

<b>APPROVAL</b> <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> 04/02/18
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>REQUEST TO VACATE APPROXIMATELY 0.1664 ACRE OF RIGHT-OF-WAY WHICH EXTENDS SOUTH OF WEST RYAN ROAD TO WEST LOOMIS ROAD BETWEEN PROPERTIES LOCATED AT 11607 WEST RYAN ROAD AND 11533 WEST RYAN ROAD BEARING TAX KEY NOS. 891-9989- 004 AND 892-9997-000, RESPECTIVELY</b>	<b>ITEM NUMBER</b> <i>6.9.</i>

Attached is a request to vacate approximately 0.1664 acre (7,248 square feet) of City of Franklin right-of-way which extends south from West Ryan Road to West Loomis Road between properties located at 11607 West Ryan Road and 11533 West Ryan Road bearing Tax Key Nos. 891-9989-004 and 892-9997-000, respectively.

The right-of-way is a 50-foot wide unimproved section of S. 116<sup>th</sup> Street, which would allow South 116<sup>th</sup> Street to extend south of West Ryan Road and connect to West Loomis Road, opposed to ending at West Ryan Road as it currently does today.

The applicant, Mills Hotel Wyoming, LLC, owns the property to the west of the existing right-of-way (11607 W. Ryan Road) and the Wisconsin Department of Transportation owns the abutting property to the east (11533 W. Ryan Road). The applicant is requesting that the full extent of the right-of-way be combined with their property to the west.

The attached application and materials further details the request and illustrates the location of the subject right-of-way.

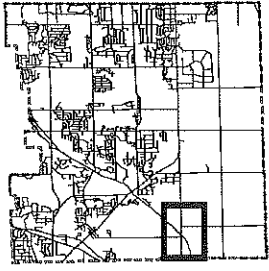
#### **Process/Next Steps**

If the Common Council chooses to entertain the vacation of the subject right-of-way and approves the action as requested below, the Plan Commission would then consider the matter and make a recommendation whether to vacate the right-of-way or not.

Following Plan Commission recommendation, the Common Council will commence proceedings by introducing the draft resolution and setting a public hearing date. The Common Council then holds the public hearing and ultimately approves or denies the request.

#### **COUNCIL ACTION REQUESTED**

A motion to refer the right-of-way vacation which extends south of West Ryan Road to West Loomis Road between properties located at 11607 West Ryan Road and 11533 West Ryan Road bearing Tax Key Nos. 891-9989-004 and 892-9997-000, respectively, to the April 19, 2018 meeting of the Plan Commission for a recommendation.



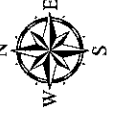
- Legend**
- Albion District
  - Building
  - City Boundary
  - Condo
  - CSM
  - Easement
  - Elementary District
  - Environmental Corridor
  - FEMA DFIRM Flood - Zone A
  - FEMA DFIRM Flood - Zone AE
  - FEMA - 0.2% Annual Chance
  - Parcel
  - Park
  - Pavement
  - County or State Hwy
  - Local Road
  - Road Right-of-Way
  - School District
  - Welland

- Zoning Districts**
- A-1
  - A-2
  - B-1
  - B-2
  - B-3
  - B-4
  - B-5
  - B-6
  - B-7
  - BP
  - CC
  - C-1
  - FC
  - R-2
  - R-3
  - R-3E
  - R-4
  - R-5
  - R-6
  - R-7
  - R-8
  - RC-1
  - OL-1
  - OL-2
  - P-1
  - PDD
  - R-1
  - R-1E
  - VB
  - VR

Legend includes all layers even if they are not visible in the map.



(C) City of Franklin, WI



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Planning Department  
9229 West Loomis Road  
Franklin, Wisconsin 53132  
Email: [generalplanning@franklinwi.gov](mailto:generalplanning@franklinwi.gov)

Franklin

MAR 08 2018

City Development



City of Franklin

Phone: (414) 425-4024  
Fax: (414) 427-7691  
Web Site: [www.franklinwi.gov](http://www.franklinwi.gov)

Date of Application: \_\_\_\_\_

## RIGHT-OF-WAY VACATION APPLICATION

Complete, accurate and specific information must be entered. **Please Print.**

### Applicant (Full Legal Name[s]):

Name: Stephen C. Mills  
Company: Mills Hotel Wyoming, LLC  
Mailing Address: 4011 80th Street  
City / State: Kenosha, WI Zip: 53142  
Phone: (262) 842-0556  
Email Address: dan@beardevelopment.com

### Applicant is Represented by (contact person) (Full Legal Name[s]):

Name: Daniel Szczap  
Company: Bear Development, LLC  
Mailing Address: 4011 80th Street  
City / State: Kenosha, WI Zip: 53142  
Phone: (262) 842-0556  
Email Address: dan@beardevelopment.com

### Project Property Information:

Property Address: Vacant Property,  
Property Owner(s): City of Franklin

Mailing Address: 9229 West Loomis Road  
City / State: Franklin, WI Zip: 53132  
Email Address: \_\_\_\_\_

Tax Key Nos: None Assigned, existing Right of Way

Existing Zoning: R8 ad R3

Existing Use: Vacant Right of Way, Adjacent to Residential

Proposed Use: Commercial

Future Land Use Identification: Right of Way

\*The 2025 Comprehensive Master Plan Future Land Use Map is available at: <http://www.franklinwi.gov/Home/Resources/Documents/Maps.htm>

### Right-of-Way Vacation Application submittals for review must include and be accompanied by the following:

- ☒ This Application form accurately completed with original signature(s). Facsimiles and copies will not be accepted.
- ☒ Application Filing Fee, payable to City of Franklin: ☐ \$125
- ☒ Legal Description for the subject property (WORD.doc or compatible format).
- ☐ Seven (7) complete collated sets of Application materials to include:
  - ☒ One (1) original and six (6) copies of a written Project Summary, *including reason for request of the vacation.*
  - ☒ Seven (7) copies of a Plat of Survey of the area to be vacated, drawn to scale (at least 11" x 14").
- ☒ Email (or CD ROM) with all plans/submittal materials. *Plans must be submitted in both Adobe PDF and AutoCAD compatible format (where applicable).*

- Upon receipt of a complete submittal, staff review will be conducted within ten business days.
- Requests for Right-of-Way Vacations are recommended by Common Council for review by the Plan Commission.
- Common Council will set a Public Hearing date, take final action, and record the document of approval with Milwaukee County Register of Deeds.

The applicant and property owner(s) hereby certify that: (1) all statements and other information submitted as part of this application are true and correct to the best of applicant's and property owner(s)' knowledge; (2) the applicant and property owner(s) has/have read and understand all information in this application; and (3) the applicant and property owner(s) agree that any approvals based on representations made by them in this Application and its submittal, and any subsequently issued building permits or other type of permits, may be revoked without notice if there is a breach of such representation(s) or any condition(s) of approval. By execution of this application, the property owner(s) authorize the City of Franklin and/or its agents to enter upon the subject property(ies) between the hours of 7:00 a.m. and 7:00 p.m. daily for the purpose of inspection while the application is under review. The property owner(s) grant this authorization even if the property has been posted against trespassing pursuant to Wis. Stat. §943.13.

*(The applicant's signature must be from a Managing Member if the business is an LLC, or from the President or Vice President if the business is a corporation. A signed applicant's authorization letter may be provided in lieu of the applicant's signature below, and a signed property owner's authorization letter may be provided in lieu of the property owner's signature[s] below. If more than one, all of the owners of the property must sign this Application).*

Stephen C. Mills  
Signature - Property Owner  
Name & Title (PRINT)  
Date: 3-7-2018

C. E. Morrow  
Signature - Property Owner  
Name & Title (PRINT)  
Date: 3-12-2018

Daniel J. Szczap  
Signature - Applicant  
Name & Title (PRINT)  
Date: 3/7/2018

\_\_\_\_\_  
Signature - Applicant's Representative  
Name & Title (PRINT)  
Date: \_\_\_\_\_



March 7, 2018

Mr. Nick Fuchs  
Principal Planner  
City of Franklin  
9229 W. Loomis Road  
Franklin, WI 53132

Dear Mr. Fuchs:

Mills Hotel Wyoming, LLC is pleased to submit this letter and the enclosed submittal materials as formal application for Right of Way Vacation for a the existing 116<sup>th</sup> Street Right of Way, south of W. Ryan Road. Bear Development is acting on behalf of the owner of record, Mills Wyoming Hotel, LLC.

**Project Summary**

Mills Wyoming Hotel, LLC is the owner of record of approximately 164 acres of land in the City of Franklin. The vast majority of the property is south of Ryan Road and west of Loomis Road and is not subject to this petition.

The property in question, consists of 7248 square feet and is located on the south side of W. Ryan Road, directly south of the improved 116<sup>th</sup> Street, west of Loomis Road. The property is existing right of way and is currently vacant and unimproved.

Mills Hotel Wyoming, LLC is the record owner of the adjacent property, which consists of 4.75 acres with frontage on both W. Ryan Road and STH 36. Mills Hotel Wyoming is respectfully requesting the City of Franklin to consider vacating the 116<sup>th</sup> right of way and to allow the property to be attached/included to Parcel 9989 004.

Based on discussions with City Staff and the Wisconsin Department of Transportation, the alignment and connection to STH 36 is not feasible and the extension of 116<sup>th</sup> Street is not planned. The WDOT (adjacent landowner to the east) has further indicated that they have no interest in the acquisition of the property in question.

The Mills property (directly west) is encumbered by an existing 100' wide ATC overhead electric transmission easement that essentially bisects the property. The easement makes it extremely difficult to redevelop the property. The addition of the

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116<sup>th</sup> right of way, would provide additional lands to create a viable property, and thus add taxable land to the City of Franklin. Because there are not viable, future plans for the improvement of 116<sup>th</sup> Street, and eventual connection to STH 36, the requested vacation is reasonable.

We look forward to discussing this request with City Staff in further detail. Should you have any questions regarding this request, please do not hesitate to contact me. I can be reached at (262) 842-0556 or by email, [dan@beardevelopment.com](mailto:dan@beardevelopment.com)

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Szczap", with a long horizontal flourish extending to the right.

Daniel Szczap  
Bear Development, LLC

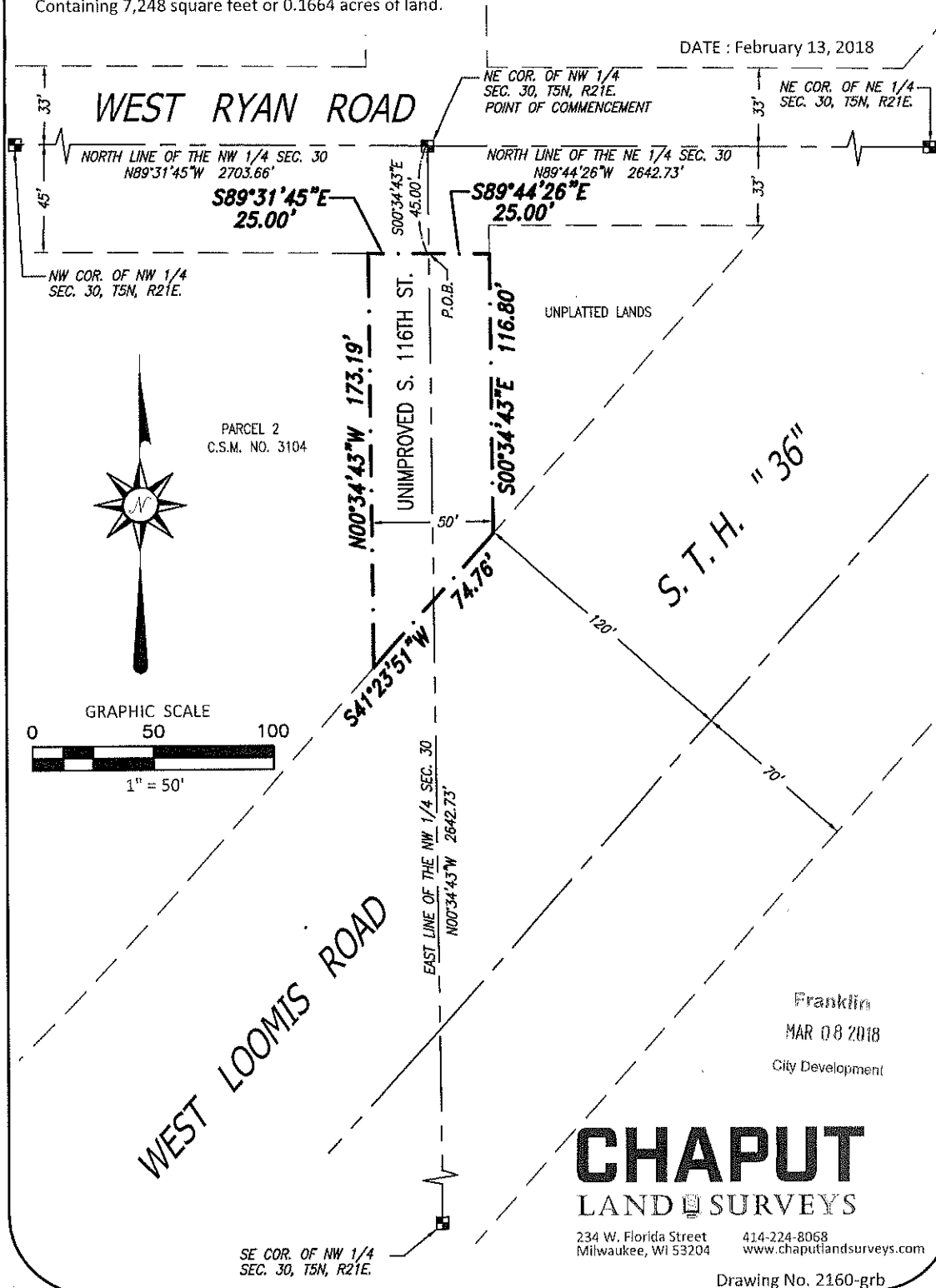
Cc: Stephen C. Mills  
S.R. Mills

# LANDS TO BE VACATED

## LEGAL DESCRIPTION

Part of the Northeast 1/4 of the Northwest 1/4 and part of the Northwest 1/4 of the Northeast 1/4 all in Section 30, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin, which is bounded and described as follows: Commencing at the Northeast corner of said Northwest 1/4 Section; thence South 00°34'43" East along the East line of said Northwest 1/4 Section a distance of 45.00 feet to a point on the South line of West Ryan Road and the point of beginning of the lands hereinafter described; thence South 89°44'26" East along said South line 25.00 feet to a point on the East line of South 116th Street; thence South 00°34'43" East along said East line 116.80 feet to a point on the North line of West Loomis Road - (S.T.H. "36"); thence South 41°23'51" West along said North line 74.76 feet to a point on the West line of South 116th Street and the East line of Parcel 2 of Certified Survey Map No. 3104; thence North 00°34'43" West along said West line 173.19 feet to a point on the South line of West Ryan Road; thence South 89°31'45" East along said South line 25.00 feet to the point of beginning.

Containing 7,248 square feet or 0.1664 acres of land.



# CHAPUT

LAND SURVEYS

## LEGAL DESCRIPTION – 116<sup>th</sup> Street Vacation

February 13, 2018

Part of the Northeast 1/4 of the Northwest 1/4 and part of the Northwest 1/4 of the Northeast 1/4 all in Section 30, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin, which is bounded and described as follows: Commencing at the Northeast corner of said Northwest 1/4 Section; thence South 00°34'43" East along the East line of said Northwest 1/4 Section a distance of 45.00 feet to a point on the South line of West Ryan Road and the point of beginning of the lands hereinafter described; thence South 89°44'26" East along said South line 25.00 feet to a point on the East line of South 116th Street; thence South 00°34'43" East along said East line 116.80 feet to a point on the North line of West Loomis Road - (S.T.H. "36"); thence South 41°23'51" West along said North line 74.76 feet to a point on the West line of South 116th Street and the East line of Parcel 2 of Certified Survey Map No. 3104; thence North 00°34'43" West along said West line 173.19 feet to a point on the South line of West Ryan Road; thence South 89°31'45" East along said South line 25.00 feet to the point of beginning.

Containing 7,248 square feet or 0.1664 acres of land.

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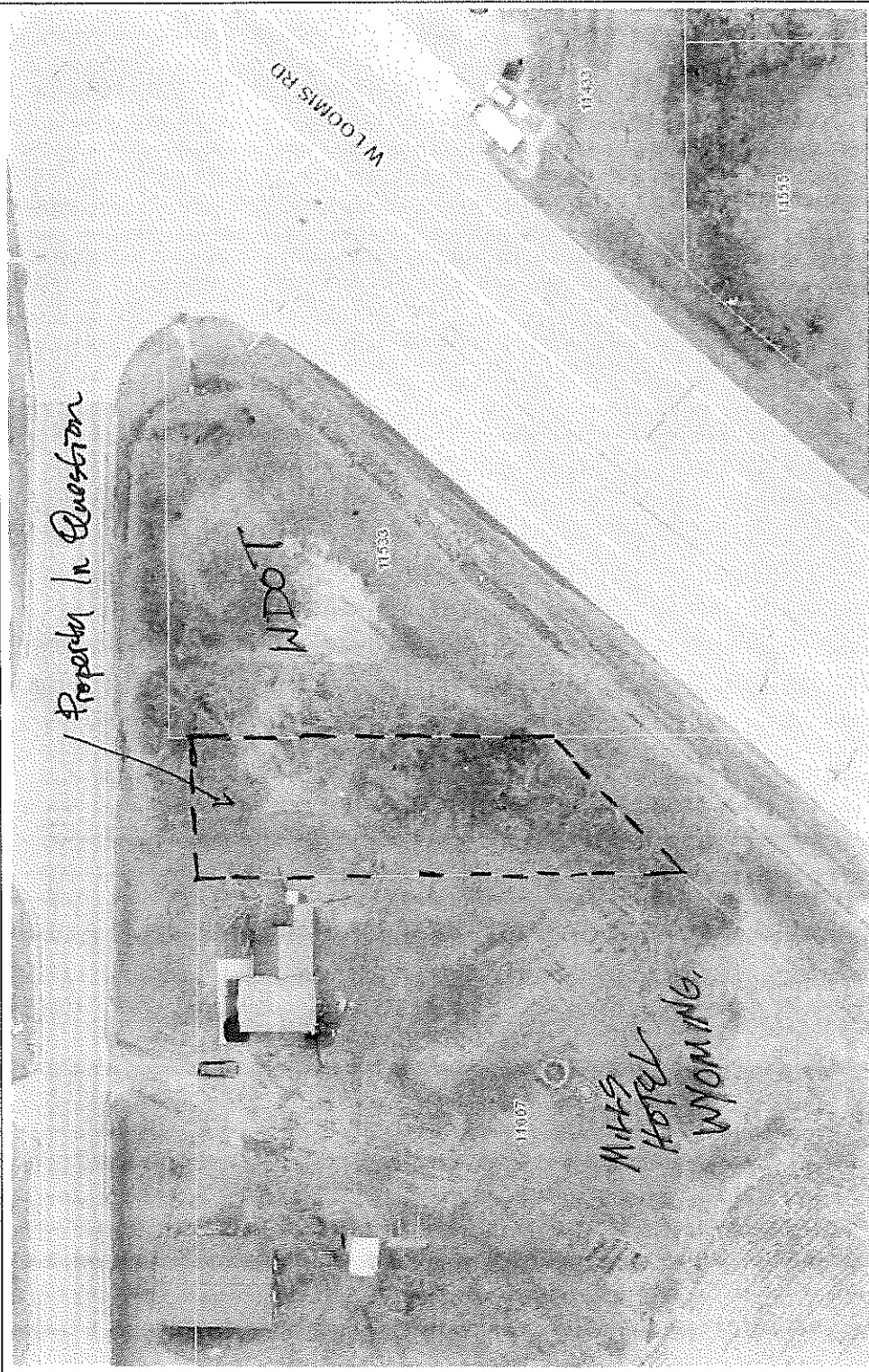
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City Development





MILWAUKEE COUNTY INTERACTIVE MAPPING SERVICE



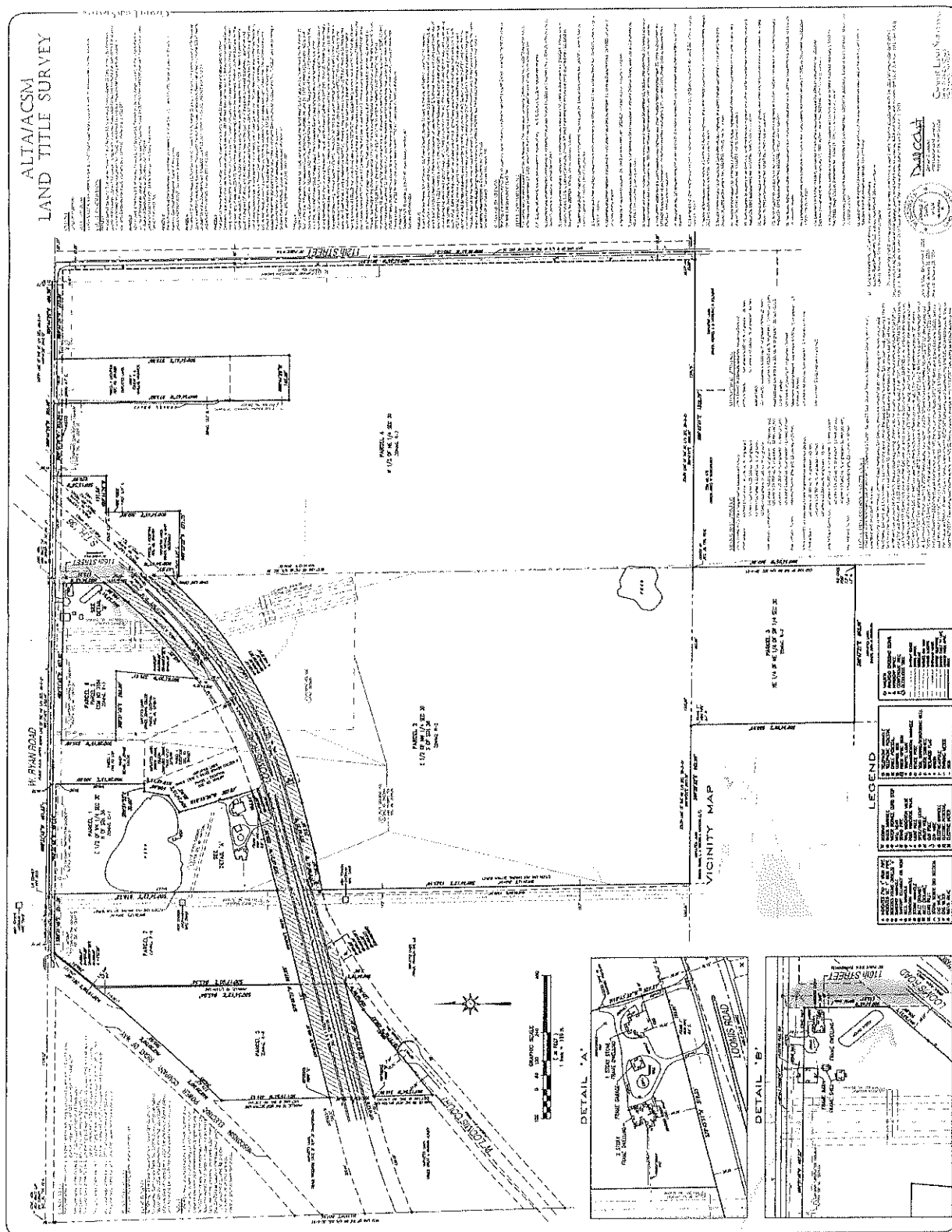
94 0 47 94 Feet  
NAD\_1927\_StatePlane\_Wisconsin\_South\_FIPS\_4903 1:564  
© MCANLIS

DISCLAIMER: This map is a user generated scale output from the Milwaukee County Land Information Office Interactive Mapping Service website. The contents herein are for reference purposes only and may or may not be accurate, current or otherwise reliable. No liability is assumed for the data delineated herein either expressed or implied by Milwaukee County or its employees.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes





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<p><b>APPROVAL</b></p> <p><i>Slw</i></p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p><b>04/02/18</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT A CONSERVATION EASEMENT FOR AND AS PART OF THE REVIEW AND APPROVAL OF A CONDOMINIUM PLAT, CERTIFIED SURVEY MAP AND SPECIAL USE FOR A CONDOMINIUMS DEVELOPMENT USE UPON PROPERTY LOCATED AT APPROXIMATELY 9733 SOUTH 76TH STREET (PARK CIRCLE, LLC, APPLICANT)</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G.10.</i></p>
<p>City Development staff recommends approval of a resolution authorizing certain officials to accept a conservation easement for and as part of the review and approval of a condominium plat, certified survey map and special use for a condominiums development use upon property located at approximately 9733 South 76th Street (Park Circle, LLC, Applicant), subject to review and approval by the Department of City Development and technical corrections by the City Attorney.</p> <p style="text-align: center;"><b>COUNCIL ACTION REQUESTED</b></p> <p>A motion to adopt Resolution No. 2018-_____, authorizing certain officials to accept a conservation easement for and as part of the review and approval of a condominium plat, certified survey map and special use for a condominiums development use upon property located at approximately 9733 South 76th Street (Park Circle, LLC, Applicant), subject to review and approval by the Department of City Development and technical corrections by the City Attorney.</p>		

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2018-\_\_\_\_\_

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO  
ACCEPT A CONSERVATION EASEMENT FOR AND AS PART OF THE REVIEW  
AND APPROVAL OF A CONDOMINIUM PLAT, CERTIFIED SURVEY MAP AND  
SPECIAL USE FOR A CONDOMINIUMS DEVELOPMENT USE UPON PROPERTY  
LOCATED AT APPROXIMATELY 9733 SOUTH 76TH STREET (PARK CIRCLE, LLC,  
APPLICANT)

---

WHEREAS, the Common Council having approved a Condominium Plat, Certified Survey Map and Special Use upon the application of Park Circle, LLC, on August 15, 2017 (Condominium Plat) and October 3, 2017 (Special Use and Certified Survey Map), and having conditioned approval thereof in part upon Common Council approval of a Conservation Easement to protect the mature woodlands, shore buffers, wetland buffers and setbacks, wetlands and shoreland wetlands on the site; and

WHEREAS, §15-7.0603B., §15-7.0102G., §15-7.0103Q., §15-7.0702Q., and §15-9.0309D. of the Unified Development Ordinance requires the submission of a Natural Resource Protection Plan in review of a Condominium Plat, Certified Survey Map and Special Use and the Unified Development Ordinance requires conservation easements to be imposed for natural resource features identified within such Plan to protect such features, all as part of the approval process for a Condominium Plat, Certified Survey Map and Special Use; and

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

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

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

Introduced at a regular meeting of the Common Council of the City of Franklin this  
\_\_\_\_\_ day of \_\_\_\_\_, 2018.

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS  
TO ACCEPT A CONSERVATION EASEMENT  
PARK CIRCLE, LLC  
RESOLUTION NO. 2018-\_\_\_\_\_

Page 2

Passed and adopted at a regular meeting of the Common Council of the City of  
Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

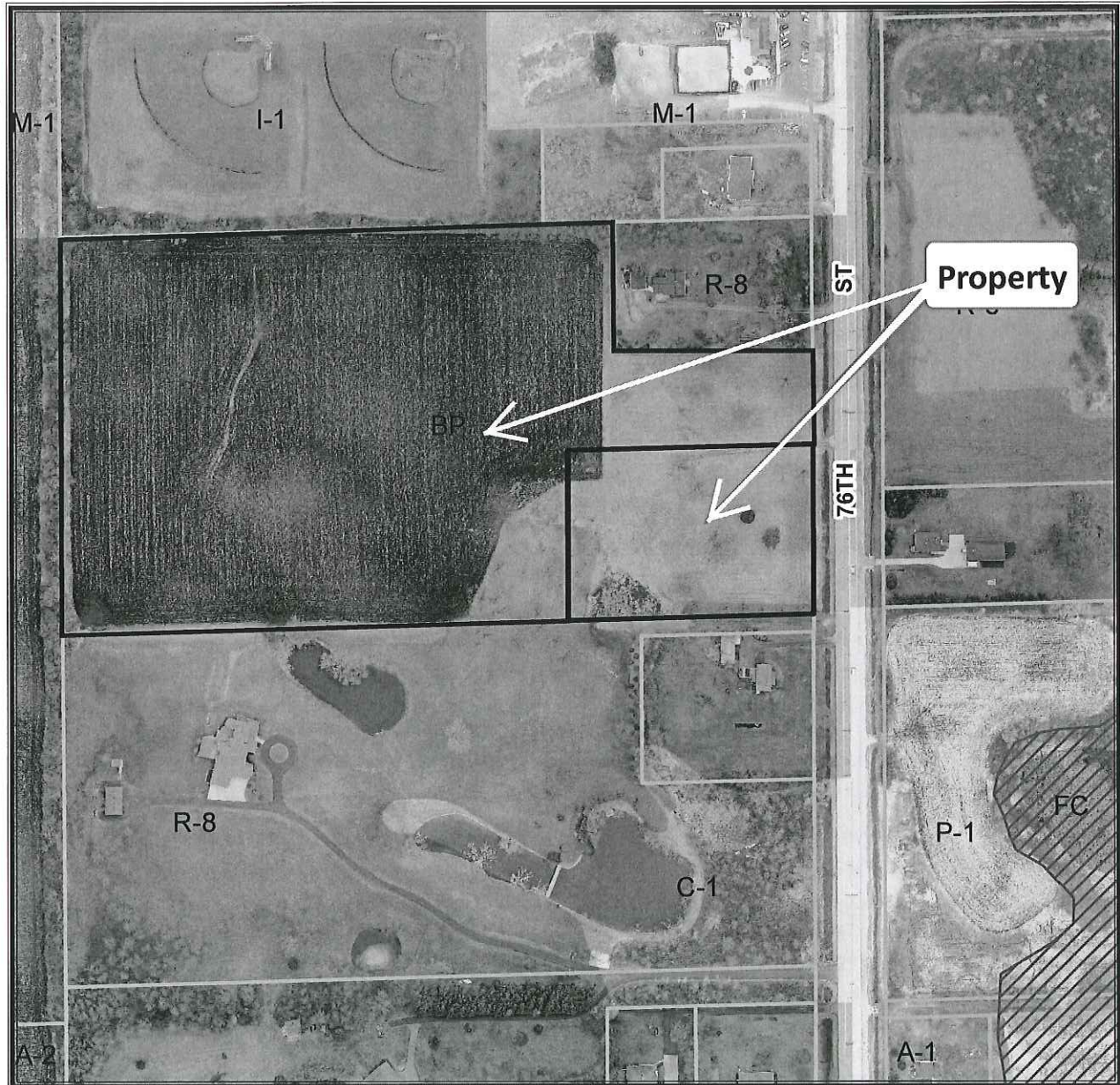
ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_



9733 S. 76th Street  
TKN 896 9999 007



Planning Department  
(414) 425-4024

0 162.5 325 650 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.*

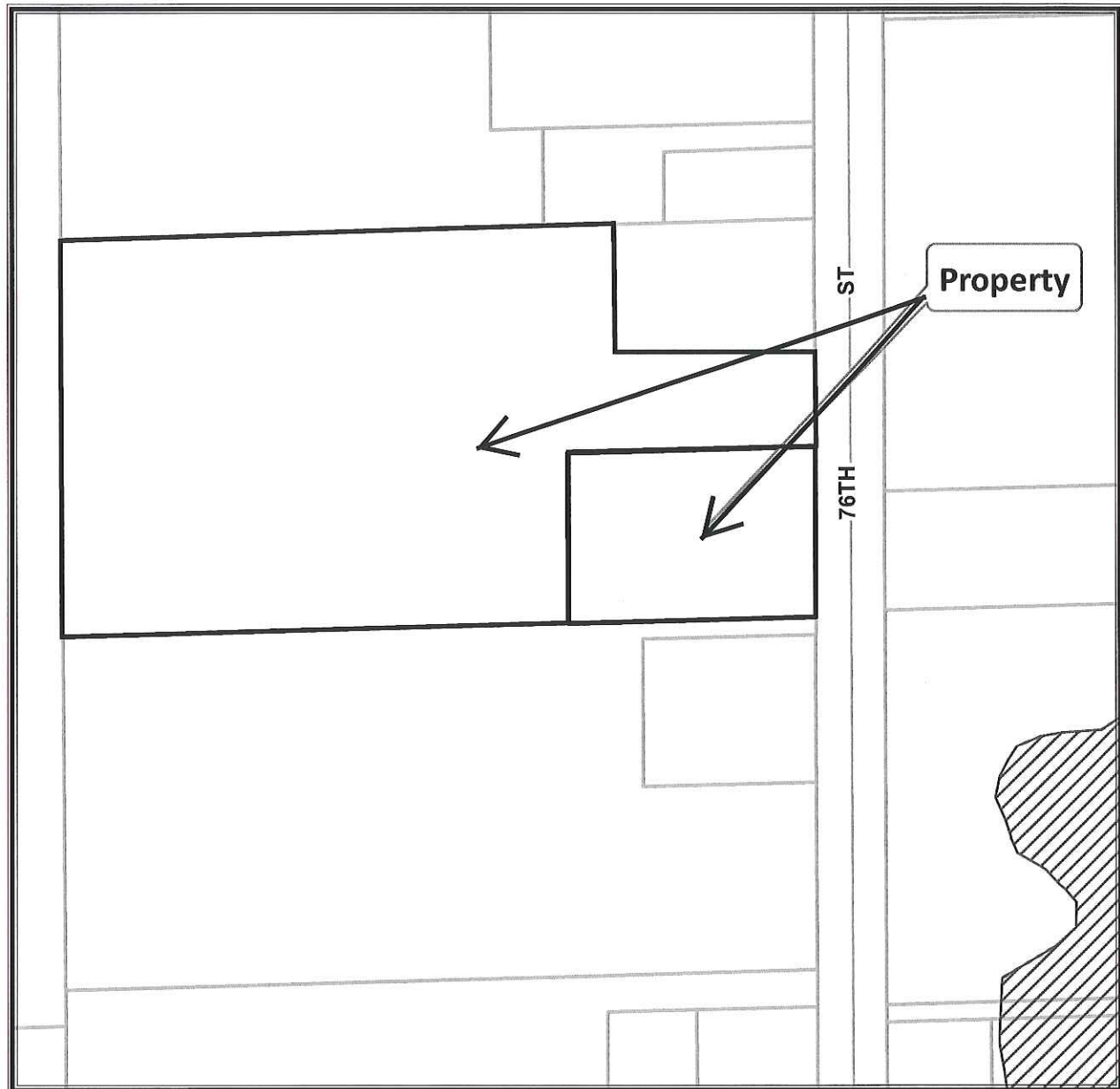


2017 Aerial Photo





9733 S. 76th Street  
TKN 896 9999 007



Planning Department  
(414) 425-4024

0 162.5 325 650 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



## CONSERVATION EASEMENT

### THE GLEN AT PARK CIRCLE

This Conservation easement is made by and between the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "grantee," and PARK CIRCLE, LLC, hereinafter referred to as "Grantor," and shall become effective upon the recording of this Grant of Conservation Easement, together with the Acceptance following, with the Office of the Register of Deeds for Milwaukee County, pursuant to §700.40(2)(b) of the Wisconsin Statutes.

### WITNESSETH

WHEREAS, Grantor is the owner in fee simple of certain real property, located within the City of Franklin, Milwaukee County, Wisconsin, being part of the Northeast 1/4 of Section 28, Township 5 North, Range 21 East, described in Exhibit A attached hereto and hereby made a part hereof (protected property); and

WHEREAS, the grantor desires and intends that the natural elements and the ecological and aesthetic values of the protected property including, without limitation, mature woodlands, shore buffers, wetland buffers and setbacks, wetlands and shoreland wetlands, and refer to Natural Resource Investigation by Wetland & Waterway Consulting, LLC, dated May 24, 2017, which is located in the office of the Department of City Development, be preserved and maintained by the continuation of land use that will not interfere with or substantially disrupt the natural elements or the workings of natural systems; and

WHEREAS, grantee is a "holder", as contemplated by §700.41(1)(b)1. of the Wisconsin Statutes, whose purposes include, while exercising regulatory authority granted to it, *inter alia*, under §62.23 and §236.45 of the Wisconsin Statutes, the conservation of land, natural areas, open space, and water areas; and

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

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

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

Grantee's rights hereunder shall consist solely of the following:

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

3. To enter the protected property at all reasonable times for the purpose of inspecting the protected property to determine if the grantor is complying with the covenants and conditions of this grant.

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

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

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

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

To Grantor:  
PARK CIRCLE, LLC  
N27 W24025 Paul Court, Suite 100  
Pewaukee, WI 53072

To Grantee:  
City of Franklin  
Office of the City Clerk  
9229 W. Loomis Road  
Franklin, Wisconsin 53132

In witness whereof, the grantor has set his hand and seals this on this date of \_\_\_\_\_  
\_\_\_\_\_, 2018.

PARK CIRCLE, LLC

By: \_\_\_\_\_  
STEVE DECLEENE - MANAGER

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ SS

Before me personally appeared on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above  
named STEVE DECLEENE, MANAGER of PARK CIRCLE, LLC to me known to be the person who  
executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said  
limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_

Acceptance

The undersigned does hereby consent to and accepts the Conservation Easement granted and conveyed to it under and pursuant to the foregoing Grant of Conservation Easement. In consideration of the making of such Grant of Conservation Easement, the undersigned agrees that this acceptance shall be binding upon the undersigned and its successors and assigns and that the restrictions imposed upon the protected property may only be released or waived in writing by the Common Council of the City of Franklin, as contemplated by §236.293 of the Wisconsin Statutes.

In witness whereof, the undersigned has executed and delivered this acceptance on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF FRANKLIN

By: \_\_\_\_\_  
Stephen R. Olson, Mayor

By: \_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN )  
SS  
COUNTY OF MILWAUKEE)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared Stephen R. Olson and Sandra L. Wesolowski, who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority, and pursuant to Resolution File No. \_\_\_\_\_ adopted by its Common Council of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public, Milwaukee County, Wisconsin

My commission expires \_\_\_\_\_

This instrument was drafted by the City of Franklin.

Approved as to contents:

\_\_\_\_\_  
Nicholas Fuchs, Principal Planner  
Department of City Development

\_\_\_\_\_  
Date

Approved as to form only:

\_\_\_\_\_  
Jesse A. Wesolowski  
City Attorney

\_\_\_\_\_  
Date

## MORTGAGE HOLDER CONSENT

The undersigned, (name of mortgagee), a Wisconsin banking corporation ("Mortgagee"), as Mortgagee under that certain Mortgage encumbering the Property and recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin, on \_\_\_\_\_, 20\_\_\_\_, as Document No. \_\_\_\_\_, hereby consents to the execution of the foregoing easement and its addition as an encumbrance title to the Property.

IN WITNESS WHEREOF, Mortgagee has caused these presents to be signed by its duly authorized officers, and its corporate seal to be hereunto affixed, as of the day and year first above written.

Name of Mortgagee  
a Wisconsin Banking Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WISCONSIN

MILWAUKEE COUNTY

ss

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, personally appeared name of officer of mortgagee, the (title of office, ie: VP) of (name of mortgagee), a Wisconsin banking corporation, and acknowledged that (s)he executed the foregoing instrument on behalf of said corporation, by its authority and for the purposes therein contained.

Name: \_\_\_\_\_

Notary Public, State of Wisconsin

My commission expires \_\_\_\_\_

## Exhibit A

### Legal Description of Property:

Lots 1, 2 and 3 and Outlot 1 of Certified Survey Map No. \_\_\_\_\_, as recorded in the Register of Deeds Office for Milwaukee County as Document No. \_\_\_\_\_, being a part of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of Section 28, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin

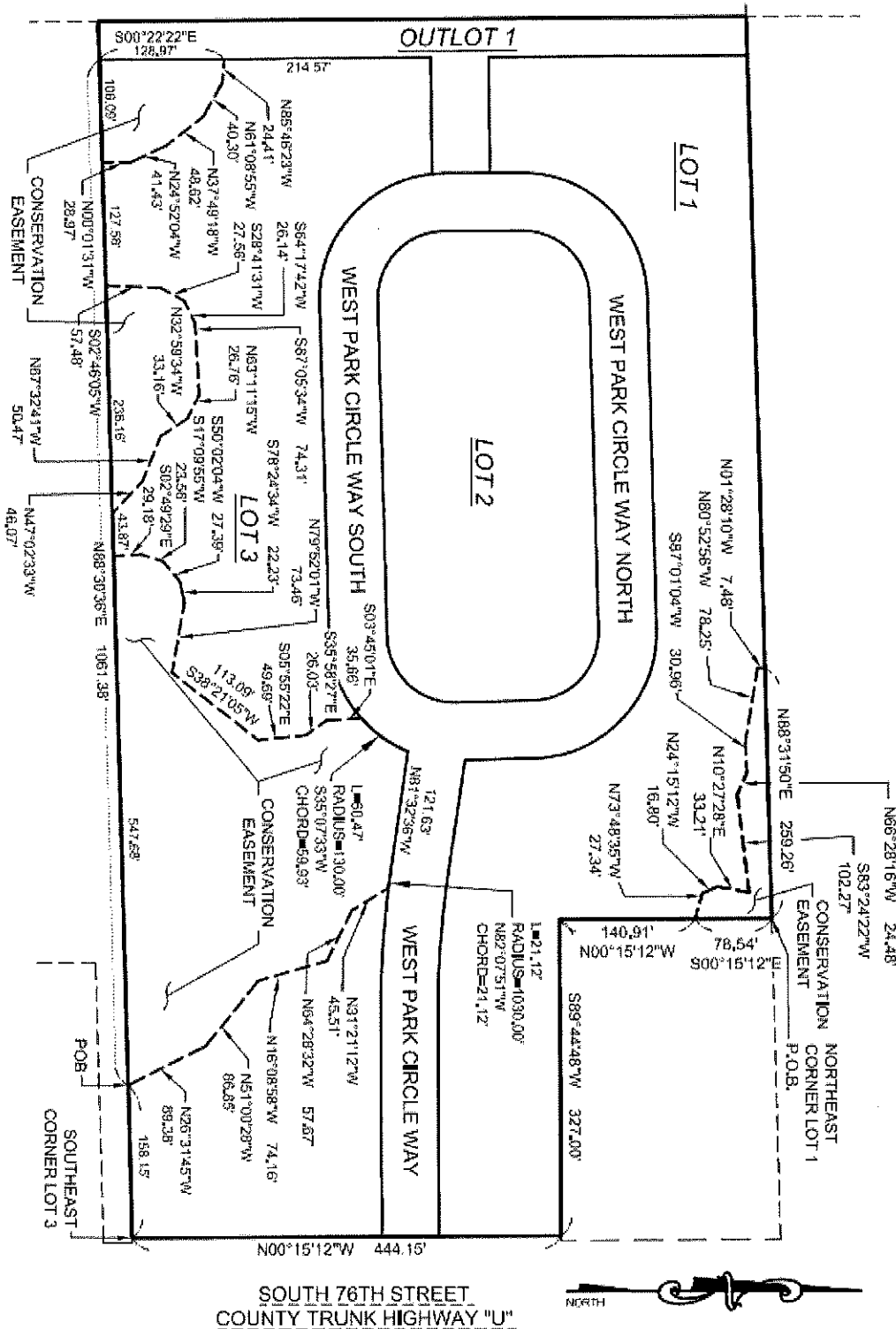
### Legal Description of Conservation Easement Area:

All that part of Lots 1 and 3 of Certified Survey Map No. \_\_\_\_\_, as recorded in the Register of Deeds Office for Milwaukee County as Document No. \_\_\_\_\_, being a part of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of Section 28, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows: Beginning at the northeast corner of said Lot 1; thence South 00°15'12" East along the east line of said Lot 1, 78.54 feet; thence North 73°48'35" West 27.34 feet; thence North 24°15'12" West 16.80 feet; thence North 10°27'28" East 33.21 feet; thence South 83°24'22" West 102.27 feet; thence North 66°28'16" West 24.48 feet; thence South 87°01'04" West 30.96 feet; thence North 80°52'56" West 78.25 feet; thence North 01°28'10" West 7.48 feet to the north line of said Lot 1; thence North 88°31'50" East along said north line 259.26 feet to the place of beginning.

ALSO INCLUDING part of said Lot 3, commencing at the southeast corner of said Lot 3; thence South 88°30'36" West along the south line of said Lot 3, 158.15 feet to the place of beginning of the land hereinafter to be described; thence North 26°31'45" West 89.38 feet; thence North 51°00'28" West 86.85 feet; thence North 16°08'58" West 74.16 feet; thence North 64°28'32" West 57.67 feet; thence North 31°21'12" West 45.51 feet to the south right-of-way line of West Park Circle Way; thence westerly 21.12 feet along said south right-of-way line and the arc of a curve, radius of 1030.00 feet, center lies to the north, chord bears North 82°07'51" West 21.12 feet; thence North 81°32'36" West along said south right-of-way line 121.63 feet to the south right-of-way line of West Park Circle; thence southwesterly 60.47 feet along said south right-of-way line and the arc of a curve, radius of 130.00 feet, center lies to the northwest, chord bears South 35°07'33" West 59.93 feet; thence South 03°45'01" East 35.66 feet; thence South 35°58'27" East 26.03 feet; thence South 05°55'22" East 49.69 feet; thence South 38°21'05" West 113.09 feet; thence North 79°52'01" West 73.46 feet; thence South 78°24'34" West 22.23 feet; thence South 50°02'04" West 27.39 feet; thence South 17°09'55" West 23.56 feet; thence South 02°49'29" East 29.18 feet to the south line of said Lot 3; thence South 88°30'36" West along said south line, 43.87 feet; thence North 47°02'33" West 46.07 feet; thence North 67°32'41" West 50.47 feet; thence North 32°59'34" West 33.16 feet; thence North 63°11'15" West 26.76 feet; thence South 87°05'34" West 74.31 feet; thence South 64°17'42" West 26.14 feet; thence South 28°41'31" West 27.56 feet; thence South 02°46'05" West 57.48 feet to the south line of said Lot 3; thence South 88°30'36" West along the south line of said Lot 3, 127.58 feet; thence North 00°01'31" West 28.97 feet; thence North 24°52'04" West 41.43 feet; thence North 37°49'18" West 48.62 feet; thence North 61°08'55" West 40.30 feet; thence North 85°46'23" West 24.41 feet to the west line of said Lot 3; thence South 00°22'22" East along said west line 128.97 feet to the south line of said Lot 3; thence North 88°30'36" East along said south line 1061.38 feet to the place of beginning.



Exhibit B  
(Conservation Easement Area)



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<p><b>APPROVAL</b></p> <p><i>Slw</i></p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p>04/02/18</p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TEXT TO COMPLY WITH 2017 WISCONSIN ACT 67 REQUIREMENTS, AND WIS. STAT. §62.23, PERTAINING IN PART TO THE STANDARDS FOR THE ISSUANCE OF A SPECIAL USE PERMIT, THE REGULATION OF SUBSTANDARD LOTS AND THE STANDARDS FOR GRANTING CERTAIN ZONING VARIANCES (CITY OF FRANKLIN, APPLICANT)</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>6.11.</i></p>
<p>At their meeting on March 22, 2018, the Plan Commission recommended approval, subject to minor technical corrections by staff, of an ordinance to amend the Unified Development Ordinance Text to comply with 2017 Wisconsin Act 67 requirements, and Wisconsin Statutes §62.23 pertaining in part to the standards for the issuance of a special use permit, the regulations of substandard lots, and the standards for granting certain zoning variances.</p> <p style="text-align: center;"><b>COUNCIL ACTION REQUESTED</b></p> <p>A motion to adopt Ordinance No. 2018-____ to amend the Unified Development Ordinance text to comply with 2017 Wisconsin Act 67 requirements, and Wis. Stat. §62.23, pertaining in part to the standards for the issuance of a Special Use permit, the regulation of substandard lots, and the standards for granting certain zoning variances (City of Franklin, Applicant).</p>		

## ORDINANCE NO. 2018-\_\_\_\_

AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT  
ORDINANCE TEXT TO COMPLY WITH 2017 WISCONSIN ACT 67 REQUIREMENTS,  
AND WIS. STAT. § 62.23, PERTAINING IN PART TO THE STANDARDS FOR THE  
ISSUANCE OF A SPECIAL USE PERMIT, THE REGULATION OF SUBSTANDARD  
LOTS AND THE STANDARDS FOR GRANTING CERTAIN ZONING VARIANCES  
(CITY OF FRANKLIN, APPLICANT)

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WHEREAS, 2017 Wisconsin Act 67 provides for amendments to the Wisconsin Statutes relating to, in part, limiting the authority of local governments to regulate development on substandard lots and require the merging of lots; requiring a political subdivision to issue a conditional use (termed a “special use” within the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin) permit under certain circumstances; standards for granting certain zoning variances; local ordinances related to repair, rebuilding, and maintenance of certain nonconforming structures; and

WHEREAS, the Department of City Development having reviewed the Unified Development Ordinance with regard to the requirements of Act 67, and Wis. Stat. § 62.23, and having recommended amendments to the Ordinance accordingly; and

WHEREAS, the Plan Commission having reviewed the proposed amendments to provide consistency with Act 67 and having recommended approval of such amendments; and

WHEREAS, the Common Council having accepted the recommendation of the Plan Commission and having determined that the proposed amendments will provide consistency between the Unified Development Ordinance and the Wisconsin Statutes.

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

SECTION 1:           §15-3.0701D. Conditions on Special Use Permits, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended as follows: add to the existing text, immediately prior to the existing last sentence: “Any condition imposed must be related to the purposes of this Ordinance as set forth in Subsection A.1. above, and be based on substantial evidence. “Substantial evidence” means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a special use permit and that reasonable persons would accept in support of a

conclusion. The requirements and conditions imposed must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. Once granted, a special use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the City may impose conditions such as the permits, duration, transfer, or renewal, in addition to any other conditions specified in this Ordinance or by the Common Council."

SECTION 2: §15-9.0103D. Hearing on Special Use Application, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended as follows: delete: "At least ten (10) days in advance of such hearing, but not more than thirty (30) days," and in place thereof, insert: "Prior to such public hearing, a class 2 (under Ch. 985 of the Wisconsin Statutes)".

SECTION 3: §15-9.0103E. Authorization of Special Uses, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended as follows: add to the existing text, immediately prior to the existing last sentence: "Notwithstanding the foregoing provisions with regard to the Common Council may deny any application, or with regard to in the event of a written protest, if an applicant for a special use permit meets or agrees to meet all of the requirements and conditions specified in this Ordinance or those imposed, the Common Council shall grant the special use permit. The applicant must demonstrate that the application and all requirements and conditions imposed relating to the special use are or shall be satisfied, both of which must be supported by substantial evidence. The Common Council's decision to approve or deny the permit must be supported by substantial evidence."

SECTION 4: §15-9.0103F. Effect of Denial of a Special Use, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended as follows: add at the end of the existing text: "If the Common Council denies a special use permit application, pursuant to Section 15-10.0500 of this Ordinance, any person or persons, jointly or severally aggrieved by such decision may, within thirty (30) days of the date of such decision, commence an action seeking the remedy available by way of certiorari in the Milwaukee County Circuit Court. Such action for certiorari shall be the sole remedy of any such person(s) aggrieved."

SECTION 5: §15-11.0103 Specific Words and Phrases, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended as follows: delete after Special Use “A use permitted by special zoning certificate in accordance with the provisions of this Ordinance.” And in place thereof, insert “A use allowed under a special use permit, special exception, or other special zoning permission issued by the City of Franklin, but does not include a variance.”

SECTION 6: §15-3.1002 Existing Nonconforming Structures, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended as follows: add at the end of the existing Section title: “(n.b. also see Sections 15-3.1013 and 15-3.1014)”.

SECTION 7: §15-3.1013 “Repair, Rebuilding, and Maintenance of Certain Nonconforming Structures”, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby created to read as follows:

“1. In this Section:

a. “Development regulations” means the part(s) of this Ordinance that applies to elements including setback, height, lot coverage, side yard, lot area, and lot width.

b. “Nonconforming structure” means a dwelling or other building that existed lawfully before the applicable provision(s) of this Ordinance was enacted or amended, but that does not conform with one or more of the development regulations in this Ordinance.

2. Notwithstanding anything to the contrary set forth elsewhere in this Ordinance, this Ordinance may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure, or any part of a nonconforming structure.”

SECTION 8: [drafting note: following is per existing Wis. Stat. § 62.23(7) (hc), not 2017 Wis. Act 67]

§15-3.1014 “Restoration or Replacement of Certain Nonconforming Structures”, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby created to read as follows:

“1. Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in this Ordinance may not prohibit the restoration or replacement of a nonconforming structure if the structure will be restored to, or replaced at, the size, subject to subd. 2., location, and use that it had immediately before the

damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

a. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

2. Under circumstances to which subd. 1. applies notwithstanding anything to the contrary elsewhere within this Ordinance, this Ordinance shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.”

SECTION 9: §15-11.0103 Specific Words and Phrases, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended to delete the definition of Structure, Nonconforming.

SECTION 10: §15-3.1003D. Two (2) or More Substandard Lots with Continuous Frontage Under the Same Ownership, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby recreated as follows: “Notwithstanding any other law or rule, or any action or proceeding under the common law, the City may not enact or enforce an ordinance or take any other action that:

1. Prohibits a property owner from doing any of the following:

a. Conveying an ownership interest in a substandard lot.

b. Using a substandard lot as a building site if all of the following apply:

i. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

ii. The substandard lot or parcel is developed to comply with all other ordinances of the City.

2. Requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

SECTION 11: §15-11.0103 Specific Words and Phrases, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended to insert the following definition: “Substandard lot means a legally created lot or parcel that met any applicable size requirements when it was created, but does not meet current lot size requirements.”



- SECTION 12: §15-10.0204A. Errors, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended as follows: delete “to hear and decide an appeal of such error pursuant to and upon the standards set forth in Sections 26.10 and 26.11 of the City of Franklin Municipal Code”, and in place thereof, insert “in the enforcement of this section or of any ordinance adopted pursuant thereto.”
- SECTION 13: §15-10.0204B. Variances and Minor Variances, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby recreated to read as follows: “Variances. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.”
- SECTION 14: §15-10.0204H. Area Exceptions, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby recreated to read as follows: “Special Exceptions. The Board of Zoning and Building Appeals may hear and decide applications for special exceptions to the terms of the Ordinance upon which the Board of Zoning and Building Appeals is required to pass under such Ordinance.”
- SECTION 15: §15-10.0204K. Public Utility Building, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby created to read as follows: “The Board of Zoning and Building Appeals may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.”
- SECTION 16: §15-10.0206A. Purpose, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended as follows: add at the end of the existing text: “The Common Council hereby specifies that an expiration date for a variance granted under this Ordinance may be established by the Board of Zoning and Building

Appeals if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. An Ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.”

SECTION 17: §15-10.0209 Special Exceptions, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended as follows: add to the existing text after 15-10.0209G. and renumber accordingly “H. Unnecessary Hardship. A property owner bears the burden of proving “unnecessary hardship”, as that term is used in this Ordinance, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner’s property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome. A property owner bears the burden of proving “unnecessary hardship”, as that term is used in this Ordinance, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.”

SECTION 18: §15-10.0212A.2. Expiration of Variances, Substitutions, and Permits, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended as follows: add to the existing text after the word “Variances” the following: “unless the Board of Zoning and Building Appeals establishes a specific date by which the action authorized by the variance must be commenced or completed, a variance granted under this Ordinance does not expire.”; add at the end of the existing text: “A variance granted under this Ordinance runs with the land.”

SECTION 19: §15-11.0103. Specific Words and Phrases, of the Unified Development Ordinance of the Municipal Code of the City of Franklin, Wisconsin is hereby amended as follows: replace “Area Exception” and its associated definition with “Area Variance. A modification to a

dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the Board of Zoning and Building Appeals under this Ordinance.”; add to the existing text after the definition of “Use, Principal” a new definition for “Use, Variance. An authorization by the Board of Zoning and Building Appeals under this Ordinance for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.”

SECTION 20: 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 21: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 22: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_



## CITY OF FRANKLIN



## REPORT TO THE PLAN COMMISSION

Meeting of February 22, 2018

## Unified Development Ordinance Text Amendment

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**RECOMMENDATION:** City Development Staff recommends that the proposed Unified Development Ordinance Text Amendment to address compliance with Act 67 state mandated changes to Special Uses, Variances, Nonconforming Structures, and Substandard lots be tabled to the March 22, 2018 Plan Commission meeting to allow staff more time to identify all necessary changes.

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<b>Project Name:</b>	Compliance with Act 67
<b>Project Address:</b>	N/A
<b>Applicant:</b>	City of Franklin
<b>Owners (property):</b>	N/A
<b>Current Zoning:</b>	N/A
<b>2025 Comprehensive Master Plan:</b>	N/A
<b>Use of Surrounding Properties:</b>	N/A
<b>Applicant Action Requested:</b>	Recommendation of approval for the proposed Unified Development Ordinance Text Amendment to address compliance with Act 67 state mandated changes to Special Uses, Variances, Nonconforming Structures, and Substandard Lots

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**INTRODUCTION:**

On November 27, 2017, Governor Scot Walker signed into law Act 67, which imposes new mandates and prohibitions upon local governments as outlined below. A more detailed summary is provided in the attached BoardmanClark Municipal Law Newsletter, Volume 23, Issue 6, November/December 2017.

- Conditional Use Permits (i.e. Special Use Permits). Act 67 limits local government discretion related to the issuance of conditional use permits. It creates a definition and establishes a number of requirements for the issuance or denial of a Conditional Use Permit.
- Variances. Act 67 creates new definitions and statutory requirements related to variances.
- Nonconforming Structures. Act 67 made minor technical changes to an existing definition of “development regulations” and to the limits a city may impose upon nonconforming structures. However, staff is proposing further revisions to the UDO to reflect earlier state mandated changes affecting nonconforming structures.
- Substandard Lots. Act 67 significantly curtails the authority of local government to impose limitations on the development of substandard lots.

While local governments did not need to make changes to their ordinances in response to Act 67, organizations including the League of Wisconsin Municipalities and the Wisconsin Chapter of the American Planning Association recommend that municipalities amend their ordinances to conform with the new laws.

**PROJECT DESCRIPTION AND ANALYSIS:**

While staff has concluded its preliminary review of the Special Use and Nonconforming Structures related changes to the UDO, which are included in the draft Ordinance, staff has not completed its review for the Variance and Substandard Lots related changes to the UDO.

**STAFF RECOMMENDATION:**

City Development Staff recommends that the proposed Unified Development Ordinance Text Amendment to address compliance with Act 67 state mandated changes to Special Uses, Variances, Nonconforming Structures, and Substandard lots be tabled to the March 22, 2018 Plan Commission meeting to allow staff more time to identify all necessary changes.

# *Municipal Law Newsletter*

VOLUME 23, ISSUE 6, NOVEMBER/DECEMBER 2017

## *In this issue*

- *New Statute Governing Conditional Use Permits, Variances, and Substandard Lots*
- *Limitations on Collecting Attorney Fees for Prosecution of Ordinance Violations*
- *Court Rules that Fence Law Applies to Cities and Villages*
- *Upper Midwest Municipals Move Forward with Major New Solar Project*
- *Boardman & Clark LLP Welcomes Attorney Jared Walker Smith*

## **New Statute Governing Conditional Use Permits, Variances, and Substandard Lots**

On November 27, 2017, Governor Scott Walker signed several new laws. One of these laws, Act 67, contains provisions of particular importance to zoned municipalities. Act 67 became effective on November 29, 2017, which means that the new mandates and prohibitions outlined below, including prohibitions against enforcing existing ordinances, are now in full force and effect.

### ***Conditional Uses***

While there is considerable case law governing issuance of conditional use permits (“CUPs”), under prior zoning law, there was no specific statutory language regulating such permits. In fact, Wis. Stat. § 62.23 mentioned CUPs only within the context of regulating community-based residential facilities. There were no requirements governing notice or public hearings for CUPs and no statutory criteria for the grant or denial of a CUP. Unsurprisingly, zoning ordinances vary widely on these requirements.

Act 67 creates a definition and establishes a number of requirements for the issuance or denial of a CUP. Under newly created Wis. Stat. § 62.23(7) (de), “conditional use” is defined as “a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.”<sup>1</sup>

Upon receipt of an application for a CUP, a municipality must hold a public hearing following publication or posting of a Class 2 notice. The new law does not specifically identify the body that must conduct the public hearing. In some municipalities, the public hearing is held by the plan commission and, in others, by the common council or village board.

Similarly, in a number of municipalities, plan commissions are authorized to grant or deny conditional use permits as well as establish any specific conditions while in others, the plan commission makes a recommendation to the governing body, which then makes these decisions.

The new statute incorporates case law holding that decisions granting or denying CUPs need to be based on “substantial evidence,” defined as

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*Continued on page 2*

“facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.”

In addition to basing its decision on “substantial evidence,” any requirements or conditions established by the governing body must be related to the purpose of the ordinance and, to the extent practicable, must be measurable. Conditions may include the permit’s duration, transfer, or renewal. If an applicant agrees to meet all the requirements and conditions specified in the municipality’s ordinances or imposed by the municipality, the municipality must grant the permit, although the applicant must be able to show, by substantial evidence, that the requirements and conditions have either been satisfied or will be satisfied.

If a municipality denies an applicant’s CUP application, the applicant may now appeal the denial directly to circuit court. Most municipal ordinances currently provide for an intermediate, administrative appeal to a zoning board of appeals or board of adjustment.

### **Variances**

New definitions and statutory requirements related to variances were also enacted. While these new provisions reflect existing case law pertaining to variances, they are worth noting.

Wis. Stat. § 62.23 (7)(e)7.a. incorporates existing case law defining an “area variance” as “a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure” and a “use variance” as “an authorization... for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.”

Wis. Stat. § 62.23(7)(e)7.d. also incorporates existing case law providing that property owners bear the burden of proving “unnecessary hardship.” For an area variance, the property owner must demonstrate that “strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner’s property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome.” For a use variance, the property owner must show that “strict compliance with a zoning ordinance would leave the property owner

with no reasonable use of the property in the absence of a variance.” In all cases, the property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

### **Substandard Lots**

The new law also contains the legislative response to *Murr v. Wisconsin*, 137 S. Ct. 1933 (2017). In *Murr*, the U.S. Supreme Court held that an ordinance that merged two substandard lots when the lots were held under common ownership did not constitute a taking of private property requiring compensation under the Fifth Amendment. Under that decision, property owners owning two adjacent, substandard lots along the Lower St. Croix River were barred from selling one lot separately.

Almost all zoning ordinances contain prohibitions or limitations on the use of substandard lots.<sup>2</sup> Some ordinances, like the ordinance at issue in *Murr*, require that a substandard lot that is held in common ownership with an adjoining lot be combined with the adjoining lot if the owner wishes to construct a building on the adjoining lot. Others prohibit or limit the construction of any structures or buildings on substandard lots irrespective of ownership. Still others require a conditional use permit or a variance before a substandard lot can be developed.

Under newly-enacted Wis. Stat. § 66.10015<sup>3</sup>, the legislature significantly curtails the authority of local government to impose limitations on the development of substandard lots.

Wis. Stat. § 66.10015(1)(e) first defines “substandard lot” to mean “a legally created lot or parcel that met any applicable lot size requirements when it was created, but does not meet current lot size requirements.”

Wis. Stat. § 66.10015(2)(e) then bars a municipality, under any circumstances, from prohibiting or limiting either (1) conveying an ownership interest in a substandard lot or (2) using a substandard lot as a building site if both of the following apply:

a. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

*Continued on next page*

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## Limitations on Collecting Attorney Fees for Prosecution of Ordinance Violations

Forfeiture actions are quasi-criminal proceedings classified by statute as civil actions. *See* Wis. Stat. §§ 778.01 and 800.02; *see also City of Janesville v. Wiskia*, 97 Wis. 2d 473, 483-84, 293 N.W.2d 522, 527 (1980). Municipalities that prevail in civil actions for prosecution of ordinance violations are able to recover limited costs of the prosecution. Wis. Stat. §§ 800.19(1b) and 800.10(1). For a typical civil action not seeking forfeitures, statutory attorney fees are an item of cost. *See e.g.*, Wis. Stat. § 814.04(1).

However, attorney fees are not recoverable in actions seeking forfeitures for violation of municipal ordinances. With some exceptions, a municipal court has exclusive jurisdiction over all actions seeking to impose a forfeiture for a violation of an ordinance of the municipality that operates the court. Wis. Stat. § 755.045(1). A municipal court cannot impose and collect attorney fees. Wis. Stat. § 814.65(3). When a municipal court's decision is appealed to the circuit court, attorney fees are not included in the definition of "full costs" awarded to a prevailing party, as they were not taxable in the original action. Wis. Stat. § 814.08(1).

When a municipality has not established a municipal court, forfeiture actions are commenced in circuit court under Wis. Stat. ch. 778. Under § 778.20, the municipality must bear the costs of prosecution, including attorney fees, but, unlike ch. 800, a circuit court's award of statutory attorney fees to a prevailing defendant has been upheld. *Town of Perry v. DSG Evergreen F.L.P.*, 2003 WI App 201, ¶¶ 11-13, 267 Wis. 2d 280, 670 N.W.2d 558, 2003 WL 22093607, at \*2 (unpublished).

The reasons for the prohibition on the recovery of attorney fees are laid out in *Town of Mt. Pleasant v. Werlein*, 119 Wis. 2d 90, 349 N.W.2d 102 (Ct. App. 1984). In *Mt. Pleasant*, the Town requested actual attorney fees, which the court denied for several reasons: 1) attorney fees must be authorized by statute or contract and no statute authorizes actual attorney fees in forfeiture actions; 2) a municipal court cannot impose or collect attorney fees and the action originated in municipal court; 3) the magnitude of the actual attorney fees requested compared to the forfeiture; and,

4) the chilling effect on the right of citizens to appeal forfeitures from municipal court if attorney fees are awarded. *Id.* at 92-94. Due to the quasi-criminal nature of forfeiture actions, and absent explicit statutory allowances, uniform non-allowance of attorney fees to a prosecuting municipality should prevail, whether the action is before a municipal court or a circuit court. *See e.g., City of Sheboygan v. Hou-Seye*, 171 Wis. 2d 771, n. 4, 495 N.W.2d 103, 1992 WL 430216, at \*4 (Ct. App. 1992) (unpublished).

— Jared Walker Smith

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### New Statute Governing Conditional Use Permits

*Continued from page 2*

b. The substandard lot or parcel is developed to comply with all other ordinances of the political subdivision.

Finally, Wis. Stat. § 66.10015(4) of the statutes prohibits a municipality from enacting or enforcing an ordinance or taking any other action that requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged. Notably, this provision applies not only to substandard lots; it applies to any attempt to mandate the merger of lots of any size through the enactment or enforcement of an ordinance purporting to do so.

### Takeaways

These new provisions will almost certainly require amendments to most existing zoning, land use and land division ordinances. Until municipalities are able to amend these ordinances to conform with the new laws, zoning administrators, plan commissions, boards of zoning appeals and governing bodies should be careful to comply with these new requirements.

— Eileen A. Brownlee & Julia K. Potter

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<sup>1</sup> Wis. Stat. § 61.35 makes the new provisions applicable to villages and § 60.61[4e] makes them applicable to towns.

<sup>2</sup> These prohibitions and limitations may also be found in some subdivision or land development ordinances as well as zoning ordinances.

<sup>3</sup> Wis. Stat. § 66.10015 was originally enacted several years ago to limit "down zoning."





## **November Case Law Update November 30, 2017**

### **A summary of Wisconsin court opinions decided during the month of November related to planning**

For previous Case Law Updates, please go to: [www.wisconsinplanners.org/learn/law-and-legislation](http://www.wisconsinplanners.org/learn/law-and-legislation)

There are no planning-related decisions to report for the month of November from the United States Supreme Court, the Wisconsin Supreme Court, or the Wisconsin Court of Appeals. **However, there was legislation enacted in Wisconsin during the month of November that changes the law related to recent U.S. Supreme Court and Wisconsin Supreme Court decisions reported in previous APA-WI case law updates over the past few months. This case law update summarizes the legislative changes to insure that members have the most current updates on the law in these areas.**

#### **New Legislation Affecting Substandard Lots: Responding to *Murr v. Wisconsin***

In November, the Wisconsin Legislature passed legislation in response to the United States Supreme Court decision last June in *Murr v. Wisconsin*. The *Murr* decision, summarized in the **June 2017 APA-WI Case Law Update**, involved a provision in the St. Croix County Zoning Ordinance that merged two substandard lots (referred to as “nonconforming lots” in many local ordinances) under common ownership for purposes of the application of the zoning ordinance and prohibited the owner from selling one of the substandard lots. The County’s ordinance followed rules promulgated by the Wisconsin Department of Natural Resources for protecting the Lower St. Croix River after its designation by Congress as a National Wild and Scenic River. The U.S. Supreme Court decision articulated a new test for determining the relevant parcel for regulatory takings analysis and concluded St. Croix County’s lot merger provision did not constitute a regulatory taking requiring the payment of just compensation. The new legislation, signed into law by Governor Walker as **2017 Wisconsin Act 67**, places new limitations on the authority of local governments and state agencies to enact or enforce lot merger provisions similar to the one found in the St. Croix County Zoning Ordinance. In addition, Act 67 includes provisions affecting substandard lots in general.

The new substandard lot/lot merger limitations are found in Sections 23 through 26 of Act 67. Those sections create several additions to the existing section of the Wisconsin Statutes entitled “Limitation on Development Regulation Authority and Downzoning” found at section 66.10015 of the Wisconsin Statutes. Act 67 adds the following definition of a “substandard lot”: “A legally created lot or parcel that met any applicable lot size requirements when it was created, but does not meet current lot size requirements.” **Wis. Stat. § 66.10015(1)(e).**

Act 67 then prohibits cities, villages, towns, and counties from enacting or enforcing ordinances or taking any other action that prohibits a property owner from conveying an ownership interest in a substandard lot or from using a substandard lot as a building site if the substandard lot does not have any structures placed partly upon an adjacent lot **and** the substandard lot is developed to comply with all other ordinances of the political subdivision. Wis. Stat. § 66.10015(2)(e).

Finally, Act 67 prohibits cities, villages, towns, counties, and state agencies from enacting or enforcing any ordinance or administrative rule or taking any other action that requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged. Wis. Stat. § 66.10015(4).

While local governments did not need to make changes their ordinances in response to the *Murr* decision, Act 67, effective November 28th, should prompt local governments and state agencies to review their ordinances and rules as follows:

- Cities, villages, towns, counties, and state agencies need to review their ordinances and rules to insure they do not require the merger of lots (both substandard lots and lots that conform to current ordinances and rules) without the consent of the owners of the lots that are to be merged.

- Cities, villages, towns and counties need to review their ordinances and practices related to substandard lots to ensure that they do not prohibit a property owner from selling or otherwise conveying an ownership interest in a substandard lot to another person or entity.

- In addition, cities, villages, towns and counties need to review their ordinances and practices to ensure they allow the use of a substandard lot as a building site if the substandard lot has never had a structure straddling the substandard lot and an adjacent lot. Any development on the substandard lot must conform to all other applicable ordinances. The application of other ordinances may limit what can be built on a substandard lot.

### **New Legislation Affecting Conditional Use Permits: Responding to *AllEnergy Corp. v. Trempealeau County***

**2017 Wisconsin Act 67** also includes changes to Wisconsin law governing conditional use permits following the recent decision of the Wisconsin Supreme Court in *AllEnergy Corp. v. Trempealeau County* reported in the **May 2017 APA-WI Case Law Update**. The *AllEnergy* case involved the denial of a conditional use permit for a proposed frac sand mine in Trempealeau County. The County voted to adopt 37 conditions for the mine, which AllEnergy agreed to meet, but then the County voted to deny the conditional use permit in part relying on public testimony in opposition to the mine. A divided Wisconsin Supreme Court upheld the County's denial of the conditional use permit acknowledging the discretionary authority of local governments in reviewing proposed conditional uses.

Act 67 follows the line of reasoning articulated by the dissent in the *AllEnergy* decision and limits local government discretion related to the issuance of conditional use permits. According to the Dissent in *AllEnergy*: “When the Trempealeau County Board writes its zoning code, or considers amendments, . . . is the stage at which the County has the greatest discretion in determining what may, and may not, be allowed on various tracts of property.” “Upon adding a conditional use to a zoning district, the municipality rejects, by that very act, the argument that the listed use is incompatible with the district.” “An application for a conditional use permit is not an invitation to re-open that debate. A permit application is, instead, an opportunity to determine whether the specific instantiation of the conditional use can be accomplished within the standards identified by the zoning ordinance.”

Act 67 adds new sections governing the issuance of conditional use permits to the various general zoning enabling laws for cities, villages, towns, and counties. Until the addition of these sections, the law governing conditional use permits was based on court decisions. The various local general zoning enabling laws did not include any references to the term “conditional use.”

The new law adds the following definition of “conditional use” to the Statutes: “‘Conditional use’ means a use allowed under a conditional use permit, special exception, or other zoning permission issued by a [city, village, town, county] but does not include a variance.”

Act 67 also includes the following definition of “substantial evidence,” a term used in several places in the Act: “‘Substantial evidence’ means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.” This language softens the language of earlier versions of the bill that stated substantial evidence did not include “public comment that is based solely on personal opinion, uncorroborated hearsay, or speculation.” Public comment that provides reasonable facts and information related to the conditions of the permit is accepted under Act 67 as evidence.

Act 67 then provides that “if an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the [city, village, town, county] ordinance or imposed by the [city, village, town, county] zoning board, the [city, village, town, county] shall grant the conditional use permit.” This new language follows the argument made by the plaintiffs and the dissenting opinion in the *AllEnergy* case. The use of the term “zoning board,” however, is at odds with current Wisconsin law that allows the governing body, the plan commission, or the zoning board of adjustment/appeals to grant conditional uses. This “zoning board” terminology may lead to some confusion.

Act 67 also provides that the conditions imposed “must be related to the purpose of the ordinance and be based on substantial evidence” and “must be reasonable and to the extent practicable, measurable and may include conditions such as the permit’s duration, transfer, or renewal.” In the past, sometimes there was confusion about whether local governments had the authority to place a time limit on the duration of a conditional use permit. This new

statutory language clarifies that local government have that authority. Since local comprehensive plans can help articulate the purpose of ordinances that implement the plan, the requirement in Act 67 that the conditions relate to the purpose of the ordinance emphasize the importance of having a condition in the zoning ordinance that the proposed conditional use furthers and does not conflict with the local comprehensive plan.

Next, Act 67 provides that the applicant must present substantial evidence “that the application and all requirements and conditions established by the [city, village, town, county] relating to the conditional use are or shall be satisfied.” The city, village, town or county’s “decision to approve or deny the permit must be supported by substantial evidence.”

Under the new law, a local government must hold a public hearing on a conditional use permit application, following publication of a class 2 notice. If a local government denies an application for a conditional use, the applicant may appeal the decision to circuit court. The conditional use permit can be revoked if the applicant does not follow the conditions imposed in the permit.

The new conditional use law applies to applications for conditional use permits filed on and after November 28, 2017.

While local governments did not need to change their ordinances in response to the *AllEnergy* decision, Act 67 should prompt local governments to review their zoning ordinance to ensure they meet the new statutory requirements. Local governments should review the requirements of their ordinance to consider adding to or revising the conditions listed in the ordinance to ensure that the local government will be able to review specific development proposals against the purpose of the ordinance and be able to support conditions imposed on a specific application with substantial evidence. Act 67 may prompt some local governments to reconsider what might be listed as a conditional use in certain zoning districts and explore creating new districts or other ways to regulate the use.

## ***U.S. Court of Appeals for the 7<sup>th</sup> Circuit Opinions***

[No planning-related cases to report.]

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APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE April 2, 2018
Reports & Recommendations	<b>AUTHORIZATION TO SIGN PROFESSIONAL SERVICES CONTRACT WITH RUEKERT MIELKE FOR EVALUATION PHASE OF RYAN CREEK INTERCEPTOR ODOR REDUCTION STUDY AND DESIGN IN THE AMOUNT OF \$10,700</b>	ITEM NO. <i>G.12.</i>

### **BACKGROUND**

The Ryan Creek Interceptor (RCI) has been in operation since 2013. Almost immediately, hydrogen sulfide (H<sub>2</sub>S) has been an issue for 13 Franklin homes connected to tributary sewers. The City of Franklin, Muskego, and MMSD has worked diligently on the issue. It appears that MMSD and Muskego have exhausted the simple fixes from the tributary flows from Muskego and the last remaining culprits are not easily solvable.

The RCI will be owned by MMSD in 2031 and they have expressed a willingness to consider structural fixes, but it is unknown what fixes will adequately address the issues. Franklin Staff has spent a considerable amount of time and effort on this issue, but efforts are needed to provide a full analysis and evaluation with detailed solutions.

### **ANALYSIS**

David Arnott, PE with Ruekert Mielke has over 20 years of experience in the planning, design, and construction management for wastewater collection, pumping and treatment facilities. Mr. Arnott has discussed the H<sub>2</sub>S issues related to the RCI with staff and is proposing an evaluation phase that includes:

1. Review design of force main system to interceptor including upstream pumping station capacities and force main lengths and sizes.
2. Coordinate with Franklin on equipment and procedures needed to test dissolved and headspace hydrogen sulfide in the interceptor.
3. Evaluate alternatives to control odor including flap gates, duck bills, passive ventilation, lateral trap with grinder pump, aeration, and the IPEX system.
4. Write report with design recommendation and cost.
5. Meet with City and MMSD on report conclusions.

Subsequent design and bidding phases would follow the results of this evaluation phase. Depending on those solutions, MMSD will be consulted for cost allocations.

### **OPTIONS**

Approve or Table

### **FISCAL NOTE**

The Sanitary Sewer Budget includes approximately \$170,000 for sanitary sewer rehabilitation issues and this is an appropriate activity.

### **RECOMMENDATION**

Motion to sign professional services contract with Ruekert Mielke for evaluation phase of Ryan Creek Interceptor odor reduction study and design in the amount of \$10,700.

## A G R E E M E N T

This AGREEMENT, made and entered into this \_\_\_\_ day of April, 2018, between the City of Franklin, 9229 West Loomis Road, Franklin, Wisconsin 53132 (hereinafter "CLIENT") and Ruekert & Mielke, Inc. (hereinafter "CONTRACTOR"), whose principal place of business is W233 N2080 Ridgeview Parkway, Waukesha, Wisconsin.

## W I T N E S S E T H

WHEREAS, the CONTRACTOR is duly qualified and experienced as a municipal services contractor and has offered services for the purposes specified in this AGREEMENT; and

WHEREAS, in the judgment of CLIENT, it is necessary and advisable to obtain the services of the CONTRACTOR to provide odor reduction study and design services for the Ryan Creek Sanitary Sewer Interceptor east of N. Cape Road on W. Ryan Road;

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

- A. This AGREEMENT may only be amended by written instrument signed by both CLIENT and CONTRACTOR.

### I. BASIC SERVICES AND AGREEMENT ADMINISTRATION

- A. CONTRACTOR shall provide services to CLIENT for odor reduction evaluation and design services as described in CONTRACTOR's proposal to CLIENT dated March 29, 2018, annexed hereto and incorporated herein as Attachment A.
- B. CONTRACTOR shall serve as CLIENT's professional representative in matters to which this AGREEMENT applies. CONTRACTOR may employ the services of outside consultants and subcontractors when deemed necessary by CONTRACTOR to complete work under this AGREEMENT following approval by CLIENT.
- C. CONTRACTOR is an independent contractor and all persons furnishing services hereunder are employees of, or independent subcontractors to, CONTRACTOR and not of CLIENT. All obligations under the Federal Insurance Contribution Act (FICA), the Federal Unemployment Tax Act (FUTA), and income tax withholding are the responsibility of CONTRACTOR as employer. CLIENT understands that express AGREEMENTS may exist between CONTRACTOR and its employees regarding extra work, competition, and nondisclosure.
- D. During the term of this AGREEMENT and throughout the period of performance of any resultant AGREEMENT, including extensions, modifications, or additions thereto, and for a period of one (1) year from the conclusion of such activity, the parties hereto agree that neither shall solicit for employment any technical or professional employees of the other without the prior written approval of the other party.

## **II. FEES AND PAYMENTS**

CLIENT agrees to pay CONTRACTOR, for and in consideration of the performance of Basic Services further described in Attachment A, a lump sum fee of \$10,700, subject to the terms detailed below:

- A. CONTRACTOR may bill CLIENT and be paid for all work satisfactorily completed hereunder on a monthly basis. CLIENT agrees to pay CONTRACTOR's invoice within 30 days of invoice date for all approved work.
- B. Total price will not exceed budget of \$10,700. For services rendered, monthly invoices will include a report that clearly states the type of work completed and the fee earned during the month being invoiced.
- C. In consideration of the faithful performance of this AGREEMENT, the CONTRACTOR will not exceed the fee for Basic Services and expenses without written authorization from CLIENT to perform work over and above that described in the original AGREEMENT.
- D. Should CLIENT find deficiencies in work performed or reported, it will notify CONTRACTOR in writing within thirty (30) days of receipt of invoice and related report and the CONTRACTOR will remedy the deficiencies within thirty (30) days of receiving CLIENT's review. This subsection shall not be construed to be a limitation of any rights or remedies otherwise available to CLIENT.

## **III. MODIFICATION AND ADDITIONAL SERVICES**

- A. CLIENT may, in writing, request changes in the Basic Services required to be performed by CONTRACTOR and require a specification of incremental or decremental costs prior to change order agreement under this AGREEMENT. Upon acceptance of the request of such changes, CONTRACTOR shall submit a "Change Order Request Form" to CLIENT for authorization and notice to proceed signature and return to CONTRACTOR. Should any such actual changes be made, an equitable adjustment will be made to compensate CONTRACTOR or reduce the fixed price, for any incremental or decremental labor or direct costs, respectively. Any claim by CONTRACTOR for adjustments hereunder must be made to CLIENT in writing no later than forty-five (45) days after receipt by CONTRACTOR of notice of such changes from CLIENT.

## **IV. ASSISTANCE AND CONTROL**

- A. Steven C. Wurster will coordinate the work of the CONTRACTOR, and be solely responsible for communication within the CLIENT's organization as related to all issues originating under this AGREEMENT.



- B. CLIENT will timely provide CONTRACTOR with all available information concerning PROJECT as deemed necessary by CONTRACTOR.
- C. CONTRACTOR will appoint, subject to the approval of CLIENT, David W. Arnott, P.E. CONTRACTOR's Project Manager and other key providers of the Basic Services. Substitution of other staff may occur only with the consent of CLIENT.

## V. TERMINATION

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

## VI. INSURANCE

The CONTRACTOR shall, during the life of the AGREEMENT, maintain insurance coverage with an authorized insurance carrier at least equal to the minimum limits set forth below:

A. Limit of General/Commercial Liability	\$3,000,000
B. Automobile Liability: Bodily Injury/Property Damage	\$1,000,000
C. Excess Liability for General Commercial or Automobile Liability	\$10,000,000
D. Worker's Compensation and Employers' Liability	\$500,000
E. Professional Liability	\$2,000,000

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

## **VII. INDEMNIFICATION AND ALLOCATION OF RISK**

- A. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless CLIENT, CLIENT'S officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CONTRACTOR or CONTRACTOR'S officers, directors, partners, employees, and consultants in the performance of CONTRACTOR'S services under this AGREEMENT.
- B. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONTRACTOR, CONTRACTOR'S officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CLIENT or CLIENT'S officers, directors, partners, employees, and consultants with respect to this AGREEMENT.
- C. To the fullest extent permitted by law, CONTRACTOR'S total liability to CLIENT and anyone claiming by, through, or under CLIENT for any injuries, losses, damages and expenses caused in part by the negligence of CONTRACTOR and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that CONTRACTOR'S negligence bears to the total negligence of CLIENT, CONTRACTOR, and all other negligent entities and individuals.
- D. In addition to the indemnity provided under Paragraph VII.B, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONTRACTOR and CONTRACTOR'S officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other disputes resolution costs) caused by, arising out of, or resulting from an unexpected Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this Paragraph shall obligate CLIENT to indemnify any individual or entity from and against the consequences of that individual or entity's own negligence or willful misconduct.

## **VIII. TIME FOR COMPLETION**

CONTRACTOR shall commence work immediately and will be completed with the Evaluation phase within 60 calendar days after execution of this agreement.

## IX. DISPUTES

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

## X. RECORDS RETENTION

CONTRACTOR shall maintain all records pertaining to this AGREEMENT during the term of this AGREEMENT and for a period of 3 years following its completion. Such records shall be made available by the CONTRACTOR to CLIENT for inspection and copying upon request.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the day and year first above written.

CITY OF FRANKLIN, WISCONSIN

RUEKERT & MIELKE, INC.

By: \_\_\_\_\_  
Stephen R. Olson

By: Steven C. Wurster  
Steven C. Wurster, P.E. (WI, IL)

Title: Mayor

Title: Senior Vice President/COO

Date: \_\_\_\_\_

Date: March 29, 2018

By: \_\_\_\_\_  
Sandra L. Wesolowski

Designated Representative:

Name: David W. Arnott, P.E.

Title: City Clerk

Title: Team Leader/Senior Project Manager

Date: \_\_\_\_\_

Phone Number: (262) 542-5733

By: \_\_\_\_\_  
Paul Rotzenberg

Title: Director of Finance & Treasurer

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jesse A. Wesolowski

Title: City Attorney

Date: \_\_\_\_\_

## ATTACHMENT A

March 29, 2018

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

RE: Ryan Creek Interceptor Odor Reduction Study and Design Proposal

Dear Glen,

Thank you for the opportunity to present this proposal for the above project. We understand that ever since the sanitary sewage flow from the City of Muskego connected to the Ryan Creek interceptor on West Ryan Road just east of North Cape Road approximately five years ago, residents from 13 homes have had severe odor issues in and around their homes. The odor is prevalent immediately after flow from Muskego is routed to the interceptor. Because of the severe odor issues, flow from the City of Muskego has not been routed to the interceptor and is instead routed to its normal path easterly through Muskego's sanitary sewer collection system.

The sewage flow from Muskego comes from several long force mains. Most of the wastewater is from residential sources; however, the Emerald Park Landfill leachate collection system is tributary to these force mains as well. The leachate is likely high in organic compounds contributing to the odor problem. These two factors are sources of significant hydrogen sulfide in the wastewater. Exacerbating the situation is the fact that the interceptor is lined. The lining make the interceptor extremely air tight. When sewage is introduced to the system, the displaced air is forced up the collection system sewer and the laterals to the homes.

Franklin has conducted smoke testing and determined that there are no significant issues with the plumbing vent systems in the homes connected to the interceptor.

We propose a two-stage approach. The first stage would be an evaluation of the existing conditions and possible solutions. It will be important to determine the dissolved hydrogen sulfide levels in the flow from the City of Muskego. In addition, the hydrogen sulfide in the headspace of the interceptor manholes should also be measured. This information is likely needed to design solutions.

Mr. Glen E. Morrow, P.E.  
City of Franklin  
March 29, 2018  
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Based on preliminary coordination with you, the potential solutions include:

Flap valves or a duck bill valve on the residential laterals to the collector sewer leading to the interceptor. The valves would reduce the amount of air transmitted to the lateral lines and to the home plumbing systems.

Passive ventilation with an inverted "J" vent at numerous points along the interceptor. Carbon filters with activated carbon would be provided at the end of the vent pipes. Additional vents would reduce the amount of air being forced to the home laterals.

A lateral trap that would prevent gasses from moving up the lateral to the homes. Because the offset would allow solids to settle, under this alternative the homes' sanitary service would be changed from a gravity system to a low pressure system with a grinder pump inside the home.

An aeration system in the upstream interceptor manhole to volatilize off the hydrogen sulfide. This solution would treat the source of the problem as hydrogen sulfide would be removed.

A proprietary device known as the IPEX system which creates turbulence inside a discharge manhole as the sewage drops down to a lower elevation. This turbulence aerates the sewage volatilizing hydrogen sulfide, mercaptans and other odor causes compounds. The IPEX system treats and removes hydrogen sulfide dissolved in the water which is the source of the odor problem.

The overall solution may be one of the above alternatives or a combination of multiple alternatives.

The second part of the project would be to design the recommended alternative. Our design phase would extend through public bidding.

Our proposed project scope includes the following tasks:

#### Evaluation Phase

1. Review design of force main system to interceptor including upstream pumping station capacities and force main lengths and sizes.
2. Coordinate with City on equipment and procedures needed to test dissolved and headspace hydrogen sulfide in the interceptor.

Mr. Glen E. Morrow, P.E.  
City of Franklin  
March 29, 2018  
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3. Evaluate alternatives to control odor including flap gates, duck bills, passive ventilation, lateral trap with grinder pump, aeration, and the IPEX system.
4. Write report with design recommendation and cost.
5. Meet with City and MMSD on report conclusions.

#### Design and Bidding Phase

1. Design chosen alternative.
2. Prepare drawings.
3. Prepare technical specifications.
4. Meet with City and MMSD at 75 percent design completion.
5. Prepare public bidding documents.
6. Prepare MMSD and WDNR submittal.
7. Prepare construction cost estimate.
8. Administer public bidding process with on-line system.
9. Answer bidders' questions. Issue needed addendums.
10. Attend bid opening.
11. Review bids for accuracy.
12. Write Recommendation of Award letter and Notice of Award.

The project specifications would be using the R/M-based system in accordance with the Construction Specification Institute and the Engineers Joint Contract Documents Committee documents.

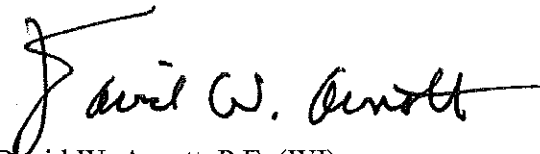
We propose to provide the above services on a lump sum basis which would include labor and reimbursables. For the Evaluation phase, the lump sum fee would be \$10,700. For the Design and Bidding phase, we would add that cost to the contract once we agree on the specific design solution.

Mr. Glen E. Morrow, P.E.  
City of Franklin  
March 29, 2018  
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We look forward to working with you on this project. Please feel free to call me with any questions concerning this proposal.

Very truly yours,


RUEKERT & MIELKE, INC.



David W. Arnott, P.E. (WI)  
Team Leader/Senior Project Manager  
[darnott@ruekert-mielke.com](mailto:darnott@ruekert-mielke.com)

DWA:sjs

cc: Steve Wurster, P.E., Ruekert & Mielke, Inc.  
Jerad Wegner P.E., Ruekert & Mielke, Inc  
File

<b>APPROVAL</b> <i>Slw</i> 	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>4/2/2018</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Authorize hiring Fred Baumgart as a limited-term, part-time employee in the Building Inspection Department</b>	<b>ITEM NUMBER</b> <i>G.13.</i>

Fred Baumgart retired from the City after 44 years as the Building Inspector earlier this year, and as of March 29<sup>th</sup>, John Skuhra retired after 28 years with the City. The hiring process for their replacements is in its final stages as background checks are being completed on the final candidates for both positions. Nonetheless, there is still some time necessary to complete the background checks and medical exams and for the candidate to provide notice to their current employers. Those two vacancies represent half of the positions dedicated full-time to construction inspection. In order to help provide the essential services during this transition period, additional support is needed.

The Director of Administration recommends approval to bring Fred Baumgart back as a limited-term, part-time employee in the Building Inspection Department. Fred would not be expected to perform inspections in the field and will focus his efforts on commercial plan review, which enables other staff to focus on field inspections. Fred would also then be available for consultation in various Govern tasks as the Building Inspection Department and IT Department continue to learn the complexities of the administrative aspects of this vital software tool. He would also be able to provide some additional guidance or training on certain in-house tasks (for example sign permits) that have to again transition to new staff members. In general, his hours would largely be based upon the fluctuation of commercial building permit application submissions while vacancies exist.

It is imperative that the Building Inspection Department effectively and efficiently serve the new developments that are anticipated and those already beginning to submit building permit applications. April will be a significant struggle for the department and providing this experienced support for plan review will be important. The agreed upon rate will be \$50 per hour with no benefits. This is not out of line with the emergency inspection service rates the City has historically used to fill for short term absences of staff.

Costs should be covered by the savings from the position vacancies. The Director of Administration recommends approval.

### **COUNCIL ACTION REQUESTED**

Motion to authorize hiring Fred Baumgart as a limited-term part-time employee in the Building Inspection Department.



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APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE <i>4/02/2018</i>
Reports & Recommendations	A RESOLUTION FOR A CHANGE ORDER NO. 2 TO DOME CORPORATION FOR A SAVINGS OF \$4,275 FOR CONSTRUCTION OF SALT STORAGE BARN	ITEM NO. <i>G.14,</i>

### **BACKGROUND**

The construction of the DPW salt barn is complete. Change Order No. 1 was signed with Dome Corporation in October 2017 that included \$5,700 for a "barn style" door. In February 2018, it was discovered that the "barn style" door was not able to be installed because of electrical conduit installed prior to barn construction. Common Council authorized purchase of a roll-up door from another supplier.

### **ANALYSIS**

The "barn-style" door was provided for \$5,700. Customary for construction products, the supplier is charging a \$1,425 restocking fee for this product. The net savings from this second and final change order is \$4,275. Documentation is provided that the expense to the contractor/supplier was in excess of this amount.

### **OPTIONS**

Approve the Change Order No. 2, or Deny

### **FISCAL NOTE**

This finalizes the project. Here is a full accounting of expenditures:

\$271,160.00	Bid Awarded to Dome Corporation
\$ 9,200.00	Change Order No. 1 to Dome Corporation
<u>(\$ 4,275.00)</u>	Change Order No. 2 to Dome Corporation
\$ 276,085.00	Subtotal to Dome Corporation
\$ 402.55	Notices in newspapers (actual)
\$ 19,126.72	Asphalt pad- Payne and Dolan (actual)
\$ 1,403.00	Electrical equipment and lights (actual)
\$ 5,000.00	Electrical contractor (estimated, completed but yet to be invoiced)
\$ 14,165.00	Overhead Door (actual, from 2018 capital improvement fund)
<u>\$ 3,500.50</u>	2017 Design Geotech Work (2017 Highway's sundry contractors budget)
\$319,682.77	Total Project Costs (\$400,000 budget)

### **RECOMMENDATION**

A resolution for a change order no. 2 to Dome Corporation for a savings of \$4,275 for construction of salt storage barn.

Engineering Department: GEM

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

RESOLUTION NO. 2018 -

A RESOLUTION FOR A CHANGE ORDER NO. 2 TO DOME CORPORATION FOR A  
SAVINGS OF \$4,275 FOR CONSTRUCTION OF SALT STORAGE BARN

---

WHEREAS, Dome Corporation of North American (Saginaw, MI) was awarded a contract to construct a salt storage barn at the DPW facility (7979 W. Ryan Road) for \$271,160 and subsequent change order in the amount of \$9,200. And

WHEREAS, the provided door was not needed and supplier requires a restocking fee.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that it would be in the best interest of the City to execute Change Order No. 2 for a savings of \$4,275.00.

Introduced at a regular meeting of the Common Council of the City of Franklin the  
\_\_\_\_\_ day of \_\_\_\_\_, 2018, by Alderman \_\_\_\_\_.

PASSED AND ADOPTED by the Common Council of the City of Franklin on the  
\_\_\_\_\_ day of \_\_\_\_\_, 2018.

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_



Dome Corporation of North America  
5450 EAST STREET, SAGINAW, MI 48601

### Change Order #2 - City of Franklin

Change Order No.: 2  
Change Order Date: 3/29/2018

The City of Franklin WI (the "Owner") and Dome Corporation of North America (the "Contractor"), are parties to that certain Design-Build Construction Agreement (the "Original Contract"), dated July 31, 2017. The Contract is modified as follows:

#### Description of Change:

Contractor will provide Owner with a credit for \$5700.00 less a 25 percent restocking fee for the overhead door portion of Change Order no. 1.

Change Order Initiated by: Owner

#### Amount of Changer Order

1 Original Contract Price	<u>\$271,160.00</u>
2 Net Change by Previous Change Orders	<u>\$9,200.00</u>
3 Contract Price Prior to this Change Order	<u>\$280,360.00</u>
4 Increase / Decrease In Contract Price by this Change Order (\$0.00 Cost plus \$0.00 OH&P)	<u>-\$4,275.00</u>
5 New Contract Price after this Change Order	<u>\$276,085.00</u>

#### Scheduling Impact

This change order will Add/ Deduct the follow number of days to the schedule 0.00

#### Special Terms

Contractor and Owner agree that the terms and conditions of the this Change Order and the Work described in the Change Order Proposal shall be governed and controlled by the Restated Contract, dated March 29, 2018.

#### Owner

Company names  
a xxx limited liability company

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_  
Date \_\_\_\_\_

#### Contractor

HOME CORP OF NORTH AMERICA

By Brent Duke  
Name Brent Duke  
Its Project Manager  
Date 3-29-18



## DOME CORPORATION OF NORTH AMERICA

Brent Lake  
Dome Corp. of NA  
5450 East Rd.  
Saginaw MI 48601

March 29<sup>th</sup>, 2018

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

Re: Change Order #2

Mr. Morrow,

This letter is written per your request for an explanation of the 25% restocking fee assessed to the credit for the overhead door.

After the agreement for Change Order #1 (addition of exhaust fan and door), Dome Corporation set about satisfying the door portion of the change order by:

- 1- Ordering and receiving an overhead "cannonball" style door for the salt storage dome from Probuild of Saginaw, MI.
- 2- Fabricating a beam of sufficient size and strength to support the door. The dome was initially designed without a door, necessitating shop labor and materials being expended in the fabrication of the beam.
- 3- Transport of the door to the job site. Dome Corporation contracted Blake Transportation Services of Owosso Michigan to transport the door to Franklin at a cost of \$1,300.

After the door was purchased and delivered to site, the decision was made by the city of Franklin to procure its own door for the salt storage dome. Dome Corporation personnel transported the door back to our vehicle storage yard, where it remains today.

The city's decision to opt out of the door portion of Change Order #1 after the fact caused Dome Corporation to incur costs well in excess of the \$1,425 restocking fee. Dome Corporation feels that twenty five percent of the \$5700 credit to the final invoice is reasonable and fair.

It's been a pleasure working with you on this project, please contact me with any further questions or concerns.

Best Regards,

Brent Lake

5450 EAST STREET, SAGINAW, MI 48601  
989-777-2050 FAX 989-777-3477  
[www.dome-corp-na.com](http://www.dome-corp-na.com), e-mail: [sales@dome-corp-na.com](mailto:sales@dome-corp-na.com)



PRO-BUILD

PRO-BUILD

5340 MIDLAND ROAD

SAGINAW MI  
(989) 695-5393

48603

ESTIMATE

DATE	SALESMAN
11/27/17	2727

ESTIMATE NO.	PAGE
032019	001

PLEASE REFER TO THIS NUMBER  
IN YOUR CORRESPONDENCE

515-00087548-001

SLIDING DOOR MATERIALS SHOP

SHOP ACCOUNT  
5450 EAST RD

SAGINAW, MI

48601

printed on: 11/27/17

at 15:39

FAX DAILY 777-3477

PRICES SUBJECT TO CHANGE AFTER	11/27/17
F.O.B.	

LINE	ITEM NUMBER	QTY	DESCRIPTION	UNIT EX/UM	UNIT PRICE	EXT. PRICE	
PACKAGE/REVISION # -- 0001-0001 DESC:SLIDING DOOR FRAMING LUMBER STATUS:							
10	TRS20410	6	2X4X10 SELECT CUT AG TREATED	6.000 EA	6.00	36.00	
20	22SP20410	30	2X4X10 #2 & BTR SPF	30.000 EA	3.85	115.50	
30	TRG20810	2	2X8X10 SYP #2 TRT GRND CONT	2.000 EA	10.00	20.00	
40	TRS20610	2	2X6X10 SELECT CUT AG TREATED	2.000 EA	9.00	18.00	
50	2SP20610	4	2X6X10 #2 & BTR SPF	4.000 EA	7.75	31.00	
60	CDX124P	1	4X8X15/32 CDX SYP PLYWOOD	1.000 EA	22.00	22.00	
ALL MATERIALS IN STOCK							
Total Weight: 677.840							
PACK NET TOTAL:						242.50	
SALES TAX: 6.000%						.00	
PACK TOTALS:						242.50	
PACKAGE/REVISION # -- 0001-0002 DESC:CANNONBALL DOOR FRAMING AND TRACK MATERIALS STATUS:							
10	SE17012	2	#201 BOTTEM RAIL #724341	2.000	33.00	66.00	
20	SE17012	3	#391 20'SIDE RAIL #725332	3.000	146.00	438.00	
30	SE17012	1	#391 12'SIDE RAIL #725333	1.000	87.00	87.00	
40	SE17012	1	#396 20'DOUBLE COUPLER RAIL #725333	1.000	154.00	154.00	
50	SE17012	1	#396 8'DOUBLE COUPLER RAIL #725147	1.000	62.00	62.00	
60	SE17012	2	#643437 DOUBLE TRUCK TROLLEY WITH 9"BAR SOLD IN SETS OF 2	2.000	81.00	162.00	
70	SE17012	4	#646224 10'2"TRACK COVER WHI	4.000	30.00	120.00	
80	SE17012	2	#711123 20'BRACKET TRACK, FAC MOUNT FOR COVER	2.000	107.00	214.00	
90	SE17012	1	#465101 SPLICE COLLER	1.000	2.50	2.50	
100	SE17012	1	#646515 TRACK COVER ENDS SET	1.000	2.12	2.12	
110	SE17012	1	#711504 7"CAM LATCH	1.000	10.50	10.50	
120	SE17012	1	#714388 5/8"X18"CANE BOLT HD	1.000	13.75	13.75	
130	SE17012	4	#462033 9.5" 4-WAY ADJUSTABL	4.000	3.61	14.44	
140	SE17012	1	CANNONBALL CREATING & FREIGH	1.000	250.00	250.00	
						TOTAL	
SIGNATURE							
DATE							

THIS IS AN ESTIMATE ONLY. PLEASE EXAMINE CAREFULLY AS WE AGREE TO FURNISH ONLY THE ARTICLES AND QUANTITIES NAMED AND DESCRIBED HEREON. ALL AGREEMENTS CONTINGENT UPON STRIKES, ACCIDENTS OR OTHER CAUSES OF DELAY BEYOND OUR CONTROL. ALL SALES ARE SUBJECT TO TERMS AND CONDITIONS AS SPECIFIED AT TIME OF SALE. PRO-BUILD WILL NOT GUARANTEE THIS ESTIMATE TO BUILD OR COMPLETE ANY SPECIFIC JOB OR CONTRACT. ANY SALES TAX, IF APPLICABLE, IS NOT INCLUDED.

CUSTOMER COPY - 1



PRO-BUILD

# ESTIMATE

5340 MIDLAND ROAD

SAGINAW MI  
(989) 695-5393

48603

DATE	SALESMAN
11/27/17	272

ESTIMATE NO.	PAGE
032019	002

PLEASE REFER TO THIS NUMBER  
IN YOUR CORRESPONDENCE

515-00087548-001

SLIDING DOOR MATERIALS SHOP

SHOP ACCOUNT

5450 EAST RD

SAGINAW, MI

printed on: 11/27/17

FAX DAILY 777-3477

48601

at 15:39

PRICES SUBJECT  
TO CHANGE AFTER

11/27/17

F.O.B.

LINE	ITEM NUMBER	QTY	DESCRIPTION	UNIT EX/UM	UNIT PRICE	EXT. PRICE
			ABOUT 7-10 WORKING DAYS			
			Total Weight: 1,107.000			
			PACK NET TOTAL:			1,596.31
			SALES TAX: 6.000%			.00
			PACK TOTALS:			1,596.31
	PACKAGE/REVISION # -- 0001-0003 DESC:FIBERGLASS DOOR PANEL MATERIAL STATUS:					
10.	SE21061	16	R-PANEL 36"COVERAGE 8OZ. WHT	16.000	43.00	688.00
			FIBERGLASS PANEL 12'			
20.	SE21061	1	1.5"NEO-SCREW 250 CT.BAG WHT	1.000	15.33	15.33
			Total Weight: 752.760			
			PACK NET TOTAL:			703.33
			SALES TAX: 6.000%			.00
			PACK TOTALS:			703.33
	PACKAGE/REVISION # -- 0001-0004 DESC:DELIVERY CHARGE STATUS:					
10.	DEL99	1	DELIVERY CHARGE	1.000 EA	15.00	15.00
			Total Weight: .000			
			PACK NET TOTAL:			15.00
			SALES TAX: 6.000%			.00
			PACK TOTALS:			15.00
			Total Weight: 2,537.600			
			PACK NET TOTAL:			
			SALES TAX: 6.000%			.00
TOTAL						
SIGNATURE						
DATE						

THIS IS AN ESTIMATE ONLY. PLEASE EXAMINE CAREFULLY AS WE AGREE TO FURNISH ONLY THE ARTICLES AND QUANTITIES NAMED AND DESCRIBED HEREON. ALL AGREEMENTS CONTINGENT UPON STRIKES, ACCIDENTS OR OTHER CAUSES OF DELAY BEYOND OUR CONTROL. ALL SALES ARE SUBJECT TO TERMS AND CONDITIONS AS SPECIFIED AT TIME OF SALE. PRO-BUILD WILL NOT GUARANTEE THIS ESTIMATE TO BUILD OR COMPLETE ANY SPECIFIC JOB OR CONTRACT. ANY SALES TAX, IF APPLICABLE, IS NOT INCLUDED.

CUSTOMER COPY - 1

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE April 2, 2018
Reports & Recommendations	A DISCUSSION ON PARKING ON S. 35 <sup>TH</sup> STREET BETWEEN W. PUETZ ROAD AND W. CREST COURT	ITEM NO. <i>G/15.</i>

### **BACKGROUND**

Recently, DPW added asphalt millings to the east shoulder of S. 35th Street Between W. Puetz Road and W. Crest Court. Complaints have prompted a discussion for Common Council.

### **ANALYSIS**

Kayla's playground at Franklin Woods is a popular venue. When constructed, the parking lot was constructed to the maximum extent. Previous discussions have eliminated parking on both sides in front of residential homes along W. Crest Court (west of S. 35th Street).

However parking along S. 35th Street was kept as overflow parking for the park. The west side of side of S. 35th Street, north of the auxiliary park entrance has been a paved shoulder for many years prior to the construction of the playground. Immediately after the construction of the playground, the remainder of the west shoulder of S. 35th Street was improved with asphalt millings.

Recent concerns about parking off of the pavement inside Franklin Woods were forwarded to staff. To address the concerns, staff posted signs prohibiting parking on the grass. Boulders were planned to be added around the perimeter of the parking lot but were halted pending this discussion at Common Council.

To discourage overflow parking at locations that are prohibited- like W. Crest Court or S. 36<sup>th</sup> Street, a sign was posted for persons leaving the parking lot that overflow parking is available on S. 35<sup>th</sup> Street. Note that this section of S. 35<sup>th</sup> Street:

- Is not listed in the municipal code 245-5(4) that lists all locations where parking is prohibited.
- Does not have any driveway accesses for any homes.
- Has adjacent homes which are shielded with a landscaping berm planted with a tree screen.
- Has a ditch that is shallow and sufficiently far away from the shoulder to not be obstructed by vehicles.

Staff started improving the eastern shoulder of S. 35<sup>th</sup> Street but has not finished the efforts pending this discussion at Common Council. The edge of millings have not been blended to the grass and traffic cones are utilized to keep vehicles sufficiently away from the edge.

### **OPTIONS**

Instruction to staff to A) complete shoulder work or B) remove millings and restore shoulder of S. 36<sup>th</sup> Street to grass.

### **FISCAL NOTE**

Either decision has minimal impact on budget.


### **RECOMMENDATION**

At the pleasure of Common Council

Engineering Department: GEM



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<b>APPROVAL</b> <i>Slw</i> 	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>4/2/2018</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Authorize up to \$20,000 in General Fund Contingency Appropriations for the Purpose of Limited-Term, Part-Time Staff or Contractual Services to Support Planning Department Services</b>	<b>ITEM NUMBER</b> <i>G.16.</i>

Although the Development Agreement for Ballpark Commons has been approved, there is still a significant amount of staff time that will be devoted to this project. The development agreement sets forth the parameters for much of the project, but many of the detailed plans and permit requests still need staff, Council, and/or Commission approvals. Items such as site plans, landscaping plans, lighting plans, architectural plans still require detailed review, often multiple reviews to accommodate changes. These reviews are important because it is many of these details and nuances that can shape the success of the projects and their perception within and impact upon the community. These same demands are occurring throughout the community with both commercial and residential developments.

At the same time, the City must strive to complete the tasks in a timely, efficient manner. The developers need to, and should, view the City as a partner in helping them complete their projects within the mutually agreed upon parameters. To that end, the City needs to remain diligent in its efforts. However, at the time these workload demands are peaking, staffing is short-handed. The Principal Planner is serving double-duty in performing certain tasks during the vacancy in the Economic Development Director position. The options to sacrifice details that may be important to the City or to delay developments that may have critical timelines should not be acceptable and are not in the City's best interest.

The Planning Director and Mayor recommend providing some limited resources for the Planning Manager to hire additional support on a project-by-project basis. The Planning Manager is attempting to identify viable options or individuals which could be either a limited-term, part-time employee or planning consultants obtained from one or more of the various consultants providing planning services (including other governmental units). The strategies and firms or individuals could shift as the nature and volume of work shifts and as their availability shifts. Waiting for a specific need to align with an available resource and then have the timing right for Council approval is likely to result in delay to contractors or missed opportunities for the City. This creates a scenario where a limited-term approval by the Common Council for administrative authority to address such service demand peaks is in the best interest of the City.

It is proposed that \$20,000 of General Fund contingency be authorized for use under the discretion and authorization by the Mayor for limited-term, part-time employees or consultants to support Planning Department services. A part-time associate planner level individual would likely run between \$25 and \$40 per hour, while a Principal Planner is in the neighborhood of

\$35 to \$46 per hour. Consulting firms likely run \$80 to \$100 per hour, with up to \$125 not unrealistic. Therefore, to put this request in perspective the funding would provide for 10 hours per week at an average cost of \$75 per hour over a six month period – or 20 hours per week over a 3 month period.

The authorization would be limited to six months. Running the authorization through the General Fund contingency appropriation enables it to handle personnel services (employee) or contractual services alternatives. Budget modifications could be addressed later to ensure the best accounting representation for the expenses and appropriations. Similarly, after the specific uses are known a budget modification could occur if allocation to a different fund, such as a TIF fund, is appropriate. An interim report on use of the funds would be made in July. If workload demand or the use of contractors (more expensive per hour) use the appropriations at a faster rate, a report would be made sooner than July.

### **COUNCIL ACTION REQUESTED**

Motion to authorize up to \$20,000 in General Fund Contingency appropriations for the purpose of limited-term, part-time staff or contractual services to support Planning Department services, as determined under the authority and with approval by the Mayor and with such authorization expiring at the end of September, 2018, unless otherwise determined by the Common Council.

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE April 2, 2018
Reports & Recommendations	AUTHORIZATION TO SIGN PROFESSIONAL SERVICES CONTRACT WITH RA SMITH IN THE AMOUNT OF \$4,300 TO PERFORM A WETLAND DETERMINATION FOR ERNIE LAKE PARK	ITEM NO. <i>G.17.</i>

### **BACKGROUND**

Staff has been working on a project to connect two pedestrian paths across the southern/western edge of Ernie Lake with a boardwalk (floating bridge). Ernie Lake Park is located south of W. Church Street, west of S. Scepter Drive, north of W. Beacon Hill Drive, and east of S. Chapel Hill Drive.

To install such a project, disturbance to wetlands will occur. To facilitate the permitting of the project, a wetland determination is needed.

### **ANALYSIS**

Staff has been told that SEWRPC does not have the available time to complete a wetland determination to comply with the project schedule. Given the use of Park Impact Fees, it is vital that this project occur in 2018.

Tina Myers, PWS at raSmith has more than 18 years of extensive experience in multidisciplinary ecological work. She is recognized as a Professional Wetland Scientist (PWS) by the Society of Wetland Scientists and is a WDNR Professionally Assured Wetland Delineator. Her experience includes wetland determinations and delineations; wetland and waterway permit applications; wetland mitigation plan preparation, maintenance and site monitoring; wetland functional assessments; environmental corridor mapping; vegetation surveys including rare species surveys, plant community mapping and assessment; natural resource protection plans; feasibility studies; environmental assessments; upland habitat restoration; and biological monitoring of streams, wildlife surveys and wildlife habitats.

It is anticipated that Ms. Myers can complete the field work in early June 2018.

### **OPTIONS**

Approve or Table

### **FISCAL NOTE**

The 2018 budget has a \$50,000 appropriation for the Ernie Lake project. However, the current estimate for the purchase and delivery of the bridge is expected to be approximately \$21,300. Combined with this professional services contract and some other expenses to install (assume \$10,000), the total project cost will be approximately \$35,600, the net City portion would be \$13,528 (38%) after \$22,072 (62%) of Park Impact fees are applied to the project.

### **RECOMMENDATION**

Motion to sign professional services contract with raSmith in the amount of \$4,300 to perform a wetland determination for Ernie Lake Park.

Engineering Department: GEM

## **A G R E E M E N T**

This AGREEMENT, made and entered into this 29<sup>th</sup> day of March, 2018, between the City of Franklin, 9229 West Loomis Road, Franklin, Wisconsin 53132 (hereinafter "CLIENT") and R.A. Smith, Inc. (hereinafter "CONTRACTOR"), whose principal place of business is 16745 West Bluemound Road, Brookfield, Wisconsin 53005.

## **W I T N E S S E T H**

WHEREAS, the CONTRACTOR is duly qualified and experienced as a municipal services contractor and has offered services for the purposes specified in this AGREEMENT; and

WHEREAS, in the judgment of CLIENT, it is necessary and advisable to obtain the services of the CONTRACTOR to provide consultation with respect to conducting a wetland delineation at Ernie Lake Park;

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

- A. This AGREEMENT may only be amended by written instrument signed by both CLIENT and CONTRACTOR.

### **I. BASIC SERVICES AND AGREEMENT ADMINISTRATION**

- A. CONTRACTOR shall provide services to CLIENT for consultation with respect to conducting a wetland delineation at Ernie Lake Park, as described in CONTRACTOR's proposal to CLIENT dated March 28, 2018, annexed hereto and incorporated herein as Attachment A.
- B. CONTRACTOR shall serve as CLIENT's professional representative in matters to which this AGREEMENT applies. CONTRACTOR may employ the services of outside consultants and subcontractors when deemed necessary by CONTRACTOR to complete work under this AGREEMENT following approval by CLIENT.
- C. CONTRACTOR is an independent contractor and all persons furnishing services hereunder are employees of, or independent subcontractors to, CONTRACTOR and not of CLIENT. All obligations under the Federal Insurance Contribution Act (FICA), the Federal Unemployment Tax Act (FUTA), and income tax withholding are the responsibility of CONTRACTOR as employer. CLIENT understands that express AGREEMENTS may exist between CONTRACTOR and its employees regarding extra work, competition, and nondisclosure.

- D. During the term of this AGREEMENT and throughout the period of performance of any resultant AGREEMENT, including extensions, modifications, or additions thereto, and for a period of one (1) year from the conclusion of such activity, the parties hereto agree that neither shall solicit for employment any technical or professional employees of the other without the prior written approval of the other party.

## **II. FEES AND PAYMENTS**

CLIENT agrees to pay CONTRACTOR, for and in consideration of the performance of Basic Services further described in Attachment A, at a lump sum fee of \$4,300 subject to the terms detailed below:

- A. CONTRACTOR may bill CLIENT and be paid for all work satisfactorily completed hereunder on a monthly basis. CLIENT agrees to pay CONTRACTOR's invoice within 30 days of invoice date for all approved work.
- B. Total price will not exceed budget of \$4,300. For services rendered, monthly invoices will include a report that clearly states the hours and type of work completed and the fee earned during the month being invoiced.
- C. In consideration of the faithful performance of this AGREEMENT, the CONTRACTOR will not exceed the fee for Basic Services and expenses without written authorization from CLIENT to perform work over and above that described in the original AGREEMENT.
- D. Should CLIENT find deficiencies in work performed or reported, it will notify CONTRACTOR in writing within thirty (30) days of receipt of invoice and related report and the CONTRACTOR will remedy the deficiencies within thirty (30) days of receiving CLIENT's review. This subsection shall not be construed to be a limitation of any rights or remedies otherwise available to CLIENT.

## **III. MODIFICATION AND ADDITIONAL SERVICES**

- A. CLIENT may, in writing, request changes in the Basic Services required to be performed by CONTRACTOR and require a specification of incremental or decremental costs prior to change order agreement under this AGREEMENT. Upon acceptance of the request of such changes, CONTRACTOR shall submit a "Change Order Request Form" to CLIENT for authorization and notice to proceed signature and return to CONTRACTOR. Should any such actual changes be made, an equitable adjustment will be made to compensate CONTRACTOR or reduce the fixed price, for any incremental or decremental labor or direct costs, respectively. Any claim by CONTRACTOR for adjustments hereunder must be made to CLIENT in writing no later than forty-five (45) days after receipt by CONTRACTOR of notice of such changes from CLIENT.

#### IV. ASSISTANCE AND CONTROL

- A. Tina M. Myers will coordinate the work of the CONTRACTOR, and be solely responsible for communication within the CLIENT's organization as related to all issues originating under this AGREEMENT.
- B. CLIENT will timely provide CONTRACTOR with all available information concerning PROJECT as deemed necessary by CONTRACTOR.
- C. CONTRACTOR will appoint, subject to the approval of CLIENT, Tina M. Myers as the CONTRACTOR's Project Manager and lead wetland scientist, Charlie Nowakowski or Matt Stangel as her field assistant, and Kyle Belott as the GIS specialist. Substitution of other staff may occur only with the consent of CLIENT.

#### V. TERMINATION

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

#### VI. INSURANCE

The CONTRACTOR shall, during the life of the AGREEMENT, maintain insurance coverage with an authorized insurance carrier at least equal to the minimum limits set forth below:

A. Limit of General/Commercial Liability	\$3,000,000
B. Automobile Liability: Bodily Injury/Property Damage	\$1,000,000
C. Excess Liability for General Commercial or Automobile Liability	\$10,000,000
D. Worker's Compensation and Employers' Liability	\$500,000
E. Professional Liability	\$2,000,000

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

## **VII. INDEMNIFICATION AND ALLOCATION OF RISK**

- A. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless CLIENT, CLIENT'S officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CONTRACTOR or CONTRACTOR'S officers, directors, partners, employees, and consultants in the performance of CONTRACTOR'S services under this AGREEMENT.
- B. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONTRACTOR, CONTRACTOR'S officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CLIENT or CLIENT'S officers, directors, partners, employees, and consultants with respect to this AGREEMENT.
- C. To the fullest extent permitted by law, CONTRACTOR'S total liability to CLIENT and anyone claiming by, through, or under CLIENT for any injuries, losses, damages and expenses caused in part by the negligence of CONTRACTOR and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that CONTRACTOR'S negligence bears to the total negligence of CLIENT, CONTRACTOR, and all other negligent entities and individuals.
- D. In addition to the indemnity provided under Paragraph VII.B, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONTRACTOR and CONTRACTOR'S officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other disputes resolution costs) caused by, arising out of, or resulting from an unexpected Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this Paragraph shall obligate CLIENT to indemnify any individual or entity from and against the consequences of that individual or entity's own negligence or willful misconduct.



### VIII. TIME FOR COMPLETION

CONTRACTOR will submit the Draft deliverable to the CLIENT within four to five weeks following fieldwork (scheduled for the week of the June 4, 2018). The Final deliverable will be submitted to the CLIENT within one week of receiving comments on the Draft deliverable.

### IX. DISPUTES

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

### X. RECORDS RETENTION

CONTRACTOR shall maintain all records pertaining to this AGREEMENT during the term of this AGREEMENT and for a period of 3 years following its completion. Such records shall be made available by the CONTRACTOR to CLIENT for inspection and copying upon request.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the day and year first above written.

CITY OF FRANKLIN, WISCONSIN

R.A. Smith, Inc.

BY: \_\_\_\_\_  
Stephen R. Olson, Mayor

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

PRINT NAME: Tina M. Myers, PWS

BY: \_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

TITLE: Project Manager / Wetland ecologist

DATE: March 29, 2018

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Paul Rotzenberg, Director of Finance and Treasurer

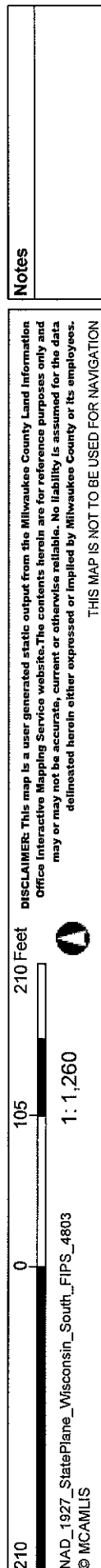
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APPROVED AS TO FORM:

\_\_\_\_\_  
Jesse A. Wesolowski, City Attorney

DATE: \_\_\_\_\_

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**DISCLAIMER:** This map is a user generated static output from the Milwaukee County Land Information Office Interactive Mapping Service website. The contents herein are for reference purposes only and may or may not be accurate, current or otherwise reliable. No liability is assumed for the data delineated herein either expressed or implied by Milwaukee County or its employees.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE April 2, 2018
Reports & Recommendations	RESOLUTION TO PURCHASE A BRIDGE AND BOARDWALK FROM CUSTOM MANUFACTURING, INC. IN THE AMOUNT OF \$21,300 FOR ERNIE LAKE PARK	ITEM NO. <i>6.18.</i>

### **BACKGROUND**

Staff has been working on a project to connect two pedestrian paths across the southern/western edge of Ernie Lake with a boardwalk (floating bridge). Ernie Lake Park is located south of W. Church Street, west of S. Scepter Drive, north of W. Beacon Hill Drive, and east of S. Chapel Hill Drive.

### **ANALYSIS**

Attached is a current quote from Custom Manufacturing, Inc (Clinton, WI) that supplied a bridge for the City in 2015 to cross Legend Creek (vicinity of Forest Hills Condominiums). This quote includes \$21,300 for purchase and delivery of a 6-foot wide x 30-foot long arched bridge kit and another 104 feet of boardwalk.

A previous 2016 quote for purchase and installation of this bridge from Custom Manufacturing was \$2,800 less. In 2017, prices increased largely attributable to the cost of lumber. Currently the price of steel is increasing on a weekly basis in preparation of a 25% tariff on imported steel.

Although very satisfied with the quality and performance of Custom Manufacturing, Staff made contact with other suppliers of similar structures but was not able to obtain quotes.

Given the increasing costs of materials and the use of Park Impact Fees for this project, it is vital that this project occur in 2018.

### **OPTIONS**

Approve or Table

### **FISCAL NOTE**

The 2018 budget has a \$50,000 appropriation for the Ernie Lake project. However, this cost of \$21,300 combined with the wetland determination fee of \$4,300 and some miscellaneous asphalt, materials and DPW time to install (or bidding contractors), assume \$10,000, the total project cost will be approximately \$35,600, the net City portion would be \$13,528 (38%) after \$22,072 (62%) of Park Impact fees are applied to the project.

### **RECOMMENDATION**

A resolution to purchase a bridge and boardwalk from Custom Manufacturing, Inc. in the amount of \$21,300 for Ernie Lake Park.

Engineering Department: GEM

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

RESOLUTION NO. 2018- \_\_\_\_\_

A RESOLUTION TO PURCHASE A  
BRIDGE AND BOARDWALK FROM CUSTOM MANUFACTURING, INC.  
IN THE AMOUNT OF \$21,300 FOR ERNIE LAKE PARK

-----  
WHEREAS, there is a desire to provide additional recreational activities at Ernie Lake Park in the City of Franklin, WI; and

WHEREAS, Whereas, the 2015 Park Impact Fee Update prepared by Ruekert & Mielke and adopted by the Common Council on May 19, 2015, included a "Note" (on p.24) under Planned Trails, Bicycle Routes, and linkages that states the following: "Planned trails, bicycle routes, and linkages are those shown in the Comprehensive Outdoor Recreation Plan or as otherwise approved and authorized by action of the Common Council, pending inclusion into the CORP. These features may include bridges or boardwalks or other design structures necessary to accommodate geographic demands." This clearly states the City's intent that these facilities, from a planning-purposes perspective, are not limited to trails shown on the maps of the CORP and that other, additional trails are clearly an intended consideration, as are trail design structures.

WHEREAS, Park Impact Fees are available and appropriate for such a project; and

WHEREAS, Custom Manufacturing, Inc. has provided satisfactory bridges to the City for previous projects; and

WHEREAS, pending steel tariffs are anticipated to increase the project costs significantly for any delay of the project.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that it would be in the best interest of the City to purchase a bridge and boardwalk from Custom Manufacturing, Inc. in the amount of \$21,300 for Ernie Lake Park.

THEREFORE, the Director of Public Works is authorized to make a purchase on behalf of the City.

Introduced at a regular meeting of the Common Council of the City of Franklin the  
\_\_\_\_\_ day of \_\_\_\_\_, 2018, by Alderman \_\_\_\_\_.

PASSED AND ADOPTED by the Common Council of the City of Franklin on the  
\_\_\_\_\_ day of \_\_\_\_\_, 2018.

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_



Custom Manufacturing, Inc.  
606 Delco Drive, P.O. Box 279  
Clinton, WI 53525  
608-676-2282 Fax: 608-676-2283  
custom@inwave.com

# Quotation

4344

Please Indicate The Above Number When Ordering

Date: March 24, 2015	Salesperson: Tina Forest
Inquiry Date:	Inquiry Number:

To: City of Franklin  
7979 West Ryan Road  
Franklin, WI 53132

Estimated Ship Date 4 weeks	Shipped VIA Advise best way	F.O.B Clinton, WI	Terms NET 30 days	
	Description		Price	Total
1	30' Arched Bridge x 6' Wide -- w/104' Boardwalk Approaches with 6 Sections of Horizontal Railings & 7 Sections of 2 x 4 Block Curbs -- Hardware -- On Galvanized Sill Pans Stamped Engineered Drawings		\$20,800.00	
	Delivery		500.00	
	Total			\$21,300.00
Above prices do not include installation, unloading equipment, utility markings, sales tax or any necessary permits				
Bridge Kit includes all Steel I-beams and cross members, which are predrilled and have a red oxide primer finish, MCA Southern Yellow Pine Treated Lumber and all hardware. All Lumber is Pre Stained Brown				


We are pleased to submit the above quotation for your consideration. Should you place an order, be assured it will receive our prompt attention. This quotation is valid for 30 days. Thereafter it is subject to change without notice.

BY:

*Tina Forest*

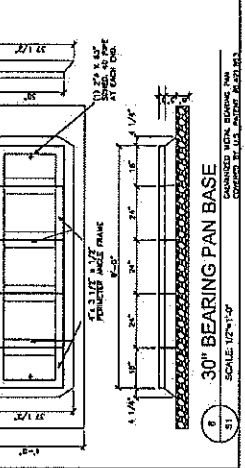
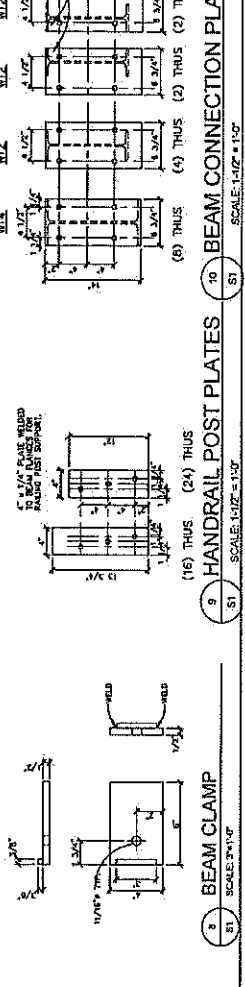
ACCEPTED:

DATE:



DRAWN: JFH  
DATE: 11/12/94  
JOB NO.: 15-0220  
REVISED: AS SHOWN  
SHEET NO.: S1

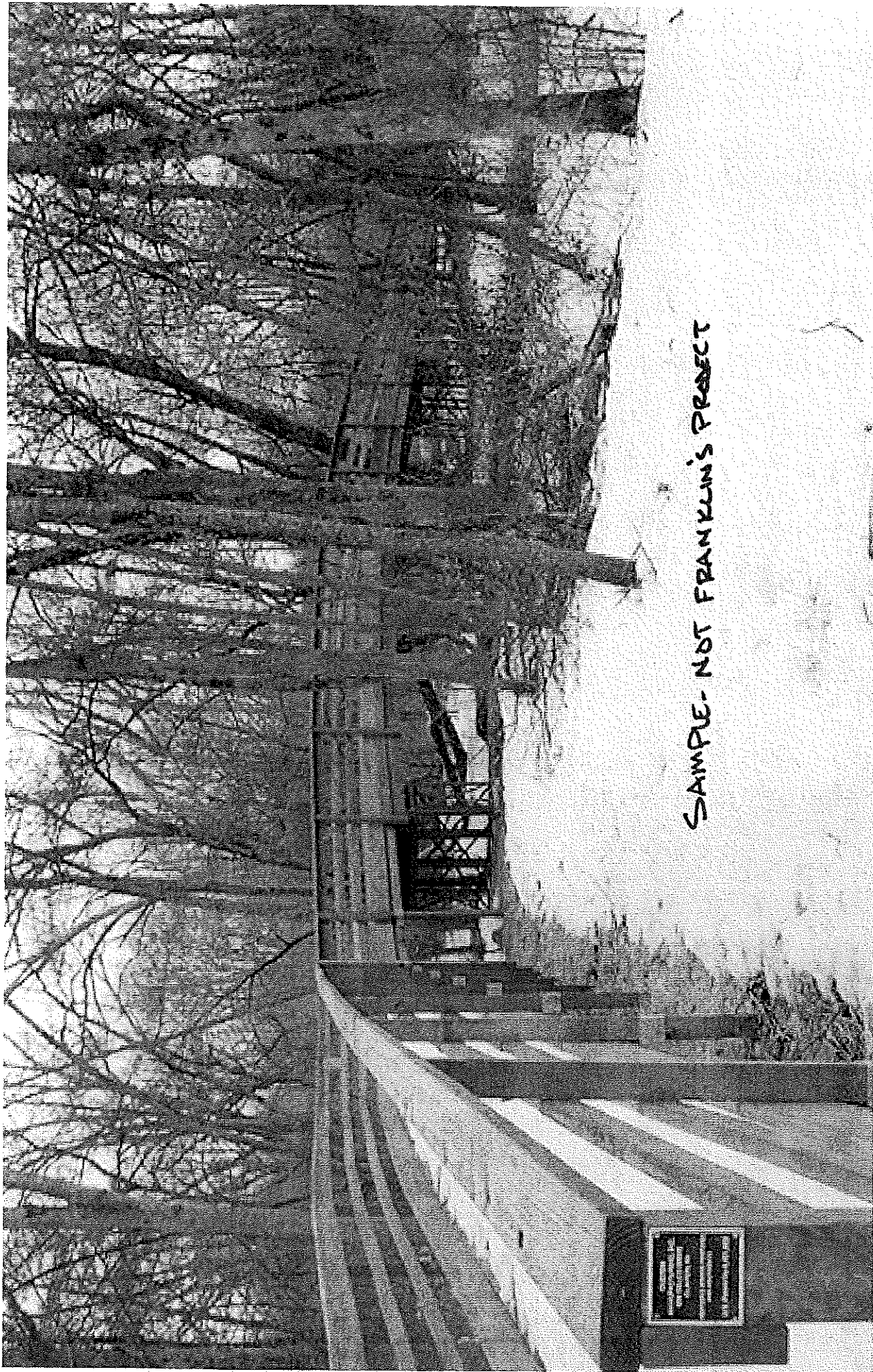
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SAMPLE- NOT FRANKLIN'S PROJECT

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