Plan Commission
MEETING AGENDA

March 6, 2023 - 6:00 PM
Council Chambers
3805 S. Casper Drive

Published: 2/28/2023

AGENDA

1. **PUBLIC HEARING(S)**
   - **A.** (4) KH RZ-2300208 John Jewell – Tax Key #: 1281.996.006 - Rezone from A-2, R-1/R-2 & C-2 to R-1/R-2 & C-2 (PUBLIC HEARING 6:00 PM)
   - **B.** (4) NJ RZ–2300230 Krokowski - 5715 S. Sunny Slope Road (Tax Key #: 1289.994) – Rezone from A-2 to A-2 & R-6 (PUBLIC HEARING 6:01 PM)
   - **C.** KH DCD1–2202121 Zoning Code Updates (PUBLIC HEARING 6:02 PM)
2. **PRIVILEGE OF THE FLOOR**
3. **CALL TO ORDER, PLEDGE OF ALLEGIANCE**
4. **ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE**
5. **APPROVAL OF MINUTES**
   - **A.** February 6, 2022 Plan Commission Meeting Minutes
6. **PLAN COMMISSION SECRETARY'S REPORT**
7. **CONTINUED BUSINESS**
   - **A.** (4) NJ CU-2300076 Matt Anderson on behalf of Matty's Bar and Grille, Inc. – 14460 W. college Avenue – Conditional Use Approval for approval of an amended outdoor annual schedule of events for 2023. (PUBLIC HEARING 2/6/23)
   - **B.** (2) NJ LD-2202321 Dave Herbeck with Oshkosh AAP, LLC on behalf of SilverStar Car Wash - 15300 W. National Avenue (Tax Key #: 1207-997-002) - 1-Lot Certified Survey Map. (Tabled 11/14/2022
   - **C.** (2) NJ UA-2202320 SilverStar Carwash – 15300 W. National Avenue (Tax Key #: 1207997-002) – Use, Site and Architectural Approval for a carwash. (Tabled 12/5/2022)
8. **OLD BUSINESS**
9. **NEW BUSINESS**
   - **A.** KH CP-2200141 Park and Open Space Plan Update - (PUBLIC HEARING 2/6/23)
   - **B.** (3) KW UA-2300197 Brian Hatzung with Zimmerman Architectural Studios on behalf of Veit – 18600 W. Lincoln Avenue (Tax Key #: 1167-994-001) – Use, Site and Architectural Approval for a 5,760 square foot storage building.

C. (6) KW UA-2300182 Dean and Suzanne Polenz – 4265 S. Wilshire Drive (Tax Key #: 1246-106) - Use, Site, and Architecture for an 8' fence.

D. (6) KW UA-2300184 Scott and Melissa Kandel – 4015 S. Belgrave Road (Tax Key #: 1245-376) – Resolution Approving a Partial Release of Restriction on Lot No. 13 of the Waterbury Estates Subdivision Plat to allow for a screened-in porch, patio, shed, and pool to be installed.

10. PENDING

11. COMMUNICATIONS

12. ADJOURN

Supplemental Information:

- *The meeting agenda and agenda packet are available online at www.NewBerlin.org. The minutes are published online and are approved at the next regularly scheduled meeting.*
- *It is possible that action will be taken on any of the items on the agenda and that the agenda may be discussed in any order.*
- *You may provide comments to the City Clerk via email at CitizenComments@NewBerlin.org. Comments will be forwarded to the Mayor and members of the governing body. Emailed comments are not read during the meeting.*
- *The City of New Berlin strives to host inclusive, accessible meetings that enable all individuals to engage and participate fully. Any person who has a qualifying disability under the Americans with Disabilities Act that requires that the meeting be accessible, please contact City Clerk Rubina R. Medina at (262) 786-8610 or via email at CityClerk@NewBerlinWI.gov at least 48 hours before the scheduled meeting time. Efforts will be made to accommodate the needs of disabled individuals through appropriate aids and/or services.*
- *It is also possible that members of and possibly a quorum of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to in the above notice.*

STAFF REPORT
EXECUTIVE SUMMARY

APPLICANT/PROJECT:	**John Jewell / Rezoning**
LOCATION:	**Tax Key #: 1281.996.006 (Lands adjacent to Beres Road and Hilltop Drive)**
REQUEST:	**Request to rezone the property located at Tax Key #: 1281.996.006 (Lands adjacent to Beres Road and Hilltop Drive) from A-2, R-1/R-2 & C-2 to R-1/R-2 & C-2.**
D.R.C. RECOMMENDATION:	**Public hearing, no action.**

DETAILS IN ATTACHED STAFF REPORT:

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
PLAN COMMISSION STAFF REPORT

Meetings of March 6, 2023

John Jewell / Rezoning
Tax Key #: 1281.996.006 (Lands adjacent to Beres Road and Hilltop Drive)

DATE STAFF REPORT PREPARED: February 1, 2023

APPLICANT / OWNER(S): John Jewell / Scott and Christine Zienkiewicz

REQUEST / DESCRIPTION OF PROJECT: The applicant is requesting to rezone the property located at Tax Key #: 1281.996.006 (Lands adjacent to Beres Road and Hilltop Drive) from A-2, R-1/R-2 & C-2 to R-1/R-2 & C-2.

DATE OF APPLICATION / DATE FILED WITH CITY CLERK: 1/20/23

DATE OF COMPLETENESS DETERMINATION: 1/25/23

PRE-APPLICATION CONFERENCE HELD: Yes
Date(s) of Meeting(s): 12/12/22, 2/14/23
Site Visit(s): 2/6/23

CONCEPTUAL PLAN: A 4-Lot CSM has been submitted (See File # LD-2300209).

SIZE OF DEVELOPMENT / PARCEL(S): 23.86 acres

CURRENT ZONING: A-2 (Agricultural and Rural Holding District), R-1/R-2 (Single-Family Residential District), C-2 (Shoreland-Wetland Holding District)

CURRENT LAND USE: Agricultural

PROPOSED ZONING: R-1/R-2 (Single-Family Residential District), C-2 (Shoreland-Wetland Holding District)

PROPOSED LAND USE: Single-family residential

PROPOSED LOT SIZES: See File # LD-2300209

Lot 1	8.45 acres
Lot 2	5.08 acres
Lot 3	5 acres
Lot 4	5 acres

PROPOSED DENSITY: N/A

ADJACENT ZONING AND LAND USE:

North:	Zoning: R-1/R-2, R-3	Land Use: Residential
South:	Zoning: A-2, C-2	Land Use: Agriculture/Commercial (Trees on the Move)
East:	Zoning: A-2, C-2	Land Use: Agriculture/Commercial (Trees on the Move)
West:	Zoning: R-1/R-2, R-3	Land Use: Residential

CONFORMANCE WITH COMPREHENSIVE PLAN AND MUNICIPAL CODE: Yes
Chapter 19: Neighborhood I: National Avenue West:

Planning Context / Vision / Development Policies:
Vision:

- The National Avenue West area, like the Western Area neighborhood (Neighborhood B), should be a regional model of rural development. Any development should occur gradually as a mix of lower density single-family development, farms, large areas of preserved open spaces, rural trails and facilities and small-scale neighborhood oriented retail.

Development Policies:

- While agricultural uses are encouraged to remain, it is recognized that the area may continue to develop as conservation residential developments. Residential uses will be permitted and accommodated pursuant to policies outlined in the Zoning and Development codes. As agricultural lands transition to residential developments, the subdivision design should attempt to incorporate farming and agriculture uses as viable open space options.
- Areas that are environmentally sensitive such as wetlands and recharge areas shall be established as priority areas for open space preservation.

Land Use:

- Future Land Use Map: Country Residential

ZONING CODE (Chapter 275): Yes, this request meets the requirements of Section 275-33B(1) of the Zoning Code.

DEVELOPMENT CODE (CHAPTER 235): N/A

REZONING REQUIRED: Yes

CONDITIONAL USE REQUIRED: No

PUBLIC HEARING REQUIRED: Yes

USE / SITE / ARCHITECTURAL REVIEW:
Use Approval Required: No
Site Plan Required: Yes, see attached CSM.
Architectural Review Required: No

PROPOSED ARCHITECTURE: N/A

UNIQUE SITE CHARACTERISTICS:
Environmental Corridor: Yes, Secondary Environmental Corridor.
Wetland On Property: Yes, wetlands were delineated by Thomson and Associates in August 2010.
Conservancy Districts (C-1, C-2): Yes, C-2
NRCS Map Classification: Not Inventoried
Floodplain: Yes, Zone AE
Topography / Geologic: Site slopes to the southeast corner (wetland/floodplain area) of the site. The highest point of the property is at the northwest corner.

BIKE & PEDESTRIAN FACILITIES PLAN: No improvements identified.

PARK & OPEN SPACE PLAN: No improvements identified.

NATURAL RESOURCES PROTECTION:
Limits of Disturbance (LOD): N/A
Wildlife Habitat Protection: N/A
Wildlife Management Plan: N/A

ENVIRONMENTAL IMPACT: No impact. The floodplain boundary is more restrictive than the wetland boundary, limiting where a future home could be built. The applicant is not proposing to construct homes near the environmental features on the new parcels created through the 4-Lot CSM (See File # LD-2300209).

STORMWATER MANAGEMENT / DRAINAGE PLAN: Applicant is required to adhere to all City of New Berlin Codes, Ordinances and Plans regarding storm water conveyance and maintenance as identified by the Department of Community Development.

SANITARY SEWER PROVISION:
Within Current Sewer Service Area: No
Basin Capacity Available: N/A
Adequate Linkage: N/A
Onsite System Required: Yes

WATER USAGE CALC.: Estimated 250 GPD per new single-family lot. Private wells will be required.

TRAFFIC IMPACT: No increase.

SCHOOL DISTRICT IMPACT: N/A
Notice Sent to Affected School District(s): No

PREVIOUS ACTION:

11/16/1998	Plan Commission approval of a 2-lot CSM (File #: LD-10-98)
2004 – 2006	This parcel was included within the Wildwood Preserve Subdivision proposal. This project was presented to the Plan Commission and Common Council a number of times, but ultimately, did not move forward.
11/10/2010	Plan Commission approval of a 3-lot CSM (File #: LD-10-10)

CONSISTENCY WITH PREVIOUS ACTION: Yes

FINDINGS:

1. The rezoning must meet the following criteria outlined in New Berlin Municipal Code Chapter 275-22(F):

    a. The proposed rezoning is consistent with the Comprehensive Plan and the stated purposes of Chapter 275;
    Yes, the proposed rezoning is compliant. The Future Land Use map identifies this area as Country Residential.

    b. Adequate public facilities and services (including sewage and waste disposal, water, gas, electricity, schools, police and fire protection, and roads and transportation, as applicable) will be available to serve the subject property while maintaining adequate levels of service to existing development;
    Yes, the proposed rezoning is compliant. This property is not served by public sanitary sewer and water facilities. Density will not increase as a result of this rezoning.

    c. Provision of public facilities to accommodate development will not place an unreasonable burden on the ability of the City to provide them;
    Yes, the proposed rezoning is compliant.

d. The proposed development has taken into account impacts on surrounding properties or the natural environment, including air, water, noise, storm water management, soils, wildlife, and vegetation;
Yes, the proposed rezoning is compliant. Any future development shall require a separate application to be filed with the Department of Community Development.

e. The land proposal for rezoning is suitable for development and will not cause unreasonable soil erosion or have an unreasonable adverse effect on rare or irreplaceable natural areas;
Yes, the proposed rezoning is compliant.

f. The proposed rezoning will not be used to legitimize, or "spot zone," a nonconforming use or structure; and
No, it will not be a spot zoning. It is consistent with the Future Land Use Map.

g. The proposed rezoning is the minimum action necessary to accomplish the intent of the petition, and an administrative modification, variance, or conditional use permit could not be used to achieve the same result.
Yes, the proposed rezoning is the minimum action necessary to accomplish the intent of the petition.

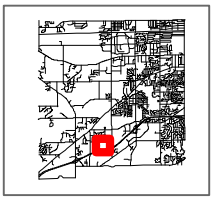
2. The applicant has simultaneously applied for a 4-Lot CSM (See File # LD-2300209).
3. Wetlands were delineated by Thomson and Associates in August 2010. Upon review of the building permits for the future single-family homes, staff will determine if a Wetland Delineation is required.
4. Lot 1 will no longer have a demonstrated agricultural use after the recording of the CSM. This parcel will have the maximum number of accessory buildings on a parcel, therefore no additional accessory buildings shall be allowed on Lot 1. Lot 1 is currently non-conforming, as it has accessory buildings located on the property without a principal structure.

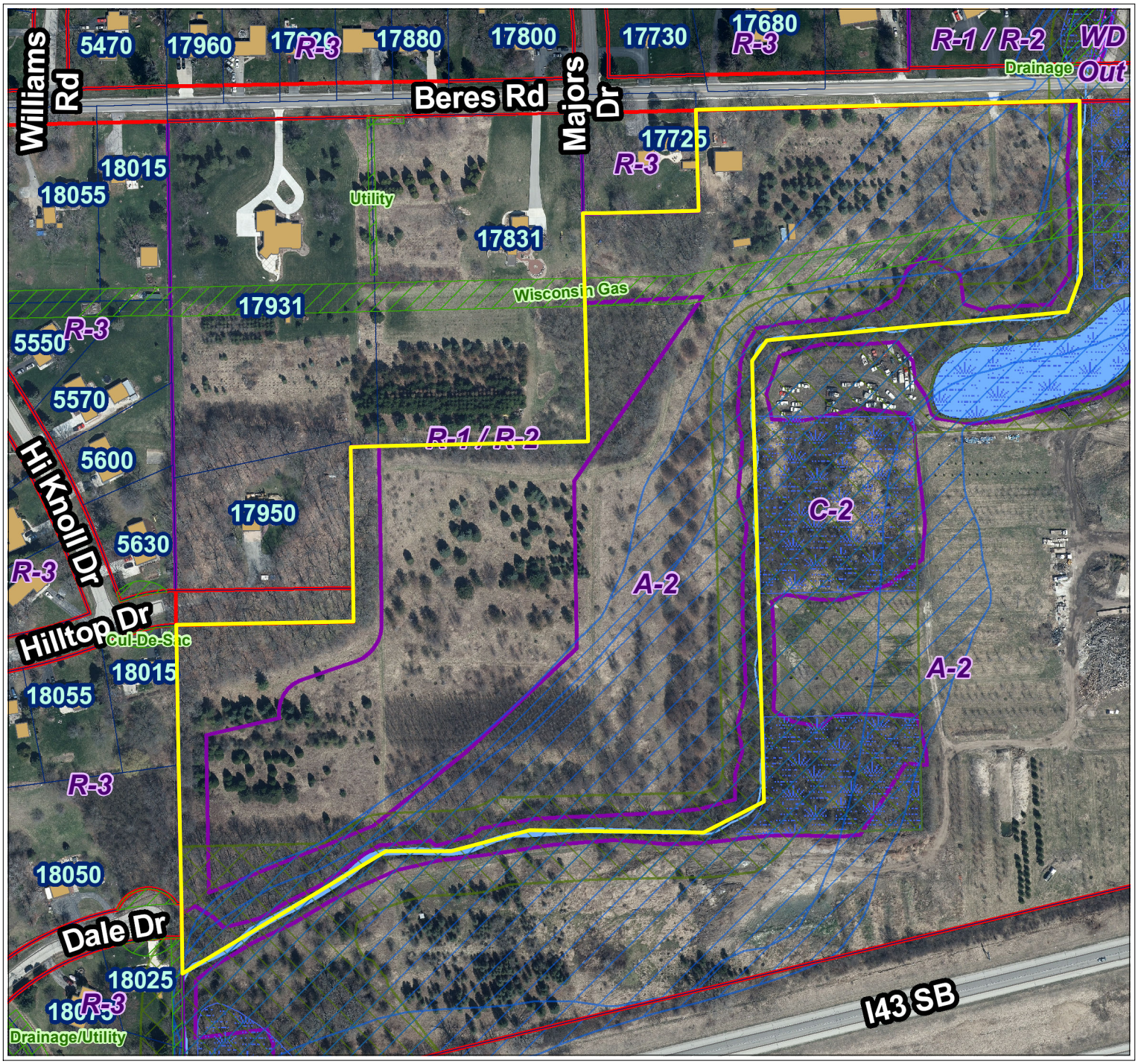
D.R.C. RECOMMENDATION: Public hearing, no action. **See Executive Summary.**

ATTACHMENTS:
Location Map
Zoning Comparison Map
CSM

City of New Berlin
Community Development

RZ-2300208 & LD-2300209
Jewell
Tax Key #: 1281.996.006





Legend

- Parcels
- Road Right-of-Way
- **Floodplain DFIRM (FEMA 2014)**
- **Flood Zone**
- FEMA DFIRM - Zone A
- FEMA DFIRM - Zone AE
- FEMA DFIRM - 0.2% Annual Chance
- Zoning Boundaries
- **Zoning Wetland Registration**
- **Wetland Registration Type**
- Registered Wetland
- Outside Wetland
- **Environmental Corridor**
- **Corridor Type**
- Isolated Natural Resource Area
- Primary Environmental Corridor
- Secondary Environmental Corridor
- **Sewer Service Area (MMSD)**
- **Sewershed**
- Current
- Ultimate

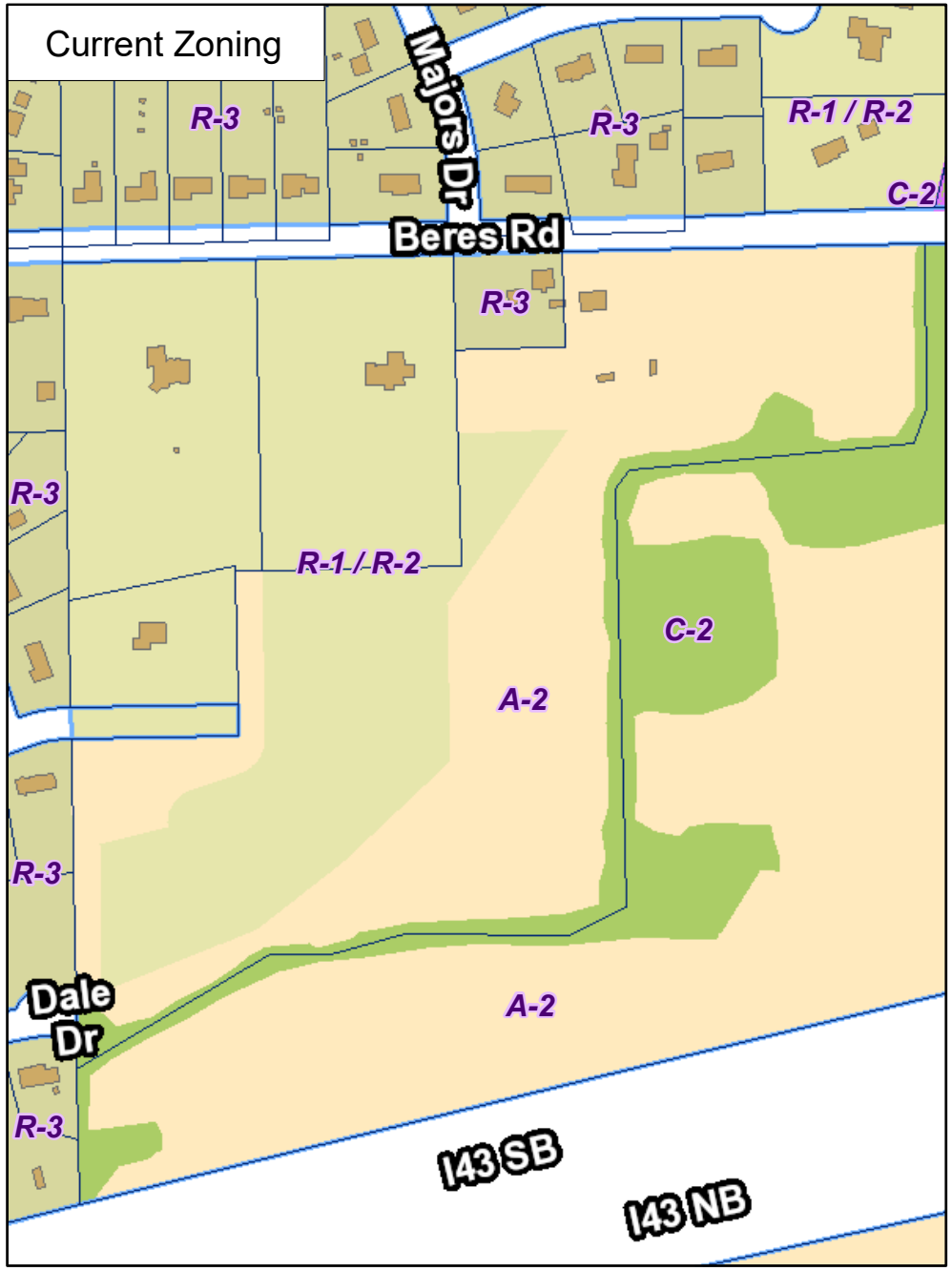
City of New Berlin
Department of Community Development
3805 S Casper Dr.
New Berlin WI 53151
(262) 797-2445
www.newberlin.org

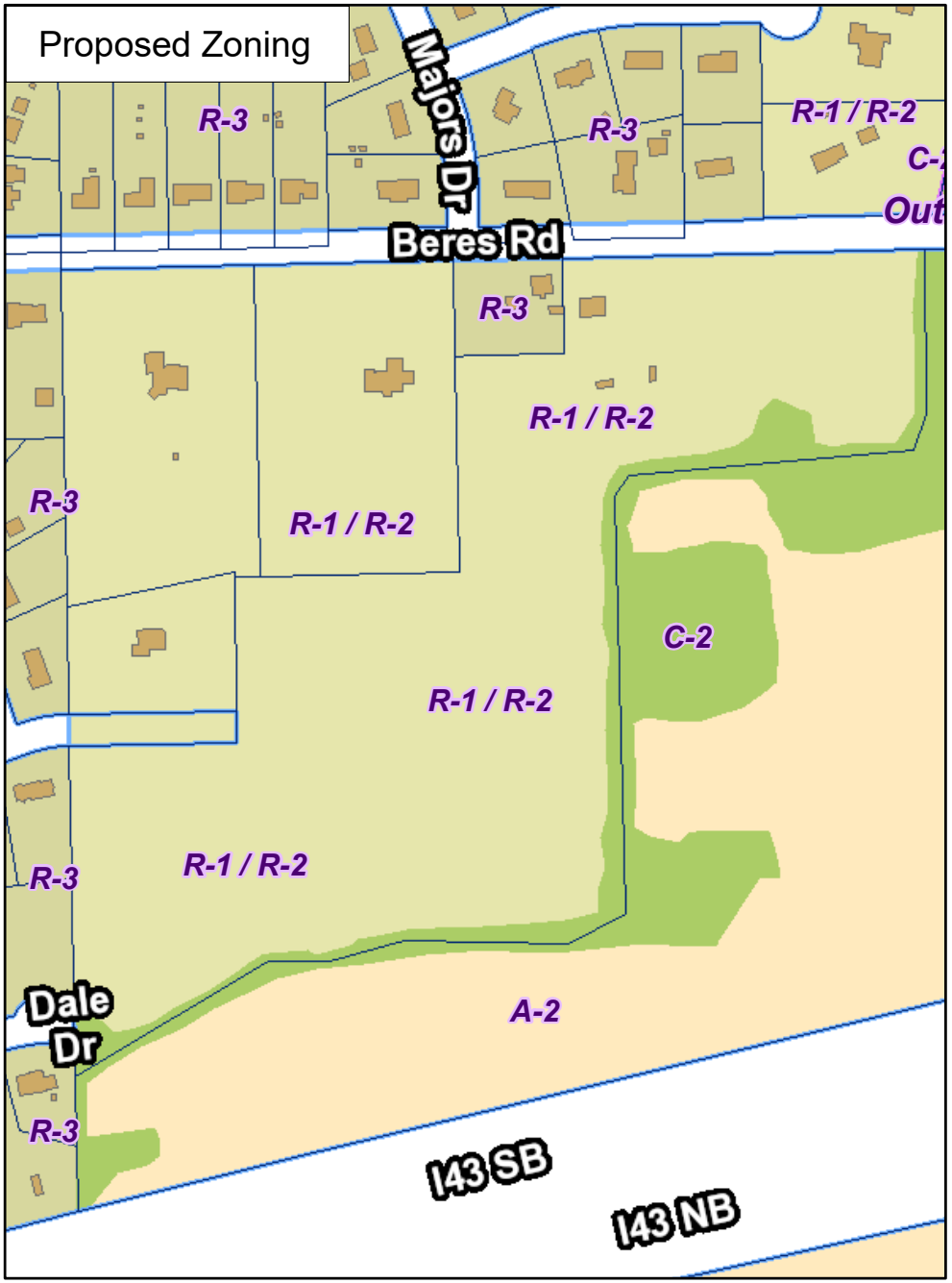
N

0 95 190 Feet

The information and depictions herein have been produced using data available through photogrametric means by the City of New Berlin. The informations and depictions herein are for informational purposes and the City of New Berlin specifically disclaims accuracy in this reproduction and specifically admonishes and advises that any and all depiction, measurements, distances depicted herein and as to which specific or precise accuracy is required should be determined by procurement of certified maps, surveys, plats, Flood Insurance Studies, or other official means.

Map Printed: 1/31/2023 11:40:42 AM





City of New Berlin
Department of Community Development
3805 S Casper Dr.
New Berlin WI 53151
(262) 797-2445
www.newberlin.org

RZ-2300208
Jewell
Taxkey# 1281996006

Legend
- Parcels
- Road Right-of-Way

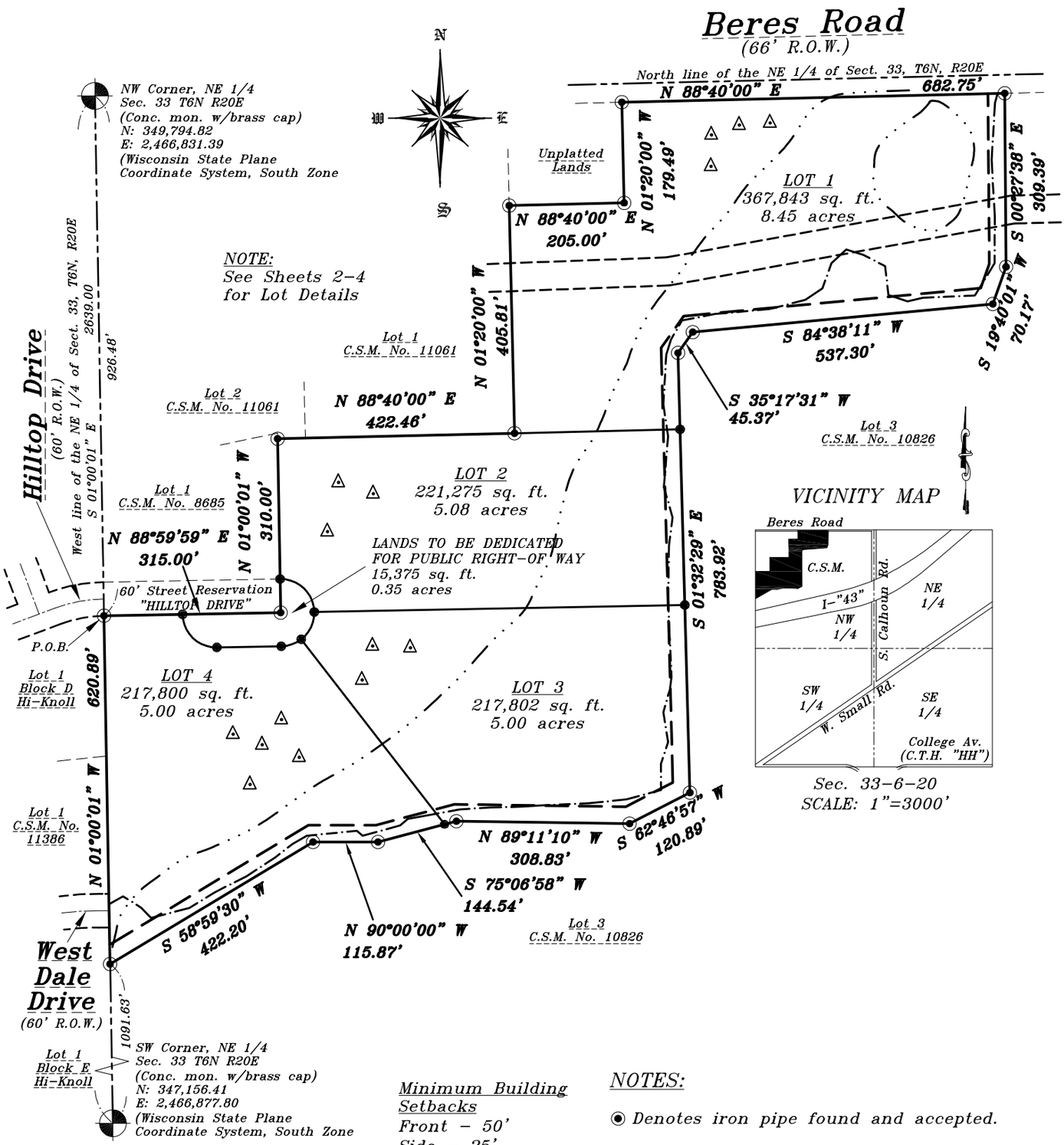
N

0 160 320 Feet
7

P:\DCD\Projects\RZ\RZ-2300208 Jewell\GIS\RZ-2300208_ZoneCompMap.mxd

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of CERTIFIED SURVEY MAP NO. 10826, Being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 33, Town 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.



Minimum Building Setbacks
Front – 50'
Side – 25'
Rear – 50'
Wetland – 30'

NOTES:

◉ Denotes iron pipe found and accepted.

● Denoted 1" x 24" iron pipe set, weighing 1.13lbs/lin. ft. min.

Map bearings refer to Grid North of the Wisconsin State Plane Coordinate System, South Zone (NAD27), with the West line of the NE 1/4 of Section 33, T6N, R20E having an assumed bearing of S 01°00'01" E.

240' 0' 120' 240'
Graphic Scale
Scale: 1"=240'

Prepared for:
Jewell Homes
S75 W17237 Janesville Road
Muskego, WI 53150
(262) 971-1002

Prepared by:
Dennis C. Sauer, P.L.S. 2421
Metropolitan Survey Service, Inc.
9415 W. Forest Home Ave.
Hales Corners, WI 53130

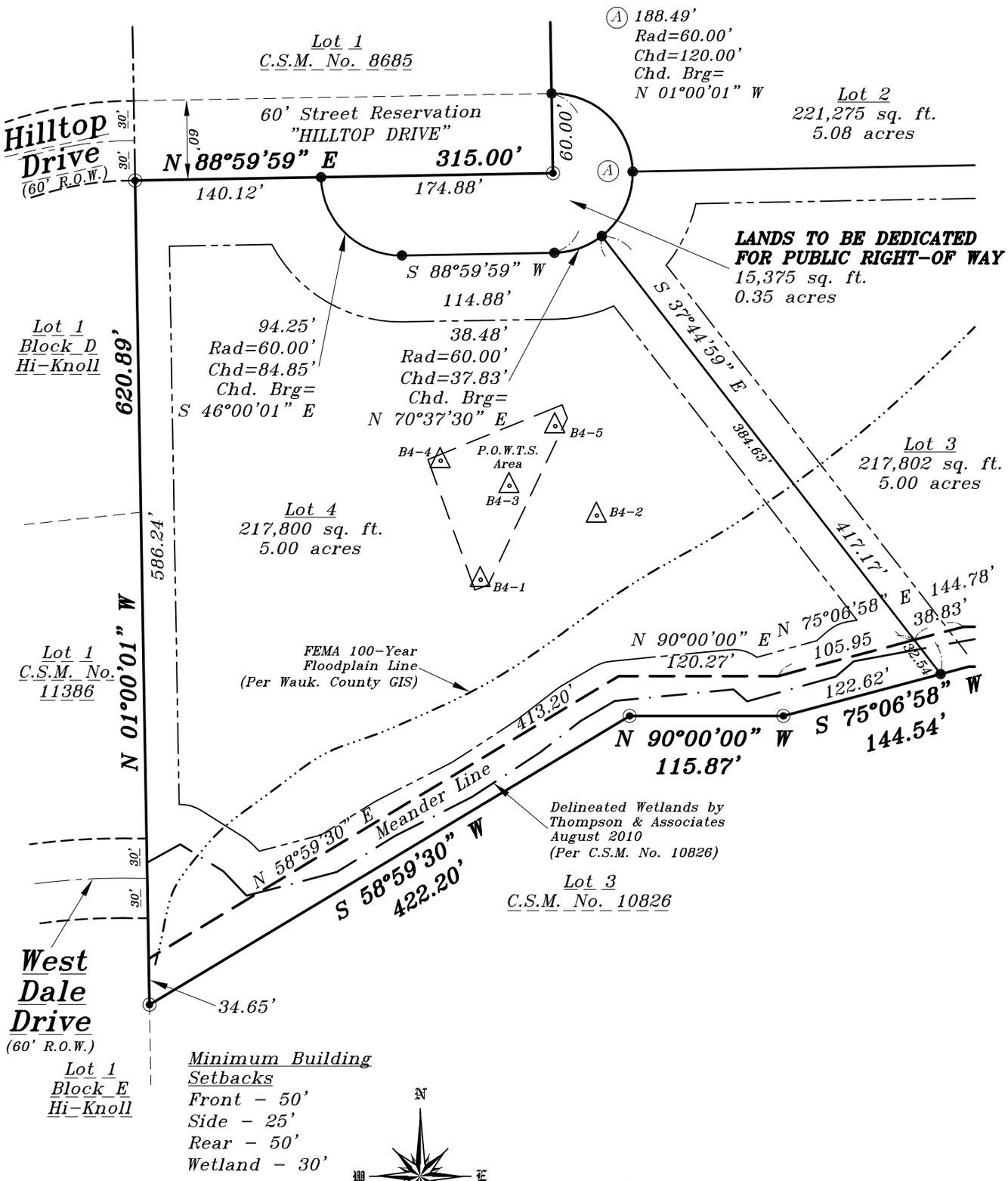
JTM

M\CERTIFIED SURVEY MAPS\New Berlin\114035(Jewell Homes)\114035.dwg

Sheet 1 of 6

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of CERTIFIED SURVEY MAP NO. 10826, Being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 33, Town 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.



NOTES:

- ◉ *Denotes iron pipe found and accepted.*
- ● *Denoted 1" x 24" iron pipe set, weighing 1.13lbs/lin. ft. min.*
- △ *Denotes Soil Boring by Butler Engineering, Inc., Dec. 22, 2022.*

Prepared for:
Jewell Homes
S75 W17237 Janesville Road
Muskego, WI 53150
(262) 971-1002

Prepared by:
Dennis C. Sauer, P.L.S. 2421
Metropolitan Survey Service, Inc.
9415 W. Forest Home Ave.
Hales Corners, WI 53130

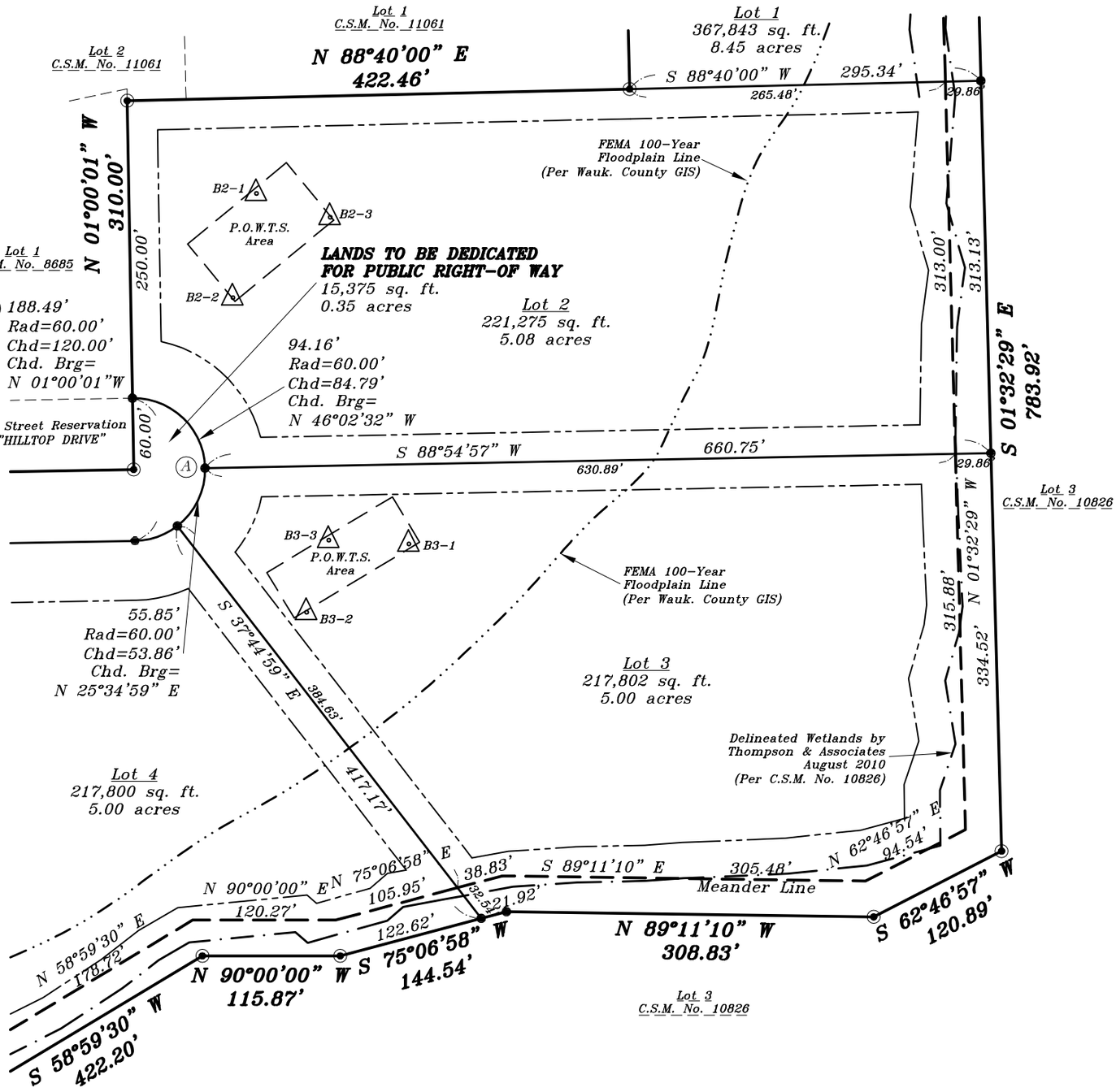
JTM

M\CERTIFIED SURVEY MAPS\New Berlin\114035(Jewell Homes)\114035.dwg

Sheet 2 of 6

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of CERTIFIED SURVEY MAP NO. 10826, Being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 33, Town 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.



Minimum Building Setbacks
Front – 50'
Side – 25'
Rear – 50'
Wetland – 30'

N
W E
S

Prepared for:
Jewell Homes
S75 W17237 Janesville Road
Muskego, WI 53150
(262) 971-1002

Prepared by:
Dennis C. Sauer, P.L.S. 2421
Metropolitan Survey Service, Inc.
9415 W. Forest Home Ave.
Hales Corners, WI 53130

120' 0' 60' 120'
Graphic Scale
Scale: 1"=120'

NOTES:

◉ *Denotes iron pipe found and accepted.*

● *Denoted 1" x 24" iron pipe set, weighing 1.13lbs/lin. ft. min.*

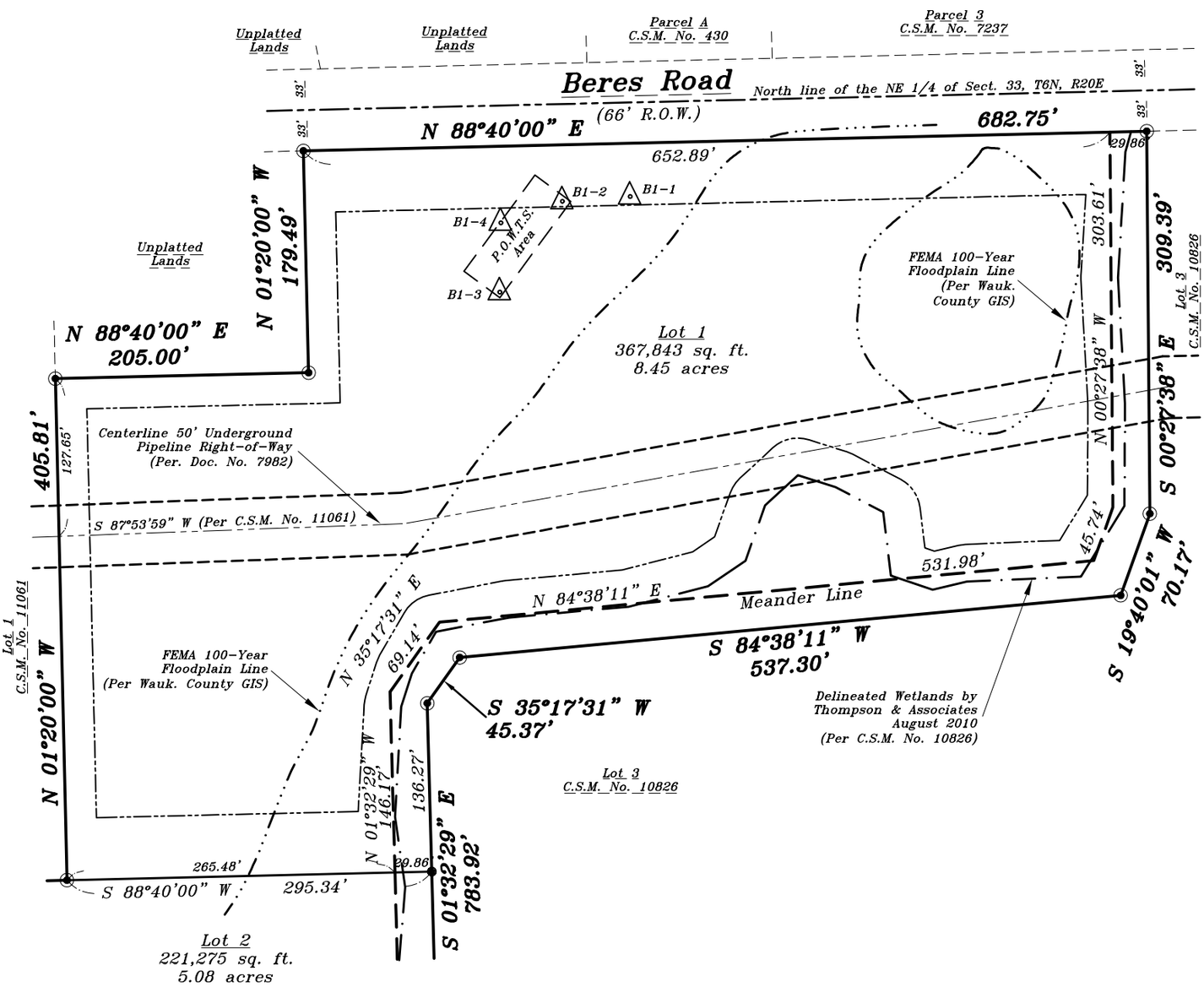
△ *Denotes Soil Boring by Butler Engineering, Inc., Dec. 22, 2022.*

Sheet 3 of 6

JTM
M\CERTIFIED SURVEY MAPS\New Berlin\114035(Jewell Homes)\114035.dwg

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of CERTIFIED SURVEY MAP NO. 10826, Being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 33, Town 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.



Minimum Building Setbacks
Front – 50'
Side – 25'
Rear – 50'
Wetland – 30'

Prepared for:
Jewell Homes
S75 W17237 Janesville Road
Muskego, WI 53150
(262) 971-1002

Prepared by:
Dennis C. Sauer, P.L.S. 2421
Metropolitan Survey Service, Inc.
9415 W. Forest Home Ave.
Hales Corners, WI 53130

120' 0' 60' 120'
Graphic Scale
Scale: 1"=120'

NOTES:

◉ *Denotes iron pipe found and accepted.*

● *Denoted 1" x 24" iron pipe set, weighing 1.13lbs/lin. ft. min.*

△ *Denotes Soil Boring by Butler Engineering, Inc., Dec. 22, 2022.*

Sheet 4 of 6

JTM
M\CERTIFIED SURVEY MAPS\New Berlin\114035(Jewell Homes)\114035.dwg

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of Certified Survey Map No. 10826, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 33, Town 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN)
MILWAUKEE COUNTY) SS

I, Dennis C. Sauer, a Professional Land Surveyor, hereby certify that:

I have surveyed, divided and mapped a redivision of Lot 2 of Certified Survey Map No. 10826, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 33, Town 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin; bounded and described as follows:

Commencing at the Northwest corner of said Northeast 1/4; thence S 01°00′01″ E along the West line of said Northeast 1/4, 926.48 feet to the south right-of-way line of Hilltop Drive, said point being the point of beginning of the lands to be described; thence N 88°59′59″ E, 315.00 feet; thence N 01°00′01″ W, 310.00 feet; thence N 88°40′00″ E, 422.46 feet; thence N 01°00′01″ W, 405.81 feet; thence N 88°40′00″ E, 205.00 feet; thence N 01°20′00″ W, 179.49 feet to the south right-of-way line of Beres Road; thence N 88°40′00″ E along the South line of said right-of-way, 682.75 feet; thence S 00°27′38″ E, 309.39 feet; thence S 19°40′01″ W, 70.17 feet; thence S 84°38′11″ W, 537.30 feet; thence S 35°17′31″ W, 45.37 feet; thence S 01°32′29″ E, 783.92 feet; thence S 62°46′57″ W, 120.89 feet; thence N 89°11′10″ W, 308.83 feet; thence S 75°06′58″ W, 144.54 feet; thence N 90°00′00″ W, 115.87 feet; thence S 58°59′30″ W, 422.20 feet to a point on the West line of said Northeast 1/4; thence N 01°00′01″ W slong said West line, 620.89 feet to the point of beginning.

Said lands containing 1,040,095 square feet (23.88 acres).

That I have made such survey, land division and map by the direction of John Jewell of Jewell Homes, owner of said land.

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

That I have fully complied with the provisions of Chapter 236.34 of the Wisconsin State Statutes and the regulations of the City of New Berlin in surveying, dividing and mapping the same.

_____ _____

Date Dennis C. Sauer
Professional Land Surveyor S-2421

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of Certified Survey Map No. 10826, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 33, Town 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.

OWNER'S CERTIFICATE

John Jewell of Jewell Homes, as owner, does hereby certify that I caused the land described on this map to be surveyed, divided and mapped as represented on this map in accordance with the requirements of Chapter 236.34 of the Wisconsin State Statutes and the regulations of the City of New Berlin.

WITNESS the hand and seal of said owner this _____ day of _____, 20_____.

_____
John Jewell, Owner

STATE OF WISCONSIN)
_____COUNTY) SS

PERSONALLY, came before me this _____ day of _____, 20_____, John Jewell, to me known to be the person who executed the foregoing instrument and acknowledged the same.

_____
Notary Public-State of Wisconsin
My Commission Expires: _____

PLAN COMMISSION APPROVAL

APPROVED by the Plan Commission of the City of New Berlin this _____ day of _____, 20_____.

_____	_____
David Ament, Chairman	Nikki Jones, Secretary
City of New Berlin	City of New Berlin

COMMON COUNCIL APPROVAL

APPROVED by the Common Council of the City of New Berlin this _____ day of _____, 20___.

_____	_____
David Ament, Mayor	Rubina Medina, City Clerk
City of New Berlin	City of New Berlin

THIS INSTRUMENT WAS DRAFTED BY:
Dennis C. Sauer, P.L.S. S-2421

STAFF REPORT
EXECUTIVE SUMMARY

APPLICANT/PROJECT:	**Diane Krokowski (Trustee) / Rezoning**
LOCATION:	**5715 S. Sunny Slope Road (Tax Key #: 1289-994)**
REQUEST:	**Request to rezone the property located at 5715 S. Sunny Slope Road (Tax Key #: 1289-994) from A-2 to A-2 and R-6.**
D.R.C. RECOMMENDATION:	**Public hearing only, no action.**

DETAILS IN ATTACHED STAFF REPORT:

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
PLAN COMMISSION STAFF REPORT

Meeting of March 6, 2023

Diane Krokowski (Trustee) / Rezoning
5715 S. Sunny Slope Road (Tax Key #: 1289-994)

DATE STAFF REPORT PREPARED: February 22, 2023

APPLICANT / OWNER(S): Diane Krokowski (Trustee)

REQUEST / DESCRIPTION OF PROJECT: The applicant is requesting to rezone the property located at 5715 S. Sunny Slope Road (Tax Key #: 1289.994) from A-2 to A-2 and R-6.

DATE OF APPLICATION / DATE FILED WITH CITY CLERK: 1/20/2023

DATE OF COMPLETENESS DETERMINATION: 1/25/2023

PRE-APPLICATION CONFERENCE HELD: Yes
Date(s) of Meeting(s): Several meetings, phone calls and emails exchanged prior to submittal.
Staff Site Visit: 2/1/2023

CONCEPTUAL PLAN: Yes, concept plan attached. Applicant has filed a separate application for a 2-Lot Certified Survey Map (See File #: LD-2300231).

SIZE OF DEVELOPMENT / PARCEL(S): 20 acres

CURRENT ZONING: A-2 (Agricultural and Rural Holding District)

CURRENT LAND USE: Single-family home and farmed land.

PROPOSED ZONING: A-2 (Agricultural and Rural Holding District) and R-6 (Section 35 Low-Density Single-Family Residential District)

PROPOSED LAND USE: No change, will continue use as single-family residential parcel and the remaining lands will stay agricultural

PROPOSED LOT SIZES: Applicant has filed a separate application for a 2-Lot Certified Survey Map (See File #: LD-2300231). The proposed lot sizes are as follows after right-of-way dedication:
Lot 1 – 1.71 acres
Lot 2 – 17.39 acres

PROPOSED DENSITY: N/A

ADJACENT ZONING AND LAND USE:

North:	Zoning: R-1/R-2 & R-6	Land Use: Single Family Residential / Red Fox Subdivision
South:	Zoning: P-2	Land Use: City Park – Section 35
East:	Zoning: R-3 & C-2	Land Use: High Grove Addition 2 Subdivision
West:	Zoning: P-2	Land Use: City Park – Section 35

CONFORMANCE WITH COMPREHENSIVE PLAN AND MUNICIPAL CODE: Yes, below is a review of the social, economic and physical factors outlined in the various sections of the Plan:

Chapter 17: Neighborhood G: Sections 26 & 35 South Moorland Road Corridor: Yes, the concepts meet the intent of this Chapter. **Planning Context / Vision / Development Policies:**

Vision:

- *Even though neighborhood G is unique, it cannot be independently planned separately from neighborhood H. The two neighborhoods are integrated and will share land uses, new roadway and trail connections and should be considered as one cohesive area. In determining an appropriate lot size for this Section, the team needed to better understand approximately how many units could fit into the residential portion identified on the Future Land Use Map based on various lot size combinations. Historically, this area called for a maximum gross density of 1 dwelling unit per 2 acres south of Grange Avenue. After careful review and looking at a variety of development concept scenarios, for what the land could hold in this area, rather than focusing on a density for this area, it was determined that lot size and various environmental constraints will be the focus. The lot sizes in this area under the R-6, Section 35 Low-Density Single-Family District, will have a minimum lot size similar to that of the adjacent subdivisions east of Sunny Slope Road. The Plan Commission and Common Council may approve smaller lot sizes pursuant to the City's zoning and subdivision codes and the vision for Neighborhood "G", in order to protect environmental features such as woodlands and tree lines, provide for additional tree protection and/or avoid steep topography. All lots shall adhere to the City's adopted zoning and subdivision codes. The future land use map for Urban Residential in Section 35 identifies approximately 199 net acres of land to be developed under the newly created R-6 Zoning District. The vision for Section 35 includes the following elements that have been incorporated into the development of the plan:*
    - *A system of meaningful pedestrian connections to create a walkable and connected community.*
      Should Lot 2 further subdivide, the City may require a mowed trail through these lots to connect to the future park and Red Fox Subdivision. Applicant has applied for a 2-lot CSM, and as part of this application, will be dedicating the right-of-way to the City. Upon future development of Lot 2, an off road sidepath shall be constructed.

    - *Focus on sound planning and architecture practices.*
      Zoning Code Section 275-59C(1)(d)[6][g] R-6, Section 35 Low-Density Single-Family Residential District states, "Home construction in the R-6 District shall utilize architectural materials similar in quality to subdivisions east of Sunny Slope Road. An approval from an architectural review board of the homeowner's association may be required prior to issuance of the building permits from the City." Note, the existing home on Lot 1 will remain along with the accessory buildings. The lot will meet the minimum lot dimensions of the R-6 Zoning District.

    - *Provide a regional park complex.*
      Applicant understands the park complex is located south of their parcels and will note this on the CSM so that future land owners are aware.

- *The recommended development for Neighborhood G balances new residential areas with new business park land uses as well as an approximately 96 plus acre park complex that would contain a mixture of active and passive park uses. Housing areas in Neighborhood G should reflect the character and quality of adjacent subdivisions classified as Suburban and Urban Residential on the future land use map. The southern portion of Neighborhood G, consisting mostly of Section 35 which is roughly the area of Grange Avenue to the North, College Avenue to the South, Moorland Road to the West and Sunny Slope Road to the East, shall be reserved for low-density single-family subdivision development that balances development with existing sensitive environmental*

features including wetlands, woodlands, existing tree rows, floodplain and environmental corridors. Agricultural uses are encouraged to continue as open space, where appropriate, for the residential developments. As property owners desire to develop their properties, development should incorporate open space that integrates these agricultural lands, and environmentally sensitive areas, particularly the stream valley. The valley will serve as a unique natural feature and appropriate buffers can be incorporated between residential developments and the existing Westridge / Towne Corporate Business Park and future Moorland East Business Park development. Future development should establish unique business park properties on the western portion of the neighborhood.

Development Policies:

- *Encourage the continuation of agricultural uses as long as the property owners so desire. As agricultural lands transition to residential developments, the subdivision design could incorporate farming and agriculture uses as viable open space options.*
  Adjacent parcels will continue to be farmed.

- *As development occurs, require off-road paths and trail connections, where appropriate to connect to the City's Utility easement / public trail and on-road bike paths for both residential and non-residential development to create an interconnected trail system for much of the Section 34/35 area. All path and trail connections shall be constructed at the time of development and public trail easements shall be provided to the City.*
  - Should Lot 2 further subdivide, the City may require a mowed trail through these lots to connect to the future park and Red Fox Subdivision. Applicant has applied for a 2-lot CSM, and as part of this application, will be dedicating the right-of-way to the City. Upon future development of Lot 2, an off road sidepath shall be constructed.

- *Include on-road bike paths for new streets and on existing streets where possible for non-residential development and major thoroughfares, and again, in order to create an interconnected trail system for much of the Section 34/35 area. Work to create linkages to the off-road paths and trail system through private development and/or public projects. All path and trail connections shall be constructed at the time of development and public trail easements shall be provided to the City.*
  - Applicant will dedicate the right-of-way as part of the CSM. A sidepath will be installed at a future date along Sunny Slope Road to connect with Red Fox and Thomson Hollow.
  - Should Lot 2 further subdivide, the City may require a mowed trail through these lots to connect to the future park and Red Fox Subdivision. Applicant has applied for a 2-lot CSM, and as part of this application, will be dedicating the right-of-way to the City. Upon future development of Lot 2, an off road sidepath shall be constructed.

- *Require coordinated, pre-planned concepts/development proposals to ensure a cohesive and coordinated development pattern. Developments must take into consideration how adjacent parcels would be developed.*
  The applicant's development plan is consistent with the Future Land Use Map for the area. Staff will continue to ensure that any future development of Lot 2 takes into consideration the following for future development:
  - Sewer and Water Connections (currently there is no service provided to this parcel and the existing home on Lot 1 is served by private on site system and well. When Lot 2 develops, it shall connect to the City water and sewer. A note will be added to the face of the CSM.

Land Use

- *Future Land Use Map: Urban Residential*

ZONING CODE (Chapter 275): Yes, this request is consistent with Section 275-33B(7) and Section 275-32B(2) of the Zoning Code.

DEVELOPMENT CODE (CHAPTER 235): Yes

REZONING REQUIRED: Yes

CONDITIONAL USE REQUIRED: No

PUBLIC HEARING REQUIRED: Yes

USE / SITE / ARCHITECTURAL REVIEW:
Use Approval Required: No
Site Plan Required: Yes, a 2-Lot CSM has been submitted (see File #: LD-2300231).
Architectural Review Required: No

PROPOSED ARCHITECTURE: N/A

UNIQUE SITE CHARACTERISTICS:
Environmental Corridor: Yes, Secondary Environmental Corridor along the westerly property line.
Wetland On Property: Yes, wetland indictors are identified on proposed Lot 2. The wetlands have not been field delineated and registered with the City at this time. At the time of future development of Lot 2, a wetland delineation will be required.
Conservancy Districts (C-1, C-2): No
NRCS Map Classification: Not Inventoried
Floodplain: No
Topography / Geologic: Site slopes from the northwest to the southeast.

BIKE & PEDESTRIAN FACILITIES PLAN:

- The Comprehensive Plan, Figure 6.16 / Page 6:22 *Sunny Slope Road is identified as having "on Road and Off Road" pedestrian trail facilities.*

- The Comprehensive Plan, Page 6:24 *"Better bicycle and pedestrian trail linkages between residential subdivisions and other subdivisions, parks, schools, libraries and commercial nodes."*
- *"Polices for multi-modal transportation included in the Comprehensive Plan on Page 6:39 – 6:40:*

    - *Construct bicycle and pedestrian facilities as recommended by the Comprehensive Plan.*

PARK & OPEN SPACE PLAN: No improvements identified.

NATURAL RESOURCES PROTECTION:
Limits of Disturbance (LOD): N/A
Woodland, Tree & Vegetation Protection: N/A
Wildlife Habitat Protection: N/A
Wildlife Management Plan: An Endangered Resources review will be completed on the property prior to the submittal of development plans.

ENVIRONMENTAL IMPACT: Wetland indictors are identified on proposed Lot 2. The wetlands have not been field delineated and registered with the City at this time. At the time of future development of Lot 2, a wetland delineation will be required.

STORMWATER MANAGEMENT / DRAINAGE PLAN: Applicant is required to adhere to all City of New Berlin Codes, Ordinances and Plans regarding storm water conveyance and maintenance as identified by the Department of Community Development.

SANITARY SEWER PROVISION:

Within Current Sewer Service Area: Yes
Basin Capacity Available: Yes
Adequate Linkage: No, currently there is no service provided to this parcel and the existing home on Lot 1 is served by private on site system and well. When Lot 2 develops, it shall connect to the City water and sewer. A note will be added to the face of the CSM.
Onsite System Required: Yes, an existing system exists on Lot 1. No additional system will be allowed on Lot 2. It will be required to hook up to city water and sewer at the time of development. A note will be added to the face of the CSM.

WATER USAGE CALC.: No increase at this time.

TRAFFIC IMPACT: No increase at this time.

SCHOOL DISTRICT IMPACT: No increase at this time. When Lot 2 develops, it shall be evaluated.
PREVIOUS ACTION: SOUTH MOORLAND ROAD (SECTION 35) COMPREHENSIVE PLAN AMENDMENTS:
Approximately two years of public comment and 29 meetings held with those interested in the Comprehensive Plan Amendments for Chapters 10, 17, and 18 to plan Section 35, South Moorland Road Corridor area.

- **12/1/2014** Staff presented a memo to the Plan Commission dated November 10, 2014 summarizing the Section 35 Master Planning Update.
- **3/28/2015** Staff began holding the South Moorland Road Corridor – Neighborhood Plan – "Staff Open Office Hours". Office hours continued through June. Upwards of 12,000 postcards were sent out to residents in the City of New Berlin notifying them of the office hours in June.
- **4/8/2015** Staff notified the Plan Commission of the South Moorland Road Corridor – Neighborhood Plan – "Staff Open Office Hours".
- **5/4/2015** Plan Commission requested the Common Council set a Public Hearing date for June 29, 2015 (Note: item tabled at the May 12, 2015 Common Council meeting in order to provide more time for discussions with the property owners).
- **7/28/2015** Common Council set a date for a Public Hearing on 9/9/15 for the amendments.
- **8/24/2015** Special Plan Commission Meeting - Commission presentation & discussion on recommendations and action.
- **9/9/2015** Public Hearing.
- **10/5/2015** Plan Commission adoption of Resolution #: 15-03 & recommendation to Council.
- **10/13/2015** Common Council adoption of Ordinance 2553 to approve the amendments to the Comprehensive Plan.

PREVIOUS ACTION: SOUTH MOORLAND ROAD CORRIDOR (SECTION 35) ZONING CODE AMENDMENTS:
The Plan Commission adopted amendments to the Zoning Code reflecting the Comprehensive Plan amendments above, which established new Zoning Districts for this area of the City, which included the R-6, Section 35 Low–Density Single-Family Residential District and P-2, Section 35 Park Complex District.

- **12/7/2015** Plan Commission held a public hearing.
- **1/6/2016** Plan Commission recommend to Common council adoption of an Ordinance to approve the amendments.
- **1/12/2016** Common Council adoption of Ordinance 2558 to approve the amendments to the Zoning Code.

Previous Action:
- **8/31/2020** Plan Commission held a public hearing on the rezoning.
- **10/5/2020** Plan Commission accepted a request from the applicant to withdraw their requests for a similar rezoning and land division.

CONSISTENCY WITH PREVIOUS ACTION: Yes

FINDINGS:

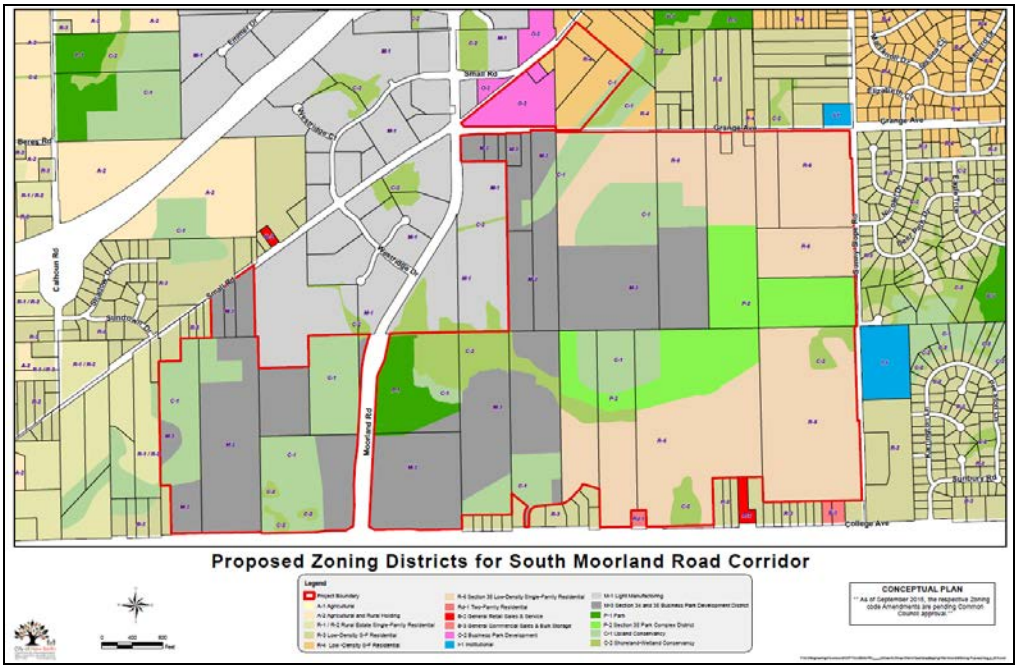
1. The rezoning must meet the following criteria outlined in New Berlin Municipal Code Chapter 275-22 (F):

   a. *The proposed rezoning is consistent with the Comprehensive Plan and the stated purposes of Chapter 275;*

   The Future Land Use map identifies this area as Urban Residential. The rezoning request is consistent with the Comprehensive Plan and Zoning Code Section 275-13.1H(4) Section 34-35 Transitional Provisions: South Moorland Road Corridor, which states, "*Section 35 is an area that is envisioned to be a mix of business park industrial, office, retail, residential, and passive and active park uses. In order to implement the conceptual neighborhood plan, the City has created three new zoning districts specifically for this geographic area. They include a new R-6 (Section 35 Low-Density Single-Family Residential), M-3 (Section 34 & 35 Business Park Development District) and P-2 (Section 35 Park Complex District). The City's comprehensive plan, Chapter 10, Land Use, Figure 10.5 identifies the Future Land Uses for this area. Below, Figure I-1 identifies the pending designated zoning districts. All projects that require rezoning within this respective area shall be rezoned in accordance with Zoning Code Figure I-1 and future Plan Commission and Common Council actions. See map below.* Please see also detailed information in "Conformance with Comprehensive Plan" section above.

   *Note, the applicant intends to leave Lot 2 A-2 until such time that it will be further developed.

Figure I-1 South Moorland Road Corridor Designated Zoning Districts



   b. *Adequate public facilities and services (including sewage and waste disposal, water, gas, electricity, schools, police and fire protection, and roads and transportation, as applicable) will be available to serve the subject property while maintaining adequate levels of service to existing development;*

   Yes, the proposed rezoning is compliant for the existing lot. An existing system exists on Lot 1. No additional system will be allowed on Lot 2. It will be required to hook up to city water and sewer at the time of development. A note will be added to the face of the CSM.

   c. *Provision of public facilities to accommodate development will not place an unreasonable burden on the ability of the City to provide them;*

Yes, the proposed development is compliant. Development of this area has been anticipated and accommodated for.

d. *The proposed development has taken into account impacts on surrounding properties or the natural environment, including air, water, noise, storm water management, soils, wildlife, and vegetation;*

Yes, it is compliant. Wetland indictors are identified on proposed Lot 2. The wetlands have not been field delineated and registered with the City at this time. At the time of future development of Lot 2, a wetland delineation will be required.

e. *The land proposal for rezoning is suitable for development and will not cause unreasonable soil erosion or have an unreasonable adverse effect on rare or irreplaceable natural areas;*

Yes, it is compliant.

f. *The proposed rezoning will not be used to legitimize, or "spot zone," a nonconforming use or structure; and*

No, it will not be a spot zoning. It will be consistent with the Comprehensive Plan and the considerable planning efforts for the South Moorland Road Corridor.

*Note, the applicant intends to leave Lot 2 A-2 until such time that it will be further developed.

g. *The proposed rezoning is the minimum action necessary to accomplish the intent of the petition, and an administrative modification, variance, or conditional use permit could not be used to achieve the same result.*

Yes, in order to create a 1.71-acre single-family parcel for the Trust to parcel off for the family member, the proposed rezoning of the lands to R-6 (Section 35 Low-Density Single Family Residential) is required in order to accommodate this request.

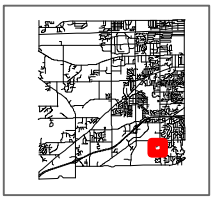
2. The applicant has simultaneously applied for a 2-Lot Certified Survey Map (See File #: LD-2300231).
3. Wetland indictors are identified on proposed Lot 2. The wetlands have not been field delineated and registered with the City at this time. At the time of future development of Lot 2, a wetland delineation will be required.

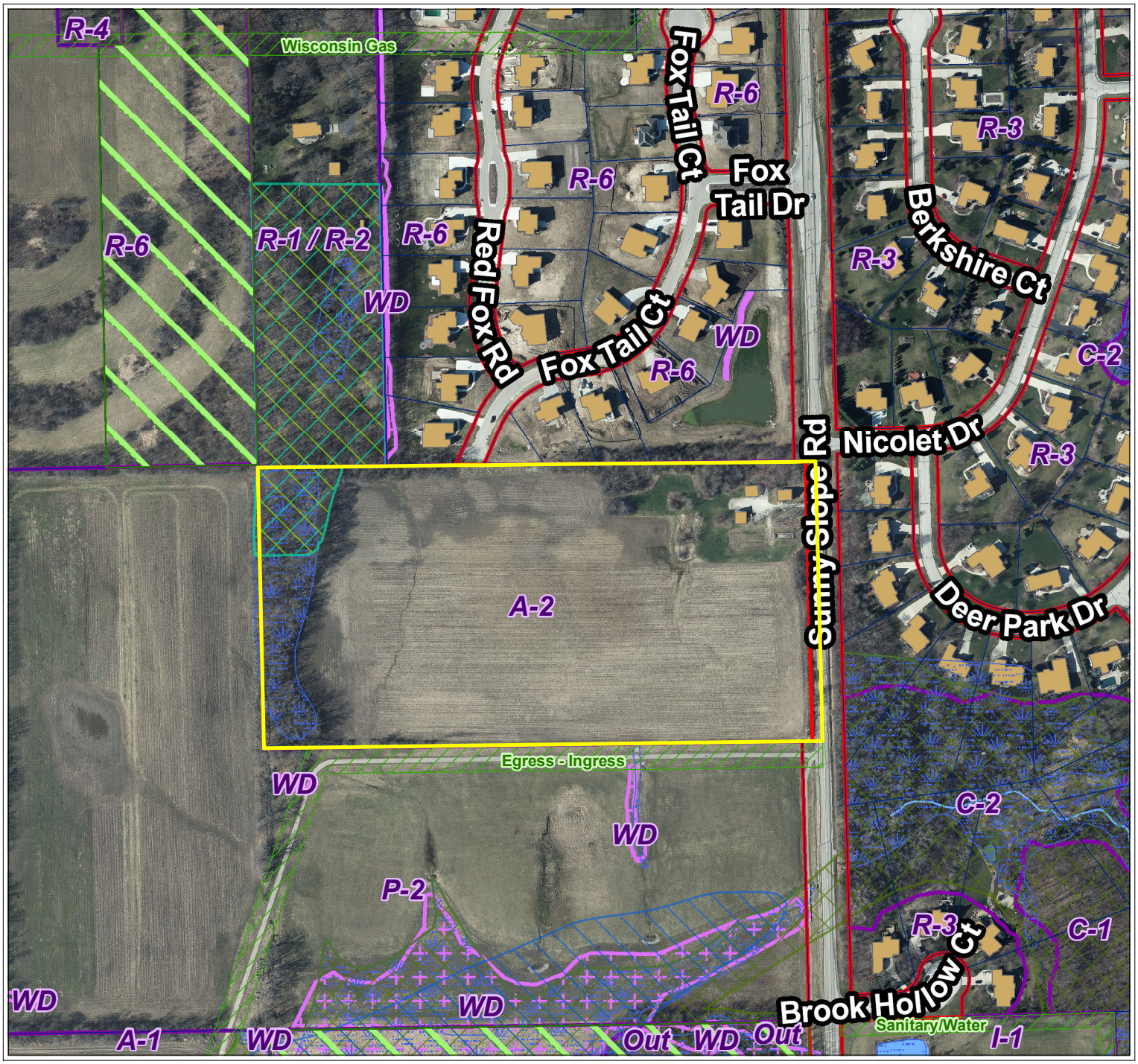
D.R.C. RECOMMENDATION: Public hearing only, no action. **See Executive Summary.**

ATTACHMENTS:
Location Map
Zoning Comparison Map
Applicant Letter
Proposed CSM

City of New Berlin
Community Development

RZ-2300230 & LD-2300231
Krokowski Rezoning & CSM
5715 S. Sunny Slope Rd,





Legend

- Parcels
- Road Right-of-Way

Floodplain DFIRM (FEMA 2014)

Flood Zone

- FEMA DFIRM - Zone A
- FEMA DFIRM - Zone AE
- FEMA DFIRM - 0.2% Annual Chance
- Zoning Boundaries

Zoning Wetland Registration

Wetland Registration Type

- Registered Wetland
- Outside Wetland

Environmental Corridor

Corridor Type

- Isolated Natural Resource Area
- Primary Environmental Corridor
- Secondary Environmental Corridor

Sewer Service Area (MMSD)

Sewershed

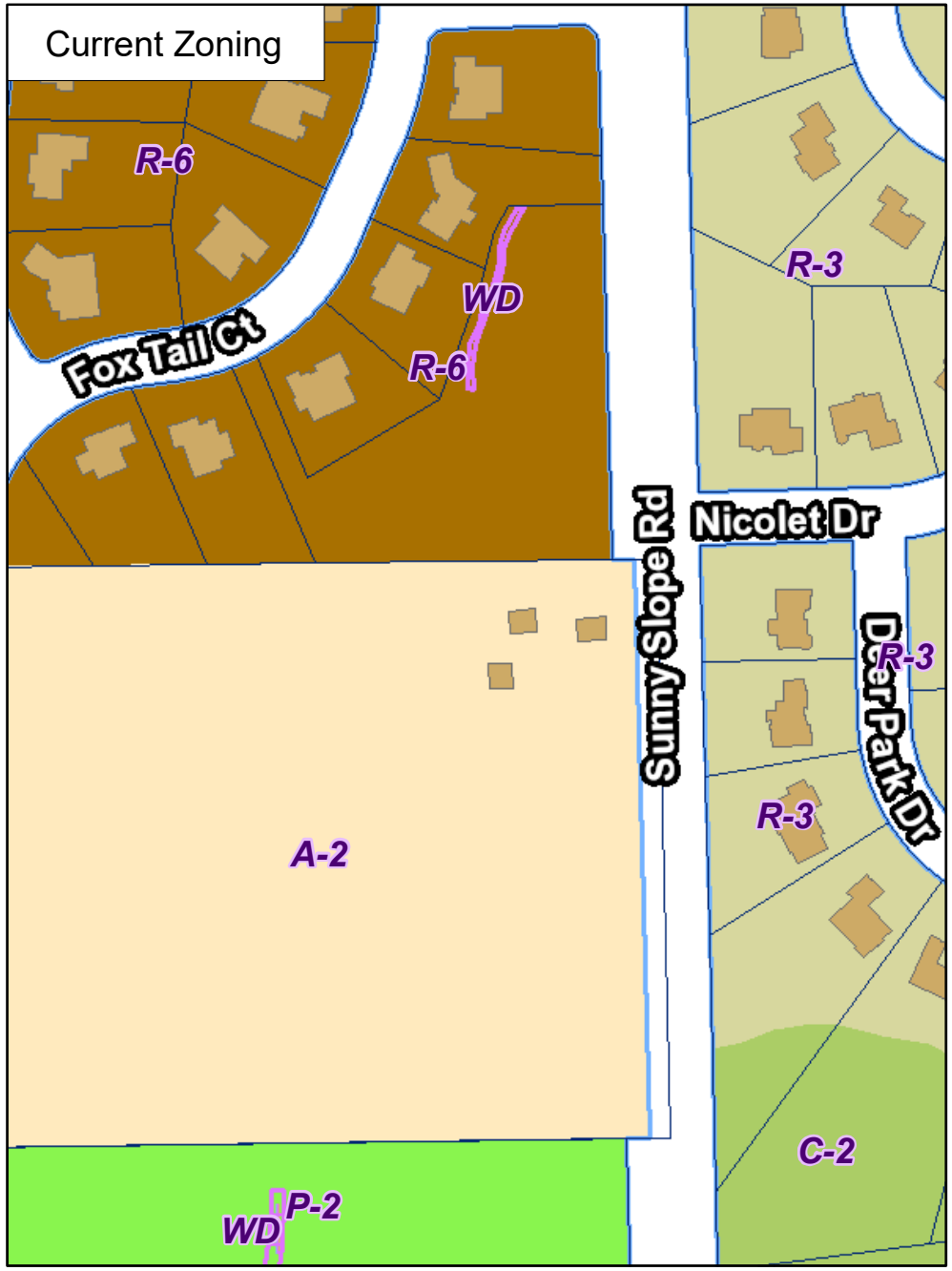
- Current
- Ultimate

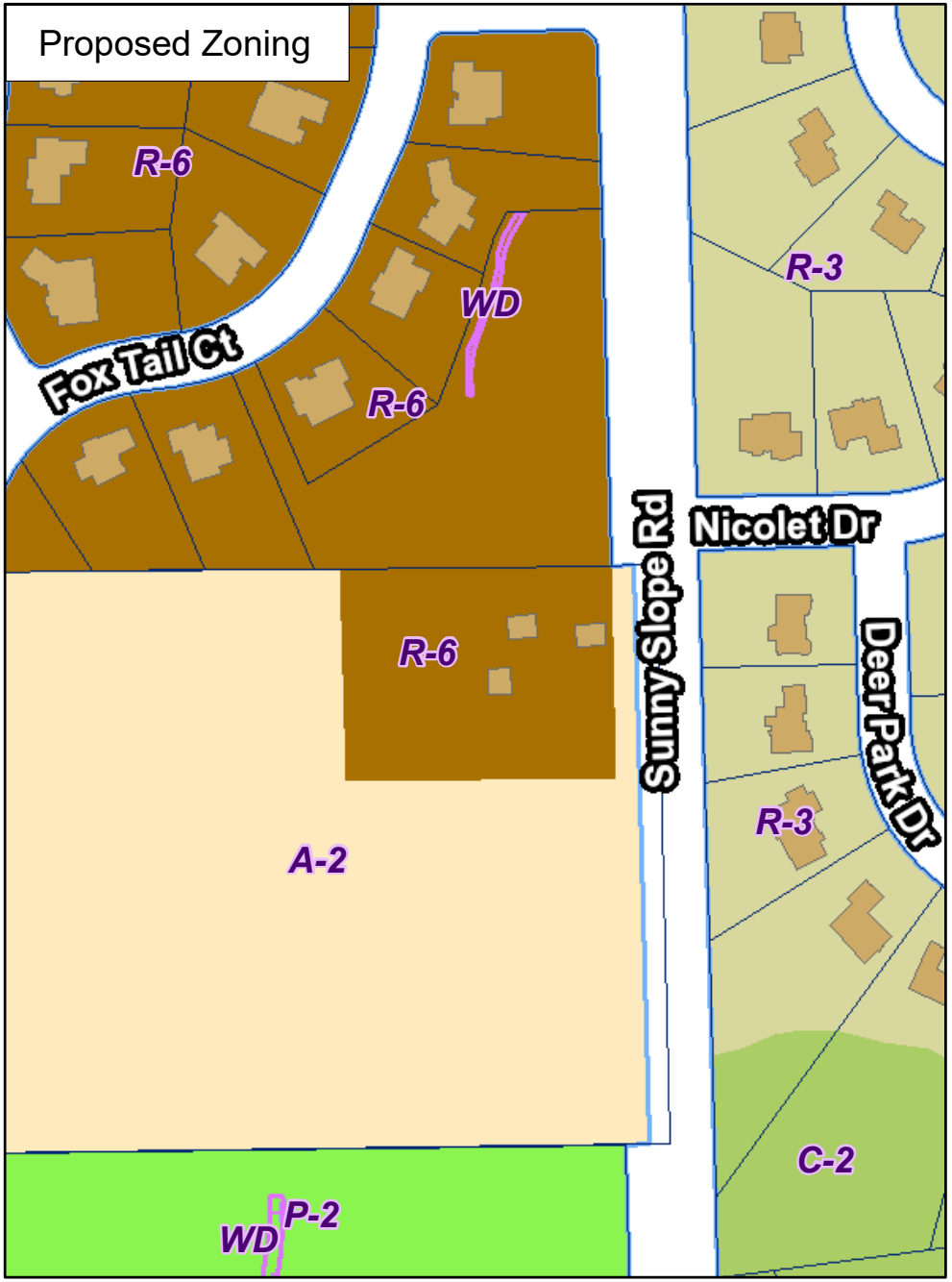
City of New Berlin
Department of Community Development
3805 S Casper Dr.
New Berlin WI 53151
(262) 797-2445
www.newberlin.org

N

0 125 250 Feet

The information and depictions herein have been produced using data available through photogrametric means by the City of New Berlin. The informations and depictions herein are for informational purposes and the City of New Berlin specifically disclaims accuracy in this reproduction and specifically admonishes and advises that any and all depiction, measurements, distances depicted herein and as to which specific or precise accuracy is required should be determined by procurement of certified maps, surveys, plats, Flood Insurance Studies, or other official means.





City of New Berlin
Department of Community Development
3805 S Casper Dr.
New Berlin WI 53151
(262) 797-2445
www.newberlin.org

RZ--2300230
KROKOWSKI TRUST 2023
5715 S. Sunny Slope Rd

Legend
- Parcels
- Road Right-of-Way

N

0 90 180 Feet

January 20, 2023

Nikki Jones
Deputy Director of Community Development
City of New Berlin Department of Community Development
3805 South Casper Drive
New Berlin, WI 53151

SUBJECT: Rezoning - Plan of Operation
RE: 20-Acre Parcel Tax ID 1289-994
Located at 5715 South Sunnyslope Road, New Berlin, WI 53151

Dear Nikki Jones:

I, Diane Krokowski, am the Trustee of the Theofila C. Krokowski Living Trust dated 08/23/2011.

As Trustee, I would like to have the two (2) acres rezoned as Residential (R-6). These two (2) acres would include a house, shed, garage, and greenhouse.

The 18 acres will remain Agricultural and Rural Holding (A-2) zoning and will continue to be farmed (cropped).

Enclosed are 7 sets of the following:

1. Rezoning - Agreement Application

2. Lot 1, R-6 area Legal Description. (RE: Rezoning)

3. Wisconsin Certified Survey Map

The Wisconsin Certified Survey Map and Legal Description R-6 were emailed to you.

Enclosed is the check for the Rezoning - Application Fee in the amount of $1,150.00. ($650.00 + $500.00).

Please forward this information to the City of New Berlin Planning Commission and Council.

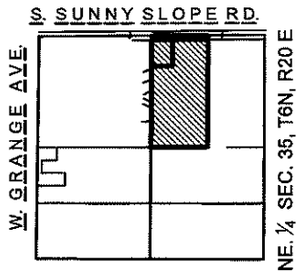
Sincerely,

Diane Krokowski Trustee

Diane Krokowski Trustee

Certified Survey Map_____

All that part of the The North 20 Acres of the Southeast 1/4 of the Northeast 1/4 of Section 35, Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin



BEARINGS ARE REFERENCED TO EAST LINE OF THE NORTHEAST 1/4 SECTION 35-6-20, BEARS S 01°28'34" E

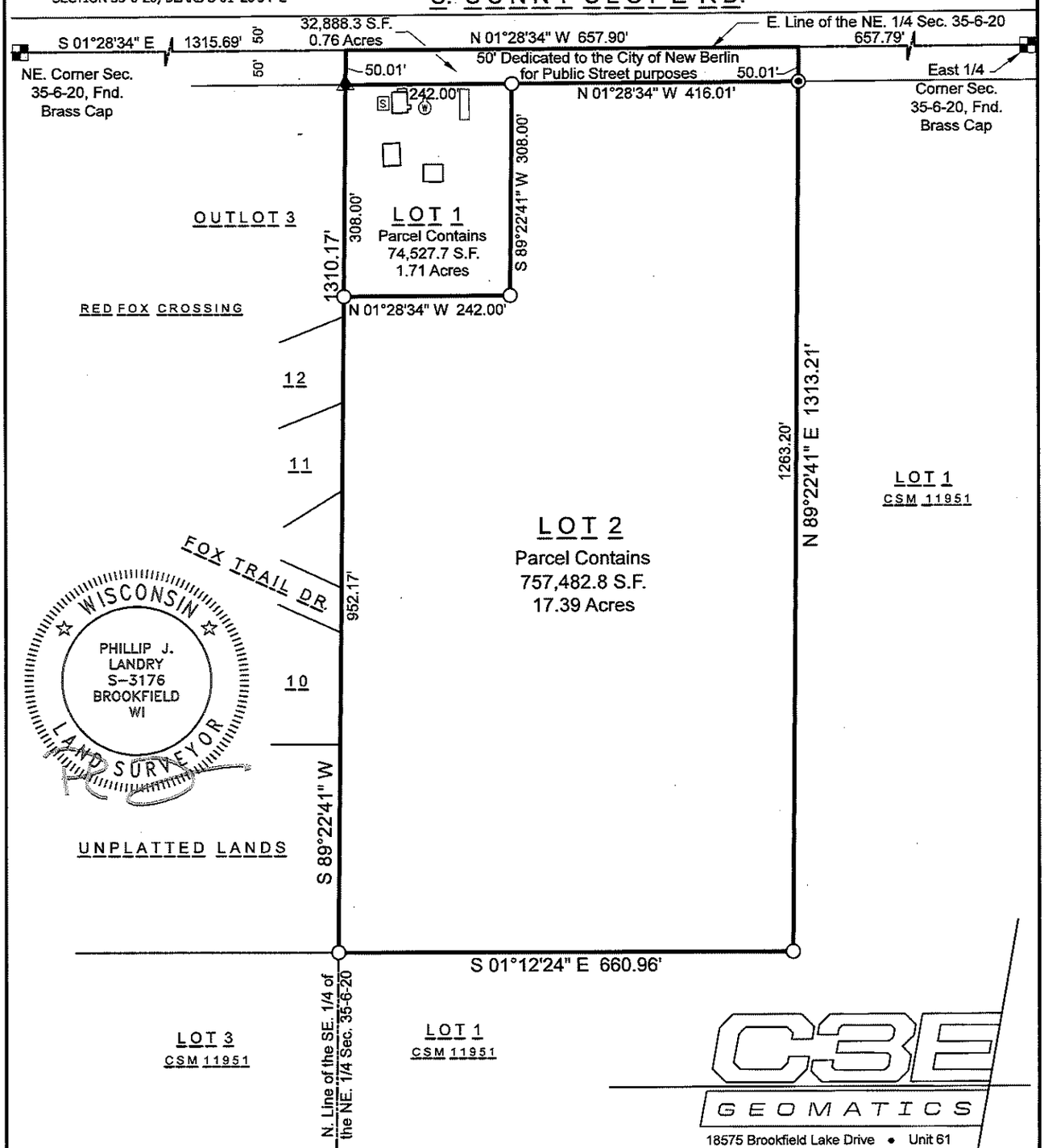
LEGEND

- WELL
- SEWER SEPTIC
- NAIL FOUND
- 3/4"X18" IRON ROD SET 1.50Lbs./LINEAL FOOT
- MONUMENT FOUND AS NOTED (Measured Outside Diam.)
- ( ) INDICATES RECORDED AS

DISTANCES ARE MEASURED TO THE NEAREST HUNDREDTH OF A FOOT

0' 200' 400'

OWNER
Theofila C. Krokowski Living Trust
Theofila C. Krokowski Living Trust - Trustee
3845 S. 98th Court
Milwaukee, Wi 53228



C3E GEOMATICS
18575 Brookfield Lake Drive • Unit 61
Brookfield, WI 53045 • (262) 312-1034
c3egeomatics.com

Revised 11-04-22

This Instrument was drafted by Phillip J. Landry, a Professional Land Surveyor, S-3176 on this 1st day of July, 2020 Sheet 1 of 5 Job# 20148

Certified Survey Map_____

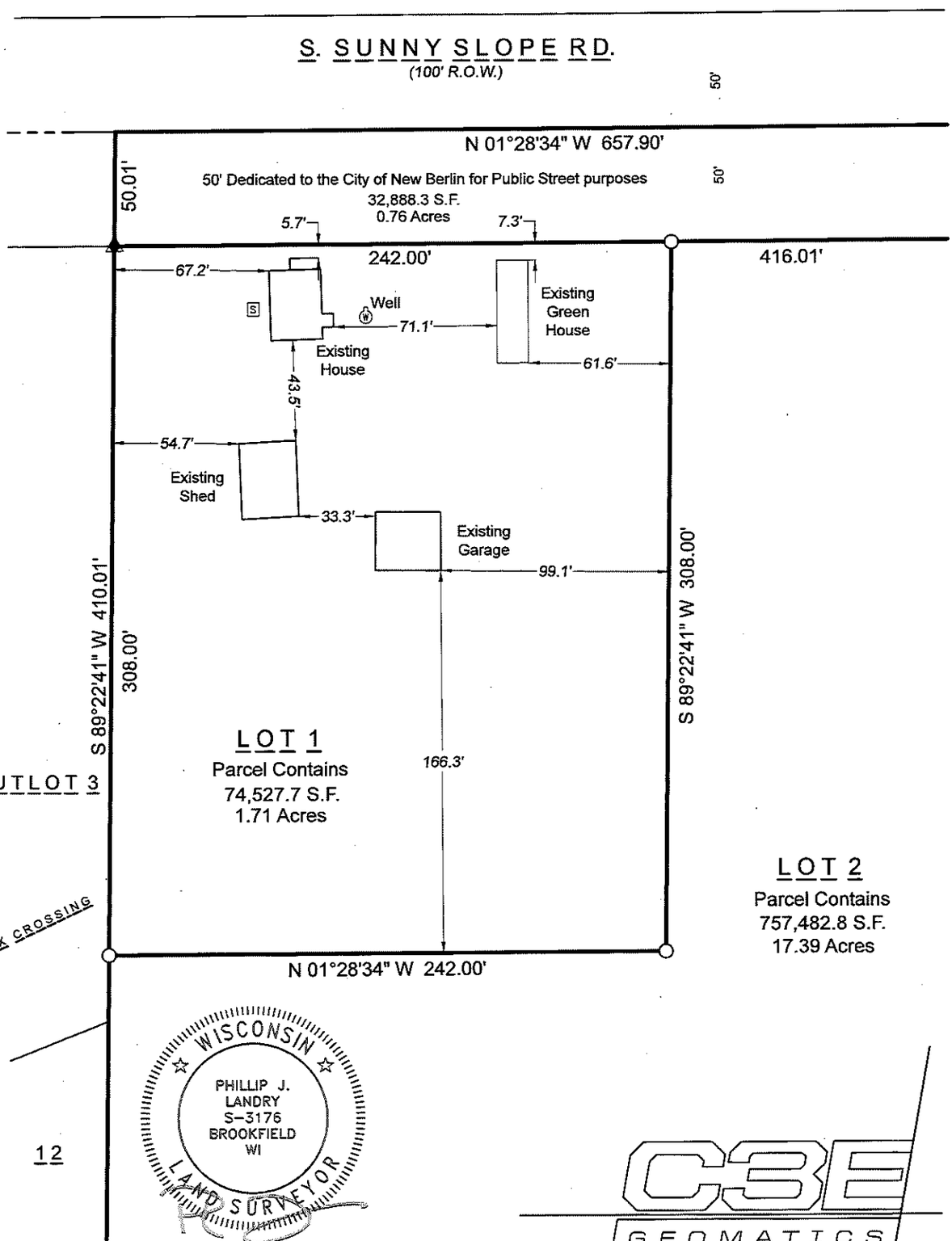
All that part of the The North 20 Acres of the Southeast 1/4 of the Northeast 1/4 of Section 35, Township 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin

LEGEND

- [S] SEWER SEPTIC
- ▲ NAIL FOUND
- ○ 3/4"X18" IRON ROD SET 1.50Lbs./LINEAL FOOT
- ◉ MONUMENT FOUND AS NOTED (Measured Outside Diam.)
- ( ) INDICATES RECORDED AS

DISTANCES ARE MEASURED TO THE NEAREST HUNDREDTH OF A FOOT

0' 60' 120'



WISCONSIN
PHILLIP J. LANDRY
S-3176
BROOKFIELD WI
LAND SURVEYOR

C3E GEOMATICS

18575 Brookfield Lake Drive • Unit 61
Brookfield, WI 53045 • (262) 312-1034
c3egeomatics.com

Revised 11-04-22

This Instrument was drafted by Phillip J. Landry, a Professional Land Surveyor, S-3176 on this 1st day of July, 2020 Sheet 2 of 5

Job# 20148

STAFF REPORT
EXECUTIVE SUMMARY

APPLICANT/PROJECT:	**Referral from the Code Committee (Sub – Committee of the Plan Commission) / Chapter 275, Zoning Code Updates**
LOCATION:	**Citywide**
REQUEST:	**Plan Commission review and discussion regarding updates to Zoning Code, Chapter 275.**
D.R.C. RECOMMENDATION:	**Plan Commission review and discussion regarding updates to Zoning Code, Chapter 275.**

Background:

1. **Staff has met with the Code Committee to review updates to the code.**
2. **The following changes are proposed to the Zoning Code:**
    a. **§275-13.1. Zoning districts. Correct Zoning District names for consistency throughout the code.**
    b. **§275-17. Department of Community Development. Include Emergency Management Services to list of powers and duties.**
    c. **§275-18. Inspection Services Division. Include fire review and inspections to list of powers and duties.**
    d. **§275-32. Agricultural Districts. Correct links to Zoning Code in Table 275-32-1.**
    e. **§275-33. Residential Districts. Correct links to Zoning Code in Table 275-33-1. Modify language for yard versus setback for consistency. Modify language for how minimum conservation area is calculated to match how it has been applied in the past.**
    f. **§275-34. Commercial Districts. Correct links to Zoning Code in Table 275-34-1. Modify language for yard versus setback for consistency.**
    g. **§275-35. Office and Industrial Districts. Correct links to Zoning Code in Table 275-35-1.**
    h. **§275-36. Institutional and recreational/park Districts. Correct links to Zoning Code Table 275-36-1.**
    i. **§275-37. Special Districts. Correct links to Zoning Code in Table 275-37-1.**
    j. **§275-39. Special overlay districts. Modify language for yard versus setback for consistency.**
    k. **§275-41. Use specific regulations. Remove captive wild animal farm from Table 275-41A. Add that keeping of exotic animals are prohibited in all zoning districts. Add definitions for transient lodging uses. Modify language for yard versus setback for consistency.**
    l. **§275-42. Accessory uses and structures. Define how square footage and height is measured for accessory structures. Modify language for yard versus setback for consistency. Reformat text for accessory uses requiring a building permit and those that do not require a building permit. Allow for windscreens on a seasonal basis.**
    m. **§275-44. Lot measurement and requirements. Relocate figures for lot dimensions and lot types.**

n. **§275-46. Yard/setback measurement and requirements. Modify language for yard versus setback for consistency. Create new figure for setbacks. Allow for staff to administratively approve reductions to the front setbacks for side on corner properties. Create new figure for yards.**

o. **§275-54. Natural Resource Protection. Tree replacement cost to be determined by DCD.**

p. **§275-55.2. Construction site erosion control. Define interim stabilization requirements.**

q. **§275-57. Off-street parking, loading and access. Correct links to Zoning Code. Outside parking of vehicles in the B-2 district shall be in accordance with an approved plan. Reference Developers Handbook for the number of driveways allowed.**

r. **§275-61. Signs. Define how to measure the width of the sign base. Add figure for determining the location of EMCs in relation to residential properties.**

s. **§275-63. Nonmetallic Mine Reclamation. Zoning Code §275-62 through §275-65.21 relocated to this section.**

t. **§275-65. Floodplain Zoning. Zoning Code §275-65.22 through §275-65.31 relocated to this section.**

u. **§275-70. Terms defined. Create definition for: balcony, exotic animals, transient residential lodging uses for remuneration. Modify definitions for: building, carport, personal services, setback, front setback, rear setback, side setback, monument sign, front yard, rear yard, side yard. Remove definition for: captive wild animals.**

3. **Additional changes that have been proposed to the Zoning Code since the January 27, 2023 Code Committee meeting (highlighted in yellow in the attachment *Draft Zoning Code Amendments*):**

   a. **§ 275-20. Common review and approval procedures. Add language regarding payment of taxes prior to obtaining other City approvals.**

   b. **§275-32. Agricultural Districts. Add car wash establishment to Table 275-32-1.**

   c. **§275-33. Residential Districts. Add car wash establishment to Table 275-33-1.**

   d. **§275-34. Commercial Districts. Add car wash establishment to Table 275-34-1.**

   e. **§275-35. Office and Industrial Districts. Add car wash establishment to Table 275-35-1.**

   f. **§275-41. Use specific regulations. Add regulations for car wash establishments.**

   g. **§ 275-42. Accessory uses and structures. Non-residential fences shall not exceed 98 inches in height.**

   h. **§ 275-42. Accessory uses and structures. Donation boxes shall be monitored and kept in good repair.**

   i. **§275-70. Terms defined. Modify definitions for: donation box, personal services.**

<u>Next Steps:</u>

1. **Public hearing held before Plan Commission.**
2. **Plan Commission recommendation forwarded to the Common Council for final action.**
3. **Common Council review for final action.**

Previous Action:

1/27/2023 **Code Committee made a recommendation to forward the amended Zoning Code to the Plan Commission.**

2/14/2023 **Common Council set the public hearing date for March 6, 2023.**

Attachments:
1/27/2023 Code Committee Minutes (forthcoming)
Draft Zoning Code Amendments

Chapter 275 ZONING

ARTICLE I
General Provisions

§ 275-1. Authority.
§ 275-2. Title.
§ 275-3. Applicability.
§ 275-4. Purpose and intent.
§ 275-5. Abrogation and greater restrictions.
§ 275-6. Minimum requirements; construal of provisions.
§ 275-7. Rules of construction and interpretation.
§ 275-8. Severability.
§ 275-9. Warning and disclaimer of liability.
§ 275-10. Repealer.
§ 275-11. Compliance required.
§ 275-12. Municipalities and state agencies regulated.
§ 275-13. Effective date; transitional provisions.
§ 275-13.1. Zoning districts.

ARTICLE II
Review and Decisionmaking Bodies

§ 275-14. Common Council. § 275-15. Plan Commission.
§ 275-16. Board of Appeals.
§ 275-17. Department of Community Development.
§ 275-18. Inspection Services Division.
§ 275-19. Community Development
Authority.

ARTICLE III
Review and Approval Procedures

§ 275-20. Common review and approval procedures.
§ 275-21. Development review procedure.
§ 275-21.1. Comprehensive Plan and/or future Land Use Map amendment procedures.
§ 275-21.2. Current Sewer Service Area amendment procedures.
§ 275-21.3. Urban Service Area amendment procedures.
§ 275-22. Changes and amendments.
§ 275-23. Planned unit development (PUD).
§ 275-24. Zoning permits (use, site plan and architectural review).
§ 275-25. Building permits.
§ 275-26. Occupancy permits.
§ 275-27. Conditional uses.
§ 275-28. Development agreements.
§ 275-29. Sign permits.
§ 275-30. Variances.
§ 275-30.1. Administrative adjustments.
§ 275-31. Appeals.

ARTICLE IV
Zoning Districts

§ 275-32. Agricultural districts.
§ 275-33. Residential districts.
§ 275-34. Commercial districts.
§ 275-35. Office and industrial districts.
§ 275-36. Institutional and recreational/ park districts.
§ 275-37. Special districts.
§ 275-38. (Reserved)
§ 275-39. Special overlay districts.

ARTICLE V
Use Regulations

§ 275-40. General provisions.
§ 275-41. Use-specific regulations.
§ 275-42. Accessory uses and structures.
§ 275-43. Temporary uses, structures and special events.

ARTICLE VI
Measurements

§ 275-44. Lot measurement and requirements.
§ 275-45. Height measurement and requirements.
§ 275-46. Yard/setback measurement and requirements.

ARTICLE VII
Nonconformities

§ 275-47. General provisions.
§ 275-48. Nonconforming uses.
§ 275-49. Nonconforming structures.
§ 275-50. Nonconforming lots.
§ 275-51. Nonconforming signs.

ARTICLE VIII
General Development Regulations

§ 275-52. General provisions.
§ 275-53. Site plan review principles and standards.
§ 275-54. Natural resource protection.
§ 275-54.1. Woodland, tree and vegetation protection (existing lands).
§ 275-55. Grading and drainage.
§ 275-55.1. Post-construction stormwater management.
§ 275-55.2. Construction site erosion control.
§ 275-55.3. Illicit charges and connections.
§ 275-56. Landscaping and buffering.

§ 275-57. Off-street parking, loading and access.
§ 275-58. Adequate public facilities.
§ 275-59. Architectural design standards.
§ 275-60. Performance standards.
§ 275-61. Signs.
§ 275-61.1. Newsracks.
§ 275-62. (Reserved)
§ 275-63. Nonmetallic Mine Reclamation.
§ 275-64. (Reserved)
§ 275-65. Floodplain Zoning.

~~**ARTICLE IX**~~
~~**Nonmetallic Mine Reclamation**~~

~~**§ 275-62. General provisions.**~~
~~**§ 275-63. Definitions.**~~
~~**§ 275-64. Standards.**~~
~~**§ 275-65. Nonmetallic mining reclamation permit application.**~~
~~**§ 275-65.1. Reclamation plan.**~~
~~**§ 275-65.2. Financial assurance.**~~
~~**§ 275-65.3. Public notice and right of hearing.**~~
~~**§ 275-65.4. Issuance of nonmetallic mining reclamation permit.**~~
~~**§ 275-65.5. Permit denial.**~~
~~**§ 275-65.6. Alternative requirements.**~~
~~**§ 275-65.7. Permit duration.**~~
~~**§ 275-65.8. Permit transfer.**~~
~~**§ 275-65.9. Previously permitted sites.**~~
~~**§ 275-65.10. Review.**~~
~~**§ 275-65.11. Permit modification.**~~
~~**§ 275-65.12. Permit suspension and revocation.**~~
~~**§ 275-65.13. Annual operator reporting.**~~
~~**§ 275-65.14. Plan review fees.**~~
~~**§ 275-65.15. Annual fees.**~~
~~**§ 275-65.16. Regulatory reporting and documentation.**~~
~~**§ 275-65.17. Completed reclamation: reporting, certification and effect.**~~
~~**§ 275-65.18. Permit termination.**~~
~~**§ 275-65.19. Right of entry and inspection.**~~
~~**§ 275-65.20. Orders and citations.**~~
~~**§ 275-65.21. Violations and penalties.**~~

~~**ARTICLE IXA**~~
~~**Floodplain Zoning**~~

~~**§ 275-65.22. Statutory authorization, findings of fact, statement of purpose, title and general provisions.**~~
~~**§ 275-65.23. General standards applicable to all floodplain districts.**~~
~~**§ 275-65.24. Floodway District (FW).**~~
~~**§ 275-65.25. Floodfringe District (FF).**~~
~~**§ 275-65.26. Other floodplain districts.**~~

~~§ 275-65.27. Nonconforming uses.~~
~~§ 275-65.28. Administration.~~
~~§ 275-65.29. Amendments.~~
~~§ 275-65.30. Enforcement and penalties.~~
~~§ 275-65.31. Definitions.~~

ARTICLE X
Enforcement and Penalties

§ 275-66. Responsibility for inspection and enforcement.
§ 275-67. Violations.
§ 275-68. Remedies and enforcement powers.
§ 275-69. Enforcement procedures.

ARTICLE XI
Definitions

§ 275-70. Terms defined.

§ 275-13.1A(1). Zoning districts.

A. Establishment.

(1) Base zoning districts. For the purpose of this chapter, the City of New Berlin is hereby divided into the following ~~29~~30 base zoning districts: [Amended 1-12-2016 by Ord. No. 2558; 10-13-2020 by Ord. No. 2642]

A-1	Agricultural District
A-2	Agricultural and Rural Holding District
R-1/R-2	Rural ~~Estate~~ Conservation Single-Family Residential
R-2E	Residential Estate Single-Family Residential District
R-3	Suburban Single-Family Residential District
R-4	Low-Density Single-Family Residential District
R-4.5	Medium-Density Single-Family Residential District
R-5	Medium-Density Single-Family Residential District
R-6	Section 35 Low-Density Single-Family Residential District
R-7	~~R-7~~ Quarry Park Low-Density Single-Family Residential District
Rd-1	Two-Family Residential District
Rm-1	Multiple-Family Residential District
B-1	Shopping Center District
B-2	General Retail Sales and Service District
B-3	General Bulk Sales District
B-5	Rural Commercial District
O-1	Office and Business Service District
O-2	Business Park Development District
O-3	Transitional Office District
M-1	Light Manufacturing District
M-2	General Industrial District
M-3	Section 34-35 Business Park Development District
I-1	Institutional District
P-1	Park and Recreation District
P-2	Section 35 Park Complex District
Q-1	Quarrying and Extractive District
L-1	Landfill District
C-1	Upland Resource Conservancy District
C-2	Shoreland Wetland Holding District
C-3	Permanent Open Space/Conservation Lands

§ 275-17. Department of Community Development.

A. General responsibilities. The Department of Community Development is responsible for formulating, implementing, directing, and administering all community development programs and overseeing the City's planning, engineering, inspection/zoning, housing, GIS/LIS, economic development, park planning & design, tourism, public building/facility planning, design and construction management, and water resource management functions in accordance with the state statutes and local rules and regulations. The Director of the Department of Community Development or his or her designee shall serve the following boards and commissions: the Common Council; Committee of the Whole; Plan Commission; Board of Public Works; Community Development Authority; Board of Appeals; Development Review Subcommittee; Architectural Review Subcommittee; Code Review Subcommittee; Sign Subcommittee; Safety Committee; Housing Trust Fund Board; Tourism Commission; Water Resource Management Utility Committee; and Utility Committee.

B. ~~The duties of the Department of Community Development shall include:~~Powers and duties.

(1) Subdivision and land development review. Review applications for subdivision and land division under Ch. 236, Wis. Stats.; this chapter; and Chapter 235, Subdivision of Land, of the Code of the City of New Berlin. Review, research, and investigate files, maps, renderings, documents, reports, surveys, plats, photographs, plans, models, building material samples, tests, site studies, impact statements/analyses, sites, site investigation, and make recommendation to the applicable board and/or commission to approve, approve with conditions, or deny with rationale.

(2) Use, site, and architecture. Review applications for the change of use, site, and architecture under this chapter. Review, research, and investigate files, maps, renderings, documents, reports, surveys, plats, photographs, plans, models, building material samples, tests, site studies, impact statements/analyses, sites, site investigation, and make recommendation to the applicable board and/or commission to approve, approve with conditions, or deny with rationale.

(3) Rezoning, planned unit developments, conditional uses. Review applications for rezoning, planned unit developments, and conditional use for compliance with this chapter and the Comprehensive Plan. Per § 66.1001(2m)(b), Wis. Stats., a conditional use does not need to be consistent with the City's Comprehensive Plan. Review, research, and investigate files, maps, renderings, documents, reports, surveys, plats, photographs, plans, models, building material samples, tests, site studies, impact statements/analyses, sites, site investigation, and make recommendation to the applicable board and/or commission to approve, approve with conditions, or deny with rationale.

(4) Code amendments. The Department shall recommend revisions and updates to this chapter, Chapter 235 (Subdivision of Land) and other relevant parts of the Municipal Code of the City of New Berlin, to the Plan Commission, applicable boards and commissions and the Common Council.

(5) Comprehensive planning. The Department shall update the City's entire Comprehensive Plan at least once every 10 years. The Comprehensive Plan shall contain the following elements: Issues and Opportunities; Housing; Transportation; Utilities and Community Facilities; Agricultural, Natural and Cultural Resources; Economic Development; Intergovernmental Cooperation; Land Use; and Implementation. The City's Park and Open Space Plan shall be updated at least once every five years.

(6) Map amendments.

(a) Create and administer a geographic/land information system (G/LIS) for maintaining and updating housing, transportation, utilities, community facilities, agricultural, natural resources, cultural resources, economic development, governmental districts, zoning and land use maps.

(b) Recommend to the Plan Commission changes that are necessary to update Zoning Maps to reflect the most-current and accurate information.

(c) Update Zoning Map changes and amendments as approved by Council.

(7) Zoning permit/use approval/building permits. Review applications and permits for zoning permit/use approval and take final action to approve or deny such applications, or refer them to the Plan Commission. (See § 275-24.)

(8) Administrative modifications. Review applications for administrative modifications and take final action to approve or deny such applications.

(9) Other administrative permits. Set procedures, review applications and issue administrative permits through the permit application center (over-the-counter) and take final action to approve, approve with conditions, or deny such applications, and issue permits for the following types of permits:

(a) Reoccupancy permits;

(b) Home occupation permits;

(c) Temporary use permits;

(d) Sign permits;

(e) Minor architectural modifications (as determined by the Director);

(f) Building and parking area additions requiring zoning permits that are less than 20,000 square feet;

(g) Properties with legal nonconforming setbacks require only the issuance of a building permit as long as the encroachment is no greater than the current setbacks, in which case the item may be considered by the Board of Appeals;

(h) Decks, patios, and fences for approved projects;

(i) Fences for nonresidential properties;

(j) Minor modifications to landscape plans. Minor modifications might include a change in a plant species, change in plant location, etc.;

(k) Accessory buildings located within non-single-family residential zoning districts with a maximum size of 2,500 square feet. Accessory buildings in non-single-family residential zoning districts that exceed 2,500 square feet shall require Plan Commission review and approval.

(10) Other powers and duties. In addition to the specific powers and duties enumerated above, the Director or his designee shall have other powers and duties necessary to effectively administer and enforce this chapter. These additional powers and duties shall include, but shall not be limited to, the following:

(a) Maintain records of all zoning and land division, use, conditional use, and sign permits issued, investigations and inspections made, work approved and other official actions taken.

(b) Establish that all necessary permits that are required for floodland uses and wetland uses by state and federal law have been secured.

(c) Inspect all structures, lands, and waters as often as necessary to assure compliance with this chapter.

(d) Investigate all substantiated complaints made relating to the use of structures, lands, and waters; give notice of all violations of this chapter to the owner, resident, agent, or occupant of the premises; and report uncorrected violations to the City Attorney in a manner specified by that office.

(e) Assist the City Attorney in the prosecution of Zoning Ordinance violations.

(f) Be permitted access to premises and structures during reasonable hours to make those inspections as deemed necessary by him to ensure compliance with this chapter. If, however, the Director or his designee is refused entry after presentation of his identification, he may procure a special inspection warrant in accordance with § 66.0119, Wis. Stats.

(g) Request assistance and cooperation from the Fire Department, City Police Department, City Attorney, and any other City department or outside agency as deemed necessary by the Director or by county, regional or state agencies.

(h) Refer complaints in other areas to the proper department, county agency, or state division responsible for enforcement.

(i) Make available to the public, to the fullest extent possible, all reports and documents concerning the City's Comprehensive Plan, development ordinances and zoning ordinances. In addition, information in the form of reports, bulletins, maps, and other data shall be available. The Department may set fees and update them from time to time as necessary to recover the cost of providing information to the public.

(j) Assist the public in filling out necessary applications and forms.

(k) Establish that all the necessary requirements, plans, fees, and information for a complete application are met and received prior to acceptance and processing of the application or permit.

(l) Enforce policies and procedures as established by various City boards and commissions.

(m) Issue cease-and-desist orders through the City Attorney's office where necessary to protect the health, safety, and welfare of the community.

(n) Where useful, the Department of Community Development or its agent may set marks on bridges or buildings or other markers which show the depth of the 100-year recurrence interval flood or may set marks delineating the boundaries of wetlands.

(o) Coordinate all siting, planning, design, engineering, construction management and implementation for projects related to: roadway maintenance, rehabilitation and reconstruction; public facilities; parks and open spaces; storm water and water resource management; public streetscapes; and CIP budgets.

(p) Conduct bi-annual PASER evaluations for all City-owned streets and parking lots and prepare coordinated PASER report.

(q) Responsible for developing, coordinating and implementing all city public infrastructure standards via the Developer's Handbook, including, but not limited to, road, sanitary, water, storm sewer, public buildings/facilities, building systems and grounds.

(11) Neighborhood plans or studies. The Department shall prepare neighborhood plans and/or studies in accordance with the recommendations in the City's Comprehensive Plan and/or at the direction of a City board, commission, or Director.

(12) Accommodations to address the needs of persons with disabilities. If a handicapped or disabled person is in need of relief from the terms of the Zoning Code in order to reasonably accommodate his/her handicap or disability, he/she may make application to the Director of Community Development for the issuance of an administrative zoning permit to meet that accommodation. The Director of Community Development may issue said administrative zoning permit if he or she determines that the following conditions have been met:

(a) The requested accommodation (i.e., the requested waiver of zoning restrictions) or another less-extensive accommodation is:

[1] Necessary to afford handicapped or disabled persons equal housing opportunity or equal access to public accommodations; and

[2] The minimum accommodation that will give the handicapped or disabled person adequate relief.

(b) The accommodation will not unreasonably undermine the basic purposes that the Zoning Ordinance seeks to achieve and will not impose a direct threat to public safety.

(c) The zoning permit shall be recorded with the Waukesha County Register of Deeds office and shall remain in effect for so long as the person seeking the accommodation is in need of the accommodation and continues to reside at or occupy the premises for which the accommodation is sought. Persons having received such a zoning permit shall be required, within six months of the end of the need for the accommodation or the cessation of their occupancy of the premises, to notify the Director of Community Development of that fact, at which point a release and termination of the zoning permit shall be recorded with the Register of Deeds.

(13) Public parks, facilities and grounds. Maintain an inventory and analyze the needs of the community by updating the City's Park and Open Space Plan, at a minimum every five years, and incorporate into the City's overall Comprehensive Plan; guide in the acquisition, dedication, preservation, and development of lands for public parks, facilities, and grounds in conjunction with the Plan Commission; coordinate the planning, engineering, design, development and coordination of contracts, with consultation from the Plan Commission, CDA and/or other appropriate boards and commissions, for all existing and proposed public parks, facilities and grounds in accordance with Common Council approvals as part of a CIP budget and/or plan; provide linkages between parks, open spaces, and public destinations.

(14) Emergency Management. Provide Emergency Management Services, as outlined in Chapter 24 of the Municipal Code.

§ 275-18. Inspection Services Division.

A. Designation. The Director is hereby designated as the enforcement officer for the building and occupancy permit provisions of this chapter. The Director may designate or delegate as necessary to carry out these duties.

B. Powers and duties.

(1) Building and occupancy permits. Issue and make the necessary on-site inspections of all building and occupancy permits as required by this chapter. (See §§ 275-25 and 275-26.)

(2) Director. Make the necessary on-site inspections for enforcement of all board and commission orders, zoning permit conditions, and requirements.

(3) Permit application center (PAC). Direct and administer the PAC to ensure compliance with application submittal requirements, fee collection, and routing procedures as outlined in this chapter.

(4) Other powers and duties. In addition to the specific powers and duties enumerated above, the Director shall have other powers necessary to effectively administer and enforce his or her duties under this chapter. These additional powers and duties shall include, but shall not be limited to, the following:

(a) Maintain records of all permits issued, inspections made, work approved, and other official actions.

(b) Record the lowest floor elevations of all structures erected, moved, altered, or improved, including those in the floodland districts. Review recertification of the line and grade of footings prior to allowing any further construction.

(c) Establish that all necessary permits that are required are secured and that all the necessary requirements, plans, fees, and information for a complete application are met prior to acceptance and processing of the permit.

(d) Inspect all structures, lands, and waters as often as necessary to assure compliance with this chapter.

(e) Investigate all substantiated complaints made relating to the location, construction or occupancy of structures and give notice of all violations of this chapter to the owner, resident, agent, or occupant of the premises, and report uncorrected violations to the City Attorney in a manner specified by that office.

(f) Assist the City Attorney in the prosecution of Zoning Ordinance and Building Code violations.

(g) Be permitted access to premises and structures during reasonable hours to make those inspections as deemed necessary by him to ensure compliance with this chapter. If, however, he is refused entry after presentation of his identification, he may procure a special inspection warrant in accordance with § 66.0119, Wis. Stats.

(h) Prohibit the use, occupancy, or erection of any structure, land, or water until such use or erection has been inspected and approved. Issue stop-work orders when and where necessary.

(i) Request assistance and cooperation from all appropriate agencies.

(j) Make available to the public, to the fullest extent possible, all reports and documents concerning the City's Zoning Ordinance and Building Codes. In addition, information in the form of reports, bulletins, maps, and other data shall be available. The City may set fees and update them from time to time as necessary to recover the cost of providing information to the public.

(k) Condemn all uninhabitable or structurally unsound buildings and structures.

(l) Enforce all conditions for the issuance of a permit as set forth by the various City boards and commissions and other City departments.

(m) Assist the public in filling out necessary applications and forms.

(n) Complete fire reviews and inspections for re-occupancy applications.

§ 275-20A. Common review and approval procedures.

The general provisions of this section apply to all development applications and procedures under this chapter unless otherwise stated.

A. Authority to file applications.

(1) Applications under this chapter may be initiated by:

(a) All the owners of the property that is the subject of the application;

(b) The owners' authorized agents;

(c) City staff on behalf of the City; or

(d) Any review or decisionmaking body.

(2) When a review or decisionmaking body initiates action under this chapter, it does so without prejudice toward the outcome.

(3) Prior to issuance of any permit, the applicant shall have fully paid all utility bills, property taxes, assessments and fees of the City, and the premises shall fully comply with all applicable codes, ordinances, rules and regulations regarding building, electrical and plumbing components thereof. In addition, the applicant shall obtain all other permits required to occupy the licensed premises or to conduct the operations permitted under the license from any and all City departments or other governmental entities with jurisdiction.

§ 275-32. Agricultural Districts. Table 275-32-1

Table 275-32-1			
Uses	Zoning Districts		Additional Regulations Refer to
	A-1	A-2	
Agricultural Uses			
Agribusiness	P	P	§ **275-41** and § **275-70**
Artisan farming	P	P	§ **275-70**
Farm buildings, general	P	P	§ **275-41A(1)**
Keeping and raising of animals	P	P	§ **275-41A(2)**
Paddocks	P	P	§ **275-41A(2)**
Raising of crops	P	P	**§ 275-37C(2)(e)**
Residential Uses	P	P	
Single-family detached dwellings	P	P	
~~Single-family detached dwellings with attached garage~~	~~P~~	~~P~~	
Worker housing	C	*	
Commercial Uses			
Bed-and-breakfast establishments	P	P	§ **275-41C(4)**
Car wash establishment	*	*	**§ 275-41C(20)**
Commercial Sports Complex	*	*	**§ 275-36D(5)**
Mobile tower facilities	P/A	P/A	§ **275-41C(16)**
Small restaurant or cafe	C	C	
Veterinary clinics	C	C	
Wineries and breweries	C	C	
Institutional/Public/Semipublic Uses			
Churches (neighborhood and community)	C	C	§ **275-70**
Essential services	P	P	
Family day-care homes	P	P	
Foster family homes	P	P	
Recreational trails	P	P	
Utilities	C	C	
Miscellaneous Uses			
Hunting and fishing clubs	C	*	
Natural resource conservation and preservation uses	P	P	
Off-street parking and loading areas	A	A	§ **275-57**
Silviculture	P	P	§ **275-54** and § **275-54.1**
Any other use the Plan Commission finds will be similar in nature, operation and function to the uses allowed within the district			§ **275-32C(~~18~~)**

LEGEND	
P	Principal Use
C	Conditional Use
A	Accessory Use
T	Temporary Use
*	Prohibited Use

§ 275-33. Residential Districts. Table 275-33-1

Table 275-33-1											
Uses	Zoning Districts										Additional Regulations Refer to
	R-1/ R-2	R-2E	R-3	R-4	R-4.5	R-5	R-6	R-7	Rd-1	Rm-1	
Agricultural Uses											
Farm buildings, general	A	*	*	*	*	*	*	A	*	*	§ **275-41A(1)**
Keeping and raising of animals	A	A	*	*	*	*	*	*	*	*	§ **275-41A(2)**
Keeping and raising of chickens for personal use	A	A	A	A	A	A	A	A	*	*	§ **275-41A(2)(g)**
Raising of crops/retail sales of locally grown crops	A	A	A	A	A	A	A	A	A	A	~~§ **275-41A**~~
Residential Uses											
Boarding or rooming houses	*	*	C	C	*	*	*	*	*	*	
Conservation subdivisions	P	P						P			§ **275-41B(3)** through **(5)**
Conventional subdivisions	C	C	P	P	P	P	P	P	P	P	§ **275-41B(3)** through **(7)**
Elderly housing	*	*	*	*	*	*	*	*	*	C	§ **275-41B(1)**
Multifamily dwellings	*	*	*	*	*	*	*	*	*	P	
Single-family detached dwellings	P	P	P	P	P	P	P	P	P	C	§ **275-41B(2)**
2-family dwellings with attached garage	*	*	*	*	*	*	*	*	P	P	
Commercial Uses											
Bed-and-breakfast establishments	C	*	*	*	*	*	*	*	*	*	§ **275-41C(4)**
Car wash establishment	*	*	*	*	*	*	*	*	*	*	§ **275-41C(20)**
Commercial Sports Complex	*	*	*	*	*	*	*	*	*	*	§ **275-36D(5)**
Mobile tower facilities	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	§ **275-41C(16)**
Institutional/Public/Semipublic Uses											
Assisted living facilities	*	*	*	*	*	*	*	*	*	C	§ **275-41B(1)**
Churches (neighborhood)	C	C	C	C	C	C	C	C	C	C	§ **275-70**
Churches (community)	*	*	*	*	*	*	*	*	*	*	§ **275-70**
Community living arrangements	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	§ **275-41G(1)**
Educational facilities	C	C	C	C	C	C	C	C	C	C	§ **275-41G(2)**
Essential services	P	P	P	P	P	P	P	P	P	P	
Family day-care homes	P	P	P	P	P	P	P	P	P		
Foster family homes	P	P	P	P	P	P	P	P	P	P	
Recreational trails	P	P	P	P	P	P	P	P	P	P	
Utilities	C	C	C	C	C	C	C	C	C	C	
Miscellaneous Uses											
Amenities planned on outlots and/or easements as part of a subdivision plat, including pocket parks and/or trails	A	A	A	A	A	A	A	A			

Table 275-33-1											
Uses	Zoning Districts										Additional Regulations Refer to
	R-1/ R-2	R-2E	R-3	R-4	R-4.5	R-5	R-6	R-7	Rd-1	Rm-1	
Natural resource conservation and preservation uses	P	P	P	P	P	P	P	P	P	P	
Off-street parking and loading areas	A	A	A	A	A	A	A	A	A	A	§ **275-57**
Silviculture	P	P	P	P	P	P	P	P	P	P	§ **275-54** and § **275-54.1**
Temporary uses	T	T	T	T	T	T	T	T	T	T	§ **275-43**
Any other use the Plan Commission finds will be similar in nature, operation and function to the uses allowed within the district											§ **275-33C(1)**

LEGEND	
P	Principal Use
C	Conditional Use
A	Accessory Use
T	Temporary Use
*	Prohibited Use

§275-33D(1) - §275-33D(20) Residential Districts

(1) In the R-4 District, the rear setback is 50 feet. However, where at least one of the following conditions is met, the minimum setback is 25 feet:
  (a) The lot is vacant and is part of a platted residential subdivision that was recorded before February 27, 2001.
  (b) The building permit for the principal structure located on the lot was issued before February 27, 2001.

(2) In the R-5 District, the minimum lot area and lot width shall meet the minimum lot area and width requirements of the R-4.5 District when the lot is created after January 1, 2004.

(3) Buildings housing animals shall not be built or located closer than 50 feet to any abutting residential lot with a lot area of two acres or less.

(4) In the R-5 District, the front and rear setbacks differ based on the drainage type at the roadway.
  (a) Where the lot fronts a street with a curb and gutter, the minimum front ~~yard~~ setback shall be 30 feet, and the minimum rear ~~yard~~ setback shall be 35 feet.
  (b) Where the lot fronts a street with an open drainage ditch, the minimum front ~~yard~~ setback shall be 40 feet, and the minimum rear ~~yard~~ setback shall be 25 feet.

(5) One additional foot of required front, side and rear yard shall be provided for every foot a farm building exceeds 35 feet in height, with a maximum height of 60 feet.

(6) No building within a multifamily residential project shall be located any closer than 30 feet to another building.

(7) (Reserved)

(8) Zero-lot-line residential developments may be allowed as a conditional use in the Rd-1 and Rm-1 Districts, subject to the regulations found in § 275-27 and § 275-44E.

(9) Wetland setback.
  (a) All impervious surfaces shall be set back a minimum of 30 feet. However, where at least one of the following conditions is met, the minimum setback is 10 feet:
    [1] The lot is vacant and is part of a platted residential subdivision that was recorded before October 9, 2001.
    [2] The building permit for the principal structure located on the lot was issued before October 9, 2001.
  (b) Grading may be allowed within the wetland setback upon approval by the Director. The applicant shall demonstrate appropriate erosion control practices as approved by the City and/or the DNR.
  (c) Landscaping may be allowed within the wetland setback upon approval by the Director. The applicant shall demonstrate appropriate erosion control practices as approved by the City and/or the DNR.

(10) Lot coverage is set forth in Table 275-33-6.

Table 275-33-6			
Lot Coverage (percent)			
District	**Maximum Coverage by Buildings**	**Maximum Coverage by Impervious Surfaces**	**Minimum Coverage by Open Space and Landscaping**
Rm-1	45%	60%	40%

(11) Applicants for conventional subdivisions in the R-1/R-2 and R-2E Districts shall be required to clearly demonstrate, at a public hearing before the Plan Commission, that a conventional layout

would better implement the policies, goals and objectives of the Comprehensive Plan, as compared with a conservation design alternative, which shall be allowed as a by-right permitted use. Notice of the public hearing shall be posted pursuant to § 275-20D(4), and notice of such hearing shall be mailed to all owners of land not less than 600 feet from the boundary of the proposed conventional subdivision, and notice of the public hearing shall also be published as a Class II legal notice under Chapter 985 of the Wisconsin Statutes.

(12) For conservation subdivisions in the R-1/R-2 District, the minimum lot size is 20,000 square feet if the POWTS is located off lot, or 32,670 square feet if the POWTS is on lot. In addition, there is a minimum amount of required conservation area in the R-1/R-2 District as follows:

(a) The subdivision must include at least 75% of the ~~adjusted tract~~ total acreage as conservation area. Conservation area shall not be used for residential lots, except as provided below.

(b) Large "conservancy lots" of at least 10 acres may, in the aggregate, occupy up to 80% of the conservation area, with the remainder of the conservation area restricted from development by way of conveyance to a homeowners' association, land trust, or to the City by way of a conservation easement. However, the conservation area within each conservancy lot remains subject to the standards for conservation area in § 275-41 herein.

(13) For conservation subdivisions in the R-1/R-2 District, the minimum lot width at the base setback line is 110 feet. The minimum street frontage is 60 feet. For side car entry garages, the minimum lot width shall be 130 feet.

(14) For conservation subdivisions in the R-2E District, the minimum lot size is 20,000 square feet within the subdivision. In addition, there is a minimum amount of required conservation area in the R-2E District:

(a) The subdivision must include at least 65% of the ~~adjusted tract~~ total acreage as conservation area. Conservation area shall not be used for residential lots, except as provided below.

(b) Large "conservancy lots" of at least 10 acres may, in the aggregate, occupy up to 80% of the conservation area, with the remainder of the conservation area restricted from development by way of conservancy to a homeowners' association, land trust, or to the City by way of a conservation easement. However, the conservation area within each conservancy lot remains subject to the standards for conservation areas in § 275-41 herein.

(15) For conservation subdivisions in the R-2E District, the minimum lot width at the base setback line is 110 feet. The minimum street frontage is 60 feet. For side car entry garages, the minimum lot width shall be 130 feet.

(16) Modification of standards. The Plan Commission or Community Development Authority may modify the open space requirement, but only if supplemental design elements or improvements are incorporated into the project which compensate for the modifications of the particular standard. Such elements may include, but are not limited to, additional landscaping, low-impact/sustainable design, alternative stormwater best management practices/green infrastructure (which may include, but are not limited to, bioretention, infiltration, pervious surfaces, green roofs, rain gardens, underground storage, and/or rain harvesting/reuse).

(17) In the R-6 and R-7 District, the Plan Commission and Common Council may approve smaller lot sizes, including reduced lot width and depth, where appropriate, in order to protect environmental features such as waterways, woodlands and tree lines, provide for additional tree protection and/or avoid steep topography; any allowed lots smaller than 25,000 square feet shall adhere to the City's adopted zoning and subdivision codes. Additional landscaping/screening requirements may apply. See § 275-41B(6).

(18) In the R-6 and R-7 Districts, the Plan Commission and Common Council may approve sixty-foot right-of-way widths where determined acceptable by DCD.

(19) In the R-7 District, the development shall reserve areas sufficient in size and shape to accommodate public signs erected by, or on the order of, or by the permission of, a government entity per § 275-61A(3). The location of this sign may be located in an area along and visible from the I-43 Corridor.

(20) In the R-7 District, a development agreement shall be required along with appropriate financial sureties, to be evaluated by the City, no more than annually and no less than every five years, for adequacy, to ensure for the proper maintenance and permitting of the onsite waste treatment facility in perpetuity.

§275-33E(1)(d) Residential Districts

d) An attached or detached garage is required in the residential districts. The garage shall have a minimum floor area of 400 square feet. A detached garage shall count toward maximum square footage as allowed under § 275-42~~A(1)~~B.

§ 275-34. Commercial Districts. Table 275-34-1

Table 275-34-1					
Uses	Zoning Districts				Additional Regulations Refer to
	B-1	B-2	B-3	B-5	
Commercial Uses					
Amusement centers or arcades	P	*	*	*	
Automotive body repair	*	*	P	*	
Automotive fuel sales	C	C	P	C	§ **275-41C(2)**
Automotive rental	*	*	P	*	
Automotive sales	*	*	P	*	
Automotive service	P	P	P	*	§ **275-41C(3)**
Banquet halls	P	P	P	*	
Bars and taverns	P	P	P	P	
Breweries	P	P	C	*	§ **275-41C(12)(d)**
Brewpubs	P	P	C	*	§ **275-41C(12)(c)**
Car wash establishment	P	P	P	*	§ **275-41C(20)**
Commercial Sports Complex	P	*	*	*	§ **275-36D(5)**
Contracting and construction sales services	C	C	P	P	
Contractor bulk sales	*	*	P	P	
Convenient cash businesses	P	*	*	*	§ **275-41C(19)**
Cosmetic tattoo establishments/permanent cosmetics	P	P	P	P	§ **275-41C(17)**
Department stores	P	C	*	*	§ **275-41C(5)**
Farm equipment sales and service	*	*	P	P	
Funeral services	P	P	*	*	§ **275-41C(7)**
Greenhouses	P	P	P	P	
Health and fitness studios	P	P	C	*	
Hotels and motels	C	*	*	*	§ **275-41C(8)**
Mobile tower facilities	A/P/C	A/P/C	A/P/C	A/P/C	§ **275-41C(16)**
Outdoor displays and sales	A	A	A	A	§ **275-41C(9)**
Outdoor storage	*	*	A	A	§ **275-41C(10)**
Personal services	P	P	P	P	§ **275-41C(11)**
Pet day-care/boarding facilities	C	C	P	P	
Public Signs	P	P	P	P	§ **275-61A(3)**
Restaurants	P	P	P	P	§ **275-41C(12)**
Retail commercial uses	P	P	P	P	
Self-storage facilities	*	*	C	C	§ **275-41C(14)**
Service commercial uses	P	P	P	P	§ **275-41C(15)**
Shopping centers	P	C	C	C	
Theaters	P	P	*	*	
Veterinary clinics	P	P	P	P	~~§ **275-41C(17)**~~

Table 275-34-1					
Uses	Zoning Districts				Additional Regulations Refer to
	B-1	B-2	B-3	B-5	
Wholesale commercial uses	*	*	P	P	
Office Uses					
Business offices	P	P	P	P	
Contracting and construction offices (only)	P	P	P	P	
Financial institutions	P	P	P	P	§ **275-41D(1)**
Medical and dental offices	P	P	C	C	
Manufacturing/Industrial Uses					
Aboveground/underground storage tanks	P	P	P	P	§ **275-41I**
Freight services	*	*	*	*	
Industrial sales	*	*	C	*	
Warehouses	*	*	C	*	
Institutional/Public/Semipublic Uses					
Bus stations	C	*	*	*	
Churches (neighborhood)	P	P	P	P	§ **275-70**
Churches (community)	C	C	C	C	§ **275-70**
Day-care centers	P	P	P	P	
Essential services	A	A	A	A	
Indoor recreational uses	C	C	*	*	
Recreational trails	P	P	P	P	
Truck rental services	*	*	P	*	
Utilities	P	P	P	P	
Miscellaneous Uses					
Drive-through facilities	A	A	A	A	§ **275-41H(1)**
Natural resource conservation and preservation uses	P	P	P	P	
Off-street parking and loading areas	A	A	A	A	§ **275-57**
Park-and-ride lots	P	P	P	P	
Residential quarters	*	A	A	A	§ **275-42G(1)(a)**
Silviculture	P	P	P	P	§ **275-54** and § **275-54.1**
Any other use the Plan Commission finds will be similar in nature, operation and function to the uses allowed within the district					§ **275-34C(1)**

LEGEND	
P	Principal Use
C	Conditional Use
A	Accessory Use
T	Temporary Use
*	Prohibited Use

§275-34D(1) - §275-34D(2). Commercial Districts.

(1) The Plan Commission may waive side and rear ~~yard~~ setback requirements if adjacent developments are designed as a unified project.

(2) The side ~~yard~~ setback in the B-2 and B-3 Districts applies to structures on lots of 100 feet or more in width. The side ~~yard~~ setback can be reduced to 10 feet for structures on existing lots with a width less than 100 feet ~~and for legal buildings with a ten-foot side yard setback~~.

§ 275-35. Office and Industrial Districts. Table 275-35-1

Table 275-35-1							
Uses	Zoning Districts						Additional Regulations Refer to
	O-1	O-2	O-3	M-1	M-2	M-3	
Commercial Uses							
Adult-oriented establishments	*	*	*	C	C	*	§ **275-41C(1)**
Automotive body repair				P	P	*	
Automotive fuel sales				P	P	P	**§ 275-41C(2)**
Automotive service	C	C	C	P	P	P	**§ 275-41C(3)**
Banquet halls	C	C	C	P	P	P	
Bars and taverns	C	C	C	P	P	P	
Breweries	*	*	*	P	P	P	§ **275-41C(12)(d)**
Brewpubs	C	C	*	P	P	P	§ **275-41C(12)(c)**
~~B-2 commercial uses~~	~~C~~	~~C~~	~~C~~	~~P~~	~~P~~	~~P~~	
Car wash establishment	P	P	*	P	P	*	**§ 275-41C(20) & § 275-41H(1)**
Commercial Sports Complex	*	*	*	P	P	P	§ **275-36D(5)**
Cosmetic tattoo establishments/permanent cosmetics	C	C	C	P	P	P	**§ 275-41C(17)**
Funeral services	C	C	C	P	P	P	**§ 275-41C(7)**
Greenhouses	C	C	C	P	P	P	
Health and fitness studios	C	C	C	P	P	P	
Hotels and motels	P	P	*	P	P	P	§ **275-41C(8)**
Mobile tower facilities	P/C	P/C	P/C	P/C	P/C	P/C	§ **275-41C(16)**
Outdoor storage	*	*	*	A	A	A	§ **275-41C(10)**
Personal services	P	C	P	C	C	P	§ **275-41C(11)**
Pet day-care/boarding facilities	*	*	*	P	P	P	
Public Signs	P	P	P	P	P	P	§ **275-61A(3)**
Restaurants	P	P	*	P	P	P	§ **275-41C(12)**
Retail commercial uses	C	C	*	C	C	P	
Sale of recreational vehicles and motorcycles	*	*	*	P	P	C	
Self-storage facilities	*	*	*	P	P	*	§ **275-41C(14)**
Service commercial uses	C	C	*	C	C	P	**§ 275-41C(15)**
Service commercial uses (outdoor storage)	C	C	*	C	C	C	
Tattoo and body-piercing establishments	*	*	*	C	C	*	
Theaters	C	C	C	P	P	P	
Veterinary clinics	C	C	C	P	P	P	
Office Uses							
Business offices	P	P	P	P	P	P	§ **275-41D(2)**
Financial institutions	P	P	*	C	C	P	**§ 275-41D(1) &** § **275-41D(2)**

Table 275-35-1							
Uses	Zoning Districts						Additional Regulations Refer to
	O-1	O-2	O-3	M-1	M-2	M-3	
Government offices	P	P	*	C	C	P	§ **275-41D(2)**
Medical and dental offices	P	P	P	C	C	P	§ **275-41D(2)**
Post offices	P	P	*	C	C	C	§ **275-41D(2)**
Manufacturing/Industrial Uses							
Aboveground/underground storage tanks	*	*	*	P	P	P	§ **275-41I**
Distribution centers	*	C	*	P	P	P	
Freight services	*	*	*	P	P	*	
Heavy industrial uses	*	*	*	*	P	*	
Industrial sales	*	*	*	C	C	P	
Industrial sales (outdoor sales)	*	*	*	C	C	C	
Light industrial uses	*	A/C	*	P	P	P	§ **275-41E(1)**
Manufacturing of animal feed	*	*	*	*	*	*	
Research and development facilities	*	*	*	P	P	P	
Truck terminals	*	*	*	*	*	*	
Warehouses	*	A/C	*	P	P	P	§ **275-41E(2)**
Institutional/Public/Semipublic Uses							
Day-care ~~facilities~~ centers	P	P	*	P	P	P	
Churches (neighborhood)	P	P	P	P	P	P	§ **275-70**
Churches (community)	C	C	C	P	P	P	§ **275-70**
Central composting facilities	*	*	*	C	C	*	
Essential services	P	P	P	P	P	P	
Recreational trails	P	P	P	P	P	P	
Recycling centers	*	*	*	C	C	C	
Utilities	C	C	C	C	C	C	
Miscellaneous Uses							
Drive-through facilities	A	A	*	A	A	A	§ **275-41H(1)**
Natural resource conservation and preservation uses	P	P	P	P	P	P	
Off-street parking and loading areas	A	A	A	A	A	A	§ **275-57**
Park-and-ride lots	P	P	*	P	P	P	
Silviculture	P	P	P	P	P	P	§ **275-54** and § **275-54.1**
Transportation depots	*	*	*	C	C	C	
Any other use the Plan Commission/CDA finds will be similar in nature, operation and function to the uses allowed within the district							§ **275-35C(1)**

LEGEND	
P	Principal Use
C	Conditional Use
A	Accessory Use
T	Temporary Use
*	Prohibited Use

§ 275-36. Institutional and recreational/park Districts. Table 275-36-1

Table 275-36-1				
Uses	Zoning Districts			Additional Regulations Refer to
	I-1	P-1	P-2	
Residential Uses				
Community living arrangements	P	*	*	§ **275-41G(1)**
Dormitories	A	*	*	
Commercial Uses				
Amphitheaters	*	C	C	
Aquariums	*	C	*	
Auditoriums	P	C	*	
Banquet halls	*	C	*	
Bowling alley	*	C	*	
Commercial Sports Complex	*	P	P	§ **275-36D(5)**
Exhibition halls	*	C	*	
Fairgrounds	*	C	*	
Mobile tower facilities	P/C	P/C	P/C	§ **275-41C(16)**
Outdoor storage	A	A	A	**§ 275-41C(10)**
Stadiums	*	C	C	
Office Uses				
Government offices	P	C	C	
Medical and dental offices	A	*	*	
Post offices	P	P	*	
Institutional/Public/Semipublic Uses				
Assisted living facilities	P	*	*	**§ 275-41B(1)**
Cemeteries	C	*	*	
Central composting facilities	C	C	*	
Churches (neighborhood)	P	*	*	§ **275-70**
Churches (community)	C	*	*	§ **275-70**
Crematory services	C	*	*	
Day-care ~~facilities~~ centers	P	*	*	
Educational facilities	P	C	*	**§ 275-41G(2)**
~~Educational facilities, i~~Interpretive centers, learning centers	P	C	*	
Nature-based learning centers	P	P	P	
Essential services	P	P	P	
Golf driving range	*	A/C	*	§ **275-41G(3)**
Hospitals	P	*	*	
Indoor recreational uses	A	P	C	
Libraries	P	C	*	
Museums and galleries	P	C	*	

Table 275-36-1				
Uses	Zoning Districts			Additional Regulations Refer to
	I-1	P-1	P-2	
Organizational clubs	P	*	P	
Public service uses	P	*	*	
Recreational trails	P	P	P	
Recycling centers	C	C	*	
Tournaments/sporting events	A	A	A	
Utilities	C	C	P	
Miscellaneous Uses				
Forest and game management		P	P	
Hunting and fishing clubs	*	C	*	
Natural resource conservation and preservation uses	P	P	P	
Park and ride lots	P	P	*	
Silviculture	P	P	P	§ **275-54** and § **275-54.1**
Any other use the Plan Commission/CDA finds will be similar in nature, operation and function to the uses allowed within the district				**§ 275-36C(1)**
Accessory Uses				
Accessory dwellings	A	A	*	§ **275-42G**
Concessions	*	P	P	
Off-street parking and loading areas	A	A	A	§ **275-57**
Temporary uses/event sales and display	T	T	P	§ **275-43**

LEGEND	
P	Principal Use
C	Conditional Use
A	Accessory Use
T	Temporary Use
*	Prohibited Use

§ 275-37. Special Districts. Table 275-37-1

Table 275-37-1						
Uses	Zoning Districts					Additional Regulations Refer to
	Q-1	L-1	C-1	C-2	C-3	
Agricultural Uses						
Maintenance of agricultural drainage systems and fences	*	*	P	C	P	
Raising of crops	*	*	P	P	P	§ **275-37C(2)(e)**
Raising of wild crops	*	*	P	P	P	
~~Silviculture~~	~~P~~	~~P~~	~~P~~	~~P~~	~~P~~	~~§ **275-54** and § **275-54.1**~~
Residential Uses						
Single-family detached dwellings ~~with attached garage~~	*	*	P	*	*	§ **275-37D(3)(c)**
Commercial Uses						
Commercial Sports Complex	*	*	*	*	*	**§ 275-36D(5)**
Mobile tower facilities	C					§ **275-41C(16)**
Outdoor storage	A	*	*	*	*	§ **275-41C(10)**
Office Uses						
Business offices	A	A	*	*	*	
Manufacturing/Industrial Uses						
Asphalt and ready-mix plants as an accessory to active quarrying operations	C	*	*	*	*	§ **275-41F**
Excavation	C	*	*	*	*	
Mineral extraction	C	*	*	*	*	§ **275-41F**
Mineral processing as an accessory to active quarrying operations	C	*	*	*	*	§ **275-41F**
Mineral storage as an accessory to active quarrying operations	C	*	*	*	*	§ **275-41F**
Peat and soil removal	C	*	*	*	*	§ **275-41F**
Quarrying	C	*	*	*	*	§ **275-41F**
Weigh scales	A	*	*	*	*	
Institutional/Public/Semipublic Uses						
Essential services	A	A	A	A	A	
Landfill	*	C	*	*	*	§ **275-41G(4)**
Municipal water and sewer services	C	*	C	C	*	
Natural stormwater management	A	A	A	A	A	
Permanent open space	P	P	P	P	P	
Piers and docks	*	*	C	C	*	
Railroads	*	*	C	C	*	
Recreational trails	P	P	P	P	P	
Repair or maintenance of local, state, or federal roads or bridges	*	*	P	P	*	
Roadways	A	*	C	C	*	
Utilities	P	P	P	P	P	
Miscellaneous Uses						

Table 275-37-1							
Uses		Zoning Districts					Additional Regulations Refer to
		Q-1	L-1	C-1	C-2	C-3	
	Forest and game management	*	*	P	*	C	
	Hunting and fishing clubs	*	*	C	C	P	
	Natural resource conservation and preservation uses	*	*	P	P	P	
	Off-street parking and loading areas	A	A	*	*	*	§ **275-57**
	Planting of native plants	P	P	P	P	P	
	Removal or mowing of nonnative wetland or prairie plants	*	*	P	P	C	
	Silviculture	P	P	P	P	P	**§ 275-54 and § 275-54.1**
	Stormwater management	*	*	C	*	C	
	Structures and lands used as designated in a reuse plan	*	C	*	*	C	
	Wetland maintenance	*	*	P	P	C	
	Wildlife management structures	*	*	P	P	C	
	Any other use the Plan Commission finds will be similar in nature, operation and function to the uses allowed within the district						§ **275-37C(3)**

LEGEND	
P	Principal Use
C	Conditional Use
A	Accessory Use
T	Temporary Use
*	Prohibited Use

§275-39F(1)(c) Special overlay districts.

(c) GIS map. Chapter 275, the City of New Berlin Zoning Ordinance, determines the allowable lot coverage for all parcels throughout the City. The NBIP's zoning district is both M-1 and M-2. The current code requires a side setback of 15 feet on each side. The recommendation of this report is to revert back to the original declaration of restrictions for the industrial park, written in 1965. This allows for a building to be constructed 10 feet from the side property line, but the total of the two side setbacks shall not be less than 30 feet. The following chart outlines the minimum requirements and maximum coverage for each site. All other zoning districts in the "park" shall follow the established standards set forth in Chapter 275 of the City's Municipal Code.

[1] Side on corner lots. Structures on corner lots shall provide a front ~~yard~~ setback as required by this chapter on the street that the structure faces. A second front yard shall be provided on the side of the structure abutting a second public or private street. Staff may administratively approve reductions ~~in~~ to the ~~second~~ front ~~yard~~ setbacks for the side on corner ~~properties~~, up to 25%.

Table 275-39-2							
Minimum Setbacks (feet)							
District	**Front**	**Side (1 Side)**	**Total Side**	**Rear**	**Shore**	**Wetland**	**Maximum Height (feet)**
M-1 SPO	50	10	30	25	50	10	45
M-2 SPO	50	10	30	25	50	10	60

Table 275-39-3			
Lot Coverage (percent)			
District	**Maximum Coverage by Buildings**	**Maximum Coverage by Impervious Surfaces**	**Minimum Coverage by Open Space and Landscaping**
M-1 SPO	50%	75%	25%
M-2 SPO	50%	75%	25%

§ 275-41. Use specific regulations. Table 275-41A

Table 275-41A			
Category	**Minimum Lot Size (acres)**	**Number per acre**	**Type of Animal**
Large livestock	3	1	Large livestock > 2 years
Large livestock	3	2	Large livestock < 2 years
Small livestock	2	8	Goats
Small livestock	2	8	Sheep
Small livestock	2	12	Pigmy goats
Small livestock	2	8	Llamas, alpacas
Small livestock	2	8	Miniature horses
Small livestock	2	4	Potbellied pigs, other small-breed pigs under 300 pounds
Small livestock	2	2	Ponies (under 40 inches)
Small livestock	2	Double allowable density	All small livestock offspring under 12 months
Small fowl	1	20	Over 4 months of age
Large fowl	2	4	Over 4 months of age
Rabbits	1	20	Over 4 months of age
Residential chickens	§ **275-41A(2)(g)**	§ **275-41A(2)(g)**	
~~Captive wild animal farm~~	~~3~~		
NOTE: See § **275-41A(2)(f)** for calculating animal combinations.			

§275-41A(2)(c) Use specific regulations

(c) Prohibited uses:

[1] Concentrated commercial animal feeding operations are prohibited in all districts.

[2] The keeping of hogs over 300 pounds is prohibited in all districts with the exception of the A-1 District.

[3] Keeping of exotic animals are prohibited in all zoning districts.

§275-41B(8) Use specific regulations

(8) Transient lodging uses

(a) Transient lodging uses for remuneration are prohibited in the residential districts of the City where the period of each individual use is less than seven (7) days. Any person acting as an agent, real estate broker, real estate sales agent, property manager, reservation service or arranges or negotiates for the use of residential property or transient lodging uses, or any person who uses or allows the use of residential property in this manner shall be considered in violation of this Section. Each day in which such residential property is used or allowed to be used in violation of this Section shall be considered a separate offense. Any rental of single-family property for camping purposes is prohibited.

(b) Individual transient residential lodging uses for remuneration of more than 6 but fewer than 30 consecutive days within any consecutive 365-day period may be rented for no more than 181 days in the aggregate. The days during which the transient residential lodging uses for remuneration may be conducted shall run consecutively. Any individual or entity which engages in transient residential lodging uses for remuneration shall notify the City Clerk, in writing, when the first rental within a 365-day period is to begin.

§275-41C(2)(b) Use specific regulations

(b) The outermost edge of any protective canopy shall not be closer than 25 feet to the base setback line and shall meet the side ~~yard~~ and rear ~~yard~~ setbacks.

§275-41C(20) Use specific regulations

(20) Car wash establishment.

(a) Car was establishments are allowed as a principal use in the B-1, B-2, B-3, O-1, O-2, M-1 & M-2 Districts if the establishment meets all other criteria.

(b) Car wash establishments are prohibited in all Agriculture, Residential, B-5 and M-3 Zoning Districts.

(c) A property containing a car wash establishment shall not be located closer than 100 feet from the border of lands designated as residential in the City's Comprehensive Plan.

(d) A property containing a car wash establishment shall not be located closer than 100 feet from the border of a residentially zoned or residentially used property due to the intensity of the use of such facilities and the impact which they are likely to have with regard to noise, light pollution and traffic in surrounding neighborhoods and streets. The distance shall be calculated as the shortest measurable distance between the property lines of the property in which the car wash facility is desired to the edge of the residential zoning district, in a straight line without regard to intervening structures. Right-of-way is not included and shall be subtracted from this measurement. A GIS map will be created by the City for any such requests.

(e) Applicants shall be required to provide supplemental information as required by the City in order to review the car wash establishment for compliance with the City's Performance Standards in Zoning Code Section 275-60 and adequate public facilities Section 275-58. Refer to Zoning Code Section 275-20 Developer Deposit fee whereby the City can utilize the applicant's developer deposit to hire outside consulting agencies to assist with the City's evaluation of the proposal.

§275-42A - 275-42F Accessory uses and structures

A. General provisions. [Amended 1-12-2016 by Ord. No. 2558; 10-9-2018 by Ord. No. 2607; 8-24-2021 by Ord. No. 2652]

(1) Properties with a minimum of five acres in size that have demonstrated agricultural or silviculture uses as determined by the Director shall be exempt from § 275-42B. "Agricultural uses" shall be defined as land that is primarily used for agricultural activity, including but not limited to the growing of qualified crops, planting in rows, fertilizing and tilling the land, and any other efforts to enhance growth of the yield. Physical evidence of agricultural activity can include furrows, crops, fencing and livestock. Minimal maintenance of the land and naturally growing crops will not be considered agricultural activity.

(2) Accessory uses that are for a demonstrated agricultural use shall only be used for storage and demonstrated agricultural purposes, and not for home occupations, commercial storage, or business operations. All setbacks shall be met for the zoning district and shall be located in the rear or side yards in all residential districts.

(3) The Plan Commission shall regulate the architecture of agricultural accessory uses under § 275-59D(1) of this chapter.

(4) Accessory uses are allowed in any district as may be specified in the appropriate district regulations or in this section.

(5) All accessory buildings shall require the issuance of a building permit.

(6) Accessory uses are allowed only after the principal structure is present or under construction. The Director of Community Development may administratively approve an accessory structure prior to the principal structure being built, as long as the construction of the principal structure has begun within one year of starting work on the accessory structure. The City has the ability to enforce fines and/or citations.

(7) The use and/or location requirements stipulated elsewhere in this chapter may be modified subject to Plan Commission approval.

(8) Detached accessory buildings and structures that are part of a planned development are subject to Plan Commission review.

(9) Skateboard ramps are prohibited in the City of New Berlin within residentially zoned districts.

(10) All accessory buildings and structures shall be located outside of public easement areas unless Plan Commission approval is granted.

B. Maximum number and size of accessory structures. The maximum allowable square footage of accessory structures and the maximum number of accessory buildings shall be regulated as outlined in Table 275-42-1. Square footage shall be based on the first-floor footprint, excluding overhangs up to 24 inches. Overhangs exceeding 24” shall be counted towards the square footage. Tool sheds with a maximum square footage of 144 square feet are allowed in addition to the "maximum combined allowable square footage" as listed in Table 275-42-1; however, the parcel may not exceed the "maximum number of accessory buildings" listed in Table 275-42-1, including the tool shed. [Amended 9-23-2014 by Ord. No. 2529]

Table 275-42-1		
Lot Area (acres)	**Maximum Combined Allowable Square Footage**	**Maximum Number of Accessory Buildings**
Less than 2	840	2
2.0 - 2.5	1,000	2
2.5 - 3.0	1,250	3
3.0 - 3.5	1,500	3
3.5 - 4.0	1,750	3
4.0 - 4.5	2,000	3
4.5 - 5.0	2,250	3
5.0 and greater	2,500*	3*

NOTES: *Unless demonstrated agricultural use as determined by the Director.

C. Pad/foundation requirements. Accessory buildings and tool sheds 144 square feet or less in area shall be placed on a pad of concrete, asphalt, patio block, polycarbonate or pressure-treated lumber. Accessory buildings greater than 144 square feet in area shall be constructed on a foundation or concrete slab.

D. Building materials. Accessory buildings may be made from either masonry or wood frame materials, subject to the following:

(1) All accessory buildings shall be at least 10 feet from a principal residence, or in the case of proper fire separation, the Building Inspector may allow accessory buildings to be placed five feet from a principal residence. The Building Inspector shall consider the health, safety, general welfare, and aesthetics of the proposed construction before granting such a waiver.

E. Dimensional requirements. [Amended 9-23-2014 by Ord. No. 2529; 10-9-2018 by Ord. No. 2607; 10-13-2020 by Ord. No. 2642]

(1) Size and height.

(a) General farm buildings.

[1] General farm buildings, including barns, silos, sheds, and storage bins intended for allowed agricultural uses, shall be sized to meet demonstrated agricultural needs.

[2] No farm buildings or parts of farm buildings shall exceed 60 feet in height.

[3] Accessory buildings exceeding 35 feet in height shall provide one additional foot of required front, side, and rear yard for each one foot over 35 feet in height.

(b) Single-family residential accessory uses. An accessory building height may only be one-story and shall not exceed 15 feet in height. A half story may be permitted, pursuant to §275-70. Living quarters are not permitted within accessory buildings. DCD may grant a waiver for accessory buildings with a height up to 18 feet in order to match the exterior of the principal structure or for a larger footprint accessory building. See § 275-45 for height measurement requirements.

(c) Non-single-family residential accessory uses. DCD staff shall determine if Architecture Review Committee review and approval is required.

[1] Accessory buildings located within non-single-family residential zoning districts with a maximum size of 2,500 square feet shall require the issuance of an administrative permit by DCD staff.

[2] Accessory buildings in non-single-family residential zoning districts that exceed 2,500 square feet shall require Plan Commission review and approval.

(2) Setbacks.

(a) All accessory uses, except where otherwise specified, shall be set back a minimum of five feet from all property lines.

(b) The five-foot accessory ~~yard~~ setback shall be regulated as follows:

[1] The accessory use setback shall be kept free from accumulation of debris or refuse.

[2] The accessory ~~yard~~ setback shall not be used for the storage of any material or for parking.

[3] Only fences, drainage swales, utilities, and landscaping may be allowed within the accessory ~~yard~~ setback area.

(c) The Plan Commission/Community Development Authority shall have the ability to modify setbacks for all accessory buildings in any non-single-family residential district.

(d) All accessory buildings and structures shall be located a minimum of 10 feet from the principal building, or in the case of proper fire separation, the Building Inspector may allow accessory buildings to be placed five feet from a principal residence. The Building Inspector shall consider the health, safety, general welfare, and aesthetics of the proposed construction before granting such a waiver.

(3) Lot coverage.

(a) Accessory uses shall not occupy more than 20% of the rear yard in any residential district.

(b) Accessory uses shall not occupy more than 50% of the rear yard area in any office or industrial district.

(c) Where accessory uses are allowed in the side or front yards, the accessory structures or uses shall not occupy more than 15% of the yard area.

F. Allowed accessory uses.

(1) Accessory uses not requiring a building permit.

(a) The following uses may be allowed in ~~all yards where the use is demonstrated to be incidental to the primary use of the property~~ the front yard: ~~[Amended 6-11-2019 by Ord. No. 2620]~~

~~[1] Basketball hoops;~~

~~[2] Bird baths;~~

~~[3] Flagpoles;~~

~~[4] Fountains;~~

~~[5] Gardens;~~

~~[6] Lawn sculptures;~~

~~[7] Religious statues;~~

~~[8] Seasonal gazebos;~~

~~[9] Temporary or seasonal swimming pools;~~

~~[10] Temporary greenhouse;~~

~~[11] Wishing wells; and~~

~~[12] Similar items determined to be appropriate by the Plan Commission.~~

Use	Minimum setbacks (feet)		
	Front	Side	Rear
Basketball hoops	5'	5'	5'
Bird baths	5'	5'	5'
Flagpoles	5'	5'	5'
Fountains	5'	5'	5'
Gardens	5'	5'	5'
Greenhouses (temporary)	5'	5'	5'
Lawn sculptures	5'	5'	5'
Pergolas (freestanding)	5'	5'	5'
Pools (temporary or seasonal)	5'	5'	5'
Religious statues	5'	5'	5'
Seasonal gazebos	5'	5'	5'
Wishing wells	5'	5'	5'

(b) The following uses may be allowed in the ~~rear~~ side yard ~~only~~:

~~[1] Compost piles not exceeding six feet in height;~~

~~[2] Fire woodpile, provided that the woodpile is neatly stacked and does not exceed six feet in height; this height restriction may be waived if the firewood is stacked against an allowed structure;~~

~~[3] Sport courts;~~

~~[4] Patio, not including a covered patio;~~

~~[5] Permanent volleyball court;~~

~~[6] Swing sets and gym sets;~~

~~[7] Tennis courts.~~

Use	Minimum setbacks (feet)		
	Front	Side	Rear
Basketball hoops	5'	5'	5'
Bird baths	5'	5'	5'
Flagpoles	5'	5'	5'
Fountains	5'	5'	5'
Gardens	5'	5'	5'
Greenhouses (temporary)	5'	5'	5'
Lawn sculptures	5'	5'	5'
Pergolas (freestanding)	5'	5'	5'
Pools (temporary or seasonal)	5'	5'	5'
Religious statues	5'	5'	5'
Seasonal gazebos	5'	5'	5'
Wishing wells	5'	5'	5'

(c) The following uses may be allowed in the rear yard:

Use	Minimum setbacks (feet)		
	Front	Side	Rear

Basketball hoops	5'	5'	5'
Bird baths	5'	5'	5'
Compost piles (maximum height 6')	5'	5'	5'
Firewood piles, neatly stacked (maximum height 6' - no height restriction if stacked against a permitted structure)	5'	5'	5'
Flagpoles	5'	5'	5'
Fountains	5'	5'	5'
Gardens	5'	5'	5'
Greenhouses (temporary)	5'	5'	5'
Lawn sculptures	5'	5'	5'
Patios (uncovered)	5'	5'	5'
Pergolas (freestanding)	5'	5'	5'
Pools (temporary or seasonal)	5'	5'	5'
Religious statues	5'	5'	5'
Seasonal gazebos	5'	5'	5'
Sport courts	5'	5'	5'
Swing sets and gym sets	5'	5'	5'
Tennis courts	5'	5'	5'
Volleyball courts (permanent)	5'	5'	5'
Wishing wells	5'	5'	5'

(2) Accessory uses requiring a building permit.

(a) The following uses may be allowed in the front yard: ~~shall meet all front, side and rear yard setbacks of the district in which the use is located: [Amended 1-12-2016 by Ord. No. 2558]~~

~~[1] Accessory buildings, including garages, with a minimum area of 144 square feet;~~

~~[2] Balconies;~~

~~[3] Central air-conditioning units and generators;~~

~~[4] Covered patios or decks;~~

~~[5] Carports, provided that the following provisions are met:~~

~~[a] The carport is a supplement to a required attached or detached garage; and~~

~~[b] The carport does not extend into the front yard.~~

Use	**Minimum setbacks (feet)**		
	Front	**Side**	**Rear**
Accessory buildings greater than 144 square feet (includes garages, pole barns)	District Setbacks	District Setbacks	District Setbacks
Balconies	District Setbacks	District Setbacks	District Setbacks
Central air-conditioning units and generators	District Setbacks	District Setbacks	District Setbacks

Covered patios or decks (attached)	District Setbacks	District Setbacks	District Setbacks
Decks (4' in height or greater)	see 275-46D(3)	District Setbacks	District Setbacks
Decks (less than 4' in height)	see 275-46D(3)	District Setbacks	5'

(b) ~~The following uses may be allowed in the rear yard only or within the side yard setback for the principal use:~~The following uses may be allowed in the side yard:

~~[1] Accessory buildings with a maximum area of 144 square feet;~~

~~[2] Cabanas or changing rooms, provided that there are no living quarters located in such use;~~

~~[3] Gazebos or chickees;~~

~~[4] Jacuzzis or hot tubs, which may be located as close to a principal or accessory building as necessary;~~

~~[5] Playhouse exceeding 144 square feet and greater than seven feet in height;~~

~~[6] Swimming pools, which may be separated a minimum of four feet from the principle building if the Department finds that there is no adverse effect upon the health, safety, general welfare, and aesthetics of the proposed development;~~

~~[7] Tool sheds;~~

~~[8] Wood or solid surface deck, not including a covered deck.~~

~~[a] If a deck has an elevation greater than four feet above the elevation, it shall be considered a balcony and must meet the minimum setback requirements of the zoning district in which it is located.~~

~~[b] A deck may extend into a side yard, provided that it meets the minimum side yard setback requirements of the zoning district in which it is located.~~

Use	**Minimum setbacks (feet)**		
	Front	**Side**	**Rear**
Accessory buildings greater than 144 square feet (includes garages, pole barns)	District Setbacks	District Setbacks	District Setbacks
Accessory buildings 144 square feet or less (includes tool sheds)	–	District Setbacks	5'
Balconies	District Setbacks	District Setbacks	District Setbacks
Carports (attached), only if supplemental to a garage	–	District Setbacks	District Setbacks
Central air-conditioning units and generators	District Setbacks	District Setbacks	District Setbacks
Covered patios or decks (attached)	District Setbacks	District Setbacks	District Setbacks
Decks (4' in height or greater)	see 275-46D(3)	District Setbacks	District Setbacks

Decks (less than 4' in height)	see 275-46D(3)	District Setbacks	5'
Gazebos/open-air structures	–	District Setbacks	District Setbacks
Hot tubs	–	District Setbacks	5'
Playhouse exceeding 144 square feet and greater than seven feet in height	–	District Setbacks	5'
Pool houses	–	District Setbacks	District Setbacks

(c) The following uses may be allowed in the rear yard:

Use	Minimum setbacks (feet)		
	Front	**Side**	**Rear**
Accessory buildings greater than 144 square feet (includes garages, pole barns)	District Setbacks	District Setbacks	District Setbacks
Accessory buildings 144 square feet or less (includes tool sheds)	–	5'	5'
Balconies	District Setbacks	District Setbacks	District Setbacks
Carports (attached), only if supplemental to a garage	–	District Setbacks	District Setbacks
Central air-conditioning units and generators	District Setbacks	District Setbacks	District Setbacks
Covered patios or decks (attached)	District Setbacks	District Setbacks	District Setbacks
Decks (4' in height or greater)	see 275-46D(3)	District Setbacks	District Setbacks
Decks (less than 4' in height)	see 275-46D(3)	District Setbacks	5'
Gazebos/open-air structures	–	District Setbacks	District Setbacks
Hot tubs	–	District Setbacks	5'
Playhouse exceeding 144 square feet and greater than seven feet in height	–	District Setbacks	5'
Pool houses	–	District Setbacks	District Setbacks
Pools (above ground or in ground)	–	5'	5'

(3) Temporary outdoor storage. Temporary outdoor storage may be allowed as an accessory use in all zoning districts, subject to the following provisions: [Amended 10-9-2018 by Ord. No. 2607; 8-24-2021 by Ord. No. 2652]

(a) Temporary outdoor storage units (example: shipping containers/crates) shall abide by the restrictions below:

[1] An administrative permit application shall be submitted and a zoning permit issued prior to the temporary outdoor storage unit being placed on the property, if it will be stored on the property for more than 30 days.

[2] Only one temporary outdoor storage unit will be allowed per tax key. The Department of Community Development will review requests for any additional temporary outdoor storage units.

[3] Temporary outdoor storage units shall not exceed eight feet in height, 10 feet in width and 20 feet in length.

[4] No flammable or explosive materials may be stored in the temporary outdoor storage unit.

[5] No temporary outdoor storage unit will be used to store materials related to an off-premises business or a home occupation.

(b) Location:

[1] Temporary storage units shall be placed on a hard, all-weather surface, driveway or turnaround area. (This does not include areas of dirt or grass.)

[2] Temporary outdoor storage areas shall be set back a minimum of 10 feet from the base setback line and a minimum of five feet from the side and rear lot lines.

[3] Temporary outdoor storage units will not be allowed to be stored on public access areas, easements or within the City of New Berlin right-of-way.

(c) Duration:

[1] Temporary outdoor storage units shall not be stored on a property longer than 30 days unless the property owner submits an administrative permit application requesting a longer duration of time. The total storage of the temporary outdoor storage unit with an application and permit shall not exceed 60 days unless as specified in the next condition.

[2] Property owners that have applied for and received a valid building permit shall be allowed to store temporary outdoor storage units on the property no longer than 180 days or until final occupancy is issued, whichever comes first.

[3] If the project has a valid building permit, the property owner shall not be required to apply for an administrative permit.

[4] If the temporary outdoor storage unit is scheduled to remain on the property over 180 days, then the property owner shall apply for an administrative permit.

[5] Once the project or property owner receives final occupancy and/or the building permits have been closed out and final inspected, the property owner must remove the temporary outdoor storage unit within 30 days.

[6] Temporary outdoor storage units and small homes are prohibited as a permanent use.

(4) Refuse containers. Refuse containers may be allowed as an accessory use in all zoning districts, subject to the following provisions. City-issued trash and recycling bins intended for weekly pickup and dumpsters used by commercial, industrial or multifamily developments for the primary use of everyday garbage disposal or recycling are exempt from this section and shall refer to Chapter 220 of the Municipal Code. [Added 10-9-2018 by Ord. No. 2607]

(a) Refuse containers (example: dumpsters/Bagster bags) shall abide by the restrictions below:

[1] Only one refuse container will be allowed per tax key. The Department of Community Development will review requests for any additional refuse containers.

[2] Refuse containers shall not exceed eight feet in height, 10 feet in width and 24 feet in length.

[3] No flammable or explosive materials may be stored in a refuse container.

[4] No refuse container will be used to store materials related to an off-premises business or a home occupation.

(b) Location:

[1] Refuse containers areas shall be set back a minimum of 10 feet from the base setback line and a minimum of five feet from the side and rear lot lines.

[2] Refuse containers will not be allowed to be stored on public access areas, easements or within the City of New Berlin right-of-way.

(c) Duration:

[1] Refuse containers shall not be stored on a property longer than 15 days, unless the property owner submits an administrative permit application requesting a longer duration of time. The total storage of a refuse container with an application and permit shall not exceed 75 days.

[2] Property owners that have applied for and received a valid building permit for an addition, remodel or alteration shall be allowed to store a refuse container on the property no longer than 180 days.

[3] Permits for new construction shall be allowed to store a refuse container until final occupancy. To prevent construction debris from leaving the site, refuse containers must be changed regularly.

§275-42G(3) Accessory uses and structures

(3) Fences. Fences are allowed as accessory uses in all districts and are further regulated as follows: [Amended 9-23-2014 by Ord. No. 2529; 10-9-2018 by Ord. No. 2607; 6-11-2019 by Ord. No. 2620]

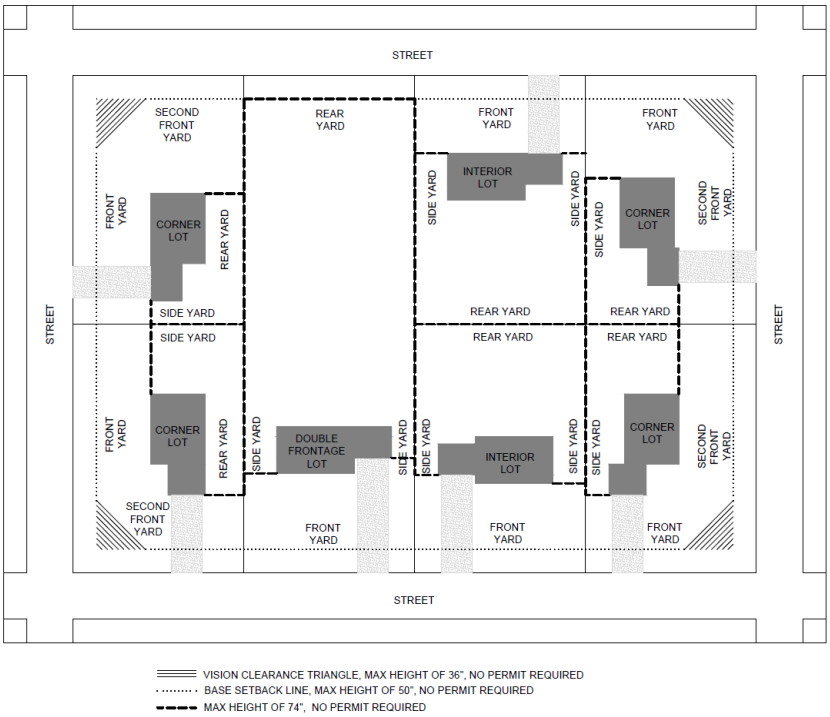
~~(a) Location and height. Fence height shall be measured from the average grade of the ground beneath the fence.~~

~~[1] Front yard. No fence in the front yard shall be located closer to the street than the base setback line and shall not exceed 50 inches in height. No fence in the vision clearance triangle shall exceed three feet in height above mean street grade. On corner lots, the side facing the side street (or second street) shall also be considered a front yard.~~

~~[2] Side and rear yards. Fences located in the side or rear yards shall not exceed 74 inches in height. On double frontage lots, the side facing the rear street shall be considered a rear yard. [Amended 10-13-2020 by Ord. No. 2642]~~

~~[a] Fences made of maintenance-free materials may be located on the lot line. Such materials include, but are not limited to, metal fences (chain-link, wrought-iron, aluminum), PVC/recycled materials, removable fencing, pressure-treated wood and other maintenance-free materials, as approved by the Director. Common-lot-line fencing that has a finished side facing both properties and is maintained by both owners with a prior agreement is allowed with a survey.~~

~~[b] Fences that are not made of maintenance-free materials shall be located at least two feet from the property line.~~



~~[3] Fences shall be located outside of easement areas unless Plan Commission approval is granted.~~

~~[4] Fences shall not block or impact existing drainage patterns. Any grade changes made in the area of the fence installation must follow the requirements in § 275-55.~~

~~(b) Construction.~~

~~[1] All structural and support components of a fence shall face away from adjacent properties.~~

~~[2] All fences shall be constructed straight and plumb. Any fence that is to be constructed or maintained in other than a straight and plumb condition, including but not limited to certain types of split-rail fences, shall require Plan Commission review and approval.~~

~~[3] Fences in nonresidential districts shall adhere to § 275-59.~~

~~(c) Maintenance. All fences shall be maintained in good repair at all times. No signs or display shall be allowed on a fence. No materials shall be stored between the fence and the lot line.~~

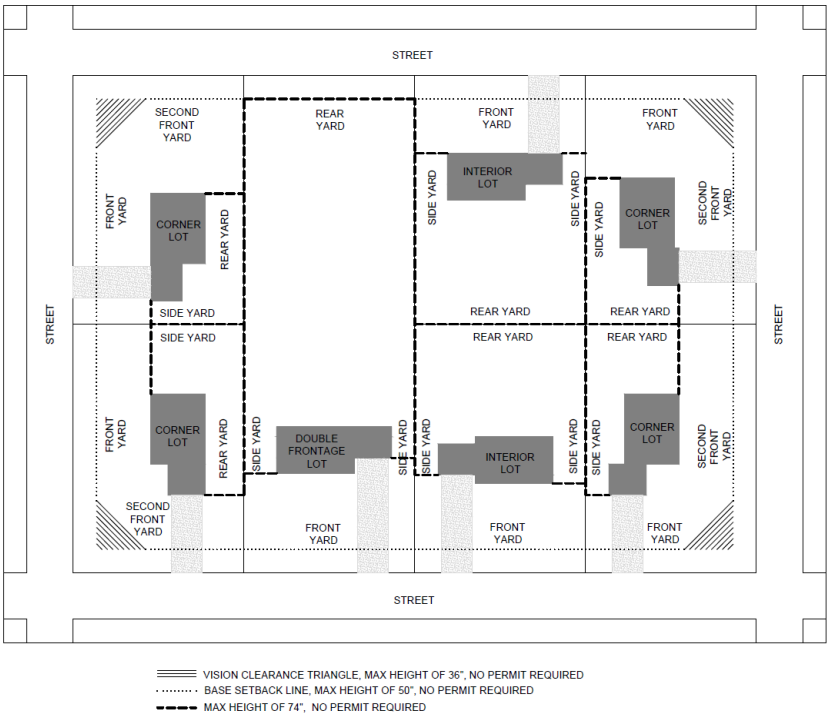
(a) Height. Fence height shall be measured from the average grade of the ground beneath the fence.

[1] Residential

[a] Front yard. No fence in the front yard shall be located closer to the street than the base setback line and shall not exceed 50 inches in height. No fence in the vision clearance triangle shall exceed three feet in height above mean street grade. On corner lots, the side facing the side street (or second street) shall also be considered a front yard.

[b] Side and rear yards. Fences located in the side or rear yards shall not exceed 74 inches in height. On double frontage lots, the side facing the rear street shall be considered a rear yard.

[2] Non-residential. Fences shall not exceed 98 inches in height.



(b) Location.

[1] Fences made of maintenance-free materials may be located on the lot line. Such materials include, but are not limited to, metal fences (chain-link, wrought-iron, aluminum), PVC/recycled materials, removable fencing, pressure-treated wood and other maintenance-free materials, as approved by the Director. Common-lot-line fencing that has a finished side facing both properties and is maintained by both owners with a prior agreement is allowed with a survey. Fences that are not made of maintenance-free materials shall be located at least two feet from the property line.

[2] Fences shall be located outside of easement areas unless Plan Commission approval is granted.

[3] Fences shall not block or impact existing drainage patterns. Any grade changes made in the area of the fence installation must follow the requirements in § 275-55.

(c) Construction and maintenance.

[1] All structural and support components of a fence shall face away from adjacent properties.

[2] All fences shall be constructed straight and plumb. Any fence that is to be constructed or maintained in other than a straight and plumb condition, including but not limited to certain types of split-rail fences, shall require Plan Commission review and approval.

[3] Fences in non-residential districts shall adhere to § 275-59.

[4] All fences shall be maintained in good repair at all times. No signs or display shall be allowed on a fence. No materials shall be stored between the fence and the lot line.

(d) Permits. No permit is required for fences meeting the above criteria. A permit shall be required for:

[1] Residential f~~F~~ences located in the front yard that exceed 50 inches but not more than 74 inches, provided that all other requirements for fences are met. DCD review and approval is required.

[2] Residential f~~F~~ences exceeding 74 inches in height, provided that all other requirements for fences are met. Plan Commission review and approval is required.

(e) Exception. ~~A snow fence temporarily constructed for the purpose of catching wind-blown snow shall not be subject to these fence requirements, provided that it shall be installed no earlier than November 1 of each year and shall be removed no later than April 1 each year.~~

[1] A snow fence temporarily constructed for the purpose of catching wind-blown snow shall not be subject to these fence requirements, provided that it shall be installed no earlier than November 1 of each year and shall be removed no later than April 1 each year.

[2] Windscreens are allowed on a seasonal basis within Institutional and Park Zoning Districts and may display content. Windscreens shall be maintained and in good repair.

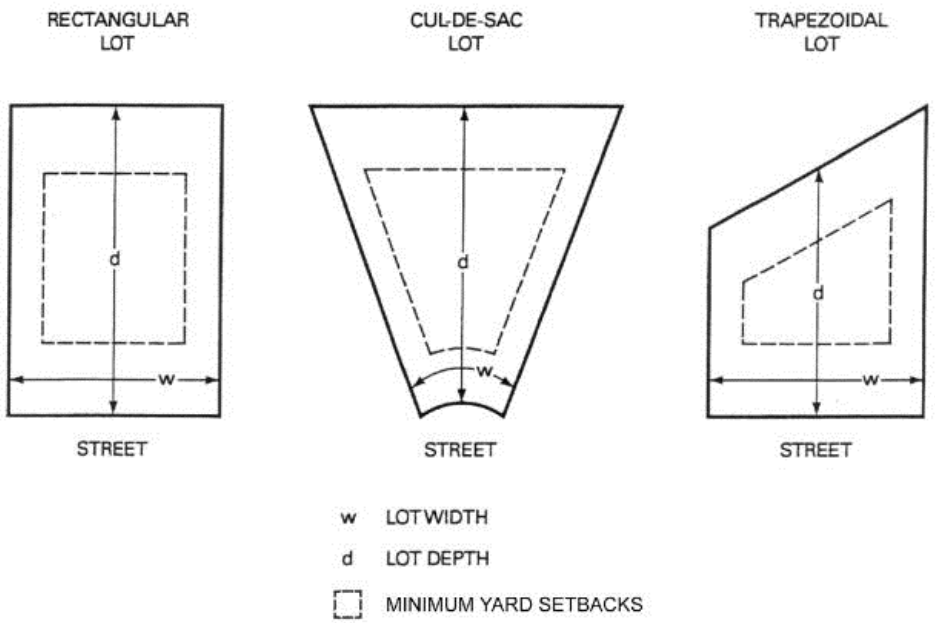
§275-42G(9) Accessory uses and structures

(9) Donation boxes. Donation boxes ~~are prohibited in all zoning districts~~ shall be monitored on at least a biweekly basis, or within five business days of a request by the Code Compliance Specialist, so that the contents are collected and that graffiti which becomes a blight is precluded. There shall be no accumulation of any items outside of the donation box. Donation boxes are required to be cleaned or repainted to remove graffiti that would otherwise result in a blight to the area. The owners contact information shall be displayed clearly on the box. The donation box shall not obstruct traffic, sidewalks, fire lanes, or impact the required the required number of parking spaces.

§275-44C - §275-44D. Lot measurement and requirements.

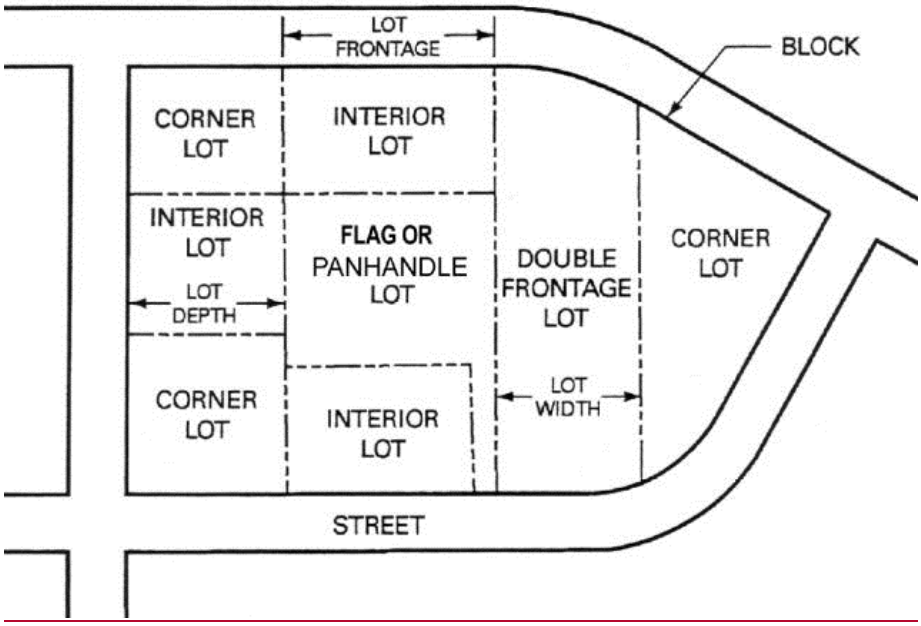
C. ~~(Reserved)~~ Dimensions.

Figure XI-2
Lot Width and Lot Depth



D. ~~(Reserved)~~ Lot Types.

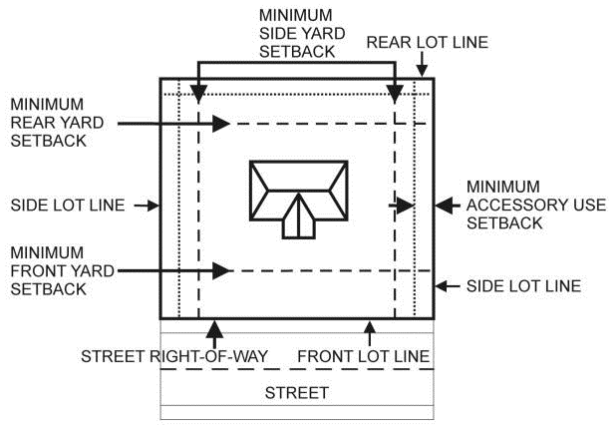
Figure XI-1
Lot Types

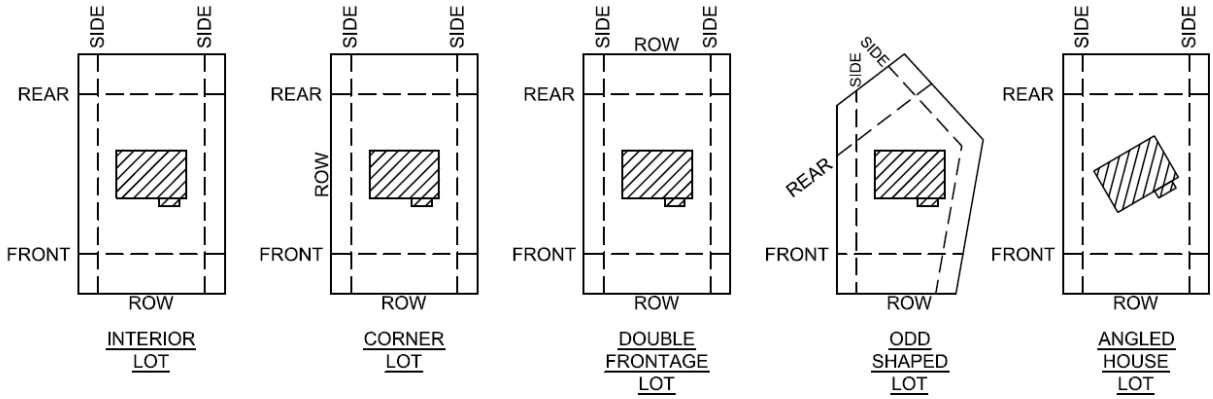


§275-46 Yard/setback measurement and requirements

A. Measurement of a setback. ~~A "setback" shall mean a line drawn parallel to a lot line at a distance equal to the depth of the required yard setback. The distance shall be measured along a line drawn perpendicular to the lot line and the setback line.~~

Figure XI-3
Measurement of Setbacks



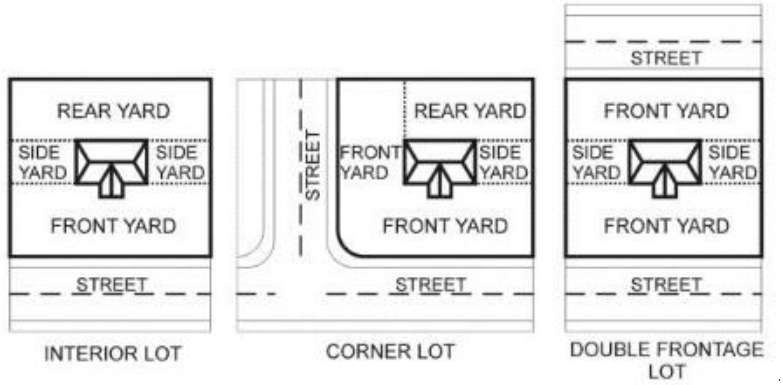


(1) Corner lots. Structures on corner lots shall provide a front ~~yard~~ setback as required by this chapter on the street that the structure faces. A second front yard shall be provided on the side of the structure abutting a second public or private street. The second front yard is referred to as the "side on corner." The setbacks on each street shall be the same distance. The remaining yards shall be a side yard and a rear yard. The functional rear of the house shall face the rear yard, which shall be opposite of the front yard. ~~The Plan Commission~~ Staff may administratively approve reduc~~e~~tions to the front setbacks for the side on corner ~~the side on corner setback~~ up to 25% on lots less than 100 feet in width.

(2) Double-frontage lots. Structures on lots abutting two opposite streets shall be provided with a front setback and a rear setback. The Director or a designee shall select where the front setback shall be applied and where the rear setback shall be applied in a manner that prohibits access to a double-frontage lot from two arterial streets. The selected front setback area shall be required to comply with the front setback requirements for the

district in which the lot is located. The selected rear setback area shall be required to comply with the rear setback requirements for the district in which the lot is located, and the rear setback area shall be screened from arterial streets with fencing or landscaping, as may be appropriate. Accessory structures may be placed in the designated rear setback area but shall be located no closer to the street right-of-way than the required setback for accessory structures. For purposes of selecting the front yard, the architectural front of the structure shall be designated as the front yard.

~~**Figure VI-3**~~
~~**Location of Yards on Typical Interior, Corner, and Double-Frontage Lots**~~



(3) Side-entry garage setback. When a garage is proposed with an entry facing an interior lot line, the garage shall be set back a minimum of 30 feet from the lot line opposite the garage door to provide for adequate maneuvering space. The setback shall be measured perpendicular from the edge closest to the street of each garage door opening. There shall be a twenty-four-foot access radius in and out of the garage door.

Figure VI-4
Side-Entry Garage Setback - Rectangular Lots

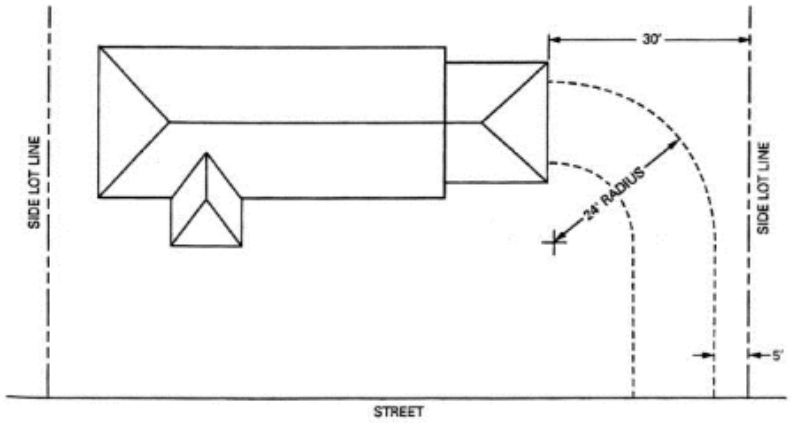
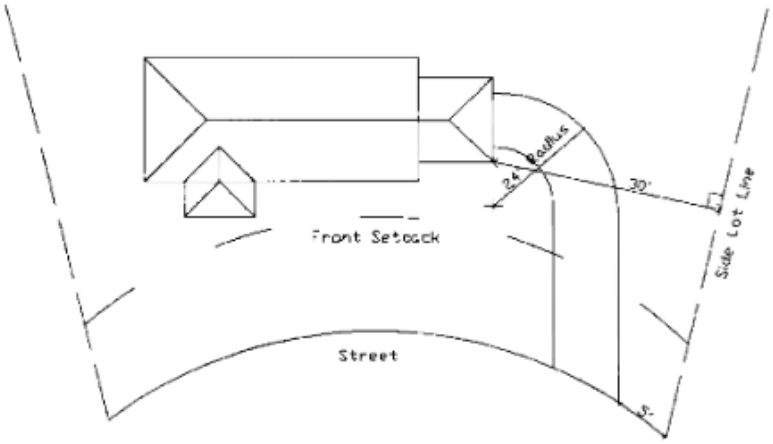
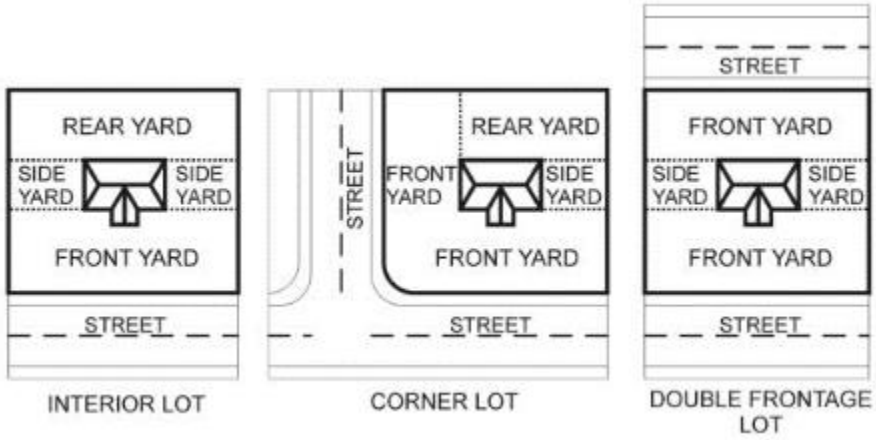


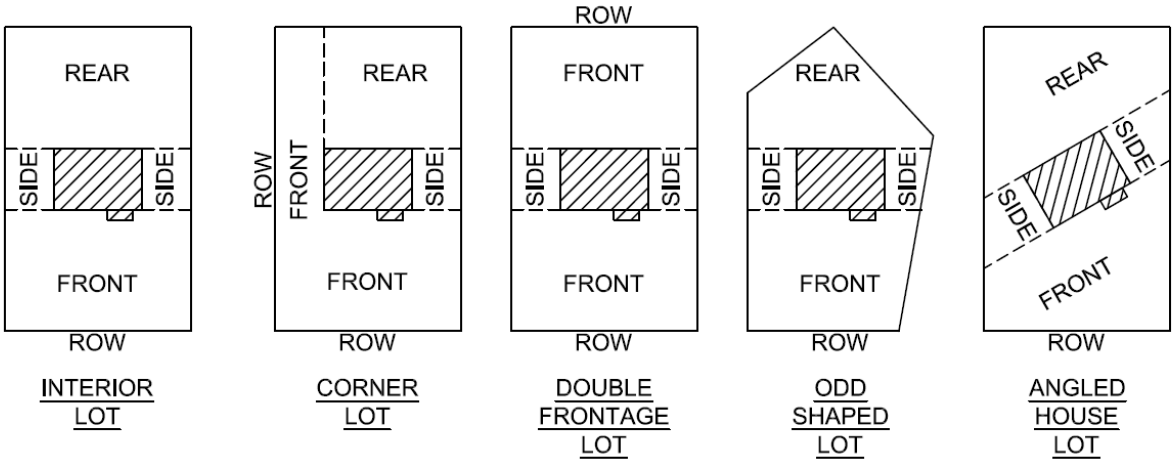
Figure VI-5
Side Entry Garage Setback - Pie Shaped Lots



B. ~~(Reserved)~~ Measurement of a yard.

Figure VI-3
Location of Yards





C. Average ~~street yards~~ front setback. For new structures, additions to existing structures or accessory structures, the required ~~street yards~~ front setback may, with Plan Commission approval, be decreased in any residential or business districts to the average of the existing ~~street yards~~ front setbacks of the abutting structures on each side but in no case less than 15 feet in any residential district and five feet in any business district.

D. Exemptions and exceptions to yard and setback requirements. The district yard and setback requirements set forth elsewhere in this chapter may be modified, but such modification shall be in accord with the following standards, subject to Plan Commission approval:

(1) Exemptions. The following uses and structures are exempt from the yard and setback limitations of this chapter:

(a) Essential services. Essential services, such as utilities, electric power and communication transmission lines.

(b) Landscaping and vegetation. Landscaping and vegetation shall comply with the vision triangle requirements set forth in this chapter.

(c) Building connections. For nonresidential uses, building interconnections between buildings and adjacent parcels for shared or common operations shall not be considered for setback purposes. [Added 8-24-2021 by Ord. No. 2652]

(2) Architectural projections. Architectural projections, limited to eaves and wing walls, if the building is constructed to the full permitted building width or depth, may project into any yard, but such projection shall not exceed three feet.

(3) Attached accessory uses. Uncovered stairs, decks sized for entry purposes only, stoops, landings, fire escapes, gutters, decks and awnings may project into any yard but not to exceed six feet and not closer than five feet to any lot line.

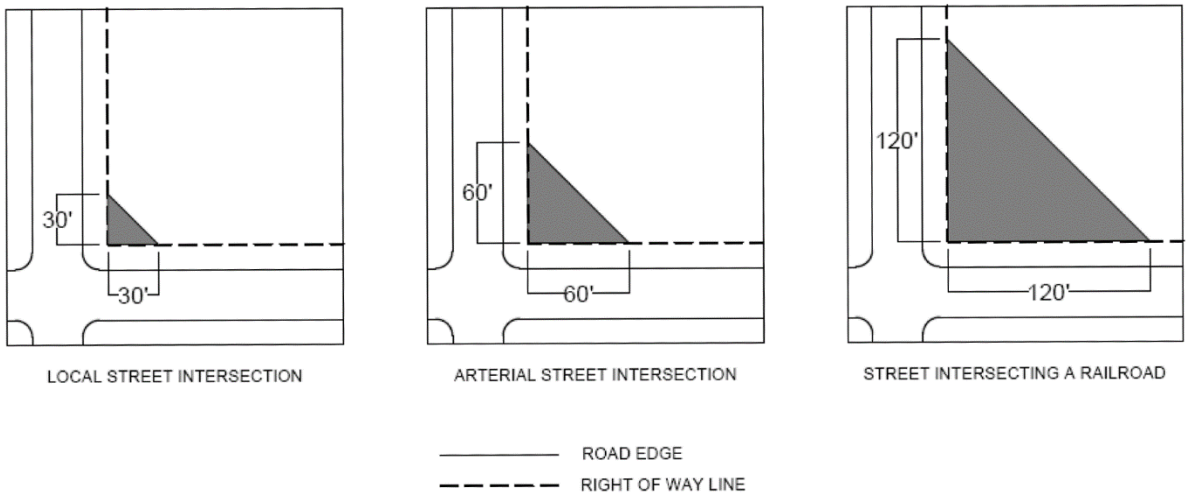
(4) Vision clearance triangle. No obstructions, such as structures, parking, landscaping or vegetation, shall be permitted in any district between the heights of three feet and 10 feet above the plane through the mean curb grades within the triangular space formed by any two intersecting right-of-way lines and a line joining those points.

(a) Intersection of local streets. The corner cutoff distances establishing the vision triangle clearance space shall be 30 feet.

(b) Intersection with arterial streets. In the case of arterial streets, one or more of which has an established right-of-way of 80 feet or more, intersecting with any other street, the corner cutoff distances establishing the vision triangle clearance space shall be 60 feet.

(c) Intersection with a railway. In the case of a railway intersecting with a street, the corner cutoff distances establishing the vision triangle clearance space shall be 120 feet.

Figure VI-6
Vision Clearance Triangle



§275-54B(7)(b). Natural Resource Protection

(b) The landscaping fee shall be calculated by taking the total number of replacement trees, as required per Table 275-54-1, less the number of trees that the applicant is able to plant on his/her/its site times the average industry cost to purchase and install a balled and burlapped, two-and-one-half-inch-DBH deciduous tree; or, in the case of a replacement evergreen tree, a six- to eight-foot tree comparable will be used. The ~~Department of Parks, Buildings and Grounds shall confer with the~~ Department of Community Development shall~~, from time to time, to~~ determine the average industry cost. The Department of Community Development shall use the landscaping fees collected to plant landscaping elsewhere in the City.

§275-55.2G(6). Construction site erosion control

(6) Sites shall receive final or interim stabilization by no later than October 15th of each year, or approved by the Director. Sites under interim stabilization shall be maintained through the winter until final stabilization can be achieved during the growing season. Stabilization methods shall adhere to the Wisconsin DNR storm water construction technical standards for erosion and stabilization practices.

§275-55.2H(6). Construction site erosion control

(6) Sites shall receive final or interim stabilization by no later than October 15th of each year, or approved by the Director. Sites under interim stabilization shall be maintained through the winter until final stabilization can be achieved during the growing season. Stabilization methods shall adhere to the Wisconsin DNR storm water construction technical standards for erosion and stabilization practices.

§275-57B(2)(c)[6] Off-street parking, loading and access

[6] Vehicles for sale shall meet the requirements described in § ~~245~~275-41C(9)(a).

§275-57B(5)(a) Off-street parking, loading and access

(a) In the B-2 Zoning District, all storage and parking of vehicles and equipment, other than required customer and employee off-street parking, shall be inside, except the outside parking of two vehicles in accordance with ~~the type and size limitations as specified in this chapter~~ an approved site plan and plan of operation.

§275-57E(5) Off-street parking, loading and access

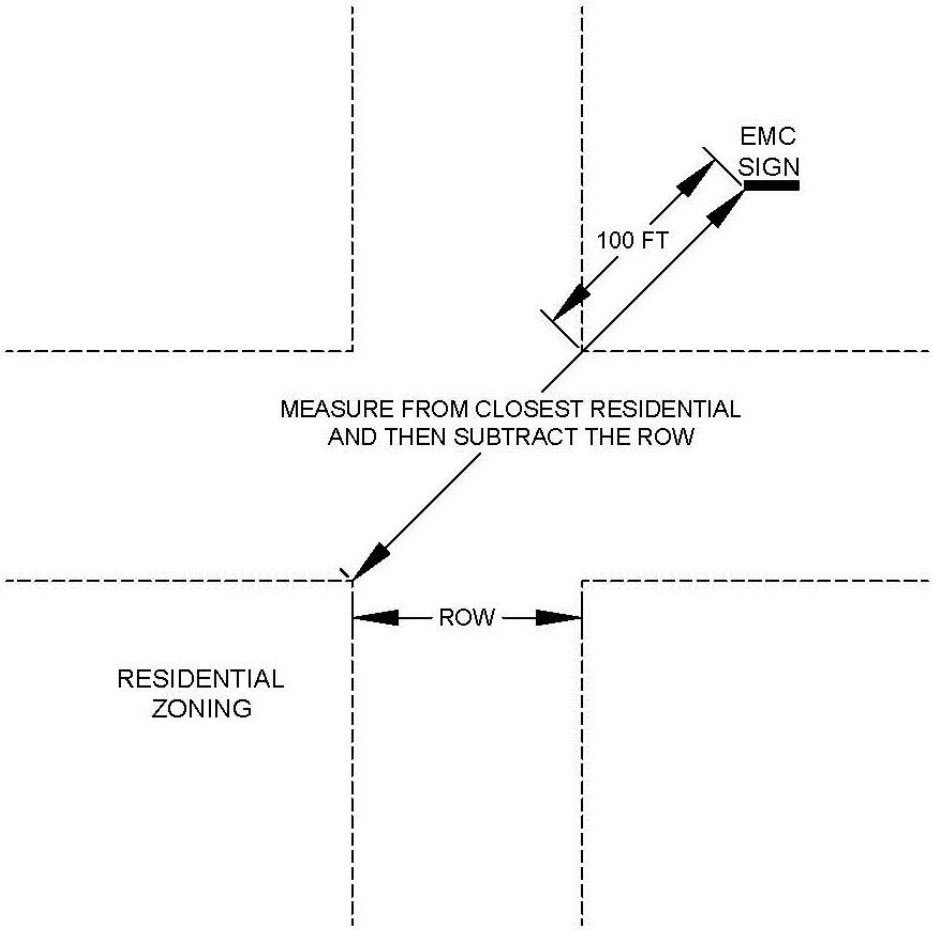
(5) Vehicular entrances. Vehicular entrances shall minimize conflict with pedestrian traffic, and driveways on arterial streets shall further be located opposite driveway openings on the opposite side of the street to minimize turning movement conflicts. The number of driveways allowed per parcel is further defined in the Development Handbook.

§275-61I(1)(c)[2] Signs

[2] The width of the sign base shall ~~be adjusted to match the width of the sign box/sign panel~~ not be less than seventy-five percent of the width of the sign face. The sign base shall be a minimum of 18 inches tall. The monument sign shall not exceed eight feet in height. The sign shall be set back entirely outside the ultimate right-of-way and vision triangle.

§275-61I(1)(g)[7] Signs

[7] A sign containing an EMC shall not be located closer than 100 feet from a residentially zoned property. The distance shall be calculated as the shortest measurable distance between the face of the sign to the edge of the residential zoning district, in a straight line without regard to intervening structures. Right-of-way is not included and shall be subtracted from this measurement.



§ 275-62. ~~General provisions.~~ Reserved.

~~A. Title. This article shall be known and may be cited as the "Nonmetallic Mining Reclamation Ordinance for the City of New Berlin."~~

~~B. Purpose. The purpose of this article is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in the City of New Berlin after the effective date of this article, in compliance with Ch. NR 135, Wis. Adm. Code, and Subchapter I of Ch. 295, Wis. Stats.~~

~~C. Statutory authority. This article is adopted under authority of § 295.14(1), Wis. Stats., § NR 135.32, Wis. Adm. Code, and § 62.11(3), Wis. Stats.~~

~~D. Restrictions adopted under other authority. The purpose of this article is to adopt and implement the uniform statewide standards for nonmetallic mining reclamation required by § 295.12(1)(a), Wis. Stats., and contained in Ch. NR 135, Wis. Adm. Code. It is not intended that this article repeal, abrogate, annul, impair or interfere with any existing rules, regulations, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.~~

~~E. Interpretation. In their interpretation and application, the provisions of this article shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin statutes outside the reclamation requirements for nonmetallic mining sites required by Subchapter I of Ch. 295, Wis. Stats., and Ch. NR 135, Wis. Adm. Code. Where any terms or requirements of this article may be inconsistent or conflicting, the more-restrictive requirements or interpretation shall apply. Where a provision of this article is required by Wisconsin statutes, or by a standard in Ch. NR 135, Wis. Adm. Code, and where the provision is unclear, the provision shall be interpreted to be consistent with the Wisconsin statutes and the provisions of Ch. NR 135, Wis. Adm. Code.~~

~~F. Severability. Should any portion of this article be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected.~~

~~G. Applicability.~~

~~(1) Overall applicability. The requirements of this article apply to all operators of nonmetallic mining sites within the City of New Berlin operating on or commencing to operate after August 1, 2001, except as exempted in Subsection G(2). This article does not apply to nonmetallic mining sites where nonmetallic mining permanently ceases before August 1, 2001. This article applies to nonmetallic mining conducted by or on behalf of the State of Wisconsin, by or on behalf of the City of New Berlin or for the benefit or use of the state or any state agency, board, commission or department, except for the waiver of financial assurance in § 275-65.2D.~~

~~(2) This article does not apply to the following activities:~~

~~(a) Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources under § 30.19, 30.195 or 30.20, Wis. Stats., and complies with Ch. NR 340, Wis. Adm. Code.~~

~~(b) Excavations subject to the permit and reclamation requirements of § 30.30 or 30.31, Wis. Stats.~~

~~(c) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.~~

~~(d) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.~~

(e) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.

(f) Excavations for building construction purposes conducted on the building site.

(g) Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.

(h) Any mining operation, the reclamation of which is required in a permit obtained under Ch. 293, Wis. Stats.

(i) Any activities required to prepare, operate or close a solid waste disposal facility under Ch. 289, Wis. Stats., or a hazardous waste disposal facility under Ch. 291, Wis. Stats., that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this article apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property where the solid waste or hazardous waste disposal facility is located, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

(j) Nonmetallic mining.

[1] Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport, or any other transportation facility or part thereof, if the nonmetallic mining is subject to the requirements of the Wisconsin Department of Transportation concerning the restoration of the nonmetallic mining site.

[2] This exemption only applies to a nonmetallic mining operation with limited purpose and duration where the Wisconsin Department of Transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the Wisconsin Department of Transportation contract for construction of a specific transportation project.

[3] If a nonmetallic mining site is covered under Subsection G(2)(j)[1] and is used to concurrently supply materials for projects unrelated to the Wisconsin Department of Transportation project, the exemption in this subsection still applies, provided that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.

(k) Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from these activities.

(l) Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under § 30.21, Wis. Stats.

H. Administration. The provisions of this article shall be administered by the City of New Berlin Department of Community Development.

I. Effective date. The provisions of this article shall take effect on July 24, 2001, the date of publication.

§ 275-63. ~~Definitions.~~ Nonmetallic Mine Reclamation

A. General provisions.

(1) Title. This article shall be known and may be cited as the "Nonmetallic Mining Reclamation Ordinance for the City of New Berlin."

(2) Purpose. The purpose of this article is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in the City of New Berlin after the effective date of this article, in compliance with Ch. NR 135, Wis. Adm. Code, and Subchapter I of Ch. 295, Wis. Stats.

(3) Statutory authority. This article is adopted under authority of § 295.14(1), Wis. Stats., § NR 135.32, Wis. Adm. Code, and § 62.11(3), Wis. Stats.

(4) Restrictions adopted under other authority. The purpose of this article is to adopt and implement the uniform statewide standards for nonmetallic mining reclamation required by § 295.12(1)(a), Wis. Stats., and contained in Ch. NR 135, Wis. Adm. Code. It is not intended that this article repeal, abrogate, annul, impair or interfere with any existing rules, regulations, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.

(5) Interpretation. In their interpretation and application, the provisions of this article shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin statutes outside the reclamation requirements for nonmetallic mining sites required by Subchapter I of Ch. 295, Wis. Stats., and Ch. NR 135, Wis. Adm. Code. Where any terms or requirements of this article may be inconsistent or conflicting, the more-restrictive requirements or interpretation shall apply. Where a provision of this article is required by Wisconsin statutes, or by a standard in Ch. NR 135, Wis. Adm. Code, and where the provision is unclear, the provision shall be interpreted to be consistent with the Wisconsin statutes and the provisions of Ch. NR 135, Wis. Adm. Code.

(6) Severability. Should any portion of this article be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected.

(7) Applicability.

(a) Overall applicability. The requirements of this article apply to all operators of nonmetallic mining sites within the City of New Berlin operating on or commencing to operate after August 1, 2001, except as exempted in Subsection G(2). This article does not apply to nonmetallic mining sites where nonmetallic mining permanently ceases before August 1, 2001. This article applies to nonmetallic mining conducted by or on behalf of the State of Wisconsin, by or on behalf of the City of New Berlin or for the benefit or use of the state or any state agency, board, commission or department, except for the waiver of financial assurance in § 275-65.2D.

(b) This article does not apply to the following activities:

[1] Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources under § 30.19, 30.195 or 30.20, Wis. Stats., and complies with Ch. NR 340, Wis. Adm. Code.

[2] Excavations subject to the permit and reclamation requirements of § 30.30 or 30.31, Wis. Stats.

[3] Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.

[4] Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.

[5] Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.

[6] Excavations for building construction purposes conducted on the building site.

[7] Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.

[8] Any mining operation, the reclamation of which is required in a permit obtained under Ch. 293, Wis. Stats.

[9] Any activities required to prepare, operate or close a solid waste disposal facility under Ch. 289, Wis. Stats., or a hazardous waste disposal facility under Ch. 291, Wis. Stats., that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this article apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property where the solid waste or hazardous waste disposal facility is located, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

]10] Nonmetallic mining.

[a] Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport, or any other transportation facility or part thereof, if the nonmetallic mining is subject to the requirements of the Wisconsin Department of Transportation concerning the restoration of the nonmetallic mining site.

[b] This exemption only applies to a nonmetallic mining operation with limited purpose and duration where the Wisconsin Department of Transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the Wisconsin Department of Transportation contract for construction of a specific transportation project.

[c] If a nonmetallic mining site is covered under Subsection G(2)(j)[1] and is used to concurrently supply materials for projects unrelated to the Wisconsin Department of Transportation project, the exemption in this subsection still applies, provided that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.

[11] Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from these activities.

[12] Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under § 30.21, Wis. Stats.

(8) Administration. The provisions of this article shall be administered by the City of New Berlin Department of Community Development.

(9) Effective date. The provisions of this article shall take effect on July 24, 2001, the date of publication.

(10) Definitions. See § 275-70.

~~As used in this article, the following words shall have the meanings indicated:~~

~~ALTERNATIVE REQUIREMENT~~
~~An alternative to the reclamation standards of this article provided through a written authorization granted by the City of New Berlin pursuant to § 275-65.6.~~

~~APPLICABLE RECLAMATION ORDINANCE~~
~~A nonmetallic mining reclamation ordinance, including this article, that applies to a particular nonmetallic mining site and complies with the requirements of Ch. NR 135, Wis. Adm. Code, and Subchapter I of Ch. 295, Wis. Stats., unless the Wisconsin Department of Natural Resources is the regulatory authority as defined in Subsection (20)(b)3. If the Wisconsin Department of Natural Resources is the regulatory authority, "applicable reclamation ordinance" means the relevant and applicable provisions of Ch. NR 135, Wis. Adm. Code.~~

~~BORROW SITE~~
~~An area outside of a transportation project site from which stone, soil, sand or gravel is excavated for use at the project site, except the term does not include commercial sources.~~

~~CITY~~
~~The City of New Berlin.~~

~~CONTEMPORANEOUS RECLAMATION~~
~~The sequential or progressive reclamation of portions of the nonmetallic mining site affected by mining operations that is performed in advance of final site reclamation, but which may or may not be final reclamation, performed to minimize the area exposed to erosion, at any one time, by nonmetallic mining activities.~~

~~DEPARTMENT~~
~~The Wisconsin Department of Natural Resources.~~

~~ENVIRONMENTAL POLLUTION~~
~~Has the meaning in § 295.11(2), Wis. Stats.~~

~~FINANCIAL ASSURANCE~~
~~A commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in § 275-65.2 and is sufficient to pay for reclamation activities required by this article.~~

~~HIGHWALL~~
~~A vertical or nearly vertical face in solid rock or a slope of consolidated or unconsolidated material that is steeper than 3:1.~~

~~LANDOWNER~~

~~The person who has title to land in fee simple or who holds a land contract for the land. A landowner is not a person who owns nonmetallic mineral rights to land if a different person possesses title to that land in fee simple or holds a land contract for that land.~~

~~LICENSED PROFESSIONAL GEOLOGIST~~
~~A person who is licensed as professional geologist pursuant to Ch. 470, Wis. Stats.~~

~~NONMETALLIC MINERAL~~
~~A product, commodity or material consisting principally of naturally occurring, organic or inorganic, nonmetallic, nonrenewable material. Nonmetallic minerals include, but are not limited to, stone, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat, talc and topsoil.~~

~~NONMETALLIC MINING or MINING~~
~~All of following:~~

~~A. Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging. Nonmetallic mining does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.~~

~~B. Processes carried out at a nonmetallic mining site that are related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. These processes include, but are not limited to, stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping and dewatering.~~

~~NONMETALLIC MINING RECLAMATION or RECLAMATION~~
~~The rehabilitation of a nonmetallic mining site to achieve a land use specified in a nonmetallic mining reclamation plan approved under this article, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, removal, storage and replacement of topsoil, stabilization of soil conditions, reestablishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution and, if practicable, the restoration of plant, fish and wildlife habitats.~~

~~NONMETALLIC MINING REFUSE~~
~~Waste soil, rock and minerals, as well as other natural site material resulting from nonmetallic mining. Nonmetallic mining refuse does not include marketable by-products resulting directly from or displaced by the nonmetallic mining that are scheduled to be removed from the nonmetallic mining site within a reasonable period of time after extraction.~~

~~NONMETALLIC MINING SITE or SITE~~
~~All contiguous areas of present or proposed mining described in Subsection A, subject to the qualifications in Subsection B.~~

~~A. "Nonmetallic mining site" means the following:~~

~~(1) The location where nonmetallic mining is proposed or conducted.~~

~~(2) Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.~~

~~(3) Areas where nonmetallic mining refuse is deposited.~~

(4) Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.

(5) Areas where grading or regrading is necessary.

(6) Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.

B. "Nonmetallic mine site" does not include any of the following areas:

(1) Those portions of sites listed in Subsection A not used for nonmetallic mining or purposes related to nonmetallic mining after August 1, 2001.

(2) Separate, previously mined areas that are not used for nonmetallic mineral extraction after August 1, 2001, and are not contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads.

(3) Areas previously mined but used after August 1, 2001, for a nonmining activity, such as stockpiles of materials used for an industrial process unrelated to nonmetallic mining.

OPERATOR

Any person who is engaged in, or who has applied for a permit to engage in, nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.

PERSON

An individual, owner, operator, corporation, limited liability company, partnership, association, county, municipality, interstate agency or state agency or federal agency.

REGISTERED PROFESSIONAL ENGINEER

A person who is registered as a professional engineer pursuant to § 443.04, Wis. Stats.

REGULATORY AUTHORITY

The City of New Berlin.

REPLACEMENT OF TOPSOIL

The replacement or redistribution of topsoil or topsoil substitute material to all areas where topsoil was actually removed or affected by nonmetallic mining for the purposes of providing adequate vegetative cover and stabilization of soil conditions needed to achieve the approved post-mining land use and as required by the reclamation plan approved pursuant to this article.

SOLID WASTE

Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Ch. 283, Wis. Stats., or source material, special nuclear material or by-product material, as defined in § 254.31(1), Wis. Stats.

TOPSOIL

The surface layer of soil which is generally more fertile than the underlying soil layers, which is the natural medium for plant growth and which can provide the plant growth, soil stability and other attributes necessary to meet the success standards approved in the reclamation plan.

~~TOPSOIL SUBSTITUTE MATERIAL~~

~~Soil or other unconsolidated material either used alone or mixed with other beneficial materials and which can provide the plant growth, site stability and other attributes necessary to meet the success standards approved in the reclamation plan.~~

~~UNRECLAIMED ACRE or UNRECLAIMED ACRES~~

~~A. Those unreclaimed areas in which nonmetallic mining has occurred after August 1, 2001, and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under § 275-65.17C. However, the term does not include any areas described in Subsection B.~~

~~B. "Unreclaimed acre" or "unreclaimed acres" does not include:~~

~~(1) Those areas where reclamation has been completed and certified as reclaimed under § 275-65.17C.~~

~~(2) Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.~~

~~(3) Those portions of nonmetallic mining sites which are included in a nonmetallic mining reclamation plan approved pursuant to this article but are not yet affected by nonmetallic mining.~~

~~(4) Areas previously mined but used after August 1, 2001, for a nonmining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.~~

~~(5) For purposes of fees under § 275-65.15, those areas within a nonmetallic mining site which the City has determined to have been successfully reclaimed on an interim basis in accordance with § 275-65.17C.~~

B. All nonmetallic mining sites subject to this article shall be reclaimed in conformance with the standards contained below:

(1) General standards.

(a) Refuse and other solid wastes. Nonmetallic mining refuse shall be reused in accordance with a reclamation plan. Other solid wastes shall be disposed of in accordance with applicable rules of the Wisconsin Department of Natural Resources adopted pursuant to Chs. 289 and 291, Wis. Stats.

(b) Area disturbed and contemporaneous reclamation. Nonmetallic mining reclamation shall be conducted, to the extent practicable, to minimize the area disturbed by nonmetallic mining and to provide for nonmetallic mining reclamation of portions of the nonmetallic mining site while nonmetallic mining continues on other portions of the nonmetallic mining site.

(c) Public health, safety and welfare. All nonmetallic mining sites shall be reclaimed in a manner so as to comply with federal, state and local regulations governing public health, safety and welfare.

(d) Habitat restoration. When the land use required by the reclamation plan approved pursuant to this article requires plant, fish or wildlife habitats, it shall be restored, to the extent practicable, to a condition at least as suitable as that which existed before the lands were affected by nonmetallic mining operations.

(e) Compliance with environmental regulations. Reclamation of nonmetallic mining sites shall comply with any other applicable federal, state and local laws, including those related to environmental protection, zoning and land use control. NOTE: Other applicable environmental, zoning or land use regulations may

include Chs. NR 103, 115, 116, 117, 205, 216, 269, 105, 106, 140, 150, 151, 340, 500-590, and 812, Wis. Adm. Code, Chs. 30 and 91, Wis. Stats., and Section 404 of the Clean Water Act (33 U.S.C. § 1344), which may be applicable to all or part of either an existing or proposed nonmetallic mining project, so long as they do not require or directly regulate the reclamation of nonmetallic mining sites as addressed under Subchapter I of Ch. 295, Wis. Stats.

(2) Surface water and wetlands protection. Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the Wisconsin Department of Natural Resources' water quality standards for surface waters and wetlands contained in Chs. NR 102 to NR 105, Wis. Adm. Code. Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to this article. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.

(3) Groundwater protection.

(a) Groundwater quantity. A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.

(b) Groundwater quality. Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in Ch. NR 140, Wis. Adm. Code, to be exceeded at a point of standard application defined in that chapter.

(4) Topsoil management.

(a) Removal. Topsoil and topsoil substitute material shall be provided as specified in the reclamation plan approved pursuant to this article in order to achieve reclamation to the approved post-mining land use. Removal of on-site topsoil and topsoil substitute material removal shall be performed, when specified in the reclamation plan, prior to any mining activity associated with any specific phase of the mining operation.

(b) Volume. The operator shall obtain the volume of soil required to perform final reclamation by removal of on-site topsoil or topsoil substitute material or by obtaining topsoil or substitute material as needed to make up the volume of topsoil as specified in the reclamation plan approved pursuant to this article.

(c) Storage. Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan approved pursuant to this article, either be used in contemporaneous reclamation or stored in an environmentally acceptable manner. The location of stockpiled topsoil or topsoil substitute material shall be chosen to protect the material from erosion or further disturbance or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.

(5) Final grading and slopes.

(a) All areas affected by mining shall be addressed in the approved reclamation plan, pursuant to § NR 135.19, Wis. Adm. Code, to provide that a stable and safe condition consistent with the post-mining land use is achieved. The reclamation plan may designate highwalls or other unmined and undisturbed natural solid bedrock as stable and safe and not in need of reclamation or designate other areas affected by mining, including slopes comprised of unconsolidated materials

that exceed a 3:1 slope, whether or not graded, as stable and safe. For slopes designated as stable under this subsection, the regulatory authority may require that either:

[1] A site-specific engineering analysis be performed by a registered professional engineer to demonstrate that an acceptable slope stability factor is attainable at a steeper slope; or

[2] The operator shall perform a field test plot demonstration to demonstrate that a stable and safe condition will be achieved and that the post-mining land use specified in the reclamation plan will not be adversely affected.

(b) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless found acceptable through one or more of the following: alternative requirements are approved under § NR 135.26, Wis. Adm. Code; steeper slopes are shown to be stable through a field plot demonstration approved as part of an approved reclamation plan; or stable slopes can be demonstrated based on site-specific engineering analysis performed by a registered professional engineer. All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.

(c) When the approved post-mining land use includes a body of water, the approved final grade at the edge of a body of water shall extend vertically six feet below the lowest seasonal water level. A slope no steeper than 3:1 shall be created at a designated location or locations, depending on the size of the water body, to allow for a safe exit.

(6) Topsoil redistribution for reclamation. Topsoil or topsoil substitute material shall be redistributed in accordance with the reclamation plan approved pursuant to this article in a manner which minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed except where uniform redistribution is undesirable or impractical. Topsoil or topsoil substitute material redistribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.

(7) Revegetation and site stabilization. Except for permanent roads or similar surfaces identified in the reclamation plan approved pursuant to this article, all surfaces affected by nonmetallic mining shall be reclaimed and stabilized by revegetation or other means. Revegetation and site stabilization shall be in accordance with the approved reclamation plan and shall be performed as soon as practicable after mining activity has permanently ceased in any part of the mine site. Note: Field test plot demonstrations are highly recommended to ensure that reclamation success standards are met and financial assurance is released as quickly as possible. When field test plots are employed, they should be approved as part of the reclamation plan under § NR 135.19, Wis. Adm. Code.

(8) Assessing completion of successful reclamation.

(a) The criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released shall be specified in the reclamation plan approved pursuant to this article. Criteria to evaluate reclamation success shall be quantifiable.

(b) Compliance with the revegetation success standards in the approved reclamation plan shall be determined by:

[1] On-site inspections by the City or its agent;

[2] Reports presenting results obtained during reclamation evaluations, including summarized data on revegetation, photo documentation or other evidence that the criteria approved in the reclamation plan to ascertain success have been met; or

[3] A combination of inspections and reports.

(c) In those cases where the post-mining land use specified in the reclamation plan requires a return of the mining site to a pre-mining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this section.

(d) Revegetation success may be determined by:

]1] Comparison to an appropriate reference area;

[2] Comparison to baseline data acquired at the mining site prior to its being affected by mining; or

[3] Comparison to an approved alternate technical standard.

(e) Revegetation using a variety of plants indigenous to the area is favored.

(9) Intermittent mining. Intermittent mining may be conducted, provided that the possibility of intermittent cessation of operations is addressed in an operator's reclamation permit, no environmental pollution or erosion of sediments is occurring, and financial assurance for reclamation pursuant to § 275-65.2 is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.

(10) Maintenance. During the period of the site reclamation, after the operator has stated that reclamation is complete but prior to release of financial assurance, the operator shall perform any maintenance necessary to prevent erosion, sedimentation or environmental pollution, comply with the standards of this article, or to meet the goals specified in the reclamation plan approved pursuant to this article.

C. Permitting. Nonmetallic mining reclamation permit application required. No person may engage in nonmetallic mining or in nonmetallic mining reclamation without possessing a nonmetallic mining reclamation permit issued pursuant to the applicable reclamation ordinance unless the activity is specifically exempted in 275-63A(7) or 275-70 definition of “Nonmetallic mining site” paragraph (b).

(1) Required submittal. All operators of any nonmetallic mining sites shall apply for a reclamation permit from the City. All applications for reclamation permits under this section shall be accompanied by the following information:

(a) A brief description of the general location and nature of the nonmetallic mine.

(b) A legal description of the property on which the nonmetallic mine is located or proposed, including the parcel identification number.

(c) The names, addresses and telephone numbers of all persons or organizations who are owners or lessors of the property on which the nonmetallic mining site is located.

(d) The name, address and telephone number of the person or organization who or which is the operator.

(e) A certification by the operator of his or her intent to comply with the statewide nonmetallic mining reclamation standards established by § 275-63B.

(2) The operator of any nonmetallic mine site shall submit an application that meets the requirements specified below to the Department of Community Development by certified mail at: 3805 S. Casper Drive, New Berlin, WI 53151, prior to beginning operations.

(a) The information required by §275-63C(1).

(b) The plan review and annual fees required by §275-63Q and §275-63R.

(c) A reclamation plan conforming to § 275-63D.

(d) A certification that the operator will provide, as a condition of the reclamation permit, financial assurance as required by §275-63E upon granting of the reclamation permit and before mining begins.

(e) To avoid duplication, the permit application and submittals required under this subsection may, by reference, incorporate existing plans or materials that meet the requirements of this article.

D. Reclamation plan.

(1) Reclamation Plan required. An operator who conducts or plans to conduct nonmetallic mining shall submit to the City a reclamation plan that meets all of the following requirements and complies with the standards of §275-63B.

(2) Existing Site information. The reclamation plan shall include information sufficient to describe the existing natural and physical conditions of the site, including but not limited to:

(a) Maps of the nonmetallic mining site including the general location, property boundaries, the aerial extent, geologic composition and depth of the nonmetallic mineral deposit, the distribution, thickness and type of topsoil, the location of surface waters and the existing drainage patterns, the approximate elevation of ground water, as determined by existing hydrogeologic information. In specific instances where the existing hydrogeologic information is insufficient for purposes of the reclamation plan, the applicant may supplement the information with the opinion of a licensed professional geologist or hydrologist.

(b) Topsoil or topsoil substitute material, if required to support revegetation needed for reclaiming the site to approved post-mining land use, can be identified using county soil surveys or other available information, including that obtained from a soil scientist or the University of Wisconsin soil science extension agent or other available information resources.

(c) Information available to the mine operator on biological resources, plant communities, and wildlife use at and adjacent to the proposed or operating mine site.

(d) Existing topography as shown on contour maps of the site at 5 foot contour intervals to be specified by the regulatory authority.

(e) Location of man-made features on or near the site.

(f) For proposed nonmetallic mining sites that include previously mined areas, a plan view drawing showing the location and extent of land previously affected by nonmetallic mining, including the location of stockpiles, wash ponds and sediment basins.

Note: Some of or all of the information required above may be shown on the same submittal, i.e. the site map required by §275-63D(2)(a) may also show topography required by §275-63D(2)(d).

(3) Post-mining land use.

(a) The reclamation plan shall specify a proposed post-mining land use for the nonmetallic mine site. The proposed post-mining land use shall be consistent with local land use plans and local zoning at the time the plan is submitted, unless a change to the land use plan or zoning is proposed. The proposed post-mining land use shall also be consistent with all applicable local, state, or federal laws in effect at the time the plan is submitted.

NOTE: A proposed post-mining land use is necessary to determine the type and degree of reclamation needed to correspond with that land use. The post-mining land use will be key in determining the reclamation plan. Final slopes, drainage patterns, site hydrology,

seed mixes and the degree of removal of mining-related structures, drainage structures, and sediment control structures will be dictated by the approved post-mining land use.

(b) Land used for nonmetallic mineral extraction in areas zoned under an exclusive agricultural use ordinance pursuant to § 91.75, Wis. Stats., shall be restored to agricultural use.[1] NOTE: Section 91.75(9), Wis. Stats., contains this requirement; § 91.01(1), Wis. Stats., defines the term "agricultural use."[2]

[1] Editor's Note: Chapter 91 of the Wisconsin Statutes was repealed and recreated with revised numbering pursuant to 2009 Wisconsin Act 28.

[2] Editor's Note: See now § 91.01(2), Wis. Stats.

(4) Reclamation measures. The reclamation plan shall include a description of the proposed reclamation, including methods and procedures to be used and a proposed schedule and sequence for the completion of reclamation activities for various stages of reclamation of the nonmetallic mining site. The following shall be included:

(a) A description of the proposed earthwork and reclamation, including final slope angles, highwall reduction, benching, terracing and other structural slope stabilization measures, and, if necessary, a site-specific engineering analysis performed by a registered professional engineer as provided by NR 135.10(1) and (2).

(b) The methods of topsoil or topsoil substitute material removal, storage, stabilization and conservation that will be used during reclamation.

(c) A plan or map which shows anticipated topography of the reclaimed site and any water impoundments or artificial lakes needed to support the anticipated future land use of the site.

(d) A plan or map which shows surface structures, roads and related facilities after the cessation of mining.

(e) The estimated cost of reclamation for each stage of the project or the entire site if reclamation staging is not planned.

(f) A revegetation plan, which shall include timing and methods of seedbed preparation, rates and kinds of soil amendments, seed application timing, methods and rates, mulching, netting and any other techniques needed to accomplish soil and slope stabilization.

(g) Quantifiable standards for revegetation adequate to show that a sustainable stand of vegetation has been established which will support the approved post-mining land use. Standards for revegetation may be based on the percent vegetative cover, productivity, plant density, diversity or other applicable measures.

(h) A plan and, if necessary, a narrative showing erosion-control measures to be employed during reclamation activities. These shall address how reclamation activities will be conducted to minimize erosion and pollution of surface water and groundwater.

(i) A description of any areas which will be reclaimed on an interim basis sufficient to qualify for the waiver of fees pursuant to §275-63T(2) and §275-63T(4) and which will be subsequently disturbed prior to final reclamation. Descriptions shall include an identification of the proposed areas involved, methods of reclamation to comply with the standards in § 275-63B and timing of interim and final reclamation. Note: Some of the information required by this subsection may be combined to avoid duplication, e.g. a single map may show anticipated post-mining topography required by §275-63D(4)(c) as well as structures and roads as required by §275-63D(4)(d).

(j) A description of how the reclamation plan addresses the long-term safety of the reclaimed mining site. The description shall include a discussion of site-specific safety measures to be implemented at the site and include measures that address public safety with regard to adjacent land uses. Note: Safety measures include visual warnings, physical barriers, slope modifications such as reclamation blasting, scaling of the rock face, and creation of benches. Other measures may be employed if found to be equivalent by a registered professional engineer.

(5) Criteria for successful reclamation. The reclamation plan shall contain criteria for assuring successful reclamation in accordance § 275-63B(8).

(6) Certification of reclamation plan. The operator shall provide a signed certification that reclamation will be carried out in accordance with the reclamation plan. If the operator does not own the land, the landowner or lessor, if different from the operator or owner, shall also provide signed certification that they concur with the reclamation plan and will allow its implementation.

(7) Existing plans and approvals. To avoid duplication of effort, the reclamation plan required by §275-63D may, by reference, incorporate existing plans or materials that meet the requirements of this article.

(8) Approval of reclamation plan. The City shall approve, conditionally approve or deny the reclamation plan submitted under this section in writing in accordance with §275-63G(2) for mines that apply for a reclamation permit in conformance with §275-63C. Conditional approvals of reclamation plans shall be made according to §275-63G(5), and denials of reclamation plans shall be made pursuant to §275-63H. The operator shall keep a copy of the reclamation plan approved under this subsection at the mine site or, if not practicable, at the operator's nearest place of business.

E. Financial assurance.

(1) Financial assurance requirements. All operators of nonmetallic mining sites in the City shall prepare and submit a proof of financial assurance that meets the following requirements:

(a) Notification. The regulatory authority shall provide written notification to the operator of the amount of financial assurance required under §275-63E(1)(c).

(b) Filing. Following approval of the nonmetallic mining reclamation permit and as a condition of the permit, the operator shall file a financial assurance with the City. The financial assurance shall provide that the operator shall faithfully perform all requirements in this article, an applicable reclamation ordinance and the reclamation plan. Financial assurance shall be payable exclusively to the City. In cases where one or more other regulatory authorities regulate a nonmetallic mining site, all financial assurance shall be made payable to the City only if it currently has primary regulatory responsibility.

(c) Amount and duration of financial assurance. The amount of financial assurance shall equal as closely as possible the cost to the City of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The amount of financial assurance shall be reviewed periodically by the City to assure it equals outstanding reclamation costs. Any financial assurance filed with the City shall be in an amount equal to the estimated cost for reclaiming all sites the operator has under project permits. The City may accept a lesser initial amount of financial assurance, provided that the permittee initiates a process to continuously increase the amount of financial assurance until it is adequate to effect reclamation. An escrow account may be

established that is based on production gross sales and serves to provide regular payments to an account that is designed to grow to the amount necessary to guarantee performance of reclamation by the expected time of final reclamation. The period of the financial assurance is dictated by the period of time required to establish the post-mining land use declared and approved of in the reclamation plan. This may extend beyond the permit if required to accomplish successful and complete implementation of the reclamation plan.

(d) Form and management. Financial assurance shall be provided by the operator and shall be by a bond or an alternate financial assurance. Financial assurance shall be payable to the City and released upon successful completion of the reclamation measures specified in the reclamation plan. Alternate financial assurances may include, but are not limited to, cash, certificates of deposit, irrevocable letters of credit, irrevocable trusts, established escrow accounts, demonstration of financial responsibility by meeting net worth requirements, or government securities. Any interest from the financial assurance shall be paid to the operator. Certificates of deposit shall be automatically renewable or other assurances shall be provided before the maturity date. Financial assurance arrangements may include, at the discretion of the City, a blend of different options for financial assurance, including a lien on the property on which the nonmetallic mining site occurs or a combination of financial assurance methods.

(e) Multiple projects. Any operator who obtains a permit from the City for two or more nonmetallic mining sites may elect, at the time the second or subsequent site is approved, to post a single financial assurance in lieu of separate financial assurance instruments for each nonmetallic mining site. When an operator elects to post a single financial assurance in lieu of separate financial assurances for each mining site, no financial assurances previously posted on individual mining sites shall be released until the new financial assurance has been accepted by the City.

(f) Multiple jurisdictions. In cases where more than one regulatory authority has jurisdiction, a cooperative financial security arrangement may be developed and implemented by the regulatory authorities to avoid requiring the permittee to prove financial assurance with more than one regulatory authority for the same nonmetallic mining site. Financial assurance is required for each site and two or more sites of less than one acre by the same operator, except that governmental units are not required to obtain financial assurance.

(g) Certification of completion and release.

[1] The operator shall notify the regulatory authority, by filing a notice of completion, at the time that he or she determines that reclamation of any portion of the mining site or the entire site is complete. The City shall inspect the mine site or portion thereof that was the subject of the notice of completion to determine if reclamation has been carried out in accordance with the approved reclamation plan. The City may partially release the financial assurance if it determines that compliance with a portion of the reclamation plan has been achieved and requires no waiting period. After determining that reclamation is complete, the City shall issue a certificate of completion and shall release the financial assurance or appropriately reduce the financial assurance in the case of reclamation of a portion of the mining site.

[2] The City shall make a determination of whether or not the certification in §275-63E(1)(g)[1] can be made within 60 days of the receipt of the request.

[3] The City may make a determination under this subsection that:

[a] Reclamation is not yet complete;

[b] It is not possible to assess whether reclamation is complete due to weather conditions, snow cover or other relevant factors;

[c] Reclamation is complete in a part of the mine; or

[d] Reclamation is fully complete.

(h) Forfeiture. Financial assurance shall be forfeited if any of the following occur:

[1] A permit is revoked under §275-63O and the appeals process has been completed.

[2] An operator ceases mining operations and fails to reclaim the site in accordance with the reclamation plan.

(i) Cancellation. Financial assurance shall provide that it may not be canceled by the surety or other holder or issuer except after not less than a ninety-day notice to the City in writing by registered or certified mail. Not less than 30 days prior to the expiration of the ninety-day notice of cancellation, the operator shall deliver to the City a replacement proof of financial assurance. In the absence of this replacement financial assurance, all mining shall cease until the time it is delivered and in effect.

(j) Changing methods of financial assurance. The operator of a nonmetallic mining site may change from one method of financial assurance to another. This may not be done more than once a year unless required by an adjustment imposed pursuant to §275-63E(1)(i). The operator shall give the City at least 60 days' notice prior to changing methods of financial assurance and may not actually change methods without the written approval of the City.

(k) Bankruptcy notification. The operator of a nonmetallic mining site shall notify the regulatory authority by certified mail of the commencement of voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C. et seq., naming the operator as debtor, within 10 days of commencement of the proceeding.

(l) Adjustment of financial assurance. Financial assurance may be adjusted when required by the City. The City may notify the operator in writing that adjustment is necessary and the reasons for it. The City may adjust financial assurance based upon prevailing or projected interest or inflation rates or the latest cost estimates for reclamation.

(m) Net-worth test.

[1] Only an operator that meets the definition of "company" in § 289.41(1)(b), Wis. Stats., may use the net-worth method of providing financial assurance.

[2] The operator shall submit information to the regulatory authority in satisfaction of the net-worth test requirements of § 289.41(4), Wis. Stats. The criteria in § 289.41(6)(b), (d), (e), (f), (g), (h) and (i), Wis. Stats., shall apply.

[3] An operator using the net-worth test to provide financial assurance for more than one mine shall use the total cost of compliance for all mines in determining the net worth to reclamation cost ratio in accordance with § 289.41(6), Wis. Stats.

[4] Determinations under the net-worth test shall be done in accordance with § 289.41(5), Wis. Stats.

[5] In addition, the operator shall submit a legally binding commitment to faithfully perform all compliance and reclamation work at the mine site that is required under this article.

(2) Private nonmetallic mines. The operator of any nonmetallic mining site that applies for a reclamation permit in conformance with §275-63C shall submit the proof of financial assurance required by §275-63E(1) as specified in the reclamation permit issued to it under this article.

(3) Public nonmetallic mining. The financial assurance requirements of this section do not apply to nonmetallic mining conducted by the State of Wisconsin, a state agency, board, commission or department, or the City.

F. Public notice and right of hearing.

(1) Reclamation plan hearing. The City shall provide public notice and the opportunity for a public informational hearing as set forth below:

(a) Public notice.

[1] When the City receives an application to issue a reclamation permit, it shall publish a public notice of the application no later than 30 days after receipt of a complete application that satisfies §275-63C.

[2] The notice shall briefly describe the mining and reclamation planned at the nonmetallic mining site. The notice shall be published as a Class 1 notice pursuant to § 985.07(1), Wis. Stats., in the official newspaper of the City. The notice shall mention the opportunity for public hearing pursuant to this section and shall give the locations at which the public may review the application and all supporting materials, including the reclamation plan.

[3] Copies of the notice shall be forwarded by the City to the county or applicable local zoning board, the county and applicable local planning organization, the County Land Conservation Officer, and owners of land within 300 feet of the boundaries of the parcel or parcels of land on which the site is located.

(b) Hearing. The City shall provide for an opportunity for a public informational hearing on an application or request to issue a nonmetallic mining reclamation permit as follows:

[1] If it conducts a zoning-related hearing on the nonmetallic mine site, the City shall provide the opportunity at this hearing to present testimony on reclamation-related matters. This opportunity shall fulfill the requirement for public hearing for a nonmetallic mining reclamation permit required by this section. The City shall consider the reclamation-related testimony in the zoning-related hearing in deciding on a permit application pursuant to this article.

[2] If there is no opportunity for a zoning-related hearing on the nonmetallic mine site as described in §275-63F(1)(b)[1], opportunity for public hearing required by this section shall be provided as follows: Any person residing within, owning property within, or whose principal place of business is within 300 feet of the boundary of the parcel or parcels of land in which the nonmetallic mining site is located or proposed may request a public informational hearing. The City shall hold a public

hearing if requested by any of these persons within 30 days of the actual date of public notice under §275-63F(1)(a).

[a] This public informational hearing shall be held no sooner than 30 days nor later than 60 days after being requested. The hearing shall be conducted as an informational hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility and effects of the proposed reclamation. Notice of the public informational hearing shall follow the general notice procedures of §275-20D of the City Municipal Code.

[b] The subject matter and testimony at this informational hearing shall be limited to reclamation of the nonmetallic mine site. Note: Informational hearings are limited to reclamation of the nonmetallic mining site. Regulatory authority staff conducting the hearings should make it clear that the hearings may not cover non- reclamation matters because they are beyond the scope of NR 135 reclamation. Non-reclamation matters are those related to zoning or subject to other local authority. These matters may include but are not limited to: traffic, setbacks, blasting, dewatering, hours of operation, noise or dust control or the question of whether to use the land for mining.

(2) Local transportation-related mines. No public notice or informational hearing is required for a nonmetallic mining reclamation permit issued to a local transportation-related mine pursuant to §275-63G(3).

G. Issuance of nonmetallic mining reclamation permit.

(1) Permit required. No person may engage in nonmetallic mining or nonmetallic mining reclamation in the City without first obtaining a reclamation permit issued under this article, except for nonmetallic mining sites that are exempt from this article under §275-63A(7)(a) or (b).

(2) Permit issuance. Applications for reclamation permits for nonmetallic mining sites that satisfy §275-63C shall be issued a reclamation permit or otherwise acted on as provided below.

(a) Unless denied pursuant to §275-63H, the City shall approve in writing a request that satisfies the requirements of §275-63C to issue a nonmetallic mining reclamation permit for the proposed nonmetallic mine.

(b) The City may not issue an approval without prior or concurrent approval of the reclamation plan that meets the requirements of §275-63D. The regulatory authority may issue a reclamation permit subject to conditions in §275-63G(5), if appropriate. The permit decision shall be made no sooner than 30 days nor later than 90 days following receipt of the complete reclamation permit application that meets the requirement in §275-63C and reclamation plan that meets the requirements in §275-63D, unless a public hearing is held pursuant to §275-63F. If a public hearing is held, the regulatory authority shall issue the reclamation permit, subject to conditions pursuant to §275-63G(5), if appropriate, or shall deny the permit as provided in §275-63H, no later than 60 days after completing the public hearing.

(c) Permits issued pursuant to this subsection shall require compliance with a reclamation plan that has been approved and satisfies the requirements of §275-63D and provision by the applicant of financial assurance required under §275-63E and payable to the City prior to beginning mining.

(3) Automatic permit for local transportation-related mines.

(a) The City shall automatically issue an expedited permit under this subsection to any borrow site that:

[1] Will be opened and reclaimed under contract with the City within a period not exceeding 36 months;

[2] Is a nonmetallic mine which is intended to provide stone, soil, sand or gravel for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or other transportation facility under contract with the City;

[3] Is regulated and will be reclaimed under contract with the City in accordance with the requirements of the Wisconsin Department of Transportation concerning the restoration of nonmetallic mining sites;

[4] Is not a commercial source;

[5] Will be constructed, operated and reclaimed in accordance with applicable zoning requirements, if any; and

[6] Is not otherwise exempt from the requirements of this article under §275-63A(7)(b)[10].

(b) In this subsection, "municipality" has the meaning defined in § 299.01(8), Wis. Stats.

(c) Automatic permits shall be issued under this subsection in accordance with the following provisions:

[1] The applicant shall notify the City of the terms and conditions of the contract with respect to reclamation of the proposed borrow site.

[2] The applicant shall provide evidence to the City to show that the borrow site and its reclamation will comply with applicable zoning requirements, if any.

[3] The City shall accept the contractual provisions incorporating requirements of the Wisconsin Department of Transportation in lieu of a reclamation plan under §275-63D.

[4] The City shall accept the contractual provisions in lieu of the financial assurance requirements in §275-63E.

[5] The public notice and hearing provisions of §275-63F do not apply to nonmetallic mining sites that are issued automatic permits under this subsection. NOTE: Local public notice and hearing requirements, if any, regarding zoning decisions still apply.

[6] Mines permitted under this subsection shall pay an annual fee to the City as provided in §275-63R but shall not be subject to the plan review fee provided in §275-63Q. The total annual fee, including the share of the Wisconsin Department of Natural Resources, shall not exceed the total amounts listed in Table 1 and 2 of § NR 135.39, Wis. Adm. Code. NOTE: Fees may not be assessed for local transportation-related mines permitted under this subsection under §275-63R that are greater than allowed by § NR 135.23(1)(g), Wis. Adm. Code. See the note following §275-63R(3)(b) for details of this fee limitation.

[7] The City shall issue the automatic permit within seven days of the receipt of a complete application.

[8] If the borrow site is used to concurrently supply materials for other than the local transportation project, the automatic permitting in this subsection still applies, provided the site will be reclaimed under a

contractual obligation with the City in accordance with the Wisconsin Department of Transportation requirements.

[9] Notwithstanding §275-63P, the operator of a borrow site under this subsection is required to submit only the information in an annual report necessary to identify the borrow site and to determine the applicable annual fee. Note: A reclamation permit is not required under this section for nonmetallic mining sites that are operated to provide materials for construction, maintenance and repair of transportation facilities that are subject to the Wisconsin Department of Transportation concerning restoration of the nonmetallic mining site, as provided by s. 295.16(1)(c), Stats.

(4) Expedited review. Any operator of a nonmetallic mining site may request expedited review of a reclamation permit application under §275-63G(4)(a) or (b) as follows:

(a) The operator may submit a request for expedited permit review with payment of the expedited review fee specified in §275-63Q(2). This request shall state the need for such expedited review and the date by which such expedited review is requested.

(b) The operator may submit a request for expedited review under this subsection if the applicant requires a reclamation permit to perform services under contract with the City. This request for expedited review shall state the need for expedited review and shall include a copy of the applicable sections of the contract and the date by which the expedited review is requested.

(c) Following receipt of a request under this subsection, the City shall inform the applicant of the estimated date for decision on issuance of the permit. If the applicant then elects not to proceed with the expedited review, the fee paid under §275-63G(4)(a) shall be returned.

(d) Expedited review under this subsection shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to §275-63F. This subsection does not impose an obligation upon the regulatory authority to act upon a permit application under this subsection by a specific date.

(5) Permit conditions. Any decision under this section may include conditions as provided below:

(a) The City may issue a reclamation permit or approve a reclamation plan subject to general or site-specific conditions if needed to assure compliance with the nonmetallic mining reclamation requirements of this article. The approval may not include condition that are not related to reclamation. Note: It is not appropriate for the regulatory authority to impose conditions on a reclamation permit, or the approval of a reclamation plan that address matters not directly related to nonmetallic mining reclamation. These matters may include but are not limited to: traffic, setbacks, blasting, dewatering, hours of operation, noise or dust control or the question of whether to use the land for mining.

(b) One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to §275-63E prior to beginning mining.

H. Permit denial. An application for a nonmetallic mining reclamation permit shall be denied as set forth below:

(1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in §275-63G, if the City finds any of the following:

(a) The applicant has, after being given an opportunity to make corrections, failed to provide to the City an adequate permit application, reclamation plan, financial assurance or any other submittal required by Ch. NR 135, Wis. Adm. Code, or this article.

(b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in this article, Ch. NR 135, Wis. Adm. Code, or Subchapter I of Ch. 295, Wis. Stats.

(c) The applicant, or its agent, principal or predecessor has, during the course of nonmetallic mining in Wisconsin within 10 years of the permit application or modification request being considered, shown a pattern of serious violations of this article or of federal, state or local environmental laws related to nonmetallic mining reclamation. The following may be considered in making this determination of a pattern of serious violations:

[1] Results of judicial or administrative proceedings involving the operator or its agent, principal or predecessor.

[2] Suspensions or revocations of nonmetallic mining reclamation permits pursuant to this article, other reclamation ordinances or Ch. NR 135, Wis. Adm. Code.

[3] Forfeitures of financial assurance.

(d) A denial under this subsection shall be in writing and shall contain documentation of reasons for denial.

(2) A decision to deny an application to issue a reclamation permit may be reviewed under §275-63M.

I. Alternative requirements.

(1) Scope of alternative requirements approvable. An operator of a nonmetallic mining site may request an alternative requirement to the reclamation standards established in §275-63B. The City may approve an alternative requirement to the reclamation standards established in this article if the operator demonstrates and the City finds that all of the following criteria are met:

(a) The nonmetallic mining site, the surrounding property or the mining plan or reclamation plan has a unique characteristic which requires an alternative requirement.

(b) Unnecessary hardship which is peculiar to the nonmetallic mining site or plan will result unless the alternative requirement is approved.

(c) Reclamation in accordance with the proposed alternative requirement will achieve the planned post-mining land use and long-term site stability in a manner that will not cause environmental pollution or threaten public health, safety or welfare.

(2) Procedures.

(a) The operator of a nonmetallic mining site requesting an alternate requirement in §275-63I(1) shall demonstrate all the criteria in §275-63I(1). This shall be submitted in writing to the Department of Community Development by certified mail at: 3805 S. Casper Drive, New Berlin, WI 53151.

(b) DCD shall within 45 days within receipt of a complete application schedule the matter for hearing before the Plan Commission and shall provide notice of the hearing to the applicant. At the time of the hearing the Plan commission shall consider whether the application meets the requirements of §275-63I(1) above. A quorum of the plan commission must be present to consider the matter as they deem appropriate in support of their application the application for alternate

requirement will be approved upon a majority vote of the members present of the Plan commission. The plan commission shall take action on the application within 90 days of receipt of the complete application.

(c) In the event that the application for alternative requirements has already been considered by the plan commission as part the standard review process said application will be forwarded to the Board of Appeals for consideration in accordance with the process as stated in §275-63I(2)(b) above.

(d) The City shall, within 90 days of receipt of the complete application, approve, conditionally approve or deny the request in writing, based on the City's determination of compliance with the criteria under §275-63I(1). The written response shall include reasons and documentation as to why the request was or was not approved.

(e) A request for an alternative requirement may be incorporated as part of an application to issue or modify a nonmetallic mining reclamation permit.

(3) Transmittal of decision on request for alternative requirement. The decision on a request for alternate reclamation requirements shall be in writing to the applicant and shall include documentation of why the alternate requirement was or was not approved.

(4) Notice to Wisconsin Department of Natural Resources. The City shall provide notice to the Wisconsin Department of Natural Resources as set forth in this section. Written notice shall be given to the Wisconsin Department of Natural Resources at least 10 days prior to any public hearing held under §275-63I(2) on a request for an alternate requirement under this article. A copy of any written decision on alternative requirements shall be submitted to the Wisconsin Department of Natural Resources within 10 days of issuance.

J. Permit duration.

(1) A nonmetallic mining reclamation permit issued under this article shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to §275-63O.

(2) If the mine operator is not the landowner, the reclamation permit duration shall not exceed the duration of the mine lease unless the lease is renewed or the permit is transferred to a subsequent lessee pursuant to §275-63K.

K. Permit transfer. A nonmetallic mining reclamation permit issued under this article shall be transferred to a new owner or operator upon satisfaction of the following conditions:

(1) A nonmetallic mining reclamation permit may be transferred to a new operator upon submittal to the City of proof of financial assurance and a certification in writing by the new permit holder that all conditions of the permit will be complied with.

(2) The transfer is not valid until financial assurance has been submitted by the new operator and accepted by the City and the City makes a written finding that all conditions of the permit will be complied with. The previous operator shall maintain financial assurance until the new operator has received approval and provided the financial assurance under this section.

(L) (Reserved)

(M) Review. Any permitting decision or action made by the City under this article may be reviewed as set forth in this section. Notwithstanding §§ 68.001, 68.03(8) and (9), 68.06 and 68.10(1)(b), Wis. Stats., any person who meets the requirements of § 227.42(1), Wis. Stats., may obtain a contested case hearing under § 68.11, Wis. Stats., on the City's decision to issue, deny or modify a nonmetallic mining reclamation permit.

(N) Permit modification.

(1) By the City. A nonmetallic mining reclamation permit issued under this article may be modified by the City if it finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with Ch. NR 135, Wis. Adm. Code, or this article. Such modification shall be by an order modifying the permit in accordance with §275-63W. This modifying order may require the operator to amend or submit new application information, reclamation plan, proof of financial assurance or other information needed to ensure compliance with Ch. NR 135, Wis. Adm. Code, or this article.

(2) At the operator's option. If the operator of any nonmetallic mine that holds a reclamation permit issued under this article desires to modify such permit or reclamation plan approved under this article, it may request such modification by submitting a written application for such modification to the Department of Community Development by certified mail at: 3805 S. Casper Drive, New Berlin, WI 53151. The application for permit or plan modification shall be acted on using the standards and procedures of this article.

(3) Required by the operator. The operator of any nonmetallic mine that holds a reclamation permit issued under this article shall request a modification of such permit if changes occur to the area to be mined, the nature of the planned reclamation, or other aspects of mining required by the reclamation plan approved pursuant to this article. Such application for permit modification shall be acted on using the standards and procedures of this article. NOTE: Modification of the permit must be requested by the operator in such circumstances under § NR 135.27, Wis. Adm. Code.

(4) Review. All actions by the City on permit modifications requested or initiated under this section are subject to review under §275-63M.

(O) Permit suspension and revocation.

(1) Grounds. The City may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this article if it finds the operator has done any of the following:

(a) Failed to submit a satisfactory reclamation plan within the time frames specified in this article.

(b) Failed to submit or maintain financial assurance as required by this article.

(c) Failed on a repetitive and significant basis to follow the approved reclamation plan.

(2) Procedures. If the City finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in §275-63O(1), it may issue a special order suspending or revoking such permit as set forth in §275-63W(2).

(3) Consequences.

(a) If the City makes any of the findings in §275-63O(1), it may suspend a nonmetallic mining reclamation permit for up to 30 days. During the time of suspension, the operator may not conduct nonmetallic mining at the site, except for reclamation or measures to protect human health and the environment as ordered by the regulatory authority pursuant to §275-63W.

(b) If the City makes any of the findings in §275-63O(1), it may revoke a nonmetallic mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided pursuant to this article to the City. The City may use forfeited financial assurance to reclaim the site to the extent needed to comply with this article and the applicable reclamation ordinance.

(P) Annual operator reporting.

(1) Contents and deadline. Annual reports that satisfy the requirements of this section shall be submitted by the operators of nonmetallic mining sites.

(a) Contents. The annual report required by this section shall include all of the following:

[1] The name and mailing address of the operator.

[2] The location of the nonmetallic mining site, including legal description, tax key number or parcel identification number, if available.

[3] The identification number of the applicable nonmetallic mining permit, if assigned by the City.

[4] The acreage currently affected by nonmetallic mining extraction and not yet reclaimed.

[5] The amount of acreage that has been reclaimed to date on a permanent basis and the amount reclaimed on an interim basis.

[6] A plan, map or diagram, accurately showing the acreage described in §275-63P(1), §275-63P(4) and §275-63P(5).

[7] The following certification, signed by the operator:
"I certify that this information is true and accurate, and that the nonmetallic mining site described herein complies with all conditions of the applicable nonmetallic mining reclamation permit and Ch. NR 135, Wis. Adm. Code."

(b) Deadline. The annual report shall cover activities on unreclaimed acreage for the previous calendar year and be submitted by January 31.

(c) When reporting may end. Annual reports shall be submitted by an operator for all active and intermittent mining sites to the City for each calendar year until nonmetallic mining reclamation at the site is certified as complete pursuant to §275-63T(3) or at the time of release of financial assurance pursuant to §275-63E(1)(g).

(2) Inspection in lieu of report. The City may, at its discretion, obtain the information required in §275-63P(1) for a calendar year by written documentation of an inspection it completes during a calendar year, as set forth in this subsection. If the City obtains and documents the required information, the annual report need not be submitted by the operator. If the City determines that the operator need not submit an annual report pursuant to this subsection, it shall advise the operator in writing at least 30 days before the end of the applicable calendar year. In that case, the City shall require the operator to submit the certification required in §275-63P(1)(a)[7].

(3) Retention of annual reports. Annual reports submitted under §275-63P(1) or inspection records that replace them under §275-63P(2) shall be retained by the City within the Department of Community Development for at least 10 years after the calendar year to which they apply. These records, or complete and accurate copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities carried out pursuant to Ch. NR 135, Wis. Adm. Code.

(Q) Plan review fees.

(1) Amount and applicability. A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under §275-63C shall submit a nonrefundable plan review fee in accordance with the fee schedule shown in NR135.39(5) Table 3. Plan review fees shall be submitted to the Department of Community Development in person or via certified mail at: 3805 S. Casper Drive, New Berlin, WI 53151. No plan review fee may be assessed under this section for any local transportation-related mining receiving an automatic permit under §275-63G(3). A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to §275-63N.

(2) Expedited plan review fee. A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under §275-63C may obtain expedited reclamation plan review by paying a fee of 1.5 times the plan review fee. Such fee shall be in addition to that required in §275-63Q(1).

(3) Relation to annual fee. Any reclamation plan review fee or expedited reclamation plan review fee collected under this section shall be added to and collected as part of the first annual fee collected under §275-63R.

(R) Annual fees.

(1) Areas subject to fees, procedures, deadline amount.

(a) Operators of all nonmetallic mining sites subject to reclamation permits issued under this article shall pay annual fees to the City of New Berlin, to the attention of the Department of Community Development, by certified mail, at: 3805 S. Casper Drive, New Berlin, WI 53151.

(b) Fees paid under this section shall be calculated based on the unreclaimed areas of a nonmetallic mining site, as defined below:

[1] "Unreclaimed acre" or "unreclaimed acres" means those unreclaimed areas in which nonmetallic mining has occurred after August 1st, 2001 and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under §275-63E(1)(g). However, the term does not include any areas described in §275-63R(1)(b)[2].

[2] "Unreclaimed acre" or "unreclaimed acres" does not include:

[a] Those areas where reclamation has been completed and certified as reclaimed under §275-63E(1)(g).

[b] Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1st, 2001.

[c] Those portions of nonmetallic mining sites which are included in an approved nonmetallic mining reclamation plan but are not yet affected by nonmetallic mining.

[d] Areas previously mined but used after August 1, 2001 for a non-mining activity, including stockpiling of materials, provided the stockpiles are associated with on-site industrial processes, used for an industrial activity unrelated to nonmetallic mining such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.

[e] Those areas within a nonmetallic mining site which the City has determined to have been successfully reclaimed on an interim basis in accordance with §275-63T(2) and §275-63T(3).

[3] Fees shall be assessed on active acres only and shall not be assessed on acreage where nonmetallic mining is proposed and approved but where no nonmetallic mining has yet taken place.

(c) Fees assessed pursuant to this section shall be based on the number of unreclaimed acres at the end of the year. Such fees apply to a calendar year of any part of a year in which nonmetallic mining takes place, until final reclamation is certified as complete under §275-63T. Fees shall be paid to the City no later than January 31 for the previous year.

(d) If reclamation has already occurred on portions of a nonmetallic mining site, the fees for such portions may be submitted with a request that they be held by the City pending certification of completed reclamation pursuant to §275-63T(3) and

§275-63E(1)(g). Upon such certification, the City shall refund that portion of the annual fee that applies to the reclaimed areas. If the City fails to make a determination under §275-63T(3) and §275-63E(1)(g) within 60 days of the request, it shall refund that portion of the annual fee that applies to the reclaimed areas.

(e) The amount collected shall equal the Wisconsin Department of Natural Resources share as described in §275-63R(2), the share of the City described in §275-63R(3), and, if applicable, the reclamation plan review fee as described in §275-63Q.

(2) Wisconsin Department of Natural Resources' share of fee.

(a) Fees paid under this section shall, except where provided in §275-63R(2)(b), include a share for the Wisconsin Department of Natural Resources equal to the amount specified in § NR 135.39(3) Table 1, Wis. Adm. Code.

(b) For nonmetallic mining sites at which no nonmetallic mining has taken place during a calendar year, the share for the Wisconsin Department of Natural Resources shall be $15.

(c) The City of New Berlin shall forward fees collected under this subsection to the Wisconsin Department of Natural Resources by March 31 of the year for which they were collected.

(3) The City's share of fee.

(a) Fees paid under this section shall also include an annual fee due to the City, which shall be as shown in § NR 135.39(4) Table 2, Wis. Adm. Code. By state law, City fees under this section may only be used to support reasonable expenses associated with administration of this article and shall not exceed the numbers as established by the State.

(b) The annual fee collected by the City under this subsection for local transportation–related mines issued permits under §275-63G(3) may not exceed the amounts set forth in NR135.39(5) Table 3. The amount listed in the aforementioned table shall be the total fee assessed on such nonmetallic mine, and shall include both a share for the Wisconsin Department of Natural Resources and the City.

(S) Regulatory reporting and documentation.

(1) Reporting. The City shall send an annual report to the Wisconsin Department of Natural Resources by March 31 for the previous calendar year. The reports shall include the following information for the previous year's nonmetallic mining reclamation program:

(a) The total number of nonmetallic mining reclamation permits in effect.

(b) The number of new permits issued within the jurisdiction of the City.

(c) The number of acres approved for nonmetallic mining and the number of acres newly approved in the previous year.

(d) The number of acres being mined or unreclaimed acres.

(e) The number of acres that have been reclaimed and have had financial assurance released pursuant to §275-63E(1)(g).

(f) The number of acres that are reclaimed and awaiting release from the financial assurance requirements of this article pursuant to §275-63T(1) and (2).

(g) The number and nature of alternative requirements granted, permit modifications, violations, public hearings, enforcement actions, penalties that have been assessed and bond or financial assurance forfeitures.

(2) Documentation. The City shall, to the best of its ability, maintain the information set forth below and make it available to the Wisconsin Department of Natural Resources for that

agency's audit of the City's reclamation program pursuant to Ch. NR 135, Wis. Adm. Code:

(a) Documentation of compliance with Ch. NR 135, Wis. Adm. Code, and this article.

(b) The procedures employed by the City regarding reclamation plan review and the issuance and modification of permits.

(c) The methods for review of annual reports received from operators.

(d) The method and effectiveness of fee collection.

(e) Procedures to accurately forward the Wisconsin Department of Natural Resources' portion of collected fees in a timely fashion.

(f) Methods for conducting on-site compliance inspections and attendant reports, records and enforcement actions.

(g) Responses to citizen complaints.

(h) The method of and accuracy in determining the amount of the financial assurance obtained from the operator to guarantee reclamation performance.

(i) The maintenance and availability of records.

(j) The number and type of approvals for alternative requirements issued pursuant to §275-63I.

(k) The method of determining the success of reclamation in meeting the criteria contained in the reclamation plan and subsequently releasing the financial assurance pursuant to §275-63E(1)(g).

(l) Any changes in local regulations, ordinances, funding and staffing mechanisms or any other factor which might affect the ability of the City to implement its nonmetallic mining reclamation program under this article.

(m) The amount of fees collected in comparison to the amount of money actually expended for nonmetallic mining reclamation program administration.

(n) Any other performance criterion necessary to ascertain compliance with Ch. NR 135, Wis. Adm. Code.

(T) Completed reclamation: reporting, certification and effect.

(1) Reporting of completed reclamation. The operator of a nonmetallic mining site may certify completion of reclamation for a portion or all of the nonmetallic mining site pursuant to a reclamation plan prepared and approved pursuant to this article.

(2) Reporting of interim reclamation. The operator of a nonmetallic mining site may report completion of interim reclamation as specified in the reclamation plan for the site prepared and approved pursuant to this chapter and Chapter NR 135, Wisconsin Administrative Code. Reporting of interim reclamation shall be done according to the procedures in §275-63T(1).

(3) Certification of completed reclamation. The City shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection within 60 days of receipt and make a determination in writing in accordance with 275-63E(1)(g)[3]. If it is determined:

(a) That interim or final reclamation is complete, including revegetation as specified in a reclamation plan that conforms with §275-63D, the City shall issue the mine operator a written certificate of completion for the applicable area.

(4) Effect of completed reclamation. If reclamation is certified by the City as complete under §275-63T(3) for part or all of a nonmetallic mining site, then:

(a) No fee shall be assessed under §275-63R for the area so certified.

(b) The financial assurance required by §275-63E shall be released or appropriately reduced in the case of completion of reclamation for a portion of the mining site.

(c) For sites which are reported as interim reclaimed under §275-63T(2) and so certified under §275-63T(3), financial assurance for reclaiming the certified area shall be reduced only if the City determines that the balance is sufficient to ensure final reclamation of the entire site.

(5) Effect of inaction following report of completed reclamation. If no written response as required by §275-63T(3) for an area of the mine site reported as reclaimed or interim reclaimed is given within 60 days of receiving such request, any annual fee paid to the City for it under §275-63R shall be refunded.

(U) Permit termination. When all final reclamation required by a reclamation plan conforming to §275-63D and required by this article is certified as complete pursuant to §275-63E(1)(g) and §275-63T(3) , the City shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

(V) Right of entry and inspection. For the purpose of ascertaining compliance with the provisions of Subchapter I of Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, or this article, any authorized officer, agent, employee or representative of the City may inspect any nonmetallic mining site subject to this article as provided below:

(1) No person may refuse entry or access onto a nonmetallic mining site of a duly authorized officer, employee or agent of the City or the Wisconsin Department of Natural Resources who presents appropriate credentials to inspect the site for compliance with the nonmetallic mining reclamation permit, this article, Ch. NR 135, Wis. Adm. Code, or Subchapter I of Ch. 295, Wis. Stats.

(2) Any person who enters the site under this right of inspection shall obtain training and provide his/her own safety equipment needed to comply with any federal, state or local laws or regulations controlling persons on the nonmetallic mining site.

(W) Orders and citations.

(1) Enforcement orders. The City may issue orders as set forth in § 295.19(1)(a), Wis. Stats., to enforce Subchapter I of Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, this article, a permit issued pursuant to this article, or a reclamation plan required by §275-63D and a permit issued under this article. A violation of this article, an order or permit issued pursuant to this article, or a reclamation plan required by §275-63D and a permit issued under this article shall be considered a violation of Subchapter I of Ch. 295, Wis. Stats., and Ch. NR 135, Wis. Adm. Code.

(2) Special orders. The City may issue a special order as set forth in § 295.19(1)(b) and (c), Wis. Stats., suspending or revoking a nonmetallic mining reclamation permit pursuant to §275-63O, or directing an operator to immediately cease an activity regulated under Subchapter I of Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, or this article until the necessary plan approval is obtained.

(3) Review of orders. A person holding a reclamation permit who is subject to an order pursuant this section shall have the right to review the order in a contested case hearing under § 68.11, Wis. Stats., notwithstanding the provisions of §§ 68.001, 68.03(8) and (9), 68.06 and 68.10(1)(b), Wis. Stats.

(4) Citations. The City may issue a citation under § 66.0113, Wis. Stats., and § 1-18 of the City of New Berlin Municipal Code to collect forfeitures to enforce Subchapter I of Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, this article, a permit issued pursuant to this article, or a reclamation plan required by §275-63D and a permit issued under this article. The issuance of a citation under this subsection shall not preclude proceeding under any other ordinance or law relating to the same or any other matter. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this subsection.

(5) Enforcement. The City may submit any order issued under §275-63W to abate violations of this article to a District Attorney, Corporation Counsel, Municipal Attorney or the Attorney General for enforcement. The District Attorney, Corporation Counsel, Municipal Attorney or the Attorney General may enforce those orders.

(X) Penalties. Any violation of Subchapter I of Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, this article, a permit issued pursuant to this article, or a reclamation plan required by §275-63D and a permit issued under this article may result in forfeitures as provided in § 295.19(3), Wis. Stats., as follows:

(1) Any person who violates Ch. NR 135, Wis. Adm. Code, or an order issued under §275-63W may be required to forfeit not less than $25 nor more than $1,000 for each violation. Each day of continued violation is a separate offense. While an order issued under §275-63W is suspended, stayed or enjoined, this penalty does not accrue.

(2) Except for the violations referred to in §275-63X(1), any person who violates Subchapter I of Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, any reclamation plan approved pursuant to this article, or an order issued pursuant to §275-63W shall forfeit not less than $10 nor more than $5,000 for each violation. Each day of violation is a separate offense. While an order issued under §275-63W is suspended, stayed or enjoined, this penalty does not accrue.

§ 275-64. ~~Standards.~~ Reserved.

~~All nonmetallic mining sites subject to this article shall be reclaimed in conformance with the standards contained below:~~

~~A. General standards.~~

~~(1) Refuse and other solid wastes. Nonmetallic mining refuse shall be reused in accordance with a reclamation plan. Other solid wastes shall be disposed of in accordance with applicable rules of the Wisconsin Department of Natural Resources adopted pursuant to Chs. 289 and 291, Wis. Stats.~~

~~(2) Area disturbed and contemporaneous reclamation. Nonmetallic mining reclamation shall be conducted, to the extent practicable, to minimize the area disturbed by nonmetallic mining and to provide for nonmetallic mining reclamation of portions of the nonmetallic mining site while nonmetallic mining continues on other portions of the nonmetallic mining site.~~

~~(3) Public health, safety and welfare. All nonmetallic mining sites shall be reclaimed in a manner so as to comply with federal, state and local regulations governing public health, safety and welfare.~~

~~(4) Habitat restoration. When the land use required by the reclamation plan approved pursuant to this article requires plant, fish or wildlife habitats, it shall be restored, to the extent practicable, to a condition at least as suitable as that which existed before the lands were affected by nonmetallic mining operations.~~

~~(5) Compliance with environmental regulations. Reclamation of nonmetallic mining sites shall comply with any other applicable federal, state and local laws, including those related to environmental protection, zoning and land use control. NOTE: Other applicable environmental, zoning or land use regulations may include Chs. NR 103, 115, 116, 117, 205, 216, 269, 105, 106, 140, 150, 151, 340, 500-590, and 812, Wis. Adm. Code, Chs. 30 and 91, Wis. Stats., and Section 404 of the Clean Water Act (33 U.S.C. § 1344), which may be applicable to all or part of either an existing or proposed nonmetallic mining project, so long as they do not require or directly regulate the reclamation of nonmetallic mining sites as addressed under Subchapter I of Ch. 295, Wis. Stats.~~

~~B. Surface water and wetlands protection. Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the Wisconsin Department of Natural Resources' water quality standards for surface waters and wetlands contained in Chs. NR 102 to NR 105, Wis. Adm. Code. Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to this article. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.~~

~~C. Groundwater protection.~~

~~(1) Groundwater quantity. A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.~~

~~(2) Groundwater quality. Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in Ch. NR 140, Wis. Adm. Code, to be exceeded at a point of standard application defined in that chapter.~~

~~D. Topsoil management.~~

~~(1) Removal. Topsoil and topsoil substitute material shall be provided as specified in the reclamation plan approved pursuant to this article in order to achieve reclamation to the~~

~~approved post-mining land use. Removal of on-site topsoil and topsoil substitute material removal shall be performed, when specified in the reclamation plan, prior to any mining activity associated with any specific phase of the mining operation.~~

~~(2) Volume. The operator shall obtain the volume of soil required to perform final reclamation by removal of on-site topsoil or topsoil substitute material or by obtaining topsoil or substitute material as needed to make up the volume of topsoil as specified in the reclamation plan approved pursuant to this article.~~

~~(3) Storage. Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan approved pursuant to this article, either be used in contemporaneous reclamation or stored in an environmentally acceptable manner. The location of stockpiled topsoil or topsoil substitute material shall be chosen to protect the material from erosion or further disturbance or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.~~

~~E. Final grading and slopes.~~

~~(1) All areas affected by mining shall be addressed in the approved reclamation plan, pursuant to § NR 135.19, Wis. Adm. Code, to provide that a stable and safe condition consistent with the post-mining land use is achieved. The reclamation plan may designate highwalls or other unmined and undisturbed natural solid bedrock as stable and safe and not in need of reclamation or designate other areas affected by mining, including slopes comprised of unconsolidated materials that exceed a 3:1 slope, whether or not graded, as stable and safe. For slopes designated as stable under this subsection, the regulatory authority may require that either:~~

~~(a) A site-specific engineering analysis be performed by a registered professional engineer to demonstrate that an acceptable slope stability factor is attainable at a steeper slope; or~~

~~(b) The operator shall perform a field test plot demonstration to demonstrate that a stable and safe condition will be achieved and that the post-mining land use specified in the reclamation plan will not be adversely affected.~~

~~(2) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless found acceptable through one or more of the following: alternative requirements are approved under § NR 135.26, Wis. Adm. Code; steeper slopes are shown to be stable through a field plot demonstration approved as part of an approved reclamation plan; or stable slopes can be demonstrated based on site-specific engineering analysis performed by a registered professional engineer. All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.~~

~~(3) When the approved post-mining land use includes a body of water, the approved final grade at the edge of a body of water shall extend vertically six feet below the lowest seasonal water level. A slope no steeper than 3:1 shall be created at a designated location or locations, depending on the size of the water body, to allow for a safe exit.~~

~~F. Topsoil redistribution for reclamation. Topsoil or topsoil substitute material shall be redistributed in accordance with the reclamation plan approved pursuant to this article in a manner which minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed except where uniform redistribution is undesirable or impractical. Topsoil or topsoil substitute material redistribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.~~

G. Revegetation and site stabilization. Except for permanent roads or similar surfaces identified in the reclamation plan approved pursuant to this article, all surfaces affected by nonmetallic mining shall be reclaimed and stabilized by revegetation or other means. Revegetation and site stabilization shall be in accordance with the approved reclamation plan and shall be performed as soon as practicable after mining activity has permanently ceased in any part of the mine site. Note: Field test plot demonstrations are highly recommended to ensure that reclamation success standards are met and financial assurance is released as quickly as possible. When field test plots are employed, they should be approved as part of the reclamation plan under § NR 135.19, Wis. Adm. Code.

H. Assessing completion of successful reclamation.

(1) The criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released shall be specified in the reclamation plan approved pursuant to this article. Criteria to evaluate reclamation success shall be quantifiable.

(2) Compliance with the revegetation success standards in the approved reclamation plan shall be determined by:

(a) On-site inspections by the City or its agent;

(b) Reports presenting results obtained during reclamation evaluations, including summarized data on revegetation, photo documentation or other evidence that the criteria approved in the reclamation plan to ascertain success have been met; or

(c) A combination of inspections and reports.

(3) In those cases where the post-mining land use specified in the reclamation plan requires a return of the mining site to a pre-mining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this section.

(4) Revegetation success may be determined by:

(a) Comparison to an appropriate reference area;

(b) Comparison to baseline data acquired at the mining site prior to its being affected by mining; or

(c) Comparison to an approved alternate technical standard.

(5) Revegetation using a variety of plants indigenous to the area is favored.

I. Intermittent mining. Intermittent mining may be conducted, provided that the possibility of intermittent cessation of operations is addressed in an operator's reclamation permit, no environmental pollution or erosion of sediments is occurring, and financial assurance for reclamation pursuant to § 275-65.2 is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.

J. Maintenance. During the period of the site reclamation, after the operator has stated that reclamation is complete but prior to release of financial assurance, the operator shall perform any maintenance necessary to prevent erosion, sedimentation or environmental pollution, comply with the standards of this article, or to meet the goals specified in the reclamation plan approved pursuant to this article.

§ 275-65. ~~Nonmetallic mining reclamation permit application.~~ Floodplain Zoning.

~~A. Required submittal. All operators of any nonmetallic mining sites shall apply for a reclamation permit from the City. All applications for reclamation permits under this section shall be accompanied by the following information:~~

~~(1) A brief description of the general location and nature of the nonmetallic mine.~~

~~(2) A legal description of the property on which the nonmetallic mine is located or proposed, including the parcel identification number.~~

~~(3) The names, addresses and telephone numbers of all persons or organizations who are owners or lessors of the property on which the nonmetallic mining site is located.~~

~~(4) The name, address and telephone number of the person or organization who or which is the operator.~~

~~(5) A certification by the operator of his or her intent to comply with the statewide nonmetallic mining reclamation standards established by § 275-64.~~

~~B. (Reserved)~~

~~C. Automatic permit for local transportation-related mines.~~

~~(1) An operator of a nonmetallic mine may apply for an automatic permit under this subsection for any borrow site that meets all of the following criteria:~~

~~(a) It will be opened and reclaimed under contract with the City within a period not exceeding 36 months;~~

~~(b) It is intended to provide stone, soil, sand or gravel for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or other transportation facility under contract with a municipality;~~

~~(c) It is regulated and will be reclaimed under contract with the City in accordance with the requirements of the Wisconsin Department of Transportation concerning the restoration of nonmetallic mining sites;~~

~~(d) It is not a commercial source;~~

~~(e) It will be constructed, operated and reclaimed in accordance with applicable zoning requirements, if any; and~~

~~(f) It is not otherwise exempt from the requirements of this article under § 275-62G.~~

~~(2) To request an automatic permit under this section, the applicant shall submit the following:~~

~~(a) A completed permit application, on a form provided by the City, in accordance with Subsection A(1) through (5).~~

~~(b) Written documentation of the terms and conditions of the contract with respect to reclamation of the proposed borrow site, including the name, address and phone number of the person charged with oversight and enforcement of the reclamation provisions.~~

~~(c) Written evidence to show that the borrow site and its reclamation is in compliance with applicable zoning requirements, if any.~~

~~(d) The first year's annual fee, in accordance with a fee schedule established by the City under § 275-65.15. Mines permitted under this subsection shall not be subject to the plan review fee provided in § 275-65.14.~~

~~D. New mines.~~

~~(1) The operator of any nonmetallic mine site that engages in or plans to engage in nonmetallic mining that will begin operations after August 1, 2001, or which has not applied for an automatic reclamation permit pursuant to Subsection B, shall submit an application that meets the requirements specified below to the Department of Community Development by certified mail at:~~

~~3805 S. Casper Drive, New Berlin, WI 53151, prior to beginning operations. This application shall be accompanied by a plan review fee as specified in § 275-65.14.~~

~~(a) The information required by Subsection A.~~

~~(b) The plan review and annual fees required by §§ 275-65.14 and 275-65.15.~~

~~(c) A reclamation plan conforming to § 275-65.1.~~

~~(d) A certification that the operator will provide, as a condition of the reclamation permit, financial assurance as required by § 275-65.2 upon granting of the reclamation permit and before mining begins.~~

~~(2) To avoid duplication, the permit application and submittals required under this subsection may, by reference, incorporate existing plans or materials that meet the requirements of this article.~~

A. Statutory authorization, findings of fact, statement of purpose, title and general provisions.

(1) Statutory authorization. This article is adopted pursuant to the authorization in §§ 61.35 and 62.23, Wis. Stats., and the requirements in § 87.30, Wis. Stats.

(2) Finding of fact. Uncontrolled development and use of the floodplains and rivers of this municipality would impair the public health, safety, convenience, general welfare and tax base.

(3) Statement of purpose. This article is intended to regulate floodplain development to:

(a) Protect life, health and property;

(b) Minimize expenditures of public funds for flood control projects;

(c) Minimize rescue and relief efforts undertaken at the expense of the taxpayers;

(d) Minimize business interruptions and other economic disruptions;

(e) Minimize damage to public facilities in the floodplain;

(f) Minimize the occurrence of future flood blight areas in the floodplain;

(g) Discourage the victimization of unwary land and home buyers;

(h) Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and

(i) Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

(4) Title. This article shall be known as the "Floodplain Zoning Ordinance for the City of New Berlin, Wisconsin."

(5) General provisions.

(a) Areas to be regulated. This article regulates all areas that would be covered by the regional flood or base flood as shown on the Flood Insurance Rate Map (FIRM) or other maps approved by DNR. Base flood elevations are derived from the flood profiles in the Flood Insurance Study (FIS) and are shown as AE, A1-30, and AH Zones on the FIRM. Other regulatory zones are displayed as A and AO Zones. Regional flood elevations (RFE) may be derived from other studies. If more than one map or revision is referenced, the most-restrictive information shall apply.

(b) Official maps and revisions. The boundaries of all floodplain districts are designated as A, AE, AH, AO or A1-30 on the maps based on the Flood Insurance Study (FIS) listed below. Any change to the base flood elevations (BFE) in the Flood Insurance Study (FIS) or any changes to the boundaries of the floodplain or floodway in the FIS or on the Flood Insurance Rate Map (FIRM) must be reviewed and approved by the DNR and FEMA through the letter of map change process (see §275-65H) before they are effective. No changes to regional flood elevations (RFEs) on non-FEMA maps shall be effective until

approved by the DNR. These maps and revisions are on file in the office of the Department of Community Development, City of New Berlin. If more than one map or revision is referenced, the most current restrictive shall apply.

[1] Based on the FIS:

[a] Flood Insurance Rate Map (FIRM) Panel Numbers 55133C0218G, 55133C0219G, 55133C0238G, 55133C0239G, 55133C0327G, 55133C0329G, 5133C0331G, 55133C0332G, 55133C0334G, 55133C0342G, 55133C0351G, 55133C0352G, 55133C0353G, 55133C0354G, 55133C0361G and 5133C0362G, dated November 5, 2014, with corresponding profiles that are based on the Waukesha County Flood Insurance Study (FIS), dated November 5, 2014, Volumes 55133CV001C, 55133CV002C, and 55133CV003C, are hereby incorporated in the City of New Berlin Floodplain Ordinance and the floodplain districts as set forth in §§ 275-65.22 through 275-65.31 as well as the City of New Berlin Zoning Map.

[2] Maps based upon other studies. Any maps referenced in this section must be approved by the DNR and be more restrictive than those based on the FIS at the site of the proposed development.

[a] Any one-hundred-year dam failure analyses as approved from time to time by the DNR and FEMA.

[b] All DNR- and FEMA-approved floodplain maps, flood profiles, floodway data tables, regional or base flood elevations, letters of map amendment, letters of map revision and other information are on file in the office of the Department of Community Development, City of New Berlin.

[c] Waukesha County Flood Storage Maps, Panel Numbers 4 and 9, dated November 5, 2014, approved by the DNR.

(c) Establishment of floodplain zoning districts. The regional floodplain areas are divided into four districts as follows:

[1] The Floodway District (FW) is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters and are contained within AE Zones as shown on the FIRM.

[2] The Floodfringe District (FF) is that portion of the floodplain between the regional flood limits and the floodway and displayed as AE Zones on the FIRM, or within A Zones shown on the FIRM when determined according to §275-65E(1)(e).

[3] The General Floodplain District (GFP) is those areas that have been or may be covered by floodwater during the regional flood and do not have a BFE or floodway boundary determined, including A, AH, and AO Zones on the FIRM, or when floodway limits have been determined according to §275-65E(1)(e) within A Zones shown on the FIRM.

[4] The Flood Storage District (FSD) is that area of the floodplain where storage of floodwaters is calculated to reduce the regional flood discharge.

(d) Locating floodplain boundaries. Discrepancies between boundaries on the Official Floodplain Zoning Map and actual field conditions shall be resolved using the criteria in [1] or [2] below. If a significant difference exists, the map shall be

amended according to §275-65H. The Director can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The Director shall be responsible for documenting actual predevelopment field conditions and the basis upon which the district boundary was determined and for initiating any map amendments required under this section. Disputes between the Director and an applicant over the district boundary line shall be settled according to §275-65G(3)(c) and the criteria in [1] and [2] below. Where the flood profiles are based on established base flood elevations from the FIRM, FEMA must approve any map amendment or revision pursuant to §275-65H.

[1] If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.

[2] Where flood profiles do not exist, the location of the boundary shall be determined by the map scale.

(e) Removal of lands from floodplain.

[1] Compliance with the provisions of this article shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to § 275-65.29. Note: This procedure does not remove the requirements for the mandatory purchase of flood insurance. The property owner must contact FEMA to request a letter of map change (LOMC).

[2] The delineation of any of the Floodplain Districts may be revised by the community where natural or man-made changes have occurred and/or where more detailed studies have been conducted. However, prior to any such change, approval must be obtained from the Wisconsin Department of Natural Resources and Federal Emergency Management Agency. A completed Letter of Map Revision is a record of the approval. The floodplain administrator shall not sign a community acknowledgement form unless all criteria set forth in the following paragraphs are met:

[a] The land and/or land around the structure must be filled at least two feet above the regional or base flood elevation;

[b] The fill must be contiguous to land outside the floodplain; Applicant shall obtain floodplain development permit before applying for a LOMR or LOMR-F.

[3] Removal of lands from the floodplain may also occur by operation of §87.30(1)(e), Wis. Stat. if a property owner has obtained a letter of map amendment from the federal emergency management agency under 44 C.F.R. 70.

(f) Compliance.

[1] No structure or use within the areas regulated by this article shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged, or altered without full compliance with the terms of this article and all other applicable local, state, and federal regulations that apply to uses within the jurisdiction of these regulations.

[2] Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with §275-65I.

[3] Floodplain development permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications, or amendments thereto if approved by the Floodplain Administrator. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with §275-65I.

(g) Municipalities and state agencies regulated.

[1] Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this article and obtain all necessary permits. State agencies are required to comply if § 13.48(13), Wis. Stats., applies.

[2] The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when § 30.2022, Wis. Stats., applies. Although exempt from a local zoning permit and permit fees, DOT must provide sufficient project documentation and analysis to ensure that the community is in compliance with Federal, State, and local floodplain standards.

[3] If a local transportation project is located within a Zone A floodplain and is not a WisDOT project under §30.2022, then the road project design documents (including appropriate detailed plans and profiles) may be sufficient to meet the requirements for issuance of a local floodplain permit if the following apply:

[a] The applicant provides documentation to the Floodplain Administrator that the proposed project is a culvert replacement or bridge replacement under 20' span at the same location;

[b] The project is exempt from a DNR permit under §30.123(6)(3);

[c] The capacity is not decreased;

[d] The top road grade is not raised, and;

[e] No floodway data is available from a federal, state, or other source. If floodway data is available in the impacted area from a federal, state, or other source that existing data must be utilized by the applicant in the analysis of the project site.

(h) Abrogation and greater restrictions.

[1] This article supersedes all the provisions of any municipal zoning ordinance enacted under § 62.23 or § 87.30, Wis. Stats., which relates to floodplains. If another ordinance is more restrictive than this article, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

[2] This article is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this article imposes greater restrictions, the provisions of this article shall prevail.

(i) Interpretation. In their interpretation and application, the provisions of this article are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this article required by Ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this article or in effect on the date of the most-recent text amendment to this article.

(j) Warning and disclaimer of liability. The flood protection standards in this article are based on engineering experience and research. Larger floods may occur or the flood height may be increased by man-made or natural causes. This article does not imply or guarantee that nonfloodplain areas or permitted floodplain uses will be free from flooding and flood damages. This article does not create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this article.

(k) Severability. Should any portion of this article be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected.

(l) Annexed areas for cities and villages. The Waukesha County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of Ch. NR 116, Wis. Adm. Code, and 44 CFR 59-72, National Flood Insurance Program (NFIP). These annexed lands are described on the municipality's Official Zoning Map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the municipal Director. All plats or maps of annexation shall show the regional flood elevation and the location of the floodway.

B. General standards applicable to all floodplain districts.

(1) General standards. The community shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding.

(a) If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall:

[1] Be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

[2] Be constructed with materials resistant to flood damage;

[3] Be constructed by methods and practices that minimize flood damages;

[4] Mechanical and utility equipment must be elevated to or above the flood protection elevation.

(b) If a subdivision or other proposed new development is in a floor-prone area, the community shall assure that:

[1] Such proposed subdivision or other proposed new development is consistent with the need to minimize flood damage within the flood-prone area;

[2] Public utilities and facilities, such as sewer, gas, electrical, and water systems, are located and constructed to minimize or eliminate flood damages;

[3] Adequate drainage shall be provided to reduce exposure to flood hazards, and all subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this article and all other requirements in §275-65G(1)(b).

(2) Hydraulic and hydrologic analyses.

(a) No floodplain development shall:

[1] Obstruct flow, defined as development which blocks the conveyance of

floodwaters by itself or with other development, causing any increase in the regional flood height; or

[2] Cause any increase in the regional flood height due to floodplain storage area lost.

(b) The Director shall deny permits if it is determined the proposed development will obstruct flow or cause any increase in the regional flood height, based on the officially adopted FIRM or other adopted map, unless the provisions of §275-65H are met.

(3) Watercourse alterations. No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified, in writing, all adjacent municipalities, the Department and FEMA regional offices and required the applicant to secure all necessary state and federal permits. The standards of §275-65B(2) must be met, and the flood-carrying capacity of any altered or relocated watercourse shall be maintained. As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation and pursuant to §275-65H, the applicant shall apply, with community acknowledgement, for a letter of map revision (LOMR) from FEMA. Any such alterations must be reviewed and approved by FEMA and the DNR through the LOMC process.

(4) Chapters 30 and 31, Wis. Stats., development. Development which requires a permit from the Department under Chs. 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed if the necessary permits are obtained and amendments to the Floodplain Zoning Ordinance are made according to §275-65H.

(5) Public or private campgrounds. Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:

(a) The campground is approved by the Department of Agriculture, Trade and Consumer Protection;

(b) A land use permit for the campground is issued by the Director;

(c) The character of the river system and the elevation of the campground are such that a seventy-two-hour warning of an impending flood can be given to all campground occupants;

(d) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedure for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation;

(e) This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated, by the officials identified in (d) above, to remain in compliance with all applicable regulations, including those of the State Department of Agriculture, Trade and Consumer Protection and all other applicable regulations;

(f) All mobile recreational vehicles places on the site must meet one of the following:

[1] Only camping units that are fully licensed, if required, and ready for highway use are allowed (A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no

permanently attached additions.); or

[2] The camping units shall not occupy any site in the campground for more than 180 consecutive days, at which time the recreational vehicle must be removed from the floodplain for a minimum of 24 hours; or

[3] Meet the requirements in either §275-65C, D, or E(1) for the floodplain district in which the structure is located.

(g) All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed 180 days and shall ensure compliance with all the provisions of this section;

(h) The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section;

(i) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued; and

(j) All service facilities, including but not limited to refuse collection, electrical service, gas lines, propane tanks, sewage systems and wells, shall be properly anchored and placed at or floodproofed to the flood protection elevation.

(k) Standards for structure in a campground:

[1] All structures must comply with section §275-65B(5) or meet the applicable requirements in §275-65C, D, or E(1) for the floodplain district in which the structure is located;

[2] Deck/landing - a portable landing maybe allowed for a camping unit for each entry provided that the landing is not permanently attached to the ground or camping unit, is no more than 200 square feet in size, shall be portable, contain no walls, or roof, and can be removed from the campground by a truck and/or trailer. Sections of such portable landings may be placed together to form a single deck not greater than 200 square feet at one entry point. Provisions for the removal of these temporary landings during flood events must be addressed within the written agreement with the municipality compliant with §275-65B(5)(d). Any suck deck/landing structure may be constructed at elevations lower than the flood protection elevation but must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.

[3] Decks/patios that are constructed completely at grade may be allowed, but must also comply with applicable shoreland zoning standards.

[4] Camping equipment and appurtenant equipment in the campground may be allowed provided that the equipment is not permanently attached to the ground or camping unit, is not used as a habitable structure, and must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood. Provisions for the removal of this equipment during flooding events shall be addressed within the written agreement with the municipality compliant with §275-65B(5)(d).

[5] Once a flood warning in the written agreement has been issued for the campground, the campground owner or the designated operator shall ensure that all persons, camping units, decks, camping equipment and

appurtenance equipment in the campground shall be evacuated within the timelines specified within the written agreement with the municipality compliant with the §275-65B(5)(d).

(l) A land use permit shall be obtained as provided under §275-65G(1)(b) before any development; repair, modification or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated.

C. Floodway District (FW).

(1) Applicability. This section applies to all floodway areas on the Floodplain Zoning Maps and those identified pursuant to §275-65E(1)(e).

(2) Permitted uses. The following open space uses are allowed in the Floodway District and the floodway areas of the General Floodplain District if they are not prohibited by any other ordinance, they meet the standards in §275-65C(3) and (4), and all permits or certificates have been issued according to §275-65G(1):

(a) Agricultural uses, such as farming, outdoor plant nurseries, horticulture, viticulture and wild crop harvesting.

(b) Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.

(c) Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of §275-65C(3)(d).

(d) Uses or structures accessory to open space uses or classified as historic structures that comply with §275-65C(3) and (4).

(e) Extraction of sand, gravel or other materials that complies with §275-65C(3)(d).

(f) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with chs. 30 and 31 Wis. Stats.

(g) Public utilities, streets and bridges that comply with §275-65C(3).

(h) Portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and ch 383 Wis. Adm. Code.

(i) Public or private wells used to obtain potable water for recreational areas that meet the requirements of local ordinance and chs. NR 811 and NR 812, Wis. Adm. Code.

(j) Wastewater treatment ponds or facilities permitted under ch NR 110.15(3(b), Wis. Adm. Code.

(k) Sanitary sewer or water supply lines to service existing or proposed development located outside the floodway that complies with the regulations for the floodplain area occupied.

(3) Standards for development in floodway areas.

(a) General.

[1] Any development in the floodway shall comply with §275-65B and have a low flood damage potential.

[2] Applicants shall provide an analysis calculating the effects of this proposal on the regional flood height to determine the effects of the proposal according to §275-65B(2) and §275-65G(1)(b)[3]: The analysis must be completed by a registered professional engineer in the state of

Wisconsin.

[3] Any encroachment in the regulatory floodway is prohibited unless the data submitted for [2] above demonstrates that the encroachment will cause no increase in flood elevations in flood events up to the base flood at any location or removes the encroached area from the regulatory floodway as provided in §275-65 A(5)(e).

(b) Structures. Structures accessory to permanent open space uses, including utility and sanitary facilities, or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:

[1] The structure is not designed for human habitation and does not have a high flood damage potential and is constructed to minimize flood damage;

[2] Shall either have the lowest floor elevated to or above the flood protection elevation or shall meet all the following standards:

[a] Have the lowest floor elevated to or above the regional flood elevation and be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and completely dry to the flood protection elevation without human intervention during flooding;

[b] Have structural components capable of meeting the provision of §275-65C(3)(b)[7] and;

[c] Be certified by a registered professional engineer or architect, through the use of a Federal Emergency Management Agency Floodproofing Certificate, that the design and methods of construction are in accordance with §275-65C(3)(b)[7].

[3] Must be anchored to resist flotation, collapse and lateral movement;

[4] Mechanical and utility equipment must be elevated to, or above, the flood protection elevation; and

[5] They must not obstruct the flow of floodwaters or cause any increase in flood levels during the occurrence of the regional flood.

[6] For a structure designed to allow the automatic entry of floodwaters below the Regional Flood Elevation, the applicant shall submit a plan that meets [1] through [5] above and meets or exceeds the following standards:

[a] The lowest floor must be elevated to or above the regional flood elevation;

[b] A minimum of two openings having a total net area not less than one square inch for every square foot of enclosed area subject to flooding;

[c] The bottom of all such openings shall be no higher than one foot above the lowest adjacent grade; openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters, otherwise must remain open;

[d] The use must be limited to parking, building access or limited storage.

[7] Certification: Whenever floodproofing measures are required, a registered professional engineer or architect shall certify that the following floodproofing measures will be utilized, where appropriate, and

are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regional flood:

[a] Reinforcement of floors and walls to resist rupture, collapse, or lateral movement caused by water pressures or debris buildup;

[b] Construction of well, water supply systems and waste treatment systems so as to prevent the entrance of flood waters in such systems and must be in accordance with provision in §275-65C(4)(d) and (e);

[c] Subsurface drainage systems to relieve external pressures on foundation walls and basement floors;

[d] Cutoff valves on sewer lines or the elimination of gravity flow basement drains; and

[e] Placement of utilities to or above the flood protection elevation.

(c) Public utilities, streets and bridges. Public utilities, streets and bridges may be allowed by permit if:

[1] Adequate floodproofing measures are provided to the flood protection elevation; and

[2] Construction meets the development standards of §275-65B(2).

(d) Fills or deposition of materials. Fills or deposition of materials may be allowed by permit if:

[1] The requirements of §275-65B(2) are met;

[2] No material is deposited in navigable waters unless a permit is issued by the Department pursuant to Ch. 30, Wis. Stats., and a permit pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1344, has been issued, if applicable, and all other requirements have been met;

[3] The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and

[4] The fill is not classified as a solid or hazardous material.

(4) Prohibited uses. All uses not listed as permitted uses in §275-65C(2) are prohibited, including the following uses:

(a) Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses;

(b) Storing materials that are buoyant, flammable, explosive, or injurious to property, water quality, or human, animal, plant, fish or other aquatic life;

(c) Uses not in harmony with or detrimental to uses permitted in the adjoining districts;

(d) Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and Ch. SPS 383, Wis. Adm. Code;

(e) Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and Chs. NR 811 and NR 812, Wis. Adm. Code;

(f) Any solid or hazardous waste disposal sites;

(g) Any wastewater treatment ponds or facilities, except those permitted under § NR 110.15(3)(b), Wis. Adm. Code; and

(h) Any sanitary sewer or water supply lines, except those to service exiting or proposed development located outside the floodway which complies with the

regulations for the floodplain area occupied.

D. Floodfringe District (FF).

(1) Applicability. This section applies to all floodfringe areas shown on the Floodplain Zoning Maps and those identified pursuant to §275-65E(1)(e).

(2) Permitted uses. Any structure, land use, or development is allowed in the Floodfringe District if the standards in §275-65D(3) are met, the use is not prohibited by this chapter or any other ordinance or regulation, and all permits or certificates specified in §275-65G(1) have been issued.

(3) Standards for development in floodfringe areas. §275-65B(1) shall apply in addition to the following requirements according to the use requested. Any existing structure in the floodfringe must meet the requirements of §275-65F.

(a) Residential uses. Any structure, including a manufactured home, which is to be newly constructed or moved into the floodfringe area shall meet or exceed the following standards. Any existing structure in the floodfringe must meet the requirements of §275-65F.

[1] All new construction, including placement of manufactured homes, and substantial improvement of residential structures, shall have the lowest floor elevated to or above the flood protection elevation on fill. The fill around the structure shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. No area may be removed from the floodfringe district unless it can be shown to meet §275-65A(5)(e).

[2] Notwithstanding [1] above, a basement or crawlspace floor may be placed at or above one foot above the regional flood elevation if the basement or crawlspace is designed to make all portions of the structure below the flood protections elevation watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. No floor of any kind is allowed lower than one foot above the regional flood elevation.

[3] Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in [4] below.

[4] In developments where existing street or sewer line elevations make compliance with [3] above impractical, the municipality may permit new development and substantial improvements where roads are below the regional flood elevation if:

[a] The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or

[b] The municipality has a DNR-approved emergency evacuation plan that follows acceptable hazard mitigation planning guidelines.

(b) Accessory structures or uses. In addition to §275-65B(1), new construction and substantial improvements of accessory structures shall be constructed on fill with the lowest floor at or above the regional flood elevation.

(c) Commercial uses. In addition to §275-65B(1), any commercial structure which is erected, altered or moved into the floodfringe area shall meet the requirements of §275-65D(3)(a). Subject to the requirements of §275-65D(3)(e), storage yards, surface parking lots and other such uses may be placed at lower elevations if an

adequate warning system exists to protect life and property.

(d) Manufacturing and industrial uses. In addition to §275-65B(1), any manufacturing or industrial structure which is erected, altered or moved into the floodfringe area shall have the lowest floor elevated to or above the flood protection elevation or meet the floodproofing standards in §275-65G(5). Subject to the requirements of 275-65D(3)(e), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(e) Storage of materials. Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with §275-65G(5). Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.

(f) Public utilities, streets and bridges. All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans, and:

[1] When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction or repair of such facilities shall only be permitted if they are designed to comply with §275-65G(5).

[2] Minor roads or nonessential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.

(g) Sewage systems. All sewage disposal systems shall be designed to minimize or eliminate infiltration of floodwater into the system, pursuant to §275-65G(5)(c), to the flood protection elevation and shall meet the provisions of all local ordinances and Ch. SPS 383, Wis. Adm. Code.

(h) Wells. All wells shall be designed to minimize or eliminate infiltration of floodwaters into the system, pursuant to §275-65G(5)(c), to the flood protection elevation and shall meet the provisions of Chs. NR 811 and NR 812, Wis. Adm. Code.

(i) Solid waste disposal sites. Disposal of solid or hazardous waste is prohibited in floodfringe areas.

(j) Deposition of materials. Any deposited material must meet all the provisions of this article.

(k) Manufactured homes.

[1] Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage and prepare, secure approval of and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.

[2] In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:

[a] Have the lowest floor elevated to the flood protection elevation; and

[b] Be anchored so they do not float, collapse or move laterally during a flood.

[3] Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks,

all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in §275-65D(3)(a).

(l) Mobile recreational vehicles. All mobile recreational vehicles must be on site for less than 180 consecutive days and be either:

[1] Fully licensed and ready for highway use (A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.); or

[2] Shall meet the elevation and anchoring requirements in §275-65D(3)(k)[2] and [3].

E. Other floodplain districts. Other floodplain districts may be established under this chapter and reflected on the Floodplain Zoning Map. These districts may include General Floodplain Districts and Flood Storage Districts.

(1) General Floodplain District (GFP).

(a) Applicability. The provisions for this district shall apply to development in all floodplains mapped as A, AO, AH and in AE Zones within which a floodway is not delineated on the Flood Insurance Rate Maps identified in §275-65A(5)(b)[1].

(b) Floodway Boundaries. For proposed development in zone A, or in zone AE within which a floodway is not delineated on the Flood Insurance Rate Map identified in §275-65A(5)(b)[1], the boundaries of the regulatory floodway shall be determined pursuant to §275-65E(1)(e). If the development is proposed to encroach upon the regulatory floodway, the development is subject to the standards of §275-65C. If the development is located entirely within the floodfringe, the development is subject to the standards of §275-65D.

(c) Permitted uses. Pursuant to §275-65E(1)(e), it shall be determined whether the proposed use is located within a floodway or floodfringe area. Those uses permitted in floodway (§275-65C(2)) and floodfringe areas (§275-65D(2)) are allowed within the General Floodplain District, according to the standards of §275-65E(1)(d), provided that all permits or certificates required under §275-65G(1) have been issued.

(d) Standards for development in the General Floodplain District. §275-65C applies to floodway areas, determined pursuant to §275-65E(1)(e); §275-65D applies to floodfringe areas, determined pursuant to §275-65E(1)(e).

[1] New construction and substantial improvements of structures in zone AO shall have the structure's lowest floor, including basement, elevated:

[a] To or above the depth, in feet, as shown on the FIRM above the highest adjacent natural grade, plus one additional foot of freeboard; or

[b] If the depth is not specified on the FIRM, to or above three feet above the highest adjacent grade.

[2] New Construction and substantial improvement of structures in zone AH shall have the lowest floor, including basement, elevated to or above the flood protection elevation; or

[3] In AO/AH Zones, provide plans showing adequate drainage paths to guide floodwaters around structures.

[4] All development in zones AO and zone AH shall meet the requirements of §275-65D applicable to flood fringe areas.

(e) Determining floodway and floodfringe limits. Upon receiving an application for

development within zone A, or within zone AE where a floodway has not been delineated on the Flood Insurance Rate Maps, the Director shall:

[1] Require the applicant to submit two copies of an aerial photograph or a plan which shows the proposed development with respect to the General Floodplain District limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and floodproofing measures, and the flood zone as shown on the FIRM.

[2] Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood heights and flood flows, regional flood elevation, and to determine floodway boundaries:

[a] A hydrologic and hydraulic study as specified in §275-65G(1)(b)[3];

[b] A plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types; and other pertinent information;

[c] Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.

(2) Flood Storage District. The Flood Storage District delineates that portion of the floodplain where storage of floodwaters has been taken into account and is relied upon to reduce the regional flood discharge. The district protects the flood storage areas and assures that any development in the storage areas will not decrease the effective flood storage capacity which would cause higher flood elevations.

(a) Applicability. The provisions of this subsection apply to all areas within the Flood Storage District (FSD), as shown on the Official Floodplain Zoning Maps.

(b) Permitted uses. Any use or development which occurs in a Flood Storage District must meet the applicable requirements in §275-65D(3).

(c) Standards for development in Flood Storage Districts.

[1] Development in a Flood Storage District shall not cause an increase equal or greater than 0.00 feet in the height of the regional flood.

[2] No development shall be allowed which removes flood storage volume unless an equal volume of storage as defined by the predevelopment ground surface and the regional flood elevation shall be provided in the immediate area of the proposed development to compensate for the volume of storage which is lost (compensatory storage). Excavation below the groundwater table is not considered to provide an equal volume of storage.

[3] If compensatory storage cannot be provided, the area may not be developed unless the entire area zoned as Flood Storage District, on this waterway, is rezoned to the Floodfringe District. This must include a revision to the floodplain study and map done for the waterway to revert to the higher regional flood discharge calculated without floodplain storage, as per §275-65H of this article.

[4] No area may be removed from the Flood Storage District unless it can be shown that the area has been filled to the flood protection elevation and

is contiguous to other lands lying outside of the floodplain.

F. Nonconforming uses.

(1) General.

(a) Applicability.

[1] The standards in this section shall apply to all uses and building that do not conform to the provisions contained within a floodplain zoning ordinance or with s.87.30, Stats and §§NR116.12-14, Wis Adm. Code and 44 CFR 59-72. These standards shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this article or any amendment thereto. A party asserting existence of a lawfully established nonconforming use or structure has a burden of proving that the use or structure was complaint with the floodplain zoning ordinance in effect at the time the use or structure was created.

[2] As permit applications are received for additions, modifications, or substantial improvements to nonconforming buildings in the floodplain, municipalities shall develop a list of those nonconforming buildings, their present equalized assessed value and a list of the costs of those activities associated with changes to those buildings.

(b) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this article may continue, subject to the following conditions:

[1] No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this article. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Maintenance is not considered a modification; this includes painting, decorating, paneling and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance. The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.

[2] If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted, and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this article.

[3] The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent.

[4] No modification or addition to any nonconforming structure or any structure with a nonconforming use which, over the life of the structure, would equal or exceed 50% of its present equalized assessed value shall be allowed unless the entire structure is permanently changed to a

conforming structure with a conforming use in compliance with the applicable requirements of this article. Contiguous dryland access must be provided for residential and commercial uses in compliance with §275-65D(3)(a). The costs of elevating the lowest floor of a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this subsection.

[5] No maintenance on a per event basis to any nonconforming structure or any structure with a nonconforming use, the cost of which would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this article. Contiguous dryland access must be provided for residential and commercial uses in compliance with §275-65D(3)(a). Maintenance to any nonconforming structure, which does not exceed 50% of its present equalized assessed value on a per event basis, does not count against the cumulative calculations over the life of the structure for substantial improvement calculations.

[6] If, on a per-event basis, the total value of the work being done under [4] and [5] above equals or exceeds 50% of the present equalized assessed value, the work shall not be permitted unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this article. Contiguous dryland access must be provided for residential and commercial uses in compliance with §275-65D(3)(a).

[7] Except as provided in [8] below, if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its predamaged condition equals or exceeds 50% of the structure's present equalized assessed value.

[8] For nonconforming buildings that are substantially damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building shall be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the minimum requirements are met and all required permits have been granted prior to the start of construction.

[a] Residential structures:

[i] Shall have the lowest floor, including basement, elevated to or above the flood protection elevation using fill, pilings, columns, posts or perimeter walls. Perimeter walls must meet the requirements of §275-65G(5)(b).

[ii] Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, and shall be constructed with methods and materials resistant to flood damage.

[iii] Shall be constructed with electrical, heating, ventilation,

plumbing and air-conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.

[iv] In A Zones, obtain, review and utilize any flood data available from a federal, state or other source.

[v] In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in §275-65E(1)(d).

[vi] In AO Zones, shall have adequate drainage paths around the structure on slopes to guide floodwaters around and away from the structure.

[b] Nonresidential structures:

[i] Shall meet the requirements of subsection [i] through [vi] above.

[ii] Shall either have the lowest floor, including basement, elevated to or above the regional flood elevation or, together with attendant utility and sanitary facilities, shall meet the standards in §275-65G(5)(a) or (b).

[iii] In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in §275-65E(1)(d).

(c) A nonconforming historic structure may be altered if the alteration will not preclude the structure's continued designation as an historic structure, the alteration will comply with §275-65C(3)(a), flood-resistant materials are used, and construction practices and floodproofing methods that comply with §275-65G(5) are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of §275-65F(1)(b)[8][a] if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and is the minimum necessary to preserve the historic character and design of the structure.

(2) Floodway District.

(a) Modifications or additions. No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in the Floodway District, unless such modification or addition:

[1] Has been granted a permit or variance which meets all ordinance requirements;

[2] Meets the requirements of 275-65F(1);

[3] Shall not increase the obstruction to flood flows or regional flood height; and

[4] Any addition to the existing structure shall be floodproofed, pursuant to §275-65G(5), by means other than the use of fill, to the flood protection elevation; and

[5] If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:

[a] The enclosed are shall be designed by a registered architect or engineer to allow for the efficient entry and exit of floodwaters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for

every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;

[b] The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;

[c] Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and

[d] The use must be limited to parking, building access or limited storage.

(b) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a Floodway District. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a Floodway District shall meet the applicable requirements of all municipal ordinances, §275-65G(5)(c) and Ch. SPS 383, Wis. Adm. Code.

(c) No new well or modification to an existing well used to obtain potable water shall be allowed in the Floodway District. Any replacement, repair or maintenance of an existing well in a Floodway District shall meet the applicable requirements of all municipal ordinances, §275-65G(5)(c) and Chs. NR 811 and NR 812, Wis. Adm. Code.

(3) Floodfringe District.

(a) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality and meets the requirements of §275-65D(3), except where (b) below is applicable.

(b) Where compliance with the provisions of (a) above would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Appeals, using the procedures established in §275-65G(3), may grant a variance from those provisions of (a) above for modifications or additions, using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:

[1] No floor is allowed below the regional flood elevation for residential or commercial structures;

[2] Human lives are not endangered;

[3] Public facilities, such as water or sewer, shall not be installed;

[4] Flood depths shall not exceed two feet;

[5] Flood velocities shall not exceed two feet per second; and

[6] The structure shall not be used for storage of materials as described in §275-65D(3)(e).

(c) All new private sewage disposal systems, or additions to, replacement, repair or maintenance of a private sewage disposal system, shall meet all the applicable provisions of all local ordinances, §275-65G(5)(c) and Ch. SPS 383, Wis. Adm. Code.

(d) All new wells, or additions to, replacement, repair or maintenance of a well, shall meet the applicable provisions of this article, §275-65G(5)(c) and Chs. NR 811 and NR 812, Wis. Adm. Code.

(4) Flood Storage District. No modifications or additions shall be allowed to any

nonconforming structure in a flood storage area unless the standards outlined in §275-65E(2)(c) are met.

G. Administration. The Director of Community Development shall administer this article.

(1) Director.

(a) Duties and powers. The Director is authorized to administer this article and shall have the following duties and powers:

[1] Advise applicants of the chapter provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.

[2] Issue permits and inspect properties for compliance with provisions of this article and issue certificates of compliance where appropriate.

[3] Inspect and assess all damaged floodplain structures to determine if substantial damage to the structures has occurred.

[4] Keep records of all official actions, such as:

[a] All permits issued, inspections made, and work approved.

[b] Documentation of certified lowest floor and regional flood elevations.

[c] Floodproofing certificates.

[d] Records of water surface profiles, Floodplain Zoning Maps and ordinances, nonconforming uses and structures, including changes, appeals, variances and amendments.

[e] All substantial damage assessment reports for floodplain structures.

[f] List of nonconforming structures and uses.

[5] Submit copies of the following items to the Department's regional office:

[a] Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments.

[b] Copies of any case-by-case analyses, and other required information.

[c] Copies of substantial damage assessments performed and all related correspondence concerning the assessments.

[6] Investigate, prepare reports, and report violations of this article to the Municipal Department of Community Development and Attorney for prosecution. Copies of the reports shall also be sent to the Department's regional office.

[7] Submit copies of amendments to the FEMA regional office.

(b) Land use permit. A land use permit shall be obtained before any new development; repair, modification or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated. All applications shall be submitted on the appropriate forms and in numbers as required by the Director. For projects requiring a land use permit, the Plan Commission shall review and take action for these projects upon receiving a written report from the Department of Community Development. Application submittals shall include, but not be limited to, the following information:

[1] General information.

[a] Name and address of the applicant, property owner and contractor.

[b] Legal description, proposed use, and whether it is new

construction or a modification.

[2] Site development plan. A site plan, drawn to scale, shall be submitted with the permit application form and shall contain:

[a] Location, dimensions, area and elevation of the lot;

[b] Location of the ordinary high-water mark of any abutting navigable waterways;

[c] Location of any structures, with distances measured from the lot lines and street center lines;

[d] Location of any existing or proposed on-site sewage systems or private water supply systems;

[e] Location and elevation of existing or future access roads;

[f] Location of floodplain and floodway limits as determined from the Official Floodplain Zoning Maps;

[g] The elevation of the lowest floor of proposed buildings and any fill using the vertical datum from the adopted study, North American Vertical Datum (NAVD);

[h] Data sufficient to determine the regional flood elevation in NAVD at the location of the development and to determine whether or not the requirements of §275-65C or §275-65D are met; and

[i] Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to §275-65B(2). This may include any of the information noted in §275-65C(3)(a).

[3] Hydraulic and hydrologic studies to analyze developments. All hydraulic and hydrologic studies shall be completed under the direct supervision of a professional engineer registered in the state. The study contractor shall be responsible for the technical adequacy of the study. All studies shall be reviewed and approved by DCD.

[a] Zone A floodplains and in AE zones within which a floodway is not delineated:

[i] Hydrology. The appropriate method shall be based on the standards in Ch. NR 116.07(3), Wis. Adm. Code, Hydrologic Analysis: Determination of Regional Flood Discharge.

[ii] Hydraulic modeling. The regional flood elevation shall be based on the standards in Ch. NR 116.07(4), Wis. Adm. Code, Hydraulic Analysis: Determination of the Regional Flood Elevation, and the following:

- Determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, or culvert) to determine adequate starting WSEL for the study.
- Channel sections must be surveyed.
- Minimum four-foot contour data in the overbanks shall be used for the development of cross section overbank and floodplain mapping.
- A maximum distance of 500 feet between cross

sections is allowed in developed areas, with additional intermediate cross sections required at transitions in channel bottom slope, including a survey of the channel at each location.

- The most-current version of HEC-RAS shall be used.
- A survey of bridge and culvert openings and the top of road is required at each structure.
- Additional cross sections are required at the downstream and upstream limits of the proposed development and any necessary intermediate locations based on the length of the reach if greater than 500 feet.
- Standard accepted engineering practices shall be used when assigning parameters for the base model, such as flow, Manning's N values, expansion and contraction coefficients, or effective flow limits. The base model shall be calibrated to past flooding data, such as high-water marks, to determine the reasonableness of the model results. If no historical data is available, adequate justification shall be provided for any parameters outside standard accepted engineering practices.
- The model must extend past the upstream limit of the difference in the existing and proposed flood profiles in order to provide a tie-in to existing studies. The height difference between the proposed flood profile and the existing study profiles shall be no more than 0.00 feet.

[iii] Mapping. A work map of each of the reach studied shall be provided, showing all cross section locations, floodway/floodplain limits based on best available topographic data, geographic limits of the proposed development, and whether the proposed development is located in the floodway.

- If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation.
- If any part of the proposed development is in the floodway, it must be added to the base model to show the difference between existing and proposed conditions. The study must ensure that all coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.

[b] Zone AE floodplains.

[i] Hydrology. If the proposed hydrology will change the existing study, the appropriate method shall be based on the standards in Ch. NR 116.07(3), Wis. Adm. Code, Hydrologic Analysis: Determination of Regional Flood Discharge.

[ii] Hydraulic modeling. The regional flood elevation shall be based on the standards in Ch. NR 116.07(4), Wis. Adm. Code, Hydraulic Analysis: Determination of the Regional Flood Elevation, and the following:

- Duplicate Effective Model. The Effective Model shall be reproduced to ensure correct transference of the model data and to allow integration of the revised data to provide a continuous FIS model upstream and downstream of the revised reach. If data from the Effective Model is available, models shall be generated that duplicate the FIS profiles and the elevations shown in the Floodway Data Table in the FIS report to within 0.1 foot.
- Corrected Effective Model. The Corrected Effective Model shall not include any man-made physical changes since the Effective Model date but shall import the model into the most-current version of HEC-RAS from Department review.
- Existing (Preproject Conditions) Model. The Existing Model shall be required to support conclusions about the actual impacts of the project associated with the Revised (Post-Project) Model or to establish more up-to-date models on which to base the Revised (Post-Project) Model.
- Revised (Post-Project Conditions) Model. The Revised (Post-Project Conditions) Model shall incorporate the Existing Model and any proposed changes to the topography caused by the proposed development. This model shall reflect proposed conditions.
- All changes to the Duplicate Effective Model and subsequent models must be supported by certified topographic information, bridge plans, construction plans and survey notes.
- Changes to the hydraulic models shall be limited to the stream reach for which the revision is being requested. Cross sections upstream and downstream of the revised reach shall be identical to those in the Effective Model and result in water surface elevations and top widths computed by the Revised Models matching

those in the Effective Models upstream and downstream of the revised reach as required. The Effective Model shall not be truncated.

[iii] Mapping. Maps and associated engineering data shall be submitted to the Department for review which meet the following conditions:

- Consistency between the revised hydraulic models, the revised floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMs and/or Flood Boundary/Floodway Maps (FBFMs), construction plans, and bridge plans.
- Certified topographic map of a suitable scale, contour interval, and a planimetric map showing the applicable items. If a digital version of the map is available, it may be submitted in order that the FIRM may be more easily revised.
- Annotated FIRM panel showing the revised one-percent and two-tenths-percent annual chance floodplains and floodway boundaries.
- If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used, then all supporting documentation or metadata must be included with the data submission along with the Universal Transverse Mercator (UTM) projection and State Plan Coordinate System in accordance with FEMA mapping specifications.
- The revised floodplain boundaries shall tie into the effective floodplain boundaries.
- All cross sections from the Effective Model shall be labeled in accordance with the effective map and a cross-section lookup table shall be included to relate to the model input numbering scheme.
- Both the current and proposed floodways shall be shown on the map.
- The stream center line or profile baseline used to measure stream distances in the model shall be visible on the map.

[4] Expiration. All permits issued under the authority of this article shall expire no more than 180 days after issuance. The permit may be extended for a maximum of 180 days for good and sufficient cause. If the permitted work has not started within 180 days of the permit date, the development must comply with any regulation, including any revision to the FIRM or FIS, that took effect after the permit date.

(c) Certificate of compliance. No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied, until a certificate of compliance is issued by the

Director, except where no permit is required, subject to the following provisions:

[1] The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this article.

[2] Application for such certificate shall be concurrent with the application for a permit.

[3] If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed.

[4] The applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that the requirements of §275-65G(5) are met.

[5] Where applicable pursuant to §275-65E(1)(d), the applicant must submit a certification by a registered professional engineer or surveyor of the elevation of the bottom of the lowest horizontal structural member supporting the lowest floor (excluding pilings or columns), and an indication of whether the structure contains a basement.

[6] Where applicable pursuant to §275-65E(1)(d), the applicant must submit certification by a registered professional engineer or architect that the structural design and methods of construction meet accepted standards of practice as required by §275-65E(1)(d).

(d) Other permits. Prior to obtaining a floodplain development permit, the applicant must secure all necessary permits from federal, state, and local agencies, including those required by the United States Army Corps of Engineers under Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. § 1344.

(2) Department of Community Development.

(a) The Department of Community Development shall review and advise the Plan Commission and the Common Council on all proposed amendments to this article, maps and text.

(3) Board of Appeals. The Board of Appeals, created under § 62.23(7)(e), Wis. Stats., is hereby authorized or shall be appointed to act for the purposes of this article. The Board shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The Director shall not be the Secretary of the Board.

(a) Powers and duties. The Board of Appeals shall:

[1] Appeals: hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Department of Community Development in the enforcement or administration of this article.

[2] Boundary disputes: hear and decide disputes concerning the district boundaries shown on the Official Floodplain Zoning Map.

[3] Variances: hear and decide, upon appeal, variances from the article standards.

(b) Appeals to the Board.

[1] Appeals to the Board may be taken by any person aggrieved or by any officer or department of the municipality affected by any decision of the

Director. Such appeal shall be taken within 30 days, unless otherwise provided by the rules of the Board, by filing with the official whose decision is in question, and with the Board, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the Board all records regarding the matter appealed.

[2] Notice and hearing for appeals, including variances.

[a] Notice. The Board shall:

[i] Fix a reasonable time for the hearing;

[ii] Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing; and

[iii] Assure that notice shall be mailed to the parties in interest and the Department's regional office at least 10 days in advance of the hearing.

[b] Hearing. Any party may appear in person or by agent. The Board shall:

[i] Resolve boundary disputes according to §275-65G(3)(c);

[ii] Decide variance applications according to §275-65G(3)(d); and

[iii] Decide appeals of permit denials according to §275-65G(4).

[3] Decision. The final decision regarding the appeal or variance application shall:

[a] Be made within a reasonable time;

[b] Be sent to the Department's regional office within 10 days of the decision;

[c] Be a written determination signed by the Chairman or Secretary of the Board;

[d] State the specific facts which are the basis for the Board's decision;

[e] Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction, or grant or deny the variance application; and

[f] Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.

(c) Boundary disputes. The following procedure shall be used by the Board in hearing disputes concerning floodplain district boundaries:

[1] If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary;

[2] The person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board; and

[3] If the boundary is incorrectly mapped, the Board should inform the Department of Community Development or the person contesting the boundary location to petition the Common Council for a map amendment

according to §275-65H.

(d) Variances.

[1] The Board may, upon appeal, grant a variance from the standards of this article if an applicant convincingly demonstrates that:

[a] Literal enforcement of the article provisions will cause unnecessary hardship;

[b] The hardship is due to adoption of the Floodplain Ordinance and unique property conditions not common to adjacent lots or premises. In such case, the ordinance or map must be amended;

[c] The variance is not contrary to the public interest; and

[d] The variance is consistent with the purposes of this article in §275-65A(3).

[2] In addition to the criteria in [1] above, to qualify for a variance under FEMA regulations, the following criteria have been met:

[a] The variance shall not cause any increase in the regional flood elevation;

[b] Variances can only be granted for lots that are less than 1/2 acre and are contiguous to existing structures constructed below the RFE;

[c] The applicant has good and sufficient cause for issuance of the variance;

[d] Failure to grant the variance would result in exceptional hardship;

[e] Granting the variance will not result in additional threats to public safety, extraordinary expense, create a nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;

[f] The variance granted is the minimum necessary, considering the flood hazard, to afford relief.

[3] A variance shall not:

[a] Grant, extend or increase any use prohibited in the zoning district.

[b] Be granted for a hardship based solely on an economic gain or loss.

[c] Be granted for a hardship which is self-created.

[d] Damage the rights or property values of other persons in the area.

[e] Allow actions without the amendments to this article or map(s) required in §275-65H.

[f] Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.

[4] When a floodplain variance is granted, the Board shall notify the applicant in writing that it may increase risks to life and property and flood insurance premiums could increase up to $25.00 per $100.00 of coverage. A copy shall be maintained with the variance record.

(4) Review of appeals of permit denials.

(a) The Department of Community Development, §275-65G(2), and the Board of Appeals shall review all data related to the appeal. This may include:

[1] Permit application data listed in §275-65G(1)(b).
[2] Floodway/Floodfringe determination data in §275-65E(1)(e).
[3] Data listed in §275-65C(3)(a)[2] where the applicant has not submitted this information to the Director.
[4] Other data submitted with the application or submitted to the Board with the appeal.

(b) For appeals of all denied permits, the Board shall:
[1] Follow the procedures of 275-65G(3);
[2] Consider Department of Community Development recommendations; and
[3] Either uphold the denial or grant the appeal.

(c) For appeals concerning increases in regional flood elevation, the Board shall:
[1] Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners as per the requirements of §275-65H; and
[2] Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase, provided no other reasons for denial exist.

(5) Floodproofing standards.

(a) No permit or variance shall be issued for a nonresidential structure designed to be watertight below the regional flood elevation until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to or above the flood protection elevation and submits a FEMA floodproofing certificate. Floodproofing is not an alternative to the development standards in §275-65B, C, D, or E(1).

(b) For a structure designed to allow the entry of floodwaters, no permit or variance shall be issued until the applicant submits a plan either:
[1] Certified by a registered professional engineer or architect; or
[2] That meets or exceeds the following standards:
[a] A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
[b] The bottom of all openings shall be no higher than one foot above grade; and
[c] Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(c) Floodproofing measures shall be designed, as appropriate, to:
[1] Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
[2] Protect structures to the flood protection elevation;
[3] Anchor structures to foundations to resist flotation and lateral movement;
[4] Minimize or eliminate infiltration of floodwaters; and
[5] Minimize or eliminate discharges into floodwaters.
[6] Placement of essential utilities to or above the flood protection elevation; and
[7] If any part of the foundation below the flood protection elevation is

enclosed, the following standards shall apply:

[a] The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;

[b] The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;

[c] Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and

[d] The use must be limited to parking, building access or limited storage.

(6) Public information.

(a) Place marks on structures to show the depth of inundation during the regional flood.

(b) All maps, engineering data and regulations shall be available and widely distributed.

(c) All real estate transfers should show what floodplain zoning district any real property is in.

H. Amendments.

(1) General.

(a) Obstructions or increases may only be permitted if amendments are made to this article, the Official Floodplain Zoning Maps, floodway lines and water surface profiles, in accordance with (b) below.

[1] In AE Zones with a mapped floodway, no obstructions or increases shall be permitted unless the applicant receives a conditional letter of map revision from FEMA and amendments are made to this article, the Official Floodplain Zoning Maps, floodway lines and water surface profiles, in accordance with (b) below. Any such alterations must be reviewed and approved by FEMA and the DNR.

[2] In A Zones, increases equal to or greater than 1.0 foot may only be permitted if the applicant receives a conditional letter of map revision from FEMA and amendments are made to this article, the Official Floodplain Maps, floodway lines, and water surface profiles, in accordance with (b) below.

(b) The Common Council shall change or supplement the Floodplain Zoning District boundaries and this article in the manner outlined in §275-65H(2). Actions which require an amendment to the article and/or submittal of a letter of map change (LOMC) include, but are not limited to, the following:

[1] Any fill or floodplain encroachment that obstructs flow causing any increase in the regional flood height.

[2] Any change to the floodplain boundaries and/or watercourse alterations on the FIRM.

[3] Any change to any other officially adopted Floodplain Maps listed in §275-65A(5)(b)[2].

[4] Any fill in the floodplain which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to

land lying outside the floodplain.

[5] Correction of discrepancies between the water surface profiles and Floodplain Zoning Maps.

[6] Any upgrade to a floodplain zoning ordinance text required by § NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the municipality.

[7] All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.

(2) Procedures. Ordinance amendments may be made upon petition of any interested party according to the provisions of § 62.23, Wis. Stats. Such petitions shall include all necessary data required by §275-65E(1)(e) and §275-65G(1)(b). The land use permit shall not be issued until a Letter of Map Revision is issued by FEMA for the proposed changes.

(a) The proposed amendment shall be referred to the Department of Community Development for a public hearing and recommendation to the Common Council. The amendment and notice of public hearing shall be submitted to the Department's regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of § 62.23, Wis. Stats.

(b) No amendments shall become effective until reviewed and approved by the Department.

(c) All persons petitioning for a map amendment that obstructs flow causing any increase in the regional flood height shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the Common Council.

I. Enforcement and penalties.

(1) Any violation of the provisions of this article by any person shall be unlawful and shall be referred to the City Attorney, who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not less than $10 and not more than $50 for each offense, together with the taxable cost of such action. Each day that the violation exists shall constitute a separate offense. Every violation of this article is a public nuisance, and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to § 87.30, Wis. Stats.

J. Definitions. See §275-70

~~§ 275-65.1. Reclamation plan.~~

~~A. Reclamation plan requirements. All operators of nonmetallic mining sites subject to this article shall prepare and submit a reclamation plan that meets the following requirements.~~

~~(1) Plan required. An operator who conducts or plans to conduct nonmetallic mining shall submit to the City a reclamation plan that meets the requirements of this section and complies with the standards of § 275-64. To avoid duplication, the reclamation plan may, by reference, incorporate existing plans or materials that meet the requirements of this article.~~

~~(2) Existing site information. The reclamation plan shall include information sufficient to describe the existing natural and physical conditions of the site, including but not limited to:~~

~~(a) Plan view maps and/or cross-section drawings of the nonmetallic mining site, including the general location (at a smaller scale); property boundaries and dimensions; the areal extent; delineation; labeling and measurement (in acres) of the general use of each area on the site (see "nonmetallic mine" definition); the geologic composition and depth of the nonmetallic mineral deposit; the distribution, thickness and type of topsoil; the location of surface waters and the existing drainage patterns; the approximate elevation of groundwater; and existing topography as determined by existing hydrogeologic information, with spot elevations and contours at two-foot contour intervals, except where the slope is greater than 30%, where the contour interval may be five feet or other contour interval as approved by the City. In specific instances where the existing hydrogeologic information is insufficient for the purposes of the reclamation plan, the applicant may supplement the information with the opinion of a licensed professional geologist or hydrologist.~~

~~[1] Topsoil or topsoil substitute material, if required to support revegetation needed for reclaiming the site to approved post-mining land use, can be identified using county soil surveys or other available information, including that obtained from a soil scientist or the University of Wisconsin soil science extension agent or other available information resources.~~

~~[2] Delineate from existing maps, biological resources, plant communities, and wildlife use at and adjacent to the proposed or operating mine site. These maps shall also delineate existing shorelands, floodplains (including cross sections), wetlands, and primary environmental corridors, as defined by the City. NOTE: Pre-mining topsoil conditions may be estimated using the Soil Survey of Waukesha County, available from the City of New Berlin Department of Community Development, unless the mining was conducted prior to the soil survey.~~

~~[3] Location of man-made features on or near the site.~~

~~[4] For proposed nonmetallic mine sites that include previously mined areas, the plan view map or cross-section drawing under Subsection A(2)(a) must also show the location and extent of land previously affected by nonmetallic mining, including the location of stockpiles, wash ponds and sediment basins.~~

~~(3) Post-mining land use.~~

~~(a) Specification required.~~

~~[1] The reclamation plan shall specify a proposed post-mining land use for the nonmetallic mine site. The proposed post-mining land use shall be~~

~~consistent with local land use plans and local zoning at the time the plan is submitted, unless a change to the land use plan or zoning is proposed. The proposed post-mining land use shall also be consistent with all applicable local, state, or federal laws in effect at the time the plan is submitted.~~

~~[2] NOTE: A proposed post-mining land use is necessary to determine the type and degree of reclamation needed to correspond with that land use. The post-mining land use will be key in determining the reclamation plan. Final slopes, drainage patterns, site hydrology, seed mixes and the degree of removal of mining-related structures, drainage structures, and sediment control structures will be dictated by the approved post-mining land use.~~

~~(b) Land used for nonmetallic mineral extraction in areas zoned under an exclusive agricultural use ordinance pursuant to § 91.75, Wis. Stats., shall be restored to agricultural use.[1] NOTE: Section 91.75(9), Wis. Stats., contains this requirement; § 91.01(1), Wis. Stats., defines the term "agricultural use."[2]~~

~~[1] Editor's Note: Chapter 91 of the Wisconsin Statutes was repealed and recreated with revised numbering pursuant to 2009 Wisconsin Act 28.~~

~~[2] Editor's Note: See now § 91.01(2), Wis. Stats.~~

~~(4) Reclamation measures. The reclamation plan shall include a description of the proposed reclamation, including methods and procedures to be used and a proposed schedule and sequence for the completion of reclamation activities for various stages of reclamation of the nonmetallic mining site. The following shall be included:~~

~~(a) A description of the proposed earthwork and reclamation, including final slope angles, highwall reduction, benching, terracing and other structural slope stabilization measures, and, if necessary, a site-specific engineering analysis performed by a registered professional engineer as provided by NR 135.10(1) and (2).~~

~~(b) The methods of topsoil or topsoil substitute material removal, storage, stabilization and conservation that will be used during reclamation.~~

~~(c) A plan or map which shows anticipated topography of the reclaimed site and any water impoundments or artificial lakes needed to support the anticipated future land use of the site.~~

~~(d) A plan or map which shows surface structures, roads and related facilities after the cessation of mining.~~

~~(e) The estimated cost of reclamation for each stage of the project or the entire site if reclamation staging is not planned.~~

~~(f) A revegetation plan, which shall include timing and methods of seedbed preparation, rates and kinds of soil amendments, seed application timing, methods and rates, mulching, netting and any other techniques needed to accomplish soil and slope stabilization.~~

~~(g) Quantifiable standards for revegetation adequate to show that a sustainable stand of vegetation has been established which will support the approved post-mining land use. Standards for revegetation may be based on the percent vegetative cover, productivity, plant density, diversity or other applicable measures.~~

~~(h) A plan and, if necessary, a narrative showing erosion-control measures to be employed during reclamation activities. These shall address how reclamation~~

activities will be conducted to minimize erosion and pollution of surface water and groundwater.

(i) A description of any areas which will be reclaimed on an interim basis sufficient to qualify for the waiver of fees pursuant to § 275-65.17C and which will be subsequently disturbed prior to final reclamation. Descriptions shall include an identification of the proposed areas involved, methods of reclamation to comply with the standards in § 275-64 and timing of interim and final reclamation.

(j) A description of how the reclamation plan addresses the long-term safety of the reclaimed mining site. The description shall include a discussion of site-specific safety measures to be implemented at the site and include measures that address public safety with regard to adjacent land uses. Note: Safety measures include visual warnings, physical barriers, slope modifications such as reclamation blasting, scaling of the rock face, and creation of benches. Other measures may be employed if found to be equivalent by a registered professional engineer.

(5) Plan criteria for success. The reclamation plan shall contain criteria for assuring successful reclamation in accordance § 275-64H.

(6) Certification of reclamation plan.

(a) The operator shall provide a signed certification that reclamation will be carried out in accordance with the reclamation plan. If the operator does not own the land, the landowner or lessor, if different from the operator or owner, shall also provide signed certification that he or she concurs with the reclamation plan and will allow its implementation.

(7) Approval. The operator shall keep a copy of the reclamation plan required by this section, once approved by the City under this article, at the mine site or, if not practicable, at the operator's nearest office or place of business.

B. Existing mines. The operator of any nonmetallic mining site that submits an automatic permit application in conformance with § 275-65B[3] shall submit the reclamation plan required by § 275-65.1A by August 1, 2002.

[3] Editor's Note: Section 275-65B was repealed by Ord. No. 2366.

C. (Reserved)

D. Existing plans and approvals. To avoid duplication of effort, the reclamation plan required by § 275-65.1A may, by reference, incorporate existing plans or materials that meet the requirements of this article. Previous approvals for nonmetallic mining sites in operation on August 1, 2001, shall satisfy the requirements of § 275-65.1A if they meet the following requirements:

(1) The document has been approved by the City; and

(2) The City finds that the document designates a post-mining land use and describes reclamation measures that meet the reclamation standards of this article.

E. Review and approval of reclamation plan. The City shall approve, conditionally approve or deny the reclamation plan submitted under this section in writing in accordance with § 275-65.4C(3)[4] for existing mines and § 275-65.4D for mines that apply for a reclamation permit in conformance with § 275-65D. Conditional approvals of reclamation plans shall be made according to § 275-65.4G, and denials of reclamation plans shall be made pursuant to § 275-65.5. The operator shall keep a copy of the reclamation plan approved under this subsection at the mine site or, if not practicable, at the operator's nearest place of business.

[4] Editor's Note: Section 275-65.4C(3) was repealed by Ord. No. 2366.

~~§ 275-65.2. Financial assurance.~~

~~A. Financial assurance requirements. All operators of nonmetallic mining sites in the City shall prepare and submit a proof of financial assurance that meets the following requirements:~~

~~(1) Notification. The regulatory authority shall provide written notification to the operator of the amount of financial assurance required under Subsection A(3).~~

~~(2) Filing. Following approval of the nonmetallic mining reclamation permit and as a condition of the permit, the operator shall file a financial assurance with the City. The financial assurance shall provide that the operator shall faithfully perform all requirements in this article, an applicable reclamation ordinance and the reclamation plan. Financial assurance shall be payable exclusively to the City. In cases where one or more other regulatory authorities regulate a nonmetallic mining site, all financial assurance shall be made payable to the City only if it currently has primary regulatory responsibility.~~

~~(3) Amount and duration of financial assurance. The amount of financial assurance shall equal as closely as possible the cost to the City of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The amount of financial assurance shall be reviewed periodically by the City to assure it equals outstanding reclamation costs. Any financial assurance filed with the City shall be in an amount equal to the estimated cost for reclaiming all sites the operator has under project permits. The City may accept a lesser initial amount of financial assurance, provided that the permittee initiates a process to continuously increase the amount of financial assurance until it is adequate to effect reclamation. An escrow account may be established that is based on production gross sales and serves to provide regular payments to an account that is designed to grow to the amount necessary to guarantee performance of reclamation by the expected time of final reclamation. The period of the financial assurance is dictated by the period of time required to establish the post-mining land use declared and approved of in the reclamation plan. This may extend beyond the permit if required to accomplish successful and complete implementation of the reclamation plan.~~

~~(4) Form and management. Financial assurance shall be provided by the operator and shall be by a bond or an alternate financial assurance. Financial assurance shall be payable to the City and released upon successful completion of the reclamation measures specified in the reclamation plan. Alternate financial assurances may include, but are not limited to, cash, certificates of deposit, irrevocable letters of credit, irrevocable trusts, established escrow accounts, demonstration of financial responsibility by meeting net worth requirements, or government securities. Any interest from the financial assurance shall be paid to the operator. Certificates of deposit shall be automatically renewable or other assurances shall be provided before the maturity date. Financial assurance arrangements may include, at the discretion of the City, a blend of different options for financial assurance, including a lien on the property on which the nonmetallic mining site occurs or a combination of financial assurance methods.~~

~~(5) Multiple projects. Any operator who obtains a permit from the City for two or more nonmetallic mining sites may elect, at the time the second or subsequent site is approved, to post a single financial assurance in lieu of separate financial assurance instruments for each nonmetallic mining site. When an operator elects to post a single financial assurance in lieu of separate financial assurances for each mining site, no financial assurances previously posted on individual mining sites shall be released until the new financial assurance has been accepted by the City.~~

~~(6) Multiple jurisdictions. In cases where more than one regulatory authority has jurisdiction, a cooperative financial security arrangement may be developed and implemented by the regulatory authorities to avoid requiring the permittee to prove financial assurance with more than one regulatory authority for the same nonmetallic mining site. Financial assurance is required for each site and two or more sites of less than one acre by the same operator, except that governmental units are not required to obtain financial assurance.~~

~~(7) Certification of completion and release.~~

~~(a) The operator shall notify the regulatory authority, by filing a notice of completion, at the time that he or she determines that reclamation of any portion of the mining site or the entire site is complete. The City shall inspect the mine site or portion thereof that was the subject of the notice of completion to determine if reclamation has been carried out in accordance with the approved reclamation plan. The City may partially release the financial assurance if it determines that compliance with a portion of the reclamation plan has been achieved and requires no waiting period. After determining that reclamation is complete, the City shall issue a certificate of completion and shall release the financial assurance or appropriately reduce the financial assurance in the case of reclamation of a portion of the mining site.~~

~~(b) The City shall make a determination of whether or not the certification in Subsection A(7)(a) can be made within 60 days of the receipt of the request.~~

~~(c) The City may make a determination under this subsection that:~~

~~[1] Reclamation is not yet complete;~~

~~[2] It is not possible to assess whether reclamation is complete due to weather conditions, snow cover or other relevant factors;~~

~~[3] Reclamation is complete in a part of the mine; or~~

~~[4] Reclamation is fully complete.~~

~~(8) Forfeiture. Financial assurance shall be forfeited if any of the following occur:~~

~~(a) A permit is revoked under § 275-65.12 and the appeals process has been completed.~~

~~(b) An operator ceases mining operations and fails to reclaim the site in accordance with the reclamation plan.~~

~~(9) Cancellation. Financial assurance shall provide that it may not be canceled by the surety or other holder or issuer except after not less than a ninety-day notice to the City in writing by registered or certified mail. Not less than 30 days prior to the expiration of the ninety-day notice of cancellation, the operator shall deliver to the City a replacement proof of financial assurance. In the absence of this replacement financial assurance, all mining shall cease until the time it is delivered and in effect.~~

~~(10) Changing methods of financial assurance. The operator of a nonmetallic mining site may change from one method of financial assurance to another. This may not be done more than once a year unless required by an adjustment imposed pursuant to Subsection A(12). The operator shall give the City at least 60 days' notice prior to changing methods of financial assurance and may not actually change methods without the written approval of the City.~~

~~(11) Bankruptcy notification. The operator of a nonmetallic mining site shall notify the regulatory authority by certified mail of the commencement of voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C. § 101 et seq., naming the operator as debtor, within 10 days of commencement of the proceeding.~~

(12) Adjustment of financial assurance. Financial assurance may be adjusted when required by the City. The City may notify the operator in writing that adjustment is necessary and the reasons for it. The City may adjust financial assurance based upon prevailing or projected interest or inflation rates or the latest cost estimates for reclamation.

(13) Net-worth test.

(a) Only an operator that meets the definition of "company" in § 289.41(1)(b), Wis. Stats., may use the net-worth method of providing financial assurance.

(b) The operator shall submit information to the regulatory authority in satisfaction of the net-worth test requirements of § 289.41(4), Wis. Stats. The criteria in § 289.41(6)(b), (d), (e), (f), (g), (h) and (i), Wis. Stats., shall apply.

(c) An operator using the net-worth test to provide financial assurance for more than one mine shall use the total cost of compliance for all mines in determining the net worth to reclamation cost ratio in accordance with § 289.41(6), Wis. Stats.

(d) Determinations under the net-worth test shall be done in accordance with § 289.41(5), Wis. Stats.

(e) In addition, the operator shall submit a legally binding commitment to faithfully perform all compliance and reclamation work at the mine site that is required under this article.

B. Existing mines. The operator of any nonmetallic mining site that submits an automatic permit application in conformance with § 275-65B[1] shall submit the financial assurance required by § 275-65.2A by August 1, 2002.

[1] Editor's Note: Section 275-65B was repealed by Ord. No. 2366.

C. New mines. The operator of any nonmetallic mining site that applies for a reclamation permit in conformance with § 275-65D shall submit the proof of financial assurance required by § 275-65.2A as specified in the reclamation permit issued to it under this article.

D. Public nonmetallic mining. The financial assurance requirements of this section do not apply to nonmetallic mining conducted by the State of Wisconsin, a state agency, board, commission or department, or the City.

~~§ 275-65.3. Public notice and right of hearing.~~

~~A. New mines. The City shall, except as provided in Subsection B,[1] provide public notice and the opportunity for a public informational hearing as set forth below:~~

~~(1) Public notice.~~

~~(a) Except as provided in Subsection A(3) for existing mines, when the City receives a complete nonmetallic mining reclamation permit application that satisfies § 275-65.1C,[2] it shall publish a public notice of the application no later than 30 days after receipt.~~

~~[2] Editor's Note: Section 275-65.1C was repealed by Ord. No. 2366.~~

~~(b) The notice shall briefly describe the mining and reclamation planned at the nonmetallic mining site. The notice shall be published as a Class 2 notice pursuant to § 985.07(2), Wis. Stats., in the official newspaper of the City. The notice shall mention the opportunity for public hearing pursuant to this section and shall give the locations at which the public may review the application and all supporting materials, including the reclamation plan.~~

~~(c) Copies of the notice shall be forwarded by the City to the county or applicable local zoning board, the county and applicable local planning organization, the County Land Conservation Officer, and owners of land within 600 feet of the boundaries of the parcel or parcels of land on which the site is located.~~

~~(2) Hearing. Except as provided in Subsection A(3) for existing mines, the City shall provide for an opportunity for a public informational hearing on an application or request to issue a nonmetallic mining reclamation permit as follows:~~

~~(a) If it conducts a zoning-related hearing on the nonmetallic mine site, the City shall provide the opportunity at this hearing to present testimony on reclamation-related matters. This opportunity shall fulfill the requirement for public hearing for a nonmetallic mining reclamation permit required by this section. The City shall consider the reclamation-related testimony in the zoning-related hearing in deciding on a permit application pursuant to this article.~~

~~(b) If there is no opportunity for a zoning-related hearing on the nonmetallic mine site as described in Subsection A(2)(a), opportunity for public hearing required by this section shall be provided as follows:~~

~~[1] Any person residing within, owning property within, or whose principal place of business is within 600 feet of the boundary of the parcel or parcels of land in which the nonmetallic mining site is located or proposed may request a public informational hearing. The City shall hold a public hearing if requested by any of these persons within 30 days of the actual date of public notice under Subsection A(1).~~

~~[2] A public informational hearing shall be held no sooner than 30 days nor later than 60 days after being requested. The hearing shall be conducted as an informational hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility and effects of the proposed reclamation. Notice of the public informational hearing shall follow the general notice procedures of § 275-20D of the City Municipal Code.~~

~~[3] The subject matter and testimony at this informational hearing shall be limited to reclamation of the nonmetallic mine site.~~

~~[1] Editor's Note: Subsection B was repealed by Ord. No. 2366.~~

~~B. (Reserved)~~

~~C. Local transportation-related mines. No public notice or informational hearing is required for a nonmetallic mining reclamation permit issued to a local transportation-related mine pursuant to § 275-65.4E.~~

~~§ 275-65.4. Issuance of nonmetallic mining reclamation permit.~~

~~A. Permit required. Every operator of a nonmetallic mining site in the City who engages in or plans to engage in nonmetallic mining after September 1, 2001, shall obtain a reclamation permit issued under this section, except for nonmetallic mining sites that are exempt from this article under § 275-62G(2). No person may engage in nonmetallic mining or nonmetallic mining reclamation after September 1, 2001, without a reclamation permit issued pursuant to this article.~~

~~B. (Reserved)~~

~~C. (Reserved)~~

~~D. Permit issuance for new mines. Applications for reclamation permits for nonmetallic mining sites not in operation on August 1, 2001, that satisfy § 275-65D shall be issued a reclamation permit or otherwise acted on as provided below.~~

~~(1) Unless denied pursuant to § 275-65.5, the City shall approve in writing a request that satisfies the requirements of § 275-65D to issue a nonmetallic mining reclamation permit for a nonmetallic mine where mining has not yet taken place before August 1, 2001, or an existing nonmetallic mine where mining is not taking place on or after August 1, 2001.~~

~~(2) The City may not issue an approval without prior or concurrent approval of the reclamation plan that meets the requirements of § 275-65.1. The regulatory authority may issue a reclamation permit subject to conditions in Subsection G, if appropriate. The permit decision shall be made no sooner than 30 days nor later than 90 days following receipt of the complete reclamation permit application and reclamation plan pursuant to this article, unless a public hearing is held pursuant to § 275-65.3. If a public hearing is held, the regulatory authority shall issue the reclamation permit, subject to conditions pursuant to Subsection G, if appropriate, or shall deny the permit as provided in § 275-65.5, no later than 60 days after completing the public hearing.~~

~~(3) Permits issued pursuant to this subsection shall require compliance with a reclamation plan that has been approved and satisfies the requirements of § 275-65.1 and provision by the applicant of financial assurance required under § 275-65.2 and payable to the City prior to beginning mining.~~

~~E. Automatic permit for local transportation-related mines.~~

~~(1) The City shall automatically issue an expedited permit under this subsection to any borrow site that:~~

~~(a) Will be opened and reclaimed under contract with the City within a period not exceeding 36 months;~~

~~(b) Is a nonmetallic mine which is intended to provide stone, soil, sand or gravel for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or other transportation facility under contract with the City;~~

~~(c) Is regulated and will be reclaimed under contract with the City in accordance with the requirements of the Wisconsin Department of Transportation concerning the restoration of nonmetallic mining sites;~~

~~(d) Is not a commercial source;~~

~~(e) Will be constructed, operated and reclaimed in accordance with applicable zoning requirements, if any; and~~

~~(f) Is not otherwise exempt from the requirements of this article under § 275-62G(2).~~

~~(2) In this subsection, "municipality" has the meaning defined in § 299.01(8), Wis. Stats.~~

~~(3) Automatic permits shall be issued under this subsection in accordance with the following provisions:~~

~~(a) The applicant shall notify the City of the terms and conditions of the contract with respect to reclamation of the proposed borrow site.~~

~~(b) The applicant shall provide evidence to the City to show that the borrow site and its reclamation will comply with applicable zoning requirements, if any.~~

~~(c) The City shall accept the contractual provisions incorporating requirements of the Wisconsin Department of Transportation in lieu of a reclamation plan under § 275-65C.~~

~~(d) The City shall accept the contractual provisions in lieu of the financial assurance requirements in § 275-65.2.~~

~~(e) The public notice and hearing provisions of § 275-65.3 do not apply to nonmetallic mining sites that are issued automatic permits under this subsection. NOTE: Local public notice and hearing requirements, if any, regarding zoning decisions still apply.~~

~~(f) Mines permitted under this subsection shall pay an annual fee to the City as provided in § 275-65.15 but shall not be subject to the plan review fee provided in § 275-65.14. NOTE: Fees may not be assessed for local transportation-related mines permitted under this subsection under § 275-65.15 that are greater than allowed by § NR 135.23(1)(g), Wis. Adm. Code. See the note following § 275-65.15C for details of this fee limitation.~~

~~(g) The City shall issue the automatic permit within seven days of the receipt of a complete application.~~

~~(h) If the borrow site is used to concurrently supply materials for other than the local transportation project, the automatic permitting in this subsection still applies, provided the site will be reclaimed under a contractual obligation with the City in accordance with the Wisconsin Department of Transportation requirements.~~

~~(i) Notwithstanding § 275-65.15, the operator of a borrow site under this subsection is required to submit only the information in an annual report necessary to identify the borrow site and to determine the applicable annual fee.~~

~~F. Expedited review. Any operator of a nonmetallic mining site may request expedited review of a reclamation permit application under Subsection F(1) or (2) as follows:~~

~~(1) The operator may submit a request for expedited permit review with payment of the expedited review fee specified in § 275-65.14B. This request shall state the need for such expedited review and the date by which such expedited review is requested.~~

~~(2) The operator may submit a request for expedited review under this subsection if the applicant requires a reclamation permit to perform services under contract with the City. This request for expedited review shall state the need for expedited review and shall include a copy of the applicable sections of the contract and the date by which the expedited review is requested.~~

~~(3) Following receipt of a request under this subsection, the City shall inform the applicant of the estimated date for decision on issuance of the permit. If the applicant then elects not to proceed with the expedited review, the fee paid under Subsection F(1) shall be returned.~~

~~(4) Expedited review under this subsection shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to § 275-65.3. This subsection does not impose an obligation upon the regulatory authority to act upon a permit application under this subsection by a specific date.~~

~~G. Permit conditions. Any decision under this section may include conditions as provided below:~~

~~(1) The City may issue a reclamation permit or approve a reclamation plan subject to general or site-specific conditions if needed to assure compliance with the nonmetallic mining reclamation requirements of this article.~~

~~(2) One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to § 275-65.2 prior to beginning mining.~~

~~§ 275-65.5. Permit denial.~~

~~An application for a nonmetallic mining reclamation permit shall be denied as set forth below:~~

~~A. An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in § 275-65.4, if the City finds any of the following:~~

~~(1) The applicant has, after being given an opportunity to make corrections, failed to provide to the City an adequate permit application, reclamation plan, financial assurance or any other submittal required by Ch. NR 135, Wis. Adm. Code, or this article.~~

~~(2) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in this article, Ch. NR 135, Wis. Adm. Code, or Subchapter I of Ch. 295, Wis. Stats.~~

~~(3) The applicant, or its agent, principal or predecessor has, during the course of nonmetallic mining in Wisconsin within 10 years of the permit application or modification request being considered, shown a pattern of serious violations of this article or of federal, state or local environmental laws related to nonmetallic mining reclamation. The following may be considered in making this determination of a pattern of serious violations:~~

~~(a) Results of judicial or administrative proceedings involving the operator or its agent, principal or predecessor.~~

~~(b) Suspensions or revocations of nonmetallic mining reclamation permits pursuant to this article, other reclamation ordinances or Ch. NR 135, Wis. Adm. Code.~~

~~(c) Forfeitures of financial assurance.~~

~~B. A denial under this subsection shall be in writing and shall contain documentation of reasons for denial.~~

~~C. A decision to deny an application to issue a reclamation permit may be reviewed under § 275-65.10.~~

~~§ 275-65.6. Alternative requirements.~~

~~A. Scope of alternative requirements approvable. An operator of a nonmetallic mining site may request an alternative requirement to the reclamation standards established in § 275-64. The City may approve an alternative requirement to the reclamation standards established in this article if the operator demonstrates and the City finds that all of the following criteria are met:~~

~~(1) The nonmetallic mining site, the surrounding property or the mining plan or reclamation plan has a unique characteristic which requires an alternative requirement.~~

~~(2) Unnecessary hardship which is peculiar to the nonmetallic mining site or plan will result unless the alternative requirement is approved.~~

~~(3) Reclamation in accordance with the proposed alternative requirement will achieve the planned post-mining land use and long-term site stability in a manner that will not cause environmental pollution or threaten public health, safety or welfare.~~

~~B. Procedures.~~

~~(1) The operator of a nonmetallic mining site requesting an alternate requirement in Subsection A shall demonstrate all the criteria in Subsection A. This shall be submitted in writing to the Department of Community Development by certified mail at: 3805 S. Casper Drive, New Berlin, WI 53151.~~

~~(2) The City shall, within 90 days of receipt of the request, approve, conditionally approve or deny the request in writing, based on the City's determination of compliance with the criteria under Subsection A. The written response shall include reasons and documentation as to why the request was or was not approved.~~

~~(3) A request for an alternative requirement may be incorporated as part of an application to issue or modify a nonmetallic mining reclamation permit.~~

~~C. Transmittal of decision on request for alternative requirement. The decision on a request for alternate reclamation requirements shall be in writing to the applicant and shall include documentation of why the alternate requirement was or was not approved.~~

~~D. Notice to Wisconsin Department of Natural Resources. A copy of any written decision on alternative requirements shall be submitted to the Wisconsin Department of Natural Resources within 10 days of issuance.~~

~~§ 275-65.7. Permit duration.~~

~~A. A nonmetallic mining reclamation permit issued under this article shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to § 275-65.20B.~~

~~B. If the mine operator is not the landowner, the reclamation permit duration shall not exceed the duration of the mine lease unless the lease is renewed or the permit is transferred to a subsequent lessee pursuant to § 275-65.8.~~

~~§ 275-65.8. Permit transfer.~~

~~A nonmetallic mining reclamation permit issued under this article shall be transferred to a new owner or operator upon satisfaction of the following conditions:~~

~~A. A nonmetallic mining reclamation permit may be transferred to a new operator upon submittal to the City of proof of financial assurance and a certification in writing by the new permit holder that all conditions of the permit will be complied with.~~

~~B. The transfer is not valid until financial assurance has been submitted by the new operator and accepted by the City and the City makes a written finding that all conditions of the permit will be complied with. The previous operator shall maintain financial assurance until the new operator has received approval and provided the financial assurance under this section.~~

~~§ 275-65.9. Previously permitted sites.~~

~~For any nonmetallic mining site which had a reclamation permit previously issued by another regulatory authority pursuant to Ch. NR 135, Wis. Adm. Code, that becomes subject to the reclamation permitting authority of the City, the terms and conditions of the previously issued county reclamation permit shall remain in force until modified by the City pursuant to § 275-65.11A.~~

~~§ 275-65.10. Review.~~

~~Any permitting decision or action made by the City under this article may be reviewed as set forth in this section. Notwithstanding §§ 68.001, 68.03(8) and (9), 68.06 and 68.10(1)(b), Wis. Stats., any person who meets the requirements of § 227.42(1), Wis. Stats., may obtain a contested case hearing under § 68.11, Wis. Stats., on the City's decision to issue, deny or modify a nonmetallic mining reclamation permit.~~

~~§ 275-65.11. Permit modification.~~

~~A. By the City. A nonmetallic mining reclamation permit issued under this article may be modified by the City if it finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with Ch. NR 135, Wis. Adm. Code, or this article. Such modification shall be by an order modifying the permit in accordance with § 275-65.20. This modifying order may require the operator to amend or submit new application information, reclamation plan, proof of financial assurance or other information needed to ensure compliance with Ch. NR 135, Wis. Adm. Code, or this article.~~

~~B. At the operator's option. If the operator of any nonmetallic mine that holds a reclamation permit issued under this article desires to modify such permit or reclamation plan approved under this article, it may request such modification by submitting a written application for such modification to the Department of Community Development by certified mail at: 3805 S. Casper Drive, New Berlin, WI 53151. The application for permit or plan modification shall be acted on using the standards and procedures of this article.~~

~~C. Required by the operator. The operator of any nonmetallic mine that holds a reclamation permit issued under this article shall request a modification of such permit if changes occur to the area to be mined, the nature of the planned reclamation, or other aspects of mining required by the reclamation plan approved pursuant to this article. Such application for permit modification shall be acted on using the standards and procedures of this article. NOTE: Modification of the permit must be requested by the operator in such circumstances under § NR 135.27, Wis. Adm. Code.~~

~~D. Review. All actions by the City on permit modifications requested or initiated under this section are subject to review under § 275-65.10.~~

~~§ 275-65.12. Permit suspension and revocation.~~

~~A. Grounds. The City may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this article if it finds the operator has done any of the following:~~

~~(1) Failed to submit a satisfactory reclamation plan within the time frames specified in this article.~~

~~(2) Failed to submit or maintain financial assurance as required by this article.~~

~~(3) Failed on a repetitive and significant basis to follow the approved reclamation plan.~~

~~B. Procedures. If the City finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in Subsection A, it may issue a special order suspending or revoking such permit as set forth in § 275-65.20B.~~

~~C. Consequences.~~

~~(1) If the City makes any of the findings in Subsection A, it may suspend a nonmetallic mining reclamation permit for up to 30 days. During the time of suspension, the operator may not conduct nonmetallic mining at the site, except for reclamation or measures to protect human health and the environment as ordered by the regulatory authority pursuant to § 275-65.20.~~

~~(2) If the City makes any of the findings in Subsection A, it may revoke a nonmetallic mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided pursuant to this article to the City. The City may use forfeited financial assurance to reclaim the site to the extent needed to comply with this article and the applicable reclamation ordinance.~~

~~**§ 275-65.13. Annual operator reporting.**~~

~~A. Contents and deadline. Annual reports that satisfy the requirements of this section shall be submitted by the operators of nonmetallic mining sites.~~

~~(1) Contents. The annual report required by this section shall include all of the following:~~

~~(a) The name and mailing address of the operator.~~

~~(b) The location of the nonmetallic mining site, including legal description, tax key number or parcel identification number, if available.~~

~~(c) The identification number of the applicable nonmetallic mining permit, if assigned by the City.~~

~~(d) The acreage currently affected by nonmetallic mining extraction and not yet reclaimed.~~

~~(e) The amount of acreage that has been reclaimed to date on a permanent basis and the amount reclaimed on an interim basis.~~

~~(f) A date-stamped aerial photo or other date-stamped orthophoto approved by the City, accurately showing the acreage described in Subsection A(1)(d) and (e).~~

~~(g) A map, with a scale of 1:100 (one inch equals 100 feet) or other scale approved by the City, accurately showing the acreage described in Subsection A(1)(d) and (e) and visualized in Subsection A(1)(f).~~

~~(h) The following certification, signed by the operator:~~

~~"I certify that this information is true and accurate, and that the nonmetallic mining site described herein complies with all conditions of the applicable nonmetallic mining reclamation permit and Ch. NR 135, Wis. Adm. Code."~~

~~(2) Deadline. The annual report shall cover activities on unreclaimed acreage for the previous calendar year and be submitted by January 31.~~

~~(3) When reporting may end. Annual reports shall be submitted by an operator for all active and intermittent mining sites to the City for each calendar year until nonmetallic mining reclamation at the site is certified as complete pursuant to § 275-65.17C or at the time of release of financial assurance pursuant to § 275-65.2A(7).~~

~~B. Inspection in lieu of report. The City may, at its discretion, obtain the information required in Subsection A for a calendar year by written documentation of an inspection it completes during a calendar year, as set forth in this subsection. If the City obtains and documents the required information, the annual report need not be submitted by the operator. If the City determines that the operator need not submit an annual report pursuant to this subsection, it shall advise the operator in writing at least 30 days before the end of the applicable calendar year. In that case, the City shall require the operator to submit the certification required in Subsection A(1)(g).~~

~~C. Retention of annual reports. Annual reports submitted under Subsection A or inspection records that replace them under Subsection B shall be retained by the City within the Department of Community Development for at least 10 years after the calendar year to which they apply. These records, or complete and accurate copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities carried out pursuant to Ch. NR 135, Wis. Adm. Code.~~

~~§ 275-65.14. Plan review fees.~~

~~Plan review application and appropriate fees shall be submitted to the Department of Community Development in person or via certified mail at: 3805 S. Casper Drive, New Berlin, WI 53151.~~

~~A. Amount and applicability. A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under § 275-65D shall submit a nonrefundable plan review fee in accordance with the fee schedule shown in Table 4, § NR 135.39(5), Wis. Adm. Code,[1] unless modified by the City through the budget review process. No plan review fee may be assessed under this section for any existing nonmetallic mine site for which an application for an automatic reclamation permit is submitted that meets the requirements of § 275-65B[2] or for any local transportation-related mining receiving an automatic permit under § 275-65.4E. A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to § 275-65.11.~~

~~Table 1~~ **~~§ NR 135.39(5), Table 4~~** **~~Annual Fees for New or Proposed Mines~~**	
~~Proposed Mine Size Rounded to the Nearest Whole Acre (acres)~~	**~~One-Time Review Fee~~**
~~1 to 25~~	~~$900~~
~~26 to 50~~	~~$1,200~~
~~51 or more~~	~~$1,500~~

~~[1] Editor's Note: See Table 1 below.~~

~~[2] Editor's Note: Section 275-65B was repealed by Ord. No. 2366.~~

~~B. Expedited plan review fee. Any permit applicant requesting expedited review by the City under § 275-65.4F shall pay the expedited review fee of 1.5x, unless modified by the City through the annual budget process. Such fee shall be in addition to that required in § 275-65.14A.~~

~~C. Relation to annual fee. Any reclamation plan review fee or expedited reclamation plan review fee collected under this section shall be added to and collected as part of the first annual fee collected under § 275-65.15.~~

~~D. NOTE: Plan review fees collected under this section are required under § 295.12(3)(e)1.a., Wis. Stats., to equal as closely as possible the cost of examination and approval of such plans. Section 295.15, Wis. Stats., requires the regulatory authority to use its fees only for the administration of its reclamation ordinance.~~

§ 275-65.15. Annual fees.

A. Areas subject to fees, procedures and deadline.

(1) General. Operators of all nonmetallic mining sites subject to reclamation permits issued under this article shall pay annual fees to the City of New Berlin, to the attention of the Department of Community Development, by certified mail, at: 3805 S. Casper Drive, New Berlin, WI 53151. Fees paid under this section shall include both a share for the Wisconsin Department of Natural Resources under Subsection B and a share for the City under Subsection C that equals as closely as possible the costs of examination and approval of nonmetallic mining reclamation plans and the inspection of nonmetallic mining sites.

(2) Areas subject to fees. Fees paid under this section shall be calculated by the City based on the number of unreclaimed acres, as defined in § 275-63, present on a nonmetallic mining site at the end of each calendar year. For new or reopened mines that submit a reclamation permit application under § 275-65D, the first year's annual fee shall be based upon the unreclaimed acres which are anticipated at the end of that calendar year.

(3) Procedures and deadlines. Fees assessed pursuant to this section shall be paid to the City no later than December 31 for the subsequent year, except when required at the time of permit application under § 275-65B and D.[1]

[1] Editor's Note: Section 275-65B was repealed by Ord. No. 2366.

(4) Fees prior to reclamation certification. If reclamation has already occurred on portions of a nonmetallic mining site, the fees for such portions may be submitted with a request that they be held by the City pending certification of completed reclamation pursuant to § 275-65.16B. Upon such certification, the City shall refund that portion of the annual fee that applies to the reclaimed areas.

B. Wisconsin Department of Natural Resources' share of fee.

(1) Fees paid under this section shall include a share for the Wisconsin Department of Natural Resources equal to the amount specified in Table 1 and § NR 135.39(3), Wis. Adm. Code.[2]

Table 2 § NR 135.39(3) Table 1 Wisconsin Department of Natural Resources' Share of Annual Fees Collected by the City of New Berlin	
Mine Size in Unreclaimed Acres Rounded to the Nearest Whole Acre (acres)	**Annual Fee**
1 to 5 (does not include mines less than 1 acre)	$35
6 to 10	$70
11 to 15	$105
16 to 25	$140
26 to 50	$160
51 or larger	$175

[2] Editor's Note: See Table 2 below. This share of the fees shall be used to support the Department's statewide cost to inspect, enforce, consult with and audit local nonmetallic mining reclamation programs under § NR 135.

(2) For nonmetallic mining sites at which no nonmetallic mining has taken place during a calendar year, the share for the Wisconsin Department of Natural Resources shall be $15.

(3) The City of New Berlin shall forward fees collected under this subsection to the Wisconsin Department of Natural Resources by March 31 of the year for which they were collected.

C. The City's share of fee. Fees paid under this section shall also include an annual fee due to the City, which shall be as shown in Table 2 and § NR 135.39(5), Wis. Adm. Code,[3] unless modified by the City through the annual budget process. By state law, City fees under this section may only be used to support reasonable expenses associated with administration of this article.

Table 3 **§ NR 135.39(4) Table 2** **City of New Berlin Annual Fees**	
Mine Size in Unreclaimed Acres Rounded to the Nearest Whole Acre (acres)	**Annual Fee**
1 to 5 (does not include mines less than 1 acre)	$450
6 to 10	$600
11 to 15	$750
16 to 25	$1,000
26 to 50	$1,100
51 or larger	$1,250

Table 4 **§ NR 135.39(4) Table 3** **Limit on Total Annual Fees For Automatically Permitted Local Transportation Project-Related Mines**	
Mine Size in Unreclaimed Acres Rounded to the Nearest Whole Acre (acres)	**Annual Fee**
1 to 5 (does not include mines less than 1 acre)	$150
6 to 10	$300
11 to 15	$450
16 to 25	$600
26 to 50	$700
51 or larger	$750

[3] Editor's Note: See Table 3 below.

D. Reduced fee for inactive mines. Any site (greater than one acre) on which no metallic mining activity has taken place in a calendar year shall be assessed a fee of $100 for the following calendar year.

~~§ 275-65.16. Regulatory reporting and documentation.~~

~~A. Reporting. The City shall send an annual report to the Wisconsin Department of Natural Resources by March 31 of each calendar year. The reports shall include the following information for the previous year's nonmetallic mining reclamation program:~~

~~(1) The total number of nonmetallic mining reclamation permits in effect.~~

~~(2) The number of new permits issued within the jurisdiction of the City.~~

~~(3) The number of acres approved for nonmetallic mining and the number of acres newly approved in the previous year.~~

~~(4) The number of acres being mined or unreclaimed acres.~~

~~(5) The number of acres that have been reclaimed and have had financial assurance released pursuant to § 275-65.2A(7).~~

~~(6) The number of acres that are reclaimed and awaiting release from the financial assurance requirements of this article pursuant to § 275-65.17A and B.~~

~~(7) The number and nature of alternative requirements granted, permit modifications, violations, public hearings, enforcement actions, penalties that have been assessed and bond or financial assurance forfeitures.~~

~~B. Documentation. The City shall, to the best of its ability, maintain the information set forth below and make it available to the Wisconsin Department of Natural Resources for that agency's audit of the City's reclamation program pursuant to Ch. NR 135, Wis. Adm. Code:~~

~~(1) Documentation of compliance with Ch. NR 135, Wis. Adm. Code, and this article.~~

~~(2) The procedures employed by the City regarding reclamation plan review and the issuance and modification of permits.~~

~~(3) The methods for review of annual reports received from operators.~~

~~(4) The method and effectiveness of fee collection.~~

~~(5) Procedures to accurately forward the Wisconsin Department of Natural Resources' portion of collected fees in a timely fashion.~~

~~(6) Methods for conducting on-site compliance inspections and attendant reports, records and enforcement actions.~~

~~(7) Responses to citizen complaints.~~

~~(8) The method of and accuracy in determining the amount of the financial assurance obtained from the operator to guarantee reclamation performance.~~

~~(9) The maintenance and availability of records.~~

~~(10) The number and type of approvals for alternative requirements issued pursuant to § 275-65.6.~~

~~(11) The method of determining the success of reclamation in meeting the criteria contained in the reclamation plan and subsequently releasing the financial assurance pursuant to § 275-65.2A(7).~~

~~(12) Any changes in local regulations, ordinances, funding and staffing mechanisms or any other factor which might affect the ability of the City to implement its nonmetallic mining reclamation program under this article.~~

~~(13) The amount of fees collected in comparison to the amount of money actually expended for nonmetallic mining reclamation program administration.~~

~~(14) Any other performance criterion necessary to ascertain compliance with Ch. NR 135, Wis. Adm. Code.~~

~~§ 275-65.17. Completed reclamation: reporting, certification and effect.~~

~~A. Reporting of completed reclamation. The operator of a nonmetallic mining site may report to the City completion of reclamation or interim reclamation for a portion of, or all of, the nonmetallic mining site pursuant to a reclamation plan prepared and approved pursuant to this article. Any report under this subsection shall be made on a form provided by the City.~~

~~B. Certification of completed reclamation.~~

~~(1) The City shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection within 60 days of receipt and make a determination in writing of one of the following:~~

~~(a) Reclamation or interim reclamation is not yet complete;~~

~~(b) It is not possible to assess whether reclamation or interim reclamation is complete due to weather conditions, snow cover or other relevant factors;~~

~~(c) Reclamation or interim reclamation is complete in a part of the mine; or~~

~~(d) Reclamation or interim reclamation is fully complete.~~

~~(2) If it is determined under Subsection B(1) that reclamation or interim reclamation is complete, including revegetation as specified in a reclamation plan that conforms with the standards contained in § 275-64H, the City shall issue the mine operator a written certificate of completion for the applicable area.~~

~~C. Effect of completed reclamation. If reclamation is certified by the City as complete under Subsection B for part or all of a nonmetallic mining site, then:~~

~~(1) No fee shall be assessed under § 275-65.15 for the area so certified.~~

~~(2) The financial assurance required by § 275-65.2 shall be released or appropriately reduced in the case of completion of reclamation for a portion of the mining site.~~

~~(3) For sites which are certified as interim reclaimed under Subsection B, financial assurance for reclaiming the certified area may be reduced only if the City determines that the balance is sufficient to ensure final reclamation of the entire site.~~

~~D. Effect of inaction following report of completed reclamation. If no written response as required by Subsection B for an area of the mine site reported as reclaimed or interim reclaimed is given within 60 days of receiving such request, any annual fee paid to the City for it under § 275-65.15 shall be refunded.~~

~~§ 275-65.18. Permit termination.~~

~~When all final reclamation required by a reclamation plan conforming to § 275-65.1 and required by this article is certified as complete pursuant to §§ 275-65.2A(7) and 275-65.17B, the City shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.~~

~~§ 275-65.19. Right of entry and inspection.~~

~~For the purpose of ascertaining compliance with the provisions of Subchapter I of Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, or this article, any authorized officer, agent, employee or representative of the City may inspect any nonmetallic mining site subject to this article as provided below:~~

~~A. No person may refuse entry or access onto a nonmetallic mining site of a duly authorized officer, employee or agent of the City or the Wisconsin Department of Natural Resources who presents appropriate credentials to inspect the site for compliance with the nonmetallic mining reclamation permit, this article, Ch. NR 135, Wis. Adm. Code, or Subchapter I of Ch. 295, Wis. Stats.~~

~~B. Any person who enters the site under this right of inspection shall obtain training and provide his/her own safety equipment needed to comply with any federal, state or local laws or regulations controlling persons on the nonmetallic mining site.~~

~~§ 275-65.20. Orders and citations.~~

~~A. Enforcement orders. The City may issue orders as set forth in § 295.19(1)(a), Wis. Stats., to enforce Subchapter I of Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, this article, a permit issued pursuant to this article, or a reclamation plan required by § 275-65.1 and a permit issued under this article. A violation of this article, an order or permit issued pursuant to this article, or a reclamation plan required by § 275-65.1 and a permit issued under this article shall be considered a violation of Subchapter I of Ch. 295, Wis. Stats., and Ch. NR 135, Wis. Adm. Code.~~

~~B. Special orders. The City may issue a special order as set forth in § 295.19(1)(b) and (c), Wis. Stats., suspending or revoking a nonmetallic mining reclamation permit pursuant to § 275-65.12, or directing an operator to immediately cease an activity regulated under Subchapter I of Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, or this article until the necessary plan approval is obtained.~~

~~C. Review of orders. A person holding a reclamation permit who is subject to an order pursuant this section shall have the right to review the order in a contested case hearing under § 68.11, Wis. Stats., notwithstanding the provisions of §§ 68.001, 68.03(8) and (9), 68.06 and 68.10(1)(b), Wis. Stats.~~

~~D. Citations. The City may issue a citation under § 66.0113, Wis. Stats., and § 1-18 of the City of New Berlin Municipal Code to collect forfeitures to enforce Subchapter I of Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, this article, a permit issued pursuant to this article, or a reclamation plan required by § 275-65.1 and a permit issued under this article. The issuance of a citation under this subsection shall not preclude proceeding under any other ordinance or law relating to the same or any other matter. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this subsection.~~

~~E. Enforcement. The City may submit any order issued under § 275-65.20 to abate violations of this article to a District Attorney, Corporation Counsel, Municipal Attorney or the Attorney General for enforcement. The District Attorney, Corporation Counsel, Municipal Attorney or the Attorney General may enforce those orders.~~

~~§ 275-65.21. Violations and penalties.~~

~~Any violation of Subchapter I of Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, this article, a permit issued pursuant to this article, or a reclamation plan required by § 275-65.1 and a permit issued under this article may result in forfeitures as provided in § 295.19(3), Wis. Stats., as follows:~~

~~A. Any person who violates Ch. NR 135, Wis. Adm. Code, or an order issued under § 275-65.20 may be required to forfeit not less than $25 nor more than $1,000 for each violation. Each day of continued violation is a separate offense. While an order issued under § 275-65.20 is suspended, stayed or enjoined, this penalty does not accrue.~~

~~B. Except for the violations referred to in Subsection A, any person who violates Subchapter I of Ch. 295, Wis. Stats., Ch. NR 135, Wis. Adm. Code, any reclamation plan approved pursuant to this article, or an order issued pursuant to § 275-65.20 shall forfeit not less than $10 nor more than $5,000 for each violation. Each day of violation is a separate offense. While an order issued under § 275-65.20 is suspended, stayed or enjoined, this penalty does not accrue.~~

~~§275-65.22 Statutory authorization, findings of fact, statement of purpose, title and general provisions.~~

~~A. Statutory authorization. This article is adopted pursuant to the authorization in §§ 61.35 and 62.23, Wis. Stats., and the requirements in § 87.30, Wis. Stats.~~

~~B. Finding of fact. Uncontrolled development and use of the floodplains and rivers of this municipality would impair the public health, safety, convenience, general welfare and tax base.~~

~~C. Statement of purpose. This article is intended to regulate floodplain development to:~~

~~(1) Protect life, health and property;~~

~~(2) Minimize expenditures of public funds for flood control projects;~~

~~(3) Minimize rescue and relief efforts undertaken at the expense of the taxpayers;~~

~~(4) Minimize business interruptions and other economic disruptions;~~

~~(5) Minimize damage to public facilities in the floodplain;~~

~~(6) Minimize the occurrence of future flood blight areas in the floodplain;~~

~~(7) Discourage the victimization of unwary land and home buyers;~~

~~(8) Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and~~

~~(9) Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.~~

~~D. Title. This article shall be known as the "Floodplain Zoning Ordinance for the City of New Berlin, Wisconsin."~~

~~E. General provisions.~~

~~(1) Areas to be regulated. This article regulates all areas that would be covered by the regional flood or base flood as shown on the Flood Insurance Rate Map (FIRM) or other maps approved by DNR. Base flood elevations are derived from the flood profiles in the Flood Insurance Study (FIS) and are shown as AE, A1-30, and AH Zones on the FIRM. Other regulatory zones are displayed as A and AO Zones. Regional flood elevations (RFE) may be derived from other studies. If more than one map or revision is referenced, the most-restrictive information shall apply.~~

~~(2) Official maps and revisions. The boundaries of all floodplain districts are designated as A, AE, AH, AO or A1-30 on the maps based on the Flood Insurance Study (FIS) listed below. Any change to the base flood elevations (BFE) in the Flood Insurance Study (FIS) or any changes to the boundaries of the floodplain or floodway in the FIS or on the Flood Insurance Rate Map (FIRM) must be reviewed and approved by the DNR and FEMA through the letter of map change process (see § **275-65.29**) before they are effective. No changes to regional flood elevations (RFEs) on non-FEMA maps shall be effective until approved by the DNR. These maps and revisions are on file in the office of the Department of Community Development, City of New Berlin. If more than one map or revision is referenced, the most current restrictive shall apply.~~

~~(a) Based on the FIS:~~

~~[1] Flood Insurance Rate Map (FIRM) Panel Numbers 55133C0218G, 55133C0219G, 55133C0238G, 55133C0239G, 55133C0327G, 55133C0329G, 5133C0331G, 55133C0332G, 55133C0334G, 55133C0342G, 55133C0351G, 55133C0352G, 55133C0353G, 55133C0354G, 55133C0361G and 5133C0362G, dated November 5, 2014, with corresponding profiles that are based on the Waukesha County Flood Insurance Study (FIS), dated November 5, 2014, Volumes 55133CV001C, 55133CV002C, and 55133CV003C, are hereby incorporated in the City of New Berlin Floodplain Ordinance and the~~

~~floodplain districts as set forth in §§ **275-65.22** through **275-65.31** as well as the City of New Berlin Zoning Map.~~

~~(b) Maps based upon other studies. Any maps referenced in this section must be approved by the DNR and be more restrictive than those based on the FIS at the site of the proposed development.~~

~~[1] Any one-hundred-year dam failure analyses as approved from time to time by the DNR and FEMA.~~

~~[2] All DNR- and FEMA-approved floodplain maps, flood profiles, floodway data tables, regional or base flood elevations, letters of map amendment, letters of map revision and other information are on file in the office of the Department of Community Development, City of New Berlin.~~

~~[3] Waukesha County Flood Storage Maps, Panel Numbers 4 and 9, dated November 5, 2014, approved by the DNR.~~

~~(3) Establishment of floodplain zoning districts. The regional floodplain areas are divided into four districts as follows:~~

~~(a) The Floodway District (FW) is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters and are contained within AE Zones as shown on the FIRM.~~

~~(b) The Floodfringe District (FF) is that portion of the floodplain between the regional flood limits and the floodway and displayed as AE Zones on the FIRM.~~

~~(c) The General Floodplain District (GFP) is those areas that have been or may be covered by floodwater during the regional flood and do not have a BFE or floodway boundary determined, including A, AH, and AO Zones on the FIRM.~~

~~(d) The Flood Storage District (FSD) is that area of the floodplain where storage of floodwaters is calculated to reduce the regional flood discharge.~~

~~(4) Locating floodplain boundaries. Discrepancies between boundaries on the Official Floodplain Zoning Map and actual field conditions shall be resolved using the criteria in Subsection **E(4)(a)** or **(b)** below. If a significant difference exists, the map shall be amended according to § **275-65.29**. The Director can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The Director shall be responsible for documenting actual predevelopment field conditions and the basis upon which the district boundary was determined and for initiating any map amendments required under this section. Disputes between the Director and an applicant over the district boundary line shall be settled according to § **275-65.28C(3)** and the criteria in Subsection **E(4)(a)** and **(b)** below. Where the flood profiles are based on established base flood elevations from the FIRM, FEMA must approve any map amendment or revision pursuant to § **275-65.29**.~~

~~(a) If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.~~

~~(b) Where flood profiles do not exist, the location of the boundary shall be determined by the map scale.~~

~~(5) Removal of lands from floodplain. Compliance with the provisions of this article shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to § **275-65.29**. Note: This procedure does not remove the requirements for the mandatory purchase of flood insurance. The property owner must contact FEMA to request a letter of map change (LOMC).~~

~~(6) Compliance. Any development or use within the areas regulated by this article shall be in~~

~~compliance with the terms of this article and other applicable local, state, and federal regulations.~~

~~(7) Municipalities and state agencies regulated. Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this article and obtain all necessary permits. State agencies are required to comply if § 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when § 30.2022, Wis. Stats., applies.~~

~~(8) Abrogation and greater restrictions.~~

~~(a) This article supersedes all the provisions of any municipal zoning ordinance enacted under § 62.23 or § 87.30, Wis. Stats., which relates to floodplains. If another ordinance is more restrictive than this article, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.~~

~~(b) This article is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this article imposes greater restrictions, the provisions of this article shall prevail.~~

~~(9) Interpretation. In their interpretation and application, the provisions of this article are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this article required by Ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this article or in effect on the date of the most-recent text amendment to this article.~~

~~(10) Warning and disclaimer of liability. The flood protection standards in this article are based on engineering experience and research. Larger floods may occur or the flood height may be increased by man-made or natural causes. This article does not imply or guarantee that nonfloodplain areas or permitted floodplain uses will be free from flooding and flood damages. This article does not create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this article.~~

~~(11) Severability. Should any portion of this article be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected.~~

~~(12) Annexed areas for cities and villages. The Waukesha County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of Ch. NR 116, Wis. Adm. Code, and 44 CFR 59-72, National Flood Insurance Program (NFIP). These annexed lands are described on the municipality's Official Zoning Map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the municipal Director. All plats or maps of annexation shall show the regional flood elevation and the location of the floodway.~~

~~§275-65.23 General standards applicable to all floodplain districts.~~

~~The community shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with materials resistant to flood damage; be constructed by methods and practices that minimize flood damages; and be constructed with electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Subdivisions shall be reviewed for compliance with the above standards. All subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this article and all other requirements in § **275-65.28A(2)**. Adequate drainage shall be provided to reduce exposure to flood hazards, and all public utilities and facilities, such as sewer, gas, electrical, and water systems, are located and constructed to minimize or eliminate flood damages.~~

~~A. Hydraulic and hydrologic analyses.~~

~~(1) No floodplain development shall:~~

~~(a) Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, causing any increase in the regional flood height; or~~

~~(b) Cause any increase in the regional flood height due to floodplain storage area lost.~~

~~(2) The Director shall deny permits if it is determined the proposed development will obstruct flow or cause any increase in the regional flood height, based on the officially adopted FIRM or other adopted map, unless the provisions of § **275-65.29** are met.~~

~~B. Watercourse alterations. No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified, in writing, all adjacent municipalities, the Department and FEMA regional offices and required the applicant to secure all necessary state and federal permits. The standards of 275-65.23A must be met, and the flood-carrying capacity of any altered or relocated watercourse shall be maintained. As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation and pursuant to § **275-65.29**, the applicant shall apply, with community acknowledgement, for a letter of map revision (LOMR) from FEMA. Any such alterations must be reviewed and approved by FEMA and the DNR through the LOMC process.~~

~~C. Chapters 30 and 31, Wis. Stats., development. Development which requires a permit from the Department under Chs. 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed if the necessary permits are obtained and amendments to the Floodplain Zoning Ordinance are made according to § **275-65.29**.~~

~~D. Public or private campgrounds. Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:~~

~~(1) The campground is approved by the Department of Health Services;~~

~~(2) A land use permit for the campground is issued by the Director;~~

~~(3) The character of the river system and the elevation of the campground are such that a seventy-two-hour warning of an impending flood can be given to all campground occupants;~~

~~(4) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official~~

~~which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedure for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation;~~

~~(5) This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated, by the officials identified in Subsection **D(4)**, to remain in compliance with all applicable regulations, including those of the State Department of Health Services and all other applicable regulations;~~

~~(6) Only camping units that are fully licensed, if required, and ready for highway use are allowed;~~

~~(7) The camping units shall not occupy any site in the campground for more than 180 consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of 24 hours;~~

~~(8) All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed 180 days and shall ensure compliance with all the provisions of this section;~~

~~(9) The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section;~~

~~(10) All camping units that remain in place for more than 180 consecutive days must meet the applicable requirements in either § **275-65.24**, **275-65.25** or **275-65.26** for the floodplain district in which the structure is located;~~

~~(11) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued; and~~

~~(12) All service facilities, including but not limited to refuse collection, electrical service, gas lines, propane tanks, sewage systems and wells, shall be properly anchored and placed at or floodproofed to the flood protection elevation.~~

~~§275-65.24 Floodway District (FW).~~

~~A. Applicability. This section applies to all floodway areas on the Floodplain Zoning Maps and those identified pursuant to § **275-65.26A(4)**.~~

~~B. Permitted uses. The following open space uses are allowed in the Floodway District and the floodway areas of the General Floodplain District if they are not prohibited by any other ordinance, they meet the standards in Subsections **C** and **D**, and all permits or certificates have been issued according to § **275-65.28A**:~~

~~(1) Agricultural uses, such as farming, outdoor plant nurseries, horticulture, viticulture and wild crop harvesting.~~

~~(2) Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.~~

~~(3) Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of Subsection **C(4)**.~~

~~(4) Uses or structures accessory to open space uses or classified as historic structures that comply with Subsections **C** and **D**.~~

~~(5) Public utilities, streets and bridges that comply with Subsection **C(3)**.~~

~~(6) Extraction of sand, gravel or other materials that complies with Subsection **C(4)**.~~

~~(7) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with Chs. 30 and 31 Wis. Stats.~~

~~C. Standards for development in floodway areas.~~

~~(1) General.~~

~~(a) Any development in floodway areas shall comply with § **275-65.23** and have a low flood damage potential.~~

~~(b) Applicants shall provide the following data to determine the effects of the proposal according to §§ **275-65.23A** and **275-65.28A(2)(c)**: **[Amended 9-23-2014 by Ord. No. 2529]**~~

~~[1] A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or~~

~~[2] An analysis calculating the effects of this proposal on regional flood heights.~~

~~(c) The Director shall deny the permit application if the project will cause any increase in flood elevations upstream or downstream, based on the data submitted for Subsection **C(1)(b)** above.~~

~~(2) Structures. Structures accessory to permanent open space uses or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:~~

~~(a) The structure is not designed for human habitation and does not have a high flood damage potential and is constructed to minimize flood damage;~~

~~(b) It shall have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings shall be no higher than one foot above grade. The opening shall be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters;~~

~~(c) They must be anchored to resist flotation, collapse and lateral movement;~~

~~(d) Mechanical and utility equipment must be elevated to, or floodproofed to or~~

~~above, the flood protection elevation; and~~

~~(e) They must not obstruct the flow of floodwaters or cause any increase in flood levels during the occurrence of the regional flood.~~

~~(3) Public utilities, streets and bridges. Public utilities, streets and bridges may be allowed by permit if:~~

~~(a) Adequate floodproofing measures are provided to the flood protection elevation; and~~

~~(b) Construction meets the development standards of § **275-65.23A**.~~

~~(4) Fills or deposition of materials. Fills or deposition of materials may be allowed by permit if:~~

~~(a) The requirements of § **275-65.23A** are met;~~

~~(b) No material is deposited in navigable waters unless a permit is issued by the Department pursuant to Ch. 30, Wis. Stats., and a permit pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1344, has been issued, if applicable, and all other requirements have been met;~~

~~(c) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and~~

~~(d) The fill is not classified as a solid or hazardous material.~~

~~D. Prohibited uses. All uses not listed as permitted uses in Subsection **B** are prohibited, including the following uses:~~

~~(1) Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses;~~

~~(2) Storing materials that are buoyant, flammable, explosive, or injurious to property, water quality, or human, animal, plant, fish or other aquatic life;~~

~~(3) Uses not in harmony with or detrimental to uses permitted in the adjoining districts;~~

~~(4) Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and Ch. SPS 383, Wis. Adm. Code;~~

~~(5) Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and Chs. NR 811 and NR 812, Wis. Adm. Code;~~

~~(6) Any solid or hazardous waste disposal sites;~~

~~(7) Any wastewater treatment ponds or facilities, except those permitted under § NR 110.15(3)(b), Wis. Adm. Code; and~~

~~(8) Any sanitary sewer or water supply lines, except those to service exiting or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.~~

~~§275-65.25 Floodfringe District (FF).~~

~~A. Applicability. This section applies to all floodfringe areas shown on the Floodplain Zoning Maps and those identified pursuant to § **275-65.26A(4)**.~~

~~B. Permitted uses. Any structure, land use, or development is allowed in the Floodfringe District if the standards in Subsection **C** are met, the use is not prohibited by this chapter or any other ordinance or regulation, and all permits or certificates specified in § **275-65.28A** have been issued.~~

~~C. Standards for development in floodfringe areas. Section **275-65.23A** shall apply in addition to the following requirements according to the use requested. Any existing structure in the floodfringe must meet the requirements of § **275-65.27**.~~

~~(1) Residential uses. Any structure, including a manufactured home, which is to be newly constructed or moved into the floodfringe area shall meet or exceed the following standards. Any existing structure in the floodfringe must meet the requirements of § **275-65.27**.~~

~~(a) The elevation of the lowest floor shall be at or above the flood protection elevation on fill unless the requirement of Subsection **C(1)(b)** below can be met. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure.~~

~~(b) The basement or crawlway floor may be placed at the regional flood elevation if it is dry-floodproofed to the flood protection elevation. No basement or crawlway floor is allowed below the regional flood elevation.~~

~~(c) Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in Subsection **C(1)(d)**.~~

~~(d) In developments where existing street or sewer line elevations make compliance with Subsection **C(1)(c)** impractical, the municipality may permit new development and substantial improvements where access roads are at or below the regional flood elevation if:~~

~~[1] The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or~~

~~[2] The municipality has a DNR-approved emergency evacuation plan.~~

~~(2) Accessory structures or uses. Accessory structures shall be constructed on fill with the lowest floor at or above the regional flood elevation.~~

~~(3) Commercial uses. Any commercial structure which is erected, altered or moved into the floodfringe area shall meet the requirements of Subsection **C(1)**. Subject to the requirements of Subsection **C(5)**, storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.~~

~~(4) Manufacturing and industrial uses. Any manufacturing or industrial structure which is erected, altered or moved into the floodfringe area shall have the lowest floor elevated to or above the flood protection elevation or meet the floodproofing standards in § **275-65.28E**. Subject to the requirements of Subsection **C(5)**, storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.~~

~~(5) Storage of materials. Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with § **275-65.28E**. Adequate measures shall be taken to ensure that such materials will not enter the water~~

~~body during flooding.~~

~~(6) Public utilities, streets and bridges. All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans, and:~~

~~(a) When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction or repair of such facilities shall only be permitted if they are designed to comply with § **275-65.28E**.~~

~~(b) Minor roads or nonessential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.~~

~~(7) Sewage systems. All sewage disposal systems shall be designed to minimize or eliminate infiltration of floodwater into the system, pursuant to § **275-65.28E(3)**, to the flood protection elevation and shall meet the provisions of all local ordinances and Ch. SPS 383, Wis. Adm. Code.~~

~~(8) Wells. All wells shall be designed to minimize or eliminate infiltration of floodwaters into the system, pursuant to § **275-65.28E(3)**, to the flood protection elevation and shall meet the provisions of Chs. NR 811 and NR 812, Wis. Adm. Code.~~

~~(9) Solid waste disposal sites. Disposal of solid or hazardous waste is prohibited in floodfringe areas.~~

~~(10) Deposition of materials. Any deposited material must meet all the provisions of this article.~~

~~(11) Manufactured homes. Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage and prepare, secure approval of and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.~~

~~(a) In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:~~

~~[1] Have the lowest floor elevated to the flood protection elevation; and~~

~~[2] Be anchored so they do not float, collapse or move laterally during a flood.~~

~~(b) Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in Subsection **C(1)**.~~

~~(12) Mobile recreational vehicles. All mobile recreational vehicles that are on site for 180 consecutive days or more or are not fully licensed and ready for highway use shall meet the elevation and anchoring requirements in Subsection **C(11)(a)** and **(b)**. A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.~~

~~§275-65.26 Other floodplain districts.~~

~~Other floodplain districts may be established under this chapter and reflected on the Floodplain Zoning Map. These districts may include General Floodplain Districts and Flood Storage Districts.~~

~~A. General Floodplain District (GFP).~~

~~(1) Applicability. The provisions for this district shall apply to all floodplains mapped as A, AO, or AH Zones.~~

~~(2) Permitted uses. Pursuant to Subsection **A(4)**, it shall be determined whether the proposed use is located within a floodway or floodfringe area. Those uses permitted in floodway (§ **275-65.24B**) and floodfringe areas (§ **275-65.25B**) are allowed within the General Floodplain District, according to the standards of Subsection **A(3)**, provided that all permits or certificates required under § **275-65.28A** have been issued.~~

~~(3) Standards for development in the General Floodplain District. Section **275-65.24** applies to floodway areas; § **275-65.25** applies to floodfringe areas. The rest of this article applies to either district.~~

~~(a) In AO/AH Zones, the structure's lowest floor must meet one of the conditions listed below, whichever is higher:~~

~~[1] At or above the flood protection elevation; or~~

~~[2] Two feet above the highest adjacent grade around the structure; or~~

~~[3] The depth as shown on the FIRM.~~

~~(b) In AO/AH Zones, provide plans showing adequate drainage paths to guide floodwaters around structures.~~

~~(4) Determining floodway and floodfringe limits. Upon receiving an application for development within the General Floodplain District, the Director shall:~~

~~(a) Require the applicant to submit two copies of an aerial photograph or a plan which shows the proposed development with respect to the General Floodplain District limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and floodproofing measures, and the flood zone as shown on the FIRM.~~

~~(b) Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood heights and flood flows, regional flood elevation, and to determine floodway boundaries:~~

~~[1] A hydrologic and hydraulic study as specified in § **275-65.28A(2)(c)**;~~

~~[2] A plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types; and other pertinent information;~~

~~[3] Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.~~

~~B. Flood Storage District. The Flood Storage District delineates that portion of the floodplain where storage of floodwaters has been taken into account and is relied upon to reduce the regional flood discharge. The district protects the flood storage areas and assures that any development in the storage areas will not decrease the effective flood storage capacity which would cause higher flood elevations.~~

~~(1) Applicability. The provisions of this subsection apply to all areas within the Flood Storage District (FSD), as shown on the Official Floodplain Zoning Maps.~~

~~(2) Permitted uses. Any use or development which occurs in a Flood Storage District must meet the applicable requirements in § **275-65.25C**.~~

~~(3) Standards for development in Flood Storage Districts.~~

~~(a) Development in a Flood Storage District shall not cause an increase equal or greater than 0.00 feet in the height of the regional flood.~~

~~(b) No development shall be allowed which removes flood storage volume unless an equal volume of storage as defined by the predevelopment ground surface and the regional flood elevation shall be provided in the immediate area of the proposed development to compensate for the volume of storage which is lost (compensatory storage). Excavation below the groundwater table is not considered to provide an equal volume of storage.~~

~~(c) If compensatory storage cannot be provided, the area may not be developed unless the entire area zoned as Flood Storage District, on this waterway, is rezoned to the Floodfringe District. This must include a revision to the floodplain study and map done for the waterway to revert to the higher regional flood discharge calculated without floodplain storage, as per § **275-65.29** of this article.~~

~~(d) No area may be removed from the Flood Storage District unless it can be shown that the area has been filled to the flood protection elevation and is contiguous to other lands lying outside of the floodplain.~~

~~§275-65.27 Nonconforming uses.~~

~~A. General.~~

~~(1) Applicability. If these standards conform with § 62.23(7)(h), Wis. Stats., they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this article or any amendment thereto.~~

~~(2) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this article may continue, subject to the following conditions:~~

~~(a) No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this article. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Maintenance is not considered a modification; this includes painting, decorating, paneling and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance. The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.~~

~~(b) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted, and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this article.~~

~~(c) The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent.~~

~~(d) No modification or addition to any nonconforming structure or any structure with a nonconforming use which, over the life of the structure, would equal or exceed 50% of its present equalized assessed value shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this article. Contiguous dryland access must be provided for residential and commercial uses in compliance with § **275-65.25C(1)**. The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this subsection.~~

~~(e) No maintenance to any nonconforming structure or any structure with a nonconforming use, the cost of which would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this article. Contiguous dryland access must be provided for residential and commercial uses in compliance with § **275-65.25C(1)**.~~

~~(f) If, on a per-event basis, the total value of the work being done under Subsection **A(2)(d)** and **(e)** equals or exceeds 50% of the present equalized assessed value, the work shall not be permitted unless the entire structure is permanently~~

~~changed to a conforming structure with a conforming use in compliance with the applicable requirements of this article. Contiguous dryland access must be provided for residential and commercial uses in compliance with § **275-65.25C(1)**.~~

~~(g) Except as provided in Subsection **A(2)(h)**, if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its predamaged condition equals or exceeds 50% of the structure's present equalized assessed value.~~

~~(h) For nonconforming buildings that are substantially damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building shall be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the minimum federal code requirements are met and all required permits have been granted prior to the start of construction.~~

~~[1] Residential structures:~~

~~[a] Shall have the lowest floor, including basement, elevated to or above the base flood elevation using fill, pilings, columns, posts or perimeter walls. Perimeter walls must meet the requirements of § **275-65.28E(2)**.~~

~~[b] Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, and shall be constructed with methods and materials resistant to flood damage.~~

~~[c] Shall be constructed with electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.~~

~~[d] In A Zones, obtain, review and utilize any flood data available from a federal, state or other source.~~

~~[e] In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in § **275-65.26A(3)**.~~

~~[f] In AO Zones, shall have adequate drainage paths around the structure on slopes to guide floodwaters around and away from the structure.~~

~~[2] Nonresidential structures:~~

~~[a] Shall meet the requirements of § 275-65.27A(2)(h)[1][a] through [f].~~

~~[b] Shall either have the lowest floor, including basement, elevated to or above the regional flood elevation or, together with attendant utility and sanitary facilities, shall meet the standards in § **275-65.28E(1)** or **(2)**.~~

~~[c] In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in § **275-65.26A(3)**.~~

~~(i) A nonconforming historic structure may be altered if the alteration will not~~

~~preclude the structure's continued designation as an historic structure, the alteration will comply with § **275-65.24C(1)**, flood-resistant materials are used, and construction practices and floodproofing methods that comply with § **275-65.28E** are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of § **275-65.27A(2)(h)[1]** if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and is the minimum necessary to preserve the historic character and design of the structure.~~

~~B. Floodway District.~~

~~(1) Modifications or additions.~~

~~(a) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway area, unless such modification or addition:~~

~~[1] Has been granted a permit or variance which meets all ordinance requirements;~~

~~[2] Meets the requirements of Subsection **A**;~~

~~[3] Shall not increase the obstruction to flood flows or regional flood height; and~~

~~[4] Any addition to the existing structure shall be floodproofed, pursuant to § **275-65.28E**, by means other than the use of fill, to the flood protection elevation.~~

~~(b) If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:~~

~~[1] The enclosed are shall be designed by a registered architect or engineer to allow for the efficient entry and exit of floodwaters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;~~

~~[2] The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;~~

~~[3] Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and~~

~~[4] The use must be limited to parking, building access or limited storage.~~

~~(2) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances, § **275-65.28E(3)** and Ch. SPS 383, Wis. Adm. Code.~~

~~(3) No new well or modification to an existing well used to obtain potable water shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of all municipal ordinances, § **275-65.28E(3)** and Chs. NR 811 and NR 812, Wis. Adm. Code.~~

~~C. Floodfringe District.~~

~~(1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality and meets the requirements of § **275-65.25C**, except where Subsection **C(2)** is applicable.~~

~~(2) Where compliance with the provisions of Subsection **C(1)** would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Appeals, using the procedures established in § **275-65.28C(3)**, may grant a variance from those provisions of Subsection **C(1)** for modifications or additions, using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:~~

~~(a) No floor is allowed below the regional flood elevation for residential or commercial structures;~~

~~(b) Human lives are not endangered;~~

~~(c) Public facilities, such as water or sewer, shall not be installed;~~

~~(d) Flood depths shall not exceed two feet;~~

~~(e) Flood velocities shall not exceed two feet per second; and~~

~~(f) The structure shall not be used for storage of materials as described in § **275-65.25C(5)**.~~

~~(3) All new private sewage disposal systems, or additions to, replacement, repair or maintenance of a private sewage disposal system, shall meet all the applicable provisions of all local ordinances, § **275-65.28E(3)** and Ch. SPS 383, Wis. Adm. Code.~~

~~(4) All new wells, or additions to, replacement, repair or maintenance of a well, shall meet the applicable provisions of this article, § **275-65.28E(3)** and Chs. NR 811 and NR 812, Wis. Adm. Code.~~

~~D. Flood Storage District. No modifications or additions shall be allowed to any nonconforming structure in a flood storage area unless the standards outlined in § **275-65.26B(3)** are met.~~

~~§275-65.28 Administration.~~

~~The Director of Community Development shall administer this article.~~

~~A. Director.~~

~~(1) Duties and powers. The Director is authorized to administer this article and shall have the following duties and powers:~~

~~(a) Advise applicants of the chapter provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.~~

~~(b) Issue permits and inspect properties for compliance with provisions of this article and issue certificates of compliance where appropriate.~~

~~(c) Inspect and assess all damaged floodplain structures to determine if substantial damage to the structures has occurred.~~

~~(d) Keep records of all official actions, such as:~~

~~[1] All permits issued, inspections made, and work approved.~~

~~[2] Documentation of certified lowest floor and regional flood elevations for floodplain development.~~

~~[3] Floodproofing certificates.~~

~~[4] Records of water surface profiles, Floodplain Zoning Maps and ordinances, nonconforming uses and structures, including changes, appeals, variances and amendments.~~

~~[5] All substantial damage assessment reports for floodplain structures.~~

~~[6] List of nonconforming structures and uses.~~

~~(e) Submit copies of the following items to the Department's regional office:~~

~~[1] Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments.~~

~~[2] Copies of any case-by-case analyses, and any other information required by the Department, including an annual summary of floodplain zoning actions taken.~~

~~[3] Copies of substantial damage assessments performed and all related correspondence concerning the assessments.~~

~~(f) Investigate, prepare reports, and report violations of this article to the Municipal Department of Community Development and Attorney for prosecution. Copies of the reports shall also be sent to the Department's regional office.~~

~~(g) Submit copies of amendments to the FEMA regional office.~~

~~(2) Land use permit. A land use permit shall be obtained before any new development; repair, modification or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated. All applications shall be submitted on the appropriate forms and in numbers as required by the Director. For projects requiring a land use permit, the Plan Commission shall review and take action for these projects upon receiving a written report from the Department of Community Development. Application submittals shall include, but not be limited to, the following information:~~

~~(a) General information.~~

~~[1] Name and address of the applicant, property owner and contractor.~~

~~[2] Legal description, proposed use, and whether it is new construction or a modification.~~

~~(b) Site development plan. A site plan, drawn to scale, shall be submitted with the permit application form and shall contain:~~

[1] Location, dimensions, area and elevation of the lot;

[2] Location of the ordinary high-water mark of any abutting navigable waterways;

[3] Location of any structures, with distances measured from the lot lines and street center lines;

[4] Location of any existing or proposed on-site sewage systems or private water supply systems;

[5] Location and elevation of existing or future access roads;

[6] Location of floodplain and floodway limits as determined from the Official Floodplain Zoning Maps;

[7] The elevation of the lowest floor of proposed buildings and any fill using National Geodetic Vertical Datum (NGVD);

[8] Data sufficient to determine the regional flood elevation in NGVD at the location of the development and to determine whether or not the requirements of § **275-65.24** or **275-65.25** are met; and

[9] Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to § **275-65.23A**. This may include any of the information noted in § **275-65.24C(1)**.

(c) Hydraulic and hydrologic studies to analyze developments. All hydraulic and hydrologic studies shall be completed under the direct supervision of a professional engineer registered in the state. The study contractor shall be responsible for the technical adequacy of the study. All studies shall be reviewed and approved by DCD.

[1] Zone A floodplains:

[a] Hydrology. The appropriate method shall be based on the standards in Ch. NR 116.07(3), Wis. Adm. Code, Hydrologic Analysis: Determination of Regional Flood Discharge.

[b] Hydraulic modeling. The regional flood elevation shall be based on the standards in Ch. NR 116.07(4), Wis. Adm. Code, Hydraulic Analysis: Determination of the Regional Flood Elevation, and the following:

[i] Determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, or culvert) to determine adequate starting WSEL for the study.

[ii] Channel sections must be surveyed.

[iii] Minimum four-foot contour data in the overbanks shall be used for the development of cross section overbank and floodplain mapping.

[iv] A maximum distance of 500 feet between cross sections is allowed in developed areas, with additional intermediate cross sections required at transitions in channel bottom slope, including a survey of the channel at each location.

[v] The most-current version of HEC-RAS shall be used.

[vi] A survey of bridge and culvert openings and the top of road is required at each structure.

[vii] Additional cross sections are required at the downstream

~~and upstream limits of the proposed development and any necessary intermediate locations based on the length of the reach if greater than 500 feet.~~

~~[viii] Standard accepted engineering practices shall be used when assigning parameters for the base model, such as flow, Manning's N values, expansion and contraction coefficients, or effective flow limits. The base model shall be calibrated to past flooding data, such as high-water marks, to determine the reasonableness of the model results. If no historical data is available, adequate justification shall be provided for any parameters outside standard accepted engineering practices.~~

~~[ix] The model must extend past the upstream limit of the difference in the existing and proposed flood profiles in order to provide a tie-in to existing studies. The height difference between the proposed flood profile and the existing study profiles shall be no more than 0.00 feet.~~

~~[c] Mapping. A work map of each of the reach studied shall be provided, showing all cross section locations, floodway/floodplain limits based on best available topographic data, geographic limits of the proposed development, and whether the proposed development is located in the floodway.~~

~~[i] If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation.~~

~~[ii] If any part of the proposed development is in the floodway, it must be added to the base model to show the difference between existing and proposed conditions. The study must ensure that all coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.~~

~~[2] Zone AE floodplains.~~

~~[a] Hydrology. If the proposed hydrology will change the existing study, the appropriate method shall be based on the standards in Ch. NR 116.07(3), Wis. Adm. Code, Hydrologic Analysis: Determination of Regional Flood Discharge.~~

~~[b] Hydraulic modeling. The regional flood elevation shall be based on the standards in Ch. NR 116.07(4), Wis. Adm. Code, Hydraulic Analysis: Determination of the Regional Flood Elevation, and the following:~~

~~[i] Duplicate Effective Model. The Effective Model shall be reproduced to ensure correct transference of the model data and to allow integration of the revised data to provide a continuous FIS model upstream and downstream of the revised reach. If data from the Effective Model is available, models shall be generated that duplicate the FIS profiles and the elevations shown in the Floodway Data Table in the FIS report to within~~

~~0.1 foot.~~

~~[ii] Corrected Effective Model. The Corrected Effective Model shall not include any man-made physical changes since the Effective Model date but shall import the model into the most-current version of HEC-RAS from Department review.~~

~~[iii] Existing (Preproject Conditions) Model. The Existing Model shall be required to support conclusions about the actual impacts of the project associated with the Revised (Post-Project) Model or to establish more up-to-date models on which to base the Revised (Post-Project) Model.~~

~~[iv] Revised (Post-Project Conditions) Model. The Revised (Post-Project Conditions) Model shall incorporate the Existing Model and any proposed changes to the topography caused by the proposed development. This model shall reflect proposed conditions.~~

~~[v] All changes to the Duplicate Effective Model and subsequent models must be supported by certified topographic information, bridge plans, construction plans and survey notes.~~

~~[vi] Changes to the hydraulic models shall be limited to the stream reach for which the revision is being requested. Cross sections upstream and downstream of the revised reach shall be identical to those in the Effective Model and result in water surface elevations and top widths computed by the Revised Models matching those in the Effective Models upstream and downstream of the revised reach as required. The Effective Model shall not be truncated.~~

~~[c] Mapping. Maps and associated engineering data shall be submitted to the Department for review which meet the following conditions:~~

~~[i] Consistency between the revised hydraulic models, the revised floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMs and/or Flood Boundary/Floodway Maps (FBFMs), construction plans, and bridge plans.~~

~~[ii] Certified topographic map of a suitable scale, contour interval, and a planimetric map showing the applicable items. If a digital version of the map is available, it may be submitted in order that the FIRM may be more easily revised.~~

~~[iii] Annotated FIRM panel showing the revised one-percent and two-tenths-percent annual chance floodplains and floodway boundaries.~~

~~[iv] If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used, then all supporting documentation or metadata must be included with the~~

~~data submission along with the Universal Transverse Mercator (UTM) projection and State Plan Coordinate System in accordance with FEMA mapping specifications.~~

~~[v] The revised floodplain boundaries shall tie into the effective floodplain boundaries.~~

~~[vi] All cross sections from the Effective Model shall be labeled in accordance with the effective map and a cross-section lookup table shall be included to relate to the model input numbering scheme.~~

~~[vii] Both the current and proposed floodways shall be shown on the map.~~

~~[viii] The stream center line or profile baseline used to measure stream distances in the model shall be visible on the map.~~

~~(d) Expiration. All permits issued under the authority of this article shall expire no more than 180 days after issuance. The permit may be extended for a maximum of 180 days for good and sufficient cause.~~

~~(3) Certificate of compliance. No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied, until a certificate of compliance is issued by the Director, except where no permit is required, subject to the following provisions:~~

~~(a) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this article.~~

~~(b) Application for such certificate shall be concurrent with the application for a permit.~~

~~(c) If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed.~~

~~(d) The applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or registered architect that floodproofing measures meet the requirements of Subsection E.~~

~~(4) Other permits. Prior to obtaining a floodplain development permit, the applicant must secure all necessary permits from federal, state, and local agencies, including those required by the United States Army Corps of Engineers under Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. § 1344.~~

~~B. Department of Community Development.~~

~~(1) The Department of Community Development shall review and advise the Plan Commission and the Common Council on all proposed amendments to this article, maps and text.~~

~~C. Board of Appeals. The Board of Appeals, created under § 62.23(7)(e), Wis. Stats., is hereby authorized or shall be appointed to act for the purposes of this article. The Board shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The Director shall not be the Secretary of the Board.~~

~~(1) Powers and duties. The Board of Appeals shall:~~

~~(a) Appeals: hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Department of Community Development in the enforcement or administration of this article.~~

(b) Boundary disputes: hear and decide disputes concerning the district boundaries shown on the Official Floodplain Zoning Map.

(c) Variances: hear and decide, upon appeal, variances from the article standards.

(2) Appeals to the Board.

(a) Appeals to the Board may be taken by any person aggrieved or by any officer or department of the municipality affected by any decision of the Director. Such appeal shall be taken within 30 days, unless otherwise provided by the rules of the Board, by filing with the official whose decision is in question, and with the Board, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the Board all records regarding the matter appealed.

(b) Notice and hearing for appeals, including variances.

[1] Notice. The Board shall:

[a] Fix a reasonable time for the hearing.

[b] Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing.

[c] Assure that notice shall be mailed to the parties in interest and the Department's regional office at least 10 days in advance of the hearing.

[2] Hearing. Any party may appear in person or by agent. The Board shall:

[a] Resolve boundary disputes according to Subsection **C(3)**.

[b] Decide variance applications according to Subsection **C(4)**.

[c] Decide appeals of permit denials according to Subsection **D**.

(c) Decision. The final decision regarding the appeal or variance application shall:

[1] Be made within a reasonable time;

[2] Be sent to the Department's regional office within 10 days of the decision;

[3] Be a written determination signed by the Chairman or Secretary of the Board;

[4] State the specific facts which are the basis for the Board's decision;

[5] Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction, or grant or deny the variance application; and

[6] Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.

(3) Boundary disputes. The following procedure shall be used by the Board in hearing disputes concerning floodplain district boundaries:

(a) If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined.

(b) In all cases, the person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board.

(c) If the boundary is incorrectly mapped, the Board should inform the person contesting the boundary location to petition the Common Council for a map amendment according to § **275-65.29**.

(4) Variances.

(a) The Board may, upon appeal, grant a variance from the standards of this article if

~~an applicant convincingly demonstrates that:~~

~~[1] Literal enforcement of the article provisions will cause unnecessary hardship;~~

~~[2] The hardship is due to adoption of the Floodplain Ordinance and unique property conditions not common to adjacent lots or premises. In such case, the ordinance or map must be amended;~~

~~[3] The variance is not contrary to the public interest; and~~

~~[4] The variance is consistent with the purposes of this article in § **275-65.22C**.~~

~~(b) In addition to the criteria in Subsection **C(4)(a)**, to qualify for a variance under FEMA regulations, the following criteria must be met:~~

~~[1] The variance may not cause any increase in the regional flood elevation;~~

~~[2] Variances can only be granted for lots that are less than 1/2 acre and are contiguous to existing structures constructed below the RFE; and~~

~~[3] Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts, and shall not be contrary to the purposes of this chapter.~~

~~(c) A variance shall not:~~

~~[1] Grant, extend or increase any use prohibited in the zoning district.~~

~~[2] Be granted for a hardship based solely on an economic gain or loss.~~

~~[3] Be granted for a hardship which is self-created.~~

~~[4] Damage the rights or property values of other persons in the area.~~

~~[5] Allow actions without the amendments to this article or map(s) required in § **275-65.29**.~~

~~[6] Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.~~

~~(d) When a floodplain variance is granted, the Board shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy shall be maintained with the variance record.~~

~~D. Review of appeals of permit denials.~~

~~(1) The Department of Community Development (Subsection **B**) and the Board of Appeals shall review all data related to the appeal. This may include:~~

~~(a) Permit application data listed in Subsection **A(2)**.~~

~~(b) Floodway/Floodfringe determination data in § **275-65.26A(4)**.~~

~~(c) Data listed in § **275-65.24C(1)(b)** where the applicant has not submitted this information to the Director.~~

~~(d) Other data submitted with the application or submitted to the Board with the appeal.~~

~~(2) For appeals of all denied permits, the Board shall:~~

~~(a) Follow the procedures of Subsection **C**;~~

~~(b) Consider Department of Community Development recommendations; and~~

~~(c) Either uphold the denial or grant the appeal.~~

~~(3) For appeals concerning increases in regional flood elevation, the Board shall:~~

~~(a) Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners as per the requirements of § **275-65.29**; and~~

~~(b) Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase, provided no other reasons for denial exist.~~

~~E. Floodproofing standards for nonconforming structures or uses.~~

~~(1) No permit or variance shall be issued for a nonresidential structure designed to be watertight below the regional flood elevation until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to the flood protection elevation and submits a FEMA floodproofing certificate.~~

~~(2) For a structure designed to allow the entry of floodwaters, no permit or variance shall be issued until the applicant submits a plan either:~~

~~(a) Certified by a registered professional engineer or architect; or~~

~~(b) That meets or exceeds the following standards:~~

~~[1] A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;~~

~~[2] The bottom of all openings shall be no higher than one foot above grade; and~~

~~[3] Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.~~

~~(3) Floodproofing measures shall be designed, as appropriate, to:~~

~~(a) Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;~~

~~(b) Protect structures to the flood protection elevation;~~

~~(c) Anchor structures to foundations to resist flotation and lateral movement;~~

~~(d) Minimize or eliminate infiltration of floodwaters; and~~

~~(e) Minimize or eliminate discharges into floodwaters.~~

~~F. Public information.~~

~~(1) Place marks on structures to show the depth of inundation during the regional flood.~~

~~(2) All maps, engineering data and regulations shall be available and widely distributed.~~

~~(3) All real estate transfers should show what floodplain zoning district any real property is in.~~

~~§275-65.29 Amendments.~~

~~A. Obstructions or increases may only be permitted if amendments are made to this article, the Official Floodplain Zoning Maps, floodway lines and water surface profiles, in accordance with § **275-65.29B**.~~

~~(1) In AE Zones with a mapped floodway, no obstructions or increases shall be permitted unless the applicant receives a conditional letter of map revision from FEMA and amendments are made to this article, the Official Floodplain Zoning Maps, floodway lines and water surface profiles, in accordance with § **275-65.29B**. Any such alterations must be reviewed and approved by FEMA and the DNR.~~

~~(2) In A Zones, increases equal to or greater than 1.0 foot may only be permitted if the applicant receives a conditional letter of map revision from FEMA and amendments are made to this article, the Official Floodplain Maps, floodway lines, and water surface profiles, in accordance with § **275-65.29B**.~~

~~B. The Common Council shall change or supplement the Floodplain Zoning District boundaries and this article in the manner outlined in § **275-65.29C** below. Actions which require an amendment to the article and/or submittal of a letter of map change (LOMC) include, but are not limited to, the following:~~

~~(1) Any fill or floodplain encroachment that obstructs flow causing any increase in the regional flood height.~~

~~(2) Any change to the floodplain boundaries and/or watercourse alterations on the FIRM.~~

~~(3) Any change to any other officially adopted Floodplain Maps listed in § **275-65.22E(2)(b)**.~~

~~(4) Any fill in the floodplain which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain.~~

~~(5) Correction of discrepancies between the water surface profiles and Floodplain Zoning Maps.~~

~~(6) Any upgrade to a floodplain zoning ordinance text required by § NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the municipality.~~

~~(7) All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.~~

~~C. Procedures. Ordinance amendments may be made upon petition of any interested party according to the provisions of § 62.23, Wis. Stats. Such petitions shall include all necessary data required by §§ **275-65.26A(4)** and **275-65.28A(2)**. The land use permit shall not be issued until a conditional letter of map revision is issued by FEMA for the proposed changes.~~

~~(1) The proposed amendment shall be referred to the Department of Community Development for a public hearing and recommendation to the Common Council. The amendment and notice of public hearing shall be submitted to the Department's regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of § 62.23, Wis. Stats.~~

~~(2) No amendments shall become effective until reviewed and approved by the Department.~~

~~(3) All persons petitioning for a map amendment that obstructs flow causing any increase in the regional flood height shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the Common Council.~~

~~§275-65.30 Enforcement and penalties.~~

~~Any violation of the provisions of this article by any person shall be unlawful and shall be referred to the City Attorney, who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not less than $10 and not more than $50 for each offense, together with the taxable cost of such action. Each day that the violation exists shall constitute a separate offense. Every violation of this article is a public nuisance, and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to § 87.30, Wis. Stats.~~

~~**§275-65.31 Definitions.**~~

~~A. Unless specifically defined, words and phrases in this article shall have their common law meanings and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and is not discretionary.~~

~~B. As used in this article, the following terms shall have the meanings indicated:~~

~~**ACCESSORY STRUCTURE OR USE**~~
~~A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building.~~

~~**AH ZONE**~~
~~See "area of shallow flooding."~~

~~**ALTERATION**~~
~~An enhancement, upgrading or substantial change or modification, other than an addition or repair, to a dwelling or to electrical, plumbing, heating, ventilating, air-conditioning and other systems within a structure.~~

~~**AO ZONE**~~
~~See "area of shallow flooding."~~

~~**AREA OF SHALLOW FLOODING**~~
~~A designated AO, AH, AR/AO, AR/AH, or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent or greater annual chance of flooding to an average depth of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.~~

~~**A ZONES**~~
~~Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.~~

~~**BASE FLOOD**~~
~~The flood having a one-percent chance of being equaled or exceeded in any given year, as published by FEMA as part of an FIS and depicted on a FIRM.~~

~~**BASEMENT**~~
~~Any enclosed area of a building having its floor subgrade, i.e., below ground level, on all sides.~~

~~**BUILDING**~~
~~See "structure."~~

~~**BULKHEAD LINE**~~
~~A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to § 30.11, Wis. Stats., and which allows limited filling between this bulkhead line and the original ordinary high-water mark, except where such filling is prohibited by the floodway provisions of this article.~~

~~**CAMPGROUND**~~
~~Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by four or more camping units, or which is advertised or represented as a camping area.~~

~~**CAMPING UNIT**~~
~~Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pickup truck, or tent that is fully licensed, if required, and ready for highway use.~~

~~**CERTIFICATE OF COMPLIANCE**~~
~~A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this article.~~

~~**CHANNEL**~~
~~A natural or artificial watercourse with definite bed and banks to confine and conduct the normal flow of water.~~

~~**CRAWLWAY or CRAWL SPACE**~~
~~An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.~~

~~**DECK**~~
~~An unenclosed exterior structure that has no roof or sides but has a permeable floor which allows the infiltration of precipitation.~~

~~**DEPARTMENT**~~
~~The Wisconsin Department of Natural Resources.~~

~~**DEVELOPMENT**~~
~~Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.~~

~~**DIRECTOR**~~
~~The City of New Berlin Director of Community Development or his/her designee.~~

~~**DRYLAND ACCESS**~~
~~A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles.~~

~~**ENCROACHMENT**~~
~~Any fill, structure, equipment, building, use or development in the floodway.~~

~~FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)~~
~~The federal agency that administers the National Flood Insurance Program.~~

~~FLOOD FREQUENCY~~
~~The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent chance of occurring in any given year.~~

~~FLOODFRINGE~~
~~That portion of the floodplain outside of the floodway which is covered by floodwaters during the regional flood and associated with standing water rather than flowing water.~~

~~FLOOD HAZARD BOUNDARY MAP~~
~~A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.~~

~~FLOOD INSURANCE RATE MAP (FIRM)~~
~~A map of a community on which the Federal Insurance Administration has delineated both special flood hazard areas (the floodplain) and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.~~

~~FLOOD INSURANCE STUDY~~
~~A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.~~

~~FLOOD or FLOODING~~
~~A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:~~
~~(1) The overflow or rise of inland waters;~~
~~(2) The rapid accumulation or runoff of surface waters from any source;~~
~~(3) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or~~
~~(4) The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a serve storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.~~

~~FLOODPLAIN~~
~~Land which has been or may be covered by floodwater during the regional flood. It includes the floodway and the floodfringe and may include other designated floodplain areas for regulatory purposes.~~

~~FLOODPLAIN ISLAND~~
~~A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater~~

~~during the regional flood.~~

~~FLOODPLAIN MANAGEMENT~~
~~Policy and procedures to ensure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.~~

~~FLOOD PROFILE~~
~~A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.~~

~~FLOODPROOFING~~
~~Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.~~

~~FLOOD PROTECTION ELEVATION~~
~~An elevation of two feet of freeboard above the water surface profile elevation designated for the regional flood. (See also "freeboard.")~~

~~FLOOD STORAGE~~
~~Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.~~

~~FLOODWAY~~
~~The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.~~

~~FREEBOARD~~
~~A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.~~

~~HABITABLE STRUCTURE~~
~~Any structure or portion thereof used or designed for human habitation.~~

~~HEARING NOTICE~~
~~Publication or posting meeting the requirements of Ch. 985, Wis. Stats. For appeals, a Class 1 notice, published once at least one week (seven days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (seven days) before the hearing, is required. Local ordinances or bylaws may require additional notice, exceeding these minimums.~~

~~HIGHEST ADJACENT GRADE~~
~~The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.~~

~~HIGH FLOOD DAMAGE POTENTIAL~~
~~Damage that could result from flooding that includes any danger to life or health or any significant~~

~~economic loss to a structure or building and its contents.~~

~~HISTORIC STRUCTURE~~

~~Any structure that is either:~~

~~(1) Listed individually on the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;~~

~~(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;~~

~~(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or~~

~~(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.~~

~~INCREASE IN REGIONAL FLOOD HEIGHT~~

~~A calculated upward rise in the regional flood elevation greater than 0.00 feet, based on a comparison of existing conditions and proposed conditions, which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.~~

~~LAND USE~~

~~Any nonstructural use made of unimproved or improved real estate. (See also "development.")~~

~~LOWEST ADJACENT GRADE~~

~~The elevation of the lowest ground surface that touches any of the exterior walls of a building.~~

~~LOWEST FLOOR~~

~~The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of 44 CFR 60.3.~~

~~MAINTENANCE~~

~~The act or process of restoring to original soundness, including redecorating, refinishing, nonstructural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.~~

~~MANUFACTURED HOME~~

~~A structure, transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."~~

~~MOBILE/MANUFACTURED HOME PARK, EXPANSION TO EXISTING~~

~~The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading or the pouring of concrete pads.~~

~~MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION~~
~~A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.~~

~~MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION, EXISTING~~
~~A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this article. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.~~

~~MOBILE RECREATIONAL VEHICLE~~
~~A vehicle which is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."~~

~~MODEL, CORRECTED EFFECTIVE~~
~~A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more-detailed topographic information than that used in the current Effective Model.~~

~~MODEL, DUPLICATE EFFECTIVE~~
~~A copy of the hydraulic analysis used in the effective FIS and referred to as the "Effective Model."~~

~~MODEL, EFFECTIVE~~
~~The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.~~

~~MODEL, EXISTING (PREPROJECT)~~
~~A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man-made modifications that have occurred within the floodplain since the date of the Effective Model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the Effective Model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.~~

~~MODEL, REVISED (POST-PROJECT)~~
~~A modification of the Existing or Preproject Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.~~

~~MUNICIPALITY or MUNICIPAL~~
~~The City governmental units enacting, administering and enforcing this article.~~

~~NEW CONSTRUCTION~~
~~For floodplain management purposes, "new construction" means structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is~~

~~later, and includes any subsequent improvements to such structures.~~

~~NGVD or NATIONAL GEODETIC VERTICAL DATUM~~
~~Elevations referenced to mean sea level datum, 1929 adjustment.~~

~~NONCONFORMING STRUCTURE~~
~~An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this article for the area of the floodplain which it occupies. (For example, an existing residential structure in the Floodfringe District is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)~~

~~NONCONFORMING USE~~
~~An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this article for the area of the floodplain which it occupies (such as a residence in the floodway).~~

~~OBSTRUCTION TO FLOW~~
~~Any development which blocks the conveyance of floodwaters such that this development, alone or together with any future development, will cause an increase in regional flood heights.~~

~~OFFICIAL FLOODPLAIN ZONING MAP~~
~~That map, adopted and made part of this article, as described in § **275-65.22E(2)**, which has been approved by the Department and FEMA.~~

~~OPEN SPACE USE~~
~~Those uses having a relatively low flood damage potential and not involving structures.~~

~~ORDINARY HIGH-WATER MARK~~
~~The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics.~~

~~PERSON~~
~~An individual, or group of individuals, corporation, partnership, association, municipality or state agency.~~

~~PRIVATE SEWAGE SYSTEM~~
~~A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.~~

~~PUBLIC UTILITIES~~
~~Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.~~

~~REASONABLY SAFE FROM FLOODING~~
~~Base floodwaters will not inundate the land or damage structures to be removed from the special flood hazard area and any subsurface waters related to the base flood will not damage existing or proposed~~

~~buildings.~~

~~REGIONAL FLOOD~~

~~A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one-percent chance of being equaled or exceeded in any given year; and if depicted on the FIRM, the RFE is equivalent to the BFE.~~

~~START OF CONSTRUCTION~~

~~The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the "actual start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.~~

~~STRUCTURE~~

~~Any man-made object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.~~

~~SUBDIVISION~~

~~Has the meaning given in § 236.02(12), Wis. Stats.~~

~~SUBSTANTIAL DAMAGE~~

~~Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its predamaged condition would equal or exceed 50% of the equalized assessed value of the structure before the damage occurred.~~

~~SUBSTANTIAL IMPROVEMENT~~

~~Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50% of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work preformed. The term does not, however, include either:~~

~~(1) Any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the Building Official and that are the minimum necessary to assure safe living conditions; or~~

~~(2) Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.~~

~~UNNECESSARY HARDSHIP~~

~~Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this article.~~

~~**VARIANCE**~~
~~An authorization by the Board of Appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in this article.~~

~~**VIOLATION**~~
~~The failure of a structure or other development to be fully compliant with this article. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.~~

~~**WATERSHED**~~
~~The entire region contributing runoff or surface water to a watercourse or body of water.~~

~~**WATER SURFACE PROFILE**~~
~~A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of a river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.~~

~~**WELL**~~
~~An excavation opening in the ground, made by digging, boring, drilling, driving or other methods, to obtain groundwater, regardless of its intended use.~~

§275-70 Terms defined.

For the purpose of this chapter, the following definitions shall be used. Words used in the present tense include the future; the singular number includes the plural number, and the plural number includes the singular number. The word "shall" is mandatory and not directory. Any words not defined in this section shall be presumed to have their customary dictionary definitions.

A ZONES

Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

ABUTTING or ADJOINING

To physically touch or border upon or to share a common property line or border.

ACCESSORY DWELLING

A second dwelling unit integrated with a business that is located on the same lot as the business. "Accessory dwelling" does not mean a mobile home, recreational vehicle, or travel trailer.

ACCESSORY STRUCTURE OR USE (as it pertains to Floodplain §275-65)

A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building.

ACCESSORY USE

See "use, accessory" below.

ACRE

A gross measure of land area equivalent to 43,560 square feet.

ACREAGE, GROSS

The total area within the lot lines of a lot, excluding any street right-of-way or ultimate right-of-way, in all districts.

ACREAGE, NET

The total area of the property less any land used for private or public roads and rights-of-way and less 75% of any private conservancy lands.

ACTIVE PARKS AND RECREATIONAL FACILITIES

Any park or recreational facility that requires grading of the land, the construction of facilities, or lighting, or is developed for ballfields.

ADEQUATE PUBLIC FACILITIES (APF)

The public facilities and services necessary to maintain the adopted level of service standards. See § **275-57**.

ADEQUATE SOD, or SELF-SUSTAINING VEGETATIVE COVER (as it pertains to Post-Construction stormwater management §275-55.1)

Maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. "Self-sustaining vegetative cover" includes grasses, forbs, sedges and duff layers of fallen leaves and woody debris.

ADJACENT

The same as "abutting or adjoining."

ADJUSTED TRACT ACREAGE DENSITY APPROACH

The determination of the maximum number of permitted dwelling units on any given property shall be determined by multiplying the acreage classified as being in the categories of constrained land as described in § 275-33-G(1)(a) by the numerical density factor for that category of constrained land.

ADMINISTERING AUTHORITY (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

A governmental employee or a regional planning commission empowered under § 62.234, Wis. Stats., that is designated by the City of New Berlin to administer this section.

ADULT-ORIENTED ESTABLISHMENTS

Commercial establishments in which a significant portion of the business is:

A. To display, sell, have in its possession for sale, offer for view, publish, disseminate, give, lease, or otherwise deal in any written or printed matter, pictures, films, sound recordings, machines, mechanical devices, models, facsimiles, or other material and paraphernalia depicting sexual conduct or nudity and which excludes minors by reason of age;

B. To display for viewing any film or pictures depicting sexual conduct or nudity and which excludes minors by reason of age; and/or

C. Where any person appears or performs in a manner depicting sexual conduct or involving nudity and from which minors are excluded by reason of age.

ADVERSE IMPACT

A condition that creates, imposes, aggravates, or leads to inadequate, impractical, unsafe, or unhealthy conditions on a site proposed for development or on an off-site property or facilities.

AGRIBUSINESS

In agriculture, "agribusiness" is a generic term that refers to the various businesses involved in food production, including farming and contract farming, seed supply, farm machinery, wholesale and distribution, processing, marketing, and retail sales. The term has two distinctly different connotations depending on context.

AGRICULTURAL FACILITIES AND PRACTICES (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

Has the meaning in § 281.16(1), Wis. Stats.

AGRICULTURAL USE

Agricultural use shall be defined by the Assessor's office in accordance with the Wisconsin Department of Revenue's Agricultural Assessment Guide for Wisconsin Property Owners.

AH ZONE

See "area of shallow flooding."

ALLEY

A public or private right-of-way, shown on a plat, which provides secondary access to a lot, block, or parcel of land.

ALLEY, PUBLIC

A special, minor public right-of-way affording only secondary access to abutting properties.

ALTERATION

An enhancement, upgrading or substantial change or modification, other than an addition or repair, to a dwelling or to electrical, plumbing, heating, ventilating, air-conditioning and other systems within a structure.

ALTERNATIVE REQUIREMENT (as it pertains to Non-Metallic Mining §275-63)

An alternative to the reclamation standards of this article provided through a written authorization granted by the City of New Berlin pursuant to § **275-63**.

AMENDMENT

Any addition, deletion, or revision of the text of this chapter or to the Official Zoning Map, adopted after public hearings.

ANTENNA

A device designed to transmit or receive broadcasts either through over-the-air signals from transmitters, including fixed television or radio signals, or microwave signals from earth-orbiting communications satellites.

ANTENNA (as it pertains to Mobile Tower siting regulations §275-41C(16))

Communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.

ANTENNA, EARTH STATION DISH

A dish-shaped antenna designed to receive television broadcasts relayed by signals from earth-orbiting communications satellites.

ANTENNA, TERRESTRIAL

Any antenna designed to receive television and radio signals relayed from one ground location to another ground location. Such antennas are typically mounted on a freestanding tower or supported on the rooftop of a structure.

AO ZONE

See "area of shallow flooding."

APPLICABLE RECLAMATION ORDINANCE (as it pertains to Non-Metallic Mining §275-63)

A nonmetallic mining reclamation ordinance, including this article, that applies to a particular nonmetallic mining site and complies with the requirements of Ch. NR 135, Wis. Adm. Code, and Subchapter I of Ch. 295, Wis. Stats., unless the Wisconsin Department of Natural Resources is the regulatory authority as defined in Subsection (20)(b)3. If the Wisconsin Department of Natural Resources is the regulatory authority, "applicable reclamation ordinance" means the relevant and applicable provisions of Ch. NR 135, Wis. Adm. Code.

APPLICANT

Unless otherwise specified, an owner or other person with a legal property interest, including a subdivider, developer, or other agent of the landowner, who has filed an application for subdivision or development.

APPLICATION (as it pertains to Mobile Tower siting regulations §275-41C(16))

An application for a permit under this section to engage in an activity specified in this section.

AREA OF SHALLOW FLOODING

A designated AO, AH, AR/AO, AR/AH, or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent or greater annual chance of flooding to an average depth of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.

ARTERIAL STREET

See "street, arterial" below.

ARTISAN FARMS

Farms that specialize in the creation of specialty products or farming, such as wine-making, cheese-making, honey production, berry production, etc.

ASSISTED-LIVING FACILITIES

Residences for the elderly that provide rooms, meals, personal care, and supervision of self-administered medication. They may provide additional services, such as recreational activities, financial services, and transportation.

ATLAS 14 (as it pertains to Post-Construction stormwater management §275-55.1)

The National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.

AUTOMOTIVE FUEL SALES

The retail sales of unleaded and diesel gasoline.

AVERAGE ANNUAL RAINFALL (as it pertains to Post-Construction stormwater management §275-55.1)

A typical calendar year of precipitation as determined by the Wisconsin Department of Natural Resources for users of models such as WinSLAMM, P8, or equivalent methodology. The average annual rainfall is chosen from a department publication for the location closest to the municipality.

AVERAGE ANNUAL RAINFALL (as it pertains to Construction Site erosion control §275-55.2)

A calendar year of precipitation, excluding snow, which is considered typical.

AWNING

A temporary or removable structure constructed of canvas, wood, or metal, extending over a window, door, patio, or deck as protection against sun or rain. Permanent overhangs or structures over windows, doors, patios, decks or driveways, or awnings with vertical attachments to the ground, are canopies, not awnings.

~~A ZONES~~

~~Areas of potential flooding shown on the most-recent Flood Insurance Rate Map which would be inundated by the regional flood as defined herein. These zones may be numbered as AO or A1 to A99 or be unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.~~

BALCONY

A platform that projects from the wall of a building, is surrounded by a railing, and has no stair access.

BARS and TAVERNS

Establishments providing or dispensing, for on-site consumption, any fermented malt beverage, malt beverage, special malt, or vinous or spirituous liquors. The sale of food products, including but not limited to sandwiches and light snacks, may be secondary to the serving of the aforementioned drinks.

BASE FLOOD

The flood having a one-percent chance of being equaled or exceeded in any given year, as published by FEMA as part of an FIS and depicted on a FIRM.

BASE SETBACK LINE

The planned right-of-way line as established by the Waukesha County Jurisdictional Highway Plan or the City of New Berlin Official Map, whichever is greater.

BASEMENT

Any enclosed area of a building having its floor subgrade, i.e., below ground level, on all sides.

BED-AND-BREAKFAST ESTABLISHMENT

Any place of lodging that provides four or fewer rooms for rent for more than 10 nights in a twelve-month period, is the owner's personal residence, is occupied by the owner at the time of rental, and in which the only meal served to guests is breakfast.

BEDROOM

A private room, 100 square feet or more in area, planned for sleeping and separable from other rooms by a door. A bedroom is generally accessible to a bathroom without crossing another bedroom or living room.

BERM

In the context of landscaping, buffer yard, or screening requirements, a mound of earth typically used to shield, screen, and buffer undesirable views and to separate potentially incompatible uses.

BEST MANAGEMENT PRACTICE or BMP (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

Structural or nonstructural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

BORROW SITE

An area outside of a transportation project site from which stone, soil, sand or gravel is excavated for use at the project site, except the term does not include commercial sources.

BREAKAWAY WALL

A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

BREWER

Any person who manufactures fermented malt beverages for sale or transportation, except that "brewer" does not include a permittee under Wis. Stats., § 125.295, as said section may be amended from time to time.

BREWERY

An entity which manufactures fermented malt beverages for sale or transportation to the extent authorized under Wis. Stats., § 125.29.

BREWPUB

An entity which manufactures fermented malt beverages completely on premises solely to the extent authorized under Wis. Stats., § 125.295(1)(a), and which is eligible for a brewpub permit pursuant to Wis. Stats., § 125.295(2)(a), as said sections may be amended from time to time.

BUFFER or BUFFER YARD

Open spaces, landscaped areas, fences, walls, berms, or any combination thereof used to physically separate or screen one use or property from another use or property to visually shield or block noise, light, or other potential nuisances.

BUILDING (as it pertains to Floodplain §275-65)

See "structure."

BUILDING

Any structure, having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals, equipment, machinery or materials. May be enclosed or open on one or more sides. A building shall be permanently affixed to the land.

BUILDING, ACCESSORY

A building detached from a principal building on the same lot and customarily incidental or subordinate to the principal building or use.

BUILDING AREA

The total area bounded by the exterior walls, as measured in square feet from the outside surface of the walls, to include only areas completely enclosed from the elements, having finished interior walls, ceilings, and floors and having light, ventilation, heating and other requirements of the Building Code, but not including basements, garages, porches, breezeways, unfinished attics, and overhangs.

BUILDING, DETACHED

A building surrounded by open space and not attached to any other structure by any means.

BUILDING HEIGHT

See § **275-45A**.

BUILDING LINE

A line parallel to a particular lot line, passing through the exterior point of the building that is closest to the lot line. See also "setback line."

BUILDING MASS

The three-dimensional bulk of a building made up of the height, width and depth.

BUILDING PERMIT (as it pertains to Mobile Tower siting regulations §275-41C(16))

A permit issued by DCD that authorizes an applicant to conduct construction activity that is consistent with the City of New Berlin and State of Wisconsin building codes.

BUILDING, PRINCIPAL

A building in which the principal use of the lot on which it is located is conducted.

BULKHEAD LINE (as it pertains to Floodplain §275-65)

A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to § 30.11, Wis. Stats., and which allows limited filling between this bulkhead line and the original ordinary high-water mark, except where such filling is prohibited by the floodway provisions of this article.

BUSINESS

An occupation, employment, or enterprise which occupies time, attention, labor and materials, or wherein merchandise is exhibited or sold, or where services are offered other than home occupations. See also "home occupation."

BUSINESS DAY (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

A day the office of the City Hall is routinely and customarily open for business.

BUSINESS OFFICES

Includes establishments providing executive, management, administrative, or professional services, including real estate, architecture, legal, travel, employment, advertising, design, engineering, accounting and similar uses. Business offices do not include health- or dental-related services.

CAMPGROUND (as it pertains to Floodplain §275-65)

Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by four or more camping units, or which is advertised or represented as a camping area.

CAMPING UNIT (as it pertains to Floodplain §275-65)

Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pickup truck, or tent that is fully licensed, if required, and ready for highway use.

CANOPY

A permanent structure without walls for the purpose of shielding driveways, sidewalks, or service areas from the elements.

~~**CAPTIVE WILD ANIMALS**~~

~~Animals regulated under state and federal licenses, such as deer, wild ducks, etc. All applicable state and federal regulations shall apply.~~

CARPORT

A roofed structure providing space for the parking or storage of motor vehicles and enclosed on not more than three sides. See also "garage, private." This does not include portable or temporary garages or carports.

CEASE-AND-DESIST ORDER (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

A court-issued order to halt land-disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the City of New Berlin.

CEMETERY

Land used or intended to be used for the burial of the dead and dedicated for cemetery services.

CERTIFICATE OF COMPLIANCE (as it pertains to Floodplain §275-65)

A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this article.

CHANGE OF USE

Any use that substantially differs from the previous use of a building or land in terms of, for example, required parking, landscaping, drainage, and particularly in terms of the new use's overall effect on the surrounding neighborhood and zoning district purposes.

CHANGEABLE-COPY READER BOARD

A sign on which informational content is manually changed in the field.

~~**CHANGE OF USE**~~

~~Any use that substantially differs from the previous use of a building or land in terms of, for example, required parking, landscaping, drainage, and particularly in terms of the new use's overall effect on the surrounding neighborhood and zoning district purposes.~~

CHANNEL

A natural or artificial watercourse or drainageway of perceptible extent with a definite bed and banks to confine and conduct continuously or periodically flowing water.

CHARACTER

Those attributes, qualities, and features that make up and distinguish a development project and give such a project a sense of purpose, function, definition, and uniqueness.

CHURCH (COMMUNITY-SCALE)

A place of gathering for religious observance, ministry, and fellowship and related social events and may include classrooms for periodic religious instruction, and administrative offices. These facilities are identified as those with a total building footprint greater than 15,000 square feet or which have accessory uses, which include, but are not limited to, uses such as banquet facilities, day school, day-care facilities, retail stores, restaurant, workout centers/club, gymnasium, health care facilities, assisted-living facilities, library, and café. Community-scale churches shall be a conditional use in all agricultural, commercial, office and institutional districts, a principal use in the industrial district and shall be prohibited in all residential districts.

CHURCH (NEIGHBORHOOD-SCALE)

A place of gathering for religious observance, ministry, and fellowship and related social events and may include classrooms for periodic religious instruction, a kitchen, a meeting area principally for members, and administrative offices. These facilities are identified as those with a total building footprint of less than 14,999 square feet. A total building size of equal to or less than 14,999 square feet shall be considered a principal use within all commercial, industrial, office and institutional districts and a conditional use in all agricultural and residential districts.

CITY

The City of New Berlin, Waukesha County, Wisconsin.

CITY'S MAP OF POTENTIAL CONSERVATION AREAS

The Map of Potential Conservation Areas for the City of New Berlin consists of wetlands (the DNR Bureau of Fisheries Management and Habitat Protection); floodplains [Federal Emergency Management Agency (FEMA)]; moderate and steep slopes (the slopes were calculated from the spot elevations within the City of New Berlin); agriculturally zoned lands (City of New Berlin GIS data); conservancy zoned lands (City of New Berlin GIS data); environmental corridors (SEWRPC); and scenic vistas (City of New Berlin Comprehensive Plan).

CLASS 1 CO-LOCATION (as it pertains to Mobile Tower siting regulations §275-41C(16))

The placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a freestanding support structure for the facility but does need to engage in substantial modification.

CLASS 2 CO-LOCATION

The placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a freestanding support structure for the facility or engage in substantial modification.

CO-LOCATION (as it pertains to Mobile Tower siting regulations §275-41C(16))

Class 1 or class 2 co-location, or both.

COLLECTOR STREET

See "street, collector" below.

COMBINED SEWER SYSTEM (as it pertains to Post-Construction stormwater management §275-55.1)

A system for conveying both sanitary sewage and stormwater runoff.

COMMERCIAL FEED LOT

The confinement of 200 or more head of livestock on a farm or other site for the purpose of intensive feeding prior to slaughter or shipment, in such concentration that ground vegetation is substantially destroyed, where:

A. The farm or site does not produce a minimum of 60% of the feed necessary to sustain the herd.

B. The farm or site is insufficient in size to provide for the disposal of all animal wastes in a manner that they will not run off, seep, percolate, or wash into surface or subsurface waters.

COMMON COUNCIL

The Common Council of the City of New Berlin, Waukesha County, Wisconsin.

COMMUNITY LIVING ARRANGEMENTS

The following facilities, licensed or operated or permitted under the authority of the Wisconsin State Statutes: child welfare agencies under § 48.60, group foster homes for children under § 48.02(7m), and community-based residential facilities under § 50.01. The term does not include day-care centers, nursing homes, general hospitals, special hospitals, prisons, and jails. The establishment of a community living arrangement shall be in conformance with §§ 46.03(22), 59.69, 62.23(7)(i), and 62.23(7a), Wis. Stats., and amendments thereto.

COMPLETE APPLICATION

An application for a development approval or permit that has been submitted in the required format, includes all mandatory information, and is accompanied by the established fee.

COMPOSTING FACILITY

A container or other designated location for the biological decomposition of organic material, such as vegetable scraps, leaves, grass clippings, vegetation, wood shavings, and nonhuman manure, to produce material for fertilizing and conditioning soils.

COMPREHENSIVE PLAN

A document or series of documents prepared by the Plan Commission and duly adopted by said Commission, setting forth policies for the future development or redevelopment of the City of New Berlin pursuant to §§ 62.23 and 66.1001, Wis. Stats.

CONDITIONAL USE

See "use, conditional" below.

CONDOMINIUM

The absolute ownership of a unit in a multiunit building based on a legal description of the airspace the unit actually occupies, plus an undivided interest in the ownership of the common elements, which are owned jointly with the other condominium unit owners.

CONIFEROUS

Trees and shrubs that generally have needles rather than leaves, bear cones, and typically remain green throughout the year.

CONNECTED IMPERVIOUSNESS (as it pertains to Post-Construction stormwater management §275-55.1)

An impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.

CONSERVATION AREAS

That portion of a tract of land that is set aside for the protection of sensitive natural features, farmland, scenic views, and other unique features. Conservation areas may be accessible to the residents of the development and/or the municipality. They may also contain areas of conservancy lots that are not accessible to the public.

CONSERVATION LOT

A large, privately owned lot constituting part of an area of open land. The purpose of the conservancy lot is to provide surrounding residents with visual access to conservation area while keeping the land under private ownership and maintenance. Only a small portion of such lots may be developed; the remainder must be protected through conservation easements and used in conformance with standards for conservation areas. Public access to conservancy lots is not required.

CONSTRAINED LANDS

Constrained lands are identified as lands within the right-of-way, all land under existing private streets, wetlands, floodways, floodfringe, steep slopes, extensive rock outcroppings, and moderately steep slopes.

CONSTRUCTION SITE (as it pertains to Construction Site erosion control §275-55.2)

An area upon which one or more land-disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land-disturbing construction activities may be taking place at different times on different schedules but under one plan, including landfills and quarry activity only to the extent not regulated by the Department of Natural Resources or controlled by an approved plan of operation.

CONTEMPORANEOUS RECLAMATION (as it pertains to Non-Metallic Mining §275-63)

The sequential or progressive reclamation of portions of the nonmetallic mining site affected by mining operations that is performed in advance of final site reclamation, but which may or may not be final reclamation, performed to minimize the area exposed to erosion, at any one time, by nonmetallic mining activities.

CONTIGUOUS

See "abutting or adjoining."

CONVENIENT CASH BUSINESS

A convenient cash business, also referred to as a "payday loan business," "title for cash business," "check cashing business" or similar enterprise, is any person licensed pursuant to Wis. Stats., § 218.05, or a person licensed pursuant to Wis. Stats., § 138.09, who accepts a check or title, holds the check or title for a period of time before negotiating or presenting the check or title for payment, and pays to the issuer an agreed-upon amount of cash, or who refinances or consolidates such a transaction. Convenient cash businesses do not include financial institutions as defined elsewhere in this section.

CORNER LOT

See "lot, corner" below.

COSMETIC TATTOO ESTABLISHMENTS/PERMANENT COSMETICS

This service includes application of permanent cosmetics, such as eyeliner on the top and bottom of the eyes, lip liner and color for top and bottom lips, and full and partial eyebrow coloration.

COUNTY

Waukesha County, Wisconsin.

CRAWLWAY or CRAWL SPACE

An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.

CUT

The excavating of earth from the ground surface during the process of land development.

DAY-CARE CENTER

A building or structure where care, protection, and supervision are provided ~~for children~~ on a regular basis away from the primary residence for less than 24 hours, with or without compensation or the provision of educational purposes. This term could include, but is not limited to, day nurseries, nursery schools, preschools, play groups, day camps, or summer camps. See also "family day-care home" below.

~~**dbh**~~

~~See "diameter at breast height" below.~~

DCD

The Department of Community Development.

DECIDUOUS

Trees and shrubs that lose their leaves at the end of each growing season and develop new ones the following season.

DECK

A platform, either freestanding or attached to a building, that is supported by pillars or posts.

DECK (as it pertains to Floodplain §275-65)

An unenclosed exterior structure that has no roof or sides but has a permeable floor which allows the infiltration of precipitation.

DENSITY, GROSS

The numerical value obtained by dividing the total number of dwelling units in a development by the gross area of the tract of land (in acres) within a development. This would include all nonresidential land uses and private streets of the development, as well as rights-of-way of dedicated streets, the result being the number of dwelling units per gross acre of land.

DENSITY, NET

The numerical value obtained by dividing the total number of dwelling units in a development by the net area (in acres) with a development. The net area is the land within a development excluding public rights-of-way, private streets and areas zoned FWO, C-1, C-2 or C-3.

DEPARTMENT OF NATURAL RESOURCES

The Wisconsin Department of Natural Resources (DNR).

DEPARTMENT STORE

A single commercial business that has a minimum building or floor area of 25,000 square feet.

DESIGN STANDARDS

The City of New Berlin Infrastructure and Site Design Standards.

DESIGN STORM (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

A hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.

DEVELOPER

See "subdivider or developer" below.

DEVELOPMENT

The carrying out of any building or construction activity, extraction or excavation operations, or the making of a substantial material change in the use or appearance of a structure or lot. "Development" shall not include the dividing of land into two or more parcels. (See "subdivision.") Development shall include:

A. Any construction, placement, reconstruction, alteration of the size, or material change in the external appearance of a structure on a lot;
B. Any change in the intensity of use of a lot, such as an increase in the number of dwelling units in a structure or on a tract of land or material increase in the intensity and impacts of the development;
C. Any change in use of land or structure;
D. Any alteration of a shore or bank of a river, stream, lake, reservoir, wetlands, or floodplains;
E. The clearing of land as an adjunct of construction;
F. The commencement of drilling, except to obtain soil samples, mining, stockpiling or fill materials, filling or excavation on a parcel of land;
G. The demolition of a structure;
H. The deposit of refuse, solid or liquid waste, or fill on a parcel of land;
I. The cutting, filling, or grading of land; and
J. The installation of landscaping within the public right-of-way, when installed in connection with the development of adjacent properties.

DEVELOPMENT (as it pertains to Floodplain §275-65)

Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

DEVELOPMENT (as it pertains to Post-Construction stormwater management §275-55.1)

Residential, commercial, industrial or institutional land uses and associated roads.

DIAMETER AT BREAST HEIGHT (dbh)

The trunk diameter of a tree, measured in inches at a height of 4.5 feet from the ground, or, in the case of a tree that is divided into multiple trunks, below 4.5 feet, as measured at the most-narrow point beneath the point of trunk division.

DIRECT CONDUITS TO GROUNDWATER (as it pertains to Post-Construction stormwater management §275-55.1)

Wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, nonmetallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.

DIRECTOR

The Director of the Department of Community Development, City of New Berlin, or his/her designee.

DISTRIBUTED ANTENNA SYSTEM (as it pertains to Mobile Tower siting regulations §275-41C(16))

A network of spatially separated antenna nodes that is connected to a common source via a transport medium and that provides mobile service within a geographic area or structure.

DISTRICT, BASIC

A part or parts of the City for which the uniform regulations of this chapter govern the use and location of land and buildings.

DISTRICT, OVERLAY

A superimposing of certain additional requirements upon an underlying basic zoning district without disturbing the requirements of the basic district. In the instance of conflicting requirements, the more strict of the conflicting requirements shall apply.

DIVISION OF LAND (as it pertains to Construction Site erosion control §275-55.2)

The creation from one parcel of two or more parcels or buildings on a site of one or fewer acres each in area where such creation occurs at one time or through the successive partition within a five-year period.

DONATION BOX

An unattended container, receptacle, or similar device that ~~is used for soliciting and collecting donations~~ accepts textiles, shoes, books, ~~of~~ clothing or other salvageable personal property items to be used by the operator for distribution, resale, or recycling. This term does not apply to any

unattended collection box located within a building.

~~**DOUBLE-FRONTAGE LOT**~~

~~See "lot, double frontage."~~

DRAINAGE

Surface water runoff or the removal of surface water or groundwater from land by drains, grading or other means, which includes runoff control to minimize erosion and sedimentation during and after construction.

DRIVE-THROUGH FACILITY

An establishment that encourages or permits customers to receive services, obtain goods, or be entertained while remaining in their motor vehicles.

DRIVEWAY

A private roadway providing access to a street or highway from a building or structure.

DRIVEWAY, SHARED

A driveway shared by adjacent property owners and privately owned and maintained.

DRYLAND ACCESS

A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land which is outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles. ~~Dryland access may include roads with their surface above the regional flood elevation and wide enough to accommodate wheeled vehicles.~~

DUMPSTER

A receptacle for common household or business waste as well as for recyclable goods.

DWELLING, EFFICIENCY

A dwelling unit consisting of one principal room with no separate sleeping rooms.

DWELLING, MULTIPLE-FAMILY

A residential building designed to be occupied by three or more households within separate dwelling units.

DWELLING, SINGLE-FAMILY

A detached building designed to be occupied exclusively by one household.

DWELLING, TWO-FAMILY

A detached building designed to be occupied by two households in two separate units.

DWELLING UNIT

A building, or portion thereof, designed and used as living and sleeping quarters for a single household, that includes exclusive sleeping, kitchen, eating, and sanitary facilities.

EASEMENT

An area where one or more property rights is reserved, conveyed, or granted by the property owner to and for the use of the public, a corporation, or other persons, for a designated part of the property, and for a specified or limited purpose, without the transfer of title; a grant by the property owner of the use of a strip of land to the City, public, or to one or more persons or corporations for a specific purpose or purposes.

EASEMENT SLOPE

That portion of land lying outside the limits of the street right-of-way necessary to comply with the minimum slope requirements, as set forth in the specifications.

EAVES

The projecting lower edge of a roof that overhangs the exterior wall of the building.

EDUCATIONAL FACILITIES

Buildings or structures used to teach students. Educational facilities may include primary schools, elementary schools, middle schools, high schools, colleges, vocational schools, and other similar uses.

EFFECTIVE INFILTRATION AREA (as it pertains to Post-Construction stormwater management §275-55.1)

The area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.

ELDERLY HOUSING

A dwelling unit or units designed and constructed to be occupied by elderly persons. An "elderly person" is a person who is 62 years of age or older on the date such person intends to occupy the premises or a family the head of which or his spouse is an elderly person as defined herein.

ELECTRONIC MESSAGE ~~BOARD~~ CENTER

A sign capable of displaying words, symbols, figures or images that can be electronically changed by remote or automatic means. Video displays are not permitted as part of electronic message ~~boards~~centers.

ENCROACHMENT

Any fill, structure, equipment, building, use or development in the floodway.

ENVIRONMENTAL CORRIDOR

Defined by the Regional Planning Commission as linear areas in the landscape which contain concentrations of high-value elements of the natural resources base.

ENVIRONMENTAL POLLUTION (as it pertains to Non-Metallic Mining §275-63)

Has the meaning in § 295.11(2), Wis. Stats.

EQUIPMENT COMPOUND (as it pertains to Mobile Tower siting regulations §275-41C(16))

An area surrounding or adjacent to the base of an existing support structure, within which are located mobile service facilities.

EROSION

The detachment and movement of soil, sediment, or rock fragments by water, wind, ice, or gravity.

EROSION AND SEDIMENT CONTROL PLAN (as it pertains to Construction Site erosion control §275-55.2)

A comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

ESSENTIAL SERVICES

Services provided by public and private utilities necessary for the exercise of the specific principal use or service of the principal structure on a given lot. Note: a public utility is not considered an essential service and must be subordinate to some other principal use or structure. These services include underground, surface, or overhead gas, electrical, steam, water, sanitary sewerage, stormwater drainage, and communication systems and accessories thereto, such as poles, towers, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, water storage tanks, solar collectors, conduits, cables, fire alarm boxes, police call boxes, traffic signals, pumps, lift stations, and hydrants, but not including buildings.

EXCEPTIONAL RESOURCE WATERS (as it pertains to Post-Construction stormwater management §275-55.1)

Waters listed in § NR 102.11, Wis. Adm. Code.

EXISTING RESOURCES AND SITE ANALYSIS MAP

This map identifies, locates, and describes noteworthy features to be designed around sensitive subdivision layouts. The purpose of this key submission is to familiarize officials with existing conditions on the applicant's tract and to provide a complete and factual reference for them in making a site visit. This map should include an orthophoto, the topography, locations of ponds, streams, ditches, and other drainageways, vegetation cover features (including cultivated lands, permanent grass, meadow, pasture, old fields, hedgerow, wetlands, and woodlands), and also soils, ridgelines, scenic views, geologic formations, man-made features, proposed streets, trails, parks, easements, etc. See § **235-38**.

EXISTING STRUCTURE (as it pertains to Mobile Tower siting regulations §275-41C(16))

A support structure that exists at the time a request for permission to place mobile service facilities on a support structure is filed with a political subdivision.

EXOTIC ANIMALS

For purposes of this chapter shall include, but are not limited to, any or all of the following orders and families of animals, whether bred in the wild or in captivity, including all hybrids. The animals listed in parentheses are intended to act as examples of common order or family species and are not to be construed as an exhaustive list or to limit the generality of each group of animals, unless otherwise specified.

A. Class Mamalia.

(1) Order Artiodactyla (hippopotamuses, giraffes, not cattle, swine, sheep, goats or camels).

(2) Order Canivora.

(a) Family Felidae (lions, tigers, cougars, leopards, ocelots, servals, not domestic cats from the felis catus family).

(b) Family Canidae (wolves, coyotes, foxes, jackals, not domestic dogs).

(c) Family Ursidae (all bears).

(d) Family Mustelidae (weasels, skunks, martins, minks, not ferrets).

(e) Family Procyonidae (raccoons, coatis).

(f) Family Hyaenidae (hyenas).

(g) Family Viverridae (civets, genets, mongooses).

(3) Order Edentatia (anteaters, armadillos, sloth).

(4) Order Marsupialia (opossums, kangaroos, wallabies).

(5) Order Perissodactyla (rhinoceroses, tapirs, not horses or donkeys or mules).

(6) Order Primates (lemurs, monkeys, chimpanzees, gorillas).

(7) Order Proboscidae (elephants).

(8) Order Rodentia (squirrels, beavers, porcupines, Gambian rats, prairie dogs, not guinea pigs, rats, mice, gerbils or hamsters).

B. Class Reptilia.

(1) Order Squamata.

(a) Family Varanidae (monitor lizards, komodo dragons), all species.

(b) Family Iguanaidae, all species.

(c) Family Boidae (boa constrictors, pythons), all species.

(d) Family Colubridae (boomslangs and African twig snakes), all species.

(e) Family Elapidae (such as coral snakes, cobras, mambas, etc.), all species.

(f) Family Nactricidae (keelback snakes), all species.

(g) Family Viperidae (such as copperhead, cottonmouths, rattlesnakes, etc.), all species.

C. Order Crocidilia (such as crocodiles, alligators, caimans, gavials, etc.), all species.

EXTRATERRITORIAL (as it pertains to Construction Site erosion control §275-55.2)

The unincorporated area within three miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or City.

FALL ZONE (as it pertains to Mobile Tower siting regulations §275-41C(16))

The area over which a mobile support structure is designed to collapse.

FAMILY

Any number of persons related by blood, adoption, or marriage, or not to exceed four persons not so related, living together in one dwelling unit as a single housekeeping entity, excepting foster family homes.

FAMILY DAY-CARE HOME

A dwelling licensed as a day-care center by the State of Wisconsin pursuant to § 48.65, Wis. Stats., where care is provided for not more than eight children.

FARM BUILDINGS, GENERAL

Buildings associated with agricultural uses, the raising of crops or the raising of animals, and may include barns, silos, sheds, and storage bins intended for permitted agricultural uses and sized to meet demonstrated agricultural needs.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

The federal agency which administers the National Flood Insurance Program. This agency was formerly known as the "Federal Insurance Administration (FIA)" and was part of the United States Department of Housing and Urban Development (HUD).

FENCE

An artificially constructed barrier of any material or combination of materials erected to enclose, barricade, define boundaries, or screen. A fence shall not include shrubs, trees, or other growing plants.

FILL

A deposit of materials of any kind placed by artificial means.

FILTERING LAYER (as it pertains to Post-Construction stormwater management §275-55.1)

Soil that has at least a three-foot deep layer with at least 20% fines; or at least a five-foot deep layer with at least 10% fines; or an engineered soil with an equivalent level of protection as determined by the regulatory authority for the site.

FINAL STABILIZATION (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

All land-disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.

FINANCIAL ASSURANCE (as it pertains to Non-Metallic Mining §275-63)

A commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in § **275-65.2** and is sufficient to pay for reclamation activities required by this article.

FINANCIAL GUARANTEE (as it pertains to Post-Construction stormwater management §275-55.1)

A performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the City of New Berlin by the responsible party to assure that requirements of the ordinance are carried out in compliance with the stormwater management plan.

FINANCIAL GUARANTY or SURETY

An irrevocable letter of credit, a cash bond, or other financial guaranty approved by the City Attorney.

FINANCIAL INSTITUTIONS

Establishments engaged in deposit banking. Financial institutions may include, but are not limited to, commercial banks, loan or mortgage companies, stockbrokers, savings institutions, and credit unions.

FLOOD or FLOODING

A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:

A. The overflow or rise of inland waters;
B. The rapid accumulation or runoff of surface waters from any source;
C. The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
D. The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a serve storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

~~FLOOD~~

~~A temporary rise in stream flow or stage in lake level that results in water overtopping the banks and inundating areas adjacent to the stream channel or lake bed.~~

~~FLOOD INSURANCE STUDY~~

~~An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mud flow) and/or flood-related erosion hazards. Such studies shall result in the publication of a Flood Insurance Rate Map showing the intensity of flood hazards in either numbered or unnumbered A Zones.~~

~~FLOODLANDS~~

~~All lands contained in the regional flood or one-hundred-year recurrence interval flood. For the purpose of zoning regulation, the floodlands are divided into the Floodway Overlay District and the Floodplain Fringe Overlay District.~~

FLOOD FREQUENCY

The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent chance of occurring in any given year.

~~FLOODPLAIN FRINGE~~

~~Those floodlands, outside the floodway, subject to inundation by the one-hundred-year recurrence interval flood. The floodplain fringe includes the Floodplain Fringe Overlay District. It is generally associated with standing water as opposed to rapidly flowing water.~~

~~FLOODPLAIN ISLAND~~

~~A natural geological land formation within the floodplain that is surrounded, but not inundated, by floodwater during the regional flood.~~

~~FLOODPLAIN ZONING MAP~~

~~A portion of the Zoning Map that shows the flood hazard district boundaries and all information required by Wis. Adm. Code § NR 116.09.~~

FLOOD HAZARD BOUNDARY MAP

A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.

FLOOD INSURANCE RATE MAP (FIRM)

A map of a community on which the Federal Insurance Administration has delineated both special flood hazard areas (the floodplain) and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.

FLOOD INSURANCE STUDY

A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

FLOOD PROFILE

~~A graph showing the relationship of the floodwater surface elevation of a flood event of a specified recurrence interval to the stream bed and other significant natural and man-made features along a stream.~~ A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

~~**FLOODPROOFING**~~

~~Any combination of structural and nonstructural additions, changes, or adjustments which reduce or eliminate flood damage to unimproved and improved real estate, water and sanitary sewer facilities, structures and their contents. (See also § 275-60J.)~~

FLOOD PROTECTION ELEVATION

~~A point two feet above the water surface elevation of the one-hundred-year recurrence interval flood. This safety factor, also called "freeboard," is intended to compensate for the many unknown factors that contribute to flood heights greater than those computed. Such unknown factors may include ice jams, debris accumulation, wave action, and obstructions of bridge openings.~~ An elevation of two feet of freeboard above the Regional Flood Elevation. (See also "freeboard.")

~~**FLOOD STAGE**~~

~~The elevation of the floodwater surface above an officially established datum plane, which is mean sea level, 1929 adjustment, on the Supplementary Floodland Zoning Map.~~

FLOOD STORAGE

Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.

FLOODFRINGE

That portion of the floodplain outside of the floodway which is covered by floodwaters during the regional flood and associated with standing water rather than flowing water.

FLOODLANDS

All lands contained in the regional flood or one-hundred-year recurrence interval flood. For the purpose of zoning regulation, the floodlands are divided into the Floodway Overlay District and the Floodplain Fringe Overlay District.

FLOODPLAIN

Land which has been or may be covered by floodwater during the regional flood. It includes the floodway and the floodfringe and may include other designated floodplain areas for regulatory purposes.

FLOODPLAIN ISLAND

A natural geological land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

FLOODPLAIN MANAGEMENT

Policy and procedures to ensure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.

FLOODPLAIN ZONING MAP

A portion of the Zoning Map that shows the flood hazard district boundaries and all information required by Wis. Adm. Code § NR 116.09.

FLOODPROOFING

Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.

FLOODWAY

~~A designated portion of the one-hundred-year recurrence interval flood area that will safely convey the regulatory flood discharge with small, acceptable upstream and downstream stage increases, limited in Wisconsin to 0.01 foot unless special legal measures are provided. The floodway, which includes the channel, is that portion of the floodplain not suited for human habitation. All fill, structures, and other development that would impair floodwater conveyance by adversely increasing flood stages or velocities or would itself be subject to flood damage should be prohibited in the floodway.~~ The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

FLOOR AREA, GROSS

The sum of the gross horizontal areas of all floors, measured in square feet, not including the basement floor, measured from the exterior faces of the exterior walls or from the center line of walls separating two buildings. Gross floor area shall include all areas used for storage, elevator shafts, and mechanical equipment.

FLOOR AREA, NET

For the purpose of calculating parking spaces, the sum of the gross horizontal areas of all floors, measured in square feet, not including the basement floor or areas that are used primarily for storage, elevator shafts, and mechanical equipment, measured from the exterior faces of the exterior walls or from the center line of walls separating two buildings.

FOSTER FAMILY HOME

The primary residence of a foster parent which is for four or fewer foster children and which is licensed under § 48.62, Wis. Stats., and amendments thereto.

FOWL, LARGE

Emus, rheas, and ostriches (ratites) housed outdoors, kept or raised for sale, resale, human consumption or pleasure.

FOWL, SMALL

Any bird housed outdoors, including, but not limited to, chickens, pigeons, ducks, geese, turkeys, peacocks and pheasants that are kept or raised for sale, resale, human consumption or pleasure.

FREEBOARD

~~A flood-protection elevation requirement designed as a safety factor which is usually expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for the effects of any factors that contribute to flood heights greater than those calculated. These factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of a watershed, loss of flood storage areas due to development and aggradation of the river or stream bed.~~ A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.

FRONTAGE

See "lot frontage."

FRONTS

Abutting a public right-of-way. See also "lot frontage."

GARAGE, PRIVATE

An accessory building primarily intended for and used for the enclosed storage or shelter of the private motor vehicles of the owner or occupant of the principal building. A private garage shall not mean a carport.

GARAGE, PUBLIC

Any building or portion thereof, not accessory to a residential building or structure, used for equipping, servicing, repairing, leasing, or public parking of motor vehicles, snowmobiles, or other recreational vehicles for hire.

GARAGE SALE

See "rummage sale."

GASIFICATION

A process that converts biomass- or fossil fuel-based carbonaceous materials into carbon monoxide, hydrogen and carbon dioxide. This is achieved by reacting the material at high temperatures (greater than 700° C.), without combustion, with a controlled amount of oxygen and/or steam. The resulting gas mixture is called syngas (from synthesis gas) or producer gas and is itself a fuel. The power derived from gasification and combustion of the resultant gas is considered to be a source of renewable energy if the gasified compounds were obtained from biomass.

GOVERNING BODY (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

County board of supervisors, town board of supervisors, village board of trustees, village council, or City Council.

GOVERNMENT OFFICE

An establishment where office uses associated with functions of government agencies are conducted. Government offices may include office space for municipal, county, regional, and federal agencies.

GRADE

A. The average elevation of the land around a building; or
B. The percent of rise or descent of a sloping surface as it exists or as rendered by cut and/or fill activities.

GRADE, FINISHED

The final elevation of the ground level after topsoil has been applied to graded slopes, as measured six feet from the exterior walls of the structure.

GRADING

The rearrangement of the earth's surface by stripping, cutting, filling, or stockpiling of earth or land.

GREENFIELD DEVELOPMENT SITES

Farmland and open areas where there has been no prior industrial or commercial activity and, therefore, where the threat of contamination is much lower than urbanized areas.

HABITABLE STRUCTURE (as it pertains to Floodplain §275-65)

Any structure or portion thereof used or designed for human habitation.

HALF STREET

Will be defined.

HEALTH AND FITNESS CENTERS

Establishments that primarily engage in providing health services for individuals. Health and fitness centers may include, but are not limited to, health clubs, fitness studios, studios, gyms, cross-fit gyms, and dance studios.

HEARING NOTICE (as it pertains to Floodplain §275-65)

Publication or posting meeting the requirements of Ch. 985, Wis. Stats. For appeals, a Class 1 notice, published once at least one week (seven days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (seven days) before the hearing, is required. Local ordinances or bylaws may require additional notice, exceeding these minimums.

HEAVY INDUSTRIAL USES

The manufacturing, processing, or assembly of products where air, noise, or odor pollution may create excessive land use conflicts or where a portion of the use is located outside of an enclosed structure.

HIGH FLOOD DAMAGE POTENTIAL

Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

HIGH-INTENSITY SOIL SURVEY

A Class A soil survey, conducted by a certified soils scientist and prepared according to the standards of the National Cooperative Soil Survey, resulting in a soils map in which the mapping units are single phases of soils series and the mapping units delineated are contrasting soils of 1/8 acre or less in size.

HIGHEST ADJACENT GRADE

The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HIGHWALL (as it pertains to Non-Metallic Mining §275-63)

A vertical or nearly vertical face in solid rock or a slope of consolidated or unconsolidated material that is steeper than 3:1.

HISTORIC STRUCTURE

Any structure that is:

A. Listed individually on the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

C. Individually listed on a local inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs which have been certified either by an approved state program, as determined by the Secretary of the Interior, or directly by the Secretary of the Interior in states without approved programs.

HOME OCCUPATION

An occupation or profession for financial gain or profit which is incident to and carried on entirely within a dwelling unit located on a lot, exclusive of attached garage or patio area, by resident occupants of the dwelling unit and which occupation is clearly incidental to and accessory to the residential use of the premises. [See also § **275-42G(4)**.]

HOMEOWNERS' ASSOCIATION

An organization formed to manage the common open space and facilities within a development that are not publicly maintained; membership in and financial support of such organization is mandatory for all landowners within the development.

HOTEL or MOTEL

A building in which lodging, with or without meals, is offered for compensation and in which there are more than five sleeping rooms.

HOUSEHOLD

A family living together in a single dwelling unit, with common access to and common use of all living and eating areas and of all areas and facilities for the preparation and serving of food within the dwelling unit. See "family."

ILLICIT CONNECTION (as it pertains to Illicit charges and connections §275-55.3)

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system, including but not limited to any conveyances which allow any nonstormwater discharge, including sewage, process wastewater, and wash water, to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been allowed, permitted, or approved by a government agency prior to the adoption of this section.

IMPERVIOUS SURFACE (as it pertains to Post-Construction stormwater management §275-55.1)

An area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, gravel or paved parking lots and streets are examples of areas that typically are impervious.

IMPERVIOUS SURFACES

Any portion of a lot that is covered by a structure or surface that prevents the passage or absorption of stormwater runoff, including but not limited to pavement, driveways and structures.

IMPROVEMENTS

Street grading and surfacing, with or without curbs and gutters, side paths, sidewalks, crosswalks, water mains, sanitary and storm sewers, culverts, bridges, and street trees.

INDUSTRIAL SALES

The sale of merchandise to industrial uses that may include the sale of fuels, gases and industrial vehicles.

INCREASE IN REGIONAL FLOOD HEIGHT

A calculated upward rise in the regional flood elevation greater than 0.00 feet, based on a comparison of existing conditions and proposed conditions, which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

INFILL AREA (as it pertains to Post-Construction stormwater management §275-55.1)

An undeveloped area of land located within existing development.

INFILL DEVELOPMENT

The development of vacant or partially developed parcels which are surrounded by or in close proximately to areas that are substantially or fully developed.

INFILTRATION

The entry and movement of precipitation or runoff into or through the soil.

INFILTRATION SYSTEM (as it pertains to Post-Construction stormwater management §275-55.1)

A device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or roadside channels designed for conveyance and pollutant removal only.

ISOLATED NATURAL FEATURES

Isolated natural features are generally isolated from the environmental corridors by urban development and, although separated from the environmental corridor network, have important natural values. Isolated natural resource areas may provide the only available wildlife habitat in an area, provide good locations for local parks and natural areas, and lend unique and aesthetic character and natural diversity to an area.

KARST FEATURE (as it pertains to Post-Construction stormwater management §275-55.1)

An area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swales.

KEEPING AND RAISING OF ANIMALS

The use of land for raising, pasturing or yarding of livestock.

LAND-DISTURBING CONSTRUCTION ACTIVITY (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

Any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land-disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

LAND USE MAP

A map based on a series of maps that are part of the land use element of the Comprehensive Plan that shows the current land uses and future land uses that indicate productive agricultural soils, natural limitations for building site development, floodplains, wetlands and other environmentally sensitive lands, the boundaries of areas to which services of public utilities and community facilities will be provided in the future consistent with the plan's timetable, and the general location of future land uses by net density or other classifications.

LANDFILL

A disposal site in which refuse and earth, or other suitable cover material, are deposited and compacted in alternate layers of specified depth in accordance with an approved plan.

LANDMARK

Any structure or improvement which has a special character or special historic interest or value as part of the development, heritage or cultural characteristics of the community, state, or nation and which has been designated as a landmark pursuant to the provisions of the City of New Berlin Landmarks Commission Ordinance.

LANDMARK SITE

Any parcel of land of historical significance due to substantial value in tracing the history of aboriginal man, or upon which an historic event has occurred, and which has been designated as a landmark site pursuant to the provisions of this chapter; or a parcel of land, or part thereof, on which is located a landmark and any abutting parcel, or part thereof, used as and constituting part of the premises on which the landmark is situated.

LANDOWNER (as it pertains to Non-Metallic Mining §275-63)

The person who has title to land in fee simple or who holds a land contract for the land. A landowner is not a person who owns nonmetallic mineral rights to land if a different person possesses title to that land in fee simple or holds a land contract for that land.

LANDOWNER (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

Any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land-disturbing construction activity or maintenance of stormwater BMPs on the property.

LANDSCAPING

Living material, such as grass, ground cover, flowers, shrubs, vines, hedges, and trees, and nonliving durable material, such as rocks, pebbles, sand, mulch, and wood chips or bark, but not including paving. Landscaping is intended to be both decorative and functional. Functional uses of landscaping include protection against erosion, absorption of pollutants, sound retardation, visual barrier, buffering or screening between different land uses, shade to moderate temperatures, protection from wind, and oxygen renewal. Landscaping may serve as screening when it is densely planted.

~~**LAND USE MAP**~~

~~A map based on a series of maps that are part of the land use element of the Comprehensive Plan that shows the current land uses and future land uses that indicate productive agricultural soils, natural limitations for building site development, floodplains, wetlands and other environmentally sensitive lands, the boundaries of areas to which services of public utilities and community facilities will be provided in the future consistent with the plan's timetable, and the general location of future land uses by net density or other classifications.~~

LETTER OF MAP AMENDMENT (LOMA)

Official notification from the Federal Emergency Management Agency (FEMA) that an individual property or structure has been removed from a Flood Hazard Boundary Map or Flood Insurance Rate Map.

LETTER OF MAP REVISION (LOMR)

Official notification from the Federal Emergency Management Agency (FEMA) that a municipality's Flood Hazard Boundary Map or Flood Insurance Rate Map has been amended. A LOMR is issued when the revised map is not republished.

LEVEL OF SERVICE (LOS)

A. In general terms, an indicator of the extent or degree of service provided by or proposed to be provided by a facility based on and related to the operational characteristics of the facility. Generally, "level of service" indicates the capacity per unit of demand for a public facility.

B. More specifically, in terms of transportation, "level of service" shall mean a qualitative measure describing operational conditions within a traffic stream, generally described in terms of such factors as speed, freedom to maneuver, traffic interruptions, comfort, convenience, and safety. LOS is usually expresses in terms of six levels, designated A through F, with A being the best and F being the worst.

LICENSED PROFESSIONAL GEOLOGIST

A person who is licensed as professional geologist pursuant to Ch. 470, Wis. Stats.

LIGHT INDUSTRIAL USES

The manufacturing, processing or assembly of products within a fully enclosed structure where noise, odor, light, or vibration is not noticeable from the adjacent properties.

LIMITS OF DISTURBANCE (LOD)

The area(s) of a site, as established pursuant to § **275-54A** of this chapter, that may be disturbed by earth movement (grading) or cleared of vegetation, including disturbance or clearance to provide space for construction of principal and accessory uses and structures, driveways, parking areas, roads, drainage and stormwater management facilities, or utilities.

LIVESTOCK

Domestic farm animals which are typically kept for breeding, production of agricultural products, sale, consumption or pleasure (see also definitions for "livestock, large" and "livestock, small").

LIVESTOCK, LARGE

Cattle, bison, horses and other livestock generally weighing over 500 pounds, including pigs over 300 pounds. Pigs over 300 pounds are only permitted in the A-1 District.

LIVESTOCK, SMALL

Small animals such as sheep, goats, miniature horses, small ponies, llamas, alpaca, potbellied pigs and other noncommercial small-breed pigs under 300 pounds and other livestock generally weighing under 500 pounds.

LOADING AREA/DOCK

An off-street space or berth for the loading or unloading of freight carriers on the same lot as the structure they serve.

LOCAL STREET

See "street, minor."

LOCALLY GROWN CROPS

Food and other agricultural products that are grown or produced, processed and sold within a certain region.

~~**LOCAL STREET**~~

~~See "street, minor."~~

LOT

A platted parcel of land, having proper street frontage, sufficient in size to meet the lot width, lot frontage, lot area, and other open space provisions of this chapter, and separately owned, developed, and otherwise operated as a unit.

LOT AREA

The total gross amount of horizontal land area within all lot lines. Public rights-of-way and private streets shall not be used in the calculation of lot area except as noted in Article **VI**.

LOT, CORNER

A lot abutting two or more streets at their intersection, provided that the corner of such intersection shall have an angle of 135° or less, measured on the lot side. See Figure XI-1.

LOT COVERAGE

The total area of all buildings, measured at grade, all accessory structures, including pools, patios, etc., and all paved areas as a percentage of the total area of the lot, with the following exceptions: side paths or paved paths no wider than eight feet, pervious pavement, and green roofs.

LOT DEPTH

The average distance measured from the front lot line to the rear lot line in the general direction of the side lot lines. See Figure XI-1 and Figure XI-2.

LOT, DOUBLE-FRONTAGE

A parcel of land, other than a corner lot, with frontage on more than one street or with frontage on a street and a navigable body of water.

LOT, FLAG or PANHANDLE

A lot not meeting minimum frontage requirements and where the access to the public or private road is by a narrow private right-of-way or driveway known as the "panhandle." The length of the panhandle shall be measured from the frontage line to the nearest point of intersection with the lot's property line that parallels or almost parallels the frontage line. See Figure XI-1.

LOT FRONTAGE

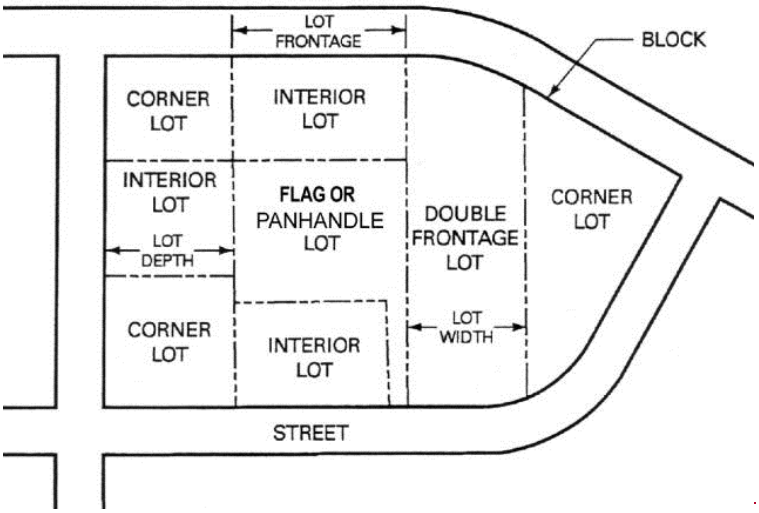
The dimension of a lot abutting a public street measured along the street right-of-way line. See Figure XI-1.

LOT, INTERIOR

A lot situated with one lot line fronting a single street and bounded by adjacent lots along each of its other lot lines. See Figure XI-1.

~~**Figure XI-1**~~

~~**Examples of Lot Types**~~



LOT LINE

The peripheral boundaries of a parcel of land and the total area lying within such boundaries.

LOT LINE, FRONT

The front property line which is coterminous with the street right-of-way. A front lot line is generally parallel to or less than 45° to the rear lot line. The front lot line is generally opposite the rear lot line. A corner lot or double-frontage lot has more than one front lot line. See Figure XI-3.

LOT LINE, REAR

An internal lot line opposite a front yard. A rear lot line is generally parallel to or less than 45° to the front street right-of-way line. Where the street line is an arc, the angle is measured from the tangent of the arc. A lot line greater than 45° from the front street right-of-way line would be a side lot line. See Figure XI-3.

LOT LINE, SIDE

An internal lot line generally extending perpendicular to the front lot line. The side lot lines extend between the front lot line and the rear lot line. See Figure XI-3.

LOT OF RECORD

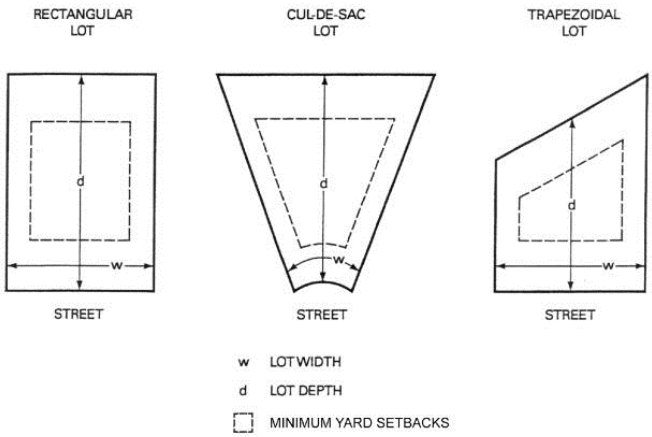
A platted lot of a recorded subdivision, certified survey map or parcel of land for which the deed, prior to the adoption of this chapter, is on record with the Waukesha County Register of Deeds and which exists as described therein.

LOT WIDTH

The width of a parcel of land measured at the building setback line or required front ~~yard~~ setback. See Figure XI-1 and Figure XI-2.

~~**Figure XI-2**~~

~~**Examples of Lot Width and Lot Depth**~~



LOWEST ADJACENT GRADE

The elevation of the lowest ground surface that touches any of the exterior walls of a building.

LOWEST FLOOR

The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of 44 CFR 60.3.

MAINTENANCE (as it pertains to Floodplain §275-65)

The act or process of ordinary upkeep and repairs, including redecorating, refinishing, nonstructural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.

MAINTENANCE AGREEMENT (as it pertains to Post-Construction stormwater management §275-55.1)

A legal document that is filed with the County Register of Deeds as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

MANUFACTURED HOME or MOBILE HOME

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to required utilities. Manufactured homes or mobile homes are not recreational vehicles, which remain licensed and ready for highway use and remain on site less than 180 consecutive days.

MASS (MASSING)

See "building mass."

MAXIMUM EXTENT FEASIBLE

That no feasible and prudent alternative exists and all possible efforts to comply with the regulation or minimize the potential harm or adverse impacts have been undertaken. Economic considerations may be taken into account but shall not be the overriding factor in determining "maximum extent feasible."

MEP or MAXIMUM EXTENT PRACTICABLE (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

The highest level of performance that is achievable but is not equivalent to a performance standard identified in this section as determined in accordance with Subsection **D(1)(d)**.

MEDIUM-INTENSITY SOIL SURVEY

A Class C soil survey, conducted by a certified soils scientist and prepared according to the standards of the National Cooperative Soil Survey, resulting in a soils map in which the mapping units are single phases of soils series and the mapping units delineated are contrasting soils of three acres or less in size.

MINERAL EXTRACTION

The extraction or excavation of rock, ore, stone, sand, gravel, soil, peat, and similar materials from the earth for off-site use.

MINERAL PROCESSING

The crushing, cleansing, separation or other similar processing activities of rock, ore, stone, sand, gravel, soil, peat, and similar materials that have been extracted or excavated from the earth.

MINOR STREET

See "street, minor."

MOBILE/MANUFACTURED HOME PARK, EXPANSION TO EXISTING (as it pertains to Floodplain §275-65)

The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading or the pouring of concrete pads.

MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION (as it pertains to Floodplain §275-65)

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION, EXISTING (as it pertains to Floodplain §275-65)

A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this article. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.

MOBILE RECREATIONAL VEHICLE (as it pertains to Floodplain §275-65)

A vehicle which is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."

MOBILE SERVICE (as it pertains to Mobile Tower siting regulations §275-41C(16))

Has the meaning given in 47 U.S.C. § 153(33). The term "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

A. Both one-way and two-way radio communication services;
B. A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and
C. Any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services," or any successor proceeding.

MOBILE SERVICE FACILITY (as it pertains to Mobile Tower siting regulations §275-41C(16))

The set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.

MOBILE SERVICE PROVIDER (as it pertains to Mobile Tower siting regulations §275-41C(16))

A person who provides mobile service.

MOBILE SERVICE SUPPORT STRUCTURE (as it pertains to Mobile Tower siting regulations §275-41C(16))

A freestanding structure that is designed to support a mobile service facility.

MODEL, CORRECTED EFFECTIVE

A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more-detailed topographic information than that used in the current Effective Model.

MODEL, DUPLICATE EFFECTIVE

A copy of the hydraulic analysis used in the effective FIS and referred to as the "Effective Model."

MODEL, EFFECTIVE

The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.

MODEL, EXISTING (PREPROJECT)

A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man-made modifications that have occurred within the floodplain since the date of the Effective Model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the Effective Model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.

MODEL, REVISED (POST-PROJECT)

A modification of the Existing or Preproject Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.

MUNICIPALITY

The City of New Berlin, Waukesha County, Wisconsin.

NATIVE PLANTS

Plants that are inherent and original to a geographic region.

NAVIGABLE WATER

Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all rivers, streams, ponds, sloughs, flowages, and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. The Wisconsin Supreme Court has declared navigable all bodies of water with a bed differentiated from adjacent uplands and with levels of flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis. For the purpose of this chapter, rivers and streams will be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey Quadrangle Maps until such time that the Wisconsin Department of Natural Resources has made a determination that the waterway is not, in fact, navigable. Furthermore, streams not shown on USGS Quadrangle Maps may later be determined to be navigable by physical navigation.

NEW CONSTRUCTION

For floodplain management purposes, "new construction" means structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

NEW DEVELOPMENT (as it pertains to Post-Construction stormwater management §275-55.1)

Development resulting from the conversion of previously undeveloped land or agricultural land uses.

NGVD or NATIONAL GEODETIC VERTICAL DATUM

Elevations referenced to mean sea level datum, 1929 adjustment.

NONCONFORMING STRUCTURE (as it pertains to Floodplain §275-65)

An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this article for the area of the floodplain which it occupies. (For example, an existing residential structure in the Floodfringe District is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)

NONCONFORMING USE (as it pertains to Floodplain §275-65)

An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this article for the area of the floodplain which it occupies (such as a residence in the floodway).

NONCONFORMING USE

See "use, nonconforming."

NONMETALLIC MINERAL

A product, commodity or material consisting principally of naturally occurring, organic or inorganic, nonmetallic, nonrenewable material. Nonmetallic minerals include, but are not limited to, stone, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat, talc and topsoil.

NONMETALLIC MINING or MINING

All of following:

A. Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging. Nonmetallic mining does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

B. Processes carried out at a nonmetallic mining site that are related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. These processes include, but are not limited to, stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping and dewatering.

NONMETALLIC MINING RECLAMATION or RECLAMATION

The rehabilitation of a nonmetallic mining site to achieve a land use specified in a nonmetallic mining reclamation plan approved under this article, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, removal, storage and replacement of topsoil, stabilization of soil conditions, reestablishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution and, if practicable, the restoration of plant, fish and wildlife habitats.

NONMETALLIC MINING REFUSE

Waste soil, rock and minerals, as well as other natural site material resulting from nonmetallic mining. Nonmetallic mining refuse does not include marketable by-products resulting directly from or displaced by the nonmetallic mining that are scheduled to be removed from the nonmetallic mining site within a reasonable period of time after extraction.

NONMETALLIC MINING SITE or SITE

All contiguous areas of present or proposed mining described in Subsection A, subject to the qualifications in Subsection B.

A. "Nonmetallic mining site" means the following:

(1) The location where nonmetallic mining is proposed or conducted.

(2) Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.

(3) Areas where nonmetallic mining refuse is deposited.

(4) Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.

(5) Areas where grading or regrading is necessary.

(6) Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.

B. "Nonmetallic mine site" does not include any of the following areas:

(1) Those portions of sites listed in Subsection **A** not used for nonmetallic mining or purposes related to nonmetallic mining after August 1, 2001.

(2) Separate, previously mined areas that are not used for nonmetallic mineral extraction after August 1, 2001, and are not contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads.

(3) Areas previously mined but used after August 1, 2001, for a nonmining activity, such as stockpiles of materials used for an industrial process unrelated to nonmetallic mining.

NRCS MSE3 OR MSE4 DISTRIBUTION (as it pertains to Post-Construction stormwater management §275-55.1)

A specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation from Atlas 14.

NUDITY

The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the areola, or the human male genitals in a discernibly turgid state even if completely or opaquely covered.

OBSTRUCTION TO FLOW

Used for floodplain regulation, any development which blocks the conveyance of floodwaters such that this development, alone or together with any future development, will cause an increase in regional flood heights.

OFF SITE (as it pertains to Post-Construction stormwater management §275-55.1)

Located outside the property boundary described in the permit application.

OFFICIAL FLOODPLAIN ZONING MAP

That map, adopted and made part of this article, as described in § 275-65, which has been approved by the Department and FEMA.

OFFICIAL LETTER OF MAP AMENDMENT

See "letter of map amendment."

OFFICIAL LETTER OF MAP REVISION

See "letter of map revision."

OFFICIAL MAP

The document, as described by § 62.23(6), Wis. Stats., which shows the location of streets, highways, parkways, parks, playgrounds, railroad rights-of-way, waterways, and public transit facilities in the City of New Berlin.

OFF-STREET PARKING

All off-street areas and spaces designed, used, required, or intended to be used for parking, storage, or display of motor vehicles, and shall include all driveways, entrance drives, or access drives to such areas, but shall not include public streets and rights-of-way.

ON SITE (as it pertains to Post-Construction stormwater management §275-55.1)

Located within the property boundary described in the permit application.

ONE-HUNDRED-YEAR RECURRENCE INTERVAL FLOOD

A flood event which has a one-percent chance of occurring or being exceeded in any given year on a particular lake, river or stream based upon engineering analysis of lake level or stream-flow records available for the watershed or an analysis of rainfall and runoff characteristics in the watershed, or both. Statistically, a one-percent annual probability will occur on average every 100 years.

OPEN SPACE

Land areas not occupied by buildings, structures, parking areas, streets, driveways, or alleys. Open space shall not include upper-floor decks and/or balconies.

OPEN SPACE LAND

A portion of a tract of land that is set aside for the protection of sensitive natural features, farmland, scenic views, and other unique features. Open space land may be accessible to residents of the development and/or the City of New Berlin, or it may contain areas of conservancy lots, which are not accessible to the public.

OPEN SPACE USE

Used for floodplain regulation, those uses having a relatively low flood damage potential and not involving structures.

OPERATOR

Any person who is engaged in, or who has applied for a permit to engage in, nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.

ORDINARY HIGH-WATER MARK (as it pertains to Post-Construction stormwater management §275-55.1)

The meaning given in § NR 115.03(6), Wis. Adm. Code.

ORDINARY HIGH-WATER MARK

The point on the bank or shore of a body of water up to which the presence and action of surface water is so continuous as to leave a distinctive mark, such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

ORGANIZATIONAL CLUB

An organization of persons for special purposes or for the promulgation of sports, art, literature, politics, or other common goals, interests, or activities, characterized by membership requirements, dues, or regular meetings, excluding clubs operated for profit or churches.

OUTDOOR DISPLAYS AND SALES

The display or sale of items, merchandise, junk, material, or vehicles outside of an enclosed structure for more than four consecutive days.

OUTDOOR STORAGE

The storage of items, merchandise, junk, material, or vehicles outside of an enclosed structure for more than four consecutive days that are not being displayed for sale. Items that are visible and are not located within an approved area for outdoor displays and sales are considered outdoor storage and shall meet the requirements in § **275-41C(10)**.

OUTLOT

A parcel of land, other than a lot or block, so designated on the plat.

OUTSTANDING RESOURCE WATERS (as it pertains to Post-Construction stormwater management §275-55.1)

Waters listed in § NR 102.10, Wis. Adm. Code.

PADDOCKS

Fenced-in areas used for riding courses or academies, showing or displaying of animals, and the confined feeding of animals, not including general pasturing.

PARK

Space designated to serve the recreational needs of the community, as further defined in the Comprehensive Plan.

PARKING AISLE

The driveway or access drive by which a car enters and departs a parking space.

PARKING LOT

A structure, premises or lot used for the parking of vehicles, excluding parking areas accessory to single-family and two-family dwelling units.

PARKING, SHARED

The joint use of a parking lot for multiple uses.

PARKING SPACE

A graded and surfaced area of not less than 180 square feet in an area either enclosed or open for the parking of a motor vehicle, having adequate ingress and egress to a public street, alley or parking aisle.

PARTIES IN INTEREST

Any person(s) with incidence of ownership, including all abutting property owners, all property owners within 100 feet, and all property owners of opposite frontages.

PARTY WALL

A wall containing no opening, which extends from the elevation of building footings to the elevation of the outer surface of the roof or above, and which separates contiguous buildings or units but is in joint use for each building.

PASSIVE PARKS AND RECREATIONAL FACILITIES

Any park or recreational facility where there is no grading of the land, construction of facilities, or lighting, and which is not developed for ballfields.

PERCENT FINES (as it pertains to Post-Construction stormwater management §275-55.1)

The percentage of a given sample of soil which passes through a #200 sieve.

PERFORMANCE STANDARD (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

A narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

PERMIT (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

A written authorization made by the City of New Berlin to the applicant to conduct land-disturbing construction activity or to discharge post-construction runoff to waters of the state.

PERMIT (as it pertains to Mobile Tower siting regulations §275-41C(16))

A permit, other than a building permit, or approval issued by the City which authorizes any of the following activities by an applicant:

A. A Class 1 co-location.
B. A Class 2 co-location.
C. The construction of a mobile service support structure.

PERMIT ADMINISTRATION FEE (as it pertains to Post-Construction stormwater management §275-55.1)

A sum of money paid to the City of New Berlin by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.

PERSON

An individual or group of individuals, corporation, partnership, association, municipality, or state agency.

PERSON (as it pertains to Illicit charges and connections §275-55.3)

Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

PERSONAL SERVICES

Establishments that primarily engage in providing personal services for individual(s). Personal services may sell goods as long as they are related to the approved personal service. Personal services may include examples such as laundry and dry-cleaning, barbershops, beauty salons, music schools, informational and instructional services, tanning salons, portrait shops, shoe repair/shoe shine shops, tailor/garment repair shops, small household appliance repair shops, coin-operated laundromats, travel offices, and similar uses.

PERVIOUS SURFACE (as it pertains to Post-Construction stormwater management §275-55.1)

An area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.

PLAN COMMISSION

The Plan Commission of the City of New Berlin.

PLANNED UNIT DEVELOPMENT

The development of a property for residential, commercial, industrial, or mixed-use development when zoning regulations that would normally apply are superseded by controls that allow a more-sensitive and more-economical arrangement of buildings, streets, and open space on the site.

PLAT

A map of a subdivision.

PLAT APPROVAL JURISDICTION

Includes all of the corporate limits of the City and extraterritorial lands.

PLAT, PRELIMINARY

A map showing the salient features of a proposed subdivision submitted to an approving authority for purposes of preliminary consideration; a plat map, upon which the subdivider's plan of the subdivision is presented and which he submits for approval and intends to record in final form in the office of the Waukesha County Register of Deeds.

POLITICAL SUBDIVISION (as it pertains to Mobile Tower siting regulations §275-41C(16))

A city, village, town, or county.

POLLUTANT (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

Has the meaning given in § 283.01(13), Wis. Stats.

POLLUTION (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

Has the meaning given in § 281.01(10), Wis. Stats.

POST-CONSTRUCTION SITE (as it pertains to Post-Construction stormwater management §275-55.1)

A construction site following the completion of land-disturbing construction activity and final site stabilization.

POWTS

Private owner waste treatment systems, which can be located off lot or on lot.

PRE-DEVELOPMENT CONDITION (as it pertains to Post-Construction stormwater management §275-55.1)

The extent and distribution of land cover types present before the initiation of land-disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.

PREMISES

A lot, parcel, tract, or plot of land, together with the buildings and structures thereon.

PREVENTATIVE ACTION LIMIT (as it pertains to Post-Construction stormwater management §275-55.1)

Has the meaning given in § NR 140.05(17), Wis. Adm. Code.

PRIMARY ENVIRONMENTAL CORRIDOR

Corridors which include the best remaining woodlands, wetlands, and wildlife habitat areas and are, in effect, a composite of the best residual elements of the natural resource base. These corridors have truly immeasurable environmental and recreational value. Their preservation in an essentially open, natural state, including park and open space site uses and country estate residential uses, will serve to maintain a high level of environmental quality, protect its natural beauty, and provide valuable recreation opportunities.

PRINCIPAL USE

See "use, principal."

PRIVATE SEWAGE SYSTEM

A sewage treatment and disposal system serving a single structure, with a septic tank and soil absorption field located on the same parcel as the structure. This term also means an alternative sewage system approved by the ~~Wisconsin Department of Commerce~~ Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field; a holding tank; a system serving more than one structure; or a system located on a different parcel than the structure.

PROTECTIVE AREA (as it pertains to Post-Construction stormwater management §275-55.1)

An area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the widths provided in Subsection **G(4)(d)**, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface.

PUBLIC HEARING

A formal meeting held pursuant to this chapter, intended to inform and obtain public comment prior to taking action in accordance with this chapter.

PUBLIC MEETING

A meeting of members of a governmental body, for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body, which is held in a place reasonably accessible to members of the public and open to all citizens at all times.

PUBLIC SIGN

Any sign that was requested and approved by the Common Council, Plan Commission and/or Department of Community Development that is on City-owned property and provides a service and/or good to the City and public.

PUBLIC UTILITIES

All persons, firms, corporations, copartnerships or a municipal authority providing gas, electricity, water, steam, telephone, cable, communications, telecommunications, sewer or other services of a similar nature.

PUBLIC UTILITY (as it pertains to Mobile Tower siting regulations §275-41C(16))

Has the meaning given in § 196.01(5), Wis. Stats.

PYROLYSIS

The pyrolysis (or devolatilization) process occurs at around 200° C. to 300° C. Volatiles are released and char is produced, resulting in up to 70% weight loss for coal. The process is dependent on the properties of the carbonaceous material and determines the structure and composition of the char, which will then undergo gasification reactions.

RAISING OF CROPS

The use of land for planting, growing, cultivating, and harvesting of crops for human or livestock consumption.

REACH

A longitudinal segment of a stream generally including those floodlands wherein flood stages are primarily and commonly controlled by the same man-made or natural obstructions to flow.

REASONABLY SAFE FROM FLOODING

Base floodwaters will not inundate the land or damage structures to be removed from the special flood hazard area and any subsurface waters related to the base flood will not damage existing or proposed buildings.

RECREATIONAL VEHICLE

A vehicular-type portable structure without permanent foundation that can be towed, hauled or driven, which may be designed as temporary living accommodations, and is used for recreational, camping, and travel use. Recreational vehicles may include but are not limited to truck trailers, truck campers, pop-up tents, boats, jet skis, personal watercraft, snowmobiles, camping trailers, and self-propelled campers.

RECREATIONAL VEHICLE, MAJOR

A vehicle that is over 20 feet in length and seven feet in height.

REDEVELOPMENT

Any proposed expansion, addition, reduction, or other alteration to an existing building, structure, or other constructed feature on a lot or site. Redevelopment also includes changes in use to existing buildings, as well as modifications to site features such as parking, signage, landscaping, grading, stormwater management devices, or changes to outdoor storage.

REDEVELOPMENT (as it pertains to Post-Construction stormwater management §275-55.1)

Areas where development is replacing older development.

REFUSE CONTAINER

A receptacle larger than 96 gallons in which debris and/or garbage is placed for pickup.

REGIONAL FLOOD

A flood determined to be representative of large floods known to have occurred in ~~southeastern~~ Wisconsin. A regional flood is a flood with a one-percent chance of being equaled or exceeded in any given year; and if depicted on the FIRM, the RFE is equivalent to the BFE.

REGISTERED PROFESSIONAL ENGINEER

A person who is registered as a professional engineer pursuant to § 443.04, Wis. Stats.

REGULATORY AUTHORITY (as it pertains to Non-Metallic Mining §275-63)

A. The county in which the nonmetallic mining site is located, that has an applicable reclamation ordinance under s. 295.13, Stats., except where a municipality has adopted an applicable reclamation ordinance pursuant to par. (B).
B. The municipality in which the nonmetallic mining site is located and which has adopted an applicable reclamation ordinance under s. 295.14, Stats.
C. The department, in cases where a county mining reclamation program is no longer in effect under s. 295.14, Stats., but only if there is no applicable reclamation ordinance enacted by the municipality in which the nonmetallic mining site is located.

RELEVANT PLANS

Any plan that places additional regulations, guidelines, policies, etc., on a specific property or area within the City of New Berlin.

REPLACEMENT OF TOPSOIL

The replacement or redistribution of topsoil or topsoil substitute material to all areas where topsoil was actually removed or affected by nonmetallic mining for the purposes of providing adequate vegetative cover and stabilization of soil conditions needed to achieve the approved post-mining land use and as required by the reclamation plan approved pursuant to this article.

RESEARCH AND DEVELOPMENT

Research, development, and testing laboratories that do not involve the mass manufacture, fabrication, processing or sale of products.

RESPONSIBLE PARTY (as it pertains to Construction Site erosion control §275-55.2)

The landowner or any other entity performing services to meet the performance standards of this section through a contract or other agreement.

RESPONSIBLE PARTY (as it pertains to Post-Construction stormwater management §275-55.1)

Any entity holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain post-construction stormwater BMPs.

RETAIL COMMERCIAL USES

Establishments primarily engaged in the sale of goods and materials to the general public. Retail commercial uses may include, but are not limited to, bookstores, antique stores, convenience stores, bakeries, grocery stores, and other similar uses.

RIGHT-OF-WAY

The width between property lines of a dedicated street or alley.

RUMMAGE SALE

The occasional sale of personal property at a residence conducted by one or more families in a neighborhood. Rummage sales do not exceed four consecutive days in length and are not conducted more often than three times per year. Rummage sales do not involve the resale of merchandise acquired for that purpose. Rummage sales are also known as "garage sales." Flea markets are not rummage sales.

RUNOFF

The rainfall, snowmelt, or irrigation water flowing over the ground surface.

RUNOFF (as it pertains to Construction Site erosion control §275-55.2)

Stormwater or precipitation, including rain, snow or ice melt or similar water, that moves on the land surface via sheet or channelized flow.

RURAL CONSERVATION SUBDIVISION

These lots are generally defined as not being served by municipal sewer and water and not within the current Sewer Service Area as defined in § **235-26C**.

SCREENING

A method of visually shielding or obscuring one abutting or nearby use or structure from another by fencing, walls, earthen berms, change of grade, or densely planted vegetation or landscaping.

SCROLLING DISPLAY

The vertical movement of a static message or display on an electronic message board.

SEARCH RING (as it pertains to Mobile Tower siting regulations §275-41C(16))

A shape drawn on a map to indicate the general area within which a mobile service support structure should be located to meet radio frequency engineering requirements, taking into account other factors including topography and the demographics of the service area.

SECONDARY ENVIRONMENTAL CORRIDOR

Often remnants of primary environmental corridors, which have been developed for intensive agricultural and urban uses. Secondary environmental corridors facilitate surface water drainage, maintain pockets of natural resource features, and provide corridors for the movement of wildlife, as well as for the movement and dispersal of seeds for a variety of plant species. Such corridors should also be preserved in essentially open, natural uses as development proceeds.

SEDIMENT (as it pertains to Construction Site erosion control §275-55.2)

Settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

SEPARATE STORM SEWER (as it pertains to Construction Site erosion control §275-55.2)

A conveyance or system of conveyances, including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:

A. Is designed or used for collecting water or conveying runoff.
B. Is not part of a combined sewer system.
C. Is not draining to a stormwater treatment device or system.
D. Discharges directly or indirectly to waters of the state.

SEPARATE STORM SEWER (as it pertains to Post-Construction stormwater management §275-55.1)

A conveyance or system of conveyances, including roads with drainage systems, streets, catch basins, curbs, gutter, ditches, constructed channels or storm drains, which meets all of the following criteria:

A. Is designed or used for collecting water or conveying runoff.
B. Is not part of a combined sewer system.
C. Discharges directly or indirectly to waters of the state.

SERVICE COMMERCIAL USES

Establishments that primarily engage in rendering services to businesses, including but not limited to printers, equipment rental, protective services, mailing, photo finishing, and other similar services.

SETBACK

~~The minimum horizontal distance between an internal lot line or the base setback line and the regulated structure or item.~~ The minimum distance a building or structure shall be located from a lot line or base setback line. The setback line shall be drawn parallel to a lot line.

SETBACK, FRONT ~~YARD~~

The horizontal distance between the base setback line and the nearest roofed or enclosed portion of a building or any projection thereof, excluding uncovered steps and stoops, gutters, and awnings. ~~Where the street line is an arc, the setback shall be measured from the arc. The front yard setback may also be called the "street yard setback." See Figure XI-3.~~ See **§275-46A.**

SETBACK, ORDINARY HIGH-WATER MARK (OHWM)

The minimum horizontal distance between the ordinary high-water mark of a navigable body of water and a line parallel thereto through the nearest roofed or enclosed portion of the principal structure, excluding uncovered steps and stoops, gutters, and awnings.

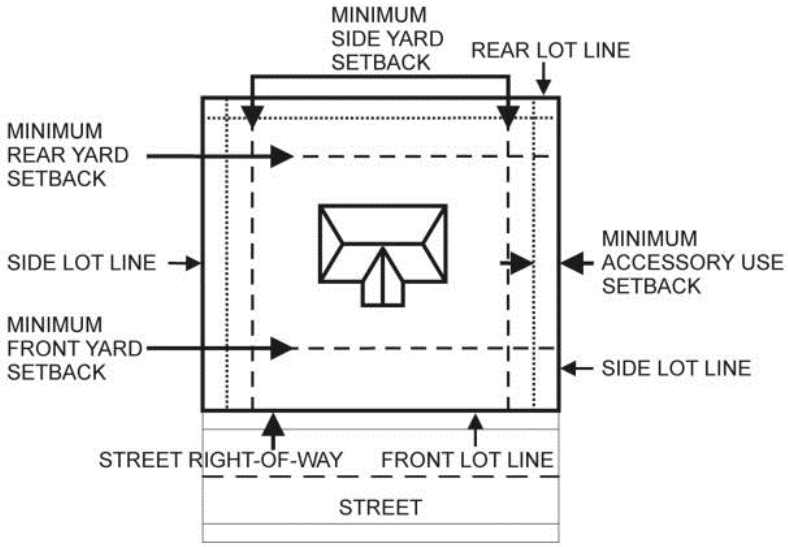
SETBACK, REAR ~~YARD~~

The minimum horizontal distance between the rear internal lot line and a line parallel thereto through the nearest roofed or enclosed portion of the principal structure, excluding uncovered steps and stoops, gutters, and awnings. A rear ~~lot~~ setback is opposite a front ~~yard~~ setback. A rear ~~yard~~ setback is not measured from a public road or street frontage. ~~See Figure XI-3.~~ See **§275-46A.**

SETBACK, SIDE ~~YARD~~

The minimum horizontal distance between the side internal lot line and a line parallel thereto through the nearest roofed or enclosed portion of the principal structure, excluding uncovered steps and stoops, gutters, and awnings. ~~The side yard setback does not extend beyond the front building face into the front yard or beyond the rear building face into the rear yard. See Figure XI-3.~~ See **§275-46A.**

~~**Figure XI-3**~~
~~**Setbacks in a Typical Interior Lot**~~



SETBACK, WETLAND

The minimum horizontal distance between the nearest delineated wetland and a line parallel through the nearest impervious surface.

SEWRPC

The Southeastern Wisconsin Regional Planning Commission.

SEXUAL CONDUCT

Acts or simulated acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breasts.

SHOPPING CENTERS

A group of commercial establishments which is planned, constructed, and managed as a total entity, with ample customer and employee parking provided on site, with provision for goods delivery separated from customer access, and with aesthetic considerations and protection from the elements. Shopping centers are further defined by size and service area and include "neighborhood shopping centers" which occupy about five to 10 acres and generally sell goods to meet the daily needs of customers and "community shopping centers" which occupy 10 to 30 acres and generally feature a junior department store or discount store and feature broader lines of shopper goods to encourage comparison shopping.

SHORELAND

Those lands lying within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond, or flowage and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater. Shorelands shall not include those adjacent to farm drainage ditches where:

A. Such lands are not adjacent to a navigable stream or river;

B. Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

C. Such lands are maintained in nonstructural agricultural use.

SHRUB

A woody plant consisting of several small stems from the ground or small branches near the ground; may be deciduous or evergreen.

SIDE ON CORNER

A name for the second front lot line on a corner lot.

SIGN

Any medium, including its structure, words, letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, or trademarks, by which anything is made known and which is used to advertise or promote an individual, firm, association, corporation, profession, business, commodity, or product and which is visible from any public street or highway.

SIGN, CANOPY OR AWNING

A sign that is mounted or painted on or attached to a canopy, awning, or marquee. See Figure XI-4.

SIGN COPY

The message or advertisement and any other symbols on the face of a sign.

SIGN, DIRECTIONAL

A sign which serves primarily to direct traffic to the location of a place, area or activity within the premises.

SIGN FACE

The area or display surface used for the message.

SIGN, GROUND

Any sign placed upon or supported by the ground independent of any other structure. See Figure XI-4.

SIGN, MONUMENT

A sign supported directly by the ground, whose base is made of stone, concrete, metal, brick or similar materials which is not less than seventy-five percent of the width of the sign face, that is not connected to or joined with any other building or structure.

SIGN, POLE

A sign that is mounted on a freestanding pole or other support so that the bottom of the sign is 10 feet or more above grade. See Figure XI-4.

SIGN, PORTABLE

A sign that is not permanent and is not affixed to a building, structure, or to the ground. Such sign is sometimes mounted on wheels to make it transportable. See Figure XI-4.

SIGN, PROJECTING

A sign that is wholly or partly dependent upon a building for support and which projects more than 12 inches from such building. See Figure XI-4.

SIGN, ROOF

A sign that is mounted on the roof of a building or which is wholly dependent upon a building for support and which projects above the point of a building with a flat roof, the eave line of a building with a gambrel, gable, or hip roof, or the deckline of a building with a mansard roof. See Figure XI-4.

SIGN, SANDWICH-BOARD

A two-sided portable sign, constructed of wood, cardboard or similar rigid material, generally displayed outside a commercial establishment to identify a product or service.

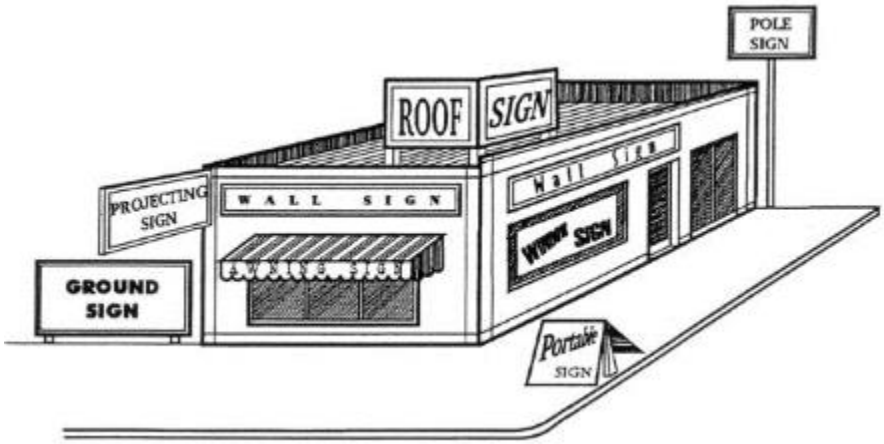
SIGN, WALL

A sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for or forms the background surface of the sign and which does not project more than 12 inches from such building or structure. See Figure XI-4.

SIGN, WINDOW

A sign that is applied or attached to the exterior or interior of a window or located in such manner within the building that it can readily be seen from the exterior of the building through a window. See Figure XI-4.

Figure XI-4
Sign Types



SILVICULTURE

The practice of establishing, tending, and reproducing stands of trees; involves prescribing such cultural operations as weedings, thinnings, prunings, and measures to protect the trees from insects, disease, and other natural elements.

SILVICULTURE ACTIVITY (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

Activities including tree nursery operation, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.

SITE

The entire area included in the legal description of the land on which a land-disturbing or land-development activity is proposed in a zoning or use approval permit application.

SITE CONTEXT MAP

A map showing the location of the proposed subdivision within its neighborhood context. This map is prepared at a more general scale and is based on existing published data. The features that shall be shown on the site context maps include the following topography (from New Berlin or Waukesha County maps): stream valleys, wetlands complexes, primary and secondary environmental corridors and natural resource areas, woodlands, ridgelines, public roads and rights-of-way, trails, utility easements, public land, land protected under conservation easements, and floodplains.

SLOPE, AVERAGE

The difference in elevation divided by horizontal distance and shall be measured over the entire parcel based on two-foot contour intervals, as shown in the following formula:
Average Slope = 0.0046 x length of contour lines (in feet) / Site or parcel area in acres

SLOPE, STEEP

Land that has an average slope of 20% or greater.

SMALL WIND ENERGY SYSTEM (as it pertains to small wind energy systems §275-42G(5))

A small wind energy system means equipment that converts and then stores or transfers energy from the wind into usable forms of energy (as defined by Wisconsin Statutes, § 66.0403(1)(m). This equipment includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries or cabling or other components used in the system, which system does not generate an excess of 100 kilowatts of electricity. "Total height" means the vertical distance from the ground level to the tip of a wind generator blade when the tip is at its highest point.

SOLID WASTE (as it pertains to Non-Metallic Mining §275-63)

Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Ch. 283, Wis. Stats., or source material, special nuclear material or by-product material, as defined in § 254.31(1), Wis. Stats.

SPECIAL PLAN OVERLAY DISTRICT (SPO)

The SPO Special Plan Overlay District may be applied in areas where specific regulations, design guidelines, and other recommendations have been created through the development of a planning document specific to various areas throughout New Berlin.

SPORTS COMPLEX

A group of indoor and/or outdoor sports facilities; refer to § **275-36D(5)** regarding commercial park/sports complexes.

STAFF

The staff of the Community Development Department of the City of New Berlin, Wisconsin.

START OF CONSTRUCTION (as it pertains to Floodplain §275-65)

The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the "actual start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STOP-WORK ORDER (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

An order issued by the City of New Berlin which requires that all construction activity on the site be stopped.

STORM DRAINAGE SYSTEM (as it pertains to Illicit charges and connections §275-55.3)

Publicly owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or -altered drainage channels, reservoirs, and other drainage structures.

STORMWATER MANAGEMENT PLAN (as it pertains to Post-Construction stormwater management §275-55.1)

A comprehensive plan designed to reduce the flow rate, runoff volume, and discharge of pollutants from stormwater after the site has undergone final stabilization following completion of the construction activity.

STORMWATER MANAGEMENT SYSTEM PLAN (as it pertains to Post-Construction stormwater management §275-55.1)

A comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

STORY

That portion of a principal building included between the surface of any floor and the surface of the next floor above or, if there is no floor above, the space between the floor and the ceiling next above. A basement shall not be counted as a story.

STORY, HALF

A story which is situated in a sloping roof, the floor area of which does not exceed 2/3 of the floor area of the story immediately below it, and which does not contain an independent dwelling unit.

STREET

A public right-of-way not less than 60 feet wide providing primary access to abutting properties.

STREET, ARTERIAL

A public street or highway used or intended to be used primarily for fast or heavy through traffic, as defined in the adopted City Comprehensive Plan or component thereof. Arterial streets and highways shall include freeways and expressways as well as arterial streets, highways, and parkways.

STREET, COLLECTOR

A street used, or intended to be used, to carry traffic from minor streets to the major system of arterial streets.

STREET, MINOR

A street used, or intended to be used, primarily for access to abutting properties.

~~**STREET YARD SETBACK**~~

~~See "setback, front yard."~~

STRUCTURAL ALTERATIONS

Any change in the supporting members of a structure, such as foundations, bearing walls, columns, beams, girders, roof members, or floor joists.

STRUCTURE (as it pertains to Floodplain §275-65)

Any man-made object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.

STRUCTURE

Any construction or assembly of materials, such as buildings, towers, canopies, masts, poles, booms, signs, decorations, carports, machinery, retaining walls, and equipment. By this definition, all buildings are structures; however, not all structures are buildings.

STRUCTURE, NONCONFORMING

A building or structure lawfully existing at the time of enactment of this chapter or amendments thereto that does not comply with all of the applicable area, height, and placement regulations of this chapter. Any such structure conforming in respect to use but not in respect to frontage, width, height, area, yard, parking, loading, or distance requirements shall be considered a nonconforming structure.

SUBDIVIDER

Any person, individual, firm, partnership, association, corporation, estate, trust, or any other group or combination acting as a unit, dividing or proposing to divide land so as to constitute a subdivision or CSM as herein defined, and includes any agent of the subdivider.

SUBDIVIDER or DEVELOPER

The legal or beneficial owner(s) of a lot or of any land included in a proposed development, including the holder of an option or contract to purchase.

SUBDIVISION

A division of a lot, parcel or tract of land by the owner thereof or his agent for the purpose of sale or building development where:

A. The act of division creates five or more parcels or building sites of 1 1/2 acres each or less in area; or

B. Five or more parcels or building sites of 1 1/2 acres each or less in area are created by successive divisions within a period of five years.

SUBSTANTIAL DAMAGE

Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its predamaged condition would equal or exceed 50% of the equalized assessed value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT (as it pertains to Floodplain §275-65)

Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50% of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not, however, include either:

A. Any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the Building Official and that are the minimum necessary to assure safe living conditions; or

B. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

SUBSTANTIAL IMPROVEMENT

Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the present equalized assessed value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. The term does not, however, include either:

A. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or

B. Any alteration of a structure or site documented as deserving preservation by the Wisconsin State Historical Society or listed on the National Register of Historic Places.

C. Ordinary maintenance repairs are not considered structural repairs, modifications or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling, and the replacement of doors, windows, and other nonstructural components.

SUBSTANTIAL MODIFICATION (as it pertains to Mobile Tower siting regulations §275-41C(16))

The modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following:

A. For structures with an overall height of 200 feet or less, increases the overall height of the structure by more than 20 feet.
B. For structures with an overall height of more than 200 feet, increases the overall height of the structure by 10% or more.
C. Measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by 20 feet or more, unless a larger area is necessary for co-location.
D. Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.

SUBURBAN CONSERVATION SUBDIVISION

These lots are generally defined as being served by municipal sewer and water, lying within the current Sewer Service Area as defined in § **235-26C**.

SUPPORT STRUCTURE (as it pertains to Mobile Tower siting regulations §275-41C(16))

An existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure.

SURETY

See "financial guaranty or surety."

TATTOO AND BODY-PIERCING ESTABLISHMENT

An establishment engaged in placing permanent designs in ink on human skin or in piercing the body for the placement of jewelry or body art.

TECHNICAL STANDARD (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

A document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

TELECOMMUNICATIONS STRUCTURES

Devices used for the transmission and receiving of digital or analog communications.

THATCH

A tightly intermingled layer of partially decomposed stems and roots of grass, which usually develops between the actively growing grass and the soil surface. Grass clippings do not contribute to thatch.

TOP OF THE CHANNEL (as it pertains to Post-Construction stormwater management §275-55.1)

An edge, or point on the landscape, landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet, landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.

TOPSOIL

The surface layer of soil which is generally more fertile than the underlying soil layers, which is the natural medium for plant growth and which can provide the plant growth, soil stability and other attributes necessary to meet the success standards approved in the reclamation plan.

TOPSOIL SUBSTITUTE MATERIAL (as it pertains to Non-Metallic Mining §275-63)

Soil or other unconsolidated material either used alone or mixed with other beneficial materials and which can provide the plant growth, site stability and other attributes necessary to meet the success standards approved in the reclamation plan.

TOTAL MAXIMUM DAILY LOAD or TMDL (as it pertains to Post-Construction stormwater management §275-55.1)

The amount of pollutants specified as a function of one or more water quality parameters that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.

TP-40 (as it pertains to Post-Construction stormwater management §275-55.1)

Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.

TR-55 (as it pertains to Post-Construction stormwater management §275-55.1)

The United States Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986.

TRANSIENT RESIDENTIAL LODGING USES FOR REMUNERATION

The use by any person of residential property for hostels, hotels, inns, lodging, motels, resort or other similar uses.

TRANSPORTATION FACILITY (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

A highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under § 85.095(1)(b), Wis. Stats. "Transportation facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department pursuant to § 281.33, Wis. Stats.

TRUCK TERMINALS

Structures used for the loading, unloading, or transfer of materials onto semitractors and trucks.

TRUNK FLARE

A tree's roots where the roots begin to spread at the base of the tree that should remain partially visible after planting.

TURNING LANES

An existing or proposed connecting roadway between two arterial streets or between an arterial street and any other street. Turning lanes include grade-separated interchange ramps.

TYPE II DISTRIBUTION (as it pertains to Post-Construction stormwater management §275-55.1)

A rainfall type curve as established in the "United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973." Rainfall depths shall be consistent with Technical Report 40, "Rainfall Frequency in the Southeastern Wisconsin Region," SEWRPC, April, 2000.

ULTIMATE STREET RIGHT-OF-WAY

See "base setback line."

UNNECESSARY HARDSHIP (as it pertains to Floodplain §275-65)

Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this article.

UNNUMBERED A ZONE

Areas shown as "Zone A" on FEMA' s Flood Insurance Rate Map, which would be inundated by the one-hundred-year recurrence interval flood, where base flood elevations have not been determined. The unnumbered A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

UNRECLAIMED ACRE or UNRECLAIMED ACRES (as it pertains to Non-Metallic Mining §275-63)

A. Those unreclaimed areas in which nonmetallic mining has occurred after August 1, 2001, and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under § **275-65.17C**. However, the term does not include any areas described in Subsection **B**.

B. "Unreclaimed acre" or "unreclaimed acres" does not include:

(1) Those areas where reclamation has been completed and certified as reclaimed under § **275-65.17C**.

(2) Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.

(3) Those portions of nonmetallic mining sites which are included in a nonmetallic mining reclamation plan approved pursuant to this article but are not yet affected by nonmetallic mining.

(4) Areas previously mined but used after August 1, 2001, for a nonmining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.

(5) For purposes of fees under § **275-65.15**, those areas within a nonmetallic mining site which the City has determined to have been successfully reclaimed on an interim basis in accordance with § **275-65.17C**.

USE

The purpose or activity for which the land or building thereon is designed, arranged, or intended, or for which it is occupied or maintained.

USE, ACCESSORY

A use that is subordinate to the principal use that is located on the same lot.

USE, CONDITIONAL

A use that is of a special nature that makes it impractical to predetermine the use as a principal use in a district. Conditional uses must meet the requirements of § **275-27** and any other additional regulations as specified in this chapter.

USE, NONCONFORMING

Any use of a building or premises which, as of the effective date of this chapter, does not, even though lawfully established, comply with all of the applicable use regulations of the zoning district in which such building or premises is located.

USE, PRINCIPAL

The main use of land or buildings as distinguished from a subordinate or accessory use. A principal use is specifically authorized as a use-by-right in a particular zoning district and may be operated after securing the necessary building permit, zoning permit or use approval when in compliance with all other regulations of this chapter.

USE, PROHIBITED

A use that is not permitted anywhere within the basic or overlay district.

USE, TEMPORARY

A use that may be permitted for a specified amount of time. Temporary uses shall require a temporary zoning permit and may be subject to additional building and zoning requirements.

UTILITIES

The public and private facilities, that are not of a regional nature, such as water wells, sanitary sewers, water mains, water and sewage pumping stations, water storage tanks, water purification facilities, power and communication transmission lines, electrical power stations and substations, static transformer stations, telephone and telegraph exchanges and gas regulation stations, wastewater treatment plants, municipal incinerators and storage yards. Telecommunication facilities are not to be considered utilities. See also § **275-40**.

UTILITY POLE (as it pertains to Mobile Tower siting regulations §275-41C(16))

A structure owned or operated by an alternative telecommunications utility, as defined in § 196.01(1d), Wis. Stats.; public utility, as defined in § 196.01(5), Wis. Stats.; telecommunications utility, as defined in § 196.01(10), Wis. Stats.; political subdivision; or cooperative association organized under Chapter **185**, Wis. Stats.; and that is designed specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in § 182.017(1g)(cq), Wis. Stats.; [for] video service, as defined in § 66.0420(2)(y), Wis. Stats.; for electricity; or to provide light.

VARIANCE

An authorization granted by the Board of Appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this chapter. A variance may not permit the use of a property that is otherwise prohibited by this chapter or allow construction in a flood hazard overlay district that is not protected to the flood protection elevation.

VIOLATION (as it pertains to Floodplain §275-65)

The failure of a structure or other development to be fully compliant with this article. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

VISION TRIANGLE

A triangular-shaped portion of land established at street intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection.

VOLUNTARY SKETCH PLAN

A sketch plan is a simple and inexpensive drawing illustrating conceptual layouts of house lots, streets, and conservation areas. It should ideally be based upon the existing resources and site analysis map and comments received from local officials during the pre-sketch conference and on-site visit.

WAREHOUSES

Structures used for the storage or distribution of goods where there is no sale of items to retailers or the general public.

WATER SURFACE PROFILE

A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of a river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating flood hazard areas.

WATERS OF THE STATE (as it pertains to Post-Construction stormwater management §275-55.1 and Construction Site erosion control §275-55.2)

Has the meaning given in § 281.01(18), Wis. Stats. Includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within the state or its jurisdiction.

WATERSHED

The entire region or area contributing runoff or surface water to a particular watercourse or body of water.

~~**WATER SURFACE PROFILE**~~

~~A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of a river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating flood hazard areas.~~

WEED TREE

A tree of little or no value, usually because of its species.

WELL

An excavated opening in the ground made by digging, boring, drilling, driving or other methods for the purpose of obtaining groundwater, regardless of its intended use.

WETLAND

An area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

WHOLESALE COMMERCIAL USES

The sale of merchandise to retail and service commercial uses, office uses, or institutional uses, or to other wholesalers. "Wholesale commercial uses" may also mean acting as an agent or broker in the buying or selling of merchandise but not selling to the general public.

WHOLESALE SALES

A sale by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale. Does not include a sale by wholesalers to users or consumers not for resale.

WISCONSIN ADMINISTRATIVE CODE (WIS. ADM. CODE)

The rules of a state agency which have the effect of law and which are issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency, or govern the organization or procedure of the agency. "Wisconsin Administrative Code" shall mean such rules as they may be amended from time to time.

WISCONSIN STATUTES (WIS. STATS.)

The laws of the State of Wisconsin, published biennially, as they may be amended from time to time.

WORKER HOUSING

Dwelling units that are provided for persons who are employed by the agricultural use or business located on the same site as the housing.

YARD

An open space on the same lot with a structure, unoccupied and unobstructed from the ground upward except the vegetation. Front yards and rear yards extend the full width of the lot.

YARD, FRONT

~~The yard area bounded by the street, side lot lines, and the front building face of the principal building. A lot with more than one street may have more than one front yard.~~ An area extending between the side lots lines from the street(s) to the front building face of the principal structure. See **§275-46B.**

YARD, REAR

An area extending between the side lot lines ~~and between~~ from the rear lot line(s) ~~and~~ to the rear building face of the principal structure. See **§275-46B.**

YARD, SIDE

An area extending ~~from~~ between the side lot line to the side building face of the principal structure ~~and extending~~ from the front yard to the rear yard of the lot. Lots generally have two side yards; however, corner lots and lots within zero-lot-line developments may only have one side yard. See **§275-46B.**

YIELD PLAN APPROACH

The determination of density, or maximum number of permitted dwelling units, shall be based on an actual yield plan. See §**275-33G(2)**.

ZERO-LOT-LINE DEVELOPMENT

A development where the structure is located on the side lot line with no setback. This may include town homes or two-family dwellings that are designed to have a party wall along a side lot line or single-family homes with one side of the structure located against alternating side lot lines.

ZONING MAP

The map adopted as an ordinance by the municipality that delineates the extent of each district or zone established in this chapter.

ZONING PERMIT

A permit required by Article **I**.

STAFF REPORT
EXECUTIVE SUMMARY

APPLICANT/PROJECT:	**Matt Anderson / Matty's Bar & Grille Annual Schedule of Outdoor Events**
LOCATION:	**14460 W. College Avenue**
REQUEST:	**Evaluation of Conditional Use Permit for Matty's Bar & Grille to hold additional outdoor events and approval of minor adjustments of the 2023 annual schedule of outdoor events for the property located at 14460 W. College Avenue.**
D.R.C RECOMMENDATION:	**Recommend tabling the Use, Site and Architecture request for Matty's Bar & Grille Annual Schedule of Outdoor Events located at 14460 W. College Avenue, subject to the application, plans on file and the following reasons:**

1. **Additional information has been requested.**

STAFF REPORT
EXECUTIVE SUMMARY

APPLICANT/PROJECT:	**Robert Gosse with The Sigma Group / SilverStar Carwash**
LOCATION:	**15300 W. National Ave. (Tax Key #: 1207997002)**
REQUEST:	**Use, Site and Architecture approval for a SilverStar Carwash located at 15300 W. National Ave (Tax Key #: 1207997002).**
D.R.C. RECOMMENDATION:	**Recommend approval of the Use, Site and Architecture approval for SilverStar Carwash located at 15300 W. National Avenue, subject to the application, plans on file and the following conditions:**

1. **PLANNING**
   a. **All plans shall be updated to match the revised site plan dated February 15, 2023. This plan proposes one ingress & egress to Coffee Road and eliminates the right turn only egress to Coffee Road, removes the bypass lane on the west side of the property and reduces the overall amount of pavement. Note, the sidewalk shall be 8' where it abuts parking and 5' where it accesses Coffee Road. Review pavement marking in Coffee Road with Engineering staff.**
   b. **Architecture Review Committee approval required.**
   c. **Plan of Operation**
      i. **Applicant shall adhere to the submitted plan of operation.**
      ii. **The applicant is proposing to construct a 4,800 square foot car wash.**
      iii. **Employee and customer parking shall be contained on site.**
      iv. **Plans shall meet the B-2, General Retail Sales and Service District, requirements in Section 275-34B(2).**
   d. **Dumpsters and roof, ground and wall mechanical equipment shall be properly screened from the street and public view in accordance with Section 275-56G of the Zoning Code. Please call that information out on plans and submit line of sight drawings.**
   e. **All permanent and temporary signs require a Sign Application to be filed prior to installation.**
   f. **Parking along the base setback line (along Coffee Road) is required to be 10'.**
   g. **Approval of the Landscaping Plan and payment of all installation and maintenance sureties is required. Landscape plans shall meet all the requirements of Article VIII Section 275-53 through 275-56 of the City's Zoning Code.**
      i. **Applicant shall provide a final list of trees to be removed. Removal of significant trees shall be replaced per the tree replacement schedule outlined in §275-54B(6) of the Zoning Code.**

ii. **Final landscape fee will be calculated upon final submittal.**

h. **The CSM shall be recorded prior to the issuance of this Zoning Permit.**

i. **Per Zoning Code Section 275-60E, Noise a sound study was requested. The plan will be kept on file with DCD. Should any substantiated complaints be filed with Code Compliance, DCD staff will investigate the issues and follow up with SilverStar Car Wash. Additional noise mitigation measures may need to be taken.**

iii. **Based on the communication from the Aerodry representative, there are noise attenuating methods that could be applied to the equipment.**

iv. **The Sound study dated February 2023 shows that the sound level at the property line will be around 60 dBA. As compared to the Sound pressure levels chart, this would be equivalent to "Normal Speech". The Sound Study is availabe in the Department of Community Development.**

2. INSPECTION

i. **Building plans shall be signed and stamped by a licensed architect or professional engineer per the Wisconsin Enrolled Commercial Building Code (SPS.361.31).**

ii. **Building plans shall be approved by the State of Wisconsin Department of Commerce Safety and Buildings Division (SPS.361.60). State letter required with permit application**

iii. **Apply and obtain appropriate building, HVAC, electric, plumbing and fire permits from the City of New Berlin Building Inspection Division.**

iv. **Plumbing: State review is required. All work must follow the State Approved Plumbing Plans.**

v. **The building shall be fully accessible from the parking lot to the interior elements SPS.363.1101 and ICC/ANSI A117.1)**

vi. **Demolition: Separate 'Wrecking' permit required for the demolition of the house and garage.**

3. ENGINEERING

a. **The proposed pavement marking modifications to Coffee Road shall be shown on the plans. See picture in letter.**

i. **Some additional pavement marking modifications may be needed to establish the left turn lane into the development. Contact the Engineering department to discuss with the pavement marking contractor at the time of restriping.**

b. **The proposed driveway approach detail will be a modified version of D.H. Figure No. 12 with the sidewalk along the back of curb and the driveway approach section just south of that.**

c. **Coffee Road was resurfaced in 2022. The City has a road cut moratorium policy for a period of 5 years after resurfacing. DCD will determine if a road cut will be allowed for the water, sewer, and storm sewer connections. If so, the applicant shall provide an additional $5,000 dollar surety deposit for a holding period of 4 years, at which time this would be the end of the moratorium. If DCD staff deems no surety is necessary or required it may release said surety.**

d. **Verify that the water and sanitary laterals to the existing home were removed at the main.**

e. **Per the TIA, work with Waukesha County to optimize the signal timing at the National Ave. and Coffee Road intersection.**

f. **Provide a copy of the revised signal timing.**

g. **The lighting shall conform to the New Berlin City Center guidelines. Submit a light pole detail for approval before ordering.**

h. **The lighting schedule does not match the cut Sheets and the Cut sheets need to be project specific. Resubmitting the example that was sent for use of the designer does not provide assurances that the correct lights will be supplied.**

i. **The City does allow a 23-foot pole as well.**

j. **Provide cut sheets for the wall units as well.**

4. **STORM WATER UTILITY**
   a. **WDNR NOI required.**
   b. **Total areas in the model are not equal. What and where is the "unconnected" area that is modeled? It is not part of the existing model.**
   c. **MMSD Chapter 13 Green Infrastructure required for greater than 5,000 sf but less than 0.5 acres impervious. Site is increasing impervious by over a 0.5 acre therefore MMSD Chapter 13 requirements shall be met. Update modeling to meet MMSD Chapter 13 requirements, recommend volumetric procedure. SWMP Maintenance Agreement is required; City of New Berlin boilerplate agreement is available online.**
   d. **A grading recert is required per DH Section VI.D.7. If stormwater management devices are to be used as sediment control devices for erosion control during construction, a certification is required prior to Building Permit and a recertification is required prior to Occupancy.**

5. **FIRE DEPARTMENT**
   a. **Key for Knox box is required.**
   b. **Provide fire extinguishers every 75' of travel.**
   c. **Maintain egress/emergency lighting throughout.**
   d. **Maintain 24' fire access width for fire lane.**

6. **SEWER UTILITY**
   a. **Maintain a 5 feet minimum horizontal clearance from any water main and sanitary sewer pipes and structures.**
   b. **Maintain 18 inches vertical clearance when crossing any pipes and structures.**
   c. **Please call Jim Hart at New Berlin Water Utility with Questions.**
   d. **If a conflict occurs, conduits will be removed at the owner's expense.**

<u>DETAILS IN ATTACHED STAFF REPORT</u>

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
PLAN COMMISSION STAFF REPORT

Meeting of March 6, 2023

Robert Gosse – The Sigma Group / SilverStar Car Wash
15300 W. National Ave.

DATE STAFF REPORT REVISED: February 22, 2023

APPLICANT / OWNER(S): Robert Gosse with the Sigma Group on behalf of SilverStar Carwash

REQUEST/DESCRIPTION OF PROJECT: Use, Site and Architecture approval for a SilverStar Carwash located at 15300 W. National Ave (Tax Key #: 1207.997.002).

DATE OF APPLICATION / DATE FILED WITH CITY CLERK: 9/30/2022; several sets of revised plans submitted.

DATE OF COMPLETENESS DETERMINATION: 10/5/2022
Application Check List Enclosed: No

PRE-APPLICATION CONFERENCE HELD: Yes
(Date(s) of Meeting(s): 8/31/2022 & 10/11/2022, along with numerous phone calls and email exchanges.

CONCEPTUAL PLAN: N/A

SIZE OF DEVELOPMENT / PARCEL(S):
Current Parcel: 2.88 acres (After CSM is recorded, the car wash will be located on Lot 2 of the CSM, 1.598 Acres)
Current Building: ~4,800 square feet

CURRENT ZONING: B-2 PUD (General Retails Sales and Service District and Planned Unit Development)

CURRENT LAND USE: Retail Commercial Sales (Dollar Tree)

PROPOSED ZONING: N/A

PROPOSED LAND USE: A carwash on Lot 2.

PROPOSED LOT SIZE (S): (After the CSM under File Application #: 2202311 is recorded).
Lot 1: 1.295 Acres
Lot 2: 1.598 Acres

PROPOSED DENSITY: N/A

ADJACENT ZONING AND LAND USE:

North:	Zoning: R-5, Medium-Density Single-Family Residential	Land Use: Single-Family Residential
South:	Zoning: B-1, Shopping Center District	Land Use: Commercial
East:	Zoning: B-2, General Retail Sales and Service District	Land Use: Commercial
West:	Zoning: B-2, General Retail Sales and Service District	Land Use: Commercial

CONFORMANCE WITH THE 2020 COMPREHENSIVE PLAN AND MUNICIPAL CODE: Yes

Chapter 15: Neighborhood "E": National Avenue East Corridor: Yes, this submittal meets the intent of this Chapter.

Planning Context / Vision / Development Policies:

Vision:

- *National Avenue should be an exemplary model of a suburban commercial corridor. Vehicular and pedestrian traffic should coexist in a safe and efficient manner through prominent pedestrian facilities and managed vehicular access. Utilities should be relocated or placed underground whenever feasible to de-emphasize their visual prominence. Public streetscape improvements should be coordinated with private landscaping and site design. Commercial development will be focused at nodes along the corridor to minimize the "strip" appearance. The City Center will be dominant commercial presence, with Civic Center being a major civic space that is a source of pride to New Berlin residents. Pedestrian access between the National Avenue corridor and nearby residential areas should be increased.*

Development Policies:

- *With the recent approval of parcel combinations and PUD for Blair's True Value, the large geographic area (approximately 25 acres in size) between Coffee Road, National Avenue and Moorland Road should be recognized as an opportunity for a larger, mixed use commercial/retail/office development. Encourage parcel assemblages and cross-access/shared-access points to create a more cohesive development area.*

Land use:

- *Future Land Use Map: City Center Mixed Use Commercial*

ZONING CODE (Chapter 275): Yes, this request meets the requirements of Section 275-34B(2) of the Zoning Code. See Findings Section for more information.

CITY CENTER DESIGN GUIDELINES: This property is within the area where City Center Design Guidelines apply. However, this property is not within the City Center Planned Unit Development (PUD). The Guidelines were revised and approved by the Plan Commission on 5/2/11. Future development on this site will be required to follow these guidelines. The following guidelines will be applied to this site for the carwash project:

1. *Parking areas screened with landscaping.*
2. *At the time of future development, redevelopment or expansions on this site, the applicant is required to follow the National Avenue Lighting Plan, which requires decorative lighting.*

EAST NATIONAL AVENUE CORRIDOR REGULATING PLAN: This property is within the East National Avenue Corridor Regulating Plan that was created by UWM students and adopted as an Appendix to the Comprehensive Plan. Recommendations in the plan included the following:

- Recommendation to allow smaller lot sizes for PUD's in order to encourage infill development and flexible site design. *The code updates in 2013 reduced the PUD minimum lot size to 1 acre for parcels along National Avenue, Greenfield Avenue and Moorland Road.*
- The City of New Berlin should continue to implement the National Avenue decorative street lighting. *The applicant will be required to install the National Avenue Lighting Plan decorative lights along National Avenue in front of this property at the time of any future development, redevelopment or expansions.*
- Consolidation of parcels to accommodate development needs. *The plan identifies the three existing parcels associated with this PUD that are proposed to be combined as parcels that*

were recommended for consolidation within the plan. This will create a larger land area to work with.

- The form and scale of the buildings within the "Coffee Road Node" should mimic that of the City Center development. *Future development of this site will be required to follow the "City Center Design Guidelines."*

Ordinance # 2552 Blair's True Value Planned Unit Development: Yes, the approved CSM meets this request.

SUBDIVISION CODE (CHAPTER 235): Yes

PUBLIC HEARING REQUIRED: No

CONCEPTUAL USE / SITE /ARCHITECTURAL REVIEW:
Use Approval Required: Yes
Site Plan Required: Yes
Architectural Review Required: Yes – the item was reviewed at the February 6th, Architectural Review Committee meeting and tabled. Item will be reviewed again at the March 6th meeting.

PROPOSED ARCHITECTURE: The building is proposed to be constructed of thinset brick embedded in precast concrete panels. Two brick colors will be used. Building will be accented with a red metal panel.

UNIQUE SITE CHARACTERISTICS:
Environmental Corridor: No
Wetland on Property: No
Conservancy Districts (C-1, C-2): No
NRCS Map Classification: Not inventoried.
Floodplain: No
Topography / Geologic: This site slopes to the east.

BIKE & PEDESTRIAN FACILITIES: Sidepaths exist in the area.

PARK & OPEN SPACE PLAN: No improvements Identified.

NATURAL RESOURCES PROTECTION:
Limits of Disturbance (LOD): Yes, a tree inventory has been prepared.
Woodland, Tree, and Vegetation Protection: Yes, a tree inventory has been prepared.
Wildlife Management Plan: N/A

ENVIRONMENTAL IMPACT: Yes, a tree inventory has been prepared.

STORM WATER MANAGEMENT / DRAINAGE PLAN: Applicant is required to adhere to all City of New Berlin Codes, Ordinances and Plans regarding storm water conveyance and maintenance as identified by the Department of Community Development. A report has been prepared and submitted with this project.

SANITARY SEWER PROVISION:
Within Current Sewer Service Area: Yes
Sewershed Capacity Available: Yes
Adequate Linkage: Yes
On-site system required: No

WATER USAGE CALCULATION: Will be reviewed at the time of building permit.

TRAFFIC IMPACT: A Traffic Impact Analysis (TIA) dated October 31, 2022 was prepared by Traffic Analysis & Design, Inc. and has been submitted. The full study is available in the Department of Community Development.

Per the applicant's submitted report, *"The National Avenue and Coffee Road intersection is expected to operate safely and efficiently with the full buildout of the proposed SilverStar Car Wash without any geometric or signal phasing changes. The proposed driveway connects Coffee Road and National Avenue (via a shared access with Dollar Tree) is expected to operate safely and efficiently with the identified recommended modifications if properly designed and constructed."*

Recommended Modifications:

- Coordinating with Waukesha County on optimizing signal time at National Avenue & Coffee Road/Michelle Witmer Memorial Drive.
- Remark the center median on Coffee Road.
- Provide shared access from the SliverStar Car Wash site to the Dollar Tree drive at National Avenue.

SCHOOL DISTRICT IMPACT: N/A

PREVIOUS ACTION:

10/5/2015	Plan Commission approved a 1-Lot CSM that combined three parcels into one.
10/5/2015	PUD Ordinance#: 2552 was approved by the Plan Commission.
10/13/2015	PUD Ordinance #: 2552 was approved by the Common Council.
10/13/2015	Common Council approved a 1-Lot CSM that combined three parcels into one.
4/22/2021	A Zoning Permit was issued for the Dollar Tree. Minor architectural changes included
11/14/2022	Plan Commission tabled this CSM request.
12/5/2022	Plan Commission tabled the Use Approval request for the SilverStar Carwash.

CONSISTENCY WITH PREVIOUS ACTION: Yes

FINDINGS:

1. The applicant is proposing to split the lot to create two lots.
2. Both lots meet the minimum lot area (40,000 sq. ft.) and lot width (200') requirements of the B-2 Zoning District.
3. Both lots are required to meet the minimum green space requirements of 25%.
4. PUD Ordinance #: 2552 Blair's True Value Planned Unit Development is on file.
5. Neighborhood Meeting was held on December 20, 2022.
    a. The site has been rotated 180 degrees so the exit (loudest part) is facing south instead of towards the neighborhood. This will allow for additional noise buffering if needed along with better stacking opportunities for the drive-thru from Coffee Road.
    b. The mechanical room is to be located on the south and east end of the building. This is the furthest away that it can be and still be located inside.
    c. Revised plan allows for better stacking on site and likely more people will use the National Avenue entrance.
    d. They are proposing to use 15' light poles rather than 23' tall poles. This will help to minimize

the perception of a “hot spot” that taller lights can create at times.

e. The developer will be installing dedicated turn / bypass lanes along Coffee Road to enter 153th Street and the car wash.

f. The County will be closing the median break on Moorland Road at San Mateo Drive. This will eliminate “cut-throughs.”

g. Additional baffles and insulation can be added if sound issues arise.

h. Lights will be turned off after closing. Security packs will stay on 24/7.

i. The cross access between the carwash and the Dollar Store is not a requirement, but the connection will reduce the traffic impact on Coffee Road by almost half.

j. They will work with Waukesha County to re-time the signals at Coffee and National to optimize traffic flow through the intersection.

6. A neighboring resident requested that the Mayor forward an email with a letter dated January 4, 2023 and a petition that was circulated in the neighborhood. The Mayor forwarded these emails to the Plan Commission on February 10, 2023. Note, since this is not a rezoning request the petition is for informational purposes only.

7. Based on Zoning Code Table 275-57-1, the required number of parking spaces is 7 (1 space per 200 sq. ft. of waiting area (1); 2 spaces per service bay (2) and one space per employee of the largest shift (4). The code also requires that a full service automotive land use is to have a minimum of 7 stacked spaces. The applicant meets these requirements. They also have spaces available for patrons to vacuum their vehicles. 20 total parking spaces provided.

8. The applicants have submitted the SilverStar Car Wash Noise Impact Study dated February 2023 and it is available in DCD. The study was prepared to analyze the expected noise impacts of the car wash on land uses adjacent and nearby the proposed New Berlin location. The impacts were assessed based on noise monitoring data collected at a similar facility in Sioux Falls, South Dakota.

   a. The Sioux Falls study used monitoring data collected at the facility to define the sound levels generated by the significate noise sources at the car wash as inputs to the iNoise environmental noise impact model. The iNoise model then calculated expected noise levels around New Berlin car wash perimeter.

   b. Conclusions of the study:

      i. The predicted noise impacts of the proposed car wash are within the acceptable levels for daytime (usually 7:00 AM to 7:00 PM (for New Berlin)) noise impacts contained in typical local noise ordinances.

      ii. The predicted noise impacts on the residential areas nearest the facility will contributed very little to the maximum daytime noise levels already experienced in these areas due to traffic noise from local roadways.

      iii. *There will be a significant impact near the property line bordering the commercial area immediately north of the facility (Dollar Tree). However, the predicted noise impacts are within the acceptable levels for noise impacts on commercial areas contained in typical local noise ordinances in the USA.*

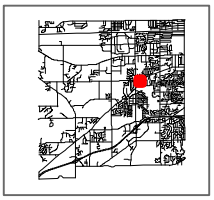
D.R.C. RECOMMENDATION: Recommend approval of the Use, Site and Architecture approval for SilverStar Carwash located at 15300 W. National Avenue, subject to the application, plans on file and the following conditions: **See Executive Summary.**

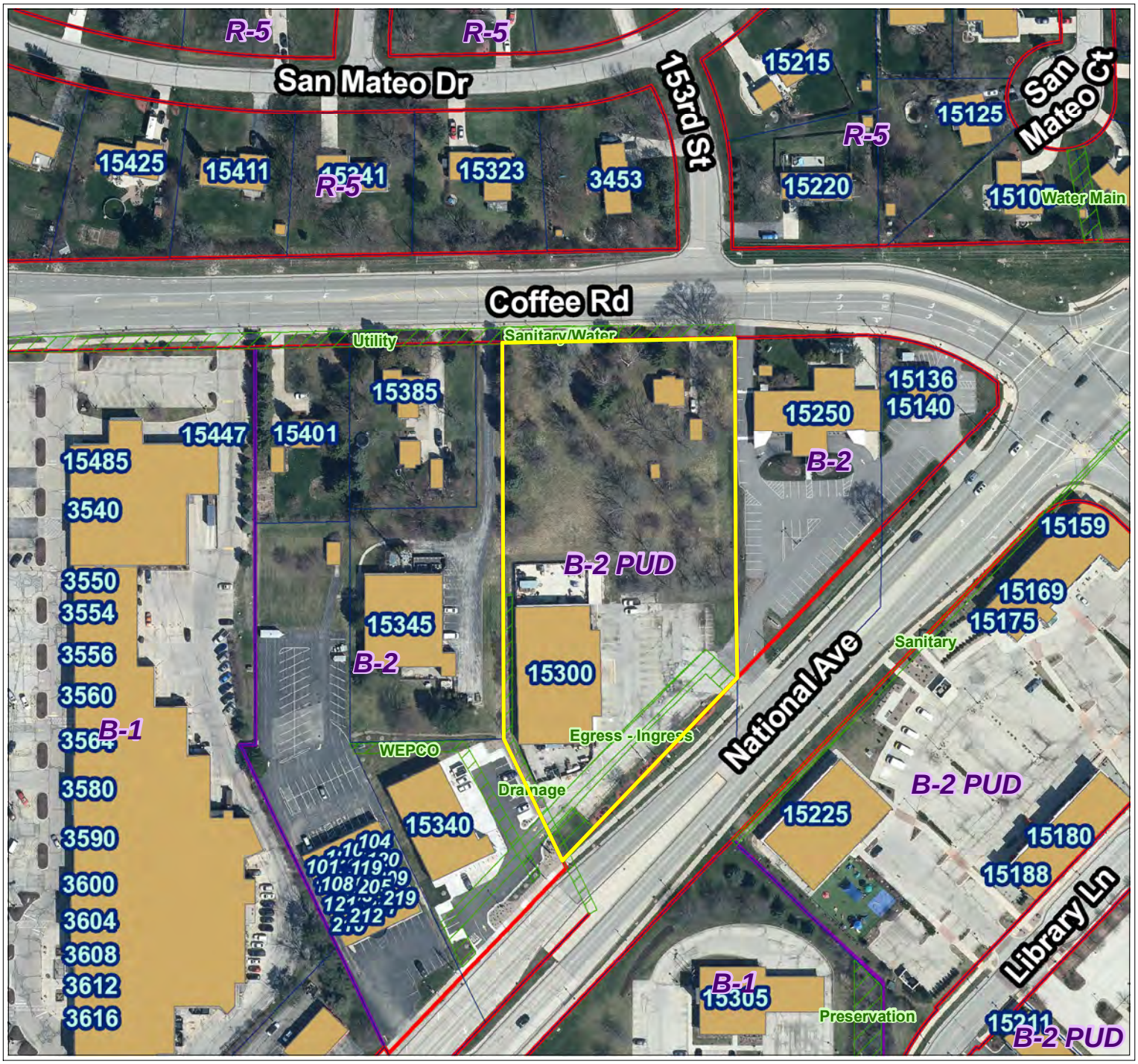
Attachments:
Location Map
Plan of Operation
Plans and Elevations

On File and Available for Review in the Department of Community Development (DCD)
Traffic Impact Analysis (TIA)
SilverStar Car Wash Noise Impact Study dated February 2023

City of New Berlin
Community Development

UA-2202320
Silverstar Carwash
15300 W. National Avenue





Legend

- Parcels
- Road Right-of-Way
- **Floodplain DFIRM (FEMA 2014)**
- **Flood Zone**
  - FEMA DFIRM - Zone A
  - FEMA DFIRM - Zone AE
  - FEMA DFIRM - 0.2% Annual Chance
- Zoning Boundaries
- **Zoning Wetland Registration**
- **Wetland Registration Type**
  - Registered Wetland
  - Outside Wetland
- **Environmental Corridor**
- **Corridor Type**
  - Isolated Natural Resource Area
  - Primary Environmental Corridor
  - Secondary Environmental Corridor
- **Sewer Service Area (MMSD)**
- **Sewershed**
  - Current
  - Ultimate

N

0 60 120 Feet

City of New Berlin
Department of Community Development
3805 S Casper Dr.
New Berlin WI 53151
(262) 797-2445
www.newberlin.org

The information and depictions herein have been produced using data available through photogrametric means by the City of New Berlin. The informations and depictions herein are for informational purposes and the City of New Berlin specifically disclaims accuracy in this reproduction and specifically admonishes and advises that any and all depiction, measurements, distances depicted herein and as to which specific or precise accuracy is required should be determined by procurement of certified maps, surveys, plats, Flood Insurance Studies, or other official means.

Map Printed: 11/22/2022 3:24:40 PM

Midwest Fidelity Partners®

February 28, 2023

Subject: Proposed Carwash Plan of Operation
15300 National Avenue/ 15300 Coffee Road, New Berlin Wisconsin

City of New Berlin Representatives:

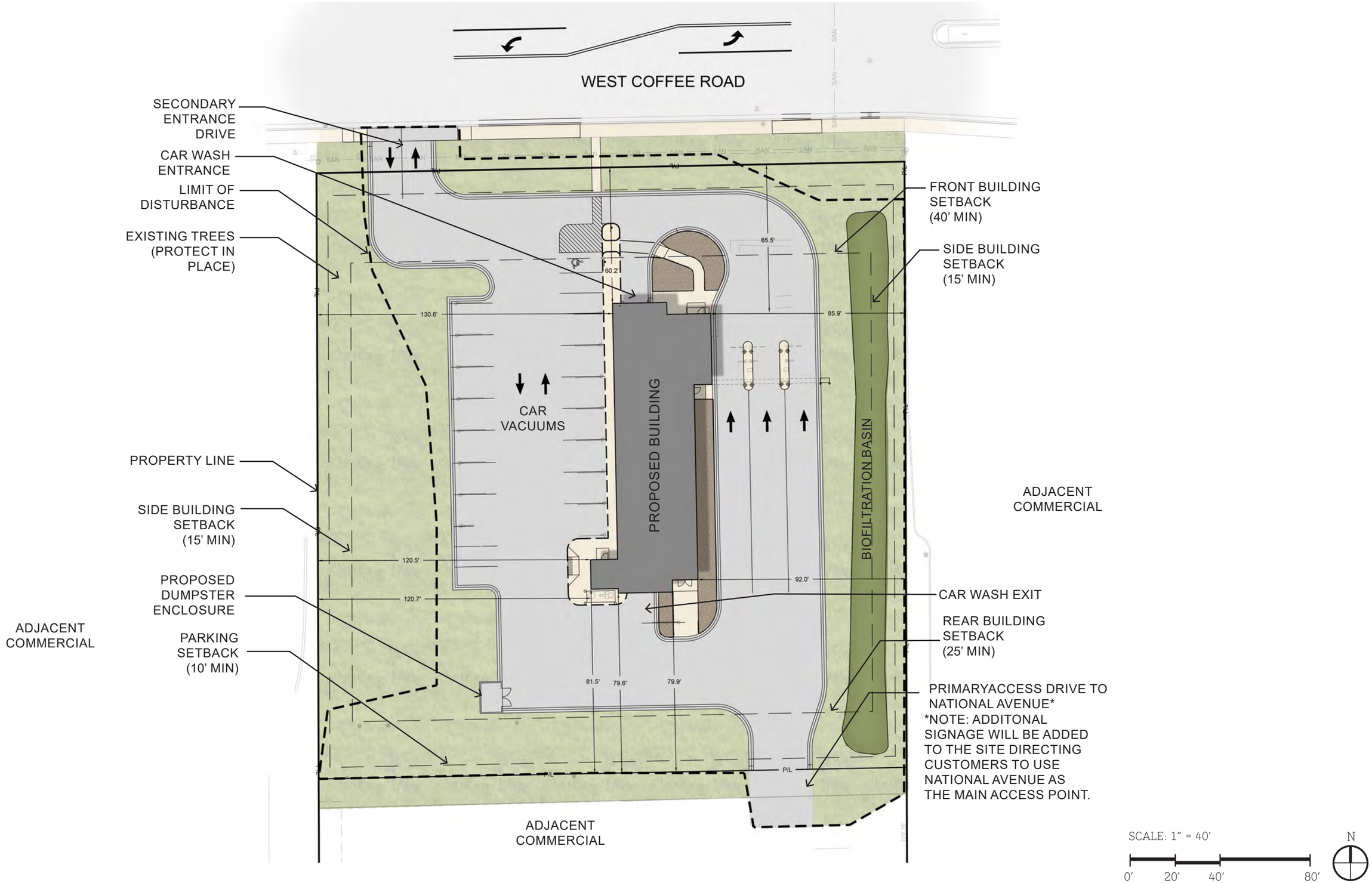
Please find this letter describing the proposed project at the above address which is coming before the Plan Commission for approval.

1. Land Use: The proposed use of the property is to develop an automated car wash facility that includes 3 pay lanes, 14 vacuum bays, 5 employee parking plus one accessible parking stall. The gross square footage of the building is 4,808 sq ft which includes equipment rooms and areas not occupied.
2. Site Activities: Activities to occur on site will be customer circulation through the carwash while in their vehicle, pre-wash prep by employees at the entrance to the wash tunnel, customer use of the vacuum bays and general maintenance and upkeep of the overall site by employees.
3. Hours of Operation: The facility will operate during the hours of 8 am – 8 pm April -September and 8 am to 7 pm October -March.
4. Employees: Generally, each facility employs 3-5 employees per shift depending on peak/non- peak times.
5. Types of Vehicles: Vehicles associated with the carwash range small cars for full size pickups.
6. Vehicle Trips: Once fully operational and established, the facility will average 30-40 cars per hour
7. Expected start of construction is July of 2023 with completion by July of 2024.
8. There are no hazards or adverse impacts requiring any mitigation as a part of this project.
9. Noise: Based on studies of similar facilities the following is what can be expected.
   - Entrance to the Tunnel: The proposed entrance to the tunnel is approximately 60' from the north property line (West Coffee Road). At this distance the expected approximate sound level at Coffee Road would be 62.6dBA. The measured existing noise level currently in that location was measured at 66.2 dBA. **Maximum impacts at the residential neighborhoods to the north and west of the facility are shown to be in the 50-55 dBA range.**
   - Exit of the Tunnel: The proposed exit of the tunnel is approximately 80' from the south property line (adjacent to the Dollar Tree adjacent parcel). At this distance the expected approximate sound level at the southern property line would be 64.4dBA. The measured existing noise level currently in that location was measured at 57.5 dBA.
   - As sound travels through the Dollar Tree property, it reaches National Avenue and the expected

approximate sound level at National Avenue would be 54.8-57.3dBA. The measured existing noise level currently in those locations is 71.2 and 72.4 dBA respectively.

- Maximum impacts at the funeral home to the east of the facility are shown to be in the 45-50 dBA range.

10. Off-Street Parking: 1 stall/ 200 sf required. 20 stalls are provided in the revised site plan.



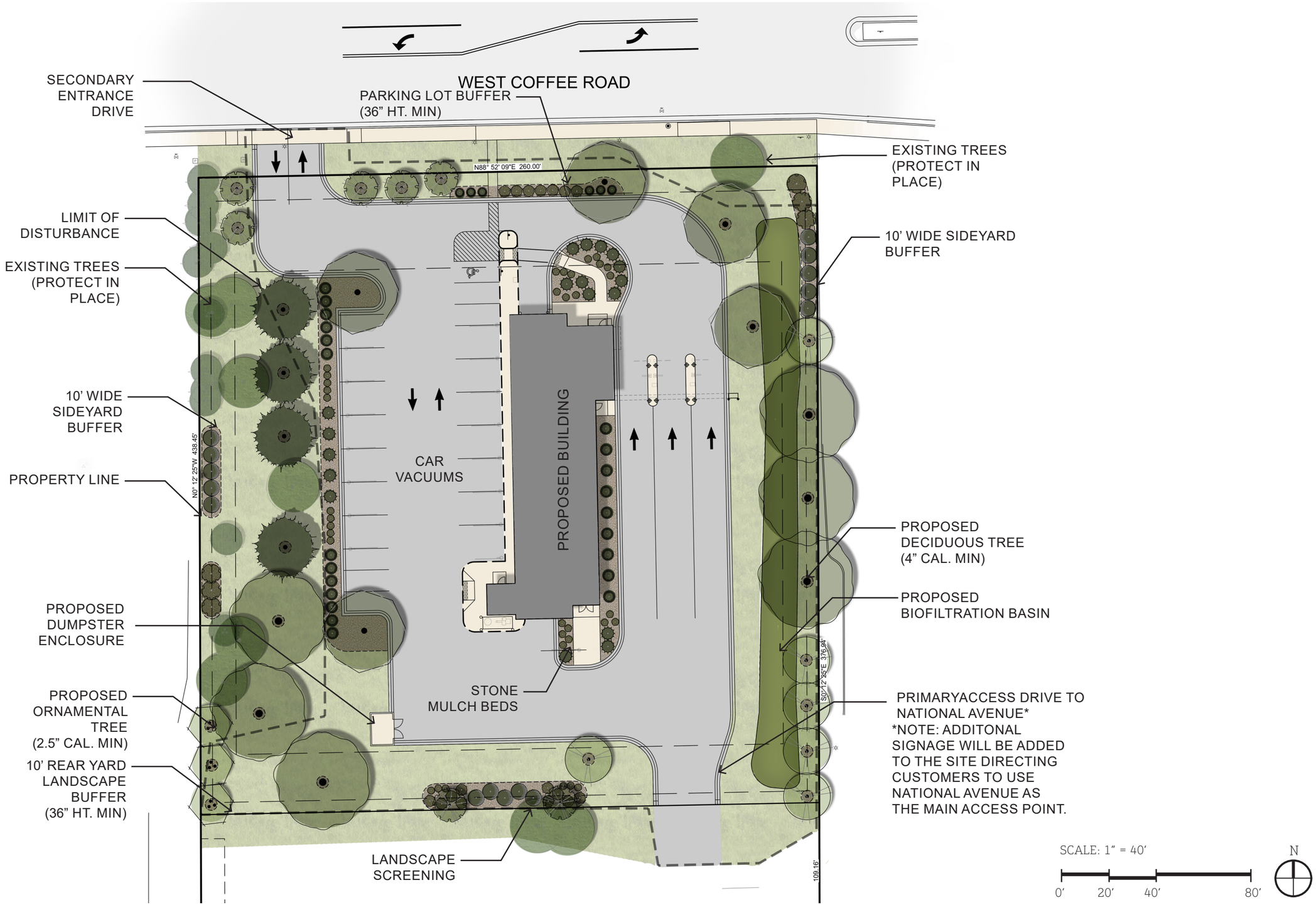
SILVERSTAR CAR WASH - SITE PLAN RENDERING

MIDWEST FIDELITY PARTNERS, LLC.

FEBRUARY 15, 2023

THE SIGMA GROUP
Single Source. Sound Solutions.

HOUSTON engineering, inc



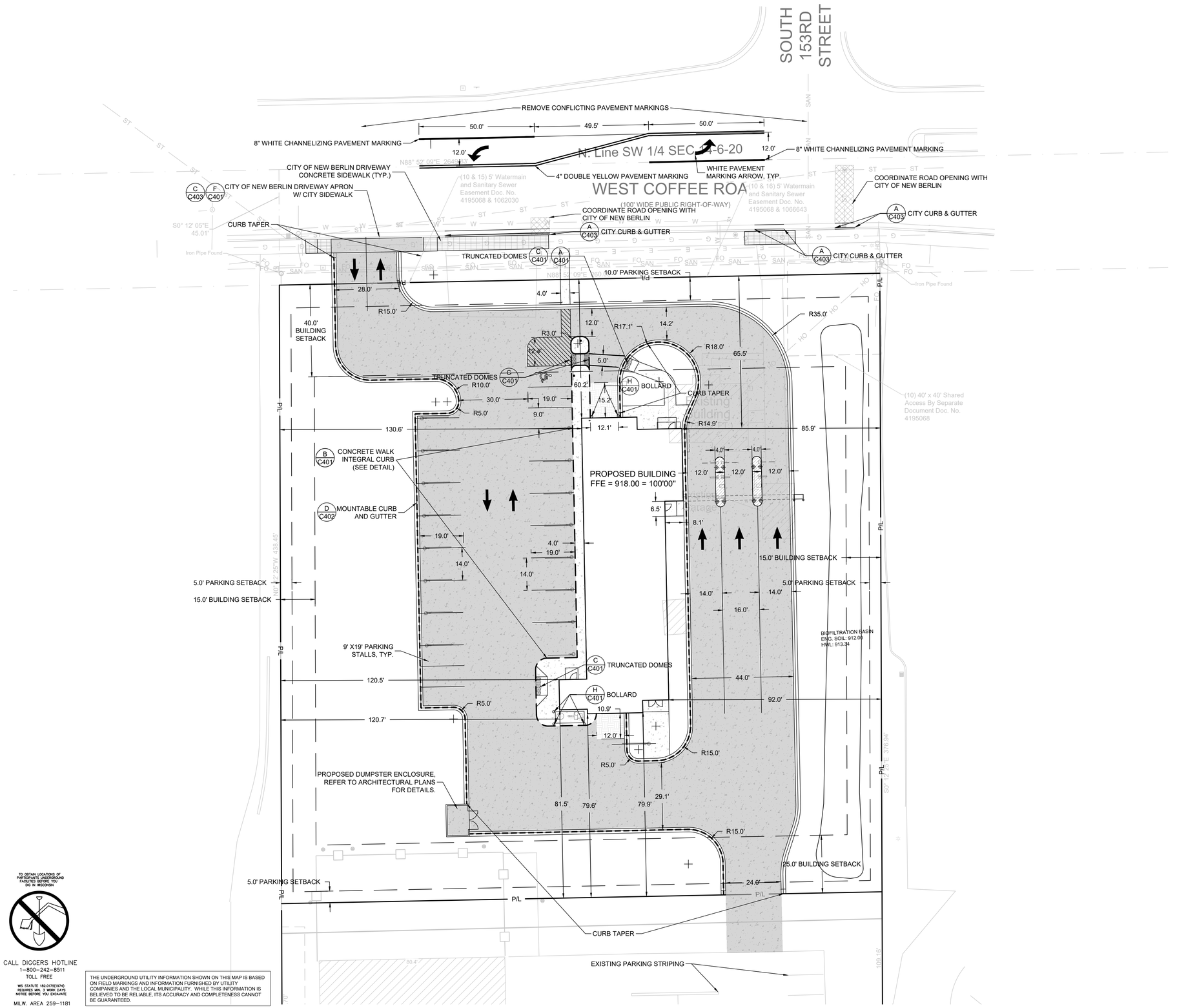
SILVERSTAR CAR WASH - LANDSCAPE PLAN RENDERING

MIDWEST FIDELITY PARTNERS, LLC.

MARCH 02, 2023

THE SIGMA GROUP
Single Source. Sound Solutions.

HOUSTON engineering, inc.



SITE INFORMATION			
SITE AREA	76200	1.749 AC	
SITE DISTURBED AREA	71072	1.632 AC	
EXISTING IMPERVIOUS AREA	6150	0.141 AC	8.1 %
PROPOSED IMPERVIOUS AREA	44867	1.030 AC	58.9 %
TOTAL PARKING SPACES	6		
ADA PARKING SPACES	1		

LEGEND:

- B C401 — 5" THICK CONCRETE WALK
- B C403 — CITY CONCRETE WALK
- D C401 — CONCRETE PAVEMENT
- F C402 — 8" HEATED CONCRETE PAVEMENT
- G C402 — 12" MEDIAN ISLAND CONCRETE PAVEMENT
- MATCH EXISTING CITY OF NEW BERLIN PAVEMENT SECTION
- # C402 — CURB & GUTTER (ACCEPT)
- # C402 — CURB & GUTTER (REJECT)

GENERAL NOTES:

1. THE UNDERGROUND UTILITY INFORMATION SHOWN ON THIS DRAWING IS BASED ON FIELD LOCATIONS AND/OR RECORDS FURNISHED BY MUNICIPALITIES AND UTILITY COMPANIES. THE LOCATION AND ACCURACY OF WHICH CANNOT BE GUARANTEED. THERE MAY BE ADDITIONAL UNDERGROUND UTILITY INSTALLATIONS WITHIN THE PROJECT AREA THAT ARE NOT SHOWN.
2. VERIFY ACTUAL LOCATIONS AND INVERTS IN THE FIELD. ANY POTENTIAL ERRORS, OMISSIONS, OR DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER PRIOR TO PROCEEDING WITH CONSTRUCTION.
3. WORK TO BE COMPLETED IS INDICATED IN BOLD TYPE LINES AND EXISTING CONDITIONS ARE INDICATED BY LIGHT TYPE LINES.
4. ELECTRONIC CIVIL FILES ARE AVAILABLE UPON WRITTEN REQUEST. DO NOT USE ELECTRONIC CIVIL FILES TO LAYOUT FOUNDATIONS, COLUMN LINES, LIGHT POLES, OR OTHER NON CIVIL SITE WORK. REFER TO ARCHITECTURAL DRAWINGS FOR DIMENSIONS OF BUILDING AND ARCHITECTURAL FEATURES.
5. DIMENSIONS ARE FROM FACE OF CURB OR EDGE OF PAVEMENT.
6. WORK WITHIN THE PUBLIC RIGHT OF WAY, INCLUDING BUT NOT LIMITED TO DRIVEWAY OPENINGS, SIDEWALK AND RAMPS, PAVING, AND CURB AND GUTTER SHALL BE COMPLETED PER MUNICIPAL AND/OR COUNTY REQUIREMENTS AND STANDARDS.
7. EARTHWORK SHALL BE IN ACCORDANCE WITH GEOTECHNICAL ENGINEER'S RECOMMENDATIONS.

TO OBTAIN LOCATIONS OF PARTICIPANTS' UNDERGROUND FACILITIES BEFORE YOU DIG IN WISCONSIN

CALL DIGGERS HOTLINE
1-800-242-8511
TOLL FREE
WIS STATUTE 182.0175(1974) REQUIRES MIN. 3 WORK DAYS NOTICE BEFORE YOU EXCAVATE
MILW. AREA 259-1181

THE UNDERGROUND UTILITY INFORMATION SHOWN ON THIS MAP IS BASED ON FIELD MARKINGS AND INFORMATION FURNISHED BY UTILITY COMPANIES AND THE LOCAL MUNICIPALITY. WHILE THIS INFORMATION IS BELIEVED TO BE RELIABLE, ITS ACCURACY AND COMPLETENESS CANNOT BE GUARANTEED.

THE SIGMA GROUP
Single Source. Sound Solutions.
www.thesigmagroup.com
1300 West Canal Street
Milwaukee, WI 53233
Phone: 414-643-4200
Fax: 414-643-4210

GRAPHIC SCALE
0 20 40

SILVERSTAR CARWASH
15300 W. NATIONAL AVE.
NEW BERLIN, WI

SITE DIMENSION

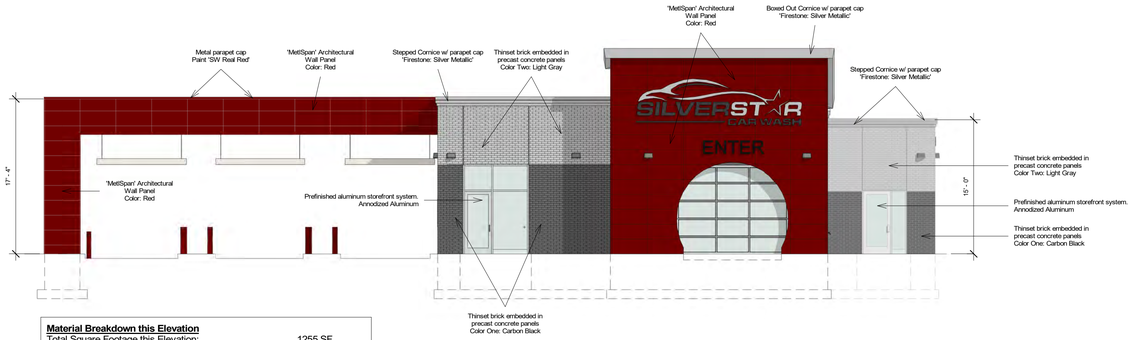
PRELIMINARY NOT FOR CONSTRUCTION

CITY SUBMITTAL 12-22-2022

SCALE:	1"=20'
PROJECT NO:	21259
DESIGN DATE:	----
PLOT DATE:	2/16/2023
DRAWN BY:	CPT
CHECKED BY:	CTC
APPROVED BY:	CTC
SHEET NO:	C100

16:49 HJOHN C100 21259

I:\Houston Engineering\21259 - New Berlin Car Wash\060 CAD\030_Production Sheets\100_Civil\C100 SITE DIMENSION.dwg

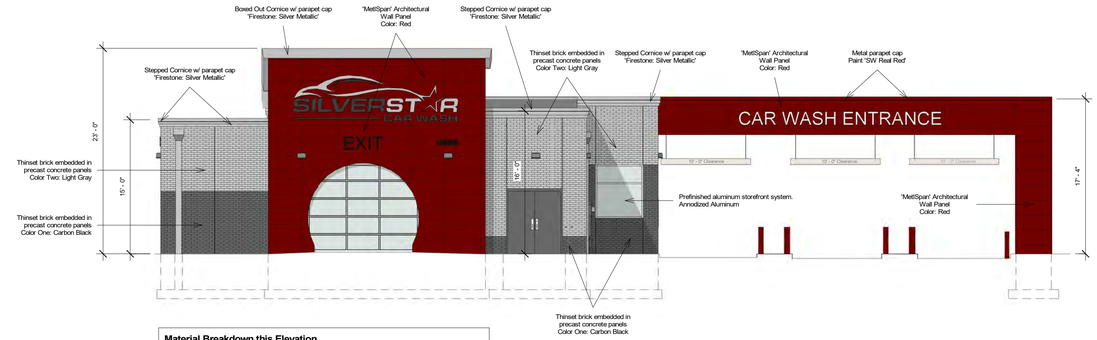


Material Breakdown this Elevation

Total Square Footage this Elevation:	1255 SF
Square Footage of Glazing this Elevation:	218 SF (17%)
Square Footage of Metal Panels this Elevation:	655 SF (52%)
Square Footage of Embedded Brick this Elevation:	382 SF (31%)

4 North Elevation

Scale: 1/8" = 1'-0"

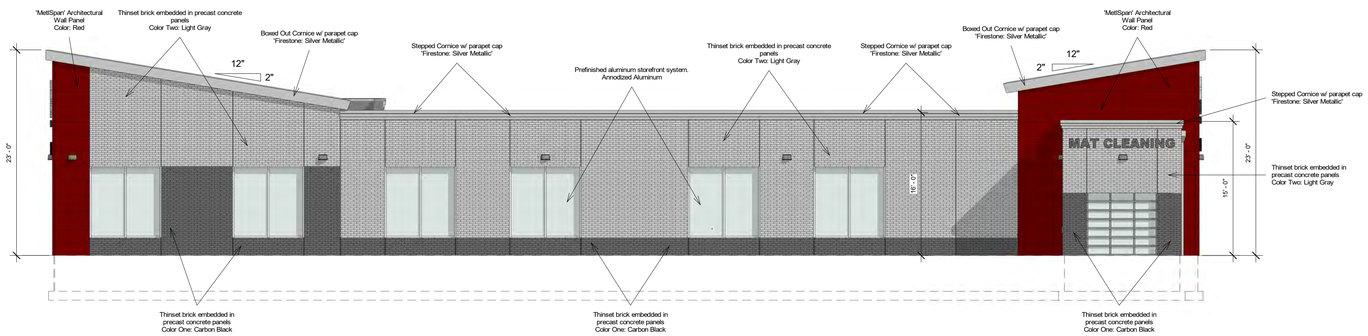


Material Breakdown this Elevation

Total Square Footage this Elevation:	1241 SF
Square Footage of Glazing this Elevation:	140 SF (11%)
Square Footage of HM Door this Elevation:	47 SF (4%)
Square Footage of Metal Panel this Elevation:	657 SF (53%)
Square Footage of Embedded Brick this Elevation:	397 SF (32%)

3 South Elevation

Scale: 1/8" = 1'-0"

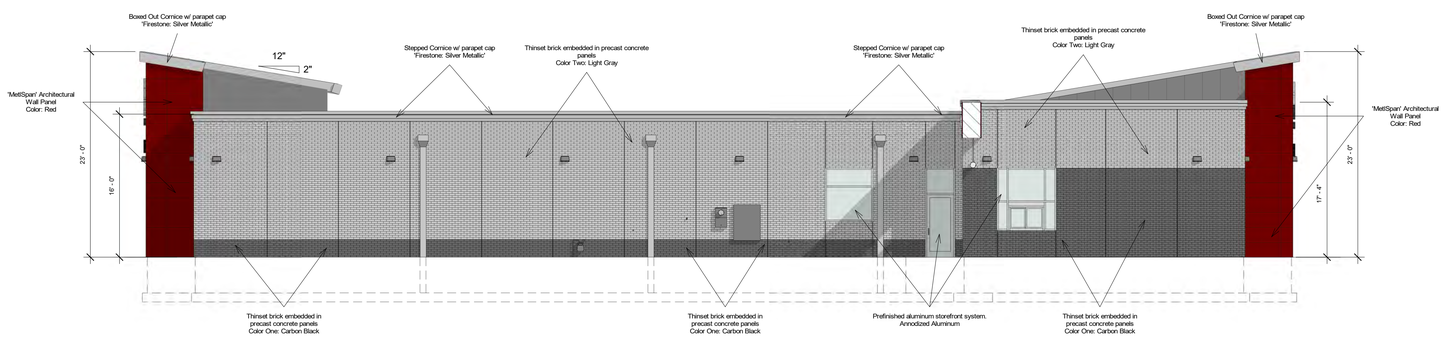


Material Breakdown this Elevation

Total Square Footage this Elevation:	2178 SF
Square Footage of Glazing this Elevation:	440 SF (20%)
Square Footage of Metal Panel this Elevation:	307 SF (14%)
Square Footage of Embedded Brick this Elevation:	1429 SF (66%)

1 West Elevation

Scale: 1/8" = 1'-0"



Material Breakdown this Elevation

Total Square Footage this Elevation:	2067 SF
Square Footage of Glazing this Elevation:	112 SF (6%)
Square Footage of Metal Panels this Elevation:	232 SF (11%)
Square Footage of Embedded Brick this Elevation:	1722 SF (83%)

2 East Elevation

Scale: 1/8" = 1'-0"

Material Breakdown (Combined):

Total Square Footage of Exterior Wall:	**6741 SF**
Total Square Footage of Glazing:	**910 SF (13%)**
Total Square Footage of HM Door:	**47 SF (1%)**
Total Square Footage of Metal Panel:	**1851 SF (28%)**
Total Square Footage of Embedded Brick:	**3930 SF (58%)**

VanDeWalle Architects LLC
ARCHITECTURE • PLANNING • INTERIORS
Sioux Falls, S.D. 605·339·4411

Midwest Fidelity Partners

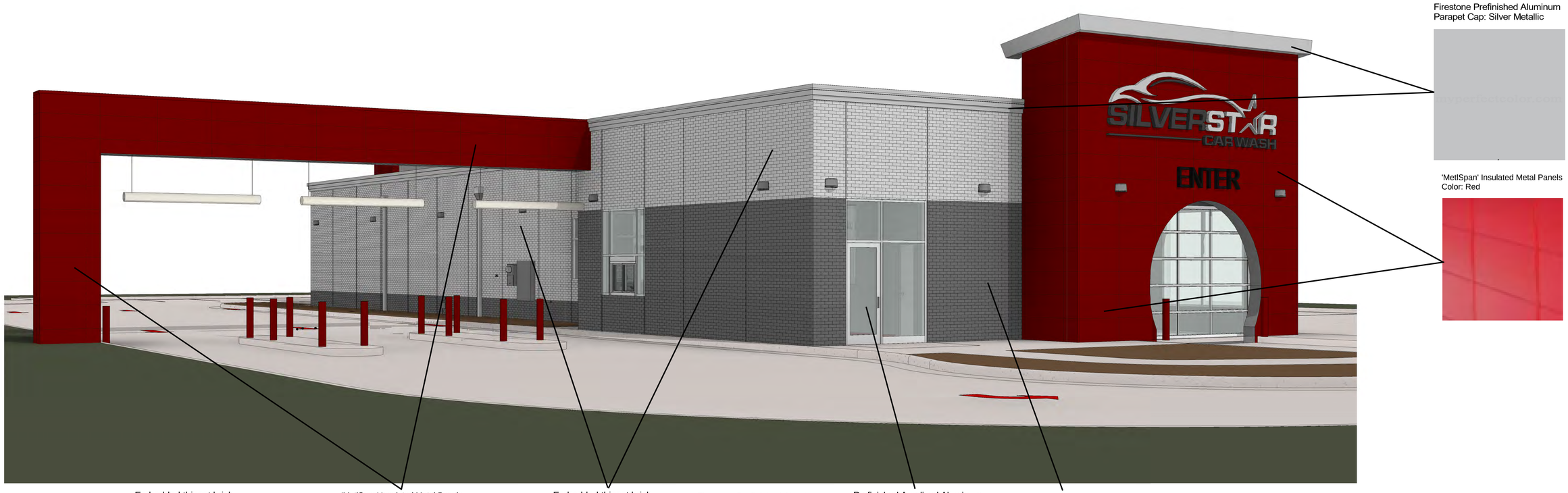
Silverstar Car Wash - WI1
-
New Berlin, WI

Exterior Elevations

COPYRIGHT 2022 ©
This plan is copyrighted and shall be used only for the building shown and is not to be copied or reproduced without written permission from VanDeWalle Architects LLC.

		Revisions	
Project No.	22065		**A3.0**
Date:	12.19.22		
Drawn By:	TJS		

12/19/2022 9:07:32 AM J:\Jobs\22065 Silverstar New Berlin WI1\Revit Model & Consultants Drawings\Architectural (R_)\22065 Silverstar WI1-128 3 LANE-12 PRECAST-ALT EXT 3.rvt

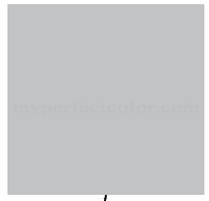


Embedded thinset brick, light gray

'MetlSpan' Insulated Metal Panels
Color: Red

Embedded thinset brick, light gray

Firestone Prefinished Aluminum
Parapet Cap: Silver Metallic



Prefinished Anodized Aluminum
Storefront w/ Clear Glazing

Embedded thinset brick, carbon black or equal

VanDeWalle Architects LLC
ARCHITECTURE • PLANNING • INTERIORS
Sioux Falls, S.D. 605•339•4411

MFP Midwest Fidelity Partners

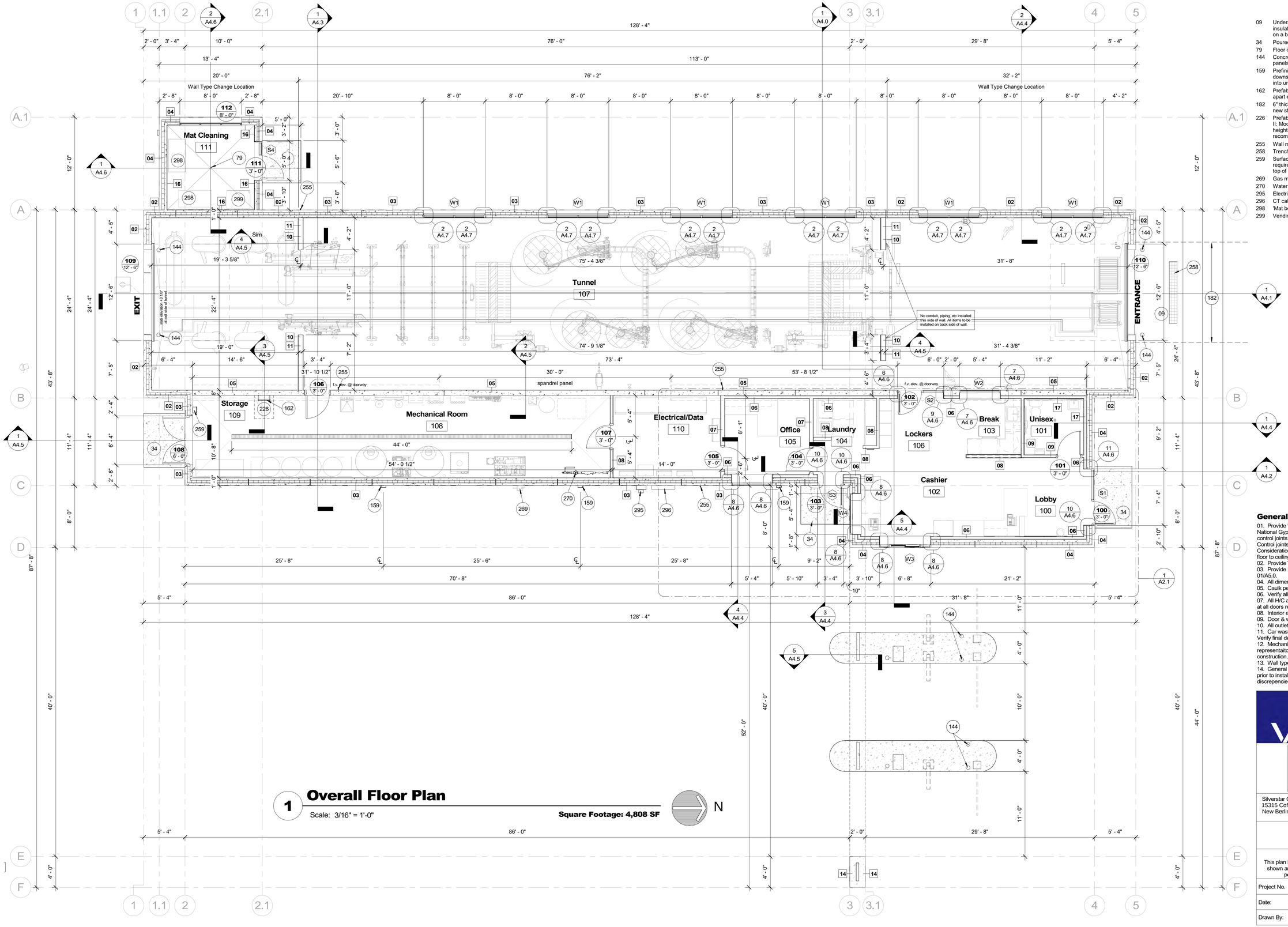
Silverstar Car Wash - WI1
-
New Berlin, WI

Exterior Elevations-Materials

COPYRIGHT 2022 ©
This plan is copyrighted and shall be used only for the building shown and is not to be copied or reproduced without written permission from Van De Walle Architects LLC.

		Revisions	
Project No.	22065		**SD1**
Date:	12.19.22		
Drawn By:	TJS		

12/19/2022 9:08:34 AM J:\Jobs\22065 Silverstar New Berlin WI1\Revit Model & Consultants Drawings\Architectural (R_)\22065 Silverstar WI1-128 3 LANE-12 PRECAST-ALT EXT 3.rvt



1 Overall Floor Plan

Scale: 3/16" = 1'-0"

Square Footage: 4,808 SF

N

Plan Notes

09 Underslab heating system. Heat piping laid into 2" rigid insulation w/ integral clips. (R-10 min.) Rigid insulation to sit on a bed of compacted granular fill. Verify extent w/ civil.
34 Poured concrete stoop. See struct.
79 Floor drain. See mech.
144 Concrete filled steel pipe bollard. Paint red to match precast panels.
159 Prefinished aluminum scupper & rectangular open faced downspout w/ silver metallic finish. Downspout 6" min. Tie into underground collection system. See civil plans.
162 Prefabricated 18"w roof access ladder. Rung spaced 12" apart evenly. Install per mfr. standard recommendations.
182 6" thick poured concrete slab w/ heat system over min. 12" new structural fill. Verify w/ mechanical & civil plans.
226 Prefabricated roof access hatch ('Babcock Davis' Personnel II: Model: BRHUG36x30S1T or approved equal). Guard height to be 42" above roof surface. Install per mfr. recommendations. Coordinate location w/ precast mfr.
255 Wall mounted water spigot. See mechanical plans.
258 Trench drain. See mechanical plans.
259 Surface mounted fire extinguisher cabinet. Verify requirements w/ fire marshall. Install cabinet @ 48" AFF to top of cabinet per ADA requirements.
269 Gas meter. See mechanical.
270 Water meter. See mechanical.
295 Electrical meter. See electrical plans.
296 CT cabinet. See electrical plans.
298 'Mat beater' equipment. See mechanical & electrical plans.
299 Vending machine, NIC

General Notes:

01. Provide 'W' style GWB control joints as recommended by the National Gypsum Association. This includes, but is not limited to, control joints @ 30'-0" o.c. max. in long corridors/wall expanses. Control joints @ door jambs, extending from door head to ceiling. Consideration should also be given to locating control joints from floor to ceiling at either edge of large window openings.
02. Provide W.R. GWB in all bathroom areas.
03. Provide 2x blocking at all grab bar locations. See detail 01/A5.0.
04. All dimensions are from face of stud, U.N.O.
05. Caulk perimeter of all sinks, toilets, & backsplashes.
06. Verify all appliance dimensions prior to ordering cabinets.
07. All H/C accessible areas shall have ADA compliant thresholds at all doors requiring thresholds.
08. Interior elevations are on sheet A5.0.
09. Door & window schedules/elevations are on sheet A5.1.
10. All outlets, switches, and plate covers to be white.
11. Car wash equipment shown for representation purposes only. Verify final design w/ supplier prior to construction.
12. Mechanical, Electrical, & Structural items shown for representaiton purposes only. Verify final design per trade prior to construction.
13. Wall types are shown on sheet A2.4.
14. General contractor to coordinate & verify all vendor equipment prior to installation, typical. Contact Architect with any layout discrepencies.

VanDeWalle Architects LLC
ARCHITECTURE • PLANNING • INTERIORS
Sioux Falls, S.D. 605-339-4411

MFP Midwest Fidelity Partners

Silverstar Car Wash
15315 Coffee Road
New Berlin, WI

Floor Plan

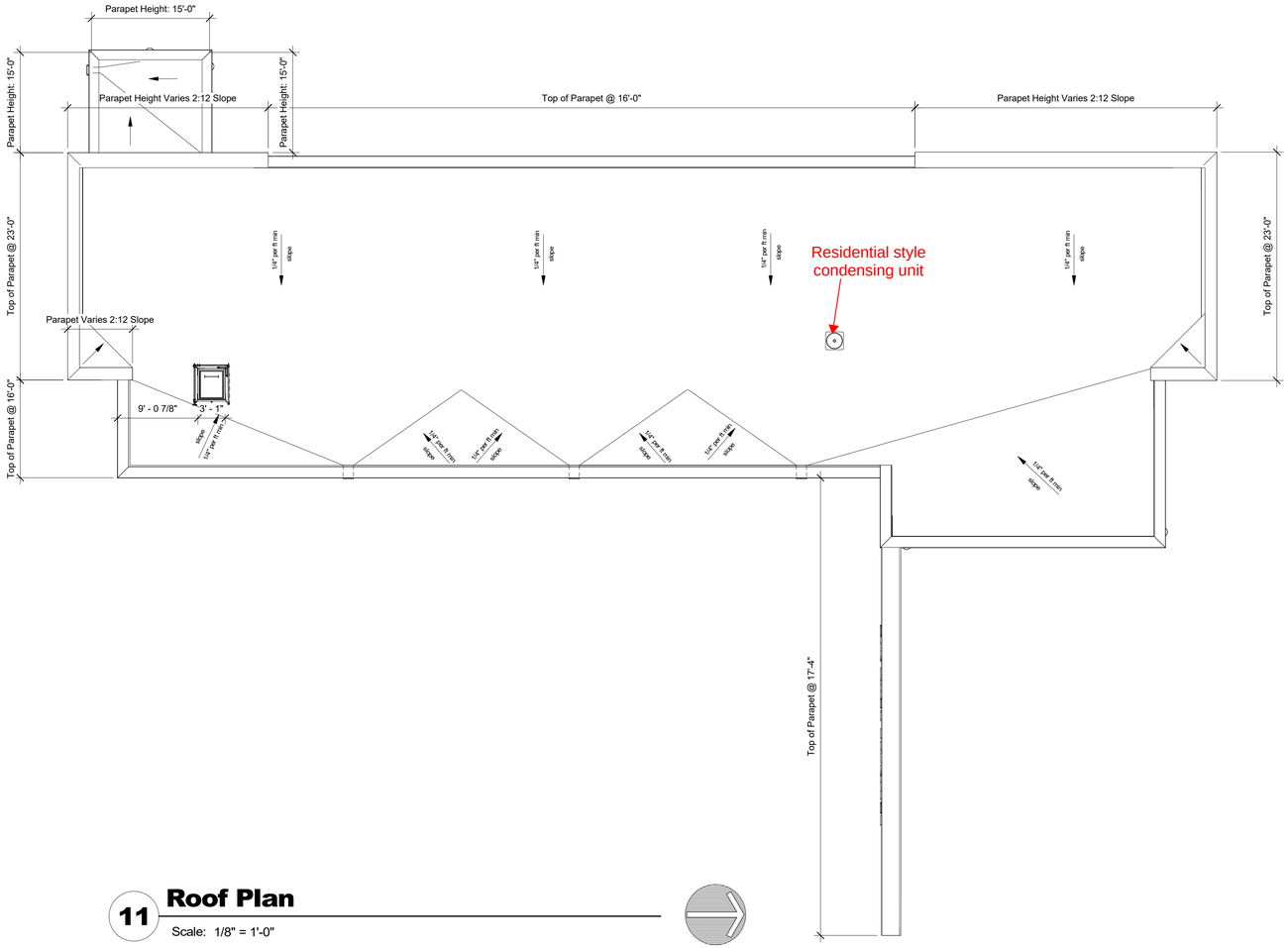
COPYRIGHT 2022 ©
This plan is copyrighted and shall be used only for the building shown and is not to be copied or reproduced without written permission from VanDeWalle Architects LLC.

Project No.	
Date:	09.20.22
Drawn By:	TJS

Revisions

A2.0

J:\Jobs\22010 Silverstar Carwash Inver Grove MN\1Revit Model & Consultants Drawings\Architectural (R_)\22010 Silverstar MN-1-128 3 LANE-12 PRECAST.rvt
9/20/2022 10:18:32 AM



11 Roof Plan

Scale: 1/8" = 1'-0"

PRELIMINARY

NOT FOR CONSTRUCTION

VanDeWalle Architects LLC
ARCHITECTURE • PLANNING • INTERIORS
Sioux Falls, S.D. 605·339·4411

MFP Midwest Fidelity Partners

Silverstar Car Wash - WI1
-
New Berlin, WI

Enlarged Office Floor Plan & Roof Plan

COPYRIGHT 2022 ©
This plan is copyrighted and shall be used only for the building shown and is not to be copied or reproduced without written permission from VanDeWalle Architects LLC.

		Revisions	
Project No.	22065		**A2.1**
Date:	12.19.22		
Drawn By:	TJS		

3/1/2023 8:33:37 AM J:\Jobs\22065 Silverstar New Berlin WI1\Revit Model & Consultants Drawings\Architectural (R__)\22065 Silverstar WI1-128 3 LANE-12 PRECAST-ALT EXT 3.rvt

STAFF REPORT
EXECUTIVE SUMMARY

APPLICANT/PROJECT:	**Robert Gosse with The Sigma Group / SilverStar Carwash**
LOCATION:	**15300 W. National Ave. (Tax Key #: 1207997002)**
REQUEST:	**Use, Site and Architecture approval for a SilverStar Carwash located at 15300 W. National Ave (Tax Key #: 1207997002).**
D.R.C. RECOMMENDATION:	**Recommend approval of the Use, Site and Architecture approval for SilverStar Carwash located at 15300 W. National Avenue, subject to the application, plans on file and the following conditions:**

1. **PLANNING**
   a. **All plans shall be updated to match the revised site plan dated February 15, 2023. This plan proposes one ingress & egress to Coffee Road and eliminates the right turn only egress to Coffee Road, removes the bypass lane on the west side of the property and reduces the overall amount of pavement. Note, the sidewalk shall be 8' where it abuts parking and 5' where it accesses Coffee Road. Review pavement marking in Coffee Road with Engineering staff.**
   b. **Architecture Review Committee approval required.**
   c. **Plan of Operation**
      i. **Applicant shall adhere to the submitted plan of operation.**
      ii. **The applicant is proposing to construct a 4,800 square foot car wash.**
      iii. **Employee and customer parking shall be contained on site.**
      iv. **Plans shall meet the B-2, General Retail Sales and Service District, requirements in Section 275-34B(2).**
   d. **Dumpsters and roof, ground and wall mechanical equipment shall be properly screened from the street and public view in accordance with Section 275-56G of the Zoning Code. Please call that information out on plans and submit line of sight drawings.**
   e. **All permanent and temporary signs require a Sign Application to be filed prior to installation.**
   f. **Parking along the base setback line (along Coffee Road) is required to be 10'.**
   g. **Approval of the Landscaping Plan and payment of all installation and maintenance sureties is required. Landscape plans shall meet all the requirements of Article VIII Section 275-53 through 275-56 of the City's Zoning Code.**
      i. **Applicant shall provide a final list of trees to be removed. Removal of significant trees shall be replaced per the tree replacement schedule outlined in §275-54B(6) of the Zoning Code.**

ii. **Final landscape fee will be calculated upon final submittal.**

h. **The CSM shall be recorded prior to the issuance of this Zoning Permit.**

i. **Per Zoning Code Section 275-60E, Noise a sound study was requested. The plan will be kept on file with DCD. Should any substantiated complaints be filed with Code Compliance, DCD staff will investigate the issues and follow up with SilverStar Car Wash. Additional noise mitigation measures may need to be taken.**

iii. **Based on the communication from the Aerodry representative, there are noise attenuating methods that could be applied to the equipment.**

iv. **The Sound study dated February 2023 shows that the sound level at the property line will be around 60 dBA. As compared to the Sound pressure levels chart, this would be equivalent to "Normal Speech". The Sound Study is availabe in the Department of Community Development.**

2. INSPECTION

i. **Building plans shall be signed and stamped by a licensed architect or professional engineer per the Wisconsin Enrolled Commercial Building Code (SPS.361.31).**

ii. **Building plans shall be approved by the State of Wisconsin Department of Commerce Safety and Buildings Division (SPS.361.60). State letter required with permit application**

iii. **Apply and obtain appropriate building, HVAC, electric, plumbing and fire permits from the City of New Berlin Building Inspection Division.**

iv. **Plumbing: State review is required. All work must follow the State Approved Plumbing Plans.**

v. **The building shall be fully accessible from the parking lot to the interior elements SPS.363.1101 and ICC/ANSI A117.1)**

vi. **Demolition: Separate 'Wrecking' permit required for the demolition of the house and garage.**

3. ENGINEERING

a. **The proposed pavement marking modifications to Coffee Road shall be shown on the plans. See picture in letter.**

i. **Some additional pavement marking modifications may be needed to establish the left turn lane into the development. Contact the Engineering department to discuss with the pavement marking contractor at the time of restriping.**

b. **The proposed driveway approach detail will be a modified version of D.H. Figure No. 12 with the sidewalk along the back of curb and the driveway approach section just south of that.**

c. **Coffee Road was resurfaced in 2022. The City has a road cut moratorium policy for a period of 5 years after resurfacing. DCD will determine if a road cut will be allowed for the water, sewer, and storm sewer connections. If so, the applicant shall provide an additional $5,000 dollar surety deposit for a holding period of 4 years, at which time this would be the end of the moratorium. If DCD staff deems no surety is necessary or required it may release said surety.**

d. **Verify that the water and sanitary laterals to the existing home were removed at the main.**

e. **Per the TIA, work with Waukesha County to optimize the signal timing at the National Ave. and Coffee Road intersection.**

f. **Provide a copy of the revised signal timing.**

g. **The lighting shall conform to the New Berlin City Center guidelines. Submit a light pole detail for approval before ordering.**

h. **The lighting schedule does not match the cut Sheets and the Cut sheets need to be project specific. Resubmitting the example that was sent for use of the designer does not provide assurances that the correct lights will be supplied.**

i. **The City does allow a 23-foot pole as well.**

j. **Provide cut sheets for the wall units as well.**

4. **STORM WATER UTILITY**
   a. **WDNR NOI required.**
   b. **Total areas in the model are not equal. What and where is the "unconnected" area that is modeled? It is not part of the existing model.**
   c. **MMSD Chapter 13 Green Infrastructure required for greater than 5,000 sf but less than 0.5 acres impervious. Site is increasing impervious by over a 0.5 acre therefore MMSD Chapter 13 requirements shall be met. Update modeling to meet MMSD Chapter 13 requirements, recommend volumetric procedure. SWMP Maintenance Agreement is required; City of New Berlin boilerplate agreement is available online.**
   d. **A grading recert is required per DH Section VI.D.7. If stormwater management devices are to be used as sediment control devices for erosion control during construction, a certification is required prior to Building Permit and a recertification is required prior to Occupancy.**

5. **FIRE DEPARTMENT**
   a. **Key for Knox box is required.**
   b. **Provide fire extinguishers every 75' of travel.**
   c. **Maintain egress/emergency lighting throughout.**
   d. **Maintain 24' fire access width for fire lane.**

6. **SEWER UTILITY**
   a. **Maintain a 5 feet minimum horizontal clearance from any water main and sanitary sewer pipes and structures.**
   b. **Maintain 18 inches vertical clearance when crossing any pipes and structures.**
   c. **Please call Jim Hart at New Berlin Water Utility with Questions.**
   d. **If a conflict occurs, conduits will be removed at the owner's expense.**

<u>DETAILS IN ATTACHED STAFF REPORT</u>

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
PLAN COMMISSION STAFF REPORT

Meeting of March 6, 2023

Robert Gosse – The Sigma Group / SilverStar Car Wash
15300 W. National Ave.

DATE STAFF REPORT REVISED: February 22, 2023

APPLICANT / OWNER(S): Robert Gosse with the Sigma Group on behalf of SilverStar Carwash

REQUEST/DESCRIPTION OF PROJECT: Use, Site and Architecture approval for a SilverStar Carwash located at 15300 W. National Ave (Tax Key #: 1207.997.002).

DATE OF APPLICATION / DATE FILED WITH CITY CLERK: 9/30/2022; several sets of revised plans submitted.

DATE OF COMPLETENESS DETERMINATION: 10/5/2022
Application Check List Enclosed: No

PRE-APPLICATION CONFERENCE HELD: Yes
(Date(s) of Meeting(s): 8/31/2022 & 10/11/2022, along with numerous phone calls and email exchanges.

CONCEPTUAL PLAN: N/A

SIZE OF DEVELOPMENT / PARCEL(S):
Current Parcel: 2.88 acres (After CSM is recorded, the car wash will be located on Lot 2 of the CSM, 1.598 Acres)
Current Building: ~4,800 square feet

CURRENT ZONING: B-2 PUD (General Retails Sales and Service District and Planned Unit Development)

CURRENT LAND USE: Retail Commercial Sales (Dollar Tree)

PROPOSED ZONING: N/A

PROPOSED LAND USE: A carwash on Lot 2.

PROPOSED LOT SIZE (S): (After the CSM under File Application #: 2202311 is recorded).
Lot 1: 1.295 Acres
Lot 2: 1.598 Acres

PROPOSED DENSITY: N/A

ADJACENT ZONING AND LAND USE:

North:	Zoning: R-5, Medium-Density Single-Family Residential	Land Use: Single-Family Residential
South:	Zoning: B-1, Shopping Center District	Land Use: Commercial
East:	Zoning: B-2, General Retail Sales and Service District	Land Use: Commercial
West:	Zoning: B-2, General Retail Sales and Service District	Land Use: Commercial

CONFORMANCE WITH THE 2020 COMPREHENSIVE PLAN AND MUNICIPAL CODE: Yes

Chapter 15: Neighborhood "E": National Avenue East Corridor: Yes, this submittal meets the intent of this Chapter.

Planning Context / Vision / Development Policies:

Vision:

- *National Avenue should be an exemplary model of a suburban commercial corridor. Vehicular and pedestrian traffic should coexist in a safe and efficient manner through prominent pedestrian facilities and managed vehicular access. Utilities should be relocated or placed underground whenever feasible to de-emphasize their visual prominence. Public streetscape improvements should be coordinated with private landscaping and site design. Commercial development will be focused at nodes along the corridor to minimize the "strip" appearance. The City Center will be dominant commercial presence, with Civic Center being a major civic space that is a source of pride to New Berlin residents. Pedestrian access between the National Avenue corridor and nearby residential areas should be increased.*

Development Policies:

- *With the recent approval of parcel combinations and PUD for Blair's True Value, the large geographic area (approximately 25 acres in size) between Coffee Road, National Avenue and Moorland Road should be recognized as an opportunity for a larger, mixed use commercial/retail/office development. Encourage parcel assemblages and cross-access/shared-access points to create a more cohesive development area.*

Land use:

- *Future Land Use Map: City Center Mixed Use Commercial*

ZONING CODE (Chapter 275): Yes, this request meets the requirements of Section 275-34B(2) of the Zoning Code. See Findings Section for more information.

CITY CENTER DESIGN GUIDELINES: This property is within the area where City Center Design Guidelines apply. However, this property is not within the City Center Planned Unit Development (PUD). The Guidelines were revised and approved by the Plan Commission on 5/2/11. Future development on this site will be required to follow these guidelines. The following guidelines will be applied to this site for the carwash project:

1. *Parking areas screened with landscaping.*
2. *At the time of future development, redevelopment or expansions on this site, the applicant is required to follow the National Avenue Lighting Plan, which requires decorative lighting.*

EAST NATIONAL AVENUE CORRIDOR REGULATING PLAN: This property is within the East National Avenue Corridor Regulating Plan that was created by UWM students and adopted as an Appendix to the Comprehensive Plan. Recommendations in the plan included the following:

- Recommendation to allow smaller lot sizes for PUD's in order to encourage infill development and flexible site design. *The code updates in 2013 reduced the PUD minimum lot size to 1 acre for parcels along National Avenue, Greenfield Avenue and Moorland Road.*
- The City of New Berlin should continue to implement the National Avenue decorative street lighting. *The applicant will be required to install the National Avenue Lighting Plan decorative lights along National Avenue in front of this property at the time of any future development, redevelopment or expansions.*
- Consolidation of parcels to accommodate development needs. *The plan identifies the three existing parcels associated with this PUD that are proposed to be combined as parcels that*

were recommended for consolidation within the plan. This will create a larger land area to work with.

- The form and scale of the buildings within the "Coffee Road Node" should mimic that of the City Center development. *Future development of this site will be required to follow the "City Center Design Guidelines."*

Ordinance # 2552 Blair's True Value Planned Unit Development: Yes, the approved CSM meets this request.

SUBDIVISION CODE (CHAPTER 235): Yes

PUBLIC HEARING REQUIRED: No

CONCEPTUAL USE / SITE /ARCHITECTURAL REVIEW:
Use Approval Required: Yes
Site Plan Required: Yes
Architectural Review Required: Yes – the item was reviewed at the February 6th, Architectural Review Committee meeting and tabled. Item will be reviewed again at the March 6th meeting.

PROPOSED ARCHITECTURE: The building is proposed to be constructed of thinset brick embedded in precast concrete panels. Two brick colors will be used. Building will be accented with a red metal panel.

UNIQUE SITE CHARACTERISTICS:
Environmental Corridor: No
Wetland on Property: No
Conservancy Districts (C-1, C-2): No
NRCS Map Classification: Not inventoried.
Floodplain: No
Topography / Geologic: This site slopes to the east.

BIKE & PEDESTRIAN FACILITIES: Sidepaths exist in the area.

PARK & OPEN SPACE PLAN: No improvements Identified.

NATURAL RESOURCES PROTECTION:
Limits of Disturbance (LOD): Yes, a tree inventory has been prepared.
Woodland, Tree, and Vegetation Protection: Yes, a tree inventory has been prepared.
Wildlife Management Plan: N/A

ENVIRONMENTAL IMPACT: Yes, a tree inventory has been prepared.

STORM WATER MANAGEMENT / DRAINAGE PLAN: Applicant is required to adhere to all City of New Berlin Codes, Ordinances and Plans regarding storm water conveyance and maintenance as identified by the Department of Community Development. A report has been prepared and submitted with this project.

SANITARY SEWER PROVISION:
Within Current Sewer Service Area: Yes
Sewershed Capacity Available: Yes
Adequate Linkage: Yes
On-site system required: No

WATER USAGE CALCULATION: Will be reviewed at the time of building permit.

TRAFFIC IMPACT: A Traffic Impact Analysis (TIA) dated October 31, 2022 was prepared by Traffic Analysis & Design, Inc. and has been submitted. The full study is available in the Department of Community Development.

Per the applicant's submitted report, *"The National Avenue and Coffee Road intersection is expected to operate safely and efficiently with the full buildout of the proposed SilverStar Car Wash without any geometric or signal phasing changes. The proposed driveway connects Coffee Road and National Avenue (via a shared access with Dollar Tree) is expected to operate safely and efficiently with the identified recommended modifications if properly designed and constructed."*

Recommended Modifications:

- Coordinating with Waukesha County on optimizing signal time at National Avenue & Coffee Road/Michelle Witmer Memorial Drive.
- Remark the center median on Coffee Road.
- Provide shared access from the SliverStar Car Wash site to the Dollar Tree drive at National Avenue.

SCHOOL DISTRICT IMPACT: N/A

PREVIOUS ACTION:

10/5/2015	Plan Commission approved a 1-Lot CSM that combined three parcels into one.
10/5/2015	PUD Ordinance#: 2552 was approved by the Plan Commission.
10/13/2015	PUD Ordinance #: 2552 was approved by the Common Council.
10/13/2015	Common Council approved a 1-Lot CSM that combined three parcels into one.
4/22/2021	A Zoning Permit was issued for the Dollar Tree. Minor architectural changes included
11/14/2022	Plan Commission tabled this CSM request.
12/5/2022	Plan Commission tabled the Use Approval request for the SilverStar Carwash.

CONSISTENCY WITH PREVIOUS ACTION: Yes

FINDINGS:

1. The applicant is proposing to split the lot to create two lots.
2. Both lots meet the minimum lot area (40,000 sq. ft.) and lot width (200') requirements of the B-2 Zoning District.
3. Both lots are required to meet the minimum green space requirements of 25%.
4. PUD Ordinance #: 2552 Blair's True Value Planned Unit Development is on file.
5. Neighborhood Meeting was held on December 20, 2022.
    a. The site has been rotated 180 degrees so the exit (loudest part) is facing south instead of towards the neighborhood. This will allow for additional noise buffering if needed along with better stacking opportunities for the drive-thru from Coffee Road.
    b. The mechanical room is to be located on the south and east end of the building. This is the furthest away that it can be and still be located inside.
    c. Revised plan allows for better stacking on site and likely more people will use the National Avenue entrance.
    d. They are proposing to use 15' light poles rather than 23' tall poles. This will help to minimize

the perception of a “hot spot” that taller lights can create at times.

e. The developer will be installing dedicated turn / bypass lanes along Coffee Road to enter 153th Street and the car wash.

f. The County will be closing the median break on Moorland Road at San Mateo Drive. This will eliminate “cut-throughs.”

g. Additional baffles and insulation can be added if sound issues arise.

h. Lights will be turned off after closing. Security packs will stay on 24/7.

i. The cross access between the carwash and the Dollar Store is not a requirement, but the connection will reduce the traffic impact on Coffee Road by almost half.

j. They will work with Waukesha County to re-time the signals at Coffee and National to optimize traffic flow through the intersection.

6. A neighboring resident requested that the Mayor forward an email with a letter dated January 4, 2023 and a petition that was circulated in the neighborhood. The Mayor forwarded these emails to the Plan Commission on February 10, 2023. Note, since this is not a rezoning request the petition is for informational purposes only.

7. Based on Zoning Code Table 275-57-1, the required number of parking spaces is 7 (1 space per 200 sq. ft. of waiting area (1); 2 spaces per service bay (2) and one space per employee of the largest shift (4). The code also requires that a full service automotive land use is to have a minimum of 7 stacked spaces. The applicant meets these requirements. They also have spaces available for patrons to vacuum their vehicles. 20 total parking spaces provided.

8. The applicants have submitted the SilverStar Car Wash Noise Impact Study dated February 2023 and it is available in DCD. The study was prepared to analyze the expected noise impacts of the car wash on land uses adjacent and nearby the proposed New Berlin location. The impacts were assessed based on noise monitoring data collected at a similar facility in Sioux Falls, South Dakota.

   a. The Sioux Falls study used monitoring data collected at the facility to define the sound levels generated by the significate noise sources at the car wash as inputs to the iNoise environmental noise impact model. The iNoise model then calculated expected noise levels around New Berlin car wash perimeter.

   b. Conclusions of the study:

      i. The predicted noise impacts of the proposed car wash are within the acceptable levels for daytime (usually 7:00 AM to 7:00 PM (for New Berlin)) noise impacts contained in typical local noise ordinances.

      ii. The predicted noise impacts on the residential areas nearest the facility will contributed very little to the maximum daytime noise levels already experienced in these areas due to traffic noise from local roadways.

      iii. *There will be a significant impact near the property line bordering the commercial area immediately north of the facility (Dollar Tree). However, the predicted noise impacts are within the acceptable levels for noise impacts on commercial areas contained in typical local noise ordinances in the USA.*

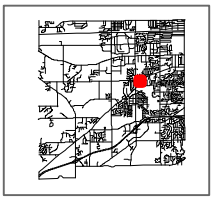
D.R.C. RECOMMENDATION: Recommend approval of the Use, Site and Architecture approval for SilverStar Carwash located at 15300 W. National Avenue, subject to the application, plans on file and the following conditions: **See Executive Summary.**

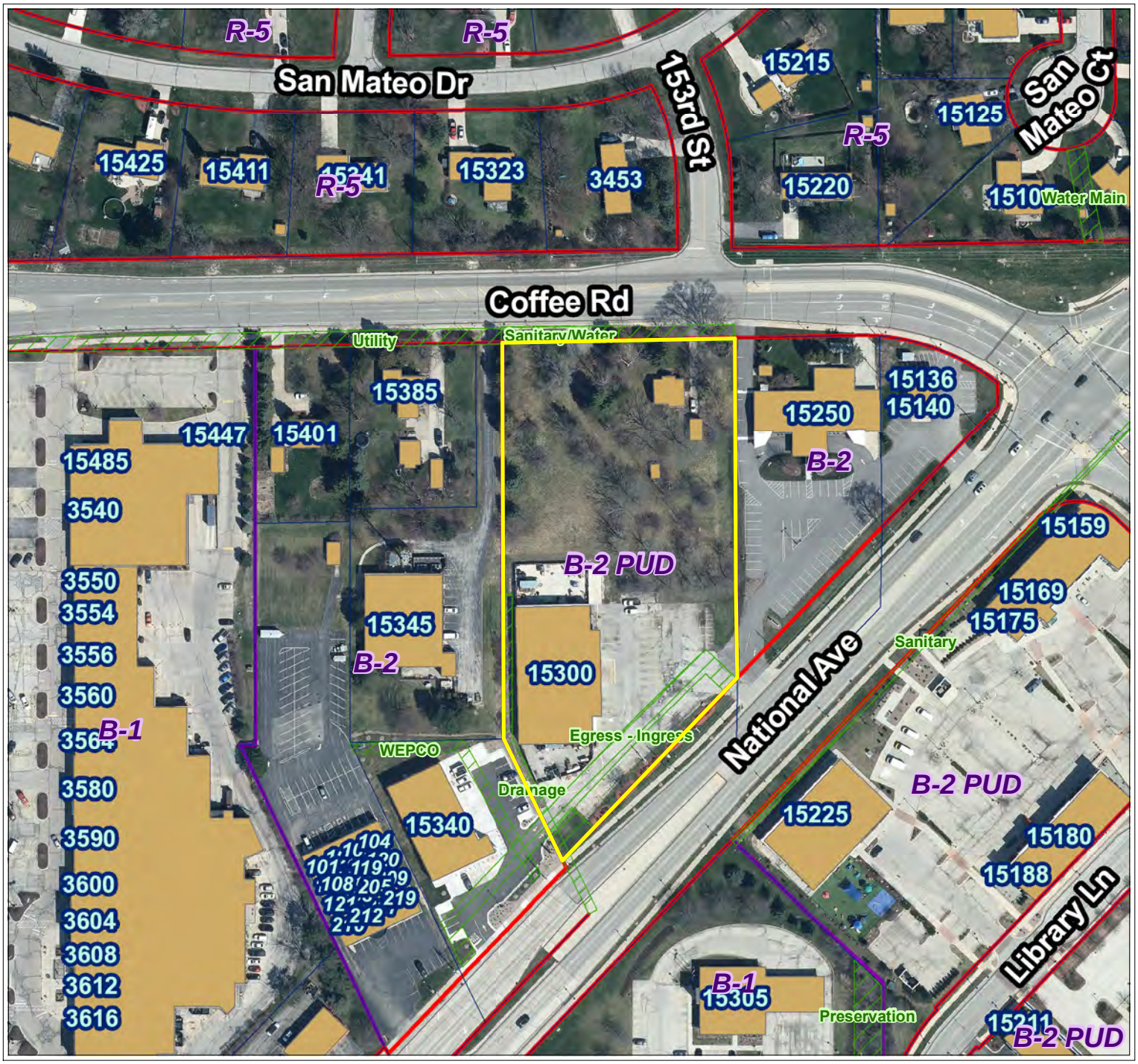
Attachments:
Location Map
Plan of Operation
Plans and Elevations

On File and Available for Review in the Department of Community Development (DCD)
Traffic Impact Analysis (TIA)
SilverStar Car Wash Noise Impact Study dated February 2023

City of New Berlin
Community Development

UA-2202320
Silverstar Carwash
15300 W. National Avenue





Legend

- Parcels
- Road Right-of-Way
- **Floodplain DFIRM (FEMA 2014)**
- **Flood Zone**
  - FEMA DFIRM - Zone A
  - FEMA DFIRM - Zone AE
  - FEMA DFIRM - 0.2% Annual Chance
- Zoning Boundaries
- **Zoning Wetland Registration**
- **Wetland Registration Type**
  - Registered Wetland
  - Outside Wetland
- **Environmental Corridor**
- **Corridor Type**
  - Isolated Natural Resource Area
  - Primary Environmental Corridor
  - Secondary Environmental Corridor
- **Sewer Service Area (MMSD)**
- **Sewershed**
  - Current
  - Ultimate

City of New Berlin
Department of Community Development
3805 S Casper Dr.
New Berlin WI 53151
(262) 797-2445
www.newberlin.org

N

0 60 120 Feet

The information and depictions herein have been produced using data available through photogrametric means by the City of New Berlin. The informations and depictions herein are for informational purposes and the City of New Berlin specifically disclaims accuracy in this reproduction and specifically admonishes and advises that any and all depiction, measurements, distances depicted herein and as to which specific or precise accuracy is required should be determined by procurement of certified maps, surveys, plats, Flood Insurance Studies, or other official means.

Map Printed: 11/22/2022 3:24:40 PM

Midwest Fidelity Partners®

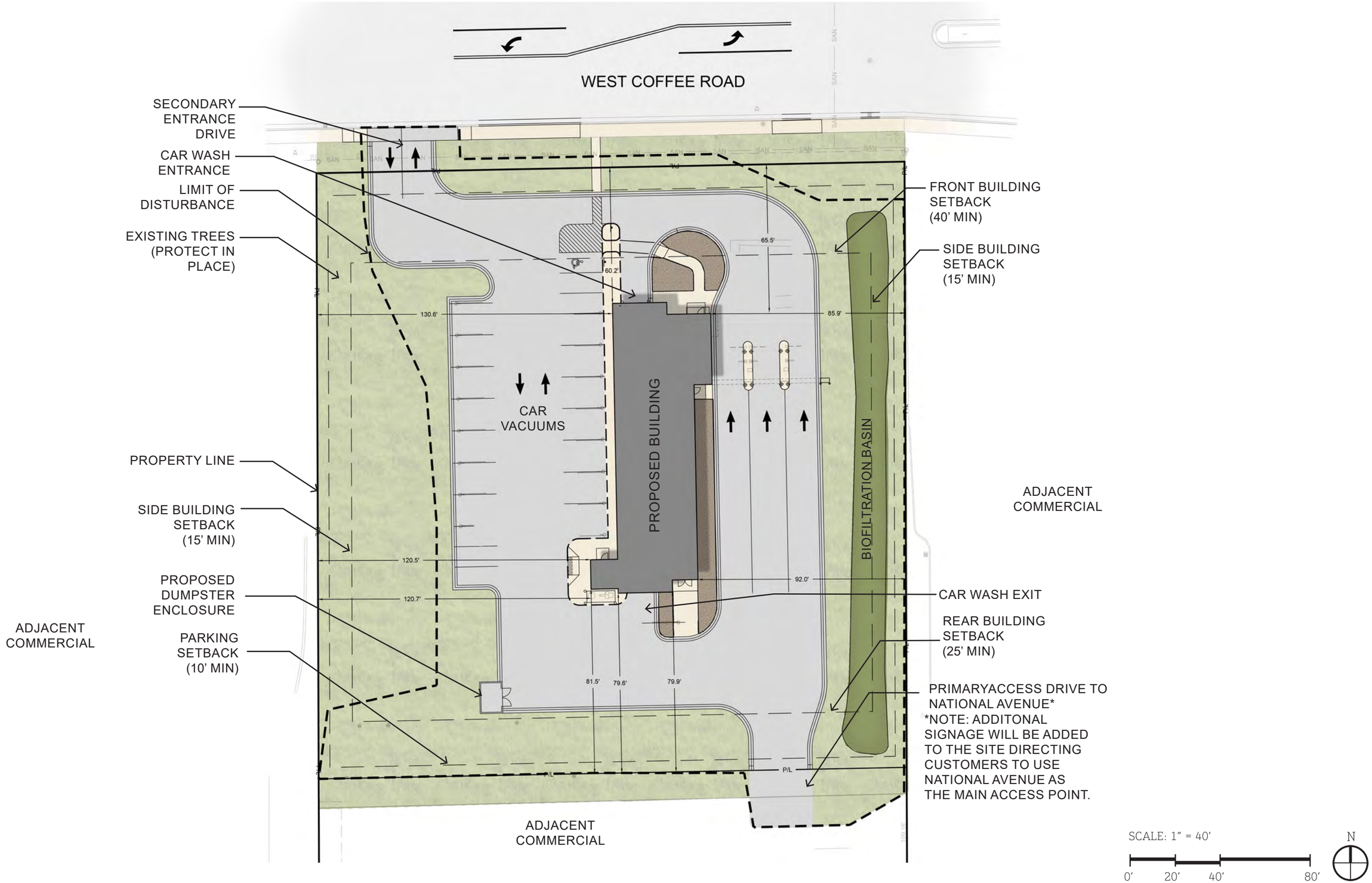
September 27, 2022

Subject: Proposed Carwash Plan of Operation
15300 National Avenue/ 15300 Coffee Road, New Berlin Wisconsin

City of New Berlin Representatives:

Please find this letter describing the proposed project at the above address which is coming before the Plan Commission for approval.

1. Land Use: The proposed use of the property is develop an automated car wash facility that will include 3 pay lanes, 20 vacuum bays and employee parking.
2. Site Activities: Activities to occur on site will be customer circulation through the carwash while in their vehicle, pre-wash prep by employees at the entrance to the wash tunnel, customer use of the vacuum bays and general maintenance and upkeep of the overall site by employees.
3. Hours of Operation: The facility will operate during the hours of 8 am – 8 pm April -September and 8 am to 7 pm October -March.
4. Employees: Generally each facility employs 3-5 employees per shift depending on peak/non-peak times.
5. Types of Vehicles: Vehicles associated with the carwash range small cars for full size pickups.
6. Vehicle Trips: Once fully operational and established, the facility will average 30-40 cars per hour
7. Expected start of construction is March of 2023 with completion by March of 2024.
8. There are no hazards or adverse impacts requiring any mitigation as a part of this project.
9. Noise: Based on studies of similar facilities the following is what can be expected.
   - Entrance to the Tunnel: The proposed entrance to the tunnel is approximately 80’ from the south property line (adjacent to Dollar Tree). At this distance the expected approximate sound level would be 66dBA.
   - Exit of the Tunnel: The proposed exit of the tunnel is approximately 60’ from the north property line (adjacent to Coffee Road right of way). At a distance of 50’, the expected approximate sound level would be 68dBA.
10. Off-Street Parking: 1 stall/ 200 sf required. 26 stalls are provided.



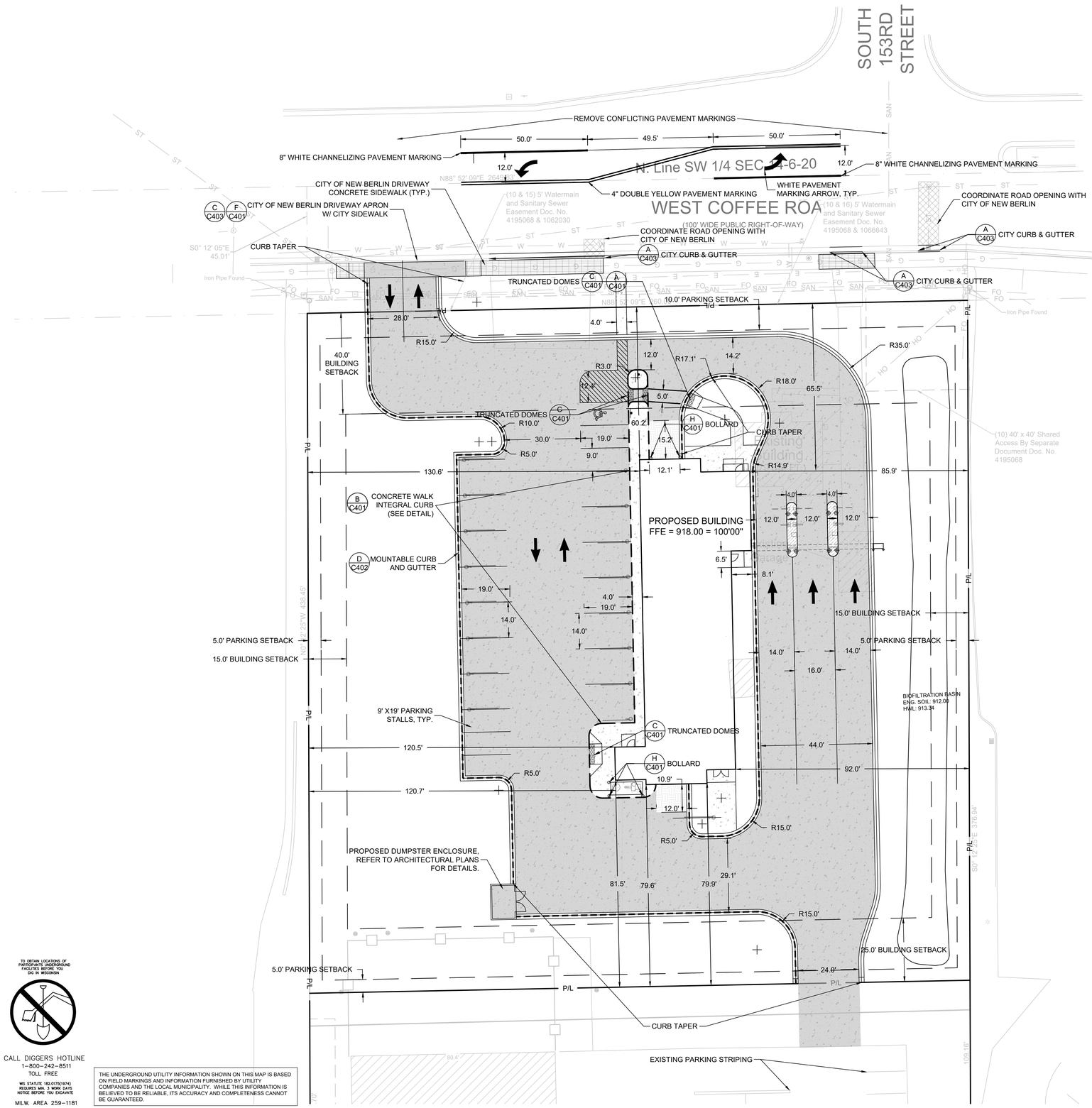
SILVERSTAR CAR WASH - SITE PLAN RENDERING

MIDWEST FIDELITY PARTNERS, LLC.

FEBRUARY 15, 2023

THE SIGMA GROUP
Single Source. Sound Solutions.

HOUSTON engineering, inc.



SITE INFORMATION			
SITE AREA	76200	1.749 AC	
SITE DISTURBED AREA	71072	1.632 AC	
EXISTING IMPERVIOUS AREA	6150	0.141 AC	8.1 %
PROPOSED IMPERVIOUS AREA	44867	1.030 AC	58.9 %
TOTAL PARKING SPACES	6		
ADA PARKING SPACES	1		

LEGEND:

- B C401 — 5" THICK CONCRETE WALK
- B C403 — CITY CONCRETE WALK
- D C401 — CONCRETE PAVEMENT
- F C402 — 8" HEATED CONCRETE PAVEMENT
- G C402 — 12" MEDIAN ISLAND CONCRETE PAVEMENT
- MATCH EXISTING CITY OF NEW BERLIN PAVEMENT SECTION
- # C402 — CURB & GUTTER (ACCEPT)
- # C402 — CURB & GUTTER (REJECT)

GENERAL NOTES:

1. THE UNDERGROUND UTILITY INFORMATION SHOWN ON THIS DRAWING IS BASED ON FIELD LOCATIONS AND/OR RECORDS FURNISHED BY MUNICIPALITIES AND UTILITY COMPANIES. THE LOCATION AND ACCURACY OF WHICH CANNOT BE GUARANTEED. THERE MAY BE ADDITIONAL UNDERGROUND UTILITY INSTALLATIONS WITHIN THE PROJECT AREA THAT ARE NOT SHOWN.
2. VERIFY ACTUAL LOCATIONS AND INVERTS IN THE FIELD. ANY POTENTIAL ERRORS, OMISSIONS, OR DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER PRIOR TO PROCEEDING WITH CONSTRUCTION.
3. WORK TO BE COMPLETED IS INDICATED IN BOLD TYPE LINES AND EXISTING CONDITIONS ARE INDICATED BY LIGHT TYPE LINES.
4. ELECTRONIC CIVIL FILES ARE AVAILABLE UPON WRITTEN REQUEST. DO NOT USE ELECTRONIC CIVIL FILES TO LAYOUT FOUNDATIONS, COLUMN LINES, LIGHT POLES, OR OTHER NON CIVIL SITE WORK. REFER TO ARCHITECTURAL DRAWINGS FOR DIMENSIONS OF BUILDING AND ARCHITECTURAL FEATURES.
5. DIMENSIONS ARE FROM FACE OF CURB OR EDGE OF PAVEMENT.
6. WORK WITHIN THE PUBLIC RIGHT OF WAY, INCLUDING BUT NOT LIMITED TO DRIVEWAY OPENINGS, SIDEWALK AND RAMPS, PAVING, AND CURB AND GUTTER SHALL BE COMPLETED PER MUNICIPAL AND/OR COUNTY REQUIREMENTS AND STANDARDS.
7. EARTHWORK SHALL BE IN ACCORDANCE WITH GEOTECHNICAL ENGINEER'S RECOMMENDATIONS.

TO OBTAIN LOCATIONS OF PARTICIPANTS' UNDERGROUND FACILITIES BEFORE YOU DIG IN WISCONSIN

CALL DIGGERS HOTLINE
1-800-242-8511
TOLL FREE
WIS STATUTE 182.0175(1974) REQUIRES MIN. 3 WORK DAYS NOTICE BEFORE YOU EXCAVATE
MILW. AREA 259-1181

THE UNDERGROUND UTILITY INFORMATION SHOWN ON THIS MAP IS BASED ON FIELD MARKINGS AND INFORMATION FURNISHED BY UTILITY COMPANIES AND THE LOCAL MUNICIPALITY. WHILE THIS INFORMATION IS BELIEVED TO BE RELIABLE, ITS ACCURACY AND COMPLETENESS CANNOT BE GUARANTEED.

THE SIGMA GROUP
Single Source. Sound Solutions.
www.thesigmagroup.com
1300 West Canal Street
Milwaukee, WI 53233
Phone: 414-643-4200
Fax: 414-643-4210

GRAPHIC SCALE
0 20 40

SILVERSTAR CARWASH
15300 W. NATIONAL AVE.
NEW BERLIN, WI

SITE DIMENSION

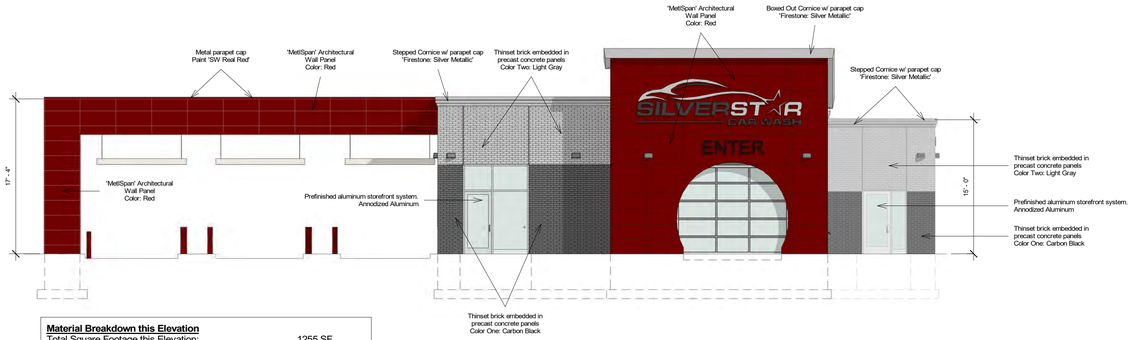
PRELIMINARY NOT FOR CONSTRUCTION

CITY SUBMITTAL 12-22-2022

SCALE:	1"=20'
PROJECT NO:	21259
DESIGN DATE:	----
PLOT DATE:	2/16/2023
DRAWN BY:	CPT
CHECKED BY:	CTC
APPROVED BY:	CTC
SHEET NO:	C100

16:49 HJOHN C100 21259

I:\Houston Engineering\21259 - New Berlin Car Wash\060 CAD\030_Production Sheets\100_Civil\C100 SITE DIMENSION.dwg

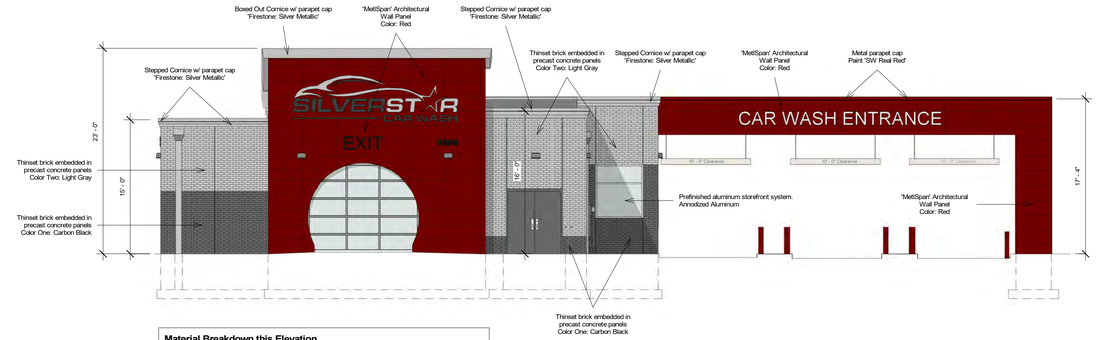


Material Breakdown this Elevation

Total Square Footage this Elevation:	1255 SF
Square Footage of Glazing this Elevation:	218 SF (17%)
Square Footage of Metal Panels this Elevation:	655 SF (52%)
Square Footage of Embedded Brick this Elevation:	382 SF (31%)

4 North Elevation

Scale: 1/8" = 1'-0"

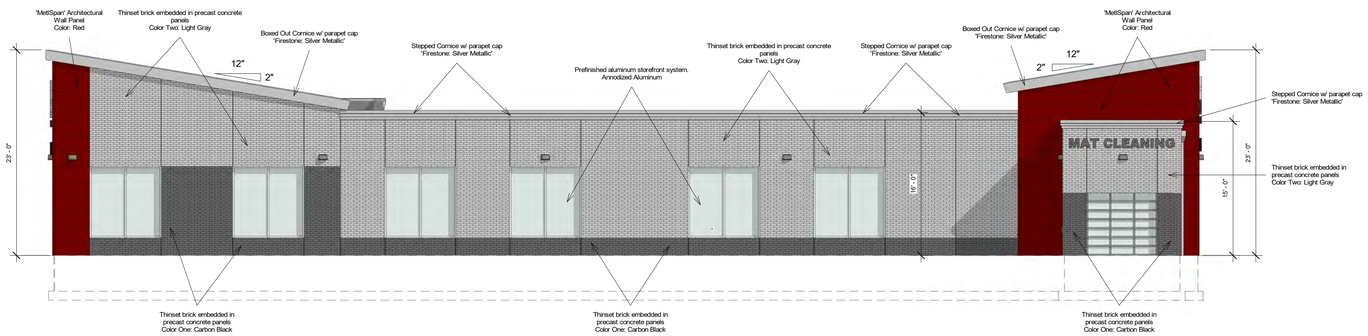


Material Breakdown this Elevation

Total Square Footage this Elevation:	1241 SF
Square Footage of Glazing this Elevation:	140 SF (11%)
Square Footage of HM Door this Elevation:	47 SF (4%)
Square Footage of Metal Panel this Elevation:	657 SF (53%)
Square Footage of Embedded Brick this Elevation:	397 SF (32%)

3 South Elevation

Scale: 1/8" = 1'-0"

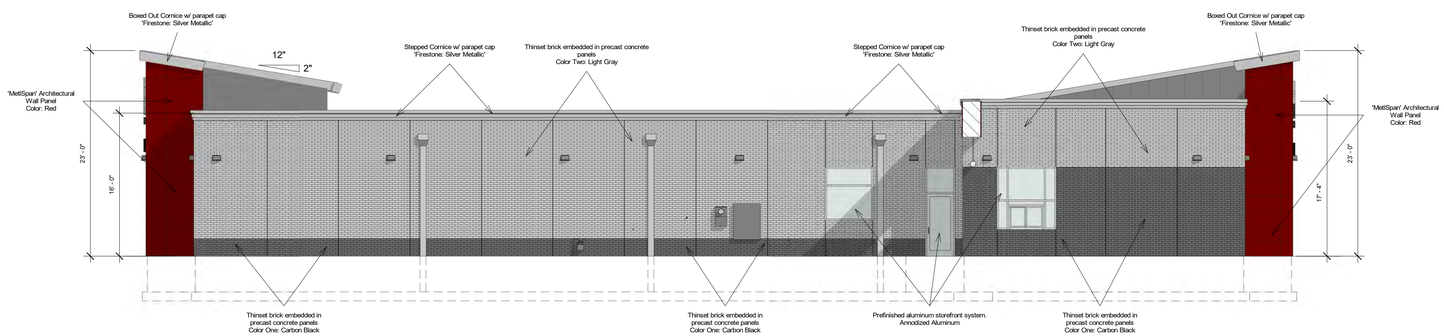


Material Breakdown this Elevation

Total Square Footage this Elevation:	2178 SF
Square Footage of Glazing this Elevation:	440 SF (20%)
Square Footage of Metal Panel this Elevation:	307 SF (14%)
Square Footage of Embedded Brick this Elevation:	1429 SF (66%)

1 West Elevation

Scale: 1/8" = 1'-0"



Material Breakdown this Elevation

Total Square Footage this Elevation:	2067 SF
Square Footage of Glazing this Elevation:	112 SF (6%)
Square Footage of Metal Panels this Elevation:	232 SF (11%)
Square Footage of Embedded Brick this Elevation:	1722 SF (83%)

2 East Elevation

Scale: 1/8" = 1'-0"

Material Breakdown (Combined):

Total Square Footage of Exterior Wall:	**6741 SF**
Total Square Footage of Glazing:	**910 SF (13%)**
Total Square Footage of HM Door:	**47 SF (1%)**
Total Square Footage of Metal Panel:	**1851 SF (28%)**
Total Square Footage of Embedded Brick:	**3930 SF (58%)**

VanDeWalle Architects LLC
ARCHITECTURE • PLANNING • INTERIORS
Sioux Falls, S.D. 605·339·4411

Midwest Fidelity Partners

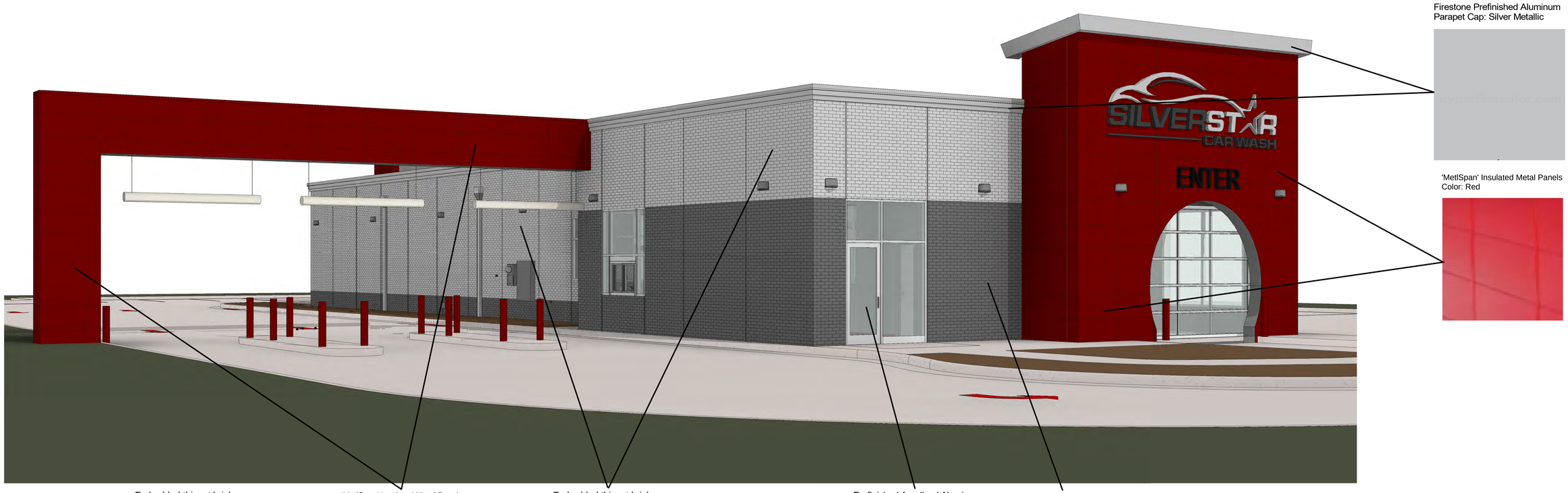
Silverstar Car Wash - WI1
-
New Berlin, WI

Exterior Elevations

COPYRIGHT 2022 ©
This plan is copyrighted and shall be used only for the building shown and is not to be copied or reproduced without written permission from VanDeWalle Architects LLC.

		Revisions	
Project No.	22065		**A3.0**
Date:	12.19.22		
Drawn By:	TJS		

12/19/2022 9:07:32 AM J:\Jobs\22065 Silverstar New Berlin WI1\Revit Model & Consultants Drawings\Architectural (R_)\22065 Silverstar WI1-128 3 LANE-12 PRECAST-ALT EXT 3.rvt



VanDeWalle Architects LLC
ARCHITECTURE • PLANNING • INTERIORS
Sioux Falls, S.D. 605•339•4411

MFP Midwest Fidelity Partners

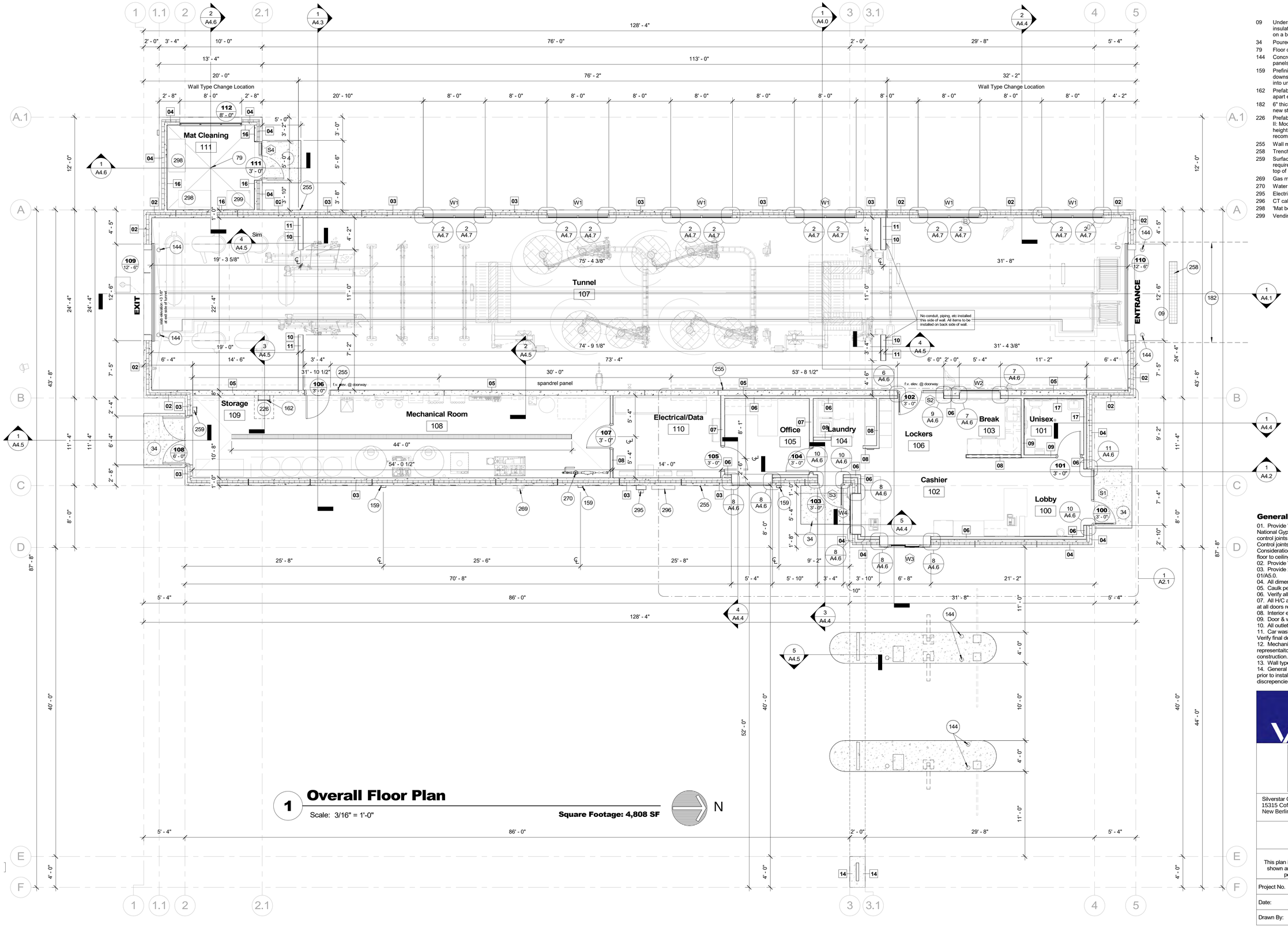
Silverstar Car Wash - WI1
-
New Berlin, WI

Exterior Elevations-Materials

COPYRIGHT 2022 ©
This plan is copyrighted and shall be used only for the building shown and is not to be copied or reproduced without written permission from Van De Walle Architects LLC.

		Revisions	
Project No.	22065		**SD1**
Date:	12.19.22		
Drawn By:	TJS		

12/19/2022 9:08:34 AM J:\Jobs\22065 Silverstar New Berlin WI1\Revit Model & Consultants Drawings\Architectural (R_)\22065 Silverstar WI1-128 3 LANE-12 PRECAST-ALT EXT 3.rvt



1 Overall Floor Plan

Scale: 3/16" = 1'-0"

Square Footage: 4,808 SF

Plan Notes

09 Underslab heating system. Heat piping laid into 2" rigid insulation w/ integral clips. (R-10 min.) Rigid insulation to sit on a bed of compacted granular fill. Verify extent w/ civil.
34 Poured concrete stoop. See struct.
79 Floor drain. See mech.
144 Concrete filled steel pipe bollard. Paint red to match precast panels.
159 Prefinished aluminum scupper & rectangular open faced downspout w/ silver metallic finish. Downspout 6" min. Tie into underground collection system. See civil plans.
162 Prefabricated 18"w roof access ladder. Rung spaced 12" apart evenly. Install per mfr. standard recommendations.
182 6" thick poured concrete slab w/ heat system over min. 12" new structural fill. Verify w/ mechanical & civil plans.
226 Prefabricated roof access hatch ('Babcock Davis' Personnel II: Model: BRHUG36x30S1T or approved equal). Guard height to be 42" above roof surface. Install per mfr. recommendations. Coordinate location w/ precast mfr.
255 Wall mounted water spigot. See mechanical plans.
258 Trench drain. See mechanical plans.
259 Surface mounted fire extinguisher cabinet. Verify requirements w/ fire marshall. Install cabinet @ 48" AFF to top of cabinet per ADA requirements.
269 Gas meter. See mechanical.
270 Water meter. See mechanical.
295 Electrical meter. See electrical plans.
296 CT cabinet. See electrical plans.
298 'Mat beater' equipment. See mechanical & electrical plans.
299 Vending machine, NIC

General Notes:

01. Provide 'W' style GWB control joints as recommended by the National Gypsum Association. This includes, but is not limited to, control joints @ 30'-0" o.c. max. in long corridors/wall expanses. Control joints @ door jambs, extending from door head to ceiling. Consideration should also be given to locating control joints from floor to ceiling at either edge of large window openings.
02. Provide W.R. GWB in all bathroom areas.
03. Provide 2x blocking at all grab bar locations. See detail 01/A5.0.
04. All dimensions are from face of stud, U.N.O.
05. Caulk perimeter of all sinks, toilets, & backsplashes.
06. Verify all appliance dimensions prior to ordering cabinets.
07. All H/C accessible areas shall have ADA compliant thresholds at all doors requiring thresholds.
08. Interior elevations are on sheet A5.0.
09. Door & window schedules/elevations are on sheet A5.1.
10. All outlets, switches, and plate covers to be white.
11. Car wash equipment shown for representation purposes only. Verify final design w/ supplier prior to construction.
12. Mechanical, Electrical, & Structural items shown for representaiton purposes only. Verify final design per trade prior to construction.
13. Wall types are shown on sheet A2.4.
14. General contractor to coordinate & verify all vendor equipment prior to installation, typical. Contact Architect with any layout discrepencies.

VanDeWalle Architects LLC
ARCHITECTURE • PLANNING • INTERIORS
Sioux Falls, S.D. 605-339-4411

MFP Midwest Fidelity Partners

Silverstar Car Wash
15315 Coffee Road
New Berlin, WI

Floor Plan

COPYRIGHT 2022 ©
This plan is copyrighted and shall be used only for the building shown and is not to be copied or reproduced without written permission from VanDeWalle Architects LLC.

Project No.	
Date:	09.20.22
Drawn By:	TJS

Revisions

A2.0

9/20/2022 10:18:32 AM J:\Jobs\22010 Silverstar Carwash Inver Grove MN\1Revit Model & Consultants Drawings\Architectural (R_)\22010 Silverstar MN-1-128 3 LANE-12 PRECAST.rvt

STAFF REPORT
EXECUTIVE SUMMARY

APPLICANT/PROJECT:	**Department of Community Development / City of New Berlin Park and Open Space Plan Update (as part of the 2030 Comprehensive Plan)**
LOCATION:	**Citywide**
REQUEST:	**Plan Commission approval of updates to the Park and Open Space Plan.**
D.R.C. RECOMMENDATION:	**Plan Commission adoption of Resolution # 23-4 approving the updates to the Park and Open Space Plan within the 2030 Comprehensive Plan and forward to the Common Council for their review and approval by Ordinance.**

Background:

1. **The 2017 Park and Open Space Plan was adopted in June of 2017 and staff has determined that it is necessary to complete a review of the document. Basic "housekeeping" items are also needed to reflect City progress and growth since June of 2017.**
2. **The Plan Commission will act as the Steering Committee for this update and will provide feedback regarding the proposed updates. Per the State Statutes, a public hearing will be held before the Plan Commission in order to present the proposed amendments. The Common Council will adopt the final changes via ordinance.**
3. **The purpose of the Park and Open Space Plan is to guide the preservation, acquisition and development of land for the use of park and recreational activities for the community. By developing short term plans and long term goals, the City can identify and accommodate necessary changes to the parks, open space and outdoor recreational needs for the residents of New Berlin. The City also maintains eligibility to apply for and receive federal and state aids to be used for the acquisition and development of additional outdoor recreational and open space facilities.**
4. **Beginning in January of 2022, DCD staff began meeting internally with various departments that utilize the plan (Parks, Buildings & Grounds, Recreation, and Planning) to review and suggest updates to the Park and Open Space Plan.**

Next Steps:

1.	**March 6, 2023**	**Plan Commission adopt a Resolution approving the 2023 Park and Open Space Plan and forward recommendation to the Common Council.**
2.	**March 14, 2023**	**Common Council adopt an Ordinance approving the 2023 Park and Open Space Plan.**

Previous Action:

06/05/2017	**Plan Commission Adoption of the 2017 Park and Open Space Plan by Resolution # 17-01**
06/13/2017	**Common Council Adoption of the 2017 Park and Open Space Plan by Ordinance # 2587**
03/07/2022	**Plan Commission reviewed and discussed the Park and Open Space Plan Updates.**
11/14/2022	**Memo to Plan Commission about accomplishments since the 2017 Plan adoption.**
12/13/2022	**Common Council set the Public Hearing date for February 6, 2023.**
01/09/2023	**Memo to Plan Commission about upcoming Staff Office Hours.**
02/06/2023	**Plan Commission Public Hearing.**

Attachments:

Resolution # 23-4

Park and Open Space Plan

STATE OF WISCONSIN **WAUKESHA COUNTY** **CITY OF NEW BERLIN**

RESOLUTION NO. 23-4

A Resolution adopting the amendment to the City's Comprehensive Plan to incorporate the 2023 Park and Open Space Plan.

WHEREAS, Section 66.1001(4) of the Wisconsin Statutes, establish the required procedure for a local government to adopt a comprehensive plan and Section 66.1001(2) identifies the required elements of a comprehensive plan; and

WHEREAS, The planning process was open to the public and numerous efforts were made to assure the broadest participation to establish the goals and elements considered for and contained within the comprehensive plan in compliance with Section 66.1001 of the Wisconsin State Statutes, and

WHEREAS, The City of New Berlin prepared and followed a Public Participation Plan that was adopted by the Plan Commission on September 10, 2007 and the Common Council on September 25, 2007 a copy of which is on file in the Department of Community Development; and

WHEREAS, the City of New Berlin Plan Commission has the authority to adopt the Comprehensive Plan and associated amendments as necessary by resolution and also to recommend that the Common Council adopt the comprehensive plan and associated amendments as necessary via Ordinance; and

WHEREAS, the City of New Berlin prepared the "City of New Berlin Comprehensive Plan", which is on file with the Department of Community Development and available on the City's website www.newberlin.org, containing all maps and other descriptive materials, to be the comprehensive plan for the City; and

WHEREAS, that the Plan Commission of the City of New Berlin adopted the City of New Berlin 2020 Comprehensive Plan as the City's comprehensive plan via Resolution No. 09-02 on November 2nd, 2009, and the Common Council adopted the Comprehensive Plan via Ordinance # 2422 on December 8th, 2009; and has been amended from time to time; and

WHEREAS, development within the City should be monitored on an ongoing basis, and compared to the City goals and objectives outlined throughout the Plan to ensure that current policies are achieving the intended results. Comprehensive Plan Chapter 22, Implementation states, "*This Plan is intended to be changed and revised over time. The City's values, goals, and capabilities may change as New Berlin grows, and the Plan must be amended to reflect those changes."* This project includes an overall update to the City's Park and Open Space Plan.

WHEREAS, Department of Community Development Staff prepared amendments to the Park and Open Space Plan within the City's adopted Comprehensive Plan that are now completed and need to be incorporated into the City's adopted Comprehensive Plan; and

WHEREAS, it is necessary to incorporate the updated Park and Open Space Plan into the City's adopted Comprehensive Plan. A copy of the 2023 Park and Open Space Plan is attached as Exhibit A. Amendments to an adopted comprehensive plan pursuant to WI State Statute 66.1001 require a Class I notification along with a public hearing.

WHEREAS, the Plan Commission reviewed the proposed amendments on November 14, 2022, February 6, 2023 and March 6, 2023 and approved the amendments to the Park and Open Space Plan on March 6, 2023 following approximately one month of public comment from the date of the public notice, including two staff open office hours held on January 10, 2023 and January 24, 2023; and

WHEREAS, the City duly noticed a public hearing dedicated to the discussion of the proposed changes on the aforementioned comprehensive plan amendments and the Plan Commission held the public hearing on February 6, 2023.

WHEREAS, the Plan Commission of the City of New Berlin by a X-X vote of the Commissioners present and voting recorded in its official minutes, adopted Resolution # 23-4 recommended approval of this comprehensive plan amendment on March 6, 2023.

NOW, THEREFORE, BE IT RESOLVED, that the Plan Commission of the City of New Berlin hereby accepts and adopts the attached City of New Berlin Comprehensive Plan amendments including the 2023 Park and Open Space Plan, recognizing that the Common Council must also adopt the comprehensive plan amendments via Ordinance for it to become effective; and

BE IT FURTHER RESOLVED that the Plan Commission does hereby recommend that the Common Council adopt Ordinance # 2666, which will constitute its adoption of the comprehensive plan amendments.

Passed and adopted by the Plan Commission on this 6th day of March 2023.

APPROVED:

_____
David A. Ament, Mayor

Certified/Countersigned:

_____
Nikki Jones
Plan Commission Secretary

City of New Berlin

CITY OF NEW BERLIN

Park and Open Space Plan 2023-2028

This page intentionally left blank.

ACKNOWLEDGMENTS

COMMON COUNCIL

Dave Ament, Mayor
John Hopkins, District 1 Alderman
Chuck Garrigues, District 2 Alderman
Dave Maxey, District 3 Alderman
Ken Harenda, District 4 Alderman
Joe Stribl, District 5 Alderman
Dennis Horbinski, District 6 Alderman
Charlotte Kroupa, District 7 Alderwoman

PLAN COMMISSION

Dave Ament, Mayor
Ted Anderson, Citizen
Scott Biller, Citizen
Brian Felda, Citizen
Brian McGrath, Citizen
Robert Rafel, Parks, Buildings & Grounds Commission Representative
Joe Stribl, Alderman

PARKS, BUILDINGS & GROUNDS COMMISSION

Dave Ament, Mayor
Domenico Ferrante, Citizen
Dennis Horbinski, Alderman
Robert Rafel, Citizen
Eugene Wicihowski, Citizen

RECREATION COMMISSION

Ken Harenda, Alderman
Jordan Napoli, New Berlin School District Representative
David Oelschlaeger, Citizen
Jason Prei, Citizen
Kara Woida, Citizen

CITY STAFF

Ed Bartz, Parks Supervisor
Erin Cross, Recreation Supervisor
Kristen Hogan, Principal Planner
Nikki Jones, Deputy Director of Community Development
Greg Kessler, Director of Community Development

This page intentionally left blank.

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION AND PLANNING PROCESS 1

Plan Purpose
Summary of Past Plans and Achievements
Planning Process
Plan Commission/Public Meetings
Public Hearing
Approvals

CHAPTER 2: BACKGROUND INFORMATION 11

Planning Region
Land Use
Population Forecasts

CHAPTER 3: CLASSIFICATION AND SERVICE STANDARDS 15

Natural Resource Features
Recreational Parks and Facilities
Bicycle and Pedestrian Facilities

CHAPTER 4: GOALS AND OBJECTIVES 23

Overall system
Enhancements to existing parks
Acquisition, dedication and preservation of parkland & open space
Development of vacant parkland
Trails
Intergovernmental cooperation and partnerships
Planning and funding
Operations and maintenance

CHAPTER 5: INVENTORY 28

Natural Resource Features
Recreational Resources
Public Recreational Parks and Facilities
Private Recreational Parks and Facilities
Bicycle and Pedestrian Facilities

TABLE OF CONTENTS

CHAPTER 6: ANALYSIS 69

Service Area and Park Distribution
Parkland Acreage
Other Considerations

CHAPTER 7: RECOMMENDATION PLAN 76

Short-Term Improvements
Long-Term Improvements

CHAPTER 1:

INTRODUCTION AND PLANNING PROCESS

PLAN PURPOSE

The primary purpose of this plan is to guide the preservation, acquisition and development of land for the use of park and recreational activities for the community. By developing short-term plans and long-term goals, the City can identify and accommodate necessary changes to the parks, open space and outdoor recreational needs for the residents of New Berlin. This plan is also used to protect and enhance the City's natural and historical resources. By preparing this plan, the City maintains eligibility to apply for and receive federal and state aids to be used for the acquisition and development of additional outdoor recreational and open space facilities.

This plan sets forth a comprehensive strategy for City Staff to use in establishing an effective park and recreation system that meets the needs of the community. It recommends parameters, goals and actions to accomplish New Berlin's changing needs, both short-term and long-term. These recommendations relate to the preservation of existing environmental, natural and historical resources, the acquisition of land to be used for new parks and open space, and the development of new parks, environmental corridors and pedestrian routes. Although the recommendations are advisory, they provide a framework for City officials, administrators and management to formulate policies. The City of New Berlin's Park and Open Space Plan is also intended for use by external stakeholders to develop an understanding of their role as partners in the implementation of the Plan.

By updating the Park and Open Space Plan, the City is able to identify areas where achievements have been made in previous plans and use these as guidelines for developing future plans. The Park and Open Space Plan examines the current status of outdoor recreation and open space in New Berlin, identifies anticipated future open space and outdoor recreation needs and prioritizes the actions for plan implementation . Adoption of this plan by the Plan Commission and Common Council of New Berlin and endorsement by the Wisconsin Department of Natural Resources will maintain the City's eligibility to apply for and receive state and federal funds for parkland, open space and outdoor recreation purposes.

SUMMARY OF PAST PLANS AND ACHIEVEMENTS

Many of the recommendations from the 2017 Park and Open Space Plan have been implemented, as well as additional accomplishments that were not planned for at the time of the plans adoption.

ENHANCEMENTS TO EXISTING PARKS

Biwer Park
Basketball Court Replacement.
Playground Replacement.
Shelter Improvements.
Trail Improvements.

Buena Park
Ball diamond fencing improvements.
Parking Lot Replacement.
Structure Replacements.
Trail Improvements.

Calhoun Park
Ball diamond fencing improvements.
Electronic Scoreboard.
Shelter Improvements.

Hickory Grove Park
Playground removal.

High Grove Park
Shelter Improvements.

Historic Park
Barn improvements.
Garage addition and improvements.
Log cabin improvements.
Museum Renovations and Addition.
New Gazebo.
Old mailroom remodeled.
Parking Lot Replacement.

Lions Park
Basketball Court Replacement.
Parking Lot Replacements (east and north).
Playground Replacement (includes a wheelchair accessible swing).
Pond Shoreline Restoration.
Shelter Improvements.
Trail Improvements.

Malone Park
Lighting replacement for basketball, volleyball and tennis courts.

Park Signage
Park system signage replacement.

Regal Park
Basketball Court Replacement.

Valley View Park
Disc golf basket replacement.
Shelter Improvements.

Weatherstone Park
Shelter Improvements.

ACQUISTITION, DEDICTAION AND PRESERVATION

City Center Plaza
Acquired 1.36 acres of land for a Special Use Park.

New Berlin Activity and Recreation Center
Acquired 25,000 square feet of the former Walmart Building for a Special Use Park.

Quarry Park
Sale of park to residential developer for use as a single-family subdivision.

Section 35
Acquired 39.14 acres of land for a Community Park.

DEVELOPMENT OF VACANT PARKLAND

City Center Plaza
Creation of an urban park within the City Center that includes a seating area with pergola, concessions and restroom facility, and an ice rink.

New Berlin Activity and Recreation Center
Renovations and Addition.

Section 35
Development of a gravel parking lot, six soccer fields and associated stormwater management.

TRAILS

Section 35
Constructed a portion of the multi-use trail from Sunny Slope Road.
Constructed sidepaths along Sunny Slope Road.

PLANNING PROCESS

This plan references many of the recommendations that were made in the 2017 Park and Open Space Plan. Focusing on some of the public feedback that was received from the Park Survey in 2008, some of the main issues that were brought up were preservation of natural features, enhancements of existing parks, and creating linear parkways to connect people to sought-after destinations. The City has continued to preserve natural features and considers this a top priority in our park and open space system, as well as for any new development site. Much of the previous

plan focused on acquiring new parkland in order to meet service area standards. This proves to not be as important to community members as enhancing the City's existing parks. Some of the areas the City would like to address in park enhancements include, but are not limited to: providing play equipment that is safe and accessible to all users, creating opportunities for more passive use within the parks, and improving signage and way finding. The City would like to encourage use of these parks and other public facilities by providing safe and accessible pathways for all users.

The duties of the Department of Community Development as they relate to park planning and design include:

- Maintain an inventory and analyze the needs of the community by updating the City's Park and Open Space Plan, at a minimum every five years, and incorporate into the City's overall Comprehensive Plan
- Guide in the acquisition, dedication, preservation, and development of lands for public parks, facilities, and grounds in conjunction with the Plan Commission
- Coordinate the planning, engineering, design, development and coordination of contracts, with consultation from the Plan Commission, CDA and/or other appropriate boards and commissions, for all existing and proposed public parks, facilities and grounds in accordance with Common Council approvals as part of a CIP budget and/or plan
- Provide linkages between parks, open spaces, and public destinations

An ADA study of City facilities was completed in 2018. The results of the study noted that there are many deficiencies within the City Parks and Buildings, which can be broken down into the following categories:

- Approach & entry
- Play areas
- Sports activities & miscellaneous site features
- Golf facility
- Fishing pier
- Restrooms and shelters

The CVMIC Playground Safety Inspection Report is prepared by the City's Insurance carrier to identify deficiencies at the City's playgrounds. These deficiencies can be broken down in the following categories:

- Designated play surface
- Entanglement
- Entrapment
- Hardware
- Maintenance
- Painted surfaces
- Pinch, crush and shear points
- Sharp points, corners or edges
- Signage and/or labeling
- Slides
- Walks and paths

A Pavement Surface Evaluation Rating (PASER) is completed every other year to assess the quality of the road surfaces within the City. Roads and parking lots with a low PASER rating are given a higher priority in the replacement schedule. More information on the PASER system can be found in the Transportation Chapter of the Comprehensive Plan.

Projects selected for reconstruction are based upon the number of outstanding issues noted in the ADA study and CVMIC Playground Report, along with timing of other planned park projects.

PLAN COMMISSION/PUBLIC MEETINGS

On March 7, 2022 and November 14, 2022 the Park and Open Space Plan was presented to the Plan Commission. Questions and feedback were provided to direct the final revisions to the Plan. On November 14, 2022 a draft of the Plan was presented and approved to forward to the Common Council to set the public hearing date.

The general public and other stakeholders were provided with opportunities to become informed about the Park and Open Space Plan update and to understand the potential impacts and benefits of its findings and recommendations. City Staff held a series of staff open office hours to allow for interested residents and/or businesses to meet with DCD staff to review proposed updates, ask questions, provide comments or express concerns regarding the Park and Open Space Plan. These office hours were held at City Hall prior to the Common Council meetings on January 10, 2023 and January 24, 2023.

PUBLIC HEARING

The Park and Open Space Plan was presented at a public hearing before the Plan Commission meeting on February 6, 2023.

APPROVALS

The Park and Open Space Plan was approved by the Plan Commission via Resolution # 23-4 on March 6, 2023 and approved by the Common Council via Ordinance # 2666 on March 14, 2023.

CHAPTER 2:

BACKGROUND INFORMATION

PLANNING REGION

The City of New Berlin encompasses 36.9 square miles in the southeastern portion of Waukesha County. New Berlin is bounded by the City and Town of Brookfield to the north, the Cities of West Allis and Greenfield and the Village of Hales Corners to the east, the City of Muskego to the south, and the City of Waukesha and the Towns of Waukesha and Vernon to the west. New Berlin is roughly 15 miles southwest of Milwaukee and has convenient access to Interstate Highway 94, located to the north, and Interstate Highway 43, which passes through the City.

LAND USE

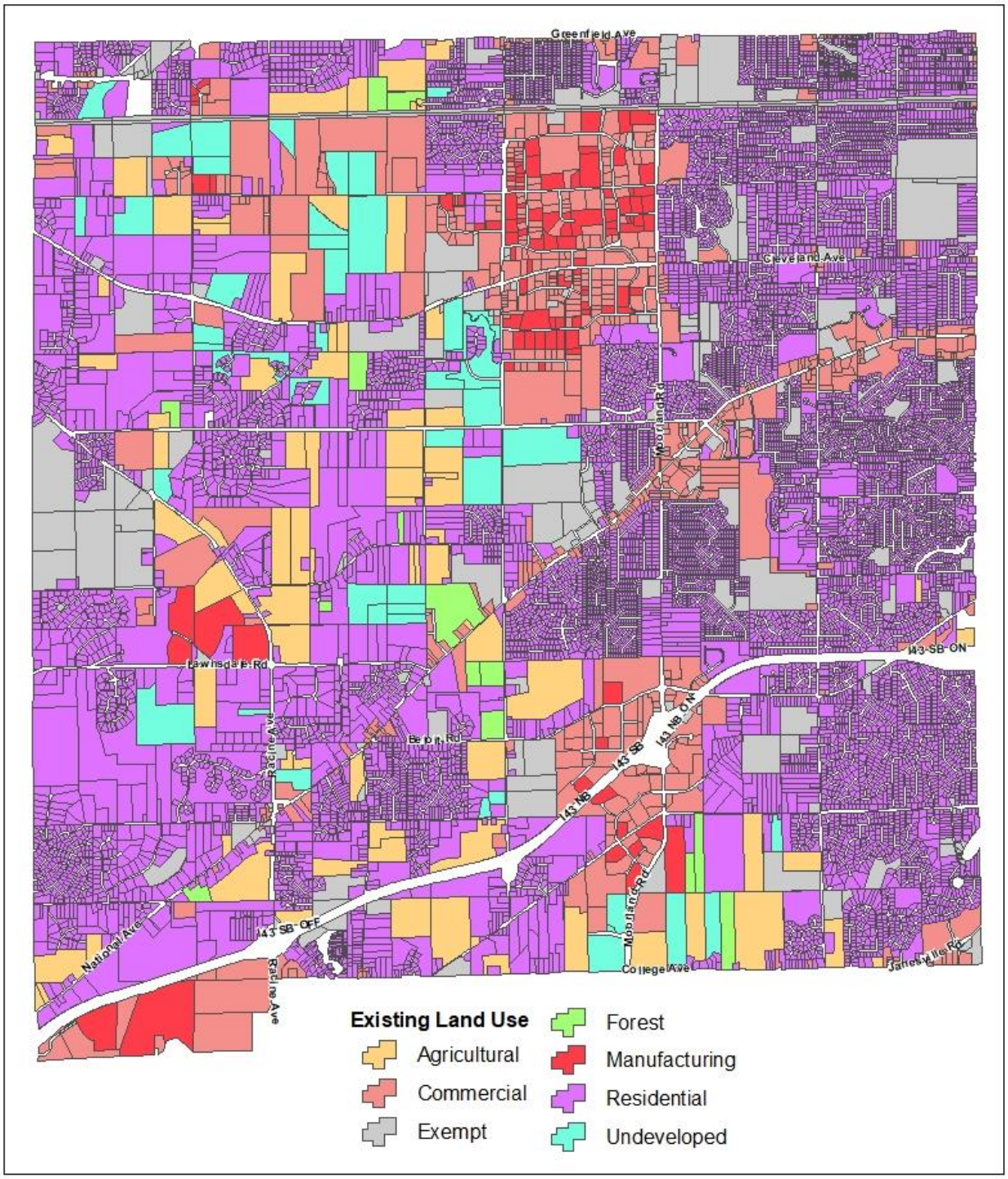
The City of New Berlin is characterized by a distinct land use pattern, whereby urban uses are concentrated in the eastern sector and rural uses are concentrated in the western sector. Generally speaking, Calhoun Road, a major north-south road that bisects the City, represents an informal division within the City of New Berlin of this historical development pattern. The distribution of the City's parkland, recreational facilities and natural areas correspond with urban land uses and the density of residential land uses. Therefore, the majority of established and developed municipal parks and open spaces are located within the City's eastern sector.

TABLE 1: Primary Land Uses, City of New Berlin (2022)

Land Use Category	Acres	% of total City Acreage
Agricultural	1,801	9 %
Commercial	3,219	15 %
Exempt land	2,353	11 %
Forest	244	1 %
Manufacturing	701	3 %
Residential	11,792	56 %
Undeveloped land	1,051	5 %
Total	**21,161**	**100%**

Source: City of New Berlin

MAP 1: Existing Land Use



Source: City of New Berlin

POPULATION FORECASTS

Like many other communities in Waukesha County, New Berlin has experienced notable increases in population during the second half of the 20th Century. In recent years, New Berlin's population has grown from 39,584 people in 2010 to 40,451 people in 2020 *(Source: U.S. Census Bureau)*—a 2.2% increase. Population projections anticipate modest gains through the duration of this plan (year 2040) for both New Berlin and other communities within Waukesha County.

TABLE 2: Population Projections, City of New Berlin and Neighboring Communities

Municipality	2010	2020	2030 Projection	2040 Projection	% Change 2010-2040
Brookfield	37,920	41,464	39,870	38,340	1.1%
Muskego	24,135	25,032	29,010	29,820	23.6%
New Berlin	39,584	40,451	45,140	45,120	14%
Waukesha	70,718	71,158	81,000	81,350	15%

Sources: U.S. Census Bureau, Wisconsin DOA "MCD and Municipal Populations Projections, 2010-2040"

Recent population growth in Waukesha County is accompanied by a change in age composition. As the baby boomer population continues to age, it is anticipated that a greater percentage of total population will be represented by the 65 years and older age group. The percent of the population 65 and older will rise from 14.3% to 25.9% -- over the course of 30 years. This trend will be accompanied by an increase in median age of the population, which will likely impact current sentiment related to recreation, facilities, needs and interest.

TABLE 3: Age Composition Projections, Waukesha County

Age Group	2010, Waukesha County	2040 (Projection), Waukesha County	Percent Change, over 30 years
<20	26.2%	23.7%	-9.5%
20 to 44	28.3%	26.5%	-6.4%
45 to 64	31.2%	23.9%	-23.4%
65 +	14.3%	25.9%	81.1%

Sources: Wisconsin DOA "County Age-Sex Population Projections, 2010-2040"

CHAPTER 3:
CLASSIFICATION AND SERVICE STANDARDS

A set of minimum standards are set for park and recreational facilities, as well as natural features, in order to quantitatively and qualitatively evaluate a park system. These standards allow for a quantitative examination of how well the existing facilities are meeting the needs of the residents in the community, in comparison with other communities. Future facilities are also planned using this information, along with projected population growth.

NATURAL RESOURCE FEATURES

ENVIRONMENTAL CORRIDORS AND ISOLATED NATURAL AREAS

Ecologically-significant acreage, both private and public, that represents a candidate for protection and preservation. Delineated by Southeastern Wisconsin Regional Planning Commission (SEWRPC), these environmental corridors are characterized by their linear configuration and natural attributes, including:

- Lakes, rivers and streams and their associated shoreland and floodplains
- Wetlands
- Woodlands
- Prairies
- Areas of wet, poorly drained and organic soils
- Areas of rugged terrain and high-relief topography

Primary Environmental Corridors

Primary environmental corridors include the highest quality and value woodlands, wetlands and wildlife habitat. These corridors have immeasurable ecological value and recreational potential. The preservation will maintain a high level of environmental quality, protect natural beauty, and provide valuable recreational opportunities.

Secondary Environmental Corridors

Secondary environmental corridors facilitate surface drainage and provide corridors for the movement of wildlife and the dispersal of seeds for a variety of species. These corridors should be preserved in open, natural uses as development proceeds, particularly when incorporating the corridors into drainageways, neighborhood parks or trail corridors.

Isolated Natural Resource Areas

Isolated natural resource areas are smaller concentrations natural features that are often isolated from an environmental corridor through urban development. Isolated natural resource areas may provide the only available wildlife habitat in the area, provide good locations for local parks and open space area, and lend aesthetic character and natural diversity to an area.

NATURAL AREAS AND CRITICAL SPECIES HABITAT

Natural Areas

Natural areas are defined as tracts of land or water so little modified by human activity, or sufficiently recovered from the effects of such activity, that they contain intact native plant

and animal communities believed to be representative of the landscape before European settlement. Classification of an area is based on consideration of the diversity of plant and animal species and the community types present; the structure and integrity of the native plant or animal community; the extent of disturbance by human activity, such as logging, grazing, water level changes and pollution; the commonness of the plant and animal communities; any unique natural feature within the area; the size of the area; and the educational value.

Critical Species Habitat

Critical species habitats are herein defined as those tracts of land or water which support Federally or State-listed rare, threatened, and/or endangered plant or animal species as defined by State or Federal agencies. These habitats include the abiotic and biotic factors necessary for the long-term support of the critical species population.

OPEN SPACE

Legal regulatory measures and development review undertaken by the City ensure varied levels of protection for high-value natural features that currently remain in open, natural and undeveloped condition on privately owned land. This may include land which is preserved via subdivision platting and land divisions. Conservation easements are often used to preserve environmental features and sensitive lands.

TABLE 4: Natural Feature and Level of Protection

Landscape Features and Land Controls	Level of Protection	Controlling Unit of Government
Natural Resources		
Wetlands	No development, setback requirements	City, WDNR, Army Corps
Floodplain	No development or limited development according to specific requirements in Flood Ordinance. Zoning Overlay.	City, WDNR, FEMA, Army Corps
Floodway	No development or limited development based on Flood Ordinance. Zoning Overlay.	City, WDNR, FEMA, Army Corps
Woodlands	Limited development if in C-1 District. Size of the woodland impacts the regulations.	City, SEWRPC
Critical species habitat (SEWRPC)	Limited development	City, SEWRPC
Primary environmental corridors (SEWRPC)	Limited development or no development (conservation easement)	City, SEWRPC
Secondary environmental corridors (SEWRPC)	Limited development or no development (conservation easement)	City, SEWRPC
Isolated natural resource areas (SEWRPC)	Limited development or no development (conservation easement)	City, SEWRPC
Shorelands	No development (shoreland wetland district). Setback is required.	City, WDNR, FEMA (if floodplain), Army Corps
Moderate slope 12-20%	Limited development (conservation subdivisions)	City
Steep Slope >20%	Limited development (conservation subdivisions)	City
Water bodies	No development (shoreland wetland district or floodplain)	City, WDNR, FEMA, Army Corps
Wildlife Habitat – Species of Concern	Limited development (conservation subdivisions) based on WDNR requirements.	City, WDNR
Prime Agricultural Lands	Development allowed	City
City Zoning and Overlays		
P-1 Park	Limited development	City
P-2 Park	Limited development	City
C-1 Conservancy	Limited development, Zoning permit required and disturbance up to 25,000sq. ft.	City
C-2 Conservancy	No development	City, WDNR
Conservation Easements	No development or limited development depending on easement documents.	City, WDNR (in some cases)
Transferred or Purchased Development Rights	N/A	N/A
Land Use Categories and Referenced land Use Elements		
Park	Limited development	City
Environmental Corridor	Limited development	City, SEWRPC
Shoreland-Wetland Conservancy	No development	City, WDNR
Upland-Woodland Conservancy	Limited development	City

Source: City of New Berlin

RECREATIONAL PARKS AND FACILITIES

PUBLICALLY OWNED

Neighborhood Park

Neighborhood parks serve as the recreational and social focus for adjoining neighborhoods and typically service a ½ mile radius. There is typically an even distribution of natural and developed areas, catering to both passive and active recreation. Generally, there are areas intended for recreational activities, such as ball fields, courts, playgrounds and picnic areas. Off street parking and restrooms are often not provided. Because of this, neighborhood parks provide safe walking and biking access. Neighborhood Parks are owned and maintained by the City.

Community Park

Community parks serve a larger population than neighborhood parks and typically service a 2 mile radius. Many features found in neighborhood parks are often found in community parks, with community parks featuring additional high quality athletic fields, restrooms, shelters and off street parking. Community Parks are owned and maintained by the City. This also includes Athletic Complexes.

Conservancy Area

Conservancy areas, or natural areas, are areas set aside for preservation of significant natural resources, remnant landscapes, open space, and visual aesthetics. Public access is generally permitted through pathways that traverse natural areas. Many times conservancy areas are used as a buffer between residential areas and more intensive land uses. Conservancy Areas are owned and maintained by the City.

Special Use Park

Special Use parks cover a broad range of recreational facilities. Some of these activities may include golf courses, historic sites and community centers. There are no specific standards for special purpose parks, as they can vary greatly. Special Use Parks are owned and maintained by the City.

County Park

County or regional parks typically have natural resources and open spaces not found in neighborhood or community parks, and service multiple surrounding communities. Many times, these parks focus on nature oriented outdoor recreation, including camping, sledding, dog exercise areas, picnicking, fishing, swimming and hiking. County Parks are owned and maintained by the County.

School Park

School districts manage and maintain these facilities to accommodate the park and recreational needs of the school, neighborhood and community. In addition to serving physical education curriculum, recreational grounds and facilities affiliated with public school campuses accommodate recreation programs managed by private sports leagues and the City's Recreation Department. School Parks are owned and maintained by the School District.

PRIVATELY OWNED

Private Recreation Facility

Private recreation facilities cover a broad range of recreational facilities often oriented towards single-purpose use. Some of these recreational activities include golf courses, driving ranges, bow hunting and sports complexes. There are no specific standards for private recreational facilities. Private Recreation Facilities are owned and maintained by the property owner. Commercial park/sport complex is further defined in Zoning Code Section 275-36D(5).

TABLE 5: NRPA Park Classifications

Component	Use	Service Area	Site	Acres/1,000 People	Site Location
Neighborhood Park	Recreational activities, including: ball fields, courts, playgrounds, picnic areas	½ mile radius (truncated by physical barriers, such as arterial roadways, active rail lines, or natural drainage)	5-10 acres	1-2 acres	Neighborhood center, with walking and biking access
Community Park	Recreational activities included in neighborhood parks, parking, restrooms	2 mile radius (relies on automobile transport for access)	30-50 acres	5-8 acres	Near major roads and/ or public facilities
Conservancy Area	Limited activities, including: hiking, wildlife viewing	Varies	Varies	N/A	Dependent upon resource availability
Special Use Park	Recreational activities, including: golf courses, historic sites, community centers	Entire community	Varies	N/A	Varies
County Park	Nature oriented outdoor recreation, including: camping, sledding, dog exercise area, picnicking, fishing, swimming, hiking	Multiple communities	200-500 acres		Adjacent to natural resources
School Park	Serves the recreational and park needs of the school and the neighborhood/ community	Varies, depends upon park classification	Varies		Adjacent to school building
Private Recreation Facility	Recreational activities, including: golf courses, driving ranges, bow hunting, sports complex	Varies, possible membership or fees	Varies		Varies

Source: City of New Berlin, NRPA

BICYCLE AND PEDESTRIAN FACILITIES

ON ROAD FACILTIES

Bicycle lanes
A paved shoulder with designated pavement marking and signage.

Shoulder paths
Paved shoulders to accommodate pedestrians and bicycles.

OFF ROAD FACILITIES

Sidepaths
Pathways within highway right-of-way. Sidewalks are considered Sidepaths. Sidepaths may be used by pedestrians, skaters, wheelchair users, joggers, bicycles and non-motorized users.

Trails
A pathway within public access easement, community park, environmental corridor or neighborhood link. These facilities tend to connect parks to other city facilities such as schools, residential subdivisions or other trail systems. Trails may be used by pedestrians, skaters, wheelchair users, joggers, bicycles and other non-motorized users. Trails are constructed of a variety of materials, including mowed grass, wood chips, wood, recycled wood products (i.e. boardwalks), stone or asphalt. Trails are also intended to connect residents to points of interest, such as schools, parks and open spaces, business districts, commercial districts, adjacent neighborhoods, and public transportation.

CHAPTER 4:

GOALS AND OBJECTIVES

An essential element of the Park and Open Space Plan is a series of goals and objectives that provide a specific direction for plan implementation. Goals identify desired future conditions and broad public purposes. Objectives provide more immediate guidance, and are intended to aid the decision-making process with regard to projects being planned for near-term implementation through incorporation into budget planning processes. They are based on the existing conditions, park services, and input from the community and staff.

OVERALL SYSTEM

Provide a City-wide park and open space system that accommodates a diversity of publicly accessible recreational opportunities.

1. Recognize and respond to both passive and active recreational needs in the design of the park and open space system.
2. Distribute park, recreation and open space resources on an equitable basis for use by all age groups.
3. Adhere to service standards in regards to developed parkland acreages.
4. Where appropriate, the trail system should provide connections to destinations such as schools, business districts, retail areas, libraries and community centers, as well as other pedestrian facilities.
5. Focus on enhancing existing park and open space facilities.
6. Evaluate the need for additional facilities to meet current demands.
7. Comply with standards outlined in the current ADA Study and CVMIC Playground Report.

ENHANCEMENTS TO EXISTING PARKS

Allow for a diverse range of recreational opportunities that serve both the passive and active needs of the community, which are supported through facility design and recreational programming.

8. Incorporate a variety of recreational elements and spaces in order to provide equal opportunities for all abilities and age groups.
9. Keep up with local demands by constructing and maintaining high quality athletic facilities within existing park sites.
10. Provide recreational programs and facilities to promote year-round use of parks.
11. To the greatest extent possible, provide safe and accessible routes to parks from the surrounding neighborhoods.
12. Upgrade current facilities and add additional recreational opportunities within existing parks, as needed.
13. Develop unified park signage for the City.

ACQUISITION, DEDICATION AND PRESERVATION OF PARKLAND & OPEN SPACE

Ensure that park and open space acreage is acquired and preserved using creative and collaborative methods. Protect environmental resources and natural areas to allow for passive recreation for residents.

1. Promote conservation easements and open space preservation with private subdivision development on the west side of the City.
2. Review and update the city parkland dedication and park impact fee ordinances to ensure adequate funding levels to meet future park and open space needs in the community. Focus parkland and open space acquisition to the planned park complex within Section 35/South Moorland Road Corridor.
3. Promote linear open spaces that remain largely interrupted. Encourage private development to dedicate open space and parkland that is located adjacent to existing public lands.
4. Prioritize the preservation of high quality landscapes, woodlands or wetlands, as well as unique landscape features.
5. Ensure that there is accessible open space and natural areas that are available for passive public use. Trails and signage should be planned for and developed in a sensitive manner as to not disturb wildlife habitat.
6. Where applicable, require developers to enhance ecological values for wildlife in dedicated open spaces.
7. Use regulatory means, such as subdivision ordinances, to preserve targeted open space areas within the City. New developments should be planned to preserve and protect environmentally sensitive areas such as wetlands, floodplains, environmental corridors, and isolated natural resource areas.

DEVELOPMENT OF VACANT PARKLAND

Develop additional active and passive recreational opportunities for users within the community, as needed.

1. Continue to provide ample, diverse and accessible parks and facilities to meet the current and future recreational needs of the community.
2. Provide for parks that are within reasonable walking distance to residential neighborhoods within the urban sections of the City.
3. Incorporate natural resource areas into the park by allowing passive outdoor activities to utilize these areas.
4. Ensure parks are safe and visible by requiring street frontage along at least one side of the park.
5. Include an action plan related to the acquisition and development of a community youth sports complex within Section 35. Address the planning, acquisition, and development of a community park with athletic fields to meet the needs of the youth sports organization.

TRAILS

Develop a multi-use trail system to provide linkages and recreational uses between park and open spaces, public destinations within the City and neighboring communities.

1. Prioritize the development of multi-use trails throughout the City, which provide for diverse non-motorized recreational activities, including biking, jogging, walking, rollerblading and horseback riding.
2. Construct a mix of trail types to allow for a variety of trail experiences.
3. Ensure trails accommodate the needs of citizens of different abilities and comply with ADA standards, to the greatest extent possible.
4. When planning and designing trails, consider external linkages that conjoin the City's boundaries.
5. Incorporate trails within easements and right-of-ways reserved for utilities and transportations facilities, where feasible.
6. Develop unified trail signage for the City that allows for better way-finding.
7. Work with the DCD to incorporate the planning, design and construction of trail/pathway segments as part of the development review process. Require developers to dedicate easements and construct recreational trails as development occurs.
8. Promote the construction of on-road shoulder bicycle lanes and separated paved pathways as a component of roadway and bridge improvement projects to make implementation more cost effective.
9. Plan trail and pedestrian facilities to provide linkages between sidepaths, bicycle lanes and other non-motorized transportation facilities.

INTERGOVERNMENTAL COOPERATION AND PARTNERSHIPS

Ensure that the City's park, recreation and open space system is coordinated with adjacent municipalities, local school districts, and other government agencies to ensure that the recreation opportunities are maximized.

1. Collaborate with surrounding jurisdictions so that the City's park and open space system contributes to a regional system of environmental protection and public recreation.
2. Work with coalitions of sports and special interest recreation organizations to define mutually compatible facility needs and mechanisms for the development, construction, operation and maintenance of these facilities.
3. Continue to partner with the New Berlin School District and the Waukesha County Parks and Land Use Department in the provision of existing and new recreation uses, and to maximize the value of capital and operational expenses.
4. Continue partnerships with local park and recreation agencies in the provision of cost effective recreation programming for all users.

PLANNING AND FUNDING

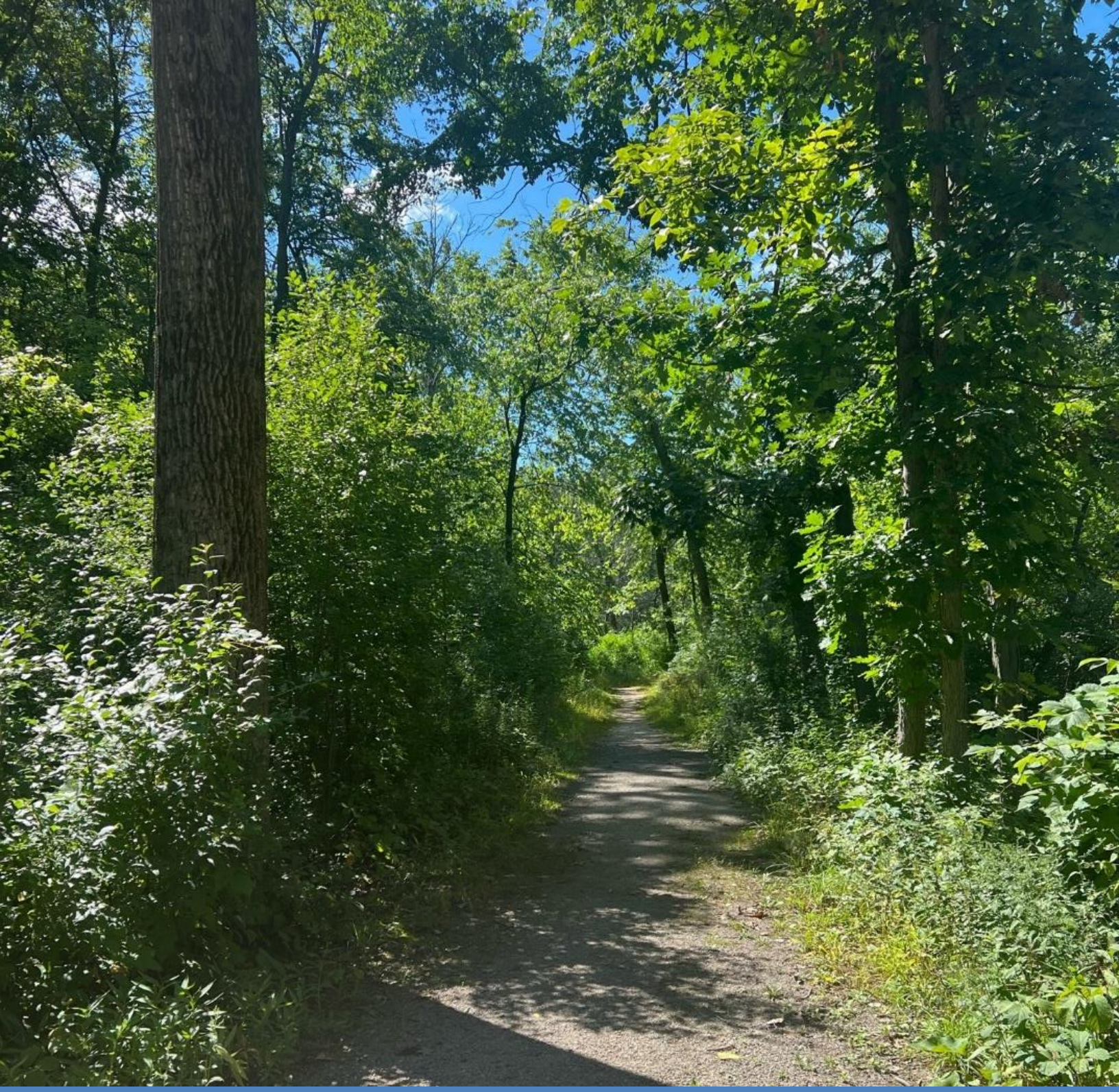
Promote economic sustainability and stability of parks through efficient use of financial resources and evaluation of Plan goals.

1. Update the Park and Open Space Plan every five years to ensure that goals and objectives remain relevant, implementation strategies are realized and that the Plan is compliant with extramural funding organizations.
2. Evaluate the actions and implementation strategies on an annual basis to ensure opportunities for cost-sharing, partnerships, facility enhancements and land acquisitions are examined.
3. Utilize a variety of funding sources to enhance and maintain public recreational resources.
4. Pursuit of financial support should consider available funding sources, such as:
    a. The State of Wisconsin Department of Natural Resources (DNR)
    b. The New Berlin Capital Improvement Budget
    c. Grants awarded by public and private foundations
    d. Park Impact Fees collected from private developers
    e. Cash-in-lieu of land dedication collected from private developers
    f. Donations and gifts
    g. City Operated Budget, including participation fees
    h. Partnerships with private developers

OPERATIONS AND MAINTENANCE

Ensure that operations and maintenance of the park, open space and trail system is supported through appropriate levels of staffing and funding.

1. Ensure that the park and open space system is realistic and affordable, and that the costs required for long term, quality management and maintenance are recognized.
2. Where feasible, the City should make use of management practices that minimize maintenance labor and operating costs, while providing for high-quality facilities.
3. Assure that parks, open space, and trails are managed and maintained in an environmentally responsible and cost-effective manner that preserves the underlying resources while being attentive to public enjoyment and safety concerns.
4. Utilize volunteers in managing and maintaining the open space and natural area system to supplement City resources.
5. Evaluate maintenance staffing levels and increase as required to ensure that proper care of park facilities is implemented. Development of new parks and recreation facilities should be implemented at a pace commensurate with the City's ability to provide proper maintenance and staffing.
6. Make use of water wise landscape principles, such as using low water demand plants, installing efficient irrigation systems, utilizing alternative / eco-friendly parking lot surfaces, and improving soil with adequate organic material.
7. Develop and implement the vehicle and equipment replacement schedule to provide for needed maintenance of parks facilities and grounds.



CHAPTER 5:

INVENTORY

NATURAL RESOURCE FEATURES

ENVIRONMENTAL CORRIDORS AND ISOLATED NATURAL AREAS

Primary Environmental Corridors

Primary environmental corridors within the City are generally located along perennial and intermittent streams and large wetland areas associated with Poplar Creek and Mill Creek.

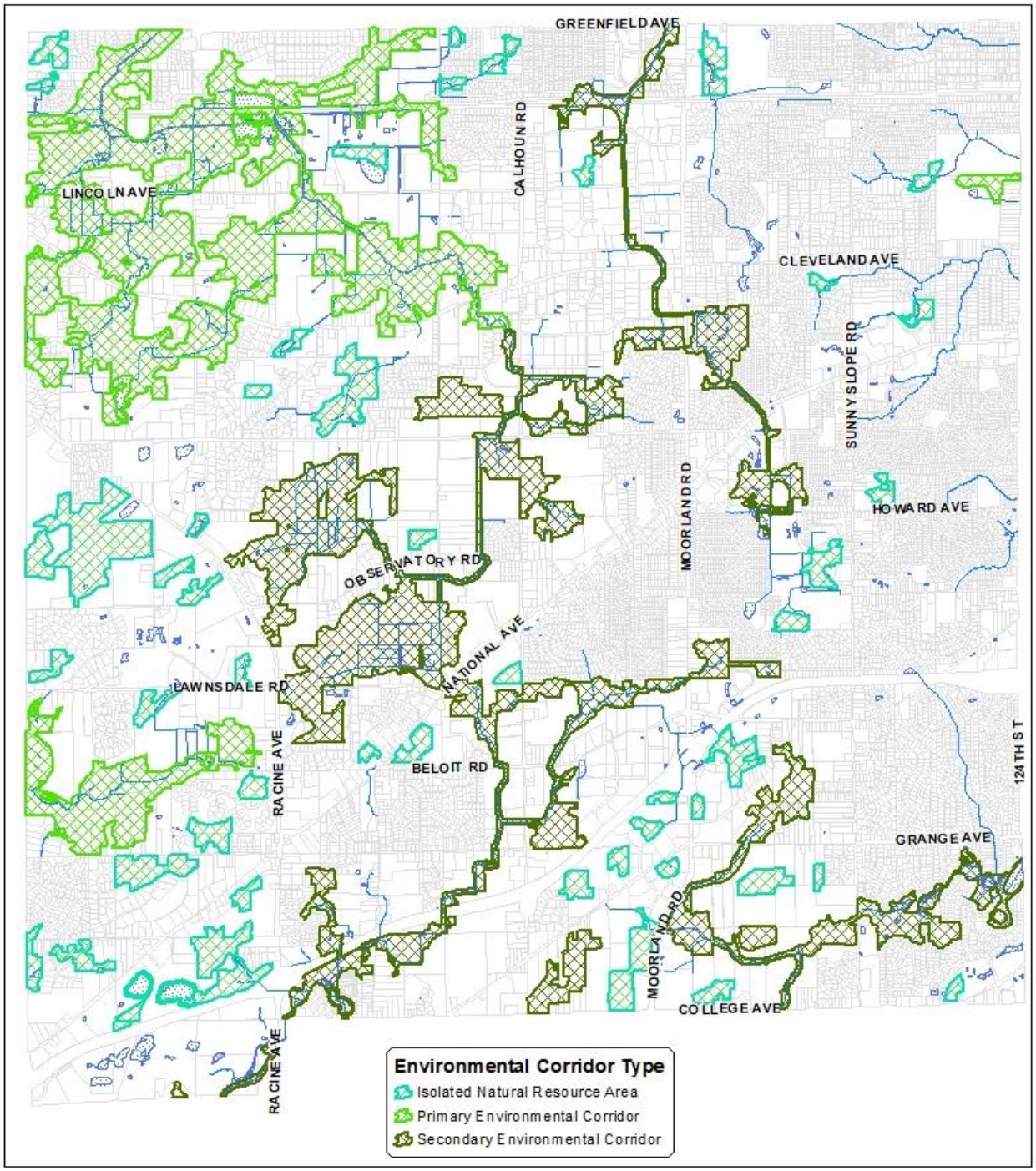
Secondary Environmental Corridors

Secondary environmental corridors in the City are generally located along Deer Creek and intermittent streams tributary to Poplar Creek.

Isolated Natural Resource Areas

Smaller concentrations of natural resources exist throughout the City and are generally isolated by urban development.

MAP 2: Environmental Corridors and Isolated Natural Resources



Source: City of New Berlin

NATURAL AREAS AND CRITICAL SPECIES HABITAT

Please reference Chapter 5 of the City's Comprehensive Plan for more information on these Natural Areas and Critical Species Habitats.

Natural Areas

There are two known Natural Areas, classified as NA-3 sites, within the City limits. The New Berlin Woods, also known as Deer Creek Sanctuary, is the only Natural Area containing rare species habitat of local significance that is entirely under protective ownership. This area contains small dry-mesic hardwoods with shallow depressions that retain water in the spring. Dominant trees include white and red oaks and sugar maple. The flora species of concern is the American gromwell (*Lithospermum latifolium*).

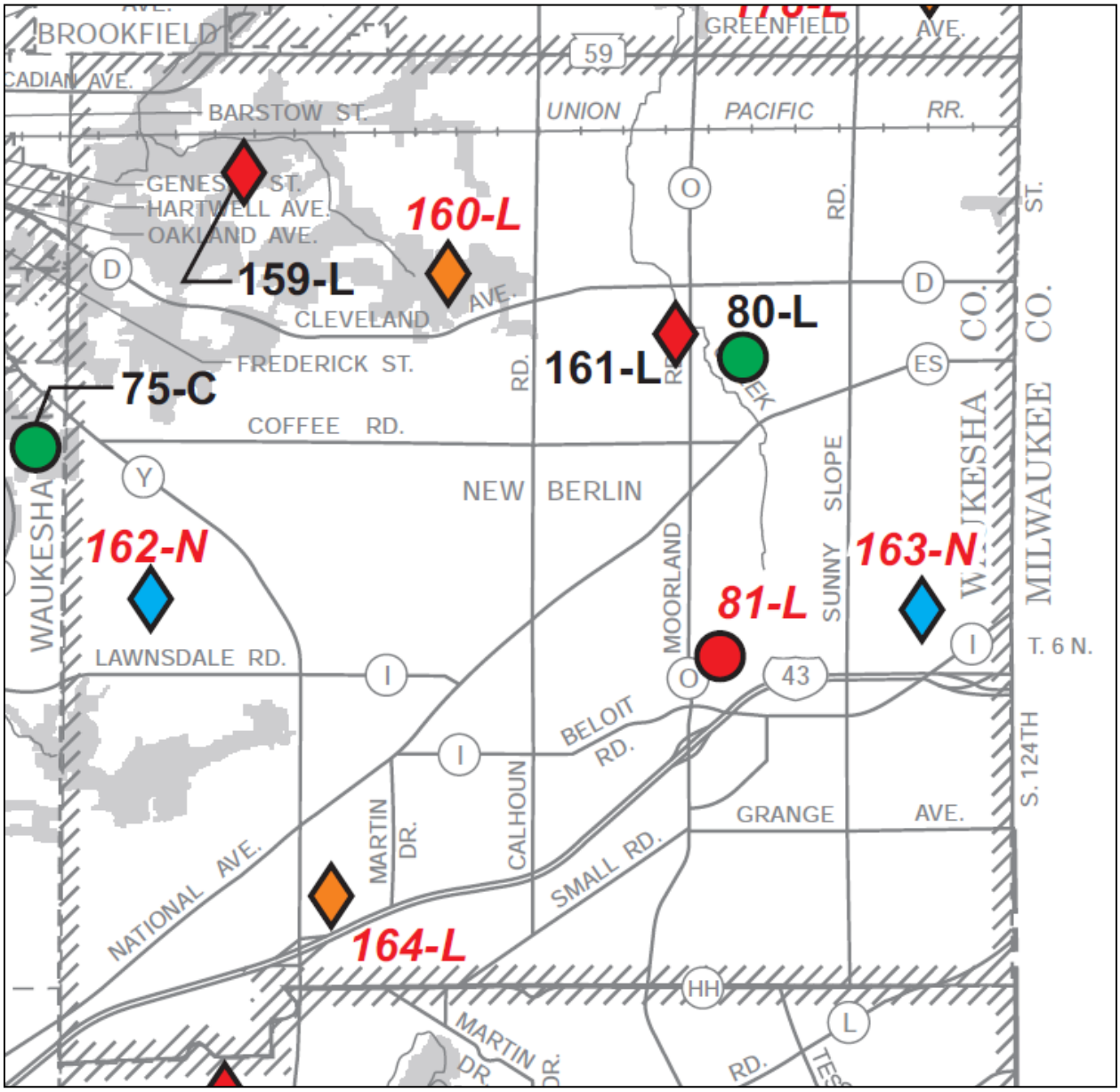
Critical Species Habitat

Prior to 2014, there were six known locations within the City that contained areas of Critical Species Habitat. Since SEWRPC's 2014 report, three of these sites no longer met site designation criteria and have been delisted. Stigler Woods is the only Critical Species Habitat site within the City of New Berlin that is partially under protective ownership. Stigler Woods supports a population of heartleaved skullcap (*Scutellaria ovata*), a State-designated special concern species.

OPEN SPACE

The City's parks system is notable for natural areas and ecological characteristics that occur as independent sites and/or features within maintained areas of parks. However, the City does not formally manage an interconnected system of open space for the purpose of scenic or environmental protection, agricultural uses or recreation. While open space preservation is a planning objective of the City, the acquisition, management and maintenance of acreage for conservation purposes requires short and long-term planning.

MAP 3: Natural Areas and Critical Species Habitat



CURRENT STATUS AND PLAN RECOMMENDATION	NA-1 SITE	NA-2 SITE	NA-3 SITE	CRITICAL SPECIES HABITAT
ENTIRELY UNDER PROTECTIVE OWNERSHIP/ PROTECTIVE OWNERSHIP TO BE RETAINED	▲	■	●	♦
PARTIALLY UNDER PROTECTIVE OWNERSHIP/ REMAINDER OF SITE TO BE ACQUIRED	▲	■	●	♦
NOT UNDER PROTECTIVE OWNERSHIP/ ENTIRE SITE TO BE ACQUIRED	(NONE)	■	●	♦
NOT UNDER PROTECTIVE OWNERSHIP/ TO BE PRESERVED TO EXTENT PRACTICABLE WITHOUT PROTECTIVE OWNERSHIP	(NONE)	(NONE)	(NONE)	♦

RECOMMENDED OWNERSHIP KEY:
S-STATE GOVERNMENT
C- COUNTY GOVERNMENT
L-LOCAL GOVERNMENT
P-PRIVATE CONSERVANCY ORGANIZATION
N-NO PROTECTIVE OWNERSHIP RECOMMENDED

27-SITE REFERENCE NUMBER (SEE TABLE 43)

55-NEWLY IDENTIFIED SITE REFERENCE NUMBER (SEE TABLE 43)

PRIMARY ENVIRONMENTAL CORRIDORS

Source: Wisconsin Department of Natural Resources and SEWRPC

RECREATIONAL RESOURCES

The City of New Berlin maintains 29 park and recreation sites that provide a variety of outdoor recreation opportunities for community members. These parks are characterized by features associated with maintained facilities and natural components. A variance in these landscape qualities and management policies provides for a balance of active, passive and scenic recreational activities. The main purpose of this Park and Open Space Plan Update concerns municipal-owned park and recreation facilities. City owned facilities are supplemented by other public and private recreation sites.

In addition to City owned and maintained parkland, there are many other recreational facilities and protected natural areas in New Berlin that are publically owned. There is a total of 1,319 acres of public parkland in the City, including both City and non-City owned. Waukesha County provides recreational facilities through Minooka Park, as well as the New Berlin Recreational Trail. The School District of New Berlin and the West Allis – West Milwaukee School District manage seven public school grounds, which accommodate public recreational uses during non-school hours.

There are various private recreational facilities within the City limits. These facilities include private recreation, open space, cemeteries and private schools.

TABLE 6: Public Recreation Sites

Managing Organization	Number of sites	Total Acreage	Description
City Department of Parks, Recreation and Forestry	29	817	Developed and undeveloped parkland, natural areas (conservancies), and special use parks; recreational trail.
Waukesha County	1	380	Nature-based parkland; regional recreational trail
School District of New Berlin	6	116*	Range of facilities that include playfields and sports fields for football, soccer, baseball, and softball
West Allis- West Milwaukee School District	1	6 *	Baseball sandlot, playfields and play equipment
TOTAL	**37**	**1,319**	

* Acreage includes total area of parcel; recreational school grounds would be a portion of this acreage
Sources: SEWRPC; City of New Berlin

PUBLIC RECREATIONAL PARKS AND FACILITIES

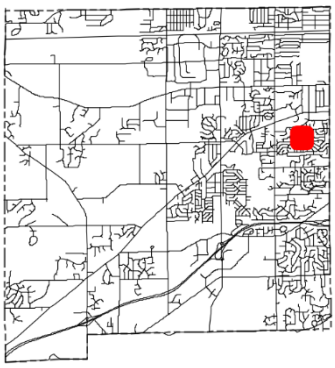
Each Publically Owned Recreational Park and Facility is classified into one of two categories: City Owned and Non-City Owned. City Owned Parks and Facilities consist of Neighborhood Parks, Community Parks, Conservancy Areas and Special Use Parks. Non-City Owned Parks and Facilities consist of County Parks and School Parks. An inventory of every publically owned park was completed. However, the Park and Open Space Plan will primarily focus on City Owned Parks and Facilities for the comprehensive site assessment to determine areas for improvement.

BIWER PARK

NEIGHBORHOOD PARK

Amenities:

- Ball Diamond
- Basketball Court
- Hiking Trail
- Playground (with poured-in-place surfacing)
- Small Shelter
- Swings
- Swing(s) – ADA accessible
- Volleyball Court



3495 S Sandalwood Drive

Improvements:

8.8 acres

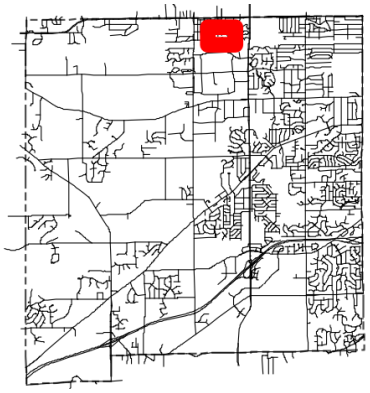
The site encompasses woodlands within an isolated natural resource area. The park is accessible from Kirkwood Drive to the north-west and from Sandalwood Drive to the east.

BUENA PARK

NEIGHBORHOOD PARK

Amenities:

- Ball Diamonds
- Basketball Court
- Bike Trail Access
- Parking Lot
- Pickleball Courts
- Picnic Area
- Playgrounds
- Restrooms
- Shelters
- Soccer Field
- Swings
- Tennis Courts



16301 W Coachlight Drive

24.7 acres

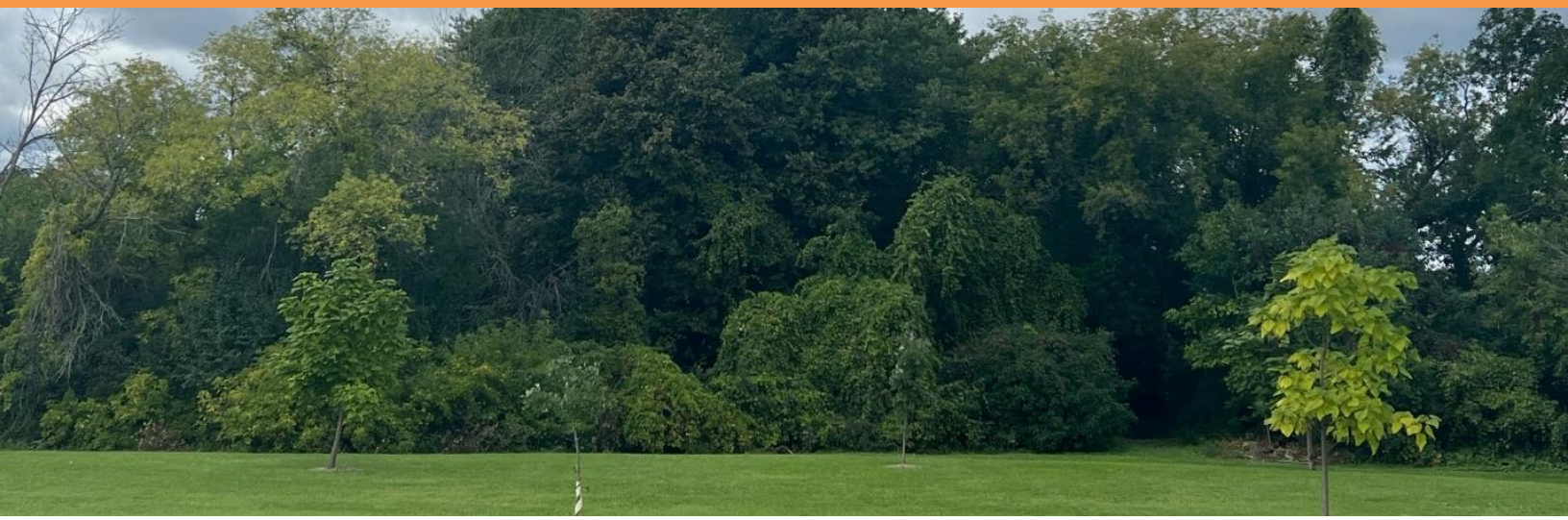
Improvements:

- Replace playground (west).

An asphalt trail connects this park to the New Berlin Recreation Trail. Buena Park is accessible from 167th Street, 165th Street, and Coachlight Drive.

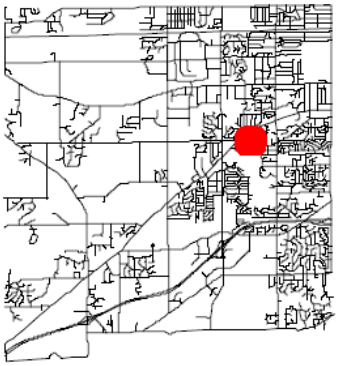
DEER CREEK PARK

NEIGHBORHOOD PARK



Amenities:

- Undeveloped



3575 S 147th Street

Improvements:

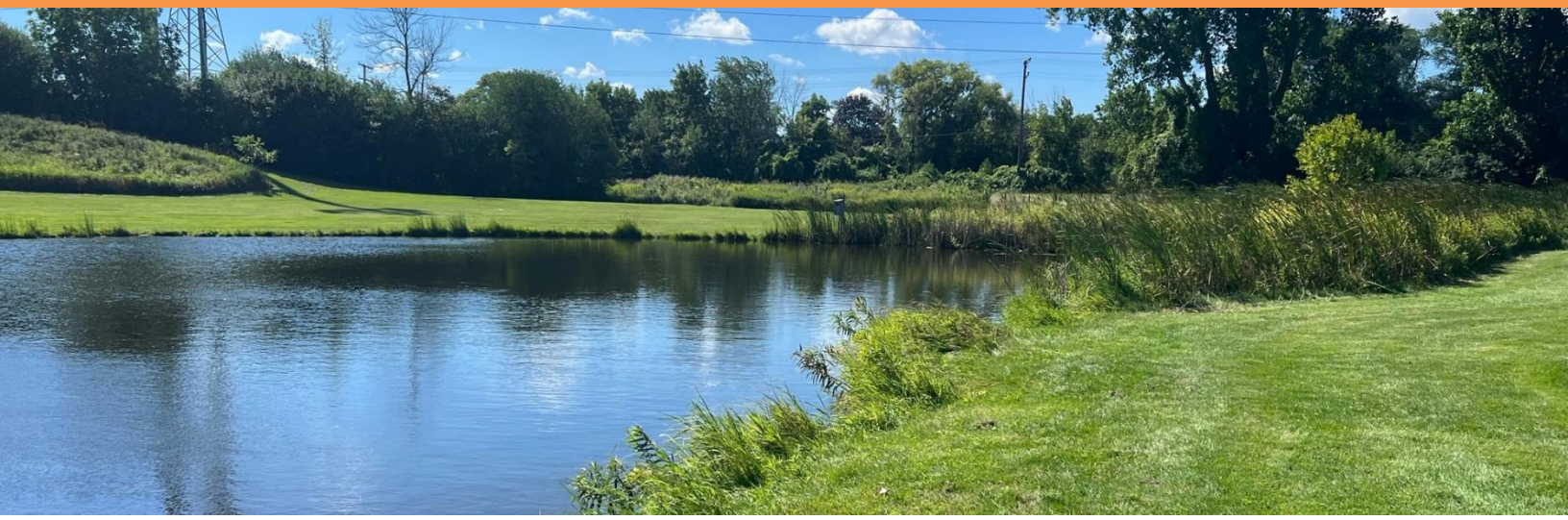
- Construct an off road recreational trail to link Deer Creek Park to City Center (west), Regal Park (south) and Deer Creek Sanctuary (north).

3.1 acres

The site encompasses secondary environmental corridor. Deer Creek Park is accessible from 147th Street.

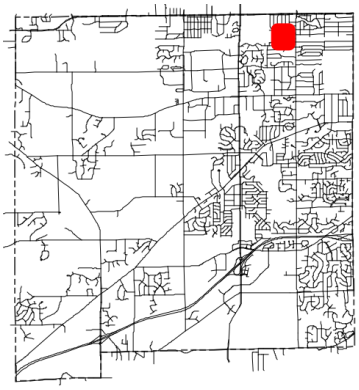
GATEWOOD PARK

NEIGHBORHOOD PARK



Amenities:

- Basketball Court
- Bike Trail Access
- Fishing Pond
- Playground
- Sledding
- Small Shelter
- Soccer Fields
- Swings
- Trail



14201 W Kostner Lane

9.2 acres

An access trail connects users to the New Berlin Recreation Trail. Gatewood Park is accessible from Kostner Lane.

Improvements:

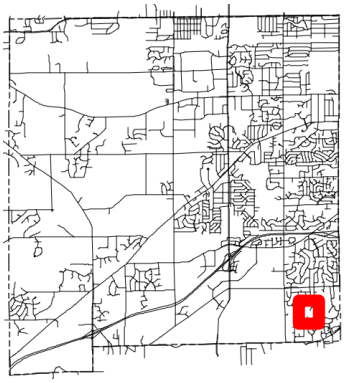
- Accessible routes.
- Replace shelter.

HIGH GROVE PARK

NEIGHBORHOOD PARK

Amenities:

- Ball Diamond
- Basketball Court
- Hiking Trail
- Playground
- Small Shelter
- Swings



13405 W Eagle Trace

14.9 acres

Improvements:

- Replace playground.

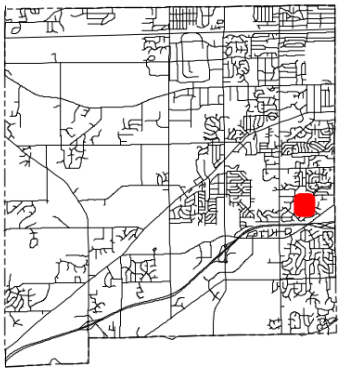
The site encompasses wetlands within a secondary environmental corridor. The park is mostly woodlands with a large open space containing a pavilion and playground. High Grove Park is accessible from Eagle Trace.

MAPLE RIDGE PARK

NEIGHBORHOOD PARK

Amenities:

- Ball Diamond
- Basketball Court
- Playground
- Shelter
- Soccer Field
- Swings
- Trail



13200 W Maple Ridge Road

8 acres

The site encompasses woodlands to the south. The park is accessible from Maple Ridge Road.

Improvements:

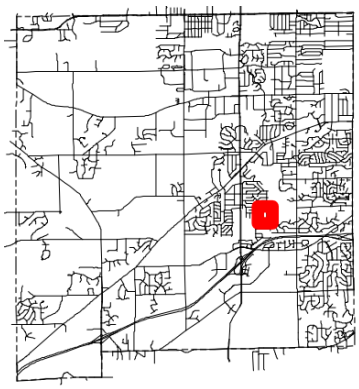
- Accessible routes.
- Replace playground.

REGAL PARK

NEIGHBORHOOD PARK

Amenities:

- Ball Diamond
- Basketball Court
- Fishing Pond
- Playground
- Soccer Field
- Swings
- Trail
- Volleyball Court



4395 S Regal Drive

18.7 acres

The site encompasses woodlands within a secondary environmental corridor. Regal Park is accessible from Regal Drive and Mayflower Drive.

Improvements:

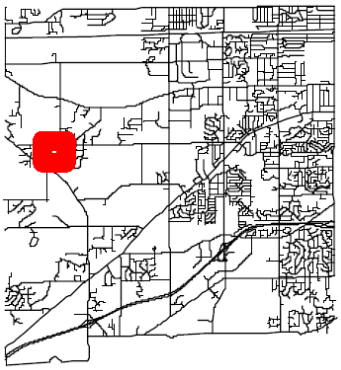
- Accessible routes.
- Construct an off road recreational trail to link Deer Creek Park to City Center(west), Regal Park(south) and Deer Creek Sanctuary(north).
- New shelter.
- Replace playground.

RUSTIC RIDGE PARK

NEIGHBORHOOD PARK

Amenities:

- Undeveloped



20425 W Coffee Road

Improvements:

19.2 acres

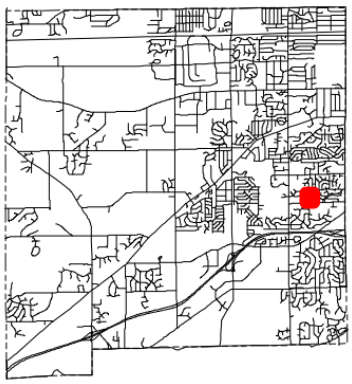
The site is fairly open with some wetlands. The park is accessible from Rustic Ridge Road.

WEATHERSTONE PARK

NEIGHBORHOOD PARK

Amenities:

- Ball Diamond
- Basketball Court
- Nature Trail
- Playground (with poured-in-place surfacing)
- Small Shelter
- Swings
- Swing(s) – ADA accessible



13355 W Linfield Drive

8.4 acres

The park encompasses wetlands and woodlands within an isolated natural resources area. Weatherstone Park is accessible from Linfield Drive.

Improvements:

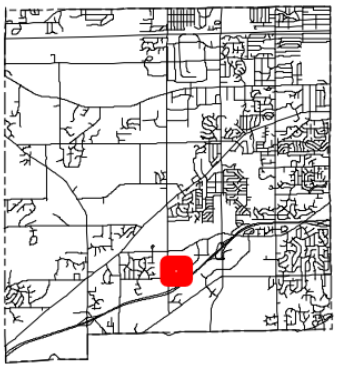
- Accessible routes

CALHOUN PARK

COMMUNITY PARK

Amenities:

- Ball Diamonds
- Basketball Court
- Fishing Pond
- Hiking Trails
- Parking Lots
- Playgrounds
- Picnic Area
- Restrooms
- Shelters
- Sledding
- Soccer Fields
- Swings



5500 S Calhoun Road

55 acres

The park encompasses woodlands within secondary environmental corridor. Both parking lots are accessible from Calhoun Road.

Improvements:

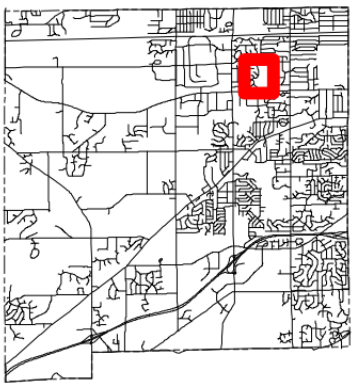
- Accessible routes.
- Bridge Maintenance.
- Parking lot replacement (south).
- Replace playground (south).
- Replace Shelter #3 and restroom with new park structure.

LIONS PARK

COMMUNITY PARK

Amenities:

- Ball Diamond
- Basketball Court
- Community Center
- Fishing Ponds
- Parking Lots
- Picnic Areas
- Playground (with poured-in-place surfacing)
- Restrooms
- Shelters
- Soccer Fields
- Swings
- Swing(s) – ADA accessible
- Tennis Courts
- Trail
- Volleyball Court



14800 W Overland Trail

39.9 acres

Improvements:

- New shelter near restrooms.

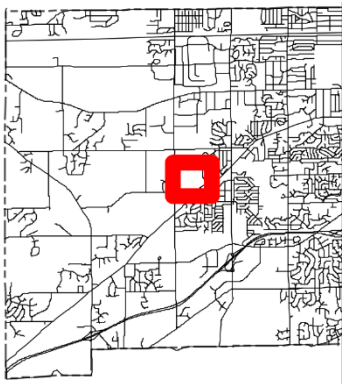
The park includes the New Berlin Community Center, which is home to the Senior Center and Food Pantry. The parking lots are accessible from Overland Trail and Lincoln Avenue.

MALONE PARK

COMMUNITY PARK

Amenities:

- Ball Diamonds (lit)
- Basketball Courts
- Concessions
- Hiking Trails
- Parking Lots
- Picnic Area
- Playground (with poured-in-place surfacing)
- Restrooms
- Shelters
- Soccer Fields
- Swings
- Swing(s) – ADA accessible
- Tennis Courts (lit)
- Volleyball Courts (lit)



16400 W Al Stigler Parkway

90 acres

The park encompasses wetlands and woodlands within a secondary environmental corridor. The parking lots are accessible from Al Stigler Parkway and Observatory Road.

Improvements:

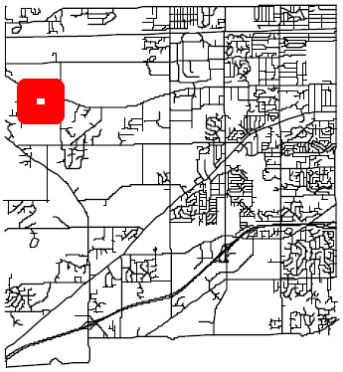
- Accessible routes.
- Add pickleball courts.
- Explore purchasing the 71 acre Posner Property.
- North parking lot replacement.
- Replace gazebo with new park structure.
- Replace Shelter #1 and concessions with new park structure.
- Replace Shelter #2 with new park structure.

MILHAM PARK

COMMUNITY PARK

Amenities:

- Undeveloped



20855 W Cleveland Avenue

Improvements:

39.2 acres

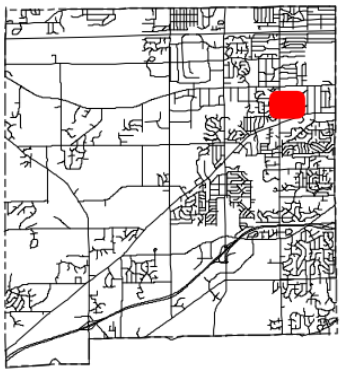
The site encompasses primary environmental corridor and wetlands. Milham Park is accessible from Cleveland Avenue.

PROHEALTH CARE PARK

COMMUNITY PARK

Amenities:

- Ball Diamond
- Basketball Court
- Parking Lot
- Picnic Area
- Playground (with poured-in-place surfacing)
- Restrooms
- Shelters
- Soccer Fields
- Swings
- Walking Paths



2950 S Sunny Slope Road

Improvements:

- Accessible routes.

23.4 acres

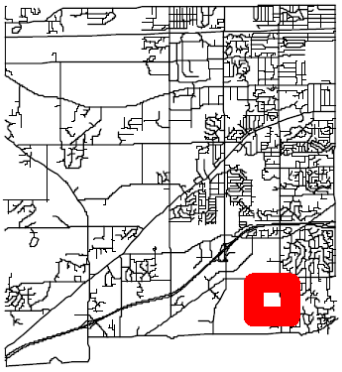
The park encompasses wetlands and woodlands. ProHealth Care Park is accessible from Sunny Slope Road.

SECTION 35 PARK

COMMUNITY PARK

Amenities:

- Parking Lot
- Soccer Fields
- Walking Paths



5851 S Sunny Slope Road

Improvements:

- Acquire approximately 56.7 acres of parkland.
- Construct an off road recreational trail to link Valley View Park to Section 35.
- Pave Phase 1 parking lot.
- Upon acquiring additional land to the west, construct athletic complex and continue construction of the multi-use trail.

39.2 acres

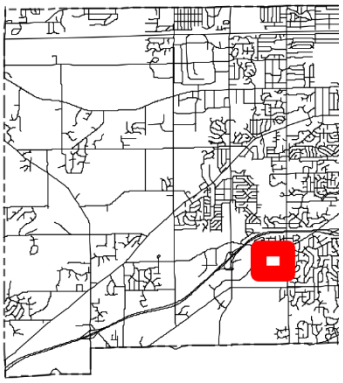
The park encompasses wetlands and secondary environmental corridor. Section 35 Park is accessible from Sunny Slope Road

VALLEY VIEW PARK

COMMUNITY PARK

Amenities:

- Archery Range
- Ball Diamonds
- Basketball Court
- Cross Country Ski
- Disc Golf Course
- Hiking Trails
- Parking Lots
- Pickleball Courts
- Picnic Area
- Playgrounds
- Restrooms
- Shelters
- Sledding
- Soap Box Derby
- Soccer Fields
- Tennis Courts



5051 S Sunny Slope Road

73.8 acres

The site encompasses wetlands and woodlands within secondary environmental corridor. The park is accessible from both Sunny Slope Road and Small Road.

Improvements:

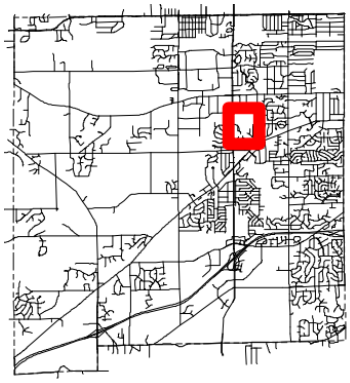
- Accessible routes.
- Construct an off road recreational trail to link Valley View Park to Section 35.
- Parking lot replacement (north, south, and southwest).
- Replace Restroom #2.
- Replace playground (southwest).

DEER CREEK SANCTUARY

CONSERVANCY AREA

Amenities:

- Bike Trail
- Paul Gihring Nature Trail



3250 S Acredale Road

47 acres

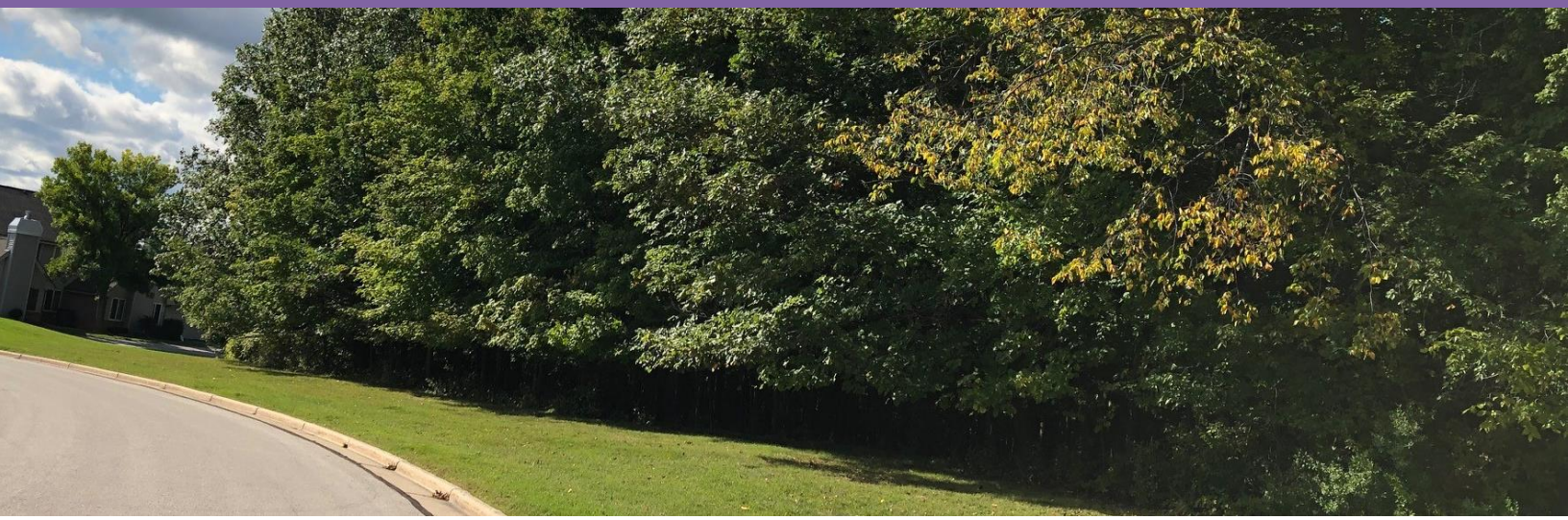
The site encompasses woodlands and wetlands within the secondary environmental corridor. Deer Creek Sanctuary is accessible from Acredale Road and Dakota Street.

Improvements:

- Construct an off road recreational trail to link Deer Creek Park to City Center(west), Regal Park(south) and Deer Creek Sanctuary(north).

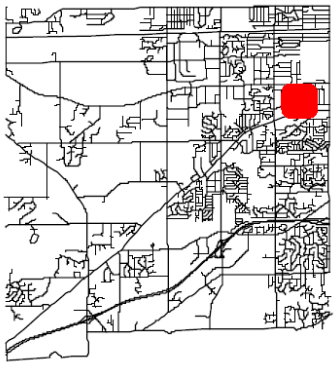
FOUNTAIN SQUARE

CONSERVANCY AREA



Amenities:

- Undeveloped



2955 S 132nd Street

Improvements:

10 acres

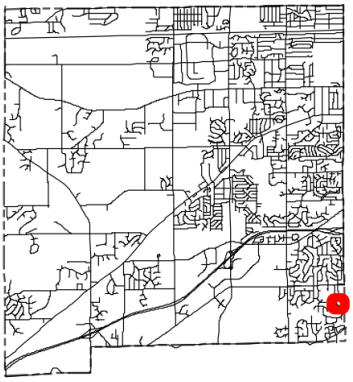
The site encompasses isolated natural resources. Fountain Square is accessible from 132nd Street.

KELLY LAKE PARK

CONSERVANCY AREA

Amenities:

- Picnic Area



5780 S Frances Avenue

Improvements:

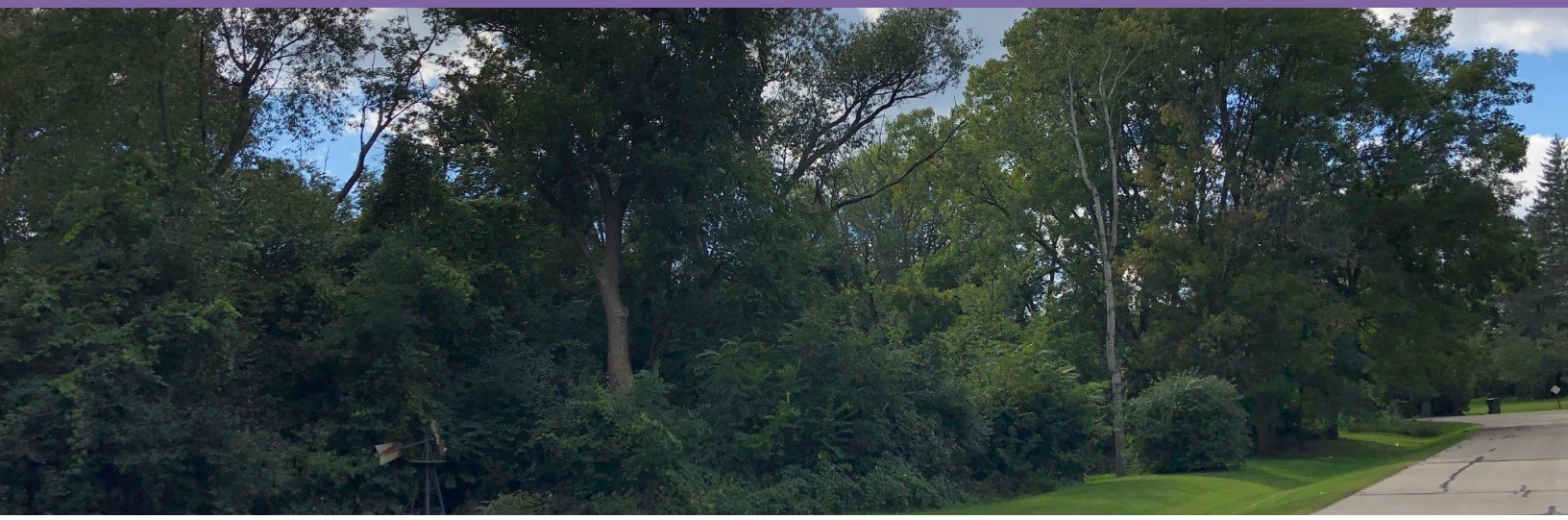
- Accessible route.

1 acre

The site encompasses wetlands within a secondary environmental corridor. Kelly Lake Park is accessible from Frances Avenue.

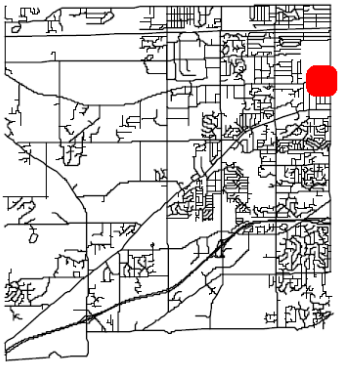
LAGOON PARKWAY

CONSERVANCY AREA



Amenities:

- Undeveloped



12601 W Lagoon Road

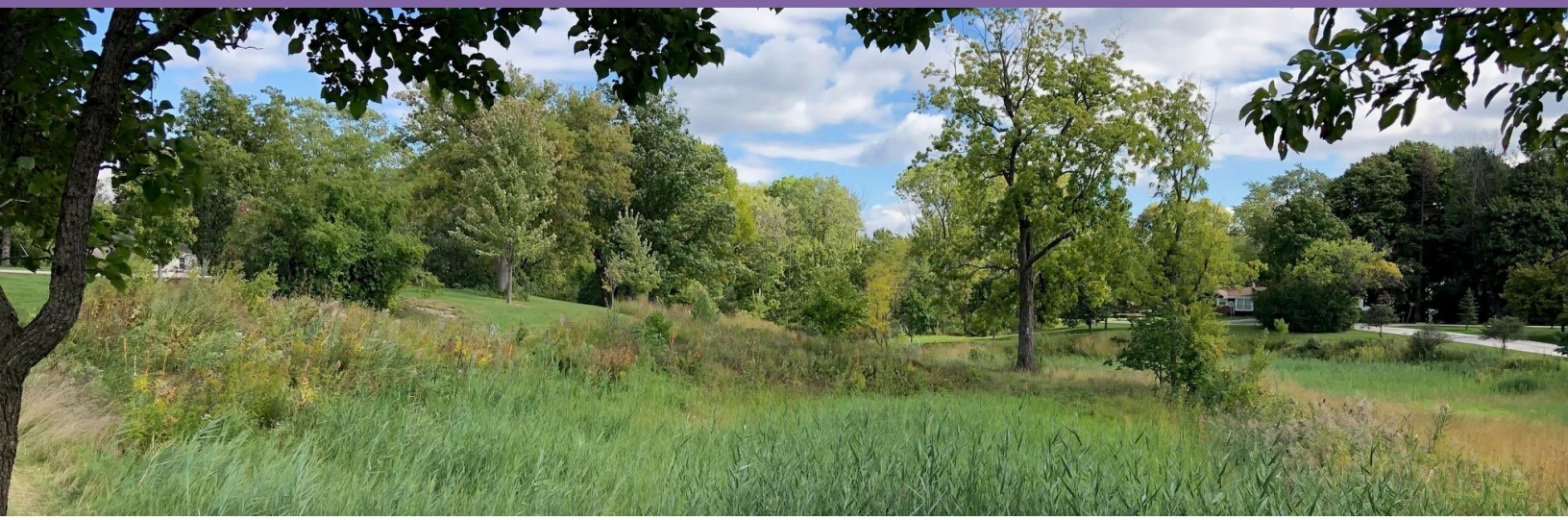
Improvements:

1 acre

The site encompasses wetlands and woodlands. Lagoon Parkway is accessible from Lagoon Road.

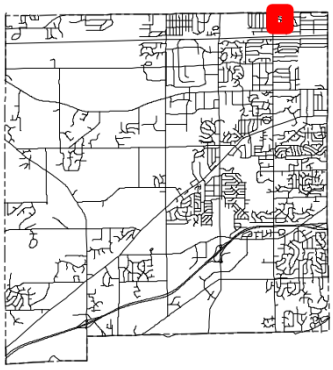
PROSPECT PARKWAY

CONSERVANCY AREA



Amenities:

- Trail



13800 W Prospect Place

Improvements:

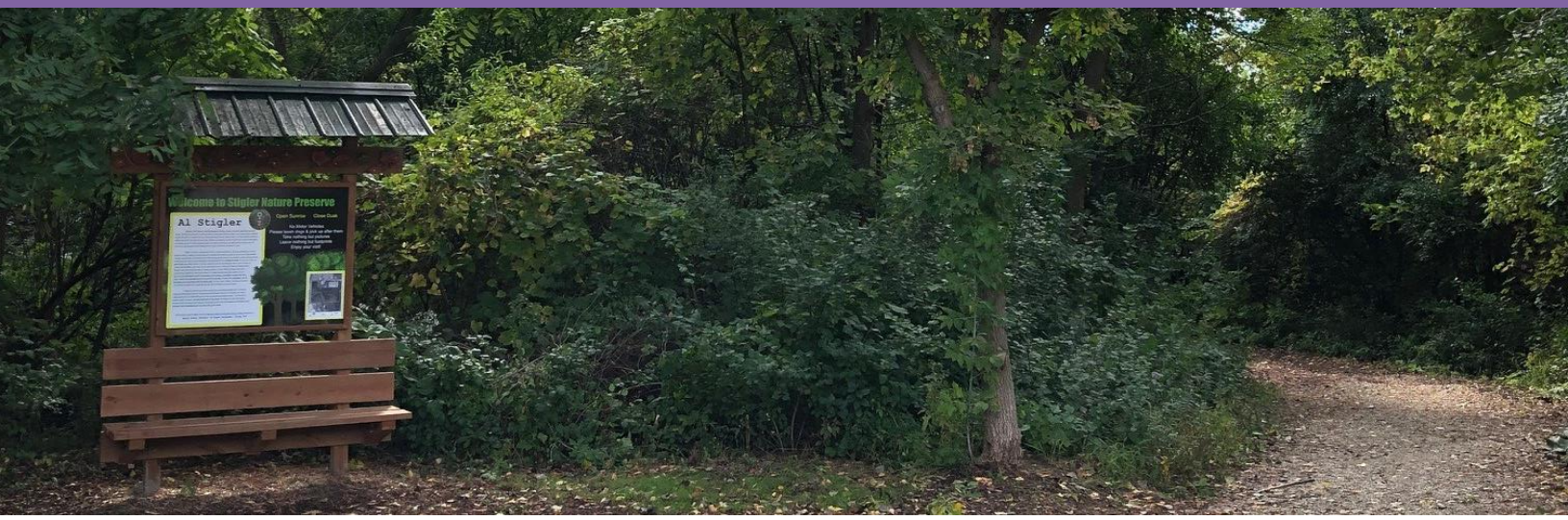
- Replace bridge.

7 acres

The site encompasses native plantings. Prospect Parkway is accessible from Meadow Lane and Prospect Place, with a bridge connecting the two sides.

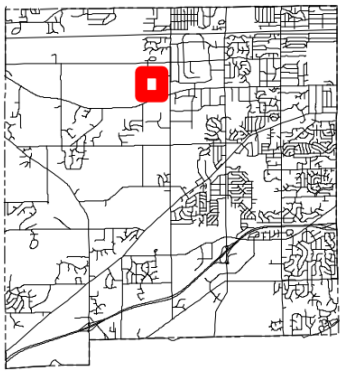
STIGLER NATURE PRESERVE

CONSERVANCY AREA



Amenities:

- Cross Country Ski
- Nature/Hiking Trail



17455 W Liberty Lane

Improvements:

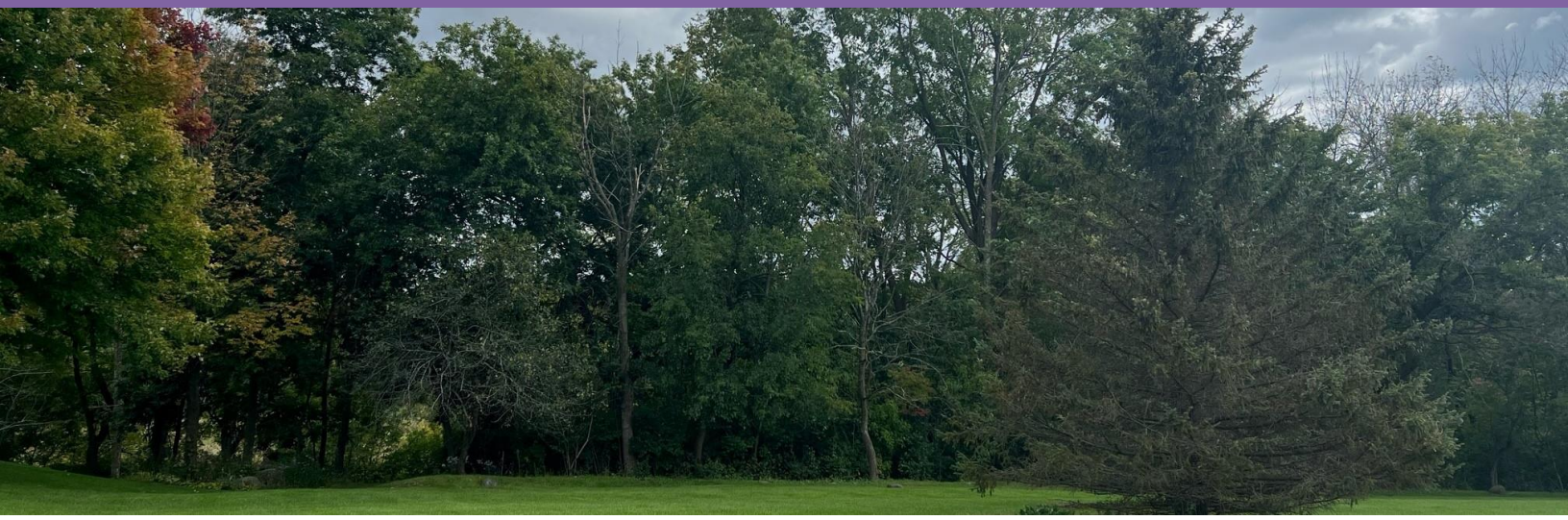
- Accessible route.

41 acres

The site encompasses wetlands and woodlands within primary environmental corridor. Stigler Nature Preserve is accessible from Liberty Lane.

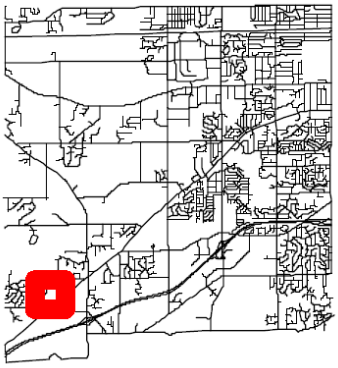
STORMY ACRES PARK

CONSERVANCY AREA



Amenities:

- Undeveloped



21001 W Windsor Drive

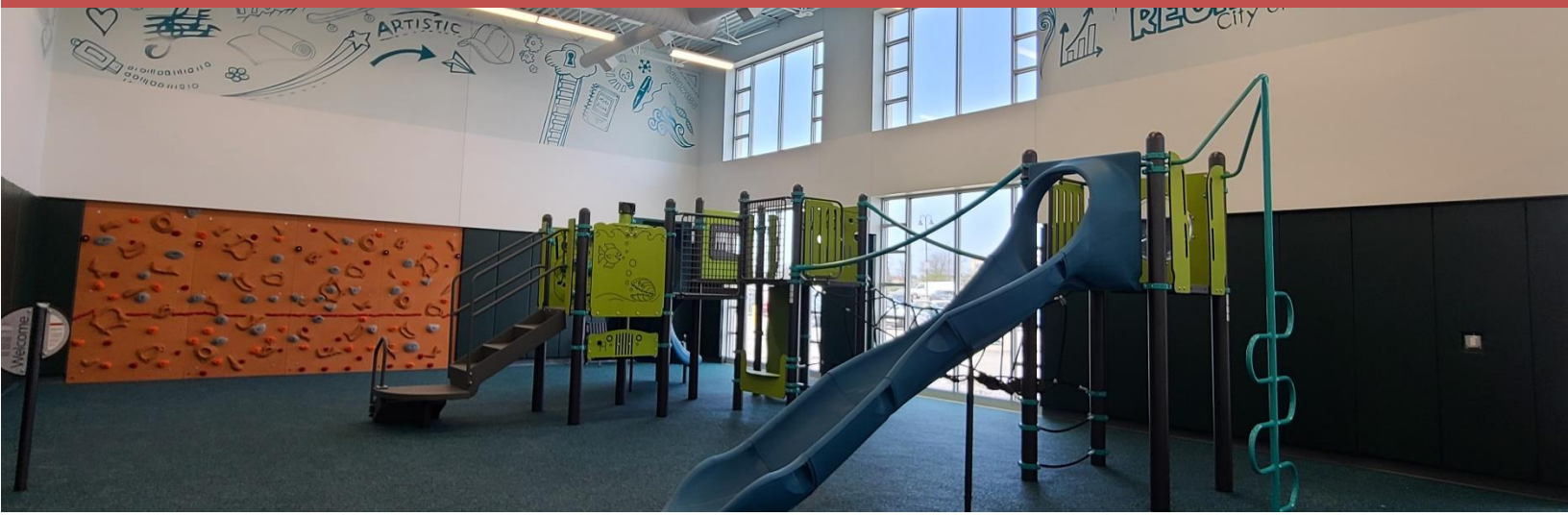
Improvements:

21 acres

The site encompasses wetlands. Stormy Acres Park is accessible from Windsor Drive.

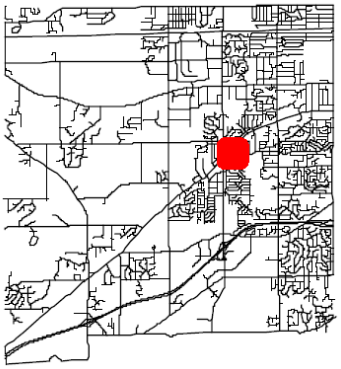
ACTIVITY & RECREATION CENTER

SPECIAL USE PARK



Amenities:

- Parking Lot
- Playground (with poured-in-place surfacing)
- Restrooms



15321 W National Avenue

Improvements:

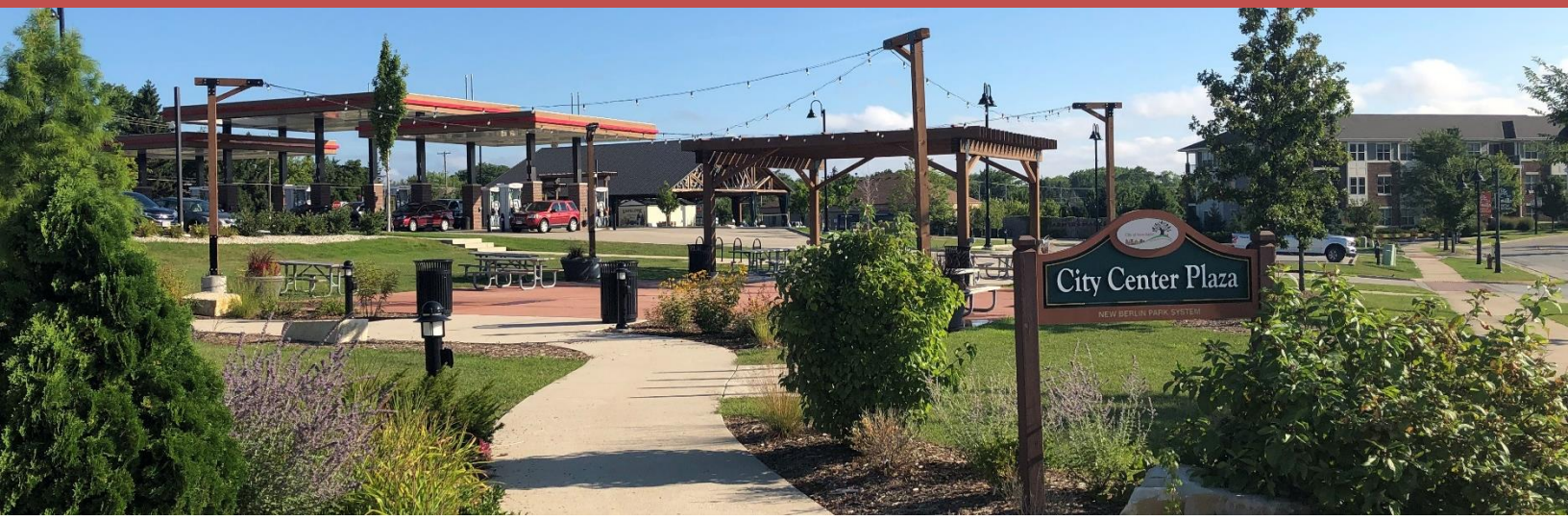
- Complete construction on addition.

4 acres

The Activity and Recreation Center is used for a variety of recreation programs. The ARC is accessible from National Avenue and Wall Street.

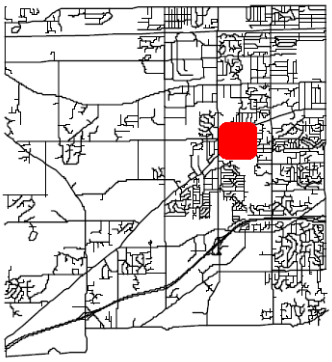
CITY CENTER PLAZA

SPECIAL USE PARK



Amenities:

- Concessions
- Ice Rink (synthetic)
- Parking Lots
- Restrooms
- Shelter
- Trail



15040 W Library Lane

1.4 acres

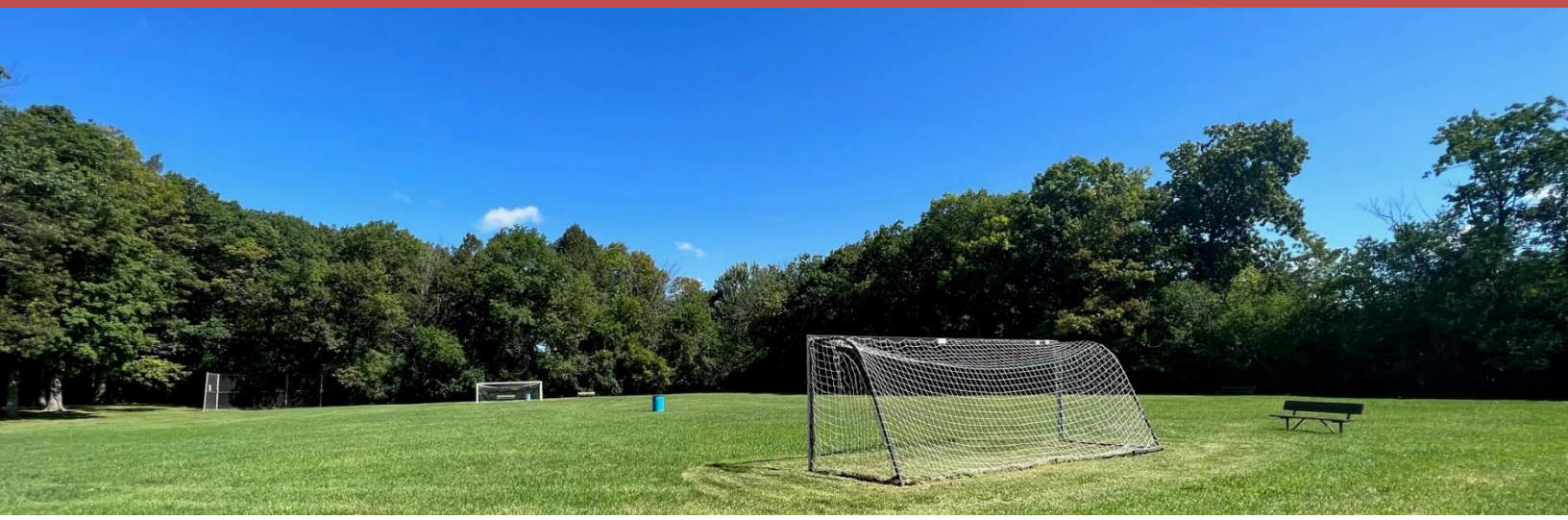
Improvements:

- Construct an off road recreational trail to link Deer Creek Park to City Center(west), Regal Park(south) and Deer Creek Sanctuary(north).

The Plaza is used for various events, including the Farmers Market, Winterfest and beer gardens. City Center Plaza is accessible from National Avenue, Library Lane and Michelle Witmer Drive.

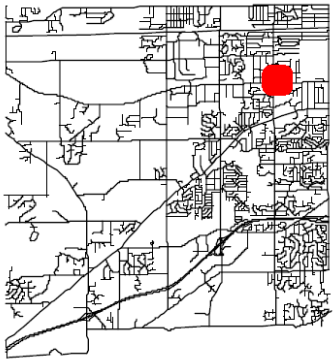
HICKORY GROVE CENTER

SPECIAL USE PARK



Amenities:

- Ball Diamonds
- Basketball Court
- Parking Lot
- Soccer Field



2600 S Sunny Slope Road

Improvements:

5 acres

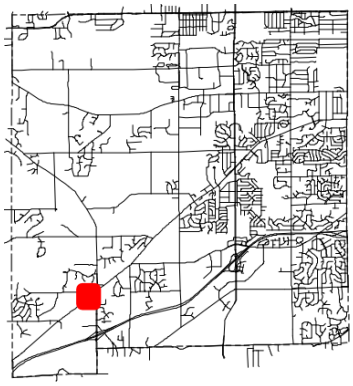
The center houses classrooms, multi-purpose rooms, and a gymnasium. Hickory Grove Center is accessible from Sunny Slope Road and Cleveland Avenue.

HISTORIC PARK

SPECIAL USE PARK

Amenities:

- Apple Orchard
- Museum
- Parking Lot
- Shelters
- Walking Trails



19885 W National Avenue

Improvements:

15 acres

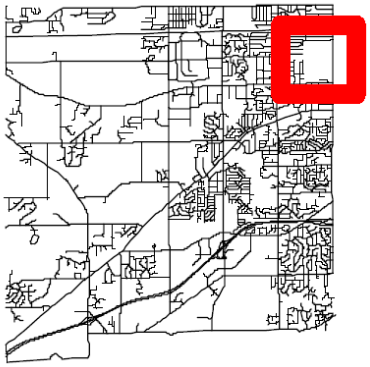
This park is comprised of historic buildings, several of which are national landmarks. Historic Park is accessible from National Avenue.

NEW BERLIN HILLS GOLF COURSE

SPECIAL USE PARK

Amenities:

- Club House
- Golf Course
- Parking Lot
- Restrooms



13175 W Graham Street

Improvements:

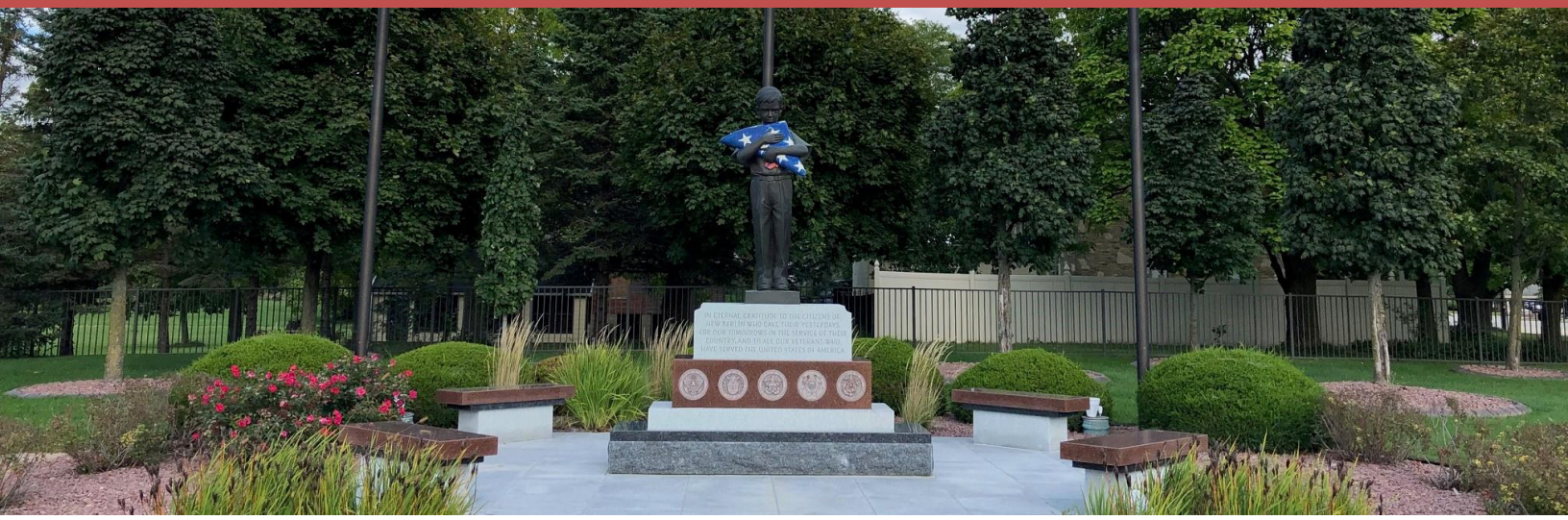
- Accessible route.

187 acres

This public golf course was established in 1907. New Berlin Hills Golf Course is accessible from Graham Street.

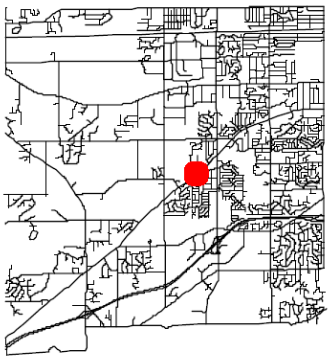
VETERAN'S MEMORIAL PARK

SPECIAL USE PARK



Amenities:

- Parking Lot
- Trail



16248 W National Avenue

Improvements:

0.4 acres

This memorial was dedicated in 2007 to honor New Berlin citizens who have served in the armed forces. Veteran's Memorial Park is accessible from Casper Drive.

NON-CITY FACILITIES

MINOOKA PARK (COUNTY PARK)
1927 Sunset Drive

Minooka Park is a 579-acre park located in the north-west portion of New Berlin, of which 380-acres are located within the western city boundary.

Amenities:
Archery Range
Cross Country Ski
Dog Park
Fishing Pond
Hiking Trails
Mountain Biking
Picnic Areas
Restrooms
Sledding
Swimming
Volleyball Courts

EISENHOWER MIDDLE-HIGH SCHOOL (SCHOOL PARK)
4333 Sunny Slope Road

Eisenhower Middle-High School is a 39-acre site located in the east-central portion of New Berlin.

Amenities:
Ball Diamonds
Football
Soccer Field
Track and Field

ELMWOOD ELEMENTARY SCHOOL (SCHOOL PARK)
5900 Sunny Slope Road

Elmwood Elementary School is a 2.4-acre site located in the southeast portion of New Berlin.

Amenities:
Ball Field
Basketball Goals
Playgrounds
Soccer Field

HERBERT HOOVER ELEMENTARY SCHOOL (SCHOOL PARK)
12705 Euclid Avenue

Herbert Hoover Elementary School is a 5.5-acre site located in the east-central portion of New Berlin.

Amenities:
Ball Field
Basketball Goals
Playground
Soccer Field

NEW BERLIN WEST MIDDLE-HIGH SCHOOL (SCHOOL PARK)
18695 Cleveland Avenue

New Berlin West Middle-High School is a 31.6-acre site located in the west-central portion of New Berlin.

Amenities:
Ball Diamonds
Football
Soccer Fields
Tennis Courts
Track and Field

ORCHARD LANE ELEMENTARY SCHOOL (SCHOOL PARK)
2015 Sunny Slope Road

Orchard Lane Elementary School is a 6.5-acre site located in the northeast portion of New Berlin.

Amenities:

Ball Fields	Playgrounds
Basketball Goals	Soccer Field

POPLAR CREEK ELEMENTARY SCHOOL (SCHOOL PARK)
17401 Cleveland Avenue

Poplar Creek Elementary School is a 6.6-acre site located in the west-central portion of New Berlin.

Amenities:

Ball Field	Playgrounds
Basketball Goals	Soccer Field

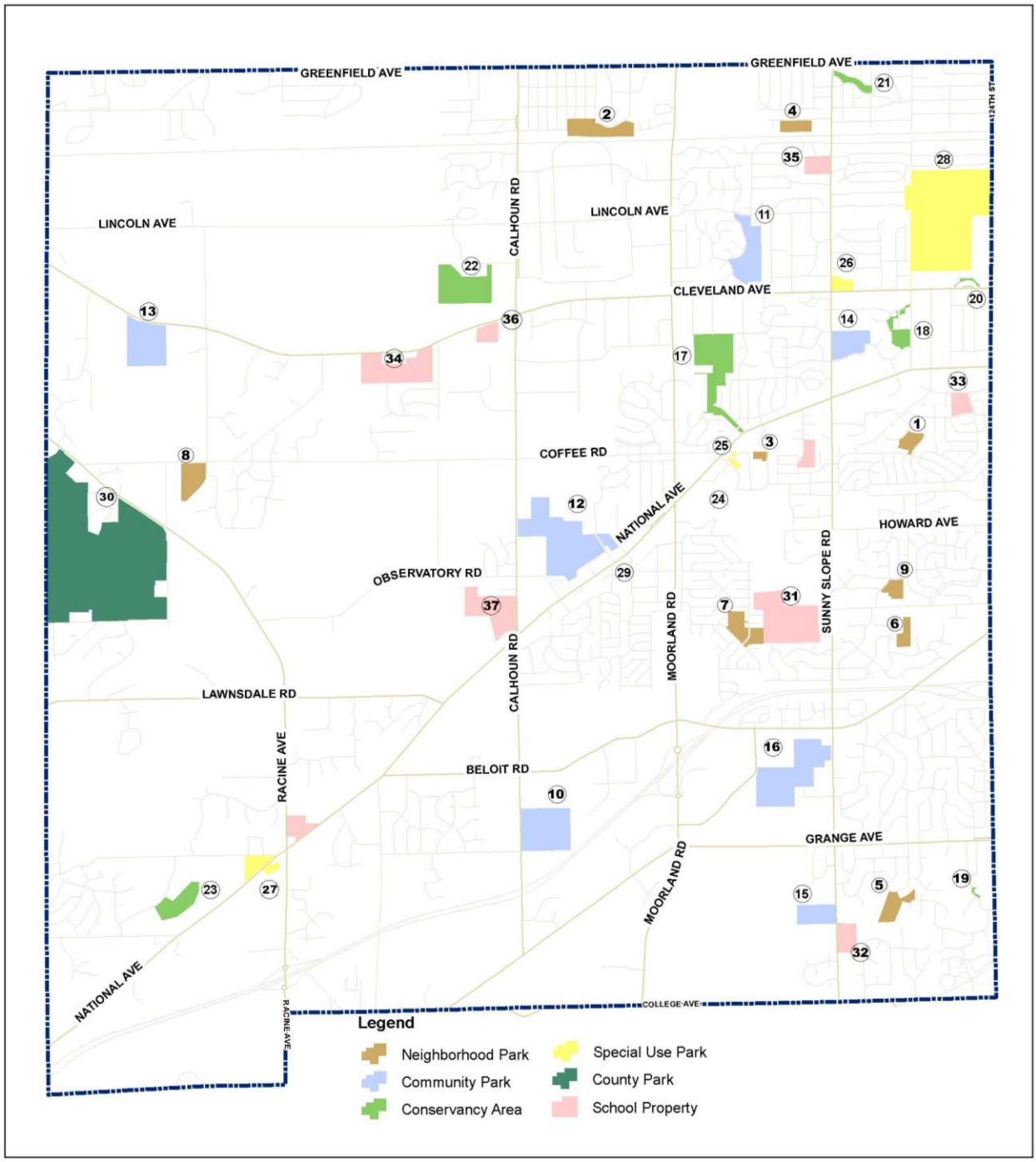
RONALD REAGAN ELEMENTARY SCHOOL (SCHOOL PARK)
4225 Calhoun Road

Ronald Reagan Elementary School is an 8.7-acre site located in the central portion of New Berlin.

Amenities:

Basketball Goals	Soccer Field
Playgrounds	

MAP 4: Public Park and Recreation Facilities



Source: City of New Berlin

1	Biwer Park	11	Lions Park	21	Prospect Parkway	31	Eisenhower Middle-High School
2	Buena Park	12	Malone Park	22	Stigler Nature Preserve	32	Elmwood Elementary
3	Deer Creek Park	13	Milham Park	23	Stormy Acres Park	33	Herbert Hoover Elementary
4	Gatewood Park	14	ProHealth Care Park	24	Activity & Recreation Center	34	New Berlin West Middle-High School
5	High Grove Park	15	Section 35 Park	25	City Center Plaza	35	Orchard Lane Elementary
6	Maple Ridge Park	16	Valley View Park	26	Hickory Grove Center	36	Poplar Creek Elementary
7	Regal Park	17	Deer Creek Sanctuary	27	Historic Park	37	Ronald Reagan Elementary
8	Rustic Ridge Park	18	Fountain Square	28	New Berlin Hills Golf Course		
9	Weatherstone Park	19	Kelly Lake Park	29	Veteran's Memorial Park		
10	Calhoun Park	20	Lagoon Parkway	30	Minooka Park		

PRIVATE RECREATIONAL PARKS AND FACILITIES

PRIVATE RECREATION FACILITY

Private Recreation facilities in the City are primarily limited to golfing activities. In addition to the 18-hole public golf course (New Berlin Hills), there are two additional courses (9 and 18 holes) and three driving ranges. Private acreage is also used for organizations that promote bow hunting and casting (angling). A 3-field league complex maintained by the Veterans of Foreign Wars (Ralph Sharping Memorial Field) affords baseball and softball uses, but is not available for City sponsored recreation use.

BICYCLE AND PEDESTRIAN FACILITIES

Each City owned Bicycle and Pedestrian Facility is classified into one of two categories: On Road and Off Road Facilities. On Road Facilities consist of Bicycle Lanes and Shoulder Paths; Off Road Facilities consist of Sidepaths and Trails. The Park and Open Space Plan will only focus on Off Road Trails. A complete inventory and analysis of Bicycle Lanes, Shoulder Paths and Sidepaths can be found in the Transportation Chapter of the City of New Berlin's Comprehensive Plan.

TRAILS

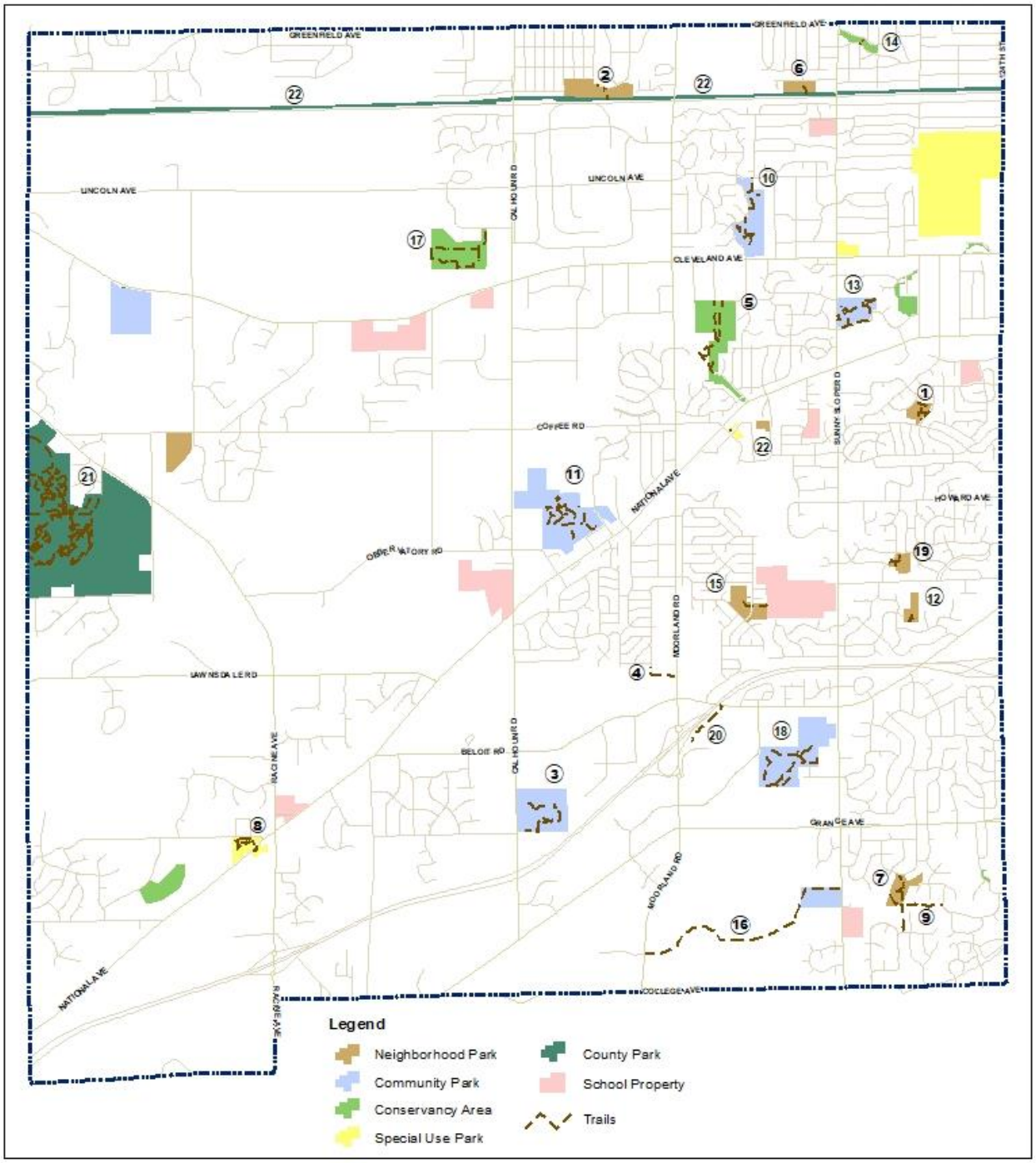
A variety of trail types can be found in New Berlin, including: Multi-Use, Bicycle, Regional, Nature and Hiking. An inventory of every public trail located within City property was completed. However, the Park and Open Space Plan will primarily focus on City Owned Trails for the comprehensive site assessment to determine areas for improvement.

TABLE 7: Public Trails

Trail Location/Municipal Park		Miles	Trail Type			Surface
			Connector	Internal	Notes	
City Owned						
1	Biwer Park	0.3		X	Hiking	Woodchip
2	Buena Park	0.12	X		Multi-Use	Asphalt
3	Calhoun Park	0.73		X	Hiking	Asphalt, grass
4	Children's Hospital Trail	0.2	X		Multi-Use	Asphalt
5	Deer Creek Sanctuary	1.06	X		Nature/Bicycle	Gravel, woodchip
6	Gatewood Park	0.09	X		Multi-Use	Gravel
7	High Grove Park	0.4	X	X	Hiking	Asphalt, gravel, woodchip
8	Historic Park	0.46		X	Walking	Concrete
9	Karrington / Woodfield Trail	0.45	X		Walking	Woodchip, boardwalk
10	Lions Park	0.77	X		Walking	Asphalt
11	Malone Park	1.3	X	X	Multi-Use/Hiking	Asphalt, woodchip
12	Maple Ridge Park	0.08		X	Hiking	Woodchip
13	Pro Health Care Park	0.94	X		Multi-Use	Asphalt, boardwalk
14	Prospect Parkway	0.04	X		Multi-Use	Asphalt
15	Regal Park	0.17	X		Walking	Gravel
16	Section 35 Trail	0.34	X		Multi-Use	Asphalt
17	Stigler Nature Preserve	0.95		X	Nature/Hiking	Woodchip
18	Valley View Park	1.36	X	X	Hiking	Gravel, woodchip
19	Weatherstone Park	0.19		X	Nature	Woodchip
20	Westridge Trail	0.33	X		Multi-Use	Asphalt, boardwalk
Non-City Owned (Waukesha County)						
21	Minooka Park	6		X	Nature	Grass, woodchip
22	New Berlin Recreational Trail	6	X		Regional	Asphalt

Source: City of New Berlin

MAP 5: Public Trails



Source: City of New Berlin

CHAPTER 6:
ANALYSIS

There are several ways to analyze how the various recreational needs of a community are being met. The National Recreation and Park Association (NRPA), along with other park and planning departments across the nation, are now placing more emphasis upon local standards and level of service. This change has occurred in recognition of the variability in the social, economic and physical aspects of our communities as such standards that work well for one community are often not appropriate for another. In recognition of this information, the following recommendations and standards were utilized in determining a baseline for parkland and recreational facility needs:

- The recommendations of the City's previous Park and Open Space Plans
- Per capita, jurisdictional, and accessibility standards outlined by the NRPA
- The recommendations of the Plan Commission and City staff

SERVICE AREA AND PARK DISTRIBUTION

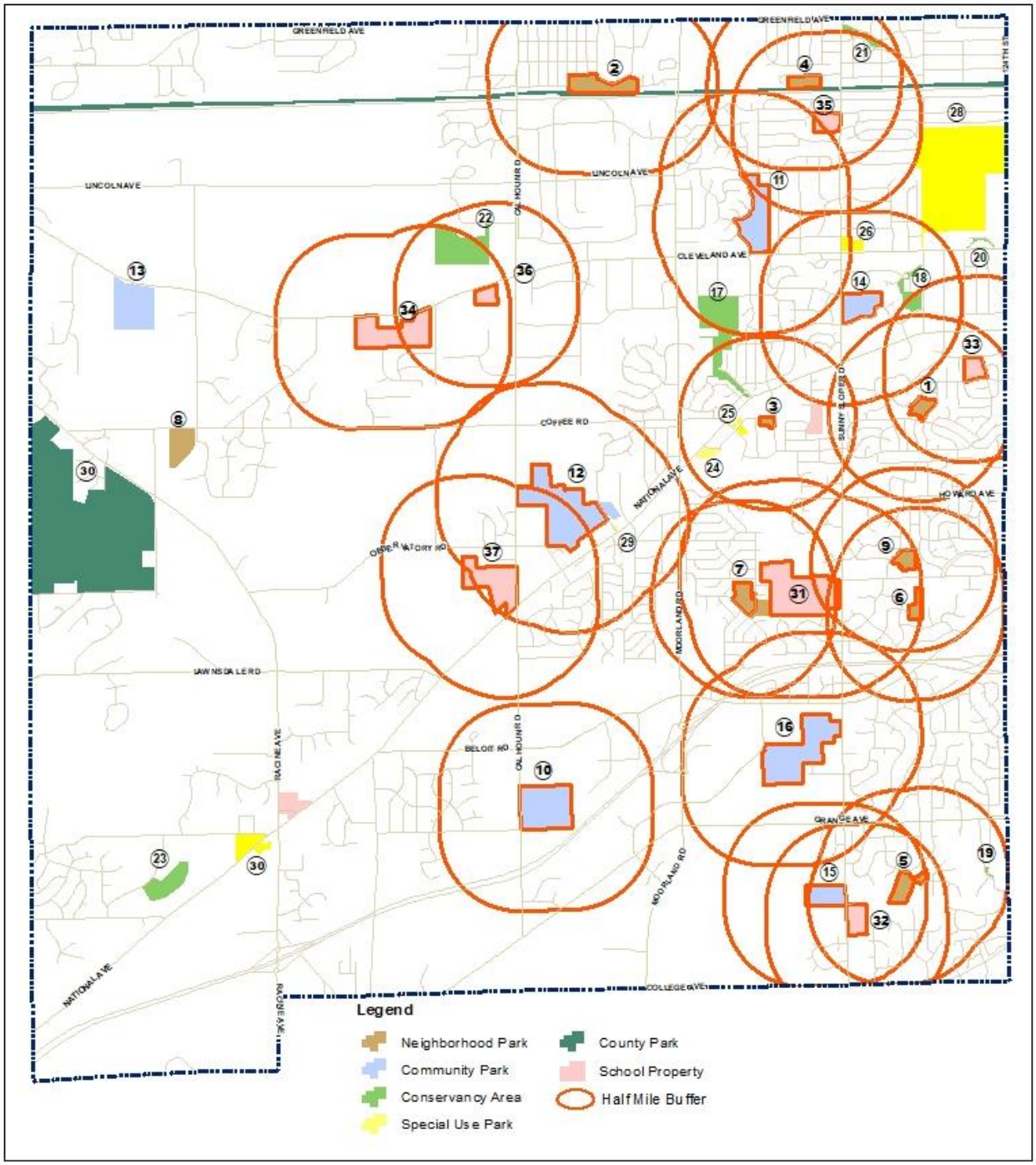
The distance that the population is from the park is a large determining factor for its ability to satisfy public needs. In order to maximize the public benefits and to provide safe access, parks should be located within a reasonable distance from the population they are intended to serve. It is also recommended that parks be distributed in a somewhat equitable fashion within a community to ensure that all residential areas are being served.

"Service Area Guidelines" prescribe the maximum distance that park users may reside, yet be considered served by a park. These guidelines are expressed in terms of straight-line distances (radii) from the park and do not take into consideration physical barriers, such as traffic arterials or natural features. Standard Service Areas recommended by the NRPA are outlined in Chapter 3 of this plan. These recommended service area guidelines serve as a general boundary for which to measure the parks ability to serve the population, and should be adjusted as necessary to suit local conditions. The following maps illustrate the extent of park service areas and distribution. In general, the greatest concentration of developed parks occur on the eastern half of the City where moderate-density residential uses are located, while the rural western sector has fewer park sites that remain largely undeveloped.

MAP 6 shows that the majority of moderate-density residential areas in the eastern sector of the City are served appropriately by Neighborhood Parks, with a few districts that are not being served. However, the areas that are not being served by a Neighborhood Park in the eastern sector of the City are being served by a Community Park. The western sector of the City is not adequately served by Neighborhood Parks according to this type of analysis. Many of the residential uses in this sector are more rural than those located in the eastern sector.

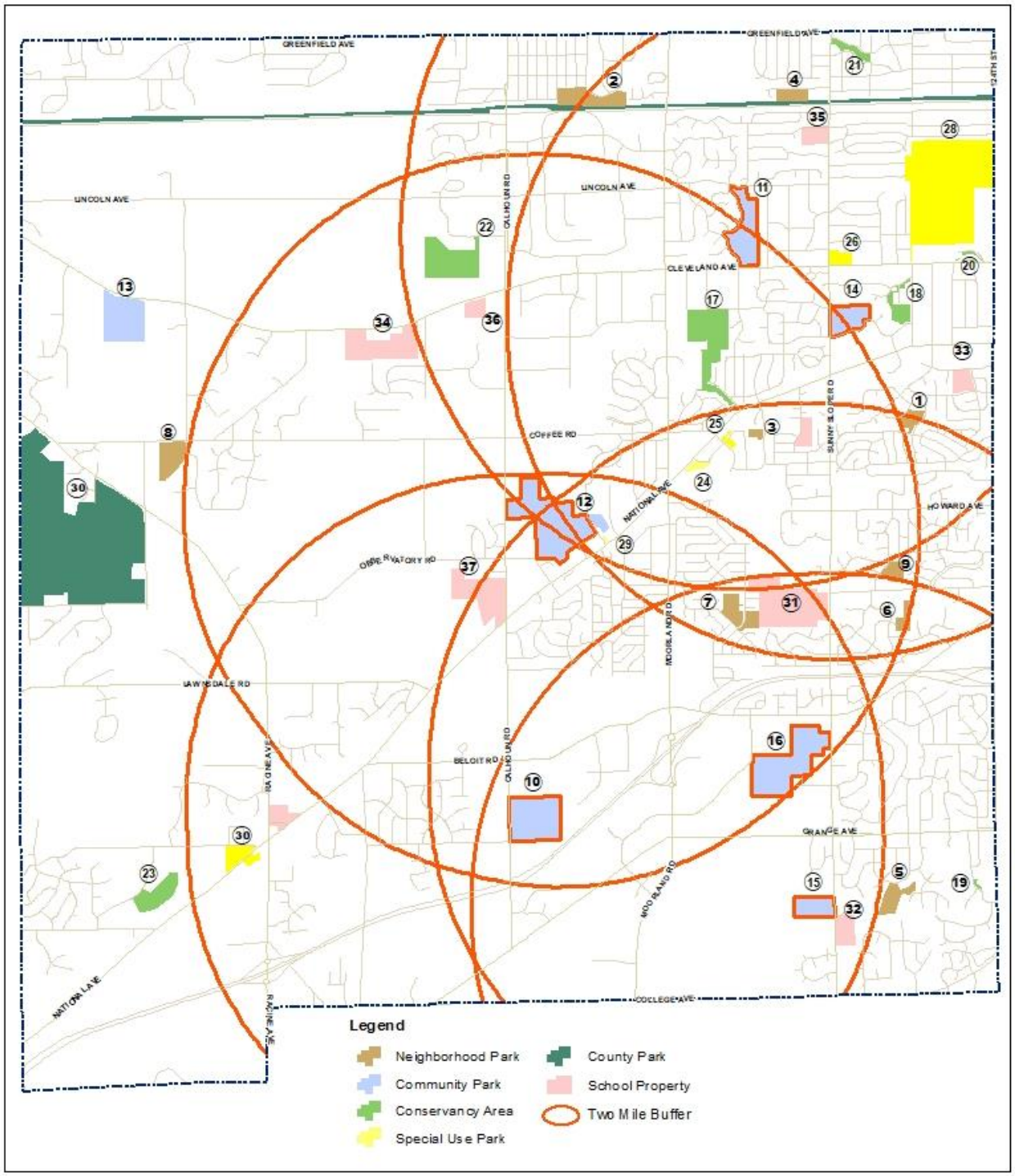
According to service area standards and park distribution shown in **MAP 7**, the eastern sector of the City is adequately served by Community Parks. The western sector of the City is not adequately served by Community Parks according to this type of analysis. Many of the residential uses in this sector are more rural than those located in the eastern sector.

MAP 6: Existing Service Area of Neighborhood Parks



Source: City of New Berlin

MAP 7: Existing Service Area of Community Parks



Source: City of New Berlin

PARKLAND ACREAGE

The following standards are based upon information prepared by the NRPA. These standards are intended to be used as a guide and should not be applied to all locations in the same manner. Varying social, economic, geographic and cultural factors of communities should be looked at when determining how the standards should be applied.

According to NRPA standards, the average neighborhood park is between 5 and 10 acres and community parks are between 30 and 50 acres. In New Berlin, these averages exceed NRPAs recommendations at 12.8 acres and 51.5 acres, respectively, as shown in **TABLE 8**. However, while looking at the developable parkland in New Berlin, the average size of these parks decreases to 6.5 acres for a neighborhood park and 24 acres for a community park. New Berlin neighborhood parks currently fall within NRPAs recommended standards for average park size, but the community parks do not.

TABLE 8: 2022 Park Size

Component	# of Facilities	City of New Berlin Gross Acreage		City of New Berlin Developable Acreage		NRPA
		Total Park Acreage	Average Park Size	Total Park Acreage	Average Park Size	
Neighborhood Park	9	115	12.8	58.9	6.5	5-10
Community Park	7	360.5	51.5	167.7	24	30-50

Source: City of New Berlin, NRPA

According to NRPA standards, for every 1,000 people in a community, 1 to 2 acres of neighborhood parks and 5 to 8 acres of community parks are needed, as shown in **TABLE 9**. In New Berlin, these averages exceed NRPAs recommendations for park acreage per 1,000 people with 2.8 acres and 8.9 acres, respectively. However, while looking at the developable parkland in New Berlin, the park acreage per 1,000 people decreases to 1.5 acres for neighborhood parks and 4.1 acres for community parks. New Berlin neighborhood parks currently fall within NRPAs recommended standards for park acreage per 1,000 people, but the community parks do not.

TABLE 9: Existing Park Acreage per 1,000 people - 2020 (population 40,451)

Component	City of New Berlin Gross Acreage		City of New Berlin Developable Acreage		NRPA Acres/1,000 People
	Total Park Acreage	Acres/1,000 People	Total Park Acreage	Acres/1,000 People	
Neighborhood Park	115	2.8	58.9	1.5	1-2
Community Park	360.5	8.9	167.7	4.1	5-8

Source: City of New Berlin, NRPA

Population forecasts predict an additional 4,689 people to be living in New Berlin by the year 2030. In order to accommodate this population increase, there must be a minimum of 45.1 acres of neighborhood parks and 225.7 acres of community parks in New Berlin, as illustrated in **TABLE 10**. Neighborhood parks within New Berlin currently meet the minimum amount set by NRPA with 58.9

acres. However, community parks within New Berlin are currently below the minimum amount set by NRPA with 167.7 acres. An additional 58 acres of developable parkland is needed by the year 2030 to be used for community parks.

TABLE 10: Additional Park Acreage needed by 2030 (projected population 45,140)

Component	NRPA Acres/ 1,000 People	Total Developable Park Acreage		Additional Developable Park Acreage 2030
		2020 (population 40,451)	2030 Needed, per NRPA (projected population 45,140)	
Neighborhood Park	1-2	58.9	45.1 – 90.3	0
Community Park	5-8	167.7	225.7 – 361.1	58

Source: City of New Berlin, NRPA

OTHER CONSIDERATIONS

According to population trends and projections, the City of New Berlin is expected to grow at a faster rate than it has in years past, as shown in **TABLE 11**. In addition to the projected population growth is the shift in the percentage of residents over the age of 65 living within the City. Accommodating the aging population should be looked into further when planning for parks and facilities within the City.

TABLE 11: Population Trends

Year	2000	2010	2020	2030	2040
Population	38220	39,584	40,451	45,140	45,120
Net change	-	1,364	867	4,689	-20
% change	-	3.45%	2.19%	11.59%	-0.04%

Sources: Wisconsin DOA

Baseball, softball, and soccer participation remains a growing trend in New Berlin. In 2022, there were approximately 154 baseball and softball teams, which includes adult softball, NBAA and numerous select teams that play in New Berlin. There are 25 ball diamonds within public parks and an additional 13 on school properties. This leaves 154 teams sharing 38 diamonds, of which a third have limited availability and are only practice fields. In 2022, there were approximately 102 soccer teams, which includes NBAA and the New Berlin Soccer Club. There are 39 soccer fields within public parks and an additional 12 on school properties. This leaves 102 teams sharing 51 fields, of which many overlap with ball diamonds, have limited seasonal availability and are only practice fields.

It should be noted that these numbers do not include school district teams and their use. In recent years, the New Berlin School District itself has noted they do not have enough field space to host practices and games for their own teams and they too have sought to use City field space. Balancing the use of fields between the NBAA, the various select teams, the School District, and Recreation programs and leagues leaves little to no field space available for the general public to use, requires excess maintenance and supplies to try to keep the fields in playable conditions, and in some instances leaves the fields unrepairable. There is a greater need for fields than what is currently available in New Berlin.

Pickleball is a growing sport in recent years, with 47 different pickleball programs offered through the City's Recreation Department and a long waitlist for programs due to lack of court space. Currently, there are only three permanent pickleball courts in the City. Some of the City's tennis courts are striped for pickleball, but are only playable if people bring their own portable net or are participating in one of the scheduled programs offered by the Recreation Department.

CHAPTER 7:
RECOMMENDATION PLAN

The following section of the Park and Open Space Plan summarizes how the City plans to address the future needs of the community. These are broken into short-term and long-term actions, based upon public input, trends within the community and service standards. This major focus of this plan is to improve our existing facilities by making sure they comply with current standards and address the needs of the community.

SHORT-TERM IMPROVEMENTS: 1 TO 5 YEARS

ENHANCEMENTS TO EXISTING PARKS

The primary focus of this plan shall be to maintain and preserve existing parkland. The parks are heavily used by sports teams, as well as other community members, as outlined in the Analysis section. According to the service area standards and park distribution, additional parks are not needed in New Berlin. However, frequent and heavy use of these sports fields decreases the longevity of them. Consider improvements, such as resurfacing, reconstructing and redesigning existing fields. Additional upgrades to accommodate ADA standards and sustainable practices are also highly encouraged. Incorporate a variety of outdoor spaces in order to provide equal opportunities for all abilities and ages, especially since there is a projected shift in the average age of the population in New Berlin. Use the ADA Study, CVMIC Playground Safety Inspection Report, and PASER as tools to plan park improvement projects.

Buena Park

Replace playground (west).

Calhoun Park

Accessible routes.
Bridge Maintenance.
Parking lot replacement (south).
Replace playground (south).
Replace Shelter #3 and restroom with new park structure.

Gatewood Park

Accessible routes.
Replace shelter.

High Grove Park

Replace playground.

Lions Park

New shelter near restrooms.

Malone Park
Accessible routes.
Add pickleball courts.
Parking lot replacement (north).
Replace gazebo with new park structure.
Replace Shelter #1 and concessions with new park structure.
Replace Shelter #2 with new park structure.
Baseball diamond improvements (lighting, fencing, netting).

Maple Ridge Park
Accessible routes.
Replace playground.

New Berlin Activity and Recreation Center
Buildout of Phase 2 (currently under construction).

ProHealth Care Park
Accessible routes.

Regal Park
Accessible routes.
New shelter.
Replace playground.

Valley View Park
Accessible routes.
Add pickleball courts.
Parking lot replacement (north, south, and southwest).
Renovate Restroom #2.
Replace playground (southwest).

Various Parks
Park Shelter Maintenance.

ACQUISITION, DEDICATION AND PRESERVATION OF PARKLAND & OPEN SPACE
Although the service area standards do not call for additional Community Parkland, the parkland acreage standards do. Consider areas of land that are within close proximity to moderate-density residential uses. These areas shall also contain high quality landscapes, woodlands or wetlands to be used for passive public uses.

Section 35
Acquire approximately 56.7 acres of parkland to serve as a Community Park.

DEVELOPMENT OF VACANT PARKLAND

According to the parkland acreage standards, additional Community Parkland is needed. The focus is to keep developed parkland in the eastern sector of the City where moderate-density residential uses are located and to provide accessible connections to these highly populated areas.

Section 35

Add pickleball courts.

Upon acquiring additional land to the west, construct athletic complex.

TRAILS

Create a "People Movement" Plan by developing a network of trails that connects people to sought-after destinations or nodes. These destinations may include, but are not limited to: schools, parks and open spaces, business districts, commercial districts, and public transportation.

Section 35

Upon acquiring additional land to the west, continue construction of a multi-use trail.

OPERATIONS AND MAINTENANCE

Maintain existing City facilities and provide best management practices to minimize operating and maintenance costs while providing high-quality facilities.

Community Center

Evaluate current and future needs of this facility, including rentable space and storage.

DPW Facility

Evaluate current and future needs of this facility, including rentable space and storage.

Hickory Grove Center

Evaluate current and future needs of this facility, including rentable space and storage.

TABLE 12: Parks CIP Budget

	Project	Estimated Cost				
		2024	2025	2026	2027	2028
1	**Buena Park** Replace playground.	$200,000				
2	**Calhoun Park** Accessible routes. Bridge Maintenance. Parking lot replacement. Replace playground. Replace Shelter #3 and restroom.		$90,000	$989,000		
3	**Gatewood Park** Accessible routes. Replace shelter.		$15,000	$150,000		
4	**High Grove Park** Replace playground.				$20,000	$200,000
5	**Lions Park** Build new shelter near restrooms.				$20,000	$200,000
6	**Malone Park** Accessible routes. Add pickleball courts. Parking lot replacement. Replace all shelters. Baseball diamond improvements.	$2,800,000	$1,250,000	$625,000		
7	**Maple Ridge Park** Accessible routes. Replace playground.	$200,000				
8	**ProHealth Care Park** Accessible routes.				$10,000	$100,000
9	**Regal Park** Accessible routes. New shelter. Replace playground.				$30,000	$300,000
10	**Section 35 Park** Add pickleball courts. Construct athletic complex and trail.		$440,000	$800,000	$11,000,000	
11	**Valley View Park** Accessible routes. Add pickleball courts. Parking lot replacement. Renovate Restroom #2. Replace playground.		$490,000	$1,000,000		
12	**Various Parks** Park shelter maintenance.	$125,000	$50,000			

Source: City of New Berlin

LONG TERM IMPROVEMENTS: 6 TO 20 YEARS

ENHANCEMENTS TO EXISTING PARKS

Continue to maintain and preserve existing parkland. Consider improvements, such as resurfacing, reconstructing and redesigning existing fields. Additional upgrades to accommodate ADA standards and sustainable practices are also highly encouraged. Use the ADA Study, CVMIC Playground Safety Inspection Report, and PASER as tools to plan park improvement projects.

ACQUISITION, DEDICATION AND PRESERVATION OF PARKLAND & OPEN SPACE

As additional facilities are needed within the parks, consider expansion of parkland. Focus on the development of parkland in the eastern sector of the City where moderate-density residential uses are located.

Malone Park

Explore the opportunity for possible expansion of Malone Park by purchasing the 71 acre Posner Property (section 15), which is located northwest of Malone Park.

DEVELOPMENT OF VACANT PARKLAND

Focus on the development of parkland in the eastern sector of the City where moderate-density residential uses are located.

Special Use Facilities within Neighborhood or Community Park

Research, plan and explore public/private partnerships for special use facilities, such as a skate park. Consider other park and recreational facilities as needs and opportunities arise

TRAILS

Create a "People Movement" Plan by developing a network of trails that connects people to sought-after destinations or nodes.

City Center Trail

Construct an off road recreational trail to link Deer Creek Park to City Center(west), Regal Park(south) and Deer Creek Sanctuary(north).

Valley View Park Trail

Construct an off road recreational trail to link Valley View Park to Section 35.

STAFF REPORT
EXECUTIVE SUMMARY

APPLICANT/PROJECT:	**Brian Hatzung with Zimmerman Architectural Studios / 5,760 square foot storage building for Veit**
LOCATION:	**18600 W. Lincoln Avenue (Tax Key #: 1167-994)**
REQUEST:	**Use, Site and Architecture approval for a 5,760 square foot storage building located at 18600 W. Lincoln Avenue.**
D.R.C. RECOMMENDATION:	**Recommend approval of Use, Site and Architecture for a 5,760 square foot storage building located at 18600 W. Lincoln Avenue, subject to the application, plans on file, and the following conditions:**

1. **Planning**
   a. **Architecture Review Committee approval required.**
   b. **Plan of Operation:**
      i. **Applicant shall adhere to the submitted plan of operation.**
      ii. **The applicant is proposing to construct a 5,760 square foot storage building.**
      iii. **Employee and customer parking shall be contained on site.**
   c. **Plans shall meet the M-1, Light Industrial District, requirements in Section 275-35B(4).**
   d. **Dumpsters and mechanical equipment shall be properly screened from the street and public view in accordance with Section 275-56G of the Zoning Code.**
   e. **Applicant shall show any roof, ground, and wall mounted equipment on architectural plans.**
   f. **All permanent and temporary signs require a Sign Application to be filed prior to installation.**
   g. **Applicant shall provide copies of any applicable WDNR and/or Army Corp of Engineers permits prior to the issuance of the Zoning Permit.**
   h. **Wetlands shall be clearly marked in the field with construction fencing and signage during site work.**
2. **Inspections**

   Inspection – State Review

   a. **Building plans shall be signed and stamped by a licensed architect or professional engineer per the Wisconsin Enrolled Commercial Building Code (SPS.361.31).**
   b. **Building plans shall be approved by the State of Wisconsin Department of Commerce Safety and Buildings Division (SPS.361.60). State letter required with permit application.**
   c. **Apply and obtain appropriate building, electric, and plumbing permits from the City**

of New Berlin Building Inspection Division.

d. Please provide (4) sets of stamped plans at time of permit application.

3. Engineering

a. Lincoln Avenue will be under construction starting April of 2023. The anticipated completion date is the end of October 2023. Access to the property will be maintained, but traffic control may limit that access. Coordinate major deliveries with the on-site inspection staff.

4. Fire Department

a. Building shall be sprinkled if used for vehicle storage, fire storage, or hazardous material storage.

5. Storm Water

a. The SWMP for the development (See File #: UA-2200118) accounted for 0.913 acres of roof. This outbuilding was included in the SWMP although the size appears to have been reduced by half. Therefore no additional SWM required at this time.

<u>DETAILS IN ATTACHED STAFF REPORT</u>

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
PLAN COMMISSION STAFF REPORT

Meeting of March 6, 2023

Brian Hatzung with Zimmerman Architectural Studios / Use Approval
18600 W. Lincoln Avenue (Tax Key #: 1167-994)

DATE STAFF REPORT PREPARED: February 10, 2023

APPLICANT / OWNER(S): Brian Hatzung with Zimmerman Architectural Studios on behalf of Veit / Vav North LLC and Kjv North LLC

REQUEST/DESCRIPTION OF PROJECT: Use, Site and Architecture approval for a 5,760 square foot storage building located at 18600 W. Lincoln Avenue.

DATE OF APPLICATION / DATE FILED WITH CITY CLERK: 1/20/2023

DATE OF COMPLETENESS DETERMINATION: 2/3/2023
Application Check List Enclosed: No

PRE-APPLICATION CONFERENCE HELD: No
Date(s) of Meeting(s): N/A – Several Phone Calls
Site Visit: 2/10/2023

CONCEPTUAL PLAN: N/A

SIZE OF DEVELOPMENT / PARCEL(S): 5,760 square feet / 51.76 acres

CURRENT ZONING: M-1 (Light Manufacturing), C-1 (Upland Resource Conservancy District) and C-2 (Shoreland Wetland Holding District)

CURRENT LAND USE: Industrial (under construction)

PROPOSED ZONING: N/A

PROPOSED LAND USE: The applicant is proposing to construct a 5,760 square foot storage building.

PROPOSED LOT SIZE (S): N/A

ADJACENT ZONING AND LAND USE:

North:	Zoning: C-1	Land Use: Certified Products
South:	Zoning: B-3/C-1	Land Use: Single-Family Home / Vacant (Conservancy)
East:	Zoning: M-1	Land Use: Starline Trucking
West:	Zoning: M-1/M-2	Land Use: Suburban Asphalt /Residential

CONFORMANCE WITH THE 2020 COMPREHENSIVE PLAN AND MUNICIPAL CODE: Yes
Chapter 12: Neighborhood B: *West Lincoln Avenue and Western Area:* Yes, this submittal meets the intent of this Chapter.

Planning Context / Vision / Development Policies:

Planning Context:

- *The vision for the West Lincoln Avenue area is to develop it into a unique business park environment with campus settings designed around environmentally sensitive areas. Clean, environmentally sensitive light industrial and office parks will be encouraged. Private on-site wastewater treatment systems will need to be evaluated on a site-by-site basis. Larger assemblages of environmentally sensitive or floodplain areas will be preserved as either publicly or privately owned open space. The farthest western portion of Lincoln Avenue is designated for country residential developments. Potential uses along this corridor could include corporate headquarters, business offices, or uses needing railroad access.*

Vision:

- *Development in this area will incorporate environmental protection as a basic value, including its importance as an aquifer recharge area.*
- *Larger assemblages of environmentally sensitive or floodplain areas will be preserved as either publicly or privately owned open space.*

West Lincoln Avenue Polices:

- *Given the substantial barriers to planning and development, a separate plan should be established for the West Lincoln Avenue corridor that recognizes the long-term commitment on the part of the City.*
- *Public sanitary sewer service shall not be extended into this area, with the exception of parcels designated to be within the Urban Service Area Boundary as amended by the City.*
- *Development along Lincoln Avenue shall not occur until the following conditions are met: any proposed development shall dedicate the proper road right of way; shall adhere to the Rural Design Cross sections identified in the Developer's Handbook for any necessary roadway improvements and shall provide field delineations when required to do so by Code. In addition, stormwater drainage and floodplain issues are to be accommodated; a reclamation plan needs to be on file by an Engineer certifying the bearing capacity; utilities are available (adequate plan for sewer and water); and groundwater, floodwater, and stormwater have been adequately accommodated. If sewer and water are not provided, businesses that have a low intensity and do not require sewer should be targeted. Alternative techniques for water will need to be explored to provide for fire safety and building code requirements.*
- *Larger assemblages of properties should be the priority for this corridor. Pull land together in larger components rather than in a piecemeal fashion. Agreements should be sought among landowners to come together when projects arise.*
- *Any future development requiring coordinated access in this area may require the applicants to submit a surety instrument to the City to cover future public improvements and cost contributions.*

Economic Development:

- *Economic development for Neighborhood B focuses primarily on business park / light industrial opportunities along Lincoln Avenue, housing development, and limited commercial development that has an agrarian or natural emphasis.*

Land Use:

- *Future Land Use Map:* Business Park / Industrial

ZONING CODE (Chapter 275): Yes, will meet all the requirements of Chapter 275-35B(4) and Chapter 275-37B (3) & (4) of the Zoning Code.

SUBDIVISION CODE (CHAPTER 235): N/A

PUBLIC HEARING REQUIRED: No

CONCEPTUAL USE / SITE /ARCHITECTURAL REVIEW:
Use Approval Required: Yes
Site Plan Required: Yes, see attached.
Architectural Review Required: Yes, will be reviewed at the March 6, 2023 Architectural Review Committee meeting.

PROPOSED ARCHITECTURE: See attached building elevations.

UNIQUE SITE CHARACTERISTICS:
Environmental Corridor: Yes, Primary Environmental Corridor
Wetland On Property: Yes, a wetland report completed by SEWRPC, dated November 20, 2012, was previously submitted (File #: WD-14-004). Wetlands have been registered on the City's Zoning Map.
Conservancy Districts (C-1, C-2): Yes, C-1 and C-2.
NRCS Map Classification: N/A
Floodplain: No
Topography / Geologic: The site is highest in the center of the property and slopes to the northwest and northeast.

BIKE & PEDESTRIAN FACILITIES: No improvements identified.

PARK & OPEN SPACE PLAN: No improvements identified.

NATURAL RESOURCES PROTECTION:
Limits of Disturbance (LOD): Shown on site plan.
Woodland, Tree, and Vegetation Protection: A Conservation Easement was recorded on August 26, 2015 (Doc #: 4162776).
Wildlife Habitat Protection: N/A
Wildlife Management Plan: N/A

ENVIRONMENTAL IMPACT: A wetland report completed by SEWRPC, dated November 20, 2012, was previously submitted. Wetlands have been registered on the City's Zoning Map.

STORM WATER MANAGEMENT / DRAINAGE PLAN: Applicant is required to adhere to all City of New Berlin Codes, Ordinances and Plans regarding storm water conveyance and maintenance as identified by the Department of Community Development. Applicant has included a storm water plan for this area from Harwood Engineering Consultants dated January 6, 2022. No additional improvements are required with this building as it was included with the original project Veit submitted.

SANITARY SEWER PROVISION:
Within Current Sewer Service Area: No
Sewershed Capacity Available: No
Adequate Linkage: No
On-site system required: Yes

WATER USAGE CALCULATION: N/A

TRAFFIC IMPACT: N/A

SCHOOL DISTRICT IMPACT: N/A

PREVIOUS ACTION:
6/29/15 – Plan Commission approved a request to rezone the property from C-1 & C-2 to M-1, C-1 & C-2 and to remove a portion of C-1 (RZ-12-005).
7/28/15 – Common Council approved rezoning request.
4/22/14 – Wetland registration submitted to City.
8/25/15 – Plan Commission approved a fill and grading plan for this former quarry site to stabilize and restone it.
8/16/21 – Plan Commission reviewed a conceptual plan for Veit, for an office and maintenance facility.
3/7/22 – Plan Commission approved a 37,800 square foot office and shop building for Veit.

CONSISTENCY WITH PREVIOUS ACTION: Yes

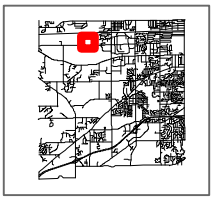
FINDINGS:
1. The applicant is proposing a 5,760 square foot storage building.
2. This Use Approval request does not allow for or approve of any sort of crushing (permanent or temporary) at this site or as part of this application.
3. The applicant previously submitted a Use Approval application for a 37,800 square foot regional office and shop building (UA-2200118) and 1-Lot CSM (LD-2200117).
4. A Conservation Easement was recorded on August 26, 2015 (Doc #: 4162776) to protect the area on the north side of the property.

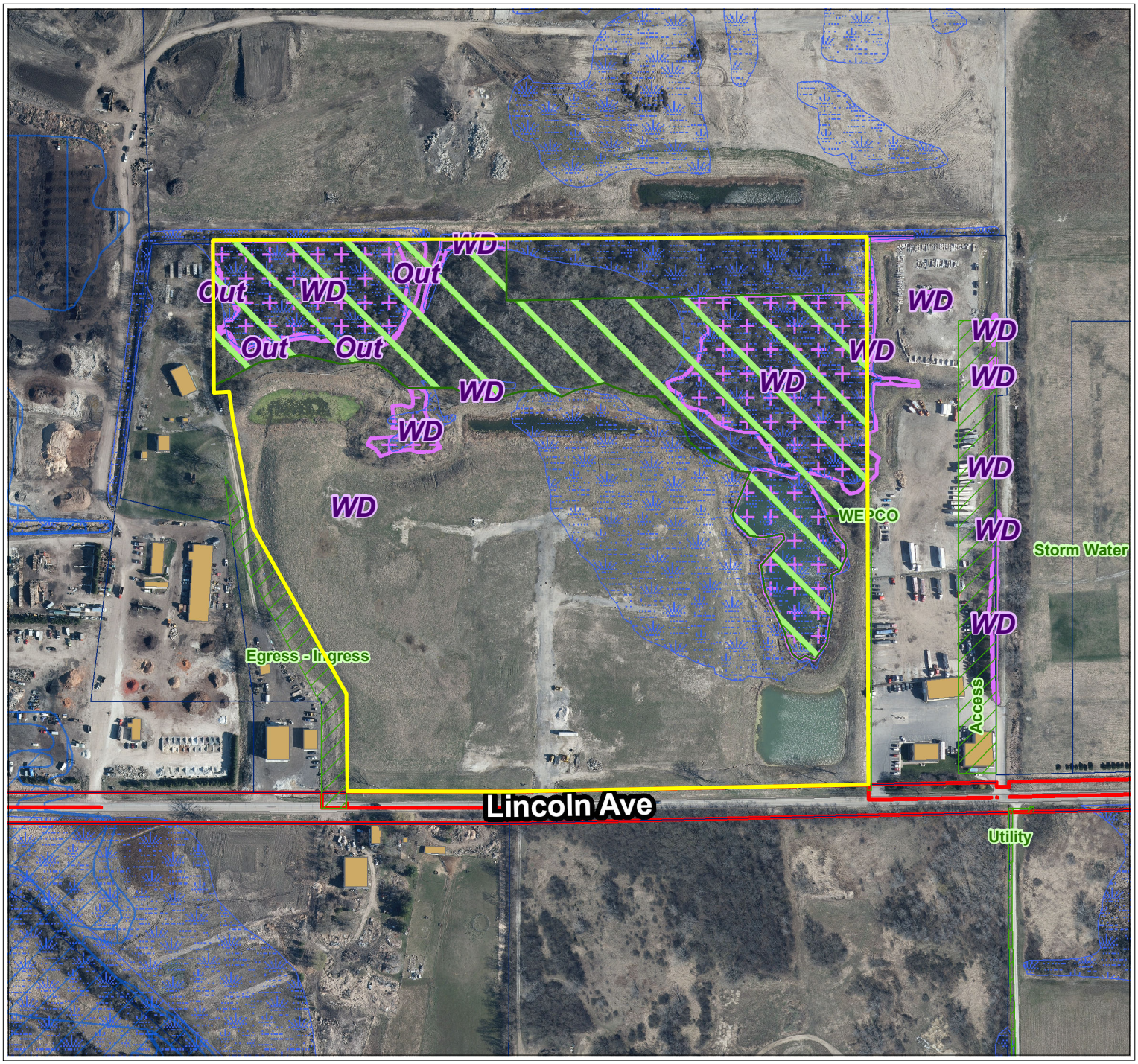
D.R.C. RECOMMENDATION: Recommend to Common Council approval of the Use, Site and Architecture approval for a 5,760 square foot storage building located at 18600 W. Lincoln Avenue (Tax Key #: 1167-994) subject to the application, plans on file and the following conditions: **See Executive Summary.**

Attachments:
Location Map
Plan of Operation
Plans
Elevations

City of New Berlin
Community Development

UA-2300197
Veit
18600 W. Lincoln Avenue





City of New Berlin
Department of Community Development
3805 S Casper Dr.
New Berlin WI 53151
(262) 797-2445
www.newberlin.org

Legend

- Parcels
- Road Right-of-Way

Floodplain DFIRM (FEMA 2014)

Flood Zone

- FEMA DFIRM - Zone A
- FEMA DFIRM - Zone AE
- FEMA DFIRM - 0.2% Annual Chance
- Zoning Boundaries

Zoning Wetland Registration

Wetland Registration Type

- Registered Wetland
- Outside Wetland

Environmental Corridor

Corridor Type

- Isolated Natural Resource Area
- Primary Environmental Corridor
- Secondary Environmental Corridor

Sewer Service Area (MMSD)

Sewershed

- Current
- Ultimate

N

0 140 280 Feet

The information and depictions herein have been produced using data available through photogrametric means by the City of New Berlin. The informations and depictions herein are for informational purposes and the City of New Berlin specifically disclaims accuracy in this reproduction and specifically admonishes and advises that any and all depiction, measurements, distances depicted herein and as to which specific or precise accuracy is required should be determined by procurement of certified maps, surveys, plats, Flood Insurance Studies, or other official means.

VEIT – STORAGE BLDG.

Plan of Operations: 18900 W. Lincoln Ave.

VEIT's Purpose:

- This storage building will provide us with additional indoor heated storage for construction materials, equipment parts and small equipment.
- The types of equipment storage will be pumps, hoses, generators, small tools, etc.
- This storage building will not be used to store large equipment or vehicles.
- This storage building will not be used for maintenance operations.

Operational Information:

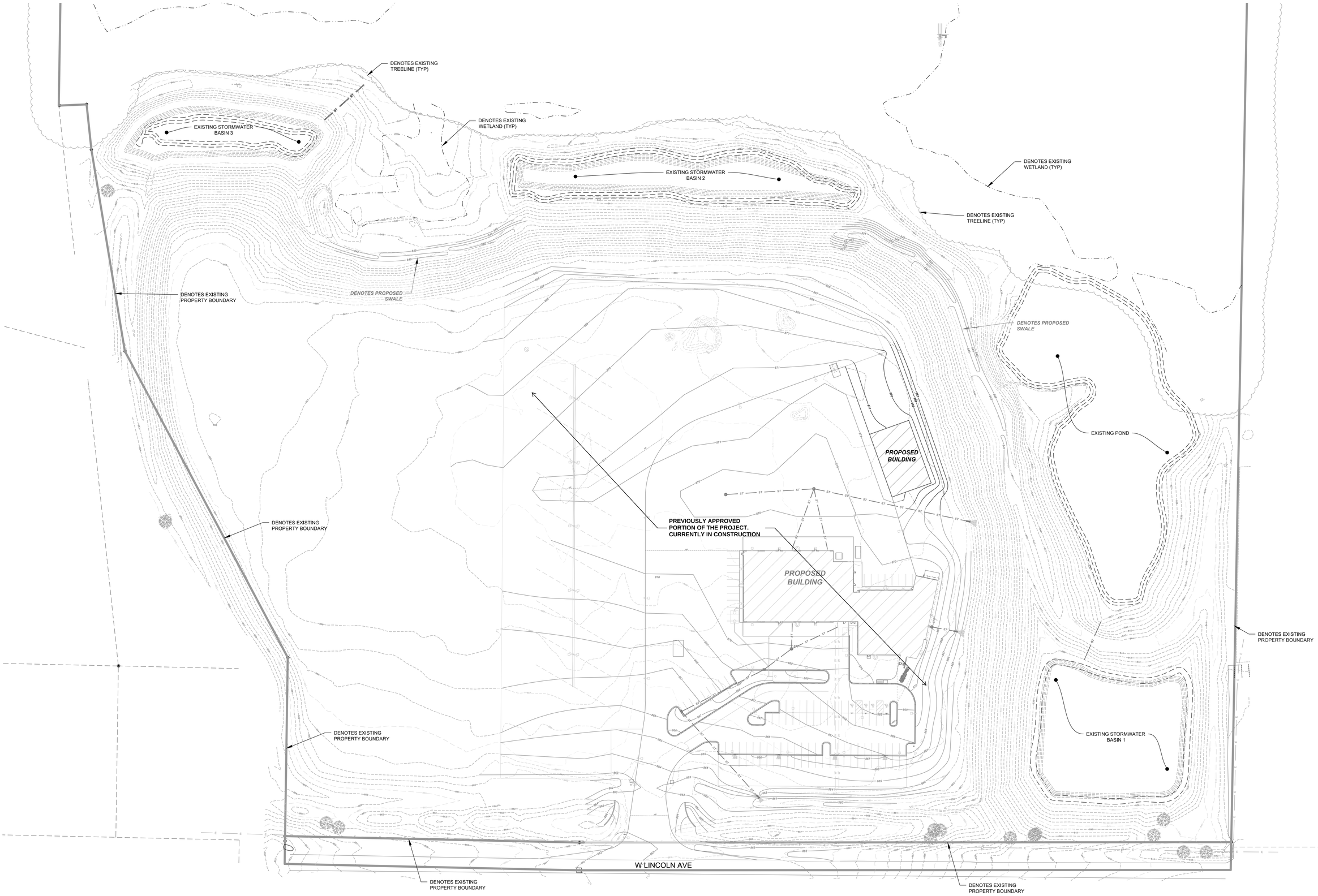
- Hours of operations Monday through Friday 6:00 am to 7:00 pm, with occasional Saturday operations.

Community Impacts:

- This facility will support a current workforce of over 35 full time employees on campus with the ability to grow and add an additional 30 full time positions before other building expansions.
- In addition, this campus will support a current workforce of 130 field operations employees and a 10-year projection to double these field employment opportunities.
- Veit supports the communities by contributing to local schools, emergency services, and charitable groups. Our goal is to develop relationships and partnerships that support the communities our employees live in.
- Veit reinvests in our people by investing in our facilities and equipment.

Closing:

VEIT is a successful third generation company with over 90 years of doing business that is community and environmentally minded. We want to invest in the City of New Berlin and people that live here. As you can see from our Roger's MN facility, we want to create a facility that shows we care about our people, community, and projects.



DIGGER'S HOTLINE
CALL BEFORE YOU DIG
1-800-242-8511

IN ACCORDANCE WITH WISCONSIN STATUTE 182.0175, DAMAGE TO TRANSMISSION FACILITIES, EXCAVATOR SHALL BE SOLELY RESPONSIBLE TO PROVIDE ADVANCE NOTICE TO THE DESIGNATED "ONE CALL SYSTEM" NOT LESS THAN THREE WORKING DAYS PRIOR TO COMMENCEMENT OF ANY EXCAVATION REQUIRED TO PERFORM WORK CONTAINED ON THESE DRAWINGS, AND FURTHER, EXCAVATOR SHALL COMPLY WITH ALL OTHER REQUIREMENTS OF THIS STATUTE RELATIVE TO EXCAVATOR'S WORK.

zimmerman
ARCHITECTURAL STUDIOS, INC.
2122 W. Mount Vernon Avenue | Milwaukee, WI 53233 | zastudios.com
TELEPHONE [414] 476.9500
FACSIMILE [414] 476.8582

Owner:
VEIT

Consultant:
Harwood Engineering Consultants
255 North 21st Street | Milwaukee, WI 53233
P 414.935.2004 | www.hecl.com

Project:
VEIT & COMPANY, INC.
STORAGE BUILDING

Location:
18600 W. Lincoln Ave.
New Berlin, WI 53151

Key Plan:

Sheet:
OVERALL GRADING PLAN

PLANNING COMMISSION SUBMITTAL

Scale: 1" = 50'

North

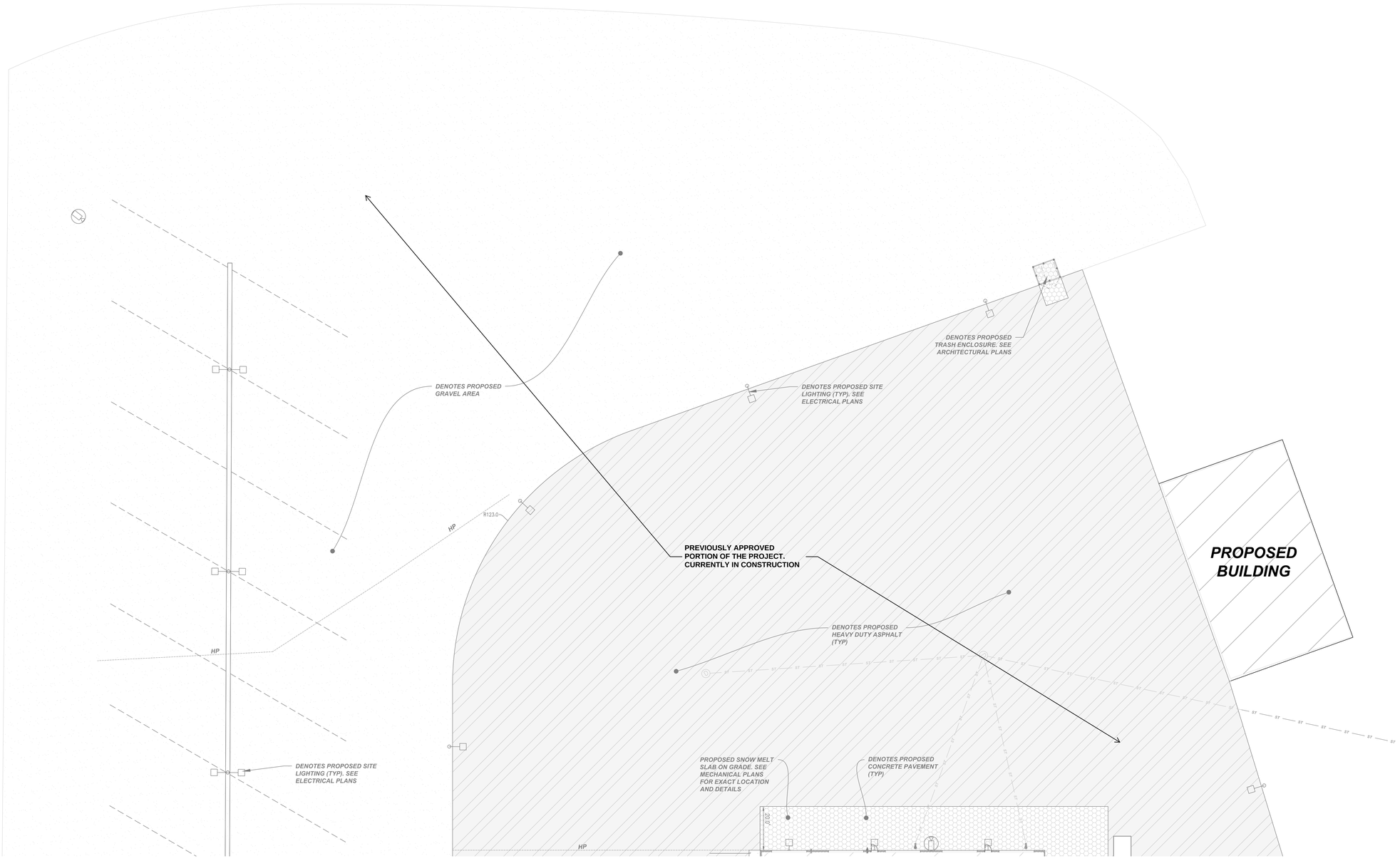
Revisions:

No:	Date:	Description:

Date:
1.20.23

Project No:
21-0073.00

Sheet No:
C1.10



HATCH LEGEND

- PROPOSED CONCRETE SIDEWALK
- PROPOSED REGULAR DUTY ASPHALT PAVEMENT
- PROPOSED HEAVY DUTY ASPHALT PAVEMENT
- PROPOSED CONCRETE PAVEMENT
- PROPOSED GRAVEL AREA

DIGGER'S HOTLINE CALL BEFORE YOU DIG 1-800-242-8511

IN ACCORDANCE WITH WISCONSIN STATUTE 182.0175, DAMAGE TO TRANSMISSION FACILITIES, EXCAVATOR SHALL BE SOLELY RESPONSIBLE TO PROVIDE ADVANCE NOTICE TO THE DESIGNATED "ONE CALL SYSTEM" NOT LESS THAN THREE WORKING DAYS PRIOR TO COMMENCEMENT OF ANY EXCAVATION REQUIRED TO PERFORM WORK CONTAINED ON THESE DRAWINGS, AND FURTHER, EXCAVATOR SHALL COMPLY WITH ALL OTHER REQUIREMENTS OF THIS STATUTE RELATIVE TO EXCAVATOR'S WORK.

Zimmerman
ARCHITECTURAL STUDIOS, INC.
2122 W. Mount Vernon Avenue | Milwaukee, WI 53233 | zastudios.com
TELEPHONE [414] 476.9500
FACSIMILE [414] 476.8582

Owner:

VEIT®

Consultant:

Harwood Engineering Consultants
255 North 21st Street | Milwaukee, WI 53233
P 414.475.5554 | www.hecl.com

Project:
VEIT & COMPANY, INC.
STORAGE BUILDING

Location:
18600 W. Lincoln Ave.
New Berlin, WI 53151

Key Plan:

Sheet:
SITE PLAN - NORTH

PLANNING COMMISSION SUBMITTAL

Scale: 1" = 20'

North

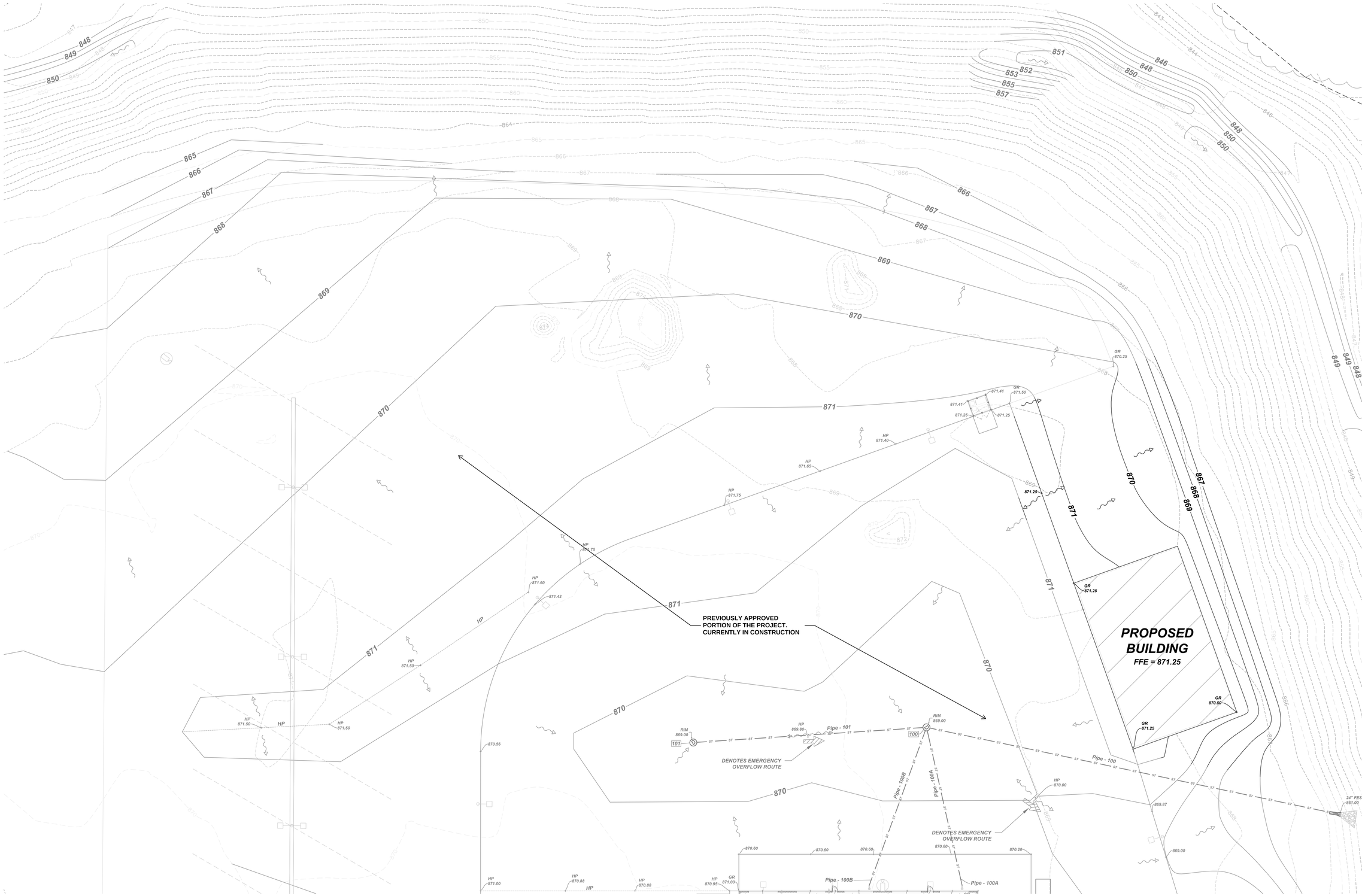
Revisions:

No.	Date:	Description:
1	2-02-2023	PC Resubmittal

Date:
1.20.23

Project No:
21-0073.00

Sheet No:
C1.12



Storm Structure Table			
#	Structure Details		
100	CATCH BASIN RIM = 869.00 Pipe - 101 = 863.30 Pipe - 100B = 863.30 Pipe - 100A = 863.30 Pipe - 100 = 863.30	201	CATCH BASIN - CURB RIM = 868.20 Pipe - 202 = 864.26 Pipe - 201 = 864.26
101	CATCH BASIN RIM = 869.00 Pipe - 101 = 864.57	202	CATCH BASIN RIM = 869.80 Pipe - 203 = 865.25 Pipe - 202A = 865.25 Pipe - 202 = 865.25
200	CATCH BASIN - CURB RIM = 866.30 Pipe - 201 = 862.93 Pipe - 200 = 862.93	300	CATCH BASIN RIM = 870.00 Pipe - 301 = 865.69 Pipe - 300 = 865.69

Storm Pipe Table					
Pipe Name	Size	Material	Length	Slope	Description
Pipe - 100	24	RCP	230	1.00%	W/ FES
Pipe - 100A	8	RCP	88	5.14%	
Pipe - 100B	8	RCP	91	4.93%	
Pipe - 101	15	RCP	127	1.00%	
Pipe - 200	12	RCP	168	1.15%	W/ FES
Pipe - 201	12	RCP	134	1.00%	
Pipe - 202	8	RCP	49	2.00%	
Pipe - 202A	6	PVC	36	5.00%	
Pipe - 203	8	RCP	73	3.00%	
Pipe - 300	8	HDPE	38	1.00%	W/ FES
Pipe - 301	6	HDPE	5	1.00%	PLUMBING PIPE

DIGGER'S HOTLINE
CALL BEFORE YOU DIG
1-800-242-8511

IN ACCORDANCE WITH WISCONSIN STATUTE 182.0175, DAMAGE TO TRANSMISSION FACILITIES, EXCAVATOR SHALL BE SOLELY RESPONSIBLE TO PROVIDE ADVANCE NOTICE TO THE DESIGNATED "ONE CALL SYSTEM" NOT LESS THAN THREE WORKING DAYS PRIOR TO COMMENCEMENT OF ANY EXCAVATION REQUIRED TO PERFORM WORK CONTAINED ON THESE DRAWINGS, AND FURTHER, EXCAVATOR SHALL COMPLY WITH ALL OTHER REQUIREMENTS OF THIS STATUTE RELATIVE TO EXCAVATOR'S WORK.

zimmerman
ARCHITECTURAL STUDIOS, INC.
2122 W. Mount Vernon Avenue | Milwaukee, WI 53233 | zastudios.com
TELEPHONE [414] 476.9500
FACSIMILE [414] 476.8582

Owner:
VEIT

Consultant:
Harwood Engineering Consultants
255 North 21st Street | Milwaukee, WI 53233
P 414.935.2004 | www.hec2.com

Project:
VEIT & COMPANY, INC.
STORAGE BUILDING

Location:
18600 W. Lincoln Ave.
New Berlin, WI 53151

Key Plan:

Sheet:
GRADING PLAN - NORTH

PLANNING COMMISSION SUBMITTAL

Scale: 1" = 20'

North

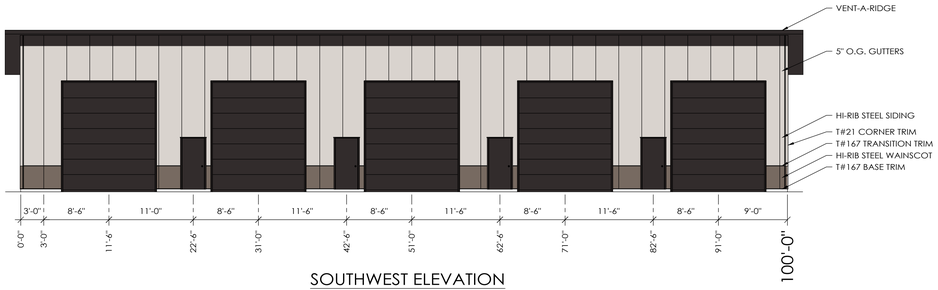
Revisions:

No:	Date:	Description:
1	2-02-2023	PC Resubmittal

Date:
1.20.23

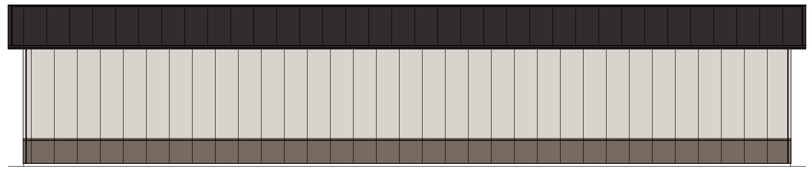
Project No:
21-0073.00

Sheet No:
C1.22



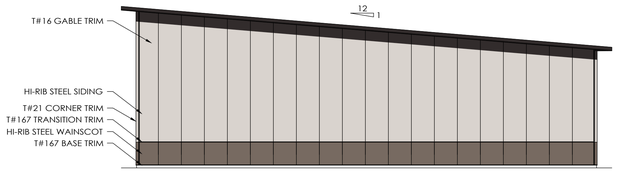
SOUTHWEST ELEVATION

SCALE: 1' 2' 4' 8' 16'



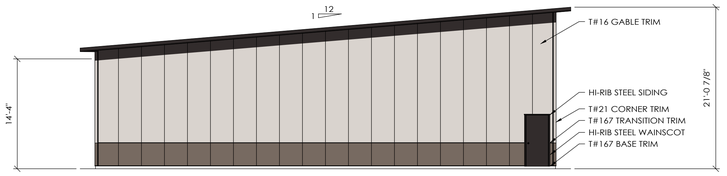
NORTHEAST ELEVATION

SCALE: 1' 2' 4' 8' 16'



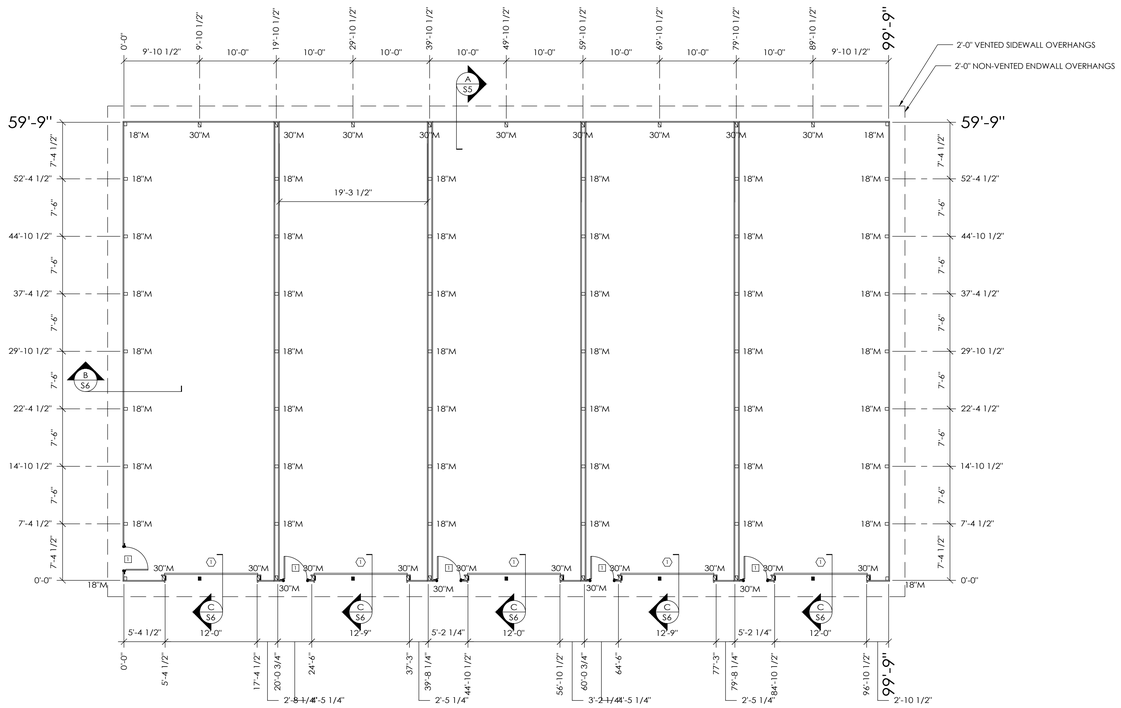
SOUTHEAST ELEVATION

SCALE: 1' 2' 4' 8' 16'



NORTHWEST ELEVATION

SCALE: 1' 2' 4' 8' 16'



COLUMN PLAN

SCALE: 1' 2' 4' 8' 16'

COLUMN PLAN LEGEND

- 3-2x6 LAMINATED COLUMN LOCATION
- 3-2x8 LAMINATED COLUMN W/ ADD'L LAMINATE LOCATION
- HEADERED TRUSS LOCATION
- 3-2x8 LAMINATED COLUMN LOCATION
- (5) 3068 MB910 PLAIN FLAT LEAF WALKDOORS, IN SWING, RIGHT HINGE WITH KEYED LEVER LOCKSET, CLOSER
- (5) 12'-2"x14'-1" OVERHEAD DOORS ◆
- FORMED DRY-PANEL (ROOF ONLY)
- ALL STEEL FASTENED WITH STAINLESS STEEL SCREWS

18"M - 18" DIAMETER FOOTING WITH 4' TO BOTTOM OF 21" THICK CONCRETE PAD (2500 PSI MINIMUM). 20" BELOW BOTTOM OF PRECAST CONCRETE COLUMN AROUND EXPOSED REBAR CAGE AND 3/4"x14" THREADED ROD WITH AN ADDITIONAL MINIMUM 1" ABOVE BOTTOM OF PRECAST CONCRETE COLUMN. PLACE CONCRETE BELOW AND ABOVE BOTTOM OF LOWER COLUMN IN ONE OPERATION.

30"M - 30" DIAMETER FOOTING WITH 4' TO BOTTOM OF 21" THICK CONCRETE PAD (2500 PSI MINIMUM). 20" BELOW BOTTOM OF PRECAST CONCRETE COLUMN AROUND EXPOSED REBAR CAGE AND 3/4"x14" THREADED ROD WITH AN ADDITIONAL MINIMUM 1" ABOVE BOTTOM OF PRECAST CONCRETE COLUMN. PLACE CONCRETE BELOW AND ABOVE BOTTOM OF LOWER COLUMN IN ONE OPERATION.

ROUGH OPENING SCHEDULE

UNIT SYMBOL FROM LEGEND	WIDTH	HEIGHT
1	37 3/4"	81"

Zimmerman ARCHITECTURAL STUDIOS, INC.
2122 W. Mount Vernon Avenue | Milwaukee, WI 53233 | zastudios.com
TELEPHONE [414] 476.9500
FACSIMILE [414] 476.8582

Owner:

VEIT

Consultant:

HARWOOD ENGINEERING CONSULTANTS

Project:

VEIT & Company, Inc.
Storage Building

Location:
18600 W. Lincoln Ave.
New Berlin, WI 53146

Key Plan:

Sheet:

FLOOR PLAN, BUILDING ELEVATIONS

Planning Commission Submittal

Scale:

1/8" = 1'-0"

Revisions:

No.	Date:	Description:
1	2-02-2023	PC Resubmittal

Date:

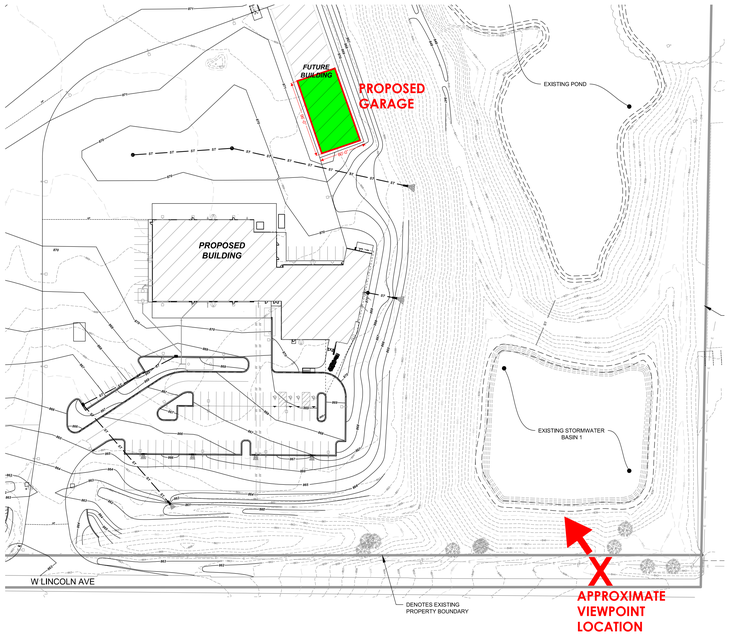
1.20.23

Project No:

210073.00

Sheet No:

A1.0



zimmerman
ARCHITECTURAL STUDIOS, INC.
2122 W. Mount Vernon Avenue | Milwaukee, WI 53233 | zastudios.com
TELEPHONE [414] 476.9500
FACSIMILE [414] 476.8582

Owner:

VEIT

Consultant:

HARWOOD ENGINEERING CONSULTANTS

Project:

VEIT & Company, Inc.
Storage Building

Location:
18600 W. Lincoln Ave.
New Berlin, WI 53146

Key Plan:

N

Sheet:

SITE RENDERING WITH BUILDING LOCATION

Planning Commission Submittal

Scale:

1/8" = 1'-0"

Revisions:

No.	Date:	Description:
1	2-02-2023	PC Resubmittal

Date:

1.20.2023

Project No:

210073.00

Sheet No:

A2.0

STAFF REPORT
EXECUTIVE SUMMARY

APPLICANT/PROJECT: **Dean and Suzanne Polenz / Waiver request for an 8' Fence**

LOCATION: **4265 S. Wilshire Drive (Tax Key #: 1246-106)**

REQUEST: **Use, Site and Architecture approval to construct an 8' tall fence along the west property line located at 4265 S. Wilshire Drive.**

D.R.C. RECOMMENDATION: **Denial of the Use, Site and Architecture to construct a 8' tall fence along the west property line located at 4265 S. Wilshire Drive (Tax Key #: 1246-106) subject to the application, plans on file and the following reasons for denial:**

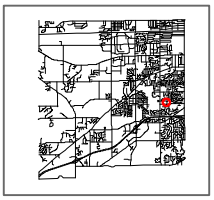
1. **The applicant is proposing to install an 8' fence along a portion of their western property line, which abuts a single-family residential property. The owner would like additional screening and has previously planted trees to help screen the rear yard. The applicant feels the fence will have the desired effect to provide additional privacy.**
    a. **Staff completed a site visit on 2/10/2023. In reviewing the site and studying the contours for the property and general area, it does not appear that a taller fence (beyond the 74" allowed by code) is necessary. There is landscaping in the area that already provides this additional buffer. See attached pictures taken by City Staff.**
    b. **See attached letter and plans provided by the applicant.**
2. **Per Section 275-42G(3)(d)[2], "Fences exceeding 74 inches in height, provided that all other requirements for fences are met. Plan Commission/CDA review and approval is required".**
3. **Fence construction and location shall adhere to the requirements set forth in Zoning Code Section 275-42G(3), with exception to the maximum height.**
4. **Contact digger's hotline.**
5. **Per 275-42, Fences shall not block or impact existing drainage patterns. Any grade changes made in the area of the fence installation must follow the requirements in §275-55.**
6. **No grading of the lot has been proposed or approved as part of this permit.**

ATTACHMENTS:
Location Map
Applicant Letter
Survey with Proposed Fence Location

Pictures looking towards west lot line where the proposed 8’ fence is desired.

City of New Berlin
Community Development

UA-2300182
Polenz Fence Waiver
4265 S. Wilshire Drive



Legend

- Parcels
- Road Right-of-Way

Floodplain DFIRM (FEMA 2014)

Flood Zone

- FEMA DFIRM - Zone A
- FEMA DFIRM - Zone AE
- FEMA DFIRM - 0.2% Annual Chance
- Zoning Boundaries

Zoning Wetland Registration

Wetland Registration Type

- Registered Wetland
- Outside Wetland

Environmental Corridor

Corridor Type

- Isolated Natural Resource Area
- Primary Environmental Corridor
- Secondary Environmental Corridor

Sewer Service Area (MMSD)

Sewershed

- Current
- Ultimate

City of New Berlin
Department of Community Development
3805 S Casper Dr.
New Berlin WI 53151
(262) 797-2445
www.newberlin.org

N

0 12.5 25 Feet

The information and depictions herein have been produced using data available through photogrametric means by the City of New Berlin. The informations and depictions herein are for informational purposes and the City of New Berlin specifically disclaims accuracy in this reproduction and specifically admonishes and advises that any and all depiction, measurements, distances depicted herein and as to which specific or precise accuracy is required should be determined by procurement of certified maps, surveys, plats, Flood Insurance Studies, or other official means.

Map Printed: 2/20/2023 8:29:42 AM

Fence Waiver

We are requesting a waiver to install a fence approx 8′ tall and 50′ length. See plot survey for location. We are requesting the 2′ of additional height to help block/screen our view of the neighbors construction/enclosed trailer and a concrete block garage which is visible from our backyard and close to the property line. Many neighbors have commented on how unsightly both are. The total fence length would be approx. 104′. 50′ at 8′ tall and the remaining at the standard 6′.

We have tried to block the view with a berm of evergreens, however, due to lack of sun the evergreens are dying back. They do not provide enough screening.

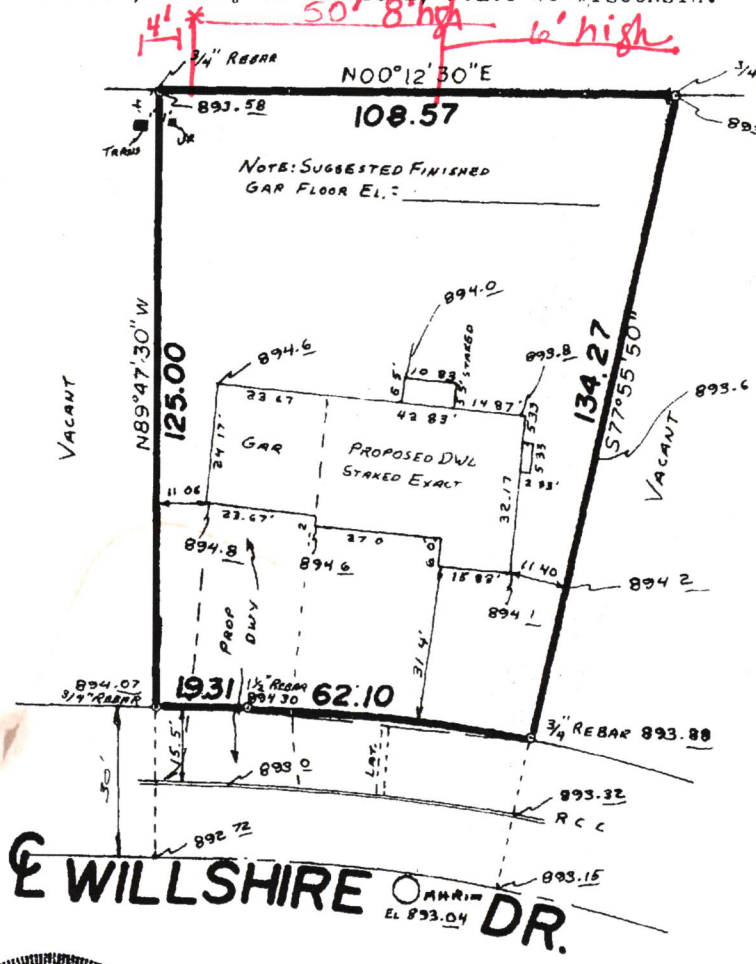
8-91

Plat of Survey

Survey For GAS LIGHT HOMES MODEL

Location Wilshire Drive

Description LOT 4 BLOCK 7 WEATHERSTONE WEST NO. 1, being a subdivision of a part of the Southeast 1/4 and the Northeast 1/4 of the Northwest 1/4 of Section 24, Town 6 North, Range 20 East, in the City of New Berlin, County of Waukesha, State of Wisconsin.



CURVE DATA
ARC 62.10'
CH 61.99'
Δ/2 5°55'-55"
MO 1.60'

WISCONSIN RANDOLPH L. RAFALSKI S-1758 WAUKESHA, WIS. LAND SURVEYOR

INTERLINE SURVEY SERVICES, INC
11221 W. FOREST HOME AVE
HALES CORNERS WISCONSIN 53130
PHONE 425 2060

State of Wisconsin)
Milwaukee County ss

SURVEY CERTIFICATE

Scale 1"=30'

We, Interline Survey Services, Inc., certify that we have surveyed the above described property and the above map is a true representation thereof, and shows the size and location of the property, its exterior boundaries, the location and dimensions of all visible structures thereon, fences, apparent easements and roadways and visible encroachments, if any

This survey is made for the exclusive use of the present owners of the Property, and also those who purchase, mortgage, or guarantee the title thereto, within one (1) year from date hereof

Randolph L. Rafalski
Wisconsin Registered Land Surveyor

Date 1-16-91
Job No 19132

STAFF REPORT
EXECUTIVE SUMMARY

APPLICANT/PROJECT:	**Scott and Melissa Kandel / Resolution approving a Partial Release of Restriction on Lot No. 13 of the Waterbury Estates Subdivision Plat to allow for a screened-in porch, patio, shed, and pool to be installed.**
LOCATION:	**4015 S. Belgrave Road (Tax Key #: 1245-376)**
REQUEST:	**Approval of a Resolution approving a Partial Release of Restriction on Lot No. 13 of the Waterbury Estates Subdivision Plat to allow for a screened-in porch, patio, shed, and pool to be installed.**
REVIEW SCHEDULE:	**Request Received: 1/20/2023** **Final Common Council Action: 3/14/2023**
D.R.C. RECOMMENDATION:	**Recommend to the Common Council approval of a Resolution approving a Partial Release of Restriction on Lot No. 13 of the Waterbury Estates Subdivision Plat to allow for a screened-in porch, patio, shed, and pool to be installed for the property located at 4015 S. Belgrave Road (Tax Key #: 1245-376), subject to the application, plans on file and the following conditions:**

1. **This request is specific to the lot located at the above address. This request shall not apply to any other lots included within Waterbury Estates.**
2. **If this request is approved by the Plan Commission and Common Council, the applicant shall execute a Partial Release of Restriction subject to final review and approval by the City Attorney.**
    a. **A final survey/stake out survey will be required that indicates the area of disturbance for the screened-in porch, patio, shed, and pool and associated grading.**
3. **Applicant and/or property owner shall apply for and obtain appropriate building, plumbing and electrical permits prior to any construction on the parcel.**
4. **The following language shall be added to the Building Permit:**
    a. **Per Section 275-37D(3)(c)[5] of the Zoning Code, *disturbance of natural features on the site shall be kept to a minimum. The Limits of Disturbance for the construction of the screened-in porch, patio, shed, and pool and associated grading has been identified on the site plan. Disturbance and/or tree removal beyond this point is prohibited. Construction fencing shall be installed to delineate the limits of disturbance, as approved by DCD via the building permit, and no grading and/or tree removal may occur beyond these limits.***
5. **The limits of disturbance shall be clearly identified in the field with silt fence or other fencing material prior to any site work. Applicant shall apply for an Erosion Control Permit with the City. The fencing shall be inspected and approved prior to any site work.**

6. **This Zoning Permit shall serve as the Agreement between the City of New Berlin and this lot owner(s), and any future lot owner(s), that the landscaping will be installed per conditions above and that the applicant shall adhere to the limits of disturbance outlined in his permit. Applicant shall sign this permit.**

DETAILS IN ATTACHED STAFF REPORT

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
PLAN COMMISSION STAFF REPORT

Meeting of March 6, 2023

Scott and Melissa Kandel / Resolution approving a Partial Release of Restriction on Lot No. 13 of the Waterbury Estates Subdivision Plat to allow for a screened-in porch, patio, shed, and pool to be installed / 4015 S. Belgrave Road (Tax Key #: 1245-376)

DATE STAFF REPORT CREATED: February 13, 2023

APPLICANT / OWNER(S): Scott and Melissa Kandel

REQUEST / DESCRIPTION OF PROJECT: Approval of a Resolution approving a Partial Release of Restriction on Lot No. 13 of the Waterbury Estates Subdivision Plat to allow for a screened-in porch, patio, shed, and pool to be installed.

DATE OF APPLICATION / DATE FILED WITH CITY CLERK: 1/20/2023

DATE OF COMPLETENESS DETERMINATION: 1/23/2023

PRE-APPLICATION CONFERENCE HELD: No
Date(s) of Meeting(s): Several phone calls and emails.
Site Visit(s): 1/26/2023

CONCEPTUAL PLAN: Yes, a concept plan was submitted.

SIZE OF DEVELOPMENT / PARCEL(S): 0.75 Acres

CURRENT ZONING: R-4.5 (Medium Density Single-Family Residential District)

CURRENT LAND USE: Single- Family residential

PROPOSED ZONING: N/A

PROPOSED LAND USE: Screened-in porch, patio, shed, and pool.

PROPOSED LOT SIZE: N/A

PROPOSED DENSITY: N/A

ADJACENT ZONING AND LAND USE:

North:	Zoning: C-2 (Shoreland Wetland Holding District) & C-3 (Permanent Open Space/Conservation Lands)	Land Use: Vacant/Drainage
South:	Zoning: R-4.5 (Medium-Density Residential)	Land Use: Single-Family Residential
East:	Zoning: R-4.5 (Medium-Density Residential)	Land Use: Vacant Outlot/Stormwater Pond
West:	Zoning: R-5 (Medium-Density Residential)	Land Use: Single-Family Residential

CONFORMANCE WITH COMPREHENSIVE PLAN AND MUNICIPAL CODE: Yes, the request meets the intent of this Chapter. Planning Context / Vision / Development Polices

Chapter 16: Neighborhood "F": Urban Residential South: Yes, this submittal meets the intent of this Chapter.

Planning Context / Vision / Development Policies:

Development Policies:

- *Create flexible but predictable compatibility standards for new construction and redevelopment related to site planning, building design and materials, landscaping, buffering, access, singe, and other land use impacts.*
- *Maintain public infrastructure in the neighborhood, including streets and sewer service, to maintain property values.*
- *Complete the linear greenway system connecting the City Center south to the neighborhood.*

Land Use:

- *Future Land Use Map: Urban Residential*

ZONING CODE (Chapter 275): Yes, this request meets the requirements of Section 275-33B(5) of the Zoning Code.

DEVELOPMENT CODE (CHAPTER 235): No

PUBLIC HEARING REQUIRED: No

CONDITIONAL USE REQUIRED: No

USE / SITE /ARCHITECTURAL REVIEW:
Use Approval Required: Yes
Site Plan Required: Yes, a survey was submitted showing the proposed screened-in porch, patio, shed, and pool.
Architectural Review Required: No

PROPOSED ARCHITECTURE: N/A

UNIQUE SITE CHARACTERISTICS:
Environmental Corridor: No
Wetland On Property: No
Conservancy Districts (C-1, C-2): No
NRCS Map Classification: Not Inventoried
Floodplain: No
Topography / Geologic: The site slopes gradually from the west to the east.

BIKE & PEDESTRIAN FACILITIES PLAN: No improvements identified.

PARK & OPEN SPACE PLAN: No improvements identified.

NATURAL RESOURCES PROTECTION:
Limits of Disturbance (LOD): Would need to be shown on the Erosion Control Plan for the building permit for the screened-in porch, patio, shed, and pool if this request is approved.

Woodland, Tree, and Vegetation Protection: Applicant is not proposing to remove any quality trees. Attached survey shows trees on the property. Dead, dying, or diseased trees are allowed to be removed, along with buckthorn and other small trees in the area of proposed construction.
Wildlife Management Plan: N/A

ENVIRONMENTAL IMPACT: Applicant plans to remove some small, low-quality trees. No trees being removed will require replacement.

STORM WATER MANAGEMENT / DRAINAGE: Applicant is required to adhere to all City of New Berlin Codes, Ordinances and Plans regarding storm water conveyance and maintenance as identified by the Department of Community Development.

SANITARY SEWER PROVISION:
Within Current Sewer Service Area: Yes
Sewer Shed Capacity Available: N/A
Adequate Linkage: N/A
Onsite System Required: No

WATER USAGE CALC.: N/A

TRAFFIC IMPACT: N/A

SCHOOL DISTRICT IMPACT: N/A
Notice Sent to Affected School District(s): No

PREVIOUS ACTION:

11/21/2002	Waterbury Estates Subdivision Plat recorded with Waukesha County Register of Deeds Office.
2016	Existing home was built.

CONSISTENCY WITH PREVIOUS ACTION: N/A

FINDINGS:

1. The Waterbury Estates Subdivision Plat was recorded at the Waukesha County Register of Deeds Office on November 21, 2002.
2. The original staff report for the subdivision (See File: S-149-97) states that *"Tree Preservation Easement required on all but the front 110' of lots 12-19. Tree Preservation Easement Restrictions similar to Wetland Preservation Restrictions to be created and placed on the face of the plat."*
3. Per Doc #: 2883773, the Waterbury Estates Subdivision Plat states the following regarding Tree Preservation Easement Restrictions:
    i. No existing live tree with a diameter of five inches (5") or more at a height of four feet (4') above ground shall be cut down, destroyed, mutilated, moved or disfigured.
4. After reviewing the staff reports, plat of survey, and subdivision plat, staff have determined that the intent of the Tree Preservation Easement was to protect the trees and prevent any encroachment within the easement. Because of these restrictions, DCD staff cannot unilaterally approve and/or waive this restriction without the applicant first seeking approval from the Plan Commission and Common Council – following the same approval process which established this requirement in the first place when the CSM was approved back in 1999 (recorded at the County in 2002).

5. The applicant would like to install a screened-in porch, patio, shed, and pool. See attached plans and survey. The approximate area of disturbance is approximately 1,628 square feet.
6. DCD staff conducted a site visit on January 26th and has confirmed that, based upon direct conversation with homeowner and staking onsite, that no trees and/or high quality vegetation would be impacted. The footprint of proposed construction (screened-in porch, patio, shed, and pool) avoids all existing quality trees.

D.R.C. RECOMMENDATION: Recommend to the Common Council approval of a Resolution approving a Partial Release of Restriction on Lot No. 13 of the Waterbury Estates Subdivision Plat to allow for a screened-in porch, patio, shed, and pool to be installed for the property located at 4015 S. Belgrave Road (Tax Key #: 1245-376), subject to the application, plans on file and the following conditions: **See Executive Summary.**

ATTACHMENTS:
Location Map
Owner Letter
Plat of Survey
Screened-In Porch Plans

Pictures looking towards the proposed patio and screened-in porch.

Picture looking towards the proposed pool.

Picture looking towards the proposed shed.