

Common Council MEETING AGENDA



April 25, 2023 - 6:04 PM
(Following the 6pm Committee of the Whole Meeting)
City Hall
Council Chambers

Published: 4/21/2023

AGENDA

1. **PRIVILEGE OF THE FLOOR**
2. **CALL TO ORDER, PLEDGE OF ALLEGIANCE**
3. **ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE**
4. **APPROVAL OF MINUTES**
 - A. April 11, 2023 Common Council Meeting Minutes
 - B. April 18, 2023 Common Council and Installation Meeting Minutes
5. **REPORTS**
 - A. City Clerk
 - B. Council President
 - C. Mayor
6. **COMMUNICATIONS**
7. **PLAN COMMISSION**
 - 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
 - B. (4) KH LD-2300209 John Jewell – Tax Key #: 1281.996.006 – 4-Lot Certified Survey Map
 - C. (4) NJ RZ-2300230 Diane Krokowski - 5715 S. Sunny Slope Road (Tax Key #: 1289.994) – Rezone from A-2 to A-2 & R-6
 - D. (4) NJ LD-2300231 Diane Krokowski - 5715 S. Sunny Slope Road (Tax Key #: 1289.994) – 2-Lot Certified Survey Map.
 - E. KH DCD1-2202121 Zoning Code Updates
 - F. (3) & (6) KH PK-2300318 Park Design – Approval of selected consultant for the design of Buena Park and Maple Ridge Park
8. **FOURTH OF JULY COMMISSION**
 - A. Discussion and recommendation to the Common Council approval of a contract with Chrome Fireworks in the amount of \$30,000
 - B. Discussion and recommendation to the Common Council approval of a contract with Pat's Services, Inc. for rentals and service from July 1st to July 4th totaling \$10,020

- C. Discussion and recommendation to the Common Council approval of a contract with A.N.T. Production Co. for rentals and service from July 1st to July 4th totaling \$10,400
- D. Discussion and recommendation to the Common Council approval of a contract with Area Rental for rentals and service from June 28th to July 5th totaling \$20,760.67

9. MAYORAL APPOINTMENTS

- A. Discussion and Possible Action to approve the Mayoral Appointments per the list as presented

10. DEFERRED, REFERRED & TABLED ITEMS

11. ITEMS REMOVED FROM CONSENT AGENDA, if any

12. CONSENT AGENDA-----

- A. *Items under the Consent Agenda have passed unanimously by the Committee of the Whole. Items not passed by a unanimous vote will be removed from consent agenda and will be considered separately.*

13. MINUTES

- A. April 11, 2023 Committee of the Whole Minutes

14. UTILITY & FINANCE

- A. Discussion and recommendation to Common Council approval of the April 26, 2023 Water Utility claims in the amount of \$30,144.40, Sewer Utility claims in the amount of \$87,395.75 and General City claims in the amount of \$546,390.14. Tax overpayment checks totaling \$7,972.03 were also generated. US Bank VISA EFT of \$25,834.53.

15. MISCELLANEOUS

- A. Fire Department Update, Chief Polzin
- B. Discussion and recommendation to the Common Council approval of a contract with Mobcraft Beer, Inc. to host beer garden events between July 28, 2023 and October 15, 2023 at Malone Park

16. END CONSENT AGENDA-----

17. CLOSED SESSION

- A. The basis for the items to be discussed in Closed Session are as enumerated in Section 19.85(1)(e) of the Wisconsin State Statutes. (e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified business whenever competitive or bargaining reasons require a Closed Session, more specifically:
- B. Discussion of negotiation strategy regarding the potential sale of city property along Moorland Rd at Robin Trail

18. RECONVENE TO OPEN SESSION - Discussion and Possible Action on items listed below

- A. Potential sale of city property along Moorland Rd at Robin Trail

19. 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.*



Common Council MEETING MINUTES

April 11, 2023 - 6:04 PM
City Hall Council Chambers

Please note: Minutes are unofficial until approved at the next regular scheduled meeting.

MINUTES

1. PRIVILEGE OF THE FLOOR

None.

2. CALL TO ORDER, PLEDGE OF ALLEGIANCE

Mayor Ament called the Common Council meeting to order at 6:24 PM.

Mayor Ament led the Pledge of Allegiance.

3. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

Rubina Medina took the roll call as follows:

Present: Alderperson Kroupa, Alderperson Horbinski, Alderperson Stribl, Alderperson Hopkins, Alderperson Garrigues, Alderperson Maxey, Alderperson Harenda

Excused: None

Staff Present: City Attorney Mark Blum, City Clerk Rubina Medina

4. APPROVAL OF MINUTES

A. March 28, 2023 Common Council Meeting Minutes

MOTION: Motion to approve

VOTE: Motion by: Kroupa
Second by: Harenda
Motion Passed: 7-0

5. REPORTS

A. City Clerk

Rubina R. Medina stated that the overall voter participation for the Spring Election was 58%. It was the highest turnout in the last 8 years for a Spring Election. The Spring Primary had a voter participation turnout of 36% in February. Thank you to the City Staff and pollworkers for all their hard work. Planning is already underway for the 2024 election year. Also, liquor license renewals have been mailed out to all establishments. The deadline to file paperwork is this Friday.

B. Council President

No Report.

C. Mayor

Congratulations to National Karate for being named Business of the Month for April.

On April 14th, the New Berlin Police & Fire will be playing the Waukesha Police & Fire. Game time is at 7PM at CMH.

April 14th is the deadline to nominate a city employee for the John Bauer award for municipal excellence.

6. COMMUNICATIONS

7. BOARD OF PUBLIC WORKS

- A.** ITEM 05-23 Recommendation to Common Council for the Approval of the 2023 LRIP Roadway Rehabilitation and Inspection Contract

MOTION: Motion to approve.

VOTE: Motion by: Horbinski
Second by: Stribl
Motion 7-0

8. PARKS, BUILDINGS & GROUNDS COMMISSION

- A.** Prospect Parkway Bridge project approval

MOTION: Motion to approve

VOTE: Motion by: Horbinski
Second by: Hopkins
Motion 7-0

9. MAYORAL APPOINTMENTS

- A.** Discussion and Possible Action to approve the Mayoral Appointments per the list as presented

MOTION: Motion to approve.

VOTE: Motion by: Kroupa
Second by: Garrigues
Motion 7-0

10. DEFERRED, REFERRED & TABLED ITEMS

11. ITEMS REMOVED FROM CONSENT AGENDA, if any

MOTION: Motion to approve Item 15C. Discussion and possible action to recommend to the Common Council the RAS from Ald. Stribl to change the date of Trick or Treat in the City of New Berlin from the last Sunday in October to the last Saturday in October.

VOTE: Motion by: Hopkins
Second by: Stribl

Motion 7-0

12. CONSENT AGENDA-----

- A.** *Items under the Consent Agenda have passed unanimously by the Committee of the Whole. Items not passed by a unanimous vote will be removed from consent agenda and will be considered separately.*

MOTION: Motion to approve consent agenda.

VOTE: Motion by: Garrigues
Second by: Stribl
Motion 7-0

13. MINUTES

- A.** March 28, 2023 Committee of the Whole Meeting Minutes

14. UTILITY & FINANCE

- A.** Discussion and possible action to recommend to the Common Council approval of the April 12, 2023 Water Utility claims in the amount of \$117,555.02, Sewer Utility claims in the amount of \$92,628.62 and General City claims in the amount of \$895,462.93. Tax overpayment checks totaling \$469.60 were also generated. US Bank VISA EFT of \$42,915.55. WE Energies EFT of \$81,367.42

15. MISCELLANEOUS

- A.** Recreation Department Update
- B.** Discussion and possible action to appoint William Jonas as the Common Council nominee to the City of New Berlin Ethics Board per section 28-6(B) of the City Code of the City of New Berlin, with a term to commence upon this appointment and to continue until 4/30/2026
- C.** Discussion and possible action to recommend to the Common Council the RAS from Ald. Stribl to change the date of Trick or Treating in the City of New Berlin from the last Sunday in October to the last Saturday in October

16. END CONSENT AGENDA-----

17. CLOSED SESSION

- A.** *The basis for the items to be discussed in Closed Session are as enumerated in Section 19.85(1)(g) of the Wisconsin State Statutes.(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which*

it is or is likely to become involved, more specifically:

Rubina Medina read the basis for the items to be discussed in the Closed Session.

MOTION: Motion to enter into closed session at 6:42PM.

VOTE: Motion by: Stribl
Second by: Kroupa
Motion 7-0

B. Frier vs. City of New Berlin

C. Michael Kusch Claim

D. Mary Rickert Claim

E. James Ford Claim

18. RECONVENE TO OPEN SESSION - Discussion and possible action on items listed below:

A. Frier vs. City of New Berlin
No Action.

B. Michael Kusch Claim
MOTION: Motion to approve the claim as outlined by the City Attorney

VOTE: Motion by: Maxey
Second by: Stribl
Motion 7-0

C. Mary Rickert Claim
MOTION: Motion to approve the claim as outlined by the City Attorney.

VOTE: Motion by: Stribl
Second by: Kroupa
Motion 7-0

D. James Ford Claim
No Action.

19. ADJOURN

MOTION: Motion to adjourn the Common Council meeting at 7:11 PM.

VOTE: Motion by: Garrigues
Second by: Kroupa
Motion 7-0



Common Council MEETING MINUTES

April 18, 2023 - 5:00 PM
City Hall
Council Chambers

Please note: Minutes are unofficial until approved at the next regular scheduled meeting.

MINUTES

1. **CALL TO ORDER; PLEDGE OF ALLEGIANCE; INVOCATION PUBLIC NOTICE**

Mayor Ament called the Common Council meeting to order at 5:02 PM.
Mayor Ament led the Pledge of Allegiance.

2. **ROLL CALL**

Rubina Medina took the roll call as follows:

Present: Alderperson Hopkins, Alderperson Horbinski, Alderperson Garrigues,
Alderperson Maxey, Alderperson Harenda, Alderperson Kroupa

Excused: Alderperson Stribl

Staff Present: City Clerk Rubina Medina

3. **COMMENTS FROM OUTGOING DISTRICT 2 ALDERMAN CHUCK GARRIGUES**

Ald. Garrigues stated it was a privilege and an honor to serve the City of New Berlin and District 2 as Alderman over the last 9 years. The City staff has been helpful in answering the questions he has and they have always been kind. Special thanks to his wife for all of her help over the years. Many hours were spent dealing with city issues and his goal was to meet with each person individually to resolve their issues. He wishes the best to the new alderperson, Scott La Fever.

4. **PRESENTATION OF RECOGNITION PLAQUE TO OUTGOING DISTRICT 2 ALDERMAN CHUCK GARRIGUES**

Mayor Ament presented a plaque of recognition to outgoing district 2 alderman, Chuck Garrigues

5. **A MOTION TO ADJOURN "SINE DIE"**

MOTION: Motion to adjourn sine die at 5:12 PM.

VOTE: Motion by: Garrigues
Second by: Harenda
Motion 7-0

6. **INSTALLATION OF NEW ALDERMAN SCOTT LA FEVER FOR DISTRICT 2 BY JUDGE JOSEPH DORLACK**

Judge Dorlack swore-in new Alderman Scott La Fever for District 2

7. **INSTALLATION OF RE-ELECTED ALDERMAN KENNETH A. HARENDA II FROM DISTRICT 4 AND ALDERMAN DENNIS HORBINSKI FROM DISTRICT 6**

Judge Dorlack swore in re-elected Alderman Kenneth A. Harenda II from District 4 and Alderman Dennis Horbinski from District 6.

8. MAYOR DAVE AMENT CALLS THE MEETING TO ORDER

Mayor Ament called the meeting to order at 5:17 PM.

9. PLEDGE OF ALLEGIANCE

Mayor Ament lead the Pledge of Allegiance.

10. ROLL CALL

Present: Alderperson Hopkins, Alderperson Horbinski, Alderperson La Fever, Alderperson Maxey, Alderperson Harenda, Alderperson Kroupa

Excused: Alderperson Stribl

Staff Present: City Clerk Rubina Medina

11. ELECTION OF COUNCIL PRESIDENT/NOMINATIONS FOLLOWED BY SECRET BALLOT, IF NECESSARY

Alderman Hopkins nominated Ald. Ken Harenda as Council President.

MOTION: Motion to close nominations

VOTE: Motion by: Kroupa
Second by: Maxey
Motion 7-0

MOTION: Motion to elect Ald. Harenda as Council President

VOTE: Motion by: Hopkins
Second by: Maxey
Motion 7-0

12. COMMENTS FROM NEW ELECTED AND RE-ELECTED OFFICIALS AND INTRODUCTION OF FAMILIES

Newly Elected Alderman Scott La Fever thanked Chuk Garrigues for his many years of service as District 2 Alderman. Scott stated that he grew up in New Berlin and he graduated from New Berlin West in 1999. He moved away and then returned to New Berlin a couple of years ago to raise his children. He felt that he needed to serve his community and that's why he ran for Alderman. He thanked all of New Berlin and his family and friends, especially his children and his girlfriend, Megan. He is excited about starting his role as Alderman.

Ald. Harenda stated he would like to thank the voters for their support for allowing him to serve again as Alderman of District 4. Thank you to his family and friends for their patience and support. He looks forward to serving as alderman and council president.

Ald. Horbinski thanked his wife, Pam, for supporting him for so many years, as well as the voters. He moved to New Berlin in 1979 and he considers New Berlin his home. He ran for election in 2011 and he had no idea that he would still be up on the dias serving as alderman. There have been many accomplishments that wouldn't have happened without the great Council, great Mayor and wonderful staff. He thanked Chuck Garrigues for his service.

13. ADJOURN

MOTION: Motion to adjourn at 5:23 PM.

VOTE: Motion by: La Fever
Second by: Kroupa
Motion 7-0

Mayor Ament invited all in attendance to have a celebratory piece of cake.

***Respectfully Submitted,
Rubina R. Medina, City Clerk***

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: Recommend to Common Council adoption of Ordinance # 2667 that approves the rezoning of 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.

DETAILS IN ATTACHED STAFF REPORT:

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
PLAN COMMISSION STAFF REPORT
Meetings of April 13, 2023

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

DATE STAFF REPORT PREPARED: March 7, 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	8.26 acres
Lot 2	5.00 acres
Lot 3	5.58 acres
Lot 4	5.00 acres

PROPOSED DENSITY: N/A

ADJACENT ZONING AND LAND USE:

North: Zoning: R-1/R-2, R-3

South: Zoning: A-2, C-2

East: Zoning: A-2, C-2

West: Zoning: R-1/R-2, R-3

Land Use: Residential

Land Use: Agriculture/Commercial (Trees on the Move)

Land Use: Agriculture/Commercial (Trees on the Move)

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, held on March 6, 2023.

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)

3/6/2023 Plan Commission public hearing for rezoning (File #: RZ-2300208)

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.

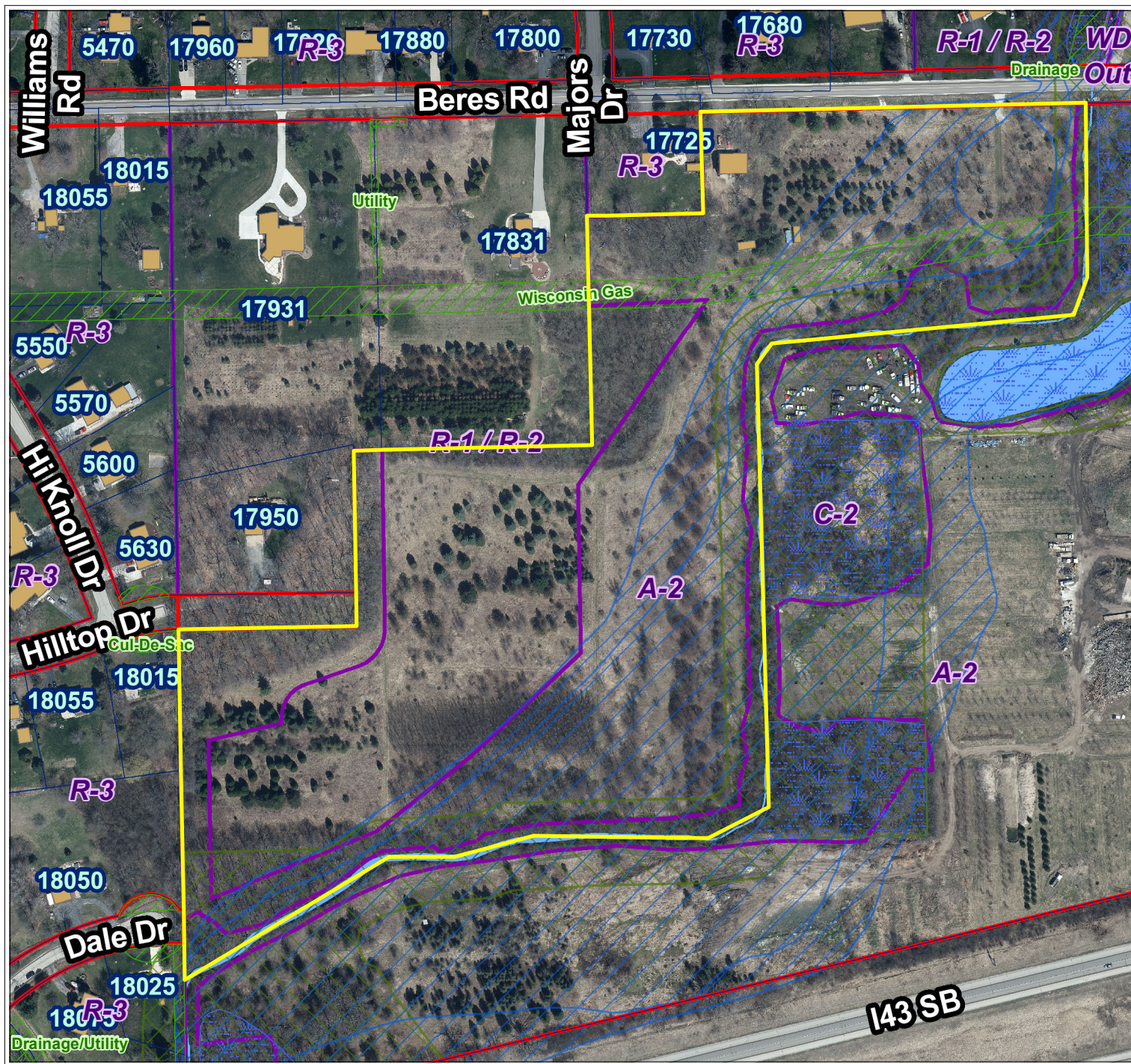
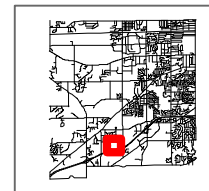
2. The applicant has simultaneously applied for a 4-Lot CSM (See File # LD-2300209).
3. Wetlands were delineated by Thomson and Associates in August 2010. Upon review of the building permits for the future single-family homes, staff will determine if a Wetland Delineation is required.
4. Lot 1 will no 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:

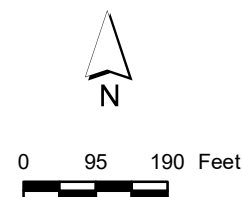
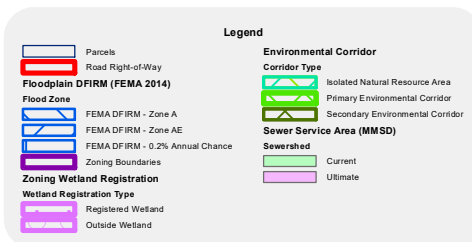
Recommend to Common Council adoption of Ordinance # 2667 that approves the rezoning of the property located at Tax Key #: 1281.996.006 (Lands adjacent to Beres Road and Hilltop Drive) from A-2, R-1/R-2 & C-2 to R-1/R-2 & C-2. **See Executive Summary.**

ATTACHMENTS:

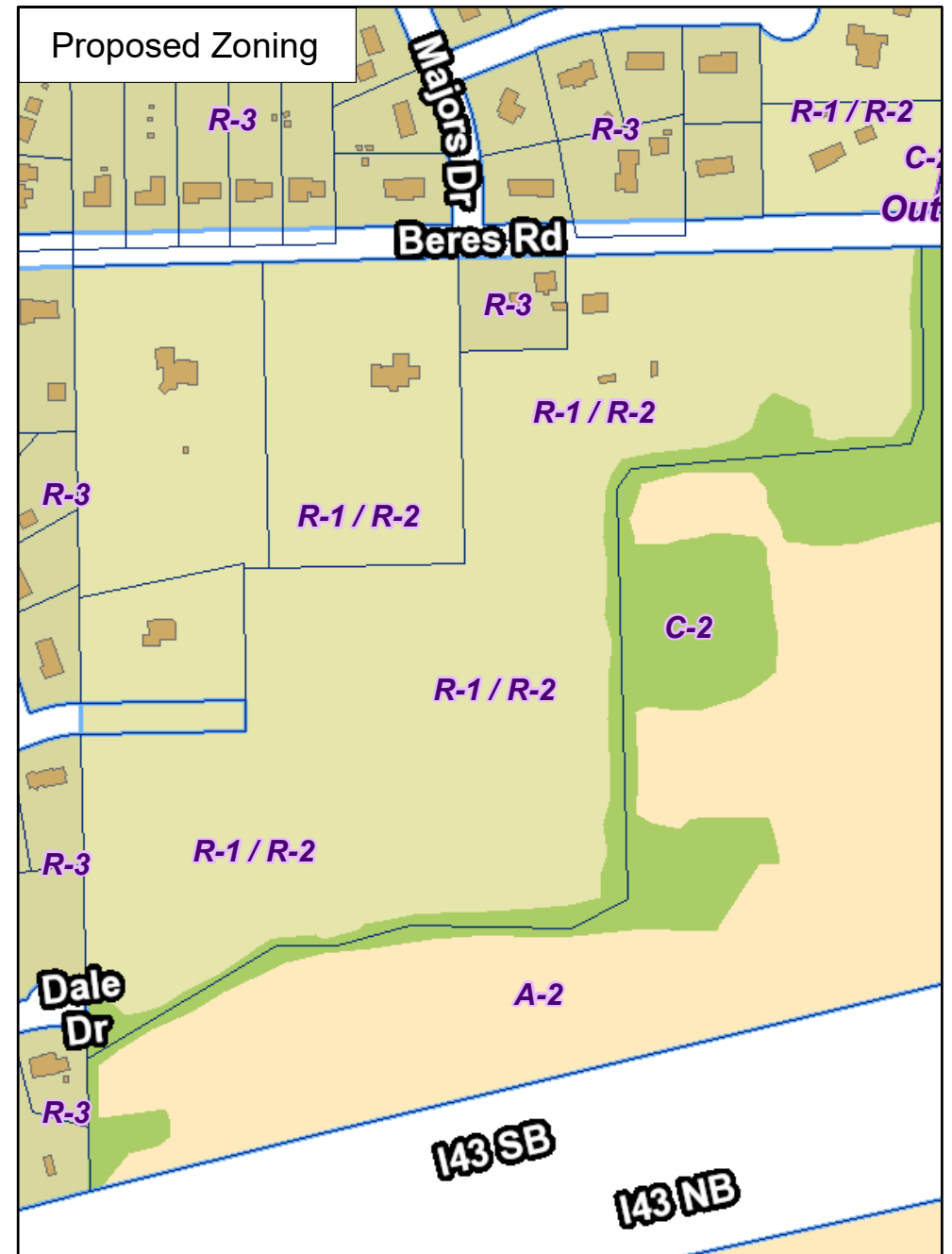
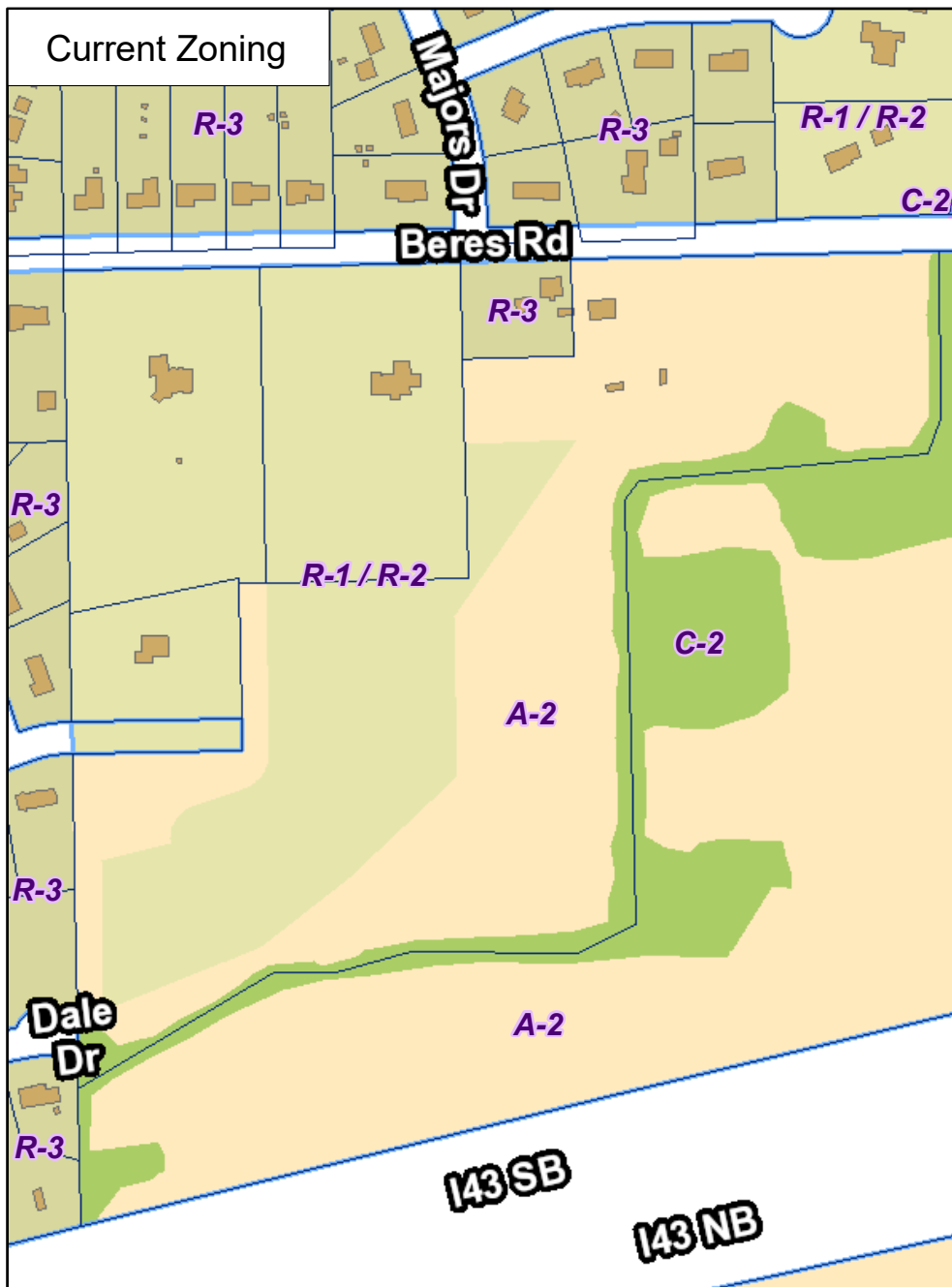
Location Map
Zoning Comparison Map
CSM
Ordinance # 2667



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

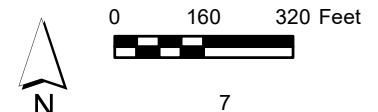


The information and depictions herein have been produced using data available through photogrammetric means by the City of New Berlin. The informations and depictions herein are for informational purposes and the City of New Berlin specifically disclaims accuracy in this reproduction and specifically 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.



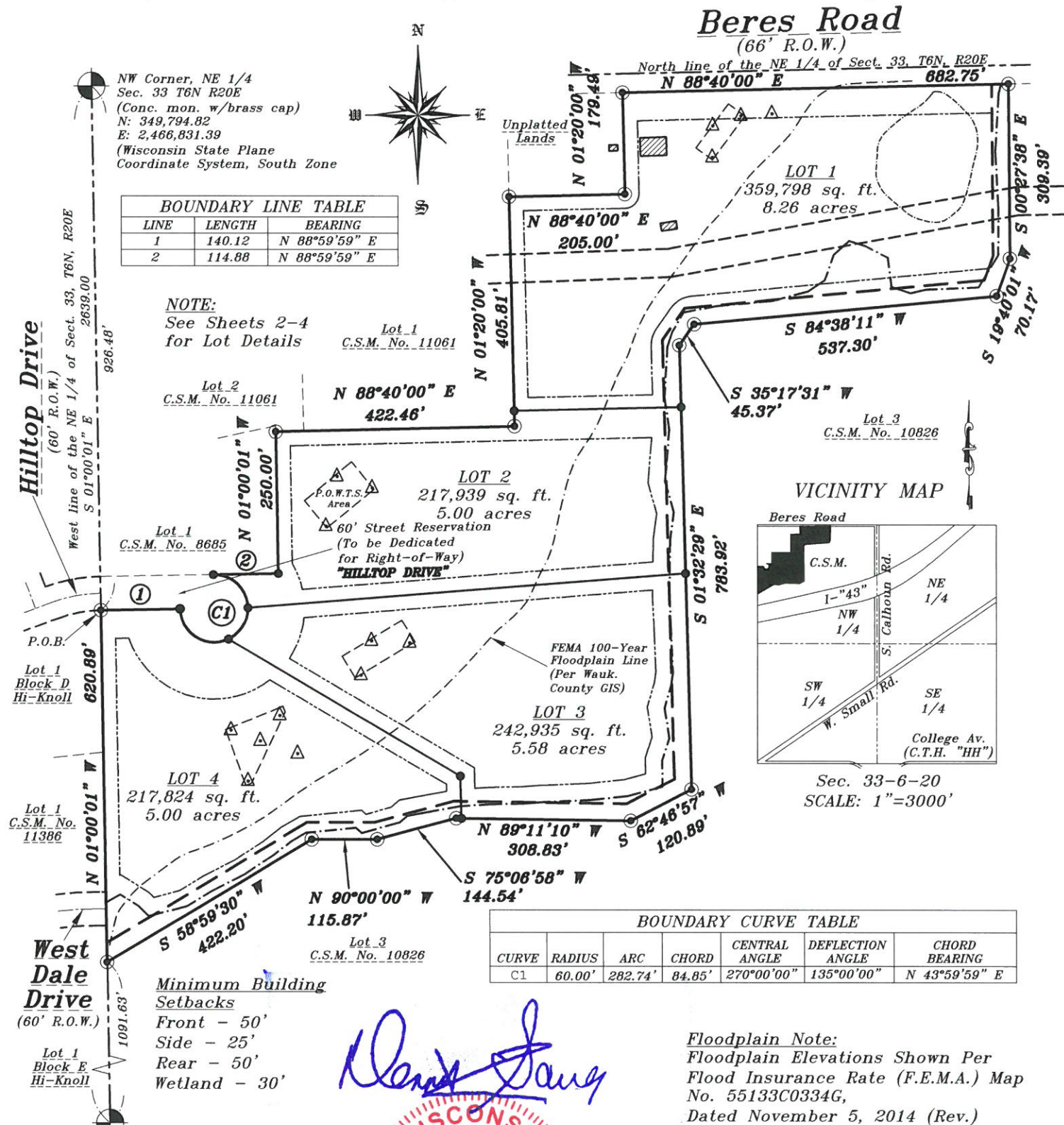
City of New Berlin
Department of Community Development
3805 S Casper Dr.
New Berlin WI 53151
(262) 797-2445
www.newberlin.org

RZ-2300208
Jewell
Taxkey# 1281996006



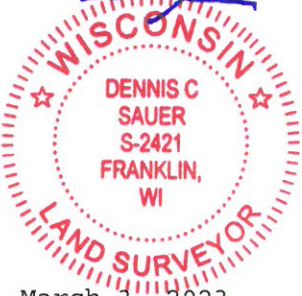
CERTIFIED SURVEY MAP NO.

Being a redivision of Lot 2 of CERTIFIED SURVEY MAP NO. 10826 and additional lands, 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.



BOUNDARY LINE TABLE		
LINE	LENGTH	BEARING
1	140.12	N 88°59'59" E
2	114.88	N 88°59'59" E

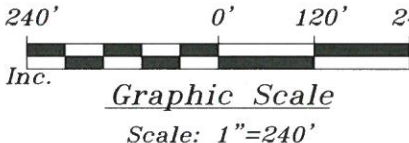
BOUNDARY CURVE TABLE						
CURVE	RADIUS	ARC	CHORD	CENTRAL ANGLE	DEFLECTION ANGLE	CHORD BEARING
C1	60.00'	282.74'	84.85'	270°00'00"	135°00'00"	N 43°59'59" E



SW Corner, NE 1/4
Sec. 33 T6N R20E
(Conc. mon. w/brass cap)
N: 347,156.41
E: 2,466,877.80
(Wisconsin State Plane
Coordinate System, South Zone)

Prepared for:
424 Investments, LLC.
S75 W17237 Janesville Road
Muskego, WI 53150
(414) 698-3247

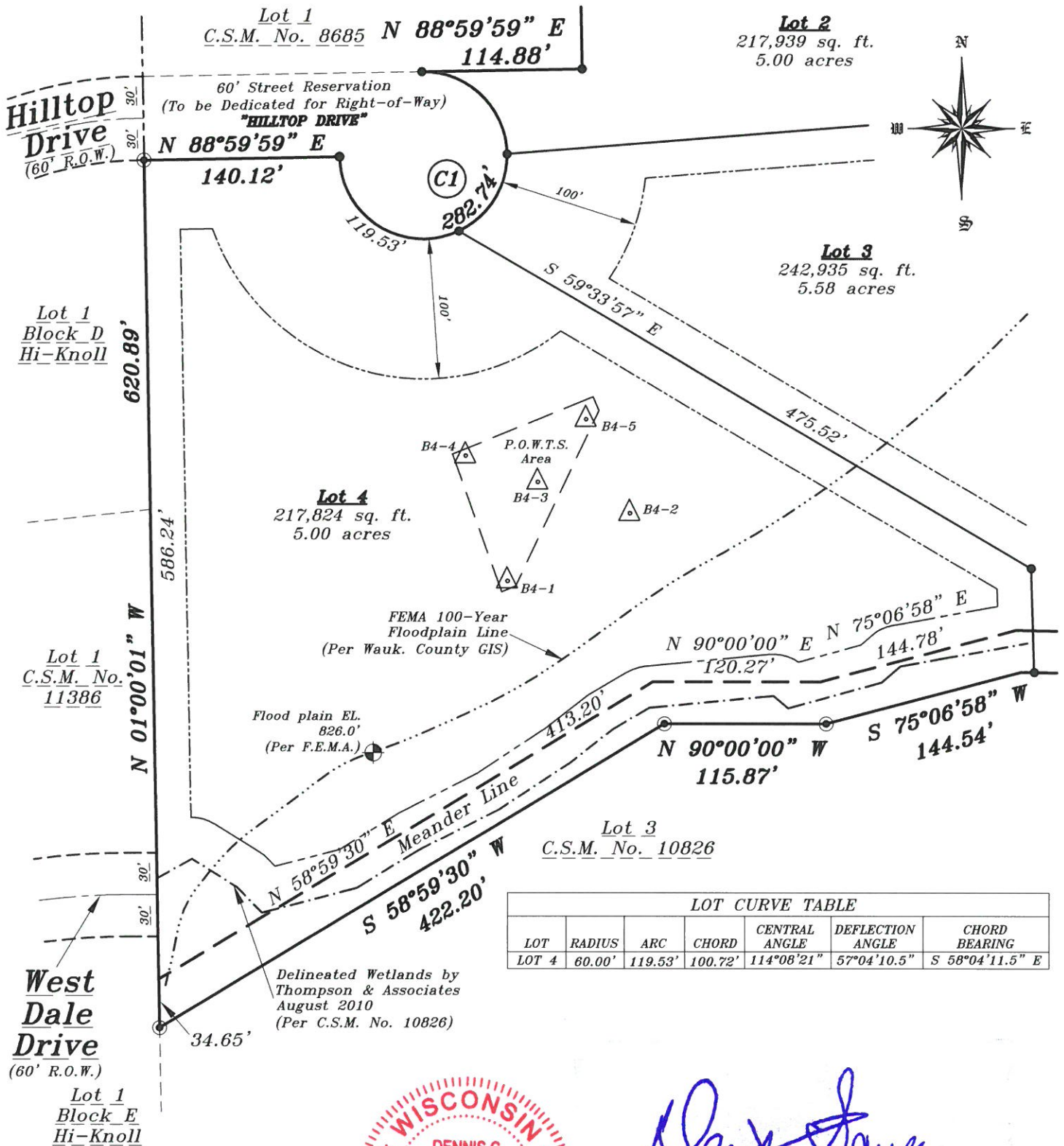
Prepared by:
Dennis C. Sauer P.L.S.-2421
Metropolitan Survey Service, Inc.
8482 S. 76th St.
Franklin, WI 53132
(414) 529-5380



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 and additional lands, 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.

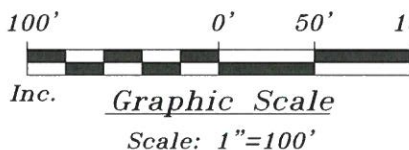


[Signature]

Prepared for:
424 Investments, LLC.
575 W17237 Janesville Road
Muskego, WI 53150
(414) 698-3247

Prepared by:
Dennis C. Sauer P.L.S-2421
Metropolitan Survey Service, Inc.
8482 S. 76th St.
Franklin, WI 53132
(414) 529-5380

March 3, 2023

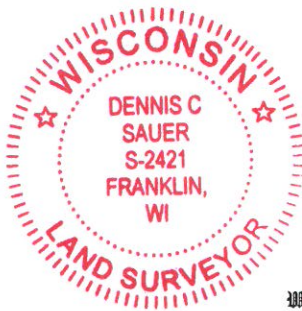
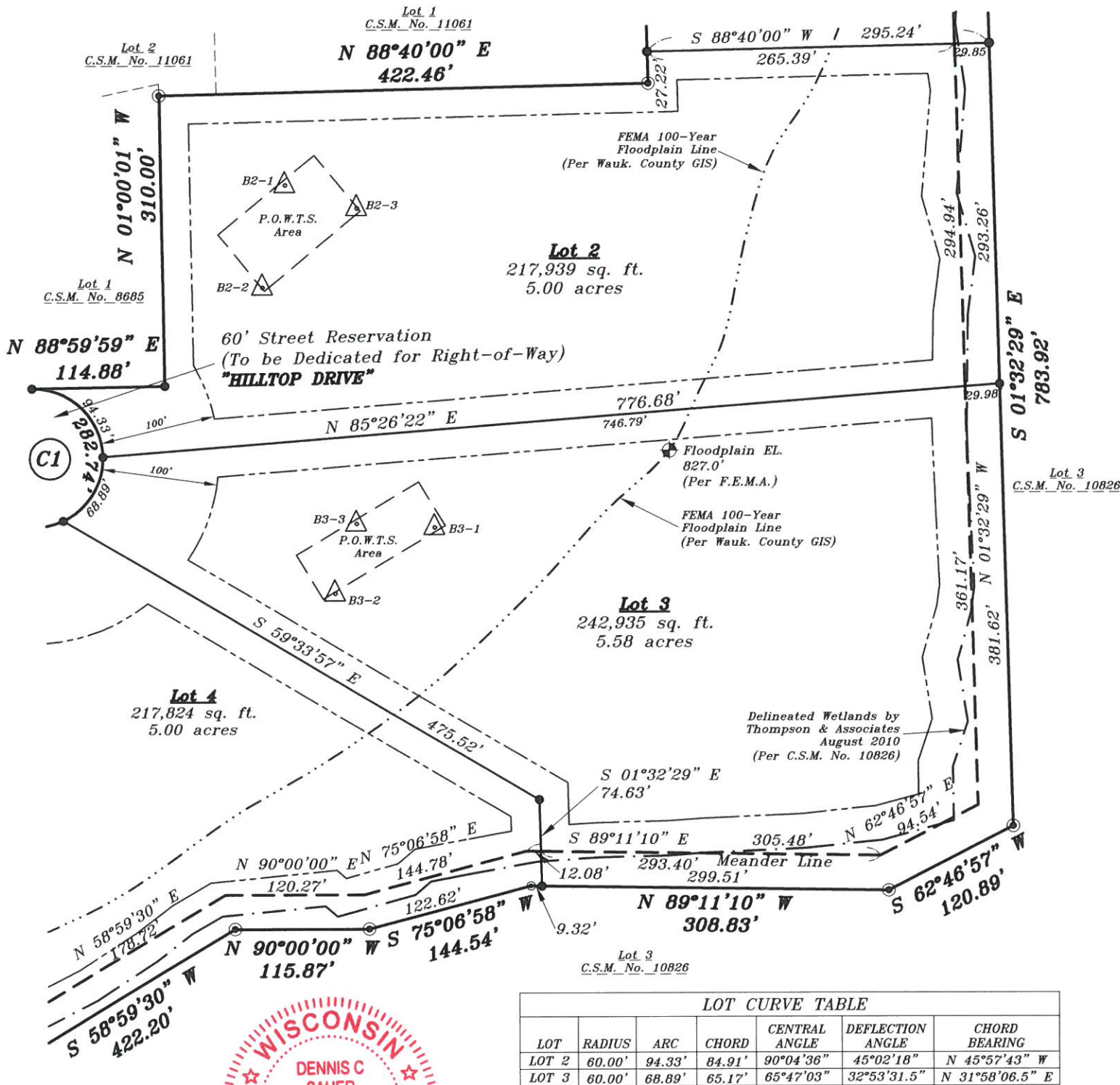


NOTES:

- 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.

CERTIFIED SURVEY MAP NO.

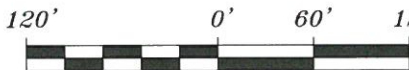
Being a redivision of Lot 2 of CERTIFIED SURVEY MAP NO. 10826 and additional lands, Being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 33, Town 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.



[Signature]

Prepared for: March 3, 2023
424 Investments, LLC.
575 W17237 Janesville Road
Muskego, WI 53150
(414) 698-3247

Prepared by:
Dennis C. Sauer P.L.S.-2421
Metropolitan Survey Service, Inc.
8482 S. 76th St.
Franklin, WI 53132
(414) 529-5380



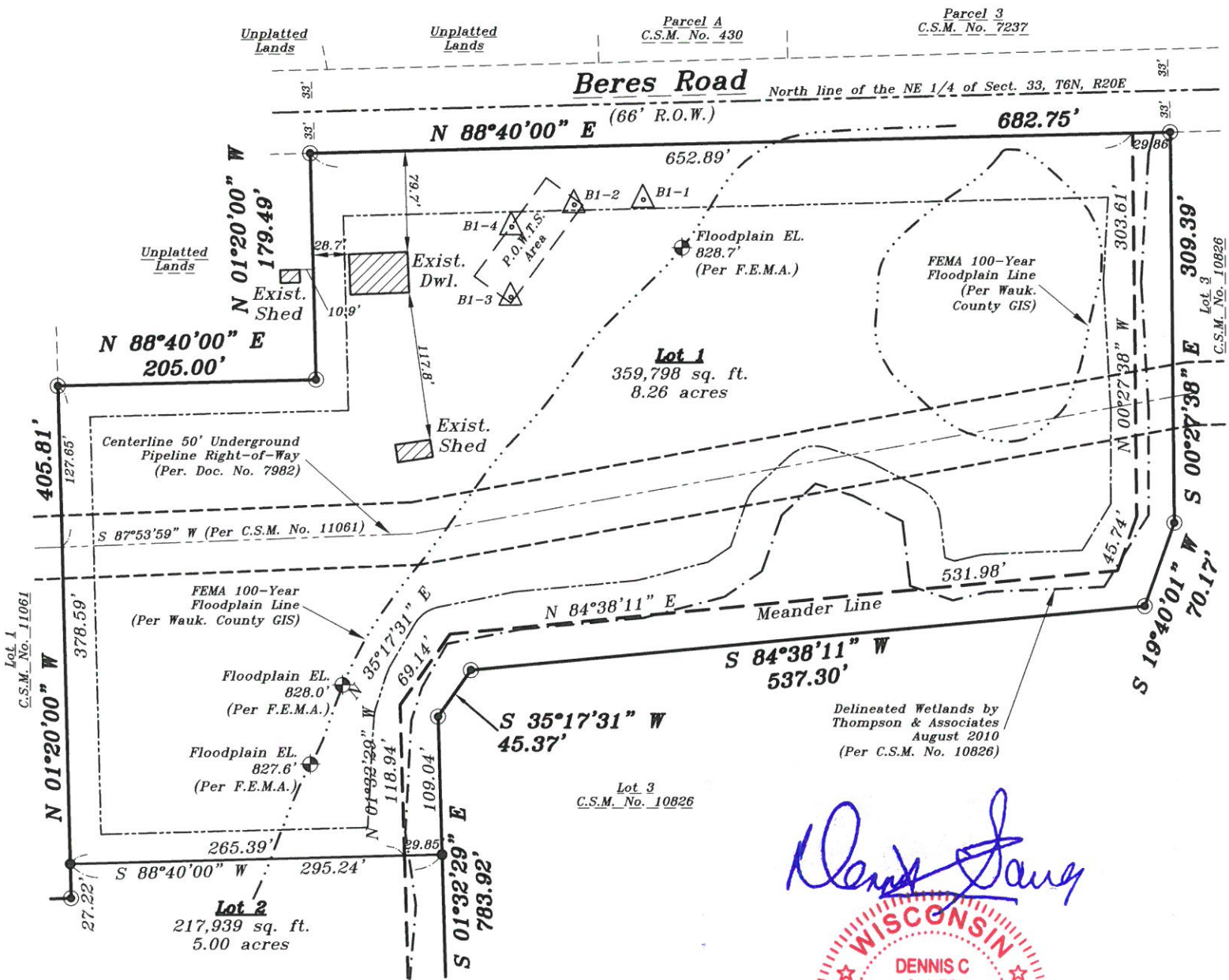
Graphic Scale
Scale: 1"=120'

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.

CERTIFIED SURVEY MAP NO. _____

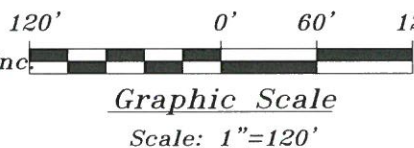
Being a redivision of Lot 2 of CERTIFIED SURVEY MAP NO. 10826 and additional lands, Being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 33, Town 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.



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

Prepared for:
424 Investments, LLC.
S75 W17237 Janesville Road
Muskego, WI 53150
(414) 698-3247

Prepared by:
Dennis C. Sauer P.L.S.-2421
Metropolitan Survey Service, Inc.
8482 S. 76th St.
Franklin, WI 53132
(414) 529-5380



Dennis C. Sauer
WISCONSIN
DENNIS C. SAUER
S-2421
FRANKLIN, WI
LAND SURVEYOR
March 3, 2023

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.

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of Certified Survey Map No. 10826 and additional lands, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and the 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, combined and mapped a redivision of Lot 2 of Certified Survey Map No. 10826 and additional lands, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and the 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 point of beginning of the lands to be described;
thence N 88°59'59" E, 140.12 feet;
thence northeasterly 282.74 feet along the arc of a curve, whose center lies to the northwest, whose radius is 60.00 feet, and whose chord bears N 43°59'59" E, 84.85 feet; thence N 88°59'59" E, 114.88 feet;
thence N 01°00'01" W, 250.00 feet; thence N 88°40'00" E, 422.46 feet;
thence N 01°20'00" 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 said south right-of-way line, 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 the West line of said Northeast 1/4; thence N 01°00'01" W along said West line, 620.89 feet to the point of beginning.

Said lands containing 1,038,496 square feet (23.84 acres).

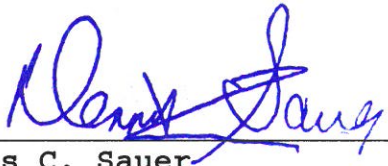
That I have made such survey, land division and map by the direction of John Jewell, Member of 424 Investments, LLC., owner of said land.

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.

MARCH 3, 2023
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 and additional lands, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and the 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.

CORPORATE OWNER'S CERTIFICATE

424 Investments, LLC., as owner, does hereby certify it caused the lands described on this map to be surveyed, divided, combined and mapped and dedicated as represented on this map in accordance with the provisions of Chapter 236.34 of the Wisconsin State Statutes and the Subdivision Regulations of the City of New Berlin.

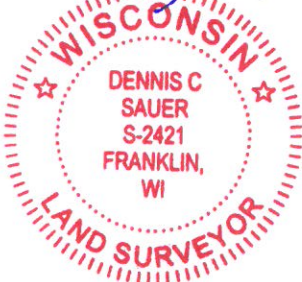
IN WITNESS WHEREOF, the said 424 Investments, LLC., has caused these presents to be signed at _____, Wisconsin, this _____ day of _____, 20____.

John Jewell, Member

STATE OF WISCONSIN)
_____) COUNTY) SS

PERSONALLY, came before me this _____ day of _____, 20____, John Jewell, Member of 424 Investments, LLC., to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public-State of Wisconsin
My Commission Expires: _____



3/3/2023

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of Certified Survey Map No. 10826 and additional lands, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and the 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.

CONSENT OF CORPORATE MORTGAGEE

CITIZENS BANK, a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, mortgagee of the above described land, does hereby consent to the surveying, dividing, combining and mapping of the land described on this map and does hereby consent to the above certification of owner.

IN WITNESS WHEREOF, the said Citizens Bank, has caused these presents to be signed by Brett Engelking, Senior Vice President - Business Banking Manager, at _____, Wisconsin, this _____ day of _____, 2023.

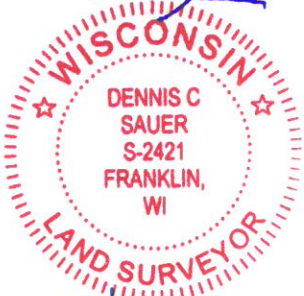
CITIZENS BANK:

Brett Engelking, Senior Vice President - Business Banking Manager

STATE OF WISCONSIN)
_____ COUNTY) SS

PERSONALLY came before me this _____ day of _____, 2023, Brett Engelking, Senior Vice President - Business Banking Manager of Citizens Bank, to me known to be the person who executed the foregoing instrument and to me known to be such officer of said corporation and acknowledged the same.

Notary Public - State of Wisconsin
My Commission Expires: _____



3/3/2023

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of Certified Survey Map No. 10826 and additional lands, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and the 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.

PLAN COMMISSION APPROVAL

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

David Ament, Chairman
City of New Berlin

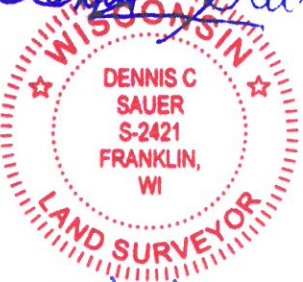
Nikki Jones, Secretary
City of New Berlin

COMMON COUNCIL APPROVAL

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

David Ament, Mayor
City of New Berlin

Rubina R. Medina, City Clerk
City of New Berlin



3/3/2023

ORDINANCE NO. 2667

Ordinance to rezone from A-2 (Agricultural and Rural Holding District), R-1/R-2 (Rural Conservation Single-Family Residential District) and C-2 (Shoreland Wetland Holding District) to R-1/R-2 (Rural Conservation Single-Family Residential District) and C-2 (Shoreland Wetland Holding District)

The Common Council of the City of New Berlin do ordain as follows:

SECTION I

The City of New Berlin, having received a petition from John Jewell to rezone the property located at Tax Key #: 1281.996.006 from A-2, R-1/R-2 & C-2 to R-1/R-2 & C-2:

OVERALL LEGAL DESCRIPTION:

LOT 2 CSM #10826 DOC #3796369 REC 12/01/2010 BEING A PT OF THE SW .25, SE .25, NE .25 AND NW .25 OF THE NE .25 OF SEC 33 T6N R20E DOC #4531358 11/18/2020

AREAS ZONED A-2 WILL BE REZONED TO R-1/R-2.**AREAS ZONED R-1/R-2 AND C-2 WILL REMAIN UNCHANGED.**

SECTION II

The matter came before the City Plan Commission which held a public hearing on the proposed rezoning on March 6, 2023 and recommended approval of said rezoning on April 13, 2023 subject to the application, plans on file, and an ordinance approved by the City Attorney, and the matter having been considered and the rezoning approved on April 25, 2023 by the Common Council.

SECTION III

The Common Council of the City of New Berlin does hereby approve the rezoning of the lands in the above-described property from A-2, R-1/R-2 & C-2 to R-1/R-2 & C-2 subject to the application and plans on file.

The Mayor and City Clerk are authorized to execute this Ordinance No. 2667 on behalf of the City of New Berlin.

SECTION IV

The several sections of this ordinance are declared to be severable. If any section shall be declared by decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of other portions of the ordinance.

SECTION V

All ordinances or parts of ordinances contravening the terms and conditions of this ordinance are hereby to that extent repealed.

SECTION VI

This ordinance shall take effect upon passage and publication of a summary notice as required by law, and the City Clerk shall so amend the Code of Ordinances and zoning map of the City of New Berlin, and shall indicate the date and number of this amending ordinance therein.

PASSED AND ADOPTED by the Common Council this 25th day of April 2023.

APPROVED:

David A. Ament, Mayor

Countersigned:

Rubina Medina, City Clerk

STAFF REPORT

EXECUTIVE SUMMARY

APPLICANT/PROJECT: John Jewell / Road Reservation Release & 4-Lot Certified Survey Map

LOCATION: Tax Key #: 1281.996.006 (Lands adjacent to Beres Road and Hilltop Drive)

REQUEST #1: Release of the 60' Road Reservation that appears on CSM # 10826

REQUEST #2: Approval of a 4-Lot Certified Survey Map

REVIEW SCHEDULE:

CSM Received:	1/20/2023
Completeness Determination:	1/25/2023
90-day time limit expires:	4/20/2023
Final Common Council Action:	4/25/2023
30-day extension expires:	5/20/2023

D.R.C. RECOMMENDATION #1: Recommend to Common Council adoption of Resolution # 23-9 approving the release of the 60' Road Reservation that appears on CSM # 10826.

D.R.C. RECOMMENDATION #2: Recommend to Common Council approval of a 4-Lot Certified Survey Map for the property located at Tax Key #: 1281.996.006 (Lands adjacent to Beres Road and Hilltop Drive), subject to the application, plans on file and the following conditions:

1. The City is requesting to release a 60' wide road reservation that is located along the southerly portion of 17950 W. Hilltop Drive, approximately 315' in length. CSM # 10826 contains language that reserves the lands for a future road.
2. The submitted CSM is proposing a different layout for the future road extension. The request is for the City to accept the ROW dedication as shown in the attached CSM upon the release of the existing road reservation outlined in Resolution # 23-9.
3. Applicant shall correct all drafting errors and requested changes identified by Staff on the final CSM prior to the City signing.
4. A final copy of the CSM shall be submitted and reviewed prior to City signing. All owners and surveyor must sign prior to City signing the CSM. Surveyor Stamp is required.
5. The CSM shall be recorded with Waukesha County Register of Deeds prior to the issuance of any new zoning or building permits.
6. Applicant and/or property owner shall apply for and obtain appropriate building, plumbing and electrical permits prior to any construction on any parcel.
7. Approval of the rezoning request (see file #: RZ-2300208) is required prior to action on the Certified Survey Map.
8. Payment of the Public Site and Open Space fee of \$5,812.80 (\$1,937.60/lot x 3 lots) is required prior to the City signing the CSM.

9. Applicant shall coordinate with Waukesha County and WDNR for septic and well permits.
10. The property, which is located outside of the current MMSD Sewer Service District, will require private on-site waste treatments sites (POWTS) for each lot that is created that will meet Waukesha County requirements.
 - a. Remove POWTS area boundary from CSM.
11. Private water supply wells meeting the requirements of the Wisconsin Department of Natural Resources will also be required.
12. Applicant shall dedicate the appropriate right-of-way to the City of New Berlin.
13. Applicant shall submit an application for a Developer's Agreement and requisite surety instrument for the cul-de-sac construction.
14. Applicant shall construct a new driveway approach for 17950 W. Hilltop Drive at the property line.
15. Vicinity map is incorrect. Showing east half of Section 33 and west half of Section 34, labels on grid and title are incorrect.
16. Account for the culvert and ditch line adjustment needed for the roadway match at 18015 W. Hilltop Drive.
17. Show the proposed mound system locations on the Master Grading Plan for the lots.
18. Show grading for a side yard property line swale between the two driveways for lots 2 and 3.
19. Pitch the driveway for lot 3 to the south and pitch the driveway for lot 2 to the south.
20. Provide project specific cross section sheets for the road extension at 50' intervals and at the existing driveway location for the house at 17950 W. Hilltop Dr.
21. Provide culvert sizes and elevations.
22. Provide an Erosion Control Plan.
23. Page 1: This sketch needs correction; this CSM is in the NE 1/4 of Section 33, below it is the SE 1/4 of Section 33. To the east of these Quarter Sections are the NW & SW 1/4's of Section 34 respectively.
24. Page 3: The distance on bearing N 1-0-1 W should be '250' to match the distance noted on Page 1.

DETAILS IN ATTACHED STAFF REPORT:

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
PLAN COMMISSION STAFF REPORT
Meetings of April 13, 2023

John Jewell / Road Reservation Release & 4-Lot Certified Survey Map
Tax Key #: 1281.996.006 (Lands adjacent to Beres Road and Hilltop Drive)

DATE STAFF REPORT PREPARED: March 1, 2023

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

REQUEST / DESCRIPTION OF PROJECT: Recommend to Common Council adoption of Resolution # 23-9 approving the release of the 60' Road Reservation that appears on CSM # 10826 AND Approval of a 4-Lot Certified Survey Map for the property located at Tax Key #: 1281.996.006 (Lands adjacent to Beres Road and Hilltop Drive).

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: Yes

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: See File # RZ-2300208.

PROPOSED LAND USE: Single-family residential

PROPOSED LOT SIZES:

Lot 1	8.26 acres
Lot 2	5.00 acres
Lot 3	5.58 acres
Lot 4	5.00 acres

PROPOSED DENSITY: N/A

ADJACENT ZONING AND LAND USE:

North: Zoning: R-1/R-2, R-3

South: Zoning: A-2, C-2

East: Zoning: A-2, C-2

West: Zoning: R-1/R-2, R-3

Land Use: Residential

Land Use: Agriculture/Commercial (Trees on the Move)

Land Use: Agriculture/Commercial (Trees on the Move)

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): Yes

REZONING REQUIRED: Yes, See File # RZ-2300208.

CONDITIONAL USE REQUIRED: No

PUBLIC HEARING REQUIRED: Not for the CSM. A Public Hearing was held on March 6, 2023 for the rezoning. See File # RZ-2300208.

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 this 4-Lot CSM.

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: ITE Manual estimates the following for single-family development:

Weekday AM Peak – 0.77 trips per unit = 3 trips

Weekday PM Peak – 1.02 trips per unit = 4 trips

Weekend Peak – 0.93 trips per unit = 4 trips

SCHOOL DISTRICT IMPACT: 1.84 total estimated students

Elementary – 0.92 students (4 lots * 0.23 students)

Middle – 0.44 students (4 lots * 0.11 students)

High School – 0.48 students (4 lots * 0.12 students)

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)

3/6/2023 Plan Commission public hearing on rezoning (File # RZ-2300208)

CONSISTENCY WITH PREVIOUS ACTION: Yes

FINDINGS:

1. The applicant has simultaneously applied for a rezoning (See File # RZ-2300208).
2. Per Section 275-33D of the Zoning Code, the minimum lot area is 5 acres and the minimum lot width is 200' in the R-1/R-2 District. The proposed lots meet the minimum lot dimensions.
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.

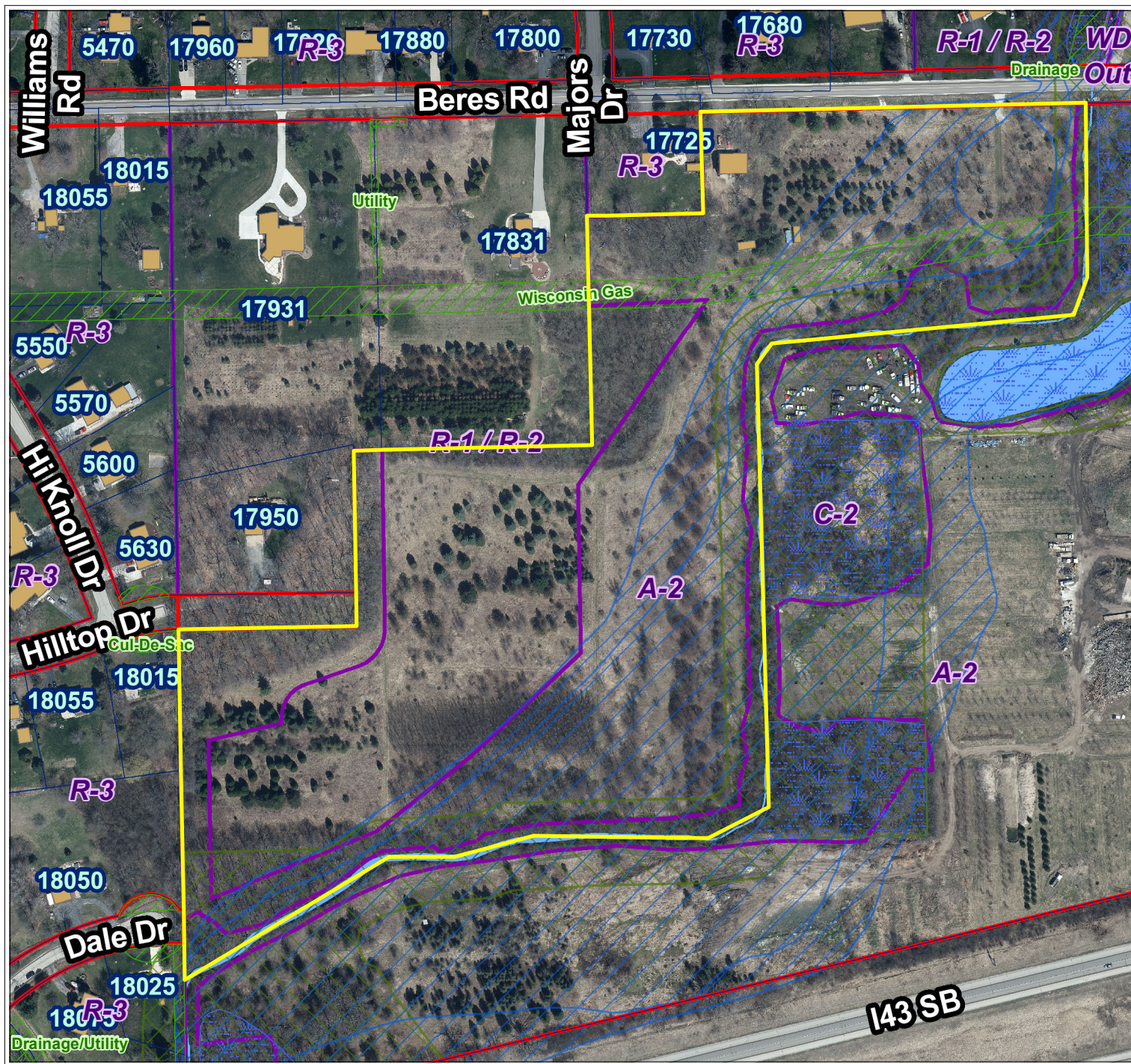
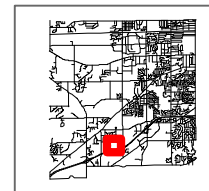
5. The City of New Berlin has concluded that the extension of Hilltop Drive is no longer necessary as a result of the redivision of Lot 2 of CSM 10826, and the dedication of a portion of said road reservation, along with a cul de sac, to the City of New Berlin. As a result, the City has concluded that the road reservation restriction can be released, but only to the extent of the lands not being dedicated for public road purposes as a part of the proposed 4-Lot CSM submitted by the applicant.
6. The City supports the modified right-of-way boundary for the following reasons:
 - a. The original development plans for these lands included a more dense subdivision. This proposal is less dense than prior development plans and includes three new residential lots to be accessed from this extension on Hilltop Drive.
 - b. This parcel contains floodplains and wetlands, and potential septic system locations that could be impacted by a longer roadway. By reducing the right-of-way length, these features are less likely to be impacted and sufficient frontage is still provided to the existing and proposed lots.
 - c. The reduced road length allows for the slope for the road to meet the City's development standards, while also providing better access to the proposed lots.

D.R.C. RECOMMENDATION:

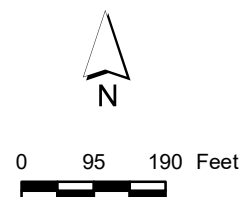
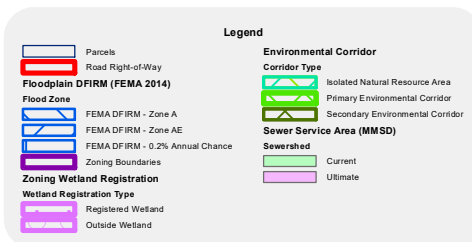
Recommend to Common Council adoption of Resolution # 23-9 approving the release of the 60' Road Reservation that appears on CSM # 10826 AND Recommend to Common Council approval of a 4-Lot Certified Survey Map for the property located at Tax Key #: 1281.996.006 (Lands adjacent to Beres Road and Hilltop Drive), subject to the application, plans on file and the following conditions: **See Executive Summary.**

ATTACHMENTS:

Location Map
CSM
Resolution # 23-9



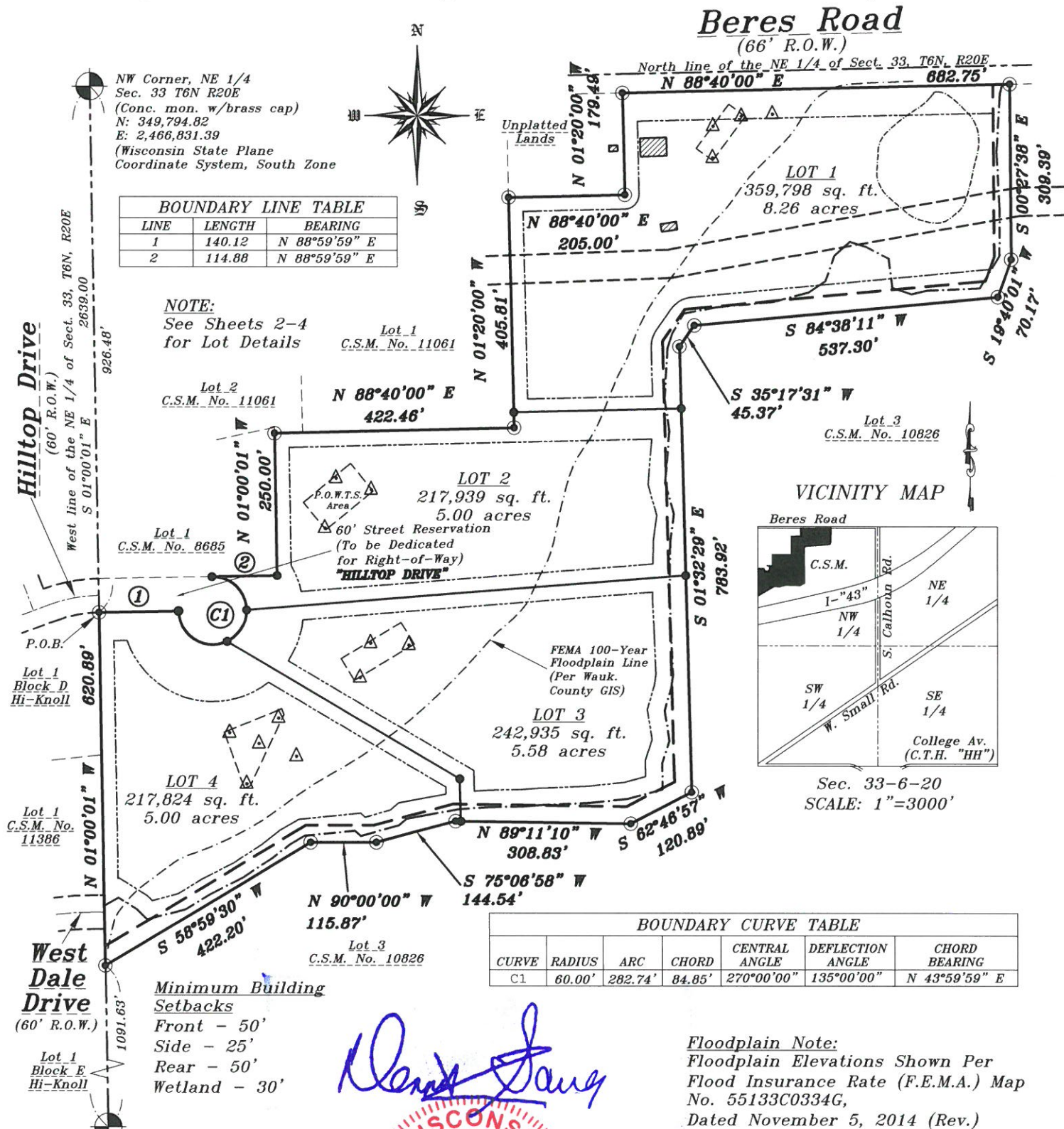
City of New Berlin
Department of Community Development
3805 S Casper Dr.
New Berlin WI 53151
(262) 797-2445
www.newberlin.org



The information and depictions herein have been produced using data available through photogrammetric 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.

CERTIFIED SURVEY MAP NO.

Being a redivision of Lot 2 of CERTIFIED SURVEY MAP NO. 10826 and additional lands, 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.



Floodplain Note:
Floodplain Elevations Shown Per
Flood Insurance Rate (F.E.M.A.) Map
No. 55133C0334G,
Dated November 5, 2014 (Rev.)

NOTES:

- ⊙ Denotes iron pipe found and accepted.
- Denoted 1" x 24" iron pipe set, weighing 1.13lbs/lin. ft. min.

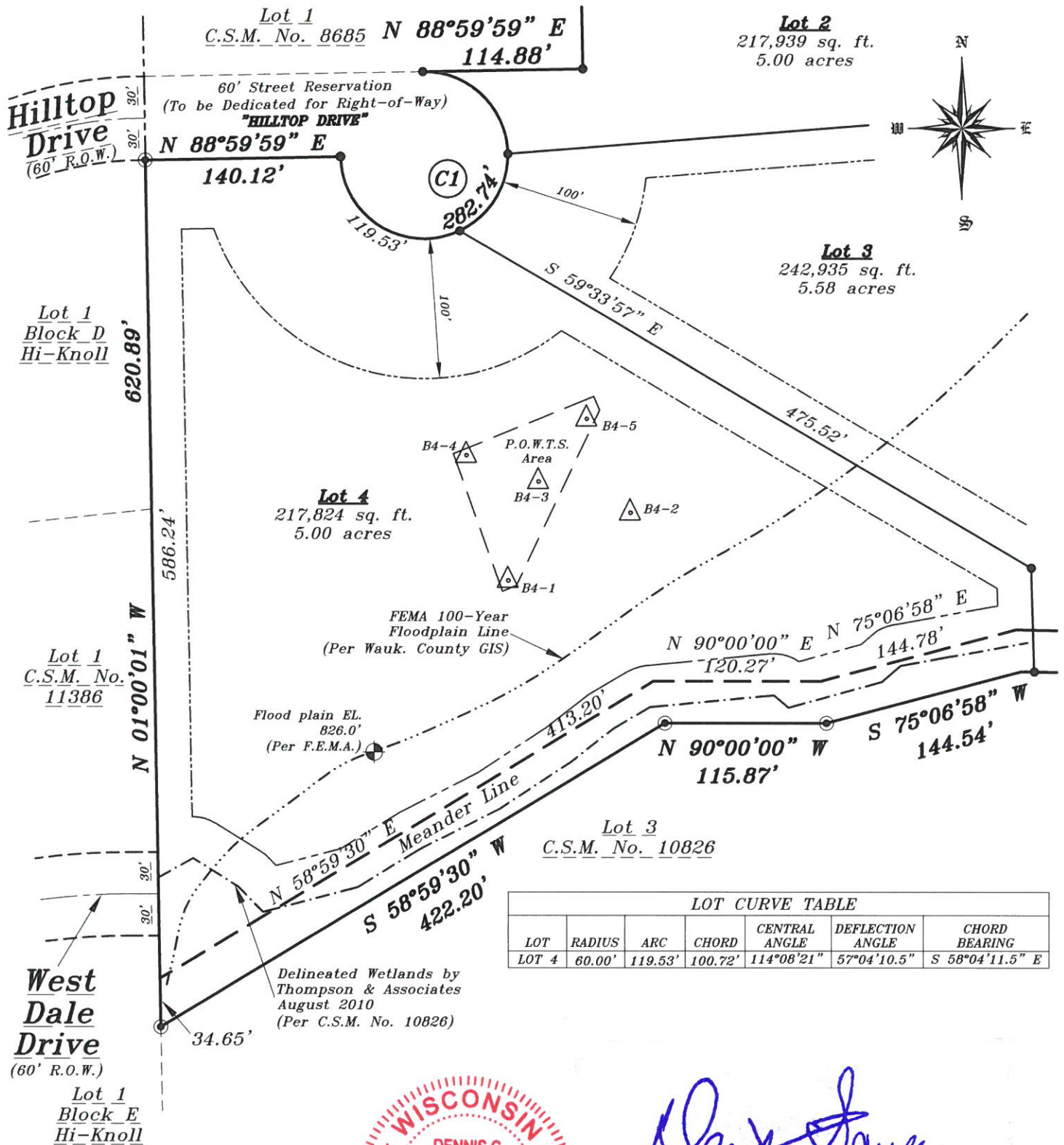
Map bearings refer to Grid North of the Wisconsin State Plane Coordinate System, South Zone (NAD27), with the West line of the NE 1/4 of Section 33, T6N, R20E having an assumed bearing of S 01°00'01" E.

Sheet 1 of 8

8

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of CERTIFIED SURVEY MAP NO. 10826 and additional lands, 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.



[Signature]

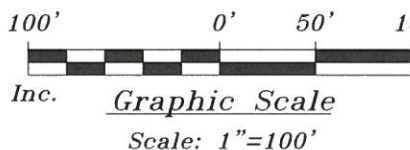
Prepared for:
424 Investments, LLC.
575 W17237 Janesville Road
Muskego, WI 53150
(414) 698-3247

March 3, 2023

NOTES:

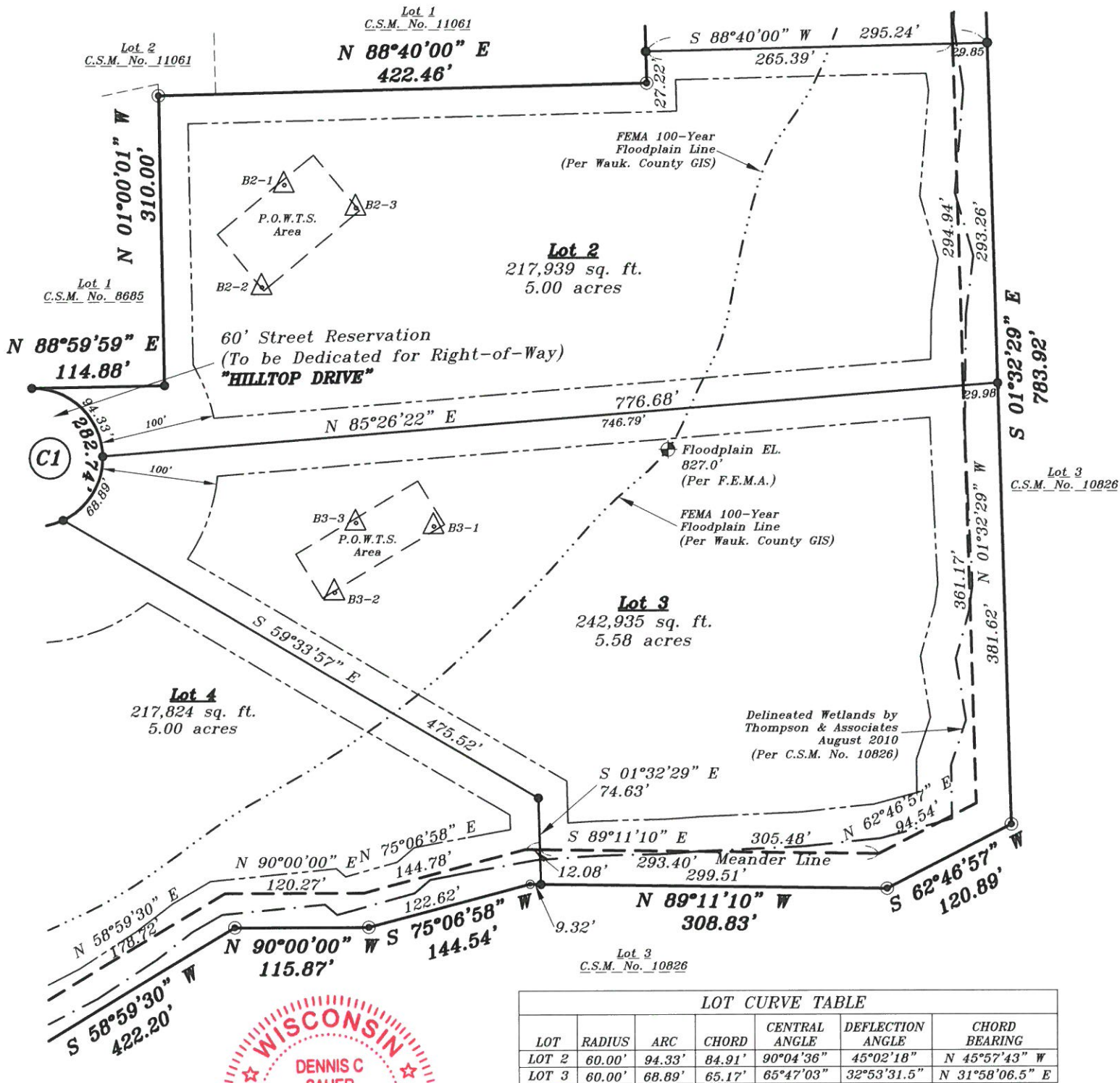
- Denotes iron pipe found and accepted.
- Denoted 1" x 24" iron pipe set, weighing 1.13lbs/lin. ft. min.
- △ Denotes Soil Boring by Butler Engineering, Inc., Dec. 22, 2022.

Prepared by:
Dennis C. Sauer P.L.S-2421
Metropolitan Survey Service, Inc.
8482 S. 76th St.
Franklin, WI 53132
(414) 529-5380



CERTIFIED SURVEY MAP NO.

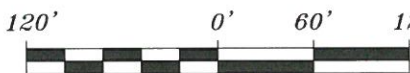
Being a redivision of Lot 2 of CERTIFIED SURVEY MAP NO. 10826 and additional lands, Being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 33, Town 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.



[Signature]

Prepared for: March 3, 2023
424 Investments, LLC.
575 W17237 Janesville Road
Muskego, WI 53150
(414) 698-3247

Prepared by:
Dennis C. Sauer P.L.S.-2421
Metropolitan Survey Service, Inc.
8482 S. 76th St.
Franklin, WI 53132
(414) 529-5380



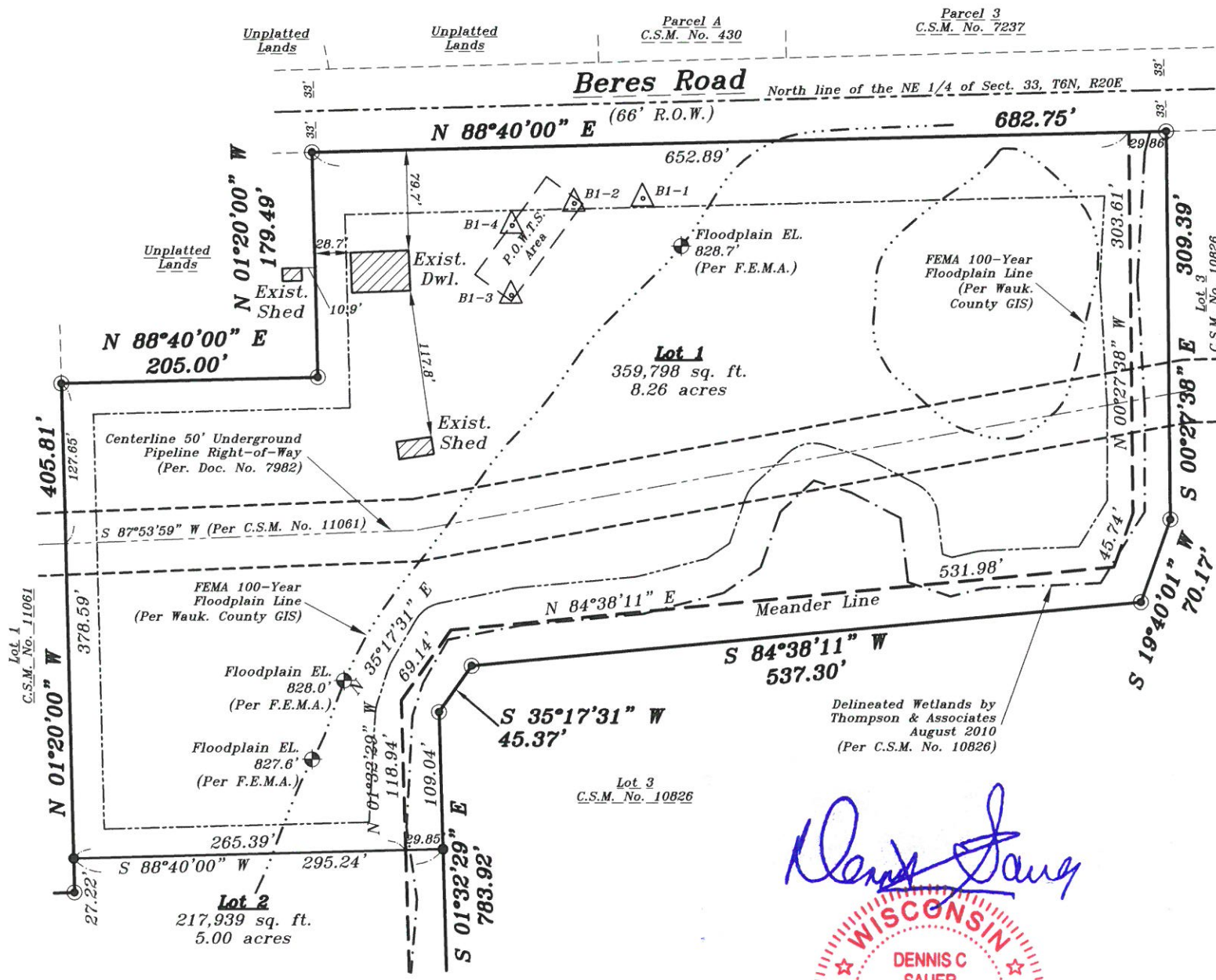
Graphic Scale
Scale: 1"=120'

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.

CERTIFIED SURVEY MAP NO. _____

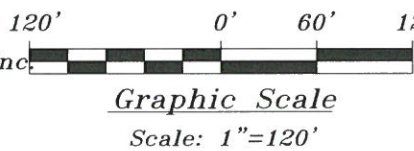
Being a redivision of Lot 2 of CERTIFIED SURVEY MAP NO. 10826 and additional lands, Being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 33, Town 6 North, Range 20 East, in the City of New Berlin, Waukesha County, Wisconsin.



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

Prepared for:
424 Investments, LLC.
S75 W17237 Janesville Road
Muskego, WI 53150
(414) 698-3247

Prepared by:
Dennis C. Sauer P.L.S.-2421
Metropolitan Survey Service, Inc.
8482 S. 76th St.
Franklin, WI 53132
(414) 529-5380



Dennis C. Sauer
WISCONSIN
DENNIS C. SAUER
S-2421
FRANKLIN, WI
LAND SURVEYOR
March 3, 2023

- 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.

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of Certified Survey Map No. 10826 and additional lands, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and the 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, combined and mapped a redivision of Lot 2 of Certified Survey Map No. 10826 and additional lands, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and the 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 point of beginning of the lands to be described;
thence N 88°59'59" E, 140.12 feet;
thence northeasterly 282.74 feet along the arc of a curve, whose center lies to the northwest, whose radius is 60.00 feet, and whose chord bears N 43°59'59" E, 84.85 feet; thence N 88°59'59" E, 114.88 feet;
thence N 01°00'01" W, 250.00 feet; thence N 88°40'00" E, 422.46 feet;
thence N 01°20'00" 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 said south right-of-way line, 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 the West line of said Northeast 1/4; thence N 01°00'01" W along said West line, 620.89 feet to the point of beginning.

Said lands containing 1,038,496 square feet (23.84 acres).

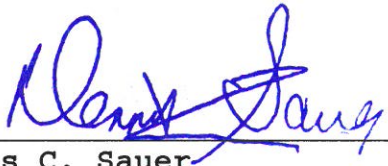
That I have made such survey, land division and map by the direction of John Jewell, Member of 424 Investments, LLC., owner of said land.

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.

MARCH 3, 2023
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 and additional lands, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and the 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.

CORPORATE OWNER'S CERTIFICATE

424 Investments, LLC., as owner, does hereby certify it caused the lands described on this map to be surveyed, divided, combined and mapped and dedicated as represented on this map in accordance with the provisions of Chapter 236.34 of the Wisconsin State Statutes and the Subdivision Regulations of the City of New Berlin.

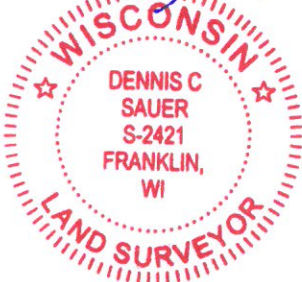
IN WITNESS WHEREOF, the said 424 Investments, LLC., has caused these presents to be signed at _____, Wisconsin, this _____ day of _____, 20____.

John Jewell, Member

STATE OF WISCONSIN)
_____) COUNTY) SS

PERSONALLY, came before me this _____ day of _____, 20____, John Jewell, Member of 424 Investments, LLC., to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public-State of Wisconsin
My Commission Expires: _____



3/3/2023

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of Certified Survey Map No. 10826 and additional lands, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and the 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.

CONSENT OF CORPORATE MORTGAGEE

CITIZENS BANK, a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, mortgagee of the above described land, does hereby consent to the surveying, dividing, combining and mapping of the land described on this map and does hereby consent to the above certification of owner.

IN WITNESS WHEREOF, the said Citizens Bank, has caused these presents to be signed by Brett Engelking, Senior Vice President - Business Banking Manager, at _____, Wisconsin, this _____ day of _____, 2023.

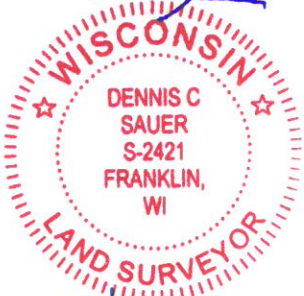
CITIZENS BANK:

Brett Engelking, Senior Vice President - Business Banking Manager

STATE OF WISCONSIN)
_____ COUNTY) SS

PERSONALLY came before me this _____ day of _____, 2023, Brett Engelking, Senior Vice President - Business Banking Manager of Citizens Bank, to me known to be the person who executed the foregoing instrument and to me known to be such officer of said corporation and acknowledged the same.

Notary Public - State of Wisconsin
My Commission Expires: _____



3/3/2023

CERTIFIED SURVEY MAP NO. _____

Being a redivision of Lot 2 of Certified Survey Map No. 10826 and additional lands, being a part of the Southwest 1/4, Southeast 1/4, Northeast 1/4 and the 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.

PLAN COMMISSION APPROVAL

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

David Ament, Chairman
City of New Berlin

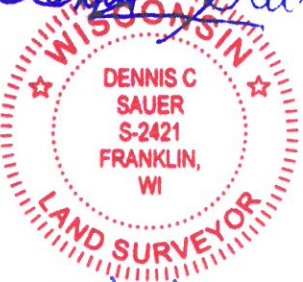
Nikki Jones, Secretary
City of New Berlin

COMMON COUNCIL APPROVAL

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

David Ament, Mayor
City of New Berlin

Rubina R. Medina, City Clerk
City of New Berlin



3/3/2023

**RESOLUTION RELEASING ROAD
RESERVATION AS NOTED IN
CSM NO. 10826**

Document Number

Title of Document

Please see the attached Resolution Releasing Road Reservation

Record this document with the Register of Deed.

Name and Return Address

Attorney Mark G. Blum
720 Clinton Street, P.O. Box 766
Waukesha, WI 53187

(Parcel Identification Number)

Drafted By:

Attorney Mark G. Blum
Hippenmeyer, Reilly, Blum,
Schmitzer, Fabian & English, S.C.
720 Clinton St., PO Box 766
Waukesha, WI 53187-0766
Phone: (262) 549-8181
Email: mgbлум@hrblawfirm.com

RESOLUTION NO. 23-9**RESOLUTION OF THE CITY OF NEW BERLIN
RELEASING ROAD RESERVATION AS NOTED IN
CSM NO. 10826**

WHEREAS, the City of New Berlin approved the Certified Survey Map for lands adjacent to Beres Road as part of Certified Survey Map No. 10826 (hereinafter referred to as “CSM No. 10826”). A copy of CSM No. 10826 is attached hereto and marked as Exhibit A and it was recorded with the Waukesha County Register of Deeds Office on December 1, 2010 as Document No. 3796369; and

WHEREAS, said CSM No. 10826 contains language reserving lands for the purpose of extending Hilltop Drive. The road reservation is 60’ in width and 315’ in length; and

WHEREAS, the City is in receipt of an application from the owner of the lot known as Tax Key No. NBC1281.996.006, which is a proposed 4-Lot Certified Survey Map (hereinafter “4-Lot CSM”, a copy of which is attached hereto and marked as Exhibit B). The access to the proposed lots would be provided via Hilltop Drive; but rather than extended the roadway as provided for in the aforementioned road reservation, the proposed 4-Lot CSM would instead only use a portion of the reservation and would terminate it through the use of a cul de sac; and

WHEREAS, it is the intention of the property owner and applicant to dedicate the lands as shown on the proposed 4-Lot CSM to the City of New Berlin for public road purposes, which dedication would include a portion of the lands that are part of the road reservation noted in CSM No. 10826; and

WHEREAS, the City of New Berlin has concluded that the extension of Hilltop Drive is no longer necessary as a result of the redivision of Lot 2 of CSM 10826, and the dedication of a portion of said road reservation, along with a cul de sac, to the City of New Berlin. As a result, the City has concluded that the road reservation restriction can be released, but only to the extent of the lands not being dedicated for public road purposes as a part of the proposed 4-Lot CSM submitted by the applicant; and

WHEREAS, the potential release of the aforementioned road reservation was reviewed by the City of New Berlin Planning Commission on April 13, 2023, at which time the Commission recommended approval of a partial release of the road reservation to the Common Council to ultimately allow for the proposed 4-Lot CSM, the construction of a cul de sac on an extension of Hilltop Drive as proposed by the applicant in Exhibit B.

NOW, THEREFORE, the City of New Berlin, as the approving entity for CSM No. 10826 (Exhibit A) hereby consents, pursuant to Wisconsin Statute Sec. 236.293, to the partial release of the road reservation as depicted for the extension of Hilltop Drive, not including the lands which are being dedicated to the City for the extension of Hilltop Drive and the construction of a cul de sac as depicted in Exhibit B.

All other terms and conditions of CSM No. 10826 shall remain in full force and effect as originally enacted and approved by the City of New Berlin.

CITY OF NEW BERLIN

David Ament, Mayor

Countersigned:

Medina Rubina, City Clerk

Subscribed and sworn to before me this

_____ day of _____, 2023.

Notary Public, State of Wisconsin

My Commission Expires: _____

EXHIBIT A

BADGER
BLUEPRINT
COMPANY, INC.
(262) 542-8200

3796369



FORM BBC-101

CERTIFIED SURVEY MAP NO. 10820

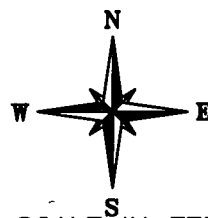
Sheet 1 of 9

Being a part of the SW ¼, SE ¼, NE ¼ and NW ¼ of the NE ¼ of Section 33, Town 6 North, Range 20 East
CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN

LEGEND:

- Concrete Monument w/
Brass cap (found)
- Iron pipe 18" x 1" dia. (placed)
1.13 + lbs. per lin. ft.
- Iron pipe found

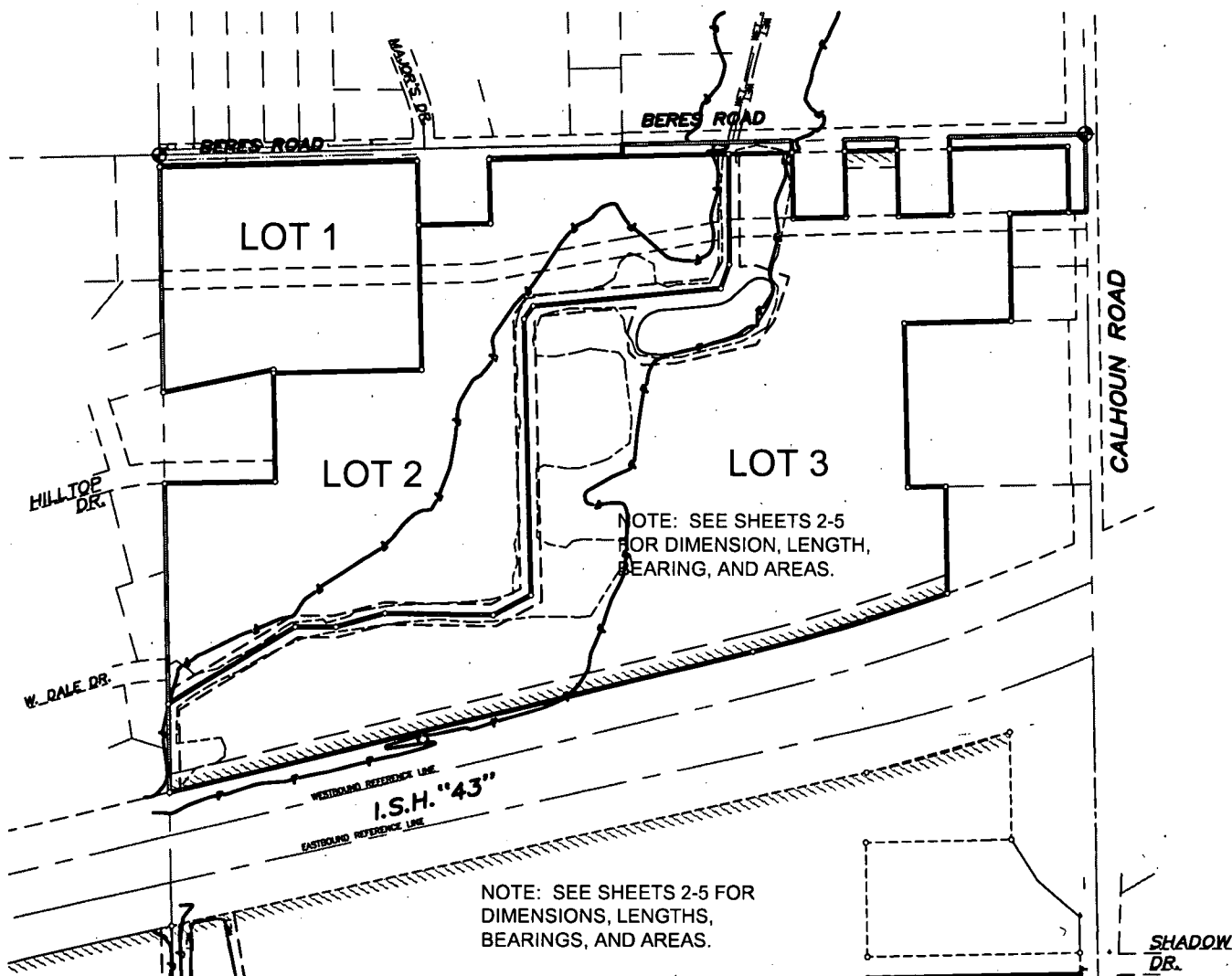
REFERENCE BEARING: THE EAST LINE OF THE NE ¼ OF SECTION 33, T6N, R20E
WAS USED AS THE REFERENCE BEARING AND HAS A BEARING OF N00°57'58"W
BASED ON THE WISCONSIN STATE PLANE COORDINATE SYSTEM (SOUTH ZONE).



SCALE IN FEET

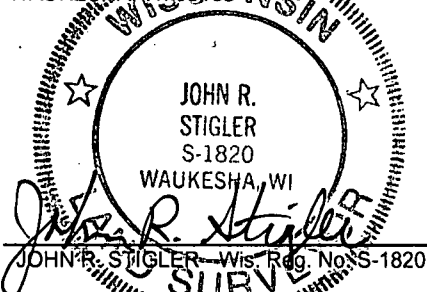
500' 0 500'

COMPOSITE MAP

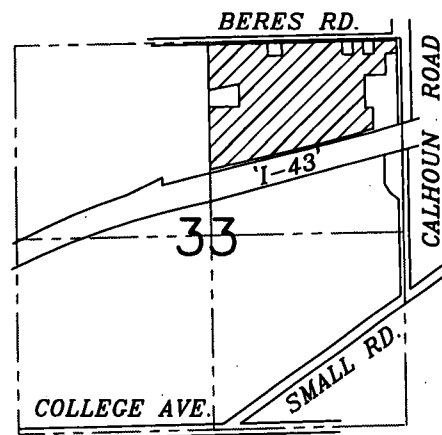


OWNER:
J & K ENTERPRISES OF NEW BERLIN, LLC
5311 S. CALHOUN ROAD
NEW BERLIN, WI 53146

SURVEYOR:
JOHN R. STIGLER
JAHNKE AND JAHNKE ASSOC. INC.
711 W. MORELAND BLVD.
WAUKESHA, WI 53186



MEANDER LINE LIMITS					
LINE TABLE					
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
L1	285.01	S01°00'01"E	L17	81.64	S38°00'00"W
L2	413.20	N58°59'30"E	L18	237.15	S77°00'00"W
L3	120.27	S90°00'00"E	L19	93.90	S87°00'00"W
L4	144.76	N75°06'58"E	L20	53.94	N47°00'00"W
L5	305.48	S89°11'10"E	L21	55.07	N03°00'00"W
L6	94.54	N62°46'57"E	L22	74.18	N18°00'00"E
L7	775.05	N01°32'28"W	L23	278.66	S84°38'11"W
L8	69.14	N35°17'31"E	L24	21.60	S35°17'31"W
L9	531.98	N84°38'11"E	L25	782.79	S01°32'28"E
L10	45.74	N19°40'01"E	L26	147.25	S62°46'57"W
L11	303.81	N00°27'38"W	L27	312.18	N89°11'10"W
L12	60.01	N88°40'00"E	L28	144.32	S75°06'58"W
L13	315.17	S00°27'38"E	L29	111.46	S90°00'00"W
L14	47.51	N86°49'49"E	L30	398.56	S58°59'30"W
L15	98.58	S71°00'00"E	L31	226.40	S01°00'01"E
L16	131.37	S19°00'00"W	L32	30.73	S76°29'58"W



VICINITY SKETCH
SECTION 33-6-20

DATED THIS 11th DAY OF August, 2010.
REVISED THIS 23rd DAY of September, 2010.
REVISED THIS 29th DAY of September, 2010.
REVISED THIS 18th DAY of November, 2010.
INSTRUMENT DRAFTED BY JOHN R. STIGLER

File Name: S:\projects\S7892\dwg\S7892CSM.dwg
P.S. NEW BERLIN 913

BADGER
BLUEPRINT
COMPANY, INC.
(262) 542-8200

FORM BBC-101

CERTIFIED SURVEY MAP NO. 10820

Sheet 2 of 9

Being a part of the SW 1/4, SE 1/4, NE 1/4 and NW 1/4 of the NE 1/4 of Section 33, Town 6 North, Range 20 East
CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN

LEGEND:

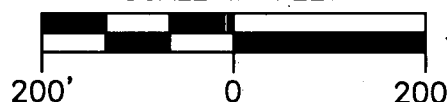
Concrete Monument w/
Brass cap (found)

Iron pipe 18" x 1" dia. (placed)
1.13 + lbs. per lin. ft.

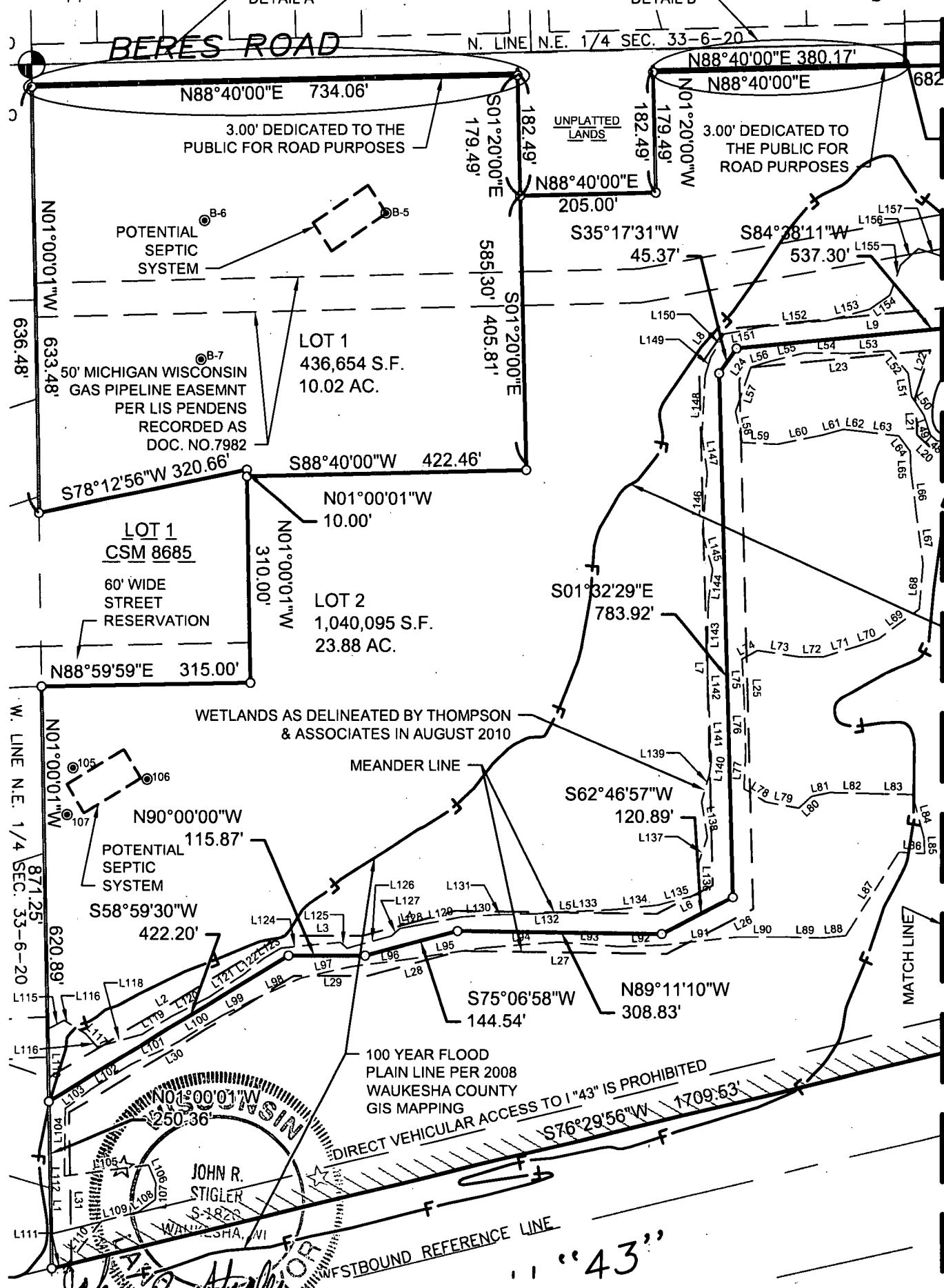
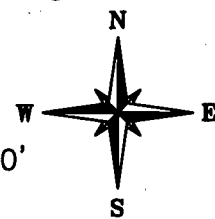
Iron pipe found

NOTE: SEE SHEET 5 FOR
DETAIL A

SCALE IN FEET



NOTE: SEE SHEET 5 FOR
DETAIL B



JOHN R. STIGLER, Wis. Reg. No. S-1820
DATED THIS 17th DAY of August, 2010.
REVISED THIS 23rd DAY of September, 2010.
REVISED THIS 29th DAY of September, 2010.
REVISED THIS 18th DAY of November, 2010.
INSTRUMENT DRAFTED BY JOHN R. STIGLER

File Name: S:\projects\S7892\dwg\S7892CSM.dwg
P.S. NEW BERLIN 913

BADGER
BLUEPRINT
COMPANY, INC.
(262) 542-8200

FORM BBC-101

CERTIFIED SURVEY MAP NO. 10826

Sheet 3 of 9

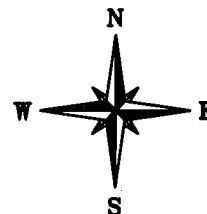
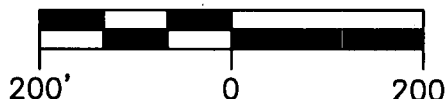
Being a part of the SW ¼, SE ¼, NE ¼ and NW ¼ of the NE ¼ of Section 33, Town 6 North, Range 20 East
CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN

LEGEND:

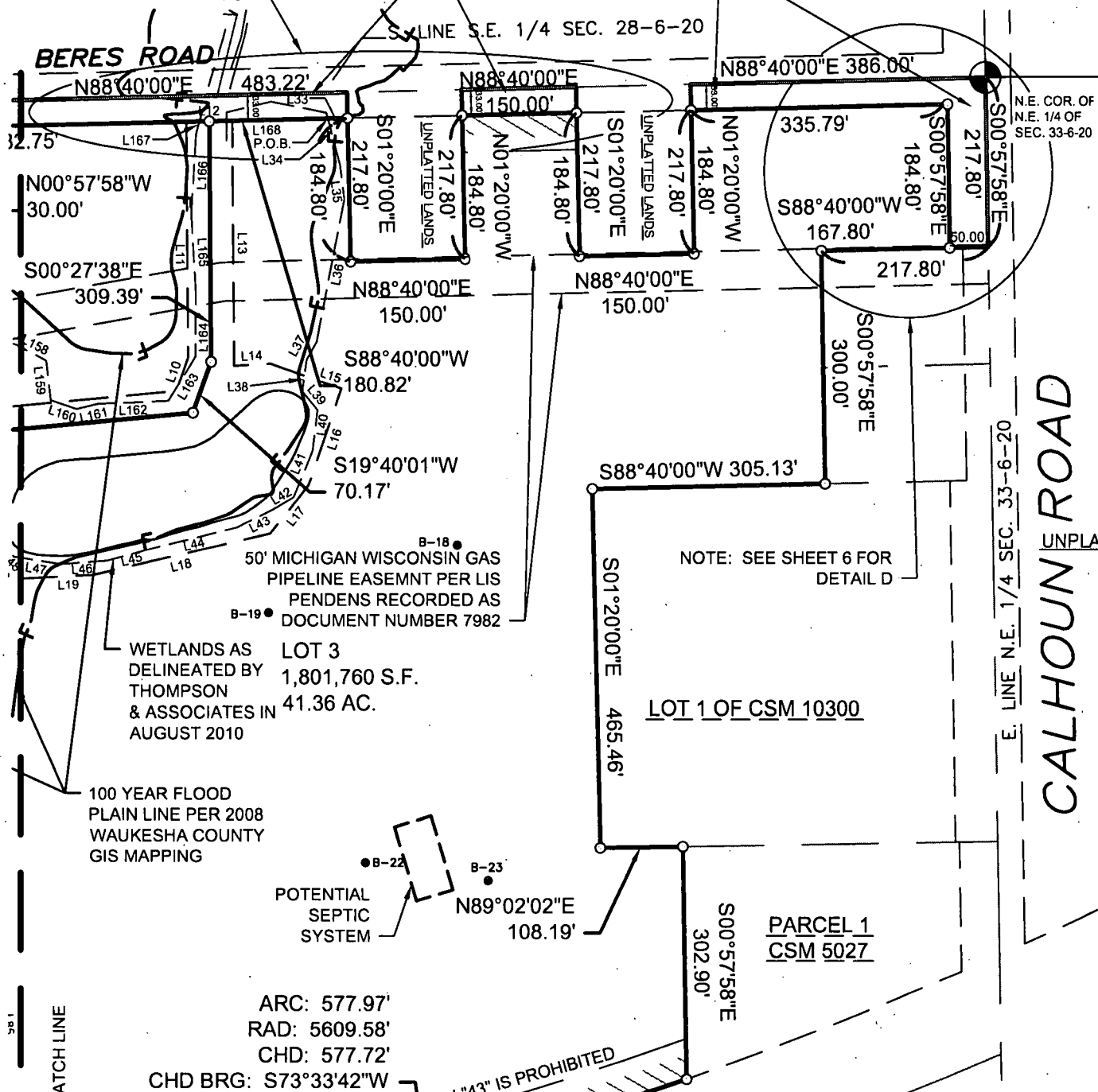
- Concrete Monument w/
Brass cap (found)
- Iron pipe 18" x 1" dia. (placed)
1.13 + lbs. per lin. ft.
- Iron pipe found

NOTE: SEE SHEET 6 FOR
DETAIL C

SCALE IN FEET



DEDICATED TO THE PUBLIC
FOR ROAD PURPOSES



JOHN R.
STIGLER
S-1820
WAUKESHA, WI

JOHN R. STIGLER - Wis. Reg. No. S-1820

DATED THIS 17th DAY OF August, 2010.
REVISED THIS 23rd DAY OF September, 2010.
REVISED THIS 29th DAY OF September, 2010.
REVISED THIS 18th DAY OF November, 2010.
INSTRUMENT DRAFTED BY JOHN R. STIGLER

File Name: S:\projects\S7892\dwg\S7892CSM.dwg
P.S. NEW BERLIN 913

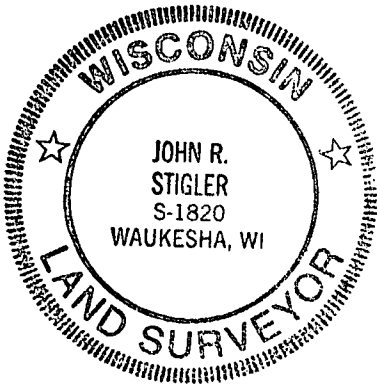
BADGER
BLUEPRINT
COMPANY, INC.
(262) 542-8200

CERTIFIED SURVEY MAP NO. 10 826 Sheet 4 of 9
Being a part of the SW ¼, SE ¼, NE ¼ and NW ¼ of the NE ¼ of Section 33, Town 6 North, Range 20 East
CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN

LINE TABLE DETAIL

MEANDER LINE LIMITS					
LINE TABLE					
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
L1	285.01	S01°00'01"E	L17	81.84	N38°00'00"E
L2	413.20	N58°59'30"E	L18	237.15	N77°00'00"E
L3	120.27	S90°00'00"E	L19	93.90	N87°00'00"E
L4	144.78	N75°08'58"E	L20	53.94	S47°00'00"E
L5	305.48	S89°11'10"E	L21	55.07	S03°00'00"E
L6	94.54	N62°48'57"E	L22	74.18	S18°00'00"W
L7	775.05	N01°32'29"W	L23	276.66	N84°38'11"E
L8	69.14	N35°17'31"E	L24	21.60	N35°17'31"E
L9	531.98	N84°38'11"E	L25	792.79	N01°32'29"W
L10	45.74	N19°40'01"E	L26	147.25	N62°48'57"E
L11	303.61	N00°27'38"W	L27	312.18	S89°11'10"E
L12	60.01	S88°40'00"W	L28	144.32	N75°08'58"E
L13	315.17	N00°27'38"W	L29	111.48	N90°00'00"E
L14	47.51	S88°49'49"W	L30	396.56	N58°59'30"E
L15	98.58	N71°00'00"W	L31	226.40	N01°00'01"W
L16	131.37	N19°00'00"E	L32	30.73	N76°28'58"E

WETLAND LIMITS					
LINE TABLE					
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
L33	25.89	S88°40'00"W	L101	80.82	S84°27'25"W
L34	81.79	S15°06'42"E	L102	71.89	S59°00'44"W
L35	45.22	S06°52'02"E	L103	48.42	S52°51'59"W
L36	188.08	S11°09'27"W	L104	101.51	S00°39'38"W
L37	27.07	S28°52'48"W	L105	127.99	N82°55'48"E
L38	40.85	S08°20'14"W	L106	27.84	S23°20'42"E
L39	31.50	S39°44'30"E	L107	26.24	S01°44'57"W
L40	53.05	S06°54'46"W	L108	31.42	S54°19'57"W
L41	64.52	S22°28'13"W	L109	57.11	S76°26'24"W
L42	29.38	S58°49'38"W	L110	83.23	S38°55'33"W
L43	54.73	S62°38'59"W	L111	23.70	S76°28'58"W
L44	120.00	S76°17'41"W	L112	250.36	N01°00'01"W
L45	54.89	S74°23'51"W	L113	108.89	N01°00'01"W
L46	61.26	S85°59'03"W			
L47	62.07	N81°14'44"W	L115	28.59	N60°47'20"E
L48	12.90	N45°35'48"W	L116	38.43	S57°51'52"E
L49	30.75	N18°34'48"W	L117	25.35	S43°56'44"E
L50	32.91	N34°48'55"W	L118	70.20	N75°22'02"E
L51	35.00	N07°57'25"W	L119	52.05	N58°16'54"E
L52	43.27	N39°07'09"W	L120	64.53	N63°08'21"E
L53	62.93	S88°33'59"W	L121	61.25	N56°50'59"E
L54	65.55	N89°22'24"W	L122	38.92	N52°10'02"E
L55	50.05	S76°59'27"W	L123	29.79	N59°44'56"E
L56	33.68	S72°53'32"W	L124	89.73	N64°27'57"E
L57	70.56	S19°18'04"W	L125	13.74	S49°17'18"E
L58	46.20	S12°28'49"E	L126	69.31	N74°26'44"E
L59	53.18	S87°07'15"E	L127	17.82	N49°19'57"E
L60	69.12	N78°40'08"E	L128	35.86	N79°37'58"E
L61	32.95	N74°43'08"E	L129	57.83	N79°38'59"E
L62	32.45	S83°08'36"E	L130	54.35	N88°11'41"E
L63	50.96	S83°14'50"E	L131	58.05	N88°37'58"E
L64	28.79	S37°18'31"E	L132	31.69	N85°58'02"E
L65	30.07	S02°28'12"E	L133	87.51	N87°30'28"E
L66	65.67	S07°28'09"E	L134	66.77	N84°02'53"E
L67	75.47	S07°24'09"E	L135	64.01	N74°50'20"E
L68	66.88	S04°46'40"W	L136	48.55	N00°40'15"W
L69	75.93	S53°36'11"W	L137	40.92	N18°33'58"E
L70	30.63	S71°15'59"W	L138	53.96	N09°08'49"W
L71	55.85	S72°58'07"W	L139	41.91	N16°01'43"E
L72	35.52	S89°08'19"W	L140	22.21	N07°51'47"E
L73	65.40	N81°38'07"W	L141	77.21	N02°39'11"W
L74	26.21	S62°01'27"W	L142	61.47	N02°16'36"W
L75	63.82	S02°49'29"E	L143	96.57	N00°48'33"E
L76	75.47	S01°47'03"E	L144	50.19	N07°33'21"E
L77	54.81	S02°42'03"W	L145	56.22	N16°04'14"W
L78	38.03	S59°07'18"E	L146	90.71	N04°42'58"E
L79	50.88	S79°28'02"E	L147	57.58	N08°17'15"W
L80	26.45	N48°13'22"E	L148	89.10	N03°16'28"E
L81	27.75	N78°33'57"E	L149	28.13	N17°44'12"E
L82	66.58	S88°29'10"E	L150	39.25	N30°07'37"E
L83	57.94	S89°01'44"E	L151	80.10	N79°02'38"E
L84	66.82	S14°49'20"E	L152	97.19	N84°48'19"E
L85	24.14	S02°36'15"E	L153	66.35	N75°36'26"E
L86	38.40	N86°24'42"W	L154	36.61	N55°36'52"E
L87	149.33	S32°28'00"W	L155	47.39	N19°36'32"E
L88	34.93	S84°34'10"W	L156	36.22	N47°18'01"E
L89	53.50	N88°41'51"W	L157	31.99	S72°17'20"E
L90	74.86	N89°52'50"W	L158	43.50	S62°25'48"E
L91	113.44	S83°46'07"W	L159	51.79	S08°49'50"E
L92	66.30	S87°51'19"W	L160	35.57	S71°27'42"E
L93	91.75	N85°29'34"W	L161	28.58	N78°39'35"E
L94	111.96	S85°31'24"W	L162	92.35	N87°33'38"E
L95	117.82	S81°34'01"W	L163	67.27	N31°36'52"E
L96	88.40	S82°38'07"W	L164	82.84	N00°17'58"E
L97	75.56	S77°17'51"W	L165	101.83	N03°12'56"W
L98	77.54	S65°47'11"W	L166	102.01	N03°28'14"E
L99	54.61	S63°31'57"W	L167	16.89	N15°17'04"E
L100	73.91	S59°13'24"W	L168	167.89	N88°40'00"E



John R. Stigler
JOHN R. STIGLER - Wis. Reg. No. S-1820

DATED THIS 17th DAY OF August, 2010.
REVISED THIS 23rd DAY of September, 2010.
REVISED THIS 29th DAY of September, 2010.
REVISED THIS 18th DAY of November, 2010.
INSTRUMENT DRAFTED BY JOHN R. STIGLER

BADGER
BLUEPRINT
COMPANY, INC.
(262) 542-8200

FORM BBC-101

CERTIFIED SURVEY MAP NO. 10826

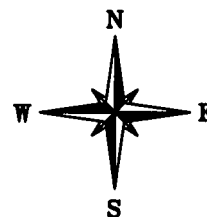
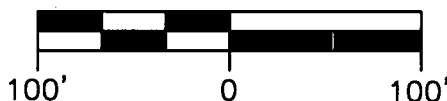
Sheet 5 of 9

Being a part of the SW ¼, SE ¼, NE ¼ and NW ¼ of the NE ¼ of Section 33, Town 6 North, Range 20 East
CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN

LEGEND:

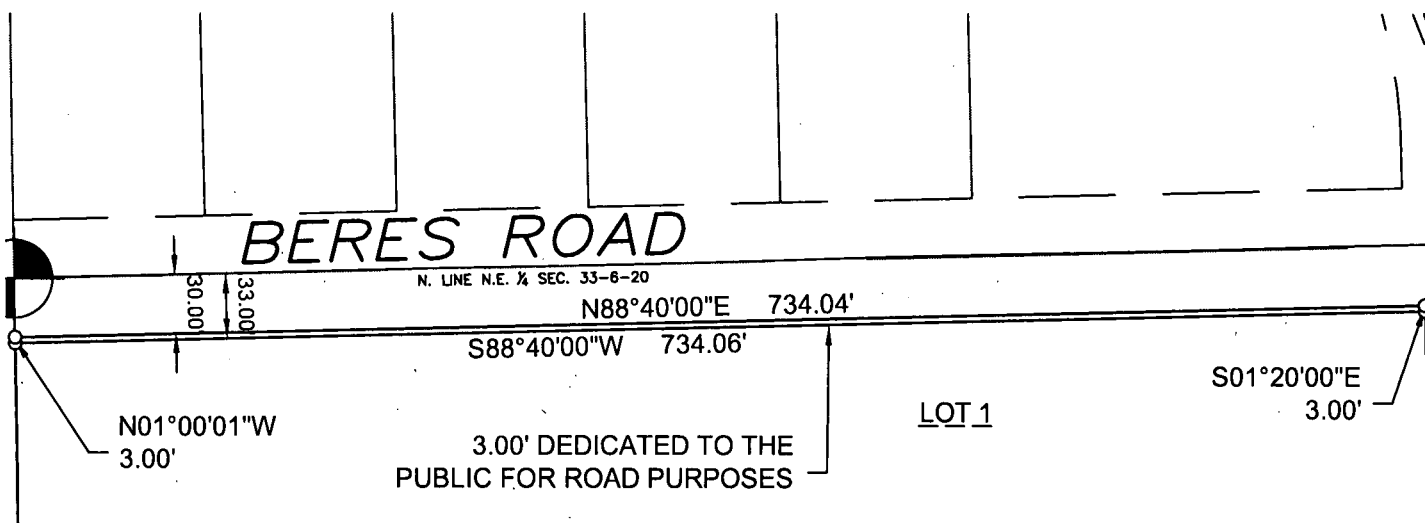
- Concrete Monument w/
Brass cap (found)
- Iron pipe 18" x 1" dia. (placed)
1.13 + lbs. per lin. ft.
- Iron pipe found

SCALE IN FEET

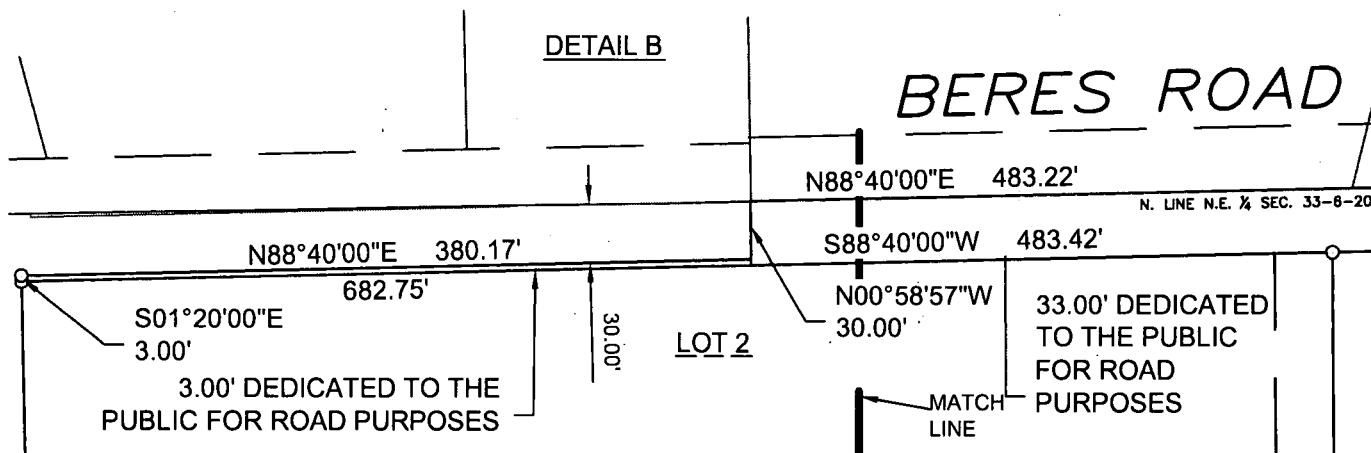


DEDICATED AREA DETAIL

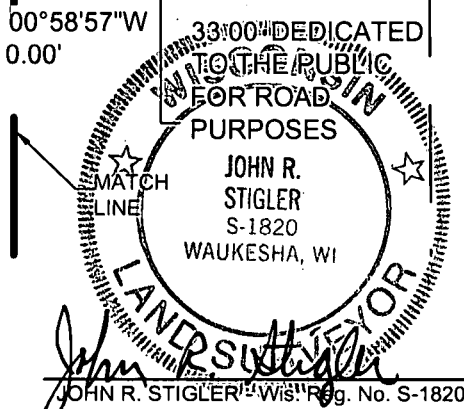
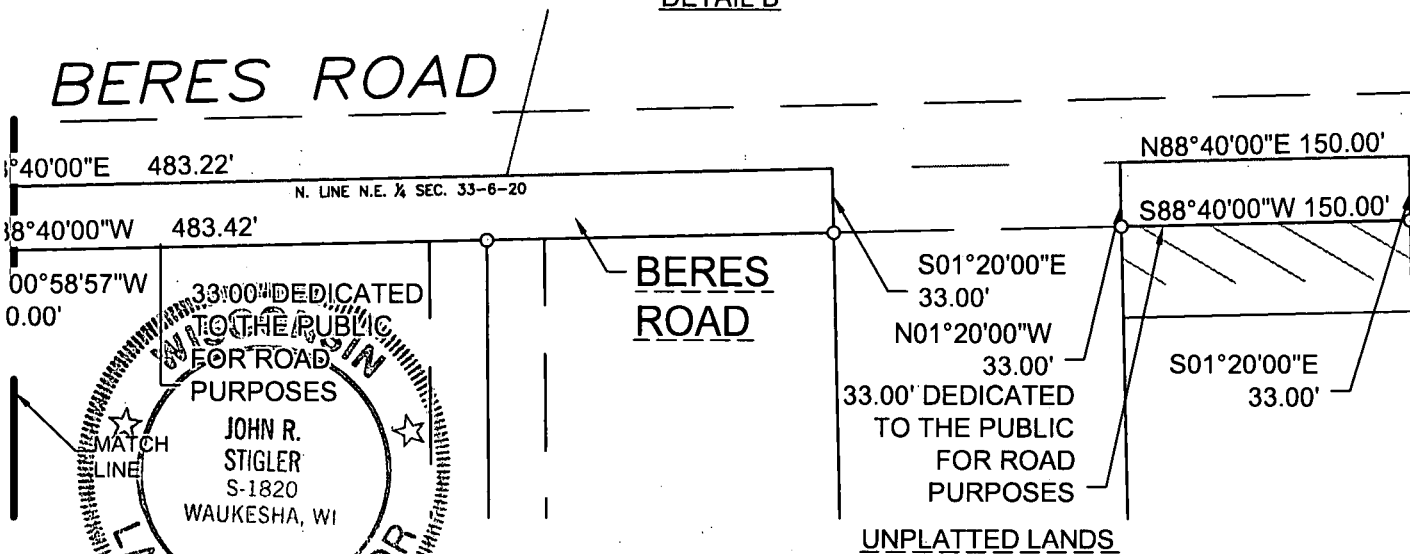
DETAIL A



DETAIL B



DETAIL B



DATED THIS 17th DAY OF August, 2010.
REVISED THIS 23rd DAY of September, 2010.
REVISED THIS 29th DAY of September, 2010.
REVISED THIS 18th DAY of November, 2010.
INSTRUMENT DRAFTED BY JOHN R. STIGLER

File Name: S:\projects\S7892\dwg\S7892CSM.dwg
P.S. NEW BERLIN 913

BADGER
BLUEPRINT
COMPANY, INC.
(262) 542-8200

FORM BBC-101

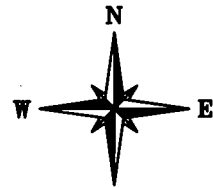
CERTIFIED SURVEY MAP NO. 10820

Sheet 6 of 9

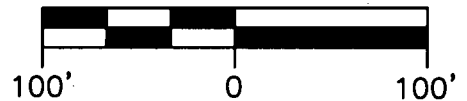
Being a part of the SW ¼, SE ¼, NE ¼ and NW ¼ of the NE ¼ of Section 33, Town 6 North, Range 20 East
CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN

LEGEND:

- Concrete Monument w/
Brass cap (found)
- Iron pipe 18" x 1" dia. (placed)
1.13 + lbs. per lin. ft.
- Iron pipe found

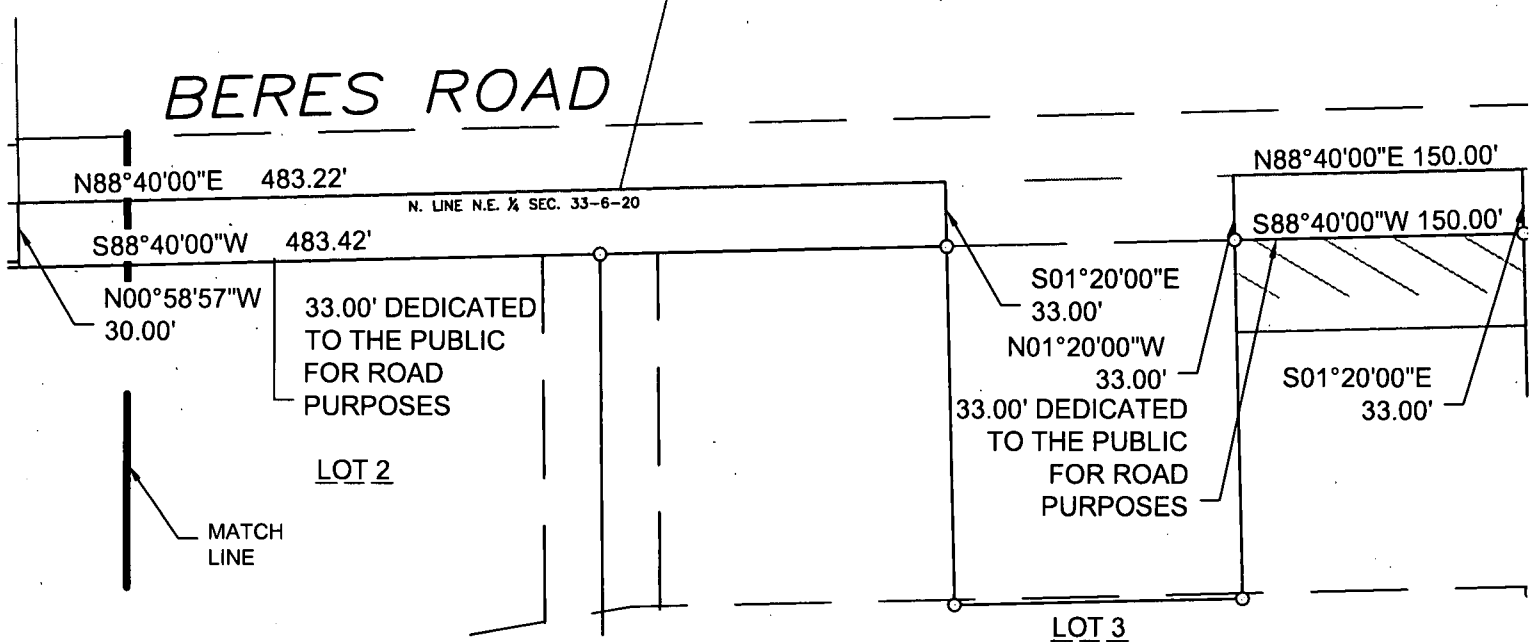


SCALE IN FEET

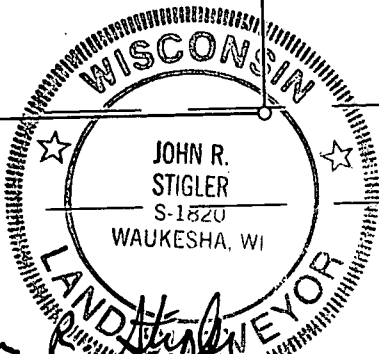
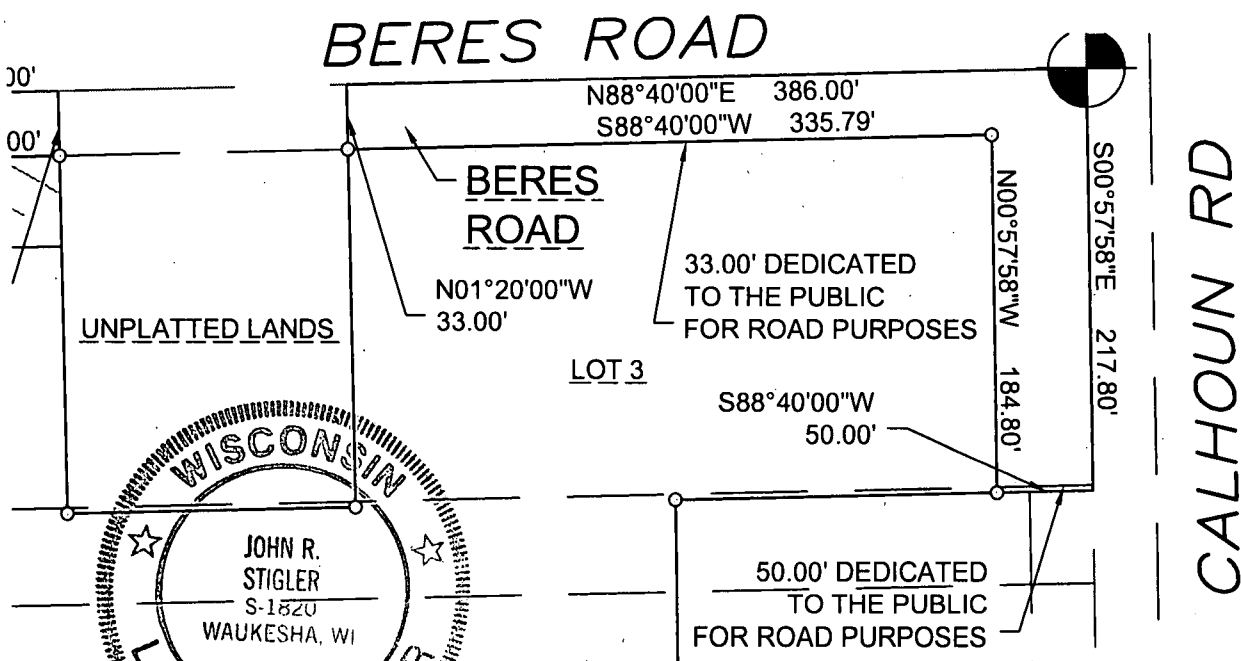


DEDICATED AREA DETAIL

DETAIL C



DETAIL D



JOHN R. STIGLER Wisconsin Reg. No. S-1820

DATED THIS 17th DAY OF August, 2010.
REVISED THIS 23rd DAY of September, 2010.
REVISED THIS 29th DAY of September, 2010.
REVISED THIS 18th DAY of November, 2010.
INSTRUMENT DRAFTED BY JOHN R. STIGLER

File Name: S:\projects\S7892\dwg\S7892CSM.dwg
P.S. NEW BERLIN 913

CERTIFIED SURVEY MAP NO. 10826

Sheet 7 of 9

Being a part of the SW ¼, SE ¼, NE ¼ and NW ¼ of the NE ¼ of Section 33, Town 6 North, Range 20 East
CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN

SURVEYOR'S CERTIFICATE:

I, John R. Stigler, registered land surveyor, being duly sworn on oath, hereby depose and say that I have surveyed, divided and mapped the following land bounded and described as follows:

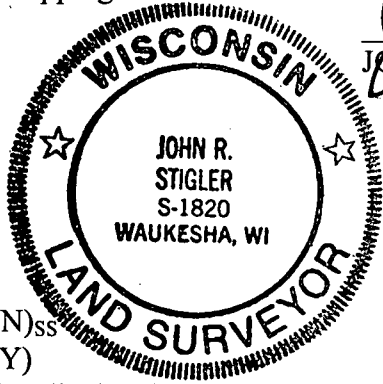
All that part of the Southwest Quarter (SW ¼), Southeast Quarter (SE ¼), Northeast Quarter (NE ¼) and Northwest Quarter (NW ¼) of the Northeast Quarter (NE ¼) of Section 33, Town 6 North, Range 20 East, City of New Berlin, Waukesha County, Wisconsin lying north of Interstate Highway "43" bounded and described as follows: Beginning at the northeast corner of the Northeast Quarter (NE ¼) of Section 33; thence South 00°57'58" East along the east line of said Northeast Quarter (NE ¼) 217.80 feet; thence South 88°40'00" West 217.80 feet; thence South 00°57'58" East 300.00 feet; thence South 88°40'00" West 305.13 feet; thence South 01°20'00" East 465.46 feet; thence North 89°02'02" East 108.19 feet; thence South 0°57'58" East 302.90 feet to the north right-of-way line of Interstate Highway "43"; thence westerly 577.97 feet along the said north right-of-way line and the arc of a curve of radius 5609.58 feet, center lies to the north, chord bears South 73°33'42" West 577.72 feet; thence South 76°29'56" West along said north right-of-way line 1709.53 feet to the west line of the Northeast Quarter (NE ¼) of Section 33; thence North 1°00'01" West along the said west line a distance of 871.25 feet; thence North 88°59'59" East along the south line of Certified Survey Map No. 8685, 315.00 feet; thence North 1°00'01" West along east line of said map 320.00 feet; thence South 78°12'56" West along north line of said map 320.66 feet to the west line of the Northeast Quarter (NE ¼) of Section 33; thence North 1°00'01" West along the west line of said Northeast Quarter (NE ¼) 636.48 feet; thence North 88°40'00" East along the south line of Beres Road 734.06 feet; thence South 1°20'00" East 182.49 feet; thence North 88°40'00" East 205.00 feet; thence North 1°20'00" West 182.49 feet; thence North 88°40'00" East 380.17 feet along the south line of Beres Road; thence North 0°57'58" West 30.00 feet; thence North 88°40'00" East along the north line of said Northeast Quarter (NE ¼) 483.22 feet; thence South 1°20'00" East 217.80 feet; thence North 88°40'00" East 150.00 feet; thence North 1°20'00" West 217.80 feet; thence North 88°40'00" East along the north line of said Northeast Quarter (NE ¼) 150.00 feet; thence South 1°20'00" East 217.80 feet; thence North 88°40'00" East 150.00 feet; thence North 1°20'00" West 217.80 feet; thence North 88°40'00" East along the north line of said Northeast Quarter (NE ¼) 386.00 feet to the place of beginning. Containing 76.19 gross acres (3,318,767 square feet) and 75.2642 net acres (3,278,509 square feet) of land.

AND DEDICATING the east 50.00 feet of land adjacent to Calhoun Road to the public for road purposes.

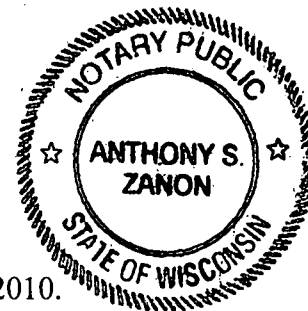
AND DEDICATING the north 33.00 feet of the east 1,319.22 feet of land adjacent to Beres Road to the public for road purposes.

AND DEDICATING the north 3.00 feet of the west 1,319.21 feet of land adjacent to Beres Road to the public for road purposes.

I further certify that I have made such survey, land division and map by the direction of the owners of said land; that such map is a correct representation of the exterior boundaries of the land surveyed and map thereof made; and that I have fully complied with the provisions of Chapter 236 of the Wisconsin State Statutes pertaining to Certified Survey Maps (Section 236.34) and the regulations of the City of New Berlin in surveying, dividing and mapping the same.



John R. Stigler
JOHN R. STIGLER – Wis. Reg. No. S-1820



STATE OF WISCONSIN)_{ss}
WAUKESHA COUNTY)

The above certificate subscribed and sworn to me this 17th day of August, 2010.

My commission expires July 21, 2013.

Anthony S. Zanon
ANTHONY S. ZANON – NOTARY PUBLIC
Revised this 18th day of November, 2010

OWNERS: J & K ENTERPRISES OF NEW BERLIN, LLC

Instrument drafted by John R. Stigler

P.S. New Berlin 913

BADGER
BLUEPRINT
COMPANY, INC.
(262) 542-8200

FORM BBC-101

CERTIFIED SURVEY MAP NO. 10926

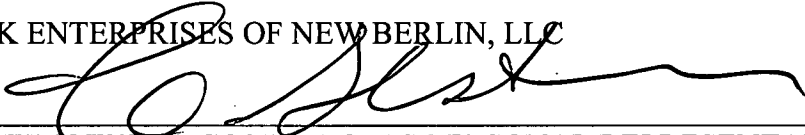
Sheet 8 of 9

Being a part of the SW ¼, SE ¼, NE ¼ and NW ¼ of the NE ¼ of Section 33, Town 6 North, Range 20 East
CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN

OWNER'S CERTIFICATE:

As personal representative, I hereby certify that I caused the land described on this map to be surveyed, divided, mapped and dedicated as represented on this map. I also certify that this Certified Survey Map is required to be submitted to the following for approval: City of New Berlin.

J & K ENTERPRISES OF NEW BERLIN, LLC


BY: TIMOTHY G. COSTELLO, AS PERSONAL REPRESENTATIVE
FOR THE ESTATE OF JAMES A. JALOVEC, MEMBER

STATE OF WISCONSIN)ss
COUNTY OF WAUKESHA)

Personally came before me this 24 day of November, 2010, the above named
TIMOTHY G. COSTELLO to me known to be the person who executed the foregoing instrument and
acknowledged the same.

My commission expires 09-01-2013NOTARY PUBLIC - Martin Larson**CONSENT OF MORTGAGEE:**

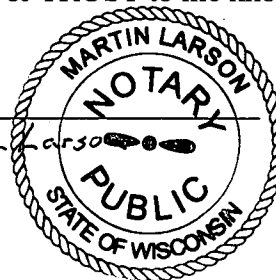
SECURANT BANK & TRUST mortgagee of the above described land, does hereby consent to the surveying, dividing, mapping and dedication of the land described on this map and does hereby consent to the above certificate of TIMOTHY G. COSTELLO as Personal Representative.

SECURANT BANK & TRUST


BY: MICHAEL T. FLEMING, SENIOR VICE PRESIDENT

STATE OF)ss

Personally came before me this 23 day of November, 2010, the above named
MICHAEL T. FLEMING, SENIOR VICE PRESIDENT OF SECURANT BANK & TRUST to me known to be
the person who executed the foregoing instrument and acknowledged the same.

My commission expires 09-01-2013NOTARY PUBLIC - Martin Larson

JOHN R. STIGLER Vis. Reg. No. S-1820

Dated this 17th day of August, 2010Revised this 23rd day of September, 2010Revised this 18th day of November 2010

OWNERS: J & K ENTERPRISES OF NEW BERLIN, LLC

Instrument drafted by John R. Stigler

P.S. New Berlin 913

46

BADGER
BLUEPRINT
COMPANY, INC.
(262) 542-8200

FORM BBC-101

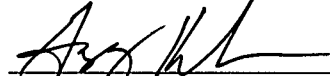
CERTIFIED SURVEY MAP NO. 10826

Sheet 9 of 9

Being a part of the SW ¼, SE ¼, NE ¼ and NW ¼ of the NE ¼ of Section 33, Town 6 North, Range 20 East
CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN

PLAN COMMISSION APPROVAL:

Approved by the Plan Commission, City of New Berlin, this 10th day of November, 2010.



GREGORY W. KESSLER - SECRETARY



JACK F. CHIOVATERO - CHAIRMAN

COMMON COUNCIL APPROVAL:

Approved by the Common Council, City of New Berlin, this 16th day of November, 2010.



KARI D. L. MORGAN - CLERK



JACK F. CHIOVATERO - MAYOR




JOHN R STIGLER - Wis. Reg. No. S-1820

Dated this 17th day of August, 2010Revised this 23rd day of September, 2010Revised this 18th day of November 2010

3796369

REGISTER OF DEEDS
WAUKESHA COUNTY, WI
RECORDED ON

December 01, 2010 12:04 PM
James R Behrend
Register of Deeds

9 PGS
TOTAL FEE: \$30.00
TRANS FEE: \$0.00
Book 105 Page 39-47

OWNERS: J & K ENTERPRISES OF NEW BERLIN, LLC

Instrument drafted by John R. Stigler

P.S. New Berlin 913

28

Page 56 of 660

47

EXHIBIT B

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:	Recommend to Common Council adoption of Ordinance # 2669 that approves the rezoning of the property located at 5715 S. Sunny Slope Road from A-2 to A-2 and R-6.

DETAILS IN ATTACHED STAFF REPORT:

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
PLAN COMMISSION STAFF REPORT
Meeting of April 13, 2023

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

DATE STAFF REPORT PREPARED: March 7, 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

South: Zoning: P-2

East: Zoning: R-3 & C-2

West: Zoning: P-2

Land Use: Single Family Residential / Red Fox Subdivision

Land Use: City Park – Section 35

Land Use: High Grove Addition 2 Subdivision

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:*
 - o *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.
 - o *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.
 - o *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.*
 - o 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.*
 - o 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.
 - o 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:
 - o 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 indicators 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.”*
- *“Policies for multi-modal transportation included in the Comprehensive Plan on Page 6:39 – 6:40:*
 - o *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 indicators 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.
- **3/6/2023** Plan Commission held a public hearing on the rezoning.

CONSISTENCY WITH PREVIOUS ACTION: Yes

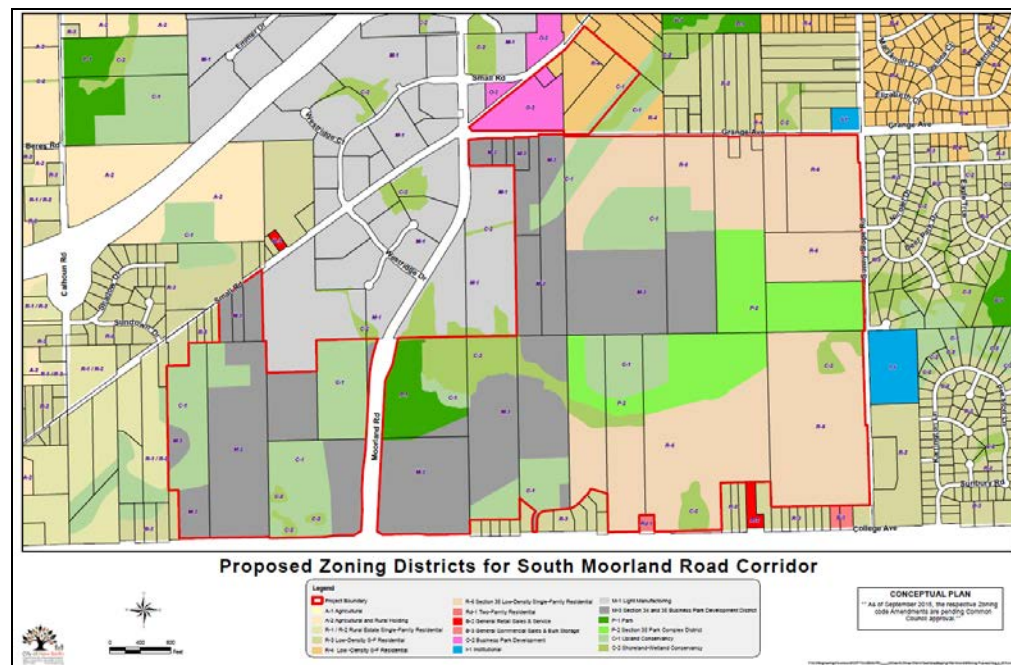
FINDINGS:

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 indicators 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 indicators 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.

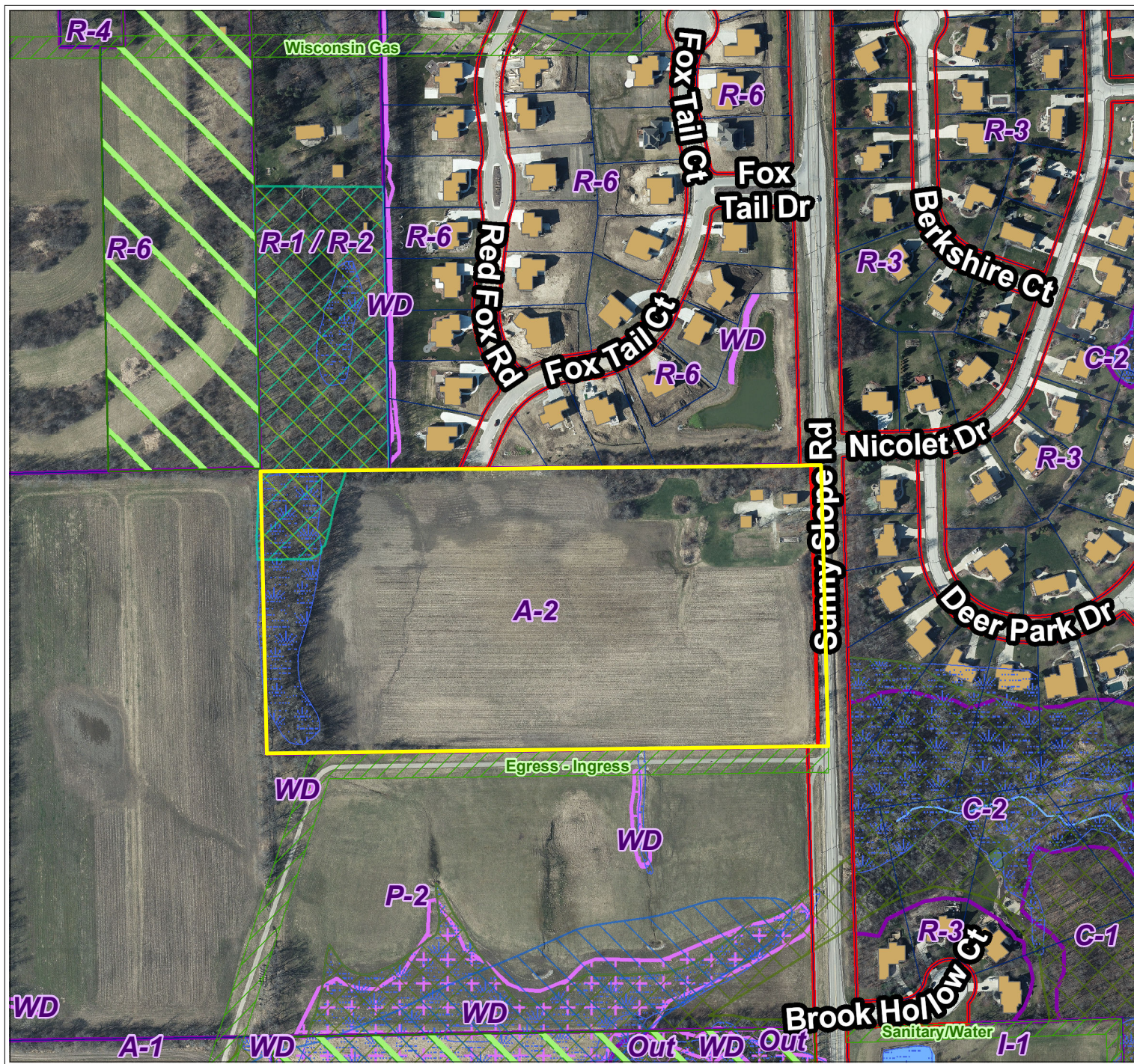
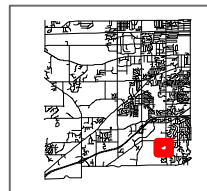
D.R.C. RECOMMENDATION:

Recommend to Common Council adoption of Ordinance # 2669 that approves the rezoning of the property located at 5715 S. Sunny Slope Road from A-2 to A-2 and R-6. **See Executive Summary.**

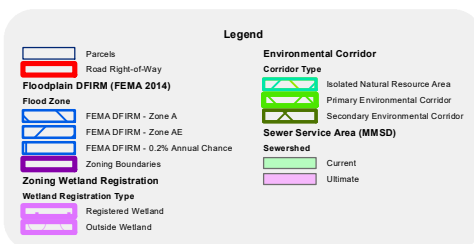
ATTACHMENTS:

Location Map
Zoning Comparison Map
Applicant Letter
Proposed CSM

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



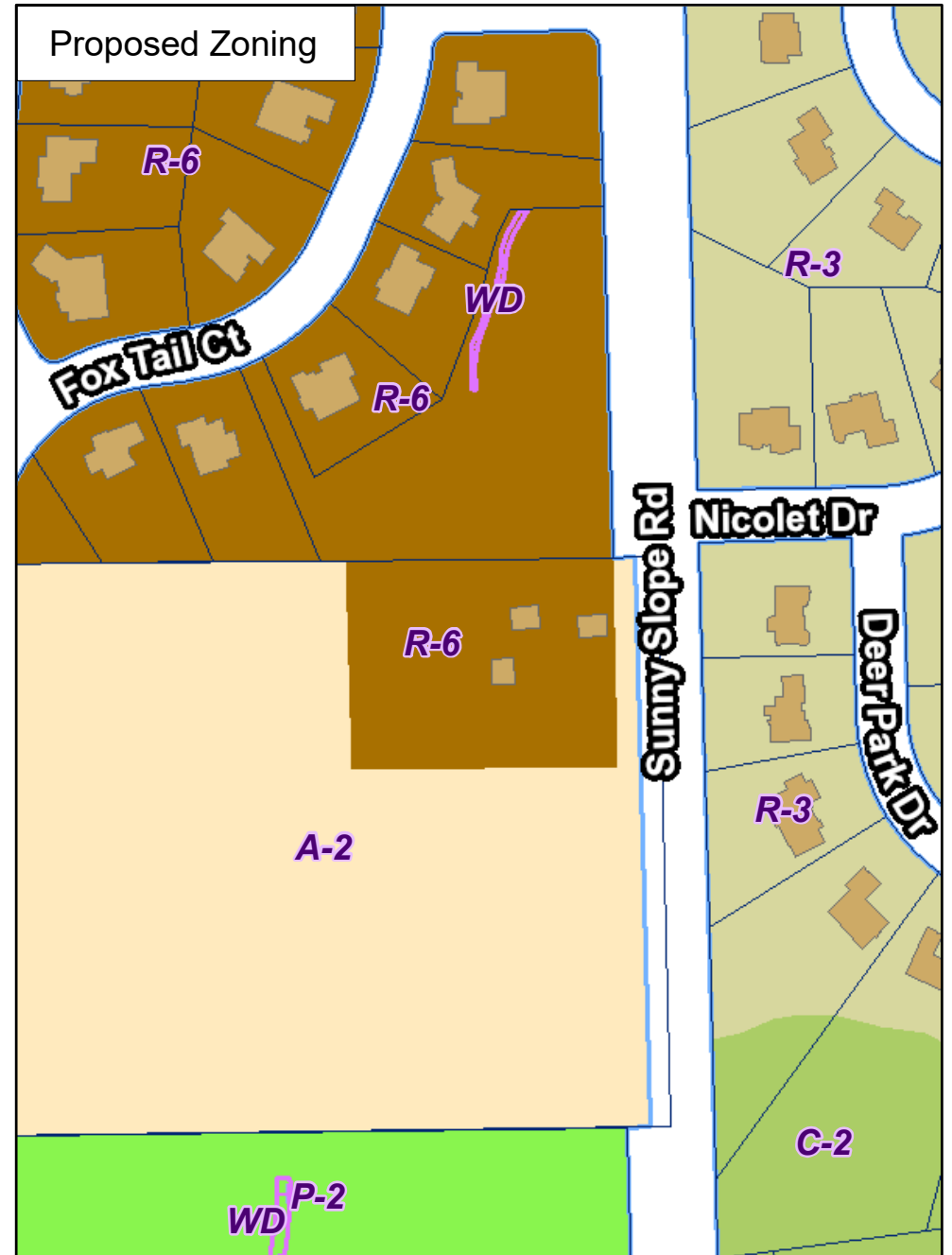
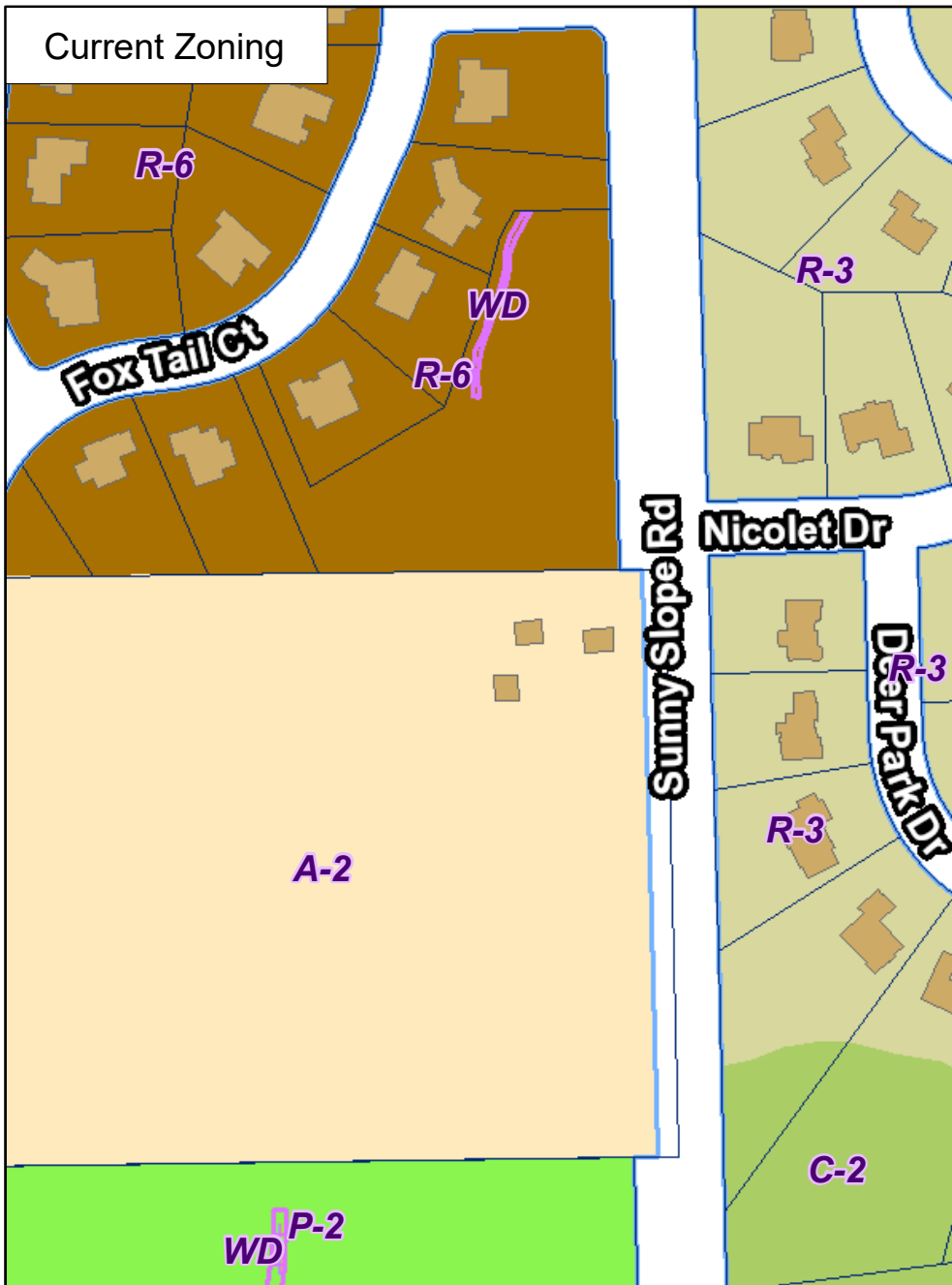
City of New Berlin
Department of Community Development
3805 S Casper Dr.
New Berlin WI 53151
(262) 797-2445
www.newberlin.org



0 125 250 Feet



The information and depictions herein have been produced using data available through photogrammetric 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.



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:

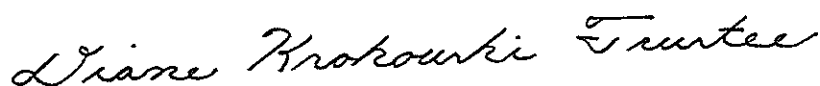
1. Rezoning - Agreement Application
2. Lot 1, R-6 area Legal Description. (RE: Rezoning)
3. Wisconsin Certified Survey Map

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.

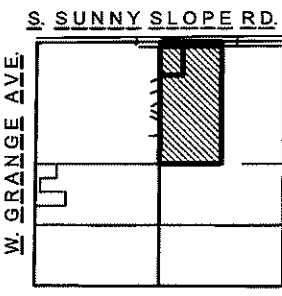
Sincerely,

A handwritten signature in cursive script that reads "Diane Krokowski Trustee".

Diane Krokowski Trustee

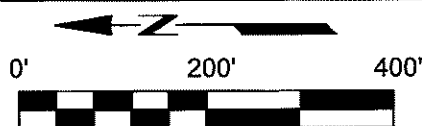
Certified Survey Map

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



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

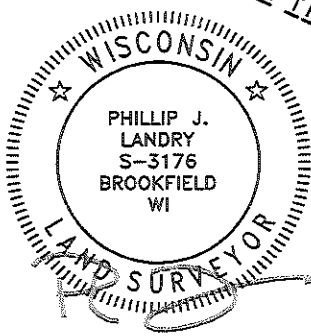
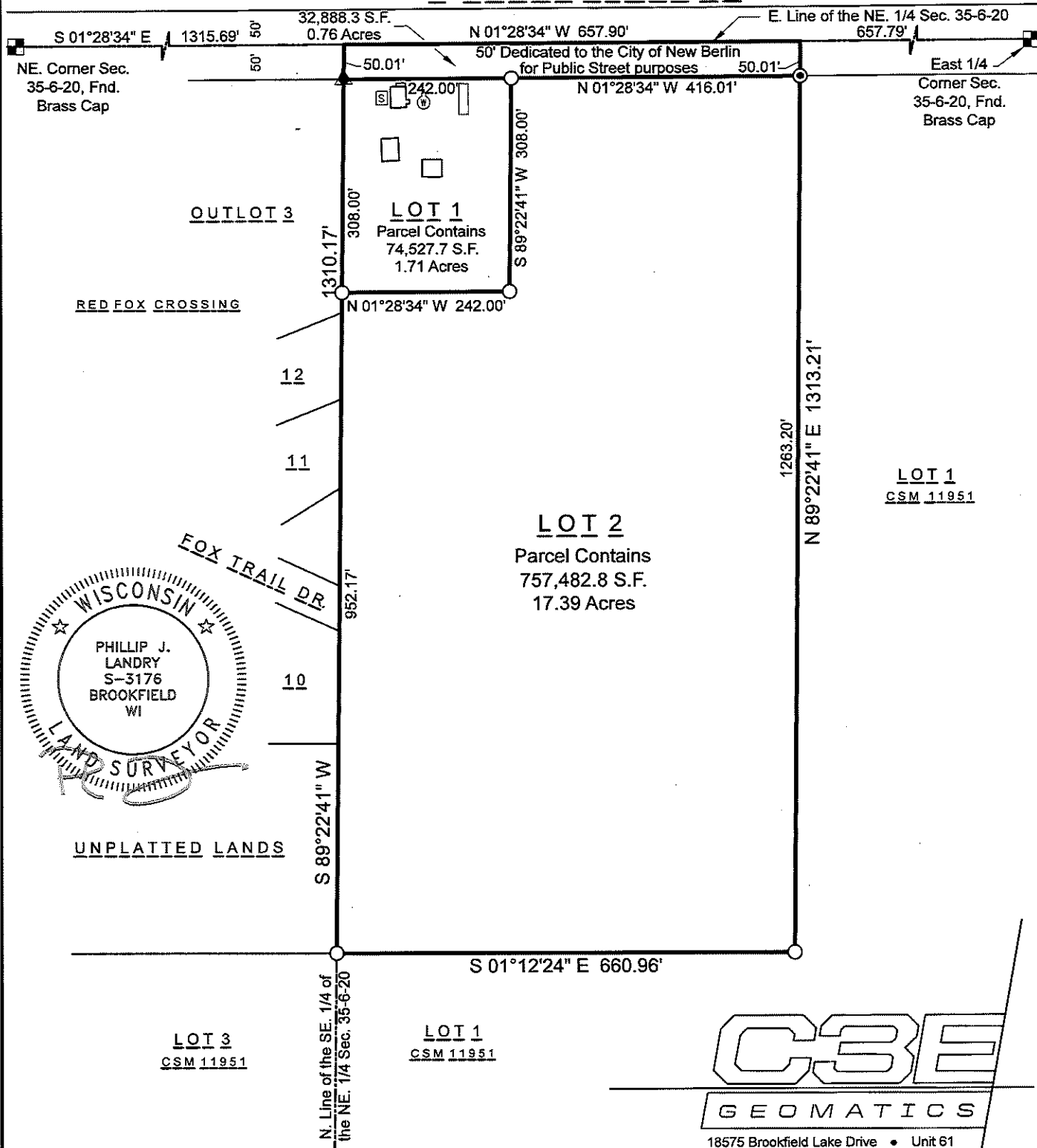


OWNER

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

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

S. SUNNY SLOPE RD.



18575 Brookfield Lake Drive • Unit 61
Brookfield, WI 53045 • (262) 312-1034
c3egeomatrics.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

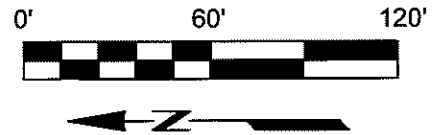
Job# 20148

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

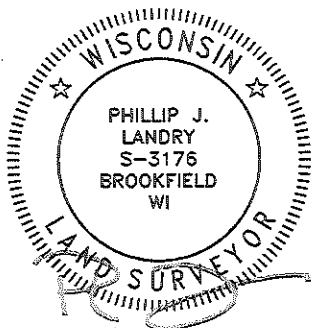
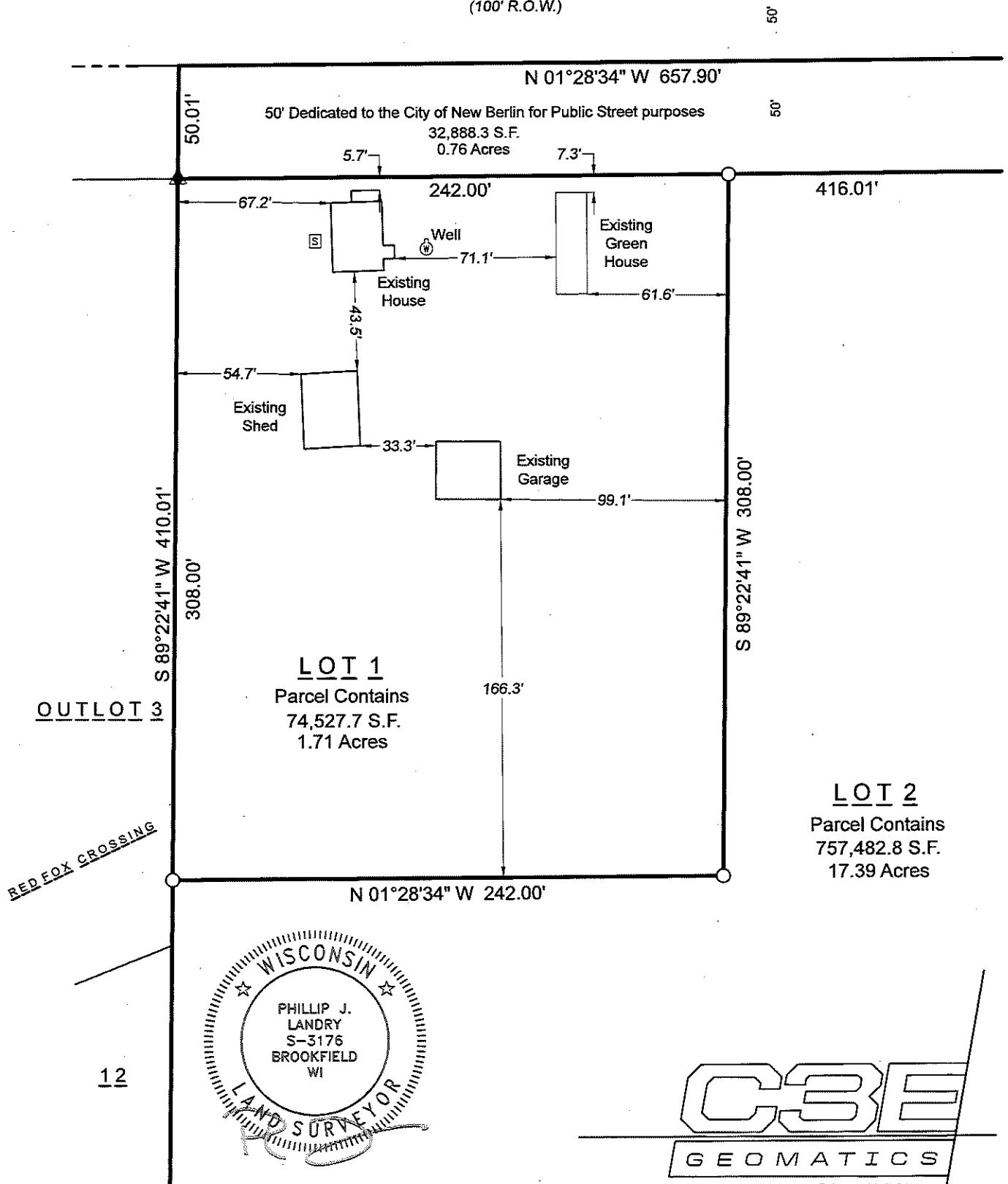
LEGEND

- 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



S. SUNNY SLOPE RD.

(100' R.O.W.)



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

18575 Brookfield Lake Drive • Unit 61
Brookfield, WI 53045 • (262) 312-1034
c3egeomatrics.com

Sheet 2 of 5

Job# 20148

ORDINANCE NO. 2669

Ordinance to rezone from A-2 (Agricultural and Rural Holding District) to A-2 (Agricultural and Rural Holding District) and R-6 (Section 35 Low-Density Single-Family Residential District)

The Common Council of the City of New Berlin do ordain as follows:

SECTION I

The City of New Berlin, having received a petition from Diane Krokowski Trustee to rezone the property located at 5715 S. Sunny Slope Road (Tax Key #: 1289-994) from A-2 to A-2 and R-6:

LEGAL DESCRIPTION: 5715 S. Sunny Slope Road (Tax Key #: 1289-994)
N 20 AC SE.25 NE.25 SEC 35 T6N R20E V1010 P167 DOC #3852565 08/30/2011

AREA TO BE REZONED FROM A-2 TO R-6

Commencing at the Northeast corner of Section 35, Township 6 North, Range 20 East; thence S 01°28'34" E along the east line of said Section; 1315.69' to the North line of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said section; thence S 89°22'41" W along the north line of said $\frac{1}{4}$ - $\frac{1}{4}$ section, 50.01 feet to the point of beginning; thence S 01°28'34" E, 242.00 feet; thence S 89°22'41" W, 308.00 feet; thence N 01°28'34" W 242.00, thence N 89°22' 41" E, 308.00 feet to the Point of Beginning of this description.

REMAINING AREA ZONED A-2 WILL REMAIN UNCHANGED.

SECTION II

The matter came before the City Plan Commission which held a public hearing on the proposed rezoning on March 6, 2023 and recommended approval of said rezoning on April 13, 2023 subject to the application, plans on file, and an ordinance approved by the City Attorney, and the matter having been considered and the rezoning approved on April 25, 2023 by the Common Council.

SECTION III

The Common Council of the City of New Berlin does hereby approve the rezoning of the lands in the above-described property from A-2 to A-2 and R-6 subject to the application and plans on file.

The Mayor and City Clerk are authorized to execute this Ordinance No. 2669 on behalf of the City of New Berlin.

SECTION IV

The several sections of this ordinance are declared to be severable. If any section shall be declared by decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of other portions of the ordinance.

SECTION V

All ordinances or parts of ordinances contravening the terms and conditions of this ordinance are

hereby to that extent repealed.

SECTION VI

This ordinance shall take effect upon passage and publication of a summary notice as required by law, and the City Clerk shall so amend the Code of Ordinances and zoning map of the City of New Berlin, and shall indicate the date and number of this amending ordinance therein.

PASSED AND ADOPTED by the Common Council this 25th day of April 2023.

APPROVED:

David A. Ament, Mayor

Countersigned:

Rubina Medina, City Clerk

STAFF REPORT

EXECUTIVE SUMMARY

APPLICANT/PROJECT: Diane Krokowski (Trustee) / CSM

LOCATION: 5715 S. Sunny Slope Road (Tax Key #: 1289-994)

REQUEST: 2-Lot Certified Survey Map

REVIEW SCHEDULE:

CSM Received:	1/20/2023
Completeness Determination:	1/25/2023
90-day time limit expires:	4/25/2023
Final Common Council Action (expected):	4/25/2023

D.R.C. RECOMMENDATION: Recommend to Common Council approval of the 2-Lot Certified Survey Map located at approximately 5715 S. Sunny Slope Road (Tax Key #: 1289-994) subject to the application, plans on file and the following conditions:

1. Rezoning shall be approved by the Common Council prior to recording of the CSM.
2. Applicant shall correct all drafting errors and requested changes identified by Staff on the final CSM prior to the City signing.
 - a. Correct "Fox Trail Dr." to "Fox Tail Ct".
 - b. Verify the exact area of Lot 2.
 - c. Sheet 5 correct City Clerk to read Rubina Medina.
 - d. Closure precision and error is out of compliance. Please correct the closure summary:
 - i. Precision, 1 part: 1272.20'
 - ii. Error distance: 3.10'
 - iii. Area: 866906.90 Sq. Ft.
 - iv. Square area: 866906.904
 - v. Perimeter: 3942.24'
 - e. Sheet 3: Verify the gross area of the parcel. Is 864,898.8 correct or is it 864,912.079?
3. A final copy of the CSM shall be submitted and reviewed prior to City signing. All owners and surveyor must sign prior to City signing the CSM. Surveyor Stamp is required.
4. The CSM shall be recorded with Waukesha County Register of Deeds prior to the issuance of any new zoning or building permits.
5. Applicant and/or new property owners shall apply for and obtain appropriate building, plumbing and electrical permits prior to any construction on any parcel.
6. Payment of the Public Site and Open Space fee of \$1,937.60.
7. Per Zoning Code Section 275-42B, only 2 accessory buildings are allowed on lots between 2 and 2.5 acres. There are currently 3 accessory buildings on Lot #1, which is more than the code allows, making this a legal non-conforming lot. Maximum combined square footages between 2 and 2.5 acres is 1,000 sq. ft.

8. A note shall be added to the face of the CSM stating, "if any buildings are to be removed on Lot #1, they would not be allowed to be rebuilt unless they would come into compliance with the Zoning Code."
9. Add a note to the face of the CSM stating, *Lot 2 shall have an outlot status. Outlot status may be removed after the following have occurred:*
 - a. Provide access to City sewer and water. A new septic system/well will not be allowed for Lot 2.
 - b. Wetland shall be field verified and registered with the City at the time of development.
 - c. Rezoning request from A-2, Agricultural and Rural Holding District to R-6, Section 35-Low Density Single-Family Residential District shall be applied for prior to any building permits being issued for this property. The R-6 zoning will be consistent with the Zoning Code Section 275-13.1H(4).
 - d. Fox Tail Ct. shall be extended when Lot 2 is subdivided.
10. Applicant understands the active park complex is located south and west of their parcels and will note this on the CSM so that future land owners are aware.

DETAILS IN ATTACHED STAFF REPORT:

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
PLAN COMMISSION STAFF REPORT
Meeting of April 13, 2023

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

DATE STAFF REPORT PREPARED: March 7, 2023

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

REQUEST / DESCRIPTION OF PROJECT: Approval of the 2-Lot Certified Survey Map located at 5715 S. Sunny Slope Road (Tax Key #: 1289.994).

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, CSM attached.

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: 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

South: Zoning: P-2

East: Zoning: R-3 & C-2

West: Zoning: P-2

Land Use: Single Family Residential / Red Fox Subdivision

Land Use: City Park – Section 35

Land Use: High Grove Addition 2 Subdivision

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:*
 - o *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. With this two-lot CSM, the applicant will be dedicating the right-of-way to the City and upon future development of Lot 2, an off road sidepath shall be constructed.
 - o *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.
 - o *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.

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. With this two-lot CSM, the applicant will be dedicating the right-of-way to the City and 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. With this two-lot CSM, the applicant will be dedicating the right-of-way to the City and 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:
 - o Sewer and Water Connections (currently there is no service provided to this parcel and the existing home on Lot 1 is served by private onsite 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.
- *Although the City may wish to invest and construct roadway, public utility, storm water infrastructure improvements, the City should approve an overall official roadway map for the Section 34/35 area and require dedication of appropriate right-of-way areas, consistent with this map, at the time of land platting where private development is taking place. The development shall also construct the roadway, public utility, and storm water infrastructure to City specifications where the City deems it necessary in order to service that development and / or overall development for the area.*
- *Development proposals shall include appropriate utility easements and/or roadway reservations or dedications to ensure public infrastructure (utility or roadway) extensions/connections and a coordinated development pattern are achieved.*

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, to accommodate the new lots size. (See application File #: RZ-2300320).

CONDITIONAL USE REQUIRED: No

PUBLIC HEARING REQUIRED: Not for the CSM, however, a public hearing was held on March 6, 2023 for the rezoning.

USE / SITE / ARCHITECTURAL REVIEW:

Use Approval Required: No

Site Plan Required: Yes, a 2-Lot CSM is attached.

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 indicators 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."*
- *"Policies for multi-modal transportation included in the Comprehensive Plan on Page 6:39 – 6:40.*

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 indicators 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 a 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 (See File #: RZ-2300230).
- **10/5/2020** Plan Commission accepted a request from the applicant to withdraw their requests for a similar rezoning and land division.
- **3/6/2023** Plan Commission held a public hearing on the rezoning (See File #: RZ-2300230).

CONSISTENCY WITH PREVIOUS ACTION: Yes

FINDINGS:

1. Wetland indicators 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.
2. The R-6, Section 35 Low-Density Single-Family Residential District, Section 275-33B(7) requires the minimum lot size to be 25,000 square feet, the lot width requirement is 110' and lot depth of 155'. The proposed Lot 1 meets the minimum lot size requirements. Note, the existing home is non-conforming. As it does not meet the front setback from Sunny Slope Road.

3. The ultimate ROW of Sunny Slope Road is 100 feet, 50 feet either side of the section line.
4. The front setback for the R-6 zoning district is 30 feet. The new front setback for the house will be 5.7 feet from the new ROW line, therefore the house will become legal non-conforming.
5. The A-2, Agricultural and Rural Holding District, Section 275-32B(2) requires minimum lot size to be 10 acres and the lot width requirement is 330'. The proposed Lot 2 meets the minimum lot size requirements.
 - a. Proposed Lot 2 shall be subject to outlot status notes on the CSM.
6. Per Zoning Code Section 275-42B, only 2 accessory buildings are allowed on lots with 2 acres or greater. There are currently 3 accessory buildings on Lot 1, which is more than the code allows, making this a legal non-conforming lot. Maximum combined square footages for lots 2 acres or greater is 1,000 sq. ft.
 - a. If any accessory buildings are to be removed on Lot 1, they would not be allowed to be rebuilt unless they would come into compliance with the Zoning Code.

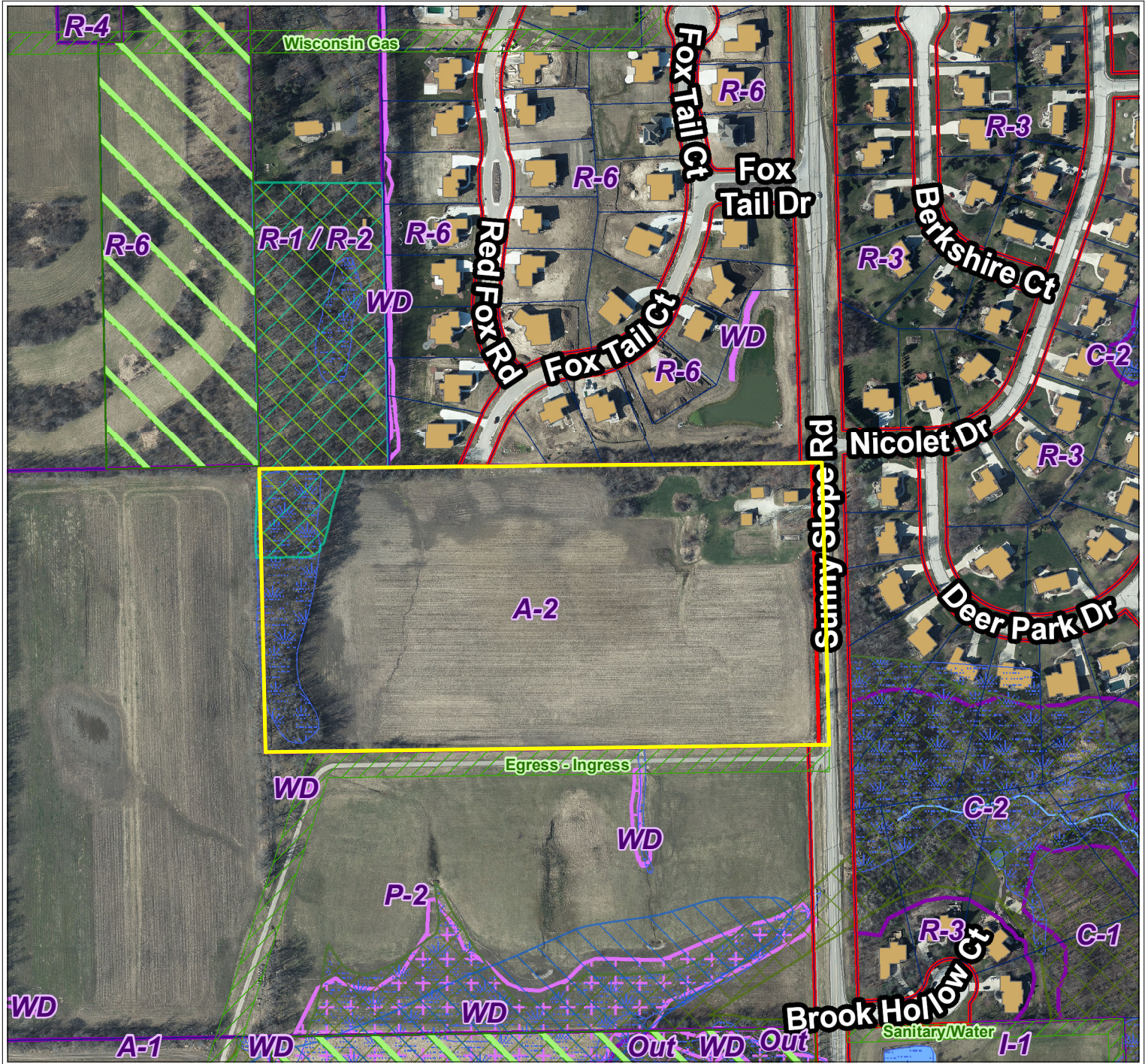
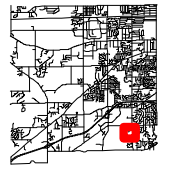
D.R.C. RECOMMENDATION:

Recommend to Common Council approval of the 2-Lot Certified Survey Map located at approximately 5715 S. Sunny Slope Road (Tax Key #: 1289-994) subject to the application, plans on file and the following conditions: **See Executive Summary.**

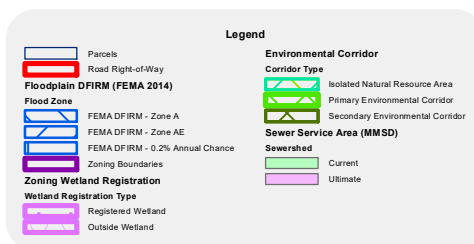
ATTACHMENTS:

Location Map
Applicant Letter
Zoning Comparison Map
Legal Description
Proposed CSM

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

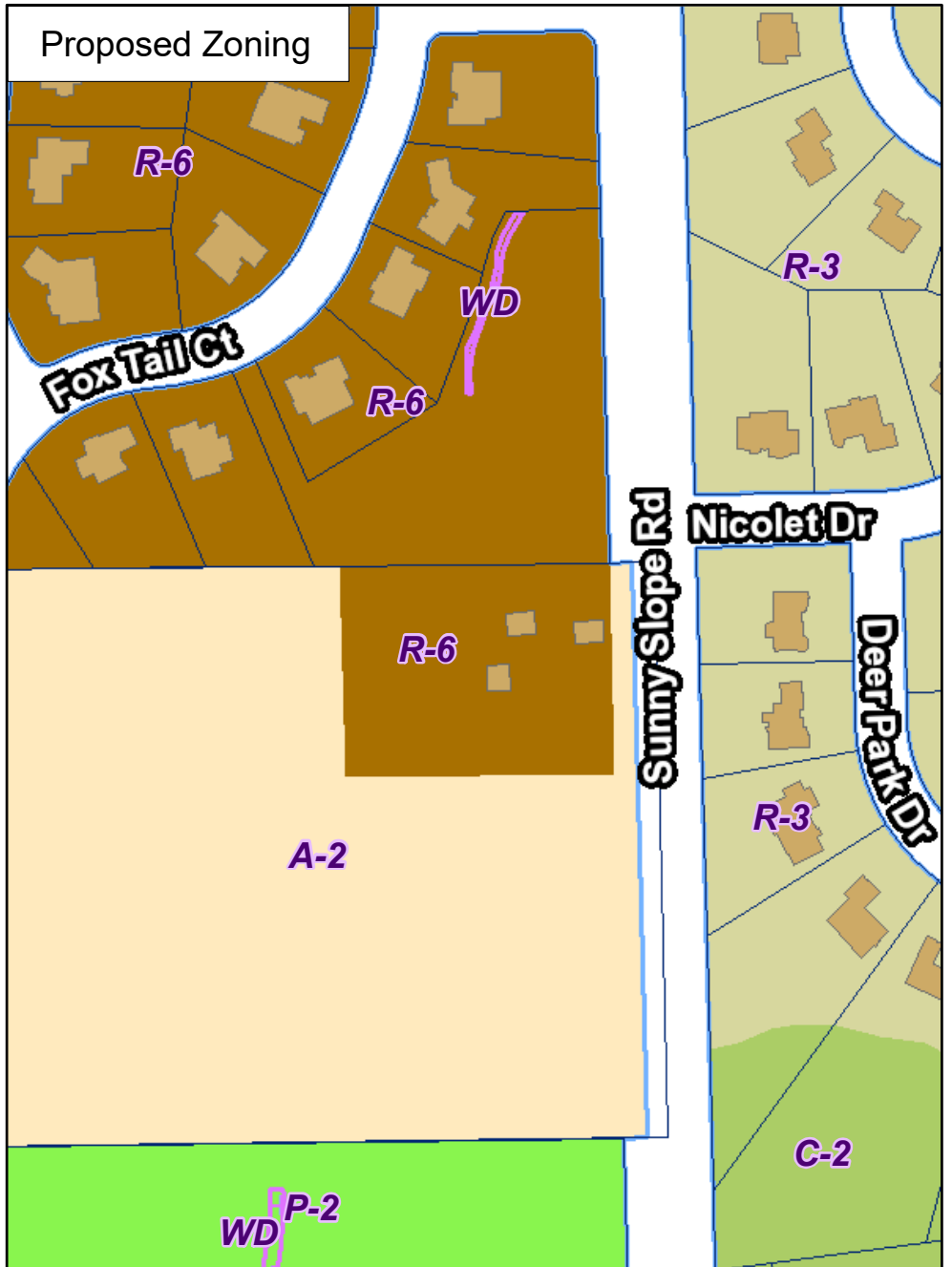
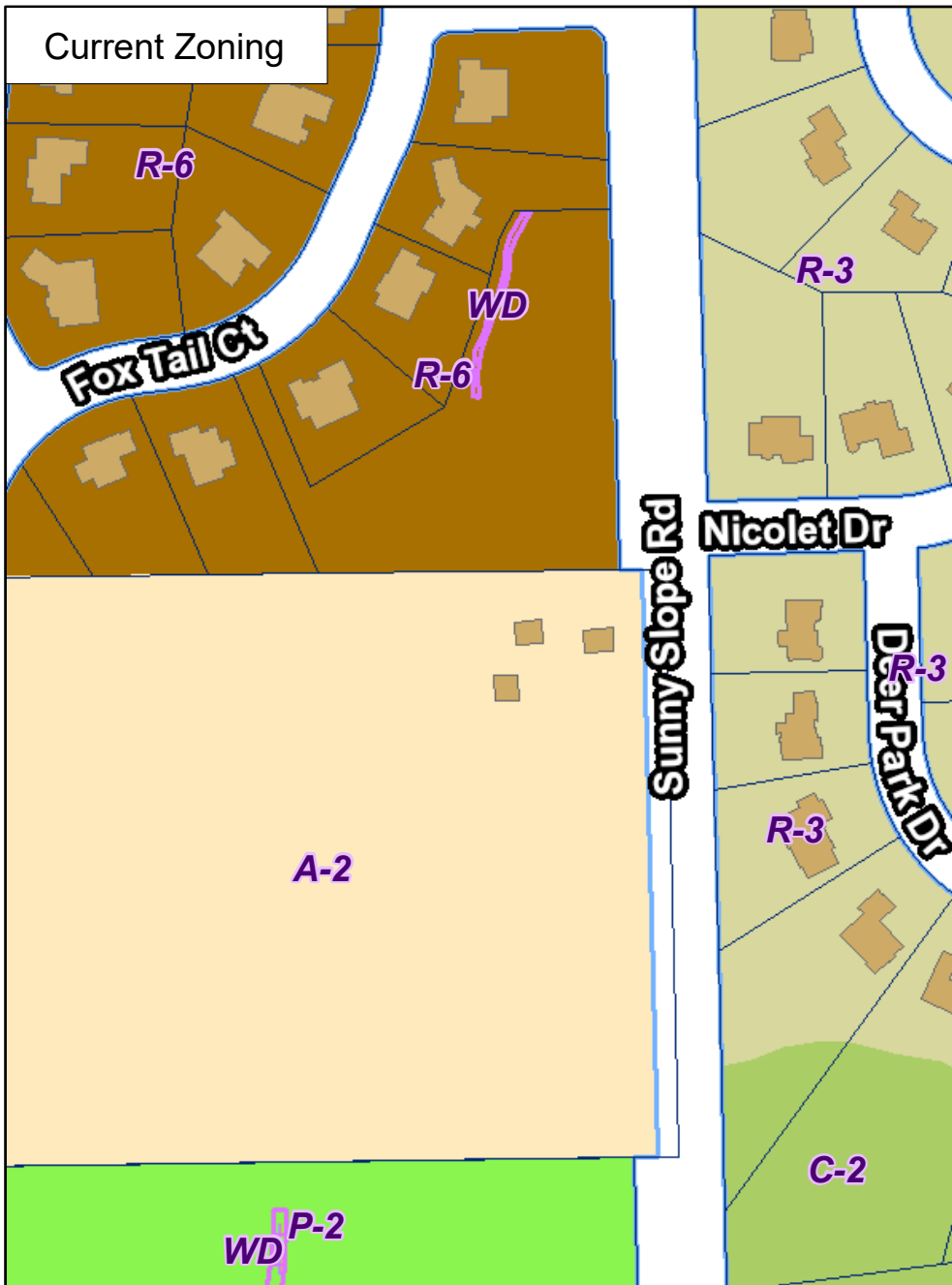


City of New Berlin
Department of Community Development
3805 S Casper Dr.
New Berlin WI 53151
(262) 797-2445
www.newberlin.org



0 125 250 Feet

The information and depictions herein have been produced using data available through photogrammetric 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.



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:

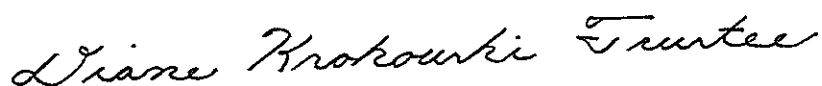
1. Rezoning - Agreement Application
2. Lot 1, R-6 area Legal Description. (RE: Rezoning)
3. Wisconsin Certified Survey Map

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.

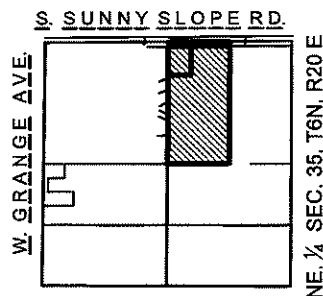
Sincerely,

A handwritten signature in cursive script that reads "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



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

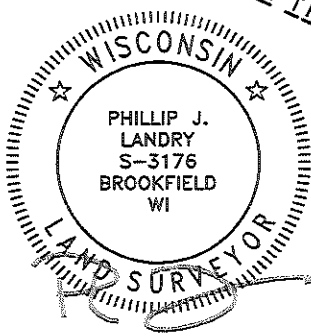
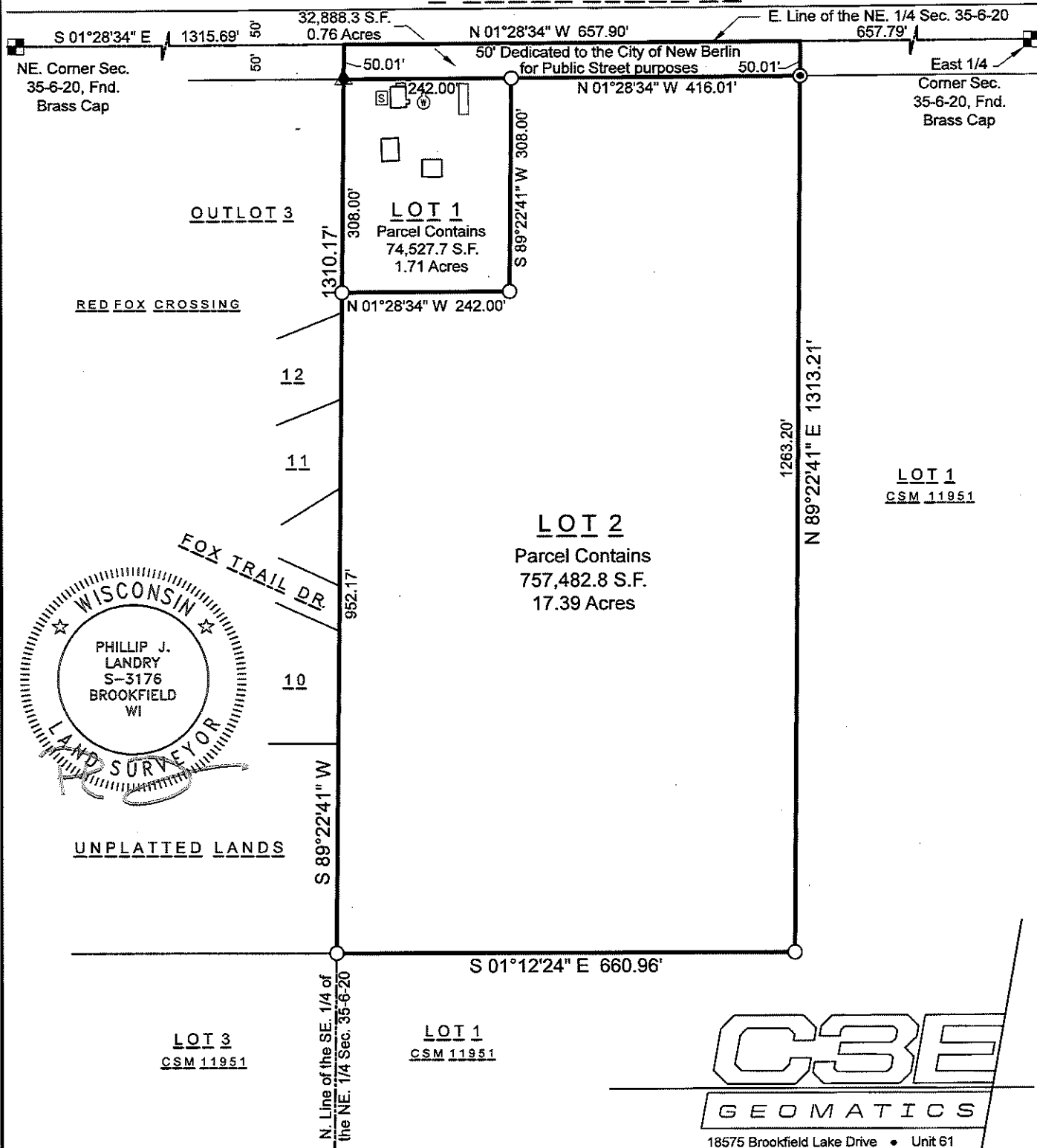


OWNER

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

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

S. SUNNY SLOPE RD.



UNPLATTED LANDS



18575 Brookfield Lake Drive • Unit 61
Brookfield, WI 53045 • (262) 312-1034
c3egeomatrics.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

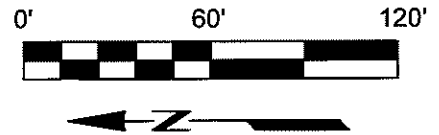
Job# 20148

Certified Survey Map

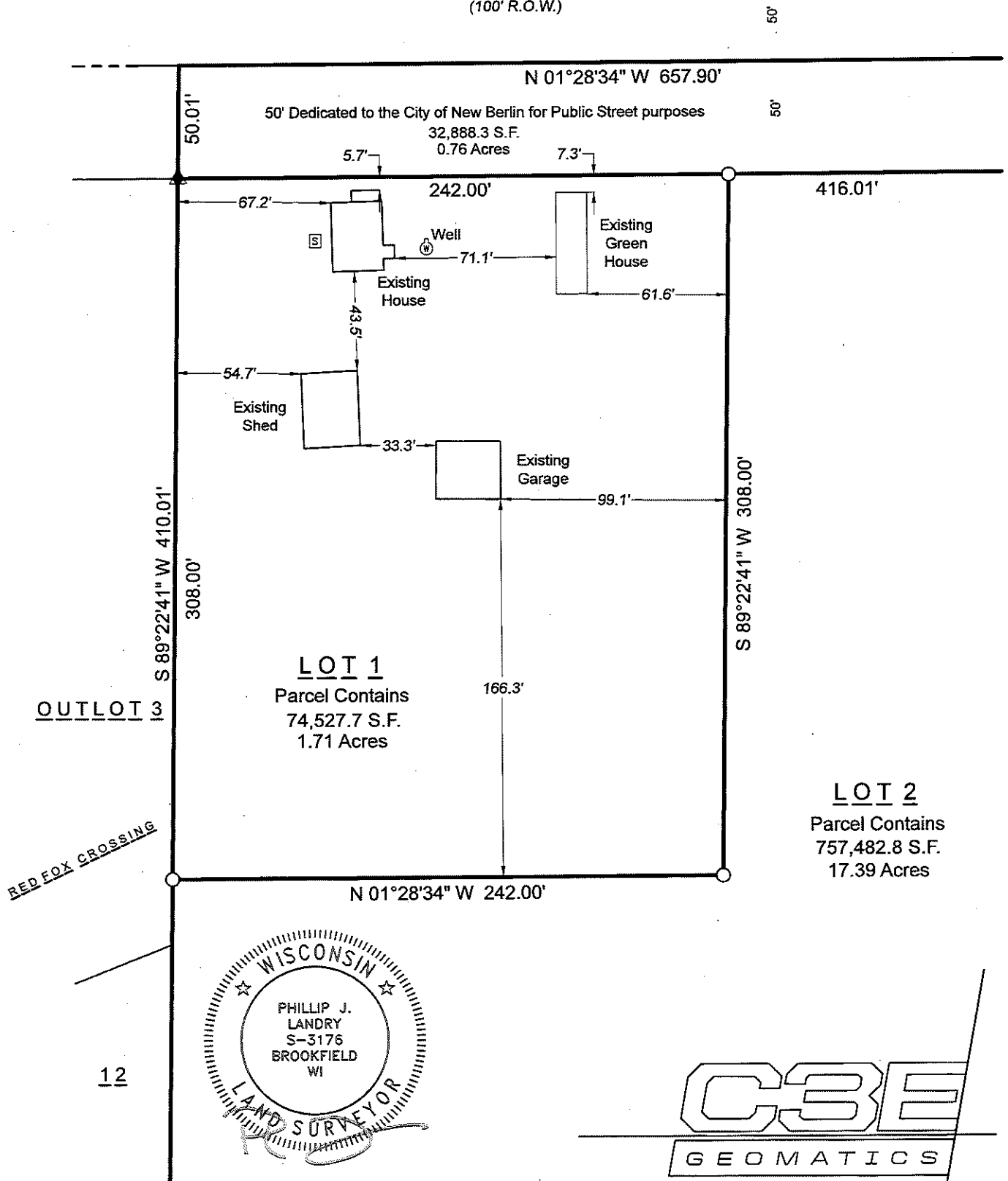
All that part of the The North 20 Acres of the Southeast 1/4 of the
Northeast 1/4 of Section 35, Township 6 North, Range 20 East, in the
City of New Berlin, Waukesha County, Wisconsin

LEGEND

- ☐ 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



S. SUNNY SLOPE RD. (100' R.O.W.)



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

18575 Brookfield Lake Drive • Unit 61
Brookfield, WI 53045 • (262) 312-1034
c3egeomatrics.com

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 recommend to Common Council adoption of an Ordinance that approves the updates to the Zoning Code, Chapter 275.
D.R.C. RECOMMENDATION:	Plan Commission recommend to Common Council adoption of an Ordinance that approves the updates to the 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.

Next Steps:

- 1. Plan Commission recommendation forwarded to the Common Council for final action.
- 2. 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.

3/6/2023 Public hearing held before Plan Commission.

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 IX
Enforcement and Penalties

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

ARTICLE X
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 ~~2930~~ 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 <u>Conservation</u> 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	§ <u>275-57</u>	
Silviculture	P	P	P	P	P	P	P	P	P	P	§ <u>275-54</u> and § <u>275-54.1</u>	
Temporary uses	T	T	T	T	T	T	T	T	T	T	§ <u>275-43</u>	
Any other use the Plan Commission finds will be similar in nature, operation and function to the uses allowed within the district											§ <u>275-33C(1)</u>	

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

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	§ <u>275-41D(1)</u>
Medical and dental offices		P	P	C	C	
Manufacturing/Industrial Uses						
Aboveground/underground storage tanks		P	P	P	P	§ <u>275-41I</u>
Freight services		*	*	*	*	
Industrial sales		*	*	C	*	
Warehouses		*	*	C	*	
Institutional/Public/Semipublic Uses						
Bus stations		C	*	*	*	
Churches (neighborhood)		P	P	P	P	§ <u>275-70</u>
Churches (community)		C	C	C	C	§ <u>275-70</u>
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	§ <u>275-41H(1)</u>
Natural resource conservation and preservation uses		P	P	P	P	
Off-street parking and loading areas		A	A	A	A	§ <u>275-57</u>
Park-and-ride lots		P	P	P	P	
Residential quarters		*	A	A	A	§ <u>275-42G(1)(a)</u>
Silviculture		P	P	P	P	§ <u>275-54</u> and § <u>275-54.1</u>
Any other use the Plan Commission finds will be similar in nature, operation and function to the uses allowed within the district						§ <u>275-34C(1)</u>

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

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	§ <u>275-41D(2)</u>
	Medical and dental offices	P	P	P	C	C	P	§ <u>275-41D(2)</u>
	Post offices	P	P	*	C	C	C	§ <u>275-41D(2)</u>
Manufacturing/Industrial Uses								
	Aboveground/underground storage tanks	*	*	*	P	P	P	§ <u>275-41I</u>
	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	§ <u>275-41E(1)</u>
	Manufacturing of animal feed	*	*	*	*	*	*	
	Research and development facilities	*	*	*	P	P	P	
	Truck terminals	*	*	*	*	*	*	
	Warehouses	*	A/C	*	P	P	P	§ <u>275-41E(2)</u>
Institutional/Public/Semipublic Uses								
	Day-care <u>facilities centers</u>	P	P	*	P	P	P	
	Churches (neighborhood)	P	P	P	P	P	P	§ <u>275-70</u>
	Churches (community)	C	C	C	P	P	P	§ <u>275-70</u>
	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	§ <u>275-41H(1)</u>
	Natural resource conservation and preservation uses	P	P	P	P	P	P	
	Off-street parking and loading areas	A	A	A	A	A	A	§ <u>275-57</u>
	Park-and-ride lots	P	P	*	P	P	P	
	Silviculture	P	P	P	P	P	P	§ <u>275-54</u> and § <u>275-54.1</u>
	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							§ <u>275-35C(1)</u>

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	*	*	§ <u>275-41G(1)</u>
Dormitories	A	*	*	
Commercial Uses				
Amphitheaters	*	C	C	
Aquariums	*	C	*	
Auditoriums	P	C	*	
Banquet halls	*	C	*	
Bowling alley	*	C	*	
Commercial Sports Complex	*	P	P	§ <u>275-36D(5)</u>
Exhibition halls	*	C	*	
Fairgrounds	*	C	*	
Mobile tower facilities	P/C	P/C	P/C	§ <u>275-41C(16)</u>
Outdoor storage	A	A	A	§ <u>275-41C(10)</u>
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	*	*	§ <u>275-41B(1)</u>
Cemeteries	C	*	*	
Central composting <u>facilities</u>	C	C	*	
Churches (neighborhood)	P	*	*	§ <u>275-70</u>
Churches (community)	C	*	*	§ <u>275-70</u>
Crematory services	C	*	*	
Day-care <u>facilities, centers</u>	P	*	*	
<u>Educational facilities</u>	<u>P</u>	<u>C</u>	<u>*</u>	§ <u>275-41G(2)</u>
<u>Educational facilities, i</u> nterpretive centers, learning centers	P	C	*	
Nature-based learning centers	P	P	P	
Essential services	P	P	P	
Golf driving range	*	A/C	*	§ <u>275-41G(3)</u>
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	§ <u>275-54</u> and § <u>275-54.1</u>
	<u>Any other use the Plan Commission/CDA finds will be similar in nature, operation and function to the uses allowed within the district</u>				<u>§ 275-36C(1)</u>
Accessory Uses					
	Accessory dwellings	A	A	*	§ <u>275-42G</u>
	Concessions	*	P	P	
	Off-street parking and loading areas	A	A	A	§ <u>275-57</u>
	Temporary uses/event sales and display	T	T	P	§ <u>275-43</u>

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	*	*	*	§ <u>275-57</u>
	Planting of native plants	P	P	P	P	P	
	Removal or mowing of nonnative wetland or prairie plants	*	*	P	P	C	
	<u>Silviculture</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>§ 275-54 and § 275-54.1</u>
	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						§ <u>275-37C(3)</u>

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
<u>Large livestock</u>	<u>3</u>	2	Large livestock < 2 years
Small livestock	2	8	Goats
<u>Small livestock</u>	<u>2</u>	8	Sheep
<u>Small livestock</u>	<u>2</u>	12	Pigmy goats
<u>Small livestock</u>	<u>2</u>	8	Llamas, alpacas
<u>Small livestock</u>	<u>2</u>	8	Miniature horses
<u>Small livestock</u>	<u>2</u>	4	Potbellied pigs, other small-breed pigs under 300 pounds
<u>Small livestock</u>	<u>2</u>	2	Ponies (under 40 inches)
<u>Small livestock</u>	<u>2</u>	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(16)(c) Use specific regulations

- (c) Definitions. ~~For the purposes of this section, the following definitions shall be used in addition to the definitions in Refer to § 275-70:~~

~~ANTENNA~~

~~Communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.~~

~~APPLICATION~~

~~An application for a permit under this section to engage in an activity specified in this section.~~

~~BUILDING PERMIT~~

~~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.~~

~~CLASS 1 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 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~~

~~Class 1 or class 2 co-location, or both.~~

~~DISTRIBUTED ANTENNA SYSTEM~~

~~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.~~

~~EQUIPMENT COMPOUND~~

~~An area surrounding or adjacent to the base of an existing support structure, within which are located mobile service facilities.~~

~~EXISTING STRUCTURE~~

~~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.~~

~~FALL ZONE~~

~~The area over which a mobile support structure is designed to collapse.~~

~~MOBILE SERVICE~~

~~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:~~

- ~~[1] Both one-way and two-way radio communication services;~~
- ~~[2] 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~~
- ~~[3] 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

~~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

~~A person who provides mobile service.~~

MOBILE SERVICE SUPPORT STRUCTURE

~~A freestanding structure that is designed to support a mobile service facility.~~

PERMIT

~~A permit, other than a building permit, or approval issued by the City which authorizes any of the following activities by an applicant:~~

- ~~[1] A Class 1 co-location.~~
- ~~[2] A Class 2 co-location.~~
- ~~[3] The construction of a mobile service support structure.~~

POLITICAL SUBDIVISION

~~A city, village, town, or county.~~

PUBLIC UTILITY

~~Has the meaning given in § 196.01(5), Wis. Stats.~~

SEARCH RING

~~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.~~

SUBSTANTIAL MODIFICATION

~~The modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following:~~

- ~~[1] For structures with an overall height of 200 feet or less, increases the overall height of the structure by more than 20 feet.~~
- ~~[2] For structures with an overall height of more than 200 feet, increases the overall height of the structure by 10% or more.~~
- ~~[3] 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.~~

~~[4] —Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.~~

SUPPORT STRUCTURE

~~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.~~

UTILITY POLE

~~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.~~

§275-41C(20) Use specific regulations

(20) Car wash establishment.

- (a) Car wash 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.~~

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

(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.~~

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

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

<u>Use</u>	<u>Minimum setbacks (feet)</u>		
	<u>Front</u>	<u>Side</u>	<u>Rear</u>

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

(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.~~

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

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

(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.~~

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

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

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

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

(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]

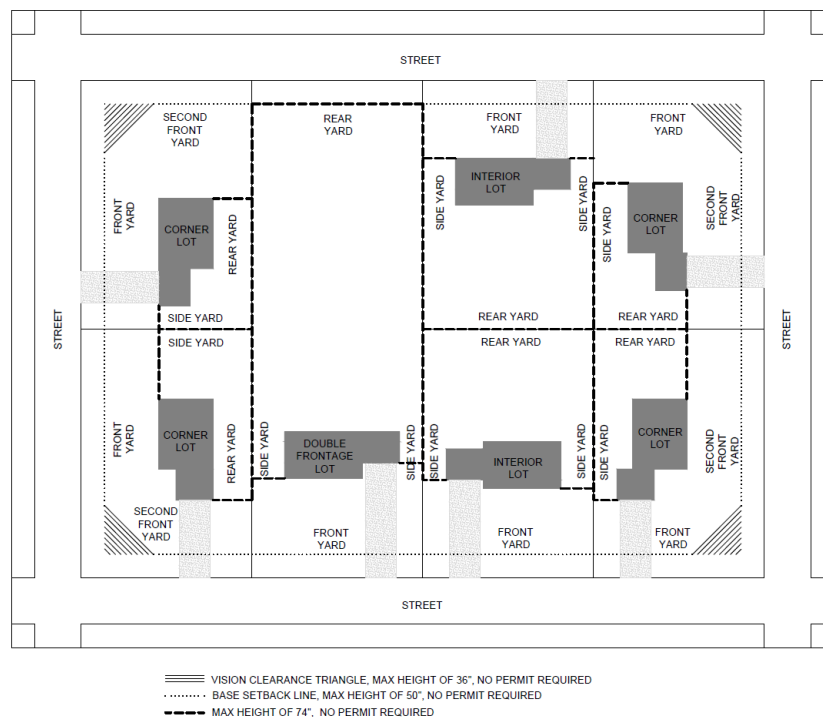
~~(a) Location and height. Fence height shall be measured from the average grade of the ground beneath the fence.~~

~~[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.~~

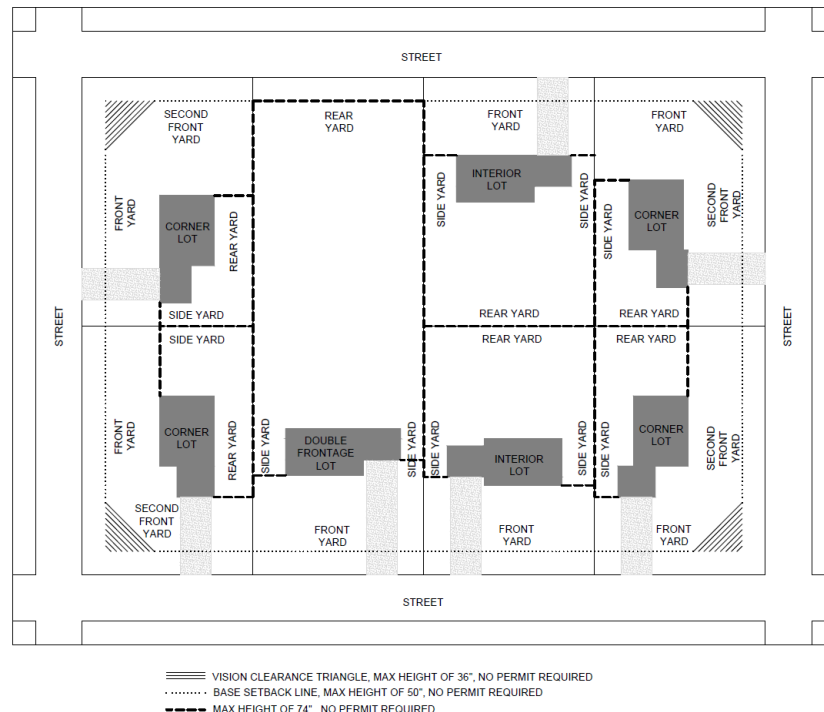
~~[b] Fences that are not made of maintenance free materials shall be located at least two feet from the property line.~~



~~[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.

Figure V – 1
Fence Location



(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~~Fences 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~~Fences 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(5)(c) Accessory uses and structures

(c) Definitions. Refer to §275-70.

~~SMALL WIND ENERGY SYSTEM~~

~~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.~~

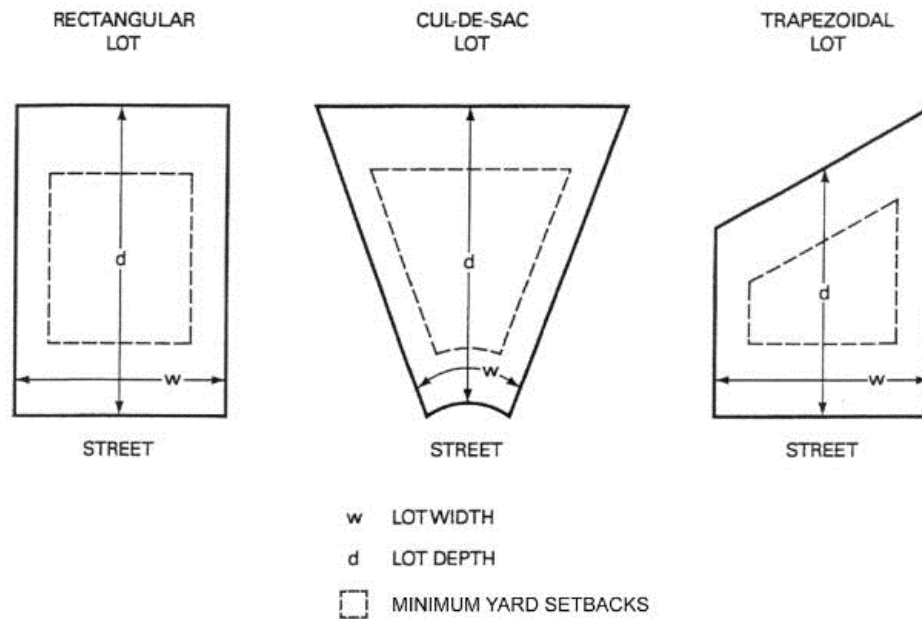
§275-42G(9) Accessory uses and structures

- (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 - §275-44E. Lot measurement and requirements.

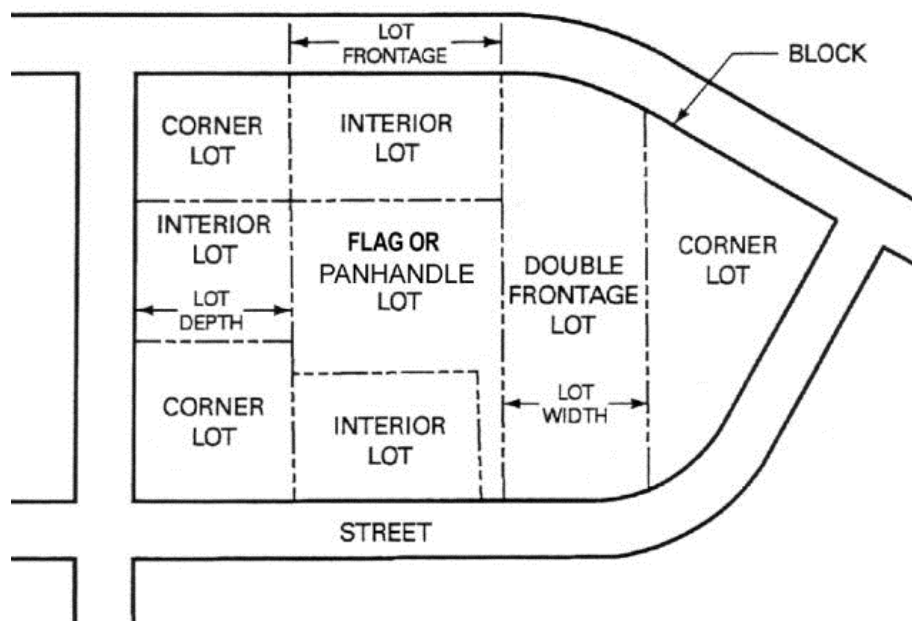
C. ~~(Reserved)~~ Dimensions.

Figure VI-1
Lot Width and Lot Depth



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

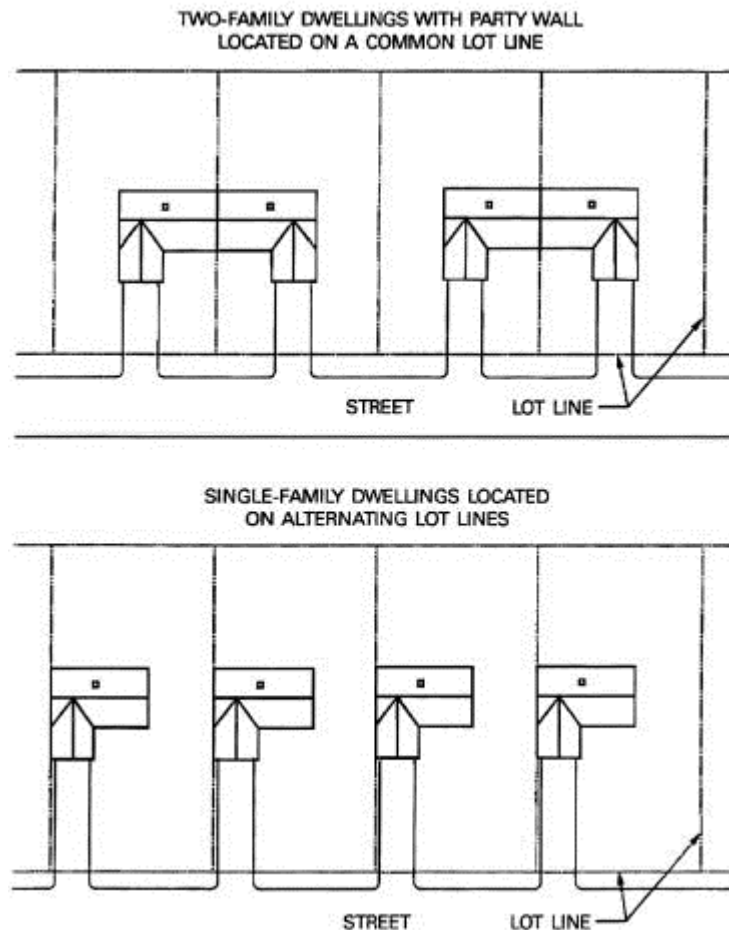
Figure VI-2
Lot Types



- E. Zero-lot-line residential development. Zero-lot-line residential developments (see Figure VI-2) may be permitted in the Rd-1 and Rm-1 Districts where the following provisions are met:
- (1) Lot area and width. Lots shall have a minimum area of 6,200 square feet and shall not be less than 50 feet in width with one dwelling unit per lot.
 - (2) Setback and yards.
 - (a) There shall be a minimum setback of 50 feet from the right-of-way of all public streets or from private drives. There shall be a side yard requirement on one side of a building of not less than 15 feet. The dwelling unit shall be placed on one side property line with a zero-foot side yard. The minimum distance between buildings shall be 30 feet. There shall be a rear yard of not less than 15 feet for all lots unless the Plan Commission permits the rear lot line to be a second zero lot line.
 - (b) All buildings shall be a minimum of 50 feet from an adjacent single-family lot line in a single-family residential district.
 - (3) Other requirements.
 - (a) Buildings constructed shall be of the row (party wall) dwelling type and shall consist of a row of attached dwelling units.
 - (b) Each dwelling unit shall have separate utility connections. Attached dwellings may have one sanitary and stormwater lateral run and two separate water meters.

Figure VI-23

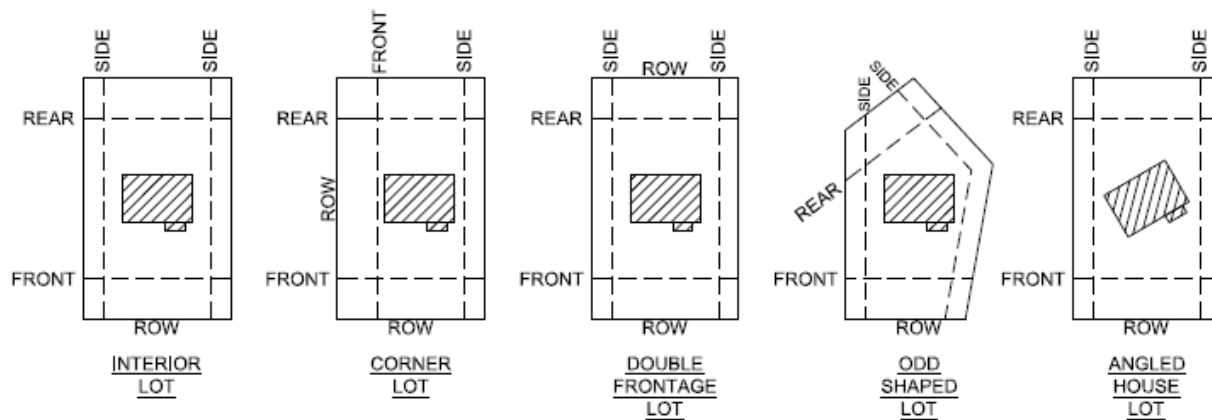
Examples of Zero-Lot-Line Residential Development



§275-46 Yard/setback measurement and requirements

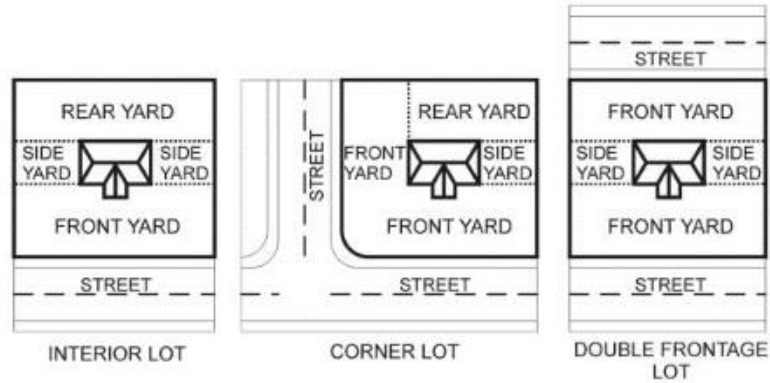
- A. Measurement of a setback. ~~A "setback" shall mean a line drawn parallel to a lot line at a distance equal to the depth of the required yard setback. The distance shall be measured along a line drawn perpendicular to the lot line and the setback line.~~

Figure VI-4
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 reductions 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-45
Side-Entry Garage Setback—Rectangular Lots

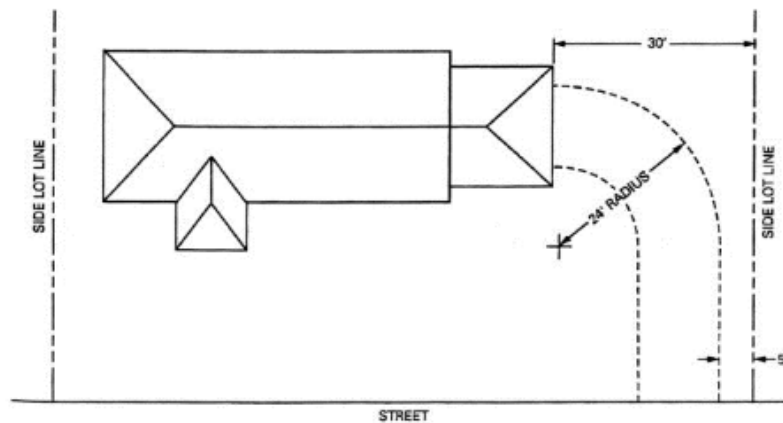
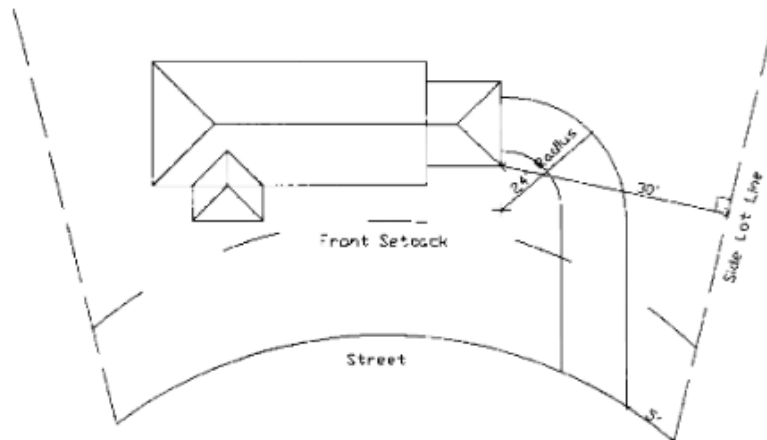
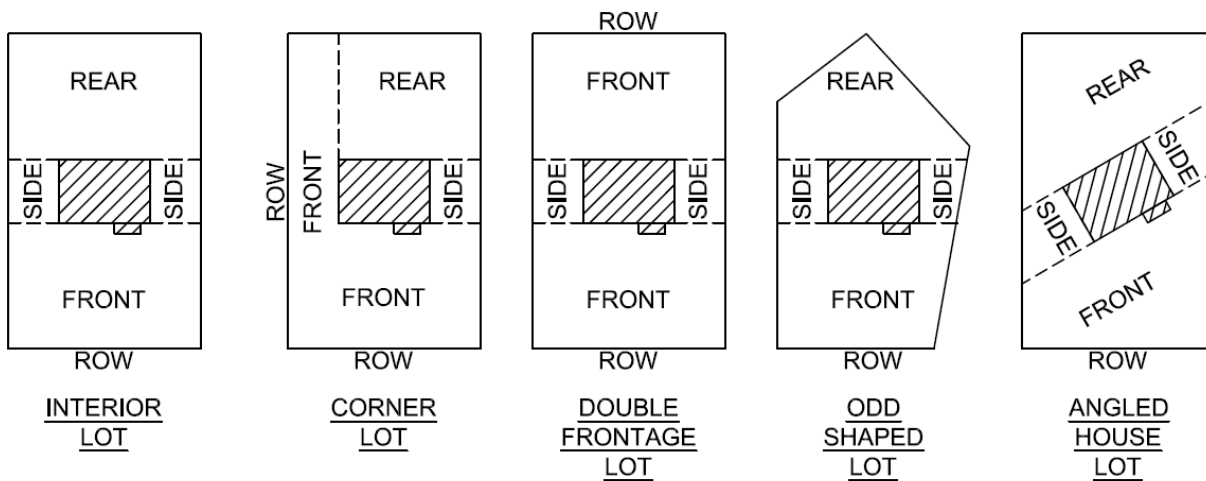


Figure VI-5
Side-Entry Garage Setback—Pie Shaped Lots



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

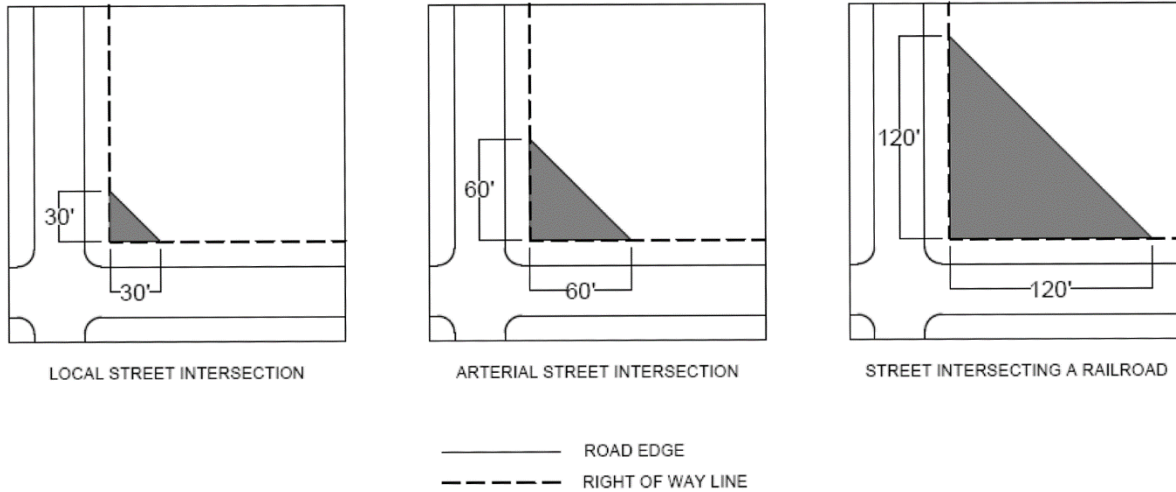
Figure VI-6
Location of Yard



- 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-67
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.

§275-55.1E. Post-construction stormwater management.

E. Definitions. Refer to §275-70.

~~ADEQUATE SOD, or SELF-SUSTAINING VEGETATIVE COVER~~

~~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.~~

~~ADMINISTERING AUTHORITY~~

~~A governmental employee, or a regional planning commission empowered under § 62.234, Wis. Stats., that is designated by the City Common Council to administer this section.~~

~~AGRICULTURAL FACILITIES AND PRACTICES~~

~~Has the meaning given in § 281.16, Wis. Stats.~~

~~ATLAS 14~~

~~The National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.~~

~~AVERAGE ANNUAL RAINFALL~~

~~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.~~

~~BEST MANAGEMENT PRACTICE or BMP~~

~~Structural or nonstructural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.~~

~~BUSINESS DAY~~

~~A day the offices of the City Hall are routinely and customarily open for business.~~

~~CEASE-AND-DESIST ORDER~~

~~A court-issued order to halt land-disturbing construction activity that is being conducted without the required permit.~~

~~COMBINED SEWER SYSTEM~~

~~A system for conveying both sanitary sewage and stormwater runoff.~~

~~CONNECTED IMPERVIOUSNESS~~

~~An impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.~~

~~DESIGN STORM~~

~~A hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.~~

~~DEVELOPMENT~~

~~Residential, commercial, industrial or institutional land uses and associated roads.~~

~~DIRECT CONDUITS TO GROUNDWATER~~

~~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.~~

~~EFFECTIVE INFILTRATION AREA~~

~~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.~~

~~EROSION~~

~~The process by which the land's surface is worn away by the action of the wind, water, ice or gravity.~~

~~EXCEPTIONAL RESOURCE WATERS~~

~~Waters listed in § NR 102.11, Wis. Adm. Code.~~

~~FILTERING LAYER~~

~~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~~

~~That 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 employment of equivalent permanent stabilization measures.~~

~~FINANCIAL GUARANTEE~~

~~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.~~

~~GOVERNING BODY~~

~~County board of supervisors, town board of supervisors, village board of trustees, village council, or City Council.~~

~~IMPERVIOUS SURFACE~~

~~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.~~

~~INFILL AREA~~

~~An undeveloped area of land located within existing development.~~

~~INFILTRATION~~

~~The entry of precipitation or runoff into or through the soil.~~

INFILTRATION SYSTEM

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.

KARST FEATURE

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.

LAND-DISTURBING CONSTRUCTION ACTIVITY

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.

LANDOWNER

Any person holding fee title, an easement or other interest in the property, which allows the person to undertake cropping, livestock management, land-disturbing construction activity or maintenance of stormwater BMPs on the property.

MAINTENANCE AGREEMENT

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.

MEP or MAXIMUM EXTENT PRACTICABLE

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) of this section.

NEW DEVELOPMENT

Development resulting from the conversion of previously undeveloped land or agricultural land uses.

NRCS-MSE3 OR MSE4 DISTRIBUTION

A specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation from Atlas 14.

OFF-SITE

Located outside the property boundary described in the permit application.

ON-SITE

Located within the property boundary described in the permit application.

ORDINARY HIGH-WATER MARK

The meaning given in § NR 115.03(6), Wis. Adm. Code.

OUTSTANDING RESOURCE WATERS

~~Waters listed in § NR 102.10, Wis. Adm. Code.~~

PERCENT FINES

~~The percentage of a given sample of soil which passes through a #200 sieve.~~

PERFORMANCE STANDARD

~~A narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.~~

PERMIT

~~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 ADMINISTRATION FEE

~~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.~~

PERVIOUS SURFACE

~~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.~~

POLLUTANT

~~Has the meaning given in § 283.01(13), Wis. Stats.~~

POLLUTION

~~Has the meaning given in § 281.01(10), Wis. Stats.~~

POST-CONSTRUCTION SITE

~~A construction site following the completion of land-disturbing construction activity and final site stabilization.~~

PRE-DEVELOPMENT CONDITION

~~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.~~

PREVENTATIVE ACTION LIMIT

~~Has the meaning given in § NR 140.05(17), Wis. Adm. Code.~~

PROTECTIVE AREA

~~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.~~

REDEVELOPMENT

~~Areas where development is replacing older development.~~

RESPONSIBLE PARTY

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.

RUNOFF

Stormwater or precipitation, including rain, snow or ice melt or similar water, that moves on the land surface via sheet or channelized flow.

SEPARATE STORM SEWER

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:

- (1) — Is designed or used for collecting water or conveying runoff.
- (2) — Is not part of a combined sewer system.
- (3) — Discharges directly or indirectly to waters of the state.

SILVICULTURE ACTIVITY

Activities including tree nursery operations, 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 the land-disturbing construction activity occurred.

STOP WORK ORDER

An order issued by the City of New Berlin which requires that all construction activity on the site be stopped.

STORMWATER MANAGEMENT PLAN

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

A comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

TECHNICAL STANDARD

A document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

TOP OF THE CHANNEL

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.

TOTAL MAXIMUM DAILY LOAD or TMDL

~~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

~~Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.~~

TR-55

~~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.~~

TRANSPORTATION FACILITY

~~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 construction of public buildings and building that are places of employment that are regulated by the Department pursuant to § 281.33, Wis. Stats.~~

TYPE II DISTRIBUTION

~~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.~~

WATERS OF THE STATE

~~Has the meaning given in § 283.01(20), Wis. Stats. 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 of groundwater, natural or artificial, public or private, within this state or its jurisdiction.~~

§275-55.2E. Construction site erosion control

E. Definitions. ~~As used in this section, the following terms shall have the meanings indicated: Refer to §275-70.~~

~~ADMINISTERING AUTHORITY~~

~~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.~~

~~AGRICULTURAL FACILITIES AND PRACTICES~~

~~Has the meaning in § 281.16(1), Wis. Stats.~~

~~AVERAGE ANNUAL RAINFALL~~

~~A calendar year of precipitation, excluding snow, which is considered typical.~~

~~BEST MANAGEMENT PRACTICE or BMP~~

~~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.~~

~~BUSINESS DAY~~

~~A day the office of the City Hall is routinely and customarily open for business.~~

~~CEASE-AND-DESIST ORDER~~

~~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.~~

~~CONSTRUCTION SITE~~

~~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.~~

~~DESIGN STORM~~

~~A hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.~~

~~DIVISION OF LAND~~

~~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.~~

~~EROSION~~

~~The process by which the land's surface is worn away by the action of wind, water, ice or gravity.~~

~~EROSION AND SEDIMENT CONTROL PLAN~~

~~A comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.~~

EXTRATERRITORIAL

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.

FINAL STABILIZATION

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.

GOVERNING BODY

County board of supervisors, town board of supervisors, village board of trustees, village council, or City Council.

LAND-DISTURBING CONSTRUCTION ACTIVITY

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.

LANDOWNER

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.

MEP or MAXIMUM EXTENT PRACTICABLE

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).

PERFORMANCE STANDARD

A narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

PERMIT

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.

POLLUTANT

Has the meaning given in § 283.01(13), Wis. Stats.

POLLUTION

Has the meaning given in § 281.01(10), Wis. Stats.

RESPONSIBLE PARTY

The landowner or any other entity performing services to meet the performance standards of this section through a contract or other agreement.

~~RUNOFF~~

~~Stormwater or precipitation, including rain, snow or ice melt or similar water, that moves on the land surface via sheet or channelized flow.~~

~~SEDIMENT~~

~~Settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.~~

~~SEPARATE STORM SEWER~~

~~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:~~

- ~~(1) — Is designed or used for collecting water or conveying runoff.~~
- ~~(2) — Is not part of a combined sewer system.~~
- ~~(3) — Is not draining to a stormwater treatment device or system.~~
- ~~(4) — Discharges directly or indirectly to waters of the state.~~

~~SILVICULTURE ACTIVITY~~

~~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 the land-disturbing construction activity is proposed in the permit application.~~

~~STOP WORK ORDER~~

~~An order issued by the City of New Berlin which requires that all construction activity on the site be stopped.~~

~~TECHNICAL STANDARD~~

~~A document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.~~

~~TRANSPORTATION FACILITY~~

~~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.~~

~~WATERS OF THE STATE~~

~~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.~~

§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.

§ 275-55.3A. Illicit charges and connections.

A. Definitions. ~~The following definitions shall be applicable in this section: Refer to §275-70.~~

ILLICIT CONNECTION

~~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.~~

PERSON

~~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.~~

STORM DRAINAGE SYSTEM

~~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.~~

§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.

§ 275-61. Signs.

A. Purpose and intent.

- (1) The purpose of this section is to provide for and regulate the design, location, and safe construction of signs in a manner to ensure that all signs are compatible with surrounding land uses, are well maintained, and express the identity of individual proprietors and the City as a whole. Signs allowed within the City of New Berlin are for the purpose of location and identification not for advertisement. All sign permits, unless otherwise specified, shall be applied for on forms provided by the Department of Community Development (DCD) and administratively reviewed by the Department.
- (2) In considering a sign application, DCD staff shall consider:
 - (a) The appearance, material for construction, location, lighting, height and size of the sign;
 - (b) Safety of operators of vehicles upon the adjoining streets and highways;
 - (c) The effect of the sign on property values within the immediate area;
 - (d) The effect of such sign with respect to the scenic beauty of the vicinity in which the sign is proposed to be located;
 - (e) The effect of such sign with respect to enforcing state laws, county and City ordinances;
 - (f) The effect of the sign with respect to the danger to human life because of falling or combustibility;
 - (g) The effect of the sign with respect to the prevention of crime; and
 - (h) The effect of such sign and display with respect to the general welfare, morals, and the conserving of the taxable value of lands and building located within the City and in the immediate area adjacent to the proposed location of the sign.
- (3) Exemptions. The following types of signs are exempt from all provisions of this chapter:
 - (a) Public signs, signs erected by, or on the order of, or by the permission of, a government entity.

B. Compliance.

- (1) No sign shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without a sign permit and conforming with the provisions of this chapter. No sign permit shall be issued to a business or property that does not have a zoning permit.
- (2) The Department of Community Development (DCD), upon review of a sign application, has the authority to administratively approve the sign application through the administrative permit policy, provided that it meets all the requirements of this chapter.

C. Sign permit application requirements. Application for a sign permit shall be made on forms provided by the Department of Community Development and must contain or have attached thereto the following information:

- (1) Name, address, and telephone number of the applicant and the property owner; location of the building, structure, or lot upon which the sign is to be attached or erected.
- (2) Name of person, firm, corporation, or association erecting the sign.
- (3) Written consent of the owner or lessee of the building, structure, or land to which or upon which the sign is to be affixed.
- (4) A scaled drawing of such sign indicating the dimensions, the materials to be used, the type of illumination, if any, and the method of construction and attachment.
- (5) A scaled colored copy of the proposed sign superimposed on the building or structure.
- (6) A scaled site plan indicating the location and position of such sign in relation to nearby buildings or structures or public streets and rights-of-way.

- (7) Fees. The applicant shall pay all applicable fees. The fee schedule is on file with the Department of Community Development. If a sign is erected before a permit is issued, the violator shall be assessed a double fee for the sign permit.
 - (8) Additional information as required by the Department of Community Development, the Plan Commission, or the Community Development Authority (where applicable).
- D. Procedure. Procedures for sign permits shall follow the procedures set forth in § 275-29.
- (1) Sign permit applications shall be filed with the permit application center and forwarded on to the Department of Community Development, which shall review the application for its completeness, accuracy, design integrity, material for construction. This determination and the permit shall be issued within five business days. If the application is incomplete or the sign application does not meet the requirements within the sign code, it may delay issuance of the sign permit or require that the application be forwarded to the Plan Commission or the Community Development Authority (where applicable) who shall approve or deny the application within 45 business days of receipt from the applicant. A sign permit shall be issued by the Department of Community Development. The permit shall become null and void if work authorized under the permit has not been completed within one year of the date of issuance.
 - (2) Architectural Review Committee. Under special circumstances, the Department of Community Development shall forward sign permit applications to the Architectural Review Committee to review the materials for construction and design integrity of selected proposed signage.
 - (3) Construction review. Staff may refer a sign permit request to Inspection Services for review of construction details or specifications prior to approval.
 - (4) Inspection. The sign owner shall call the Department of Community Development or designated member of staff for an electrical inspection (if applicable) upon completion of all permit requirements and installation.
 - (5) Appeal. An applicant may appeal a decision made by staff to the Plan Commission or the Community Development Authority (where applicable) for determination. An additional review fee as determined by the Director shall be required for any sign application that is forwarded to the Plan Commission or the Community Development Authority (where applicable) for review.
 - (6) Waiver. An applicant may request a waiver from the Plan Commission or Community Development Authority (where applicable) for the requirements set forth in this section. All sign waiver requests are subject to an application review fee as established by the Director.
- E. General provisions.
- (1) Existing signs. Signs lawfully existing at the time of the adoption or amendment of this chapter may be continued, although the use, size or location does not conform with the provisions of this chapter. However, it shall be deemed a nonconforming use or structure, and the provisions of Article VII of this chapter shall apply to specific nonconforming rights. By maintaining a sign in the established right-of-way of an adjoining street or highway, the owner does so at his own risk, and no damages will be awarded if the removal is required for public use or safety or right-of-way acquisition.
 - (2) Sign size. The size of a sign shall be in proportion and coordinate with the building and site on which it is located and shall adhere to the size requirements in this section.
 - (3) Measurement of sign area. In calculating the area of a sign to determine whether it meets the requirements of this chapter, DCD staff shall include the sign copy and any border or frame surrounding that copy. Supporting members of a sign shall be excluded from the area calculation. Area of irregularly shaped signs or signs containing two or more

detached elements shall be determined by the area of the smallest regular polygon that will encompass all elements of the sign. (See Figure VIII-10.)

Figure VIII-10
Examples of Measurement of Sign Area



- (4) Measurement of sign height. The height of the sign shall be computed as the distance from the base of the sign at the existing or new grade to the top of the highest attached component of the sign.
- (5) Location.
 - (a) All signs shall be constructed/erected on the business property.
 - (b) No part of the sign or sign base shall overhang onto an adjacent property or be located within the ultimate right-of-way.
 - (c) No sign shall be located within the vision clearance triangle.
 - (d) No sign shall identify or direct attention to a business, activity, or enterprise that is not located on the same premises as the sign. Off-premises signs are prohibited in the City of New Berlin, with the exception of official signs that benefit the City and are located on City-owned land, and signs located within the special commercial sign areas identified in § 275-61J.
 - (e) When required for safety, curbs, protective bumpers or planters shall be placed below signs to prevent damage from passing motor vehicles or pedestrians.
 - (f) Signs shall not flash or blink other than approved electronic message devices. Sirens, strobe lights and other illuminated devices shall not be used to draw attention to a sign or business.
- (6) Maintenance.
 - (a) The owner of any sign shall keep it in good maintenance and repair, which includes restoring, repainting to the same color, or replacement of a worn or damaged legally existing sign to its original condition. The owner shall also maintain the premises on which the sign is erected in a clean, sanitary, and inoffensive condition, free and clear of all obnoxious substances, rubbish, weeds, and grass.
 - (b) The owner of any sign shall be required to have all parts and supports of a sign properly painted as directed by DCD staff unless they are galvanized or otherwise treated to prevent rust and deterioration.
 - (c) The sign owner shall be responsible for the maintenance of the sign. If the sign ownership should transfer, the new owner shall be responsible for the maintenance of the sign.
 - (d) Temporary signs are allowed; however, once the tenant space is permitted by the City, the sign shall be removed from the property.

F. Construction standards.

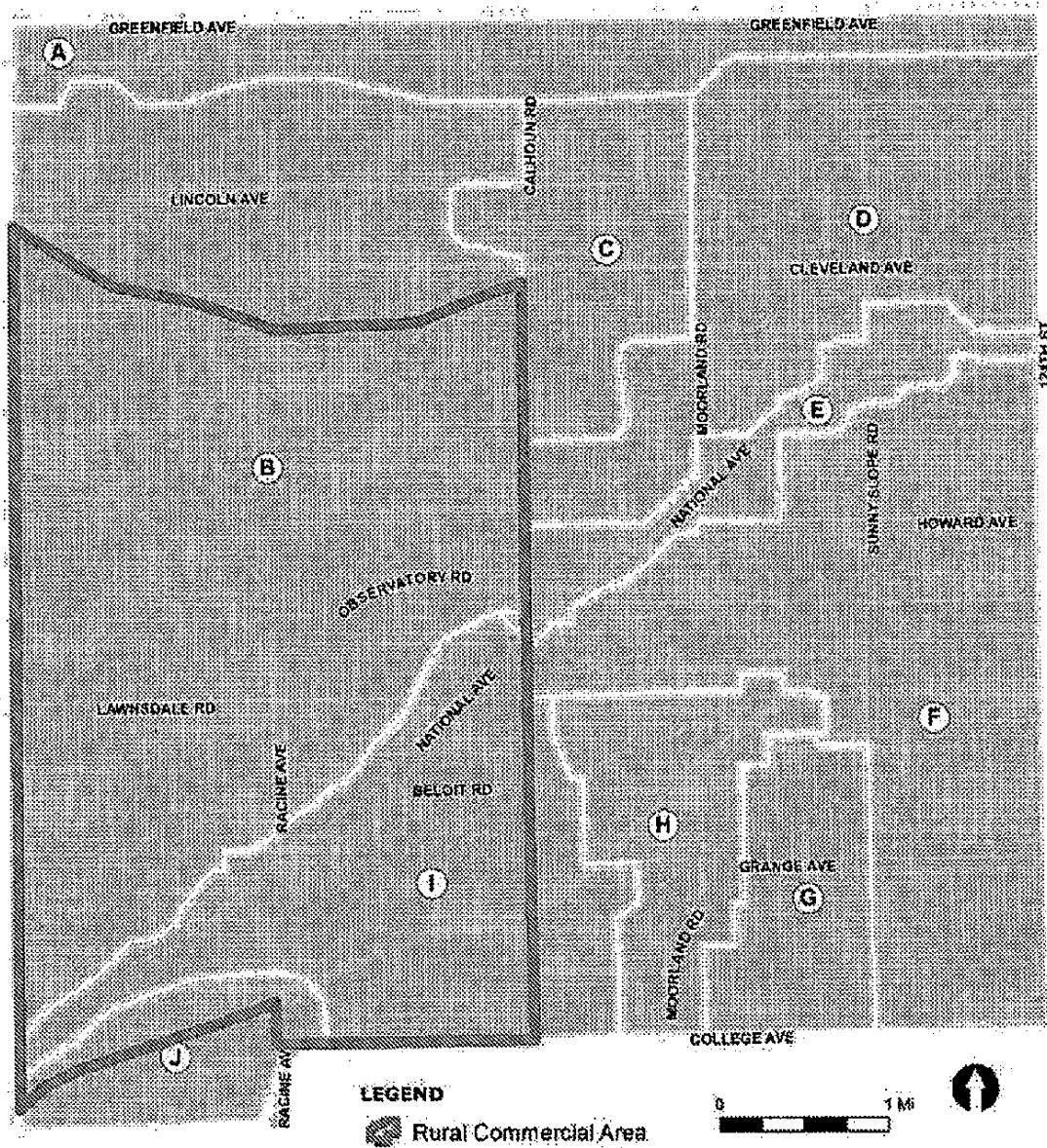
(1) General standards.

- (a) Signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs, signals or devices.
- (b) Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals or devices. Signs shall not be placed so as to obstruct or interfere with traffic visibility.
- (c) No person shall display upon any sign or other sign structure any obscene, indecent, or immoral matter.
- (d) No signs or any part thereof or sign anchors, braces, or guide rods shall be attached, fastened, or anchored to any fire escape, fire ladder, or standpipe, and no such sign or any part of any such sign or any anchor, brace, or guide rod shall be erected, put up, relocated, or maintained so as to hinder or prevent free ingress or egress through any door, doorway, window, or fire escape or so as to hinder or prevent the raising or placing of ladders against such building by the Fire Department of the City, as necessity therefore may require.

(2) Lighting.

- (a) No sign shall be lighted or flashing in such a way as to cause glare or impair driver visibility upon public ways or adjacent properties. If external illumination is approved by staff, the fixture shall be mounted on a permanent unmovable base and the neck soldered so as to prevent the fixtures from being tampered with or redirected.
- (b) All signs with electrical wiring shall require an electrical permit from the City Electrical Inspector.
- (c) Signs located within the Rural Commercial Area (See Figure ~~X~~ VIII-11) shall not include external neon tube lighting or internal illumination. The Rural Commercial Area is defined in the City of New Berlin Comprehensive Plan, Chapter 12. Please refer to that document for specific information.

Figure ~~X~~ VIII-11
Rural Commercial Area



- (3) Wind pressure and dead-load requirements. The applicant and installers shall ensure that all signs and other display structures shall be designed and constructed to withstand wind pressure of not less than 40 pounds per square foot of area and shall be constructed to receive dead loads as required by the Building Inspector pursuant to the City Building Code[1] or other ordinance.
[1] Editor's Note: See Ch. 80, Building Construction.
- (4) Supporting members or braces. The applicant and installer shall ensure that all signs shall be constructed of galvanized iron, properly treated wood, steel, copper, brass, or other noncorrosive incombustible material. The applicant and installer shall ensure that every means or device used for attaching any sign shall extend through the walls of the building if the safe and permanent support of such sign so requires and shall be securely anchored by wall plates and nuts to the inside of the walls. Small flat signs containing

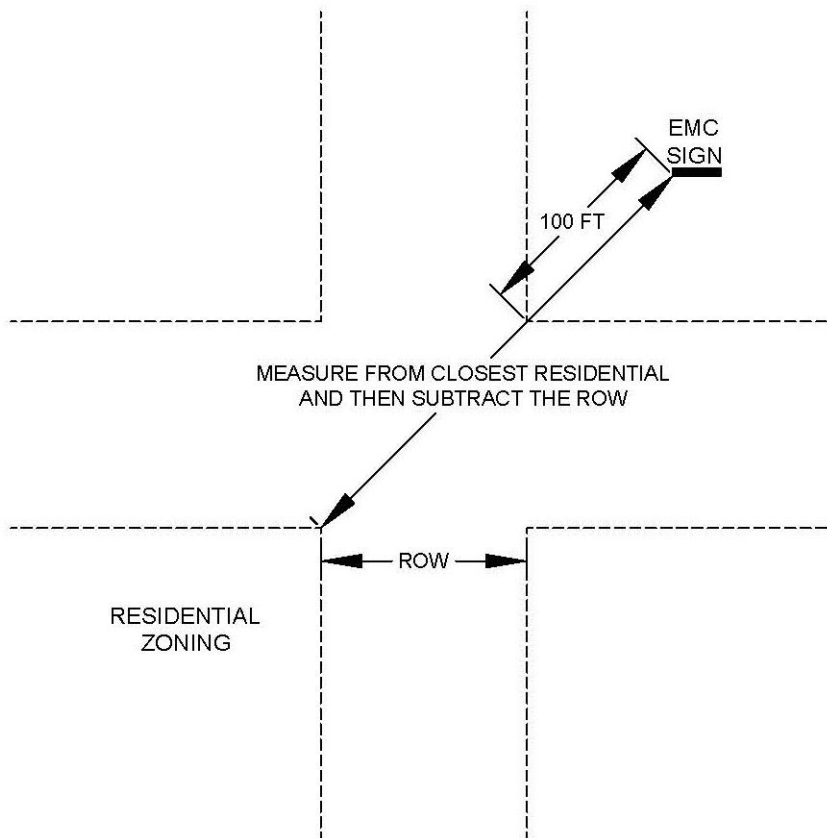
less than 10 square feet of area may be attached to a building by the use of lag bolts or other means.

- G. Signs permitted in all zoning districts without a permit. The following signs are permitted in all zoning districts without a permit, subject to the following and any other applicable regulations:
- (1) Yard signs. One yard sign may be allowed, not exceeding six square feet. The sign shall be placed on the property and no such signs shall be erected or placed within a public right-of-way, on light poles, utility poles, etc. No yard signs shall be placed off premises.
 - (2) Signs shall not be erected 30 days prior to the event, and signs shall be removed within 48 hours of the event.
- H. Signs permitted in residential zoning districts with a permit. Signs are permitted in any R-1, R-2, R-2E, R-3, R-4, R-4.5, R-5, R-6, Rd-1 or Rm-1 Zoning District, subject to the following regulations and other applicable standards in this chapter:
- (1) Temporary development signs. Allowed with an approved project. One sign at the entrance to the development is allowed, provided that the sign shall not exceed 32 square feet in area or eight feet in height. DCD staff shall specify the period of time the sign may remain, based on the size of the development.
 - (2) Residential monument signs. A permanent monument sign displaying the subdivision name may be placed at each entrance to the subdivision, not to exceed two signs per subdivision street frontage. Applicant shall submit an application for a sign permit including the following items:
 - (a) A site plan indicating the location of the sign.
 - (b) A color rendering of the proposed sign.
 - (c) Residential monument signs may, at the discretion of DCD staff, be placed within the public right-of-way, provided that such signs will not cause a hazard to traffic or adjoining property. A release and hold-harmless agreement including the following language shall be required:
 - [1] All residential monument sign placement, relocation and removal shall be at the sign owner's sole expense.
 - [2] The sign owner(s) agrees to remove the residential monument signs upon receiving 10 days' written notice from the City of New Berlin when the residential monument signs would impede construction, reconstruction or maintenance of the road right-of-way or interfere with vision of users of the roadway or otherwise interfere with traffic.
 - [3] City shall not be liable for any liens filed against the property (signs).
 - [4] The sign owner(s) further agrees to remove the residential monument sign(s) upon receiving 30 days, written notice from the City of New Berlin for any or no reason at all.
 - [5] All residential monument sign placement, replacement, relocation and removal shall be at the sign owner's sole expense. If the individual residential lots do not maintain the sign and it is in disrepair or becomes a hazard to public safety, the City shall have the authority to remove the sign.
 - [6] The residential homeowners' association shall be responsible for paying all maintenance of the signs and associated landscaping. Written agreements shall be on file with the City of New Berlin from the Developer and/or the homeowners' association as to the future maintenance and care for any proposed landscaping and structure/monument repairs and/or removal.

- [7] If the residential homeowners' association should become defunct, then the individual subdivision lots would be responsible for the maintenance of the sign and any landscaping.
 - [8] This document shall be construed as a permit only and not as an easement.
 - (3) Agricultural signs. Permanent or temporary signs may be allowed up to a total of 32 square feet. No individual sign shall be greater than 32 square feet or eight feet in height.
- I. Signs permitted in nonresidential zoning districts with a permit. Signs are permitted in B-1, B-2, B-3, B-5, O-1, O-2, O-3, M-1, M-2, M-3, Q-1, L-1, I-1, P-1, P-2 or PUD/SPO Zoning District, subject to the following regulations and other applicable standards in this chapter. Existing deed restrictions and covenants or design guidelines and standards with more restrictive requirements shall be enforced in conjunction with the sign section of this chapter (§ 275-61):
 - (1) Sign type and permitted sizes.
 - (a) Wall signs or building signs. Wall signs and building signs shall be placed against the exterior walls of buildings and shall not extend more than 12 inches outside of a building's wall surface; shall not exceed one square foot in area for every one linear foot of building face width on which they are mounted; and shall not exceed the height or project beyond the building.
 - (b) Awning and canopy signs. Awning and canopy signs affixed flat to the surface of a marquee or canopy are permitted in lieu of a wall sign, provided that the sign does not extend vertically or horizontally beyond the limits of such marquee, awning, or canopy. An awning or canopy may extend up to 12 feet beyond the building to which it is affixed but shall not extend into a required front yard, side yard, or rear yard, nor shall it extend closer than one foot to the vertical plane formed by the curbline in a shopping center. A name sign not exceeding two square feet in area located immediately in front of the entrance to an establishment may be suspended from an awning or canopy, provided that the name sign is at least eight feet above the sidewalk. The canopy sign shall be considered one of the two allowable signs, subject to one of the signs being a monument/ground sign.
 - (c) Monument signs.
 - [1] All new signs and/or replacement of existing signs located along arterials or major thoroughfares shall be placed on a monument base constructed of the same material and color or shall enhance the exterior architecture of the principal building. Arterials include Calhoun Road, Cleveland Avenue, Greenfield Avenue, Lincoln Avenue, Moorland Road, National Avenue, Howard Avenue, Beloit Road, Coffee Road, Lawnsdale Road, Janesville Road, Racine Avenue, College Avenue, Sunny Slope Road, 124th Street, Small Road, and Grange Avenue.
 - [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.
 - [3] Monument signs shall not exceed 32 square feet in face area per side. The face area includes all surface area of the signage box and sign face but excludes the surface area of the signage base described.
 - [4] Monument signs may be positioned either parallel or perpendicular to the public right-of-way.

- [5] Address plaque or numbers shall be required on the monument base or incorporated onto the sign face.
- [6] The applicant may request a waiver from the Plan Commission for the requirement for a monument sign. If a waiver is granted, the monument sign may not be substituted for an additional wall sign.
- (d) Ground signs. Ground signs shall not exceed eight feet in height and shall be set back entirely outside the ultimate right-of-way and shall not exceed 32 square feet in area on one side.
- (e) Pole signs. All pole signs are prohibited.
- (f) Roof signs. Roof signs are prohibited.
- (g) Electronic message centers (EMCs) and changeable message signs. EMCs or changeable message signs may be erected as part of ground and monument signs and shall meet the requirements for those sign types.
 - [1] The sign area for EMCs or changeable message signs shall be included in the total permitted sign area allowed and shall not exceed 50% of the total sign area. The maximum size for an EMC or changeable message sign is 24 square feet.
 - [2] The changeable message portion of the sign must occupy a secondary position to the name of the business, development and/or tenant.
 - [3] An EMC may display static images only. No blinking, flashing, moving, scrolling or animated messages permitted. A message/image on an EMC shall not flash, scroll, twirl or otherwise move when changing.
 - [4] Text or images, or any portions thereof, on an EMC may change up to, but not more frequently than, once every eight seconds.
 - [5] Illumination. The maximum illumination of any electronic message or manual changeable message sign shall not exceed 15 footcandles when measured with a light meter held perpendicular to the sign at a distance of 24 inches.
 - [6] Each sign shall be placed in such a manner so as to not interfere with, confuse or present any hazard to traffic or pedestrians. This determination is in the reasonable discretion of the Plan Commission.
 - [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.

Figure VIII-12
EMC Distance Measurement



- [8] Audio speakers and all forms of pyrotechnics are prohibited.
- [9] EMCs are not allowed within the Rural Commercial Area. ~~See § 275-61F(2)(c); and~~ City of New Berlin Comprehensive Plan, Chapter 12; ~~and~~ **Figure X.**

- (h) Off-premises signs. Off-premises signs are prohibited, except for where otherwise noted in this section.
- (i) Monument signs in the M-3 District shall utilize the required bronze metal address plaque delineated in the sketch below:

Figure VIII-113
Bronze Metal Address Plaque Example



- (2) Number of signs.
- (a) Only two signs may be permitted per business. Owners may elect for them to be any combination of wall signs, ground signs, or monument signs, not exceeding a total of two, and approved by DCD staff. Numbers of permitted signs by type are listed in Table 275-61-1.

Table 275-61-1 Sign Combinations			
	Maximum Number of Wall Signs	Monument Sign	Maximum Number of Total Signs
Citywide			
1 right-of-way frontage	1	Required	2
Multiple right-of-way frontages and building over 10,000 square feet	2	Required	3
Business/Industrial Parks			
1 right-of-way frontage	1	Optional	2
Multiple right-of-way frontages and building over 10,000 square feet	2	Optional	3

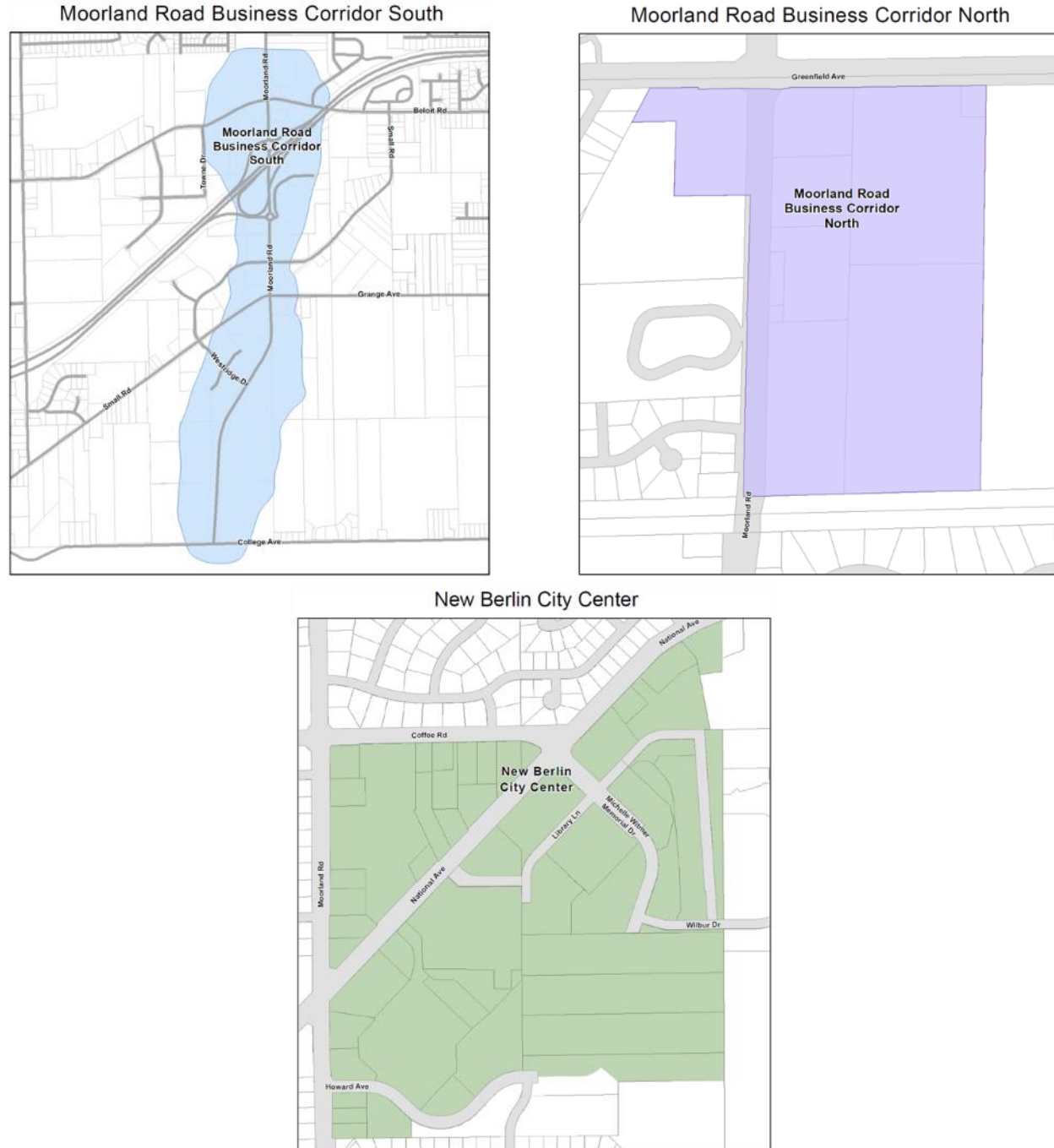
- (b) All multitenant buildings may provide a tenant directory as part of the master identification monument sign as defined below in § 275-61(3)(b).
- (c) Separate wall canopy or fascia signs may be allowed for each tenant in a retail, shopping, industrial or commercial center, subject to the approval of an overall coordinated sign plan by the DCD staff for the building. The size of wall signs approved in this manner shall be figured using the width of the bay occupied by each tenant.
- (d) Price signs for gasoline or diesel fuel sales as required by other governmental regulatory entities shall not be subject to limitations on numbers of signs; however, such price signs shall not exceed an additional 20 square feet in area and shall be incorporated into a permanent sign.
- (e) Directional signs six square feet in area or less and with a maximum height of four feet are allowed but shall require DCD staff approval. These do not count towards the total sign count for the business.
- (f) ATM. ATM network signs shall require a sign permit.

- (3) Overall coordinated sign plan.
 - (a) The overall coordinated sign plan shall be developed and submitted to DCD staff for any building that has more than one tenant in all zoning districts.
 - (b) Master identification monument sign. The overall coordinated sign plan shall permit multitenant buildings to have one freestanding monument sign.
 - [1] Master identification monument signs shall not exceed 32 square feet in face area. The face area includes all surface area of the signage box and sign face but excludes the surface area of the signage base described.
 - [2] The height of the master identification monument sign shall be limited to eight feet.
 - [3] The sign base shall be a minimum of 18 inches in height. The monument sign shall not exceed eight feet in height unless a waiver is approved by the Plan Commission or Community Development Authority and shall be set back entirely outside the ultimate right-of-way and vision triangle.
 - [4] Monument signs or master identification monument signs may be positioned either parallel or perpendicular to the public right-of-way.
 - [5] Address plaque or numbers shall be required on the monument base or face of the sign.
 - (c) Wall signs. Individual businesses within the development are allowed a wall sign meeting the provisions in § 275-61I(1) and (2), in addition to the master identification monument sign.

J. Special commercial sign areas.

- (1) Purpose. The Plan Commission and Common Council have determined that there are certain commercial areas in the City that warrant the designation as special commercial sign areas to permit additional and/or larger signage because:
 - (a) Such areas are characterized by intense commercial activity and a high concentration of retail, commercial and business uses along major streets;
 - (b) The uses to which such signs pertain have long street frontages and/or have a significant setback from the right-of-way;
 - (c) Major roads in these areas have wide rights-of-way, divided highways and a higher speed of traffic; and
 - (d) Sign locations are buffered from residential areas.
- (2) Designation. The City hereby designates special commercial sign districts for qualifying businesses within the areas described below:
 - (a) Moorland Road Business Corridor. The Moorland Road Business Corridor is defined as nonresidential properties abutting Moorland Road north of the railroad tracks to Greenfield Avenue and properties abutting both sides of Moorland Road south of the Moorland Commons and Moorland Reserve developments to College Avenue. This area also includes properties abutting Beloit Road between Towne Drive and I-43. Any property that has right-of-way adjacent to the areas described above or has an access point connecting the development to Moorland Road are considered to be located within the Moorland Road Business Corridor. See the map below.
 - (b) City Center. The City Center is defined as the area identified in the Comprehensive Plan as City Center Mixed Use Commercial. See the map below.

Figure VIII-114
Special Commercial Sign Areas



- (3) Moorland Road Business Corridor. The areas identified within the Moorland Road Business Corridor are subject to the sign standards listed below.
- (a) Number of signs. Only three signs may be permitted per business. Per § 275-611(1)(c)[1] monument signs are required along arterials.
 - (b) Wall signage.
 - [1] There shall be a maximum number of two wall signs permitted per business.

- [2] Wall signs and building signs shall be placed against the exterior walls of buildings and shall not extend more than 12 inches outside of a building's wall surface; shall not exceed 1.25 square foot in area for every one linear foot of building face width on which they are mounted; and shall not exceed the height or project beyond the building.
 - [3] The maximum area of a wall sign may be increased by 25% if the building elevation where the sign is located faces the right-of-way and is set back by more than 150 feet from the public right-of-way.
 - (c) Monument signs.
 - [1] Monument signs shall adhere to the stipulations outlined in § 275-611(1)(c) and (3)(b), with exception to the items listed below.
 - [2] Each parcel may have a maximum of one monument sign per street frontage. Monument sign(s) may be placed anywhere on the property that is outside of the ultimate right-of-way, vision triangle and circulation areas, but is limited to a maximum of one monument sign per street frontage.
 - [3] Where at least one access point is commonly shared within a development and cross access is provided, off-premises monument and directory signage for the businesses located within the development is permitted. Signage shall be integrated into an overall coordinated sign plan for the entire development. Coordinated sign plan shall be reviewed and approved by DCD.
 - [4] The total monument sign height shall not exceed 13 feet.
 - [5] Maximum size of the monument sign face:
 - [a] The area for a single tenant monument sign shall not exceed 75 square feet per side.
 - [b] The area for a multi-tenant master identification monument sign that incorporates tenant names shall not exceed 100 square feet per side.
 - [c] Square footage calculations do not include any architectural elements of the sign.
 - [6] EMCs shall adhere to the regulations outlined in § 275-611(1)(g).
- (4) City Center. The areas identified within the City Center are subject to the standards listed below.
 - (a) Number of signs. Only three signs may be permitted per business. Owners may elect for them to be any combination of wall signs or monument signs, subject to the requirements listed below. Per § 275-611(1)(c)[1], monument signs are required along arterials.
 - (b) Wall signage.
 - [1] There shall be a maximum number of two wall signs permitted per business.
 - [2] Wall signs and building signs shall be placed against the exterior walls of buildings and shall not extend more than 12 inches outside of a building's wall surface; shall not exceed 1.25 square foot in area for every one linear foot of building face width on which they are mounted; and shall not exceed the height or project beyond the building.
 - [3] The maximum area of a wall sign may be increased by 25% if the building elevation where the sign is located faces the right-of-way and is set back by more than 150 feet from the public right-of-way.

- (c) Monument signs.
 - [1] Monument signs shall adhere to the stipulations outlined in § 275-61I(1)(c) and (3)(b), with exception to the items listed below.
 - [2] Each parcel may have a maximum of one monument sign per street frontage. Monument sign(s) may be placed anywhere on the property that is outside of the ultimate right-of-way, vision triangle and circulation areas, but is limited to a maximum of one monument sign per street frontage.
 - [3] Where at least one access point is commonly shared within a development and cross access is provided, off-premises monument and directory signage for the businesses located within the development is permitted. Signage shall be integrated into an overall coordinated sign plan for the entire development. Coordinated sign plan shall be reviewed and approved by DCD.
 - [4] Multi-tenant monument signs shall have at minimum: a base, a midsection including field of text and a top element. The top element/feature (typically the anchor tenant's name and/or plaza name) shall not be included within the square footage calculations, but shall be architecturally integrated into the overall sign.
 - [5] The total monument sign height shall not exceed 13 feet.
 - [6] Maximum size of the monument sign face:
 - [a] The area for a single tenant monument sign shall not exceed 32 square feet per side.
 - [b] The area for a multi-tenant master identification monument sign that incorporates tenant names shall not exceed 36 square feet per side.
 - [c] Square footage calculations do not include any architectural elements of the sign.
 - [7] EMCs shall adhere to the regulations outlined in § 275-61I(1)(g).
 - [8] Public entry signage.
 - [a] The face area for public entry signs shall not exceed 48 square feet.
 - [b] In order to maintain a cohesive design throughout City Center, the design of the public entry signs shall be coordinated with and approved by the Department of Community Development.
 - [c] Public entry signs shall be constructed of durable and long-lasting materials, such as metal, stone, brick, masonry or other durable materials.
 - [d] Public entry way signage may be permitted within the City right-of-way upon review and approval by the Director.

K. Portable/temporary signs.

- (1) Department of Community Development staff may permit the temporary use of a portable sign, such as banners, pennants, and/or balloons, for display purposes in any district, provided that the portable sign meets the following criteria below. The permit application process in § 275-61C shall be required for portable signs. All temporary banners installed without a permit shall be assessed a double fee. These types of sign permits shall only be charged the base sign fee plus the filing fee.
 - (a) Portable/temporary signs shall be located outside any public right-of-way; will not be located closer than 10 feet to an adjacent property; will not be over 32 square

feet in area; will not extend over or onto any street, alley, sidewalk, or other public thoroughfare without the approval of the Director; and will not cause a hazard to traffic or adjoining properties.

- (b) Portable/temporary sign permits shall expire after 45 days or a date stipulated on the sign permit. No business shall be issued more than four portable sign permits in any given year (from January 1 to December 31).
 - (c) Portable signs shall not be illuminated.
 - (d) Portable sandwich board signs shall be permitted without a sign permit, provided they are placed directly in front of the business storefront and they are only displayed during business hours of operation. One portable sandwich board sign is allowed per business. Portable sandwich board signs shall not exceed four feet in height and two feet in width.
- (2) The Department of Community Development staff may permit the temporary placement of directional signs by commercial establishments in construction zones for the purpose of identifying or showing the alternative access location of businesses affected by the construction. Placement of signs shall be at a point of barricade or detour. Signage shall not be placed in the travel portion of the road, block vision, or operation of construction vehicles. The business shall coordinate with the contractor for specific placement of the signage. The temporary signage shall be removed following completion of the construction project. This type of signage is subject to the following regulations:
- (a) Single businesses affected by the construction are permitted to have one temporary sign at the point of barricade or detour. The signage is not to exceed six square feet in area.
 - (b) A development of four or more businesses is permitted to place one temporary sign at the point of barricade or detour for all businesses within the development affected by the construction. Signage for four or more businesses is not to exceed 32 square feet per side in area.
 - (c) The Director or his designee may remove signs that cause confusion, present a safety hazard or are located within the right-of-way.
 - (d) The Director may order sign removal if the sign is considered a safety hazard or impedes the progress of a construction project.
 - (e) Signage may be removed at the discretion of the construction manager during individual phases of the construction project.
- (3) Portable trailer signs are prohibited. Construction trailer signs shall require a sign permit and shall not exceed 32 square feet.

L. Enforcement.

- (1) Order to remove signs. No sign shall advertise a business that is in violation of this chapter or for which no zoning, occupancy and/or building permit has been issued. If the Director or his designee finds that any sign or other display structure regulated herein has been constructed or erected or is being maintained in violation of this chapter, the sign will be removed by the Director or his designee. Any sign located in a City of New Berlin right-of-way will be removed immediately.
 - (a) Unsafe or hazardous signs. Any sign which is hereinafter found to be unsafe or insecure, or is a menace to the public, or by reason of its location creates a traffic hazard, or is dangerous to persons and property, as determined by the Director, his designee, the City Police Department or the Safety Commission, shall be removed, except for those on private property.
 - (b) Abandoned signs. Any sign which is dilapidated or out of repair shall be removed by the property owner.

- (c) Maintenance. If the sign owner violates the maintenance requirements of this chapter, the sign shall be removed by the property owner.
- (2) Compliance. A business or property that has signage that does not meet the requirements of the current sign code shall be required to bring all signage into compliance according to Article VII of this chapter.
- (3) Penalty.
 - (a) If a sign is displayed before a permit is issued, the violator shall pay twice the normal amount for the sign permit. If the sign owner violates the maintenance requirements as set forth in this chapter, the owner must pay a fee equal to the rate paid for the sign permit.
 - (b) Any person who violates any provision of this section or any order, rule, regulation or determination regarding signs shall be subject to the penalties prescribed in Article X of this chapter.

§ 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.

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 §275-65L.
- (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 flood-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 protection 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 compliant 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^[4] shall submit the financial assurance required by § 275-65.2A by August 1, 2002.~~
- ~~^[4] 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 S 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 55133CV001G, 55133CV002G, and 55133CV003G, 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 existing 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 area 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.~~

~~S275-65.28 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 severe 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 performed. 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.

BREW PUB

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, or 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 Iguanidae, 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 severe 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 proximity 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 expressed 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.

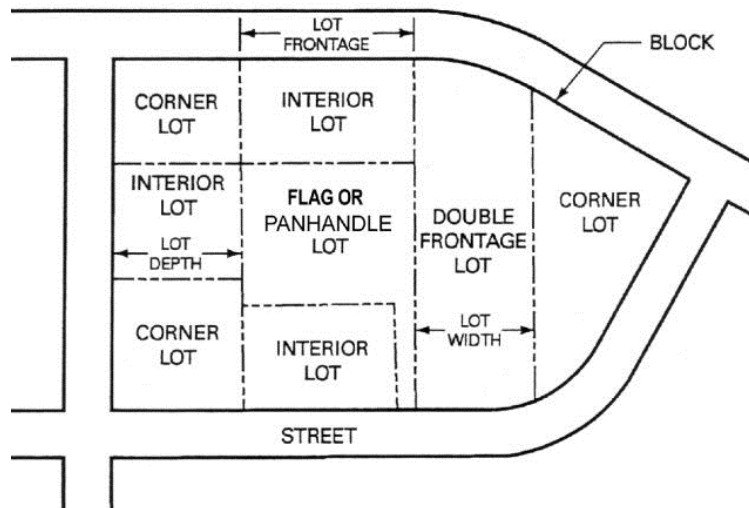
LOT FRONTAGE

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.

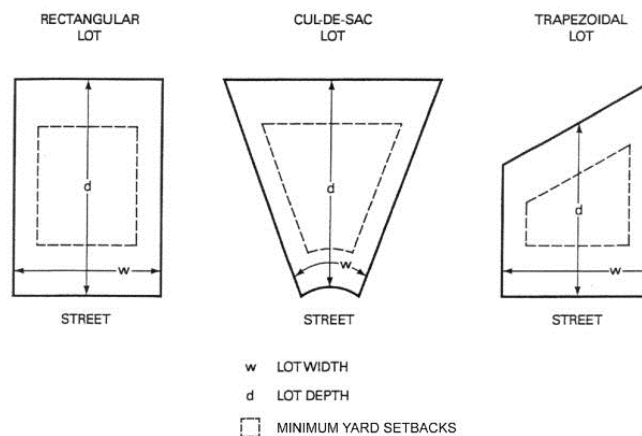
LOT OF RECORD

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.

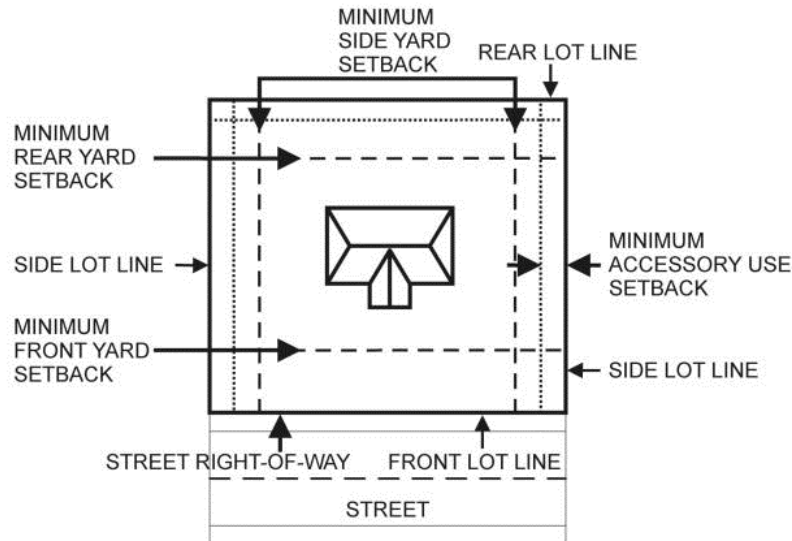
SETBACK, REAR ~~YARD~~

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.

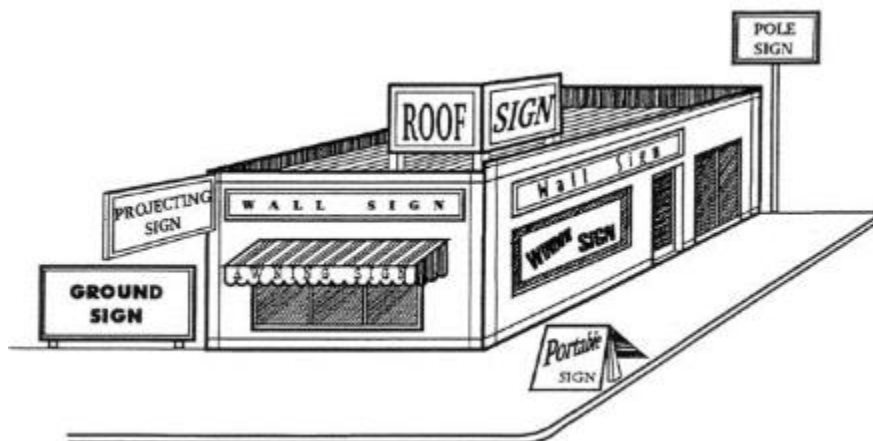
SIGN, WALL

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 weeding, 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.

ORDINANCE NO. 2668**ORDINANCE TO AMEND CHAPTER 275 (ZONING) OF THE
MUNICIPAL CODE OF THE CITY OF NEW BERLIN**

The Common Council of the City of New Berlin do ordain as follows:

SECTION I

The Table of Contents for Chapter 275 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

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

Enforcement and Penalties

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

ARTICLE X

Definitions

- § 275-70. Terms defined.

SECTION II

Section 275-13.1A(1) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (1) Base zoning districts. For the purpose of this chapter, the City of New Berlin is hereby divided into the following 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 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 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

SECTION III

Section 275-17 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- 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. 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.

SECTION IV

Section 275-18 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- 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.

SECTION V

Section 275-20A of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- 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.

SECTION VI

Table 275-32-1 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

Table 275-32-1			
Uses	Zoning Districts		Additional Regulations Refer to
	A-1	A-2	
Agricultural Uses			
Agribusiness	P	P	§ <u>275-41</u> and § <u>275-70</u>
Artisan farming	P	P	§ <u>275-70</u>
Farm buildings, general	P	P	§ <u>275-41A(1)</u>
Keeping and raising of animals	P	P	§ <u>275-41A(2)</u>
Paddocks	P	P	§ <u>275-41A(2)</u>
Raising of crops	P	P	§ <u>275-37C(2)(e)</u>
Residential Uses	P	P	
Single-family detached dwellings	P	P	
Worker housing	C	*	
Commercial Uses			
Bed-and-breakfast establishments	P	P	§ <u>275-41C(4)</u>
Car wash establishment	*	*	§ <u>275-41C(20)</u>
Commercial Sports Complex	*	*	§ <u>275-36D(5)</u>
Mobile tower facilities	P/A	P/A	§ <u>275-41C(16)</u>
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	§ <u>275-70</u>

Table 275-32-1			
Uses	Zoning Districts		Additional Regulations Refer to
	A-1	A-2	
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	§ <u>275-57</u>
Silviculture	P	P	§ <u>275-54</u> and § <u>275-54.1</u>
Any other use the Plan Commission finds will be similar in nature, operation and function to the uses allowed within the district			§ <u>275-32C(8)</u>

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

SECTION VII

Table 275-33-1 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

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	*	*	§ <u>275-41A(1)</u>
Keeping and raising of animals	A	A	*	*	*	*	*	*	*	*	§ <u>275-41A(2)</u>
Keeping and raising of chickens for personal use	A	A	A	A	A	A	A	A	*	*	§ <u>275-41A(2)(g)</u>
Raising of crops/retail sales of locally grown crops	A	A	A	A	A	A	A	A	A	A	
Residential Uses											
Boarding or rooming houses	*	*	C	C	*	*	*	*	*	*	
Conservation subdivisions	P	P						P			§ <u>275-41B(3)</u> through <u>(5)</u>
Conventional subdivisions	C	C	P	P	P	P	P	P	P	P	§ <u>275-41B(3)</u> through <u>(7)</u>
Elderly housing	*	*	*	*	*	*	*	*	*	C	§ <u>275-41B(1)</u>
Multifamily dwellings	*	*	*	*	*	*	*	*	*	P	
Single-family detached dwellings	P	P	P	P	P	P	P	P	P	C	§ <u>275-41B(2)</u>

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	
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	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			
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

SECTION VIII

Section 275-33D(1) through Section 275-33D(20) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (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 setback shall be 30 feet, and the minimum rear setback shall be 35 feet.
 - (b) Where the lot fronts a street with an open drainage ditch, the minimum front setback shall be 40 feet, and the minimum rear 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 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 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.

SECTION IX

Section 275-33E(1)(d) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- 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 § 275-42B.

SECTION X

Table 275-34-1 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

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	§ <u>275-41C(2)</u>
Automotive rental	*	*	P	*	
Automotive sales	*	*	P	*	
Automotive service	P	P	P	*	§ <u>275-41C(3)</u>
Banquet halls	P	P	P	*	
Bars and taverns	P	P	P	P	
Breweries	P	P	C	*	§ <u>275-41C(12)(d)</u>
Brewpubs	P	P	C	*	§ <u>275-41C(12)(c)</u>
Car wash establishment	P	P	P	*	§ <u>275-41C(20)</u>
Commercial Sports Complex	P	*	*	*	§ <u>275-36D(5)</u>
Contracting and construction sales services	C	C	P	P	
Contractor bulk sales	*	*	P	P	
Convenient cash businesses	P	*	*	*	§ <u>275-41C(19)</u>
Cosmetic tattoo establishments/permanent cosmetics	P	P	P	P	§ <u>275-41C(17)</u>
Department stores	P	C	*	*	§ <u>275-41C(5)</u>
Farm equipment sales and service	*	*	P	P	
Funeral services	P	P	*	*	§ <u>275-41C(7)</u>
Greenhouses	P	P	P	P	
Health and fitness studios	P	P	C	*	
Hotels and motels	C	*	*	*	§ <u>275-41C(8)</u>
Mobile tower facilities	A/P/C	A/P/C	A/P/C	A/P/C	§ <u>275-41C(16)</u>

Table 275-34-1						
Uses		Zoning Districts				Additional Regulations Refer to
		B-1	B-2	B-3	B-5	
	Outdoor displays and sales	A	A	A	A	§ <u>275-41C(9)</u>
	Outdoor storage	*	*	A	A	§ <u>275-41C(10)</u>
	Personal services	P	P	P	P	§ <u>275-41C(11)</u>
	Pet day-care/boarding facilities	C	C	P	P	
	Public Signs	P	P	P	P	§ <u>275-61A(3)</u>
	Restaurants	P	P	P	P	§ <u>275-41C(12)</u>
	Retail commercial uses	P	P	P	P	
	Self-storage facilities	*	*	C	C	§ <u>275-41C(14)</u>
	Service commercial uses	P	P	P	P	§ <u>275-41C(15)</u>
	Shopping centers	P	C	C	C	
	Theaters	P	P	*	*	
	Veterinary clinics	P	P	P	P	
	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	§ <u>275-41D(1)</u>
	Medical and dental offices	P	P	C	C	
Manufacturing/Industrial Uses						
	Aboveground/underground storage tanks	P	P	P	P	§ <u>275-41I</u>
	Freight services	*	*	*	*	
	Industrial sales	*	*	C	*	
	Warehouses	*	*	C	*	
Institutional/Public/Semipublic Uses						
	Bus stations	C	*	*	*	
	Churches (neighborhood)	P	P	P	P	§ <u>275-70</u>
	Churches (community)	C	C	C	C	§ <u>275-70</u>
	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	§ <u>275-41H(1)</u>
	Natural resource conservation and preservation uses	P	P	P	P	
	Off-street parking and loading areas	A	A	A	A	§ <u>275-57</u>
	Park-and-ride lots	P	P	P	P	
	Residential quarters	*	A	A	A	§ <u>275-42G(1)(a)</u>
	Silviculture	P	P	P	P	§ <u>275-54</u> and § <u>275-54.1</u>
	Any other use the Plan Commission finds will be similar in nature,					§ <u>275-34C(1)</u>

Table 275-34-1						
Uses		Zoning Districts				Additional Regulations Refer to
		B-1	B-2	B-3	B-5	
	operation and function to the uses allowed within the district					

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

SECTION XI

Section 275-34D(1) - Section 275-34D(2) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (1) The Plan Commission may waive side and rear setback requirements if adjacent developments are designed as a unified project.
- (2) The side setback in the B-2 and B-3 Districts applies to structures on lots of 100 feet or more in width. The side setback can be reduced to 10 feet for structures on existing lots with a width less than 100 feet.

SECTION XII

Table 275-35-1 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

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)
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	

Table 275-35-1

Uses	Zoning Districts						Additional Regulations Refer to
	O-1	O-2	O-3	M-1	M-2	M-3	
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)
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 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	

Table 275-35-1								
Uses		Zoning Districts						Additional Regulations Refer to
		O-1	O-2	O-3	M-1	M-2	M-3	
	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

SECTION XIII

Table 275-36-1 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

Table 275-36-1					
Uses		Zoning Districts			Additional Regulations Refer to
		I-1	P-1	P-2	
Residential Uses					
	Community living arrangements	P	*	*	§ <u>275-41G(1)</u>
	Dormitories	A	*	*	
Commercial Uses					
	Amphitheaters	*	C	C	
	Aquariums	*	C	*	
	Auditoriums	P	C	*	
	Banquet halls	*	C	*	
	Bowling alley	*	C	*	
	Commercial Sports Complex	*	P	P	§ <u>275-36D(5)</u>
	Exhibition halls	*	C	*	
	Fairgrounds	*	C	*	
	Mobile tower facilities	P/C	P/C	P/C	§ <u>275-41C(16)</u>

Table 275-36-1					
Uses		Zoning Districts			Additional Regulations Refer to
		I-1	P-1	P-2	
	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 centers	P	*	*	
	Educational facilities	P	C	*	§ 275-41G(2)
	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	*	
	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

Table 275-36-1					
Uses		Zoning Districts			Additional Regulations Refer to
		I-1	P-1	P-2	
Temporary uses/event sales and display		T	T	P	§ <u>275-43</u>

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

SECTION XIV

Table 275-37-1 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

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	
Residential Uses							
	Single-family detached dwellings	*	*	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	

Table 275-37-1						
Uses		Zoning Districts				
		Q-1	L-1	C-1	C-2	C-3
Landfill		*	C	*	*	*
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						
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	*	*	*
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
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						

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

SECTION XV

Section 275-39F(1)(c) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (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 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 to the front setbacks for the side on corner, 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%

SECTION XVI

Table 275-41A of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

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

Table 275-41A			
Category	Minimum Lot Size (acres)	Number per acre	Type of Animal
Rabbits	1	20	Over 4 months of age
Residential chickens	§ <u>275-41A(2)(g)</u>	§ <u>275-41A(2)(g)</u>	
NOTE: See § <u>275-41A(2)(f)</u> for calculating animal combinations.			

SECTION XVII

Section 275-41A(2)(c) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (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.

SECTION XVIII

Section 275-41B(8) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (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.

SECTION XIX

Section 275-41C(2)(b) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (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 and rear setbacks.

SECTION XX

Section 275-41C(16)(c) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (c) Definitions. Refer to § 275-70.

SECTION XXI

Section 275-41C(20) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (20) Car wash establishment.
 - (a) Car wash 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.

SECTION XXII

Section 275-42A through Section 275-42F of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- 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 setback shall be regulated as follows:
 - [1] The accessory use setback shall be kept free from accumulation of debris or refuse.
 - [2] The accessory 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 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 the front yard:

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 side yard:

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:

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 side 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)	–	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.

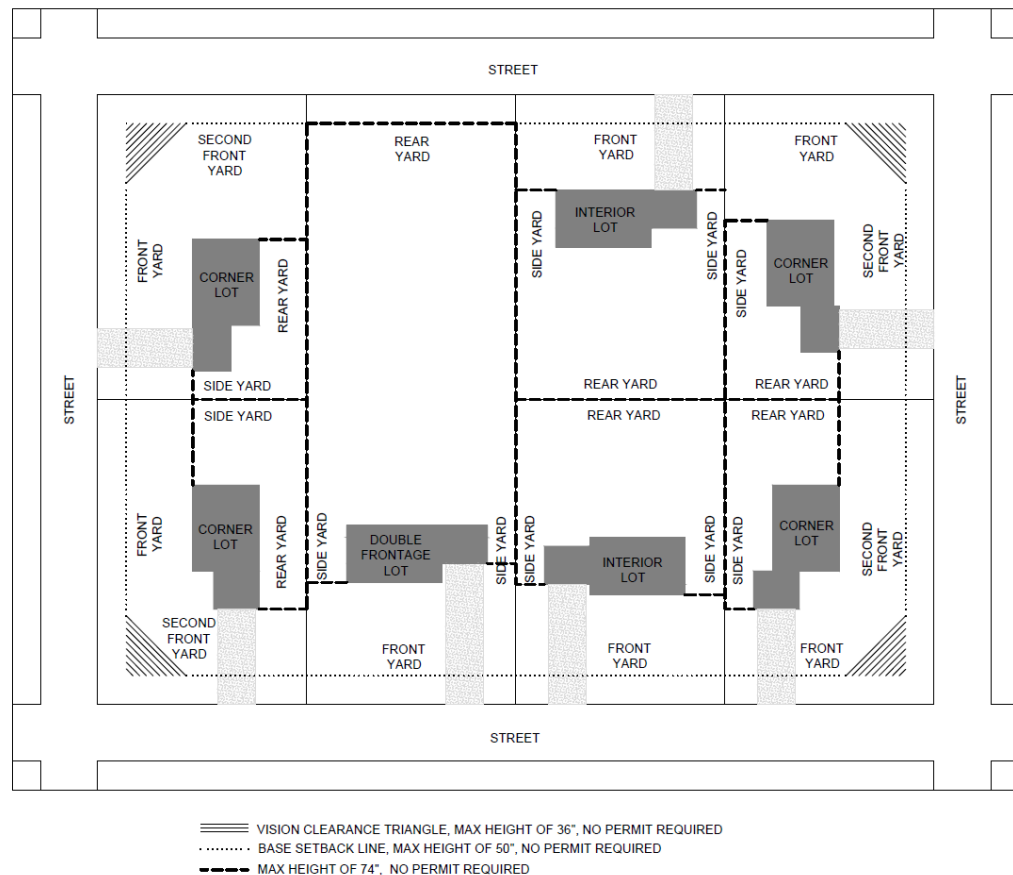
SECTION XXIII

Section 275-42G(3) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (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) 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.

**Figure V – 1
Fence Location**



- (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 fences 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 fences exceeding 74 inches in height, provided that all other requirements for fences are met. Plan Commission review and approval is required.
- (e) Exception.
 - [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.

SECTION XXIV

Section 275-42G(5)(c) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (c) Definitions. Refer to §275-70.

SECTION XXV

Section 275-42G(9) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

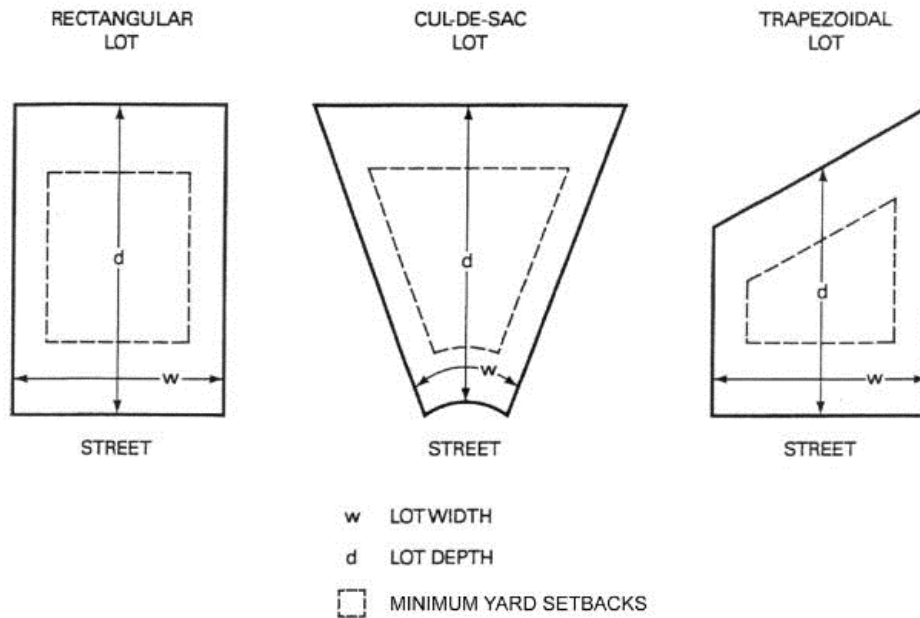
- (9) Donation boxes. Donation boxes shall be monitored on at least a biweekly basis, or within five business days of a request by the Code Compliance Specialist, so that the contents are collected and that graffiti which becomes a blight is precluded. There shall be no accumulation of any items outside 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.

SECTION XXVI

Section 275-44C through Section 275-44E of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

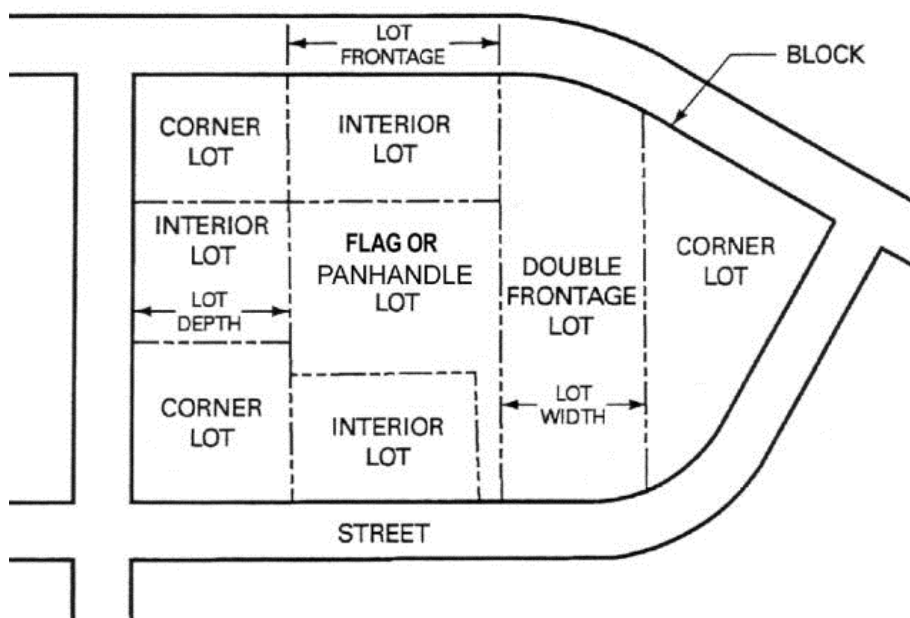
C. Dimensions.

Figure VI-1
Lot Width and Lot Depth



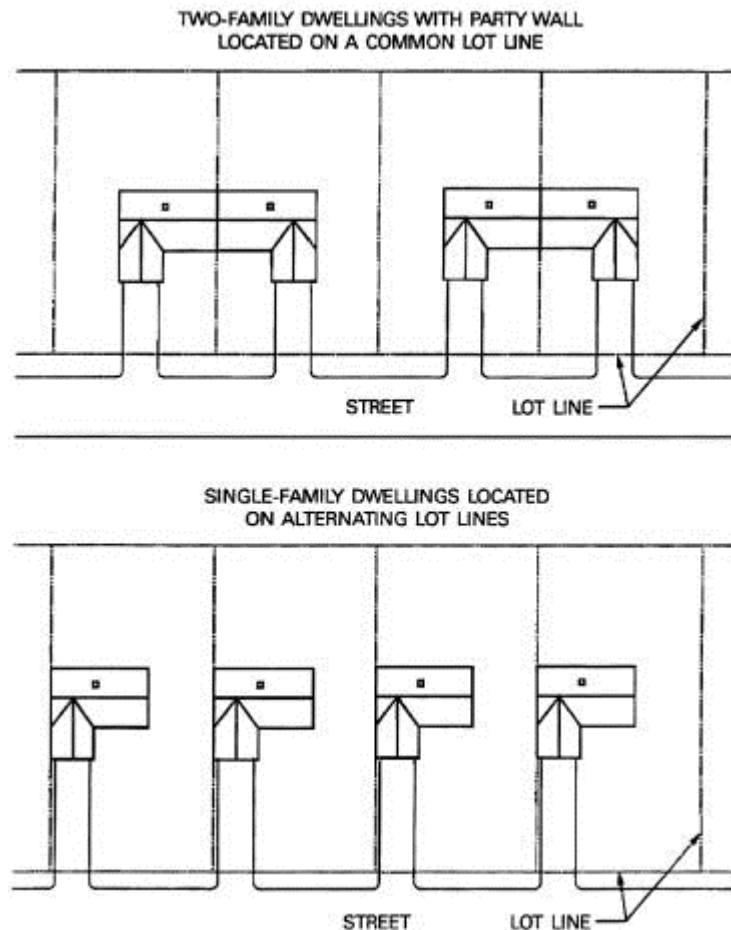
D. Lot Types.

Figure VI-2
Lot Types



- E. Zero-lot-line residential development. Zero-lot-line residential developments (see Figure VI-2) may be permitted in the Rd-1 and Rm-1 Districts where the following provisions are met:
- (1) Lot area and width. Lots shall have a minimum area of 6,200 square feet and shall not be less than 50 feet in width with one dwelling unit per lot.
 - (2) Setback and yards.
 - (a) There shall be a minimum setback of 50 feet from the right-of-way of all public streets or from private drives. There shall be a side yard requirement on one side of a building of not less than 15 feet. The dwelling unit shall be placed on one side property line with a zero-foot side yard. The minimum distance between buildings shall be 30 feet. There shall be a rear yard of not less than 15 feet for all lots unless the Plan Commission permits the rear lot line to be a second zero lot line.
 - (b) All buildings shall be a minimum of 50 feet from an adjacent single-family lot line in a single-family residential district.
 - (3) Other requirements.
 - (a) Buildings constructed shall be of the row (party wall) dwelling type and shall consist of a row of attached dwelling units.
 - (b) Each dwelling unit shall have separate utility connections. Attached dwellings may have one sanitary and stormwater lateral run and two separate water meters.

Figure VI-3
Examples of Zero-Lot-Line Residential Development

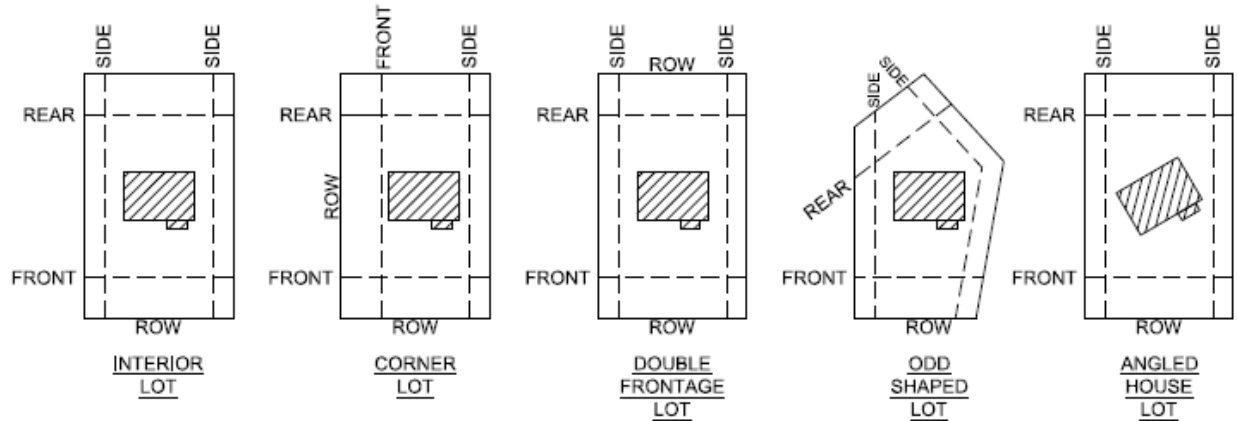


SECTION XXVII

Section 275-46 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

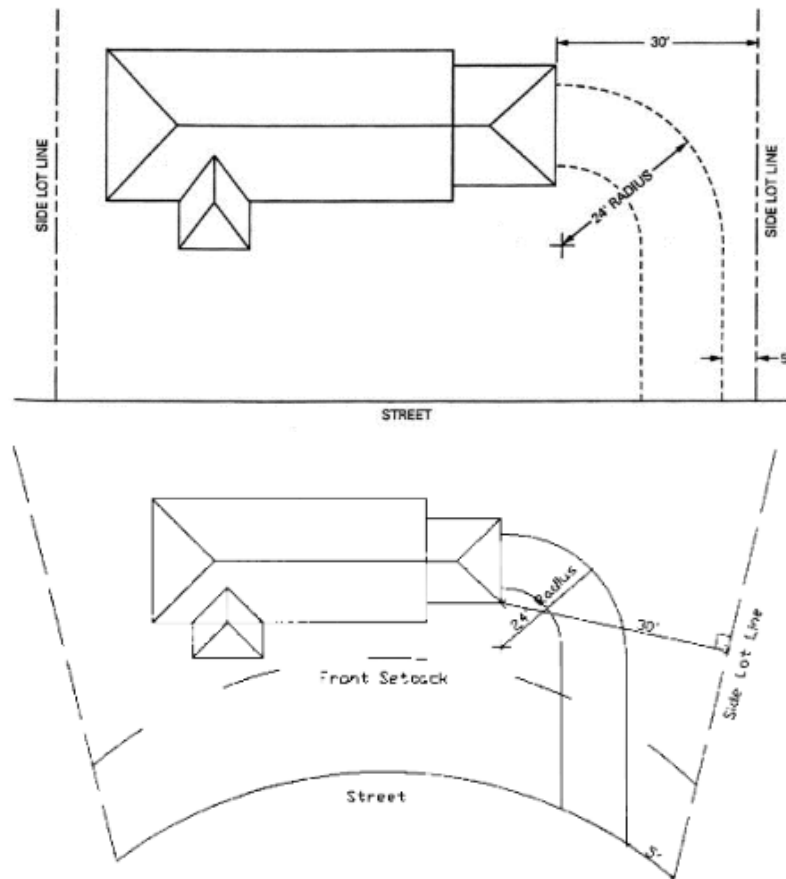
A. Measurement of a setback.

**Figure VI-4
Measurement of Setbacks**



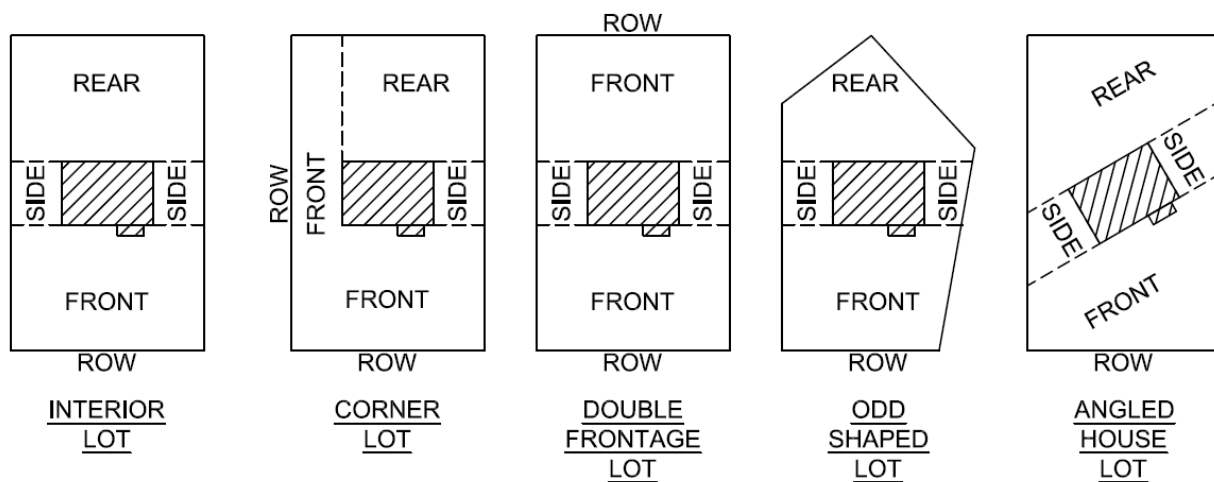
- (1) Corner lots. Structures on corner lots shall provide a front setback as required by this chapter on the street that the structure faces. A second front yard shall be provided on the side of the structure abutting a second public or private street. The second front yard is referred to as the "side 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. Staff may administratively approve reductions to the front setbacks for the side on corner 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.
- (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-5
Side-Entry Garage Setback**



B. Measurement of a yard.

**Figure VI-6
Location of Yards**



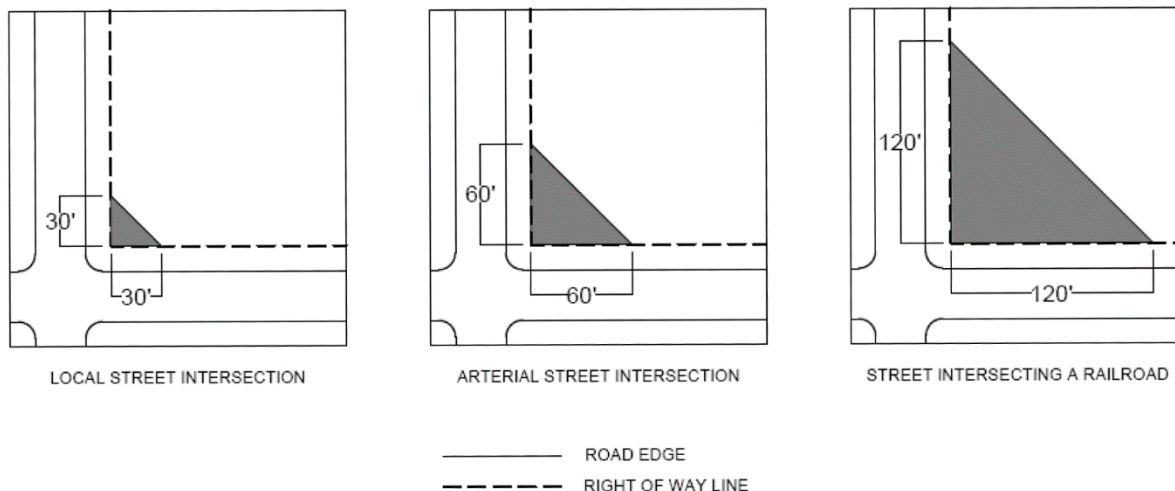
C. Average front setback. For new structures, additions to existing structures or accessory structures, the required front setback may, with Plan Commission approval, be decreased in any residential or business districts to the average of the existing front setbacks of the abutting structures on each 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-7
Vision Clearance Triangle



SECTION XXVIII

Section 275-54B(7)(b) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (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 Community Development shall determine the average industry cost. The Department of Community Development shall use the landscaping fees collected to plant landscaping elsewhere in the City.

SECTION XXIX

Section 275-55.1E of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- E. Definitions. Refer to §275-70.

SECTION XXX

Section 275-55.2E of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- E. Definitions. Refer to §275-70.

SECTION XXXI

Section 275-55.2G(6) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (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.

SECTION XXXII

Section 275-55.2H(6) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (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.

SECTION XXXIII

Section 275-55.3A of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- A. Definitions. Refer to §275-70.

SECTION XXXIV

Section 275-57B(2)(c)[6] of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

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

SECTION XXXV

Section 275-57B(5)(a) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (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 an approved site plan and plan of operation.

SECTION XXXVI

Section 275-57E(5) of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- (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.

SECTION XXXVII

Section 275-61 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

- A. Purpose and intent.
- (1) The purpose of this section is to provide for and regulate the design, location, and safe construction of signs in a manner to ensure that all signs are compatible with surrounding land uses, are well maintained, and express the identity of individual proprietors and the City as a whole. Signs allowed within the City of New Berlin are for the purpose of location and identification not for advertisement. All sign permits, unless otherwise specified, shall be applied for on forms provided by the Department of Community Development (DCD) and administratively reviewed by the Department.
 - (2) In considering a sign application, DCD staff shall consider:
 - (a) The appearance, material for construction, location, lighting, height and size of the sign;
 - (b) Safety of operators of vehicles upon the adjoining streets and highways;
 - (c) The effect of the sign on property values within the immediate area;

- (d) The effect of such sign with respect to the scenic beauty of the vicinity in which the sign is proposed to be located;
 - (e) The effect of such sign with respect to enforcing state laws, county and City ordinances;
 - (f) The effect of the sign with respect to the danger to human life because of falling or combustibility;
 - (g) The effect of the sign with respect to the prevention of crime; and
 - (h) The effect of such sign and display with respect to the general welfare, morals, and the conserving of the taxable value of lands and building located within the City and in the immediate area adjacent to the proposed location of the sign.
- (3) Exemptions. The following types of signs are exempt from all provisions of this chapter:
 - (a) Public signs, signs erected by, or on the order of, or by the permission of, a government entity.
- B. Compliance.
 - (1) No sign shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without a sign permit and conforming with the provisions of this chapter. No sign permit shall be issued to a business or property that does not have a zoning permit.
 - (2) The Department of Community Development (DCD), upon review of a sign application, has the authority to administratively approve the sign application through the administrative permit policy, provided that it meets all the requirements of this chapter.
- C. Sign permit application requirements. Application for a sign permit shall be made on forms provided by the Department of Community Development and must contain or have attached thereto the following information:
 - (1) Name, address, and telephone number of the applicant and the property owner; location of the building, structure, or lot upon which the sign is to be attached or erected.
 - (2) Name of person, firm, corporation, or association erecting the sign.
 - (3) Written consent of the owner or lessee of the building, structure, or land to which or upon which the sign is to be affixed.
 - (4) A scaled drawing of such sign indicating the dimensions, the materials to be used, the type of illumination, if any, and the method of construction and attachment.
 - (5) A scaled colored copy of the proposed sign superimposed on the building or structure.
 - (6) A scaled site plan indicating the location and position of such sign in relation to nearby buildings or structures or public streets and rights-of-way.
 - (7) Fees. The applicant shall pay all applicable fees. The fee schedule is on file with the Department of Community Development. If a sign is erected before a permit is issued, the violator shall be assessed a double fee for the sign permit.
 - (8) Additional information as required by the Department of Community Development, the Plan Commission, or the Community Development Authority (where applicable).
- D. Procedure. Procedures for sign permits shall follow the procedures set forth in § 275-29.
 - (1) Sign permit applications shall be filed with the permit application center and forwarded on to the Department of Community Development, which shall review the application for its completeness, accuracy, design integrity, material for construction. This determination and the permit shall be issued within five business days. If the application is incomplete or the sign application does not meet the requirements within the sign code, it may delay issuance of the sign permit or require that the application be forwarded to the Plan Commission or the Community Development Authority (where applicable) who shall approve or deny the application within 45 business days of receipt from the applicant. A sign permit shall be issued by the Department of Community Development. The permit shall become null and void if work authorized under the permit has not been completed within one year of the date of issuance.

- (2) Architectural Review Committee. Under special circumstances, the Department of Community Development shall forward sign permit applications to the Architectural Review Committee to review the materials for construction and design integrity of selected proposed signage.
- (3) Construction review. Staff may refer a sign permit request to Inspection Services for review of construction details or specifications prior to approval.
- (4) Inspection. The sign owner shall call the Department of Community Development or designated member of staff for an electrical inspection (if applicable) upon completion of all permit requirements and installation.
- (5) Appeal. An applicant may appeal a decision made by staff to the Plan Commission or the Community Development Authority (where applicable) for determination. An additional review fee as determined by the Director shall be required for any sign application that is forwarded to the Plan Commission or the Community Development Authority (where applicable) for review.
- (6) Waiver. An applicant may request a waiver from the Plan Commission or Community Development Authority (where applicable) for the requirements set forth in this section. All sign waiver requests are subject to an application review fee as established by the Director.

E. General provisions.

- (1) Existing signs. Signs lawfully existing at the time of the adoption or amendment of this chapter may be continued, although the use, size or location does not conform with the provisions of this chapter. However, it shall be deemed a nonconforming use or structure, and the provisions of Article VII of this chapter shall apply to specific nonconforming rights. By maintaining a sign in the established right-of-way of an adjoining street or highway, the owner does so at his own risk, and no damages will be awarded if the removal is required for public use or safety or right-of-way acquisition.
- (2) Sign size. The size of a sign shall be in proportion and coordinate with the building and site on which it is located and shall adhere to the size requirements in this section.
- (3) Measurement of sign area. In calculating the area of a sign to determine whether it meets the requirements of this chapter, DCD staff shall include the sign copy and any border or frame surrounding that copy. Supporting members of a sign shall be excluded from the area calculation. Area of irregularly shaped signs or signs containing two or more detached elements shall be determined by the area of the smallest regular polygon that will encompass all elements of the sign. (See Figure VIII-10.)

Figure VIII-10
Examples of Measurement of Sign Area

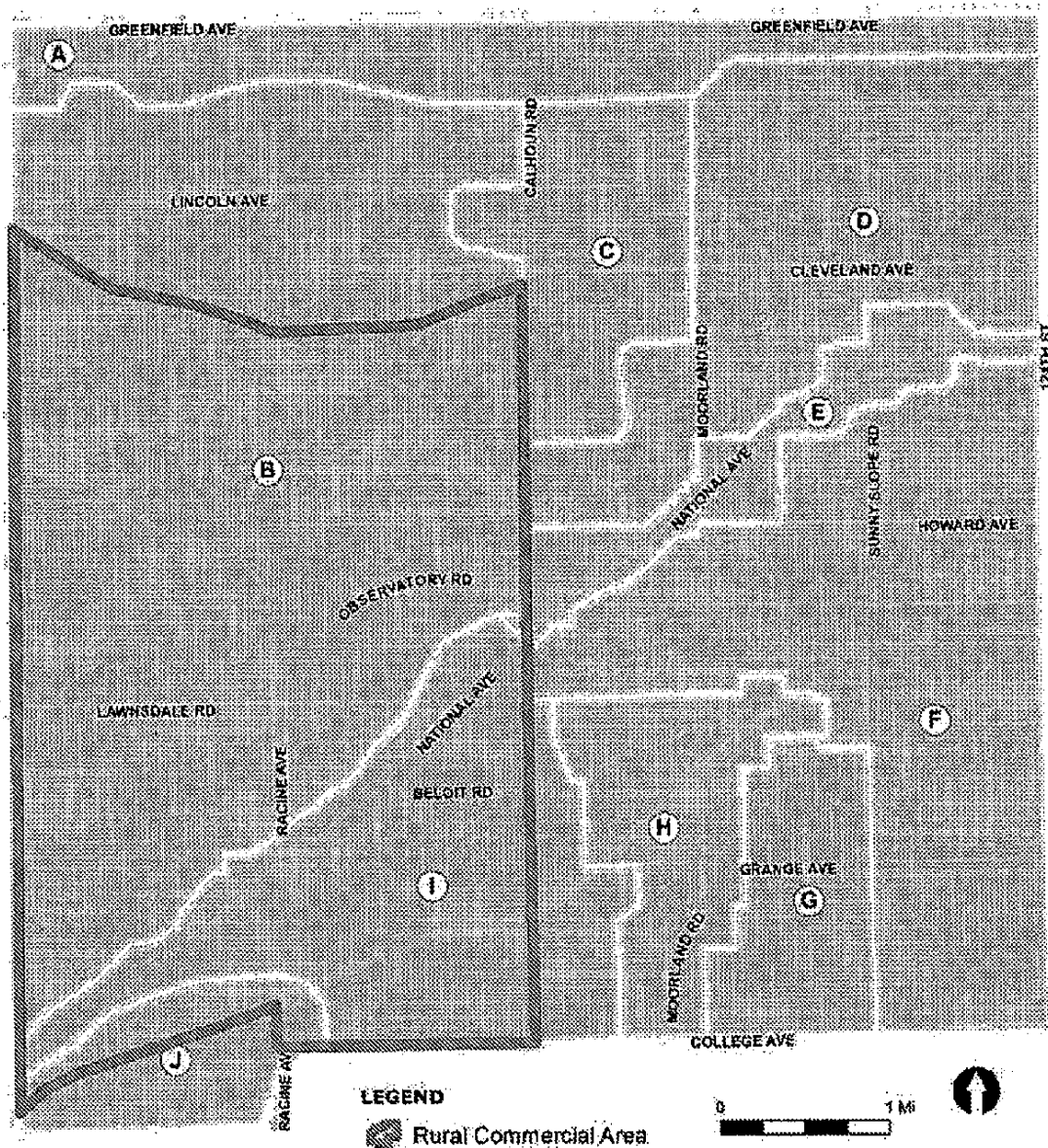


- (4) Measurement of sign height. The height of the sign shall be computed as the distance from the base of the sign at the existing or new grade to the top of the highest attached component of the sign.
- (5) Location.

- (a) All signs shall be constructed/erected on the business property.
 - (b) No part of the sign or sign base shall overhang onto an adjacent property or be located within the ultimate right-of-way.
 - (c) No sign shall be located within the vision clearance triangle.
 - (d) No sign shall identify or direct attention to a business, activity, or enterprise that is not located on the same premises as the sign. Off-premises signs are prohibited in the City of New Berlin, with the exception of official signs that benefit the City and are located on City-owned land, and signs located within the special commercial sign areas identified in § 275-61J.
 - (e) When required for safety, curbs, protective bumpers or planters shall be placed below signs to prevent damage from passing motor vehicles or pedestrians.
 - (f) Signs shall not flash or blink other than approved electronic message devices. Sirens, strobe lights and other illuminated devices shall not be used to draw attention to a sign or business.
- (6) Maintenance.
- (a) The owner of any sign shall keep it in good maintenance and repair, which includes restoring, repainting to the same color, or replacement of a worn or damaged legally existing sign to its original condition. The owner shall also maintain the premises on which the sign is erected in a clean, sanitary, and inoffensive condition, free and clear of all obnoxious substances, rubbish, weeds, and grass.
 - (b) The owner of any sign shall be required to have all parts and supports of a sign properly painted as directed by DCD staff unless they are galvanized or otherwise treated to prevent rust and deterioration.
 - (c) The sign owner shall be responsible for the maintenance of the sign. If the sign ownership should transfer, the new owner shall be responsible for the maintenance of the sign.
 - (d) Temporary signs are allowed; however, once the tenant space is permitted by the City, the sign shall be removed from the property.
- F. Construction standards.
- (1) General standards.
- (a) Signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs, signals or devices.
 - (b) Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals or devices. Signs shall not be placed so as to obstruct or interfere with traffic visibility.
 - (c) No person shall display upon any sign or other sign structure any obscene, indecent, or immoral matter.
 - (d) No signs or any part thereof or sign anchors, braces, or guide rods shall be attached, fastened, or anchored to any fire escape, fire ladder, or standpipe, and no such sign or any part of any such sign or any anchor, brace, or guide rod shall be erected, put up, relocated, or maintained so as to hinder or prevent free ingress or egress through any door, doorway, window, or fire escape or so as to hinder or prevent the raising or placing of ladders against such building by the Fire Department of the City, as necessity therefore may require.
- (2) Lighting.
- (a) No sign shall be lighted or flashing in such a way as to cause glare or impair driver visibility upon public ways or adjacent properties. If external illumination is approved by staff, the fixture shall be mounted on a permanent unmovable base and the neck soldered so as to prevent the fixtures from being tampered with or redirected.

- (b) All signs with electrical wiring shall require an electrical permit from the City Electrical Inspector.
- (c) Signs located within the Rural Commercial Area (See Figure VIII-11) shall not include external neon tube lighting or internal illumination. The Rural Commercial Area is defined in the City of New Berlin Comprehensive Plan, Chapter 12. Please refer to that document for specific information.

**Figure VIII-11
Rural Commercial Area**



- (3) Wind pressure and dead-load requirements. The applicant and installers shall ensure that all signs and other display structures shall be designed and constructed to withstand wind pressure of not less than 40 pounds per square foot of area and shall be constructed to receive dead loads as required by the Building Inspector pursuant to the City Building Code[1] or other ordinance.

[1] Editor's Note: See Ch. 80, Building Construction.

- (4) Supporting members or braces. The applicant and installer shall ensure that all signs shall be constructed of galvanized iron, properly treated wood, steel, copper, brass, or other noncorrosive incombustible material. The applicant and installer shall ensure that every means or device used for attaching any sign shall extend through the walls of the building if the safe and permanent support of such sign so requires and shall be securely anchored by wall plates and nuts to the inside of the walls. Small flat signs containing less than 10 square feet of area may be attached to a building by the use of lag bolts or other means.
- G. Signs permitted in all zoning districts without a permit. The following signs are permitted in all zoning districts without a permit, subject to the following and any other applicable regulations:
 - (1) Yard signs. One yard sign may be allowed, not exceeding six square feet. The sign shall be placed on the property and no such signs shall be erected or placed within a public right-of-way, on light poles, utility poles, etc. No yard signs shall be placed off premises.
 - (2) Signs shall not be erected 30 days prior to the event, and signs shall be removed within 48 hours of the event.
- H. Signs permitted in residential zoning districts with a permit. Signs are permitted in any R-1, R-2, R-2E, R-3, R-4, R-4.5, R-5, R-6, Rd-1 or Rm-1 Zoning District, subject to the following regulations and other applicable standards in this chapter:
 - (1) Temporary development signs. Allowed with an approved project. One sign at the entrance to the development is allowed, provided that the sign shall not exceed 32 square feet in area or eight feet in height. DCD staff shall specify the period of time the sign may remain, based on the size of the development.
 - (2) Residential monument signs. A permanent monument sign displaying the subdivision name may be placed at each entrance to the subdivision, not to exceed two signs per subdivision street frontage. Applicant shall submit an application for a sign permit including the following items:
 - (a) A site plan indicating the location of the sign.
 - (b) A color rendering of the proposed sign.
 - (c) Residential monument signs may, at the discretion of DCD staff, be placed within the public right-of-way, provided that such signs will not cause a hazard to traffic or adjoining property. A release and hold-harmless agreement including the following language shall be required:
 - [1] All residential monument sign placement, relocation and removal shall be at the sign owner's sole expense.
 - [2] The sign owner(s) agrees to remove the residential monument signs upon receiving 10 days' written notice from the City of New Berlin when the residential monument signs would impede construction, reconstruction or maintenance of the road right-of-way or interfere with vision of users of the roadway or otherwise interfere with traffic.
 - [3] City shall not be liable for any liens filed against the property (signs).
 - [4] The sign owner(s) further agrees to remove the residential monument sign(s) upon receiving 30 days, written notice from the City of New Berlin for any or no reason at all.
 - [5] All residential monument sign placement, replacement, relocation and removal shall be at the sign owner's sole expense. If the individual residential lots do not maintain the sign and it is in disrepair or becomes a hazard to public safety, the City shall have the authority to remove the sign.
 - [6] The residential homeowners' association shall be responsible for paying all maintenance of the signs and associated landscaping. Written agreements shall be on file with the City of New Berlin from the

Developer and/or the homeowners' association as to the future maintenance and care for any proposed landscaping and structure/monument repairs and/or removal.

[7] If the residential homeowners' association should become defunct, then the individual subdivision lots would be responsible for the maintenance of the sign and any landscaping.

[8] This document shall be construed as a permit only and not as an easement.

(3) Agricultural signs. Permanent or temporary signs may be allowed up to a total of 32 square feet. No individual sign shall be greater than 32 square feet or eight feet in height.

I. Signs permitted in nonresidential zoning districts with a permit. Signs are permitted in B-1, B-2, B-3, B-5, O-1, O-2, O-3, M-1, M-2, M-3, Q-1, L-1, I-1, P-1, P-2 or PUD/SPO Zoning District, subject to the following regulations and other applicable standards in this chapter. Existing deed restrictions and covenants or design guidelines and standards with more restrictive requirements shall be enforced in conjunction with the sign section of this chapter (§ 275-61):

(1) Sign type and permitted sizes.

(a) Wall signs or building signs. Wall signs and building signs shall be placed against the exterior walls of buildings and shall not extend more than 12 inches outside of a building's wall surface; shall not exceed one square foot in area for every one linear foot of building face width on which they are mounted; and shall not exceed the height or project beyond the building.

(b) Awning and canopy signs. Awning and canopy signs affixed flat to the surface of a marquee or canopy are permitted in lieu of a wall sign, provided that the sign does not extend vertically or horizontally beyond the limits of such marquee, awning, or canopy. An awning or canopy may extend up to 12 feet beyond the building to which it is affixed but shall not extend into a required front yard, side yard, or rear yard, nor shall it extend closer than one foot to the vertical plane formed by the curbline in a shopping center. A name sign not exceeding two square feet in area located immediately in front of the entrance to an establishment may be suspended from an awning or canopy, provided that the name sign is at least eight feet above the sidewalk. The canopy sign shall be considered one of the two allowable signs, subject to one of the signs being a monument/ground sign.

(c) Monument signs.

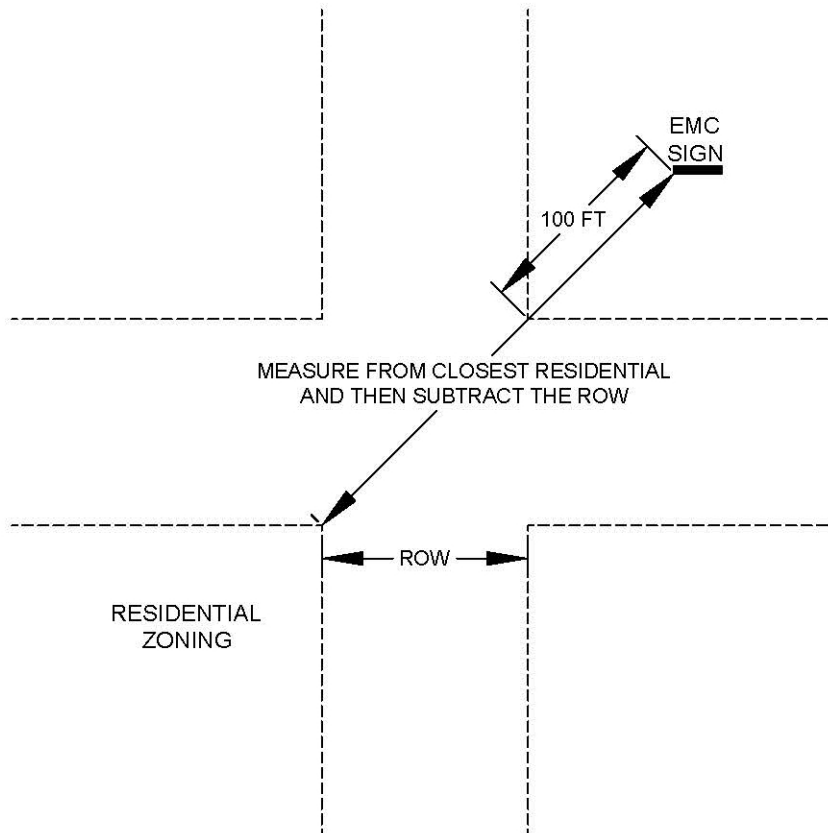
[1] All new signs and/or replacement of existing signs located along arterials or major thoroughfares shall be placed on a monument base constructed of the same material and color or shall enhance the exterior architecture of the principal building. Arterials include Calhoun Road, Cleveland Avenue, Greenfield Avenue, Lincoln Avenue, Moorland Road, National Avenue, Howard Avenue, Beloit Road, Coffee Road, Lawnsdale Road, Janesville Road, Racine Avenue, College Avenue, Sunny Slope Road, 124th Street, Small Road, and Grange Avenue.

[2] The width of the sign base shall 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.

[3] Monument signs shall not exceed 32 square feet in face area per side. The face area includes all surface area of the signage box and sign face but excludes the surface area of the signage base described.

- [4] Monument signs may be positioned either parallel or perpendicular to the public right-of-way.
- [5] Address plaque or numbers shall be required on the monument base or incorporated onto the sign face.
- [6] The applicant may request a waiver from the Plan Commission for the requirement for a monument sign. If a waiver is granted, the monument sign may not be substituted for an additional wall sign.
- (d) Ground signs. Ground signs shall not exceed eight feet in height and shall be set back entirely outside the ultimate right-of-way and shall not exceed 32 square feet in area on one side.
- (e) Pole signs. All pole signs are prohibited.
- (f) Roof signs. Roof signs are prohibited.
- (g) Electronic message centers (EMCs) and changeable message signs. EMCs or changeable message signs may be erected as part of ground and monument signs and shall meet the requirements for those sign types.
 - [1] The sign area for EMCs or changeable message signs shall be included in the total permitted sign area allowed and shall not exceed 50% of the total sign area. The maximum size for an EMC or changeable message sign is 24 square feet.
 - [2] The changeable message portion of the sign must occupy a secondary position to the name of the business, development and/or tenant.
 - [3] An EMC may display static images only. No blinking, flashing, moving, scrolling or animated messages permitted. A message/image on an EMC shall not flash, scroll, twirl or otherwise move when changing.
 - [4] Text or images, or any portions thereof, on an EMC may change up to, but not more frequently than, once every eight seconds.
 - [5] Illumination. The maximum illumination of any electronic message or manual changeable message sign shall not exceed 15 footcandles when measured with a light meter held perpendicular to the sign at a distance of 24 inches.
 - [6] Each sign shall be placed in such a manner so as to not interfere with, confuse or present any hazard to traffic or pedestrians. This determination is in the reasonable discretion of the Plan Commission.
 - [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.

Figure VIII-12
EMC Distance Measurement



- [8] Audio speakers and all forms of pyrotechnics are prohibited.
- [9] EMCs are not allowed within the Rural Commercial Area. See § 275-61F(2)(c) and City of New Berlin Comprehensive Plan, Chapter 12.
- (h) Off-premises signs. Off-premises signs are prohibited, except for where otherwise noted in this section.
- (i) Monument signs in the M-3 District shall utilize the required bronze metal address plaque delineated in the sketch below:

Figure VIII-13
Bronze Metal Address Plaque Example



- (2) Number of signs.

- (a) Only two signs may be permitted per business. Owners may elect for them to be any combination of wall signs, ground signs, or monument signs, not exceeding a total of two, and approved by DCD staff. Numbers of permitted signs by type are listed in Table 275-61-1.

Table 275-61-1 Sign Combinations			
	Maximum Number of Wall Signs	Monument Sign	Maximum Number of Total Signs
Citywide			
1 right-of-way frontage	1	Required	2
Multiple right-of-way frontages and building over 10,000 square feet	2	Required	3
Business/Industrial Parks			
1 right-of-way frontage	1	Optional	2
Multiple right-of-way frontages and building over 10,000 square feet	2	Optional	3

- (b) All multitenant buildings may provide a tenant directory as part of the master identification monument sign as defined below in § 275-61(3)(b).
- (c) Separate wall canopy or fascia signs may be allowed for each tenant in a retail, shopping, industrial or commercial center, subject to the approval of an overall coordinated sign plan by the DCD staff for the building. The size of wall signs approved in this manner shall be figured using the width of the bay occupied by each tenant.
- (d) Price signs for gasoline or diesel fuel sales as required by other governmental regulatory entities shall not be subject to limitations on numbers of signs; however, such price signs shall not exceed an additional 20 square feet in area and shall be incorporated into a permanent sign.
- (e) Directional signs six square feet in area or less and with a maximum height of four feet are allowed but shall require DCD staff approval. These do not count towards the total sign count for the business.
- (f) ATM. ATM network signs shall require a sign permit.
- (3) Overall coordinated sign plan.
- (a) The overall coordinated sign plan shall be developed and submitted to DCD staff for any building that has more than one tenant in all zoning districts.
- (b) Master identification monument sign. The overall coordinated sign plan shall permit multitenant buildings to have one freestanding monument sign.
- [1] Master identification monument signs shall not exceed 32 square feet in face area. The face area includes all surface area of the signage box and sign face but excludes the surface area of the signage base described.
- [2] The height of the master identification monument sign shall be limited to eight feet.
- [3] The sign base shall be a minimum of 18 inches in height. The monument sign shall not exceed eight feet in height unless a waiver is approved by the Plan Commission or Community Development Authority and shall be set back entirely outside the ultimate right-of-way and vision triangle.
- [4] Monument signs or master identification monument signs may be positioned either parallel or perpendicular to the public right-of-way.

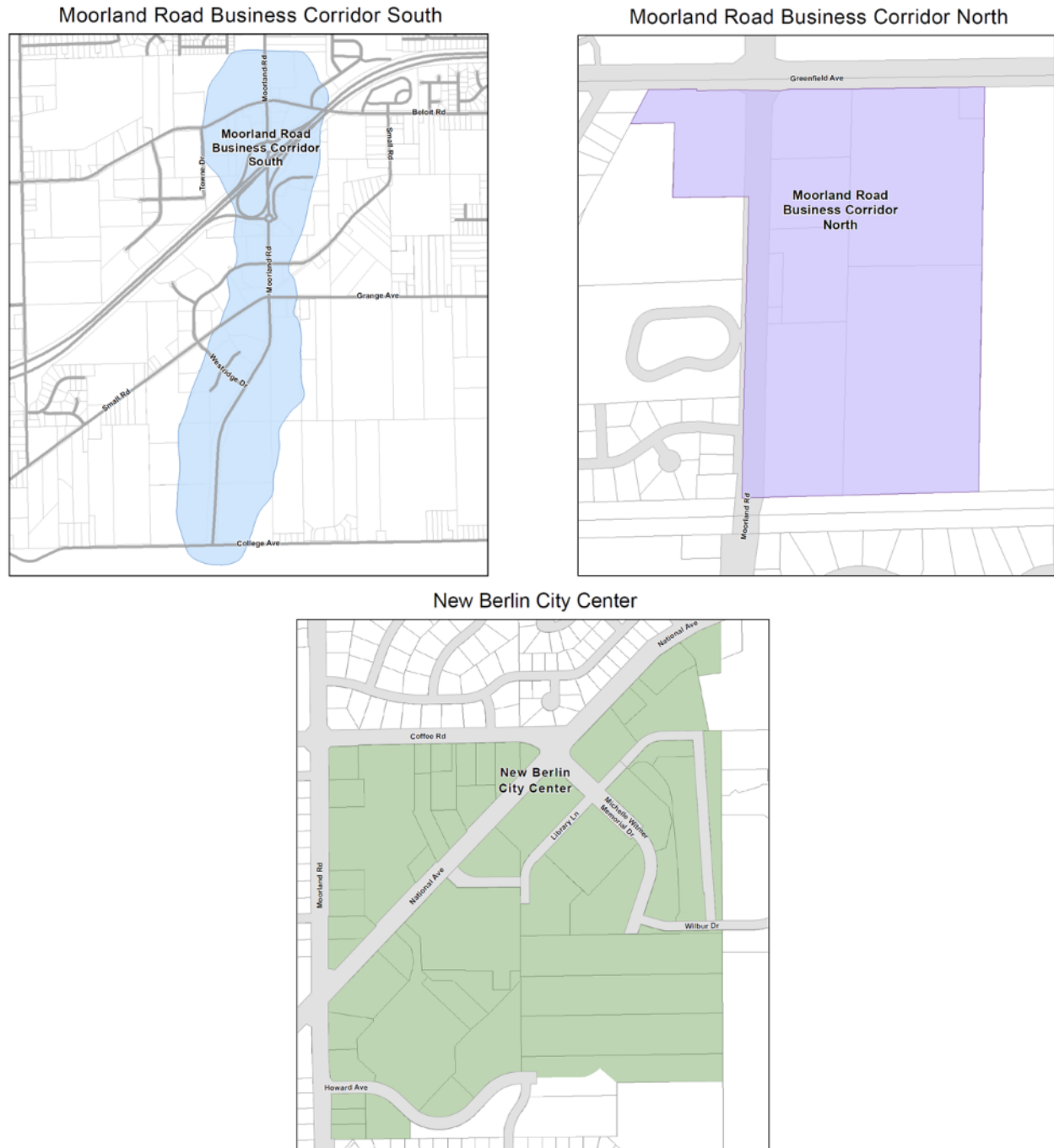
[5] Address plaque or numbers shall be required on the monument base or face of the sign.

- (c) Wall signs. Individual businesses within the development are allowed a wall sign meeting the provisions in § 275-61I(1) and (2), in addition to the master identification monument sign.

J. Special commercial sign areas.

- (1) Purpose. The Plan Commission and Common Council have determined that there are certain commercial areas in the City that warrant the designation as special commercial sign areas to permit additional and/or larger signage because:
 - (a) Such areas are characterized by intense commercial activity and a high concentration of retail, commercial and business uses along major streets;
 - (b) The uses to which such signs pertain have long street frontages and/or have a significant setback from the right-of-way;
 - (c) Major roads in these areas have wide rights-of-way, divided highways and a higher speed of traffic; and
 - (d) Sign locations are buffered from residential areas.
- (2) Designation. The City hereby designates special commercial sign districts for qualifying businesses within the areas described below:
 - (a) Moorland Road Business Corridor. The Moorland Road Business Corridor is defined as nonresidential properties abutting Moorland Road north of the railroad tracks to Greenfield Avenue and properties abutting both sides of Moorland Road south of the Moorland Commons and Moorland Reserve developments to College Avenue. This area also includes properties abutting Beloit Road between Towne Drive and I-43. Any property that has right-of-way adjacent to the areas described above or has an access point connecting the development to Moorland Road are considered to be located within the Moorland Road Business Corridor. See the map below.
 - (b) City Center. The City Center is defined as the area identified in the Comprehensive Plan as City Center Mixed Use Commercial. See the map below.

**Figure VIII-14
Special Commercial Sign Areas**



- (3) Moorland Road Business Corridor. The areas identified within the Moorland Road Business Corridor are subject to the sign standards listed below.
- (a) Number of signs. Only three signs may be permitted per business. Per § 275-611(1)(c)[1] monument signs are required along arterials.
 - (b) Wall signage.
 - [1] There shall be a maximum number of two wall signs permitted per business.
 - [2] Wall signs and building signs shall be placed against the exterior walls of buildings and shall not extend more than 12 inches outside of a building's

- wall surface; shall not exceed 1.25 square foot in area for every one linear foot of building face width on which they are mounted; and shall not exceed the height or project beyond the building.
- [3] The maximum area of a wall sign may be increased by 25% if the building elevation where the sign is located faces the right-of-way and is set back by more than 150 feet from the public right-of-way.
- (c) Monument signs.
- [1] Monument signs shall adhere to the stipulations outlined in § 275-611(1)(c) and (3)(b), with exception to the items listed below.
- [2] Each parcel may have a maximum of one monument sign per street frontage. Monument sign(s) may be placed anywhere on the property that is outside of the ultimate right-of-way, vision triangle and circulation areas, but is limited to a maximum of one monument sign per street frontage.
- [3] Where at least one access point is commonly shared within a development and cross access is provided, off-premises monument and directory signage for the businesses located within the development is permitted. Signage shall be integrated into an overall coordinated sign plan for the entire development. Coordinated sign plan shall be reviewed and approved by DCD.
- [4] The total monument sign height shall not exceed 13 feet.
- [5] Maximum size of the monument sign face:
- [a] The area for a single tenant monument sign shall not exceed 75 square feet per side.
- [b] The area for a multi-tenant master identification monument sign that incorporates tenant names shall not exceed 100 square feet per side.
- [c] Square footage calculations do not include any architectural elements of the sign.
- [6] EMCs shall adhere to the regulations outlined in § 275-611(1)(g).
- (4) City Center. The areas identified within the City Center are subject to the standards listed below.
- (a) Number of signs. Only three signs may be permitted per business. Owners may elect for them to be any combination of wall signs or monument signs, subject to the requirements listed below. Per § 275-611(1)(c)[1], monument signs are required along arterials.
- (b) Wall signage.
- [1] There shall be a maximum number of two wall signs permitted per business.
- [2] Wall signs and building signs shall be placed against the exterior walls of buildings and shall not extend more than 12 inches outside of a building's wall surface; shall not exceed 1.25 square foot in area for every one linear foot of building face width on which they are mounted; and shall not exceed the height or project beyond the building.
- [3] The maximum area of a wall sign may be increased by 25% if the building elevation where the sign is located faces the right-of-way and is set back by more than 150 feet from the public right-of-way.
- (c) Monument signs.
- [1] Monument signs shall adhere to the stipulations outlined in § 275-611(1)(c) and (3)(b), with exception to the items listed below.

- [2] Each parcel may have a maximum of one monument sign per street frontage. Monument sign(s) may be placed anywhere on the property that is outside of the ultimate right-of-way, vision triangle and circulation areas, but is limited to a maximum of one monument sign per street frontage.
- [3] Where at least one access point is commonly shared within a development and cross access is provided, off-premises monument and directory signage for the businesses located within the development is permitted. Signage shall be integrated into an overall coordinated sign plan for the entire development. Coordinated sign plan shall be reviewed and approved by DCD.
- [4] Multi-tenant monument signs shall have at minimum: a base, a midsection including field of text and a top element. The top element/feature (typically the anchor tenant's name and/or plaza name) shall not be included within the square footage calculations, but shall be architecturally integrated into the overall sign.
- [5] The total monument sign height shall not exceed 13 feet.
- [6] Maximum size of the monument sign face:
 - [a] The area for a single tenant monument sign shall not exceed 32 square feet per side.
 - [b] The area for a multi-tenant master identification monument sign that incorporates tenant names shall not exceed 36 square feet per side.
 - [c] Square footage calculations do not include any architectural elements of the sign.
- [7] EMCs shall adhere to the regulations outlined in § 275-61I(1)(g).
- [8] Public entry signage.
 - [a] The face area for public entry signs shall not exceed 48 square feet.
 - [b] In order to maintain a cohesive design throughout City Center, the design of the public entry signs shall be coordinated with and approved by the Department of Community Development.
 - [c] Public entry signs shall be constructed of durable and long-lasting materials, such as metal, stone, brick, masonry or other durable materials.
 - [d] Public entry way signage may be permitted within the City right-of-way upon review and approval by the Director.

K. Portable/temporary signs.

- (1) Department of Community Development staff may permit the temporary use of a portable sign, such as banners, pennants, and/or balloons, for display purposes in any district, provided that the portable sign meets the following criteria below. The permit application process in § 275-61C shall be required for portable signs. All temporary banners installed without a permit shall be assessed a double fee. These types of sign permits shall only be charged the base sign fee plus the filing fee.
 - (a) Portable/temporary signs shall be located outside any public right-of-way; will not be located closer than 10 feet to an adjacent property; will not be over 32 square feet in area; will not extend over or onto any street, alley, sidewalk, or other public thoroughfare without the approval of the Director; and will not cause a hazard to traffic or adjoining properties.

- (b) Portable/temporary sign permits shall expire after 45 days or a date stipulated on the sign permit. No business shall be issued more than four portable sign permits in any given year (from January 1 to December 31).
 - (c) Portable signs shall not be illuminated.
 - (d) Portable sandwich board signs shall be permitted without a sign permit, provided they are placed directly in front of the business storefront and they are only displayed during business hours of operation. One portable sandwich board sign is allowed per business. Portable sandwich board signs shall not exceed four feet in height and two feet in width.
- (2) The Department of Community Development staff may permit the temporary placement of directional signs by commercial establishments in construction zones for the purpose of identifying or showing the alternative access location of businesses affected by the construction. Placement of signs shall be at a point of barricade or detour. Signage shall not be placed in the travel portion of the road, block vision, or operation of construction vehicles. The business shall coordinate with the contractor for specific placement of the signage. The temporary signage shall be removed following completion of the construction project. This type of signage is subject to the following regulations:
 - (a) Single businesses affected by the construction are permitted to have one temporary sign at the point of barricade or detour. The signage is not to exceed six square feet in area.
 - (b) A development of four or more businesses is permitted to place one temporary sign at the point of barricade or detour for all businesses within the development affected by the construction. Signage for four or more businesses is not to exceed 32 square feet per side in area.
 - (c) The Director or his designee may remove signs that cause confusion, present a safety hazard or are located within the right-of-way.
 - (d) The Director may order sign removal if the sign is considered a safety hazard or impedes the progress of a construction project.
 - (e) Signage may be removed at the discretion of the construction manager during individual phases of the construction project.
- (3) Portable trailer signs are prohibited. Construction trailer signs shall require a sign permit and shall not exceed 32 square feet.

L. Enforcement.

- (1) Order to remove signs. No sign shall advertise a business that is in violation of this chapter or for which no zoning, occupancy and/or building permit has been issued. If the Director or his designee finds that any sign or other display structure regulated herein has been constructed or erected or is being maintained in violation of this chapter, the sign will be removed by the Director or his designee. Any sign located in a City of New Berlin right-of-way will be removed immediately.
 - (a) Unsafe or hazardous signs. Any sign which is hereinafter found to be unsafe or insecure, or is a menace to the public, or by reason of its location creates a traffic hazard, or is dangerous to persons and property, as determined by the Director, his designee, the City Police Department or the Safety Commission, shall be removed, except for those on private property.
 - (b) Abandoned signs. Any sign which is dilapidated or out of repair shall be removed by the property owner.
 - (c) Maintenance. If the sign owner violates the maintenance requirements of this chapter, the sign shall be removed by the property owner.
- (2) Compliance. A business or property that has signage that does not meet the requirements of the current sign code shall be required to bring all signage into compliance according to Article VII of this chapter.

- (3) Penalty.
 - (a) If a sign is displayed before a permit is issued, the violator shall pay twice the normal amount for the sign permit. If the sign owner violates the maintenance requirements as set forth in this chapter, the owner must pay a fee equal to the rate paid for the sign permit.
 - (b) Any person who violates any provision of this section or any order, rule, regulation or determination regarding signs shall be subject to the penalties prescribed in Article X of this chapter.

SECTION XXXVIII

Section 275-62 of the Zoning Code of the City of New Berlin is hereby repealed:

§ 275-62. Reserved.

SECTION XXXIX

Section 275-63 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

§ 275-63. 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.

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.

SECTION XL

Section 275-64 of the Zoning Code of the City of New Berlin is hereby repealed:

§ 275-64. Reserved.

SECTION XLI

Section 275-65 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

§ 275-65. Floodplain Zoning.

- 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 flood-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 placed 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 existing 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 protection 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 compliant 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

SECTION XLII

Section 275-65.1 through Section 275-65.31 of the Zoning Code of the City of New Berlin are hereby repealed:

SECTION XLIII

Section 275-70 of the Zoning Code of the City of New Berlin is hereby amended to read as follows:

§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.

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.

BREW PUB

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.

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.

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 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.

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 accepts textiles, shoes, books, 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.

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.

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 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 messagecenters.

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 Iguanidae, 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 Natricidae (keelback snakes), all species.
 - (g) Family Viperidae (such as copperhead, cottonmouths, rattlesnakes, etc.), all species.

C. Order Crocilia (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 severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

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.

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 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.

FLOOD PROTECTION ELEVATION

An elevation of two feet of freeboard above the Regional Flood Elevation. (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.

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

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 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 proximity 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.

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 expressed 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.

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.

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 setback. See Figure XI-1 and Figure XI-2.

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 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 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 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

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. 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

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 setback is opposite a front setback. A rear setback is not measured from a public road or street frontage. See **§275-46A**.

SETBACK, SIDE

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. See **§275-46A**.

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.

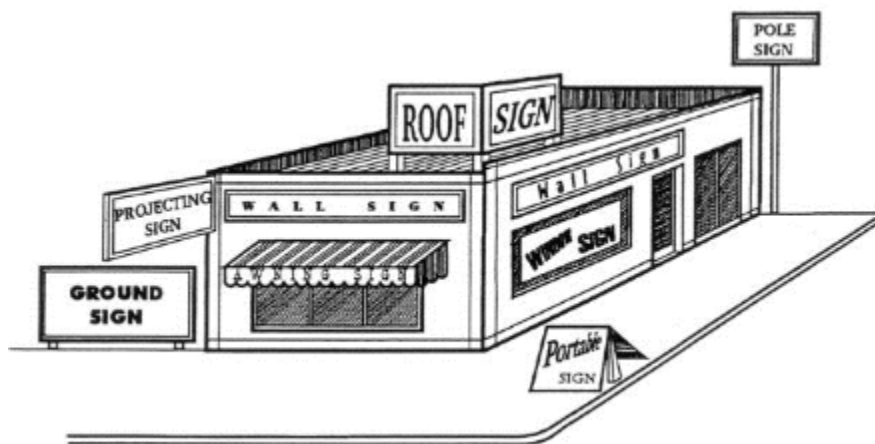
SIGN, WALL

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 weeding, thinning, pruning, 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.

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.

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

An area extending between the side lot 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 from the rear lot line(s) to the rear building face of the principal structure. See **§275-46B**.

YARD, SIDE

An area extending between the side lot line to the side building face of the principal structure 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.

SECTION XLIV

All Ordinances or parts of Ordinances contravening the terms and conditions of this Ordinance are hereby to that extent repealed.

SECTION XLV

The several sections of this Ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the Ordinance.

SECTION XLVI

This Ordinance shall take effect upon passage and publication as approved by law, and the City Clerk shall so amend the Code of Ordinances of the City of New Berlin, and shall indicate the date and number of this amending ordinance therein.

PASSED AND ADOPTED by the Common Council this 25th day of April, 2023.

APPROVED:

David Ament, Mayor

Countersigned:

Rubina Medina, City Clerk

STAFF REPORT

EXECUTIVE SUMMARY

APPLICANT/PROJECT: City of New Berlin / Design for Buena Park and Maple Ridge Park

LOCATION: Buena Park - 16301 W. Coachlight Drive
Maple Ridge Park - 13200 W. Maple Ridge Road

REQUEST: Approval of the Design Contract for Buena Park and Maple Ridge Park

D.C.D. RECOMMENDATION: Recommend to the Common Council the awarding of a Professional Services Design Contract to the most responsive, qualified consultant, Stantec Consulting Services Inc. for the design of Buena Park and Maple Ridge Park in a not-to-exceed amount of \$50,000, from accounts 04252900 61131 C2023 and 04252900 61133 C2023.

1. In February, the City of New Berlin solicited Proposals from 4 firms for design services for Buena Park and Maple Ridge Park. The work consists of preparing plans, specifications and estimates for these parks in 2023.
2. Analysis of Need. A summary of each parks deficiencies is outlined in the CIP Request, which is included in the attached Request for Proposal.
3. Project Description and Scope of Services. Site improvements for Buena Park and Maple Ridge Park include the replacement of play structures and installing poured-in-place surfacing, reconstruction of a basketball court and trail improvements.
4. Design services will include the preparation of final construction plans, bidding documents and estimate.
5. On March 24, 2023, the City received three (3) Proposals for the Professional Engineering Services for the designs of Buena Park and Maple Ridge Park. Staff reviewed the Proposals and determined that Stantec Consulting Services Inc. is the most responsive, qualified consultant.
6. The project proposal is attached, along with the composite scoring sheet.

DETAILS IN ATTACHED STAFF REPORT

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

Meeting of April 13, 2023

City of New Berlin / Buena Park and Maple Ridge Park
16301 W. Coachlight Drive and 13200 W. Maple Ridge Road

DATE STAFF REPORT CREATED: 3/24/2023

APPLICANT: City of New Berlin

REQUEST / DESCRIPTION OF PROJECT:

Buena Park

- The design shall incorporate an approximately 3,500 square foot inclusive playground area to be located in the same general location as the existing playground (west playground). The playground system shall feature inclusive play elements. The existing playground has numerous issues, as outlined in the CIVMC Playground Report (see attached CIP Request for more information). The design shall comply with all current CPSC, ASTM and ADA standards.
- Features such as shade, site amenities, poured-in-place surfacing and site work/landscaping shall be incorporated into the design.
- The design shall include adding and/or replacing trails to provide for paved accessible routes to play components.

Maple Ridge Park

- The design shall incorporate an approximately 3,500 square foot inclusive playground area to be located in the same general location as the existing playground. The playground system shall feature inclusive play elements. The existing playground has numerous issues, as outlined in the CIVMC Playground Report and ADA Study (see attached CIP Request for more information). The design shall comply with all current CPSC, ASTM and ADA standards.
- Features such as shade, site amenities, poured-in-place surfacing and site work/landscaping shall be incorporated into the design.
- The design shall include replacing the basketball court.
- The existing paved trail system throughout the park has numerous issues, as outlined in the ADA Study. The design shall include adding and/or replacing trails to provide for paved accessible routes to play components, athletic fields and shelters.
- There are drainage problems near the existing playground. The design should incorporate solutions to the drainage issues in the park.

PROPOSALS RECEIVED: 3

SELECTED CONSULTANT: Stantec Consulting Services Inc.

FISCAL IMPACT: Estimated Design Cost \$50,000

SOURCE OF FUNDS:

\$25,000.00	04252900 61131 C2023	Playground - Buena Park
\$25,000.00	04252900 61133 C2023	Playground - Maple Ridge Park

D.C.D. RECOMMENDATION:

Recommend to the Common Council the awarding of a Professional Services Design Contract to the most responsive, qualified consultant, Stantec Consulting Services Inc. for the design of Buena Park and Maple Ridge Park in a not-to-exceed amount of \$50,000, from accounts 04252900 61131 C2023 and 04252900 61133 C2023. **See Executive Summary.**

Attachments:

Selected Proposal – Project Approach
Request for Proposal
Composite Scoring Sheet

Project Approach

Project Understanding

YOUR CITY

Our team understands the positive benefits and the value that park land adds to a community. We respect the City's desire to provide inclusive playgrounds, accessible trails, and open space access for all residents. We have reviewed the Request for Proposal, capital improvement project summary, and project area maps.

Our team has extensive years of experience in Parks and Recreation Projects and understand how important these projects are to the quality of life in their communities. This project will be an extension of what is already a great city and park system. Our approach will be to build a park that is connected to the surrounding neighborhoods and accessible to the residents of New Berlin.

YOUR PARKS

Buena and Maple Ridge Parks will benefit greatly from new inclusive playground equipment, improved trails, and improved drainage. You have already invested quite a bit at Buena Park with improved support facilities; a new shelter, new restroom/shelter, and trails that improve amenity proximity and connectivity within the park, and eliminate drainage issues. We're looking forward to working on Maple Ridge to design amenities that provide accessible routes for all park users.

CHALLENGING ISSUES OF THE PROJECT

We are aware of the challenges of this project, in particular the draining issues that have, in part prompted these required improvements in Buena Park. We are also aware that the existing paved system throughout the park has issues with accessibility that need to be addressed. Additionally, we understand that the equipment is dated, has not been properly maintained, and is not accessible to everyone.

PROJECT APPROACH

Our integrated team strategy will streamline communication with an approach that will utilize specialized input from local experts to maximize project outcomes. Should the need ever arise for any unique challenges, our team has access to 265 landscape

architects and a wide variety of natural system experts from across our company. Our team's coordinated approach to problem solving, design solution generation, and project delivery results in innovative and practical solutions. Team familiarity and unity allows us to efficiently design the solution that best meets your schedule, your budget, and project goals.

The best way to deliver a successful project is to identify the A-team members from the beginning and keep them engaged in the project from start to finish. That is our approach to every project, and for Buena and Maple Ridge we have assembled a highly qualified team combining the unique expertise required to make this project successful under one umbrella led by Stantec.

You are familiar with our key project personnel from working with us on Biwer, Buena, and Lions Parks. We are drawing upon the talents of local design experts Todd Wichman, Sarah McDonald, Rashad Tiam Watt and Christian Moring and are happy to add Alex Krzmarzick to the team.

Our team have both local and national experience in community placemaking. They will be supported by our local technical partners to provide full and complete design and engineering services. We will do this by adhering to the themes listed below:

We Listen—We listen to our clients. We want to understand your vision. We know it needs to be a fun, engaging process that yields a financially successful, beautiful park. Together, we will create and reinforce the special personality that is New Berlin!

Create Memorable Experiences—Most people can intuitively sense good design. Our goal is to design memorable experiences that resonate with your users. That is what will keep them coming back for more and continue their support of New Berlin parks.

The "WOW" Factor—Being unique is good. The details and thought that goes into the design will connect with park guests, provide community identity and an increased sense of pride in city parks.

PROJECT SCHEDULE AND WORKLOAD

Our team's experience will be essential to developing an appropriate design schedule for the project. Early and frequent meetings with the design team and City staff are recommended to foster partnering and the creation of a working dialogue to deliver the best product, on time and in budget.

At the end of the preliminary design phase, the goal is to have the city staff and community in alignment with the vision and financial parameters of the project. Once approved, the move into construction documents will be seamless and focused.

Our proposed design leadership for this scope of work is based out of our local offices and will be available to schedule and conduct meetings in a time efficient manner to stay on schedule.

We see no issue in delivering the project to the City in the anticipated time frame and our team has the availability and are eager to work on these two park exciting park projects.

Four key phases of the delivery process are listed below.

Scope of Work

PHASE 1: DATA COLLECTION

Subtask 1.1: Kick-off Meeting with Project Manager, Site Walk-through (Meeting 1, in person)

We will meet with the City's Project Manager and key City staff to review the scope, schedule, and budget for both parks. We will also discuss preferred communication methods and frequency so that we can match our level and style of communications to your expectations and project budget. We will identify potential project opportunities and constraints related to your desired improvements, and jointly develop solutions to minimize the potential risks and maximize the opportunities. We will take photographs and note issues for both of the parks. We will confirm the limits of expected work and discuss any adjustments to the survey limits assumed herein. We request that a City representative be in attendance from each relevant department.

Subtask 1.2: Information Gathering and Review

Good planning and design begin with research and a solid foundation of knowledge on which to plan. As a design team, we will gather knowledge from historical use and physical development patterns, both past and present. Our goal is to also gain knowledge through interaction with City staff.

We can anticipate a seamless transition to the next phase with Buena since we have been involved in the planning, design, and construction of the improvements there. For Maple Ridge Park, we will carefully review other previously completed studies and reports, such as the City of New Berlin Comprehensive Outdoor Recreation Plan, Capital Improvement Project Request and the Playground Report and ADA Study to get an understanding of the key opportunities and constraints.

Subtask 1.3: Site Survey

Chaput Land Surveys will prepare a site topographic map of the anticipated work areas at each park. The topographic map will consist of existing site features, topography, cadastral and utility information, as well as available utility as-built information provided by the City of New Berlin. As requested, the survey will be completed using state plane coordinates and elevation datum: 'NAVD 1988 (US Feet)'. Using x/y coordinate system of NAD 1983 (2011) State Plane Wisconsin South 4803.

- For each site, Chaput Land Surveys will prepare an Exhibit in CAD format with engineering design topography and utility detail to include the following:
- Horizontal Datum NAD 1983 (2011) State Plane Coordinates and Vertical Datum NAVD 1988
- Project limits per the City of New Berlin RFP and as necessary to the centerline of adjacent streets.
- Set two (2) project benchmarks
- Site elevations with 1 foot contour intervals and spot elevations on paved surfaces
- Existing site improvements
- Adjacent street pavement edges and centerline
- Sewer lines will be depicted by location, size and

depths where accessible without confined entry and supplemented with available City plans.

- Watermain and water services will be depicted from surface evidence and available plans
- Other subsurface utility lines will be depicted from by Diggers Hotline and available plans
- Trees of 6" caliper or larger will be located
- Property lines per available City of New Berlin cadastral maps.

Subtask 1.4: Geotechnical Investigations

CGC, Inc. will perform geotechnical investigations to determine soil conditions for the proposed improvements. The proposed investigations for each park are as follows:

Buena Park

- Two borings to 10 ft = 20 ft of drilling
- Site utilities will be cleared through Digger's Hotline only (Private Lines locate would be extra)
- Site is accessible with a truck-mounted drill rig
- Site will be drilled at the same time as Maple Ridge Park project
- Standard soil laboratory testing (moisture contents)
- Letter report providing results of borings and recommendations for new playground equipment

Maple Ridge Park

- Two borings to 10 ft and three borings to 5 ft = 35 ft of drilling
- Site utilities will be cleared through Digger's Hotline only (Private Lines locate would be extra)
- Site is accessible with a truck-mounted drill rig
- Site will be drilled at the same time as Buena Park project
- Standard soil laboratory testing (moisture contents)
- Letter report providing results of borings and recommendations for new playground equipment and new trails

Phase 1 Deliverables

- Kick-off Meeting with Project Manager, Site Walk-through (Meeting 1)
- Opportunities and Constraints Analysis
- Site Surveys
- Geotechnical Reports

PHASE 2: PRELIMINARY DESIGN

Subtask 2.1: Preliminary Design Alternatives

Based on the desired programmatic amenities, we will provide one design alternatives per park that will be to scale. In addition, we will provide vendor generated 3D renderings and equipment alternatives from a preferred vendor. (vendors may explore more alternatives)

Buena Park

- Playground replacement with 3,500 square foot inclusive playground with poured in place surfacing
- Shade structure
- Site amenities
- Additional trails and accessible routes
- Landscape improvements

Maple Ridge Park

- Playground replacement with 3,500 square foot inclusive playground with poured in place surfacing
- Shade structure
- Basketball court replacement
- Site amenities
- Additional trails and accessible routes
- Landscape improvements
- Resolve drainage issues

Subtask 2.2: Preliminary Design Submittal and Presentation (Meeting 2, virtual)

We will present design alternatives to City staff for review. After receiving feedback from staff, we will finalize one design alternative for each park and include vendor provided 3D renderings.

Subtask 2.3: Quantity Take-offs, Vendor Coordination and Cost Estimation

We propose working alongside a preferred playground equipment vendor that will be used for both projects for ease of design, coordination, communication, and procurement. We will work closely with the vendor to assist the City in selecting playground equipment that meets your needs and falls within budget. We will monitor costs during the preliminary design alternative phase so that the proposed playground equipment is within budget. Once the final designs are selected, we will provide a detailed cost estimate of proposed improvements.

Phase 2 Deliverables

- One Design Alternative (to scale and in color)
- Preliminary Design Submittal and Presentation (Meeting 2)
- Quantity Take-offs, Vendor Coordination and Cost Estimation of Final Design Alternative
- One Preferred Design Alternative (One for each park, to scale, drafted, and in color)

PHASE 3: FINAL CONSTRUCTION PLANS AND BIDDING DOCUMENTS

This phase (Subtasks 3.1-3.7) will be based on the approved site plan as the conclusion of Phase 2. Stantec will provide project management, site, and civil engineering design services, as well as stormwater management considerations during this phase. Documents will be developed for client review and comment prior to formal submittal to the City of New Berlin for required reviews and approvals.

This phase includes incorporating two rounds of Client review comments from applicable City Departments (at 50% and 100%/Final Plan Completion). The final version of the plans produced in this task shall be used for approvals, permits, bidding, and construction. A representative from all relevant departments should review the submittals and attend the 50% drawing check-in.

Subtask 3.1: 50% Drawings and Details

Subtask 3.2: 50% Drawings and Details Check-in (Meeting 3, virtual)

Subtask 3.3: 100% Drawings and Details

Subtask 3.4: 100% Drawings and Details Check-in (Meeting 4, virtual)

Subtask 3.5: Specifications

Subtask 3.6: Cost Estimates

Phase 3 Deliverables

- Deliverables align with tasks listed above

Each plan sheet developed will follow the requirements of the City of New Berlin. Deliverables shall be as follows:

- Provide an **Overall Title and Project Information Sheet**, which will include the name, location, and vicinity of the project, as well as the sheet index and applicable authorities having jurisdiction over the proposed development. (Buena and Maple Ridge)
- Provide a **Survey Map**, which will include the following identified during survey field work (as provided by others). (Buena and Maple Ridge)
 - Horizontal Datum NAD 1983 (2011) State Plane Coordinates
 - Vertical Datum NAVD 1988
 - Project limits per the City of New Berlin RFP and as necessary to the centerline of adjacent streets
 - Project benchmarks, site elevations with 1 foot contour intervals and spot elevations on paved surfaces
 - Existing site improvements
 - Adjacent street pavement edges and centerline
 - Sewer lines will be depicted by location, size and depths where accessible without confined entry
 - Watermain and water services will be depicted from surface evidence and available plans

- Other subsurface utility lines will be depicted from by Diggers Hotline and available plans
- Trees of 6" caliper or larger will be located
- Property lines per available City of New Berlin cadastral maps
- Provide a **Site Demolition and Erosion Control Plan**, which will include site features to remove, site features to remain and protect during construction, locations of erosion control best management practices, construction access locations, concrete washout areas, and other applicable information. (Buena and Maple Ridge)
- Provide **Dimensioned Site Plans**, which will include any proposed buildings, existing buildings, driveways, walks, plazas, trails, playground area(s), typical dimensions, existing items to remain and other applicable proposed features. (Buena and Maple Ridge)
- Provide a **Site Grading and Drainage Plan**, which will include the proposed grades, flow arrows, typical pavement slopes, existing and proposed contour lines, and/or other potential proposed features.
- Provide **Landscape Plans and Details**, which will include all required playground enlargement plans, playground and basketball surfacing plan, playground details, site amenities and planting plan. (Buena and Maple Ridge (site and landscape only))
- Provide **Site Detail Plans**, which will include details as required for a Contractor to execute construction of the proposed improvements. These details will be provided on the plans.
- Provide **WDNR and MMSD** for the proposed work. It is assumed that no WDNR or MMSD permitting will be required based on our initial estimates of proposed disturbance and impervious areas.
- Provide **Site Work Specifications and Bidding Documents** which will include (but not be limited to) general, earth work, pavement, utility, landscape, erosion control, site lighting, amenities and playground equipment related specifications.
- Stantec will work with City staff to incorporate the necessary front end contractual documents for bidding.

PHASE 4: BIDDING

During the bidding phase we will assist the City in getting the two park projects ready to be bid.

Subtask 4.1: Prepare bid notice

Subtask 4.2: Provide digital construction plans and bidding documents

Subtask 4.3: Provide plan and specification clarification to perspective bidders

Subtask 4.4: Bid Opening Meeting and Bid Evaluation (Meeting 5 and 6, virtual)

We will prepare bid notice, construction plans, specifications, and bid documents for upload to Questcdn.com for perspective bidders. We will facilitate and attend a pre-bid meeting and a bid opening meeting with the City.

Phase 4 Deliverables

- Bid Notice
- Digital Construction drawings and bidding documents
- Pre-bid Meeting (Meeting 5)
- Bid Opening Meeting (Meeting 6)

ASSUMPTIONS AND CONDITIONS

- All playground design and equipment will be prefabricated non-custom features that will be procured out of a catalog using one preferred vendor, as selected by the City of New Berlin.
- Both Buena Park and Maple Ridge Playground and Park Improvements will be bid out in one package/as one project.
- The City, if not already, will become eligible to sole source playground equipment through a cooperative or other alternatives.
- All open-air shelters (if desired) are prefabricated non-custom design architectural features that will be procured out of a catalog.
- Survey fee is based on minimal snow coverage at date of field survey.
- No site lighting is assumed as part of the scope herein.
- Geotechnical investigations are limited to the scope herein.

- Site plan changes after 60% of the site design is complete that result in additional work will be considered additional services and be subject to additional fees paid to Stantec.
- Public road design is not included in the scope of work at this time. If requested, Stantec can provide you with an amendment to this contract for additional services.
- The City will be responsible for providing Stantec with pertinent information related to the project, including but not limited to, CAD files of existing features and utilities, geotechnical reports, architectural building plans, etc.
- The City will provide Property Legal Description and Recorded Easements and a complete legal description of all lands to be surveyed and copies of recorded easements.
- Stantec not responsible for any costs incurred due to schedule delays beyond our control (e.g. weather, client-induced delays, non-performance of other contractors, etc.)
- Task budgets are estimates and we reserve the right to reallocate budget between tasks but will not exceed the total contract without Client approval.
- Where not stated as being included in the fees, project specific subconsultant, contractor, lab and other similar third-party charges will be charged as invoiced to Stantec with a 10 percent markup.
- Additional correspondence and meetings not specified in the Scope herein can be provided as supplemental services, if requested.
- Floodplain analysis is not included at this time. It is assumed that there will be no change in floodplain elevation based on the proposed improvements and scope of work.
- No public engagement is required or included as part of the scope of work.
- There are no known wetlands or floodplains with either of the parks. A wetland delineation was not included in the scope of work.
- No Meeting summaries are included in the scope of services.

- If survey scope is reduced significantly (i.e. subtraction of a park) then task fees may need to be reevaluated due to surveyor mobilization costs.
- It is assumed that all each park will be constructed separately and would therefore not meet the threshold of disturbance of more than one acre or increase impervious area by more than 5,000 SF, therefore Wisconsin Department of Natural Resources (WDNR) or Milwaukee Metropolitan Sewerage District (MMSD) permitting is not included at this time but could be included as an additional service. It is also assumed that all City of New Berlin building/utility permits will be handled internally or waived by City Staff.

ADDITIONAL SERVICES

No additional services other than those specifically identified in the body of this proposal are included in the Scope of Work. If items outside the above-mentioned Scope of Work are found to be required, Stantec can provide you with additional professional services as an amendment to the base contract.

FEE PROPOSAL

The fee for the proposed work listed above is a lump sum fee of **\$50,000***.

**Proposal assumes design services of \$49,750 and estimated expenses of \$250.*

We believe we have outlined a scope and fee that meets the project needs and your budget. If additional meetings are required outside of the 6 identified in the scope above, the following additional hourly rates would apply for the Project Manager to attend:

Virtual Meeting Rate (1 hour): \$161.00 per staff member required to attend

Sarah McDonald In Person Meeting Rate (2 hours): \$322.00

**CITY OF NEW BERLIN
REQUEST FOR PROPOSAL
DESIGN FOR BUENA PARK & MAPLE RIDGE PARK**

The City of New Berlin (City) desires to retain the professional services of an engineering consultant to complete a design and preparation of final plans and specifications, as well as related site improvements for Buena Park and Maple Ridge Park, which includes the replacement of play structures and poured-in-place surfacing, reconstruction of a basketball court and trail improvements.

Qualified consultants are invited to submit proposals to accomplish the scope of work hereinafter defined. The consultant will be expected to work directly with the City. The Department of Community Development will be the lead agent for the Project.

1. Project Description and Scope of Services

A. Buena Park

- 1) The design shall incorporate an approximately 3,500 square foot inclusive playground area to be located in the same general location as the existing west playground. The playground system shall feature inclusive play elements. The existing playground has numerous issues, as outlined in the CIVMC Playground Report (see attached CIP Request for more information). The design shall comply with all current CPSC, ASTM and ADA standards.
- 2) Features such as shade, site amenities, poured-in-place surfacing and site work/landscaping shall be incorporated into the design.
- 3) The design shall include adding and/or replacing trails to provide for paved accessible routes to play components.

B. Maple Ridge Park

- 1) The design shall incorporate an approximately 3,500 square foot inclusive playground area to be located in the same general location as the existing playground. The playground system shall feature inclusive play elements. The existing playground has numerous issues, as outlined in the CIVMC Playground Report and ADA Study (see attached CIP Request for more information). The design shall comply with all current CPSC, ASTM and ADA standards.
- 2) Features such as shade, site amenities, poured-in-place surfacing and site work/landscaping shall be incorporated into the design.
- 3) The design shall include replacing the basketball court.
- 4) The existing paved trail system throughout the park has numerous issues, as outlined in the ADA Study. The design shall include adding and/or replacing trails to provide for paved accessible routes to play components, athletic fields and shelters.

- 5) There are drainage problems near the existing playground. The design should incorporate solutions to the drainage issues in the park.

2. Data Collection

- A. A field survey of the parks shall be completed by the selected consultant as necessary to complete the designs for the limits of work.
- B. The selected consultant shall compile existing topographic, cadastral and utility as-built information as needed from the City of New Berlin data files and private utilities.
- C. The field survey shall be completed based upon state plane coordinates. The Elevation Datum the City of New Berlin uses is 'NAVD 1988 (US Survey Feet)'. The X/Y Coordinate system the City uses is NAD 1983 (2011) State Plane Wisconsin South 4803. Verify the accuracy of City topographic data by comparing to field survey data.
- D. The selected consultant shall provide geotechnical and/or environmental reports as needed. Increased impervious over 5,000 square feet triggers MMSD requirements. Disturbance over 1 acre triggers WDNR requirements.

3. Preliminary Design

- A. Based upon the field survey data and the information compiled, prepare park designs including the features outlined in the Project Description and Scope of Services.
- B. Submit the preliminary designs to the City for review and approval.

4. Final Construction Plans and Bidding Documents

- A. Upon receiving approval of the preliminary designs by the City, complete the final construction plans and bidding documents.
- B. Prepare appropriate construction details.
- C. Prepare a construction erosion control plan.
- D. Apply for any applicable DNR permits.
- E. Prepare bidding documents based upon City of New Berlin standards.
- F. Submit the final construction plans and bidding documents to the City for review and approval.

5. Bidding Phase

- A. Prepare the official bidding notice and submit the notice to the City.
- B. Provide digital construction plans and bidding documents to be uploaded to

Questcdn.com for perspective bidders.

C. Provide plan and specification clarifications to perspective bidders.

D. Attend the Bid Opening.

E. Evaluate bids received, prepare a letter of recommendation for award and submit it to the City.

6. Administration

A. Attend up to ten meetings with the City (approximately five virtual, five in person). It is anticipated that these meetings may include:

1. Preliminary design submittal and presentation.
2. Presentation to the Plan Commission.
3. Final construction plan submittal.
4. Bid opening attendance.

B. Prepare and submit construction cost estimates to the City.

C. Deliverables shall include:

1. Five hard copies and an electronic copy of the construction plans in AutoCad and PDF format.
2. Three hard copies of the bidding documents and an electronic copy in PDF format.
3. No bidding documents and construction plans will be produced for distribution to perspective bidders.

7. Schedule

A. Based on the evaluation of the Proposals received, a consultant will be selected. A proposed contract will then be prepared and negotiated with the most responsive, responsible consultant.

B. The following time schedule is anticipated:

- | | |
|-------------------------------------|-------------------|
| 1. Receipt of all Proposals | March 24, 2023 |
| 2. Staff selection of Consultant | March 31, 2023 |
| 3. Plan Commission | April 13, 2023 |
| 4. Common Council award of contract | April 25, 2023 |
| 5. Preliminary designs completed | September 8, 2023 |

- | | |
|---|------------------|
| 6. Preliminary designs to the Plan Commission | October 2, 2023 |
| 7. Communication to PBG from staff | October 2, 2023 |
| 8. Final Designs completed | November 6, 2023 |
| 9. Bidding Phase Completed | Winter 2024 |

C. Submittal

1. Five copies of proposals should be submitted to the Department of Community Development by 10:00 AM., Friday, March 24, 2023. Late submittals will not be accepted and will be returned unopened. Proposals should be mailed or delivered to:

Kristen Hogan, Principal Planner
3805 South Casper Drive
New Berlin, WI 53151

2. Proposals will be evaluated based on the consultants professional qualifications, the experience and qualification of the project team, Consultant present and committed work load, project approach, consultant effort, and cost.
3. All questions regarding proposals should be directed to Kristen Hogan at the following e-mail address: khogan@newberlin.org.

CITY OF NEW BERLIN CAPITAL PROJECT SUMMARY	
Project Title: Buena Park and Maple Ridge Park Playground and Trail Replacement	Department: DCD/Planning

(A) Project Scope and Description:

This project consists of the design of replacement play structures, poured in place surfacing and trails at Buena Park and Maple Ridge Park to comply with CVMIC and ADA standards. Add additional trails as needed to connect to park amenities.

(B) Location:

Buena Park - 16301 W. Coachlight Drive
Maple Ridge Park - 13200 W. Maple Ridge Rd

(C) Analysis of Need:

The City's insurance carrier, CIVMC, completed an annual playground inspection in 2022. MSA completed an ADA study of City facilities in 2018. The results of the studies noted that there are many outstanding issues with these playground areas and the trails within the parks, including safety and failing to comply with current ADA standards. These projects were selected for reconstruction based upon the number of outstanding issues, as well as other proposed park redevelopment plans planned for the same year, such as playground replacement, park structure replacement or trail reconstruction.

Buena Park Playground (west)

The following is a summary of the outstanding issues that are outlined in the CIVMC report:

- **Entrapment.** Head and Neck Entrapment - Public playground equipment shall be designed and constructed or assembled so that any accessible opening shall meet the following performance requirements to reduce the risk of accidental head or neck entrapment by either a head-first or feet-first entry into the opening. ASTM-F1487 6.1. This piece of equipment presents a head entrapment hazard. The equipment should be modified to eliminate the head entrapment hazard.
- **Maintenance.** Inadequate maintenance of equipment has resulted in injuries on playground. Because the safety of playground equipment and its suitability for use depend on good inspection and maintenance, the manufacturer's maintenance instructions and recommended inspection schedules should be strictly followed. A comprehensive maintenance program should be developed for each playground. All playground areas and equipment should be inspected for excessive wear, deterioration, and any potential hazards. CPSC 4.1. Platform is showing signs of rust/corrosion and should be monitored to ensure it is structurally sound.
- **Painted Surfaces.** Metals not inherently corrosion resistant should be painted, galvanized, or otherwise treated to prevent rust. Paints and other finishes should be maintained to prevent rusting of exposed metals and to minimize children playing with peeling paint and paint flakes. CPSC 2.5.4. All painted surfaces must be maintained in good condition to eliminate rusting and peeling paint.
- **Sliding Poles.** The pole should extend at least 60 inches above the level of the platform or structure used for access to the sliding pole. CPSC 5.3.2.6. The sliding pole should be a minimum of 60 inches above the level of the platform.

- Entrapment. Head and Neck Entrapment - Public playground equipment shall be designed and constructed or assembled so that any accessible opening shall meet the following performance requirements to reduce the risk of accidental head or neck entrapment by either a head-first or feet-first entry into the opening. ASTM-F1487 6.1. This piece of equipment presents a head entrapment hazard. The equipment should be modified to eliminate the head entrapment hazard.
- Entrapment. Head and Neck Entrapment - Public playground equipment shall be designed and constructed or assembled so that any accessible opening shall meet the following performance requirements to reduce the risk of accidental head or neck entrapment by either a head-first or feet-first entry into the opening. ASTM-F1487 6.1. This piece of equipment presents a head entrapment hazard. The equipment should be modified to eliminate the head entrapment hazard.
- Entrapment. Head and Neck Entrapment - Public playground equipment shall be designed and constructed or assembled so that any accessible opening shall meet the following performance requirements to reduce the risk of accidental head or neck entrapment by either a head-first or feet-first entry into the opening. ASTM-F1487 6.1. This piece of equipment presents a head entrapment hazard. The equipment should be modified to eliminate the head entrapment hazard.
- Maintenance. Inspections alone do not constitute a comprehensive maintenance program. Any problems found during the inspection should be noted and fixed as soon as possible. All repairs and replacements of equipment parts should be completed following the manufacturer's instructions. CPSC 4.2. All hazards found during inspections should be eliminated as soon as possible. Swing support structure is showing signs of cracking/damage. Monitor/repair/replace as needed.
- Painted Surfaces. Metals not inherently corrosion resistant should be painted, galvanized, or otherwise treated to prevent rust. Paints and other finishes should be maintained to prevent rusting of exposed metals and to minimize children playing with peeling paint and paint flakes. CPSC 2.5.4. All painted surfaces must be maintained in good condition to eliminate rusting and peeling paint.
- Entrapment. Head and Neck Entrapment - Public playground equipment shall be designed and constructed or assembled so that any accessible opening shall meet the following performance requirements to reduce the risk of accidental head or neck entrapment by either a head-first or feet-first entry into the opening. ASTM-F1487 6.1. This piece of equipment presents a head entrapment hazard. The equipment should be modified to eliminate the head entrapment hazard.
- Concrete Footings – Exposed. All anchoring devices for playground equipment, such as concrete footings or horizontal bars at the bottom of flexible climbers, should be installed below ground level, beneath the base of the protective surfacing material. This will also prevent children from sustaining additional injuries from impact if they fall on exposed footings. CPSC 3.6. Play areas should be free of tripping hazards. The concrete footing presents a tripping hazard and also increases the risk of an impact hazard if a child falls onto the concrete footing. The proper amount of protective surfacing material must be maintained over the concrete footings at all times.

Buena Park Trails

The following is a summary of the outstanding issues that are outlined in the ADA study:

- No accessible route from accessible parking stall (west side of park) to park elements. Add accessible route.

Maple Ridge Park Playground

The following is a summary of the outstanding issues that are outlined in the CIVMC report:

- Maintenance. Inspections alone do not constitute a comprehensive maintenance program. Any problems found during the inspection should be noted and fixed as soon as possible. All repairs and replacements of equipment parts should be completed following the manufacturer's instructions. CPSC 4.2. Platforms are showing signs of

- degradation, monitor the platforms and protective coatings to prevent rust/corrosion.
- Maintenance. Inspections alone do not constitute a comprehensive maintenance program. Any problems found during the inspection should be noted and fixed as soon as possible. All repairs and replacements of equipment parts should be completed following the manufacturer's instructions. CPSC 4.2. Plastic equipment is showing signs of UV exposure, monitor the equipment and repair/replace as needed.
- Painted Surfaces. Metals not inherently corrosion resistant should be painted, galvanized, or otherwise treated to prevent rust. Paints and other finishes should be maintained to prevent rusting of exposed metals and to minimize children playing with peeling paint and paint flakes. CPSC 2.5.4. All painted surfaces must be maintained in good condition to eliminate rusting and peeling paint.

The following is a summary of the outstanding issues that are outlined in the ADA study:

- Engineered wood fiber surface is soft and uneven. Replace surface and maintain to ASTM F1951-99. (~2,600 SF).
- Spring riders are aging. Consider replacement.

Maple Ridge Park Trails

The following is a summary of the outstanding issues that are outlined in the ADA study:

- Route from parking area to site features is not accessible. Width is less than 60". Widen pavement and top dress.
- Route from parking area to site features is not accessible. Surface is worn and grass/weed covered in spots. Replace/add gravel.
- No accessible route exists to connect basketball court, athletic field, or shelter. Add accessible route. (~350 LF)

(D) Alternatives:

Playgrounds

The City's insurance carrier, CVMIC, has inspected the equipment on a regular basis and identified several safety violations that warrant attention.

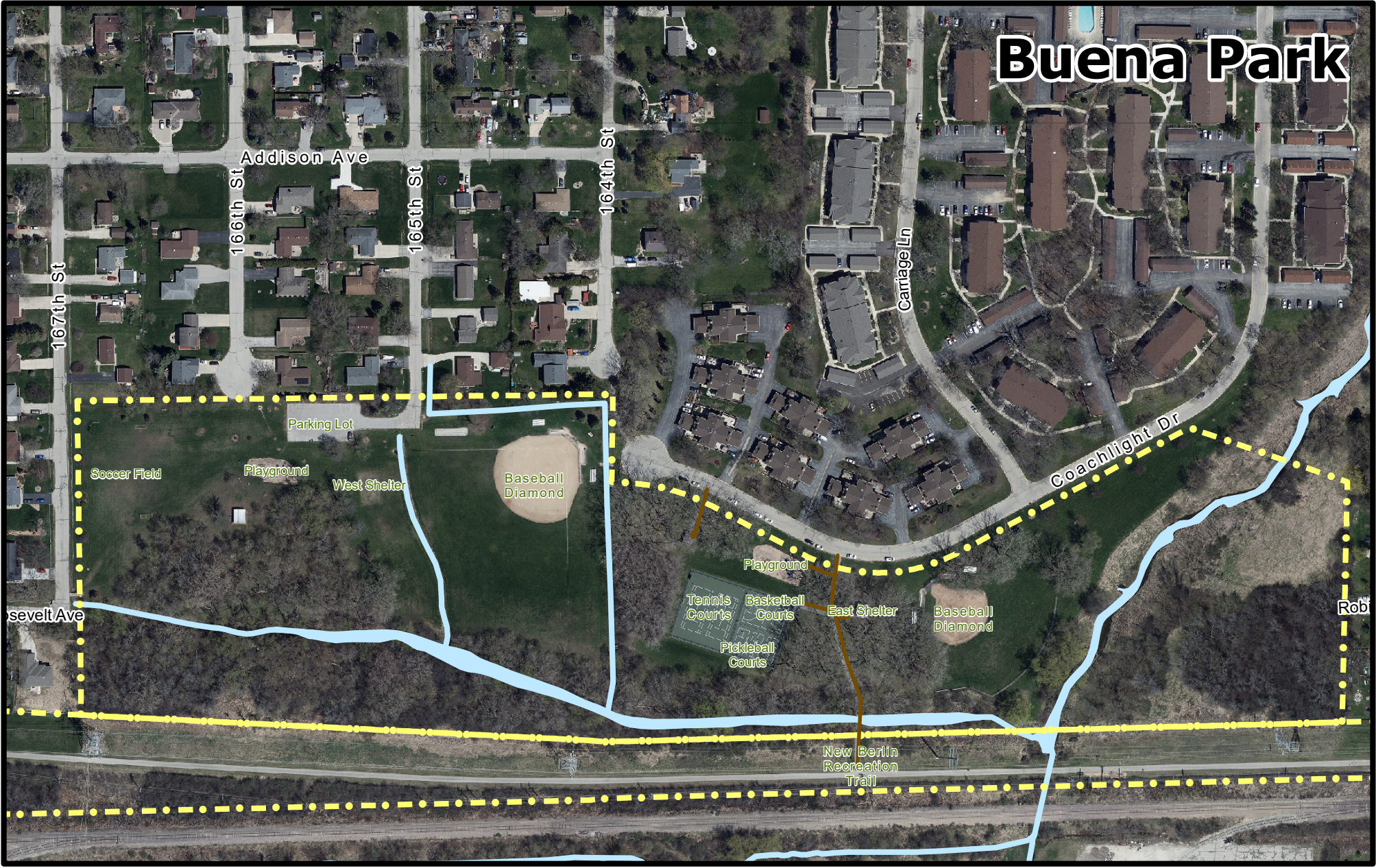
Parks, Building and Grounds Department to make spot repairs instead of replacing entire playground and surfacing. This would save on construction costs. This alternative is not acceptable as there would be ongoing maintenance with repairs to the playground equipment and maintenance with the playground surfacing. These repairs and maintenance tasks take away a significant amount of time from these crews who perform other daily task throughout the City. By bidding this project out, the operating costs will be reduced.

Trails

Parks, Building and Grounds Department and/or Streets Department to make spot repairs instead of replacing entire trail. This would save on labor costs, but not material costs. This alternative would take away a significant amount of time from these crews who perform other daily task throughout the City. By bidding this project out, the operating costs to repair and maintain the trails will not be increased.

(E) Ongoing Operating Costs:

Once the playground is replaced, routine park maintenance will be needed over the next 5-10 years. Once the trails are reconstructed, only minor maintenance should be needed over the next 5-10 years. No major operating implications are anticipated.

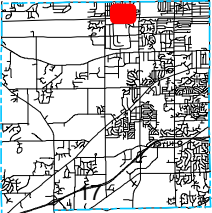


Legend

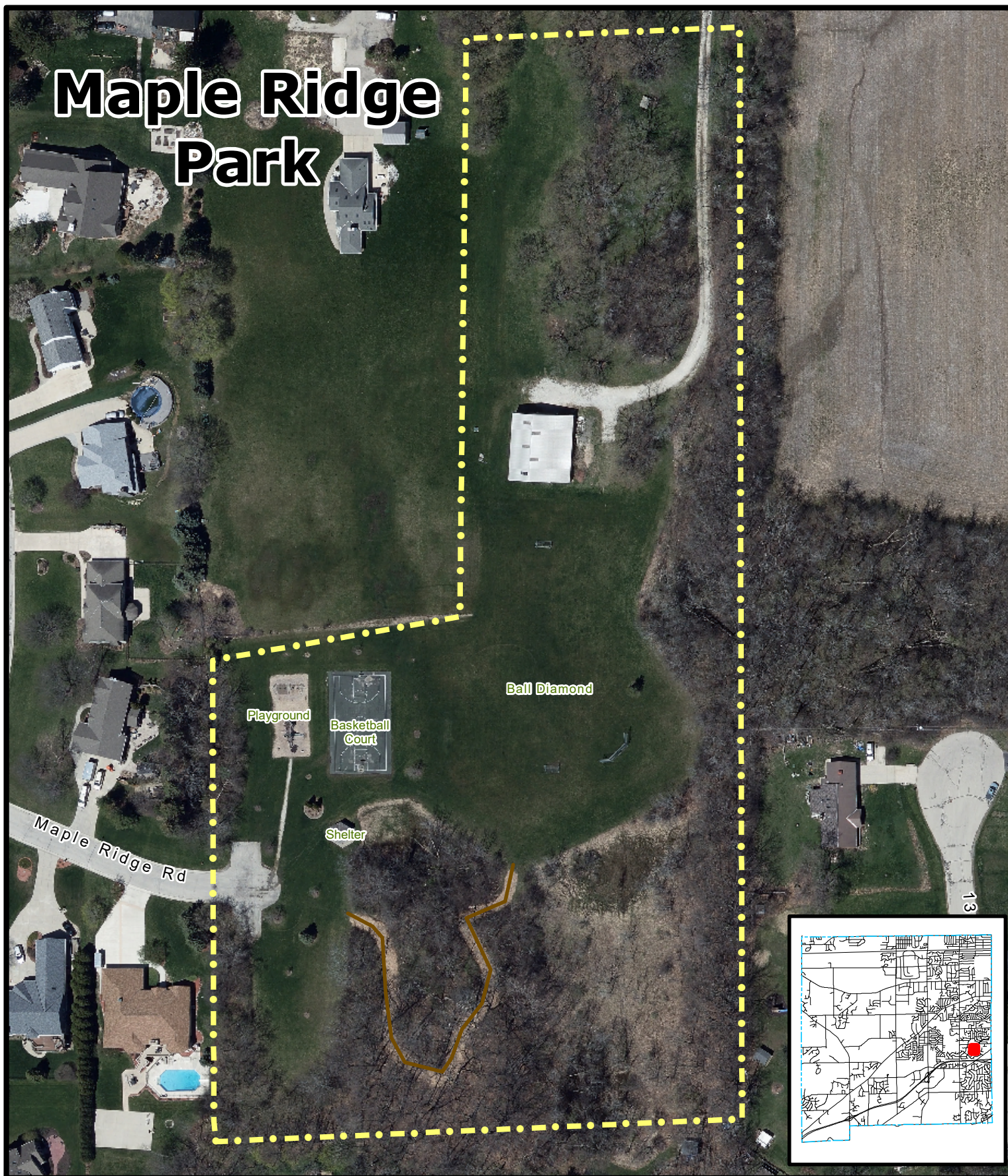
-  Park
-  Trails---.12 Miles
-  Water



0 100 200 Feet



Maple Ridge Park



Legend

-  Park
-  Trails-- .08 Miles



Buena Park & Maple Ridge Park Design

COMPOSITE SHEET

CRITERIA	MULTIPLIER
Experience and Qualifications of Project Team	20
Present and Committed Work Load	20
Project Approach	20
Consultant Effort (ie. Hours to complete)	20
Cost	20

NUMBER OF EVALUATORS:

4

CONSULTANT	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Average	Ranking
Stantec	4.6	3.8	3.8	4.4	4.15	1
MSA	4.4	3.4	3.6	4.4	3.95	2
Ayres	3.8	3	3	3.8	3.4	3



REQUESTED ACTION STATEMENT

DATE: April 25, 2023

TO: Mayor
Common Council

FROM: Erin Cross, Recreation Manager & 4th of July Commission

ISSUE: Item from 4th of July Commission requiring Common Council approval

REQUESTED: Recommend to the Common Council approval of a contract with Chrome Fireworks in the amount of \$30,000.

FISCAL IMPACT: The City has received a donation from Festival Foods, Inc. in the amount of \$20,000 that will offset the majority of the fireworks expense, and an additional \$10,000 has been fundraised by the 4th of July Commission in an effort to offset the increased expense of this year's fireworks.

RATIONALE: Per the 4th of July Contract Policy (also attached), any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with Chrome Fireworks in the amount of \$30,000. This agreement has been reviewed and approved as to its form by the City Attorney, with the note that the City will need to issue a permit for the fireworks.

RECOMMENDATION: The Common Council approve the contract with Chrome Fireworks in the amount of \$30,000 for this year's 4th of July Festival.

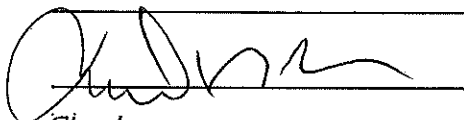
4th of July Contract Routing Form

Name of Contractor: Chrome Fireworks
Contract Date: July 4th, 2023
Contract Amount: \$30,000

Date contract was approved by 4th of July Commission: January 24, 2023

City Attorney has reviewed & approved this contract with the following comments if any:

see enclosed letter dated 3/29/23


City Attorney

3/29/23
Date

Date Contract was approved by Council: _____

Routing for contract signatures:

City Attorney ☒

Finance Director ☐

Recreation Supervisor ☐

Mayor ☐

Other ☐

Contract Information entered into database by Clerk's Office: ☐

**Completed copy of this form should be returned to Recreation Supervisor.
This Contract Routing Form will be retained by the City Clerk along with the
original executed contract.**

INVOICE

Date: February 9, 2023
Invoice # 2612

Chrome Fireworks
PO Box 44186
Madison, WI 53744

SOLD City of New Berlin
TO:

Phone: (608) 732-4545
chromefireworks@gmail.com
www.chromefireworks.com

PAYMENT METHOD	
TERMS: DUE APPON RECEIPT	Make checks payable to Chrome Fireworks

[illegible]

THANK YOU FOR
YOUR BUSINESS!



P.O. Box 44186
Madison, WI 53744

Phone: (608) 732-4545
chromefireworks@gmail.com
www.chromefireworks.com

PERMIT TO POSSESS AND DISPLAY FIREWORKS

To whom it may concern, Greetings!

The local authority having jurisdiction grants Chrome Fireworks and Displays, LLC (formerly known as Krueger Pyrotechnics) the right to exhibit display fireworks for the following event:

State:

County:

Fireworks Event:

Event Sponsor:

Date of Display:

Rain Date:

Fireworks Location:

Approx. Display Start Time; Subject to Change with Weather:

SHERIFF, FIRE DEPARTMENT CHIEF
OR TOWN CHAIRMAN:

Signature of Official Issuing Permit

Print Name and Title of Official Issuing Permit

(Email or send a copy of this permit to Chrome Fireworks at least one month prior to display)

(Keep a copy of this permit for Sponsor's records)



PO Box 44186 ☆ Madison, WI ☆ 53744
608.732.4545 ☆ chromefireworks@gmail.com
www.chromefireworks.com

Sponsor

*City of New Berlin
3805 S. Casper Drive
New Berlin, WI 53151*

2023 CONTRACT

This contract entered into this _____ day of _____, 202__, engages the services of Chrome Fireworks & Displays, LLC, hereinafter referred to as "Chrome", to produce and perform a pyrotechnic display on behalf of Sponsor under the following terms:

1. The date of the display will be Tues July 4, 2023. In case of inclement weather, the display will be rescheduled for Weds July 5th or Sat July 8. Chrome will have complete authority to cancel the display if, in the reasonable opinion of Chrome, the health, safety, and well-being of the pyrotechnicians, spectators or property would be jeopardized by proceeding with the display including inclement weather or imminent threat thereof.
2. The cost of the display will be \$ 30,000. Upon signing this Contract, Sponsor will pay an initial payment to Chrome in the amount of \$ 5,000 invoiced in January. The remaining balance will be paid within 10 days of the display. A late fee of 1.5% per month shall apply to any unpaid balance remaining beyond a 10-day period. Should a cancellation occur once crew is enroute or onsite, the cost of insurance, labor and any non-reusable items will be billed or deducted from the deposit, minimum 40% of budget amount.
3. Sponsor will procure and furnish a suitable location for the fireworks display with adequate distances from audience, roof tops, flammable materials and other hazards in compliance with NFPA 1123 guidelines - including a minimum spectator set back of at least 600 feet at all points from the largest diameter mortars. Sponsor will secure all police, fire, local and state permits, and shall arrange for all security bonds if required by law for the location of the display. Sponsor will furnish all necessary police, fire and other appropriate protection necessary for proper crowd control and protection, automobile parking, and supervision in clearing of debris after the display. Sponsor will be solely responsible for keeping all unauthorized persons out of the display firing area and behind the safety zone lines.
4. Chrome reserves the right to make substitutions as to the amount, size and description of fireworks as is reasonably necessary to address site, weather, health, supply availability and safety concerns should they arise.
5. **Cancellation:** Should the fireworks display(s) agreed upon in this Contract be cancelled by the Client prior to the fireworks display date, shall result in liquidated damages payable to Chrome Fireworks from the Sponsor for an amount equal to 40% of the Contract price plus any and all other related costs incurred by the Display Operator in resolving matters related to failure of Client to fulfill this Contract, including but not limited court costs, attorney fees, litigation expenses, witness fees/expenses, travel expenses and similar costs), prejudgment interest, post judgment interest, fees, and expenses incurred by the Display Operator.
6. **Weather/ Shoot Trailers:** In event of worsening weather conditions at the planned showtime, Chrome will need flexibility on shoot times, earlier or later depending on weather conditions. Chrome often provides electronic & shoot trailer shows for utmost performance of the firework show. The downfall of these electronic setups is that

they CANNOT be dismantled. The show will need to be fired or secured/ stored until the nearby rain date. It is very hazardous and potentially fatal to our crews to dismantle this type of display. Chrome needs flexibility of the Sponsor to shoot the show or adequately secure the setup until the rain date.

7. Setup: Chrome will provide qualified pyrotechnicians who will deliver, set-up, execute, dismantle and cleanup the pyrotechnic display. In some cases the crew shall arrive the night prior to the event to begin setup.

8. Clean Up & Searches: The pyrotechnicians shall conduct an after-display search of the grounds in an effort to locate and dispose of any unexploded fireworks. The search shall be reasonably dictated by such elements including, but not limited to terrain, ground cover, weather conditions and time of completion of display. Chrome pyrotechnicians will provide reasonable cleanup for the site immediately following the display. All equipment, firework packaging, and larger debris will be removed to the best of the crew's ability before leaving the display area. Sponsor shall provide a nearby dumpster or other adequate space for boxes, spent cakes and refuse after the display.

After our cleanup pieces of paper, cardboard, multi-shot cake inserts and fuse casing will remain but should disappear with weather, time and/or lawn mowing. In concentrated areas of debris particles for example, Chrome often uses leaf rakes if the site and ground cover allows, without being required, our crews provide reasonable effort to clean up the large debris for the Sponsor.

9. Chrome will conduct a reasonable search of the display area before departure, in an attempt to locate any damages or unexploded shells. Sponsor acknowledges that an early morning search of the area is of utmost importance, or as soon as reasonably possible following the display. This search is to locate anything abnormal including site damage or unexploded fireworks that might not have been spotted by Chrome in the night. In the event that Sponsor discovers any unexploded fireworks, Sponsor will immediately contact Chrome and Chrome shall be responsible for removing said fireworks as soon as possible after receipt of such notice. **Please notify Jim Krueger via cell phone 608-732-4545. If you have a cell # for your crew lead they may be notified also.**

10. \$5,000,000 Insurance: Unless otherwise agreed, Chrome shall provide General Liability and Property Damage Insurance for the fireworks display in the amount of \$5,000,000 naming the Sponsor as an additional insured party. The current industry standard is \$1,000,000 of such coverage. A certificate evidencing liability insurance shall be provided to Sponsor before the display. Sponsor will notify Chrome of any additional insureds prior to issuing the insurance certificate.

The sponsor and landowner along with other entities and individuals listed on the certificate of insurance shall be deemed an additional insured per this contract. No additional written agreement is needed for endorsement.

Chrome is also covered with \$5,000,000 of MCS-90 Transportation insurance which is compliant with Dept. of Transportation interstate regulations.

The pyrotechnicians on site are covered with a \$500,000 Workers Comp insurance policy, proof of all insurances are readily available by request.

11. Chrome shall take all steps reasonably anticipated to safeguard spectators and Sponsor's property. Should any losses occur which Sponsor believes are the result of Chrome's firework display, Sponsor will immediately notify Chrome of the nature of the loss and the date on which the loss occurred. Said notice shall be in writing and provide as much detail as possible regarding the extent of the loss (including clear pictures) as this process will be required by the insurance adjustors.

12. In the event of fire, accident, flood, act of God or other causes beyond the control of Chrome which prevents Chrome from performing under this contract, other than inclement weather, both parties agree to terminate this contract and all performance requirements and damages resulting therefrom.

13. The Sponsor will pay to Chrome pay all costs (including but not limited to court costs, attorney fees, litigation expenses, witness fees/expenses, travel expenses and similar costs), prejudgment interest, post judgment interest, fees, expenses and all damages incurred by the Chrome through enforcing this contract.

14. The Sponsor agrees to indemnify, hold harmless and defend Display Operator and employees from any and all claims brought against the Display Operator for any and all accidents, incidents or allegations not directly related to the Display Operator's agreed upon contractual duties and obligations, aka: any other liabilities arising from sponsor's event.

Chrome will provide the General Liability insurance certificate to Sponsor for the purpose of insuring Chrome's risk in performing contracted duties involving the fireworks display. However, Chrome will be indemnified and held harmless for the remainder of the Sponsor's event or issues arising as result of the event. This includes but is not limited to the event's activities, other contractors, vendors, traffic issues, and members of general public, audience and/or any other matters beyond the direct control, scope and duty of Chrome's contract.

15. This Contract will be construed by laws of the state of Wisconsin. In the event that any provision of this agreement is deemed unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect.

16. This Contract constitutes the entire agreement between the parties hereto and supersedes all prior and contemporaneous agreements, understanding, negotiations and discussions, either oral or executed in writing by the parties to be bound thereby. Chrome reserves the right to transfer the contract at which time the duties and liability would also be transferred in entirety, indemnifying and holding harmless Chrome. The waiver of any provisions of this Contract will not constitute a waiver of any other provision of this contract.

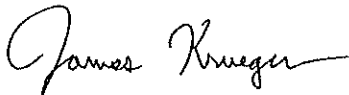
17. The party signing this document on behalf of Sponsor warrants and represents that (s)he is solely authorized to enter into this agreement on behalf of the Sponsor.

ADDITIONAL PROVISIONS:

X _____
Sponsor – signature

X _____
Print name and title

CHROME FIREWORKS AND DISPLAYS, LLC:



James Krueger - owner



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/19/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Ryder Rosacker McCue & Huston (MGD by Hull & Company)
509 W Koenig St
Grand Island NE 68801

CONTACT
NAME: Kristy Wolfe
PHONE (A/C, No, Ext): 308-382-2330 FAX (A/C, No): 308-382-7109
E-MAIL: Kwolfe@ryderinsurance.com
ADDRESS:

INSURED
James M Krueger II & Kate P Krueger Revocable Trust Dated October 22, 22 & Any Amendments Thereto;
Chrome Fireworks and Displays LLC
PO Box 44186
Madison WI 53744

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	SCOTTSDALE INS CO	41297
INSURER B:	NATIONAL CAS CO	11991
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES

CERTIFICATE NUMBER: 1101056805

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC			CPS4020708	10/25/2022	10/25/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☒ SCHEDULED AUTOS ☒ NON-OWNED AUTOS			ZBO004766	10/25/2022	10/25/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$			CXS0023168	10/25/2022	10/25/2023	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				WC STATU-TORY LIMITS ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Regarding the General Liability coverage, Waiver of Subrogation applies to the entities listed below per attached form CG 24 04 when required by written agreement.

Regarding the General Liability coverage, Blanket Additional Insured applies to the entities listed below per attached form GLS-150s when required by written agreement.

Display Location: in greenspace near New Berlin Recycling Center, 3711 S Casper Dr, New Berlin, WI 53151

Display Date: Tues July 4, 2023

Rain Date: Weds July 5, 2023

CERTIFICATE HOLDER**CANCELLATION**

City of New Berlin
3805 S Casper Dr.
New Berlin WI 53151
USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2010 ACORD CORPORATION. All rights reserved.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

Any person or organization with whom the insured has agreed to waive rights of recovery, provided such agreement is made in writing and prior to the loss.

Additional Premium is Included

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV - Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.



ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

With respect to this endorsement, **SECTION II—WHO IS AN INSURED** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract, written agreement or written permit which must be:

- a. Currently in effect or becoming effective during the term of the policy; and
- b. Executed prior to the "bodily injury," "property damage," or "personal and advertising injury."

The insurance provided to these additional insureds is limited as follows:

1. That person or organization is an additional insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - a. Your acts or omissions; or
 - b. The acts or omissions of those acting on your behalf.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

2. With respect to the insurance afforded to these additional insureds, the following exclusions are added to item 2. **Exclusions of SECTION I—COVERAGES:**

This insurance does not apply to "bodily injury," "property damage" or "personal and advertising injury" occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
3. The limits of insurance applicable to the additional insured are those specified in the written contract, written agreement or written permit or in the Declarations for this policy, whichever is less. These limits of insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations for this policy.
 4. Coverage is not provided for "bodily injury," "property damage," or "personal and advertising injury" arising out of the sole negligence of the additional insured.
 5. The insurance provided to the additional insured does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of an architect's, engineer's or surveyor's rendering of or failure to render any professional services including:

- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - b. Supervisory, inspection, architectural or engineering activities.
6. Any coverage provided hereunder will be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a

written contract specifically requires that this insurance be primary.

When this insurance is excess, we will have no duty under **SECTION I—COVERAGES** to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured against that "suit." If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured's rights against all those other insurers.

AUTHORIZED REPRESENTATIVE

DATE

Includes copyrighted material of ISO Properties, Inc., with its permission.
Copyright, ISO Properties, Inc., 2004

ADDENDUM TO CITY OF NEW BERLIN CONTRACTS

This Addendum is made and entered into and shall be considered an attachment to all contracts entered into by the City of New Berlin for so long as the City of New Berlin is subject to the U.S. Department of Treasury Restrictions, as well as other federal restrictions related to the City's receipt of Coronavirus Local Fiscal Recovery Funds. The following Terms and Conditions shall be included in each such agreement and are incorporated as though fully set forth in the original contract.

1. No City contractor or employee shall operate any machinery or vehicle while utilizing a smart phone, including, but not limited to, the use of any cellular phone or texting.
2. All City employees and contractors, while engaged in the performance of City business or acting consistent with the performance of services under a contract with the City shall utilize seatbelts and any other safety devices related to the operation of a motor vehicle.
3. City employees or contractors whose duties and responsibilities are funded through the Coronavirus State and Local Fiscal Recovery Funds agree that they will not engage in any lobbying activities while in the course of providing services on behalf of the City of New Berlin, as restricted under the Hatch Act, 5 USC Sec. 1501-1508. No funds appropriated under the Coronavirus State and Local Fiscal Recovery Act shall be utilized for lobbying, and no political payments shall be made through the use of said funds.
4. All City employees and contractors, while in the performance of duties on behalf of the City shall abide by all local, state and federal regulations concerning the ingestion of controlled substances and shall not violate such Statutes or Ordinances. The City shall enforce drug free workplace standards and provide awareness programs for Staff. The City shall further agree to take action regarding individuals using drugs in the workplace according to law.
5. All City employees and contractors, in the course of performing of their duties on behalf of the City, shall, to the extent applicable, comply with the provisions in Wisconsin Statute Sec. 19.59 regarding conflicts of interest, as well as City of New Berlin Municipal Code Chapter 28 regarding ethics. Specifically, no City employee or contractor shall accept or solicit money or tangible personal property or otherwise receive consideration in exchange for the agreement to enter into a contract with a third party.
6. City employees shall avoid the acquisition of unnecessary items or property on behalf of the City.
7. City employees shall, to the extent applicable, engage in value engineering as part of any construction work performed on behalf of the City.
8. Contracts shall only be awarded to responsible contractors with experience in performing the services being contracted for.

9. City contracts shall avoid compensating for contractor work performed on a time and material basis and, to the extent practicable, shall have fixed-price contracts.
10. The selection of a contractor by the City should be done in an atmosphere of open and honest competition.
11. In the course of public bidding involving the purchase of equipment, the City shall not specify only a brand name for the purpose of limiting potential contracting parties.
12. The City shall verify that any entity with which it is contracting has not been excluded for contracting pursuant to 2 CFR 180.
13. City contractors do hereby certify that they are not designated by the federal government as being precluded from engaging in federal contracts.

CITY OF NEW BERLIN
GENERAL TERMS and CONDITIONS OF SERVICE

1. Introduction. This document (hereinafter referred to as "Terms and Conditions") is hereby incorporated and part of the contract between the City of New Berlin (hereinafter referred to as "City") and the contractor identified below (hereinafter referred to as "Contractor"). These Terms and Conditions, along with the Scope of Services and any attachments thereto, shall constitute the entire contract for material, work and other goods and services, collectively referred to as the "Goods" between the City and the Contractor. It is expressly agreed that no statement, arrangement, warranty or understanding, oral or written, expressed or implied, will be recognized unless it is stated in or otherwise permitted by these Terms and Conditions, and the aforementioned Scope of Services. These Terms and Conditions are solely for the benefit of the City and the Contractor and are not intended for the benefit of any other party.
2. Proposal. The Contractor is solely responsible for, and shall have sole control of, construction methods, sequences and coordination of all work described in the Scope of Services, unless expressly stated to the contrary.
3. Services and/or Construction Materials. All materials and work shall be furnished in accordance with normal industry standards and practices. Contractor agrees to install or provide the services set forth in the Scope of Services in a good and workmanlike manner, in accordance with construction practices in the Milwaukee Metro area, using quality materials and products as identified in the Scope of Services.
4. Access to the Site. The City shall provide access to the Contractor to work in and on City property, and to provide utility services as may be agreed to the Scope of Services incorporated herein.
5. Storage of Materials. The storage of materials and storage of Contractor's equipment shall be the responsibility of the Contractor. The City agrees to maintain access for the Contractor at the project site and to keep the project site free from obstructions and conflicting work. The Contractor shall be responsible for obtaining builders risk insurance coverage and in general, for insuring the materials and work being provided hereunder.
6. Insurance. Contractor shall maintain workers compensation, automobile liability and commercial general liability insurance coverage with carriers licensed to do business in the State of Wisconsin, and with such limits as the City may establish and require from time to time. Contractor shall furnish a Certificate of Insurance evidencing the types and amounts of coverage. Said coverage shall be on an occurrence basis and the limits identified in the general liability coverage shall be for this project and not the policy as a whole. Contractor agrees to require that the insurer list the City as an Additional Insured and to provide adequate evidence of said status through the liability insurance endorsement. Contractor shall further obtain an endorsement from the insurance carrier indicating that any material changes to the policy or any cancellation of the coverage subsequent to the issuance of the Certificate, and until the completion of the

services hereunder, shall necessitate that the insurer provide not less than thirty (30) days notice to the City of said fact. Clauses such as that the insurer will endeavor to notify the City are unacceptable and will be rejected.

7. Independent Contractor. The parties warrant that no employer/employee relationship is established between the Contractor and the City by virtue of the terms of this contract. It is understood by the parties hereto that the Contractor is an independent contractor and as such, neither it nor its employees if any are employees of the City for purposes of tax, retirement system or social security withholding.

8. Records and Reports. Records relating to the performance of the services under this contract must be retained for seven (7) years after final disposition. However, if any litigation claim or audit has started before the expiration of the seven (7) year period, then records shall be retained for five (5) years after the litigation or audit is resolved.

9. Advertisements. Contractor shall not identify the City as a client or customer of the Contractor, or utilize the name of the City or its logo in any advertisements or other documents placed in the public domain without the express written consent of the City.

10. Changes. In the event that the parties determine that a modification to the terms of the providing of these goods or services are necessary, said change shall not be effective unless executed by authorized representatives of both parties.

11. Delay. Work shall be completed within the number of working days set forth in the contract or otherwise as soon as reasonably practicable unless delay occurs due to work stoppage, adverse weather conditions, labor disputes or modifications to the Terms and Conditions of the Contract.

12. Dispute. These Terms and Conditions shall be deemed to have been made and governed by the laws of the State of Wisconsin. Any legal suit or action with regard to these Terms and Conditions or the project as a whole shall be venued in the Waukesha County Circuit Courts, Waukesha County, Wisconsin, unless the parties mutually agree to arbitration and/or mediation in place of civil litigation.

13. Limitation on Liability. The City's liability to the Contractor shall not exceed the sums paid by the City to the Contractor under this contract. In addition, to the extent that the Contractor seeks indemnification from the City, that indemnity shall be subject to the limitations set forth herein. No indemnity provided under any contract hereinunder shall be construed to be a waiver or estoppel of the City of New Berlin or its insureds' ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to those set forth in Wisconsin Statute §893.80, §895.52 and §945.05. To the extent indemnification is available and enforceable, the City of New Berlin or its insured shall not be liable in indemnity or contribution for any amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligations to indemnify hereunder are further subject to the availability limits of applicable insurance coverage. Under no circumstances shall the City be required to indemnify the Contractor for its own negligence or intentional conduct.

14. Modification and Assignability. This contract, including all documents incorporated by reference herein, may not be enlarged, modified or altered except upon written agreement signed by both parties. The Contractor may not subcontract or assign its rights, including rights to compensation, or terms of performance arising hereunder without the prior written consent of the City. Any subcontractor or assignee shall be bound by all of the terms and conditions of the contract, and will be required to enter into a written agreement with the City.

15. Termination of Contract. This contract may be terminated as follows:

- A. *Termination for Convenience.* City may terminate this contract in whole or in part for the convenience of the City when the City determines that the continuation of the project is not in the best interests of the City. Contractor shall be entitled to payment for all of the services performed at the date of the termination, together with its direct costs of termination. Under no circumstances shall the Contractor be entitled to any penalty for the termination nor shall the Contractor be entitled to any payment for lost profits.
- B. *Termination for Cause.* If the City determines that the Contractor has failed to comply with any of the terms and conditions of the contract and the scope of services and related documents thereto, the City may give written notice to the Contractor of any such deficiency and in the event that the Contractor fails to cure said deficiency within ten (10) days of the notice of such failure, the City may, with no further notice, declare this contract to be terminated. Contractor will therefore be entitled to receive payment for those services performed at the date of termination, plus the amount of reasonable damages suffered by the City by reason of the Contractor's failure to comply with the terms of the contract. Under no circumstances shall the Contractor be entitled to any lost profits arising from the contract.

16. Warranty. Contractor warrants and guarantees to City that all materials and equipment and the work to be performed hereunder will be of good quality and free from faults and defects. This warranty shall cover materials for the manufacturer stated warranty period and workmanship for one (1) year from the date of substantial completion or as provided in the Scope of Services attached hereto, whichever is greater.

17. Conflicts. If there is any inconsistency between these Terms and Conditions and the Scope of Services or any attachments thereto, these Terms and Conditions shall apply.

18. Protection of the Project Site. Contractor agrees to post signage and to appropriately guard the area in which the contract work is being performed, and to take all other steps that may be necessary in accordance with requirements of OSHA and/or other governmental agencies with jurisdiction to ensure that the project site is maintained in a safe manner so as to prevent workers and passersby from entering the project site.

19. Hold Harmless. The contractor will defend and hold harmless the City as and against any claims, actions, demands or causes of action brought by a third party for damages or losses arising out of Contractor's performance of the work under these Terms and Conditions and the attached Scope of Services. Said indemnification shall include the City's actual attorney fees. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct.

20. Indemnity. The City shall not be liable for failure on the part of the Contractor or any other party performing under this contract in accordance with all applicable laws and regulations. Contractor waives any and all claims and recourse against the City including the right of contribution for loss of damage to persons or property arising out of or growing out of any way connected with or incident to the performance of this contract, except for liability arising out of the sole negligence of the City or its officers, agents or employees.

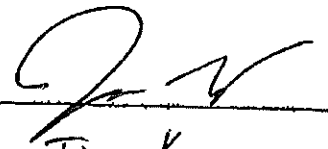
21. Working Hours. Unless specifically noted, all work included in this contract is to be performed during normal business hours, Monday through Friday. Work performed at any other time or on legal holidays must be specifically approved by the City.

CITY:
City of New Berlin

CONTRACTOR:

Chrome Fireworks
[Print Contractor Name]

By: _____
[Print Name & Title]

By: 
Jim Krueger - owner
[Print Name & Title]

2/19/23

CITY OF NEW BERLIN
GENERAL TERMS and CONDITIONS OF SERVICE
4th OF JULY FIREWORK EDIT

1. Introduction. This document (hereinafter referred to as "Terms and Conditions") is hereby incorporated and part of the contract between the City of New Berlin (hereinafter referred to as "City") and the contractor identified below (hereinafter referred to as "Contractor"). These Terms and Conditions, along with the Scope of Services and any attachments thereto, shall constitute the entire contract for material, work and other goods and services, collectively referred to as the "Goods" between the City and the Contractor. It is expressly agreed that no statement, arrangement, warranty or understanding, oral or written, expressed or implied, will be recognized unless it is stated in or otherwise permitted by these Terms and Conditions, and the aforementioned Scope of Services. These Terms and Conditions are solely for the benefit of the City and the Contractor and are not intended for the benefit of any other party.
2. Proposal. The Contractor is solely responsible for, and shall have sole control of, construction methods, sequences and coordination of all work described in the Scope of Services, unless expressly stated to the contrary.
3. Services and/or Construction Materials. All materials and work shall be furnished in accordance with normal industry standards and practices. Contractor agrees to install or provide the services set forth in the Scope of Services in a good and workmanlike manner, in accordance with construction practices in the Milwaukee Metro area, using quality materials and products as identified in the Scope of Services.
4. Access to the Site. The City shall provide access to the Contractor to work in and on City property, and to provide utility services as may be agreed to the Scope of Services incorporated herein.
5. Storage of Materials. The storage of materials and storage of Contractor's equipment shall be the responsibility of the Contractor. The City agrees to maintain access for the Contractor at the project site and to keep the project site free from obstructions and conflicting work. The Contractor shall be responsible for obtaining builders risk insurance coverage and in general, for insuring the materials and work being provided hereunder.
6. Insurance. Contractor shall maintain workers compensation, automobile liability and commercial general liability insurance coverage with carriers licensed to do business in the State of Wisconsin, and with such limits as the City may establish and require from time to time. Contractor shall furnish a Certificate of Insurance evidencing the types and amounts of coverage. Said coverage shall be on an occurrence basis and the limits identified in the general liability coverage shall be for this project and not the policy as a whole. Contractor agrees to require that the insurer list the City as an Additional Insured and to provide adequate evidence of said status through the liability insurance endorsement. Contractor shall further obtain an endorsement from the insurance carrier indicating that any material changes to the policy or any cancellation

of the coverage subsequent to the issuance of the Certificate, and until the completion of the services hereunder, shall necessitate that the insurer provide not less than thirty (30) days notice to the City of said fact. Clauses such as that the insurer will endeavor to notify the City are unacceptable and will be rejected.

7. Independent Contractor. The parties warrant that no employer/employee relationship is established between the Contractor and the City by virtue of the terms of this contract. It is understood by the parties hereto that the Contractor is an independent contractor and as such, neither it nor its employees if any are employees of the City for purposes of tax, retirement system or social security withholding.

8. Records and Reports. Records relating to the performance of the services under this contract must be retained for seven (7) years after final disposition. However, if any litigation claim or audit has started before the expiration of the seven (7) year period, then records shall be retained for five (5) years after the litigation or audit is resolved.

9. Advertisements. Contractor shall not identify the City as a client or customer of the Contractor, or utilize the name of the City or its logo in any advertisements or other documents placed in the public domain without the express written consent of the City.

10. Changes. In the event that the parties determine that a modification to the terms of the providing of these goods or services are necessary, said change shall not be effective unless executed by authorized representatives of both parties.

11. Delay. Work shall be completed within the number of working days set forth in the contract or otherwise as soon as reasonably practicable unless delay occurs due to work stoppage, adverse weather conditions, labor disputes or modifications to the Terms and Conditions of the Contract.

12. Dispute. These Terms and Conditions shall be deemed to have been made and governed by the laws of the State of Wisconsin. Any legal suit or action with regard to these Terms and Conditions or the project as a whole shall be venued in the Waukesha County Circuit Courts, Waukesha County, Wisconsin, unless the parties mutually agree to arbitration and/or mediation in place of civil litigation.

13. Limitation on Liability. The City's liability to the Contractor shall not exceed the sums paid by the City to the Contractor under this contract. In addition, to the extent that the Contractor seeks indemnification from the City, that indemnity shall be subject to the limitations set forth herein. No indemnity provided under any contract hereinunder shall be construed to be a waiver or estoppel of the City of New Berlin or its insureds' ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to those set forth in Wisconsin Statute §893.80, §895.52 and §345.05. To the extent indemnification is available and enforceable, the City of New Berlin or its insured shall not be liable in indemnity or contribution for any amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligations to indemnify hereunder are further subject to the

availability limits of applicable insurance coverage. Under no circumstances shall the City be required to indemnify the Contractor for its own negligence or intentional conduct.

14. Modification and Assignability. This contract, including all documents incorporated by reference herein, may not be enlarged, modified or altered except upon written agreement signed by both parties. The Contractor may not subcontract or assign its rights, including rights to compensation, or terms of performance arising hereunder without the prior written consent of the City. Any subcontractor or assignee shall be bound by all of the terms and conditions of the contract, and will be required to enter into a written agreement with the City.

15. Termination of Contract. This contract may be terminated as follows:

- A. *Termination for Convenience.* City may terminate this contract in whole or in part for the convenience of the City when the City determines that the continuation of the project is not in the best interests of the City. Contractor shall be entitled to payment for all of the services performed at the date of the termination, together with its direct costs of termination. Under no circumstances shall the Contractor be entitled to any penalty for the termination nor shall the Contractor be entitled to any payment for lost profits.
- B. *Termination for Cause.* If the City determines that the Contractor has failed to comply with any of the terms and conditions of the contract and the scope of services and related documents thereto, the City may give written notice to the Contractor of any such deficiency and in the event that the Contractor fails to cure said deficiency within ten (10) days of the notice of such failure, the City may, with no further notice, declare this contract to be terminated. Contractor will therefore be entitled to receive payment for those services performed at the date of termination, plus the amount of reasonable damages suffered by the City by reason of the Contractor's failure to comply with the terms of the contract. Under no circumstances shall the Contractor be entitled to any lost profits arising from the contract.

16. Warranty. Contractor warrants and guarantees to City that all materials and equipment and the work to be performed hereunder will be of good quality and free from faults and defects. This warranty shall cover materials for the manufacturer stated warranty period and workmanship for one (1) year from the date of substantial completion or as provided in the Scope of Services attached hereto, whichever is greater.

17. Conflicts. If there is any inconsistency between these Terms and Conditions and the Scope of Services or any attachments thereto, these Terms and Conditions shall apply.

18. Protection of the Project Site. Contractor agrees to post signage and/or appropriately guard the area in which the contract work is being performed and to take all other steps that may be necessary in accordance with requirements of NFPA 1123, OSHA and/or other

governmental agencies with jurisdiction to ensure that the project site is maintained in a safe manner so as to prevent workers and passersby from entering the project site and being injured.

Additionally, the City agrees to erect fencing to assist in the protection of the site from which the fireworks will be launched as depicted on the attached map, Exhibit A. In addition, the City will provide the Contractor with contact information for the 4th of July Command Center so as to provide the Contractor with resources to deal with any person or persons who may trespass into the area where the launching is to occur.

19. Hold Harmless. The contractor will defend and hold harmless the City as and against any claims, actions, demands or causes of action brought by a third party for damages or losses arising out of Contractor's performance of the work under these Terms and Conditions and the attached Scope of Services. Said indemnification shall include the City's actual attorney fees. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct.

20. Indemnity. The City shall not be liable for failure on the part of the Contractor or any other party performing under this contract in accordance with all applicable laws and regulations. Contractor waives any and all claims and recourse against the City including the right of contribution for loss of damage to persons or property arising out of or growing out of any way connected with or incident to the performance of this contract, except for liability arising out of the sole negligence of the City or its officers, agents or employees.

21. Working Hours. Unless specifically noted, all work included in this contract is to be performed during normal business hours, Monday through Friday. Work performed at any other time or on legal holidays must be specifically approved by the City.

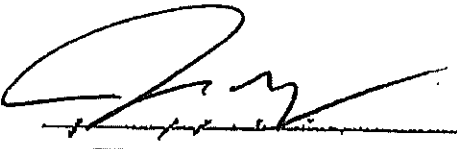
CITY:
City of New Berlin

CONTRACTOR:

Chrome Fireworks
[Insert Contractor Name]

By: _____

[Print Name & Title]

By:  _____

Jim Krueger - owner
[Print Name & Title]

2/19/23



City of New Berlin
3805 South Casper Drive P.O. Box 510921
New Berlin, Wisconsin 53151-0921

(262) 786-8610
Fax (262) 786-6121

REQUESTED ACTION STATEMENT

DATE: April 25, 2023

TO: Mayor
Common Council

FROM: Erin Cross, Recreation Manager & 4th of July Commission

ISSUE: Items from 4th of July Commission requiring Common Council Approval

REQUESTED: Approval of contract with Pat's Services, Inc. for rentals and service from July 1st to July 4th totaling \$10,020, as approved by the 4th of July Commission on December 8, 2022.

FISCAL IMPACT: This expense falls within the budgeted expense for this line item.

RATIONALE:

Pat's Services, Inc has provided this rental and service in previous years. The contract has been reviewed and okayed by City Attorney Mark Blum.

RECOMMENDATION:

Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with Pat's Services, Inc in the amount of \$10,020.

4th of July Contract Routing Form

Name of Contractor: Fat's Services, Inc
Contract Date: July 1st thru July 4th, 2023
Contract Amount: \$10,020

Date contract was approved by 4th of July Commission: December 8, 2022

City Attorney has reviewed & approved this contract with the following comments if any:

The terms & conditions must include that the City is an additional insured on a primary & non-contributory basis. With the COI says that the T&C does not.

[Signature]
City Attorney

3/28/23
Date

Date Contract was approved by Council: _____

Routing for contract signatures:

City Attorney ☒

Finance Director ☐

Recreation Supervisor ☐

Mayor ☐

Other ☐

Contract Information entered into database by Clerk's Office: ☐

**Completed copy of this form should be returned to Recreation Supervisor.
This Contract Routing Form will be retained by the City Clerk along with the
original executed contract.**

PATS SERVICES, INC.

38331 60TH STREET
BURLINGTON, WI 53105

Ph: 262-537-4988 Fax: 262-537-4945

Service & Rental

Invoice

Phone: (262) 797-2443

Fax: (262) 754-1805 POLLY

Billing Address

CITY OF NEW BERLIN RECREATION DEPT.
ATTN: ERIN CROSS
3805 S. CASPER DRIVE
NEW BERLIN, WI 53151

Cust #	Date	Clerk	Terms	Invoice P.O.#	Invoice #	Page
CITYOFNEWB	6/29/2023	TS			A-240216	Page 1 / 2

DESCRIPTION	RATE	QTY	TAX%	TAX	AMOUNT
Svc Site: 29823 , FOURTH OF JULY MALONE PARK & PARADE ROUTE, NEW BERLIN Site PO#					
6/29/2023- 7/5/2023 PORTABLE TOILET RENTAL-SPECIAL	100.00	70			7,000.00
6/29/2023- 7/5/2023 HANDICAPPED TOILET RENTAL-SPECIAL	100.00	4			400.00
6/29/2023- 7/5/2023 PORTABLE SINK RENTAL-SPECIAL	100.00	4			400.00
6/29/2023- 7/5/2023 55 GALLON WASTE BARRELS	75.00/EACH	4			300.00
7/2/2023 SERVICE/SUNDAY A.M.	10.00/EACH	64			640.00
7/3/2023 SERVICE/MONDAY A.M.	10.00/EACH	64			640.00
7/4/2023 SERVICE/TUESDAY A.M.	10.00/EACH	64			640.00

Service Site 29823 Total: 10,020.00

Total 10,020.00

**See attached sheet for placement and on-site contacts.

FOR YOUR CONVENIENCE WE NOW ACCEPT PAYMENTS ONLINE, VISIT PATSSERVICES.COM AND SELECT ONLINE PAYMENTS.

PATS SERVICES, INC.

38331 60TH STREET
BURLINGTON, WI 53105

Ph: 262-537-4988 Fax: 262-537-4945

**Service &
Rental**

Page2 / 2

DESCRIPTION	RATE	QTY	TAX%	TAX	AMOUNT
-------------	------	-----	------	-----	--------

[Faint, illegible text, possibly a signature or stamp]

Statement as of 11/19/2022	Future: 10,020.00	Current: 0.00	30 Day: 0.00	60 Day: 0.00	90 Day: 0.00	Total Due: 10,020.00
----------------------------	-------------------	---------------	--------------	--------------	--------------	----------------------

Please detach here and return the bottom portion with your payment.

Div: A Cust #: CITYOFNEWB Site #: 29823 Invoice #: A-240216

From CITY OF NEW BERLIN RECREATION
DEPT.
ATTN: ERIN CROSS
3805 S. CASPER DRIVE
NEW BERLIN, WI 53151

To PATS SERVICES, INC.
38331 60TH STREET
BURLINGTON, WI 53105

Invoice #	A-240216
Total Pre-Tax	10,020.00
Total Tax	0.00
Invoice Total	10,020.00
Paid Amt	0.00
Adjustment Amt	0.00
Balance	10,020.00



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/28/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Schenning Insurance Center 633 S. Cogswell Drive Silver Lake, WI 53170 June E. Brandes		262-889-4373		CONTACT NAME: Schenning Insurance Center	
				PHONE (A/C, No, Ext): 262-889-4373	FAX (A/C, No):
				E-MAIL ADDRESS:	
				INSURER(S) AFFORDING COVERAGE	
				INSURER A: West Bend Mutual Ins.	
				INSURER B:	
				INSURER C:	
				INSURER D:	
				INSURER E:	
				INSURER F:	

INSURED
PATS SERVICES INC
38331 60TH STREET
BURLINGTON, WI 53105-7807

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ POLLUTION LIAB LIMITS GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	X		A800692 100,000/100,000	01/01/2023	01/01/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Emp Ben. \$ 500,000
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			A800692	01/01/2023	01/01/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ WAIVED			A800692	01/01/2023	01/01/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	A842306	01/01/2023	01/01/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A	HIRED AUTO PHYSICAL DAMAGE			A800692	01/01/2023	01/01/2024	LIMIT \$ 150,000 COMP/COLL 100 DED

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Fourth of July event at Malone Park & parade route, July 1, 2, 3, & 4, 2023
Portable toilet/sink rentals
Certificate holder is an additional insured on a primary & non-contributory basis with respect to liability arising out of the insured's operations & completed work as required by written contract per form attached

CERTIFICATE HOLDER

NEWBE-1

CITY OF NEW BERLIN
4TH OF JULY COMMISSION
poldenburg@newberlin.org
3805 S CASPER DR
NEW BERLIN, WI 53151

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
June E. Brandes

CITY OF NEW BERLIN
GENERAL TERMS and CONDITIONS OF SERVICE

1. Introduction. This document (hereinafter referred to as "Terms and Conditions") is hereby incorporated and part of the contract between the City of New Berlin (hereinafter referred to as "City") and the contractor identified below (hereinafter referred to as "Contractor"). These Terms and Conditions, along with the Scope of Services and any attachments thereto, shall constitute the entire contract for material, work and other goods and services, collectively referred to as the "Goods" between the City and the Contractor. It is expressly agreed that no statement, arrangement, warranty or understanding, oral or written, expressed or implied, will be recognized unless it is stated in or otherwise permitted by these Terms and Conditions, and the aforementioned Scope of Services. These Terms and Conditions are solely for the benefit of the City and the Contractor and are not intended for the benefit of any other party.
2. Proposal. The Contractor is solely responsible for, and shall have sole control of, construction methods, sequences and coordination of all work described in the Scope of Services, unless expressly stated to the contrary.
3. Services and/or Construction Materials. All materials and work shall be furnished in accordance with normal industry standards and practices. Contractor agrees to install or provide the services set forth in the Scope of Services in a good and workmanlike manner, in accordance with construction practices in the Milwaukee Metro area, using quality materials and products as identified in the Scope of Services.
4. Access to the Site. The City shall provide access to the Contractor to work in and on City property, and to provide utility services as may be agreed to the Scope of Services incorporated herein.
5. Storage of Materials. The storage of materials and storage of Contractor's equipment shall be the responsibility of the Contractor. The City agrees to maintain access for the Contractor at the project site and to keep the project site free from obstructions and conflicting work. The Contractor shall be responsible for obtaining builders risk insurance coverage and in general, for insuring the materials and work being provided hereunder.
6. Insurance. Contractor shall maintain workers compensation, automobile liability and commercial general liability insurance coverage with carriers licensed to do business in the State of Wisconsin, and with such limits as the City may establish and require from time to time. Contractor shall furnish a Certificate of Insurance evidencing the types and amounts of coverage. Said coverage shall be on an occurrence basis and the limits identified in the general liability coverage shall be for this project and not the policy as a whole. Contractor agrees to require that the insurer list the City as an Additional Insured and to provide adequate evidence of said status through the liability insurance endorsement. Contractor shall further obtain an endorsement from the insurance carrier indicating that any material changes to the policy or any cancellation of the coverage subsequent to the issuance of the Certificate, and until the completion of the

services hereunder, shall necessitate that the insurer provide not less than thirty (30) days notice to the City of said fact. Clauses such as that the insurer will endeavor to notify the City are unacceptable and will be rejected.

7. Independent Contractor. The parties warrant that no employer/employee relationship is established between the Contractor and the City by virtue of the terms of this contract. It is understood by the parties hereto that the Contractor is an independent contractor and as such, neither it nor its employees if any are employees of the City for purposes of tax, retirement system or social security withholding.

8. Records and Reports. Records relating to the performance of the services under this contract must be retained for seven (7) years after final disposition. However, if any litigation claim or audit has started before the expiration of the seven (7) year period, then records shall be retained for five (5) years after the litigation or audit is resolved.

9. Advertisements. Contractor shall not identify the City as a client or customer of the Contractor, or utilize the name of the City or its logo in any advertisements or other documents placed in the public domain without the express written consent of the City.

10. Changes. In the event that the parties determine that a modification to the terms of the providing of these goods or services are necessary, said change shall not be effective unless executed by authorized representatives of both parties.

11. Delay. Work shall be completed within the number of working days set forth in the contract or otherwise as soon as reasonably practicable unless delay occurs due to work stoppage, adverse weather conditions, labor disputes or modifications to the Terms and Conditions of the Contract.

12. Dispute. These Terms and Conditions shall be deemed to have been made and governed by the laws of the State of Wisconsin. Any legal suit or action with regard to these Terms and Conditions or the project as a whole shall be venued in the Waukesha County Circuit Courts, Waukesha County, Wisconsin, unless the parties mutually agree to arbitration and/or mediation in place of civil litigation.

13. Limitation on Liability. The City's liability to the Contractor shall not exceed the sums paid by the City to the Contractor under this contract. In addition, to the extent that the Contractor seeks indemnification from the City, that indemnity shall be subject to the limitations set forth herein. No indemnity provided under any contract hereinunder shall be construed to be a waiver or estoppel of the City of New Berlin or its insureds' ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to those set forth in Wisconsin Statute §893.80, §895.52 and §345.05. To the extent indemnification is available and enforceable, the City of New Berlin or its insured shall not be liable in indemnity or contribution for any amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligations to indemnify hereunder are further subject to the availability limits of applicable insurance coverage. Under no circumstances shall the City be required to indemnify the Contractor for its own negligence or intentional conduct.

14. Modification and Assignability. This contract, including all documents incorporated by reference herein, may not be enlarged, modified or altered except upon written agreement signed by both parties. The Contractor may not subcontract or assign its rights, including rights to compensation, or terms of performance arising hereunder without the prior written consent of the City. Any subcontractor or assignee shall be bound by all of the terms and conditions of the contract, and will be required to enter into a written agreement with the City.

15. Termination of Contract. This contract may be terminated as follows:

- A. Termination for Convenience. City may terminate this contract in whole or in part for the convenience of the City when the City determines that the continuation of the project is not in the best interests of the City. Contractor shall be entitled to payment for all of the services performed at the date of the termination, together with its direct costs of termination. Under no circumstances shall the Contractor be entitled to any penalty for the termination nor shall the Contractor be entitled to any payment for lost profits.
- B. Termination for Cause. If the City determines that the Contractor has failed to comply with any of the terms and conditions of the contract and the scope of services and related documents thereto, the City may give written notice to the Contractor of any such deficiency and in the event that the Contractor fails to cure said deficiency within ten (10) days of the notice of such failure, the City may, with no further notice, declare this contract to be terminated. Contractor will therefore be entitled to receive payment for those services performed at the date of termination, plus the amount of reasonable damages suffered by the City by reason of the Contractor's failure to comply with the terms of the contract. Under no circumstances shall the Contractor be entitled to any lost profits arising from the contract.

16. Warranty. Contractor warrants and guarantees to City that all materials and equipment and the work to be performed hereunder will be of good quality and free from faults and defects. This warranty shall cover materials for the manufacturer stated warranty period and workmanship for one (1) year from the date of substantial completion or as provided in the Scope of Services attached hereto, whichever is greater.

17. Conflicts. If there is any inconsistency between these Terms and Conditions and the Scope of Services or any attachments thereto, these Terms and Conditions shall apply.

18. Protection of the Project Site. Contractor agrees to post signage and to appropriately guard the area in which the contract work is being performed, and to take all other steps that may be necessary in accordance with requirements of OSHA and/or other governmental agencies with jurisdiction to ensure that the project site is maintained in a safe manner so as to prevent workers and passersby from entering the project site.

19. Hold Harmless. The contractor will defend and hold harmless the City as and against any claims, actions, demands or causes of action brought by a third party for damages or losses arising out of Contractor's performance of the work under these Terms and Conditions and the attached Scope of Services. Said indemnification shall include the City's actual attorney fees. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct.

20. Indemnity. The City shall not be liable for failure on the part of the Contractor or any other party performing under this contract in accordance with all applicable laws and regulations. Contractor waives any and all claims and recourse against the City including the right of contribution for loss of damage to persons or property arising out of or growing out of any way connected with or incident to the performance of this contract, except for liability arising out of the sole negligence of the City or its officers, agents or employees.

21. Working Hours. Unless specifically noted, all work included in this contract is to be performed during normal business hours, Monday through Friday. Work performed at any other time or on legal holidays must be specifically approved by the City.

CITY:
City of New Berlin

CONTRACTOR:
PATS SERVICES, INC.
~~38324 60th STREET~~
~~Insert Contractor Address~~
BURLINGTON, WI 53105-7807

By: _____

[Print Name & Title]

By:

Marleen J. Sieglar
Admin. Assistant

[Print Name & Title]

ADDENDUM TO CITY OF NEW BERLIN CONTRACTS

This Addendum is made and entered into and shall be considered an attachment to all contracts entered into by the City of New Berlin for so long as the City of New Berlin is subject to the U.S. Department of Treasury Restrictions, as well as other federal restrictions related to the City's receipt of Coronavirus Local Fiscal Recovery Funds. The following Terms and Conditions shall be included in each such agreement and are incorporated as though fully set forth in the original contract.

1. No City contractor or employee shall operate any machinery or vehicle while utilizing a smart phone, including, but not limited to, the use of any cellular phone or texting.
2. All City employees and contractors, while engaged in the performance of City business or acting consistent with the performance of services under a contract with the City shall utilize seatbelts and any other safety devices related to the operation of a motor vehicle.
3. City employees or contractors whose duties and responsibilities are funded through the Coronavirus State and Local Fiscal Recovery Funds agree that they will not engage in any lobbying activities while in the course of providing services on behalf of the City of New Berlin, as restricted under the Hatch Act, 5 USC Sec. 1501-1508. No funds appropriated under the Coronavirus State and Local Fiscal Recovery Act shall be utilized for lobbying, and no political payments shall be made through the use of said funds.
4. All City employees and contractors, while in the performance of duties on behalf of the City shall abide by all local, state and federal regulations concerning the ingestion of controlled substances and shall not violate such Statutes or Ordinances. The City shall enforce drug free workplace standards and provide awareness programs for Staff. The City shall further agree to take action regarding individuals using drugs in the workplace according to law.
5. All City employees and contractors, in the course of performing of their duties on behalf of the City, shall, to the extent applicable, comply with the provisions in Wisconsin Statute Sec. 19.59 regarding conflicts of interest, as well as City of New Berlin Municipal Code Chapter 28 regarding ethics. Specifically, no City employee or contractor shall accept or solicit money or tangible personal property or otherwise receive consideration in exchange for the agreement to enter into a contract with a third party.
6. City employees shall avoid the acquisition of unnecessary items or property on behalf of the City.
7. City employees shall, to the extent applicable, engage in value engineering as part of any construction work performed on behalf of the City.
8. Contracts shall only be awarded to responsible contractors with experience in performing the services being contracted for.

9. City contracts shall avoid compensating for contractor work performed on a time and material basis and, to the extent practicable, shall have fixed-price contracts.
10. The selection of a contractor by the City should be done in an atmosphere of open and honest competition.
11. In the course of public bidding involving the purchase of equipment, the City shall not specify only a brand name for the purpose of limiting potential contracting parties.
12. The City shall verify that any entity with which it is contracting has not been excluded for contracting pursuant to 2 CFR 180.
13. City contractors do hereby certify that they are not designated by the federal government as being precluded from engaging in federal contracts.



City of New Berlin
3805 South Casper Drive P.O. Box 510921
New Berlin, Wisconsin 53151-0921

(262) 786-8610
Fax (262) 786-6121

REQUESTED ACTION STATEMENT

DATE: April 25, 2023

TO: Mayor
Common Council

FROM: Erin Cross, Recreation Manager & 4th of July Commission

ISSUE: Items from 4th of July Commission requiring Common Council Approval

REQUESTED: Approval of contract with A.N.T. Production Co. for rentals and service from July 1st to July 4th totaling \$10,400, as approved by the 4th of July Commission on October 26, 2022.

FISCAL IMPACT: This expense falls within the budgeted expense for this line item.

RATIONALE:

A.N.T. Production Co has provided this rental and service in previous years. The contract has been reviewed and okayed by City Attorney Mark Blum.

RECOMMENDATION:

Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with A.N.T. Production Co in the amount of \$10,400.

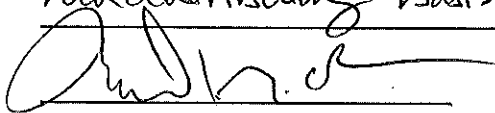
4th of July Contract Routing Form

Name of Contractor: A. N. T. Production Co.
Contract Date: July 1st thru July 4th, 2023
Contract Amount: \$10,400

Date contract was approved by 4th of July Commission: October 26, 2023

City Attorney has reviewed & approved this contract with the following comments if any:

The form of the Grant Terms & conditions must include
language that we are an additional insured on a "primary and
noncontributory basis!"



City Attorney

10/3/28/23

Date

Date Contract was approved by Council: _____

Routing for contract signatures:

City Attorney ☒

Finance Director ☐

Recreation Supervisor ☐

Mayor ☐

Other ☐

Contract Information entered into database by Clerk's Office: ☐

**Completed copy of this form should be returned to Recreation Supervisor.
This Contract Routing Form will be retained by the City Clerk along with the
original executed contract.**

A.N.T Production Co.
c/o A.N.T. Sound & Lighting LLC
3881 E Klieforth Ave
Cudahy WI 53110
10/20/2022

Polly Oldenburg
New Berlin 4th of July Family Festival 2023

Hello Polly,

Here is the requested pricing information from our company. This is for 4 days at your New Berlin 4th of July Family Festival 2023. We have been asked to quote the following items: PA/Lighting for 2 stages, Grounds PA with additional speakers, and portable PA like we have done in the past 2yrs. Now we have been asked to give a price for an additional full day on July 1st. You will see we itemized it so you can see the additional charges compared to 2021.

Items Provided Per Stage	Quantity	Estimated cost
4 RCF Powered Mains per side	8	
2 RCF Powered Subs per side	4	
4 mixes for monitors	4	
150 Digital snake- 32 Channel	2	
32 channel Midas Digital Soundboard	2	
All Microphones, Mic cables, Stands		
Sound Engineer	2	
LED Pars and Moving lights for each stage		
Lighting Controller	2	
Lighting Engineer	2	
Cost for both stages –		\$7000
Additional Day Pricing		\$2200
Cost for Portable PA & Grounds PA		\$1000
Additional grounds PA speakers		\$200
TOTAL FOR THE WHOLE EVENT		\$10,400

Thank you for giving us the opportunity again to bid for your event. We also wanted to make sure you are aware of a few requirements that we insist upon for all of our outdoor events we work.

- We need to have a 50amp 220v minimum circuit a maximum of 50 feet from

stage area, if it is closer that is best.

- Parking for loading in the gear is vital to a safe and quick set up plus tear down. We need to make sure we are next to each tent or no more than 10 feet away.
- If storms are possible in the forecast we will monitor it closely to ensure the safety of the entertainers, our production crew and everyone else on the grounds. We will make sure before any decisions are made; we consult with New Berlin 4th of July Family Festival to ensure guidelines are met with our contract.
- We need to know the event has overnight security, so we can converse with them about our time frames of being on the grounds.

If you have any questions or would like to discuss this quote please feel free to contact me directly via email or by phone 414-852-5228.

Sincerely,

Andrea Kisley & Tim Kisley

A.N.T Production Co. c/o A.N.T Sound& Lighting LLC



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/13/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Provident Insurance Group 9323 W. Greenfield Ave West Allis WI 53214		CONTACT NAME: Dave Scholfield PHONE (A/C, No, Ext): 414-416-8313 FAX (A/C, No): 414-810-3515 E-MAIL ADDRESS:	
INSURED ANT Sound & Lighting LLC 3881 E. Klieforth Cudahy WI 53110		INSURER(S) AFFORDING COVERAGE INSURER A: Travelers INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 19046	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC ☐ OTHER:	Y	Y	6808J202934	8/24/2022	8/24/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY			BA3N911036	8/24/2022	8/24/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ UMBRELLA LIAB ☐ EXCESS LIAB ☐ DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	☐ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐	N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City Of New Berlin listed as additional insured.
Waiver of Subrogation applies to the general liability and commercial auto

ANT Sound and Lighting LLC is contracted to provide sound and lighting production for the main stage musical acts from July 2nd through July 4th 2021.

CERTIFICATE HOLDER

CANCELLATION

City of New Berlin 3805 S Casper Drive New Berlin WI 53151	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Dave Scholfield</i>
--	---

Fax: ACORD 25 (2016/03)

Email:

© 1988-2015 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

**CITY OF NEW BERLIN
GENERAL TERMS and CONDITIONS OF SERVICE**

1. Introduction. This document (hereinafter referred to as "Terms and Conditions") is hereby incorporated and part of the contract between the City of New Berlin (hereinafter referred to as "City") and the contractor identified below (hereinafter referred to as "Contractor"). These Terms and Conditions, along with the Scope of Services and any attachments thereto, shall constitute the entire contract for material, work and other goods and services, collectively referred to as the "Goods" between the City and the Contractor. It is expressly agreed that no statement, arrangement, warranty or understanding, oral or written, expressed or implied, will be recognized unless it is stated in or otherwise permitted by these Terms and Conditions, and the aforementioned Scope of Services. These Terms and Conditions are solely for the benefit of the City and the Contractor and are not intended for the benefit of any other party.
2. Proposal. The Contractor is solely responsible for, and shall have sole control of, construction methods, sequences and coordination of all work described in the Scope of Services, unless expressly stated to the contrary.
3. Services and/or Construction Materials. All materials and work shall be furnished in accordance with normal industry standards and practices. Contractor agrees to install or provide the services set forth in the Scope of Services in a good and workmanlike manner, in accordance with construction practices in the Milwaukee Metro area, using quality materials and products as identified in the Scope of Services.
4. Access to the Site. The City shall provide access to the Contractor to work in and on City property, and to provide utility services as may be agreed to the Scope of Services incorporated herein.
5. Storage of Materials. The storage of materials and storage of Contractor's equipment shall be the responsibility of the Contractor. The City agrees to maintain access for the Contractor at the project site and to keep the project site free from obstructions and conflicting work. The Contractor shall be responsible for obtaining builders risk insurance coverage and in general, for insuring the materials and work being provided hereunder.
6. Insurance. Contractor shall maintain workers compensation, automobile liability and commercial general liability insurance coverage with carriers licensed to do business in the State of Wisconsin, and with such limits as the City may establish and require from time to time. Contractor shall furnish a Certificate of Insurance evidencing the types and amounts of coverage. Said coverage shall be on an occurrence basis and the limits identified in the general liability coverage shall be for this project and not the policy as a whole. Contractor agrees to require that the insurer list the City as an Additional Insured and to provide adequate evidence of said status through the liability insurance endorsement. Contractor shall further obtain an endorsement from the insurance carrier indicating that any material changes to the policy or any cancellation of the coverage subsequent to the issuance of the Certificate, and until the completion of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660

services hereunder, shall necessitate that the insurer provide not less than thirty (30) days notice to the City of said fact. Clauses such as that the insurer will endeavor to notify the City are unacceptable and will be rejected.

7. Independent Contractor. The parties warrant that no employer/employee relationship is established between the Contractor and the City by virtue of the terms of this contract. It is understood by the parties hereto that the Contractor is an independent contractor and as such, neither it nor its employees if any are employees of the City for purposes of tax, retirement system or social security withholding.

8. Records and Reports. Records relating to the performance of the services under this contract must be retained for seven (7) years after final disposition. However, if any litigation claim or audit has started before the expiration of the seven (7) year period, then records shall be retained for five (5) years after the litigation or audit is resolved.

9. Advertisements. Contractor shall not identify the City as a client or customer of the Contractor, or utilize the name of the City or its logo in any advertisements or other documents placed in the public domain without the express written consent of the City.

10. Changes. In the event that the parties determine that a modification to the terms of the providing of these goods or services are necessary, said change shall not be effective unless executed by authorized representatives of both parties.

11. Delay. Work shall be completed within the number of working days set forth in the contract or otherwise as soon as reasonably practicable unless delay occurs due to work stoppage, adverse weather conditions, labor disputes or modifications to the Terms and Conditions of the Contract.

12. Dispute. These Terms and Conditions shall be deemed to have been made and governed by the laws of the State of Wisconsin. Any legal suit or action with regard to these Terms and Conditions or the project as a whole shall be venued in the Waukesha County Circuit Courts, Waukesha County, Wisconsin, unless the parties mutually agree to arbitration and/or mediation in place of civil litigation.

13. Limitation on Liability. The City's liability to the Contractor shall not exceed the sums paid by the City to the Contractor under this contract. In addition, to the extent that the Contractor seeks indemnification from the City, that indemnity shall be subject to the limitations set forth herein. No indemnity provided under any contract hereinafter shall be construed to be a waiver or estoppel of the City of New Berlin or its insureds' ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to those set forth in Wisconsin Statute §893.80, §895.52 and §345.05. To the extent indemnification is available and enforceable, the City of New Berlin or its insured shall not be liable in indemnity or contribution for any amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligations to indemnify hereunder are further subject to the availability limits of applicable insurance coverage. Under no circumstances shall the City be required to indemnify the Contractor for its own negligence or intentional conduct.

14. Modification and Assignability. This contract, including all documents incorporated by reference hereto, may not be enlarged, modified or altered except upon written agreement signed by both parties. The Contractor may not subcontract or assign its rights, including rights to compensation, or terms of performance arising hereunder without the prior written consent of the City. Any subcontractor or assignee shall be bound by all of the terms and conditions of the contract, and will be required to enter into a written agreement with the City.

15. Termination of Contract. This contract may be terminated as follows:

- A. Termination for Convenience. City may terminate this contract in whole or in part for the convenience of the City when the City determines that the continuation of the project is not in the best interests of the City. Contractor shall be entitled to payment for all of the services performed at the date of the termination, together with its direct costs of termination. Under no circumstances shall the Contractor be entitled to any penalty for the termination nor shall the Contractor be entitled to any payment for lost profits.
- B. Termination for Cause. If the City determines that the Contractor has failed to comply with any of the terms and conditions of the contract and the scope of services and related documents thereto, the City may give written notice to the Contractor of any such deficiency and in the event that the Contractor fails to cure said deficiency within ten (10) days of the notice of such failure, the City may, with no further notice, declare this contract to be terminated. Contractor will therefore be entitled to receive payment for those services performed at the date of termination, plus the amount of reasonable damages suffered by the City by reason of the Contractor's failure to comply with the terms of the contract. Under no circumstances shall the Contractor be entitled to any lost profits arising from the contract.

16. Warranty. Contractor warrants and guarantees to City that all materials and equipment and the work to be performed hereunder will be of good quality and free from faults and defects. This warranty shall cover materials for the manufacturer stated warranty period and workmanship for one (1) year from the date of substantial completion or as provided in the Scope of Services attached hereto, whichever is greater.

17. Conflicts. If there is any inconsistency between these Terms and Conditions and the Scope of Services or any attachments thereto, these Terms and Conditions shall apply.

18. Protection of the Project Site. Contractor agrees to post signage and to appropriately guard the area in which the contract work is being performed, and to take all other steps that may be necessary in accordance with requirements of OSHA and/or other governmental agencies with jurisdiction to ensure that the project site is maintained in a safe manner so as to prevent workers and passersby from entering the project site.

19. Hold Harmless. The contractor will defend and hold harmless the City as and against any claims, actions, demands or causes of action brought by a third party for damages or losses arising out of Contractor's performance of the work under these Terms and Conditions and the attached Scope of Services. Said indemnification shall include the City's actual attorney fees. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct.

20. Indemnity. The City shall not be liable for failure on the part of the Contractor or any other party performing under this contract in accordance with all applicable laws and regulations. Contractor waives any and all claims and recourse against the City including the right of contribution for loss of damage to persons or property arising out of or growing out of any way connected with or incident to the performance of this contract, except for liability arising out of the sole negligence of the City or its officers, agents or employees.

21. Working Hours. Unless specifically noted, all work included in this contract is to be performed during normal business hours, Monday through Friday. Work performed at any other time or on legal holidays must be specifically approved by the City.

CITY:
City of New Berlin

CONTRACTOR:

A.N.T. Sound & Lighting LLC
[Insert Contractor Name]

By: _____

[Print Name & Title]

By:

Andrea Kisley
[Print Name & Title] Owner/operator

ADDENDUM TO CITY OF NEW BERLIN CONTRACTS

This Addendum is made and entered into and shall be considered an attachment to all contracts entered into by the City of New Berlin for so long as the City of New Berlin is subject to the U.S. Department of Treasury Restrictions, as well as other federal restrictions related to the City's receipt of Coronavirus Local Fiscal Recovery Funds. The following Terms and Conditions shall be included in each such agreement and are incorporated as though fully set forth in the original contract.

1. No City contractor or employee shall operate any machinery or vehicle while utilizing a smart phone, including, but not limited to, the use of any cellular phone or texting.
2. All City employees and contractors, while engaged in the performance of City business or acting consistent with the performance of services under a contract with the City shall utilize seatbelts and any other safety devices related to the operation of a motor vehicle.
3. City employees or contractors whose duties and responsibilities are funded through the Coronavirus State and Local Fiscal Recovery Funds agree that they will not engage in any lobbying activities while in the course of providing services on behalf of the City of New Berlin, as restricted under the Hatch Act, 5 USC Sec. 1501-1508. No funds appropriated under the Coronavirus State and Local Fiscal Recovery Act shall be utilized for lobbying, and no political payments shall be made through the use of said funds.
4. All City employees and contractors, while in the performance of duties on behalf of the City shall abide by all local, state and federal regulations concerning the ingestion of controlled substances and shall not violate such Statutes or Ordinances. The City shall enforce drug free workplace standards and provide awareness programs for Staff. The City shall further agree to take action regarding individuals using drugs in the workplace according to law.
5. All City employees and contractors, in the course of performing of their duties on behalf of the City, shall, to the extent applicable, comply with the provisions in Wisconsin Statute Sec. 19.59 regarding conflicts of interest, as well as City of New Berlin Municipal Code Chapter 28 regarding ethics. Specifically, no City employee or contractor shall accept or solicit money or tangible personal property or otherwise receive consideration in exchange for the agreement to enter into a contract with a third party.
6. City employees shall avoid the acquisition of unnecessary items or property on behalf of the City.
7. City employees shall, to the extent applicable, engage in value engineering as part of any construction work performed on behalf of the City.
8. Contracts shall only be awarded to responsible contractors with experience in performing the services being contracted for.

9. City contracts shall avoid compensating for contractor work performed on a time and material basis and, to the extent practicable, shall have fixed-price contracts.
10. The selection of a contractor by the City should be done in an atmosphere of open and honest competition.
11. In the course of public bidding involving the purchase of equipment, the City shall not specify only a brand name for the purpose of limiting potential contracting parties.
12. The City shall verify that any entity with which it is contracting has not been excluded for contracting pursuant to 2 CFR 180.
13. City contractors do hereby certify that they are not designated by the federal government as being precluded from engaging in federal contracts.



City of New Berlin
3805 South Casper Drive P.O. Box 510921
New Berlin, Wisconsin 53151-0921

(262) 786-8610
Fax (262) 786-6121

REQUESTED ACTION STATEMENT

DATE: April 25, 2023

TO: Mayor
Common Council

FROM: Erin Cross, Recreation Manager & 4th of July Commission

ISSUE: Items from 4th of July Commission requiring Common Council Approval

REQUESTED: Approval of contract with Area Rental for rentals and service from June 28th to July 5th totaling \$20,760.67, as approved by the 4th of July Commission on January 24, 2023.

FISCAL IMPACT: This expense falls within the budgeted expense for this line item.

RATIONALE:

Area Rental has provided this rental and service in previous years. The contract has been reviewed and okayed by City Attorney Mark Blum.

RECOMMENDATION:

Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with Area Rental in the amount of \$20,760.67.

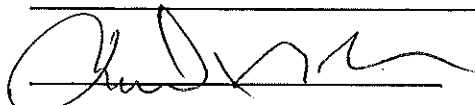
4th of July Contract Routing Form

Name of Contractor: Area Rental & Sales Co. LLC
Contract Date: July 1st thru July 4th, 2023
Contract Amount: \$20,740.67

Date contract was approved by 4th of July Commission: January 24, 2023

City Attorney has reviewed & approved this contract with the following comments if any:

See enclosed letter dated 3/2/23


City Attorney

3/29/23
Date

Date Contract was approved by Council: _____

Routing for contract signatures:

City Attorney ☒

Finance Director ☐

Recreation Supervisor ☐

Mayor ☐

Other ☐

Contract Information entered into database by Clerk's Office: ☐

**Completed copy of this form should be returned to Recreation Supervisor.
This Contract Routing Form will be retained by the City Clerk along with the
original executed contract.**

17000 W Cleveland Ave.
New Berlin, WI 53151
(262)827-1444
(262)827 4924 (fax)



3586 Hillside Dr.
Delafield, WI 53018
(262) 646-4444

Status: Quote

Quote #: q13876-1

Event Beg: Fri 6/30/2023 7:30AM

Event End: Tue 7/4/2023 7:00PM

Operator: Amy Russell

Customer #: 22124

NEW BERLIN 4TH OF JULY

3805 S. CASPER DR.
PO BOX 510921
NEW BERLIN, WI 53151

Delivery Wed 6/28/2023 8:00AM - 5:00PM

POLLY 262-787-8164
MALONE PARK
16400 W AL STIGLER PKWY
NEW BERLIN, WI 53151

Pickup Wed 7/5/2023 8:00AM - 5:00PM

POLLY 262-787-8164
MALONE PARK
16400 W AL STIGLER PKWY
NEW BERLIN, WI 53151

- 1) DEL WED ANYTIME
2) CALL WHEN ON THE WAY

- 1) PICK UP MON OR TUE ANYTIME

- 1) BILLING CUSTOMER
2) NEW BERLIN 4TH OF JULY
3) GRASS OK TO STAKE
4) CUSTOMER MUST CALL DIGGERS HOTLINE 10 DAYS PRIOR TO INSTALL AT 800-242-8511
5) -50
6) CUSTOMER TO SET UP AND RESTACK TABLES AND CHAIRS
7) DAMAGE WAIVER AVAILABLE FOR 10% OF THE RENTAL

Qty	Key	Items	Event End Date
TENTS			
1	127-0263	60X150WA TENSION TENT Rental MUST HAVE 9' LEGS ON BOTH, 150' SIDE ON BOTH TENTS TO HAVE SIDEWALL, CTR POLE LIGHTS ON ALL POLES IN BOTH	Tue 7/4/2023 7:00PM
1	127-0580-1	*60X30WA END W/ROPES Rental	Tue 7/4/2023 7:00PM
1	127-0590-1	*60X30WA END W/HOLES Rental	Tue 7/4/2023 7:00PM
3	127-0620-1	*60X30WA MID Rental	Tue 7/4/2023 7:00PM
8	127-2030-1	*CENTER POLE 25' Rental	Tue 7/4/2023 7:00PM
4	127-0461-1	*7' METAL SIDEPOLES Rental	Tue 7/4/2023 7:00PM
40	127-0460-1	*8' METAL SIDEPOLES Rental	Tue 7/4/2023 7:00PM
86	127-0452-1	*STAKES REGULAR Rental	Tue 7/4/2023 7:00PM
18	127-0470-1	*3-HOLE T-BARS Rental	Tue 7/4/2023 7:00PM
50	127-0490-1	*RACHET/STRAP 2" Rental	Tue 7/4/2023 7:00PM
1	127-0256	60X150WE TENSION TENT Rental	Tue 7/4/2023 7:00PM
1	127-0550-1	*60X30WE END W/ROPES Rental	Tue 7/4/2023 7:00PM
1	127-0560-1	*60X30WE END W/HOLES Rental	Tue 7/4/2023 7:00PM
3	127-0570-1	*60X30WE MID Rental	Tue 7/4/2023 7:00PM
8	127-2030-1	*CENTER POLE 25' Rental	Tue 7/4/2023 7:00PM
4	127-0461-1	*7' METAL SIDEPOLES Rental	Tue 7/4/2023 7:00PM
40	127-0460-1	*8' METAL SIDEPOLES Rental	Tue 7/4/2023 7:00PM
86	127-0452-1	*STAKES REGULAR Rental	Tue 7/4/2023 7:00PM
18	127-0470-1	*3-HOLE T-BARS Rental	Tue 7/4/2023 7:00PM
50	127-0490-1	*RACHET/STRAP 2" Rental	Tue 7/4/2023 7:00PM
2	126-0010-1	10X10WCT FRAME TENT Rental 10X10'S SIDEWALLS ON ALL 4 SIDES AND THREE SETS OF LIGHTS FOR PORT A POTTY AREA	Tue 7/4/2023 7:00PM
2	126-8010-1	*10X10WCT TOP Rental	Tue 7/4/2023 7:00PM
8	127-0452-1	*STAKES REGULAR Rental	Tue 7/4/2023 7:00PM
1	127-0146-1	40X80RA TENSION TENT Rental TENT MUST BE COLOR/ PIE TENT	Tue 7/4/2023 7:00PM
2	127-0509-1	*40XR END SECTION Rental	Tue 7/4/2023 7:00PM
2	127-0510-1	*40XR MID SECTION Rental	Tue 7/4/2023 7:00PM
3	127-2030-1	*CENTER POLE 25' Rental	Tue 7/4/2023 7:00PM

Qty	Key	Items		Event End Date
24	127-0460-1	*8' METAL SIDEPOLES	Rental	Tue 7/ 4/2023 7:00PM
28	127-0452-1	*STAKES REGULAR	Rental	Tue 7/ 4/2023 7:00PM
1	127-0005	20X20W POLE TENT	Rental	Tue 7/ 4/2023 7:00PM
2	127-0501-1	*20XW END SECTION	Rental	Tue 7/ 4/2023 7:00PM
1	127-0465-1	*CENTER POLE 20X,14'ORANGE	Rental	Tue 7/ 4/2023 7:00PM
8	127-0460-1	*8' METAL SIDEPOLES	Rental	Tue 7/ 4/2023 7:00PM
12	127-0452-1	*STAKES REGULAR	Rental	Tue 7/ 4/2023 7:00PM
SIDEWALLS				
4	128-0046-1	SIDEWALL,CT.SOLID,10'HOLES	Rental	Tue 7/ 4/2023 7:00PM
4	128-0045-1	SIDEWALL,CT.SOLID,10'ROPES	Rental	Tue 7/ 4/2023 7:00PM
16	128-0035-1	SIDEWALL,9'X20'SOLID,TRAD. 60X150	Rental	Tue 7/ 4/2023 7:00PM
4	128-0032-1	SIDEWALL,8'X20'CATH.,TRAD. 20x20	Rental	Tue 7/ 4/2023 7:00PM
LIGHTS				
20	095-0255-1	LIGHT,4BULB,CENTER POLE MOUNTED,FLOODS MUST PLUG IN AND VERIFY ALL LIGHTS WORK	Rental	Tue 7/ 4/2023 7:00PM
1	095-0195-1	LIGHT,STRING 50'WHITE CORD(5)40W BULBS	Rental	Tue 7/ 4/2023 7:00PM
4	035-0170	LIGHT TOWER,30',4-1000W FLOODS *****CUSTOMER IS RESPONSIBLE FOR CABLE***** *****\$175.00 CHARGE IF CABLE IS BROKE. X	Rental	Tue 7/ 4/2023 7:00PM
FLOORING				
84	096-0061-1	DANCE FLOOR,3'X4' 15X24 DANCE FLOOR IN 1 - 60x150 24x27 in the East 60x150	Rental	Tue 7/ 4/2023 7:00PM
STAGE				
68	096-0050-1	STAGE,4'X4'SECTIONS UP TO 32" TALL 20X20X24 WITH 2 EXTRA PIECES ON EACH SIDE AND TWO SETS OF STEPS IN EACH 60X150	Rental	Tue 7/ 4/2023 7:00PM
1	096-0108-1	.LEGS BLUE 24"	Rental	Tue 7/ 4/2023 7:00PM
4	096-0095-1	STAGE,STEPS UP TO 32" TALL	Rental	Tue 7/ 4/2023 7:00PM
TABLES				
30	096-0025-1	TABLE,BANQ.8'X30" SEATS-8 (DO NOT STAPLE TABLES , \$5.00 CHARGE PER TABLE) (TABLES ARE MADE OF PLYWOOD AND ARE DESIGNED TO BE COVERED) 1.50 CHARGE PER TABLE IF NOT BROKEN DOWN AND STACKED UPON PICKUP	Rental	Tue 7/ 4/2023 7:00PM
60	096-0036-1	TABLE,CABARET 30"RD.X42" TALL (DO NOT STAPLE TABLES , \$5.00 CHARGE PER TABLE) (TABLES ARE MADE OF PLYWOOD AND ARE DESIGNED TO BE COVERED) 1.50 CHARGE PER TABLE IF NOT BROKEN DOWN AND STACKED UPON PICKUP	Rental	Tue 7/ 4/2023 7:00PM
60	500-0090-1	*TABLE TOPS 30"	Rental	Tue 7/ 4/2023 7:00PM
60	500-0038-1	STEM CABERET	Rental	Tue 7/ 4/2023 7:00PM
60	500-0039-1	base	Rental	Tue 7/ 4/2023 7:00PM
CHAIRS				
120	096-0001-1	CHAIR,BLACK POLY A .30 CHARGE PER CHAIR IF NOT BROKEN DOWN AND STACKED UPON PICKUP	Rental	Tue 7/ 4/2023 7:00PM
MISC RENTAL ITEMS				
30	145-1100-1	CABLE COVER	Rental	Tue 7/ 4/2023 7:00PM
4	145-0065-1	EXTINGUISHER FIRE	Rental	Tue 7/ 4/2023 7:00PM
FIREMANS BREAKFAST				
35	096-0025-1	TABLE,BANQ.8'X30" SEATS-8 (DO NOT STAPLE TABLES , \$5.00 CHARGE PER TABLE) (TABLES ARE MADE OF PLYWOOD AND ARE DESIGNED TO BE COVERED) 1.50 CHARGE PER TABLE IF NOT BROKEN DOWN AND STACKED UPON PICKUP	Rental	Tue 7/ 4/2023 7:00PM
200	096-0001-1	CHAIR,BLACK POLY A .30 CHARGE PER CHAIR IF NOT BROKEN DOWN AND STACKED UPON PICKUP	Rental	Tue 7/ 4/2023 7:00PM
1	Misc - 2	LABOR CUSTOM LIGHT INSTALLATION USING CAGE LIGHTS AND PIPE FRAME BY TOILETS 6 UPRIGHTS, 6 BASES, 5 CROSSES STAKED INTO ASPHALT	Retail	

Qty	Key	Items	Event End Date
1	MISC-1	DELIVERY/PICKUP Delivery	

Quote valid for 5 days.

Quote

I have read all pages associated with this contract. Front and Back.

Area Rental has 5 Business Days to accept or decline the contract after submission of the signed contract based on equipment and staffing availability.

EQUIPMENT DAMAGE WAIVER, 10% of Rental Charge

INITIAL: ACCEPTED _____ DECLINED _____

Signature: _____

NEW BERLIN 4TH OF JULY

Rental:	\$20,400.67
Sales:	\$160.00
Delivery Charge:	\$200.00
Subtotal:	\$20,760.67
Total:	\$20,760.67
Paid:	\$0.00
Amount Due:	\$20,760.67

1. Lessee understands and agrees that said equipment remains the property of Lessor and that failure of the Lessee to return said equipment to Lessor within the time provided may constitute a crime and subject the Lessee to prosecution, therefore, unless such failure is occasioned through Lessee's required compliance with military orders. Equipment must not be taken more than 150 miles from origin without Lessor's approval.

2. Lessee agrees to pay Lessor for any loss of or damage to said equipment while in his custody or other expenses resulting from Lessee's use of said equipment. Lessee agrees to pay full rental fee of said equipment until payment for such repairs or replacements have been made to Area Rental. If Lessee accepts damage waiver, Lessee is not responsible for damage to equipment not caused through Lessee neglect up to maximum limit of \$5,000, the Lessee would be responsible for all damages over and above the \$5,000. The Lessee is fully responsible for the following regardless if the damage waiver was accepted or declined: damage to tires, cost of cleaning and reconditioning necessary resulting from use in painting, sandblasting or similar use of equipment, cost of repair or replacement from negligent use from misuse or abuse of the equipment or unnecessary exposure to the elements, or use for purposes for which the equipment was not designed, or for loading beyond capacity. Tractors, loaders and skid steer loaders are not to be used for the purpose of demolition.

3. Lessee authorizes Lessor to bill Lessee's credit card for all charges and expenses incurred pursuant to said contract.

4. Lessee agrees to indemnify and save harmless the Lessor from claims: loss and damage, including costs and attorney's fees arising from or occasioned by the operation, use or presence of the leased equipment or any act or default of Lessee, his agents or servant. Lessee assumes all risks, liabilities and costs for all injuries to or death of any person or persons and damage to the property of anyone arising or occasioned by the operation, use or presence of the leased equipment. Lessee shall reimburse Lessor for all attorney fees, court costs and expenses incurred by Lessor to enforce collection to preserve and enforce Lessor's rights under this contract.

5. Lessee shall assume all liability for any and all damage to personal property from any cause whatsoever while being transported in said trailer and/or equipment including damage caused by water or theft.

6. For the purpose of enforcing Lessor's ownership of said equipment and to protect Lessor's rights under the contract, Lessee agrees that Lessor may retake possession of equipment at any time and for such purpose to enter upon the premises of Lessee. Lessee hereby waives any right of action against Lessor by reason of such retaking or entry.

Lessee acknowledges that he has examined said equipment and/or trailer, together with any coupling mechanism and that said equipment and/or trailer and coupling mechanism are in good condition and that said trailer and/or equipment is securely connected to Lessee's automobile. Lessee agrees to assume all liability for any damages to the towing vehicle arising out of the use of said trailer and/or equipment. Lessee agrees to periodically inspect said equipment and/or trailer and coupling mechanism and to maintain the same in a safe, dependable and secure condition while in his custody. Lessee is fully responsible for the suitability of the towing vehicle and hitch assemblies ability to transport the weight of the trailer and load. Regardless of the party at fault, Lessee understands and agrees to be responsible for damage to said trailer or equipment resulting from collision or other accident.

7. Lessee agrees that in the event any of the Property becomes unsafe or in a state of disrepair, Lessee will immediately discontinue the use thereof and promptly notify Lessor. Lessee accepts responsibility for evacuating any tent when wind or gust exceed 25 MPH or when other unsafe conditions arise. Lessor is not responsible for any damage caused by tents falling regardless of the cause. Grounds must be suitable for the use of installation equipment, Lessor is not responsible for grass, grounds or asphalt damage.

8. Reservations canceled or significantly altered less than 72 hours before the Property is to be delivered or picked up by Lessee are subject to a cancellation fee equal to the full contract cost. All other reservation cancellations are subject to a cancellation fee of 1/3 of the contract cost. Counts may be reduced by up to 15 percent of the dollar amount of the contract without penalty a minimum of 72 hours before the Property is to be delivered or picked up. Deliveries are tail gate to tail gate. A \$15 per man per 15 minutes is assessed on delays of pick ups or deliveries.

9. Lessee assumes full responsibility for any additional expenses incurred by Reason of Breakdown of said equipment. Lessee must pay for all gas used. Sales tax is added to all rentals. Lessee pays for time out, not time used. There are minimum charges on Lessor's equipment regardless if Lessee used up all of that time. In case of equipment breakdown, it is Lessee's responsibility to return equipment for service or replacement. Time adjustments may be made, however, Lessee is still responsible for rental fees. Any equipment kept overnight is charged on a daily basis. Any rental credits must be used within a 3 week period of the original rental contract. Lessee will be charged for service calls due to Lessee error.

10. This contract represents the entire agreement between the parties hereto and there are no collateral, oral or other agreements or understandings. Inquiry proposals are null and void if not accepted within 15 days.

ADDENDUM TO CITY OF NEW BERLIN CONTRACTS

This Addendum is made and entered into and shall be considered an attachment to all contracts entered into by the City of New Berlin for so long as the City of New Berlin is subject to the U.S. Department of Treasury Restrictions, as well as other federal restrictions related to the City's receipt of Coronavirus Local Fiscal Recovery Funds. The following Terms and Conditions shall be included in each such agreement and are incorporated as though fully set forth in the original contract.

1. No City contractor or employee shall operate any machinery or vehicle while utilizing a smart phone, including, but not limited to, the use of any cellular phone or texting.
2. All City employees and contractors, while engaged in the performance of City business or acting consistent with the performance of services under a contract with the City shall utilize seatbelts and any other safety devices related to the operation of a motor vehicle.
3. City employees or contractors whose duties and responsibilities are funded through the Coronavirus State and Local Fiscal Recovery Funds agree that they will not engage in any lobbying activities while in the course of providing services on behalf of the City of New Berlin, as restricted under the Hatch Act, 5 USC Sec. 1501-1508. No funds appropriated under the Coronavirus State and Local Fiscal Recovery Act shall be utilized for lobbying, and no political payments shall be made through the use of said funds.
4. All City employees and contractors, while in the performance of duties on behalf of the City shall abide by all local, state and federal regulations concerning the ingestion of controlled substances and shall not violate such Statutes or Ordinances. The City shall enforce drug free workplace standards and provide awareness programs for Staff. The City shall further agree to take action regarding individuals using drugs in the workplace according to law.
5. All City employees and contractors, in the course of performing of their duties on behalf of the City, shall, to the extent applicable, comply with the provisions in Wisconsin Statute Sec. 19.59 regarding conflicts of interest, as well as City of New Berlin Municipal Code Chapter 28 regarding ethics. Specifically, no City employee or contractor shall accept or solicit money or tangible personal property or otherwise receive consideration in exchange for the agreement to enter into a contract with a third party.
6. City employees shall avoid the acquisition of unnecessary items or property on behalf of the City.
7. City employees shall, to the extent applicable, engage in value engineering as part of any construction work performed on behalf of the City.
8. Contracts shall only be awarded to responsible contractors with experience in performing the services being contracted for.

9. City contracts shall avoid compensating for contractor work performed on a time and material basis and, to the extent practicable, shall have fixed-price contracts.
10. The selection of a contractor by the City should be done in an atmosphere of open and honest competition.
11. In the course of public bidding involving the purchase of equipment, the City shall not specify only a brand name for the purpose of limiting potential contracting parties.
12. The City shall verify that any entity with which it is contracting has not been excluded for contracting pursuant to 2 CFR 180.
13. City contractors do hereby certify that they are not designated by the federal government as being precluded from engaging in federal contracts.

CITY OF NEW BERLIN
GENERAL TERMS and CONDITIONS OF SERVICE

1. Introduction. This document (hereinafter referred to as "Terms and Conditions") is hereby incorporated and part of the contract between the City of New Berlin (hereinafter referred to as "City") and the contractor identified below (hereinafter referred to as "Contractor"). These Terms and Conditions, along with the Scope of Services and any attachments thereto, shall constitute the entire contract for material, work and other goods and services, collectively referred as to the "Goods" between the City and the Contractor. It is expressly agreed that no statement, arrangement, warranty or understanding, oral or written, expressed or implied, will be recognized unless it is stated in or otherwise permitted by these Terms and Conditions, and the aforementioned Scope of Services. These Terms and Conditions are solely for the benefit of the City and the Contractor and are not intended for the benefit of any other party.
2. Proposal. The Contractor is solely responsible for, and shall have sole control of, construction methods, sequences and coordination of all work described in the Scope of Services, unless expressly stated to the contrary.
3. Services and/or Construction Materials. All materials and work shall be furnished in accordance with normal industry standards and practices. Contractor agrees to install or provide the services set forth in the Scope of Services in a good and workmanlike manner, in accordance with construction practices in the Milwaukee Metro area, using quality materials and products as identified in the Scope of Services.
4. Access to the Site. The City shall provide access to the Contractor to work in and on City property, and to provide utility services as may be agreed to the Scope of Services incorporated herein.
5. Storage of Materials. The storage of materials and storage of Contractor's equipment shall be the responsibility of the Contractor. The City agrees to maintain access for the Contractor at the project site and to keep the project site free from obstructions and conflicting work. The Contractor shall be responsible for obtaining builders risk insurance coverage and in general, for insuring the materials and work being provided hereunder.
6. Insurance. Contractor shall maintain workers compensation, automobile liability and commercial general liability insurance coverage with carriers licensed to do business in the State of Wisconsin, and with such limits as the City may establish and require from time to time. Contractor shall furnish a Certificate of Insurance evidencing the types and amounts of coverage. Said coverage shall be on an occurrence basis and the limits identified in the general liability coverage shall be for this project and not the policy as a whole. Contractor agrees to require that the insurer list the City as an Additional Insured and to provide adequate evidence of said status through the liability insurance endorsement. Contractor shall further obtain an endorsement from the insurance carrier indicating that any material changes to the policy or any cancellation of the coverage subsequent to the issuance of the Certificate, and until the completion of the

services hereunder, shall necessitate that the insurer provide not less than thirty (30) days notice to the City of said fact. Clauses such as that the insurer will endeavor to notify the City are unacceptable and will be rejected.

7. Independent Contractor. The parties warrant that no employer/employee relationship is established between the Contractor and the City by virtue of the terms of this contract. It is understood by the parties hereto that the Contractor is an independent contractor and as such, neither it nor its employees if any are employees of the City for purposes of tax, retirement system or social security withholding.

8. Records and Reports. Records relating to the performance of the services under this contract must be retained for seven (7) years after final disposition. However, if any litigation claim or audit has started before the expiration of the seven (7) year period, then records shall be retained for five (5) years after the litigation or audit is resolved.

9. Advertisements. Contractor shall not identify the City as a client or customer of the Contractor, or utilize the name of the City or its logo in any advertisements or other documents placed in the public domain without the express written consent of the City.

10. Changes. In the event that the parties determine that a modification to the terms of the providing of these goods or services are necessary, said change shall not be effective unless executed by authorized representatives of both parties.

11. Delay. Work shall be completed within the number of working days set forth in the contract or otherwise as soon as reasonably practicable unless delay occurs due to work stoppage, adverse weather conditions, labor disputes or modifications to the Terms and Conditions of the Contract.

12. Dispute. These Terms and Conditions shall be deemed to have been made and governed by the laws of the State of Wisconsin. Any legal suit or action with regard to these Terms and Conditions or the project as a whole shall be venued in the Waukesha County Circuit Courts, Waukesha County, Wisconsin, unless the parties mutually agree to arbitration and/or mediation in place of civil litigation.

13. Limitation on Liability. The City's liability to the Contractor shall not exceed the sums paid by the City to the Contractor under this contract. In addition, to the extent that the Contractor seeks indemnification from the City, that indemnity shall be subject to the limitations set forth herein. No indemnity provided under any contract hereinunder shall be construed to be a waiver or estoppel of the City of New Berlin or its insureds' ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to those set forth in Wisconsin Statute §893.80, §895.52 and §345.05. To the extent indemnification is available and enforceable, the City of New Berlin or its insured shall not be liable in indemnity or contribution for any amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligations to indemnify hereunder are further subject to the availability limits of applicable insurance coverage. Under no circumstances shall the City be required to indemnify the Contractor for its own negligence or intentional conduct.

14. Modification and Assignability. This contract, including all documents incorporated by reference herein, may not be enlarged, modified or altered except upon written agreement signed by both parties. The Contractor may not subcontract or assign its rights, including rights to compensation, or terms of performance arising hereunder without the prior written consent of the City. Any subcontractor or assignee shall be bound by all of the terms and conditions of the contract, and will be required to enter into a written agreement with the City.

15. Termination of Contract. This contract may be terminated as follows:

- A. Termination for Convenience. City may terminate this contract in whole or in part for the convenience of the City when the City determines that the continuation of the project is not in the best interests of the City. Contractor shall be entitled to payment for all of the services performed at the date of the termination, together with its direct costs of termination. Under no circumstances shall the Contractor be entitled to any penalty for the termination nor shall the Contractor be entitled to any payment for lost profits.
- B. Termination for Cause. If the City determines that the Contractor has failed to comply with any of the terms and conditions of the contract and the scope of services and related documents thereto, the City may give written notice to the Contractor of any such deficiency and in the event that the Contractor fails to cure said deficiency within ten (10) days of the notice of such failure, the City may, with no further notice, declare this contract to be terminated. Contractor will therefore be entitled to receive payment for those services performed at the date of termination, plus the amount of reasonable damages suffered by the City by reason of the Contractor's failure to comply with the terms of the contract. Under no circumstances shall the Contractor be entitled to any lost profits arising from the contract.

16. Warranty. Contractor warrants and guarantees to City that all materials and equipment and the work to be performed hereunder will be of good quality and free from faults and defects. This warranty shall cover materials for the manufacturer stated warranty period and workmanship for one (1) year from the date of substantial completion or as provided in the Scope of Services attached hereto, whichever is greater.

17. Conflicts. If there is any inconsistency between these Terms and Conditions and the Scope of Services or any attachments thereto, these Terms and Conditions shall apply.

18. Protection of the Project Site. Contractor agrees to post signage and to appropriately guard the area in which the contract work is being performed, and to take all other steps that may be necessary in accordance with requirements of OSHA and/or other governmental agencies with jurisdiction to ensure that the project site is maintained in a safe manner so as to prevent workers and passersby from entering the project site.

19. Hold Harmless. The contractor will defend and hold harmless the City as and against any claims, actions, demands or causes of action brought by a third party for damages or losses arising out of Contractor's performance of the work under these Terms and Conditions and the attached Scope of Services. Said indemnification shall include the City's actual attorney fees. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct.

20. Indemnity. The City shall not be liable for failure on the part of the Contractor or any other party performing under this contract in accordance with all applicable laws and regulations. Contractor waives any and all claims and recourse against the City including the right of contribution for loss of damage to persons or property arising out of or growing out of any way connected with or incident to the performance of this contract, except for liability arising out of the sole negligence of the City or its officers, agents or employees.

21. Working Hours. Unless specifically noted, all work included in this contract is to be performed during normal business hours, Monday through Friday. Work performed at any other time or on legal holidays must be specifically approved by the City.

CITY:
City of New Berlin

CONTRACTOR:

Area Rental & Sales Co LLC
[Insert Contractor Name]

By: _____

[Print Name & Title]

By:

Michael Landry
Michael Landry owner
[Print Name & Title]



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/15/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER AssuredPartners of Illinois, LLC 4350 Weaver Pkwy Warrenville IL 60555-3925		CONTACT NAME: Certificate Team PHONE (A/C, No, Ext): 630-355-2077 E-MAIL ADDRESS: certs.apil@assuredpartners.com FAX (A/C, No): 630-355-7996		
INSURED Area Rental & Sales Co., LLC 17000 W Cleveland Ave. New Berlin WI 53151 AREAREN-01		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A : Central Insurance Companies		20230
		INSURER B :		
		INSURER C :		
		INSURER D :		
		INSURER E :		
		INSURER F :		

COVERAGES **CERTIFICATE NUMBER: 726958197** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:	Y		CLP8964679	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$
A	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			BAP8964678	1/1/2023	1/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			CXS8964680	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 OTHER:
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Additional Insured(s) for General Liability: City of New Berlin.

CERTIFICATE HOLDER City of New Berlin 3805 S Casper Drive New Berlin, WI 53151	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

© 1988-2015 ACORD CORPORATION. All rights reserved.



DATE: April 21, 2023

TO: Rubina Medina
City Clerk

FR: Mayor Dave Ament

RE: Mayoral Appointments for the April 25, 2023 Common Council Mtg

Architectural Review Committee

Scott Schulpus
16840 W Beloit Rd.
New Berlin, WI 53151
262-613-5021
sschulpus@aol.com
(New Appointment)

Expiration Date

4/30/2024

For Office Purposes Only						
TT	Eml	Web	Provov	Ltr	Ethcs	HB

Plan Commission

Scott Schulpus
16840 W Beloit Rd.
New Berlin, WI 53151
262-613-5021
sschulpus@aol.com
(New Appointment)

Expiration Date

4/30/2026

For Office Purposes Only						
TT	Eml	Web	Provov	Ltr	Ethcs	HB

New Berlin Fire Department



Mission

Our mission is to provide exceptional services while committed to building a safer community.

Vision

The New Berlin Fire will continuously strive to be a caring, understanding, people first organization committed to excellence in all we do.

New Berlin Fire Department



Values

Integrity – we commit to honest, trustworthy, and ethical behavior.

Professional Excellence – we support continuous training and education, mentorship, and professional development to ensure exceptional service to our community.

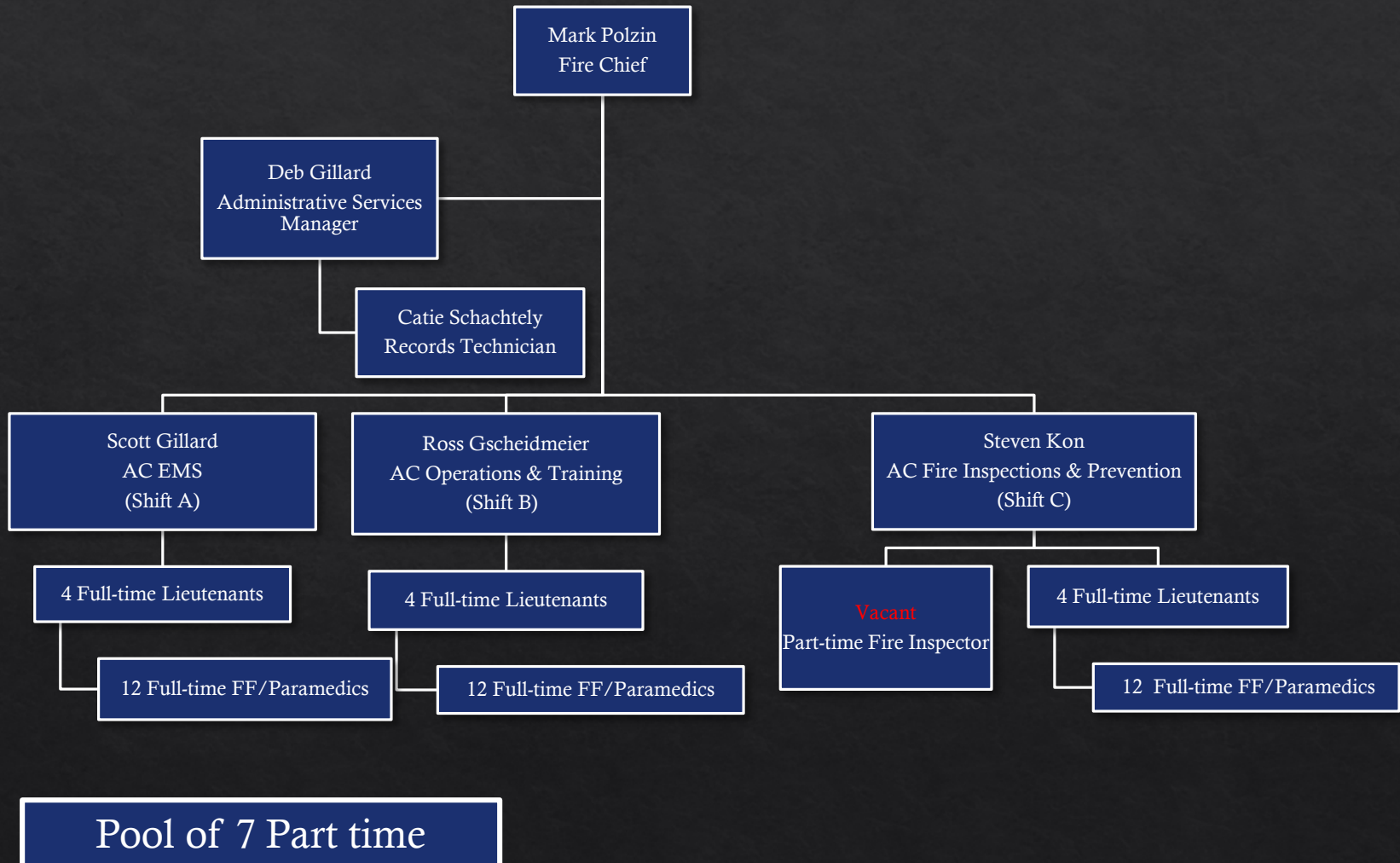
Teamwork and Shared Leadership – we seek to encourage and empower our members with opportunities to enhance your fire department.

Community Engagement – we understand our responsibility in building a safer community by deepening our involvement in the community we serve.

Diversity and Inclusion – we dedicate ourselves to reflecting and embracing diversity within our department and throughout our community.

Health, Safety, and Wellness – we pledge to provide an environment which supports the health, safety, and well-being of our members.

New Berlin Fire Department Organizational Chart



Response Overview

- *New Berlin Fire/EMS responses - 2021/4960 2022/4951*
 - *Private vs. Government Insurance (Ground Ambulance Study)*

- *Health Care Facilities, Assisted Living Facilities & Community Based Residential Facilities*
 - *Inter-Facility (Education on emergent vs non-emergent)*
 - *Lift Assist (Education on fire department vs facility responsibility)*
 - *Emergency Transport – fire department*

2022 Accomplishments

- ❑ *Ambulance replacement in service September*
- ❑ *Staffing for Adequate Fire and Emergency Response (SAFER) Grant acquisition \$2.7 million*
 - ❑ *Nine full-time Firefighter Paramedic positions*
- ❑ *Assistance to Firefighters Grants (AFG) \$30K*
 - ❑ *Second set of battery operated extrication equipment*
- ❑ *Wisconsin Emergency Medical Services Flex Grant \$90K*
 - ❑ *Patient Lift Assist Hover Bags, FD Training Rooms technology updates*
- ❑ *Kelmann Cares Grant \$1K*
 - ❑ *Portable battery operated scene lighting*

2023 NBFD Goals

- ❑ *Work with and assist local high schools with the fire service dual enrollment program*
- ❑ *Expand education and training opportunities for all department members*
- ❑ *Create an internal Peer Support Team*
- ❑ *Expand our ability to conduct fire investigations*
- ❑ *Update job descriptions*
- ❑ *Develop a fair and consistent promotional process*
- ❑ *Look for external funding sources for equipment*
- ❑ *Increase our community involvement outside of emergency responses*
- ❑ *Establish department policies and procedures*
- ❑ *Conduct a department Strength, Weakness, Opportunity, Threat (SWOT) analysis*
- ❑ *Utilize data to assist in decision making processes*
- ❑ *Construct a department Standard of Cover document and Strategic Plan*

Questions



REQUESTED ACTION STATEMENT

DATE: April 25, 2023

TO: Mayor
Common Council

FROM: Erin Cross, Recreation Manager

ISSUE: Approval of Beer Garden Contract with Mobcraft Beer, Inc.

REQUESTED: Recommend to the Common Council approval of a contract with Mobcraft Beer, Inc. to host beer garden events between July 28, 2023 and October 15, 2023 at Malone Park.

FISCAL IMPACT: The City will receive \$400 upon completion of each day of service with a total of 14 days included in the agreement.

RATIONALE: Per the New Berlin Municipal Code 184-3 (D)(2), the Parks, Buildings and Grounds Commission along with the Common Council must approve granting a group or individual to sell or dispense fermented malt beverages in any park or parkway.

In an effort to provide passive recreational community gathering opportunities, the Recreation Department has worked in coordination with Mobcraft Beer, Inc to host beer gardens this summer and fall at Malone Park in New Berlin. These events will provide community members the opportunity to spend time outdoors at New Berlin Parks while maintaining safe social distances.

RECOMMENDATION: Please consider recommending the approval of the contract with Mobcraft Beer, Inc.

SPONSORSHIP/USE AGREEMENT

This Sponsorship/Use Agreement (hereinafter "Agreement") is made and entered into this ____ day of April ____, 2023, by and between the CITY OF NEW BERLIN (hereinafter referred to as the "City") and MobCraft Beer, Inc d/b/a MobCraft, duly organized and validly existing under the laws of the State of Wisconsin (hereinafter referred to as "Sponsor");

WHEREAS, the City owns and operates Malone Park, which has various amenities (hereinafter the "Premises"); and

WHEREAS, the New Berlin Public Library Board operates the New Berlin Public Library, which has an associated green space area adjacent to the library, which are also considered part of the Premises; and

WHEREAS, the City is desirous of conducting beer garden events on selected days between July 28, 2023 and October 15, 2023 (more specifically described on the attached Exhibit A).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agreed as follows:

1. The City does hereby grant access to the Malone Park pavilion, as depicted on the attached maps, Exhibit B. Additional locations shall include other New Berlin City Park locations, including Historical Park, City Center Plaza, as well as the New Berlin Public Library green area.

2. The City hereby grants said access on Fridays, Saturdays and Sundays on the dates and times outlined in Exhibit A. These dates and times are subject to modifications as may be made, in writing, from time to time, between the Sponsor and the Recreation Department Office.

3. In addition to the use of the Premises, the City agrees to provide picnic tables, and trash and recycling receptacles, for the use of the patrons during the course of the events.

4. Sponsor is hereby permitted to sell beer with an alcohol content no greater than 8%, subject to the approval of a State license.

5. Sponsor is authorized to work with licensed food truck vendors to provide food for purchase during the hours outlined in Exhibit A. Any such food truck vendor must comply with the health and safety requirements outlined by the Waukesha County Health Department and must obtain appropriate permits required by the City of New Berlin.

6. Sponsor will serve beer provided for hereunder, and further agrees to arrange for the performance of music with either a DJ or a live performer, using minimally amplified music. The applicant will be required to apply for a loudspeaker permit through the New Berlin Police Department.

7. The hours of operation shall be Fridays from 3pm-9pm, Saturdays, 12pm-9pm & Sundays, 12pm-9pm in the event of a rain reschedule. Sponsor may engage in restocking or

cleanup activities outside of these hours; however, the performance of these activities shall not last more than one hour before or after the aforementioned hours of operation.

8. Responsibilities of Sponsor:

- a. Sponsor acknowledges that the Park is a public space and must remain open and accessible to the public throughout the course of the event.
- b. Sponsor agrees to abide by all local, state and federal regulations concerning the sale and service of alcoholic beverages.
- c. Sponsor agrees not to discriminate against anyone desiring to participate in the event on the basis of age, race, sex, marital status or any other prohibited basis of discrimination.
- d. Sponsor agrees that the space that is being utilized shall be maintained so as to permit access as required under the Americans with Disabilities Act.
- e. Sponsor agrees to pay all taxes or fees associated with the operation of the event.
- f. Sponsor agrees, at its own expense, to keep the premises and surrounding area clean and sanitary at all times. Garbage shall be collected during the course of the event, which will be picked up by the City daily.
- g. No equipment being provided by the City shall be removed or replaced without the written consent of the City and any such use will be at the expense of the Sponsor.
- h. Sponsor agrees that they will obtain all necessary licenses or permits to conduct the operations as contemplated hereunder, and will comply with all local Health Code requirements, as well as Building Code requirements.

9. The parties shall mutually perform an inspection of the Premises both prior to the commencement of this Agreement, as well as following it, so as to verify that the condition of the Premises meets the requirements as set forth in this Agreement. Sponsor agrees to return the Premises to the City following the conclusion of the event in the condition that existed prior to the commencement of the event, reasonable wear and tear excepted.

10. Sponsor agrees to indemnify and hold harmless the City as and against any and all claims, demands, actions, causes of action, or fees, including actual attorney fees, arising from the activities of the Sponsor, their agents, subcontractors or assigns, in conducting the beer garden events, as well as the performance of the terms of this Agreement. This indemnification shall include the acts or omissions of any contractors or subcontractors that they may engage for the performance of the event.

11. Sponsor agrees that this Agreement is exclusive to them and to the extent they wish to engage other entities to assist with the performance of the event, such entities must be approved by the Common Council or their designee, and such subcontractors must agree to the same indemnity and insurance requirements as required of the Sponsor.

12. Sponsor acknowledges that they are ultimately responsible for the acts or omissions of any subcontractors with which they may engage.

13. The parties agree to mutually perform advertising for the event.

14. Sponsor agrees to allow the City to hold events coordinated by the City in conjunction with the beer garden. This use is not exclusive.

15. Sponsor acknowledges that they are not permitted to bring in additional lighting without the express written permission of the City. Strings of lights are permitted, provided that each bulb is not greater than 25 watts in capacity. The Sponsor may also bring in and set up a point of sale station and credit card station at their expense.

16. City agrees to maintain the bathrooms on the premises during the course of this event consistent with its normal operating policies; meaning that the bathrooms will be maintained daily.

17. Sponsor agrees to restrict the areas in which beer consumption is permitted to those that are shown on the attached maps (Exhibit B). The City will create fencing and/or signage directing patrons that alcohol may only be consumed within the designated area.

18. As part of the consideration for this Agreement, the Sponsor agrees to pay to the City the amount of Four Hundred (\$400.00) Dollars per day, for each day of the event, not less than thirty (30) days following the completion of the event. Sponsor further agrees to provide the City with sales records satisfactory to the City to monitor their use of the City facilities. Should the event not be completed due to rain, no payment shall be collected.

19. Sponsor shall provide security during the event and will ensure that the terms of this Agreement, as well as all other applicable City Rules and City Ordinances, including the Rules of the New Berlin Public Library Board, are followed. Any criminal activity shall be reported immediately to the New Berlin Police Department.

20. Sponsor agrees to provide evidence of comprehensive, general liability insurance with limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, which insurance shall list the City as an Additional Insured on a primary and non-contributory basis.

21. In the event Sponsor fails to abide by the terms of this Agreement, or in the event the events create a public nuisance, the use may be terminated.

22. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.

23. Each party acknowledges that the person signing the Agreement has been duly authorized by the governing body of each entity.

24. This Agreement represents the complete understanding of the parties with respect to the subject matter set forth herein, and may only be amended in a subsequent agreement executed by all parties.

25. To the extent that any portion of the Agreement is deemed to be unenforceable by a court of competent jurisdiction, the parties agree that the balance of the Agreement shall remain in full force and effect.

CITY :
City of New Berlin

SPONSOR:
MobCraft Beer, Inc
d/b/a MobCraft

By: _____
David Ament, Mayor

By: _____

By: _____
Erin Cross, Recreation Manager

By: _____

EXHIBIT A

Dates/Times/Places of Beer Garden Events

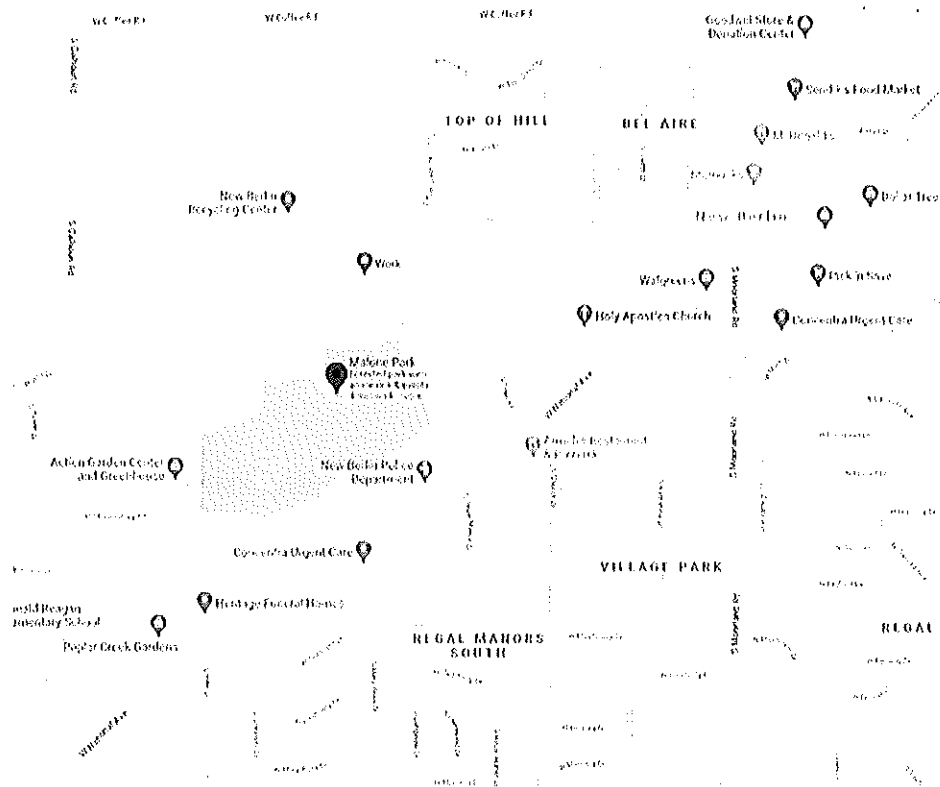
Fri-Sat, July 28-29, 2023	Fri: 3pm-9pm, Sat 12pm-9pm	Malone Park
Fri-Sat, August 11-12, 2023	Fri: 3pm-9pm, Sat 12pm-9pm	Malone Park
Fri-Sat, August 25-26, 2023	Fri: 3pm-9pm, Sat 12pm-9pm	Malone Park
Sun, Oct 8, 2023	1pm-6pm	Historic Park

Rain Dates/Times/Places of Beer Garden Events

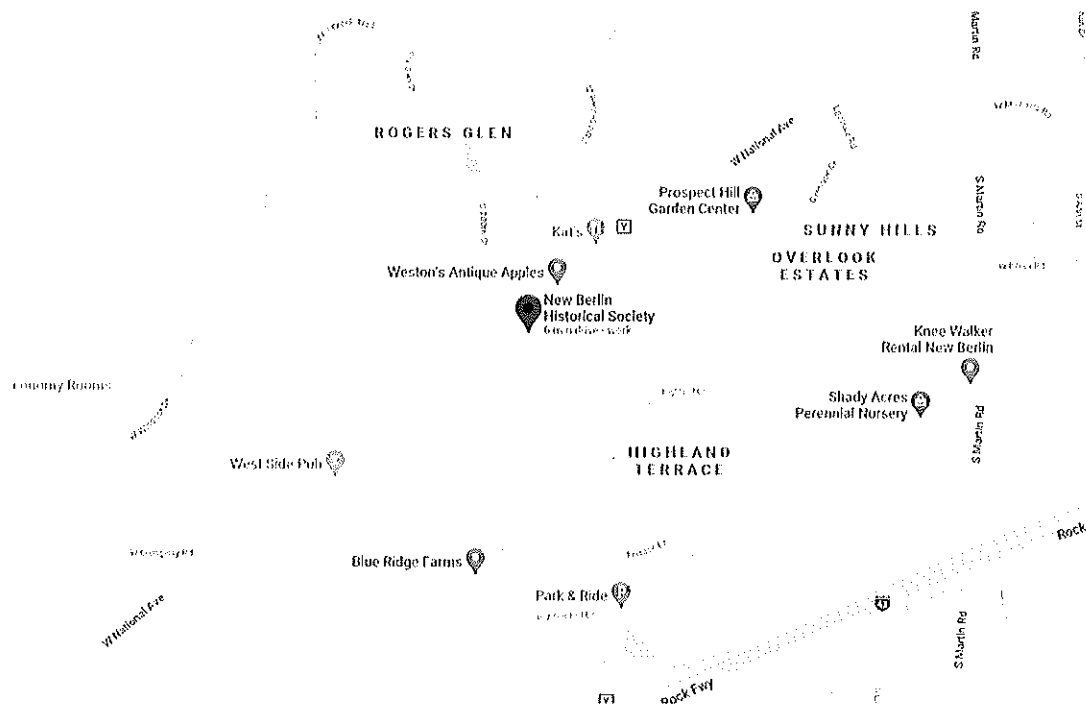
Sun, July 30, 2023	Sun 12pm-9pm	Malone Park
Sun, Aug 13, 2023	Sun 12pm-9pm	Malone Park
Sun, Aug 27, 2023	Sun 12pm-9pm	Malone Park
Sun, Oct 15, 2022	1pm-6pm	Historic Park

EXHIBIT B

Malone Park



Historic Park





MOBCLLC-01

DWHITNEY01

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/17/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER AVID Risk Solutions, Inc. 2501 Parmenter Street Suite 200A Middleton, WI 53562	CONTACT NAME:	
	PHONE (A/C, No, Ext): (608) 827-4525 FAX (A/C, No): (608) 827-4712 E-MAIL ADDRESS: certificates@avidrisk.com	
INSURED Mobcraft Beer, Inc. 505 S 5th Street Milwaukee, WI 53204	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Illinois Casualty Company	15571
	INSURER B : Erie Insurance Exchange	26271
	INSURER C : Hartford Insurance (For Direct Bill Commission Download)	00914
	INSURER D : Westchester Surplus Lines Insurance Company	10172
	INSURER E :	
INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			BP35209	5/29/2022	5/29/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			Q10-3031035	10/30/2022	10/30/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	☐ UMBRELLA LIAB ☐ EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐	N/A	83WBCAU8BXY	10/30/2022	10/30/2023	☒ PER STATUTE ☒ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Liquor Liability			LL96909	5/29/2022	5/29/2023	Each Common Cause 1,000,000
D	Professional Liab			G74323467 001	10/1/2022	10/1/2023	Products Recall 50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of New Berlin Recreation Dept.
3805 S Casper Dr
New Berlin, WI 53151

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

