



Plan Commission Meeting Agenda

January 13, 2025 - 3:00 PM
Council Chambers
3805 S. Casper Drive

Amended 1/9/2025 @ 2:30PM
Published 1/9/2025

AGENDA

1. **CALL TO ORDER, PLEDGE OF ALLEGIANCE**
2. **ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE**
3. **NEW BUSINESS**
 - A. Discussion and possible action to recommend to Common Council rejection of (4) KH SP-2500053 Ryan's Buying LLC – 5751 S. Sunny Slope Road - Theofila Estates Final Plat
4. **ADJOURN**

Additional Information

- The agenda packet with supplemental information related to the agenda items is available online at www.NewBerlinWI.gov. Once finalized by the governing body, approved meeting minutes are also posted online.
- The governing body may consider agenda items out of order
- Members, and potentially a quorum of other governmental bodies of the municipality, may be present at the meeting to gather information. No action will be taken by any governmental body other than the one referenced in this notice.
- With reasonable notice, accommodations will be provided under the Americans with Disabilities Act to meet the needs of individuals with disabilities through appropriate aids and services. For more information or to request assistance, please contact the Office of the City Clerk at (262) 786-8610.

STAFF REPORT

EXECUTIVE SUMMARY

APPLICANT/PROJECT: Ryan Janssen, Ryan's Buying LLC / Theofila Estates Subdivision Final Plat

LOCATION: 5751 S. Sunny Slope Road (Tax Key #: 1289.994.002)

REQUEST: Approval of the Theofila Estates Subdivision Final Plat for the property located at 5751 S. Sunny Slope Road (Tax Key #: 1289.994.002).

REVIEW SCHEDULE:

Preliminary Plat Received:	11/20/2024
60-day time limit expires:	1/19/2025
Final Common Council Action (expected):	1/14/2025

D.R.C. RECOMMENDATION: Recommend to Common Council rejection of Theofila Estates Subdivision Final Plat for the property located at 5751 S. Sunny Slope Road (Tax Key #: 1289.994.002), subject to the application, plans on file and the following reasons:

1. The Municipal Code states in §235-15N(1): *No final plat will be accepted as complete until the applicant provides adequate documentation that the required improvements have been completed.* Staff has reviewed the submitted Final Plat application and found it to be substantially incomplete.
2. The Director or designee shall make a determination of the developer's compliance with the terms of the development agreement, City ordinances, and the City's Developer's Handbook.
 - a. The Sequence of Development, as stated in the approved Development Agreement, states that the following items shall be completed prior to approval of the Final Plat: Construction Plan Approvals, Development Agreement Approvals and Sureties, Pre-construction Meeting, Erosion Control and Stormwater Best Management Practices, Grading, Sanitary System, Water System, Storm Drainage System, Roadway Base Course, Private Utilities (Electric, Gas, Telephone, CATV, Etc.), Restoration, Roadway Binder & Surface Course, Record Drawings And Certifications, and Easement Recording.
 - b. As of November 20, 2024, Grading, Sanitary System, Water System, Storm Drainage System, Roadway Base Course, Private Utilities (Electric, Gas, Telephone, CATV, Etc.), Restoration, Roadway Binder & Surface Course, Record Drawings And Certifications, and Easement Recording have not been completed, therefore the improvements cannot be accepted.

ATTACHMENTS:

Inspection Report (11/25/2024) - construction status at the time of submittal
Letter (11/22/2024) – incomplete application
Email (11/21/2024) – construction status
Letter (10/30/2024) – incomplete application
Preliminary Plat Staff Report (1/8/2024)

Daily Project Events Report

		Day & Date:	Monday, November 25, 2024
Project:	Theofila Estates	Client:	City of New Berlin
Project Number:	1244600		
Engineering Firm:	raSmith	Contractor:	Veit USA
Report By:	Mark Nosonovsky	Sub Contractor:	DC Burbach
Project Type:	Roads	Weather/Temp - AM:	47° and Mostly Cloudy
Project Type Detail:	curb	Weather/Temp - PM:	48° and Mostly Cloudy

Erosion Control Status:

In place.

Activity for the Day: (Comments)

I arrived on site at Theofila Estates at 6:55 AM. DC Burbach was on site. They removed two short pieces of concrete curb, one short piece in the cul-de-sac on Norbert Ct (22' length) and one short piece north of the storm inlet INL 5A (14' length). Burbach then set forms to pour the two sections of curb. Forms were checked by Burbach using a level. A concrete truck from Zignego arrived on site shortly after 9:30 AM. Burbach began pouring the section in the cul-de-sac on Norbert Ct. The concrete was vibrated as it was being poured. Burbach then poured the short section north of inlet INL 5A. A piece of felt was placed approx. 5' away from the inlet. Burbach laborers and finisher worked on giving the concrete a smooth finish. The concrete pour was completed at 10:10 AM. 3.5 cubic yards of mix 928 were ordered for today's pour. Once the concrete had set, Burbach stripped the forms and covered the new curb with blankets and plastic due to expected cold weather temperatures. Burbach left the job site at 12:40 PM. I spent some time today on GPS work.

Items Used Today

Item No.	Bid Items (drop down)	Units	Qty	Comments
-				
-				
-				
-				
-				
-				
-				
-				
-				
-				
-				

Signature of Site Representative:



Construction Operations Management
Project Automation System



Site Representative Time (hrs): **7.5**

Daily Project Events Report Photos

Burbach removed two short pieces of concrete curb



Burbach set forms ahead of the concrete pour



Burbach set forms ahead of the concrete pour



Concrete pour begins on Norbert Ct



Daily Project Events Report Photos

Concrete pour on Theofila Ct



A piece of felt was placed approx. 5' north of the inlet INL 5A



Concrete pour is completed



Newly poured concrete curb was covered with plastic and blankets due to expected cold weather temperatures





November 22, 2024

Sent via email to ryan@ryansbuying.com

Ryan Janssen
Ryan's Buying LLC
PO Box 486
Mukwonago, WI 53149

Re: Theofila Estates Subdivision Final Plat

Dear Mr. Janssen:

The Department of Community Development received your application on November 20, 2024, for the Theofila Estates Subdivision Final Plat located at 5751 S. Sunny Slope Road and has determined the application to be incomplete. The Municipal Code states in §235-15N(1): *No final plat will be accepted as complete until the applicant provides adequate documentation that the required improvements have been completed.* Staff has reviewed the submitted Final Plat application and found to be substantially incomplete.

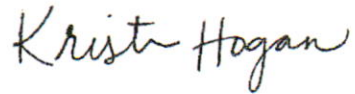
The Director or designee shall make a determination of the developer's compliance with the terms of the development agreement, City ordinances, and the City's Developer's Handbook.

- The Sequence of Development, as stated in the approved Development Agreement, states that the following items shall be completed prior to approval of the Final Plat: Construction Plan Approvals, Development Agreement Approvals and Sureties, Pre-construction Meeting, Erosion Control and Stormwater Best Management Practices, Grading, Sanitary System, Water System, Storm Drainage System, Roadway Base Course, Private Utilities (Electric, Gas, Telephone, CATV, Etc.), Restoration, Roadway Binder & Surface Course, Record Drawings And Certifications, and Easement Recording.
- As of November 20, 2024, Grading, Sanitary System, Water System, Storm Drainage System, Roadway Base Course, Private Utilities (Electric, Gas, Telephone, CATV, Etc.), Restoration, Roadway Binder & Surface Course, Record Drawings And Certifications, and Easement Recording have not been completed, therefore the improvements cannot be accepted.

Please contact the City once the improvements have been made so we can provide an application cutoff date for a future Plan Commission meeting. You will need to re-submit your application and materials at such time you are ready to apply; materials will need to be picked up from City Hall by **December 2, 2024**. Staff will not accept an application for the Final Plat unless the required improvements have been completed and preliminarily accepted by the City as outlined in the executed Development Agreement dated July 10, 2024.

If you should have any questions, or need further information, please contact our office at (262) 797-2445 ext. 2514.

Sincerely,
CITY OF NEW BERLIN

A handwritten signature in black ink that reads "Kristen Hogan". The script is cursive and fluid, with the first name "Kristen" and last name "Hogan" clearly legible.

Kristen Hogan
Principal Planner

CC: Alderman Harenda
Mark Blum, City Attorney
Tom Schmitzer, Attorney
Greg Kessler, Director of Community Development
Nikki Jones, Deputy Director of Community Development
Tammy Simonson, City Engineer

Hogan, Kristen

From: Simonson, Tamara
Sent: Thursday, November 21, 2024 1:53 PM
To: Ryan Janssen; Ryan Janssen; Paul Jenswold
Cc: Kessler, Greg; Hogan, Kristen; Blum, Mark; Jones, Nikki
Subject: Theofila Paving

Ryan and Paul,

I know we have been working towards getting the pavement down at Theofila, but today's weather along with other factors have led me to believe we are not going to be able to place any asphalt anymore this year.

Wolf still has a day needed to fine grade the roadway. The base course has now been saturated with the snow and the probable rain this afternoon. The cooler temps make drying it out less likely.

The binder would take a day by itself.

There are sections of curb and gutter that need to be replaced before the surface course can be placed and then that will need 2-3 days to cure if you use high early concrete.

Paul Schafer told me yesterday that Wolf plans to close their plant down on Tuesday. And the temps next week Tuesday and Wednesday won't get high enough to meet the WisDOT Cold Weather Paving requirements for surface course at 36 degrees and rising.

The Development Agreement states under Section VII.B.3 "The asphaltic binder and surface course shall be installed in the same calendar year and shall not be installed without prior approval of the City Engineer to confirm the suitability of weather and site conditions for paving."

Based on this information, we recommend that you place barricades where your site meets Red Fox and plan to come back in the spring to complete the project.

If there is any information that I am not aware of, please let know.

Thank you,

Tamara M. Simonson, PE
City Engineer
City of New Berlin



October 30, 2024

Sent via email to ryan@ryansbuying.com

Ryan Janssen
Ryan's Buying LLC
PO Box 486
Mukwonago, WI 53149

Re: Theofila Estates Subdivision Final Plat

Dear Mr. Janssen:

The Department of Community Development received your application on October 18, 2024, for the Theofila Estates Subdivision Final Plat located at 5751 S. Sunny Slope Road and has determined the application to be incomplete. The Municipal Code states in §235-15N(1): *No final plat will be accepted as complete until the applicant provides adequate documentation that the required improvements have been completed.* Staff has reviewed the submitted Final Plat application and found to be substantially incomplete.

The Director or designee shall make a determination of the developer's compliance with the terms of the development agreement, City ordinances, and the City's Developer's Handbook.

- The Sequence of Development, as stated in the approved Development Agreement, states that the following items shall be completed prior to approval of the Final Plat: Construction Plan Approvals, Development Agreement Approvals and Sureties, Pre-construction Meeting, Erosion Control and Stormwater Best Management Practices, Grading, Sanitary System, Water System, Storm Drainage System, Roadway Base Course, Private Utilities (Electric, Gas, Telephone, CATV, Etc.), Restoration, Roadway Binder & Surface Course, Record Drawings And Certifications, and Easement Recording.
- As of October 30, 2024, Grading, Sanitary System, Water System, Storm Drainage System, Roadway Base Course, Private Utilities (Electric, Gas, Telephone, CATV, Etc.), Restoration, Roadway Binder & Surface Course, Record Drawings And Certifications, and Easement Recording have not been completed, therefore the improvements cannot be accepted.

The next application cutoff date is **November 20, 2024** for the January 8, 2025 Plan Commission meeting. You will need to re-submit your application and materials at such time you are ready to apply. Staff will not accept an application for the Final Plat unless the required improvements have been completed and preliminarily accepted by the City as outlined in the executed Development Agreement dated July 10, 2024.

If you should have any questions, or need further information, please contact our office at (262) 797-2445 ext. 2514.

Sincerely,
CITY OF NEW BERLIN

A handwritten signature in black ink that reads "Kristen Hogan". The script is cursive and fluid, with the first name "Kristen" and last name "Hogan" clearly distinguishable.

Kristen Hogan
Principal Planner

CC: Alderman Harenda
Mark Blum, City Attorney
Tom Schmitzer, Attorney
Greg Kessler, Director of Community Development
Nikki Jones, Deputy Director of Community Development
Tammy Simonson, City Engineer

STAFF REPORT

EXECUTIVE SUMMARY

APPLICANT/PROJECT:	Ryan Janssen, Ryan's Buying LLC / Theofila Estates Subdivision Preliminary Plat		
LOCATION:	5751 S. Sunny Slope Road (Tax Key #: 1289.994.002)		
REQUEST:	Approval of the Theofila Estates Subdivision Preliminary Plat for the property located at 5751 S. Sunny Slope Road (Tax Key #: 1289.994.002).		
REVIEW SCHEDULE:	Preliminary Plat Received:	10/20/2023	
	Completeness Determination:	10/23/2023	
	90-day time limit expires:	1/18/2024	
	15-day extension:	2/2/2024	
	Final Common Council Action (expected):	1/23/2024	
D.R.C. RECOMMENDATION:	Recommend to Common Council adoption of a resolution approving the Theofila Estates Subdivision Preliminary Plat for the property located at 5751 S. Sunny Slope Road (Tax Key #: 1289.994.002), subject to the application, plans on file and the following conditions:		

1. Planning:

a. Plat:

- i. Satisfaction of all the conditions outlined in the Letter of No Objection by Waukesha County Park and Land Use Department is required.
- ii. Satisfaction of all the conditions outlined in the Letter of No Objection by the Department of Administration is required.
- iii. A Development Agreement shall be approved by the Board of Public Works and Common Council prior to the start of construction.
- iv. Applicant shall correct all drafting errors and requested changes identified by Staff on the Final Plat prior to the City signing.
- v. A final copy of the Final Plat shall be submitted and reviewed prior to City signing. All owners and surveyor must sign prior to City signing the Final Plat. Surveyor Stamp is required.
- vi. Applicant shall submit a Mylar of the recorded plat to the City of New Berlin. Please make sure to have your surveyor coordinate with the State/County on this if necessary. This document is kept on file with the City.
- vii. Applicant shall provide the CAD file containing all the line work to include all parcels, easement lines, etc. The file needs to be in the NAD 83 (2011) State Plane Wisconsin South Projection.
- viii. A copy of the subdivision covenants shall be submitted prior to the City signing the Final Plat. This document shall address the maintenance of the open space and outlot.

1. Define maintenance of the paved paths by the HOA.
 - ix. Payment of \$25,188.80 (\$1,937.60/lot x 13 lots = \$25,188.80) in Public Site and Open Space Fees required prior to the City of New Berlin signing the Final Plat.
 - x. Right-of-way widths shall be a minimum of 60 feet for public streets. Per §275-33D(18): "In the R-6 District, the Plan Commission and Common Council may approve sixty-foot right-of-way widths where determined acceptable by DCD." A resolution is required.
 - xi. Per CSM 12457, Outlot status on this parcel may be removed after Red Fox Rd is extended and City sewer and water is provided to these proposed parcels.
 - xii. A note shall be placed on the Final Plat stating "A park complex with lighting, ball fields, and a variety of other activities is planned to be located adjacent to the subdivision".
 - xiii. Within Red Fox Crossing Subdivision, "Fox Trail Court" shall be named "Red Fox Road".
 - xiv. "Red Fox Road" shall be named "Theofila Court".
 - xv. Natural Gas Pipeline shall be shown on the plat. Pipeline found on lot 12 is not shown on the plans.
- b. Civil Plans:
- i. Applicant shall provide perimeter screening along Sunny Slope Road in accordance with §275-41B(6).
 1. Approval of the Landscaping Plan (for the berms along Sunny Slope Road) and payment of all installation and maintenance sureties is required prior to the City signing the Development Agreement. Landscape plans shall meet the requirements of §275-53 through §275-56.

2. Engineering:

a. Plat

- i. North of the subdivision, Red Fox Rd is labeled as Fox Trail Ct. This shall be changed to Red Fox Rd.
- ii. Show the vision corner easements at the intersection of Norbert Court and Red Fox Road.
- iii. Label the easement between lots 3 and 4 as 20 ft Wide Private Storm and Drainage Easement.
- iv. Extend a 30 ft Public Sanitary Sewer Easement along the proposed sanitary sewer along the south side of Lot 5.
- v. Rename the 40 ft Wide Utility Easement between lots 5 and 6 to 40 ft Wide Public Utility and Pedestrian Easement.
- vi. Remove utility linework from the plat.
- vii. At the connection to the existing right-of-way, the width of the proposed right-of-way is shown as 33 ft each side of centerline. This shall be revised to 30 ft each side of centerline.
- viii. A note shall be added stating: "There shall be no direct vehicular ingress or egress between Sunny Slope Road and Outlot 1 in this subdivision. It is being expressly

intended that this restriction shall constitute a restriction for the benefit of the public according to Section 236.293 of the Wisconsin Statutes and shall be enforced by the City of New Berlin.”

- ix. A note shall be added stating: “Private Drainage Easements are established to provide for the unobstructed flow of stormwater runoff from adjacent and upstream properties. Owners of lots on which these private drainage easements exist shall be responsible for keeping these areas free from any obstructions that may restrict flow.”
- x. A note shall be added stating: “Tree Preservation Easement Restrictions Lots 1, 12, & 13:
 - 1. The grading, filling, and/or removal of topsoil is prohibited.
 - 2. The removal or destruction of vegetative cover, i.e. trees shrubs, grasses, etc. is prohibited with the exception that dead, dying or diseased vegetation may be removed at the discretion of the land owner under the recommendation of a forester or naturalist with approval from the City of New Berlin Department of Community Development. Invasive plant species, as identified by the Wisconsin Department of Natural Resources, may also be removed with approval from the City of New Berlin Department of Community Development.
 - 3. The construction of any permeant or temporary structures, fencing, pools, decks, play equipment, or the like is prohibited.
 - 4. The introduction of any plant material not indigenous to the existing environment is prohibited.
 - 5. Unauthorized removal of trees within the Tree Preservation Easement shall require replanting in accordance with the City’s Tree Replacement Policy noted in Zoning Code Section 275-54B(6). Because the species and/or quality of the tree that has been removed is not able to be determined after-the-fact, the required number of replacement trees will be based on stump size, regardless of the species or quality of the original tree.”

b. Civil Plans:

- i. On page 1, the north south roadway is labeled as Theofila Court, whereas the plan names this roadway as Red Fox Road.
- ii. Show the vision corner easements on the plan set.
- iii. The radius of the neck of the cul-de-sac shall be 40’ as measured to the flange of the curb and gutter.
- iv. The 40’ Utility Easement shall be labeled as 40’ Public Utility and Pedestrian Easement.
- v. § 275-57F requires driveways on local streets to be located a minimum of 100’ from the intersecting right-of-way on the two streets. The driveways on lots 1, 2, 8, and 14 are shown too close to the intersection.
- vi. On lot 1, a significant amount of runoff drains from the north. To better define a swale behind the house the northwest corner of the building may not allow for an exposure, and the southwest corner may only allow for a partial exposure. This flow shall be more channelized toward the west drainage swale.
- vii. Provide proposed culvert sizes for the temporary culverts associated with the temporary access to Sunny Slope Rd.

- viii. Add a note to the Erosion Control Plan stating; "Temporary access shall be completely removed following roadway base course placement and prior to the issuing of the Final Plat."
- ix. Show storm sewer main crossings on sanitary and water main plan and profile sheets.
- x. An outside drop connection is required at the sanitary sewer connection to existing MH 101.
- xi. Provide details for hydrant assemblies, storm manholes, sanitary manholes, behind the curb storm water collector mains and manholes.
- xii. Provide plan and profile for the path along Sunny Slope Rd.
- xiii. The rate of vertical curvature shall be based on a design speed of 30 mph. The rate of vertical curvature (K) at the connection the existing Red Fox Road is less than 37.

3. Stormwater:

- a. Plat:
 - i. Change bearing on South Line to read S--W instead of N—E.
 - ii. Plat line work meets closure criteria.
- b. WDNR NOI is required.
- c. MMSD Chapter 13 approval is required.
- d. SWMP Maintenance Agreement is required; Submit signed SWMA for City routing and we will notify you when completed so that you can record at the County. The City will swap out the certification page with the correct City Clerk.
- e. AsBuilt plans of the Stormwater Management facilities are required per DH Section VI.D.7. If the stormwater management facilities are used for erosion control during construction, an AsBuilt is required after construction of the facilities, and a recertification/AsBuilt is required prior to Occupancy.
- f. Along the north side of lot 1, recommend a berm along the border with Red Fox. If not there should be a swale to effectively divert any overflow from their inlet.
- g. Concerned with the overflow spillway directed to the south rather than the Sunny Slope Road swale.
- h. Provide storm sewer drainage areas and sizing calculations.

4. Utilities:

- a. Sewer:
 - i. A sewer plug must be installed at connection to existing manhole and can only be removed after final punch list approval per NB Spec: 3.1.3.1.5.
 - ii. Some type of driveway must be provided to MH #1 and MH #2 to have access to maintain.
- b. Water:
 - i. Ensure water and sewer laterals are in grass areas of properties. Should not be in or near driveways.

DETAILS IN ATTACHED STAFF REPORT:

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

Meeting of January 8, 2024

Ryan Janssen, Ryan's Buying LLC / Theofila Estates Subdivision Preliminary Plat
5751 S. Sunny Slope Road (Tax Key #: 1289.994.002)

DATE STAFF REPORT PREPARED: November 3, 2023

APPLICANT / OWNER(S): Ryan Janssen, Ryan's Buying LLC / Theofila C Krokowski Living Trust

REQUEST / DESCRIPTION OF PROJECT: The applicant is requesting approval of the Theofila Estates Subdivision Preliminary Plat for the property located at 5751 S. Sunny Slope Road (Tax Key #: 1289.994.002).

DATE OF APPLICATION / DATE FILED WITH CITY CLERK: 10/20/23

DATE OF COMPLETENESS DETERMINATION: 10/23/23

PRE-APPLICATION CONFERENCE HELD: Yes

Date(s) of Meeting(s): 6/16/23, 9/20/23, 11/29/23 and several phone calls and emails exchanged.
Plan Commission Site Visit(s): 8/1/23

CONCEPTUAL PLAN: Yes, a preliminary plat is attached.

SIZE OF DEVELOPMENT / PARCEL(S): 17.39 acres

CURRENT ZONING: R-6 (Section 35 Low-Density Single-Family Residential District)

CURRENT LAND USE: Farmland

PROPOSED ZONING: N/A

PROPOSED LAND USE: Single-family residential subdivision

PROPOSED LOT SIZES: 14 lots averaging 28,090 SF in lot area. Minimum lot area is 25,000 SF.

PROPOSED DENSITY: 17.39 total acres / 14 lots = 1 lot per 1.2 acres.

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

Land Use: City Park

Land Use: Single Family Residential

Land Use: City Park

CONFORMANCE WITH COMPREHENSIVE PLAN AND MUNICIPAL CODE: Yes

Chapter 17: Neighborhood G: Sections 26 & 35 South Moorland Road Corridor: Yes, the concepts meet the intent of this Chapter.

Vision:

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

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.*
A paved trail shall be required to connect these lots to the park to the south. An off road sidepath shall be constructed along Sunny Slope Road to connect to the existing off road sidepath to the north and south of this property.
- *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.*
A paved trail shall be required to connect these lots to the park to the south. An off road sidepath shall be constructed along Sunny Slope Road to connect to the existing off road sidepath to the north and south of this property.
- *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 development plan is consistent with the Future Land Use Map. This development shall connect to City Sewer and Water (currently there is no service provided to this parcel).

Land Use

- *Future Land Use Map: Urban Residential*

ZONING CODE (Chapter 275): Yes, the lots meet the requirements in §275-33B(7).

DEVELOPMENT CODE (CHAPTER 235): Yes, in compliance with §235-15.

REZONING REQUIRED: No

CONDITIONAL USE REQUIRED: No

PUBLIC HEARING REQUIRED: No

USE / SITE / ARCHITECTURAL REVIEW:

Use Approval Required: No

Site Plan Required: Yes, see attached preliminary plat.

Architectural Review Required: No

PROPOSED ARCHITECTURE: N/A

UNIQUE SITE CHARACTERISTICS:

Environmental Corridor: Yes, a small portion of Secondary Environmental Corridor is located in the northwest corner of the parcel within the outlot.

Wetland On Property: Wetlands have been registered on the City's Zoning Map, see file # WD-2301607. Wetlands were field delineated by Heartland Ecological Services on May 11, 2023.

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: A paved trail shall be required to connect these lots to the park to the south. An off road sidepath shall be constructed along Sunny Slope Road to connect to the existing off road sidepath to the north and south of this property.

- The Comprehensive Plan, Chapter 6, Figure 6.16
 - Sunny Slope Road is identified as having on road and off road pedestrian trail facilities.
- The Comprehensive Plan, Chapter 6, Section "Needs Assessment for Bicycle and Pedestrian Routes"
 - *"Better bicycle and pedestrian trail linkages between residential subdivisions and other subdivisions, parks, schools, libraries and commercial nodes."*
- The Comprehensive Plan, Chapter 6, Section "Policies for multi-modal transportation"
 - *"Construct bicycle and pedestrian facilities as recommended by the Comprehensive Plan."*

PARK & OPEN SPACE PLAN: No improvements.

NATURAL RESOURCES PROTECTION:

Limits of Disturbance (LOD): Subdivision boundary is shown on the plat.

Wildlife Habitat Protection: N/A

Wildlife Management Plan: An Endangered Resources review will be completed on the property prior to the City signing the Development Agreement.

ENVIRONMENTAL IMPACT: Wetlands have been registered on the City's Zoning Map, see file # WD-2301607. Wetlands were field delineated by Heartland Ecological Services on May 11, 2023. Existing trees along the west property line will be preserved within the outlot as noted in the conditions.

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. A stormwater management plan has been submitted.

SANITARY SEWER PROVISION:

Within Current Sewer Service Area: Yes

Basin Capacity Available: Yes

Adequate Linkage: This development shall connect to City Sewer and Water (currently there is no service provided to this parcel).

Onsite System Required: No

WATER USAGE CALC.: Estimated 250 GPD per new single-family lot.

TRAFFIC IMPACT: TIA is not required since it doesn't meet the threshold. Per §275-58C(2)(a), a TIA is required for any subdivision or multifamily residential development with 40 or more dwelling units. The subdivision plat includes 14 lots.

SCHOOL DISTRICT IMPACT: 8.26 total estimated students

Elementary – 4.34 students (14 lots * 0.31 students)

Middle – 1.96 students (14 lots * 0.14 students)

High School – 1.96 students (14 lots * 0.14 students)

Notice Sent to Affected School District(s): Yes, preliminary plat emailed to the school district. No comments have been received.

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 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.

- **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-2001475)
- **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)
- **4/13/2023** Plan Commission recommend to Common Council adoption of an Ordinance to approve the rezoning and approval of a 2-Lot CSM.
- **4/25/2023** Common Council adoption of Ordinance 2669 to approve the rezoning and approval of a 2-Lot CSM.
- **8/1/2023** Plan Commission site walk for Theofila Estates Concept Subdivision.
- **8/14/2023** Plan Commission review concept plan for 14-lot subdivision.
- **10/2/2023** Plan Commission held a public hearing on the rezoning (See File #: RZ-2301341)

- **11/6/2023** Plan Commission recommend to Common Council adoption of an Ordinance to approve the rezoning.
- **11/14/2023** Common Council adoption of Ordinance 2686 to approve the rezoning.

CONSISTENCY WITH PREVIOUS ACTION: Yes

FINDINGS:

1. The applicant is proposing a 14-lot subdivision on 17.39 acres.
2. Waukesha County has reviewed and provided comments on the preliminary plat.
3. The State has reviewed and provided comments on the preliminary plat.
4. The site visit was held with the Plan Commission and general public on August 1, 2023. §235-15 of the City of New Berlin Subdivision Code allows the owner to voluntarily invite the Plan Commission, Department of Community Development staff, members of the Common Council and abutting neighbors to visit the site prior to the filing of a preliminary plat. This allows attendees the opportunity to see the area of the proposed subdivision in person, ask any questions they may have and visualize the proposal first hand.
5. A neighborhood informational meeting was held on September 20, 2023. Neighbors were able to ask the applicant questions about the project. A summary is attached to the staff report.
6. A meeting with the Red Fox HOA was held on November 29, 2023. Neighbors were able to ask the applicant questions about the project.
7. Wetlands have been registered on the City's Zoning Map, see file # WD-2301607. Wetlands were field delineated by Heartland Ecological Services on May 11, 2023.
8. A park complex with lighting, ball fields, and a variety of other activities is planned to be located adjacent to the subdivision.

STAFF RECOMMENDATION:

Recommend to Common Council adoption of a resolution approving the Theofila Estates Subdivision Preliminary Plat for the property located at 5751 S. Sunny Slope Road (Tax Key #: 1289.994.002), subject to the application, plans on file and the following conditions: **See Executive Summary.**

ATTACHMENTS:

Location Map
Preliminary Plat
Construction Plans

Via E-Mail

January 11, 2025

Mayor David Ament
Common Council
Plan Commission
c/o Gregory W. Kessler, AICP
3805 South Casper Drive
New Berlin, WI 53151

Re: Theofila Estates Final Plat Application
Our File: 21269.76103

Dear Mayor, Alders, and Plan Commission Members:

We represent Ryan's Buying LLC regarding the Theofila Estates Final Plat Application (the "Final Plat") and are submitting this letter in support of its application for the January 13, 2025, Plan Commission Meeting and the January 14, 2025, City Council Meeting. Because of the short notice, Ryan's Buying will not be able to attend the meetings.

Ryan's Buying submitted the Final Plat for approval on October 18, 2024, with the proper filing fees, copies, etc. The City issued a letter on October 30, 2024, stating that staff had reviewed the submittal and found it incomplete because the public improvements were not complete. The letter instructed him to resubmit in November. In November, nothing was "resubmitted." The City had the Final Plat, documents, fees, etc. The City was waiting for the public improvements to be completed to "accept" the submittal. The City then issued another letter declining to accept the submittal because the public improvements were not completed.

Ryan's Buying filed an appeal of the decisions of the City as to its rejected submission, which included that under state law the City's staff cannot refuse to accept the submittal of a final plat. See Attached. For subdivisions located in cities, the city council is the sole approving authority. See Wis. Stat. §§ 236.10(1)(a), 236.10(3) (regarding final plats dedicating streets) and 236.13. City staff is not authorized by state law to act on a submitted final plat (i.e., deny it by refusing to accept it).

Even if state law allowed staff to not accept an application, the Department's refusal to process the submitted Final Plat violated its own ordinances. Section 235-9 of the Code of the City of New Berlin (the "Code") only allows the Department to review the completeness of the final plat and make recommendations to the Plan Commission. It does not grant it the power to refuse to accept or to

deny the submission. Section 235-14D(1) of the Code, which likely violates state law, allows the Department to not process the submission of a final plat if it does not meet the requirements of Wis. Stat. § 236.20 and the Wisconsin Platting Manual. But neither Wis. Stat. § 236.20 nor the Wisconsin Platting Manual require that public improvements be completed prior to acceptance of a final plat submitted for approval, which is the reason given for refusing to accept the submission of the Theofila Estates final plat.

The City then notified Ryan's Buying on January 9, 2025 that it will take action on the Final Plat at the January 13, 2025 Plan Commission meeting and the January 14, 2025 Common Council Meeting. Such short notice is unprecedented.

There are a number of issues that should be addressed. The Theofila Estates Final Plat has already been approved as a matter of law. Section 236.11(2)(a) provides that the City "shall approve or reject the final plat within 60 days of its submission, unless the time is extended by agreement with the subdivider or subdivider's agent." The provision goes on to say if "the approving authority fails to act within 60 days and if no unsatisfied objections have been filed within that period, the plat shall be deemed approved, and, upon demand, a certificate to that effect shall be made on the face of the plat by the clerk of the authority that has failed to act."

Ryan's Buying has never agreed to any extension, and since the Final Plat was submitted on October 18, 2024, the City Council has taken no action within the 60 days and the Final Plat is already approved. Ryan's Janssen hereby demands that the City's clerk provides a certificate on the face of the plat that the City has failed to act.

Ryan's Buying larger concern has to do with how the City approves its plats. At this time, the City doesn't want to approve the Final Plat because there is approximately \$100,000 of work that needs to be done, which is the installation of the asphalt road. The other public improvements are in. The City is currently holding a \$880,000 bond to ensure that all of the work will be completed. The City's process of requiring surety and that the improvements be installed prior to approving the Final Plat significantly increases the costs of developing housing and the time to get those projects to market. Furthermore, the City's own subdivision ordinance, Section 235-15P(2)(a), acknowledges that the Plan Commission may approve a final plat based on the completion of improvements or a guarantee of the improvements. The City is imposing a burden on Ryan's Buying not required by City ordinance.

For the reasons stated in the appeal that Ryan's Buying submitted, we believe the City's ordinances violate state law. But more importantly, the City's process is bad housing policy. We assume the City does this to protect itself because it wants to make sure the public improvements are completed; however, the City has a bond to ensure that the improvements are completed. The City's policy of requiring both surety and the installation of the public improvements prior to approving final plats

may be well intentioned but it increases the cost of housing in the City when it is already protected by the required surety.

If the City wishes to discuss moving forward in a practical manner to the benefit of both parties, Ryan's Buying is willing to discuss it; however, if the City votes to deny the Final Plat on January 13th and 14th, Ryan's Buying will be left with no alternative then to assert its rights.

Thank you for your attention to this matter.

Sincerely,

AXLEY BRYNELSON, LLP

A handwritten signature in black ink, appearing to read "Robert C. Procter", with a stylized flourish at the end.

Robert C. Procter

Cc: Attorney Mark Blume (Via Email)
Ryan Janssen (Via Email)

Attachment: Appeal

Appeal to the Board of Appeals

This is a formal request to appeal the decision issued on November 22 by the Department of Community Development (the “Department”), which denied the application and submittal of the Final Plat for Theofila Estates.

First, the Department cannot refuse an application for final plat approval. For subdivisions located in cities, the City Board is the sole approving authority. See Wis. Stat. §§ 236.10(1)(a), 236.10(3) (regarding final plats dedicating streets) and 236.13. By refusing to accept the application, City staff has effectively denied the final plat, which staff does not have the authority to do. See *Id.*

Even if the Department could refuse to accept an application, the Department’s refusal to process this application violated its own ordinances. Section 235-9 of the Code of the City of New Berlin (the “Code”) only allows the Department to review the completeness of the final plat and make recommendations to the Plan Commission, it does not grant it the power to refuse to accept the application or to deny it. Section 235-14D(1) of the Code allows the Department to not process an application if it does not meet the requirements of Wis. Stat. § 236.20 and the Wisconsin Platting Manual. But neither Wis. Stat. § 236.20 nor the Wisconsin Platting Manual require that public improvements be completed prior to acceptance of a final plat submitted for approval, which is the reason given for refusing to process the application for approval for Theofila Estates.

Second, once a subdivider submits a final plat for approval, the City cannot “condition approval upon compliance with, or base an objection upon, any requirement other than those specified in [Wis. Stat. § 236.13].” Wis. Stat. § 236.13.(3). Under Wis. Stat. § 236.13, approval may be conditioned upon a City ordinance that is in effect when the subdivider submits a preliminary plat, or a final plat if no preliminary plat is submitted. See Wis. Stat. § 236.13(1); provided, however, the City may not adopt an ordinance that imposes requirements that are more restrictive than time limits, deadlines, notice requirements, or other provisions of the chapter that provide protections for a subdivider. See Wis. Stat. § 236.45(2)(ac).

In addition to the Department’s violation of state statute and City ordinance cited above, there are several City ordinances and conditions of approval that violate Wis. Stat. Ch. 236.

1. The City Cannot Require That Public Improvements Be Completed As A Condition of Approval

The City’s requirement that construction and approval of improvements be completed prior to the filing of the final plat violates Wis. Stat. § 236.13. Section 236.13, when considered as a whole, shows a clear legislative intent: municipalities may ensure public improvements are installed, but they cannot withhold approval based on their completion. This interpretation ensures fairness, aligns with the phased nature of development, and avoids undue delays. It is not the intent of the section to require subdividers to install

millions of dollars of public improvements without knowing whether the plat will be approved.

The following sections express this intent.

- Wis. Stat. § 236.13(2)(am)1.a. allows the City to require the subdivider to "make and install" public improvements as a condition of approval, which is distinct from requiring the subdivider to "complete" those improvements before final approval. "Make and install" refers to initiating and progressing the construction or placement of public improvements, while "complete" requires them to be fully finished and operational. By allowing the governing body to require security of up to 120% of the estimated cost to ensure completion, the statute clearly envisions that improvements can remain incomplete at the time of approval, provided there is a guarantee they will be finished within a reasonable timeframe. This interpretation aligns with the plain language of the provision, balances the interests of both the subdivider and the governing body, and avoids rendering the security requirement redundant, as full pre-approval completion would eliminate the need for such a mechanism.
- Wis. Stat. § 236.13 emphasizes a phased and reasonable approach. Under § 236.13(2)(am)1.b., subdividers can construct projects in phases, and security can only be required for the phase currently under construction.
- Wis. Stat. § 236.13(2)(am)1.c. further limits the duration of required security to 14 months after substantial completion, reinforcing that approval and construction can proceed before final completion.
- Wis. Stat. § 236.13(2)(am)3.b. requires the release of building permits once public improvements are "substantially completed" (i.e., installation of a binder course). This clearly assumes that the final plat is already approved and recorded.
- Wis. Stat. § 236.13(2)(am)3.c. permits foundational construction before substantial completion if public safety improvements are in place and security is provided. This again clearly assumes that the final plat is already approved and recorded.

These provisions, read in context, confirm that completion of improvements is a post-approval milestone, not a precondition for approval.

2. Even If the City Could Require That Public Improvements Be Completed As A Condition of Approval, It Can Not Require Both Completion and Security.

The City's requirement under the Development Agreement that the subdivider make and install the public improvements and provide surety to ensure that the improvements will be made violation Wis. Stat. § 236.13(2)(am)1. Section 236.13(2)(am)1 states that "[a]s a further condition of approval, the governing body of the town or municipality within which the subdivision lies may require that the subdivider make and install any public improvements reasonably necessary **or** that the subdivider provide security to ensure that the subdivider will make those improvements within a reasonable time." (Emphasis added.) The statute

explicitly uses the word "or," which is a disjunctive term indicating that the City has two distinct options: (1) require the subdivider to make and install the public improvements as a condition of approval, or (2) require the subdivider to provide security to guarantee the improvements will be completed within a reasonable time. The plain meaning of "or" prevents the City from imposing both requirements simultaneously, as doing so would convert the disjunctive into a conjunctive (i.e., "and"), which the statute does not authorize.

3. The Final Plat Should Be Approved Because It Conforms Substantially to the Preliminary Plat

Wisconsin Stat. § 236.11(1)(b) provides that "If the final plat conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances adopted as authorized by law, it is entitled to approval ..." The Final Plat for Theofila Estates conforms to the Preliminary Plat and is, therefore, entitled to approval under the same conditions.

The Department's stated reason for not accepting the application to approve the Final Plat because the public improvements are not installed. But as stated above, that is not a valid condition to deny approval. The City cannot require as a condition of approval that the public improvements be completed. It can only require as a condition of approval that they be made and installed in the future.

4. Additional Conflicts with City Ordinances

The following City ordinances conflict with statutory provisions that protect subdividers. Specifically:

1. Code 235-3(C) prohibits the issuance of building permits for parcels not of record until all requirements are met. This ordinance conflicts with Wis. Stat. § 236.13(2)(am)3.b, which requires that building permits be released at substantial completion of public improvements (i.e., the installation of the binder permit). It also is in direct conflict with Wis. Stat. § 236.13(2)(am)3.c, which requires release of foundation permits once the health and safety improvements are installed.
2. City Ordinance 235-13 states that no building permits may be issued until the Final Plat is approved, recorded, and all public improvements are accepted. This also directly conflicts with Wis. Stat. §§ 236.13(2)(am)3.b. and 3.c.

CONCLUSION

The purpose of **Wis. Stat. ch. 236** is to provide protections for both subdividers and municipalities. It ensures that:

- Subdividers can secure plat approval before making significant capital investments in public improvements.
- Municipalities are protected by requiring surety guarantees for the completion of improvements, preventing these from becoming a municipal liability.

Withholding plat approval until public improvements are complete undermines this balance and imposes additional burdens on subdividers that are not supported by statute.

The refusal by City staff to accept the application for final plat approval and the subsequent denial based on conflicting local ordinances are not compliant with **Wis. Stat. ch. 236**. We respectfully request that the Board of Appeals reverse the Department of Community Development's denial and direct the City to accept the application and approve the Final Plat as submitted, consistent with state law.

CITY OF NEW BERLIN DEPARTMENT OF COMMUNITY DEVELOPMENT

Dear Members of the City of New Berlin Plan Commission, Members of the Common Council as well as Mayor David Ament:

The City is in receipt of a letter from Attorney Robert Procter dated January 11, 2025, regarding the Theofilia Estates final plat application. This final plat is scheduled for consideration on Monday, January 13, 2025, by the Plan Commission and on Tuesday, January 14, 2025, by the Common Council. In response to Attorney Procter's letter, I want to provide some comments for your consideration.

Timeline.

1. Final plat submitted on October 18, 2024.
2. Staff rejected the final plat as being incomplete on October 30, 2024, because the public infrastructure was not completed as required by City ordinance section 235.15 and the development agreement for this subdivision.
3. The final plat was resubmitted on November 20, 2024.
4. That plat was rejected by staff on November 22, 2024, for the same reasons.
5. An appeal was filed to the City Board of Appeals by the developer dated December 11, 2024, objecting to the staff decision dated November 22, 2024.
6. The City accepted the final plat for filing on January 10, 2025, to permit the Plan Commission and Common Council to consider whether the City Ordinance and Development Agreement would allow for approval for the final plat.
7. The developer's attorney sent a letter dated January 11, 2025, objecting to the actions of the City.

Argument #1.

The developer's attorney argues that the City should have accepted the final plat dated October 18, 2024, and the fact that it was not denied within sixty (60) days of that date means that it is approved by statute. That argument ignores that no appeal was filed to the October 30, 2024, decision to not accept the plat for filing. In addition, the developer resubmitted the plat for filing on November 20, 2024. They do not explain why they would refile if they believed the October 18, 2024, plat was still active. The developer also does not explain why they would have appealed the staff's decision to the Board of Appeals if they believe there was still an active plat and why they would only appeal the denial of the second plat application. The Board of Appeals application does not object to the nonacceptance of the October 18, 2024, plat, but rather only to the nonacceptance of the November 20, 2024, plat. The developer apparently believed that only the second plat was

active based upon the fact that they filed a second plat in the first place and only sought consideration of that second plat on the appeal.

Argument #2.

The staff did not have the authority to deny the submission. The final plat showed roads that have not been constructed in accordance with what was proposed in the preliminary plat and which was required under City of New Berlin Ordinance Section 235-15, as well as the terms of the Development Agreement to which the developer agreed. As a result, the final plat submitted did not accurately reflect what has been constructed to date and is, therefore, incomplete and noncompliant with the Development Agreement to which the developer agreed and Section 235-15 of the City Code.

The developer was well aware of the requirements that were in place for the development of the Theofilia subdivision. If the developer had an objection to those requirements, it could have submitted an appeal to the Board of Appeals as to that decision of City staff, but, in fact, it contractually consented to those terms. The developer seeks to avoid the obligations to which it willingly consented. As a practical matter, even if this plat were to be approved, it would be impossible to approve building permits for any construction to occur on the lots in the subdivision until there is a functional road to allow for access to those lots, and more importantly, for the access by City emergency services should they be needed during the course of that construction. This is the reason that such improvements are required under the City ordinance, as well as the Development Agreement, and indeed as a matter of common sense.

Respectfully submitted,



Greg W. Kessler

Director of Community Development, City of New Berlin