping and snow removal business upon property located at 11307 West Forest Home Avenue, subject to the conditions of approval in the attached draft resolution.

Orrin Sumwalt

From: Adam Remington
Sent: Wednesday, March 22, 2017 7:36 AM
To: Orrin Sumwalt
Cc: Rich Carlsen
Subject: Liban's Lawn Service Building (11307 W. Forest Home)

Orrin,

There is no record of any fire at 11307 W. Forest Home, and we have never responded to that particular address for any type of incident (at least as far back as 2001). There was a fire at 11305 W. Forest Home in 2007, but even if both buildings shared the 11305 address at that time, the report indicates that the fire was controlled by the sprinkler system, so this means that the fire was definitely in the building currently shown as 11305 (current 11307 does not have a sprinkler system).

We did have a fire at the 11301 building in 2016. This was the label-making company (Repacorp), and paper products in one of the cutting machines caught fire. Again, largely controlled by the sprinkler system (which is actually shared by the connected buildings at 11301 and 11305. I was there, and can state that current 11307 was definitely not involved.

Rich believes that the complaint of "a fire" at 11307 may stem from unauthorized outdoor burning. If that is the case, they do not have FD approval to do that. Open burning permits should only be issued to private homeowners. They are issued from the clerk's office due to money changing hands. I know that the clerks are asking/checking, because they have referred business owners and other groups to me in the past. It is possible that a business owner could have (intentionally or unintentionally) not disclosed that it was a business address that they were getting the burning permit for, and that they "think" they are authorized to burn, when in reality they are not (I will have Cathy check the permits to make sure that is not the case).

Burning of construction waste and/or trash is prohibited citywide at all times. In any case, our records do not show any burning complaints at either 11305 or 11307, so if they were burning something outside, no one called us to investigate (In which case we would have required them to extinguish, or put it out ourselves).

Please call me if you have any other questions. I have copied Rich, and he may be able to provide more insight.

Adam J. Remington
Fire Chief
Franklin Fire Department
(414) 425-1420
aremington@franklinwi.gov

This message is intended for the sole use of the individual and entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended addressee, nor authorized to receive for the intended addressee, you are hereby notified that you may not use, copy, disclose or distribute to anyone the message or any information contained in the message. If you have received this message in error, please immediately advise the sender by reply email and delete the message.

Orrin Sumwalt

From: Adam Remington
Sent: Wednesday, March 22, 2017 10:07 AM
To: Orrin Sumwalt
Cc: Rich Carlsen
Subject: RE: FW: Special use permit hearing for Liban's Landscaping

Orrin,

That is correct. The building (like most in the city) is inspected twice annually. There are no outstanding violations at this time. Though, our records will show it under the 11305 address due to the discrepancy in Govern.

Adam.

-----Original Message-----

From: Orrin Sumwalt
Sent: Wednesday, March 22, 2017 9:58 AM
To: Adam Remington
Cc: Rich Carlsen
Subject: FW: FW: Special use permit hearing for Liban's Landscaping

Adam,

Thank you for your previous email. Staff will share that information with the Plan Commission at tomorrow's meeting. Below, please find a response to Jim Kleczka's concerns from Mr. Liban. Please note under #1 below, Mr. Liban claims his business has been subject to regular fire inspections. Can you confirm this?

Thanks,

orrin sumwalt, aicp | associate planner | city of franklin | 414.425.4024

-----Original Message-----

From: libanslandscape@wi.rr.com [mailto:libanslandscape@wi.rr.com]
Sent: Tuesday, March 21, 2017 5:55 PM
To: Orrin Sumwalt
Cc: Gail Olsen
Subject: Re: FW: Special use permit hearing for Liban's Landscaping

Orrin & Gail,

I'm responding to the email sent by Jim K's to clear up some false claims.

Not sure if I need to or where it should be sent just felt responding to his email would save precious time at the meeting.

#1 Concern: We applied for a permit on 12/04/2001 and received approval on 2/14/82002.

We have regular fire inspections and have abided to all there requests. We have never had a fire at this site or anywhere else.

#2 Concerns: We acquired use approval before Jim K's was occupying his current site. We were aware of Jim K's application and had no concerns with it. Anytime a landscaping or any other business opens its doors its good for the community.

#3 Concerns: We are not building. Office is located at 21380 W Lawnsdale Ct New Berlin. City of New Berlin is collecting taxes for that site.

#4 Concerns: The property we occupy is not visible from Forest Home ave or business located on 112th St or Cortez Rd. Entire site will be enclosed by 6' solid wood fence.

#5 & #6 Concerns: We have built several relationships with surrounding business and patronize to some of the following. Fisco Auto, Suburban Asphalt and Jim K's. All relationships have been favorable. We have been maintaining the surrounding area. We do not sell or have we ever sold or advertised to sell mulch. We are not competition for Jim K's.

Sorry you have to spend more time on our application just wanted to respond to his claims.

Thank you

Mark Liban

libanslandscape@wi.rr.com

414-406-7619

---- Orrin Sumwalt <OSumwalt@franklinwi.gov> wrote:

> Mark,

>

>

>

> My apologies. The email from Mr. Kleczka didn't make it into the electronic packet that was emailed last Friday. Please find the email below, dated March 15, 2017.

>

>

>

> Regards,

>

> From: Joel Dietl

> Sent: Wednesday, March 15, 2017 3:05 PM

> To: Orrin Sumwalt

> Subject: FW: Special use permit hearing for Liban's Landscaping

>

> FYI, and for the Plan Commission packet.

>

> Joel Dietl, AICP

> Planning Manager

> Department of City Development

> City of Franklin

> 9229 W. Loomis Road

> Franklin, Wisconsin 53132

> Phone: 414-425-4024

> Email: jdietl@franklinwi.gov<mailto:jdietl@franklinwi.gov>

>

> From: Steve Olson [mailto:steve-olson@wi.rr.com]

> Sent: Wednesday, March 15, 2017 2:57 PM

> To: Joel Dietl

> Subject: FW: Special use permit hearing for Liban's Landscaping

>

> Please put this in the record and copy for all plan commissioners.

>

> Steve Olson

> Mayor

> City of Franklin

> 9229 W. Loomis Rd.

> Franklin, Wi. 53132

> O: 414-427-7529

>

> [Franklin Logo Final email w text larger]

>

> From: JIM K'S LANDSCAPING [mailto:jimkslandscaping@hotmail.com]

> Sent: Wednesday, March 15, 2017 2:40 PM

> To: solson@franklinwi.gov<mailto:solson@franklinwi.gov>;

swesolowski@franklinwi.gov<mailto:swesolowski@franklinwi.gov>

> Subject: Special use permit hearing for Liban's Landscaping

>

>

> Dear Steve & Sandy

>

>

>

> I was just informed by one of my neighbors that Mark Liban of Liban's Landscaping is applying for a special use permit to run a landscaping business at 11307 W Forest Home Ave.

>

>

>

> I strongly object to granting him this permit for the following reasons:

>

>

>

> 1) He was running his business across the street in the back of the parking lot of the large office buildings and in back of Aladdin's. He was running the business there for a number of years without a permit. Last year because he was storing all his equipment, mulch, fertilizer and gas cans illegally a fire started. Because this was not a legal business and none of his employees were around the fire started which could of spread to all the other neighboring businesses including mine.

>

>

>

> 2) I have an established legal and permitted Landscaping business just 2 blocks away. I went thru all the legal formalities prior to opening up my business. I object to having another business like mine just 2 blocks away.

>

>

>

> 3) This property can not be built on because it is in a flood zone. That shed that he is running his office out of should not be permitted. Throwing down traffic bond does not correct all the problems.

>

>

>

> 4) When we applied for our special use permit we had to build a berm. The public does not want to see all his trucks equipment etc. It is an eye soar. Our property is maintained beautifully. We actually have had wedding parties pull up in front of our property to take wedding pictures in front of our berm that is how well maintained we keep our property.

>

>

>

> 5) If you recall the landscaper who was renting my property at 11221 W Forest Home Ave prior to me purchasing was a landscaper. What the city told us was he did not full fill his special use permit which was obvious when we purchased this property. Libans has been operating a business for years in Franklin with no permits and putting other businesses in

jepordy because he does not maintain his sites. He has been storing/selling mulch without a permit and that is not fair to my business when I did everything legally prior to opening my business.

>

>

>

> 6) He has been building his landscape bins for awhile now without even having a permit. He still even has his bins at that office parking lot. So is he going to continue storing & selling his mulch there also.

>

>

>

> I STRONGLY OBJECT TO GRANTING ANOTHER BUSINESS LIKE MINE A SPECIAL USE PERMIT WHEN I AM ONLY 2 BLOCKS AWAY AND HE HAS BEEN RUNNING THIS BUSINESS ILLEGALLY FOR YEARS!

>

>

>

> Please confirm receipt of this email and please consider my point of view. I can not attend the hearing but I would like my opinion heard. I look forward to hearing from you.

>

>

>

> Regards

>

> James Kleczka

>

> Jim K's Landscaping

>

> 11221 W Forest Home Ave

>

> Franklin WI 53132

>

> www.jimkslandscaping.com<<http://www.jimkslandscaping.com>>

Exhibit A

Liban's LaWN Service Inc.
21380 W. Lawnsdale Court
New Berlin, WI 53146
Mark Liban
414-406-7619
libanslandscape@wi.rr.com

Vehicle List:

2005 GMC Dump 25,000#
2016 Dodge Dump, 16,000#
2013 GMC Dump 10,000#
2007 Chev Dump 10,000#
2008 GMC Cube Van 8,000#
(4) GMC Pick Up

Employees: 9 to 10 Full time

Hours of operations: Summer 7:00 AM through 7:00 PM, Monday through Friday, Saturday occasionally. Winter, Anytime the snow stops, happens 2 to 6 times a month, Dec through April.

Services offered off site: Lawn maintenance, Landscaping, Snow removal.

Services offered on site: None

Site Operations: Employees drive to site, pick up schedule, vehicle, equipment and material. After 30 min to an hour they have left the site to complete scheduled work.
Return at end of day to park equipment and vehicles and leave site.
Maintenance and minor repairs are done on equipment during normal working hours.

Material stored on site: Mulch, gravel, field stone, hardscape material and top soil.
Material is not used for retail sales only used for work scheduled.

Liban's

DIVISION 15-3.0700

SPECIAL USE STANDARDS AND REGULATIONS

SECTION 15-3.0701

GENERAL STANDARDS FOR SPECIAL USES

- A. **General Standards.** No special use permit shall be recommended or granted pursuant to this Ordinance unless the applicant shall establish the following:

1. **Ordinance and Comprehensive Master Plan Purposes and Intent.** The proposed use and development will be in harmony with the general and specific purposes for which this Ordinance was enacted and for which the regulations of the zoning district in question were established and with the general purpose and intent of the City of Franklin Comprehensive Master Plan or element thereof.

Response: Current zoning M-1 Limited industrial. Liban's operations at site consist of storage for vehicles, equipment and material. All services are preformed off site at client's location. We load up equipment and material in the morning and unload at night.

2. **No Undue Adverse Impact.** The proposed use and development will not have a substantial or undue adverse or detrimental effect upon or endanger adjacent property, the character of the area, or the public health, safety, morals, comfort, and general welfare and not substantially diminish and impair property values within the community or neighborhood.

Response: Site requesting use of is currently a field. No further development. Area to be used for storage. Area will be covered with compacted gravel and surrounded with a 6' dog eared solid wood fence. Keep a 10' buffer zone between lot line and fence along east lot line to allow existing trees for additional screening. Area will have weekly trash cleanup.

3. **No Interference with Surrounding Development.** The proposed use and development will be constructed, arranged, and operated so as not to dominate the immediate vicinity or to interfere with the use and development of neighboring property in accordance with the applicable zoning district regulations.

Response: Operations on site are 7:00 AM to 9:00AM and 4:00 PM to 9:00 PM Monday through Friday and some Saturdays. Operating hours on site average 2 to 3 hours per day. No development

4. **Adequate Public Facilities.** The proposed use and development will be served adequately by essential public facilities and services such as streets, public utilities including public water supply system and sanitary sewer, police and fire protection, refuse disposal, public parks, libraries, schools, and other public facilities and utilities or the applicant will provide adequately for such facilities.

Response: Site has electric and natural gas utilities. Employees are working on site on average 2 to 3 hours per day. Fire hydrants located within 75'

Franklin

MAR 13 2017

City Development

5. **No Traffic Congestion.** The proposed use and development will not cause undue traffic congestion nor draw significant amounts of traffic through residential streets. Adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

Response: 3 to 5 vehicles leave in the morning and return in the evening.

6. **No Destruction of Significant Features.** The proposed use and development will not result in the destruction, loss, or damage of any natural, scenic, or historic feature of significant importance.

Response: None present.

7. **Compliance with Standards.** The special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the Common Council pursuant to the recommendations of the Plan Commission. The proposed use and development shall comply with all additional standards imposed on it by the particular provision of this Division and Ordinance authorizing such use.

Response: Operations comply with M-1 zoning.

- B. **Special Standards for Specified Special Uses.** When the zoning district regulations authorize a special use in a particular zoning district and that special use is indicated as having special standards, as set forth in Section 15-3.0702 and 15-3.0703 of this Division, a Special Use Permit for such use in such zoning district shall not be recommended or granted unless the applicant shall establish compliance with all such special standards.

Response: No special standards requested.

- C. **Considerations.** In determining whether the applicant's evidence establishes that the foregoing standards have been met, the Plan Commission and the Common Council shall consider the following:

1. **Public Benefit.** Whether and to what extent the proposed use and development at the particular location requested is necessary or desirable to provide a service or a facility that is in the interest of the public convenience or that will contribute to the general welfare of the neighborhood or community.

Response: Liban's patronizes and relies greatly on many surrounding companies and has been for 19 years. There is also a tax revenue benefit for the city.

2. **Alternative Locations.** Whether and to what extent such public goals can be met by the location of the proposed use and development at some other site or in some other area that may be more appropriate than the proposed site.

Response: 1) Down size to the approved size of site, restore requesting area to field and rent additional property from neighboring property to the south.

2) Locate to new site. Do not have options at this time.

3. **Mitigation of Adverse Impacts.** Whether and to what extent all steps possible have been taken to minimize any adverse effects of the proposed use and development on the immediate vicinity through building design, site design, landscaping, and screening.

Response: No new development. Screen entire area with fence. Maintain area weekly.

Removal of storage unit. New location of dumpster. Organize yard including bins for loose material.

4. **Establishment of Precedent of Incompatible Uses in the Surrounding Area.** Whether the use will establish a precedent of, or encourage, more intensive or incompatible uses in the surrounding area.

Response: Neighboring sites have similar operations. Liban's term of use for property will be 8 to 12 years.

LEASE

THIS LEASE is made as of 6/1/14 by Michael Diltworth and Robert's No. 9 LLC, ("Landlord") located at 8575 W. Forest Home Avenue, Suite 140, Greenfield, Wisconsin and Liban's Lawn Service, Inc. ("Tenant") located at 21380 W. Lawnsdale Ct, New Berlin, WI 53146.

FOR VALUE RECEIVED, Landlord and Tenant agree as follows:

1. Premises. Landlord leases to Tenant and Tenant rents from Landlord the Premises, being a part of the real estate located at 11311 W. Forest Home Avenue, Franklin, Wisconsin, part of the 8,230 square foot metal structure building, as more particularly described in Exhibit A (the "Premises"), 9,000+ square feet of exterior space and gravel fenced area to the North of the leased building and gravel parking space to the East of the leased building, as more particularly described in Exhibit B (the "Premises") for the Term defined below and in accordance with the provisions of this Lease. Tenant accepts the Premises in as-is condition. Landlord and Tenant to determine location within the building that is acceptable to both parties.

2. Term. The "Term" of this Lease shall be a month to month basis.

3. Use. Tenant shall use the Premises only for storage, parking, and warehousing (the "Permitted Uses") and for no other purpose without Landlord's prior consent, which may be withheld in Landlord's sole discretion. Tenant shall not commit or permit on the Premises any (a) violation of law (including, without limitation, the Americans With Disabilities Act) or private restriction; (b) public or private nuisance; (c) act or condition in the Premises that would invalidate or conflict with any insurance policy covering the Premises or property in it or make insurance unavailable; (d) waste; or (e) introduction, storage, or use of hazardous materials. Tenant shall promptly notify Landlord of any defective condition in the Premises or possible environmental contamination of the Premises that becomes known to Tenant.

4. Rent.

a.) It is understood by both Landlord and Tenant that this is a month to month lease. Either party may terminate the Lease with a written 30 day notice.

b.) Tenant may expand to additional square footage subject to the same terms as this Lease, and provided Landlord is able to provide for such request.

c.) Tenant shall pay to Landlord, without set off, deduction, or demand, "Rent" and other charges, in monthly installments in advance on or before the first day of each month in the following amounts:

Monthly Rent and Expenses:

	Per Month
Base Rent Interior	\$750.00
Base Rent Exterior	\$500.00
TOTAL MONTHLY PAYMENT:	\$1,250.00

Franklin

MAR 13 2017

19. Notices. Notices shall be sent to the following addresses:

Landlord: Robert's No. 9 LLC & Michael Dilworth
Attn: Michael Dilworth
8575 W. Forest Home Ave., Suite 140
Greenfield, WI 53228

Tenant: Liban's Lawn Service, Inc.
Attn: Mark Liban
21380 W. Lawnsdale Ct.
New Berlin, WI 53146

LANDLORD:

Michael Dilworth and Robert's No. 9 LLC

By: 

TENANT:

Liban's Lawn Service, Inc.

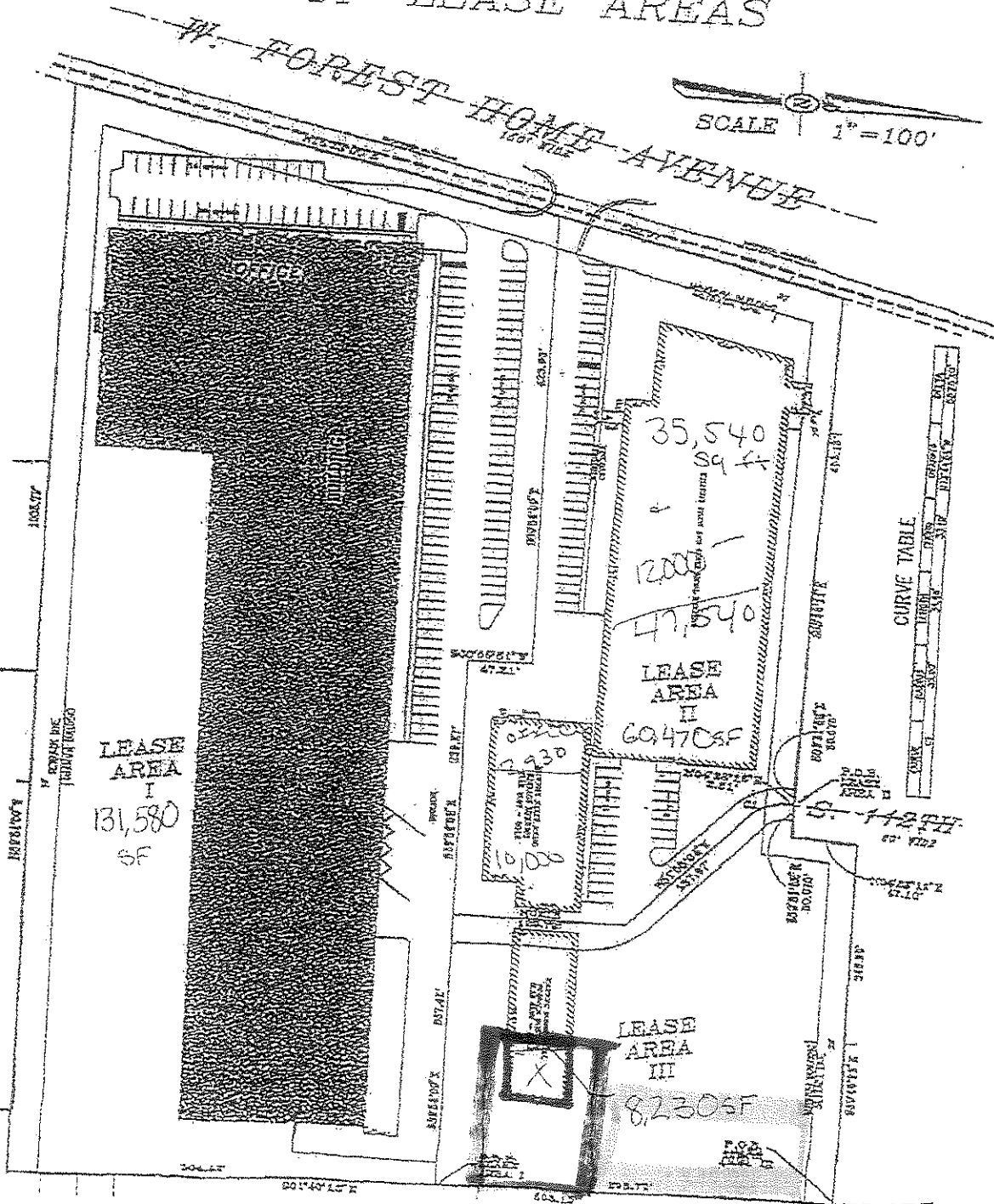
By: 
7/14/14

Exhibit A

PROJ. NO. 02-13-98-112
DWC. NO. 861022.DWG
DATE: OCTOBER 15, 1998

NO. 02-13-98-112
PROJ. NO. 861022.DWG
DATE: OCTOBER 15, 1998
FAX (614) 516-4322

EXHIBIT DRAWING OF LEASE AREAS



COMMENT AREA

NEW AREA

2000

City Development?

Height of Building 16'

11

Owner: Libras Service / Mark Libras
212 522 6444 date of Nov 2011

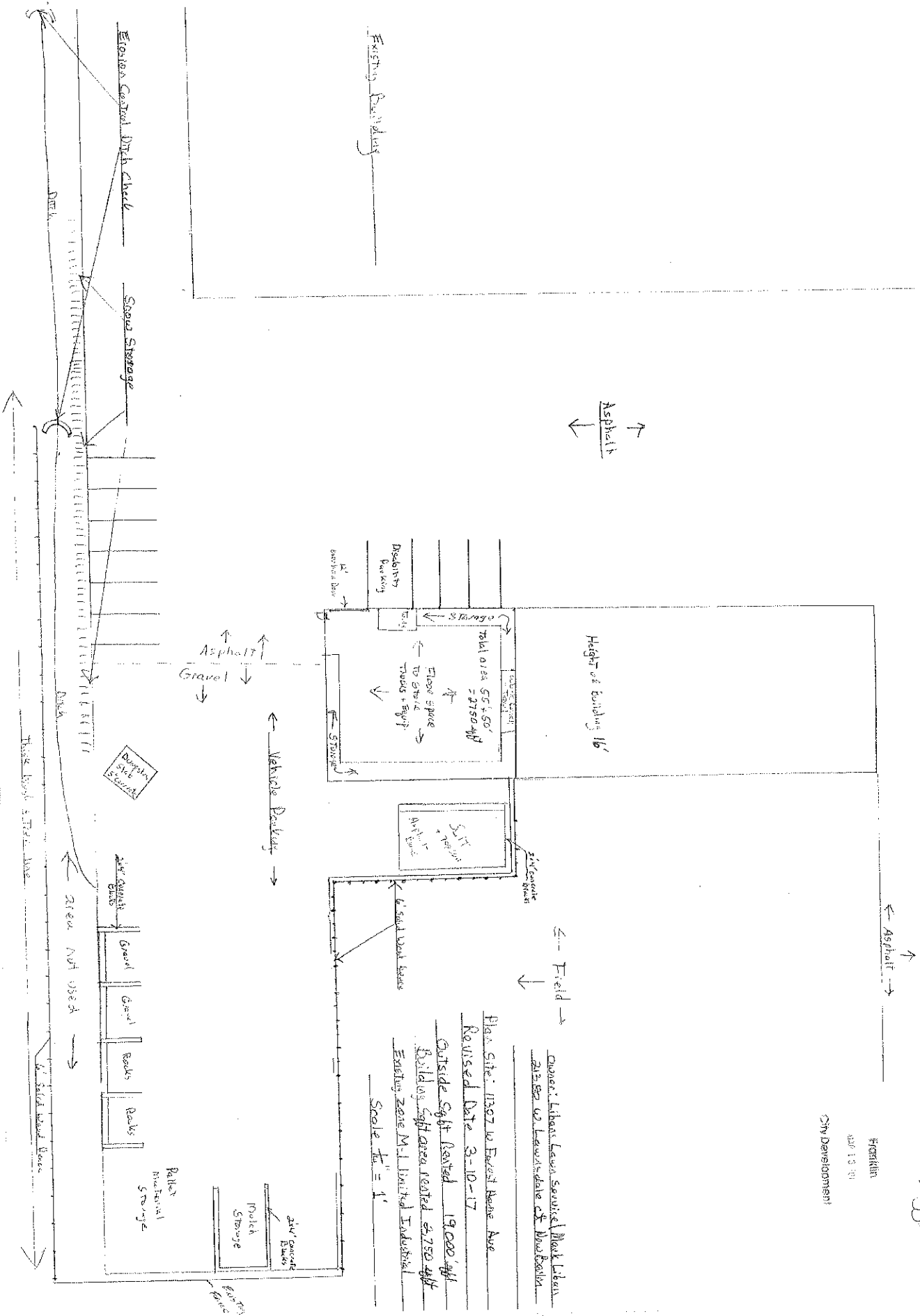
Place Site: 11307 W Forest Home Ave
Revised Date 3-10-17

Outside Sght Rented 19,000 yd

Existing Zone M-1 limited Industrial

$$\text{Scale } \frac{1}{10} = 1'$$

1000



APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE March 21, 2017
REPORTS & RECOMMENDATIONS	An Ordinance to Amend Sec 207-23 & 207-26 of the Municipal Code providing for oversizing payments to landowners related to installation of Water or Sanitary Sewer facilities	ITEM NUMBER <i>G.9.</i>

Background

Occasionally, water and/or sanitary sewer facilities are installed to areas of the City to provide for development by the landowner or a developer. The City will require the installation of oversized facilities as part of the project. Financing the oversizing is provided in the current ordinance by use of Impact fees on new development. The current Ordinance provides financing over five years, allowing new development to catch up with the cash required for the oversizing.

When the amount of the oversizing cost is \$30,000 or less, the attached amendment to ordinance 207-23 & 207-26 would permit the Common Council to immediately pay the entire oversizing costs, providing the Director of Finance & Treasurer certifies that funds are available in the Utility Development or Development Funds.

Analysis

A recent project along West Loomis Road had oversizing costs of \$25,878.00 which are being returned to the landowner/developer over five years beginning in February, 2016.

Options

Amend the Ordinance to permit the Common Council to immediately pay the landowner/developer oversizing costs of \$30,000 or less, when the Director of Finance & Treasurer certifies funds are available in the Utility Development or Development Fund.

Or

Leave the existing financing arrangement unchanged.

COUNCIL ACTION REQUESTED

Motion to adopt Ordinance 2017-_____, an Ordinance amending section 207-23 C (2) (a) and section 207-26 C (2) (a) permitting oversizing cost reimbursement to the landowner or developer that are \$30,000 or less immediately from available funds in the Utility Development or Development Funds.

ORDINANCE NO. 2017-_____

AN ORDINANCE TO AMEND §§207-23.C. AND 207-26.C. OF THE MUNICIPAL
CODE PERTAINING TO OVERSIZING COSTS REIMBURSEMENT TO
LANDOWNERS OR DEVELOPERS RELATED TO THE FINANCING
OF THE INSTALLATION OF
WATER AND SANITARY SEWER FACILITIES

WHEREAS, §§207-23.C. and 207-26.C. of the Municipal Code pertain to the financing of the costs of public water and sewer improvements, including where such improvements are constructed and installed by the City and also where such improvements are installed by private parties and then dedicated to the City; and

WHEREAS, §§207-23.C.(2)(a) and 207-26.C.(2)(a) provide for oversizing costs reimbursement to private parties who or which undertook the work of public improvement, and that such costs are to be paid in five equal annual payments following the completion of the work and acceptance thereof by the City; and

WHEREAS, the Common Council having considered the benefit to the City of the dedication of public utility infrastructure constructed and installed at the cost of private parties, and the promotion of quality development within the City, and having considered the five year term for the reimbursement of the oversizing costs of projects paid for by private parties, though the oversized portion of the facilities support the system and do not specially benefit the properties served by the specific infrastructure; and

WHEREAS, the Common Council having considered situations where the total oversizing costs are relatively insubstantial in amount compared generally to the costs of public improvements, i.e., a total amount of \$30,000 or less, and that the cost of making the proscribed payments to landowners and developers incurs costs to the taxpayers that may not provide sufficient benefit to taxpayers because of the relatively small sums involved, and the Common Council having determined that it is in the best interests of the taxpayers to amend the Municipal Code to provide for a forthwith reimbursement under such circumstances instead of repayment over a five year term.

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

SECTION 1: §207-23.C.(2) of the Municipal Code of the City of Franklin, Wisconsin, is hereby amended with regard to the introductory text thereof: immediately following "landowner", insert: "or developer".

SECTION 2: §207-23.C.(2)(a) of the Municipal Code of the City of Franklin, Wisconsin, is hereby amended to add the following at the end of the existing text: "In the event the total project oversize portion reimbursement amount upon project completion is \$30,000 or less and City funds are available in the Development or Utility Development Funds, as certified by the Director of Finance & Treasurer, such reimbursement shall be paid within a reasonable amount of time from project completion. Reimbursement shall not include interest."

SECTION 3: §207-26.C.(2)(a) of the Municipal Code of the City of Franklin, Wisconsin, is hereby amended to add the following at the end of the existing text: "In the event the total project oversize portion reimbursement amount upon project completion is \$30,000 or less and City funds are available in the Development or Utility Development Funds, as certified by the Director of Finance & Treasurer, such reimbursement shall be paid within a reasonable amount of time from project completion. Reimbursement shall not include interest."

SECTION 4: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION 5: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 6: This ordinance shall take effect and be in force from and after its passage and publication, and the first Monday June 5, 2017 Fair day.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017, by Alderman _____.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017.

APPROVED:

ATTEST:

Stephen R. Olson, Mayor

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

BLANK PAGE

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE 4/3/2017
Reports & Recommendations	REQUEST FOR REIMBURSEMENT FOR WATER MAIN OVERSIZING AT MATT TALBOT RECOVERY SERVICES, INC, 9132 S. 92ND STREET	ITEM NO. <i>G. 10,</i>

BACKGROUND

In keeping with City development practice, the development agreement requires Matt Talbot Recovery Services, Inc. to extend the sixteen-(16) inch water main to their property along W. Loomis Road (STH 36) and S. 92nd Street for future development and distribution purposes. Pursuant to the development agreement, the City agreed to reimburse the developer for any difference between the cost for installation of a 16-inch water main versus an 8-inch water main. The installation of the 16-inch water main has been completed and a calculation of the cost difference is explained below.

Matt Talbot Recovery Services has requested reimbursement for this oversized water main extension. Although the project was substantially complete over a year ago, the developer was delayed in providing the supporting documentation. Staff now concurs on the oversizing cost calculations.

ANALYSIS

Prior to work commencing, the developer submitted quotations for an 8-inch water main system (\$115,590) and a 16-inch water main system (\$204,281). There was one change order (\$25,285) related to the watermain that involved a bore to save a tree. Had the smaller 8-inch water main been installed, the estimated change order amount would have been \$14,311. Therefore:

- Theoretical 8" project costs = \$115,590 + \$14,311 = \$129,901
- 16" project costs = \$204,281 + \$25,285 = \$229,566
- Amount of reimbursement = \$229,566 - \$129,901 = \$99,665

The recommended total to be reimbursed is \$99,665. The development agreement dated November 25, 2015, and Municipal Code 207-23(C)(2)(a) provide that the City will reimburse the developer over five equal payments. If the documentation had been provided in a timely manner, the developer would have been due to receive the first installment in February 2017. The developer has requested that the first installment be retroactively paid upon approval from Common Council.

Note that no other property owners were assessed as part of this project. Those property owners may connect as a cost outlined in Municipal Code 207-23(C)(2)(b).

Of note is that the project is not complete. Items related to the construction of the watermain yet to be completed include:

1. Grade ditch area at the intersection of W. St. Martins Road and S. 92nd Street
2. Grade erosion control fence area at the intersection of W. St. Martins Road and S. 92nd Street
3. Grade ditch area in front of house on the property
4. Patch asphalt area at the intersection of W. St. Martins Road and S. 92nd Street
5. Remove erosion control fencing and re-grade area on S. 92nd Street (across from subject property) where soil was disturbed
6. Straighten and re-center valve box on water main
7. Pave fire hydrant areas to road

8. Build up pad around fire hydrant on W. St. Martins Road and extend to road with pavement

OPTIONS

Per development agreement and reimbursement policy, reimbursement shall be established.

FISCAL NOTE

The total reimbursement of water \$99,665 is to be paid over a five-(5) year period from the water impact fee account. There are sufficient appropriations in the Development Fund for this program.

Payments occur in February every year, and given the completion date of the project, the 2017 payment is proposed to go upon approval unless otherwise directed.

RECOMMENDATION

Motion to reimburse Matt Talbot Recovery Services, Inc. for oversizing water main constructed as part of its development in the amount of \$99,665 to be paid in five (5) annual payments, consistent with City reimbursement policy, and contingent on developers completion of punch list items.

Department of Engineering: GEM

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE April 3, 2017
REPORTS AND RECOMMENDATIONS	A Resolution Urging the Governor and the Legislature to Protect Homeowners and Main Street Businesses and Close Loopholes that Shift a Greater Property Tax Burden from Commercial to Residential Homeowners and Main Street Businesses	ITEM NUMBER <i>G.11.</i>

A draft of the above resolution is attached hereto. Also attached is a copy of the League of Wisconsin Municipalities subject matter issue briefing memorandum. The City is currently involved in two Circuit Court actions on the subject matter. In *Lowe's Home Centers, LLC vs. City of Franklin*, Milwaukee County Circuit Court Case No. 2016CV008356 and *Menard, Inc. vs. City of Franklin*, Milwaukee County Circuit Court Case No. 2016CV008734, the City is represented by League of Wisconsin Municipalities Mutual Insurance Company counsel.

COUNCIL ACTION REQUESTED

A motion to adopt A Resolution Urging the Governor and the Legislature to Protect Homeowners and Main Street Businesses and Close Loopholes that Shift a Greater Property Tax Burden from Commercial to Residential Homeowners and Main Street Businesses.



131 W. Wilson St., Suite 505
Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

Issue Briefing: Dark Store and Walgreens Decision Tax Shift

Court rulings giving tax cuts to chain stores result in tax increases for homeowners

Property taxes for homeowners and main street businesses are increasing in Wisconsin as national retailers pay less. A carefully-orchestrated wave of 100s of lawsuits in Wisconsin is forcing assessors to slash the market value of thriving national retail stores, shifting their tax burden to local mom and pop shops and to their home-owning customers. If the Legislature fails to close these loopholes, we estimate that millions of dollars in property taxes will shift from large commercial properties to homeowners and other taxpayers over the next few years.

The table below shows what assessors estimate the tax increases that homeowners in select communities will experience when the Dark Store strategy and Walgreens' decision is fully implemented. Calculations are based on amount of national chain retail, 2015 mill rates, and median home values:

City	Estimated Tax Increase	Average increase per home per year
Brookfield	5%	\$233.50
Hudson	9%	\$374.58
La Crosse	7%	\$197.12
Oconomowoc	8%	\$360.96
Pleasant Prairie	17%	\$892.50
Wauwatosa	7%	\$382.12
West Bend	8%	\$253.89

This is not a new problem, nor is it exclusive to Wisconsin. Wisconsin is merely the latest state to experience this coordinated legal attack on in-state taxpayers. Indiana and Michigan have already experienced it. In Indiana, the Legislature promptly slammed the door on this court-created loophole. A similar legislative fix is pending in Michigan. Wisconsin must do the same.

Loophole #1: It's just a big empty box. Tax attorneys for Target, Meijer, and other big box chains are using what is known as the "**Dark Store Theory**" to argue that the assessed value of a new, thriving store should be based on the value of vacant or abandoned buildings of similar size. They argue that regardless of their new location or how updated their building is the value for 'property tax purposes' should be based on the value of the buildings and locations they abandoned prior to moving into the new store at their new location.

Real World Example from Wauwatosa: The Lowe's store at 12000 W. Burleigh St. is currently challenging the city's assessed valuation. The City assessed the property at \$13.6 million. The City's expert believes the market value is actually \$17.7 million. Lowe's argues the property's current value is \$7.1 million of which \$3 million is attributed to land. Yet, the land was purchased in 2007 for \$9,012,800. Lowe's built a 140,000 square foot building in 2006 for approximately \$7 million, they then subsequently purchased the land after constructing the building. Altogether, Lowe's spent in excess of \$16 million to acquire the land and build the structure. Now, Lowe's argues that the land was devalued from \$9

million to \$3 million because the big box store was constructed. Lowe's insists that under Wisconsin law (based on the *Walgreens* decision) only vacant dark stores, such as the vacated big box stores near the former Northridge shopping area, can be used as comparables. The City disagrees, but their only options are costly litigation or settling with the property owner on a compromise value.

To learn more about the dark store tax strategy and its impact on other tax payers visit the League's Dark Store Loophole Resource page: <http://www.lwm-info.org/1279/Dark-Store-Tax-Loophole>

Loophole #2: Gold box on Wall Street, cardboard box on Main Street. Walgreens and CVS stores use a different, but related strategy, to argue that the assessed value of their properties should be less than half of actual sale prices on the open market. The two have already sued more than 100 Wisconsin communities, claiming the rent they pay for their newly-constructed, highly-visible corner locations doesn't accurately reflect its fair market value for property tax purposes. Walgreens and CVS have won dramatic assessment reductions since a 2008 Wisconsin Supreme Court decision, *Walgreens v. City of Madison*, upheld this tax strategy. These properties are developed to the retailer's specifications and leased to them with no landlord responsibility other than collecting rent. More than 80% of Walgreen stores and 95% of CVS stores operate under a lease arrangement. Drugstores have become the most popular single-tenant properties in the national real estate investment market. But attorneys for Walgreen and CVS argue that their actual sale prices don't represent market value and the underlying leases are the wrong tool for determining the property's value for 'property tax purposes.' Instead, they say, the assessments should hinge on the amount the landlord could get if the drugstore moved out and a different retailer moved in.

Real World Example from Oshkosh: Walgreens challenged the City of Oshkosh's assessments of two of its stores. The city based its assessment on the actual amounts for which the properties were sold. The court rejected the city's approach and ordered that the two Walgreens be refunded for several tax years. The total amount of the refunds equaled \$305,672. Other taxpayers in Oshkosh now have to pick up Walgreen's former share of the tax burden. There are over 200 Walgreens located in Wisconsin's cities and villages.

To learn more about the need to overturn the *Walgreens v. Madison* decision and that decision's impact on other tax payers visit the League's Overturn the Walgreens Decision Web Page: <http://www.lwm-info.org/1468/Overturn-the-Walgreens-Decision>

Other states have stopped this tax shift. The Republican-controlled Indiana Legislature overwhelmingly passed bipartisan legislation in 2015 and 2016 prohibiting assessors from valuing new big box stores the same as abandoned stores in a different market segment. The Michigan legislature is considering similar proposals. In May 2016 the Michigan house passed a dark store fix bill by a vote of 97-11. The bill died in the Michigan Senate.

Solution: Follow Indiana's lead and pass legislation in Wisconsin closing off these tax strategies and stopping the tax shift to home owners. Pass legislation clarifying that:

1. Reverse the *Walgreens v. City of Madison* decision by clarifying that leases are appropriately factored into the valuation of leased properties (*Rep. Rob Brooks (R-Saukville and Sen. Duey Stroebel (R-Saukville) plan to introduce soon*); and
2. When using the comparable sale method of valuation, assessors shall consider as comparable only those sales within the same market segment exhibiting a similar highest and best use rather than similarly sized but vacant properties in abandoned locations. (*Rep. Rob Brooks and Sen. Roger Roth (R-Appleton) plan to introduce soon*).

RESOLUTION NO. 2017-_____

A RESOLUTION URGING THE GOVERNOR AND THE LEGISLATURE TO PROTECT
HOMEOWNERS AND MAIN STREET BUSINESSES AND CLOSE LOOPHOLES THAT
SHIFT A GREATER PROPERTY TAX BURDEN FROM COMMERCIAL TO
RESIDENTIAL HOMEOWNERS AND MAIN STREET BUSINESSES

WHEREAS, home owners in Wisconsin already pay 70% of the total statewide property tax levy; and

WHEREAS, that disproportionate burden is about to get much worse unless the Legislature addresses tax avoidance strategies that national chains like Walgreens, and big box retail establishments like Target and Lowe's are using across the country to gain dramatic reductions in their property tax bills at the expense of homeowners and other taxpayers; and

WHEREAS, a carefully-orchestrated wave of 100s of lawsuits in Wisconsin is forcing assessors to slash the market value of thriving national retail stores, shifting their tax burden to local mom and pop shops and homeowners; and

WHEREAS, Walgreens and CVS stores in Wisconsin have argued in communities across the state that the assessed value of their property for property tax purposes should be less than half of their actual sale prices on the open market; and

WHEREAS, in many cases the courts have sided with Walgreens and CVS, requiring communities to refund tax revenue back to the stores; and

WHEREAS, there are over 200 Walgreens stores located in Wisconsin's cities and villages; and

WHEREAS, Target, Lowe's, Meijer, Menards and other big box chains are using what is known as the "Dark Store Theory" to argue that the assessed value of a new store in a thriving location should be based on comparing their buildings to sales of vacant stores in abandoned locations from a different market segment; and

WHEREAS, the Republican-controlled Indiana state Legislature has on two occasions in the last two years overwhelmingly passed legislation prohibiting assessors from valuing new big box stores the same as nearby abandoned stores from a different market segment; and

WHEREAS, the Michigan state house overwhelmingly passed similar legislation in May of 2016.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the City of Franklin hereby urges the Governor and the Legislature to protect homeowners and main street businesses from having even more of the property tax burden shifted to them by passing legislation clarifying that:

1. Leases are appropriately factored into the valuation of leased properties; and
2. When using the comparable sale method of valuation, assessors shall consider as comparable only those sales within the same market segment exhibiting a similar highest and best use rather than similarly sized but vacant properties in abandoned locations.

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

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

APPROVED:

ATTEST:

Stephen R. Olson, Mayor

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

Blank Page

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 04/04/2017
REPORTS & RECOMMENDATIONS	A RESOLUTION TO ACCEPT JURISDICTIONAL TRANSFER OF W. ST. MARTINS ROAD (CTH MM) FROM S. NORTH CAPE ROAD TO S. LOVERS LANE ROAD	ITEM NUMBER <i>G.12.</i>

BACKGROUND

In 2016, the City and the County entered a "Local / County Agreement for a Highway Improvement" for the Jurisdictional Transfer Agreement of W. St. Martins Road (CTH MM) from S. North Cape Rd. to S. Lovers Lane Rd. Milwaukee County has substantially completed the road improvements and the punch list items are expected to be completed this spring.

The County needs to finalize and close out the project to meet federal funding requirements by June 1, 2017. To meet this deadline, they are requesting that the City accept the project in April 2017.

ANALYSIS

The road project was substantially complete before winter. The project could not reach final completion because of winter conditions and will be completed this spring. Of note are the following outstanding punch list items:

1. Inlet at Station 74+50 LT (10570 West St Martins Road). Inlet was installed last year on December 13, 2016). Contractor will asphalt around it once asphalt plant starts this year.
2. Pavement marking are peeling off in Stage 2 due to the road not cleaned after top soil. Contractor will restripe when pavement conditions are warm and dry.
3. Landscaping to be monitored this year (April / May 2017) to monitor the growth and extent of weed infestation. Reseed and/or weed control as determined by Staff.
4. Most ditches in Stage 2 have settled over the winter. Some blockages have created ponding conditions in yards. Ditches and side yards in stage 2 must be dressed up to ensure positive drainage.

This winter there were a few intersections that did not drain as anticipated- specifically W. Church Street. The County has agreed to cost-share remediation of these locations if City DPW staff performs the work.

Overall, the project has performed well. Assuming that the punch list is adequately addressed, City DPW is ready to accept the project.

OPTIONS

Approve or Deny (will need specific justification if denied).

FISCAL NOTES

There will be some expense (two to four days of labor and equipment) for DPW to remediate the drainage ponding at W. Church Street and S. Chapel Hill Drive. DPW will add W. St. Martins Road to the snow removal routes for the 2017-2018 winter season.

RECOMMENDATIONS

Motion to adopt Resolution 2017 - _____, a resolution to accept jurisdictional transfer of W. St. Martins Road (CTH MM) from S. North Cape Road to S. Lovers Lane Road.

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY
RESOLUTION NO. 2017-

A RESOLUTION TO ACCEPT JURISDICTIONAL TRANSFER OF W. ST. MARTINS ROAD
(CTH MM)
FROM S. NORTH CAPE ROAD TO S. LOVERS LANE ROAD

WHEREAS, the City of Franklin and Milwaukee County have discussed the merit of transferring several roadways; and

WHEREAS, on March 28, 2016, the City of Franklin and Milwaukee County entered into a Local/County Agreement for W. St. Martins Road (CTH MM) from S. North Cape Road to S. Lovers Lane Road; and

WHEREAS, Milwaukee County has satisfactorily fulfilled the terms of the 2016 agreement; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that the Common Council conditionally accepts the jurisdictional transfer from Milwaukee County of W. St. Martins Road (CTH MM) from S. North Cape Road to S. Lovers Lane Road.

This agreement being subject to review and approval of the City Attorney.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017 by Alderman _____.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

Blank Page

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE April 3, 2017
REPORTS AND RECOMMENDATIONS	AN ORDINANCE TO AMEND THE MUNICIPAL CODE TO REGULATE THE APPLICATION AND SALE OF COAL TAR SEALANT PRODUCTS	ITEM NUMBER <i>G.13.</i>

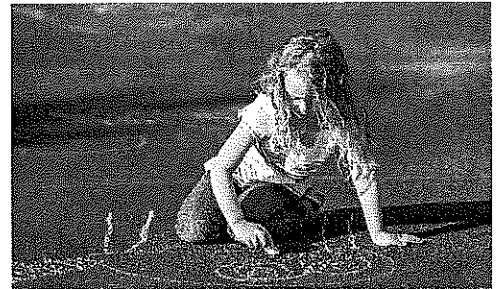
The Intergovernmental Cooperation Council Executive Council of the Milwaukee Metropolitan Sewerage District at its March 13, 2017 meeting received a briefing upon the subject matter of the environmental and public health impacts of polycyclic aromatic hydrocarbons (PAHs), which are contained in coal tar sealants and other high PAH sealants, used in the construction and maintenance of streets, driveways, parking lots and the like. Attached hereto is a copy of the Clean Wisconsin fact sheet presented at the meeting, as well as subject matter presentation materials presented at the November 14, 2016 ICC meeting. A draft of the above ordinance is attached hereto.

COUNCIL ACTION REQUESTED

A motion to adopt An Ordinance to Amend the Municipal Code to Regulate the Application and Sale of Coal Tar Sealant Products.



DANGEROUS DRIVEWAYS TOXIC PAH POLLUTION FROM TAR-BASED SEALANTS



Tar-based pavement sealants are the primary source of toxic PAH pollution in urban landscapes. Those PAHs are harmful to human health and hurt fish and other aquatic life in our lakes and rivers.

What are pavement sealants?

Pavement sealants, also known as “sealcoats” or “sealers,” are the jet-black coatings homeowners and contractors apply to residential, commercial, and industrial driveways and parking lots. There are two main types of pavement sealants on the market today: tar-based sealants (also called “coal tar-based”), and asphalt-based sealants.

The problem with tar-based pavement sealants

Pavement sealants contain **polycyclic aromatic hydrocarbons** (PAHs), which are toxic compounds that can **cause cancer and developmental problems in children**. The American Medical Association and other public health groups have urged local and state governments to ban tar-based sealants due to their harmful health effects.

How are people exposed to PAHs from tar-based sealants?

PAHs accumulate in soils, household dust, and carpets when particles of tar-based sealants are blown or tracked into homes, schools, and other buildings. The particles come from those sealants being worn down over time by weather, tire abrasion, and foot traffic. The toxic sealant particles are also washed off by rain and spring meltwater, ending up in our local water bodies.

A recent study found that 77% of PAH pollution in Milwaukee streambeds came from tar-based sealants.

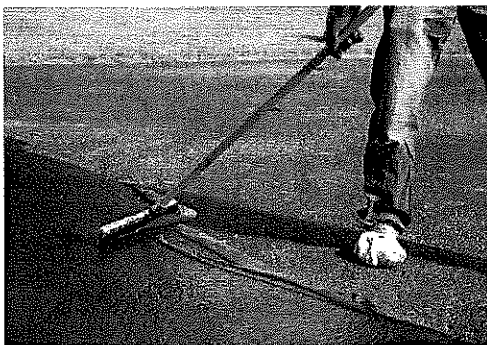
How significant is the health risk?

The coal tar pitch used in tar-based sealants is classified as a **hazardous waste**. Children living in homes where parking lots are coated with tar-based pavement sealants face a **14-fold increase in cancer risk** compared to those living next to unsealed lots, according to researchers at Baylor University and the U.S. Geological Survey. ***A lifetime of exposure can lead to cancer rates 38 times higher.***

CHILDREN LIVING FROM BIRTH TO
AGE 6 NEAR PARKING LOTS WITH
TAR-BASED SEALANTS HAVE A
**14x HIGHER LIFETIME
CANCER RISK**

Current Tar-Based Sealant Bans:

Andover, Massachusetts (use restriction)
Ann Arbor, Michigan
Annapolis/Anne Arundel County,
Maryland
Austin, Texas
Bee Cave, Texas
Boone, North Carolina (use restriction)
Cwlt. of Massachusetts (use
restriction)
Dane County, Wisconsin
Dexter, Michigan
Edwards Aquifer Authority, Texas
Greenville, South Carolina
Hamburg Township, Michigan
Milwaukee, Wisconsin
Montgomery County, Maryland
North Barrington, Illinois
Prince George's County, Maryland
San Antonio, Texas
San Marcos, Texas
Scio Township, Michigan
South Barrington, Illinois
Spring Lake Township, Michigan
State of Minnesota
State of Washington
Sudbury, Massachusetts (use restriction)
Suffolk County, New York
Van Buren Township, Michigan
Washington, D.C.
Westwood, Massachusetts
Winfield, Kansas
Winnetka, Illinois
Ypsilanti, Michigan



“Whether sending their children to a playground or repairing a driveway, Americans are potentially being exposed to harmful carcinogens in coal-tar-based sealcoats.”

– American Medical Assoc.

How to be PAH-safe:

Don't use tar-based pavement sealants

If you feel you must seal your driveway or parking lot, then use asphalt-based sealants, which have 1,000-times lower PAH levels.

Remove your shoes

If you don't have control over your parking lot or driveway, try to keep sealant dust and soil out of your home by taking off shoes before entering.

Look for hidden PAHs

Tar can have a lot of different names, and some other byproducts can have very high levels of PAHs. To be safe, check the “Material Safety Data Sheet” of the product (try searching online) and avoid anything including CAS #'s **64742-90-1, 65996-92-1, 65996-93-2, 65996-89-6, 69013-21-4, or 8007-45-2.**

Speak up

Become an advocate in your community against the use of tar-based pavement sealants. More at cleanwisconsin.org/our-work/pah.

Environmental impacts

PAHs **kill small organisms** living on the bottoms of rivers and streams and can **cause tumors in fish and other large aquatic animals**. This could result in costly impacts on the ecological balance of aquatic environments. Even three months or more after sealants are applied, the tar-sealed pavement runoff can kill fathead minnows and water fleas, two indicator species used to assess chemical toxicity to aquatic life.

Economic Impacts

PAH pollution from tar-based sealants can be a significant burden to taxpayers when municipalities are on the hook for cleaning up stormwater sediment ponds contaminated with PAH-laden sediment. In the Minneapolis metro area, the PAH cleanup from tar-based sealants is estimated to cost taxpayers hundreds of millions of dollars.

Are there alternatives?

Yes. Asphalt-based pavement sealants have up to 1,000-times lower PAH levels and are no more expensive than tar-based sealants. Alternatives such as acrylic sealants or gravel parking lots and driveways have minimal PAH levels. Studies of an early PAH ban in Austin, Texas, show significant PAH reductions in local waterbodies.

How do tar-based sealants compare to other PAH sources?

Other sources of environmental PAH pollution have significantly lower concentrations than tar-based sealants. Fresh asphalt, for example is about 1.5 parts per million (ppm) PAHs. Smoke from wood fires can range from 2 to 114 ppm, engine exhaust 102-370 ppm, and used motor oil around 440 ppm. ***Tar-based sealants are hundreds to thousands of times worse***, at 70,000 – 100,000 ppm.

**WE IN WISCONSIN NEED TO FOLLOW THE LEAD OF OTHERS
AND END THE SALE AND USE OF HIGH-PAH SEALANTS TO
PROTECT OUR HEALTH AND ENVIRONMENT.**

Visit cleanwisconsin.org/our-work/pah for more information.

Tyson Cook

Director of Science and
Research
tcCook@cleanwisconsin.org
608-251-7020 x27

Amber Meyer Smith

Director of Programs and
Government Relations
asmith@cleanwisconsin.org
608-251-7020 x16

Polycyclic Aromatic Hydrocarbons And Coal Tar Sealants

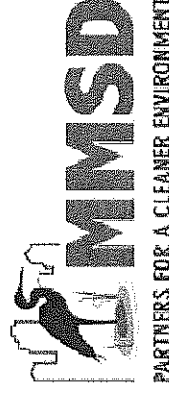
ICC's Executive Council of the MMSD Meeting

November 14, 2016

Christopher Magruder
Science Advisory Committee Coordinator



Matthew T. Magruder
MMSD Research Manager



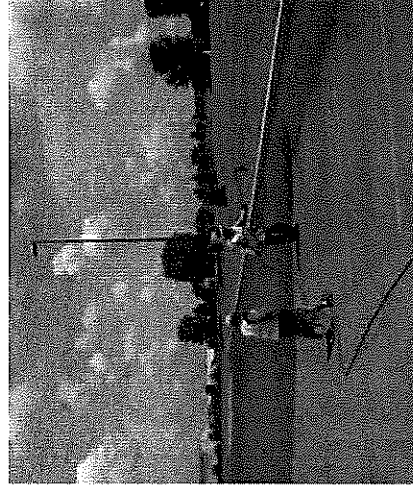
Why Pavement Sealcoats?

Sprayed or brushed onto asphalt pavement

- Improve appearance (black, shiny coating)
- Done to increase pavement longevity (??)

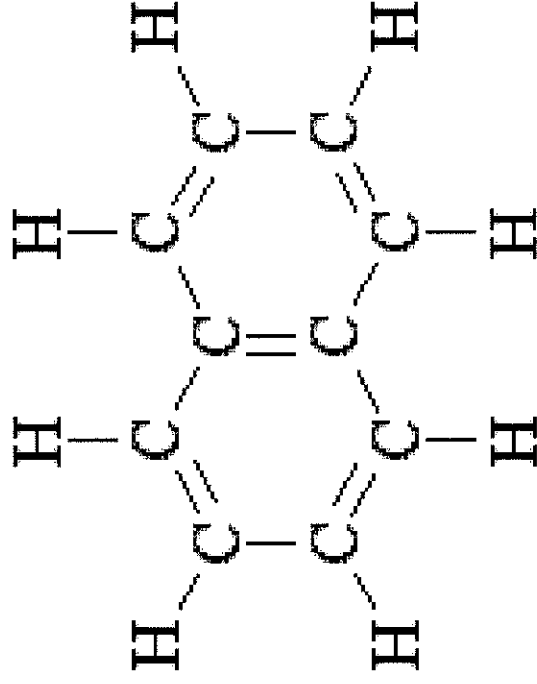
Asphalt or Coal-Tar based sealcoats

- similar in appearance, however...
- Polycyclic Aromatic Hydrocarbons concentrations ~1000x higher in Coal Tar-based^a sealants



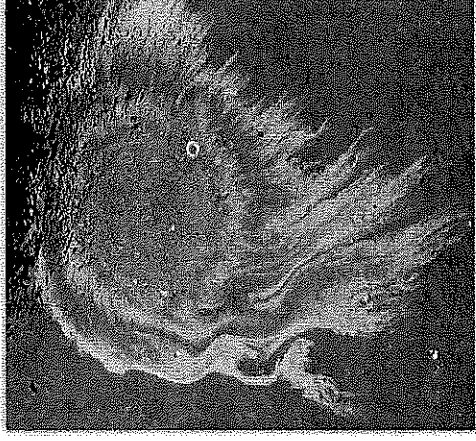
a. Mahler et al. 2012, ES&T; b. Baron et al. 1998; c. Nat'l Toxicology Program 2011;

What are Polycyclic Aromatic Hydrocarbons (PAHs)?



Polycyclic aromatic hydrocarbons are group of organic compounds (>200) containing only carbon and hydrogen atoms arranged around two or more aromatic (benzene - C_6H_6) rings.

Where do PAHs come from?

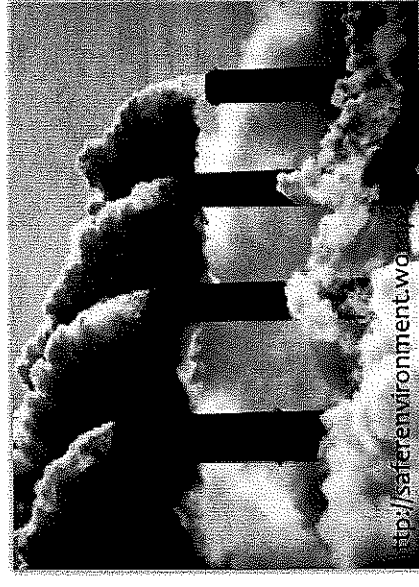


- * Naturally occur in oil, coal, tar.
- * Form during incomplete combustion of carbon-based materials or fossil fuels (*petroleum, coal, wood, diesel, gasoline*).



- * There are two distinct categories of PAHs.

- * Petrogenic
- * Pyrogenic



What are the differences between the two categories of PAHs ?

Petrogenic:

- * Formed at low temperatures, lower molecular weight
- * Formed over geologic time scale
- * Found in fossil fuels
 - * Coal, crude, refined petroleum products, lubricants, asphalt, etc.

Pyrogenic

- * Formed at high temperatures, higher molecular weight
- * Natural = forest & grass fires, volcanic eruption, etc.
- * Manmade = engine exhaust, coal fired power plant emissions, creosote, coal tar sealants, etc.

Why Should We Care About PAHs?

- * Many PAHs are toxic, carcinogenic, or mutagenic to aquatic life and humans.
- * These environmental effects can be additive.
- * Prenatal exposure to PAHs linked to later developmental problems.
- * 17 PAHs have been identified as being of greatest concern with regard to potential exposure and adverse health effects on humans (Agency for Toxic Substances and Disease Registry).
- * 16 PAHs are on USEPA's priority pollutant list.
- * Costly to remediate.

What are the urban sources of PAHs?

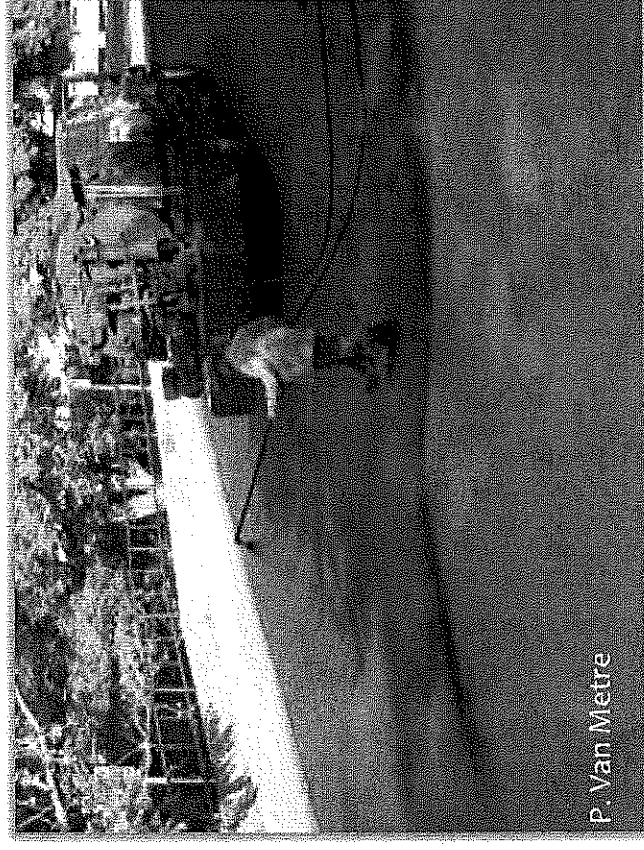
All concentrations in mg/kg, sums of 12 PAHs
(means of as many as 6 studies)

Fresh asphalt	1.5
Weathered asphalt	3
Fresh motor oil	4
Brake particles	16
Road/tunnel dust	24
Tire particles	86
Diesel engine	102
Gasoline engine	370
Used motor oil	440

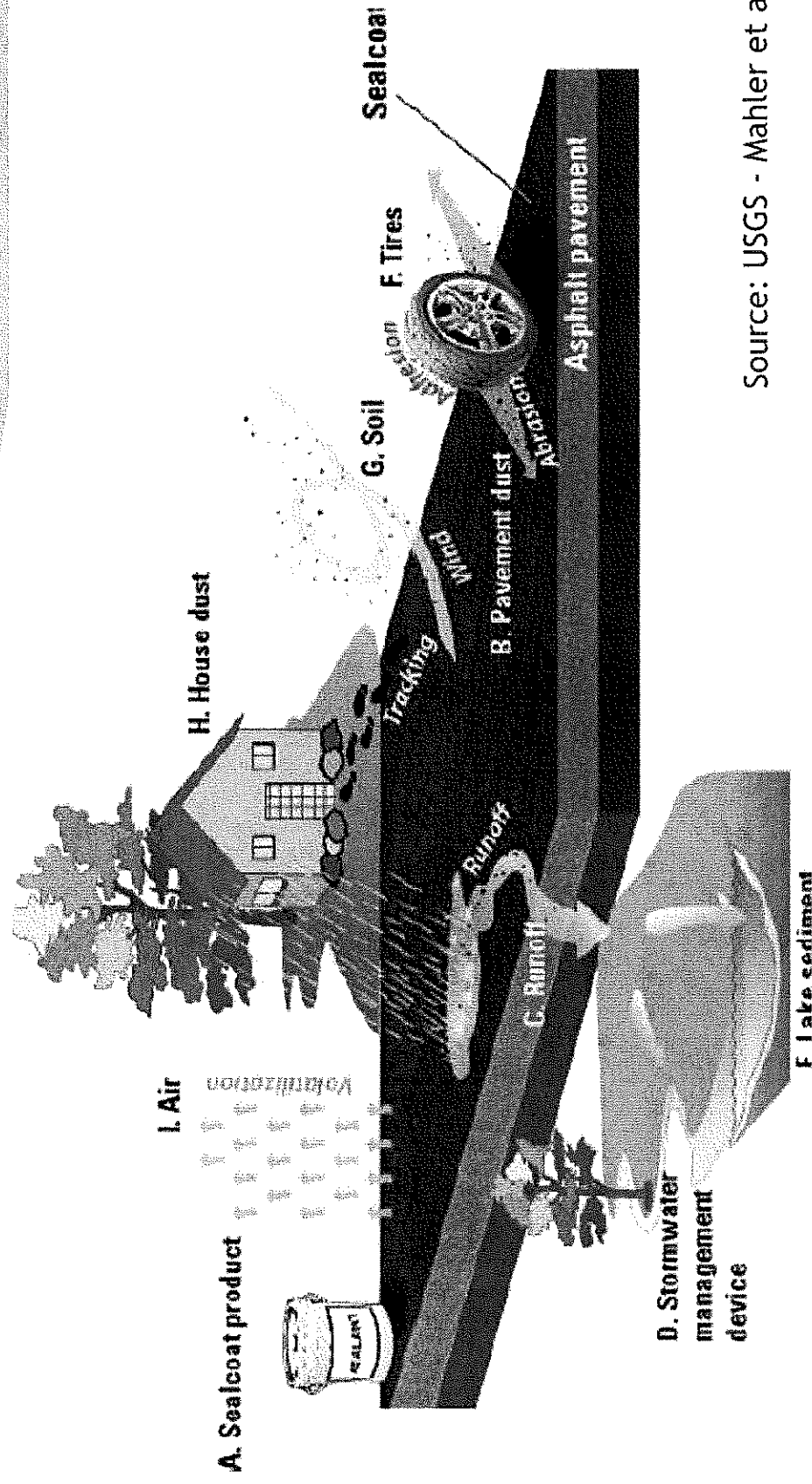
Pavement Sealcoat

Asphalt-based ~ 50

Coal-tar-based ~70,000

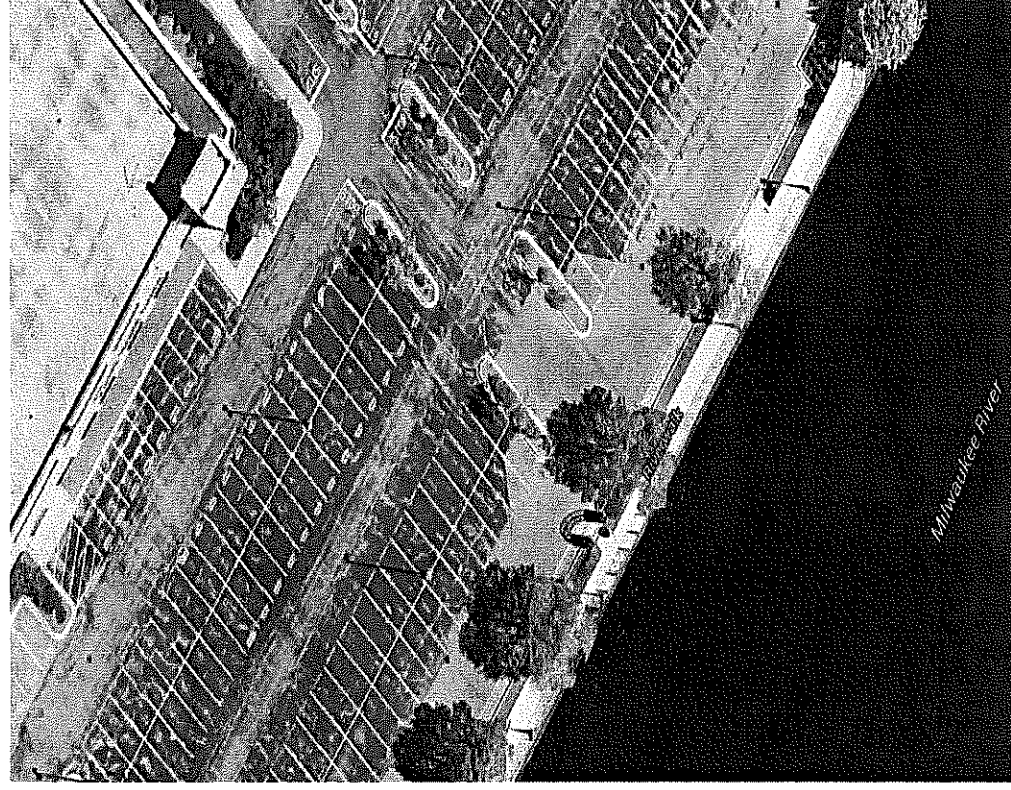


Once applied, how do PAHs in Coal-tar sealants move through the environment?



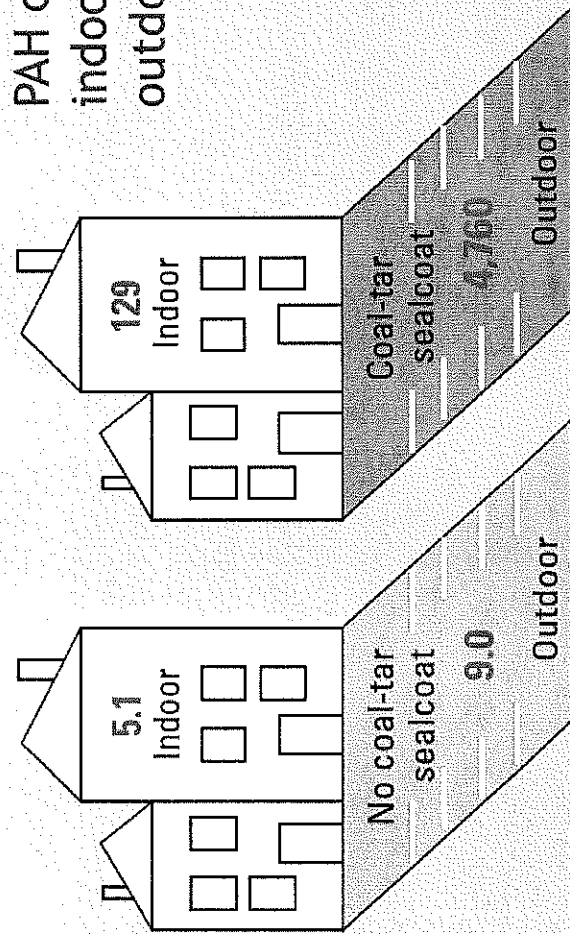
Source: USGS - Mahler et al. 2012

Example of pavement sealcoat weathering



- Abraded by vehicle traffic, tires, snow plows, etc.
- Weathered particles are carried and dispersed by the wind or are washed into storm drains by rain or snow melt, ultimately reaching waterways.

USGS study highlights coal-tar sealant use and human health risks.



PAH-contaminated dust on coal-tar-sealcoated pavement (right) is tracked indoors.¹⁰ Concentrations shown are median values for the sum of the 16 Priority Pollutant PAHs, in units of milligrams per kilogram, in house dust and parking lot dust.

PAH concentrations 25 time higher indoors where coal-tar sealants are used outdoors.



Coal-Tar-Based Pavement Sealcoat—Potential Concerns for Human Health and Aquatic Life

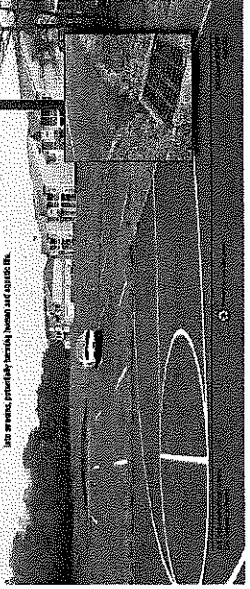
Sealcoat is the thick, viscous liquid applied to many asphalt parking lots, driveways, and playgrounds to protect and enhance the appearance of the underlying asphalt. Studies by the U.S. Geological Survey (USGS), academic institutions, and State and local agencies have identified coal-tar-based pavement sealcoat as a major source of polycyclic aromatic hydrocarbons (PAHs) contamination in urban and suburban areas and a potential concern for human health and aquatic life.¹

Key Findings:

Human Health Concerns—As coal-tar-based sealcoat ages, it weathers into small particles with high levels of PAHs that can be tracked into homes and incorporated into house dust. For people who live adjacent to coal-tar-sealcoated pavement, ingestion of PAH-contaminated house dust and soil results in an elevated potential cancer risk, particularly for young children. Exposure to PAHs, especially early in childhood, has been linked by genetic professionals to an increased risk of lung, skin, bladder, and respiratory cancers.

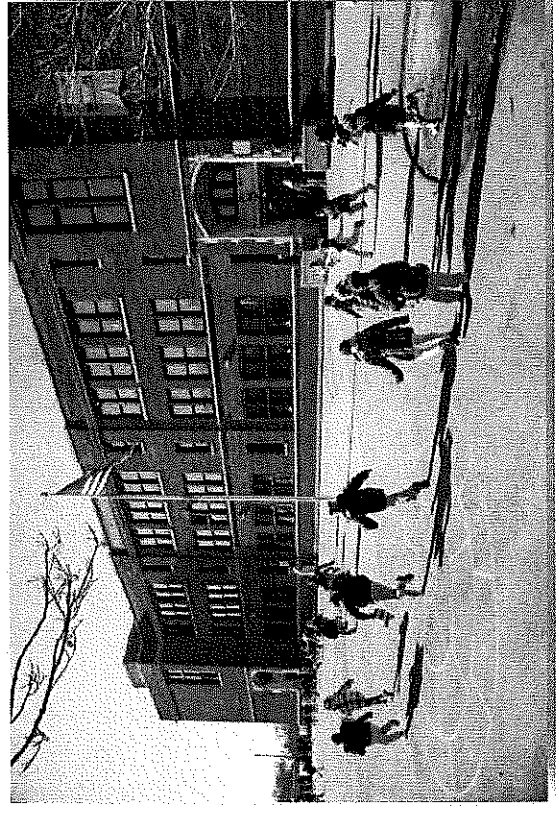
Aquatic Life Concerns—Runoff from coal-tar-sealcoated pavement, even runoff collected more than 3 months after sealcoat application, is acutely toxic to fish and animals and water fowl. Two species commonly used to assess toxicity to aquatic life, the fathead minnow and the daphnia, died at the lowest of the tested concentrations of sealcoat runoff. Runoff from sealcoat also contains polycyclic aromatic hydrocarbons (PAHs), which are known to be carcinogenic to aquatic life.

Sealcoat is the thick, viscous liquid applied to many asphalt parking lots, driveways, and playgrounds to protect and enhance the appearance of the underlying asphalt. Studies by the U.S. Geological Survey (USGS), academic institutions, and State and local agencies have identified coal-tar-based pavement sealcoat as a major source of polycyclic aromatic hydrocarbons (PAHs) contamination in urban and suburban areas and a potential concern for human health and aquatic life.



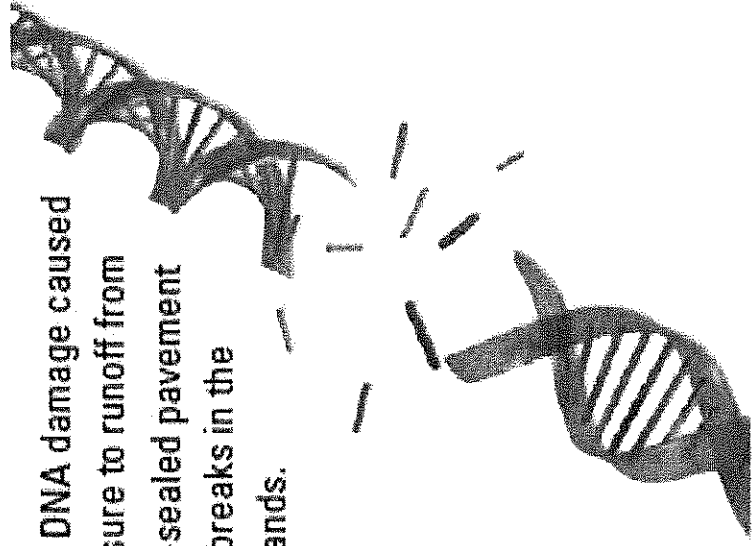
Exposure to Coal-Tar Sealants pose risk of developing cancer.

The excess cancer risk for people living adjacent to coal-tar sealcoated pavement (1.1 cancer incidences for every 10,000 individuals exposed) was 38 times higher, on average (central tendency), than for people living adjacent to unsealed pavement.



Cells exposed to the coal-tar-sealcoat runoff have damaged DNA and reduced capacity to perform repair.

Types of DNA damage caused by exposure to runoff from coal-tar-sealed pavement include breaks in the DNA strands.



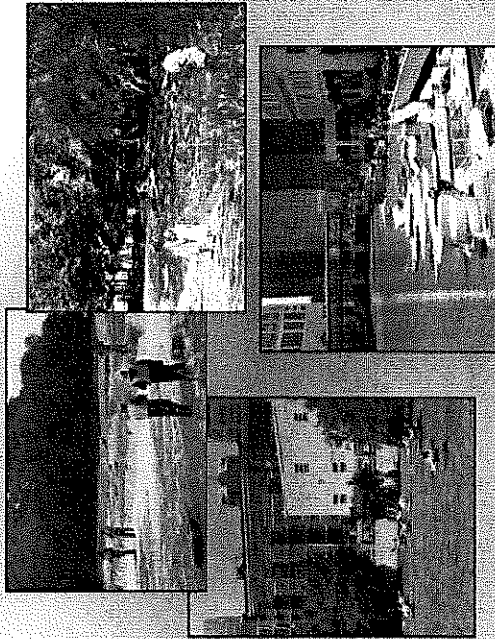
- The combination of DNA damage and impaired repair capacity intensifies the potential for long-term damage to cell health.
- DNA damage has many possible consequences, including aging, cell death, and mutations
- Mutations can affect the function of genes and can potentially lead to cancer.

So.... are PAHs of concern for the Milwaukee Region and SE Wisconsin?



Prepared in cooperation with the
Milwaukee Metropolitan Sewerage District

Organic Waste Compounds in Streams: Occurrence and Aquatic Toxicity in Different Stream Compartments, Flow Regimes, and Land Uses in Southeast Wisconsin, 2006–9

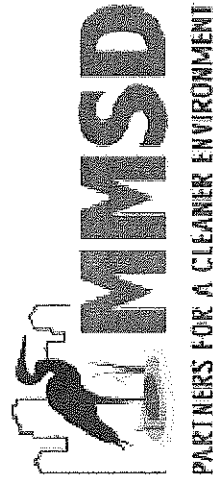


Scientific Investigations Report 2013–5104

U.S. Department of the Interior
U.S. Geological Survey

2013 Report:

Organic Waste Compounds In Streams



Sediment Results

Sites (least top to bottom)	n	Antioxidants	Dyes/pigments	Fire retardants	Polycyclic aromatic hydrocarbons	Plasticizers	Fuels	Solvents	Herbicides	Insecticides	Antimicrobial disinfectants	Detergent metabolites	Flavors and fragrances	Human drugs, nonprescription	Sterols	Miscellaneous
MRC	3	.	○	.	○	.	○	○	.	○	○	○	○	.	●	.
LMM	4	●	●	.	●	○	○	.	.	○	○	●	○	.	●	.
OSM	3	○	○	○	●	○	○	○	.	○	○	○	○	.	●	.
MRW	3	○	●	○	●	●	○	.	.	○	●	●	○	.	●	○
UCW	3	○	○	○	○	○	○	○	.	○	○	○	○	.	●	.
RRG	3	○	●	.	●	○	○	.	.	○	○	●	○	.	●	.
LCM	2	○	○	○	●	○	○	○	.	○	○	○	○	.	●	○
KRM	3	○	●	.	●	●	○	○	.	○	○	○	○	.	●	○
HCW	3	○	●	○	●	○	○	.	.	○	○	○	○	.	●	.

EXPLANATION

Maximum concentration, in micrograms per kilogram

Detection frequency, in percent

○ 0
○ 20-39
○ 40-59
○ 60-79
○ 80-100

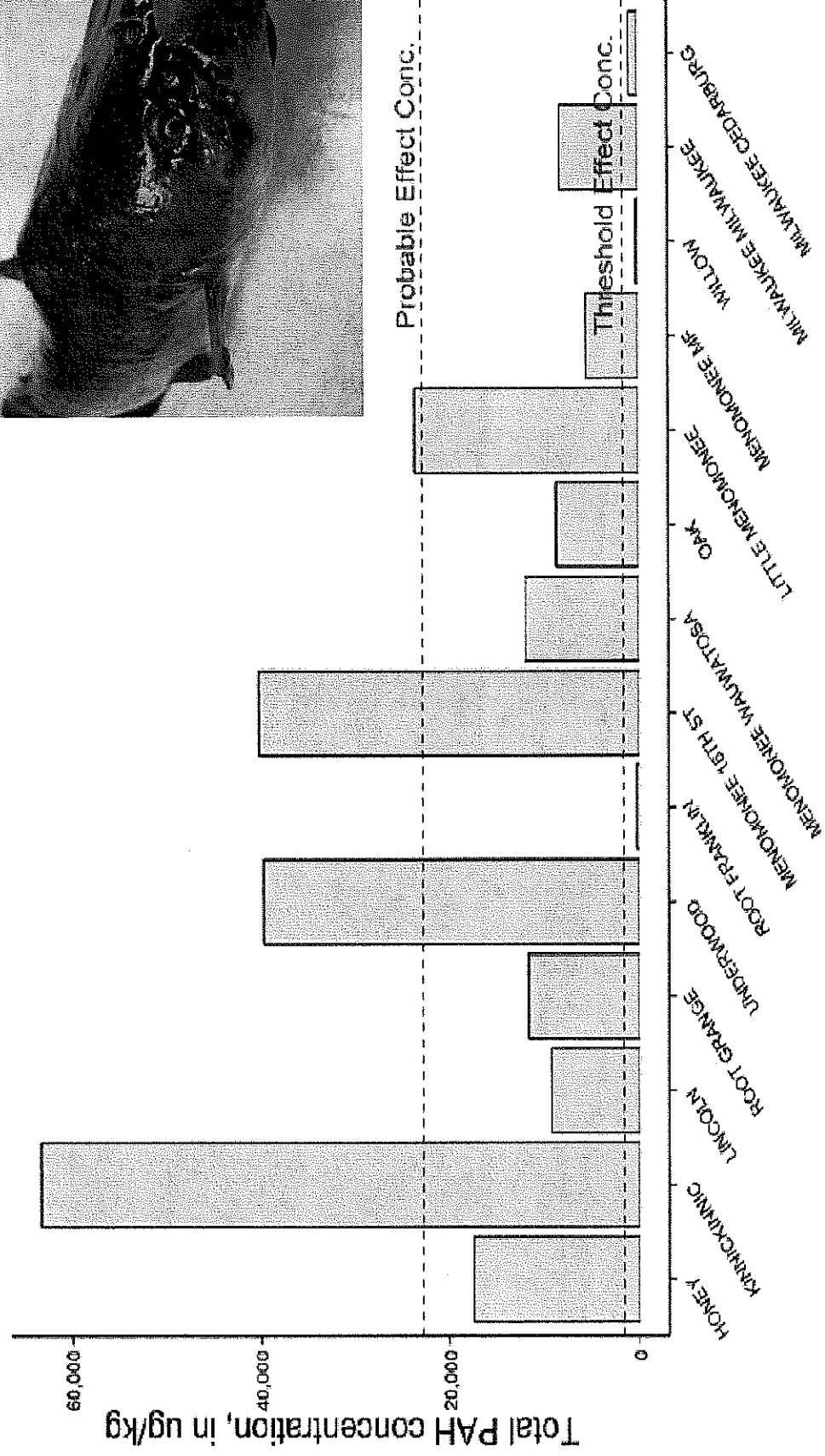
<100

100-999

1,000-9,999

≥10,000

PAH's potential for toxicity in sediments



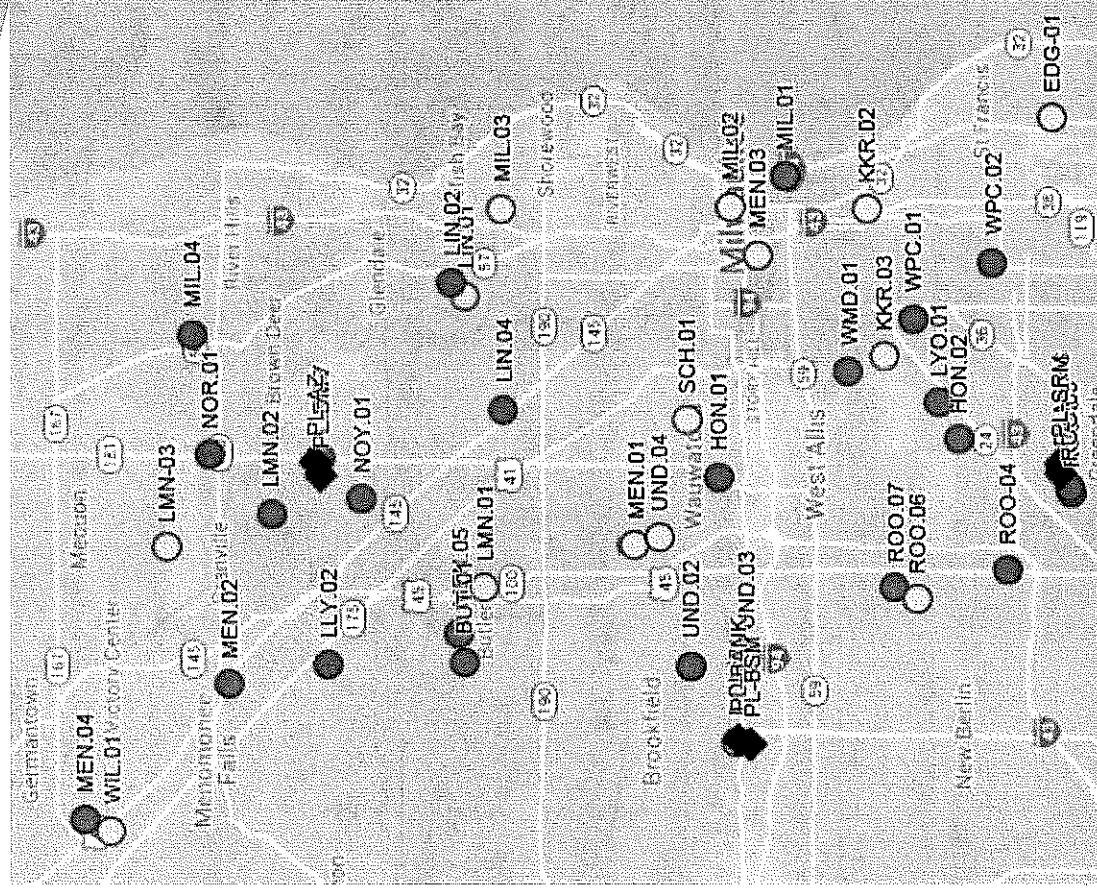
Sampling sites, most to least urban

A Second MMSD and USGS Study

Identify Sources and Toxicity of PAHs in Milwaukee Area Streams

- * Collect ~40 samples from streambeds and determine source areas.
- * Identify source(s) of PAHs to streams
 - * Contributions from various sources, use multiple lines of evidence to identify greatest sources (i.e. coal-tar based sealants).
- * Relate sediment PAH concentrations to toxicity to aquatic organisms (bioassays).

2013-2015 Study Overview



- stream sites
- stream sites with toxicity bioassay
- ◆ parking lots

Streambed sediment at 40 stream sites

- Targeted fine, depositional sediment, 0-4cm depth
- Sieved to remove particles > 2mm

Parking lot dust at 6 sites using vacuum

- Sealed pavement (3)
- unsealed pavement (2)
- concrete (1)

QA/QC: 4 samples

- 2 Spikes, 2 duplicates

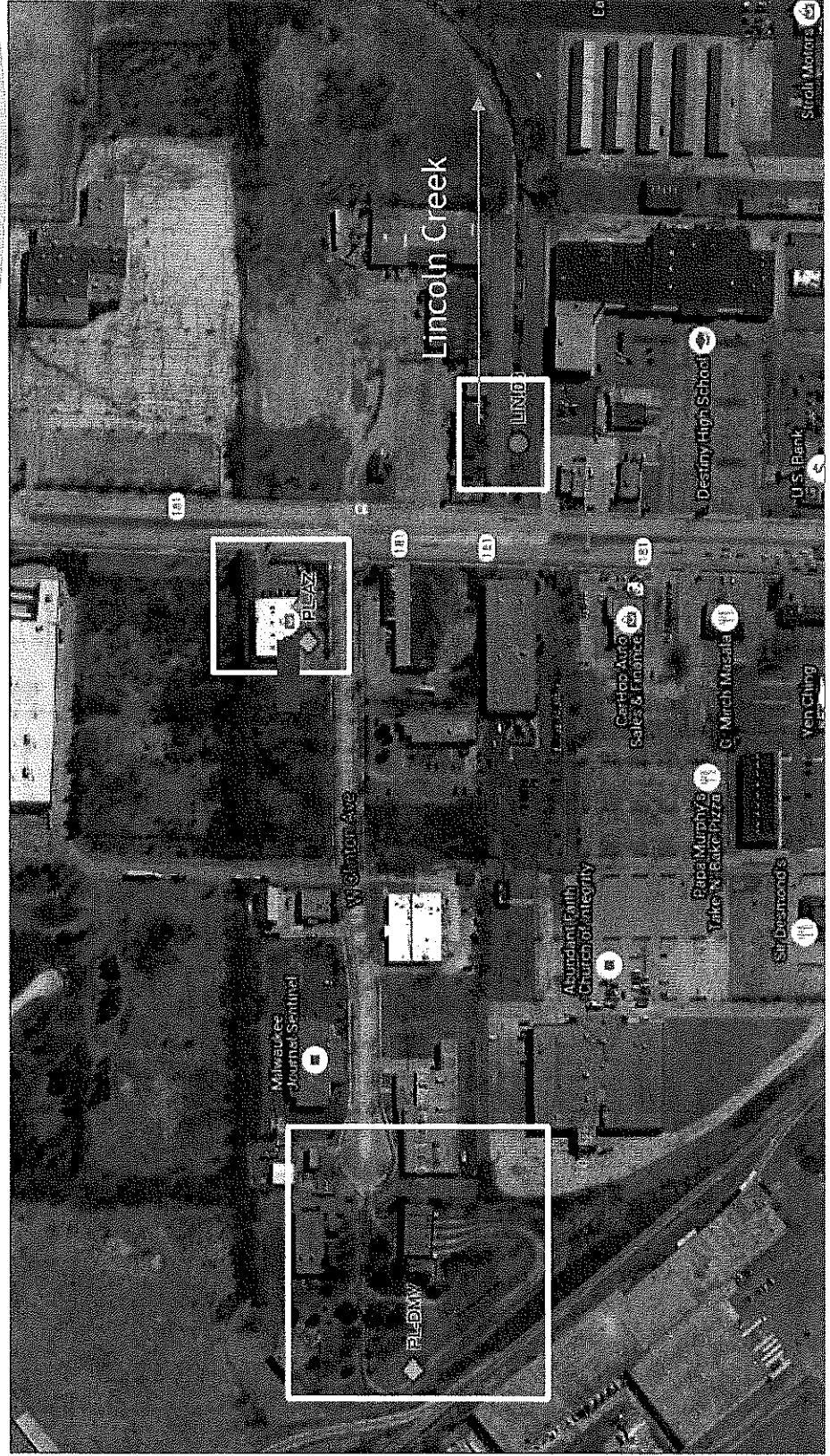
Source Identification

Multiple lines of evidence approach:

1. Land Use Analysis
2. Elimination of some sources based on stream concentrations (Mass Fraction Analysis)
3. Summation of parent to alkyl PAHs
4. Summation of high molecular weight to low molecular weight PAHs
5. Diagnostic compound ratios and double ratios^{a-d}
6. Proportional concentration source profiles^{c,d}
7. EPA's Chemical Mass Balance (CMB) model^{c,e,f}
8. Principal Component Analysis

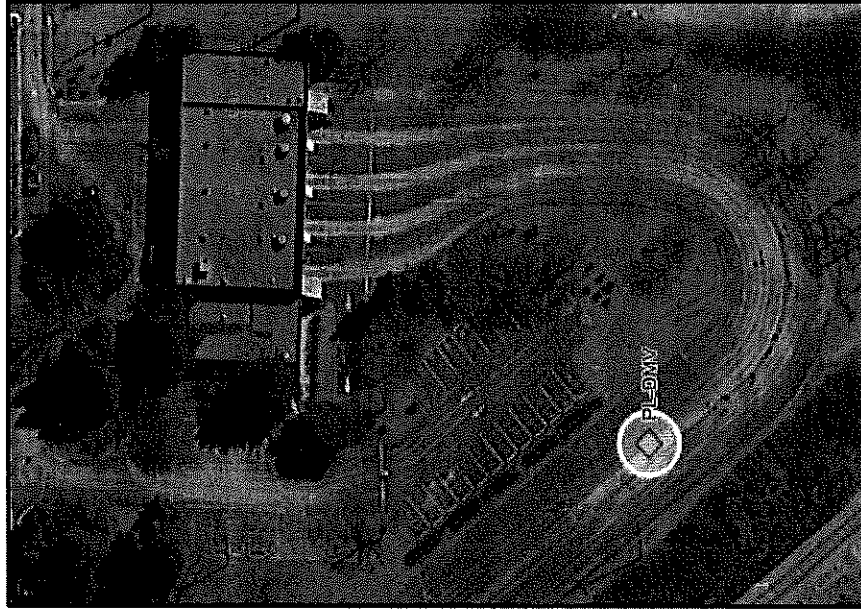
a, Yunker et al. 2002; b, Ahrens and Depree 2010; c, Crane et al. 2014; d, Van Metre et al. 2009; e, Van Metre and Mahler 2010; f, Li et al. 2003

Examples of sampling locations: Lincoln Cr at 76th St



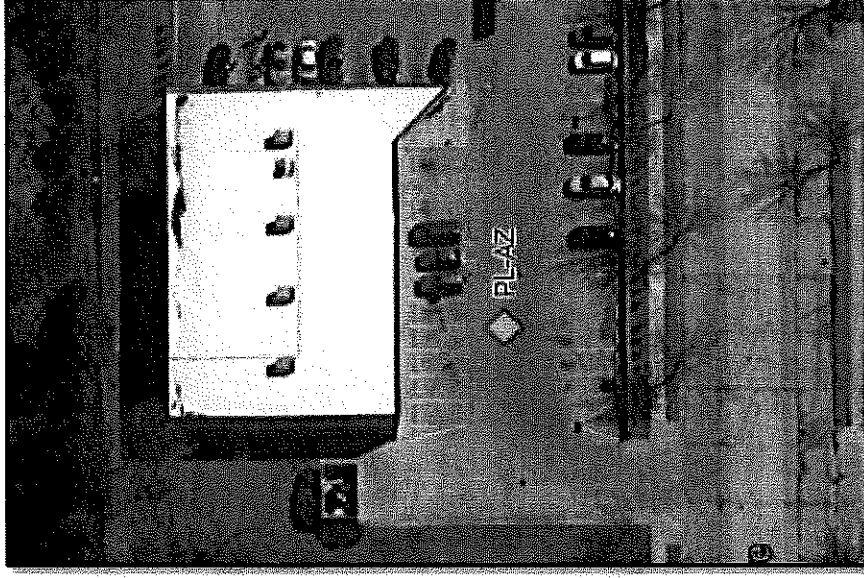
PAH Concentrations

Coal tar-sealed
lot (old DMV)



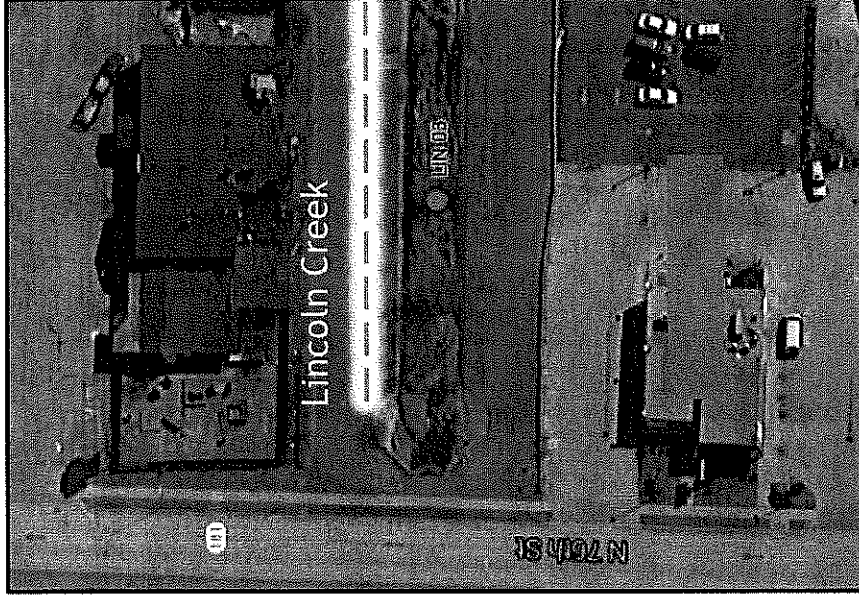
20,774 mg/kg
Lot dust

Unsealed
Concrete lot

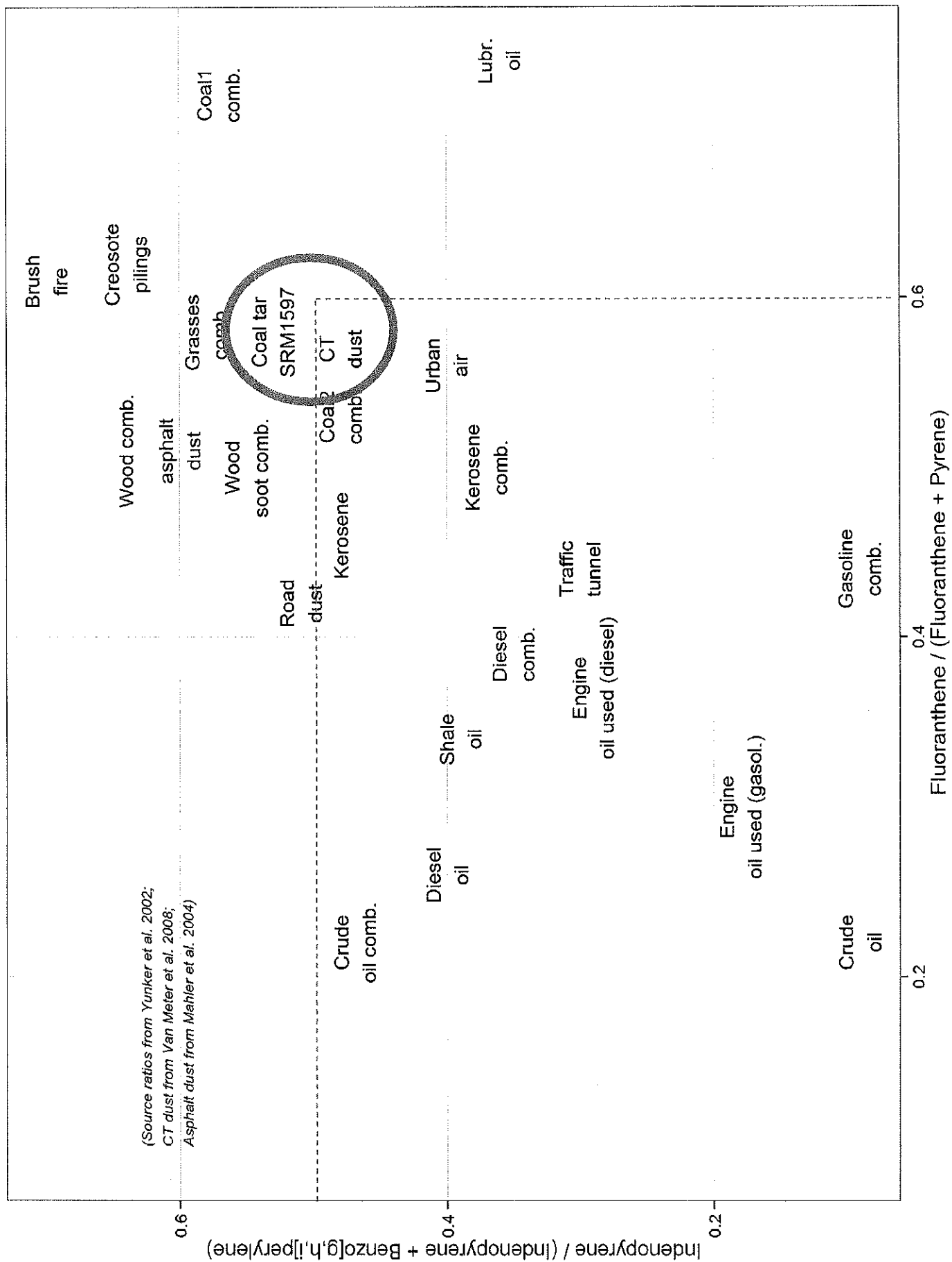


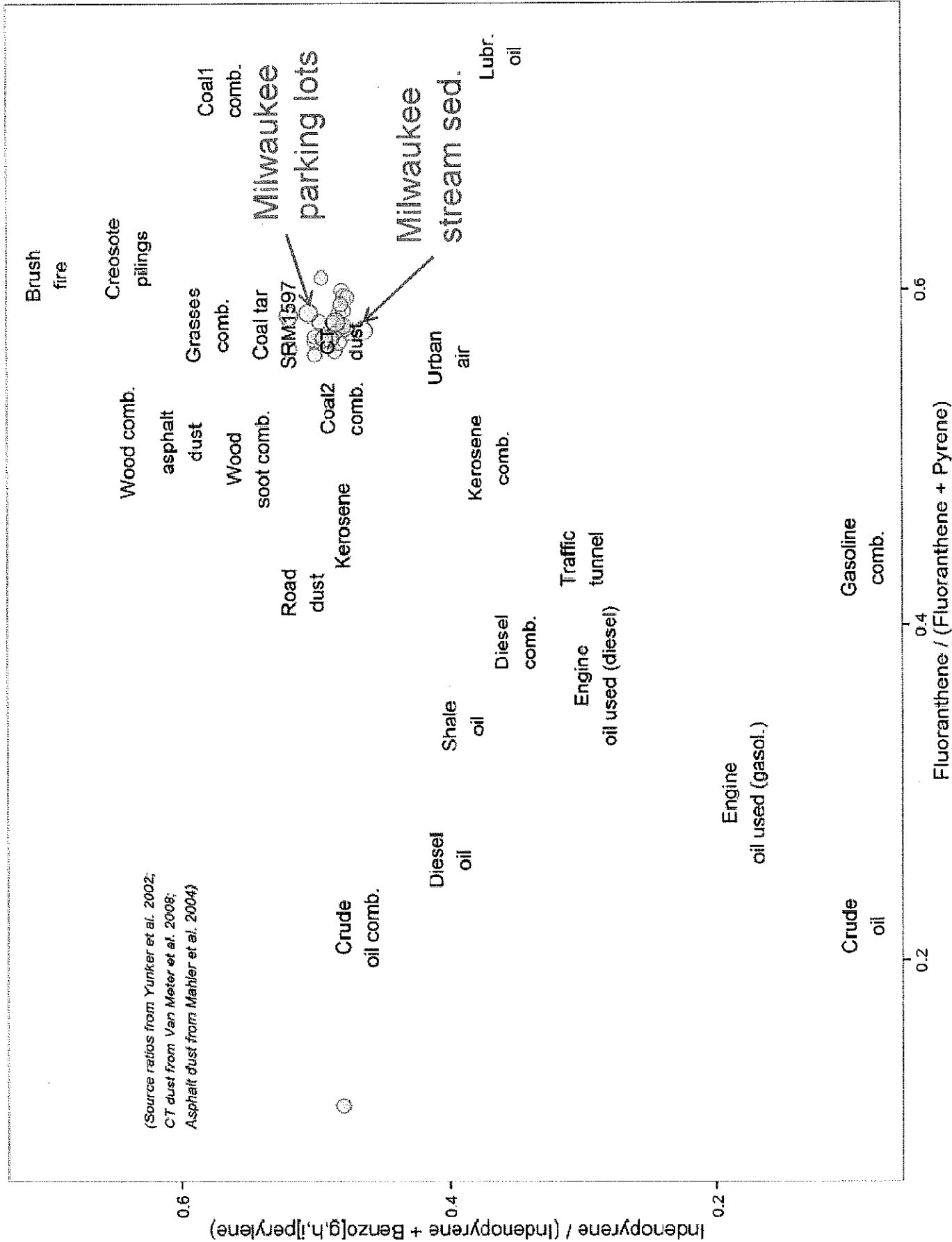
17.3 mg/kg
Parking lot dust

Lincoln Creek at 76th

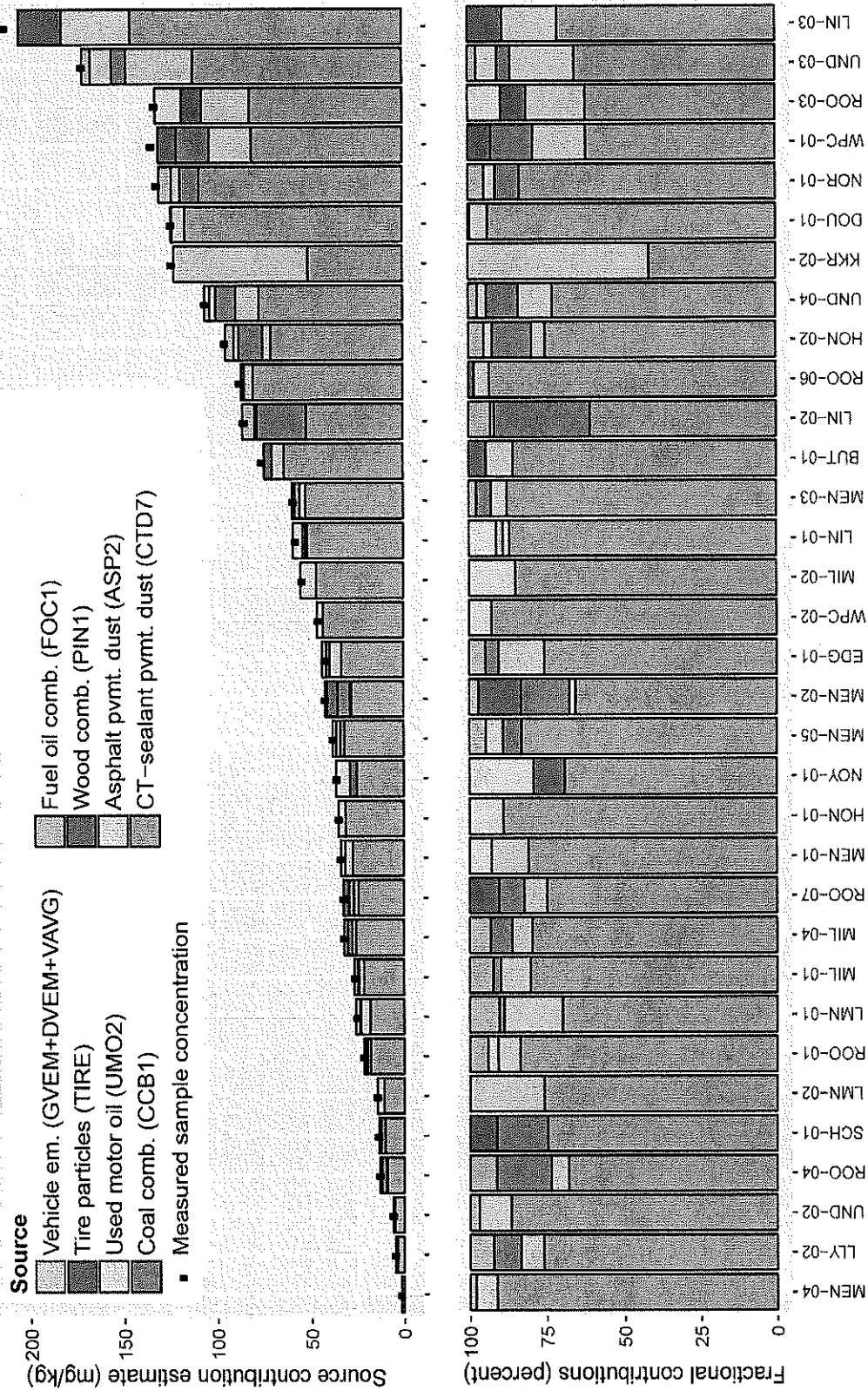


208 mg/kg
Stream sediment





Source Contributions of PAHs to Milwaukee Streambed Sediments



Estimated using the US EPA Contaminant Mass Balance Model

Milwaukee Findings

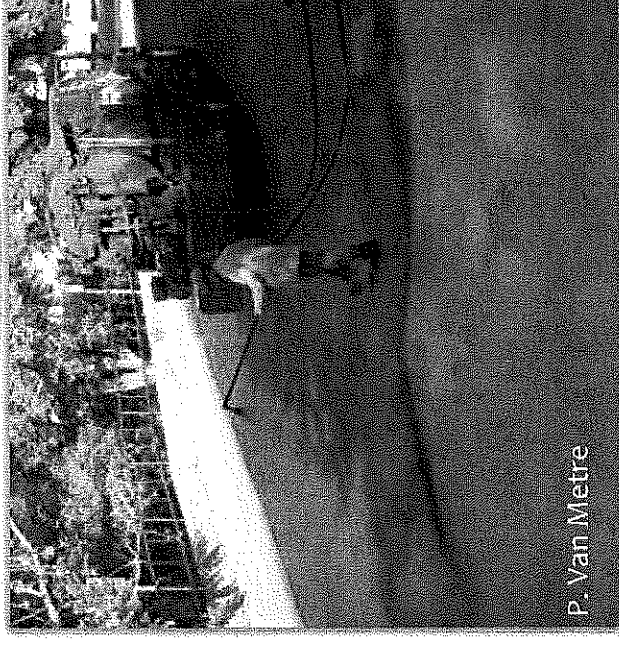
Toxicity to aquatic organisms

- PAH concentrations exceed Sediment Quality Guidelines at many sites
 - Sites exceeding Threshold Effect Concentration: 37/40
 - Sites exceeding Probable Effect Concentration: 13/37

- Bioassays demonstrate increasing PAH concentrations were associated with decreasing *Hyaella* survival

Source apportionment

- 8 methods indicate that coal tar-based sealcoat is the primary source of PAHs to Milwaukee streams.
- EPA CMB Model: On average 77% of PAHs are from coal tar sealcoat dust.



What are the economic impacts of coal-tar sealant derived PAHs?

- * Sediment contamination with PAHs from coal-tar sealants are costly to remove because special handling and disposal methods are required.
- * Estimates for sediment disposal costs in Minneapolis-St Paul area are up to \$1 billion if 10 % of stormwater detentions facilities have PAH concentrations above the Minnesota's human-health risk-base Soil Reference Value.
- * Minnesota banned the uses of coal-tar sealants to eliminate the human health risks and costs associated with removal of sediments contaminated with coal-tar sealants.

Alternatives for Management of Coal-tar Sealants

Hierarchy of Alternatives

Outright Ban

Public Restricted Use

Government Agency Bans

Institutional Use Bans

Voluntary Supplier/Contractor
Agreements

Voluntary Market Place Controls

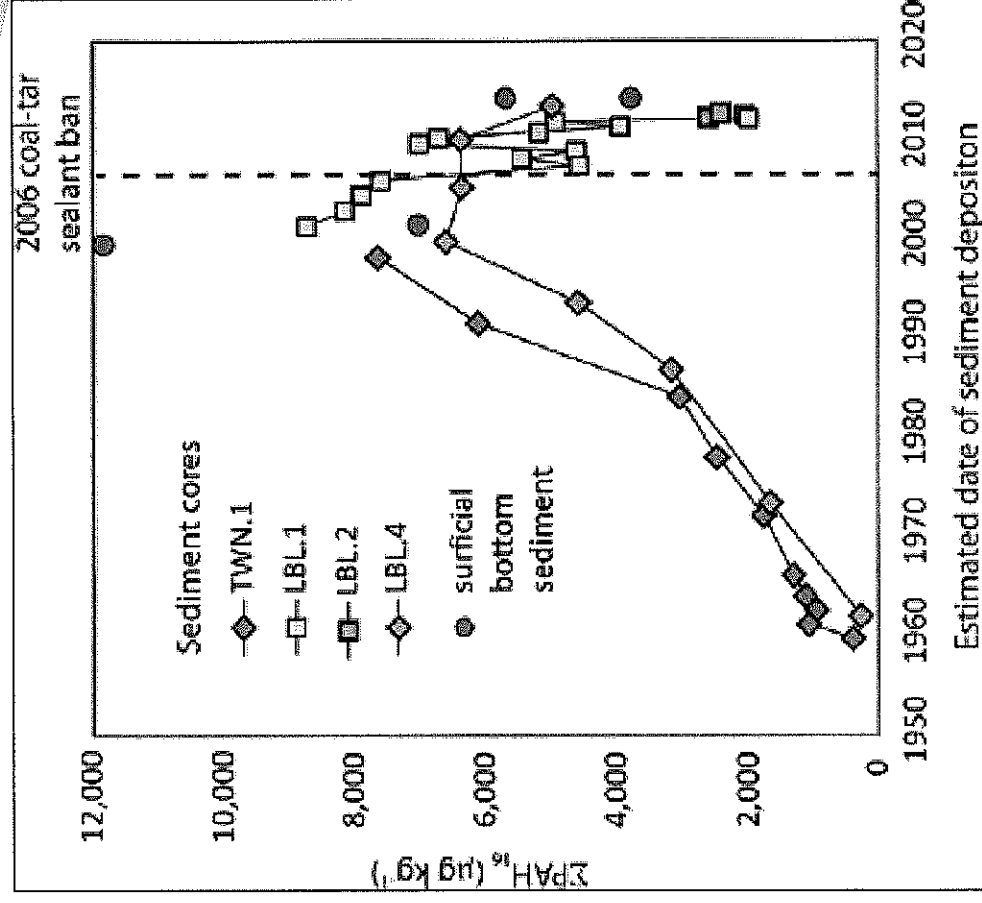
Public Education / Awareness

Coal-Tar Sealant Bans are Effective!

PAH Source Reductions

Austin, TX

Source: Van Metre et al. 2014



Successful Local Bans

* Cities

- * Austin, Bee Cave, TX
- * Des Plaines, Winnetka, and South Barrington, IL
- * Springfield, MO
- * Greenfield, SC
- * Winfield, KS
- * Ann Arbor, MI

* Districts

- * Washington D.C.

* Counties

- * Dane County, WI
- * Montgomery County, MD
- * Prince Georges County, MD
- * Suffolk County, NY
- * Edwards Aquifer, Comal and Hays Counties, TX
- * Multiple Counties in Minnesota before statewide ban

Dane County

Coal-Tar Sealant Ordinance

80.08 REGULATION OF THE APPLICATION AND SALE OF SEALCOAT PRODUCTS CONTAINING COAL TAR.

- (1) No person shall apply any sealcoat product within Dane County that is labeled as containing coal tar.
- (2) No person shall sell, offer to sell, or display for sale any sealcoat product within Dane County that is labeled as containing coal tar.
- (3) Any person who sells pavement sealcoat products shall prominently display, in the area where such pavement sealcoat products are sold, a notice that contains the following language: "The application of coal tar sealcoat products on driveways, parking lots and all other paved surfaces in Dane County is prohibited by section 80.08 of the Dane County Code of Ordinances."

Coal tar is a significant source of polycyclic aromatic hydrocarbons (PAHs), a group of organic chemicals that can be carried by stormwater and other runoff into Dane County's lakes and streams. PAHs are an environmental concern because they are toxic to aquatic life."

<http://pdf.countyofdane.com/ordinances/ord080.pdf>

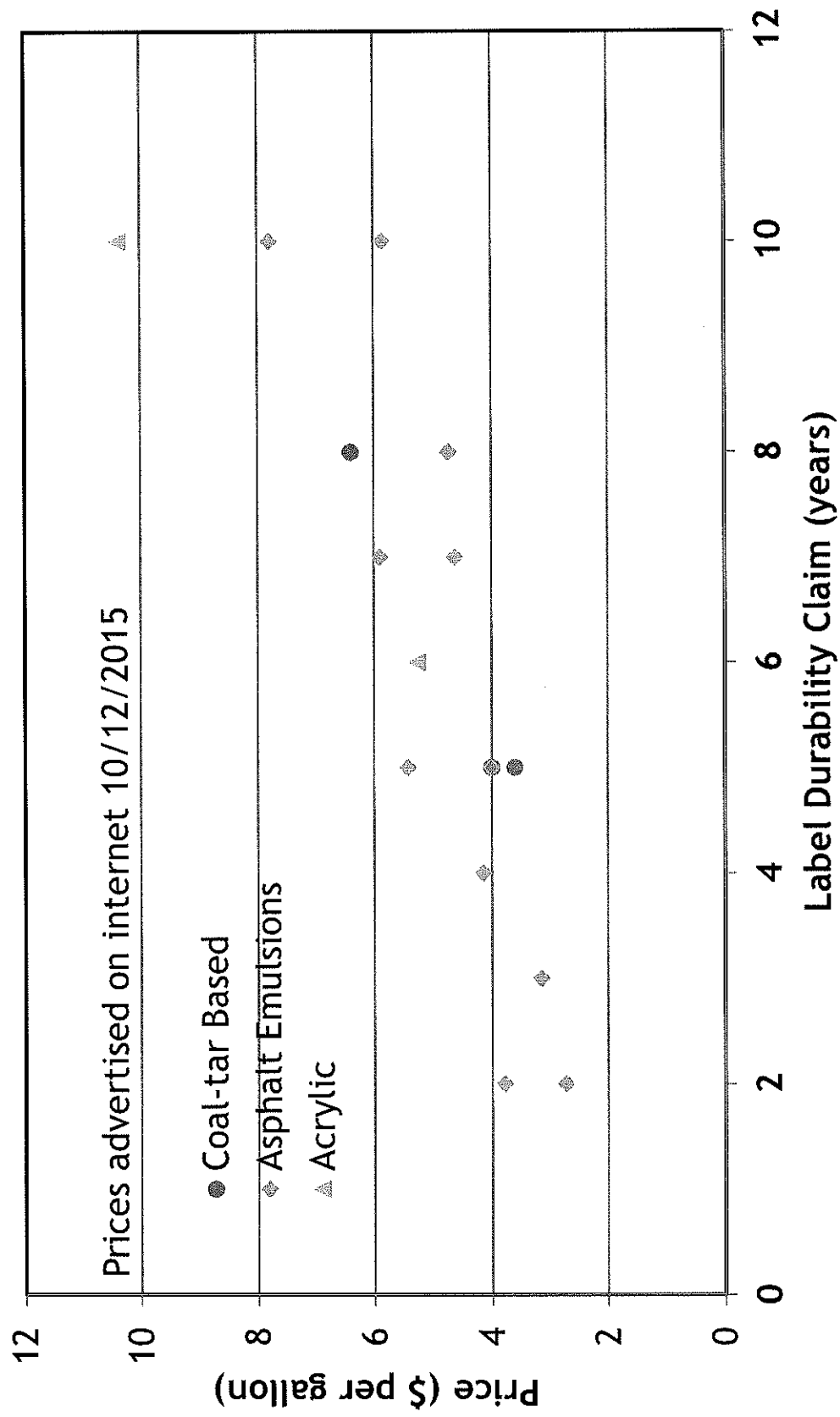
Why should we take action on coal-tar sealants now?

- Excessive PAHs in coal-tar sealants are known to be detrimental to the environment and human health.
- Most studies find coal-tar sealants are a primary source of PAHs in areas where used, including the MILWAUKEE REGION!
- Arguments for policy action can be made on multiple grounds:
 - Human health
 - Environmental health
 - Economics
- Coal-tar sealants are a **CONTROLLABLE** source with **REASONABLE** alternatives available.



Cost Comparison

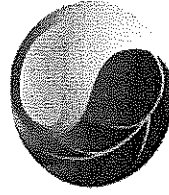
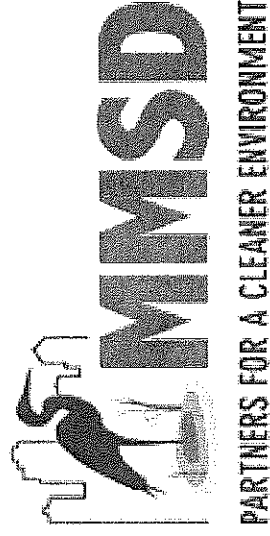
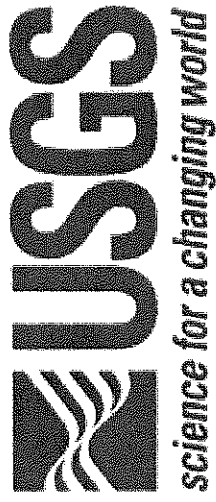
Reasonable Alternatives Available



A Regional or Statewide Coal-Tar Sealant Policy would do the following:

1. Protect human health.
 - By reducing exposure to potential carcinogens.
2. Protect aquatic ecosystems from harm.
 - By reducing lethal and sublethal effects.
3. Reduce municipal costs for hazardous/contaminated sediment disposal.
4. Determine if a regional or statewide phase-out or ban on coal-tar sealants is necessary.

Acknowledgements



sweet water
SOUTHEASTERN WISCONSIN WATERSHEDS TRUST, INC.



STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

ORDINANCE NO. 2017-_____

AN ORDINANCE TO AMEND THE MUNICIPAL CODE TO REGULATE THE
APPLICATION AND SALE OF COAL TAR SEALANT PRODUCTS

WHEREAS, the City of Franklin finds that the City's water resources are a natural asset, which enhance the environmental, recreational, cultural and economic resources of the area and contribute to the general health and welfare of the public; and

WHEREAS, the City of Franklin finds that polycyclic aromatic hydrocarbons (PAHs), which are contained in coal tar sealants and other high PAH sealants, volatilize off sealed pavement and can be inhaled by humans and animals; are broken down by sunlight and abraded by vehicle and foot traffic; can be carried off of sealed pavement as small particles by that same traffic and transported into homes and onto nearby soils; and can be carried by storm water and other run off into the water resources of Franklin; and

WHEREAS, PAHs are an environmental concern because they are toxic to aquatic life, resulting in a loss of species and a lower number of organisms; and

WHEREAS, PAH compounds have been proven to be carcinogenic, mutagenic, and teratogenic to humans according to the International Agency for Research on Cancer; individuals with lifelong exposure to coal/tar seal/coat treated pavements and playgrounds have a 38-fold higher risk of cancer; and the American Medical Association therefore advocates for legislation to ban the use of pavement sealcoats that contain PAHs or require use of sealcoat products that contain minimal PAH; and

WHEREAS, environmental impacts and human health risks can be minimized and pavements can be maintained by utilizing alternative products or methods, absent PAHs; and

WHEREAS, the City of Franklin finds that regulating the amount of contaminants, including Polycyclic Aromatic Hydrocarbons (PAHs) contained in coal tar sealant products and other high PAH sealant products, entering the water resources of the City will improve and protect public health and the water quality of Franklin and neighboring water resources.

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

SECTION 1: §222-11. Violations and penalties, of the Municipal Code of the City of Franklin, Wisconsin, is hereby renumbered to §222-12.

SECTION 2: §222-11. of the Municipal Code of the City of Franklin, Wisconsin, is hereby recreated to read as follows:

§222-11. Coal tar sealant products.

A. Definitions.

(1) COAL TAR is a byproduct of the process used to refine coal. Coal tar contains high levels of polycyclic aromatic hydrocarbons (PAHs).

(2) COAL TAR SEALANT PRODUCT means a pavement sealant product that contains coal tar, coal tar pitch, coal tar pitch volatiles, RT-12, Refined Tar or any variation assigned the Chemical Abstracts Service (CAS) numbers 65996-92-1, 65996-93-2, 65996-89-6, or so 8007-45-2 or related substances.

(3) HIGH PAH SEALANT PRODUCT means any pavement sealant product that contains greater than 0.1% polycyclic aromatic hydrocarbons (PAHs) by weight, including, but not limited to, coal tar sealant products and sealant products containing steam-cracked petroleum residues, steam-cracked asphalt, pyrolysis fuel oil, heavy fuel oil, ethylene tar, or any variation of those substances assigned the chemical abstracts service number 64742-90-1, 69013-21-4 or related substances.

(4) PAVEMENT SEALANT PRODUCT, or sealcoat, is any substance that is typically applied on paved surfaces to protect the surfaces. This may include but is not limited to sealant products that are coal tar or asphalt based.

(5) POLYCYCLIC AROMATIC HYDROCARBONS (PAHs) are a group of organic chemicals that are formed during the incomplete combustion of coal, oil, gas, or other organic substances, are present at high levels in coal tar, and are known to be harmful to humans, fish, and other aquatic life.

(6) DIRECTOR means the City Engineer or the City Engineer's designee.

B. ENFORCEMENT. Violations of this Section will be enforced by the City Engineer or the City Engineer's designee.

C. REGULATION OF THE APPLICATION AND SALE OF COAL TAR OR OTHER HIGH PAH SEALANT PRODUCTS.

(1) Except as provided in Subsection §222-11.D., no person shall apply any coal tar sealant product or high PAH sealant product within the City of Franklin.

(2) No person shall sell, offer to sell, or display for sale any coal tar sealant product or high PAH sealant product within the City of Franklin.

(3) Any person who sells pavement sealant products shall prominently display, in the area where such pavement sealant products are sold, a notice that contains the following language: "The application of coal tar sealant products or other high PAH sealant products on driveways, parking lots and all other paved surfaces in the City of Franklin is prohibited by §222-11. of the City of Franklin Municipal Code of Ordinances. Polycyclic Aromatic Hydrocarbons (PAHs), are a group of organic chemicals that are known to cause cancer and are toxic to aquatic life. Coal tar and other high-PAH sealant products are a major source of PAHs that can travel into homes, buildings, and soils, or be carried by stormwater and other run off into the water resources of the City of Franklin.

(4) No person shall allow a coal tar sealant product or other high PAH sealant product to be applied upon property that is under that person's ownership or control.

(5) No person shall contract with any commercial applicator, residential or commercial developer, or any other person for the application of any coal tar sealant product or high PAH sealant product to any driveway, parking lot, or other surface within the City of Franklin.

(6) No commercial applicator, residential or commercial developer, or other similar individual or organization shall direct any employee, independent contractor, volunteer, or other person to apply any coal tar sealant product or high PAH sealant product to any driveway, parking lot, or other surface within the City of Franklin.

D. EXEMPTIONS. The DIRECTOR may exempt a person from a requirement of this chapter if the DIRECTOR determines that:

(1) The Director may exempt a person from the requirements of Subsection §222-11.C. if the person is conducting bona fide research concerning the effects of a coal tar sealant product or high PAH sealant product on the environment; the use of the coal tar product or high PAH sealant product is required for said research; and the DIRECTOR determines that said research will not cause significant contamination of the surrounding environment, including soils and aquatic ecosystems, and will not unduly endanger human health.

(2) The Director may exempt a person from the requirements of Subsection §222-11.C. if the person does not intend to apply the sealant within municipal boundaries.

E. Penalty.

(1) Any person who violates Subsection §222-11.C. by applying a coal tar sealant product or high PAH sealant product at his or her residence shall be subjected to a fine not to exceed \$500.

(2) Each day that a violation occurs or continues is a separate offense and subject to an additional fine.

(3) Any commercial sealant product applicator, residential or commercial developer, industrial or commercial owner, or any other person, other than a person identified under Subsection E.(1) above who violates Subsection §222-11.C., shall be subject to a fine of not less than \$1,000 nor more than \$10,000. Each incidence of a violation shall constitute a separate offense. Upon default of payment, the violator shall be subject to imprisonment for not less than 30 days nor more than 100 days.

SECTION 3: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION 4: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 5: This ordinance shall take effect and be in force from and after its passage and publication.

ORDINANCE NO. 2017-_____

Page 5

Introduced at a regular meeting of the Common Council of the City of Franklin this
_____ day of _____, 2017, by Alderman _____.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin
this _____ day of _____, 2017.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE 4/03/17
Reports & Recommendations	A RESOLUTION AWARDDING CONTRACT TO THE LOW BIDDER, PAYNE & DOLAN, INC. IN THE AMOUNT OF \$837,433.26, FOR THE 2017 LOCAL STREET IMPROVEMENT PROGRAM	ITEM NO. <i>G.14.</i>

BACKGROUND

Pursuant to the advertising on March 16, and March 23, 2017, two (2) bids were received on March 30, 2017, for the 2017 Local Street Improvement Program. The program is anticipated to begin in May with completion scheduled for the end of August.

Portions of the following roads are included this year: St. Martins Road; S. Oakwood Park Drive; W. Putez Road/S. 99th Street; W. Rawson Avenue; W. Hunting Park Drive; S. 47th Street; S. 118th Street/W. Shields Drive; S. 121st Street; W. James Avenue/S. 120th Court; W. James Avenue; and W. Cortez Circle.

ANALYSIS

The bids received were as follows:

	Total Base Bid
Payne & Dolan, Inc.	\$ 837,433.26
Stark Pavement Corporation	\$ 843,848.31

The engineer's estimate was \$860,532.

Staff recommends the award to Payne & Dolan, Inc. in the amount of \$837,433.26.

OPTIONS

Approve or deny the award.

FISCAL NOTE

The Road Program fund for 2017 was budgeted at \$940,000.

RECOMMENDATION

Motion to adopt Resolution No. 2017 - _____, a resolution awarding contract to the low bidder, Payne & Dolan, Inc. in the amount of \$837,433.26, for the 2017 Local Street Improvement Program.

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. 2017 - _____

A RESOLUTION AWARDED CONTRACT TO THE LOW BIDDER,
PAYNE & DOLAN, INC. \$837,433.26, FOR THE
2017 LOCAL STREET IMPROVEMENT PROGRAM.

WHEREAS, the City of Franklin advertised and solicited bids for the 2017 Local Street Improvement Program; and

WHEREAS, the low bidder was Payne & Dolan, Inc, with a bid of \$837,433.26; and

WHEREAS, Payne & Dolan, Inc. is a qualified public works contractor; and

WHEREAS, it is in the best interest of the City as recommended by the City's staff to award the contract at the total base bid of \$837,433.26 to Payne & Dolan, Inc..

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin, that Payne & Dolan, Inc. be awarded the contract for the 2017 Local Street Improvement Program.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized and directed to execute a contract with Payne & Dolan, Inc. on behalf of the City.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017 by Alderman _____.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017.

APPROVED:


Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

GEM

APPROVAL <i>slw</i> 	REQUEST FOR COUNCIL ACTION	MEETING DATE 4/3/2017
REPORTS & RECOMMENDATIONS	Authorization to Execute an Agreement for Additional Asbestos Remediation in the Health Department Remodeling Project	ITEM NUMBER <i>G.15.</i>

The Common Council previously approved an agreement for asbestos abatement that addressed removal of drywall mud (and the wall) that was found to have asbestos from the original construction. That process went smoothly. Unfortunately, the project did run into a problem with the floor tiles. The old floor tiles are known to have asbestos content, but it was not expected to come in to play during the project. The expectation and project plan was to remove the current carpet overlay, apply a sealant to the top of the tiles, and re-carpet over the sealant. This strategy had been successfully applied a number of years back when the current Finance Department area was remodeled. The same strategy was used when the City Development area was remodeled before that. Sealing in the old tile was an effective and allowable method to avoid abatement.

Unfortunately, the contractor approved for laying the new carpet, who was also responsible for removing the existing carpeting, immediately ran into difficulty. The existing carpet in the Health Department area could not be peeled back or removed without disturbing the tiles. Since there is a strict limit on how much area can be disturbed, understood to be up to three square feet, the process was immediately stopped when a couple of the 9 inch by 9 inch tiles lifted and cracked when the carpet was peeled back. The project was halted immediately and after significant discussion a machine was brought in that can scrape the carpet without applying as much upward lift. Although dramatically more successful, it still caused sufficient disruption that it was very evident that the three-square-foot limit would be significantly exceeded if the full floor had been completed. (This was evident with only about one-sixth or seventh of the floor scraped of carpet.) As such, the project was immediately halted, and the limited areas impacted were sealed with tape and plastic pending proper abatement.

The City has no real option left but to properly abate all of the tile in the Health Department area. The low bidder from the first process, PARSS Corporation, has submitted a quote of \$6,325, which includes the \$700 DNR permit fee. This quote entails using a "friable" method, which, in short, means using mechanical devices in the abatement process. A quote was also obtained from Integrity Environmental Services who was previously brought to our attention by the firm that does the environmental testing. Integrity quoted \$4,477 using a friable method or \$3,974 using a non-friable method. Both of Integrity's quotes do not include air sampling after the fact, which would cost \$400 from EMC who did the earlier asbestos assessment and air sampling. After much investigation and discussions with both vendors as to the nature, applicability, and methodologies associated with both friable and non-friable strategies, PARSS was asked for a quote to do the project in a non-friable manner. Via telephone, they confirmed that their price would be reduced by the \$700 cost of the permit.

The benefit of the non-friable method is that only a two-day notice period and \$50 permit is required by the State whereas the friable method requires a ten-day notice period and \$700 permit. Each person consulted believed that the non-friable method could be employed because the area to be remediated is less than 1,500 square feet and because our example of disruption shows "minimal" breakage (cracking and maybe a few or handful of pieces) as opposed to crumbling and significant dust generation. The end result, therefore, for the non-friable method is as follows: Integrity \$4,374, which includes the \$400 for air sampling to be paid to a different vendor, or PARSS Corporation \$5,625.

In addition to the \$400 for air sampling with Environmental Management Consulting, Inc. (EMC), there will also be another approximately \$675 to remove and replace a window to provide the necessary venting for the abatement process. Similarly, the tiled area in front of the walk-in counter will need to have new tile placed. Pricing is being obtained from Stu's Flooring, who was awarded the carpet bid, and is expected to be more than \$300 but less than \$600. (Because of the foot traffic in this area, it was not originally expected to be replaced in the original plan and carpet proposal.) Therefore, there is up to an additional \$5,649 in construction and professional services to fully remediate the asbestos tile and mastic from the Health Department.

The good news is, once abated, it is a permanent solution and won't creep up again the next time the carpet has to be replaced. Appropriations for this project come from the \$1.8 million dollar capital project for the City Hall remodel (primarily incorporating roofing and HVAC replacement). If, during implementation, something small (less than \$1,000) comes up, it will be addressed with the Facilities budget and brought back to your attention after the fact. If anything unexpected larger than that comes up, it will be brought back to the Council. If approved, a two-day notice period to the DNR will apply, as noted above. Unless otherwise directed, if the recommended motion below is approved, staff will also proceed with the small, additional related steps referenced above so that this remodel project can be completed.

COUNCIL ACTION REQUESTED

Authorize the Director of Administration to execute a contractor services agreement incorporating the attached Environmental Proposal from Integrity Environmental Services, Inc., for \$3,974 for additional asbestos abatement in the Health Department, in a form as acceptable to the City Attorney.

INTEGRITY ENVIRONMENTAL SERVICES, INC.
2325 Parklawn Drive, Suite Q
Waukesha, WI 53186
262-798-1453 phone
262-798-1497 fax

ENVIRONMENTAL PROPOSAL

TO:

City of Franklin
9229 W. Loomis Rd.
Franklin , WI 53132

March 29, 2017

Proposal #: Q17-314

Attention: Mr. Bob Tesch

LOCATION:

City Hall/Health Department Office
9229 W. Loomis Rd.
Franklin , Wis. 53132

**DESCRIPTION: Remove Asbestos Floor Tile and Mastic some under carpet
approximately 1360 sqft. From Health Department Office.**

STRUCTURE:

Work will be completed on a not to exceed basis: 1) \$3974.00 Non Friable Methods.2 day notice
DHS.

2) \$4477.00 Friable Methods. 10 day notice

DNR.

INTEGRITY ENVIRONMENTAL SERVICES, INC.
2325 Parklawn Drive, Suite Q
Waukesha, WI 53186
262-798-1453 phone
262-798-1497 fax

ENVIRONMENTAL PROPOSAL

REMOVAL PROCEDURES UTILIZED:

OSHA abatement procedures shall be implemented within a regulated area utilizing wet removal methods in accordance with applicable Federal, State, and Local regulations.

SUPPLEMENTAL CONDITIONS:

- Final air sampling not responsibility of Integrity .Integrity can set up clearance but it will be billed to owner.
- 10 day/2day notice required to state and local regulatory agencies.
- Work will be done on any shift
- Material shall be adequately wetted within regulated area and double bagged to be disposed of in a proper landfill.
- Water and electricity must be made available to Integrity by owner.
- Work completed per Bob Tesch.
- Work can start 10 business days after notice to Wisconsin DNR is filed.
- All movable items in work area must be removed prior to work start.
- Owner is responsible for all utilities including, electrical , HVAC fire systems and plumbing in affected area.
- No prevailing wages are included.
- Not responsible for aesthetics or condition of floor after removal.

INTEGRITY ENVIRONMENTAL SERVICES, INC.
2325 Parklawn Drive, Suite Q
Waukesha, WI 53186
262-798-1453 phone
262-798-1497 fax

ENVIRONMENTAL PROPOSAL

• **GENERAL CONDITIONS:**

1. When necessary or applicable, Integrity Environmental will conduct final air clearance monitoring as per Federal, State and local regulations.
2. When removing flooring and flooring mastics the following items are not the responsibility of Integrity Environmental:
 - a Staining of any sub floor surfaces including but not limited to wood, concrete, and leveling compounds
 - b Dissipation of solvents due to stress fractures or dissipation caused by other subsurface conditions
 - c Multiple layers of tiles and mastics unless noted otherwise in this proposal
3. When removing roofing materials Integrity Environmental assumes that the roof is of solid construction and that the roof planks are contiguous and without gaps. When removing roofing materials it is the responsibility of others to insure weather protection.
4. Integrity Environmental has included a one-time mobilization and demobilization cost for the above project amount. Any additional mobilization costs will be invoiced at \$65.00 per hour, plus applicable trucking costs.
5. All proposal amounts are based on regular time hourly rates, unless otherwise indicated.
6. Integrity Environmental can proceed with the work ten working days after award of the contract, if the project exceeds 260 lineal feet or 160 square feet. A ten-day notification is not required for projects less than this. Operations and Maintenance projects will be scheduled according to our availability. The project notifications are requirements of the DNR, City of Milwaukee, and DHFS.
7. OSHA standard 29 CFR 1926.1101(k)(1)(i) states: Building and facility owners shall identify the presence, location and quantity of asbestos containing material (ACM) and/or presumed asbestos containing material (PACM) at the work site.
8. OSHA standard 29 CFR 1926.1101 (k)(1)(ii) states: Building and/or facility owners shall notify the following persons of the presence, location, and quantity of ACM or PACM, at the work sites in their buildings and facilities. Notification either shall be in writing, or shall consist of a personal communication between the owner and the person to whom notification must be given or their authorized representatives: (A) Prospective employers applying or bidding for work whose employees reasonably can be expected to work in or adjacent to areas containing such material: (B) Employees of the owner who will work in or adjacent to areas containing such material: (C) On multi-employer work sites, all employers or employees who will be performing work within or adjacent to areas containing such materials: (D) Tenants who will occupy areas containing such material.
9. Certified technicians who are trained in the applicable Federal, State, and Local rules and regulations will execute all project phases.
10. Integrity Environmental will conduct air monitoring in accordance with OSHA regulations.
11. All persons authorized to enter the abatement area will be required to have a current medical exam, to be fit tested for respirator use, sign in and out of the abatement area, and utilize proper decontamination methods.
12. All required medical surveillance and examinations are conducted and recorded per OSHA regulations.
13. All regulated areas will be posted in compliance with all EPA regulations and OSHA standards. All signs must remain in place until final air clearance is established.
14. All personnel conducting asbestos removal or management will be certified in the applicable discipline as per local, state, and federal regulations.
15. All contaminated materials will be disposed of in an approved sanitary landfill per DNR regulations.
16. Owner to provide all necessary electricity, hot and cold potable water, and sufficient storage space for non-contaminated materials and equipment. All non-stationary items are to be moved by others prior to the start of the abatement project. It will be the owner's

INTEGRITY ENVIRONMENTAL SERVICES, INC.
2325 Parklawn Drive, Suite Q
Waukesha, WI 53186
262-798-1453 phone
262-798-1497 fax

ENVIRONMENTAL PROPOSAL

responsibility to make sure all HVAC systems within the containment areas are shut down and locked out. Owner must notify Integrity Environmental of any other hazardous materials that we may come in contact with, and supply us with the Material Safety Data Sheets (MSDS) for those materials.

17. Areas which require abatement will be accomplished by utilizing Class I, Class II or Class III operations per OSHA regulation 29 CFR 1926.1101.
18. Integrity Environmental has a no smoking policy.
19. Integrity Environmental will provide copies of all air monitoring results, notifications, disposal manifests, and other related documents to the owner.
20. Performance, labor, and material bonding costs are not included in the above amounts. The bonding can be added for an investment of fifty dollars (\$50.00) per thousand dollars (\$1,000.00) of contract or portion of, minimum of one hundred dollars (\$100.00) per bond.
21. Any alterations or deviations from the above proposal involving extra costs will be executed upon verbal or written approval by the owner or owner's representative. Extra costs will be added to the above proposal.
22. Integrity Environmental has one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate liability insurance coverage. These costs are included in the above sum. A copy of the insurance certificate will be provided if Integrity Environmental is the successful bidder. \$2,000,000 to \$5,000,000 per occurrence insurance is available for an added premium.
23. All Integrity Environmental employees are covered by statutory Workers Compensation Insurance.
24. The owner is advised to be aware of Wisconsin Statutes Chapter 779, Subchapter 1, Construction Liens. The statement that appears below is required by Wis. Stats §779.02(2)(a) if Integrity Environmental is to preserve any Lien rights in the event of failure of responsible party to pay for services rendered per this proposal.
25. All agreements contingent upon strikes, accidents, or delays beyond Integrity Environmental control. Owner to carry fire, tornado, and other necessary insurance. Owner is responsible for the liabilities of hazardous chemicals and/or materials that exist on site.
26. Payments to be made net cash 15 days, 1-1/2% service charge per month after 15 days of receipt of invoice. This proposal may be withdrawn if not accepted within Sixty (60) days.
27. Integrity Environmental is expressly authorized to sign any required disposal forms on behalf of the owner(s) or generator of any waste removed from the site.

INTEGRITY ENVIRONMENTAL SERVICES, INC.
2325 Parklawn Drive, Suite Q
Waukesha, WI 53186
262-798-1453 phone
262-798-1497 fax

ENVIRONMENTAL PROPOSAL

ACCEPTANCE OF PROPOSAL

March 29, 2017

Proposal #: Q17-314

Authorized by:

Patrick Gogin, Project Manager

The above **ENVIRONMENTAL** proposal is accepted as quoted and you are authorized to proceed with the work specified. Payments will be made as outlined above.

Date:

Signature:

Print Name:

Title:

Please sign and return one (1) copy of this proposal acceptance.

You are hereby notified that persons or companies furnishing labor or materials for the construction property at this worksite may have lien rights on your land and buildings if they are not paid. Those entitled to lien rights, in addition to Integrity Environmental Services, Inc., are those who contract directly with you or those who give you identification notice within sixty (60) days after they furnish labor or materials for the construction. You should give a copy of each notice you receive to your mortgage lender, if any. Integrity Environmental Services, Inc. agrees to cooperate with you and your lender, if any, to see that all-potential lien claimants are duly paid.

Blank Page

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 4/03/17
LICENSES AND PERMITS	MISCELLANEOUS LICENSES	ITEM NUMBER H.1.
<p data-bbox="185 384 841 420">See attached list from meeting of April 3, 2017.</p> <p data-bbox="524 1543 1097 1579" style="text-align: center;">COUNCIL ACTION REQUESTED</p>		



City of Franklin

9229 W. Loomis Road
Franklin, WI 53132-9728

414-425-7500

License Committee

Agenda*

Aldermen's Room

April 3, 2017 – 5:45 pm

1.	Call to Order & Roll Call	Time:			
2.	Applicant Interviews & Decisions				
License Applications Reviewed		Recommendations			
Type/ Time	Applicant Information	Approve	Hold	Deny	
Operator 2016-17 5:50 pm	Brandon T Sowinski 570 W14965 Cornell Cir, Apt #8 Muskego, WI 53150 Swiss Street Pub & Grill				
Operator 2016-17 5:55 pm	Jessica N St Louis 3829 S Miner St., Apt #5 Milwaukee, WI 53212 Cross Roads Pub & Grill				
Operator 2017-18 Renewal	Jessica N St Louis 3829 S Miner St., Apt #5 Milwaukee, WI 53212 Cross Roads Pub & Grill				
Operator 2016-17 New	Stephanie A Jenson 6450 W English Meadows Dr, #H206 Greenfield, WI 53220 Irish Cottage				
Operator 2016-17 New	Evan R Strasser 6034 Oakwood Lane Greendale, WI 53129 Rock Sports Complex				
Operator 2016-17 New	Raymond A Syrstad, Jr 7841 S Scepter Dr., #21 Franklin, WI 53132 Point After Pub & Grill				
Change of Agent 2016-17	Brad C Leachy W133 S6526 Fennimore Ln Muskego, WI 53150 Speedway #4455				
Operator 2017-18	John E Bergner 8501 Parkland Dr Franklin, WI 53132 Franklin Civic Celebration				
Operator 2017-18	Randy F Grass 9056 W Elm Ct, Unit F Franklin, WI 53132 Franklin Civic Celebration				
Operator 2017-18 Renewal	Shane R Jaskie 7811 W Winston Way Franklin, WI 53132 Irish Cottage				
Operator 2017-18	Anthony M Megna 10321 W Church St Franklin, WI 53132 Franklin Civic Celebration				
Operator 2017-18 Renewal	Amy M Ottaviani 28706 Beach Dr Waterford, WI 53185 Irish Cottage				

Type/ Time	Applicant Information	Approve	Hold	Deny
Daycare 2017-18	Rochelle S Boyce N9027 E Miramar Dr East Troy, WI 53120 Mrs. Rikki's Structured Daycare			
Daycare 2017-18	Tanya L Soich 6855 S 50 th St Franklin, WI 53132 Jubilee Christian Day Care			
3.	Adjournment			
		Time		

*Notice is given that a majority of the Common Council may attend this meeting to gather information about an agenda item over which they have decision-making responsibility. This may constitute a meeting of the Common Council per State ex rel. Badke v. Greendale Village Board, even though the Common Council will not take formal action at this meeting.

Blank Page

APPROVAL <i>Slaw</i> <i>BA</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 4/3/17
Bills	Vouchers and Payroll Approval	ITEM NUMBER I. 1

Attached are vouchers dated March 17, 2017 through April 3, 2017 Nos. 164263 through Nos. 164416 in the amount of \$ 835,115.41. Included in this listing are EFT's Nos. 3418 through Nos. 3431 and Library vouchers totaling \$ 51,080.77.

Early release disbursements dated March 17, 2017 through March 30, 2017 in the amount of \$ 597,470.94 are provided on a separate listing and are also included in the complete disbursement listing. These payments have been released as authorized under Resolution 2013-6920.

The net payroll dated March 31, 2017 is \$ 388,241.83 previously estimated at \$ 392,000.00. Payroll deductions for March 31, 2017 are \$ 395,756.66, previously estimated at \$ 401,000.00.

The estimated payroll for April 14, 2017 is \$ 372,000.00 with estimated deductions and matching payments of \$ 218,000.00.

Attached is a list of property tax investments and refunds dated March 17, 2017 through April 3, 2017 Nos. 17177 and EFT Nos. 147 through Nos. 148 in the amount of \$ 2,000,398.86. These payments have been released as authorized under Resolution 2013-6920. Voided checks in the amount of \$ (32.55) are separately listed.

COUNCIL ACTION REQUESTED

Motion approving the following:

- City vouchers with an ending date of April 3, 2017 in the amount of \$ 835,115.41 and
- Payroll dated March 31, 2017 in the amount of \$ 388,241.83 and payments of the various payroll deductions in the amount of \$ 395,756.66 plus City matching payments and
- Estimated payroll dated April 14, 2017 in the amount of \$ 372,000.00 and payments of the various payroll deductions in the amount of \$ 218,000.00, plus City matching payments and
- Property tax investments and refunds with an ending date of April 3, 2017 in the amount of \$ 2,000,398.86.