

Special Board of Appeals Meeting Agenda



February 19, 2026 - 6:00 PM
Council Chambers
3805 S. Casper Dr.

This meeting is limited to procedural review. The Board will not receive testimony or consider the merits of the appeal at this time.

AGENDA

1. **CALL TO ORDER**
2. **ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE**
3. **PRELIMINARY REVIEW OF APPEAL APPLICATION**
 - A. **Appeal Overview:**
Milwaukee Rescue Mission - New Journey
Board of Appeals Application filed by: New Berlin Neighbors United, UA
Related Action: Certified Survey Map (CSM) / Plan Commission determination
 - B. **Preliminary Procedural Issues (Threshold Review Only):**
Discussion and possible action regarding preliminary procedural matters, including but not limited to: timeliness of the appeal, sufficiency of form and content, identification of the decision being appealed, standing, mootness (if applicable), and other procedural issues
 - C. **Closed Session — If Necessary:**
The Board of Appeals may convene in closed session pursuant to Wis. Stat. § 19.85(1)(g), for the purpose of conferring with legal counsel regarding litigation or legal strategy concerning its determinations on preliminary procedural issues.
 - D. **Reconvene in Open Session — If Applicable:**
The Board of Appeals will reconvene in open session and may take such action as it deems appropriate on the matters discussed in closed session.
 - E. **Board Determination of Next Steps:**
Discussion and possible action may include: scheduling the matter for a public hearing, requesting additional information, or determining that the appeal is insufficient to proceed
4. **ADJOURN**

Additional Information

- The agenda packet, including supplemental information related to agenda items, is available online at www.NewBerlinWI.gov. Once finalized by the governing body, approved meeting minutes will also be posted online.
- Agenda items may be taken out of order at the governing body's discretion.
- Members, and possibly a quorum, of other municipal governmental bodies may attend this meeting to gather information. However, no action will be taken by any governmental body other than the one referenced in this notice.
- Accommodations will be provided under the Americans with Disabilities Act (ADA) to meet the needs of individuals with disabilities. If you require assistance or appropriate aids and services, please contact the Office of the City Clerk at (262) 786-8610 with reasonable notice.



Board of Appeals

Applicant / Contact

Name New Berlin Neighbors United, U.A.
 Address 4880 South Courtland
 City, State, Zip New Berlin, WI 53151
 Phone _____
 E-Mail nbcu2026@gmail.com
 Current Zoning M-1

Agent

Name Attorney Joseph R. Cincotta
 Address 1200 East Capitol Drive - Suite 327
 City, State, Zip Shorewood, WI 53211
 Phone 414-416-1291
 Email jrc4@chorus.net
 Property Owner's Address 5295 South Moorland Road
 Property Owner _____

NOTE: Should the Board of Appeals approve your variance, you will also need to obtain the appropriate zoning and/or building permits. A Board of Appeals approval does not grant final approval for your respective use or construction project. It is the property owner's responsibility to ensure that the appropriate permits have been received prior to the commencement of any construction and/or occupancy.

INSTRUCTIONS

All petitions must be accompanied by a survey showing the existence of the present use and the change required. Scaled drawings may be substituted for surveys. However, the Board may request a certified survey at the time of the hearing. Photographs and blueprints of proposed construction are helpful. A \$50.00 filing fee plus a \$200.00 administrative fee must be paid at the time the petition is filed for setback, square footage, height and floodplain variance. A \$500.00 administrative fee plus a \$50.00 filing fee is required for Plan Commission appeal.

Petitions must be received on or before 4:30 pm of the required due date in order for the petition to be scheduled for review by the board on first Thursday of the following month. Meetings are normally held at 6pm

At the hearing, proper documentation will be reviewed. Petitioner, or agent, will speak first along with those who favor the petition. Those who oppose the petition will be given the opportunity to speak after the affirmative case has been argued. All argument should be relevant to the appeal presented. The Board may, at its discretion, limit debate and place witnesses under oath.

Application Type (Time frame)*	Fees	Required Plans/Information (Failure to submit all required plans will result in rejection of the application.)
<input type="checkbox"/> Setback/Size Variance	\$200+ \$50 Filing Fee	<input type="checkbox"/> Nature of Appeal – 8 copies <input type="checkbox"/> Hardship Argument – 8 copies <input type="checkbox"/> Scaled Drawing/ Survey – 8 copies <input type="checkbox"/> Photos – 8 copies
<input type="checkbox"/> Flood Plain	\$200+ \$50 Filing Fee	<input type="checkbox"/> Nature of Appeal – 8 copies <input type="checkbox"/> Hardship Argument – 8 copies <input type="checkbox"/> Scaled Drawing/ Survey – 8 copies <input type="checkbox"/> Photos – 8 copies
<input checked="" type="checkbox"/> Plan Commission	\$500+ \$50 Filing Fee	<input checked="" type="checkbox"/> Nature of Appeal – 8 copies <input type="checkbox"/> Hardship Argument – 8 copies

RECEIVED

JAN 23 2026

CITY OF NEW BERLIN
OFFICE OF THE CITY CLERK
RUBINA R. MEDINA

-- CONTINUED ON PAGE 2 --

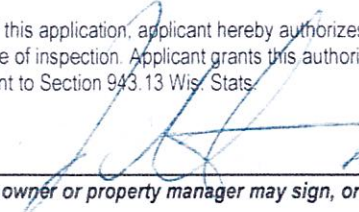
Fees:

Base Fee From Above	\$ <u>500.00</u>
Filling Fee	\$ <u>50.00</u>
Total	\$ <u>550.00</u>

- * Only if all required materials are submitted and satisfactory.
- ¹ Other plans and information may be required by staff upon further review of the project.
- ² Drawn to a scale no greater than 1"=100'.
- ³ All architectural plans at a scale no smaller than 1/8" = 1'
- ⁴ Colored building elevation, architectural rendering, or photos suitable for public presentation to fit on a single 8½" x 11" or 11" x 17" sheet.

No refunds for denied applications

By the execution of this application, applicant hereby authorizes the City of New Berlin or its agents to enter upon the property during the hours of 7:00 A.M. to 7:00 P.M. daily for the purpose of inspection. Applicant grants this authorization to enter to the City of New Berlin or its agents even if applicant has posted this land against trespassing pursuant to Section 943.13 Wis. Stats.

Signature  Andy Inc. Applicant - NBCC, WI Date: 1/22/26
Only the property owner or property manager may sign, or letter/email of authorization required. The final responsible party is the property owner.

Please do not write below this line

Accepted by: Rm Date: 1/23/26
 Board of Appeals Date: 2/19/2026
 Total Fee: \$550.00 pd by check
 File Number: _____



Make Checks Payable To:
CITY OF NEW BERLIN

January 23, 2026

Board of Appeals – City of New Berlin
c/o Rubina Medina, Clerk and
Greg Kessler, Director of Community Development, and
John Goetter, Chair Board of Appeals
City of New Berlin
3805 S. Casper Drive
New Berlin, WI 53151

Re: Supplemental Filing for January 7, 2026 Appeal

Dear Chair Goetter and Director Kessler and Clerk Medina:

I am in receipt of the letter from Ms. Medina of January 21, 2026. Thank you for the copy of the application form for the appeal to the Board of Appeals

Please find enclosed a completed version of the Appeal application. This also included the required number of copies of the narrative describing the nature of the appeal filed by my client, New Berlin Citizens United, U.A. on January 7, 2026.

I am submitting this by email and it will also be delivered to the Clerk's office and payment made at that time

Very truly yours

Electronically signed by Joseph R. Cincotta

Joseph R. Cincotta
Attorney for New Berlin Citizens United, U.A.

Cc: Attorney Eric Larson
Attorney Thomas Schmitzer

John Goetter - Chairman
New Berlin Board of Appeals
3805 S. Casper Dr.
New Berlin, WI 53151

JAN 07 2026
CITY OF NEW BERLIN
OFFICE OF THE CITY CLERK
RUBINA R. MEDINA
HAM
4PM

Dear Chairman,

We are filing a grievance with the Board of Appeals in regards to the MRM: New Journeys building proposal that was approved by the New Berlin Planning Committee on 8 December 2025.

We feel the proposal violates building and zoning codes, and its classification as a "community-scale church" misrepresents the fundamental nature of the facility (see attached Zoning Conflicts and Land-Use Issues). We formally request all proceedings halted, so that the aforementioned concerns can be reviewed by the Board of Appeals.

Sincerely,

Mackenzie Plehn-Smith - Managing Member

Zoning Conflicts and Land-Use Issues

-Structural mis-classification: Proposed structure does not function as an Assembly Group A-3 Occupancy type "community-scale church". Architectural design, occupancy, operation, land-use, municipal water / sewer, utilities, traffic, and environmental impact is defined under Sec. 308.2 (International Building Codes) as an Institutional Group I-1 occupancy which includes, but is not limited to, the following; Alcohol and drug centers, Assisted living facilities, Congregate care facilities, Group homes, Halfway houses, Residential board and care facilities, Social rehabilitation facilities. *Note: Milwaukee Rescue Mission's other structures, similar in design and function, are classified as Rm6: high-density, multi-family residential, by the city of Milwaukee.

-Zoning conflicts: Institutional Group I-1 occupancy (IBC) and cannot exist in the proposed M-1 (Light Industrial) zone, without a public hearing for re-zoning, and cannot automatically force re-zoning under the protections of the RLUIPA, ADA, or FHA as they are civil rights based and give no special building privileges or exemptions.

-Additional zoning issues: The proposed build site consists of (2) flag lots (Tax Key Numbers 1260.998.001 and 1260.998.002). The city shall not grant any special circumstances to a particular entity, religious or non, in approving the joining of (2) separate lots, especially for proposals that already do not meet zoning and district requirements. Having insufficient frontage, lack of access and easements, potential encroachment impacts on neighboring businesses as well as close proximity to C-2 conservancies, which may become polluted and/or disturbed during the building process, parking, increased road access, all prohibit this type structure from existing on such land. The insufficient frontage in itself, does not allow for proper emergency access or evacuation routes, in case of fire, flood, or other potentially catastrophic events. The City shall not approve any prohibited PUDs, deviations, flexibilities, or grant special requests for exemptions for the "Milwaukee Rescue Mission: New Journey" project, under developer Patrick Vanderburgh, on these parcels.

-Abuse of RLUIPA, ADA, and FHA protections: Milwaukee Rescue Mission is using the discriminatory protections under the RLUIPA, ADA, and FHA, which have no effect, and do not grant special permissions, to evade building and zoning laws. The RLUIPA, ADA, and FHA, are designed to prevent discrimination on religious, gender, ethnicity, socioeconomic background, and disabled peoples, and are civil rights only in nature to ensure all entities and people(s) can function in society on equal terms. To use these protective acts to exact privilege, and in doing so, violating the public's right to a hearing, is a civil rights violation in itself.

February 16, 2026

Deborah C. Tomczyk
Direct Dial: 414-298-8331
dtomczyk@reinhartlaw.com

SENT BY EMAIL

Rubina Medina, City Clerk.
City of New Berlin
3805 South Casper Drive
New Berlin, WI 53151

Eric J. Larson, Esq,
Municipal Law & Litigation Group
730 N. Grand Avenue
Waukesha, WI 53186

Dear Ms. Medina and Mr. Larson: Re: 5295 S. Moorland Road (the “Property”)

This firm represents landowners Moorland Hospitality Group, LLC and Democat, LLC (collectively, the “Owners”) in redeveloping the Property. The Property is primed and well-suited for the Milwaukee Rescue Mission’s New Journey development and use.

- The Property is zoned M-1 Light Manufacturing District, which permits the New Journey use;
- The Property is bounded by I-43, Moorland Road and the Westridge Business Park, isolating it from residential uses; and
- Consistent with the recommendations of City staff and the City Attorney, Plan Commission unanimously granted Use, Site and Architecture approval at its December 8th, 2025 meeting.

Notwithstanding the appropriateness of the Property for the New Journey use, opponents and their newly-formed community organization, New Berlin Citizens United, U.A. (the “Appellant”), are opposing, and seek to induce the City to illegally override, the property, due process and equal protection rights of Owners and the Milwaukee Rescue Mission. Specifically, the Appellant is imploring the City’s Board of Appeals (the “Board”) to overturn the concluded City approval process and derail the New Journey development.

Rubina Medina, City Clerk
Eric J. Larson, Esq.
February 16, 2026
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However, the Appellant's reckless appeal to the Board must fail for several reasons: (1) it is untimely; (2) the Appellant lacks standing; and (3) the appeal itself is inarticulate and inadequate. As more particularly outlined below, we urge the City and the Board not to be led astray by the Appellant.

1. The Appeal is Not Timely

City Code § 275-31(A)(1) requires that any appeal of a decision of the Plan Commission must be filed with the Department of Community Development or the Board within 30 days. City Code § 275-31(B) also requires that all appeals shall be "in writing and on such forms as shall be prescribed by the decision-making body and accompanied by the appropriate filing fee. Courts strictly construe such a filing deadline, and failure to appeal timely is fatal to the appeal. See *Hartford Citizens for Responsible Government v. City of Hartford Board of Zoning Appeals*, 2008 WI App 107.

Plan Commission unanimously approved the Use, Site and Architecture plans for New Journey's use of the Property at its duly-noticed meeting on December 8, 2025. That approval establishes January 7, 2026 as the deadline for any appeal. Despite that approval, 18 opponents hand delivered letters to the City Clerk on January 7, 2026 registering a "formal grievance and zoning objection"; and a nineteenth such letter was mailed to the City Clerk on January 9, 2026. No forms were filed to accompany the grievances, and no letter writer paid any fees.

The grievance letters could not possibly constitute timely appeals under City Code § 275-31(B).

- The letters were not filed with the Department of Community Development or the Board, but with the City Clerk;
- The letters did not include any *required* appeal forms; and
- The letters were not accompanied by any *required* filing fees.

Indeed, by letter dated January 20, 2026 and consistent with Board Rule 4F, the City Clerk sent notices of insufficiency to the letter writers informing them of the deficiencies in their grievances.

Board Rule 4F indicates that deficiencies may be corrected within 10 days in addition to the initial 30-day deadline—which arguably extended until January 19, 2026 the deadline for Appellant's appeal. Setting aside whether a Board Rule can trump the 30-day deadline established in City Code, the Appellant's cure *still* was untimely. Rather, the Appellant submitted a Board of Appeals form and fee on January 23, 2026—five days beyond even the additional time afforded for a cure by Board Rule.

Rubina Medina, City Clerk
Eric J. Larson, Esq.
February 16, 2026
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Appellant's appeal was not timely by the most favorable reading of City Code and Board Rule. The untimeliness of the appeal is fatal and denies the Board jurisdiction to consider it.

2. The Appellant Lacks Standing

City Code § 275-31A.(1) specifies that standing to appeal to the Board may be made only "by any person aggrieved or his agent...". City Code § 275-31A.(2) expounds that "The owner or lessee of the structure, land, or water to be affected, or his agent, may make appeals." Similarly, Board Rule 4B authorizes appeals by "The owner, mortgagee or purchaser under a land contract... [or]...a person aggrieved by the decision..."

City Code and Board Rules limiting appeals to "aggrieved parties" are based on the authority granted under Wis. Stat. sec. 62.23(7)(e)(4) and 227.53(1). Wisconsin courts have found persons to be "aggrieved" and thus entitled to appeal only if the challenged decision directly and personally affects a legally protected interest, rather than reflecting a generalized concern shared with the public at large. *Village of Slinger v. City of Hartford*, 2002 WI App 187, ¶ 9, 256 Wis.2d 859, 650 N.W.2d 81. The sufficiency of an interest to establish standing is measured by whether the appellant has sustained, or will sustain, some measurable pecuniary loss or substantial injury to his or her interests. *Id.* at ¶ 12. *Lake Country Racquet & Athletic Club, Inc. v. Village of Hartland*, 2002 WI App 301, ¶ 13, 259 Wis. 2d 107, 655 N.W.2d 189. The Wisconsin Supreme Court has honed this into a two-part test for standing: (1) the challenged action must cause the appellant an injury in fact, and (2) the interest allegedly injured must be one that an identified law protects. *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶31, 402 Wis. 2d 587, 977 N.W.2d 342.

The Appellant and all grievance-letter-writers fall far short of demonstrating standing. First, no potential injury has been demonstrated, or even mentioned, as arising from the New Journey use at the Property. Second, the relevant City Code, Board Rule and Wisconsin Statutes cited above confirm that neither the Appellant, nor any of the grievance letter writers have an interest that such laws protect:

- Neither Appellant nor any letter writer is an owner, lessee, mortgagee or land contract purchaser of the Property. Indeed, all parties with an interest in the Property have joined to oppose this alleged appeal.
- The Appellant identifies itself only as a community organization, registered with the Wisconsin Department of Financial Institutions on January 6, 2026.
- The Appellant has failed to identify any interest it has or who its members are.

Rubina Medina, City Clerk
Eric J. Larson, Esq.
February 16, 2026
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- The return addresses used by grievance letter-writers are not proximate to the Property and are, in most cases, several miles away.

Appellant and the individuals who submitted grievance letters lack standing under City Code, Board Rule, Wisconsin Statute and binding caselaw. Lack of standing is fatal and denies the Board jurisdiction to consider the Appellant's appeal.

3. The Materials Filed Fail to Adequately Articulate What is Being Appealed

City Code § 275-31(B) requires that "Every appeal shall state, at a minimum, what provision(s) of the chapter is/are involved, what relief from the provision(s) is being sought, and the grounds on which the relief should be granted..." Board Rule 4C also requires: "A scale drawing shall accompany each form showing the location and site of the property, existing improvements thereon and change or addition requested..." Wisconsin courts have determined that zoning boards of appeals are creatures of statute whose powers are limited by their enabling statutes and who lack authority to ignore or invalidate ordinances as written. *See Ledger v. City of Waupaca Bd. of Appeals*, 146 Wis. 2d 256, 263, 430 N.W.2d 370 (Ct. App. 1988).

The materials submitted to allegedly constitute an "appeal" are woefully deficient:

- No City Code provisions are cited. Most of the letters do not reference *any* provision of law, and the materials that include cites are to the International Building Code. The gist of the grievances allege indecipherable and nondescript "building and zoning code violations."
- Since no City Code provisions are cited, it follows that there is no relief from the City Code being requested.
- Similarly, no grounds on which relief should be granted are explained.
- No materials were provided to show the location, abutting properties or, indeed, *any* information "necessary to inform the board of the facts of the appeal or application" as required by Board Rule 4B.

Because Appellant's materials present only vague allegations, fail to identify any specific violation of City Code, and fail to request relief within the Board's authority, the purported appeal does not satisfy the requirements of City Code § 275-31(B). Accordingly, the Board lacks jurisdiction to consider it.

Rubina Medina, City Clerk
Eric J. Larson, Esq.
February 16, 2026
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4. Even If the Appeal Was Properly Before the Board, the City Staff, City Attorney and Plan Commission's Interpretation of City Code Must Prevail

Wisconsin courts have repeatedly held that a comprehensive zoning ordinance is presumed valid and must be liberally construed in favor of the municipality. *Town of Rhine v. Bizzell*, 2008 WI 76, ¶18, 311 Wis. 2d 1, 751 N.W.2d 780. Wisconsin courts recognize that municipal zoning decisions and interpretations are entitled to judicial deference. *Ottman v. Town of Primrose*, 2011 WI 18, ¶52, 332 Wis. 2d 3, 796 N.W.2d 411. When a municipality applies the correct legal standards and reaches a decision that is not arbitrary, oppressive, or unreasonable, courts will not disturb the municipality's determination. *Id.*

As explained in a December 29, 2025 letter to Mayor Ament and the Members of the Common Council, City staff, the City Attorney and Plan Commission each determined that the proposed New Journey use is a permitted use within the M-1 zoning district, which expressly allows religious institutions, including community-scale churches, under City Code § 275-35. The December 29, 2025 letter further advised that "...the city does not have discretion to deny the use based on fear or speculative perceived impacts... It is also required to adhere to federal laws such as the Americans with Disabilities Act, Fair Housing Act and Religious Land Use and Institutionalized Person Act, all of which prohibit a municipality from making zoning and land use decisions on discriminatory bases...[and preclude]...unfairly burdening the exercise of religious..."

The interpretations of City Code recommended by City staff and the City Attorney and adopted by Plan Commission are reasonable and must continue to carry the day.

For the foregoing reasons, the Board must refrain from taking any action on Appellant's appeal.

Yours very truly,



Deborah C. Tomczyk

cc Mark Blum (by email)
Daniel Dalton (by email)
John Ford (by email)
Thomas Schmitzer (by email)
Benjamin Streckert (by email)

60901587



City Attorney Thomas G. Schmitzer, Sr.

720 Clinton Street • PO Box 766 • Waukesha, Wisconsin 53187-0766 • (262) 549-8181 • tschmitzer@newberlinwi.gov

E-MAIL: TSCHMITZER@HRBLAWFIRM.COM

February 17, 2026

Sent Via Email (rmedina@newberlinwi.gov)

John Goetter, Chairman
City of New Berlin Board of Appeals
c/o Rubina Medina, City Clerk
3805 South Casper Drive
New Berlin, WI 53151

Re: Special Board of Appeals Meeting
Date: February 19, 2026 at 6:00 p.m.
Applicant: New Berlin Neighbors United, U.A.

Dear Mr. Goetter:

Our office represents the City of New Berlin Plan Commission with respect to the above-referenced matter, which is scheduled for a Special Board of Appeals meeting on February 19, 2026, at 6:00 p.m. According to the published agenda for this meeting, the meeting is limited to procedural review, and the Board of Appeals will not receive testimony or consider the merits of the appeal at the time of this Special Meeting. The agenda provides that the Board will consider preliminary procedural issues, in particular, discussion and possible action regarding such preliminary procedural matters, including but not limited to: timeliness of the appeal, sufficiency of form and content, identification of the decision being appealed, standing, mootness (if applicable), and other procedural issues.

For the Board's consideration at the time of the Special Meeting, please accept this letter as the Plan Commission's statement on preliminary procedural issues in this matter. We would ask that a copy of this letter please be provided to the other Board members prior to the meeting.

The agenda materials for this Special Meeting include a Board of Appeals application filed by the applicant's agent and received by the City of New Berlin on January 23, 2026. The applicant is identified as "New Berlin Neighbors United, U.A.". The application refers to a "Property Owner's Address" of 5295 South Moorland Road. The application indicates that it was accepted by the City Clerk, Rubina Medina ("RM") on January 23, 2026, and that a fee of \$550.00 was paid by check at that time.

In addition to the application form, there was an undated and unsigned letter, addressed to you, attached. The letter attached to the application does not indicate what organization it is from; it only identifies "Mackenzie Plehn-Smith – Managing Member". The copy of this letter attached to the application appears to have a file stamp from the City Clerk, dated January 7, 2026.

Mr. John Goetter
Chairman of the Board of Appeals
City of New Berlin
February 17, 2026
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The letter attached to the application form states as follows:

“We are filing a grievance with the Board of Appeals in regards to the MRM: New Journeys building proposal that was approved by the New Berlin Planning Committee on 8 December 2025.

We feel the proposal violates building and zoning codes, and its classification as a “community-scale church” misrepresents the fundamental nature of the facility (see attached Zoning Conflicts and Land-Use Issues). We formally request all proceedings halted, so that the aforementioned concerns can be reviewed by the Board of Appeals.”

In addition to the aforementioned letter, the application included a copy of a document titled “Zoning Conflicts and Land-Use Issues”, which lists the following four categories:

1. Structural Mis-Classification;
2. Zoning Conflicts;
3. Additional Zoning Issues; and
4. Abuse of RLUIPA, ADA, and FHA Protections.

Neither the application form, the letter, nor the additional page states which provisions of New Berlin Municipal Code (“NBMC”) Chapter 275 are involved in the appeal; what relief from such provisions is being sought; or the grounds on which the relief should be granted to the applicant.

For the following reasons, the New Berlin Plan Commission respectfully requests that the Board of Appeals dismiss the appeal at the time of its Special Meeting on February 19, 2026.

As the Board of Appeals considers these procedural issues, the Plan Commission would note that at least one other person beyond the appellant has submitted arguments and authorities to the Board of Appeals on the merits of the appeal. Since this individual, and any others who may interject themselves into this matter, are not parties to this appeal and lack standing to do so even if they were, the Plan Commission would object to the arguments of such persons becoming part of the record and, as a result, should not be considered by the Board of Appeals.

I. This Applicant’s appeal was not timely filed.

Appeals from a Plan Commission decision shall be made to the Board of Appeals pursuant to Section 275-31 of the NBMC, which provides, in pertinent part, as follows:

“A. Standing to Appeal; Timing.

- (1) Appeals from the decision of any review and decision-making body may be made by any person aggrieved or his agent, or by an officer, department, board, or bureau of the City. Such appeal shall be filed with the Department of Community Development for the review and decision-making body from whom the appeal is taken within thirty (30) days after the date of written notice of the decision or order of the review and decision-making body.

- (2) The owner or lessee of the structure, land, or water to be affected, or his agent, may make appeals following the decision of any review or decision-making body, but not later than thirty (30) days after the date of written notice of the decision or order of the review and decision-making body.

B. Format of Appeal.

- (1) All appeals shall be in writing on such forms that shall be prescribed by the decision-making body and accompanied by the appropriate filing fee. Every appeal shall state, at a minimum, what provision(s) of the chapter is/are involved, what relief from the provision(s) is being sought, and the grounds on which the relief should be granted to the appellant.

C. Appeals from Department of Community Development or Plan Commission's Decision.

- (1) Appeals of decisions of the Department of Community Development or Plan Commission shall be made to the Board of Appeals, unless otherwise provided in this chapter."

Here, the Plan Commission's unanimous decision to grant use, site, and architectural approval for the Milwaukee Rescue Mission/New Journey Development occurred on December 8, 2025. Thus, the deadline for filing any appeal of that decision was January 7, 2026. The applicant, New Berlin Neighbors United, U.A., did not file the prescribed form or pay the required filing fee until January 23, 2026.

It is expected that the applicant may argue that its request for appeal should be considered timely because it purportedly submitted a grievance letter, which was received by the City Clerk on January 7, 2026. However, that argument must fail for the following reasons:

1. The letter that was received by the City Clerk on January 7, 2026, a copy of which is attached hereto and marked as "Exhibit A", was not accompanied by the prescribed form, nor was the required filing fee paid on that date.
2. Exhibit "A" was from an entity named "New Berlin Citizens United, LLC" and allegedly signed by its "Managing Member". An entity search of the Wisconsin Department of Financial Institutions reveals that no such LLC exists. The application currently before the Board was submitted on behalf of an organization named "New Berlin Neighbors United, U.A.". The letter attached to that application obscures the name and address of the original sender (New Berlin Citizens United, LLC), apparently suggesting that the original sender (New Berlin Citizens United, LLC) and the current applicant (New Berlin Neighbors United, U.A.) are one and the same. Clearly, they are not. The application and fee received by the City Clerk on January 23, 2026, were submitted on behalf of "New Berlin Neighbors United, U.A.", and thus, must be considered a new and, therefore, untimely appeal.

3. Even if the Board chooses to disregard these (and other) discrepancies, neither NBMC Section 275-31 nor the underlying state statute (Sec. 62.23(7)(e)(4), Wis. Stats.) provide for the “relation-back” of an appeal to the date of the deficient filing. That is, there is no municipal code or statute which the Board may use to conclude that this applicant filed a timely appeal request on January 7, 2026.
4. Under Section 4(F) of the Rules of Procedure of the Board of Appeals, the date for filing the required form and fee would have been January 17, 2026. The appellant’s application and fee were not filed until January 23, 2026.

II. New Berlin Neighbors United, U.A., lacks standing to bring this appeal.

In the event that the Board of Appeals concludes that the applicant’s appeal request was filed timely, New Berlin Neighbors United, U.A., lacks standing to appeal the December 8, 2025 decision of the Plan Commission.

NBMC Section 275-31 provides, in pertinent part, that “[a]ppeals from the decision of any review and decision-making body may be made by any person aggrieved or by his agent...”. A person is “aggrieved” only if the challenged decision causes injury to a legally protected interest and is personal, particularized, and direct. Chenequa Conservancy, Inc. v. Village of Hartland, 2004 WI App 144, ¶12-15. That is, whether the decision of an agency directly causes injury to the interest of the appellant. Wisconsin’s Environmental Decade, Inc. v. PSC, 69 Wis. 2d 1, 10 (1975). In other words, does the challenged action cause the appellant injury in fact? “Abstract injury” is not enough. “[An appellant] must show that [it] has sustained or is immediately in danger of sustaining some direct injury as a result of the challenged official conduct, and the injury or threat of injury must be both real and immediate and not conjectural or hypothetical. Los Angeles v. Lyons, 461 U.S. 95, 103 S.Ct. 1660, 1665 (1983). When an appellant fails to show an injury in fact, its appeal must be dismissed for lack of standing. Fox v. Wisconsin Department of Health and Social Services, 112 Wis. 2d 514, 526 (1983).

Here, New Berlin Neighbors United, U.A., has entirely failed to allege that it “has sustained or is immediately in danger of sustaining some direct injury” as the result of the Plan Commission’s approval granted at its December 8, 2025 meeting. Lyons, 103 S.Ct. at 1665. In all likelihood, this association could not, in and of itself, have suffered an injury in fact. To our knowledge, it is not a property owner within the City of New Berlin, and, moreover, has no legal existence within our state. (It should be noted that there is an unincorporated nonprofit association named “New Berlin Citizens United, U.A.” but, for the same reasons, that entity cannot have suffered any threatened or actual injury either.)

Instead, this applicant merely alleges it feels “the proposal violates building and zoning codes”, and its classification as a “community-scale church” misrepresents the fundamental nature of the facility...” In its attached “Zoning Conflicts and Land-Use Issues”, this applicant vaguely refers to occupancy classifications under the International Building Code (“IBC”), alleged “additional zoning issues” and various federal laws it deems inapplicable to this proposed development. The applicant has entirely failed to explain how these alleged “Zoning Conflicts and Land-Use Issues” have caused it any “real and immediate” injury or threat of injury.

While a nonprofit association, such as New Berlin Neighbors United, U.A., may be able to assert a claim in its name on behalf of its members, one or more of its members must “have standing to assert a claim in their own right, the interests that a nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member”. Sec. 184.07(2) Wis. Stats. Other than Ms. Plehn-Smith, none of the members of this association have been identified. More importantly, none of its members (including Ms. Plehn-Smith) have explained how the Plan Commission’s decision in this matter directly caused injury to him or her, or whether they possess any interest recognized by law. Wisconsin’s Environmental Decade, 69 Wis. 2d at 10.

For these reasons, at its meeting on February 19, 2026, the Board of Appeals should dismiss this appeal based upon lack of standing.

III. The Applicant’s appeal fails to satisfy the requirements of NBMC Section 275-31(D).

NBMC Section 275-31(D) provides, in part, as follows: “Every appeal shall state, at a minimum, what provision(s) of the chapter is/are involved, what relief from the provision(s) is being sought, and the grounds on which the relief should be granted to the appellant”.

As stated previously, neither the letter attached to the application form nor the list of “Zoning Conflicts and Land-Use Issues” attached to that letter state which provisions of Chapter 275 are involved in the appeal. Instead, the appellant merely states that it feels “the proposal violates building and zoning codes, and its classification as a “community-scale church” misrepresents the fundamental nature of the facility”. The attached list of “Zoning Conflicts and Land-Use Issues” vaguely references two occupancy types under the IBC and one specific section (Section 308.2) of the IBC. Laying aside the fact that IBC standards have no application to City of New Berlin zoning code determinations. There is no specific relief sought by the appellant and no grounds on which any relief should be granted. Quite simply, the applicant has failed to meet even the minimum requirements needed to identify the determination of the Plan Commission decision being appealed.

IV. Any issue regarding the Plan Commission’s recommendation for approval of the Certified Survey Map is moot.

The applicant’s list of “Zoning Conflicts and Land-Use Issues” references “additional zoning issues”. Although this section does not specifically mention the Certified Survey Map (“CSM”), or the Plan Commission’s recommendation for approval of that CSM, any such decision regarding that CSM has now been rendered moot. At its January 13, 2026 meeting, the Common Council voted, 4-3, to deny approval of the proposed CSM, which would have consolidated two lots into one. Consequently, to the extent that it has been raised by the appellant, this issue is moot.

For the foregoing reasons, the New Berlin Plan Commission respectfully requests that the Board dismiss the appeals application filed by New Berlin Neighbors United, U.A. on January 23, 2026.

Mr. John Goetter
Chairman of the Board of Appeals
City of New Berlin
February 17, 2026
Page | 6

Should the Board of Appeals determine that this appeal may procedurally move forward, the Plan Commission reserves the right to present additional arguments regarding the substance of this appeal.

Thank you for your attention to this matter.

Sincerely,

Electronically signed by Thomas G. Schmitzer

Thomas G. Schmitzer

TGS/mp

Att.

cc: Mayor David Ament (via email only)
Attorney Mark G. Blum (via email only)
Attorney Joseph R. Cincotta (via email only)
Attorney Eric Larson (via email only)
Attorney Deborah C. Tomczyk (via email only)
Mr. Gregory Kessler (via email only)
Ms. Nikki Jones (via email only)
Ms. Rubina Medina (via email only)

New Berlin Citizens United, LLC
4880 S. Courtland Court
New Berlin, WI 53151

1/7/2026

John Goetter - Chairman
New Berlin Board of Appeals
3805 S. Casper Dr.
New Berlin, WI 53151

RECEIVED

JAN 07 2026

CITY OF NEW BERLIN
OFFICE OF THE CITY CLERK
RUBINA R. MEDINA

HAM
RM

Dear Chairman,

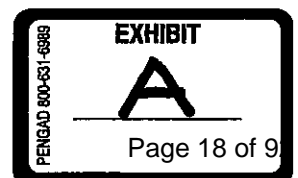
We are filing a grievance with the Board of Appeals in regards to the MRM: New Journeys building proposal that was approved by the New Berlin Planning Committee on 8 December 2025.

We feel the proposal violates building and zoning codes, and its classification as a "community-scale church" misrepresents the fundamental nature of the facility (see attached Zoning Conflicts and Land-Use Issues). We formally request all proceedings halted, so that the aforementioned concerns can be reviewed by the Board of Appeals.

Sincerely,

Mackenzie Plehn-Smith

Mackenzie Plehn-Smith - Managing Member



February 18, 2026

Attorney Eric Larson, Counsel for BOA
elarson@ammr.net
Rubina Medina, Clerk City of New Berlin/BOA
rmedina@newberlinwi.gov;
City of New Berlin Board of Appeals
3805 S. Casper Drive
New Berlin, WI 53151

Re: Position statement of Appellant and response to Respondents filings regarding BOA Appeal of December 8, 2025 Plan Commission Land Use Determination - 5295 South Moorland Road

Dear Eric:

On behalf of the appellant New Berlin Citizens United, U.A. and its members please accept the following submission to supplement the packet ahead of tomorrow's Board of Appeals hearing on the above matter.

This is provided in response to and to supplement the record relative to the Plan Commission's submittal by Attorney Schmitzer, and in response to the Applicant's letter from its Counsel. I have only been able to review these filings as of earlier today. NBCU's initial response to the issues raised are further described below.

I. Summary of the appeal.

As is quite expressly clear in the appeal filing by New Berlin Citizens United, U.A. ("NBCU"), this appeal is about the interpretation of the City's ordinances, specifically whether the proposed New Journey facility is a religious institution or as described in the City Zoning code, a "church." It is not. The definitions of community and neighborhood churches do not cover the Rescue Mission facility, which is essentially a community living facility. It is thus not a permitted use in the M-1 district. The staff and Plan Commission's determination to the contrary is erroneous and the BOA may and should reverse that determination as a matter of law.

As you know, the BOA is the body under the statutes and the ordinances that considers appeals involving the interpretation of the City's ordinances. *See Ord. 275-16(d)(2)*. And is specifically established to conduct appeals of determinations of the Plan

Commission. *See Ord. § 275-31(c)* (“Appeals of decisions of the ... Plan Commission shall be made to the Board of Appeals.”)

Contrary to the Applicants suggestion in their submission, that no review of the Plan Commission’s determination is permissible, that is incorrect. The staff and Plan Commission do not get to stretch the definition of what a permitted use is on a case-by-case or ad hoc basis to accommodate a particular applicant. This Board is a check on those types of determinations, including the one made here finding that the MRM was a permitted use.

II. The Appeal is timely.

The appeal filings by NBCU and its members were made on January 7, 2026. Copies are enclosed at **Exhibit A** including the filing by Ms. Plehn-Smith and member Tyler Brenner.

As shown these filings are stamped by the Clerk on January 7, 2026, which is within the 30-day period set forth to appeal the Plan Commission’s December 8th determination.

III. Content of the appeal filing.

Counsel for the Plan Commission and the applicant make a related argument that involves the content of the appeal filing. They argue that it did not include the standard application or the filing fee. They argue that makes the appeal untimely. It does not. It may make it technically incomplete but the notice of the appeal was timely made, and the content of the appeal filing is more than sufficient to make clear what is being appealed. And in conjunction with record from the Plan Commission also makes clear the specific ordinance sections at issue.

In addition, the BOA rules specifically contemplate an appeal filing that may not include certain materials or the filing fee. The rules set up a mechanism to allow for such an appeal filing to be supplemented to supply the required materials. That is what occurred here. The BOA rules provide as follows:

F. Insufficient notice. The board shall consider no appeal or application unless it is made on the required form. Upon receipt of any communication purporting to be an appeal or application, the secretary ***shall*** supply the applicant with the proper forms, which must be filed within 10 days in addition to the 30 days specified in rule 4 A. in order to be considered by the board.

Under the rules, the clerk of the BOA shall inform the appellant of the need to supplement the appeal filing. And indeed, that was done in this case, though undersigned had to prompt that action by a letter to the Clerk and Counsel for the BOA providing my notice of appearance. That was on January 21, 2026 a copy of which is filed herewith as part of **Exhibit B.**

Soon thereafter, the Clerk sent a letter advising that the appeal filing needed to be completed. The letter provides as follows:

At this time, no appeal is pending with the City of New Berlin Board of Appeals. An appeal is not considered pending unless and until a complete appeal application and the required filing fee are submitted in accordance with the Board of Appeals Rules of Procedure.

Until such time, the matter is not before the Board of Appeals for consideration.

*See Copy of supplement letter from Clerk at **Exhibit C***

Significantly, the instructions from the Clerk **do not** assert that the appeal is untimely. Instead, and consistent with the BOA rules, she advised what is missing and needs to be supplied to complete the appeal application. That was timely accomplished through appellants supplemental filing and tendering of the appeal fee on January 23, 2026.

*See **Exhibit D** - Copy of January 23, 2026 supplemental material including application as stamped by the Clerk as of 1.23.26.*

In addition, the BOA rules provide for an extension of 10 days beyond the 30-day filing deadline. However, that 10-day period must be allowed to commence from the date of the Clerk's notice letter regarding the need for the application and the filing fee. While the rule provides for an additional 10-days commencing at the end of the 30-day filing period, here the Clerk's notice letter itself was not sent until January 21st, 14 days after the initial and timely filing of the primary notice of appeal.

Thus, the 10-day period should be considered to run from January 21, 2026, the date of the Clerk's notice letter. That would be an appropriate and reasonable application of the BOA rules in this instance. And it is further consistent with the requirement in the state statute that appeals to the BOA be taken within a *reasonable* time:

4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board ...

See Wis. Stats. § 62.23(7)(e)(4).

Moreover, the Board should be aware that the appellants members were diligent in seeking information on how to properly file their appeal. They asked the Clerk and staff within her office for assistance regarding any applications or filing fees. At the time of the filing, none of that information was provided.

In addition to the above, please note that the 30-day period applies to those who have appeared in front of a reviewing body and received a written determination. The 30-day period does not begin to run until the applicant receives written notice of the decision. *See Ord. § 275-31(1)(A)* (“ within 30 days after the date of written notice of the decision or order of the review and decisionmaking body.”) The BOA rules provide the same. *See BOA Rules at § 4(A)*.

None of the members of the Appellant have received such written notice. That is because the determination at issue was not subject to a public hearing and full public notice at the December 8, 2025 Plan Commission hearing. Indeed, NBCU and its members only learned about the project starting on January 2, 2026 based on media reports. This project is not highlighted on the City website.

Given this, and taking a strict approach to the rules, the 30-day time period for property owners and neighbors such as the members of NBCU has not even have commenced yet. Here, a more reasonable approach is appropriate, but that reasonable approach must be applied equally to all the parties. Doing so requires that the Appeal be found sufficient and timely

IV. Nature of the Appeal.

The Defendants also argue that the appeal filing is not detailed enough because it does not include citation to specific provisions of the ordinances at issue. However, the appeal filing is appropriately detailed and provides a thorough explanation of the primary issue:

We feel the proposal violates building and coning codes, and its classification as a community-scale church misrepresents the fundamental nature of the facility (see attached Zoning Conflicts and Land Use Issues.”

See Exhibit A – Appeal filing at p. 1

The second page of the appeal further explains that:

the proposed structure does not function as Community scale church and reference that the nature of the proposed facility “cannot exist in the M-1 (light industrial) zone.”

See Exhibit A Appeal filing at p. 2.

While the specific citations are not expressed, those are shown in the Plan Commission staff report, which is part of the record for the determination at issue. A copy of that report is included as Exhibit F. This material is part of the record and should already be part of this appeal. The state statute and the BOA rules require that the record

be provided to the BOA forthwith. *See* Wis. Stats. § 62.23(7)(4). And it must be done before any substantive decisions may be made, especially ones that involve facts in the record.

In conjunction with the complete record, the content of the appeal filing is fully sufficient to provide full notice of the issues being raised, and the specific ordinances involved.

Counsel for the Plan Commission also argues that the typo on the appeal document listing NBCU as an “LLC,” whereas the entity is actually NBCU, U.A. established under Ch. 184 Stats., should somehow be fatal to the appeal. But that was fully clarified in undersigned notice of appearance filings. And indeed, the Clerk directed her correspondence to undersigned on behalf of NBCU, U.A. *See Exhibit C*.

In summary, filing legal applications and forms, and the interpretation of filing rules, should not be a game that elevates form over substance. There is no prejudice to the merits of the opposing parties arguments in confirming the appeal is timely and sufficient and in proceeding with this appeal on the merits.

V. Standing.

The opposing submissions misstate the standing rules under the ordinance and caselaw. Under Ord. Section 275-31, standing to appeal is provided to any *person aggrieved*. This is the same language as the state statute under Wis. Stats, § 62.23(7)(e)(4):

4. Appeals to the board of appeals may be taken by *any person aggrieved* ...

In addition, a separate section of the ordinances further explains who has standing to bring appeals:

Persons authorized to seek relief. Only those persons or parties who would be specifically damaged by a violation of this chapter may institute appropriate action or proceedings for relief pursuant to the procedures set forth in this chapter. Such persons or parties may include the City, the Common Council, the Board of Appeals, the Plan Commission, the Director, or any adjacent or neighboring property owner.

See Ord. § 275-68(A)- Enforcement and Penalties

Injunctive relief. Compliance with the provisions of this chapter may also be enforced by injunctive order at the suit of the City or one or more adjacent or neighboring property owners who would be specifically damaged by the ordinance violation.

See Ord § 275-68(B)(5).

It is clear that a person aggrieved includes those *neighboring property* owners who would be specially impacted by the proposed MRM Facility. As is shown by the addresses on the appeal filings, some of the members of NBCU live quite close to the proposed development. In particular, Mr. Brenner’s address is at 15101 West Small Road. As an aerial view shows, the property is quite close to the proposed development. See **Exhibit E** – *Aerial view of project site and surrounding*.

Regarding the law of standing, a recent Court of Appeals decision made clear that standing is not to be strictly construed. As explained by the Court in *Friends of Blue Mound State Park v. WDNR*:

Wisconsin courts “construe the law of standing liberally and even an injury to a trifling interest may suffice ... To satisfy the first part of the test for standing, a petitioner must “allege[] injuries that are a direct result of the agency action.” quoting *784 *WED I*, 69 Wis. 2d at 13, 230 N.W.2d 243). “[A]llegations of injury to aesthetic, conservational, recreational, health and safety interests will confer standing so long as the injury is caused by a change in the physical environment.” *Milwaukee Brewers Baseball Club v. DHSS*, 130 Wis. 2d 56, 65, 387 N.W.2d 245 (1986). We conclude that the allegations contained in the Friends’ petitions for judicial review are sufficient to satisfy this part of the standing test. See *WED I*, 69 Wis. 2d at 14, 230 N.W.2d 243. **“The question of whether the injury alleged will result from the agency action in fact is a question to be determined on the merits, not on a motion to dismiss for lack of standing.” *Id.***

See *Friends of Blue Mound State Park*, 408 Wis.2d 763, 783-84 (Ct.App.2025).

In addition, an Association such as NBCU has standing when one of its members has standing.

As part of the liberal standard employed in Wisconsin, *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶19, 402 Wis. 2d 587, 977 N.W.2d 342, courts in our state recognize “associational standing” when at least one of the members of an association would have had standing and “the interests at stake in the litigation are germane to the organization’s purpose,” *Munger*, 372 Wis. 2d 749, ¶54, 890 N.W.2d 22 (citation omitted); see also *Metropolitan Builders Ass’n*, 282 Wis. 2d 458, ¶13, 698 N.W.2d 301 (concluding that an association had standing so long as any of its members had the right to challenge the ordinance at issue). The point is to make sure that a party has a sufficient stake in the lawsuit such that it will “carefully develop[] and zealously argue[]” the issues

See *Wisconsin Realtors Assoc. v. City of Neenah*, 418 Wis.2d 78, 86 (Ct.App.2025)

Here, the neighbors have a clear property interest in the value of their own properties and their use and quiet enjoyment. And thus have a clear interest in protecting

that property from the likely negative impact on the value of that property that would be caused by the development should it proceed. This appeal asserts a violation of the ordinances in approving the MRM facility. That violation will very likely cause special damages to the members of NBCU, making them and it an aggrieved party with standing.

In addition, determining standing is a factual issue. And as noted in the Court decisions, at the outset of a legal challenge is typically presume to exist. Here, it is not practical or reasonable to make a factual determination on standing without all the facts. And the neighbors made their concerns known and described the facts at hearings on the project, in particular the Common Council meeting of January 13, 2026. The content of those comments must be in the record, along with other facts, before any evaluation of standing can proceed.

VI. Conclusion.

The appeal is timely and sufficient in content. Should the BOA want to evaluate standing, it must allow for further facts to be developed and including in the record before any such determination is made. For now, the appeal should proceed.

Very truly yours

Electronically signed by Joseph R. Cincotta

Joseph R. Cincotta
Attorney for New Berlin Citizens United, U.A.

EXHIBIT A

Copy of January 7, 2026 appeal filings

R. Tyler & Hannah Brenner
15101 W. Small Rd.
New Berlin, WI 53151

1/7/2026

John Goetter - Chairman
New Berlin Board of Appeals
3805 S. Casper Dr.
New Berlin, WI 53151

RECEIVED

JAN 07 2026

**CITY OF NEW BERLIN
OFFICE OF THE CITY CLERK
RUBINA R. MEDINA**

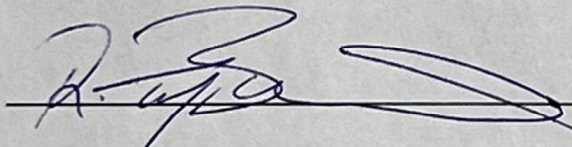
10:49 am
RM

Dear Chairman,

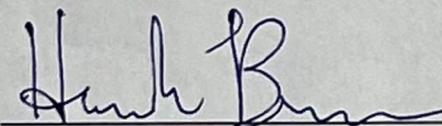
We are filing a grievance with the Board of Appeals in regards to the MRM: New Journeys building proposal that was approved by the New Berlin Planning Committee on 8 December 2025. We are filing as aggrieved citizens under the grounds that the building proposal is within a .5 mile radius of our property.

We feel the proposal violates building and zoning codes, and its classification as a "community-scale church" misrepresents the fundamental nature of the facility. We formally request all proceedings halted, so that the aforementioned concerns can be reviewed by the Board of Appeals.

Sincerely,

 1-7-2026

Richard Tyler Brenner - New Berlin Citizen

 1-7-2026

Hannah Elizabeth Brenner - New Berlin Citizen

John Goetter - Chairman
New Berlin Board of Appeals
3805 S. Casper Dr.
New Berlin, WI 53151

JAN 07 2026
CITY OF NEW BERLIN
OFFICE OF THE CITY CLERK
RUBINA R. MEDINA

11 AM
UPM

Dear Chairman,

We are filing a grievance with the Board of Appeals in regards to the MRM: New Journeys building proposal that was approved by the New Berlin Planning Committee on 8 December 2025.

We feel the proposal violates building and zoning codes, and its classification as a "community-scale church" misrepresents the fundamental nature of the facility (see attached Zoning Conflicts and Land-Use Issues). We formally request all proceedings halted, so that the aforementioned concerns can be reviewed by the Board of Appeals.

Sincerely,

Mackenzie Plehn-Smith - Managing Member

Zoning Conflicts and Land-Use Issues

-Structural mis-classification: Proposed structure does not function as an Assembly Group A-3 Occupancy type "community-scale church". Architectural design, occupancy, operation, land-use, municipal water / sewer, utilities, traffic, and environmental impact is defined under Sec. 308.2 (International Building Codes) as an Institutional Group I-1 occupancy which includes, but is not limited to, the following; Alcohol and drug centers, Assisted living facilities, Congregate care facilities, Group homes, Halfway houses, Residential board and care facilities, Social rehabilitation facilities. *Note: Milwaukee Rescue Mission's other structures, similar in design and function, are classified as Rm6: high-density, multi-family residential, by the city of Milwaukee.

-Zoning conflicts: Institutional Group I-1 occupancy (IBC) and cannot exist in the proposed M-1 (Light Industrial) zone, without a public hearing for re-zoning, and cannot automatically force re-zoning under the protections of the RLUIPA, ADA, or FHA as they are civil rights based and give no special building privileges or exemptions.

-Additional zoning issues: The proposed build site consists of (2) flag lots (Tax Key Numbers 1260.998.001 and 1260.998.002). The city shall not grant any special circumstances to a particular entity, religious or non, in approving the joining of (2) separate lots, especially for proposals that already do not meet zoning and district requirements. Having insufficient frontage, lack of access and easements, potential encroachment impacts on neighboring businesses as well as close proximity to C-2 conservancies, which may become polluted and/or disturbed during the building process, parking, increased road access, all prohibit this type structure from existing on such land. The insufficient frontage in itself, does not allow for proper emergency access or evacuation routes, in case of fire, flood, or other potentially catastrophic events. The City shall not approve any prohibited PUDs, deviations, flexibilities, or grant special requests for exemptions for the "Milwaukee Rescue Mission: New Journey" project, under developer Patrick Vanderburgh, on these parcels.

-Abuse of RLUIPA, ADA, and FHA protections: Milwaukee Rescue Mission is using the discriminatory protections under the RLUIPA, ADA, and FHA, which have no effect, and do not grant special permissions, to evade building and zoning laws. The RLUIPA, ADA, and FHA, are designed to prevent discrimination on religious, gender, ethnicity, socioeconomic background, and disabled peoples, and are civil rights only in nature to ensure all entities and people(s) can function in society on equal terms. To use these protective acts to exact privilege, and in doing so, violating the public's right to a hearing, is a civil rights violation in itself.

EXHIBIT B

Copy of Notice of Appearance by Counsel

January 21, 2026

John Goetter, Chair Board of Appeals
Gregg Kessler, Director of City Development
gkessler@newberlin.org
City of New Berlin
3805 S. Casper Drive
New Berlin, WI 53151

***Re: Notice of Appearance in BOA Appeal of December 8, 2025 Plan
Commission Land Use Determination - 5295 South Moorland Road***

Dear Chair Goetter and Director Kessler:

Please accept this correspondence and the enclosed as my Notice of Appearance on behalf of New Berlin Citizens United, U.A. regarding the appeal to the Board of Appeals filed by NBCU on January 7, 2026.

If Counsel for the BOA has been engaged for this appeal, I would appreciate being forward his or her contact information. I may be reached at the contacts below and email to jrc4@chorus.net.

Very truly yours

Electronically signed by Joseph R. Cincotta

Joseph R. Cincotta
Attorney for New Berlin Citizens United, U.A.

STATE OF WISCONSIN
CITY OF NEW BERLIN
BOARD OF APPEALS

NEW BERLIN CITIZENS UNITED, U.A.
4880 South Courtland
New Berlin, WI 53151

Appellant,

CITY OF NEW BERLIN
PLAN COMMISSION
3805 S. Casper Drive
New Berlin, WI 53151

Respondent.

In Re:
December 8, 2025
Plan Commission Determination
5295 South Moorland Road

NOTICE OF APPEARANCE OF COUNSEL

PLEASE TAKE NOTICE that Joseph R. Cincotta hereby appears in this matter as Counsel for the Appellant, New Berlin Citizens United, U.A. A copy of all papers in this action should be served upon undersigned as noted below.

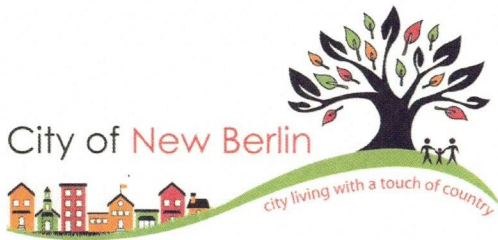
Dated this 20th day of January, 2026

Electronically signed by Joseph R. Cincotta
Joseph R. Cincotta
State Bar No. 1023024
Attorney for Appellant

P.O. Address:

1200 East Capitol Drive – Suite 327
Shorewood, WI 53211
414-416-1291
Jrc4@chorus.net

EXHIBIT C
Copy of Clerk's Notice Letter
of January 21, 2026



Office of the City Clerk

3805 S. Casper Drive ▪ New Berlin, Wisconsin 53151
(262) 786-8610 ▪ www.NewBerlinWI.gov

January 21, 2026

Attorney Joseph R. Cincotta
1200 E. Capital Drive, Suite 327
Shorewood, WI 53211

RE: NOTICE OF APPEARANCE – BOARD OF APPEALS

Dear Attorney Cincotta:

This letter acknowledges receipt of your Notice of Appearance on behalf of New Berlin Citizens United, U.A.

At this time, no appeal is pending with the City of New Berlin Board of Appeals. An appeal is not considered pending unless and until a complete appeal application and the required filing fee are submitted in accordance with the Board of Appeals Rules of Procedure.

Until such time, the matter is not before the Board of Appeals for consideration.

In response to your request, counsel for the City of New Berlin Board of Appeals is Attorney Eric J. Larson of Municipal Law & Litigation Group, SC. His contact information is provided below:

Attorney Eric J. Larson
Municipal Law & Litigation Group, SC
730 N. Grand Avenue
Waukesha, WI 53186
Phone: (262) 548-1340
Email: elarson@ammr.net

Very truly yours,

Rubina Medina

Rubina R. Medina, CMC/WCMC
New Berlin City Clerk
Board of Appeals Secretary

Cc: Attorney Eric J. Larson, Municipal Law & Litigation Group, SC
Attorney Thomas G. Schmitzer, Sr., City of New Berlin Municipal Attorney
Greg Kessler, Director of Community Development

Enclosures

EXHIBIT D

Copy of Appellants Supplemental filing

January 23, 2026

January 23, 2026

Board of Appeals – City of New Berlin
c/o Rubina Medina, Clerk and
Greg Kessler, Director of Community Development, and
John Goetter, Chair Board of Appeals
City of New Berlin
3805 S. Casper Drive
New Berlin, WI 53151

Re: Supplemental Filing for January 7, 2026 Appeal

Dear Chair Goetter and Director Kessler and Clerk Medina:

I am in receipt of the letter from Ms. Medina of January 21, 2026. Thank you for the copy of the application form for the appeal to the Board of Appeals

Please find enclosed a completed version of the Appeal application. This also included the required number of copies of the narrative describing the nature of the appeal filed by my client, New Berlin Citizens United, U.A. on January 7, 2026.

I am submitting this by email and it will also be delivered to the Clerk's office and payment made at that time

Very truly yours

Electronically signed by Joseph R. Cincotta

Joseph R. Cincotta
Attorney for New Berlin Citizens United, U.A.

Cc: Attorney Eric Larson
Attorney Thomas Schmitzer



Board of Appeals

Applicant / Contact

Name New Berlin Neighbors United, U.A.
 Address 4880 South Courtland
 City, State, Zip New Berlin, WI 53151
 Phone _____
 E-Mail nbcu2026@gmail.com
 Current Zoning M-1

Agent

Name Attorney Joseph R. Cincotta
 Address 1200 East Capitol Drive - Suite 327
 City, State, Zip Shorewood, WI 53211
 Phone 414-416-1291
 Email jrc4@chorus.net
 Property Owner's Address 5295 South Moorland Road
 Property Owner _____

NOTE: Should the Board of Appeals approve your variance, you will also need to obtain the appropriate zoning and/or building permits. A Board of Appeals approval does not grant final approval for your respective use or construction project. It is the property owner's responsibility to ensure that the appropriate permits have been received prior to the commencement of any construction and/or occupancy.

INSTRUCTIONS

All petitions must be accompanied by a survey showing the existence of the present use and the change required. Scaled drawings may be substituted for surveys. However, the Board may request a certified survey at the time of the hearing. Photographs and blueprints of proposed construction are helpful. A \$50.00 filing fee plus a \$200.00 administrative fee must be paid at the time the petition is filed for setback, square footage, height and floodplain variance. A \$500.00 administrative fee plus a \$50.00 filing fee is required for Plan Commission appeal.

Petitions must be received on or before 4:30 pm of the required due date in order for the petition to be scheduled for review by the board on first Thursday of the following month. Meetings are normally held at 6pm

At the hearing, proper documentation will be reviewed. Petitioner, or agent, will speak first along with those who favor the petition. Those who oppose the petition will be given the opportunity to speak after the affirmative case has been argued. All argument should be relevant to the appeal presented. The Board may, at its discretion, limit debate and place witnesses under oath.

Application Type (Time frame)*	Fees	Required Plans/Information (Failure to submit all required plans will result in rejection of the application.)
<input type="checkbox"/> Setback/Size Variance	\$200+ \$50 Filing Fee	<input type="checkbox"/> Nature of Appeal – 8 copies <input type="checkbox"/> Hardship Argument – 8 copies <input type="checkbox"/> Scaled Drawing/ Survey – 8 copies <input type="checkbox"/> Photos – 8 copies
<input type="checkbox"/> Flood Plain	\$200+ \$50 Filing Fee	<input type="checkbox"/> Nature of Appeal – 8 copies <input type="checkbox"/> Hardship Argument – 8 copies <input type="checkbox"/> Scaled Drawing/ Survey – 8 copies <input type="checkbox"/> Photos – 8 copies
<input checked="" type="checkbox"/> Plan Commission	\$500+ \$50 Filing Fee	<input checked="" type="checkbox"/> Nature of Appeal – 8 copies <input type="checkbox"/> Hardship Argument – 8 copies

RECEIVED

JAN 23 2026

CITY OF NEW BERLIN
OFFICE OF THE CITY CLERK
RUBINA R. MEDINA

-- CONTINUED ON PAGE 2 --

Fees:

Base Fee From Above	\$ <u>500.00</u>
Filling Fee	\$ <u>50.00</u>
Total	\$ <u>550.00</u>

- * Only if all required materials are submitted and satisfactory.
- ¹ Other plans and information may be required by staff upon further review of the project.
- ² Drawn to a scale no greater than 1"=100'.
- ³ All architectural plans at a scale no smaller than 1/8" = 1'
- ⁴ Colored building elevation, architectural rendering, or photos suitable for public presentation to fit on a single 8½" x 11" or 11" x 17" sheet.

No refunds for denied applications

By the execution of this application, applicant hereby authorizes the City of New Berlin or its agents to enter upon the property during the hours of 7:00 A.M. to 7:00 P.M. daily for the purpose of inspection. Applicant grants this authorization to enter to the City of New Berlin or its agents even if applicant has posted this land against trespassing pursuant to Section 943.13 Wis. Stats.

Signature *[Handwritten Signature]* *Andriy Inc. Attorney - NBCU, IA* Date: *1/22/26*
Only the property owner or property manager may sign, or letter/email of authorization required. The final responsible party is the property owner.

Please do not write below this line

Accepted by: *Rm* Date: *1/23/26*
 Board of Appeals Date: *2/19/2026*
 Total Fee: *\$550.00 pd by check*
 File Number: _____



Make Checks Payable To:
CITY OF NEW BERLIN

January 23, 2026

Board of Appeals – City of New Berlin
c/o Rubina Medina, Clerk and
Greg Kessler, Director of Community Development, and
John Goetter, Chair Board of Appeals
City of New Berlin
3805 S. Casper Drive
New Berlin, WI 53151

Re: Supplemental Filing for January 7, 2026 Appeal

Dear Chair Goetter and Director Kessler and Clerk Medina:

I am in receipt of the letter from Ms. Medina of January 21, 2026. Thank you for the copy of the application form for the appeal to the Board of Appeals

Please find enclosed a completed version of the Appeal application. This also included the required number of copies of the narrative describing the nature of the appeal filed by my client, New Berlin Citizens United, U.A. on January 7, 2026.

I am submitting this by email and it will also be delivered to the Clerk's office and payment made at that time

Very truly yours

Electronically signed by Joseph R. Cincotta

Joseph R. Cincotta
Attorney for New Berlin Citizens United, U.A.

Cc: Attorney Eric Larson
Attorney Thomas Schmitzer

John Goetter - Chairman
New Berlin Board of Appeals
3805 S. Casper Dr.
New Berlin, WI 53151

JAN 07 2026
CITY OF NEW BERLIN
OFFICE OF THE CITY CLERK
RUBINA R. MEDINA
HAM
AM

Dear Chairman,

We are filing a grievance with the Board of Appeals in regards to the MRM: New Journeys building proposal that was approved by the New Berlin Planning Committee on 8 December 2025.

We feel the proposal violates building and zoning codes, and its classification as a "community-scale church" misrepresents the fundamental nature of the facility (see attached Zoning Conflicts and Land-Use Issues). We formally request all proceedings halted, so that the aforementioned concerns can be reviewed by the Board of Appeals.

Sincerely,

Mackenzie Plehn-Smith - Managing Member

Zoning Conflicts and Land-Use Issues

-Structural mis-classification: Proposed structure does not function as an Assembly Group A-3 Occupancy type "community-scale church". Architectural design, occupancy, operation, land-use, municipal water / sewer, utilities, traffic, and environmental impact is defined under Sec. 308.2 (International Building Codes) as an Institutional Group I-1 occupancy which includes, but is not limited to, the following; Alcohol and drug centers, Assisted living facilities, Congregate care facilities, Group homes, Halfway houses, Residential board and care facilities, Social rehabilitation facilities. *Note: Milwaukee Rescue Mission's other structures, similar in design and function, are classified as Rm6: high-density, multi-family residential, by the city of Milwaukee.

-Zoning conflicts: Institutional Group I-1 occupancy (IBC) and cannot exist in the proposed M-1 (Light Industrial) zone, without a public hearing for re-zoning, and cannot automatically force re-zoning under the protections of the RLUIPA, ADA, or FHA as they are civil rights based and give no special building privileges or exemptions.

-Additional zoning issues: The proposed build site consists of (2) flag lots (Tax Key Numbers 1260.998.001 and 1260.998.002). The city shall not grant any special circumstances to a particular entity, religious or non, in approving the joining of (2) separate lots, especially for proposals that already do not meet zoning and district requirements. Having insufficient frontage, lack of access and easements, potential encroachment impacts on neighboring businesses as well as close proximity to C-2 conservancies, which may become polluted and/or disturbed during the building process, parking, increased road access, all prohibit this type structure from existing on such land. The insufficient frontage in itself, does not allow for proper emergency access or evacuation routes, in case of fire, flood, or other potentially catastrophic events. The City shall not approve any prohibited PUDs, deviations, flexibilities, or grant special requests for exemptions for the "Milwaukee Rescue Mission: New Journey" project, under developer Patrick Vanderburgh, on these parcels.

-Abuse of RLUIPA, ADA, and FHA protections: Milwaukee Rescue Mission is using the discriminatory protections under the RLUIPA, ADA, and FHA, which have no effect, and do not grant special permissions, to evade building and zoning laws. The RLUIPA, ADA, and FHA, are designed to prevent discrimination on religious, gender, ethnicity, socioeconomic background, and disabled peoples, and are civil rights only in nature to ensure all entities and people(s) can function in society on equal terms. To use these protective acts to exact privilege, and in doing so, violating the public's right to a hearing, is a civil rights violation in itself.



Board of Appeals

Applicant / Contact

Name New Berlin Neighbors United, U.A.
 Address 4880 South Courtland
 City, State, Zip New Berlin, WI 53151
 Phone _____
 E-Mail nbcu2026@gmail.com
 Current Zoning M-1

Agent

Name Attorney Joseph R. Cincotta
 Address 1200 East Capitol Drive - Suite 327
 City, State, Zip Shorewood, WI 53211
 Phone 414-416-1291
 Email jrc4@chorus.net
 Property Owner's Address 5295 South Moorland Road
 Property Owner _____

NOTE: Should the Board of Appeals approve your variance, you will also need to obtain the appropriate zoning and/or building permits. A Board of Appeals approval does not grant final approval for your respective use or construction project. It is the property owner's responsibility to ensure that the appropriate permits have been received prior to the commencement of any construction and/or occupancy.

INSTRUCTIONS

All petitions must be accompanied by a survey showing the existence of the present use and the change required. Scaled drawings may be substituted for surveys. However, the Board may request a certified survey at the time of the hearing. Photographs and blueprints of proposed construction are helpful. A \$50.00 filing fee plus a \$200.00 administrative fee must be paid at the time the petition is filed for setback, square footage, height and floodplain variance. A \$500.00 administrative fee plus a \$50.00 filing fee is required for Plan Commission appeal.

Petitions must be received on or before 4:30 pm of the required due date in order for the petition to be scheduled for review by the board on first Thursday of the following month. Meetings are normally held at 6pm

At the hearing, proper documentation will be reviewed. Petitioner, or agent, will speak first along with those who favor the petition. Those who oppose the petition will be given the opportunity to speak after the affirmative case has been argued. All argument should be relevant to the appeal presented. The Board may, at its discretion, limit debate and place witnesses under oath.

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- - CONTINUED ON PAGE 2 - -

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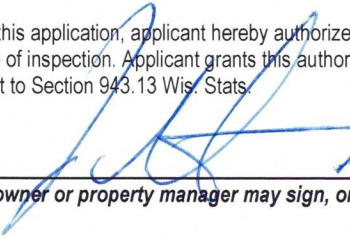
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Signature  Andrew For. Anderson NBSU, VA Date: 7/22/26
Only the property owner or property manager may sign, or letter/email of authorization required. The final responsible party is the property owner.

Please do not write below this line

Accepted by: _____ Date: _____

Board of Appeals Date: _____

Total Fee: _____

File Number: _____



**Make Checks Payable To:
CITY OF NEW BERLIN**

John Goetter - Chairman
New Berlin Board of Appeals
3805 S. Casper Dr.
New Berlin, WI 53151

JAN 07 2026
CITY OF NEW BERLIN
OFFICE OF THE CITY CLERK
RUBINA R. MEDINA

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EXHIBIT E

Aerial View of Project site and neighboring properties



15101 W Small Rd



EXHIBIT F

Copy of December 8, 2025

Plan Commission Staff Memo and Related

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

Meeting of December 8, 2025

Patrick Vanderburgh with Milwaukee Rescue Mission New Journey / Use Approval
5295 S. Moorland Road (Tax Key #: 1260.998.001 & 1260.998.002)

DATE STAFF REPORT PREPARED: October 28, 2025

APPLICANT / OWNER(S): Patrick Vanderburgh with Milwaukee Rescue Mission New Journey / Moorland Hospitality Group, LLC

REQUEST / DESCRIPTION OF PROJECT: Use Approval for a 57,010 sq. ft. rehabilitative development located at 5295 S. Moorland Road (Tax Key #'s: 1260.998.001 & 1260.998.002).

DATE OF APPLICATION / DATE FILED WITH CITY CLERK: 10/24/2025

DATE OF COMPLETENESS DETERMINATION: 10/27/2025

PRE-APPLICATION CONFERENCE HELD: Yes
Date(s) of Meeting(s): 5/20/25, 7/9/25 & 10/16/25

CONCEPTUAL PLAN: N/A

SIZE OF DEVELOPMENT / PARCEL(S): 5.68 acres (After CSM approval of the 1-Lot CSM LD-2502142)

CURRENT ZONING: M-1 (Light Manufacturing District)

CURRENT LAND USE: Vacant former Single-family residential / home was taken down 10/25/24.

PROPOSED ZONING: N/A

PROPOSED LAND USE: Construction of a 57,010 sq. ft. rehabilitative development.

PROPOSED LOT SIZES: Lot 1: 5.68 Acres (See File #: LD-2502142)

PROPOSED DENSITY: N/A

ADJACENT ZONING AND LAND USE:

North: Zoning: N/A

South: Zoning: M-1

East: Zoning: M-1

West: Zoning: N/A

Land Use: Interstate 43

Land Use: Light Manufacturing (Nassco Inc. & Pieper Automation, Apria Healthcare LLC & Renewable Energy & Drives - US)

Land Use: Light Manufacturing (Roadrunner Express Car Wash)

Land Use: Interstate 43

CONFORMANCE WITH COMPREHENSIVE PLAN AND MUNICIPAL CODE: Yes

Chapter 18: Neighborhood H: Westridge & Moorland Road

Planning Context / Vision / Development Policies:

Neighborhood H:

- *Westridge/Towne Corporate Business Park should be expanded as a major economic center for the City. The Business Park should continue to set an example of high standards in architecture, site planning, and sustainable practices. Primary uses should promote light manufacturing and office complexes. Hotels, clinics, entertainment (i.e. restaurants, shopping center, and cinemas), and retail should serve as supporting uses.*
- *The vision for the South Moorland Road Corridor includes the following elements that have been incorporated into the development of the plan:*
 - ✓ *A business community that focuses on sustainable site and building design.*
 - ✓ *Emphasis on preservation of significant environmental features such as: wetlands, woodlands, tree rows, floodplain and environmental corridors.*
 - ✓ *Focus on green infrastructure and creative storm water management elements.*
 - ✓ *A system of meaningful pedestrian connections to create a walkable and connected community.*
 - ✓ *Focus on sound planning and architecture practices.*
 - ✓ *Layout that includes a mix of retail, commercial, office and light manufacturing within the Business Park/Industrial area.*
 - ✓ *Allow for flexible site design for both residential and nonresidential development by creating Zoning Code standards that promote creativity and sustainability.*
 - ✓ *Require significant buffers between contrasting uses and main thoroughfares.*

Development Policies:

- *Emphasize mixed use developments with light industrial and office as the dominant land uses. Supporting hospitality related uses (i.e., hotels and table service restaurants) should complement the primary uses.*
- *Require traffic impact studies to be submitted for new construction as indicated in the City Zoning Code requirements. The City should ensure that impact studies include consideration of the surrounding area at full build-out.*
- *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.*
- *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.*
- *Any future development requiring coordinated access and/or utility extensions in this area may require the applicant to submit a surety instrument to the City to cover future public improvements and cost contributions.*

Land Use

- *Future Land Use Map: Business Park Industrial*

ZONING CODE (Chapter 275): Yes, this request is consistent with Section 275-35B(4) of the Zoning Code.

DEVELOPMENT CODE (CHAPTER 235): Yes

REZONING REQUIRED: No

CONDITIONAL USE REQUIRED: No

PUBLIC HEARING REQUIRED: No

USE / SITE / ARCHITECTURAL REVIEW:

Use Approval Required: Yes

Site Plan Required: Yes

Architectural Review Required: Yes, this item will be reviewed at the December 8, 2025 meeting.

PROPOSED ARCHITECTURE: Please refer to attached plans.

UNIQUE SITE CHARACTERISTICS:

Environmental Corridor: Yes, the majority of the site is considered environmental corridor. However, much of the site has already been clear cut / disturbed many years ago.

Wetland On Property: Yes, applicant completed a wetland delineation on May 23, 2025 by Wetland & Waterway Consulting, LLC. The report indicates the complex flagged during the current delineation remains the same as that flagged during the 2019 delineation. Wetlands were registered on the City's Zoning Map. (See File #: WD-1903347).

Conservancy Districts (C-1, C-2): No

NRCS Map Classification: Not Inventoried

Floodplain: No

Topography / Geologic: Site slopes to the southeast.

BIKE & PEDESTRIAN FACILITIES PLAN: None identified.

PARK & OPEN SPACE PLAN: None identified.

NATURAL RESOURCES PROTECTION:

Limits of Disturbance (LOD): Yes, applicant will provide an erosion control plan.

Woodland, Tree, and Vegetation Protection: The applicant has submitted a Tree Inventory along with a landscape plan and tree-planting schedule.

Wildlife Habitat Protection: N/A

Wildlife Management Plan: N/A

ENVIRONMENTAL IMPACT: Applicant completed a wetland delineation on May 23, 2025 by Wetland & Waterway Consulting, LLC. The report indicates the complex flagged during the current delineation remains the same as that flagged during the 2019 delineation. Wetlands were registered on the City's Zoning Map. (See File #: WD-1903347).

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 plans as been included.

SANITARY SEWER PROVISION:

Within Current Sewer Service Area: Yes

Basin Capacity Available: Yes

Adequate Linkage: Yes

Onsite System Required: No

WATER USAGE CALC.: Will be furthered reviewed at the time of building permit.

TRAFFIC IMPACT: Applicant has submitted a TIA prepared by TADI on September 17, 2025. This is on file with DCD.

The access driveway for the existing car wash and proposed New Journey development connects to S. Moorland Road with right-in/right-out only movements and stop sign control. Due to the raised median on S. Moorland Road, traffic entering the driveway from the south must do so via a U-turn at the Rock Ridge roundabout to the north. Traffic exiting the driveway to the north on S. Moorland Road must do so via a U-turn at the Westridge Drive/Small

Road signalized intersection to the south.

The Institute of Transportation Engineers (ITE) Trip Generation Manual, 11th Edition does not provide trip data for land uses similar to the Milwaukee Rescue Mission's New Journey development. Therefore, trip generation was completed using a combination of the small office land use (for staff trips) and congregate care facility (for attendee/resident trips). Congregate care facility was chosen as it provides trip rates per bed for residents who generally do not own cars or drive each day.

The small office and congregate care facility trip rates were applied to the 30 weekday/4 weekend staff members and 56 bed/112 attendees, respectively, expected by full occupancy of the New Journey development. Based on ITE, the New Journey development generates 490 weekday daily trips, 40 weekday AM peak hour trips and 50 weekday PM peak hour trips.

The ITE Trip Generation Manual does not provide trip rates for the small office or congregate care facility land uses. Saturday staff numbers are about 15% of the weekday staff numbers, and about 10% of the residents are estimated to drive cars. Saturday peak hour trips for the New Journey facility were therefore conservatively estimated to be about 20% of the weekday PM peak hour trips (10 Saturday midday peak hour trips). The trip generation table is shown on Exhibit 5.

PART A – SUMMARY/RECOMMENDED IMPROVEMENTS

There is expected to be enough capacity at the existing study intersections to accommodate the additional traffic from the proposed New Journey development on the west side of S. Moorland Road. Intersection operations are expected to operate at LOS D or better during the peak hours, both with and without the additional traffic from the proposed development. Therefore, no changes to the existing geometrics or traffic control are recommended at either study intersection.

PART B – CONCLUSION

The existing study intersections are expected to operate safely and efficiently with the buildout of the development site. The additional site traffic traveling through or U-turning at the S. Moorland Road intersection with Small Road/Westridge Drive is not expected to significantly impact delays during the peak hours.

SCHOOL DISTRICT IMPACT: N/A

PREVIOUS ACTION:

3/2/2020	Plan Commission approved a 2-Lot CSM and a Hampton Inn Hotel.
3/10/2020	Common Council approved a 2-Lot CSM.
3/1/2021	The Plan Commission approved a 12-month extension.
2/7/2022	The Plan Commission approved a limited extension through May 31, 2022.

CONSISTENCY WITH PREVIOUS ACTION: Yes

FINDINGS:

1. The applicant has simultaneously applied for a 1-Lot Certified Survey Map. (See File #'s: LD-2502142).
2. The applicant is proposing construction of a four-story, 57,010 sq. ft. rehabilitative development.
3. Applicant completed a wetland delineation on May 23, 2025 by Wetland & Waterway Consulting, LLC. The report indicates the complex flagged during the current delineation remains the same as that flagged during the 2019 delineation. Wetlands were registered on the City's Zoning Map. (See File #: WD-1903347).
4. Applicant has met the minimum open space requirement of 30% for the M-1 Zoning District.
5. Applicant is proposing 75 parking spaces and meets the City's requirements. Should additional parking be needed, the applicant/owner will be required to provide an application to the city.
6. The applicant has submitted a TIA. This is on file with DCD. See the Transportation Section of this report for additional information.

7. After reviewing the applicant's submitted information as well as city code, specifically Section 275-70 and 275-35, it was the City Attorney's (our) conclusion that from a pure use standpoint the proposed MRM New Journey facility is most appropriately categorized as an institutional use given its nature as an inpatient/outpatient AODA treatment facility.
 - a. We acknowledge that there is some faith-based component to the treatment programs and therefore that this use is arguably consistent with the definition of a community church as defined in the aforementioned code section, as well as under RLUIPA. Definitions as outlined in Zoning Code Section 275-70:
 - i. *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 cafe. 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.*
 - ii. *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.*
 - b. Such a use is considered a permitted use in the M-1 Zoning District.
 - c. Based upon this analysis, the City considers this proposed Use (church/treatment facility) to be a principal use and may be considered as such by the Plan Commission via a Use, site, and Architectural permit review.
 - d. Any zoning permit issued shall have the following provisions outlined:
 - i. The use will be maintained consistently with the definition of a community church as per Section 275-70 of the city code.
 - ii. The use will be maintained in accordance with the permit(s) that you are issued to operate the facility by any governmental entity with jurisdiction including State of WI DHS.
 - iii. The use will be operated consistently with the approved plan of operation that was supplied by the applicant to the city.
 - iv. The applicant has indicated that in the event that the use becomes tax exempt at any point that the property owner will make a payment in lieu of taxes to the City for the amount which would have been paid by a similar industrial use in the Westridge Business Park. The agreement of this would be memorialized in an agreement to the property owner and the city which will be recorded with the Waukesha County Register of Deeds and will run in perpetuity with the land.
8. Since the property will no longer be developed as a hotel as originally represented in the creation of TID 4 staff will be recommending to the Common Council that it adopt a resolution to terminate TID 4 and therefore that the property will no longer be part of a tax incremental financing district.

STAFF RECOMMENDATION:

Recommend approval for the Use, Site and Architecture for the construction of 57,010 sq. ft. rehabilitative development located at 5295 S. Moorland Road (Tax Key #'s: 1260.998.001 & 1260.998.002), subject to the application, plans on file and the following conditions: **See Executive Summary.**

ATTACHMENTS:

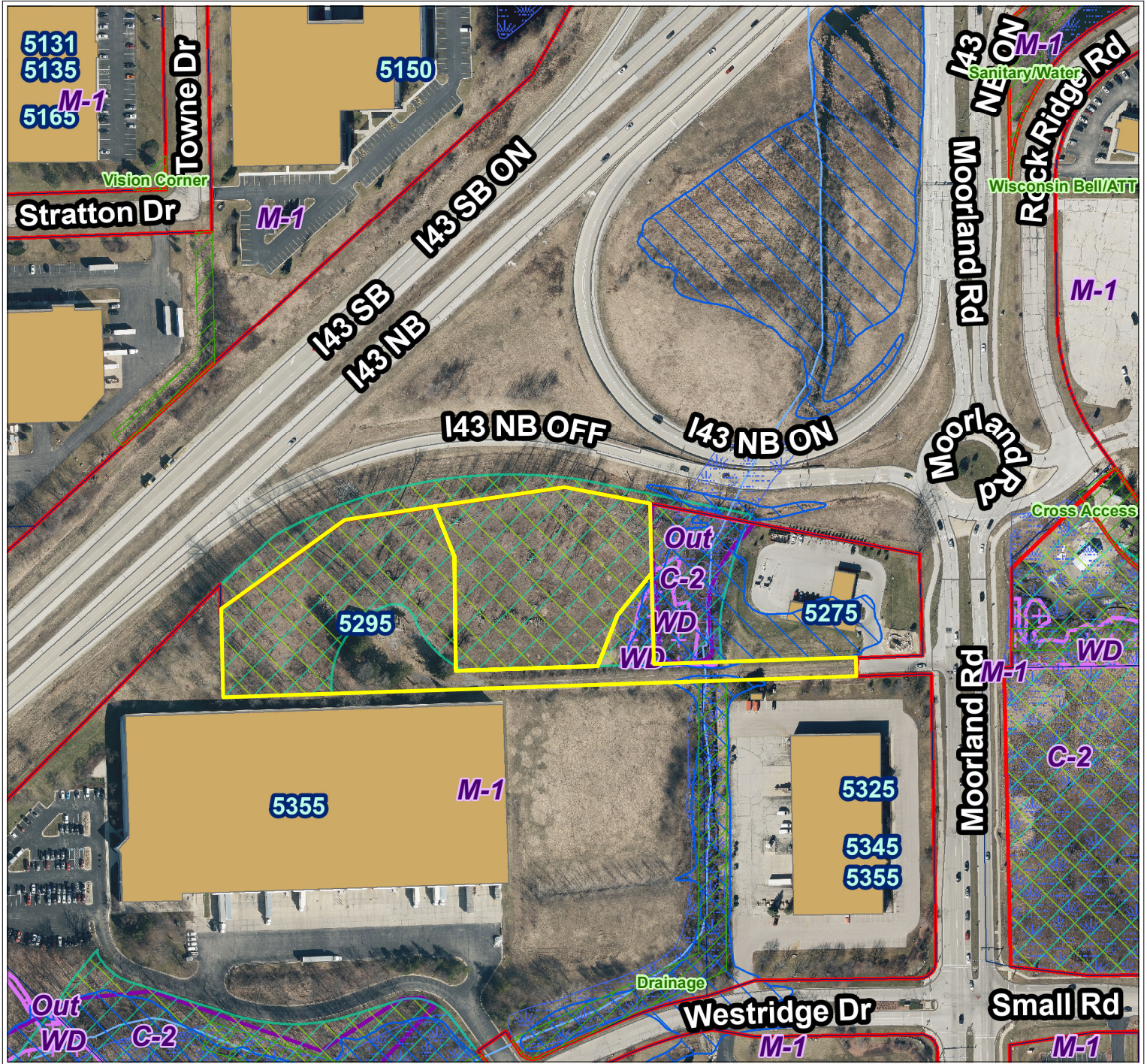
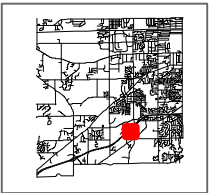
Location Map
Plans
Rendering



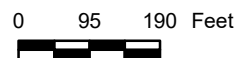
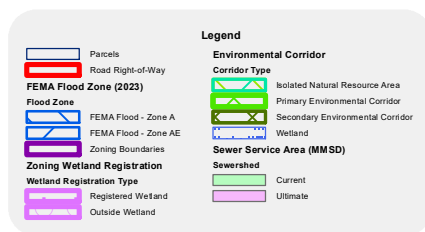
LD-2502142 & UA-2502143
 Milwaukee Rescue Mission-
 New Journey

5295 S. Moorland Road

(Tax Key #'s: 1260.998.001 & 1260.998.002)



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.

New Journey New Berlin Campus

Plan of Operation

October 24, 2025

Proposed Use of Land and Building

Project Description: Milwaukee Rescue Mission's New Journey Campus Development

This property will serve as the permanent, dedicated campus for the Milwaukee Rescue Mission's *New Journey* residential addiction recovery program. For decades, *New Journey* has successfully served single men seeking recovery from substance addiction, offering a structured, supportive, and transformative environment.

Program Overview

The *New Journey* program begins with a 28-day candidacy period during which participants reside on campus while undergoing a thorough evaluation process. During this time, staff conduct interviews and assessments to determine each individual's suitability for the full six-month residential program. This vetting process includes comprehensive background checks, resolution of any outstanding legal issues or warrants, and addressing any critical health or medical concerns.

Six-Month Residential Program

Candidates who are accepted into the program commit to a six-month, full-time residential experience. The program is rigorous and holistic, designed to address the physical, emotional, spiritual, and vocational needs of each participant. Key components include:

- **Personal and group exercises** to promote relational development, emotional growth and self-awareness
- **Adult education** aimed at strengthening academic proficiency and essential life skills
- **Individual and group counseling** led by trained staff counselors
- **Physical fitness activities** to improve health and well-being
- **Christian mentoring and spiritual development**
- **Career training and job readiness preparation**
- **Community-building and accountability structures** to support sustained sobriety and personal growth

The development of this new campus will enhance the effectiveness and reach of the *New Journey* program, providing a stable, purpose-built environment where men can rebuild their lives and establish a foundation for long-term recovery and reintegration into society.

Activities

Typical activities on the campus will include:

- Congregant meals
- Social, recreational and athletic activities both indoors and outdoors
- Support groups
- Classes
- Individual study
- Professional individual and group counseling
- Congregant chapel services

Activity Frequency & Days/Hours of Operation

As a residential campus, typical residential activities – i.e. meals, social/recreational – will occur every day throughout the week.

The concentration of program activities – classes, counseling, group sessions – will occur mostly during typical business hours – 8AM – 4PM, Monday through Friday, with occasional groups or activities occurring in the evenings Monday – Friday.

Total Number of Employees – Peak Number Weekly

The campus will build to full capacity over a three to five year period with maximum staffing level achieved at the end of that period. Total staffing will start at approximately 20 FTE and build to approximately 35 FTE. The campus will maintain a staff presence 24/7/365. The highest concentration of staff will occur during the work week (6AM-8PM; M-F) with approximately 20-25 staff members on campus in overlapping 1st & 2nd shifts.

Number of Program Residents

Participation in the residential component of the *New Journey* program will build through three to five years with projected resident levels as follows:

Year 1 – 50-60

Year 2 – 60-80

Year 3 – 80-100

Year 4 – 90-110

Year 5 - 120

Number and Type of Vehicles on Campus

Three permanent service vehicles will be on the campus – 1 utility vehicle (i.e. pickup truck); 2 passenger vans.

20 – 30 staff and resident vehicles will typically be on the campus at any given time (only residents in the transitional phase of the program will have private vehicles on the campus and this total will likely be 10 or less vehicles).

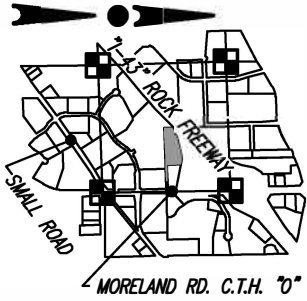
Occasionally the campus will host an event with outside guests as, for instance, program graduations, where an additional 10-20 vehicles may be present on the campus. At these peak events (i.e. special events hosted during the week), there may be a maximum of 40-50 vehicles on the campus. These type of peak events will not occur more two or three times per month.

Expected Start and Completion Dates for Construction

With formal necessary approvals by the City of New Berlin in early 2026, we will plan for construction to begin in the summer/fall of 2026 and complete by summer/fall 2027.

CERTIFIED SURVEY MAP NO.

BEING A CONSOLIDATION OF LOTS 1 AND 2 OF CERTIFIED SURVEY MAP NO. 12253. BEING A THAT PART OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 27, IN TOWN 6 NORTH, RANGE 20 EAST, IN THE CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN.



LOCALITY MAP:
 S.E. 1/4, SEC. 27,
 T. 6 N., R. 20 E.
 SCALE: 1"=2000'

OWNER:
 MILWAUKEE RESCUE MISSION
 1820 W. WELLS STREET
 MILWAUKEE, WI 53233

PREPARED BY:
 TRIO ENGINEERING, LLC
 19035 W. CAPITOL DRIVE, SUITE 200
 BROOKFIELD, WI 53045
 PHONE: 262-790-1480
 FAX: 262-790-1481

NOTES:

- ALL BEARINGS ARE REFERENCED TO GRID NORTH OF THE WISCONSIN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE (NAD-27), IN WHICH THE EAST LINE OF THE S.E. 1/4 OF SECTION 27, TOWN 6 NORTH, RANGE 20 EAST, BEARS S00°53'38"E.
- WETLAND LINES SHOWN HEREON WERE FIELD DELINEATED BY WETLAND AND WATERWAY CONSULTING (DAVE MEYER) ON SEPTEMBER 23, 2025, AND WAS FIELD LOCATED BY TRIO ENGINEERING, LLC.
- ALL TELEPHONE LINES, ELECTRIC LINES, CABLE TELEVISION LINES, TELECOMMUNICATION LINES AND OTHER SIMILAR UTILITY SERVICES SHALL BE PLACED UNDERGROUND UNLESS THE APPLICANT OR UTILITY CAN DEMONSTRATE THAT UNDERGROUNDING IS NOT FEASIBLE.
- AS OWNER I HEREBY RESTRICT ALL LOTS AND BLOCKS, IN THAT NO OWNER, POSSESSOR, USER, NOR LICENSEE, NOR OTHER PERSON SHALL HAVE ANY RIGHT OF DIRECT VEHICULAR INGRESS OR EGRESS WITH INTERSTATE "43" AS SHOWN ON THIS MAP; IT BEING EXPRESSLY INTENDED THAT THIS RESTRICTION SHALL CONSTITUTE A RESTRICTION FOR THE BENEFIT OF THE PUBLIC ACCORDING TO S.236.293, STATS., AND SHALL BE ENFORCEABLE BY THE DEPARTMENT OF TRANSPORTATION.
- THE LOTS OF THIS LAND DIVISION MAY EXPERIENCE NOISE AT LEVELS EXCEEDING THE LEVELS IN s. TRANS 405.04, TABLE I. THESE LEVELS ARE BASED ON FEDERAL STANDARDS. THE DEPARTMENT OF TRANSPORTATION IS NOT RESPONSIBLE FOR ABATING NOISE FROM EXISTING STATE TRUNK HIGHWAYS OR CONNECTING HIGHWAYS, IN THE ABSENCE OF ANY INCREASE BY THE DEPARTMENT TO THE HIGHWAY'S THROUGH-LANE CAPACITY.

LEGEND:

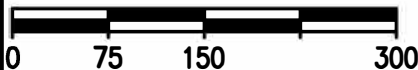
- - INDICATES Section Corner (See Plan for Details)
- - INDICATES "Found" 3/4" Iron Rod.
- - INDICATES "Found" 1" Iron Pipe.

P.O.C.
 S.E. CORNER, S.E. 1/4,
 SEC. 27-6-20
 FND. CONC. MON. W/ ALUM.
 CAP. WISCONSIN STATE PLANE
 COORD. SYSTEM-SOUTH ZONE
 N 349,999.69, E 2,506,308.94

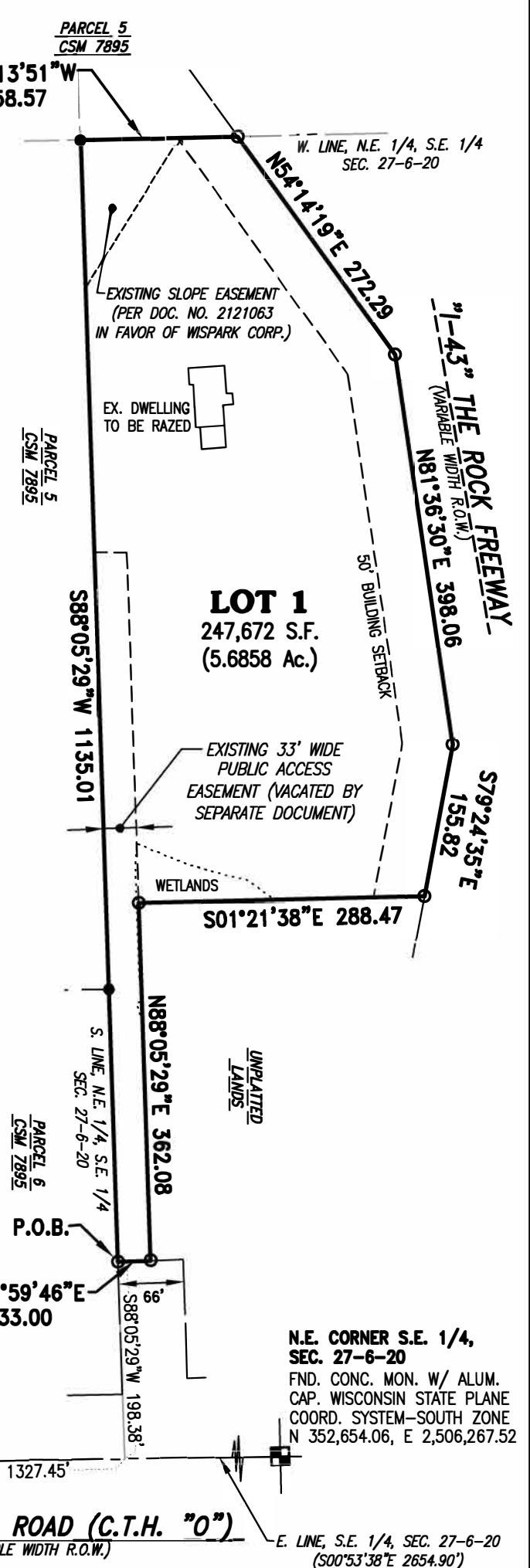
**N.E. CORNER S.E. 1/4,
 SEC. 27-6-20**
 FND. CONC. MON. W/ ALUM.
 CAP. WISCONSIN STATE PLANE
 COORD. SYSTEM-SOUTH ZONE
 N 352,654.06, E 2,506,267.52



SCALE: 1"=150'



S. MOORLAND ROAD (C.T.H. "0")
 (VARIABLE WIDTH R.O.W.)



H:\CT700\787\19018-01\Survey\CSM\530CSM02.dwg

DRAFTED THIS 24TH DAY OF OCTOBER, 2025
 THIS INSTRUMENT WAS DRAFTED BY GRADY L. GOSSER, S-2972

19-018-787-01
 SHEET 1 OF 3

STATE OF WISCONSIN
CITY OF NEW BERLIN
BOARD OF APPEALS

NEW BERLIN CITIZENS UNITED, U.A.
4880 South Courtland
New Berlin, WI 53151

Appellant,

CITY OF NEW BERLIN
PLAN COMMISSION
3805 S. Casper Drive
New Berlin, WI 53151

Respondent.

In Re:
December 8, 2025
Plan Commission Determination
5295 South Moorland Road

DECLARATION OF R. TYLER BRENNER

COUNTY OF WAUKESHA)
)
STATE OF WISCONSIN)

R. Tyler Brenner, states as follows:

1. My name is R. Tyler Brenner. My home address is 15101 West Small Road, New Berlin, WI 53151. I am a founding member of New Berlin Citizens United, U.A. NBCU includes many supporters and members. A list of some of our members who live near the proposed MRM facility is attached to this statement.

2. The interests of those who reside in the city of New Berlin, who are naturally bound to the land and to the community in which they live, should take priority over that of foreign entities / investors looking to develop within our city for their own profit. We have all laid our roots in this city; most as young families looking to raise our children, nearly all to invest our life-long earnings in real property and enjoy the public safety, security, and the aesthetically pleasing suburban environment New Berlin has to offer.

3. The recent actions of the planning commission, and involving the actions and statements of Director Kessler and City Attorney Schmitzer, undermines the non-biased, objective role that should be compulsory for such positions within local government

4. The proposed New Journey MRM facility puts our property at an obvious and inevitable risk of becoming an “undesirable location.” Our property is within a .5-mile radius of the proposed facility. Another member of NBCU, the Kastner’s property is also within .5 miles. It is apparent that there will be a negative impact and devaluation of existing properties in the immediate vicinity, whether industrial or residential, due to the facility, but that has been inexplicably dismissed by staff and the Plan Commission as inconsequential.

5. As evident by the emails sourced through open public records (Wis. Stat. §19.31-19.39), City officials went out of their way in what were effectively private discussions with the representatives of the developer firm and its investors find a “solution” for their jointly-owned properties at 5295 S Moorland. Ultimately. They ultimately agreed that the proposed 57,000 S.F. CBRF constitutes a “church”. An action that undeniably gives developers (through zoning evasion), unfair priority over the rest of the citizens and taxpayers of the City and in particular those of us who live in close proximity to the proposed development as neighbors. I have attached copies of relevant emails from these open records.

6. Evaluating the risk of negative events that are without any reasonable doubt going to occur if this facility is put into operation is not inappropriate. We are in favor of providing appropriate help to people that are experience unfair challenges. But it is appropriate to consider the impact of this proposed facility on our neighborhood. The current site is not a reasonable location for this of development.

7. According to the Milwaukee Fire Department, Milwaukee Rescue Mission’s central campus, located at 830 N. 19th street in Milwaukee and during a single year period

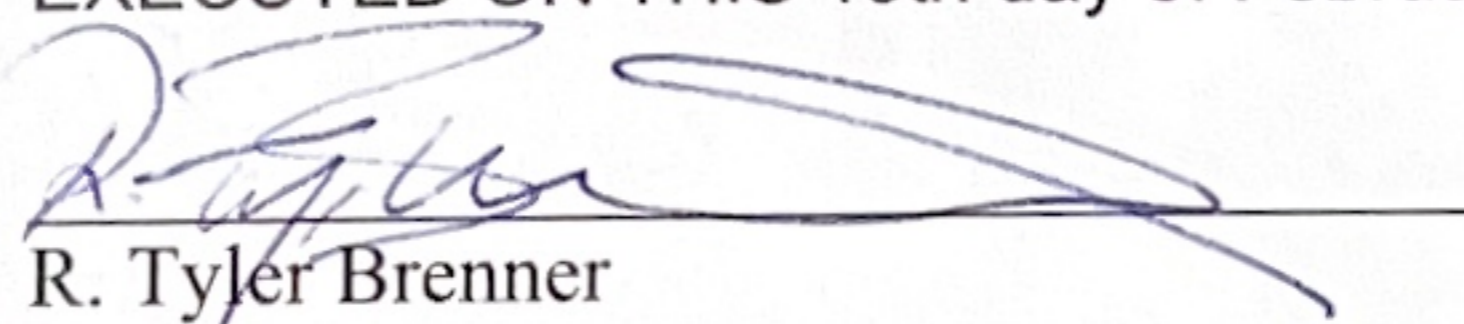
between January 1st 2024, to February 26th 2025, 218 ERT calls for service were issued by (or in response to) the facility.¹ This is objective, irrefutable evidence, in regards to risk towards public safety, depletion of ERT resources, and the overall blight this would cause our suburban neighborhood and the City in general.

8. We as the property owners and taxpayers of the City, and in particular those of us who live near the proposed facility, are not required, by any law, to trust the unrestricted, unsanctioned, and ungoverned vetting process of a privately owned, non-profit organization, whether religious or non by affiliation. The safety of our children is paramount and non-negotiable. We are rightly and reasonably concerned about their safety, and the overall safety of the neighborhood, should the project proceed as planned.

9. The City and I believe the developers, should be morally and ethically obligated to consider the inherent risks such a facility would impose upon the residential properties that are in the immediate vicinity (.5 mi. RAD), as well as the lives and well-being of those who reside in close proximity.

PURSUANT TO 28 U.S.C. SEC. 1746, I CERTIFY
UNDER PENALTY OF PERJURY THAT THE
FOREGOING IS TRUE AND CORRECT TO THE
BEST OF MY KNOWLEDGE.

EXECUTED ON THIS 19th day of February, 2026.


R. Tyler Brenner

¹ See <https://www.tmj4.com/news/milwaukee-county/ambulances-constantly-at-homeless-shelters-in-milwaukee>

MEMBERS OF NEW BERLIN NEIGHBORS UNITED. U.A.

MEMBERS OF NEW BERLIN CITIZENS UNITED. U.A.

As referenced in the attached Declaration, the following our founding members of NBCU. Our property and the Kastners are within .5 miles of the proposed MRM facility.

Hannah & Tyler Brenner
15101 W. Small Road
New Berlin, WI 53151

Mark & Shari Kastner
15185 W. Small Road
New Berlin, WI 53151

Mackenzie Plehn-Smith
4880 S. Courtland Court
New Berlin, WI 53151

John & Christine Wollenziehn
14825 W. Small Road
New Berlin, WI 53151

Leah Deml
3480 S. Wehr Road
New Berlin, WI 53146

Theresa Sebestyen
6095 S. Karrington Lane
New Berlin, WI 53151

Andrew & Ashley Tietzen
16355 W. Crescent Drive
New Berlin, WI 53151

James Gatzke
13900 W. Brook Hollow Court
New Berlin, WI 53151

Annette Gelinsky
13030 W. Armour Avenue
New Berlin, WI 53151

Mary Fennig
5090 S. Small Road
New Berlin, WI 53151

Erin Maney
16225 W. Heatherly Drive
New Berlin, WI 53151

Julie LeCourt
12620 W. Needham Drive
New Berlin, WI 53151

Maria Haas
13469 W. Grange Avenue
New Berlin, WI 53151

Lori Hoffman
2841 S. Franklin Drive
New Berlin, WI 53151

Corrine Wolf
14935 W. Small Road
New Berlin, WI 53151

From: John Ford
Sent: Friday, April 4, 2025 3:22 PM
To: Greg Kessler (gkessler@newberlin.org<mailto:gkessler@newberlin.org>)
<gkessler@newberlin.org<mailto:gkessler@newberlin.org>>; Kelly Wall
(kwall@newberlin.org<mailto:kwall@newberlin.org>)
<kwall@newberlin.org<mailto:kwall@newberlin.org>>
Subject: RE: 5295 S Moorland

Greg - sorry I missed you today.

Kelly - nice speaking with you and catching up this afternoon!

As you know, we have been actively trying to find a development solution over the past few years for our site at 5295 S Moorland. We have a user / user that has significant interest in the site that we think would work really well. We'd like to come in with the user to further discuss thoughts / next steps.

Here are a couple dates that would work next week:

- * Tuesday (4/8) 8AM OR 10AM
- * Friday (4/11) 11AM

Let me know what works for both of you and we can get on the calendar.

Have a nice weekend!

[<https://threeleafdevelopment.com/wp-content/uploads/2023/08/TLP-Logo-Green.png>]
<<https://url.us.m.mimecastprotect.com/s/BqLCCL9P2vUROB8XFqhVcy4104/>>
John Ford | Chief Development Officer
jford@threeleafdevelopment.com<mailto:jford@threeleafdevelopment.com>
OFFICE: 414-775-0TLP(0857) CELL: 414-399-0165

504 W. Juneau Avenue
Milwaukee, WI 53203

From: John Ford
Sent: Friday, April 11, 2025 11:23 AM
To: Greg Kessler (gkessler@newberlin.org<mailto:gkessler@newberlin.org>)
<gkessler@newberlin.org<mailto:gkessler@newberlin.org>>
Subject: RE: 5295 S Moorland

Hi Greg -

Nice catching up this morning and thank you for the time!

As discussed, times have changed from when we originally proposed the hotel at this site. Hotels are not financeable and the entire demand for such has changed post-Covid. Additionally, this site has other access challenges that we've discussed when considering industrial type uses.

I understand your concern / reaction of having a non-profit development on a TIF district. In thinking about this potential use, I'd ask you to consider the overall impact such could have for the community, how this location makes sense for such, and try to collaboratively look for potential solution. I have connected with New Journey and updated them on our conversation. As requested, we will gather additional information on their program specifics + examples and send over to you next week for your review.

We can then further discuss once you've had a chance to review such.

Have a great weekend!

[<https://threeleafdevelopment.com/wp-content/uploads/2023/08/TLP-Logo-Green.png>]
<<https://url.us.mimecastprotect.com/s/BqLCCL9P2vUROB8XFqhVcy4104/>>
John Ford | Chief Development Officer
jford@threeleafdevelopment.com<mailto:jford@threeleafdevelopment.com>
OFFICE: 414-775-0TLP(0857) CELL: 414-399-0165

504 W. Juneau Avenue
Milwaukee, WI 53203

From: John Ford
Sent: Friday, May 9, 2025 1:16 PM
To: Greg Kessler (gkessler@newberlin.org<mailto:gkessler@newberlin.org>)
<gkessler@newberlin.org<mailto:gkessler@newberlin.org>>
Cc: Matt Burow
<Matt@threeleafdevelopment.com<mailto:Matt@threeleafdevelopment.com>>
Subject: Meeting - 5295 S Moorland Ave

Hi Greg -

Matt and I would like to coordinate a meeting with you in the near future to discuss our development site at 5295 S Moorland in an effort to collaboratively work together to find a solution that will actually work at this site.

We have now owned the land for nearly 5 years and want to find a solution.

Can you please provide some dates / times over the next 2 weeks and we'll respond with what works for us and get it on the calendar?

To be most efficient, would it make most sense for the meeting to include both yourself and Mayor Ament?

Appreciate your time and consideration!

[<https://threeleafdevelopment.com/wp-content/uploads/2023/08/TLP-Logo-Green.png>]
<<https://url.us.mimecastprotect.com/s/qmVNCv2jz8F756VgUotrQ-CGj/>>

John Ford | Chief Development Officer

jford@threeleafdevelopment.com<mailto:jford@threeleafdevelopment.com>

OFFICE: 414-775-0TLP(0857) CELL: 414-399-0165

504 W. Juneau Avenue
Milwaukee, WI 53203

From: John Ford <jford@threeleafdevelopment.com>
Sent: Tuesday, May 27, 2025 9:43 AM
To: Kessler, Greg <gkessler@newberlin.org>; Jones, Nikki
<njones@newberlin.org>
Cc: Matt Burow <Matt@threeleafdevelopment.com>
Subject: RE: Meeting - 5295 S Moorland Ave

Hi Greg & Nikki -

Hope you enjoyed the holiday Memorial Day weekend!

Following up on our meeting last week (5/20/25) about our development site at 5295 S Moorland. We discussed two options / users that have strong interest in our site:

1. Milwaukee Rescue Mission New Journey

* Willing to do a PILOT for City taxes that an industrial use approximately would pay at site. Can you provide us an example of what this payment might look like based on your development? What size building are you planning to construct at this site? Do you have a concept site plan/elevation? Would the building encompass both parcels (Tax Key #: 1260.998.001 == 3.37 acres & Tax Key #: 1260.998.002)?

* At meeting you asked us to look into Fire / EMS frequency for this use...we checked with MRM and they have had to call an ambulance a total of 8 times over the past 4 years (average 2x/year). Obviously, this is a very low usage rate. Can you also confirm with Milwaukee Police Department the average number of PD calls per year?

* 6-month program of fully vetted clients that includes rehabilitation, stay program, and classes / repositioning. Further details previously sent + re-attached here for convenience. What is the maximum number of clients you will have at one time? Would these be apartments/dorms or more like a hospital room? You mention in your memo dated April 17, 2025, that its's your goal to launch a new campus that would allow you to double your current capacity. The memo states that your current capacity is 40 to 50 men in new Journey.

* 501c(3) Can you explain what type of license this may require from the state? The websites states the organization was - established in 2011, the Journey House Charitable Foundation is a nonprofit, registered 501(c)(3) public charity whose principal purpose is to seek gifts, contributions, donations and bequests for Journey House, Inc. in support of its charitable purposes.

* A revised TIA would be required for this location based on the potential change in use. Please confirm if you would request TIF funding if public improvements are required, based on a revised TIA for your development and County review?

* Below are the definitions for church from our Zoning Code section 275-70 - Based on these definitions can you tell us more about the plan of operation for the church that is interested in this location? What size building would they plan to construct at this site? Do you have a concept site plan/elevation? Would the building encompass both parcels (Tax Key #: 1260.998.001 - 3.37 acres & Tax Key #: 1260.998.002)

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 cafe. 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.

We have evaluated / marketed to nearly all potential uses for this site, including industrial. Access is the challenge for Industrial uses. Each of the two above uses have interest in this site and would NOT require the TID. I saw Greg Johnson's (Ehlers) email dated 5/20/25 (attached) whereby he indicated the process to close a TID, especially this TID #4 given small / simple, is straightforward with Common Council simply adopting a resolution to close.

We discussed next steps at the conclusion of our meeting that you wanted to discuss with the Mayor and City Attorney. Please advise once you have done so and would like to further discuss. We look forward to continuing to collaboratively work towards a solution at this site.

The Zoning Code section 275-70 (definitions) defines "Community Living Arrangements" as The following facilities, licensed or operated or permitted under the authority of the Wisconsin State Statutes: child welfare agencies under A7 48.60, Wis. Stats., group foster homes for children under A7 48.02(7m), Wis. Stats., and community-based residential facilities under A7 50.01, Wis. Stats. 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 =A7=A7 46.03(22), 59.69, 62.23(7)(i), and 62.23(7a), Wis. Stats., and amendments thereto.

i. See

also Zoning Code Seciton 275-41G(1)

G. Institutional/public/semipublic uses.

(1) Community living arrangements.

(a) Community living arrangements as provided for in =A7 62.23(7)(i), Wis. Stats., shall be a principal use in all residential districts and in the Institutional District.

(b) Community living arrangements that exceed the limit of those defined in A7 62.23(7)(i), Wis. Stats., may be approved as a conditional use per Section 275-27

<[https://library.municode.com/wi/new_berlin/codes/municipal_code=?nodeId=3DPTIIGELE_CH275ZO_ARTIIIIREAPPR_S275-27COUS](https://library.municode.com/wi/new_berlin/codes/municipal_code/?nodeId=3DPTIIGELE_CH275ZO_ARTIIIIREAPPR_S275-27COUS)>.

(c) Community living arrangements shall meet all applicable state statutes regarding such uses.

* A revised TIA would be required for this location based on the potential change in use. Please confirm if you would request TIF funding if public improvements are required, based on a revised TIA for your development and County review?

* Note, there is no public transportation offered to this location. How will program participants access the program?

* Will there be outdoor programming such as recreational activities outside the building?

* How much onsite parking will be anticipated?

1. Church

* Non-profit

* Allowed by current zoning

From: "Kessler, Greg" <gkessler@newberlin.org>
To: John Ford <jford@threeleafdevelopment.com>, "Jones, Nikki"
<njones@newberlin.org>
CC: Matt Burow <Matt@threeleafdevelopment.com>
Subject: RE: Meeting - 5295 S Moorland Ave
Thread-Topic: Meeting - 5295 S Moorland Ave
Thread-Index: AdvBDa0IdIU+kridRC25DGspR03n1A0BXyFAAGKWgTA=
Date: Thu, 29 May 2025 13:42:54 +0000

Good Morning:

Please see my comments and questions in red below.

As you will note below, we have tried to review our various Zoning Code use tables (M-1, I-1, etc.) to better understand how your use would be characterized, and we are having difficulty with this step. It seems that it is not a CBRF, nor a hospital. Their website states they are a charitable, non-profit, Christian organization. Until you can provide us clarity on how we can define the use of the Milwaukee Rescue Mission New Journey, it is difficult for us to prescribe an application process. Would you be willing to check with the City of Milwaukee to see how they have characterized this use based on their Zoning Code.

Regards,
Greg

From: Kessler, Greg
<gkessler@newberlin.org<mailto:gkessler@newberlin.org>>
Sent: Tuesday, July 29, 2025 12:12 PM
To: John Ford
<jford@threeleafdevelopment.com<mailto:jford@threeleafdevelopment.com>>
Subject: New Journey Follow-Up

Good Afternoon:

Thank you for the follow up information that you provided. I will pass this on to Mayor Ament and Ald Harenda.

After reviewing the information that you supplied as well as the City Code specifically section 275-70 and 275-35 it is our conclusion that from a pure use standpoint the proposed New Journey facility is most appropriately categorized as an institutional use given its nature as an inpatient/outpatient AODA treatment facility. With that being said we acknowledge that there is some faith-based component to the treatment programs and therefore that this use is arguably consistent with the definition of a community church as defined in the aforementioned code section, as well as under RLUIPA. Such a use is considered a permitted use in our industrial zoning district which is the district in which your subject property is found.

In light of these conclusions the City considers your proposed New Journey church/treatment facility to be a permitted use on the property you propose for it, and you may therefore make an application for a zoning permit accordingly. This zoning permit will require that you make an application for use site and architectural approval for the building you intend to construct. Use site and architectural approval will need to be considered by the City Plan Commission and the permit itself will be subject to the findings in the staff report which will include the following:

1. The use will be maintained consistent with the definition of a community church as per Section 275-70 of the city code.
2. The use will be maintained in accordance with the permit(s) that you are issued to operate the facility by any governmental entity with jurisdiction including State of WI DHS.
3. The use will be operated consistent with the approved plan of operation that you supply to the city.
4. You have indicated that in the event that the use becomes tax exempt at any point that the property owner will make a payment in lieu of taxes to the City for the amount which would have been paid by a similar industrial use in the Westridge business park. We expect that this

agreement will be memorialized in an agreement agreeable to the property owner and the city which will be recorded with the Waukesha County Register of Deeds and will run in perpetuity with the land.

The forms for the aforementioned application may be found on the City's website. Considering these conclusions, we don't believe that a meeting with the mayor and/or the Alderman of the district is necessary.

For the sake of transparency I want to make you aware that since the property will no longer be developed as a hotel as originally represented in the creation of TID 4 staff will be recommending to the Common Council that it adopt a resolution to terminate TID 4 and therefore that the property will no longer be part of a tax incremental financing district. Thank you for your consideration of these comments.

Please let me know if you have any questions or would like to set up a pre-application meeting.

Regards,
Greg

[photo]

Gregory Kessler, AICP
Director
Department of Community Development
City of New Berlin | 3805 S. Casper Drive | New Berlin, WI 53151
Phone: 262.797.2445
Email: gkessler@newberlinwi.gov

418 Wis.2d 78, 2025 WI App 49
Court of Appeals of Wisconsin.

**WISCONSIN REALTORS
ASSOCIATION, INC.**, Plaintiff-Appellant,
v.
CITY OF NEENAH,
Defendant-Respondent.

Appeal No. 2024AP994
|
Submitted on Briefs March 28, 2025
|
Filed July 9, 2025

Summary judgment is appropriate when there are no disputed material facts and moving party is entitled to judgment as matter of law.

Synopsis

Background: Trade association representing real estate professionals brought action against city to challenge city ordinance that prohibited owners of residential property from obtaining permit to rent the property unless it was their primary residence, which was an ordinance that association claimed was preempted by state statute. Association moved for declaratory and summary judgment, which city opposed. The Circuit Court, Winnebago County, Daniel J. Bissett, J., entered summary judgment for city. Trade association appealed.

Holdings: The Court of Appeals, Lazar, J., held that:

[1] association demonstrated that it had associational standing to bring action, and

[2] ordinance was in logical conflict with, and thus was preempted by, state statute that limited ability of cities to restrict rentals of residential dwellings.

Affirmed in part, reversed in part, and cause remanded with directions.

West Headnotes (15)

[1] **Summary Judgment**—In conjunction with right to judgment as matter of law

[2] **Appeal and Error**—Plenary, free, or independent review

Appellate court reviews circuit court’s grant of summary judgment independently.

[3] **Appeal and Error**—State preemption of local law

Whether statute preempts municipal ordinance is question of law to be reviewed independently by appellate court.

[4] **Appeal and Error**—Standing

Whether party has standing is question of law that appellate court reviews independently.

[5] **Action**—Persons entitled to sue

“Standing” is concept that restricts access to judicial remedies to those who have suffered some injury because of something that someone has either done or not done.

[6] **Associations**↔Standing of members in general
Associations↔Germaneness

Courts recognize associational standing when at least one of members of association would have had standing and interests at stake in litigation are germane to organization’s purpose.

1 Case that cites this headnote

[7] **Corporations and Business Organizations**↔Persons entitled to sue; standing
Declaratory Judgment↔Subjects of relief in general

As required for trade association for real estate professionals to have associational standing to seek declaration that **city** ordinance that prohibited owners of residential property from obtaining permit to rent property unless it was their primary residence was preempted by state statute, association demonstrated that at least one member of association would have had standing to seek such declaration; officer of association testified that association’s members owned real property in **city**, including property to be used for short-term rentals. *Wis. Stats* § 66.1014.

1 Case that cites this headnote

[8] **Corporations and Business Organizations**↔Persons entitled to sue; standing
Declaratory Judgment↔Subjects of relief in general

Trade association for real estate professionals demonstrated that its interest in seeking declaration that **city** ordinance that prohibited owners of residential property from obtaining permit to rent property unless it was their primary residence was preempted by state statute was germane to association’s purpose, as required for association to have standing to seek

such declaration; officer of association attested that association’s goals included, among other things, defending property rights, which would implicate right to rent residential dwelling regardless of whether or not it was owner’s primary residence. *Wis. Stats* § 66.1014.

1 Case that cites this headnote

[9] **Courts**↔Decisions of United States Courts as Authority in State Courts

Federal law on standing is not binding in Wisconsin. *U.S. Const.* art. 3, § 2, cl. 1.

[10] **Landlord and Tenant**↔Preemption Municipal, County, and Local Government↔Regulation of Private Conduct; Police Power
Zoning and Planning↔Other particular cases

City ordinance that prohibited owners of residential property from obtaining permit to rent property unless it was their primary residence was in logical conflict with, and thus was preempted by, state statute that limited ability of **cities** to restrict rentals of residential dwellings; despite argument that ordinance simply limited ownership of rental property, statute forbade local ordinances that prohibited rental of any building intended to be used as home, residence, or sleeping place for seven consecutive days or longer, and statute’s requirement that owner engaging in short-term rental had to be allowed to rent out residential dwelling for at least six months of year conflicted with ordinance’s requirement that owner live in dwelling for more than six months of year. *Wis. Stats* § 66.1014.

[11] **Statutes**↔Language

Court starts with statute’s text in deciphering its meaning.

of state legislation—is sufficient to constitute preemption.

[12] **Statutes** → Plain language; plain, ordinary, common, or literal meaning

When meaning of statute is plain from its text, court need not inquire further.

APPEAL from an order of the circuit court for Winnebago County, Cir. Ct. No. 2022CV707: DANIEL J. BISSETT, Judge. *Affirmed in part, reversed in part and cause remanded with directions.*

Attorneys and Law Firms

On behalf of the plaintiff-appellant, the cause was submitted on the briefs of Michelle E. Martin and Zachariah J. Sibley of Axley Brynerson, LLP, Madison.

[13] **Zoning and Planning** → Free or unrestricted use of property

Zoning ordinances are in derogation of common law and, hence, are to be construed in favor of free use of private property.

On behalf of the defendant-respondent, the cause was submitted on the brief of Joseph M. Wirth and Ryan J. Truesdale of Wirth + Baynard, Wauwatosa.

Before Gundrum, P.J., Neubauer, and Lazar, JJ.

Opinion

LAZAR, J.

[14] **Zoning and Planning** → Free or unrestricted use of property

To operate in derogation of common law, provisions of zoning ordinance must be clear and unambiguous.

*81 **665 ¶1 The Wisconsin Realtors Association, Inc. (WRA) appeals an order of the circuit court granting summary judgment in favor of the City of *82 Neenah. WRA contends that the court was incorrect in holding that the City’s Tourist Housing Ordinance, which prohibits owners of residential property **666 from obtaining the necessary permit for renting that property unless it is their “primary residence,” is not contrary to Wis. Stat. § 66.1014 (2023-24).¹ The City defends the court’s grant of summary judgment and argues that WRA does not have standing to challenge the ordinance in the first place. We affirm the circuit court’s determination that WRA satisfies our state’s permissive requirements for standing. We reverse the circuit court’s grant of summary judgment in favor of the City, however, because the ordinance logically conflicts with state law. We direct the court to issue a revised order declaring the Ordinance preempted and therefore void.

BACKGROUND

[15] **Municipal, County, and Local Government** → Conflicting or conforming laws; conflict preemption

Satisfaction of single prong of test for determining whether ordinance is preempted by state statute—i.e., (1) legislature has expressly withdrawn power of municipalities to act; (2) ordinance logically conflicts with state legislation; (3) ordinance defeats purpose of state legislation; or (4) ordinance violates spirit

¶2 The **City** adopted its Tourist Housing Ordinance (the “Ordinance”) in 2017. See **Neenah**, Wis., Code ch. 26, art. XV (enacted by Ordinance No. 2017-09 (June 21, 2017)). Relevant to this appeal, Sections 26-661(7)–(8) of the Ordinance list two “[s]tandards” to which all tourist housing properties in the **City of Neenah** must conform:

(7) The owner(s) of the property must obtain a tourist housing permit before any rentals are allowed;

(8) The tourist housing property shall be the primary residence of the applicant.

¶3 Also in 2017, the state legislature enacted [Wis. Stat. § 66.1014](#), entitled “Limits on residential dwelling rental prohibited.” 2017 Wis. Act 59, § 996g. *83 The statute defines a “[r]esidential dwelling” as “any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.” [Sec. 66.1014\(1\)\(b\)](#). It further provides, in subsection (2):

(a) Subject to par. (d), a **[city]** may not enact or enforce an ordinance that prohibits the rental of a residential dwelling for 7 consecutive days or longer.

(b) If a **[city]** has in effect on September 23, 2017, an ordinance that is inconsistent with par. (a) or (d), the ordinance does not apply and may not be enforced.

(c) Nothing in this subsection limits the authority of a **[city]** to enact an ordinance regulating the rental of a residential dwelling in a manner that is not inconsistent with the provisions of pars. (a) and (d).

(d) 1. If a residential dwelling is rented for periods of more than 6 but fewer than 30 consecutive days, a **[city]** may limit the total number of days within any consecutive 365-day period that the dwelling may be rented to no fewer than 180 days. The **[city]** may not specify the period of time during which the residential dwelling may be rented, but the **[city]** may require that the maximum number of allowable rental days within a 365-day period must run consecutively. A person who rents the person’s residential dwelling shall notify the clerk of the **[city]** in writing when the first rental within a 365-day period begins.

2. Any person who maintains, manages, or operates a short-term rental, as defined in [\[Wis. Stat. §\] 66.0615 \(1\) \(dk\)](#), for more than 10 nights each year, shall do all of the following:

*84 a. Obtain from the department of agriculture, trade

and consumer protection a license as a tourist rooming house, as defined in [\[Wis. Stat. §\] 97.01 \(15k\)](#).

b. Obtain from a **[city]** a license for conducting such activities, if a **[city]** enacts **667 an ordinance requiring such a person to obtain a license.

¶4 **WRA** filed suit to challenge the Ordinance, asserting that its “primary residence” requirement is contrary to and preempted by [Wis. Stat. § 66.1014](#).² According to its Senior Vice President of Legal and Public Affairs, **WRA** is a non-stock corporation whose members are “residential and commercial real estate sales agents, brokers, appraisers, inspectors, property managers, bankers and other professionals who touch real estate.” **WRA’s** members, who number over 17,500, “assist people in buying, selling, and managing property in the **City**, including, but not limited to, real property to be used for short-term rentals.” **WRA’s** purposes include “defending property rights, promoting economic growth, and keeping housing affordable.” At least some of **WRA’s** members “own real property in the **City**, including, but not limited to, property to be used for short-term rentals.”

¶5 The **City** opposed **WRA’s** motions for declaratory judgment and summary judgment. In addition to arguing that **WRA** was wrong on the merits, it argued that **WRA** lacked standing to challenge the Ordinance.

¶6 In an oral ruling, the circuit court determined that **WRA** had standing under *85 *Metropolitan Builders Ass’n of Greater Milwaukee v. Village of Germantown*, 2005 WI App 103, 282 Wis. 2d 458, 698 N.W.2d 301. On the merits, however, the court sided with the **City**, determining that the “primary residence” requirement of the Ordinance neither violated nor was preempted by [Wis. Stat. § 66.1014](#). The court then entered an order granting summary judgment to the **City** in this regard.

DISCUSSION

[1] [2]¶7 **WRA** appeals, arguing that the circuit court should not have granted summary judgment to the **City** because the Ordinance restricting short-term rentals³ to only residential dwellings that are the “primary residences” of their owners is either prohibited or preempted by [Wis. Stat. § 66.1014](#). “Summary judgment is appropriate when there are no disputed material facts and the moving party is entitled to judgment as a matter of law,” and we review the circuit court’s grant of summary judgment independently. *Scenic Pit LLC v.*

Village of Richfield, 2017 WI App 49, ¶6, 377 Wis. 2d 280, 900 N.W.2d 84.

¹³ ¹⁴ ¶8 Whether a statute preempts a municipal ordinance is also a question of law to be reviewed independently by this court. *Lake Beulah Mgmt. Dist. v. Village of East Troy*, 2011 WI 55, ¶11, 335 Wis. 2d 92, 799 N.W.2d 787; *Scenic Pit*, 377 Wis. 2d 280, ¶7, 900 N.W.2d 84. Before we address that issue, however, we review the **City's** argument that the circuit court erred in determining that **WRA** has standing to challenge the Ordinance. *86 ⁴ Whether a party has standing is yet another question of law that this court reviews independently. *Krier v. Vilione*, 2009 WI 45, ¶14, 317 Wis. 2d 288, 766 N.W.2d 517; *City of Mayville v. DOA*, 2020 WI App 63, ¶9, 394 Wis. 2d 296, 950 N.W.2d 925.

**668 A. Standing

¹⁵ ¹⁶ ¶9 “‘Standing’ is a concept that restricts access to judicial remedies to those who have suffered some injury because of something that someone has either done or not done.” *Munger v. Seehafer*, 2016 WI App 89, ¶48, 372 Wis. 2d 749, 890 N.W.2d 22. As part of the liberal standard employed in Wisconsin, *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶19, 402 Wis. 2d 587, 977 N.W.2d 342, courts in our state recognize “associational standing” when at least one of the members of an association would have had standing and “the interests at stake in the litigation are germane to the organization’s purpose,” *Munger*, 372 Wis. 2d 749, ¶54, 890 N.W.2d 22 (citation omitted); see also *Metropolitan Builders Ass’n*, 282 Wis. 2d 458, ¶13, 698 N.W.2d 301 (concluding that an association had standing so long as any of its members had the right to challenge the ordinance at issue). The point is to make sure that a party has a sufficient stake in the lawsuit such that it will “carefully develop[] and zealously argue[]” the issues. See *McConkey v. Van Hollen*, 2010 WI 57, ¶16, 326 Wis. 2d 1, 783 N.W.2d 855. Judicial efficiency is also a part of the analysis. *Id.*, ¶18. As we stated in *Metropolitan Builders Ass’n*, in some contexts, “[t]here is *87 simply nothing to be gained from repeated litigation of the same issue.” 282 Wis. 2d 458, ¶16, 698 N.W.2d 301.

¹⁷ ¹⁸ ¶10 Here, there is unrefuted evidence in the Record (and the circuit court found) that at least one of **WRA's** members would have had standing to challenge the Ordinance; an officer of **WRA** attested that “**WRA's** members own real property in the **City**, including ... property to be used for short-term rentals.” He also attested that **WRA's** goals include, among other relevant

things, “defending property rights,” which would implicate the right to rent a residential dwelling regardless of whether or not it was the owner’s primary residence. **WRA's** interest in challenging the Ordinance is thus germane to its purpose, and it has sufficient stake to carefully and zealously present the issues. And, as in *Metropolitan Builders Ass’n*, judicial economy is served by allowing **WRA** members to challenge the Ordinance through collective action rather than individually; the court saves resources by resolving this issue once rather than in multiple lawsuits. See 282 Wis. 2d 458, ¶16, 698 N.W.2d 301 (noting some of the disincentives to bringing individual cases for developers belonging to an association, including fear of retaliation by the village being sued by the association).

¹⁹ ¶11 In asserting that **WRA** lacks standing, the **City** notes the associational standing doctrine articulated in *Munger* but then relies exclusively on federal law, arguing that **WRA's** interest in challenging the Ordinance is insufficient. “Federal law on standing is not binding in Wisconsin.” *Friends of Black River Forest*, 402 Wis. 2d 587, ¶17, 977 N.W.2d 342. For the foregoing reasons, and assuming without deciding that this court has jurisdiction to review the standing issue raised in *88 the **City's** cross-appeal, we do not disturb the circuit court’s holding that **WRA** has standing to challenge the Ordinance.

B. Preemption

¹⁰ ¶12 Turning to the merits of the case, we must determine whether the Ordinance permitting tourist housing rental only for “the primary residence” of the applicant is void as preempted by Wis. Stat. § 66.1014. In *DeRosso Landfill Co., Inc. v. City of Oak Creek*, 200 Wis. 2d 642, 547 N.W.2d 770 (1996), our supreme court articulated the test it first announced in *Anchor Savings & Loan Ass’n v. Equal Opportunities Commission*, 120 Wis. 2d 391, 395-97, 355 N.W.2d 234 (1984): a municipal **669 ordinance is preempted by state statute—and therefore void—when “(1) the legislature has expressly withdrawn the power of municipalities to act; (2) it logically conflicts with state legislation; (3) it defeats the purpose of state legislation; or (4) it violates the spirit of state legislation.” *DeRosso Landfill*, 200 Wis. 2d at 651-52, 547 N.W.2d 770 (footnote omitted). We conclude that the Ordinance is preempted based on at least the second prong of the *DeRosso Landfill* test.

¹¹ ¹² ¶13 As always, we start with a statute’s text in deciphering its meaning. See *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633,

681 N.W.2d 110. Wisconsin Stat. § 66.1014(1)(b) defines what the legislature meant by “[r]esidential dwelling” in this context: “any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.” (Emphasis added.) Then, it states in subsection *89 (2)(a) that political subdivisions (such as the City) are prohibited from promulgating an ordinance that “prohibits the rental of a residential dwelling for 7 consecutive days or longer.” Sec. 66.1014(2)(a). Thus, the statute forbids local ordinances that prohibit the rental of “any building ... intended to be used as a home, residence, or sleeping place” for seven consecutive days or longer. See *id.*; § 66.1014(1)(b). When the meaning of a statute is plain from its text, we need not inquire further. See *Kalal*, 271 Wis. 2d 633, ¶45, 681 N.W.2d 110.

¶14 Next, we look at the text of the Ordinance. It says that the City will only grant the required permit to rent out a residential dwelling if it is the applicant’s “primary residence.” Although it does not define the term “primary residence,” the term clearly excludes some residential dwellings—those residences that are non-primary—and thus the ordinance prohibits short-term rentals of at least some residential dwellings. It is evident that this logically conflicts with the statute’s prohibition against local limitations on the short-term rental of “any” residential dwellings.

¶15 The City’s arguments that there is no logical conflict here are unavailing. The City characterizes the statute as imposing only time limits on residential rentals and asserts that the Ordinance does not contain any restrictions conflicting with those time limits; instead, it says, the Ordinance simply limits ownership of rental property. This attempted distinction falls apart with the statute’s explicit language that local government cannot prohibit short-term rental of “any” buildings that are “residential dwellings.” See Wis. Stat. §§ 66.1014(1)(b), 66.1014(2)(a). The statutory definition leaves no room for the City’s suggestion that it can lawfully prohibit the rental of buildings not used *90 as a primary residence so long as the rental agreements for those buildings comport with § 66.1014’s timing requirements.

¶16 The City argues that the statute cannot actually mean that “any” building used or intended to be used as a home is a “residential dwelling” because if it did, “every structure in Neenah can be a residential dwelling” and that would leave the City unable to prohibit short-term rental of every structure in its bounds. Obviously, as far as the statute is concerned, the City is free to limit

short-term rentals on factories, hotels, shopping malls, and any other structures that are not “used or intended to be used as a home, residence, or sleeping place.” See Wis. Stat. § 66.1014(1)(b). More importantly, when the text is clear, it is the end of our inquiry into the meaning **670 of a statute. See *Kalal*, 271 Wis. 2d 633, ¶45, 681 N.W.2d 110.

¶17 Moreover, the City’s assertion (lacking any citation to the Record, we note) that an individual’s “primary residence” is one in which “the individual is domiciled ... for the majority of time” creates another conflict with Wis. Stat. § 66.1014. Subdivision (2)(d)1 of the statute says that a city may “limit the total number of days within any consecutive 365-day period that the dwelling may be rented to no fewer than 180 days”—in other words, an owner engaging in short-term rental must be allowed to rent out a residential dwelling for at least six months of a year. See Wis. Stat. § 66.1014(2)(d)1. According to the City’s definition, though, the Ordinance requires the owner of a rentable dwelling to live in the dwelling for more than six months of a year. The City fails to explain how this conflict can be resolved.

*91 ¹³ ¹⁴¶18 We also note that, notwithstanding the principle that municipalities’ power to enact zoning ordinances is to be broadly construed in favor of the enactor, “[z]oning ordinances are in derogation of the common law and, hence, are to be construed in favor of the free use of private property.” *Heef Realty & Invs., LLP v. City of Cedarburg Bd. of Appeals*, 2015 WI App 23, ¶7, 361 Wis. 2d 185, 861 N.W.2d 797 (alteration in original; citation omitted). Accordingly, “[t]o operate in derogation of the common law, the provisions of a zoning ordinance must be clear and unambiguous.” *Id.* That is not the case here.

CONCLUSION

¹⁵¶19 Because we hold that the Ordinance is in logical conflict with Wis. Stat. § 66.1014, and satisfaction of a single prong of the *DeRosso Landfill* test is sufficient to constitute preemption, we need not address whether the Ordinance defeats the purpose of or violates the spirit of the state legislation. See *DeRosso Landfill*, 200 Wis. 2d at 652, 547 N.W.2d 770. We reverse the circuit court’s grant of summary judgment for the City and direct the court to issue a revised order declaring the Ordinance preempted and therefore void.

By the Court.—Order affirmed in part, reversed in part and cause remanded with directions.

All Citations

Footnotes

- 1 All references to the Wisconsin Statutes are to the 2023-24 version.
- 2 **WRA** also asserted that other provisions in the Ordinance are contrary to state law, but these issues are not on appeal.
- 3 “ ‘Short-term rental’ means a residential dwelling that is offered for rent for a fee and for fewer than 30 consecutive days.” [Wis. Stat. § 66.0615\(1\)\(dk\)](#).
- 4 Because we conclude **WRA** has associational standing, as discussed below, we do not address **WRA’s** argument that the **City’s** failure to file a notice of cross-appeal makes this issue unreviewable. **WRA’s** motion to dismiss the cross-appeal is denied as moot.

408 Wis.2d 763, 2023 WI App 38
Court of Appeals of Wisconsin.

FRIENDS OF BLUE MOUND STATE
PARK, Petitioner-Appellant,
v.
WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,
Respondent-Respondent.

Appeal No. 2022AP1127

Submitted on Briefs: March 17, 2023

Opinion Filed: June 27, 2023

Synopsis

Background: Non-profit organization that sought to preserve and enhance state park filed two petitions seeking judicial review of actions by the Department of Natural Resources (DNR). The Circuit Court, Iowa County, Margaret M. Koehler, J., dismissed the petitions based on lack of capacity and lack of standing. Non-profit appealed.

Holdings: The Court of Appeals, Dugan, J., held that:

- [1] non-profit had capacity to sue DNR;
- [2] administrative regulations did not prohibit “friends groups” from suing DNR;
- [3] articles of incorporation for non-profit organization did not waive its statutory capacity to sue DNR; and
- [4] non-profit organization had standing to seek judicial review of DNR’s denial of its contested case petition.

Reversed and remanded.

West Headnotes (16)

[1] **Appeal and Error** → Standing

Whether party has standing is question of law that court of appeals reviews independently.

1 Case that cites this headnote

[2] **Administrative Law and Procedure** → Motion for dismissal; hearing and determination

In reviewing motion to dismiss petition seeking judicial review of agency decision, court of appeals determines whether petition on its face states facts sufficient to show that petitioner named therein is aggrieved by decision sought to be reviewed.

[3] **Appeal and Error** → Parties, process, and appearance

On review of motion to dismiss for lack of standing, court must take all facts alleged by petitioner to be true in determining whether he has standing to bring his claim; this is petitioner’s ability to prove facts at trial.

[4] **Parties** → Capacity and interest in general

Action cannot be maintained by one who has no capacity to sue.

[5] **Corporations and Business Organizations** → Civil Actions


Non-profit organization that sought to preserve and enhance state park had capacity to sue

Department of Natural Resources (DNR) to challenge revision of its master plan; non-profit was nonstock corporation, statute provided that “[u]nless its articles of incorporation provide otherwise, a corporation has the same powers as an individual to do all things necessary or convenient to carry out its affairs,” and non-profit’s articles of incorporation did not limit non-profit to only supporting, assisting, or promoting DNR. [Wis. Stats § 181.0302](#).

not include any language suggesting qualifying friend groups were prohibited from filing lawsuit against DNR. [Wis. Stats §§ 27.016\(2\)\(b\), 27.016\(3\), 181.0302\(1\)](#).

[6] Corporations and Business Organizations  **Civil Actions**

Legislature did not prohibit “friends groups,” such as non-profit organization that sought to preserve and enhance state park, from suing Department of Natural Resources (DNR) to challenge revision of its master plan; not all “friends groups” existed only by authority granted in state law, non-profit existed as corporate entity, statute provided that entity can only qualify to become eligible for specified grants if that group first existed as “non-stock, nonprofit corporation” that is tax-exempt, and as non-profit followed legislature’s prescribed path for recognition as qualifying, grant-eligible friends group, non-profit had same default powers as any other corporation, including power to sue or be sued. [Wis. Stats §§ 27.016\(1\)\(b\), 181.0302\(1\)](#).

[8] Corporations and Business Organizations  **Application and certificate or articles of incorporation**
Corporations and Business Organizations  **Civil Actions**

Articles of incorporation for non-profit organization, which stated non-profit’s purpose was to “conduct any lawful activities of charitable and educational nature to support, assist, and promote the Wisconsin Department of Natural Resources,” did not waive its statutory capacity to sue Department of Natural Resources (DNR) and challenge DNR’s revision to its master plan; if non-profit’s articles of incorporation were interpreted to waive their right to sue DNR, that would mean non-profit would be unable to sue DNR to enforce terms of their agreement, which would be absurd result. [Wis. Stats § 181.0302\(1\)](#).

[7] Corporations and Business Organizations  **Civil Actions**

Administrative regulations did not prohibit “friends groups,” such as non-profit organization that sought to preserve and enhance state park, from suing Department of Natural Resources (DNR) to challenge revision of its master plan; nothing in administrative rules limited capacity of non-profit, as corporate entity, from being able to sue or be sued, and administrative list of what must be included in agreement between DNR and friends group did

[9] Environmental Law  **Organizations, associations, and other groups**

Non-profit corporation had standing to seek judicial review of Department of Natural Resources’ (DNR) decision to revise its master plan under Administrative Procedure Act; Act allowed petitioner to seek judicial review of administrative decisions that adversely affected or aggrieved substantial interests of any person, non-profit alleged direct injuries to organization and its members, including negative impact of new snowmobile trail on their preservation work and ecological restoration efforts, and interests alleged were within broad environmental interests protected by Wisconsin Environmental Protection Act (WEPA). [Wis. Stats §§ 1.11, 227.52, 227.53\(1\)](#).

1 Case that cites this headnote

[10] Administrative Law and Procedure Injury in general

Wisconsin uses two-step test to determine whether particular petitioner has standing under statutes governing judicial review of administrative decisions: Wisconsin courts typically ask first whether decision of agency directly causes injury to interest of petitioner and second, whether interest asserted is recognized by law.

1 Case that cites this headnote

[11] Action Persons entitled to sue

Wisconsin courts construe law of standing liberally and even injury to trifling interest may suffice to confer standing.

1 Case that cites this headnote

[12] Administrative Law and Procedure Causation; redressability

To satisfy first part of test for standing to challenge agency action, petitioner must allege injuries that are direct result of agency action.

[13] Administrative Law and Procedure Causation; redressability

Allegations of injury to aesthetic, conservational, recreational, health and safety interests will confer standing to challenge agency action so long as injury is caused by change in physical environment.

[14] Administrative Law and Procedure Dismissal, Withdrawal, or Abandonment

Question of whether injury alleged will result from agency action in fact is question to be determined on merits, not on motion to dismiss for lack of standing.

[15] Administrative Law and Procedure Injury in general

Second prong of test for standing to challenge agency action requires that injury alleged be to interest which law recognizes or seeks to regulate or protect.

2 Cases that cite this headnote

[16] Corporations and Business Organizations Civil Actions

Non-profit corporation that sought to preserve and enhance state park had standing to seek judicial review of Department of Natural Resources' (DNR) denial of its contested case petition; statute gave non-profit right to hearing if it satisfied four criteria, DNR contended that standing for contested hearing was derivative of standing for any underlying claim, and court of appeals had determined that non-profit had standing to bring their underlying claim. Wis. Stats § 227.42(1).

**790 APPEAL from an order of the circuit court for

Iowa County, Cir. Ct. No. 2021CV114: [MARGARET MARY KOEHLER](#), Judge. *Reversed and remanded for further proceedings.*

Attorneys and Law Firms

On behalf of the petitioner-appellant, the cause was submitted on the briefs of [Brian H. Potts](#), [David R. Zoppo](#), and [Olivia S. Radics](#) of Perkins Coie LLP in Madison.

On behalf of the respondent-respondent, the cause was submitted on the brief of [Joshua L. Kaul](#) and Gabe Johnson-Karp of the Wisconsin Department of Justice in Madison.

Before [Brash](#), C.J., [Dugan](#) and [White](#), JJ.

Opinion

[DUGAN](#), J.

***767 **791** ¶1 The Friends of Blue Mound State Park (“the Friends”) appeal the order of the circuit court dismissing two petitions for judicial review of actions by the Wisconsin Department of Natural Resources (“the Department”). The circuit court determined that the Friends lacked capacity and standing to file the petitions for review. Because we determine that the Friends has both capacity and standing, we reverse the circuit court’s order and remand for proceedings consistent with this opinion.

*768 BACKGROUND

¶2 The Friends is a small nonprofit organization dedicated to supporting and assisting the Department in providing recreational, interpretive, scientific, historical, educational, and related visitor services to enhance Blue Mound State Park. The Friends is incorporated as a non-stock corporation under Chapter 181 of the Wisconsin Statutes. The Friends’ articles of incorporation state that the corporation’s purpose is to “conduct any lawful activities of charitable and educational nature to support, assist, and promote the Wisconsin Department of Natural Resources, including interpretive, scientific, historical, educational, and related visitor services at Blue Mound State Park.” The parties agree that the Friends has entered into an agreement with the Department that authorizes the organization to be recognized as a “Friends group” and to be eligible for certain benefits in

accordance with Department regulations.¹

¶3 On May 26, 2021, the Department adopted a revised master plan for Blue Mound State Park that authorized the creation of a new snowmobile trail. On June 25, 2021, the Friends filed a petition for judicial review in Dane County Circuit Court Case No. 2021CV114, seeking to challenge the Department’s adoption of the revised master plan. Specifically, the Friends alleged that the Department failed to conduct an adequate environmental analysis of the impact of the new snowmobile trail. On August 13, 2021, the Friends filed a second petition for judicial review in Dane County Circuit Court Case No. 2021CV1955, ***769** challenging the Department’s decision to deny the Friends’ petition for a contested case hearing.²

¶4 The Department moved to dismiss the Friends’ petitions, arguing that the Friends lacked capacity and standing to seek judicial review of the Department’s actions.³ The Dane County Circuit Court subsequently consolidated the Friends’ two petitions into a single case and further determined that the proper venue was Iowa County. The Iowa County Circuit Court granted the Department’s motions to dismiss both petitions, concluding that ****792** the Friends lacked capacity and standing. However, the circuit court granted the Friends’ motion to stay the portions of the revised master plan that authorized construction of the new snowmobile trail and continued the stay, pending this appeal.

STANDARD OF REVIEW

^[1] ^[2] ^[3] ¶5 “Whether a party has standing is a question of law that we review independently.” ***770** *Friends of the Black River Forest v. Kohler Co.*, 2022 WI 52, ¶10, 402 Wis. 2d 587, 977 N.W.2d 342 (citation omitted). “In reviewing a motion to dismiss a petition seeking judicial review of an agency decision, we determine ‘whether a petition on its face states facts sufficient to show that the petitioner named therein is aggrieved ... by the decision sought to be reviewed.’ ” *Id.* (internal quotation marks omitted; quoting *Wisconsin’s Env’t Decade, Inc. v. Pub. Serv. Comm’n of Wis. (WED I)*, 69 Wis. 2d 1, 8, 230 N.W.2d 243 (1975)). “On review of a motion to dismiss for lack of standing, the court must ‘take all facts alleged by [the petitioner] to be true in determining whether he has standing to bring his claim.’ ” *Id.*, ¶11 (quoting *McConkey v. Van Hollen*, 2010 WI 57, ¶14 n.5, 326 Wis. 2d 1, 783 N.W.2d 855).

In evaluating a ch. 227 motion to dismiss, we apply

“the rules that the allegations of the petition are assumed to be true; that the allegations are entitled to a liberal construction in favor of the petitioner; and that this court is not concerned with the ability of the petitioner to prove the facts alleged at trial.”

Id. (quoting *WED I*, 69 Wis. 2d 1 at 8-9, 230 N.W.2d 243).

¶6 The parties have not identified the standard of review for the question of whether the Friends has capacity to sue, nor have we found any published Wisconsin cases addressing this issue directly. The Friends cite *Mayo v. Boyd*, 2014 WI App 37, ¶8, 353 Wis. 2d 162, 844 N.W.2d 652, for the proposition that our review of the order granting the Department’s motion to dismiss is *de novo*. The Department points to *Data Key Partners v. Permira Advisers, LLC*, 2014 WI 86, ¶17, 356 Wis. 2d 665, 849 N.W.2d 693, arguing that “[t]his [c]ourt independently reviews whether a pleading can survive a motion to dismiss, benefitting *771 from the analysis of the circuit court.” We assume, without deciding, that the standard of review proposed by the Department is correct.

DISCUSSION

I. The Friends has capacity to sue under Wis. Stat. § 181.0302(1).

¹⁴¹¶7 “[N]ot every entity has the capacity to sue and be sued.” *Mayhugh v. State*, 2015 WI 77, ¶40, 364 Wis. 2d 208, 867 N.W.2d 754 (citing Wis. Stat. §§ 802.03, 802.06). “It is an accepted principle of law that an action cannot be maintained by one who has no capacity to sue.” *Joint Sch. Dist. No. 1, City of Wis. Rapids v. Wisconsin Rapids Educ. Ass’n*, 70 Wis. 2d 292, 302, 234 N.W.2d 289 (1975).

¹⁵¹¶8 The Friends argues that it has capacity to sue under Wis. Stat. § 181.0302 (2021-22),⁴ which sets forth the general powers of a Chapter 181 corporation. This statute provides that “[u]nless its articles of incorporation provide otherwise, a corporation ... has the same powers as an individual to do all things necessary or convenient to carry out its affairs.” Sec. 181.0302. As relevant to this appeal, a corporation’s default powers include the power **793 to “[s]ue and be sued, complain and defend in its corporate name.” Sec. 181.0302(1). The Friends argues that any waiver of its statutory right to sue must be express, and that the Department has not identified any “clear and specific renunciation” of the Friends’ right to

sue. See *772 *Mulvaney v. Tri State Truck & Auto Body, Inc.*, 70 Wis. 2d 760, 767-68, 235 N.W.2d 460 (1975) (explaining that “[o]nly a clear and specific renunciation of the statutory right” would be sufficient to demonstrate a waiver of the right to sue to enforce warranty of title).

¶9 The Department agrees that the default powers in Wis. Stat. § 181.0302 are relevant to this appeal. However, the Department focuses on the phrase, “[u]nless its articles of incorporation provide otherwise,” and argues that the Friends’ articles of incorporation “limit[] [its] activities to those which support, assist, and promote” the Department. The Department further points to the statutory and regulatory scheme governing official friends groups, contending that both the legislature and the Department have limited the Friends’ capacity to challenge the Department’s revised master plan for Blue Mound State Park.

¶10 The circuit court agreed with the Department, concluding that the Friends’ articles of incorporation “legally restrict Friends from acting in ways that do not support the [Department]’s management of the Park.” The court determined that the language requiring the Friends to assist and support the Department’s properties was “in effect ... a clear waiver of the statutory right to sue.” Likewise, the court found it significant that the Department’s administrative rules require the Friends “to support, assist, and promote the mission and activities of the Department’s properties as approved by the Department.” Finally, the court noted that the Friends group enjoyed “certain privileges and priorities over other unofficial groups” by virtue of having entered a written agreement with the Department. Although Wisconsin courts have permitted other friends groups to sue the Department, the *773 court concluded that the “Friends are materially distinguishable from other groups due to its Articles of Incorporation [and] its status as an official friends group.”

¶11 We disagree with the circuit court’s determination that the Friends lacks capacity to sue. Both parties agree that the Friends is a Chapter 181 corporation and further agree that, as a general matter, a Chapter 181 corporation has the capacity to sue and be sued. Although the Department makes several arguments for why the Friends has waived its statutory capacity to sue under Wis. Stat. § 181.0302(1), we conclude that none of these arguments support the conclusion that the Friends has clearly and specifically renounced its right to sue the Department. See *Mulvaney*, 70 Wis. 2d at 768, 235 N.W.2d 460. Nor has the Department pointed to any Wisconsin authority that would suggest that something less than a clear and specific renunciation would be sufficient to overcome the

Friends' statutory capacity to sue and be sued pursuant to § 181.0302(1). We address each of the Department's arguments below.

a. The legislature has not prohibited friends groups from suing the Department.

¹⁶¶12 To support its argument that the Friends lacks capacity to sue, the Department points to several statutory provisions that govern the role of friends groups in Wisconsin state parks. Specifically, the Department points to provisions that:

- define the types of entities that may qualify as a friends group (Wis. Stat. § 27.016(1)(b));

***774 **794** • authorize the Department to establish a grant program for qualifying friends groups (Wis. Stat. § 27.016(2)(a));

- establish the criteria by which friends groups may qualify for grant eligibility (Wis. Stat. § 27.016(2)(b), (3));

- make friends groups eligible for various state grants or contracts (Wis. Stat. § 23.098 (grants for property development on Department-owned properties); § 23.0912(1g) (authorizing the Department to “contract with nonprofit conservation organizations and other 3rd parties to perform land management, maintenance, and improvement activities on Department land”); § 27.016 (governing a grants program for state parks and forests));

- direct the Department to establish a system to offer grants “to eligible friends groups before ... eligible nonprofit conservation groups” (Wis. Stat. § 23.098(4)(am));

- require the Department to “promulgate rules to establish criteria to be used in determining which friends groups and which activities related to the maintenance or operation of state parks [or other properties] are eligible for these grants” (Wis. Stat. § 27.016(3));

- require a qualifying friends group to establish “an endowment fund for the benefit of a state park” or other property (Wis. Stat. § 27.016(2)(b)); and

- require a qualifying friends group to “enter[] into a written agreement with the Department as required by the Department by rule” (Wis. Stat. §

27.016(2)(b)).

***775** ¶13 The Department refers to qualifying friends groups that are eligible for priority consideration for grants as “officially recognized friends groups” and argues that the cited statutory provisions “establish that an officially recognized friends group exists *only* by the authority granted in state law.” This argument is patently incorrect. The Friends exists as a corporate entity pursuant to Chapter 181 of the Wisconsin Statutes. Indeed, one of the statutory provisions identified by the Department provides that an entity can only qualify to become eligible for specified grants, if that group first exists as a “non-stock, nonprofit corporation” that is tax-exempt. Wis. Stat. § 27.016(1)(b). We conclude that having followed the legislature’s prescribed path to recognition as a qualifying, grant-eligible friends group, the Friends has the same default powers as any other Chapter 181 corporation, including the power to “sue and be sued, complain and defend in its corporate name.” Wis. Stat. § 181.0302(1).

¶14 Moreover, none of the statutory provisions cited by the Department expressly limit the capacity of friends groups to sue and be sued as set forth in Wis. Stat. § 181.0302(1). To support its argument that the legislature has implicitly altered the Friends’ statutory capacity to sue and be sued, the Department points to two “instructive” decisions from the New York Court of Appeals holding that legislatively-created entities lacked capacity to sue. See *Community Bd. 7 of Borough of Manhattan v. Schaffer*, 84 N.Y.2d 148, 615 N.Y.S.2d 644, 639 N.E.2d 1 (N.Y. 1994); *Excess Line Ass’n of N.Y. (ELANY) v. Waldorf & Assocs.*, 30 N.Y.3d 119, 87 N.E.3d 117 (N.Y. 2017). However, neither of these decisions are persuasive on the question of whether the Friends has capacity to sue.

***776** ¶15 The issue presented in *ELANY* was whether “a legislatively created advisory association under the supervision of the ***795** Department of Financial Services (DFS) ... has capacity to sue its members.” *ELANY*, 30 N.Y.3d at 121, 87 N.E.3d 117. The New York Court of Appeals concluded that “a right to sue cannot be derived from [ELANY’s] enabling legislation or some other concrete statutory predicate.” *Id.* at 125, 87 N.E.3d 117 (internal quotation marks omitted; citation omitted). Here, the Department contends that “Wisconsin law governing friends groups is ... closely analogous to New York’s laws governing ELANY.” We disagree. In the present case, the legislature has directed that any qualifying friends group must be incorporated as a non-stock, nonprofit, tax-exempt corporation. See Wis. Stat. § 27.016(1)(b). In turn, Wis. Stat. § 181.0302(1)

serves as the “concrete statutory predicate” that gives such corporations the capacity to sue. *See ELANY*, 30 N.Y.3d at 125, 87 N.E.3d 117.

¶16 Further, the Department’s reliance on *Community Board 7* is similarly inapposite. That case involved a legislatively created community board that sought to challenge the city’s denial of a public records request. *Id.*, 84 N.Y.2d at 152, 615 N.Y.S.2d 644, 639 N.E.2d 1. The New York Court of Appeals concluded that the community board lacked capacity to sue in light of “the terms and history of its own enabling legislation.” *Id.* at 157, 615 N.Y.S.2d 644, 639 N.E.2d 1. In reaching this conclusion, however, the court distinguished “[g]overnmental entities created by legislative enactment” from corporations that “are creatures of statute and, as such, require statutory authority to sue and be sued.” *Id.* at 155-56, 615 N.Y.S.2d 644, 639 N.E.2d 1. The court explained that a governmental entity’s “right to sue, if it exists at all, must be derived from the relevant enabling legislation or some other concrete statutory predicate.” *Id.* at 156, 615 N.Y.S.2d 644, 639 N.E.2d 1. In the *777 present case, there is no need to examine any statutes other than Chapter 181, which serves as the concrete statutory predicate that gives the Friends the default power to sue and be sued. *See Wis. Stat. § 181.0302(1)*.

¶17 Finally, the Department points to a series of Wisconsin decisions holding that municipal corporations and quasi-governmental entities are not permitted to sue the state or other government agencies. *See Brown Cnty. v. DHSS*, 103 Wis. 2d 37, 43, 307 N.W.2d 247 (1981) (“Because of its status as an arm of the state, a county cannot be heard to challenge or question the wisdom of its creator”); *City of Marshfield v. Towns of Cameron, etc.*, 24 Wis. 2d 56, 63, 127 N.W.2d 809 (1964) (“Municipal corporations, being creatures of the state, are not permitted to censor or supervise the activities of their creator”); *id.* (“Although towns are denominated ‘quasi-municipal corporations,’ they are likewise ‘political subdivisions and governmental agencies of the state.’”) (citation omitted); *Columbia Cnty. v. Board of Trs. of Wis. Ret. Fund*, 17 Wis. 2d 310, 317, 116 N.W.2d 142 (1962) (“A county as a quasi municipal corporation and as an arm of the state has no right to question the constitutionality of the acts of its superior and creator or of another arm or governmental agency of the state.”). We conclude that these decisions do not affect our analysis because the Friends is a Chapter 181 corporation and not a municipal corporation or quasi-governmental entity.

b. The Department’s administrative regulations do not

prohibit friends groups from suing the Department.

¶18 To further support its argument that the Friends lacks capacity to sue, the Department points *778 to the administrative rules regarding qualifying friends groups that the Department has promulgated **796 pursuant to *Wis. Stat. § 27.016(2)(b) and (3)*. *See generally Wis. Admin. Code ch. NR 1.71* (May 2022).⁵ Specifically, the Department asks us to consider the effect of rules that:

- define a qualifying friends group as “a non-profit, non-stock, tax-exempt corporation organized to support, assist and promote the mission and activities of Department properties, facilities and programs and other activities as approved by the Department under the provisions of a written agreement with the Department” (*Wis. Admin. Code §§ NR 1.71(3)(b), (4)(b)1.*);
- require a qualifying friends group to “be structured through articles of incorporation and by-laws to direct its mission and activities to the support of the property, group of properties, or other Department facilities and programs as approved by the Department” (*Wis. Admin. Code § NR 1.71(4)(b)1.*);⁶

*779 • authorize the Department to work with a qualifying friends group “as the lead volunteer organization for a property, facility or program,” making it eligible for “certain privileges, such as use of Department equipment and facilities” (*Wis. Admin. Code § NR 1.71(1)*);

- govern the distribution and administration of legislative grant programs (*see, e.g., Wis. Admin. Code ch. NR 51; Sec. NR 50.21*); and
- require qualifying friends groups to “[p]rovide an annual fiscal and program report” and “permit a fiscal audit by the Department upon request.” (*Wis. Admin. Code § NR 1.71(4)(b)2.a., c.*)⁷

¶19 As with the statutory provisions that the Department has cited, we see nothing in the administrative rules identified by the Department that limits the Friends’ default capacity to sue and be sued under *Wis. Stat. § 181.0302(1)*. To the contrary, the list of items that must be included in a written agreement contains several specific limits on what a friends group can and cannot do. *See Wis. Admin. Code § NR 1.71(4)(b)2.a.-i.* For example, the written agreement between a qualifying friends group and the Department must “[p]rohibit Department employees from *780 serving as officers and directors” and must provide **797 that a friends group “[a]gree not to represent their employees and volunteers as Department employees.” *See § NR 1.71(4)(b)2.f., g.*

Importantly, missing from this long list of requirements is any language to suggest that qualifying friends groups are prohibited from filing suit against the Department.

¶20 In its opening brief, the Friends cites to *Sauk Prairie Conservation Alliance v. DNR*, Sauk County Circuit Court Case No. 2016CV642 (Dec. 8, 2016), and *Friends of Stower Seven Lakes Trail v. DNR*, Polk County Circuit Court Case No. 2021CV38 (Feb. 4, 2021), to support its argument that several other friends groups that were created to support Department properties have sued the Department. The Department argues that these cases are distinguishable because the Friends' designation as an official friends group with priority consideration for grants, alters its capacity to sue and be sued under Wis. Stat. § 181.0302(1).⁸ However, the Department points to no statute, regulation, or other Wisconsin authority to support this proposition. We, therefore, see no basis for concluding that the Department's regulations affect the Friends' default power to sue and be sued under § 181.0302(1).

***781 c. The Friends' articles of incorporation do not waive its right to sue the Department.**

¶21 The Department further argues that the "plain terms" of the Friends' articles of incorporation have waived the Friends' statutory capacity to sue.⁹ Specifically, the Department focuses on the language in the Friends' articles of incorporation, stating that the entity's purpose is to "conduct any lawful activities of charitable and educational nature to support, assist, and promote the Wisconsin Department of Natural Resources, including interpretive, scientific, historical, educational, and related visitor services at Blue Mound State Park." According to the Department, this language means that the Friends has "elected not to exercise the full extent of the powers authorized by law." Instead, the Department asserts that the Friends has "self-limited the activities [it] may undertake in relation to" the Department.

¶22 We disagree that this language constitutes a clear and specific renunciation of the Friends' statutory capacity to sue the Department. See ***782 *Mulvaney*, 70 Wis. 2d at 768, 235 N.W.2d 460.** Our conclusion is bolstered by the Department's acknowledgement that the Friends' articles of incorporation need not be construed as a ****798** complete waiver of the Friends' capacity to sue the Department. Indeed, if the Friends' articles completely waived the Friends' capacity to sue the Department, then the Friends would not even be able to sue the Department to enforce the terms of their agreement. The Department

appears to recognize that such an interpretation would not make sense, and instead, asks this court to limit our analysis to the question of whether the Friends lacks capacity to bring this particular action. We conclude that the language in the Friends' articles does not support this distinction. If the Department is correct that the phrase "support, assist, and promote the Wisconsin Department of Natural Resources" has expressly limited the Friends' capacity to sue the Department for an inadequate review of environmental impacts at a specified property, we fail to see how the same language would, nonetheless, preserve the Friends' capacity to bring any other type of claim against the Department. We, therefore, decline to interpret this language as a partial waiver of the Friends' capacity to sue the Department under Wis. Stat. § 181.0302(1).

¶23 Thus, for the reasons stated above, we conclude that the Friends has capacity to sue the Department. We next address whether the Friends has standing to seek judicial review of the Department's decisions under Chapter 227.

***783 II. The Friends has standing to seek judicial review of the Department's decision under Chapter 227.**

¶24 "In the context of judicial review of an administrative decision, standing is governed by Wis. Stat. §§ 227.52 and 227.53." *Friends of the Black River Forest*, 402 Wis. 2d 587, ¶20, 977 N.W.2d 342. Pursuant to § 227.52, a petitioner may seek judicial review of "[a]dministrative decisions which adversely affect the substantial interests of any person." Likewise, § 227.53(1) provides that "any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review of the decision as provided in this chapter." These statutory provisions "require a petitioner to 'show a direct effect on his legally protected interests.'" *Friends of the Black River Forest*, 402 Wis. 2d 587, ¶20, 977 N.W.2d 342 (quoting *Fox v. Wisconsin DHSS*, 112 Wis. 2d 514, 524, 334 N.W.2d 532 (1983)).

¶25 Wisconsin uses a two-step test to determine whether a particular petitioner has standing under these statutes. See *id.*, ¶18. Wisconsin courts "typically ... ask first 'whether the decision of the agency directly causes injury to the interest of the petitioner' and second, 'whether the interest asserted is recognized by law.'" *Id.* (quoting *WED I*, 69 Wis. 2d at 10, 230 N.W.2d 243). Wisconsin courts "construe the law of standing liberally and even an injury to a trifling interest may suffice." *Id.*, ¶19 (citations omitted).

¹¹² ¹¹³ ¹¹⁴ ¶26 To satisfy the first part of the test for standing, a petitioner must “allege[] injuries that are a direct result of the agency action.” *Id.*, ¶21 (quoting *784 *WED I*, 69 Wis. 2d at 13, 230 N.W.2d 243). “[A]llegations of injury to aesthetic, conservational, recreational, health and safety interests will confer standing so long as the injury is caused by a change in the physical environment.” *Milwaukee Brewers Baseball Club v. DHSS*, 130 Wis. 2d 56, 65, 387 N.W.2d 245 (1986). We conclude that the allegations contained in the Friends’ petitions for judicial review are sufficient to satisfy this part of the standing test. See *WED I*, 69 Wis. 2d at 14, 230 N.W.2d 243. “The question of whether the injury alleged will result from the agency action in fact is a question to be determined **799 on the merits, not on a motion to dismiss for lack of standing.” *Id.*

¶27 In the Friends’ petitions for judicial review, the Friends allege direct injuries to the organization and its members, including the negative impact of the new snowmobile trail on their preservation work and ecological restoration efforts. We also note that for the purposes of this appeal, the Department does not dispute that the Friends has satisfied the first prong of the test for standing.

¹¹⁵ ¶28 The second prong of Wisconsin’s test for standing requires that the injury alleged by the Friends be “to an interest which the law recognizes or seeks to regulate or protect.” *Friends of the Black River Forest*, 402 Wis. 2d 587, ¶28, 977 N.W.2d 342 (quoting *Waste Mgmt. of Wis., Inc. v. State of Wis. Dept. of Natural Resources*, 144 Wis. 2d 499, 505, 424 N.W.2d 685 (1988)). “[T]his inquiry centers on a textually-driven analysis of the language of the specific statute cited by the petitioner as the source of its claim to determine whether that statute ‘recognizes or seeks to regulate or protect’ the interest advanced by the petitioner.” *Friends of the Black River Forest*, 402 Wis. 2d 587, ¶28, 977 N.W.2d 342 (quoting *Waste Mgmt. of Wis., Inc.*, 144 Wis. 2d at 505, 424 N.W.2d 685).

*785 ¶29 The circuit court focused on the Friends’ claim under the Wisconsin Environmental Protection Act (WEPA), Wis. Stat. § 1.11, concluding that the Friends “[is] not within the zone of interest under ... WEPA.” In particular, the court found that the Friends’ “unique relationship” with the Department meant that the Friends had failed to establish that it was within the zone of interests protected by WEPA.¹⁰

¶30 At the outset, we note that the Wisconsin Supreme Court has discarded the zone of interests label as an “anachronistic misnomer.” *Friends of the Black River*

Forest, 402 Wis. 2d 587, ¶30, 977 N.W.2d 342. Nonetheless, discarding this label “leaves the test’s substance intact.” *Id.* The substance of the test asks whether the injury is “to an interest which the law recognizes or seeks to regulate or protect.” *Id.* (quoting *Waste Mgmt. of Wis., Inc.*, 144 Wis. 2d at 505, 424 N.W.2d 685).

¶31 In applying this test, the circuit court concluded that the Friends’ unique relationship with the Department as an officially recognized friends group prevented the Friends from having standing under WEPA. We see no basis for this limitation on standing. The Wisconsin Supreme Court has “consistently recognized broad environmental interests under WEPA for standing purposes.” *Friends of the Black River Forest*, 402 Wis. 2d 587, ¶26 n.10, 977 N.W.2d 342. As relevant here, WEPA “recognize[s] an interest sufficient to give a person standing to question compliance with its conditions *786 where it is alleged that the agency’s action will harm the environment in the area where the person resides.” *Id.*, ¶24 (quoting *WED I*, 69 Wis. 2d at 19, 230 N.W.2d 243). Thus, for example, WEPA has conferred standing on the corporate owner of a farm to challenge an agency action that caused injury to “its legally protected conservation interest.” *Friends of the Black River Forest*, 402 Wis. 2d 587, ¶24 n.8, 977 N.W.2d 342 (quoting **800 *Applegate-Bader Farm, LLC v. DOR*, 2021 WI 26, ¶17 n.7, 396 Wis. 2d 69, 955 N.W.2d 793). Similarly, the Wisconsin Supreme Court has determined that “increased traffic congestion is an effect on the physical environment cognizable under WEPA.” *Milwaukee Brewers Baseball Club*, 130 Wis. 2d at 70, 387 N.W.2d 245.

¶32 As with the petitioners in *Applegate-Bader Farm* and *Milwaukee Brewers Baseball Club*, the Friends’ petition alleges harm to its conservation and ecological interests due to the new snowmobile trail. These interests are within the “broad environmental interests” protected by WEPA. *Friends of the Black River Forest*, 402 Wis. 2d 587, ¶26 n.10, 977 N.W.2d 342.

¶33 Despite the broad standing conferred by WEPA, the circuit court, nonetheless, determined that the Friends lacked a legally protected interest under *Columbia County*. In *Columbia County*, the Wisconsin Supreme Court held that “[a] county as a quasi municipal corporation and as an arm of the state has no right to question the constitutionality of the acts of its superior and creator or of another arm or governmental agency of the state.” *Id.*, 17 Wis. 2d at 317, 116 N.W.2d 142. Here, the circuit court concluded that the Friends’ “unique affiliation with the [Department] puts Friends in the same position as the” county in *Columbia County*. However, as

explained above, the Friends is incorporated under Chapter 181, and we see no basis for *787 concluding that the statutes and regulations that make qualifying friends groups eligible for grants, somehow turned the Friends into a quasi-municipal corporation or an arm of the state. Thus, we conclude that *Columbia County* does not limit the otherwise broad standing conferred by WEPA.

¶34 In this appeal, the Department argues that our standing inquiry should be focused narrowly on whether WEPA “protect[s], recognize[s], or regulate[s] *this* petitioner’s *specific interests*.” In arguing that WEPA does not protect the Friends’ specific interests, the Department relies on two Wisconsin decisions: *Friends of Black River Forest*, 402 Wis. 2d 587, 977 N.W.2d 342, and *Chenequa Land Conservancy, Inc. v. Village of Hartland*, 2004 WI App 144, 275 Wis. 2d 533, 685 N.W.2d 573. Neither of these decisions involves a petitioner who claimed standing under WEPA. Indeed, in *Friends of Black River Forest*, the Wisconsin Supreme Court identified WEPA as an example of a statute that conferred standing for claims asserting an injury to the petitioner’s conservation or environmental interests. See *id.*, 402 Wis. 2d 587, ¶24 & n.8, 977 N.W.2d 342. But the Court explained that cases that found standing under WEPA were distinguishable because the petitioner in *Friends of the Black River Forest* “ha[d] not asserted the Department made a negative-EIS decision nor ha[d] [the petitioner] brought any claim under WEPA.” *Id.*, ¶24 n.8. In contrast, in this case the Friends *has* asserted that the Department made a negative-EIS¹¹ decision, and the Friends *has* brought its claim under WEPA. Thus, *Friends of the Black River Forest* fully supports the conclusion that the Friends has standing in this case.

*788 ¶35 Our decision in *Chenequa Land Conservancy, Inc.* is similarly not helpful to the Department. In that case, the petitioner sought review of a Department of Transportation decision conveying state property to the Village of Hartland. *Id.*, 275 Wis. 2d 533, ¶1, 685 N.W.2d 573. The petitioner argued that the property transfer **801 violated Wis. Stat. § 84.09(5) (2001-02), as well as a Department manual. *Id.* We explained that for the petitioner to have standing,

The injury asserted must be such that it gives the plaintiff a personal stake in the outcome of the controversy.... The injury need not be pecuniary; it may, for example, be an injury to interests that are aesthetic, conservational, or recreational. See [WED I], 69 Wis. 2d at 10 [230 N.W.2d 243]. The injury need not be of great magnitude...; and it need not have already occurred, but instead may be one that will allegedly result from a sequence of events set in motion

by the agency’s conduct. [*Id.*], 69 Wis. 2d at 14 [230 N.W.2d 243].

Chenequa Land Conservancy, 275 Wis. 2d 533, ¶17, 685 N.W.2d 573.

¶36 In *Chenequa Land Conservancy*, this court concluded that the petitioner had established an injury, based on its allegation that it would have arranged for the property to be purchased and preserved if the Department had followed the correct procedures for surplus land. *Id.*, ¶¶18-19. But we further concluded that the petitioner had not satisfied the second part of the test for standing—namely, a legally protectable interest—because “[t]here is nothing in Wis. Stat. § 84.09(5) [(2001-02)] that indicates this section was intended to establish procedures to protect persons or entities interested in purchasing state property.” *Id.*, ¶¶20-22.

¶37 In contrast to the petition in *Chenequa Land Conservancy*, the Friends is bringing its claim *789 under WEPA, Wis. Stat. § 1.11, which is intended to establish procedures to protect persons or entities asserting environmental interests. *Friends of the Black River Forest*, 402 Wis. 2d at 587, ¶26 n.10, 977 N.W.2d 342. Thus, *Chenequa Land Conservancy* is readily distinguishable.

¶38 For the reasons stated above, we conclude that the Friends has standing to challenge the Department’s revised master plan that authorized the creation of a new snowmobile trail within Blue Mound State Park. Thus, we reverse the circuit court’s order dismissing the Friends’ petition challenging the Department’s revised master plan.

¹¹⁶¶39 We next turn to the question of whether the Friends has standing to seek judicial review of the Department’s denial of its contested case petition under Wis. Stat. § 227.42. This statute gives the Friends a right to a hearing, if the Friends satisfies four criteria:

- (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
- (b) There is no evidence of legislative intent that the interest is not to be protected;
- (c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and
- (d) There is a dispute of material fact.

Wis. Stat. § 227.42(1). The Department contends that the question of whether these factors are satisfied is

“necessarily intertwined with standing to bring the underlying claim.”

*790 ¶40 In dismissing the Friends’ petition for judicial review of the Department’s denial of a hearing, the circuit court relied on its determination that the Friends lacked standing. Other than the argument that the Friends lack a legally protected interest, which we have already rejected, the Department has not identified any other basis for affirming the circuit court’s dismissal of the Friends’ petition under [Wis. Stat. § 227.42](#). Instead, the Department contends that “standing for a contested case hearing is derivative of standing **802 for any underlying claim.” Because we have concluded that the Friends has standing to bring their underlying claim, we also conclude that the Friends has standing to petition for a contested case hearing. We, therefore, reverse the circuit court’s dismissal of the Friends’ petition for judicial review of the Department’s decision denying the Friends’ petition for a contested case hearing.

CONCLUSION

¶41 We conclude that the Friends has capacity to sue the Department under [Wis. Stat. § 181.0302\(1\)](#) and has not waived the right to sue through its articles of incorporation or by becoming a qualifying, grant-eligible friends group pursuant to [Wis. Stat. § 27.016](#) and [Wis. Admin. Code § NR 1.71](#). We also conclude that the Friends has alleged sufficient facts in its petition to satisfy the standing requirements of [Wis. Stat. § 227.52](#) and [Wis. Stat. § 227.53](#). We, therefore, reverse the dismissal of the Friends’ petitions and remand for proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded for further proceedings.

All Citations

408 Wis.2d 763, 2023 WI App 38, 993 N.W.2d 788

Footnotes

- 1 We note that although both parties agree that this written agreement exists, the agreement itself is not part of the record.
- 2 In addition to the Department, the Friends’ petitions for judicial review also named the Wisconsin Natural Resources Board (“the Board”) as a respondent. The circuit court concluded that the Board was not a proper party to the second petition. The Friends do not challenge this aspect of the circuit court’s decision.
- 3 The Department’s motion to dismiss the petition in Case No. 2021CV1955 does not appear to be part of the record. We note that the Department cites to a letter filed with the circuit court on July 20, 2021, but that is just a letter to the judge about the status of the Friends’ request for a contested case hearing. However, the docket for Dane County Circuit Court Case No. 2021CV1955 shows a motion to dismiss filed on September 2, 2021.
- 4 All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.
- 5 All subsequent references to the Wisconsin Administrative Code are to the May 2022 version unless otherwise noted.
- 6 The Department highlights the phrase, “as approved by the Department,” suggesting that this phrase applies to the entirety of [Wis. Admin. Code § NR 1.71\(4\)\(b\)1](#). The circuit court appears to have adopted this broad interpretation. However, the Friends argues that the disjunctive “or” in this subdivision means that this phrase only modifies “other Department facilities and programs.” See [United State v. Woods](#), 571 U.S. 31, 45, 134 S.Ct. 557, 187 L.Ed.2d 472 (2013) (when “operative terms are connected by the conjunction ‘or’ ... its ordinary use is almost always disjunctive”); [Encino Motorcars, LLC v. Navarro](#), — U.S. —, 138 S. Ct. 1134, 1141, 200 L.Ed.2d 433 (2018) (“[w]here a sentence contains several antecedents and several consequents,” courts should “read them distributively and apply the words to the subjects which, by context, they seem most properly to

relate”) (citation omitted). We agree with the Friends that the Department is asking us to interpret the phrase “as approved by the Department” more broadly than its logical context permits.

7 The Department also contends that [Wis. Admin. Code §§ NR 1.71\(3\)\(b\) and \(4\)\(b\)1](#). “require the Friends to conduct its operations subject to [Department] supervision and approval.” However, the text of the cited regulations does not support the Department’s assertion. As noted above, the Department appears to be taking the phrase “as approved by the Department” out of context.

8 We note that the cases cited by the Friends are not part of the record and they are not part of its appendix. However, the Department does not dispute that in those cases, the friends groups were permitted to sue the Department. Further, we note that the Friends cited [Friends of Black River Forest v. DNR, Nos. 2019AP299 and 2019AP534, unpublished slip op., 2020 WL 5521443 \(WI App Sept. 15, 2020\)](#), which is an unpublished **per curiam** decision. We remind counsel that the case may not be cited on appeal. See [Wis. Stat. Rule 809.23\(3\)](#).

9 The Friends argues that the Department waived this argument because it raised it for the first time in its reply brief to the circuit court. In its opening brief in support of its motion to dismiss, the Department stated that “only two categories of information are relevant to the current motion: (1) information about the administrative rules and statutes governing official ‘Friends groups’ like the Friends here; and (2) information about the nature of the Friends’ current challenge in the petition for judicial review.” Because we conclude that the circuit court erred on the merits of this argument, we do not address whether the Department properly raised its argument that the Friends’ articles of incorporation waived the Friends’ default power to sue the Department under [Wis. Stat. § 181.0302\(1\)](#).

10 In its opening brief, the Friends points to several other statutory grounds for standing, including various property management laws and administrative regulations. The Department contends that these other statutes and regulations do not confer standing because they are not intended to protect the interests of private parties. In its reply brief, the Friends only argues standing under WEPA.

11 EIS is an abbreviation for environmental impact statement. See generally [Wis. Stat. § 1.11](#).