

Special Board of Appeals Hearing



April 16, 2026 - 4:00 PM
New Berlin City Hall
Council Chambers
3805 S. Casper Dr.

Posted this 11th day of April 2026

NOTICE OF HEARING

**Re: Milwaukee Rescue Mission - New Journey Building Proposal
Board of Appeals Application filed by NEW BERLIN NEIGHBORS UNITED, U.A.
(also referenced in filings as New Berlin Citizens United, U.A.)**

Please note: This hearing is limited solely to the issue of whether the appellant qualifies as an aggrieved person with standing to proceed with the appeal. As described below, testimony and evidence will be received; however, all testimony must be relevant to that issue. Testimony regarding the merits of the underlying proposal will not be considered.

The Board of Appeals reserves the right to modify the order of business or adjourn the hearing based on legal or procedural developments, including any pending court action.

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE

2. ROLL CALL

3. PROCEDURAL ISSUES

- A.** Counsel will be provided an opportunity to raise procedural issues for the Board's consideration, which may include arguments to adjourn to a later date, and the Board may rule on such matters.

4. REVIEW OF HEARING PROCEDURES

- A.** Explanation of the quasi-judicial nature of the proceeding, including testimony procedures, rules of evidence, expectations for conduct, and the process for submission and consideration of exhibits.

All testimony and evidence must be relevant to the issue of standing. The Chair may limit or exclude testimony that is not relevant to this issue. The Chair may impose reasonable time limits to ensure an orderly and efficient proceeding.

5. STATEMENT OF THE CASE BY THE CHAIR

- A.** Summary of the appeal and clarification that the issue before the Board is limited to standing/aggrieved person status.

6. APPELLANT'S CASE-IN-CHIEF

- A. Presentation by New Berlin Neighbors United, U.A. (also referenced as New Berlin Citizens United, U.A.), including testimony, witnesses, and submission of evidence relevant to the issue of whether the appellant has standing/aggrieved person status.
- 7. PRESENTATION BY OTHER PARTIES, INCLUDING PLAN COMMISSION AND PROPERTY OWNER**
- A. Presentation of testimony, witnesses, and evidence by other parties to the appeal, including the Plan Commission and/or property owner, in accordance with established procedures and relevant to the issue of whether the appellant has standing/aggrieved person status.
- 8. APPELLANT REBUTTAL**
- 9. REBUTTAL BY OPPOSITION**
- 10. QUESTIONS FROM THE BOARD OF APPEALS**
- 11. CLOSE OF EVIDENTIARY PORTION OF HEARING**
- 12. DELIBERATION BY THE BOARD OF APPEALS IN CLOSED SESSION - IF NECESSARY**
- A. 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 determination on preliminary procedural issues.
- 13. RECONVENE IN OPEN SESSION - IF APPLICABLE**
- A. 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.
- 14. ACTION**
- A. Discussion and possible determination regarding whether the appellant meets the legal standard as an aggrieved person with standing to proceed with the appeal.
- 15. RECORD FOR PURPOSES OF APPEAL**
- A. If applicable, legal counsel for the Appellant, Plan Commission, and Property Owner will be provided an opportunity to speak concerning the record for purposes of appeal, and the Board may make a determination.
- 16. 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.

Procedures

Municipal LAW

& L I T I G A T I O N G R O U P

DALE W. ARENZ (1935-2022)
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JOHN P. MACY
H. STANLEY RIFFLE (Court Commissioner)
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April 6, 2026

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Re: *BOA appeal - NBCU, U.A. v. Plan Commission et al*

Ladies and Gentlemen:

Thank you for your submittals. A few responses to procedural issues:

1. If there is any doubt, I want to put to rest where we stand procedurally. No decision has been made on whether this appeal is sufficient to proceed to hearing on the merits.
2. We remain scheduled to hear testimony on a threshold procedural issue on April 16. The testimony on April 16 is strictly limited to whether the appellant is aggrieved in the sense contemplated by law for purposes of this appeal.

MUNICIPAL LAW & LITIGATION GROUP, S.C.
ARENZ, MOLTER, MACY, RIFFLE, LARSON & BITAR

MUNICIPAL LAW & LITIGATION GROUP, S.C.

City Clerk and Counsel
April 6, 2026
Page 2

3. If the Board of Appeals concludes the appellant has not met the foregoing threshold issue, the appeal will be dismissed.
4. If the Board of Appeals concludes the appellant meets the foregoing threshold issue, the Board will next, at this April 16 meeting, hear counsel's arguments concerning the sufficiency of the record provided and will render a decision on that issue.
5. As to votes required, I will advise my client as follows:
 - a. The foregoing procedural matters will be decided by a simple majority vote of those Board of Appeals members present, per 62.23(7)(e)(3m), Stats.

"If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present".
 - b. In the event of a tie vote, the appellant would have failed to meet their burden, and the appeal would be dismissed.

"Each applicant, therefore, must shoulder its burden to prove that it meets the conditions." Delta Biological Res., Inc. v. Bd. of Zoning Appeals of City of Milwaukee, 160 Wis. 2d 905, 913, 467 N.W.2d 164, 168 (Ct. App. 1991).
 - c. While certain provisions of the City Code speak to 4 votes being required, that is only on the question of overturning the decision being appealed. (Code Sections 275-16(C)(3) ("the concurring vote of four members of the Board shall be necessary to correct an error"), and also Section 275-31(C)). We have not reached that ultimate question at this time, but if we eventually do, 4 votes would be necessary to reverse the Plan Commission. In the event of a 3-1 vote on that ultimate question, Section 6.C. of the Board's Rules of Procedure requires the matter to be put over to the next meeting.

If you should have any questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,
MUNICIPAL LAW & LITIGATION GROUP, S.C.

Eric J. Larson

Eric J. Larson

EJL/jd

NBCU Arguments on Standing and Record

March 24, 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: BOA appeal - NBCU, U.A. v. Plan Commission et. al.,
Completion of the Record***

Dear Eric:

Having reviewed Attorney Blum's email of yesterday, March 23rd, I wanted to provide the following response.

According to the previously agreed to prehearing schedule, each party was to file its materials or submissions regarding the issue of standing on March 18th. That is what has occurred and the Plan Commission filed its letter brief on that day, a copy of which is attached. Appellants also filed their memorandum/brief. And the Applicant filed their letter through Attorney Tomczyk.

There is no provision in the existing agreement between the parties for the Plan Commission to now file a reply. The agreement was for simultaneous filings regarding standing. That is what has occurred. Thus, the Plan Commission is not entitled at this point to file a reply brief regarding standing. As Counsel for appellants, I would agree to allow such a filing if I could then file Appellant's "reply." As Appellants have the burden in this matter, that would be customary. Also, I assume that all prehearing filings are going to be supplied to the BOA members nearer in time to the hearing, and are not being supplied as they are submitted, but would appreciate clarification on that.

Regarding the content of the record, Attorney Blum's statements are not supported with any citation to authority and are incorrect. They appear to be based on the idea that this matter is already at the circuit court, where the record would be complete and the Court would be conducting a certiorari review.

The statement "In Board of Appeals matters the expansion of the record is generally not permitted." This is again not correct regarding proceedings at the BOA

itself, which is a de novo proceeding. What is needed is that the complete record be provided to the Board. As noted in our March 20th objection letter:

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, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

Here, the action appealed from is two-fold: The determination that the proposed MRM facility is a “church” and thus a permitted use, and the process by which that decision was made and finally determined by the Plan Commission on December 8, 2025. Thus, all records related to that decision are material to this appeal. As you know, we have already included key emails into the record at the BOA showing the negotiations regarding the decision by the staff to agree to characterize the proposed use as a “church,” and those are again attached. The attached records are a useful portion of the record but are obviously incomplete. All records regarding the process and ultimate determination that the use was a “church” and thus permitted, must be in the record. And it is important and statutorily required that the Plan Commission assemble and provide that entire record. Those materials are then the reference factual record from which the *de novo* hearing at the BOA proceeds.

The statement that, “This review must be limited to the information presented before the commission otherwise it is not a review of the decision but a rehearing of it which is not what is contemplated in the statutes.” Again, this is not supported by any citation to authority and again appears to be based on the idea that this matter is already at the circuit court. The BOA hearing and proceeding we are in is a *de novo* proceeding. The hearing scheduled for April 16th at the BOA is fully evidentiary hearing and has been scheduled and set up as such.

In that connection, the lack of the full record is a hindrance to Appellants. However, while the complete record must be provided to the BOA pursuant to the statute, Appellants are not limited in submitting any and all portions of that public record at the hearing or in advance, which we reserve the right to do.

You had emailed in response to our letter of March 20th about trying to resolve this dispute about the content and completeness of the record at an upcoming meeting of the BOA and/or through a meet and confer with counsel. Was this a reference to the meeting set for April 16th, which is currently scheduled for the evidentiary hearing? It does not seem to make sense to have an issue about the content of the record not occur until the date of the actual evidentiary hearing. I do think a near term conference between counsel could be useful to discuss these matters.

I appreciate your attention and consideration of this letter. We will be supplying our exhibits later today according to the schedule but reserve the right to and will likely file those with you into the evening later today to allow time to assemble and scan and otherwise prepare the actual documents.

Very truly yours

Electronically signed by Joseph R. Cincotta

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

Cc: Attorney Tom Schmitzer
Attorney Mark Blum
Attorney Deborah Tomczyk

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

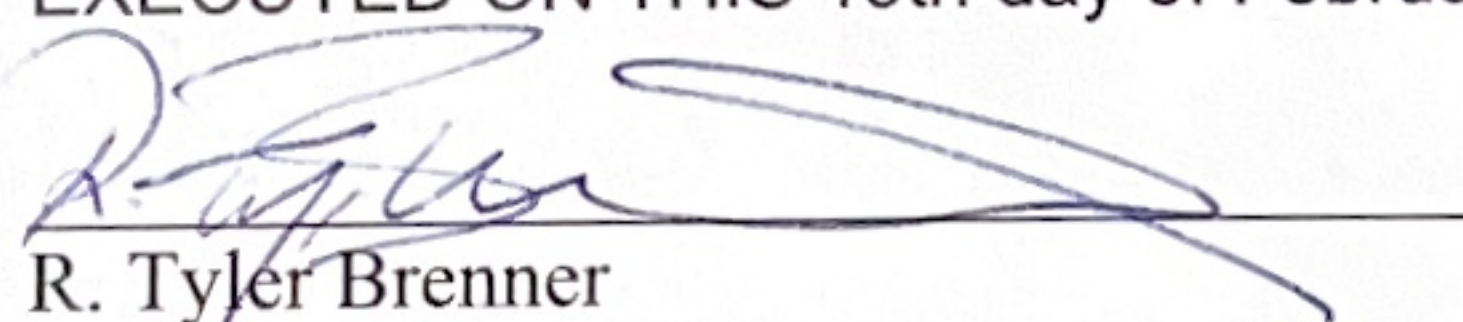
between January 1st 2024, to February 26th 2025, 218 ERT calls for service were issued by (or in response to) the facility.¹ This is objective, irrefutable evidence, in regards to risk towards public safety, depletion of ERT resources, and the overall blight this would cause our suburban neighborhood 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.m.mimecastprotect.com/s/BqLCCL9P2vUROB8XFqhVcy4104/>>
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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.m.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 it'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 website 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 46.03(22), 59.69, 62.23(7)(i), and 62.23(7a), Wis. Stats., and amendments thereto.

i. See

also Zoning Code Section 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_ARTIIIREAPPR_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

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

APPELLANT’S WITNESS LIST

Appellant, New Berlin Citizens United, U.A., (“NBCU”) provides the following list of persons who may testify at the hearing in this matter regarding the standing of Appellant as an aggrieved person pursuant to allowing NBCU to pursue this appeal to the Board of Appeals.

1. Tyler Brenner. Mr. Brenner owns and resides at his property at 15101 West Small Road, New Berlin, WI 53151. Mr. Brenner may be called to testify regarding the proposed MRM New Journey facility and its likely impact on the value and the use and enjoyment of his property and the surrounding neighborhood. Mr. Brenner is a founding member of the Appellant, New Berlin Citizen’s United, U.A. (“NBCU”)

2. Hannah Brenner. Ms. Brenner owns and resides at her property at 15101 West Small Road, New Berlin, WI 53151. Ms. Brenner may be called to testify regarding the impact of the proposed MRM New Journey project on her property and the use and enjoyment of her property and surrounding area. Ms. Brenner is a founding member of the Appellant, NBCU.

3. Mark & Shari Kastner. The Kastners own and reside at their property at 15185 W. Small Rd. New Berlin, WI 5315 they may be called to testify regarding the impact of the proposed MRM New Journey project on their property and the use and enjoyment of their property and surrounding area. The Kastners are members of the Appellant, NBCU.

4. Tyler Gunther owns and resides at his property at 15225 West Small Road New Berlin, WI 53151. Mr. Gunther may be called to testify regarding the impact of the proposed MRM New Journey project on his property and the use and enjoyment of his property and surrounding area. Mr. Gunther is a member of the Appellant, NBCU.

5. Scott Klaas. Mr. Klaas is a property owner resident of New Berlin whose address is 13835 West Morningview Court, New Berlin WI 53151. He is also a real estate professional with Apex Realty Group and may be called to testify in his individual capacity and also as an expert regarding the New Berlin real estate market and associated issues.

6. Janice Shoman. Ms. Shoman is a property owner and resident of New Berlin. She is also a retired law enforcement professional having worked for Milwaukee Police Department for many years. She may be called to testify in her individual capacity and also provide expert testimony and opinion arising from her law enforcement experience.

7. Mary Fennig. Ms. Fennig is a property owner and resident of New Berlin whose address is 5090 S. Small Road New Berlin, WI 53151. Ms. Fennig may be called to testify regarding her experience regarding residential treatment facilities and the likely impact of the MRM New Journey facility on her property and neighborhood.

8. Craig D. Hungerford. Mr. Hungerford is a real estate valuation expert with Real Estate Dynamics located at 448 West Washington Avenue, Madison, WI 53703. He may be called to provide expert testimony regarding the impact of the proposed MRM New Journey facility to property and the tax base of the City and its taxpayers and associated matters.

9. Other persons with relevant knowledge. Appellant reserves the right to call adversely, and not just on cross exam, any lay or expert witnesses named or identified by any party in this matter, or otherwise identified in the record as having knowledge relevant to the issues presented.

10. Appellant reserves the right to identify and rely on and name further witnesses learned of and identified as this matter proceeds.

11. Appellant reserves the right to call rebuttal witnesses at any hearings in this matter as necessary and in accordance with applicable law.

Dated this 18th day of March, 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

Real Estate Dynamics, Inc

Meet the Real Estate Dynamics Staff

Craig D. Hungerford, CRE, ASLA, is the President and co-owner of Real Estate Dynamics consulting. He has a post graduate degrees in Real Estate Appraisal; Investment Analysis; and Market Research and Landscape Architecture from the University of Wisconsin, Madison. In addition, he is a member of The Counselors of Real Estate, an organization established exclusively for real estate advisors who provide intelligent, unbiased and trusted advice for a client or employer. Mr. Hungerford is a member of the American Society of Landscape Architects, which is the national professional association representing landscape architects.

Prior to starting REDI, Mr. Hungerford served as a project manager and analyst for Landmark Research Inc. in Madison, WI, a national consulting firm. He has over 30 years of experience in development consulting, public pension fund consulting, corporate real estate consulting, all types of market analysis, economic impact studies, municipal development evaluation, physical planning, and feasibility and valuation studies for major mixed-use properties — including senior continuum-of-care, general residential, retail, golf courses and office.

In addition, Mr. Hungerford is co-founder and development manager for Trio Development LLC, a commercial real estate development and management company. He is currently a board member of Attic Angel Prairie Point, a senior living community in Madison, WI. Additionally, Mr. Hungerford is co-owner, founder, and instructor at Martingilio Martial Arts and Fitness in Madison, WI.

Jill C. Buechner is the Vice-President and co-owner of Real Estate Dynamics consulting. She has undergraduate degrees in Real Estate and Urban Land Economics; and Risk Management and Insurance from the University of Wisconsin, Madison. She has over 15 years experience in development consulting, corporate real estate consulting, all types of market analysis, economic impact studies, municipal development evaluation, and feasibility and valuation studies for major mixed-use real estate properties — including senior continuum-of-care, general residential, retail, golf courses and office.

In addition, Ms. Buechner is the co-founder and development manager for Trio Development LLC, a commercial real estate development and management company. Ms. Buechner, with her husband, is also the co-owner and founder of Monster Lures LLC, a specialty fishing lure company in Middleton, WI.

Bryce W. Armstrong is the Executive Vice-President of Real Estate Dynamics consulting. He has master's degrees in Real Estate and Urban Land Economics, Management and Human Resources with an Entrepreneurship emphasis, and a law degree (JD) — all from the University of Wisconsin, Madison. Mr. Armstrong is a licensed attorney and member of the State Bar of Wisconsin, as well as a licensed real estate broker and member of the Wisconsin Realtors Association.

He has over 13 years of experience including development consulting, corporate real estate consulting, all types of market analysis, economic impact studies, municipal development evaluation, physical planning, and feasibility and valuation studies for major mixed-use properties — including senior continuum-of-care, general residential, retail, golf courses and office.

In addition, he is co-founder and development manager for Trio Development LLC, a commercial real estate development and management company. Mr. Armstrong is the President and founder of Armstrong Real Estate LLC, a full-service real estate firm offering commercial and residential brokerage services in the state of Wisconsin.

Real Estate Dynamics, Inc. 448 W. Washington Avenue, Madison, WI 53703 Ph: 608-255-4676

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STATE OF WISCONSIN
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NEW BERLIN CITIZENS UNITED, U.A.
4880 South Courtland
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**APPELLANT’S MEMORANDUM ON WHEN A PARTY IS
AN AGGRIEVED PERSON**

Pursuant to the agreement between the parties by counsel, Appellant provides this memorandum setting forth the method of determining whether a person who seeks to appeal a matter to the Board of Adjustment is an aggrieved person.

I. Summary of how to demonstrate standing/injury.

The members of NBCU are “aggrieved persons” in multiple ways under the ordinances and applicable state law and court decisions. To be a person aggrieved means there is a negative impact or injury or *threatened* injury to a person that affects their rights which are recognized under the law. The courts have explained that aggrieved is equivalent to suffering injury to their legal interests:

Consequently, we interpret aggrieved to mean the same as what it means in other statutes and hold that a complainant is ‘aggrieved’ by WEC’s decision when she or he has suffered an injury to a legally recognized interest as a result of WEC’s decision.

See Brown v. WEC, 414 Wis.2d 601, 611 (2025).

What the courts have also established is the amount of injury only has to be “appreciable,” or in the words of the court cases even a “trifling” of injury is sufficient for standing:

To be sure, “[i]t is not the magnitude of the injury that confers standing, but rather the fact that an injury has occurred.” *Milwaukee Brewers Baseball Club v. DHSS*, 130 Wis. 2d 56, 69, 387 N.W.2d 245 (1986). In other words, the bar is low—even an injury to a “trifling interest” may be sufficient to confer standing.”

See Brown, 414 Wis.2d at 612.

That is because the purpose of requiring a person to be aggrieved or have standing is to make sure that the party pursuing a legal claim is sufficiently concerned about the issue in dispute so as to make a strong and zealous argument in favor of his or her position. As the Court of Appeals sitting in Waukesha recently explained:

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).

Counsel for the Plan Commission has noted the law on standing in his previous submission to the Board, which acknowledges that standing is based on *some* injury to a property or other legal interest, not on a *sufficient amount* of injury. *See Position Statement of Plan Commission 2.17.26 at p. 4.* (“[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”)

This issue is pertinent – that only some injury or a “trifle” is necessary - because Counsel for the Board has suggested in his submissions that the question before the Board is whether some of the members of NBCU, are *sufficiently aggrieved*. That is not correct. Whether there is standing, and a person is aggrieved, is not based on the amount of injury or impact, but only that there is some impact or injury, or in this case, threatened injury.¹

Here, NBCU and the members of NBCU are injured in three ways:

1. There is a negative impact on the use and enjoyment and value of their properties. This is shown given the nature of the use and the activity that will arise from the construction and operation of the MRM facility. It is well-settled and undisputed that property owners and taxpayers have a legal interest in protecting their property values, and the use and quiet enjoyment of their property, from erroneous developments and the underlying determinations that permit them.

2. Secondly, because the determination by the Plan Commission is that the proposed use is a “permitted use”, the members of NBCU were denied a public hearing. This is a public right to which they are entitled and the deprivation of that public hearing right is separate injury. *See Gloudeman v. City of St. Francis*, 143 Wis.2d 780, 789-90 (Ct. App. 1988) (The legislature, in enacting sec. 62.23(7)(d), has attempted to protect this right to due process by requiring an adequate notice and hearing before a change in municipal zoning could affect the character of a neighborhood.); *see also, Oliveira v. City of Milwaukee*, 242 Wis.2d 1, 16 (2001) (When a zoning amendment is enacted without the required notice and hearing, the public has been denied its statutory right to appear and voice objections to the proposed amendment, and the amendment is therefore void.)

¹ Here, the issue is the threat of injury because the development has yet to be built or put in operation

3. Thirdly, as taxpayers, each member of NBCU who is a property taxpayer of New Berlin, and as the previously submitted list shows. all of them are, will suffer an injury by having to pay some perhaps small but meaningful amount more in taxes if the MRM facility is built and operated as in intended, as nonprofit The facility and owner will pay no property taxes. Thus, the approval of the proposed facility, if allowed to proceed, will necessarily increase the tax burden a in small but equal amount on all taxpayers in the City.

This is especially the case here given that the approved development of a hotel and the TID District covering it, which was intended to increase tax base and therefore create a lesser burden on the taxpayers, is not being built. Instead, a non-profit is being proposed which will actually reduce the amount of taxes imposed and collected from the subject property.

In addition, in this case, the nature of the use will necessarily and without doubt increase the costs to the City's Emergency Services. This aptly demonstrated by the many, many emergency and other similar calls that are experienced at the current facility in Milwaukee, as has been discussed in the greater record and will be further entered into the record at the hearing.

II. The ultimate questions for the Board.

Based on the legal framework above, and the facts already in the record and to be further provided at the hearing, the questions the Board should ask are:

1. Will this proposed development cause any appreciable negative impact on the value and use and enjoyment of certain of NBCU members' property? Only if the Board can reasonably find that there will be no negative impact at all due to the construction and operation of the facility, can the Board properly conclude there is no standing based on impact to the value and use and enjoyment of the property of the nearby members of NBCU.

2. Alternatively, did the determination of the Plan Commission that the MRM facility would be a permitted use cause the members of NBCU and other New Berlin property taxpayer to be denied a public hearing on the project. It did, because without the finding of a permitted use, the applicant would have had to apply for and obtain a rezoning and/or a conditional use permit both of which require public hearing.

3. Thirdly, in addition to or in the alternative to the standing shown by the above, will allowing for this facility cause an increase in the tax revenues on the remaining tax base and tax payers that is necessary to raise the City's yearly levy? It appears clear that it will.

Regarding this type of standing - taxpayer standing - any taxpayer may pursue a claim for the misuse of, unlawful expenditure of, or failure to obtain proper taxes from. *See Fabick v. Evers*, 396 Wis.2d 231, 239-40 (2021).

This approach to taxpayer standing in these matters is also consistent with the State statute governing appeal to the circuit court of the determinations of this Board. Under Wis. stats. §62.23(7)(e)(10), any *taxpayer* may seek review of the decision of this Board after an appeal:

Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari.

See Wis. Stats. § 62.23(7e)(10)

III. Proper procedure for 4-person panel of the Board.

Counsel for the BOA and the opposing parties also agreed to address the procedural issue of how many votes will be required in this matter to make any findings in favor of the Appellants. This is based on the fact that there are only four (4) members on the panel for the Board in this appeal, and they will continue to be the same four members as the case proceeds.

The Board rules do contemplate a situation where there are only four board members hearing a matter. The rules provide as follows

Vote required. All orders or decisions of the board granting a variance or exception or reversing any action or order of the building inspector shall require the affirmative vote of four members. Whenever only four members of the board are present and they vote 3-to-1 in favor of the appellant, the matter shall be laid over for consideration and final determination at the next meeting of the board or a special meeting called for that purpose.

See BOA Rules of Procedure 6(c).

Given the intent of the ordinances to allow for further hearing and the addition of additional members when there are only four members available, unanimity is *not* required. This is consistent with the state statute under Section 62.23 which provides that if a quorum is present, the Board of Appeals may take action under this subsection by a majority vote of the members present:

3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.

See Wis. Stats. § 62.23(7e)(3m).

Four members satisfies a quorum of a five-member board. As a result, in this case, a vote of majority of 3-1 is what is required to make findings in favor of the appellant. A unanimous vote of 4-0 is not required and would not be appropriately applied to appellant's claims in this matter. Alternatively, Rule 6(c) would need to be complied with and the Board must include the addition of an alternate or another member to make the Board authorized to act in this case.

Respectfully submitted.

Dated this 18th day of March, 2026

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

P.O. Address:

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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

APPELLANT'S EXHIBIT LIST

Appellant, New Berlin Citizens United, U.A., ("NBCU") provides the following list of documents and other exhibits that it may rely on at the hearing and any other proceedings in this matter.¹ Exhibits 1 - 4 are attached. The remaining exhibits are filed sequentially in a drop link at <https://www.dropbox.com/scl/fo/t0zv3puup4mjwuhyhkc3h/AL2CiWCUG553fIsKelzbUEE?rlk=eyJtebyelzphjzkrtpajm9ed&st=2b98406j&dl=0>

1. Aerial plan view New Berlin project area
2. Aerial plan view West Allis properties
3. Aerial plan view Milwaukee Rescue Mission
4. Expert letter/report S. Klaas
5. January 13, 2026 Common Council minutes
6. Plain view proposed MRM first floor
7. Plan view proposed MRM second and third floor
8. Plan view proposed MRMN 4th floor

¹ This is an over inclusive listing of exhibits and it is not intended that all will be offered or addressed at the hearing on this matter though Appellants reserve the right to do so.

9. Renderings proposed MRM facility
10. Appellants' memo and standing aggrieved person
11. Appellants' witness list
12. BOA application
13. BOA hearing notice
14. BOA Rules of Procedure
15. Data on call volume police EMS calls to MRM
16. Clerk letter to J. Lecourt
17. Correspondence regarding notice of appearance
18. Declaration of Tyler Brenner and attached emails
19. City staff letter for December 8th meeting.
20. Email from Mayor on appeal filing
21. January 7th appeal filings -Exhibit A
22. Notice of appearance - Exhibit B
23. Clerk's notice letter regarding appeal - Exhibit C
24. Supplemental appeal filings - Exhibit D
25. Aerial view of project site area - Exhibit E
26. Copy of plan commission memo - Exhibit F
27. Email regarding staff Communications/open meetings (G. Kessler)
28. Letter regarding notice of appeal
29. Letter regarding scheduling conference and prehearing dates
30. Letter regarding scheduling conference amended
31. Appellants' letter to Counsel regarding deficiency in record 3.20.26
32. Letter regarding record and proceedings 3.24.26
33. Letter to Clerk and attorney Larson by applicant
34. Letter to Clerk by applicant

35. Letter to attorney Schmitzer by applicant
36. Location map from file
37. Updated Member list NBCU
38. Open records Milwaukee Police Department re 818 North 19th Street
39. Open records Milwaukee Police Department re 830 North 19th Street
40. Proposed MRM New Journey CSM
41. Record of Calls to Milwaukee Police Department regarding MRM
42. New Journey development memo 122925
43. New Journey memorandum to director Kessler
44. New Journey plan of operation
45. Notice of retainer and position statement by Appellants
46. Plan Commission packet December 8th 2025.
47. Plan Commission packet December 8th 2025 CSM
48. Plan of operation overview
49. Position statements January 2026
50. Pre inspection report City of Milwaukee DNS re MRM
51. Pre inspection report City of Milwaukee DNS re MRM
52. Email regarding “pilot” program for property taxes - Proposed
53. Screenshot regarding EMS calls per MRM
54. Overview aerial exhibit Small Road and project site
55. Copy of Wisconsin realtors association standard real estate condition report
56. Appellants also reserve the right to and will rely on any documents or exhibits identified or submitted or filed or offered by any party or its representatives at any time during this matter.
57. Appellants reserve the right to and will rely on any and all documents that are part of the actual record within the City’s files in any way related to the MRM proposed development.

58. Appellants reserve the right to and will rely on any and all statutes or ordinances that are relevant to any of the issues raised in this matter and also the Standard Industrial Classifications Code.
59. Appellants reserve the right to supplement these exhibits as the matter proceeds and more information and facts are discovered.
60. As noted, this listing of Exhibits is not meant to indicated that any or then or all of them will be offered into the record or otherwise relief on by Appellants.

Dated this 24th day of March, 2026

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

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EXHIBIT
NBCU-1

Google Maps

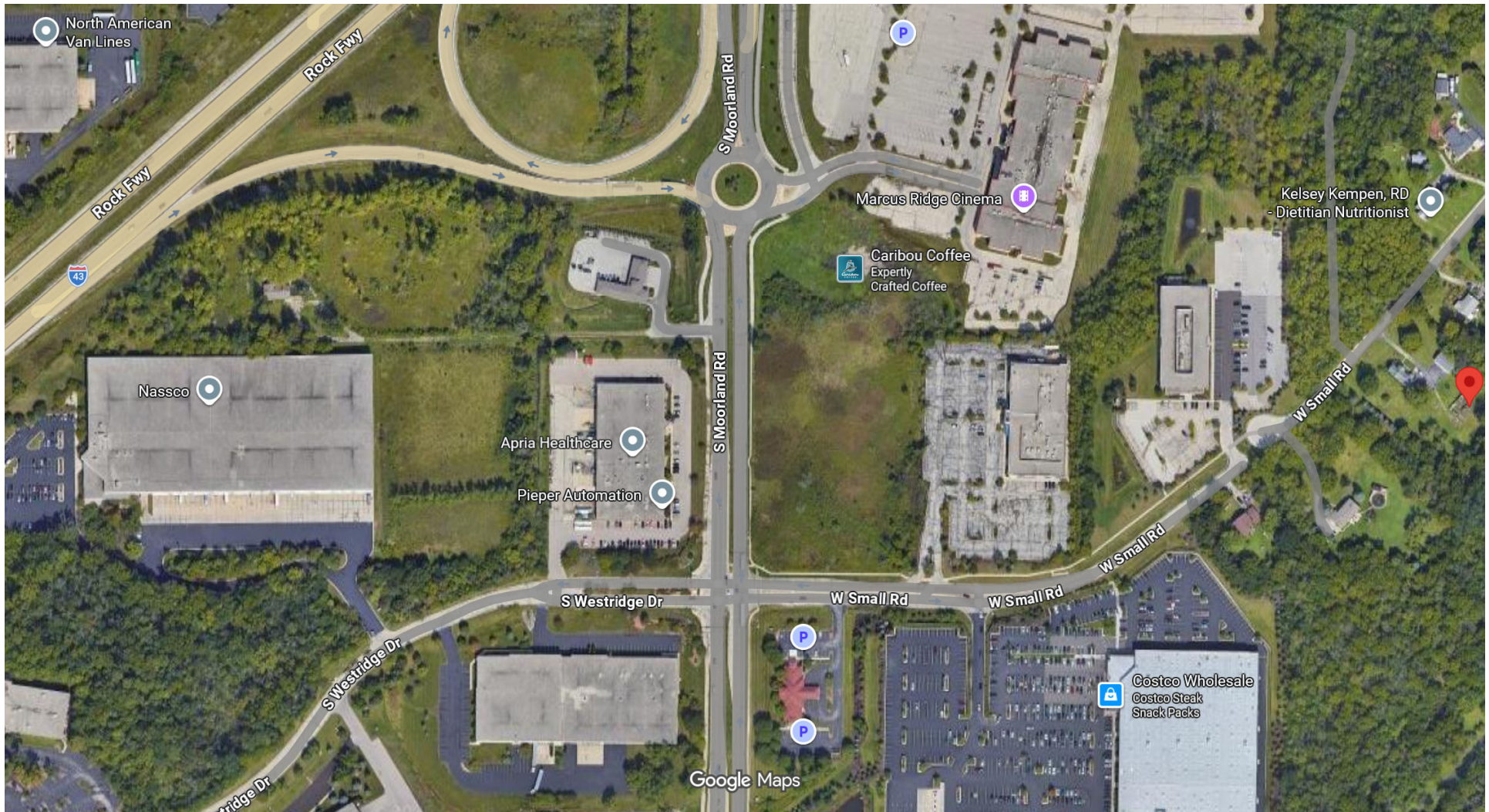
15101 W Small Rd



Imagery ©2026 Airbus, Maxar Technologies, Map data ©2026 Google 200 ft

Google Maps

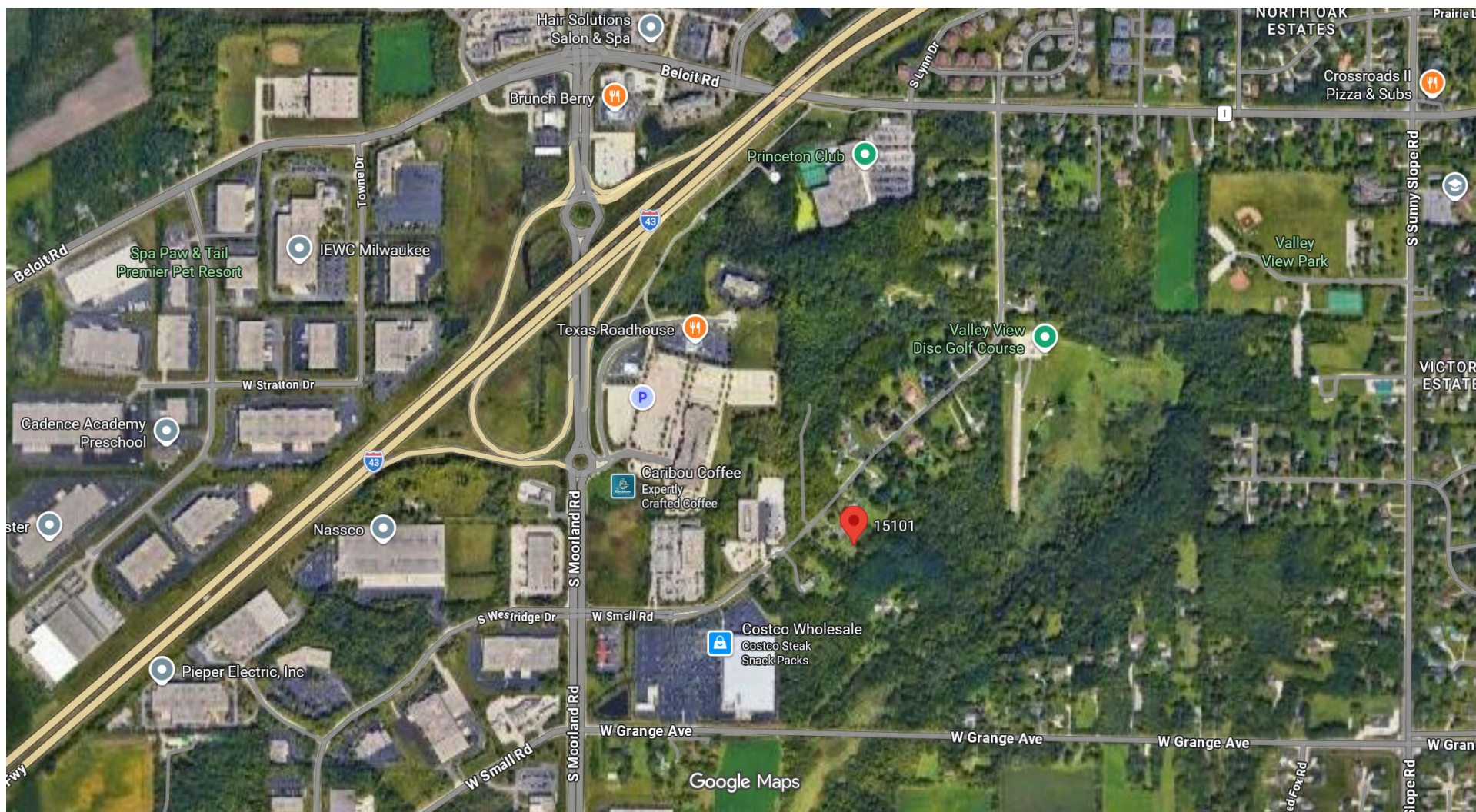
15101 W Small Rd



Imagery ©2026 Airbus, Maxar Technologies, Map data ©2026 Google 200 ft

Google Maps

15101 W Small Rd



Imagery ©2026 Airbus, Maxar Technologies, Map data ©2026 Google 500 ft

Google Maps

5365 S Moorland Rd



Imagery ©2026 Airbus, Maxar Technologies, Map data ©2026 200 ft

Google Maps

5365 S Moorland Rd



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EXHIBIT
NBCU-2

Google Maps

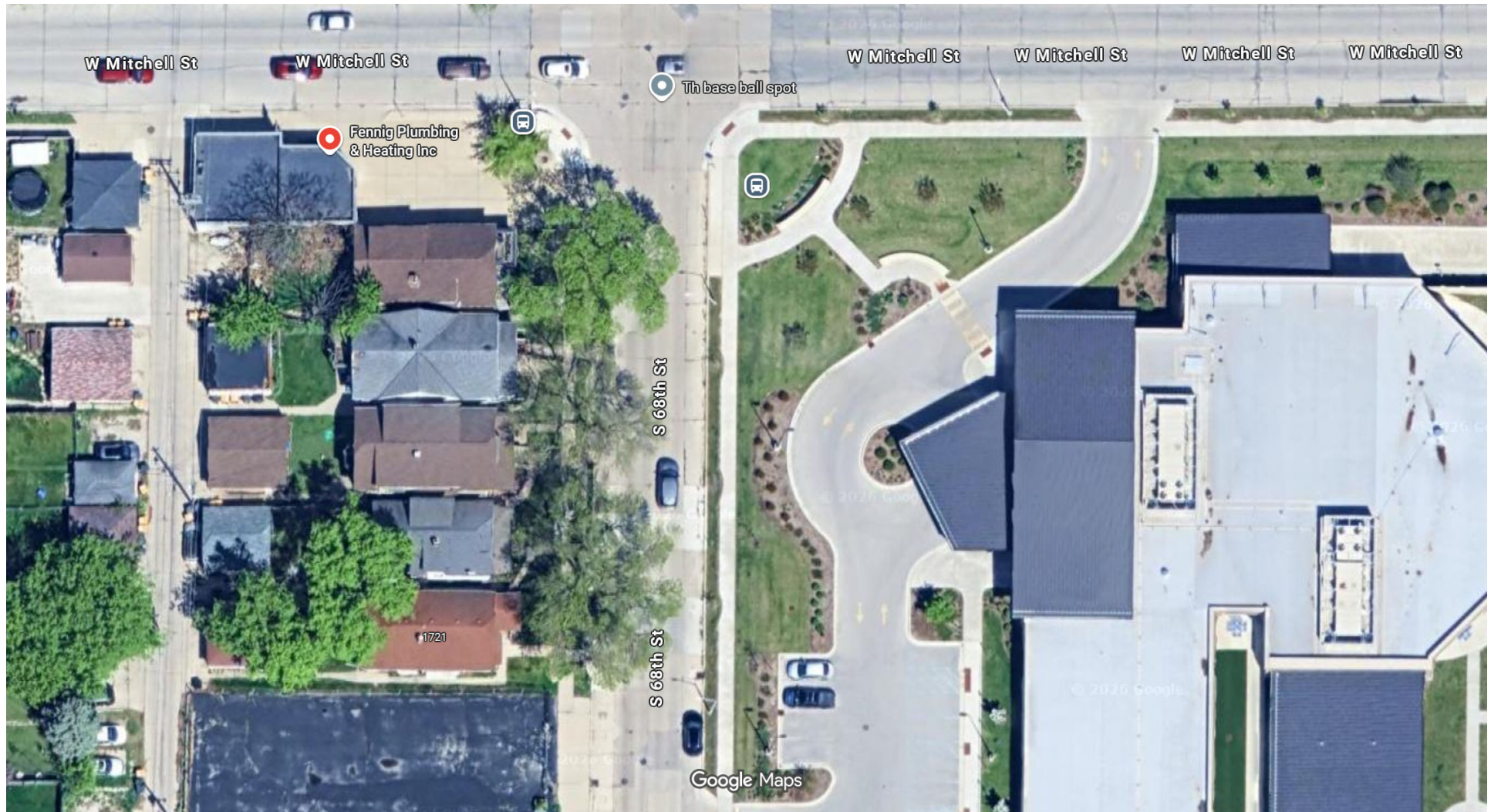
fennig plumbing



Imagery ©2026 Airbus, Maxar Technologies, Map data ©2026 100 ft

Google Maps

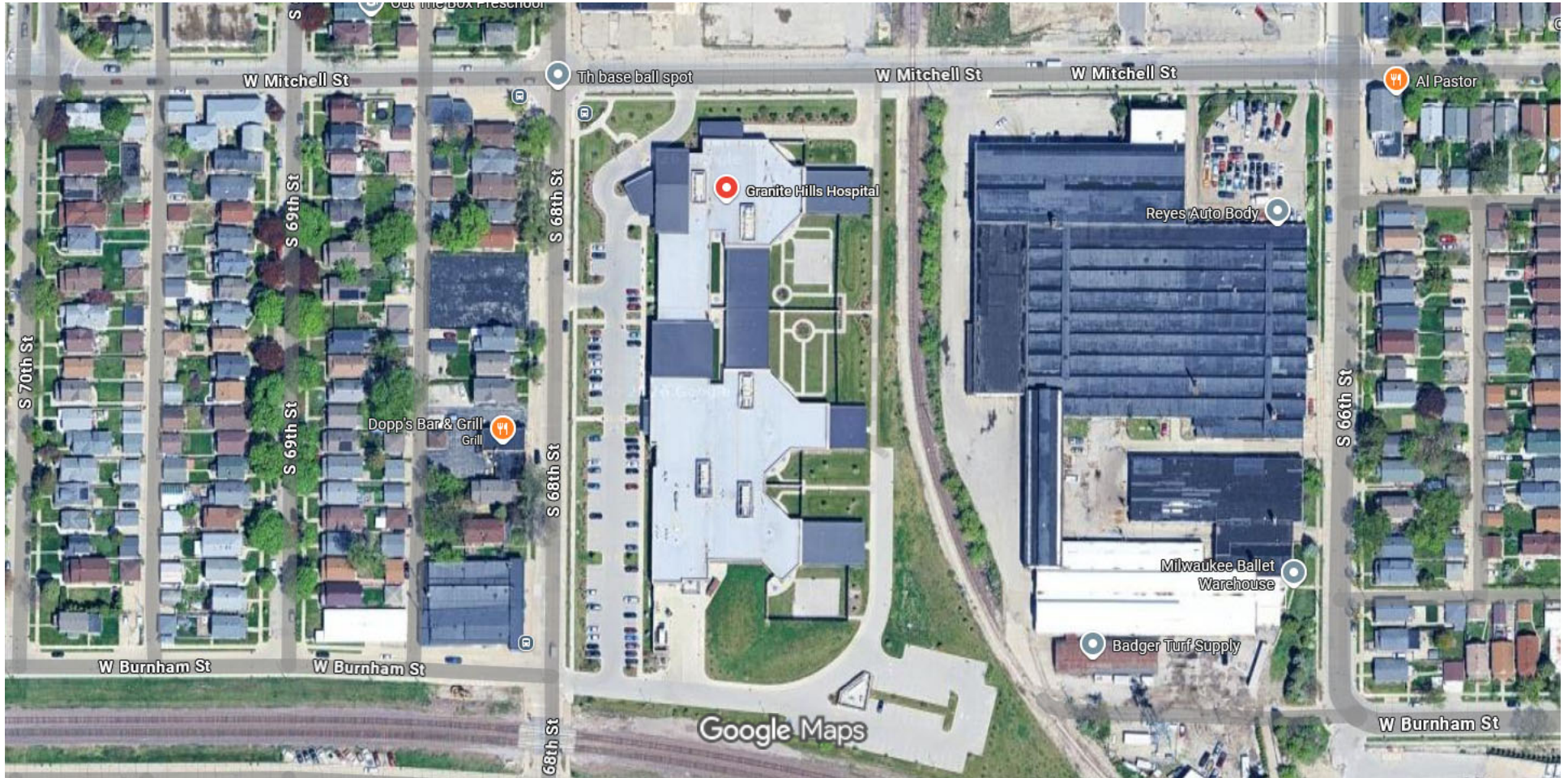
fennig plumbing



Imagery ©2026 Airbus, Map data ©2026 20 ft



west allis treatment center

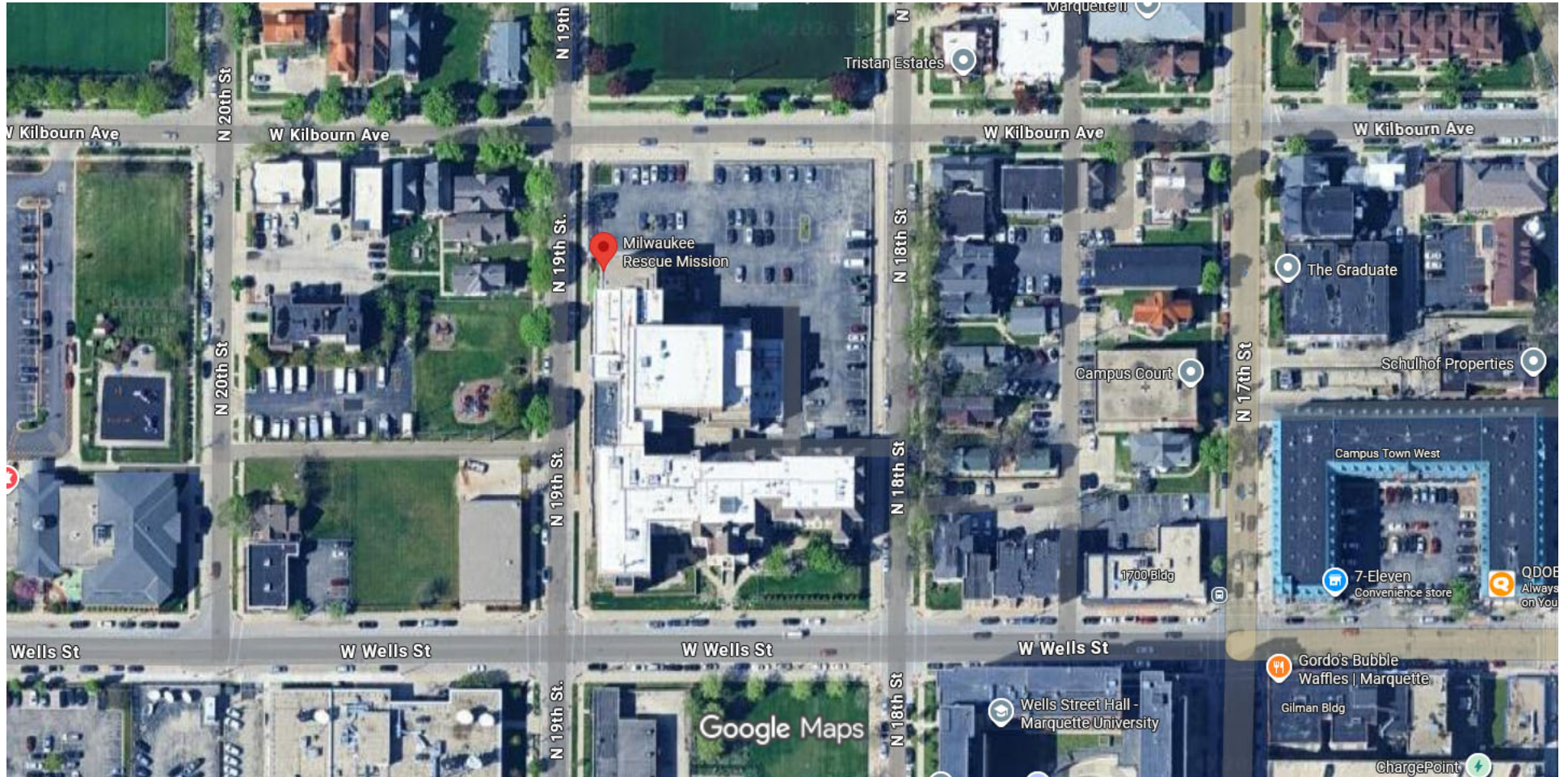


Imagery ©2026 Airbus, Maxar Technologies, Map data ©2026 100 ft

EXHIBIT
NBCU-3



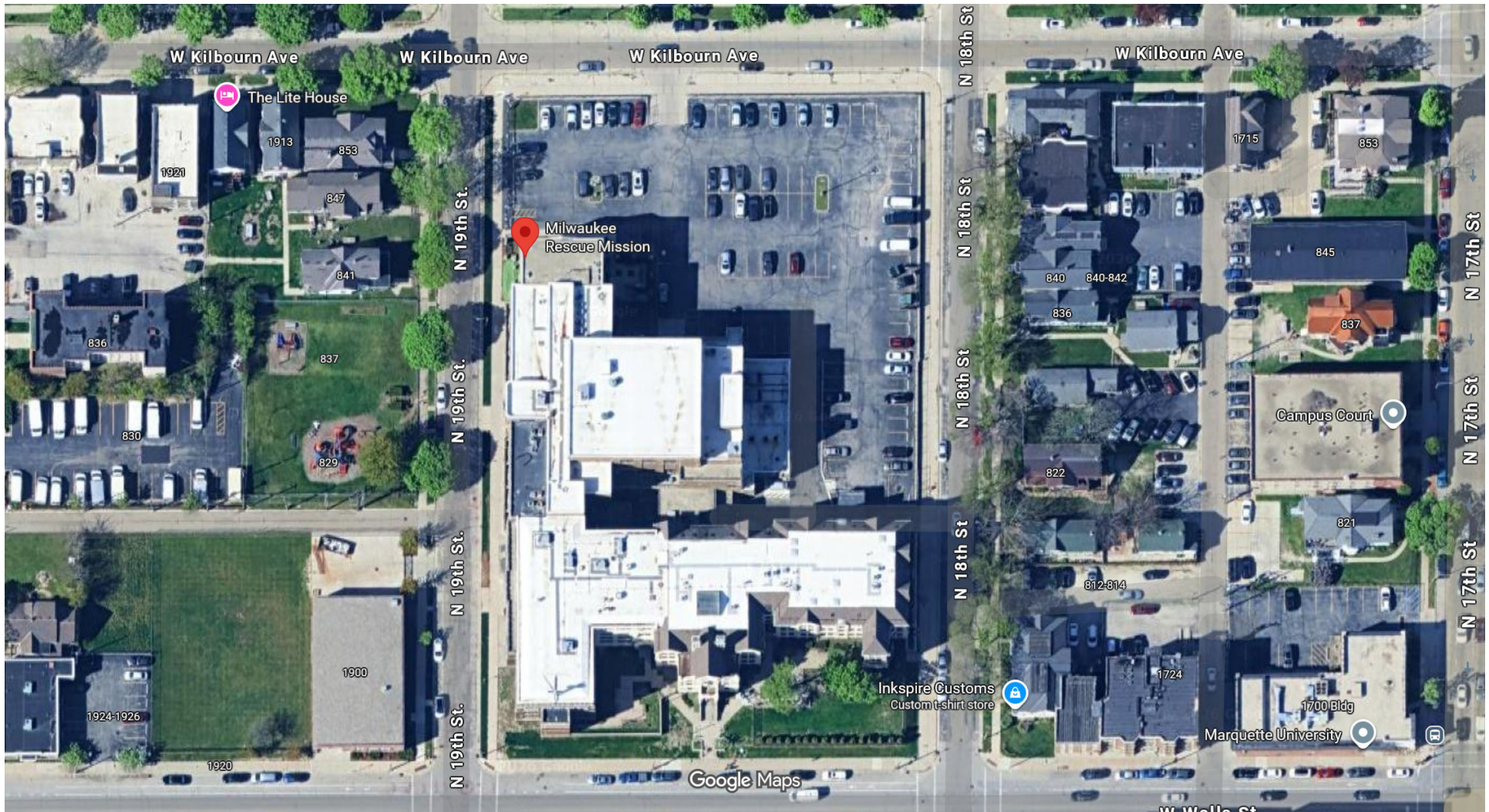
Milwaukee Rescue Mission



Imagery ©2026 Airbus, Maxar Technologies, Map data ©2026 Google 100 ft

Google Maps

Milwaukee Rescue Mission



Imagery ©2026 Airbus, Maxar Technologies, Map data ©2026 Google 50 ft

EXHIBIT
NBCU-4

TO: Joseph R. Cincotta

DATE: March 24, 2026

SUBJECT: Professional Assessment of Market Impacts: Proposed MRM Facility (New Journey Campus)

I. Professional Qualifications & Market Context As a Realtor in New Berlin for over 16 years with a career volume exceeding 2,200 sales, I have an intimate understanding of how "externalities"—factors outside a property's boundary—dictate market value. New Berlin is consistently recognized as one of the premier places to live in the region. This reputation is currently reflected in our critical market indicators:

- **Active Inventory:** Only 5 homes are currently available without accepted offers.
- **Average Days on Market (DOM):** 11 days (calculated over the past 12 months).
- **Months of Inventory:** 0.7 months (any figure under 4.0 months represents a strong Seller's Market).

II. The "Institutional" Shift The primary concern regarding the proposed Milwaukee Rescue Mission (MRM) facility is its scale. This is not a small-scale "group home"; it is a 120-bed institutional campus. This project would fundamentally reclassify the neighborhood character from "Suburban Residential/Light Industrial" to "Institutional," creating a permanent negative externality for nearby residents.

III. Critical Market Impacts The following factors represent my professional assessment of how this facility will financially impact New Berlin homeowners:

- **Inventory Influx & Softening Demand:** Approval of this project is likely to trigger a surge in local inventory as wary homeowners exit, while simultaneously softening buyer demand. This shift in the supply-demand curve will erode the current seller-favoring market.
- **The "Disclosure" Mandate:** Section E5 of the Wisconsin Real Estate Condition Report (RECR) asks: "Are you aware of any proposed construction of a public project that may affect the use of the property?" This project would compel sellers to disclose its existence, creating an immediate "stigma" that buyers must weigh before even stepping foot on the property.
- **The "Comparable Sale" Ripple Effect:** Real estate value is dictated by "comps." If a single home near the center sells at a discount due to proximity, it establishes a new, lower baseline. This brings down the appraised value of every subsequent home in that radius, regardless of the home's individual quality.
- **Increased Days on Market (DOM):** Proximity to a treatment center historically increases the time it takes to sell a home. In real estate, time is an enemy to value; the longer a property sits, the more buyers perceive it as "flawed," leading to aggressive low-ball offers.
- **Diminution of Sale Price:** Combined, the factors of disclosure, stigma, and stagnant DOM lead to lower final sales prices, effectively stripping homeowners of their hard-earned equity.



IV. Conclusion The introduction of the New Journey Campus poses a significant financial threat to New Berlin residents. My professional opinion is that this project will cause measurable, long-term harm to the property values and the overall economic health of the community. And will have a more direct and greater impact on the values of the residential properties in the area near the proposed facility, including along West Small Road, than in the broader community. Those properties will experience a loss in overall long-term value the closer they are to the facility. The amount or percentage of loss is not precisely determinable until a property is listed, but in my opinion those properties will experience a measurable and concrete amount of loss. That may be in an actual decrease in value but could also take the form of a slower growth in value over time once the MRM facility is operating. For these reasons, I formally recommend against the approval of the Milwaukee Rescue Mission project.

Respectfully,

Scott Klaas Realtor since 2010

DISCLAIMER

THIS CONDITION REPORT CONCERNS THE REAL PROPERTY LOCATED AT _____
IN THE _____
(CITY) (VILLAGE) (TOWN) OF _____, COUNTY OF _____
STATE OF WISCONSIN.

THIS REPORT IS A DISCLOSURE OF THE CONDITION OF THAT PROPERTY IN COMPLIANCE WITH SECTION 709.02 OF THE WISCONSIN STATUTES AS OF _____ (MONTH) _____ (DAY), _____ (YEAR). IT IS NOT A WARRANTY OF ANY KIND BY THE OWNER OR ANY AGENTS REPRESENTING ANY PARTY IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT THE PARTIES MAY WISH TO OBTAIN.

A buyer who does not receive a fully completed copy of this report within 10 days after the acceptance of the contract of sale or option contract for the above-described real property has the right to rescind that contract (Wis. Stat. s. 709.02), provided the owner is required to provide this report under Wisconsin Statutes chapter 709.

NOTICE TO PARTIES REGARDING ADVICE OR INSPECTIONS

Real estate licensees may not provide advice or opinions concerning whether or not an item is a defect for the purposes of this report or concerning the legal rights or obligations of parties to a transaction. The parties may wish to obtain professional advice or inspections of the property and to include appropriate provisions in a contract between them with respect to any advice, inspections, defects, or warranties.

A. OWNER'S INFORMATION

A1. In this form, "aware" means the "owner(s)" have notice or knowledge.

A2. In this form, "defect" means a condition that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed, or replaced would significantly shorten or adversely affect the expected normal life of the premises.

A3. In this form, "owner" means the person or persons, entity, or organization that owns the above-described real property. An "owner" who transfers real estate containing one to four dwelling units, including a condominium unit and time-share property, by sale, exchange, or land contract is required to complete this report.

Exceptions: An "owner" who is a personal representative, trustee, conservator, or fiduciary appointed by or subject to supervision by a court, and who has never occupied the property transferred is not required to complete this report. An "owner" who transfers property that has not been inhabited or who transfers property in a manner that is exempt from the real estate transfer fee is not required to complete this report. (Wis. Stat. s. 709.01)

A4. The owner represents that to the best of the owner's knowledge, the responses to the following questions have been accurately checked as "yes," "no," or "not applicable (N/A)" to the property being sold. If the owner responds to any question with "yes," the owner shall provide, in the additional information area of this form, an explanation of the reason why the response to the question is "yes."

A5. If the transfer is of a condominium unit, the property to which this form applies is the condominium unit, the common elements of the condominium, and any limited common elements that may be used only by the owner of the condominium unit being transferred.

A6. The owner discloses the following information with the knowledge that, even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the property. The owner hereby authorizes the owner's agents and the agents of any prospective buyer to provide a copy of this report, and to disclose any information in the report, to any person in connection with any actual or anticipated sale of the property.

CAUTION: The lists of defects following each question below are examples only and are not the only defects that may properly be disclosed in response to each respective question.

B. STRUCTURAL AND MECHANICAL

	YES	NO	N/A
B1. Are you aware of defects in the roof? Roof defects may include items such as leakage or significant problems with gutters or eaves.	☐	☐	☐
B2. Are you aware of defects in the electrical system? Electrical defects may include items such as <i>defects in solar panels and systems</i> , electrical wiring not in compliance with applicable code, knob and tube wiring, 60 amp service, or aluminum-branch circuit wiring.	☐	☐	☐
B3. Are you aware of defects in part of the plumbing system (including the water heater, water softener, and swimming pool)? Other plumbing system defects may include items such as leaks or defects in pipes, toilets, interior or exterior faucets, bathtubs, showers, or any sprinkler system.	☐	☐	☐
B4. Are you aware of defects in the heating and air conditioning system (including the air filters and humidifiers)? Heating and air conditioning defects may include items such as defects in the heating ventilation and air conditioning (HVAC) equipment, supplemental heaters, ventilating fans or fixtures, or solar collectors.	☐	☐	☐
B5. Are you aware of defects in a woodburning stove or fireplace or of other defects caused by a fire in a stove or fireplace or elsewhere on the property? Such defects may include items such as defects in the chimney, fireplace flue, inserts, or other installed fireplace equipment; or woodburning stoves not installed pursuant to applicable code.	☐	☐	☐
B6. Are you aware of defects related to smoke detectors or carbon monoxide detectors or a violation of applicable state or local smoke detector or carbon monoxide detector laws? NOTE: State law requires operating smoke detectors on all levels of all residential properties and operating carbon monoxide detectors on all levels of most residential properties (see Wis. Stat. ch. 101).	☐	☐	☐
B7. Are you aware of defects in the basement or foundation (including cracks, seepage, and bulges)? Other basement defects may include items such as flooding, defects in drain tiling or sump pumps, or movement, shifting, or deterioration in the foundation.	☐	☐	☐
B8. Are you aware of defects in any structure on the property? Structural defects with respect to the residence or other improvements may include items such as movement, shifting, or deterioration in walls; major cracks or flaws in interior or exterior walls, partitions, or the foundation; wood rot; and significant problems with driveways, sidewalks, patios, decks, fences, waterfront piers or walls, windows, doors, floors, ceilings, stairways, or insulation.	☐	☐	☐
B9. Are you aware of defects in mechanical equipment included in the sale either as fixtures or personal property? Mechanical equipment defects may include items such as defects in any appliance, central vacuum, garage door opener, in-ground sprinkler, or in-ground pet containment system that is included in the sale.	☐	☐	☐
B10. Are you aware of rented items located on the property such as a water softener or other water conditioner system or <i>water treatment system</i> , or other items affixed to or closely associated with the property? <i>Such items may include reverse osmosis systems, iron filters, or other filters.</i>	☐	☐	☐
B11. Are you aware of basement, window, or plumbing leaks, overflow from sinks, bathtubs, or sewers, or other ongoing water or moisture intrusions or conditions?	☐	☐	☐
B12. Explanation of "yes" responses _____			

C. ENVIRONMENTAL

	YES	NO	N/A
C1. Are you aware of the presence of unsafe levels of mold?	☐	☐	☐
C2. Are you aware of a defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the property, lead in paint, lead in soil, or other potentially hazardous or toxic substances on the property? NOTE: Specific	☐	☐	☐

federal lead paint disclosure requirements must be complied with in the sale of most residential properties built before 1978.

	YES	NO	N/A
C3. Are you aware of the presence of asbestos or asbestos-containing materials on the property?	☐	☐	☐
C4. Are you aware of the presence of or a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of hazardous or toxic substances on neighboring properties?	☐	☐	☐
C5. Are you aware of current or previous termite, powder post beetle, or carpenter ant infestations or defects caused by animal, reptile, or insect infestations, <i>including infestations impacting trees</i> ?	☐	☐	☐
C6. Are you aware of water quality issues caused by unsafe concentrations of or unsafe conditions relating to lead?	☐	☐	☐
C7. Are you aware of the manufacture of methamphetamine or other hazardous or toxic substances on the property?	☐	☐	☐
C8. Explanation of "yes" responses _____			

D. WELLS, SEPTIC SYSTEMS, STORAGE TANKS

	YES	NO	N/A
D1. Are you aware of defects in a well on the property or in a well that serves the property, including unsafe well water? Well defects may include items such as an unused well not properly closed in conformance with state regulations, a well that was not constructed pursuant to state standards or local code, or a well that requires modifications to bring it into compliance with current code specifications. Well water defects might include, but are not limited to, unsafe levels of bacteria (total Coliform and E. coli), nitrate, arsenic, or other substances affecting human consumption safety.	☐	☐	☐
D2. Are you aware of a joint well serving the property?	☐	☐	☐
D3. Are you aware of a defect related to a joint well serving the property?	☐	☐	☐
D4. Are you aware that a septic system or other private sanitary disposal system serves the property?	☐	☐	☐
D5. Are you aware of defects in the septic system or other private sanitary disposal system on the property or any out-of-service septic system that serves the property and that is not closed or abandoned according to applicable regulations? Septic system defects may include items such as backups in toilets or in the basement; exterior ponding, overflows, or backups; or defective or missing baffles.	☐	☐	☐
D6. Are you aware of underground or aboveground fuel storage tanks on or previously located on the property? (If "yes," the owner, by law, may have to register the tanks with the Wisconsin Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708, whether the tanks are in use or not. Regulations of the Wisconsin Department of Agriculture, Trade and Consumer Protection may require the closure or removal of unused tanks.)	☐	☐	☐
D7. Are you aware of defects in the underground or aboveground fuel storage tanks on or previously located on the property? Defects in underground or aboveground fuel storage tanks may include items such as abandoned tanks not closed in conformance with applicable local, state, and federal law; leaking; corrosion; or failure to meet operating standards.	☐	☐	☐
D8. Are you aware of an "LP" tank on the property? (If "yes," specify in the additional information space whether the owner of the property either owns or leases the tank.)	☐	☐	☐
D9. Are you aware of defects in an "LP" tank on the property?	☐	☐	☐
D10. Explanation of "yes" responses _____			

E. TAXES, SPECIAL ASSESSMENTS, PERMITS, ETC.

	YES	NO	N/A
E1. Have you received notice of property tax increases, other than normal annual increases, or are you aware of a pending property reassessment?	☐	☐	☐
E2. Are you aware that remodeling was done that may increase the property's assessed value?	☐	☐	☐
E3. Are you aware of pending special assessments?	☐	☐	☐
E4. Are you aware that the property is located within a special purpose district, such as a drainage district, that has the authority to impose assessments against the real property located within the district?	☐	☐	☐
E5. Are you aware of any proposed construction of a public project that may affect the use of the property?	☐	☐	☐
E6. Are you aware of any remodeling, replacements, or repairs affecting the property's structure or mechanical systems that were done or additions to this property that were made during your period of ownership without the required permits?	☐	☐	☐
E7. Are you aware of any land division involving the property for which a required state or local permit was not obtained?	☐	☐	☐
E8. Explanation of "yes" responses _____			

F. LAND USE

	YES	NO	N/A
F1. Are you aware of the property being part of or subject to a subdivision homeowners' association, <i>or other homeowners' association</i> ?	☐	☐	☐
F2. If the property is not a condominium unit, are you aware of common areas associated with the property that are co-owned with others?	☐	☐	☐
F3. Are you aware of any zoning code violations with respect to the property?	☐	☐	☐
F4. Are you aware of the property or any portion of the property being located in a floodplain, wetland, or shoreland zoning area?	☐	☐	☐
F5. Are you aware of nonconforming uses of the property? A nonconforming use is a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform to the use restrictions in the current ordinance.	☐	☐	☐
F6. Are you aware of conservation easements on the property? A conservation easement is a legal agreement in which a property owner conveys some of the rights associated with ownership of his or her property to an easement holder such as a governmental unit or a qualified nonprofit organization to protect the natural habitat of fish, wildlife, or plants or a similar ecosystem, preserve areas for outdoor recreation or education, or for similar purposes.	☐	☐	☐
F7. Are you aware of restrictive covenants or deed restrictions on the property?	☐	☐	☐
F8. Other than public rights of ways, are you aware of nonowners having rights to use part of the property, including, but not limited to, private rights-of-way and easements other than recorded utility easements?	☐	☐	☐
F8a. Are you aware of any private road agreements or shared driveway agreements relating to the property?	☐	☐	☐
F9. Are you aware of the property being subject to a mitigation plan required under administrative rules of the Wisconsin Department of Natural Resources related to county shoreland zoning ordinances, which obligates the owner of the property to establish or maintain certain measures related to shoreland conditions and which is enforceable by the county?	☐	☐	☐
F10. The use value assessment system values agricultural land based on the income that would be generated from its rental for agricultural use rather than its fair market value. When a person converts agricultural land to a non agricultural use (e.g., residential or commercial development), that person may owe a conversion charge. For more information visit https://www.revenue.wi.gov/Pages/FAQS/slf-useassmt.aspx or (608) 266-2486.			
a. Are you aware of all or part of the property having been assessed as agricultural land under Wis. Stat. s. 70.32 (2r) (use value assessment)?	☐	☐	☐
b. Are you aware of the property having been assessed a use-value assessment conversion charge relating to this property? (Wis. Stat. s. 74.485 (2))	☐	☐	☐

		YES	NO	N/A
	c. Are you aware of the payment of a use-value assessment conversion charge having been deferred relating to this property? (Wis. Stat. s. 74.485 (4))	☐	☐	☐
F11.	Is all or part of the property subject to or in violation of a farmland preservation agreement? Early termination of a farmland preservation agreement or removal of land from such an agreement can trigger payment of a conversion fee equal to 3 times the class 1 "use value" of the land. Visit https://datcp.wi.gov/Pages/Programs_Services/FarmlandPreservation.aspx for more information.	☐	☐	☐
F12.	Is all or part of the property subject to, enrolled in, or in violation of the Forest Crop Law, Managed Forest Law, the Conservation Reserve Program, or a comparable program?	☐	☐	☐
F13.	Are you aware of a dam that is totally or partially located on the property or that an ownership in a dam that is not located on the property will be transferred with the property because it is owned collectively by members of a homeowners' association, lake district, or similar group? (If "yes," contact the Wisconsin Department of Natural Resources to find out if dam transfer requirements or agency orders apply.)	☐	☐	☐
F14.	Are you aware of boundary or lot line disputes, encroachments, or encumbrances (including a joint driveway) affecting the property? Encroachments often involve some type of physical object belonging to one person but partially located on or overlapping on land belonging to another; such as, without limitation, fences, houses, garages, driveways, gardens, and landscaping. Encumbrances include, without limitation, a right or claim of another to a portion of the property or to the use of the property such as a joint driveway, liens, and licenses.	☐	☐	☐
F15.	Are you aware there is not legal access to the property?	☐	☐	☐
F16.	Are you aware of federal, state, or local regulations requiring repairs, alterations, or corrections of an existing condition? This may include items such as orders to correct building code violations.	☐	☐	☐
F17.	Are you aware of a pier attached to the property that is not in compliance with state or local pier regulations? See http://dnr.wi.gov/topic/waterways for more information.	☐	☐	☐
F18.	Are you aware of a written agreement affecting riparian rights related to the property?	☐	☐	☐
F19.	Are you aware that the property abuts the bed of a navigable waterway that is owned by a hydroelectric operator? Under Wis. Stat. s. 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a hydroelectric operator, as defined in s. 30.132 (1) (b), may be required to ask the permission of the hydroelectric operator to place a structure on the bed of the waterway.	☐	☐	☐
F20.	Are you aware of one or more burial sites on the property? (For information regarding the presence, preservation, and potential disturbance of burial sites, contact the Wisconsin Historical Society at 800-342-7834 or www.wihist.org/burial-information).	☐	☐	☐
F21.	Explanation of "yes" responses _____			

G. ADDITIONAL INFORMATION

		YES	NO	N/A
G1.	Have you filed any insurance claims relating to damage to this property or premises within the last five years?	☐	☐	☐
G2.	Are you aware of a structure on the property that is designated as a historic building or that all or any part of the property is in a historic district?	☐	☐	☐
G2a.	Does the property currently have internet service? If so, who is your provider? _____	☐	☐	☐
G2b.	Does the property have an electric vehicle charging system and station or installed wiring for a future system or station? Is the system or station affixed to the property?	☐	☐	☐
G2c.	Does the property have accessibility features? If so, attach an Accessibility Features Report (see https://www.wra.org/Disabilities/).	☐	☐	☐
G3.	Are you aware of any agreements that bind subsequent owners of the property, such as a lease agreement or an extension of credit from an electric cooperative?	☐	☐	☐
G3a.	Are you aware of any right of first refusal, recorded or not, on all or any portion of the property?	☐	☐	☐

- G4. Is the owner a foreign person, as defined in 26 USC 1445 (f)? (E.g. a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate.)
Section 1445 of the Internal Revenue Code (26 USC 1445), also known as the Foreign Investment In Real Property Tax Act or FIRPTA, provides that a transferee (buyer) of a U.S. real property interest must be notified in writing and must withhold tax if the transferor (seller) is a foreign person, unless an exception under FIRPTA applies to the transfer.
- G5. Are you aware of other defects affecting the property?
Other defects might include items such as drainage easement or grading problems; excessive sliding, settling, earth movements, or upheavals; or any other defect or material condition.
- G6. The owner has owned the property for _____ years.
- G7. The owner has lived in the property for _____ years.
- G8. Explanation of "yes" responses _____

YES ☐ NO ☐ N/A ☐

☐ ☐ ☐

Notice: You may obtain information about the sex offender registry and persons registered with the registry by contacting the Wisconsin Department of Corrections at <http://www.doc.wi.gov> or by phone at 608-240-5830

OWNER'S CERTIFICATION

NOTE: Wisconsin Statute section 709.035 requires owners who, prior to acceptance of a purchase contract or an option to purchase, obtain information that would change a response on this report to submit a complete amended report or an amendment to the previously completed report to the prospective buyer within 10 days of acceptance.

The owner certifies that the information in this report is true and correct to the best of the owner's knowledge as of the date on which the owner signs this report.

Owner		Date	_____
Owner		Date	_____
Owner		Date	_____
Owner		Date	_____
Owner		Date	_____

CERTIFICATION BY PERSON SUPPLYING INFORMATION

A person other than the owner certifies that the person supplied information on which the owner relied for this report and that the information is true and correct to the best of the person's knowledge as of the date on which the person signs this report.

Person		Items	_____	Date	_____
Person		Items	_____	Date	_____
Person		Items	_____	Date	_____

BUYER'S ACKNOWLEDGEMENT

The prospective buyer acknowledges that technical knowledge such as that acquired by professional inspectors may be required to detect certain defects such as the presence of asbestos, building code violations, and floodplain status.

I acknowledge receipt of a copy of this statement.

Prospective buyer		Date	_____
Prospective buyer		Date	_____
Prospective buyer		Date	_____
Prospective buyer		Date	_____
Prospective buyer		Date	_____

Information appearing in italics is supplemental in nature and is not required pursuant to Section 709.03 of the Wisconsin Statutes.

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No representation is made as to the legal validity of any provision or the adequacy of any provision in any specific transaction.

March 20, 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: BOA appeal - NBCU, U.A. v. Plan Commission et. al.,
Completion of the Record**

Dear Eric:

Regarding the record in this matter, the City/Plan Commission has filed a proposed record as of March 18, 2026. It includes limited materials. It does not include all the communications and memos regarding the discussion and negotiations between the applicant and the City staff and legal counsel that resulted in the approval of the site plan. And with that the approval of the determination by staff and the Plan Commission that the proposed MRM New Journey facility qualified as a Church under the City Zoning Code and was thus a permitted use.

All of this information is part of the record in this matter. The record in full is required to be supplied to the BOA by the Plan Commission. State statute requires as follows:

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, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

See Wis. Stats. § 62.23(7e)(4)

The record is incomplete and deficient. The lack of that information will prejudice the appellants. That includes, but is not limited to, being denied the information that demonstrates the approval as a permitted use, the non-profit status of the

proposed use and the operation of the facility, all of which are relevant to the issue of standing and injury as well as the underlying merits of the appeal.

The courts have made clear that record must be complete and include all documents that are related to the subject matter:

“The right to a hearing and a record sufficient for judicial review to determine whether the exercise of the administrative power was capricious or arbitrary is fundamental. ... in those cases where the judicial branch has the jurisdiction to review the action of the legislative function the facts which lie within the knowledge of the agency must be disclosed in the record so that the record is complete and adequate for a judicial review to determine whether the action was arbitrary, capricious or discriminatory.

See State ex rel. Ruffalo v. Common Council of City of Kenosha, 38 Wis.2d 518, 524 (1968); *See also e.g. Allenergy Corp. v. Trempealeau County Land Use Committee*, 375 Wis.2d 329, 371-72 (2017) (In making this determination, we may look to the whole record. “[A] reviewing court should consider the context of the evidence when determining whether it supports a municipality's action.” *citing Oneida Seven Generations Corp. v. City of Green Bay*, 2015 WI 50, ¶45, 362 Wis.2d 290, 865 N.W.2d 162.

The record must be made complete for this matter to properly proceed. Please advise on how the BOA is planning to address this issue. Appellant’s may also supply and have and reserve the right to include in their exhibits documents that may be part of the complete record of this matter.

However, the obligation under the statute and the decisional law is that the Plan Commission “shall forthwith” submit all papers that are part of the record of the determination appealed from. The plain language of the statute does not permit the respondent party, who also is charged with preparing the record, to make unilateral determinations about what is or is not in the record, or what is or is not relevant. The entirety of the record, from the initial applications, all emails and other communications throughout that time between all parties, including legal counsel, and any later staff memos and packet materials, as well as subsequent correspondence, must be included.

Very truly yours

Electronically signed by Joseph R. Cincotta

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

Cc: Attorney Tom Schmitzer
Attorney Deborah Tomczyk

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**

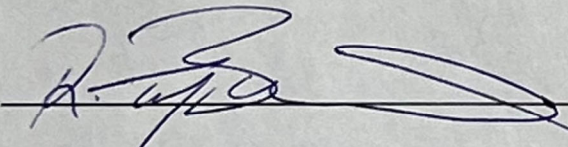
10:49 am
pm

Dear Chairman,

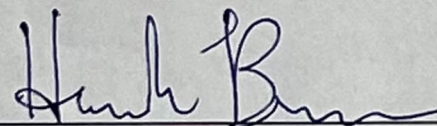
We are filing a grievance with the Board of Appeals in regards to the MRM: New Journeys building proposal that was approved by the New Berlin Planning Committee on 8 December 2025. We are filing as aggrieved citizens under the grounds that the building proposal is within a .5 mile radius of our property.

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

11AM
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.

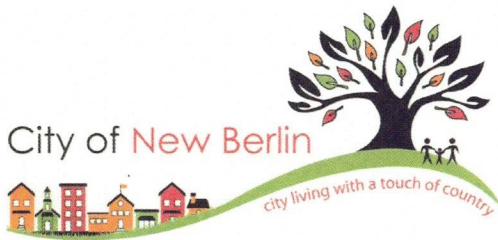
Dated this 20th day of January, 2026

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.)
☐ Setback/Size Variance	\$200+ \$50 Filing Fee	☐ Nature of Appeal – 8 copies ☐ Hardship Argument – 8 copies ☐ Scaled Drawing/ Survey – 8 copies ☐ Photos – 8 copies
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-- CONTINUED ON PAGE 2 --

RECEIVED
JAN 23 2026
CITY OF NEW BERLIN
OFFICE OF THE CITY CLERK
RUBINA R. MEDINA

Fees:

Base Fee From Above	\$ 500.00
Filling Fee	\$ 50.00
Total	\$ 550.00

* 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

Property for Appeal - NBCE, VA

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**

JOSEPH R. CINCOTTA, LLC

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

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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

11AM
JPM

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

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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 _____

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- - 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.

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Signature [Signature] Andrew For Approval 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

11AM
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 E

**Aerial View of Project site
and neighboring properties**

Google Maps

15101 W Small Rd



Imagery ©2026 Airbus, Maxar Technologies, Map data ©2026 Google 200 ft

Plan Commission Arguments on Standing and Record



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

March 18, 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: Board of Appeals Meeting
Date: April 16, 2026 at 4:00 p.m.
Applicant: New Berlin Neighbors United, U.A.

Dear Mr. Goetter:

Pursuant to the parties' agreed-upon procedure, please accept this letter as the New Berlin Plan Commission's pre-hearing submittal relative to the hearing now scheduled for April 16, 2026, at 4:00 p.m. This hearing will be limited to the issue of whether the appellant, New Berlin Neighbors United, U.A., has standing to appeal the Plan Commission's unanimous decision to grant use, site, and architectural approval for the Milwaukee Rescue Mission/New Journey Development. This approval occurred at the December 8, 2025, meeting of the Plan Commission.

Plan Commission List of Witnesses

The New Berlin Plan Commission reserves its right to call the following witnesses at the time of the hearing:

1. Gregory Kessler, Director of the Department of Community Development, City of New Berlin, 3805 South Casper Drive, New Berlin, Wisconsin 53151. Mr. Kessler is the Director of the New Berlin Department of Community Development. For purposes of whether the appellant has standing, Mr. Kessler will testify regarding the location of the proposed Milwaukee Rescue Mission/New Journey development; the zoning classification of the property where the proposed development is to be located; the zoning classifications of properties which surround the location of the proposed development; the physical characteristics of the area in which the property is located including, but not necessarily limited to, roadways and intersections; traffic; and the nature, uses and structures located in the vicinity of the proposed development; the proximity of the properties owned by the individual members of the appellant organization to the proposed development; the future land-use classifications of properties owned by certain members of the appellant organization, including, but not necessarily limited to, future land-use designations of

properties owned by Brenner and Kastner, and the history regarding such future land-use classifications under the City's comprehensive plan. During his testimony, Mr. Kessler may refer to certain maps, aerial photographs, other photographs, and other evidence to be marked as exhibits for the Board's consideration at the time of the hearing. Those exhibits will be provided at a later date, pursuant to the agreed-upon procedures set by the parties.

2. Nikki Jones, Deputy Director of the Department of Community Development, City of New Berlin, 3805 South Casper Drive, New Berlin, Wisconsin 53151. Ms. Jones is the Deputy Director of the New Berlin Department of Community Development. For purposes of whether the appellant has standing, Ms. Jones will testify regarding the location of the proposed Milwaukee Rescue Mission/New Journey development; the zoning classification of the property where the proposed development is to be located; the zoning classifications of properties which surround the location of the proposed development; the physical characteristics of the area in which the property is located including, but not necessarily limited to, roadways and intersections; traffic; and the nature, uses and structures located in the vicinity of the proposed development; the proximity of the properties owned by the individual members of the appellant organization to the proposed development; the future land-use classifications of properties owned by certain members of the appellant organization, including, but not necessarily limited to, future land-use designations of properties owned by Brenner and Kastner, and the history regarding such future land-use classifications under the City's comprehensive plan. During her testimony, Ms. Jones may refer to certain maps, aerial photographs, other photographs, and other evidence to be marked as exhibits for the Board's consideration at the time of the hearing. Those exhibits will be provided at a later date, pursuant to the agreed-upon procedures set by the parties.
3. Sam Monroe, Assessor for the City of New Berlin, 3805 South Casper Drive, New Berlin, Wisconsin 53151. Mr. Monroe is the northwest regional manager for Tyler Tech, which provides assessor services for the City of New Berlin. Mr. Monroe will testify regarding the assessed values of the properties owned by the members of the appellant organization including, but not necessarily limited to, the assessed values of the properties owned by Brenner and Kastner; the proximity of these properties to the proposed development; the physical characteristics of the area in the vicinity of the proposed development including, but not necessarily limited to, the location of roadways and intersections, other developments, structures and uses in that vicinity, traffic and other factors taken into consideration in arriving at an assessment; and the general process utilized in arriving at a property value assessment. It is expected that Mr. Monroe may offer an opinion regarding whether the proposed development will affect the assessed values of the properties owned by members of the appellant organization including, but not necessarily limited to, properties owned by Brenner and Kastner, and the factors taken into consideration by him in arriving at such an opinion. During his testimony, Mr. Monroe may refer to certain maps, aerial photographs, other photographs, other evidence, and other data and information relied upon by him in reaching these conclusions to be marked as exhibits for the Board's consideration at the time of the hearing. Mr. Monroe's resume and qualifications are attached.

The Plan Commission reserves its right to name additional witnesses in response to witnesses named by the appellant or other parties; the Plan Commission further reserves its right to call any witness identified

by the appellant or any of the other parties; and the Plan Commission reserves its right to call rebuttal witnesses at the time of the hearing.

Standing of Appellant

Section 275-31 of the New Berlin Municipal Code, in pertinent part, is 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 its agent or by an officer, department, board or bureau of the City.

Thus, in order to have standing to bring an appeal to this Board, the appellant must be considered a “person aggrieved”. 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 interests of the appellant. Wisconsin’s Environmental Decade, Inc. v. PSC, 69 Wis. 2nd 1, 10 (1975). 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). An appellant’s allegations of injury to aesthetic, conservational, recreational, health and safety interests will only confer standing if the injury is caused by a change in the physical environment. Milwaukee Brewers Baseball Club v. DHSS, 130 Wis. 2nd 56, 65 (1986). 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. 2nd 514, 526 (1983).

The Plan Commission reserves its right to supplement the aforementioned standards at the time of the hearing and respond to the standards proposed by the appellant or any other party.

Voting Requirement

Section 275-31(C) of the New Berlin Municipal Code provides as follows:

(C) Appeals from Department of Community Development or Plan Commission’s Decision.

Appeals of decisions of the Department of Community Development or Plan Commission shall be made to the Board of Appeals, unless otherwise provided for in this chapter. The Board of Appeals shall hold a public hearing on each appeal and, following the public hearing, act to approve or deny the appeal. Written and published notice for public hearings shall be provided pursuant to the general notice requirements of Section 275-20(D). The concurring vote of a majority of the Board, or four votes, shall be necessary to reverse any order, requirement, decision, or determination of the Department of Community Development or the Plan Commission or to decide in favor of the appellant on any matter

on which it is required to pass under this chapter. Upon reaching a decision on appeal, the Board of Appeals shall notify the appellants in writing and the Plan Commission in ten working days after taking final action on an appeal and shall, in case of denial, state its reasons for denial in writing.

Thus, there must be four votes of the Board in order to reverse the decision of the Plan Commission or to decide in favor of this appellant on any matter, including whether this appellant has standing to bring this appeal.

It must be noted that Section 275-31(C) prevails over the Board's Rules of Procedure. Section 1 of those Rules of Procedure provides that "[w]henver any conflict shall exist between these rules and the laws of the state or ordinances of the City, the state laws and local ordinances shall prevail". Thus, if there is conflict between the four-vote requirement set forth in Section 275-31(C) and the Board's Rules of Procedure, the ordinance's four-vote rule shall prevail.

The Plan Commission reserves its right to make further arguments regarding this voting requirement at the time of the hearing and to respond to the arguments of the appellant or any other party regarding this voting requirement.

Record

The complete record for the Board's consideration is being supplied with this letter. The record should consist only of those materials presented to the Plan Commission at its meeting on December 8, 2025, which materials served as the basis for its decision at that meeting and which decision is under review by the Board of Appeals. These materials, which are also available on the City's website as part of the Plan Commission's agenda packet for the December 8, 2025 meeting, are as follows:

1. Staff Report Executive Summary; File No. LD-2502142; PC Date: 12/08/2025; and
2. Staff Report Executive Summary; File No. UA-2502143; PC Date: 12/08/2025.

Although not part of the materials considered by the Plan Commission at its December 8, 2025 meeting, a copy of the minutes of that meeting are also being supplied with this letter. Additionally, an audio and video recording of the December 8, 2025 Plan Commission meeting is publicly available at the following address: newberlinwi.portal.civicclerk.com/event/1482/media. The Plan Commission's consideration of these agenda items begins at approximately the 12:24 mark of that video.

Thank you for your attention to these matters.

Sincerely,

Electronically signed by Thomas G. Schmitzer

Thomas G. Schmitzer

Mr. John Goetter
Chairman of the Board of Appeals
City of New Berlin
March 18, 2026
Page | 5

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)

Sam Monroe, Northwest Regional Manager – Wisconsin Assessor II & III

Summary With over 23 years of experience in mass appraisal, Sam served as Tyler's Appraisal Senior Project Supervisor prior to his current role as Northwest Regional Manager. Sam supervises all phases of the appraisal project in keeping with client contracts and requirements. Oversee budgeting and scheduling functions to ensure the timely delivery of a quality product. Responsible for promoting and maintaining a positive relationship with the client. Sit and rule on hearings. Ratio Study and Equalization.

Education University of Southern Indiana

Work Experience Certified as an Assessor III in Wisconsin. He is well versed in the application of multiple CAMA systems and valuation techniques for Wisconsin.

Tyler Technologies Appraisal Senior Project Supervisor

Network Supervisor, Vanderburgh County Indiana Assessor

Real Estate Deputy, Center Twp Vanderburgh County Indiana

Technical Skills Proficient with Microsoft Excel

Proficient with Thomson Reuters ProVal, X-Soft INCAMA, Enterprise Assessment and UNIVERS

Project Experience Indiana: Spencer County, Perry County, Crawford County, Gibson County, Posey County, Knox County, Warrick County

Wisconsin: Various projects as necessary

2022 & 2024 City of Beloit Revaluation

2023 Village of Menomonee Falls Revaluation

2024 Village of Greendale Revaluation

2025 Village of Waukesha Revaluation

2025 Village of Rochester Revaluation

Annual Market Updates City of Oak Creek and Village of Caledonia

Email: Sam.Monroe@TylerTech.com

Telephone: 812-483-0653

STAFF REPORT EXECUTIVE SUMMARY

APPLICANT/PROJECT: Patrick Vanderburgh with Milwaukee Rescue Mission – New Journey / CSM

LOCATION: 5295 S. Moorland Road (Tax Key #'s: 1260.998.001 & 1260.998.002)

REQUEST: 1-Lot Certified Survey Map

REVIEW SCHEDULE:	CSM Received:	10/24/2025
	Completeness Determination:	10/24/2025
	90-day time limit expires:	1/22/2025
	Final Common Council Action (expected):	1/13/2026

D.R.C. RECOMMENDATION: Recommend to Common Council approval of the 1-Lot Certified Survey Map 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:

1. Applicant shall correct all drafting errors and requested changes identified by Staff on the final CSM prior to the City signing.
2. The existing 33 ft wide public access easement. should read, to be, vacated.
3. Applicant shall address any comments from Waukesha County.
4. A final copy of the CSM shall be submitted and reviewed prior to City signing. All owners and surveyor must sign prior to City signing the CSM. Surveyor Stamp is required.
5. The CSM shall be recorded with Waukesha County Register of Deeds prior to the issuance of any new zoning or building permits.
6. Applicant and/or new property owners shall apply for and obtain appropriate building, plumbing and electrical permits prior to any construction on any parcel.

DETAILS IN ATTACHED STAFF REPORT:

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
1-Lot Certified Survey Map
5295 S. Moorland Road (Tax Key #'s: 1260.998.001 & 1260.998.002)

DATE STAFF REPORT PREPARED: October 31, 2025

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

REQUEST / DESCRIPTION OF PROJECT: Approval of the 1-Lot Certified Survey Map located at 5295 S. Moorland Road (Tax Key #'s: 1260.998.001 & 1260.998.002).

DATE OF APPLICATION / DATE FILED WITH CITY CLERK: 10/24/25

DATE OF COMPLETENESS DETERMINATION: 10/24/25

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

CONCEPTUAL PLAN: Yes, CSM is attached.

SIZE OF DEVELOPMENT / PARCEL(S): 5.67 acres (once CSM is approved).

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. (See File #: UA-2502143).

PROPOSED LOT SIZES: Lot 1: 5.6858 Acres

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.*
- *Use low-intensity office or neighborhood-oriented retail as a buffer between the industrial areas and the residential areas to the north and west.*
- *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: No

Site Plan Required: Yes, a Certified Survey Map was submitted.

Architectural Review Required: No

PROPOSED ARCHITECTURE: N/A

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 submitted a TIA prepared by TADI on September 17, 2025. This is on file with DCD.

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 Use Approval to construct a 57,010 sq. ft. rehabilitative development. (See File #: UA-2502143).
2. 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).

STAFF RECOMMENDATION:

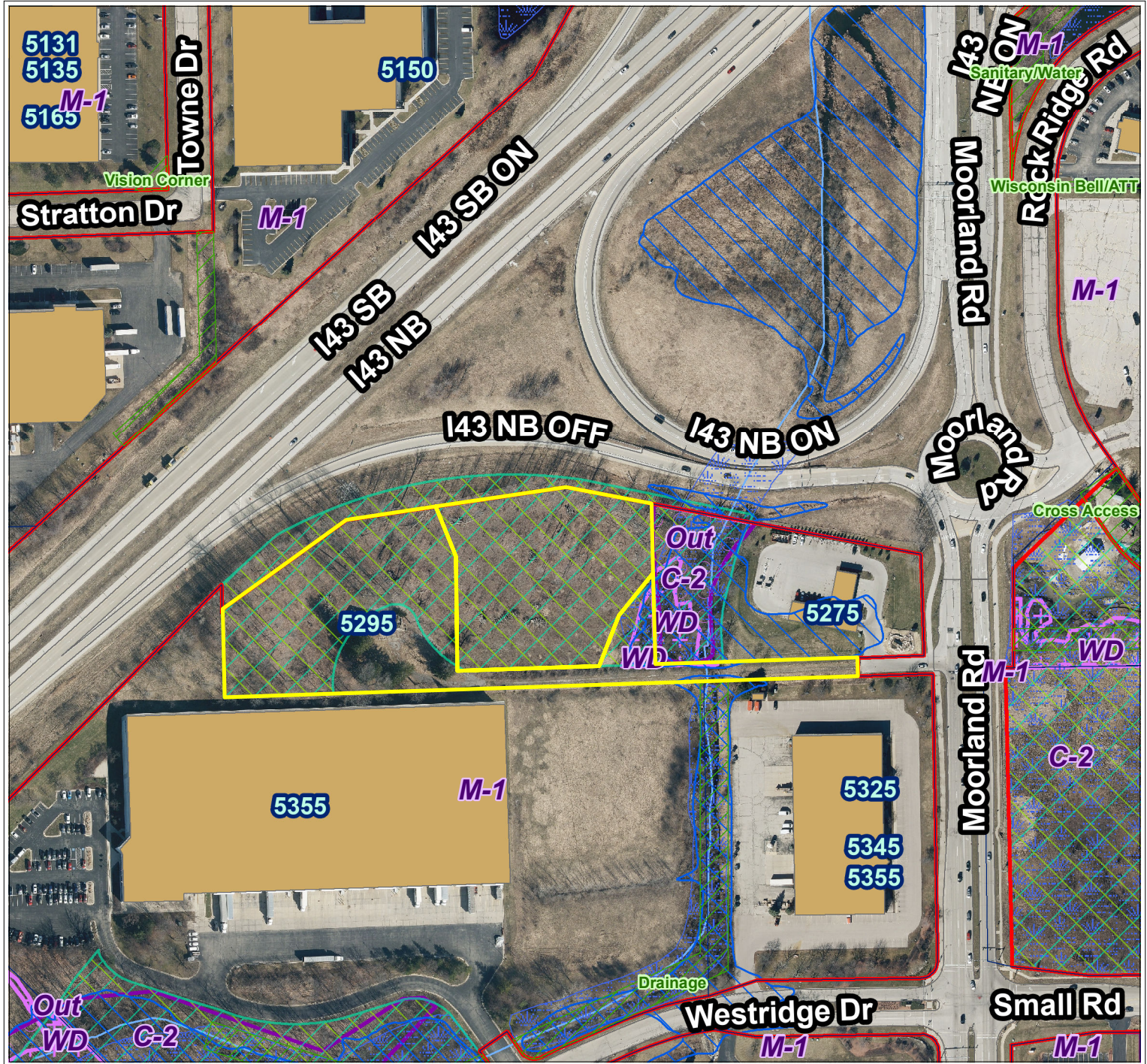
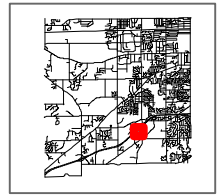
Recommend to Common Council approval of the 1-Lot Certified Survey Map located at 5295 S. Moorland Road (Tax Key #'s: 1260.998.001 & 1260.998.002), subject to the application, plans on file and the following conditions: **See Executive Summary.**

ATTACHMENTS:

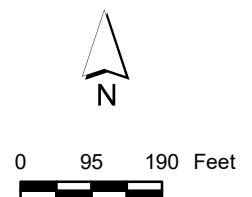
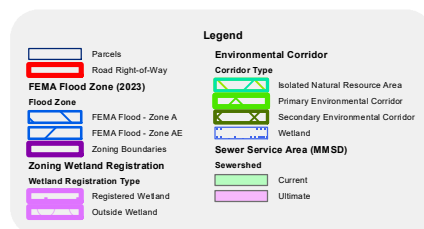
Location Map
CSM



LD-2502142 & UA-2502143
 Milwaukee Rescue Mission-
 New Journey
 5295 S. Moorland Road
 (Tax Key #'s: 1260.998.001 & 1260.998.002)



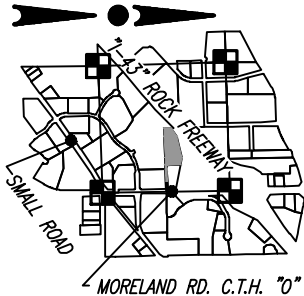
City of New Berlin
 Department of Community Development
 3805 S Casper Dr.
 New Berlin WI 53151
 (262) 797-2445
www.newberlin.org



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.

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'

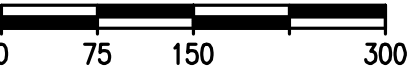
- NOTES:
- ALL BEARINGS ARE REFERENCED TO GRID NORTH OF THE WISCONSIN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE (NAD-27), IN WHICH THE EAST LINE OF THE S.E. 1/4 OF SECTION 27, TOWN 6 NORTH, RANGE 20 EAST, BEARS S00°53'38"E.
 - WETLAND LINES SHOWN HEREON WERE FIELD DELINEATED BY WETLAND AND WATERWAY CONSULTING (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

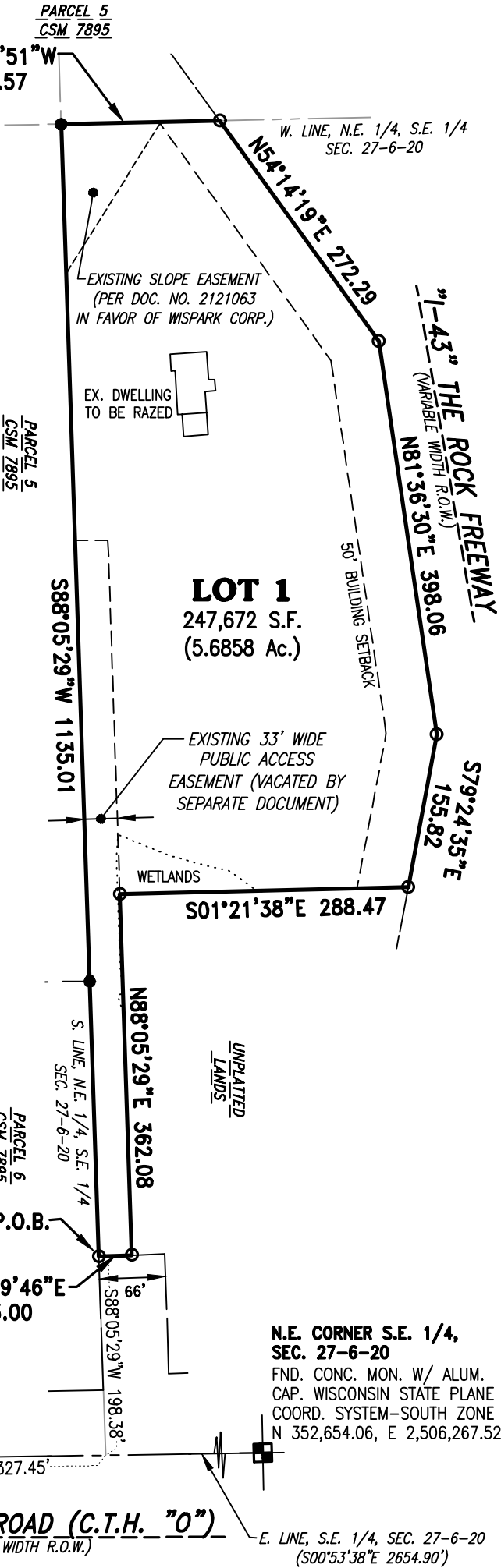
SCALE: 1"=150'



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

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



CERTIFIED SURVEY MAP NO. _____

BEING A CONSOLIDATION OF LOTS 1 AND 2 OF CERTIFIED SURVEY MAP NO. 12253. BEING A 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.

SURVEYOR'S CERTIFICATE:

STATE OF WISCONSIN)
) ss
COUNTY OF WAUKESHA)

I, Grady L. Gosser, Professional Land Surveyor, do hereby certify:

That I have surveyed, divided and mapped a consolidation of Lots 1 and 2 of Certified Survey Map No. 12253. Recorded in the office of the Register of Deeds for Waukesha County on November 29, 2021, as Document No. 4635480. Being a part of the Northeast 1/4 of the Southeast 1/4 of Section 27, Town 6 North, Range 20 East, in the City of New Belin, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Southeast Corner of the said Southeast 1/4; Thence North 00°53'38" West and along the East line of the said Southeast 1/4 Section, 1327.45 feet to a point on the South line of the said Northeast 1/4 of the said Southeast 1/4 Section; Thence South 88°05'29" West and along the said South line, 198.38 feet to the West Right-of-Way line of "S. Moorland Road" (C.T.H. "O") and the place of beginning of lands hereinafter described;

Continuing thence South 88°05'29" West and along the said South line, 1135.01 feet to a point on the West line of the said Northeast 1/4 of the said Southeast 1/4 Section; Thence North 01°13'51" West and along the said West line, 158.57 feet to a point on the Southerly Right-of-Way line of Interstate "43"; Thence North 54°14'19" East and along the said Southerly line, 272.29 feet to a point; Thence North 81°36'30" East and along the said Southerly line, 398.06 feet to a point; Thence South 79°24'35" East and along the said Southerly line, 155.82 feet to a point; Thence South 01°21'38" East, 288.47 feet to a point; Thence North 88°05'29" East, 362.08 feet to a point on the said West Right-of-Way line of said "S. Moorland Road (C.T.H. "O"); Thence South 01°59'46" East and along the said West Right-of-Way line, 33.00 feet to the point of beginning of this description.

Said Parcel contains 247,672 Square Feet (or 5.6858 Acres) of land, more or less.

That I have made such survey, land division and map by the direction of the **MILWAUKEE RESCUE MISSION**, owner of said lands.

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

That I have fully complied with the provisions of Chapter 236 of the Wisconsin Statutes and the subdivision regulations of the City of New Berlin in surveying, dividing and mapping the same.

Dated this _____ day of _____, 20_____.

Grady L. Gosser, P.L.S.
Professional Land Surveyor, S-2972
TRIO ENGINEERING, LLC
19035 W. Capitol Drive, Suite 200
Brookfield, WI 53045
Phone: (262)790-1480 Fax: (262)790-1481

CERTIFIED SURVEY MAP NO._____

BEING A CONSOLIDATION OF LOTS 1 AND 2 OF CERTIFIED SURVEY MAP NO. 12253. BEING A 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.

OWNER'S CERTIFICATE:

As owner, I hereby certify that I have caused the land described on this map to be surveyed, divided and mapped as represented on this map in accordance with the provisions of Chapter 236 of the Wisconsin Statutes, and the Subdivision Regulations of the City of New Berlin, this _____ day of _____, 20 ____.

MILWAUKEE RESCUE MISSION

STATE OF WISCONSIN)
) ss
COUNTY OF)

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

Print Name: _____
Notary Public, _____ County, WI
My commission expires: _____

CITY OF NEW BERLIN COMMON COUNCIL APPROVAL:

This Certified Survey Map is hereby approved by the City of New Berlin Common Council, on this _____ day of _____, 20 ____.

David A. Ament, Mayor

Date:

Rubina R. Medina, City Clerk

Date:

CITY OF NEW BERLIN PLAN COMMISSION APPROVAL:

This Certified Survey Map is hereby approved by the City of New Berlin Plan Commission, on this _____ day of _____, 20 ____.

David A. Ament, Mayor

Date:

Nikki Jones, Secretary

Date:

STAFF REPORT EXECUTIVE SUMMARY

APPLICANT/PROJECT: Patrick Vanderburgh with Milwaukee Rescue Mission – New Journey / Use Approval

LOCATION: 5295 S. Moorland Road (Tax Key #'s: 1260.998.001 & 1260.998.002)

REQUEST: 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).

D.R.C. RECOMMENDATION: Recommend approval for the Use, Site and Architecture for the construction of a 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:

1. Planning:

- a. Common Council approval required of the land division request (File #: LD-2502142) prior to the issuance of the Zoning Permit. CSM shall be recorded with Waukesha County Register of Deeds Office.
- b. Plan of Operation:
 - i. Applicant shall adhere to the submitted plan of operation.
 - ii. The applicant is proposing to construct a 57,010 sq. ft. rehabilitative development.
 - iii. Employee and customer parking shall be contained on site.
 - iv. On-site grading work can begin prior to issuance of zoning permits; however, the grading and stormwater plan shall be approved prior to any site disturbance. A letter of credit shall be on file prior to any site work.
- c. The project will be reviewed by the Architecture Review Committee on December 8, 2025.
- d. Approval of the Landscaping Plan and payment of all installation and maintenance sureties is required. Landscape plans shall meet all the requirements of Article VIII Section 275-53 through 275-56 of the City's Zoning Code.
 - i. Applicant submitted a detailed tree inventory.
 - ii. Applicant has provided a list of trees to be removed. Removal of significant trees shall be replaced per the tree replacement schedule outlined in § 275-54B(6) of the Zoning Code. The initial landscape fee calculations is based on the submitted plans for Options B (planting smaller trees 2.5"-4") the fee would be approximately \$45,300.
 - iii. Consider using larger / taller trees (5"- 7") to bring down the replacement fee or remove fewer trees.
 - iv. Final landscape fee will be calculated upon final submittal.
- e. Mechanical equipment shall be properly screened from the street rights-of-way including I-43 and public view in accordance with Section 275-56.G of the Zoning Code.
- f. Applicant shall show any roof, ground, and wall mounted equipment on architectural plans and how they will be screened.
- g. Dumpsters shall be properly screened from the street and public view in accordance with

Article VIII Section 275-56 of the New Berlin Municipal Ordinance.

- h. All permanent and temporary signs require a Sign Application to be filed prior to installation.**
- i. Applicant shall provide copies of any applicable WDNR and Army Corp of Engineers permits prior to issuance of the Zoning Permit.**
- j. Wetlands shall be clearly marked in the field with construction fencing and signage during site work.**

2. Stormwater:

- a. Update the narrative to not round the time of concentration, model has them to one decimal.**
- b. Add the 36-inch horizontal orifice to the model.**
- c. Provide stamped signed cover for the SWMP.**
- d. WDNR NOI is required.**
- e. MMSD Chapter 13 approval is required.**
- f. SWMP Maintenance Agreement is required; City of New Berlin boilerplate agreement is available online.**
- g. If the stormwater management facilities are used for erosion control during construction, an asbuilt is required after construction of the facilities, and a recertification/asbuilt is required prior to Occupancy.**
- h. Stormwater Management Facilities Asbuilts are required to be submitted and approved prior to occupancy.**
- i. Recorded Stormwater Maintenance Agreement is required to be recorded prior to occupancy.**

3. Engineering:

- a. Per 275-55.A.(5). Retaining walls exceeding 16 inches in height may be constructed only upon issuance of an administrative permit. Retaining walls may be reviewed and approved with a building permit, in which case a separate use approval permit would not be required.**
 - i. A retaining wall plan detailing the location, size, type and proposed grades on both sides of the retaining wall, together with a detailed cross section of the retaining wall, a description of the material to be used, and a description of the method of construction to be utilized shall be required.**
 - ii. Retaining walls should not exceed 48 inches in height unless designed by a professional engineer or installed according to manufacturer's specifications. Walls that are not tiered and exceed seven feet in height shall require a professional engineer on site overseeing the construction of the retaining wall.**
 - iii. Retaining walls shall not be located closer than 5 feet to a side or rear lot line unless the Director finds that there is no other practical location, and only after written approval by the affected neighbor is received.**
 - iv. Adequate safety features and precautions shall be incorporated into the retaining wall design to mitigate the hazard of the abrupt drop off created by the wall.**
 - v. Retaining walls structures, including tiebacks, are to be located outside the base setback line.**
- b. Parking:**
 - i. The plan provides 75 parking stalls. The Plan of Operation includes 3 facility-owned vehicles, 35 Staff members in 2 shifts and the possibility of 120 clients. It is estimated**

that only 66 clients will have a vehicle on-site. With the highest parking demand of 94 spaces, adjusted with a 20% correction factor for vacancies, the total number of required parking spaces is 75. If parking becomes a problem, where fire lanes are being blocked, etc., additional parking may be required in the future as part of the Zoning Permit requirements.

c. Utilities:

- i. The sanitary and water extensions to the property will be private.
- ii. The property owner will be responsible for maintenance and flushing of the fire hydrants. A record of hydrant maintenance must be available and presented to the fire inspector upon request.
- iii. Provide a stand pipe for fire connection within the stair wells for connection on each floor. Show the location of the fire panel and the annunciator panel on the interior building plans.

d. Provide the City with a copy of the Shared Maintenance Agreement with Roadrunner Express for the shared portion of the entrance drive.

e. Provide the City with a copy of the Wetland fill permit and NOI from the DNR.

f. Lighting Plan:

- i. The lighting plan provided is difficult to read. Provide a new plan printed to a larger size font.

4. Sewer Utility:

- a. Maintain a 5 feet minimum horizontal clearance from any water main and sanitary sewer pipes and structures.
- b. Maintain 24 inches vertical clearance when crossing any pipes and structures.
- c. Please call Alex Parker at New Berlin Water Utility with Questions.
- d. If a conflict occurs, conduits will be removed at the owner's expense.

5. Water Utility:

- a. All hydrants have a hydrant valve.
- b. Six-inch water service shall have a hydrant valve anchored to 8-inch public water main.
- c. Maintain a 5 feet minimum horizontal clearance from any water main and sanitary sewer pipes and structures.
- d. Maintain 24 inches vertical clearance when crossing any pipes and structures.
- e. Please call Alex Parker at New Berlin Water Utility with Questions.
- f. If a conflict occurs, conduits will be removed at the owner's expense.

6. Inspection:

- a. Inspection CU - STATE REVIEW
- b. Building plans shall be signed and stamped by a licensed architect or professional engineer per the Wisconsin Enrolled Commercial Building Code (SPS.361.31).
- c. Building plans shall be approved by the State of Wisconsin Department of Commerce Safety and Buildings Division (SPS.361.60).
- d. Please contact Wisconsin Department of Health Services for plan review.
- e. State letter required with permit application.

- f. Apply and obtain appropriate building, HVAC, electric, plumbing and fire permits from the City of New Berlin Building Inspection Division.
- g. Zoning approval will be required BEFORE applying for the building permit. Separate application and plans are required.
- h. Plumbing: State review is required for over 16 fixtures - new and/or replacements.
- i. The building shall be fully accessible from the parking lot to the interior elements SPS.363.1101 and ICC/ANSI A117.1).
- j. 2021 IBC and updated SPS 361-366 apply.
- k. The City of New Berlin DOES NOT issue phased or temporary occupancies.

7. Fire:

- a. Maintain fire sprinkler coverage throughout.
- b. Key for Knox box is required.
- c. Stand pipes required.
- d. Maintain 24' fire access width for fire lane.
- e. Maintain audio and visual fire alarm notification.
- f. Fire hydrants shall be placed every 300 feet starting at Moorland Road edge and located per NBFD.

DETAILS IN ATTACHED STAFF REPORT:

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:

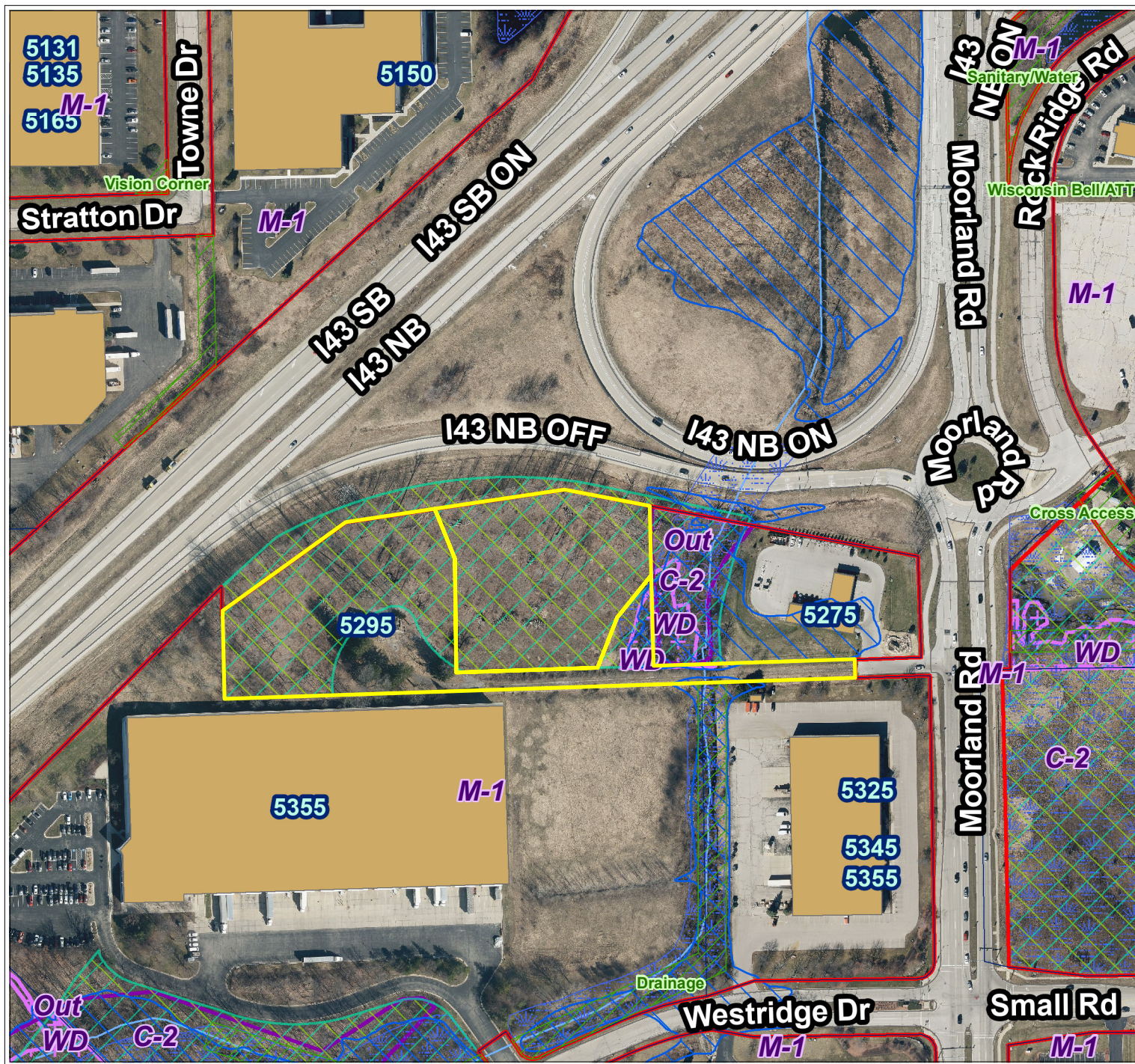
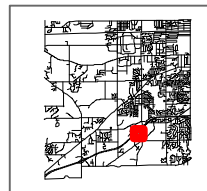
Recommend approval for the Use, Site and Architecture for the construction of 57,010 sq. ft. rehabilitative development located at 5295 S. Moorland Road (Tax Key #'s: 1260.998.001 & 1260.998.002), subject to the application, plans on file and the following conditions: **See Executive Summary.**

ATTACHMENTS:

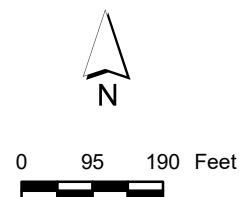
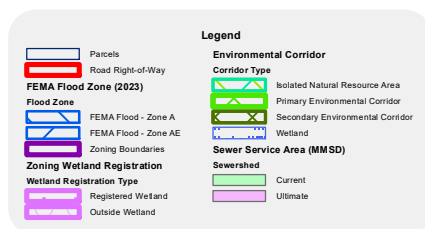
Location Map
Plans
Rendering



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



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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).

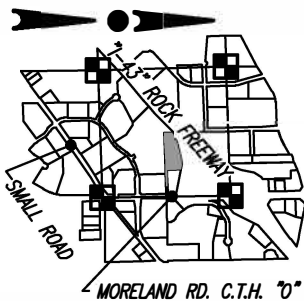
Occasionally the campus will host an event with outside guests as, for instance, program graduations, where an additional 10-20 vehicles may be present on the campus. At these peak events (i.e. special events hosted during the week), there may be a maximum of 40-50 vehicles on the campus. These type 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'

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:

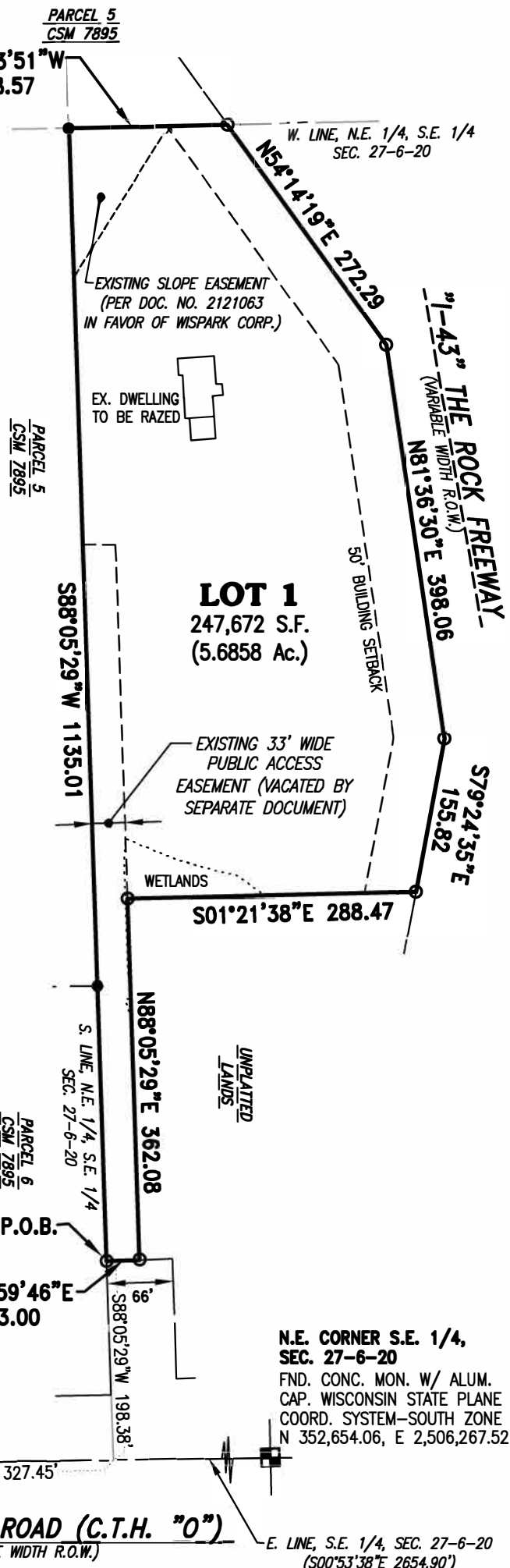
- - INDICATES Section Corner (See Plan for Details)
- - INDICATES "Found" 3/4" Iron Rod.
- - INDICATES "Found" 1" Iron Pipe.

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



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.)

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

CERTIFIED SURVEY MAP NO. _____

BEING A CONSOLIDATION OF LOTS 1 AND 2 OF CERTIFIED SURVEY MAP NO. 12253. BEING A 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.

SURVEYOR'S CERTIFICATE:

STATE OF WISCONSIN)
) ss
COUNTY OF WAUKESHA)

I, Grady L. Gosser, Professional Land Surveyor, do hereby certify:

That I have surveyed, divided and mapped a consolidation of Lots 1 and 2 of Certified Survey Map No. 12253. Recorded in the office of the Register of Deeds for Waukesha County on November 29, 2021, as Document No. 4635480. Being a part of the Northeast 1/4 of the Southeast 1/4 of Section 27, Town 6 North, Range 20 East, in the City of New Belin, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Southeast Corner of the said Southeast 1/4; Thence North 00°53'38" West and along the East line of the said Southeast 1/4 Section, 1327.45 feet to a point on the South line of the said Northeast 1/4 of the said Southeast 1/4 Section; Thence South 88°05'29" West and along the said South line, 198.38 feet to the West Right-of-Way line of "S. Moorland Road" (C.T.H. "O") and the place of beginning of lands hereinafter described;

Continuing thence South 88°05'29" West and along the said South line, 1135.01 feet to a point on the West line of the said Northeast 1/4 of the said Southeast 1/4 Section; Thence North 01°13'51" West and along the said West line, 158.57 feet to a point on the Southerly Right-of-Way line of Interstate "43"; Thence North 54°14'19" East and along the said Southerly line, 272.29 feet to a point; Thence North 81°36'30" East and along the said Southerly line, 398.06 feet to a point; Thence South 79°24'35" East and along the said Southerly line, 155.82 feet to a point; Thence South 01°21'38" East, 288.47 feet to a point; Thence North 88°05'29" East, 362.08 feet to a point on the said West Right-of-Way line of said "S. Moorland Road (C.T.H. "O"); Thence South 01°59'46" East and along the said West Right-of-Way line, 33.00 feet to the point of beginning of this description.

Said Parcel contains 247,672 Square Feet (or 5.6858 Acres) of land, more or less.

That I have made such survey, land division and map by the direction of the **MILWAUKEE RESCUE MISSION**, owner of said lands.

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

That I have fully complied with the provisions of Chapter 236 of the Wisconsin Statutes and the subdivision regulations of the City of New Berlin in surveying, dividing and mapping the same.

Dated this _____ day of _____, 20_____.

Grady L. Gosser, P.L.S.
Professional Land Surveyor, S-2972
TRIO ENGINEERING, LLC
19035 W. Capitol Drive, Suite 200
Brookfield, WI 53045
Phone: (262)790-1480 Fax: (262)790-1481

CERTIFIED SURVEY MAP NO._____

BEING A CONSOLIDATION OF LOTS 1 AND 2 OF CERTIFIED SURVEY MAP NO. 12253. BEING A 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.

OWNER'S CERTIFICATE:

As owner, I hereby certify that I have caused the land described on this map to be surveyed, divided and mapped as represented on this map in accordance with the provisions of Chapter 236 of the Wisconsin Statutes, and the Subdivision Regulations of the City of New Berlin, this _____ day of _____, 20 ____.

MILWAUKEE RESCUE MISSION

STATE OF WISCONSIN)
) ss
COUNTY OF)

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

Print Name: _____
Notary Public, _____ County, WI
My commission expires: _____

CITY OF NEW BERLIN COMMON COUNCIL APPROVAL:

This Certified Survey Map is hereby approved by the City of New Berlin Common Council, on this _____ day of _____, 20 ____.

David A. Ament, Mayor

Date:

Rubina R. Medina, City Clerk

Date:

CITY OF NEW BERLIN PLAN COMMISSION APPROVAL:

This Certified Survey Map is hereby approved by the City of New Berlin Plan Commission, on this _____ day of _____, 20 ____.

David A. Ament, Mayor

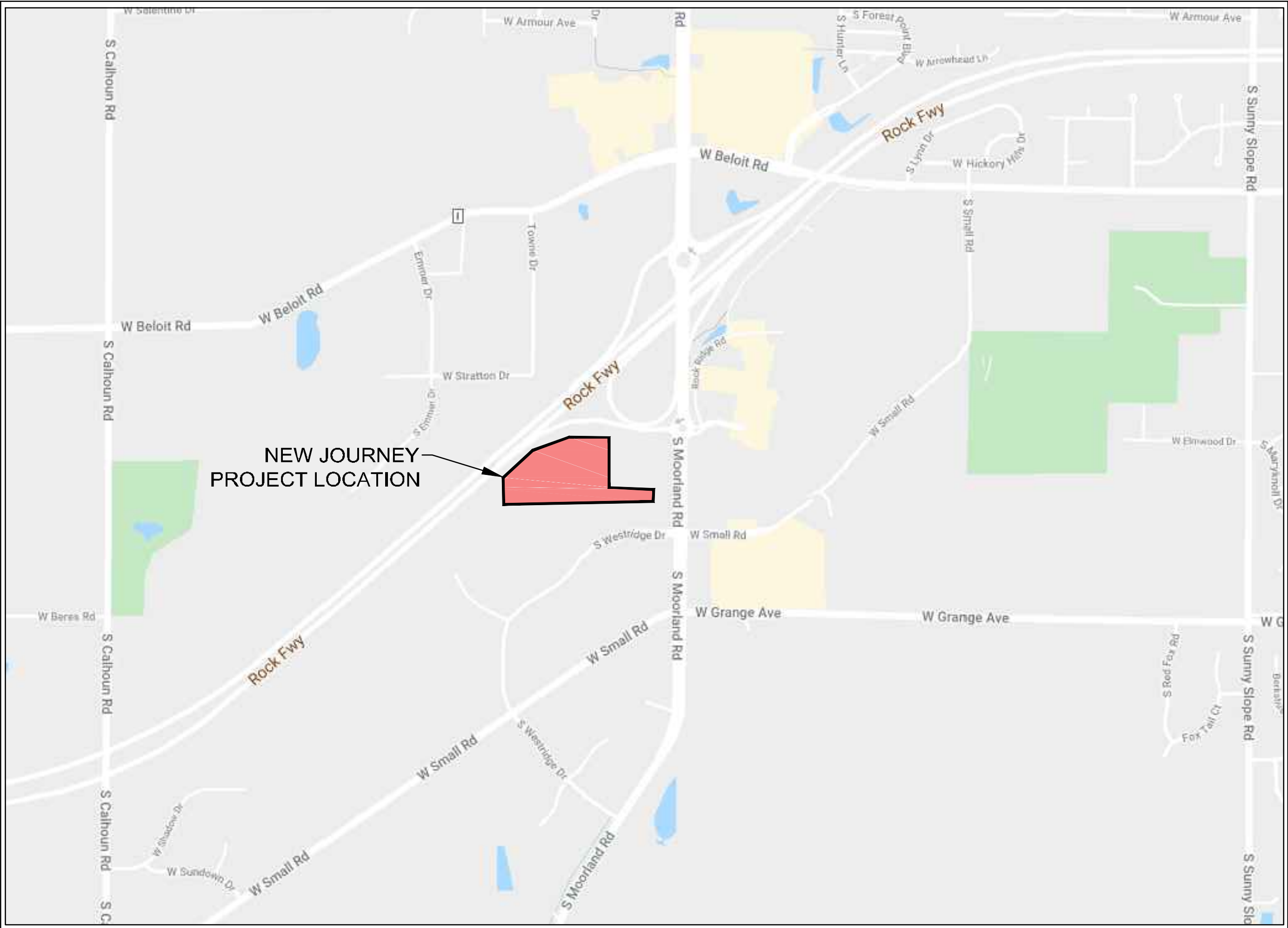
Date:

Nikki Jones, Secretary

Date:

GENERAL NOTES

1. THE LATEST EDITIONS OF THE FOLLOWING DOCUMENTS AND ANY SUPPLEMENTS THERETO, SHALL GOVERN ALL CONSTRUCTION ITEMS ON THIS PLAN UNLESS OTHERWISE NOTED.
-STANDARD SPECIFICATIONS FOR SEWER AND WATER CONSTRUCTION IN WISCONSIN, 6TH EDITION (SSSWCW)
-THE WISCONSIN D.O.T. STANDARD SPECIFICATIONS FOR HIGHWAY AND STRUCTURE CONSTRUCTION, LATEST EDITION
-WDNR STORMWATER RUNOFF TECHNICAL STANDARDS.
-WISDOT PAL APPROVED EROSION CONTROL MEASURES LIST, LATEST EDITION.
-CITY OF NEW BERLIN STANDARDS & REQUIREMENTS FOR DEVELOPMENT, LATEST EDITION.
2. THE CONTRACTOR SHALL TAKE ALL MEASURES NECESSARY TO MINIMIZE EROSION, WATER POLLUTION AND SILTATION CAUSED BY CONSTRUCTION OF THIS PROJECT. EROSION CONTROL MEASURES SHALL BE IN ACCORDANCE WITH WISCONSIN DEPARTMENT OF NATURAL RESOURCES TECHNICAL STANDARDS.
3. EROSION CONTROL PLAN: THE CONTRACTOR IS RESPONSIBLE FOR PROPERLY IMPLEMENTING ALL EROSION CONTROL MEASURES AS ILLUSTRATED ON THE APPROVED PLAN. THE VILLAGE ENGINEER RESERVES THE RIGHT TO REQUIRE ANY ADDITIONAL EROSION CONTROL MEASURES AS DEEMED NECESSARY DURING THE COURSE OF CONSTRUCTION.
4. THE CONTRACTOR SHALL FIELD VERIFY THE ELEVATIONS OF THE BENCHMARKS PRIOR TO COMMENCING WORK. THE CONTRACTOR SHALL ALSO FIELD VERIFY LOCATION, ELEVATION AND SIZE OF EXISTING UTILITIES, AND VERIFY FLOOR, CURB OR PAVEMENT ELEVATIONS WHERE MATCHING INTO EXISTING WORK. THE CONTRACTOR SHALL FIELD VERIFY HORIZONTAL CONTROL BY REFERENCING SHOWN COORDINATES TO KNOWN PROPERTY LINES. NOTIFY ENGINEER OF DISCREPANCIES IN EITHER VERTICAL OR HORIZONTAL CONTROL PRIOR TO PROCEEDING WITH WORK.
5. THE CONTRACTOR SHALL VERIFY THE EXACT LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO BEGINNING CONSTRUCTION (CALL DIGGERS HOTLINE AT 800-242-8511). COST OF REPLACEMENT OR REPAIR OF EXISTING UTILITIES DAMAGED AS A RESULT OF THE CONTRACTOR'S OPERATION SHALL BE THE CONTRACTOR'S RESPONSIBILITY.
6. EXISTING UTILITY INFORMATION IS SHOWN FROM SURVEY WORK, FIELD OBSERVATIONS, AVAILABLE PUBLIC RECORDS, AND AS-BUILT DRAWINGS. EXACT LOCATIONS AND ELEVATIONS OF UTILITIES SHALL BE DETERMINED PRIOR TO INSTALLING NEW WORK. EXCAVATE TEST PITS AS REQUIRED.
7. PROPERTY CORNERS SHALL BE CAREFULLY PROTECTED UNTIL THEY HAVE BEEN REFERENCED BY A PROFESSIONAL LAND SURVEYOR. PROPERTY MONUMENTS DISTURBED BY THE CONTRACTOR'S OPERATIONS SHALL BE REPLACED AT THE CONTRACTOR'S EXPENSE.
8. ENGINEER SHALL BE NOTIFIED 48 HOURS IN ADVANCE OF PERFORMING ANY CONSTRUCTION.
9. ALL TRENCHING SHALL BE PERFORMED ACCORDING TO OSHA STANDARDS.
10. ALL ITEMS SHALL INCLUDE ALL THE NECESSARY MATERIALS AND LABOR TO COMPLETE THE ITEM IN PLACE.
11. THE CONTRACTOR SHALL CLEAN ALL ADJACENT STREETS OF ANY SEDIMENT OR DEBRIS DAILY (OR AS ORDERED BY ENGINEER) AS REQUIRED BY MUNICIPAL ORDINANCE.
12. ACCESS TO THE WORK AREA SHALL COME FROM THE ADJACENT PRIVATE LANDS AND NOT THE PAVEMENTS OR SHOULDERS OF THE HIGHWAY (I-43).
13. THE CONTRACTOR SHALL PROVIDE TRAFFIC CONTROL AND ADVANCE WARNING SIGNAGE ALONG S. MOORLAND RD., S. WESTRIDGE DR. & W. SMALL RD. DURING TRUCKING OPERATIONS AND PAVING, GRADING, & UTILITY WORK ALONG & WITHIN PUBLIC RIGHT-OF-WAY. THIS PLAN SHALL BE APPROVED BY THE CITY OF NEW BERLIN. TRAFFIC CONTROL MUST BE IN ACCORDANCE WITH M.U.T.C.D. STANDARDS.



SITE VICINITY MAP
NOT TO SCALE



AERIAL SITE PHOTO
NOT TO SCALE

NEW JOURNEY PRELIMINARY DEVELOPMENT PLANS

CITY OF NEW BERLIN, WISCONSIN

SHEET INDEX

CIVIL		
T1	-	COVER SHEET
C1.0	-	EXISTING SITE PLAN
C1.1	-	DEVELOPMENT PLAN
C2.0	-	GRADING PLAN
C2.1	-	POND PLAN
C3.0	-	EROSION CONTROL PLAN
C4.0	-	UTILITY PLAN
C5.0-5.1	-	CONSTRUCTION NOTES & DETAILS



19035 W CAPITOL DR., SUITE 200
BROOKFIELD, WI 53045
PHONE: (262) 790-1480
FAX: (262) 790-1481
EMAIL: jpodulko@trioeng.com

PROJECT:
NEW JOURNEY
5295 S MOORLAND ROAD (CTH O)
CITY OF NEW BERLIN, WI
PREPARED FOR:
MILWAUKEE RESCUE MISSION
890 N. 19th ST.
MILWAUKEE, WI 53233

REVISION HISTORY

DATE	DESCRIPTION
10/24/2025	PRELIMINARY PLANS

DATE:
OCTOBER 24, 2025

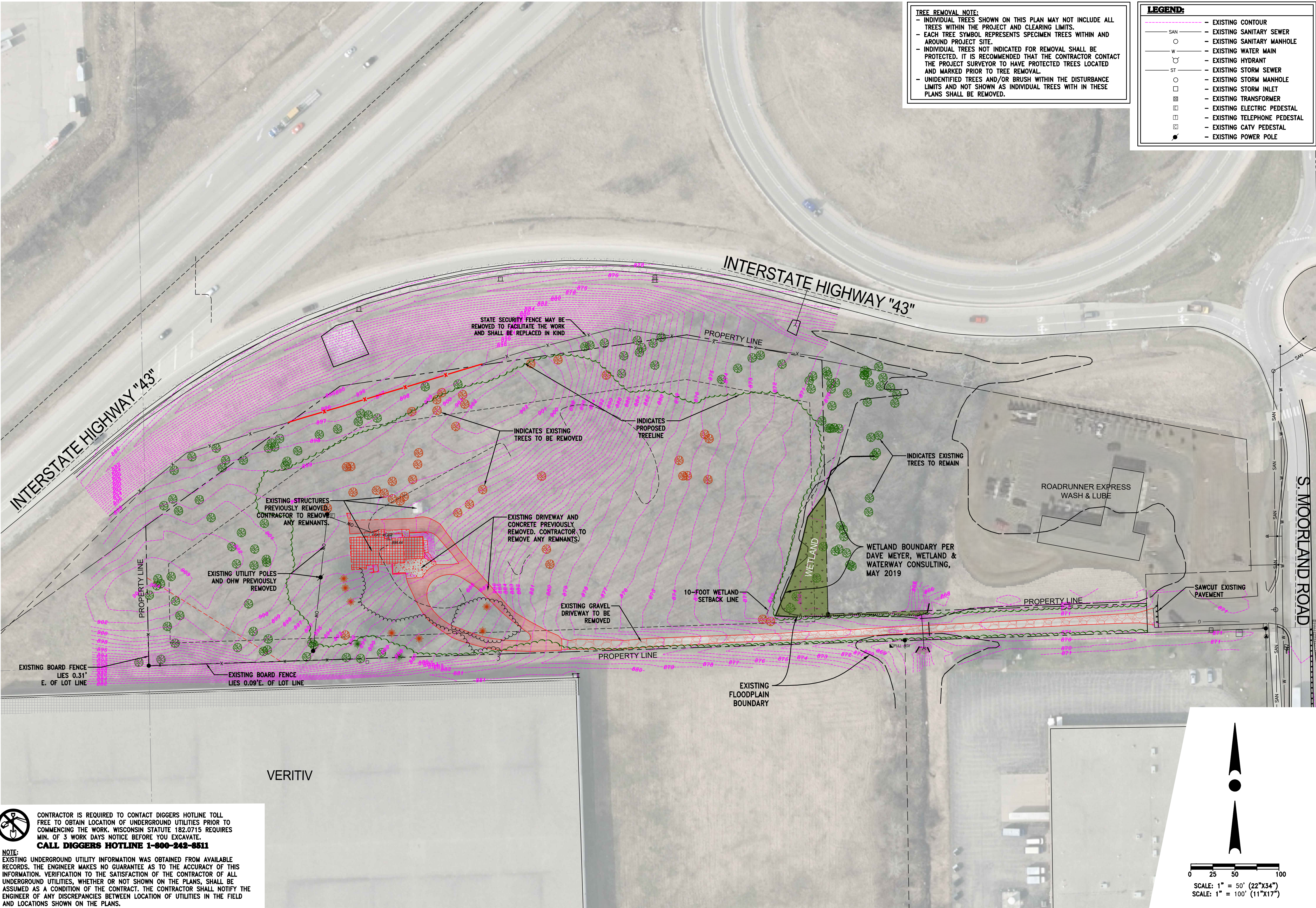
JOB NUMBER:
19018

DESCRIPTION:

COVER SHEET

SHEET

T1



WISCONSIN

Matthew A. Bailey

E-19033

OCONOMOWOC, WI

PROFESSIONAL ENGINEER

DESIGN • LAND SURVEYING

TRIO

CIVIL ENGINEERING

19035 W CAPITOL DR., SUITE 200

BROOKFIELD, WI 53045

PHONE: (262) 790-1480

FAX: (262) 790-1481

EMAIL: jpodulko@trioeng.com

PROJECT:

NEW JOURNEY

6295 S MOORLAND ROAD (CTH O)

CITY OF NEW BERLIN, WI

PREPARED FOR:

MILWAUKEE RESCUE MISSION

830 N. 19th ST.

MILWAUKEE, WI 53233

REVISION HISTORY

DATE	DESCRIPTION
10/24/2025	PRELIMINARY PLANS

DATE:

OCTOBER 24, 2025

JOB NUMBER:

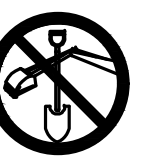
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DESCRIPTION:

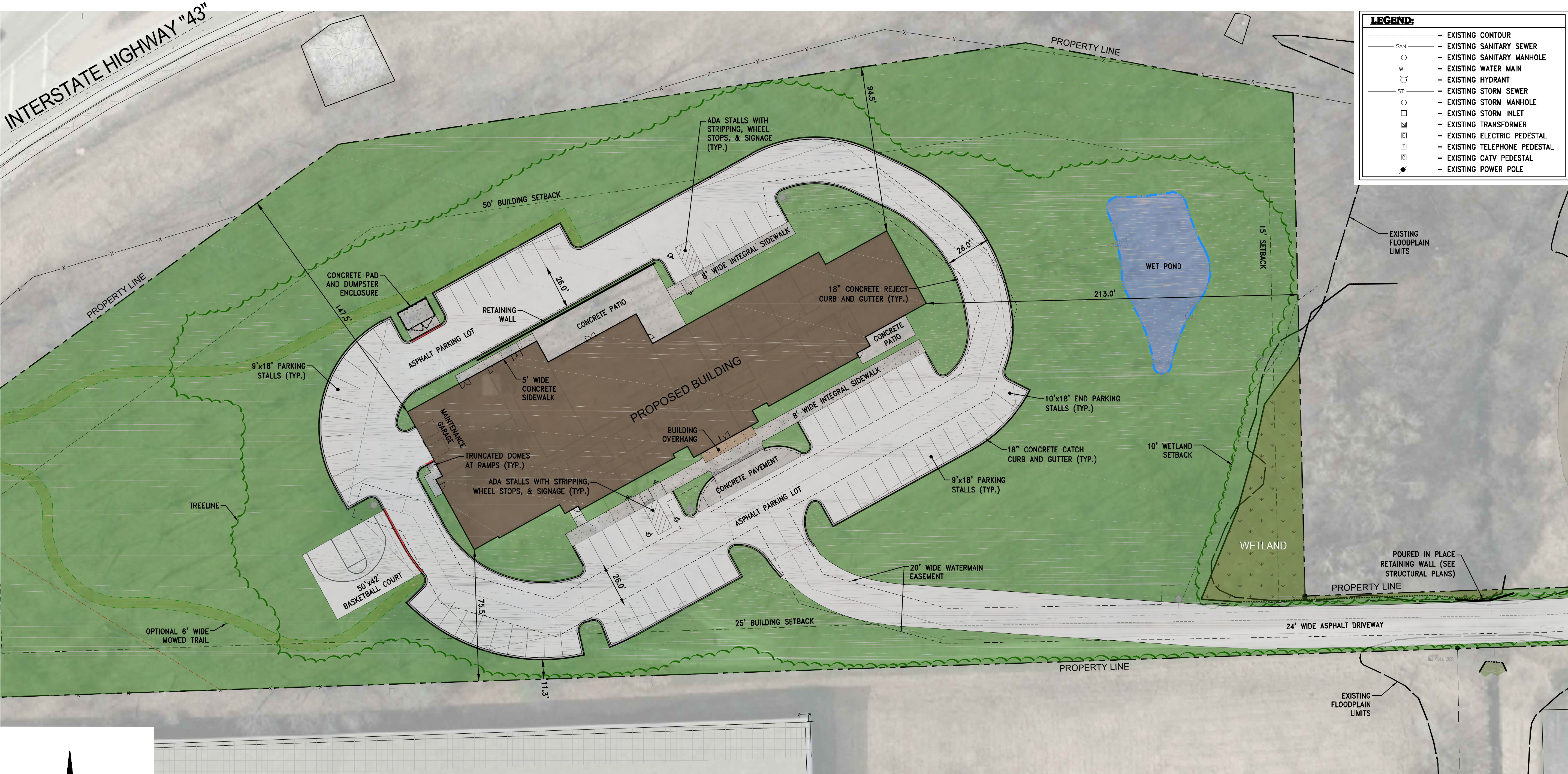
EXISTING SITE PLAN

SHEET

C1.0

 CONTRACTOR IS REQUIRED TO CONTACT DIGGERS HOTLINE TOLL FREE TO OBTAIN LOCATION OF UNDERGROUND UTILITIES PRIOR TO COMMENCING THE WORK. WISCONSIN STATUTE 182.0715 REQUIRES MIN. OF 3 WORK DAYS NOTICE BEFORE YOU EXCAVATE.
CALL DIGGERS HOTLINE 1-800-242-8511

NOTE: EXISTING UNDERGROUND UTILITY INFORMATION WAS OBTAINED FROM AVAILABLE RECORDS. THE ENGINEER MAKES NO GUARANTEE AS TO THE ACCURACY OF THIS INFORMATION. VERIFICATION TO THE SATISFACTION OF THE CONTRACTOR OF ALL UNDERGROUND UTILITIES, WHETHER OR NOT SHOWN ON THE PLANS, SHALL BE ASSUMED AS A CONDITION OF THE CONTRACT. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF ANY DISCREPANCIES BETWEEN LOCATION OF UTILITIES IN THE FIELD AND LOCATIONS SHOWN ON THE PLANS.



LEGEND:

- EXISTING CONTOUR
- EXISTING SANITARY SEWER
- EXISTING SANITARY MANHOLE
- EXISTING WATER MAIN
- EXISTING HYDRANT
- EXISTING STORM SEWER
- EXISTING STORM MANHOLE
- EXISTING STORM INLET
- EXISTING TRANSFORMER
- EXISTING ELECTRIC PEDESTAL
- EXISTING TELEPHONE PEDESTAL
- EXISTING CATV PEDESTAL
- EXISTING POWER POLE

0 15 30 60

SCALE: 1" = 30' (22"x34")
SCALE: 1" = 60' (11"x17")

NOTE:
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SITE DATA

TOTAL LOT AREA:	247,672 S.F. (5.686 Ac)
ZONING:	M-1
FRONT SETBACK:	50'
REAR SETBACK:	15'
SIDE SETBACK:	25'
WETLAND SETBACK:	10'
OHWM SETBACK:	50'
PARKING SETBACK:	10'

EXISTING IMPERVIOUS AREA:	16,503 S.F. (0.379Ac)
BUILDING	2580 S.F. (0.059Ac)
PAVEMENT/GRAVEL	13,923 S.F. (0.320Ac)
EXISTING PERVIOUS AREA:	231,169 S.F. (5.307Ac)
PROPOSED IMPERVIOUS AREA:	84,807 S.F. (1.912Ac)
BUILDING	21,659 S.F. (0.497Ac)
PAVEMENT/GRAVEL	63,148 S.F. (1.431Ac)
PROPOSED PERVIOUS AREA:	162,865 S.F. (3.739Ac)

PARKING DATA:	
PROPOSED STALLS:	75 STALLS
ADA STALLS:	3 STALLS PROVIDED 3 STALLS REQUIRED

WISCONSIN
Matthew A. Beck
E-49333
OCONOMOWOC, WI
PROFESSIONAL ENGINEER

TRIO
DESIGN • LAND SURVEYING
CIVIL ENGINEERING

19035 W CAPITOL DR., SUITE 200
BROOKFIELD, WI 53045
PHONE: (262) 790-1480
FAX: (262) 790-1481
EMAIL: joudelko@trioeng.com

PROJECT:
NEW JOURNEY
5295 S MOORLAND ROAD (CTH O)
CITY OF NEW BERLIN, WI
PREPARED FOR:
MILWAUKEE RESCUE MISSION
830 N 10th ST
MILWAUKEE, WI 53233

REVISION HISTORY	
DATE	DESCRIPTION
10/24/2025	PRELIMINARY PLANS

DATE:
OCTOBER 24, 2025

JOB NUMBER:
19018

DESCRIPTION:
DEVELOPMENT PLAN

SHEET

C1.1



19035 W CAPITOL DR., SUITE 200
BROOKFIELD, WI 53045
PHONE: (262) 790-1480
FAX: (262) 793-1481
EMAIL: jbailey@trioeng.com

PROJECT:
NEW JOURNEY
5295 S MOORLAND ROAD (CTH O)
CITY OF NEW BERLIN, WI
PREPARED FOR:
MILWAUKEE RESCUE MISSION
830 N. 19th ST.
MILWAUKEE, WI 53233

REVISION HISTORY

DATE	DESCRIPTION
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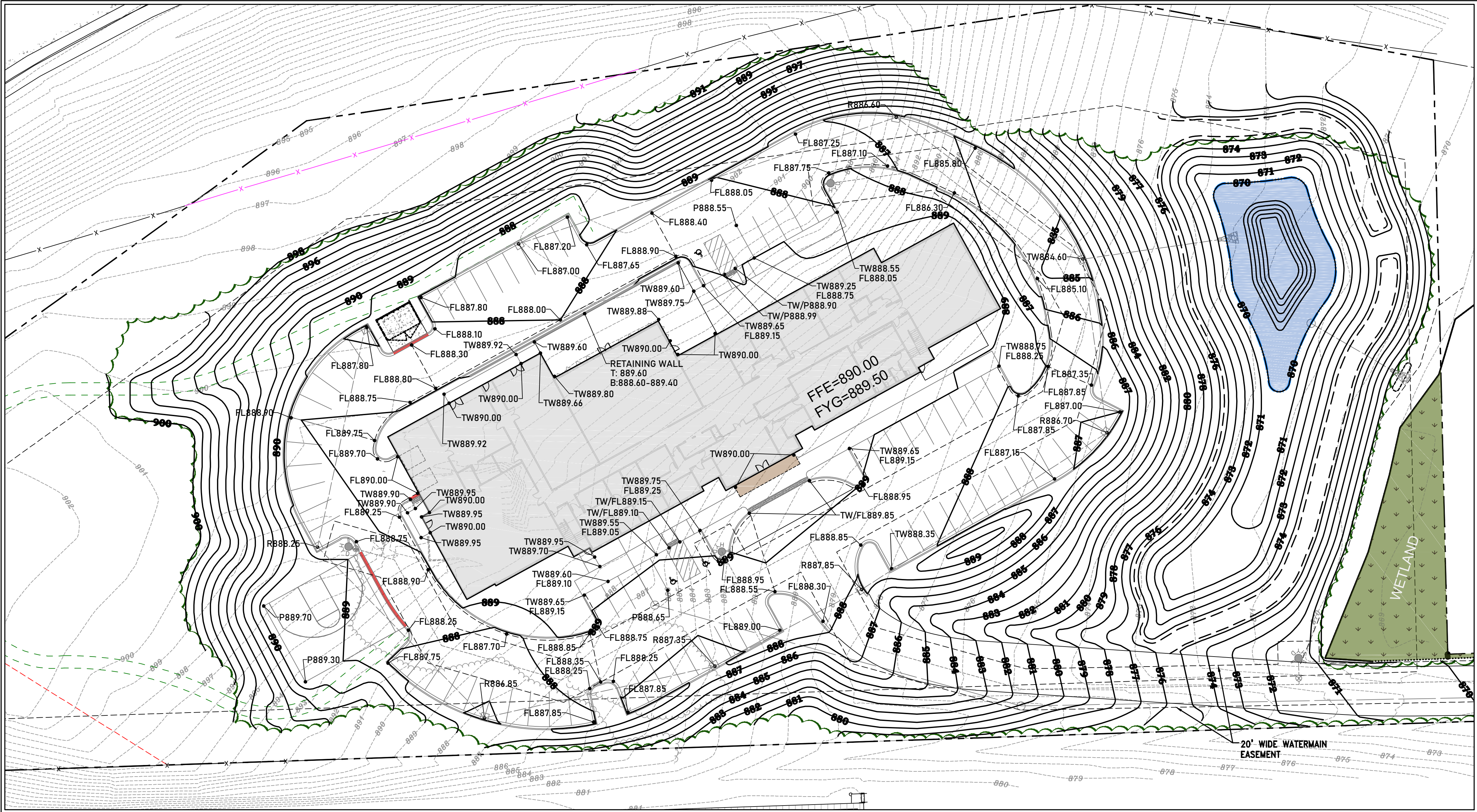
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19018

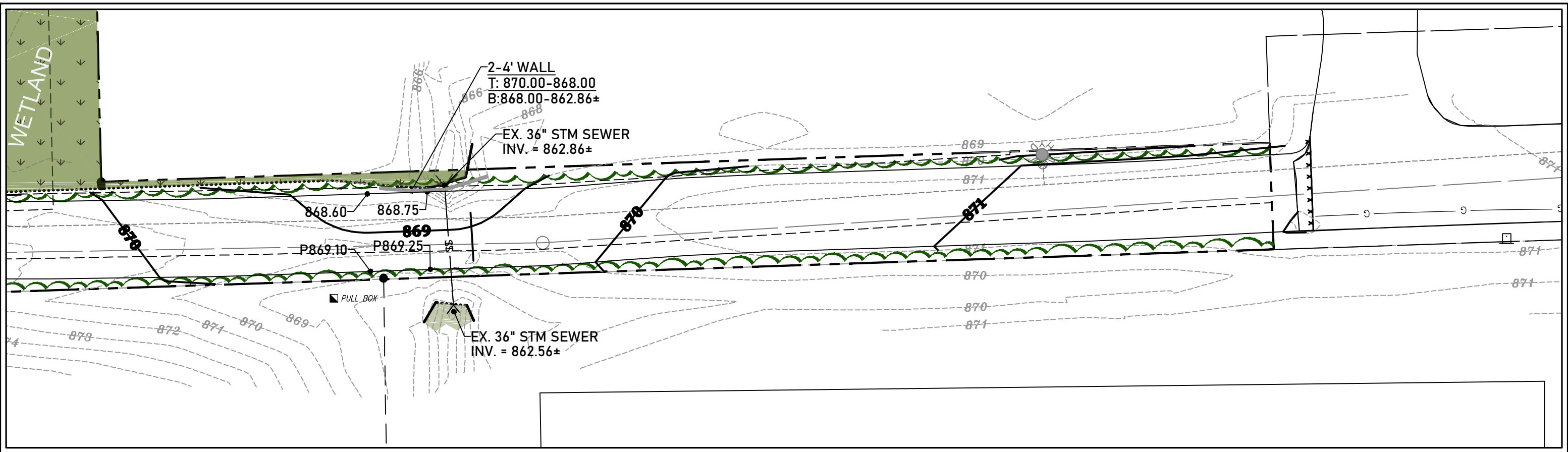
DESCRIPTION:

**MASTER
GRADING
PLAN**
SHEET

C2.0



MAIN BUILDING GRADING



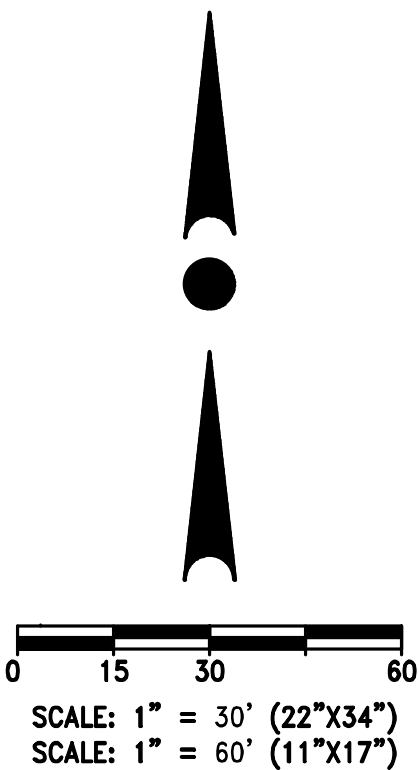
DRIVEWAY GRADING

- *AMERICANS WITH DISABILITIES ACT* (ADA) MINIMAL REQUIREMENTS:**
1. GENERAL CONTRACTOR TO BECOME FAMILIAR WITH AND APPLY THE ADA MINIMAL REQUIREMENTS AND REPORT TO ENGINEER ANY DISCREPANCIES BEFORE CONSTRUCTION.
 2. THE MINIMUM CLEAR WIDTH OF AN ACCESSIBLE ROUTE PER CODE IS 36".
 3. ALL PROPOSED SIDEWALKS SHALL HAVE A MAXIMUM OF 2.0% CROSS SLOPE AND A MAXIMUM OF 5.0% RUNNING SLOPE.
 4. THE GENERAL CONTRACTOR/CONTRACTOR SHALL MEASURE THE SUBGRADE AND ACROSS FORMS PRIOR TO INSTALLATION OF ASPHALT OR CONCRETE IMPROVEMENTS TO ASSURE THE FINAL IMPROVEMENTS WILL MEET THESE MINIMAL ADA REQUIREMENTS. ANY DISCREPANCIES SHALL BE REPORTED TO THE CIVIL ENGINEER PRIOR TO INSTALLATION OF THE IMPROVEMENTS.
- RAMPS**
5. AN ACCESSIBLE ROUTE WITH A RUNNING SLOPE GREATER THAN 1:20 (5.00%) IS A RAMP AND SHALL COMPLY WITH THE RAMP REQUIREMENTS.
 6. AN ACCESSIBLE ROUTE MAY CROSS OPEN PAVEMENT OR FOLLOW A RAMP AS REQUIRED BY SITE-SPECIFIC CONDITIONS. THE RUNNING SLOPE OF AN ACCESSIBLE ROUTE ACROSS OPEN PAVEMENT MUST NOT EXCEED 1:20 (5.00%), WITH A CROSS SLOPE NOT EXCEEDING 1:50 (2.00%). SLOPES EXCEEDING 1:20 (5.00%), BUT LESS THAN 1:12 (8.33%), CONSTITUTE RAMPS AND MUST CONFORM TO THE REQUIREMENTS FOR RAMP DESIGN (HANDRAILS, CURBS, LANDINGS, RISE AND RUN LIMITS, ETC.) AS DETAILED ON THE CIVIL AND ARCHITECTURAL PLANS. NO RAMP SHALL HAVE A RUNNING SLOPE EXCEEDING 1:12 (8.33%), NOR HAVE A CROSS SLOPE EXCEEDING 1:50 (2.00%).
- CURB RAMPS**
7. A CURB RAMP SHALL BE PROVIDED WHEREVER AN ACCESSIBLE ROUTE CROSSES A CURB.
 8. CURB RAMPS HAVE A MAXIMUM RISE OF 6", MAXIMUM SLOPE OF 1:12 (8.33%) AND DO NOT REQUIRE HANDRAILS.
 9. IF A CURB RAMP IS LOCATED WHERE PEDESTRIANS MUST WALK ACROSS THE RAMP, OR WHERE IT IS NOT PROTECTED BY HANDRAILS, OR GUARDRAILS, IT SHALL HAVE FLARED SIDES; THE MAXIMUM SLOPE OF THE FLARE SHALL BE 1:10 (10.00%).

- LEGEND:**
- EXISTING CONTOUR
 - PROPOSED CONTOUR
 - PROPOSED SPOT ELEVATION
 - PROPOSED FLOW ARROW
 - PROPOSED FINISHED FLOOR GRADE
 - PROPOSED YARD GRADE

CONTRACTOR IS REQUIRED TO CONTACT DIGGERS HOTLINE TOLL FREE TO OBTAIN LOCATION OF UNDERGROUND UTILITIES PRIOR TO COMMENCING THE WORK. WISCONSIN STATUTE 182.0715 REQUIRES MIN. OF 3 WORK DAYS NOTICE BEFORE YOU EXCAVATE. CALL DIGGERS HOTLINE 1-800-242-8511

NOTE: EXISTING UNDERGROUND UTILITY INFORMATION WAS OBTAINED FROM AVAILABLE RECORDS. THE ENGINEER MAKES NO GUARANTEE AS TO THE ACCURACY OF THIS INFORMATION. VERIFICATION TO THE SATISFACTION OF THE CONTRACTOR OF ALL UNDERGROUND UTILITIES, WHETHER OR NOT SHOWN ON THE PLANS, SHALL BE ASSUMED AS A CONDITION OF THE CONTRACT. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF ANY DISCREPANCIES BETWEEN LOCATION OF UTILITIES IN THE FIELD AND LOCATIONS SHOWN ON THE PLANS.



H:\C700\787\19018-01\CONSTRUCTION PLANS\CIVIL PLANS-NEW JOURNEY-22X34.DWG



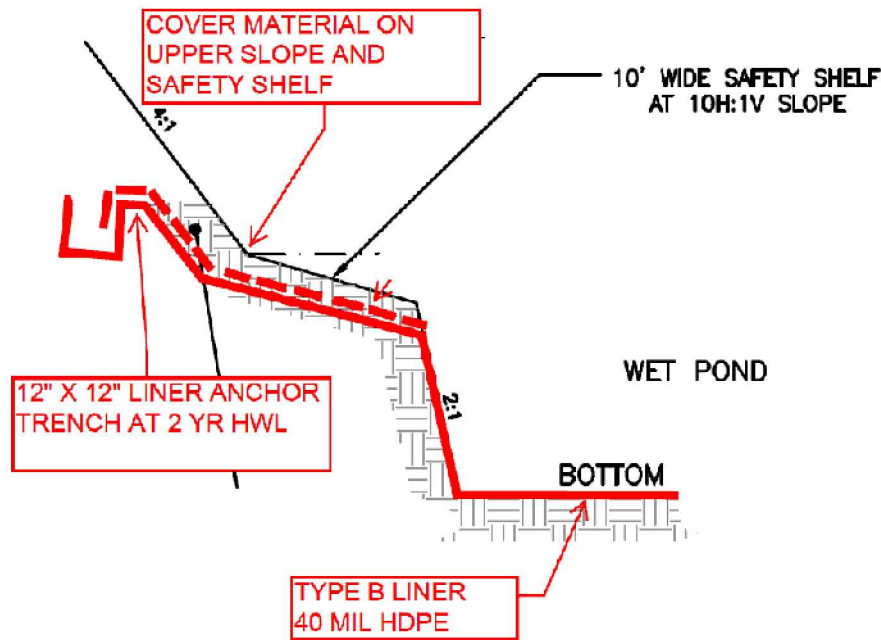
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CALL DIGGERS HOTLINE 1-800-243-8511

NOTE:
EXISTING UNDERGROUND UTILITY INFORMATION WAS OBTAINED FROM AVAILABLE RECORDS. THE ENGINEER MAKES NO GUARANTEE AS TO THE ACCURACY OF THIS INFORMATION. VERIFICATION TO THE SATISFACTION OF THE CONTRACTOR OF ALL UNDERGROUND UTILITIES, WHETHER OR NOT SHOWN ON THE PLANS, SHALL BE ASSUMED AS A CONDITION OF THE CONTRACT. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF ANY DISCREPANCIES BETWEEN LOCATION OF UTILITIES IN THE FIELD AND LOCATIONS SHOWN ON THE PLANS.

HDPE LINER NOTE:

- TYPE B HDPE LINER
- LINER PRODUCT INFORMATION:
 - MIN. THICKNESS = 40 MILS
 - COLOR = BLACK
 - SUPPLIER = SOLMAX
- INSTALLED PER MANUFACTURER SPECIFICATIONS
- LINER SHALL BE TRENCHED INTO POND SLOPE PER DETAIL AND SAFETY SHELF COVERED WITH MIN. 6" OF TOPSOIL.

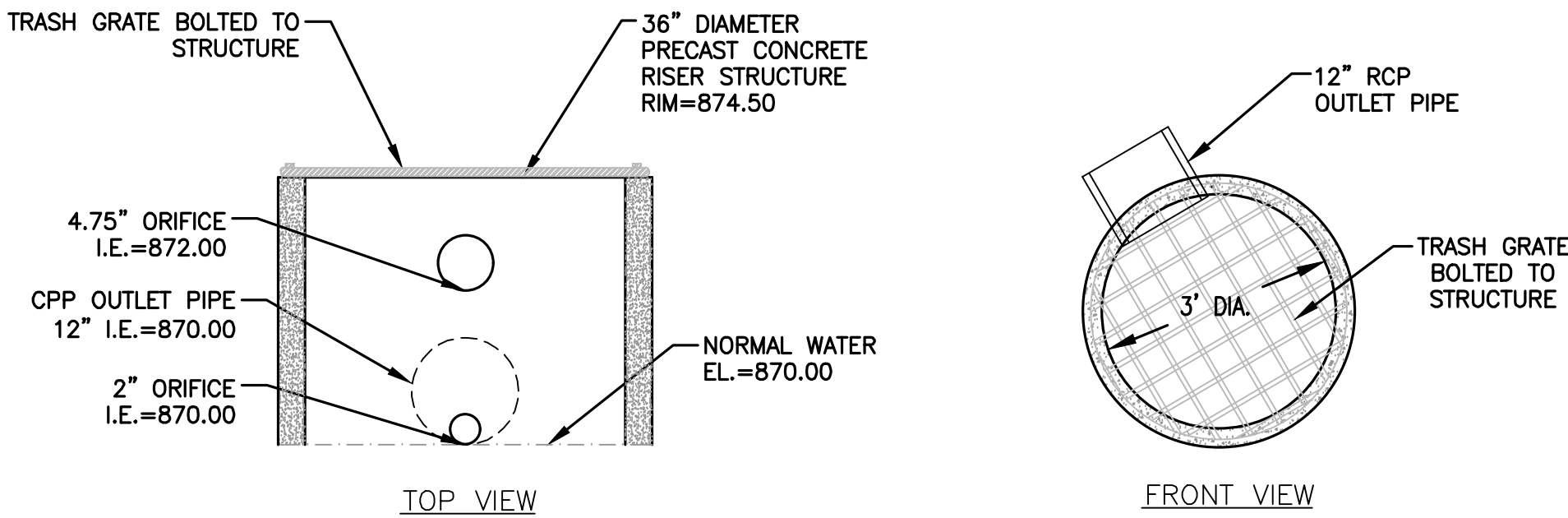
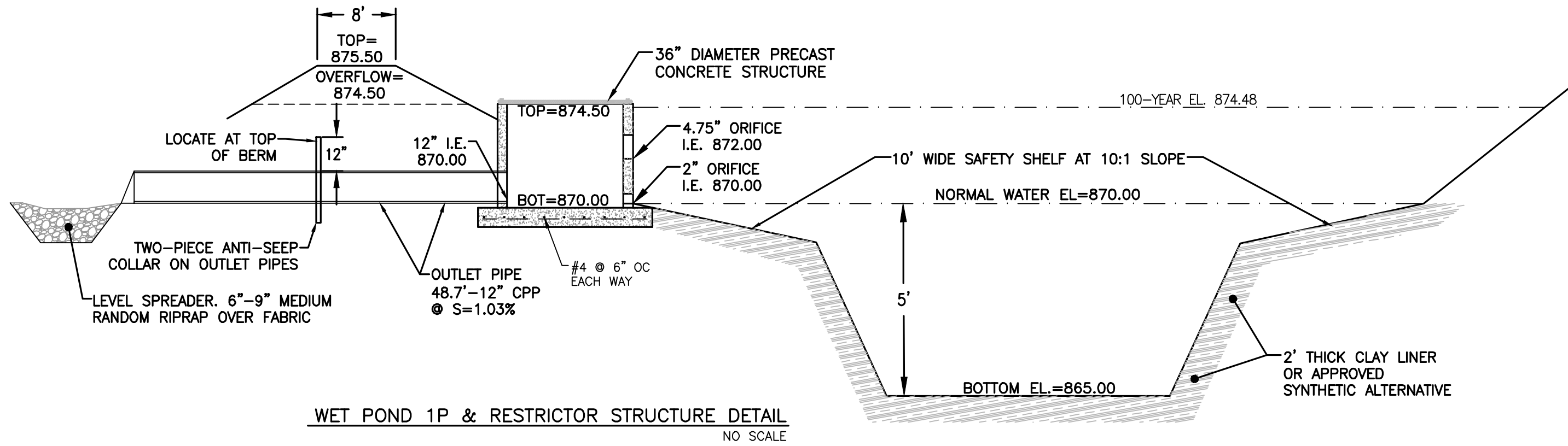


- WET POND LINER OPTIONS:**
- A. 2" THICK CLAY LINER (REFER TO CLAY LINER NOTES)
 - B. BENTONITE GEOSYNTHETIC LINER
 - C. HDPE LINER (REFER HDPE LINER NOTES)

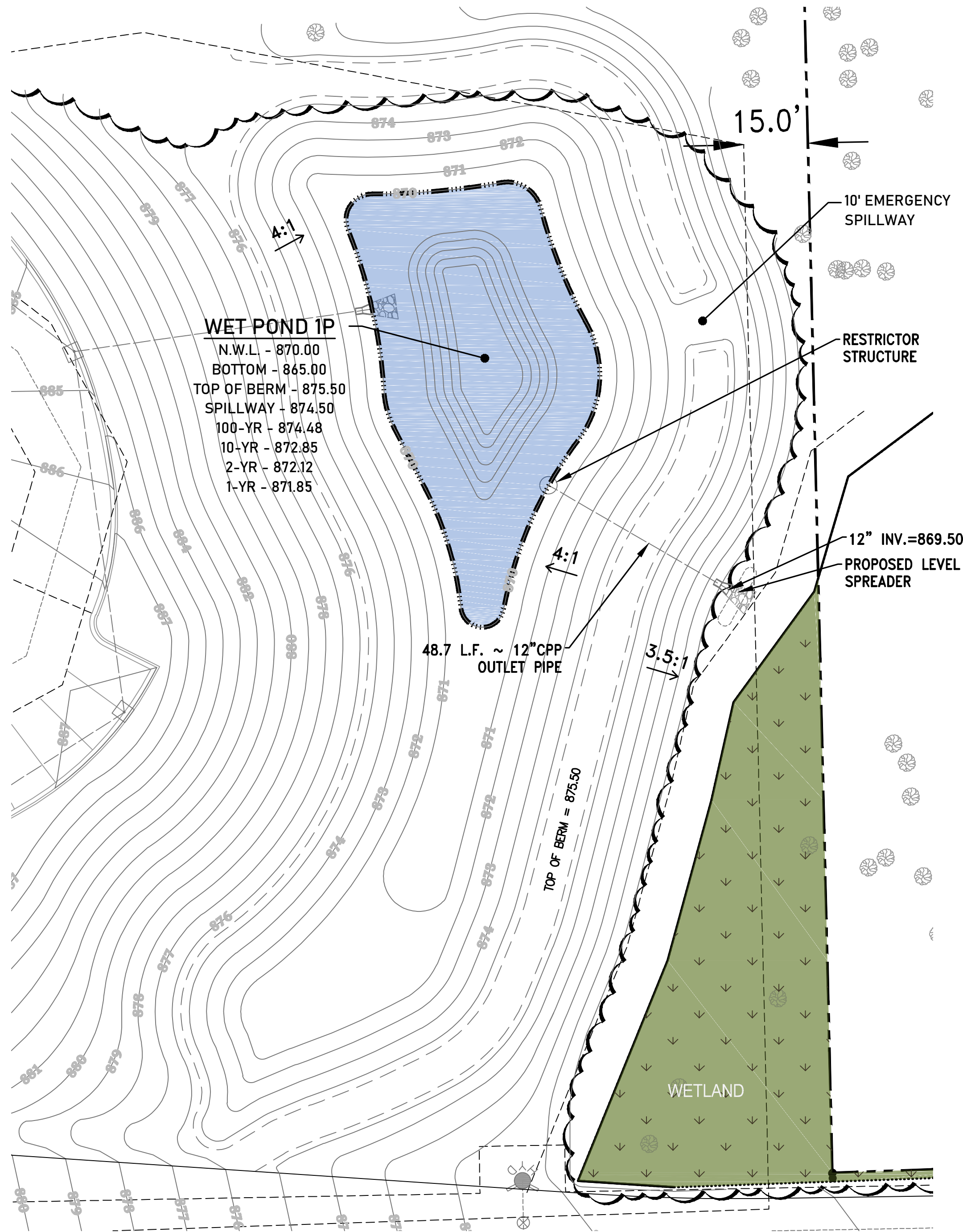
- TWO-PIECE ANTI-SEEP COLLAR NOTES:**
- ANTI-SEEP COLLAR MATERIAL SHALL MATCH OUTLET PIPE MATERIAL.
 - ANTI-SEEP COLLARS SHALL BE 1/4" POLYETHYLENE SHEETS WITH COLLAR FOR PIPE; DIMENSIONS SHALL BE AS NOTED ON THE DETAIL.
 - INSTALL ANTI-SEEP COLLARS PER MANUFACTURER SPECIFICATIONS.

CLAY LINER NOTE:

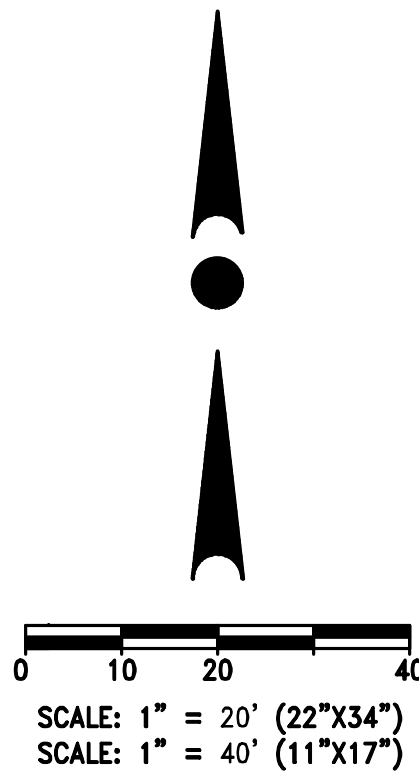
- 2" THICK CLAY LINER IN ACCORDANCE WITH WDNR TECH. STD. 1001 TYPE B, AND SOILS REPORT.
- CLAY LINER MATERIALS SHOULD BE COMPACTED TO A MINIMUM OF 90 TO 92% DRY DENSITY AS DETERMINED BY MODIFIED PROCTOR (ASTM D1557).
- IF PREDOMINANTLY GRANULAR TEXTURE SOILS AND/OR GROUNDWATER INFLOW IS ENCOUNTERED AT OR BELOW THE BOTTOM ELEVATION OF THE POND, A "SACRIFICIAL" LIFT OF CLAYEY FILL MAY BE REQUIRED TO BE PLACED ALONG THE SIDEWALLS AND BASE PRIOR TO COMMENCING WITH ACTUAL LINER PLACEMENT/CONSTRUCTION TO AID IN ATTAINING A SATISFACTORILY COMPACTED LINER SECTION. THE PLACEMENT OF A "SACRIFICIAL" LAYER IS PARTICULARLY BENEFICIAL IN CREATING A STABLE SUBBASE IN THE EVENT SLIGHT GROUNDWATER SEEPAGE OCCURS.
- GEOTECHNICAL TESTING SHALL BE PERFORMED ON POTENTIAL CLAY LINER MATERIAL TO CONFIRM THAT SPECIFICATIONS ARE MET.



RESTRICTOR STRUCTURE DETAIL
NO SCALE



POND 1P PLAN VIEW



19035 W CAPITOL DR., SUITE 200
BROOKFIELD, WI 53045
PHONE: (262) 790-1480
FAX: (262) 790-1481
EMAIL: jpodulko@trioeng.com

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830 N. 19th ST.
MILWAUKEE, WI 53233

REVISION HISTORY

DATE	DESCRIPTION
10/24/2025	PRELIMINARY PLANS

DATE:

OCTOBER 24, 2025

JOB NUMBER:

19018

DESCRIPTION:

POND
PLAN

SHEET

C2.3

TEMPORARY DEWATERING GEOTEXTILE BAG

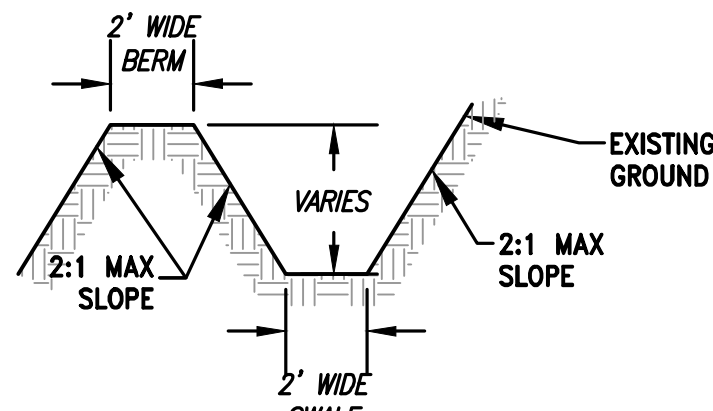
- IF DEWATERING IS REQUIRED, A GEOTEXTILE DEWATERING BAG MEETING THE SPECIFICATIONS IN THE TABLE TO THE RIGHT SHALL BE UTILIZED AS STATED ON THE EROSION CONTROL PLAN.
- REFER TO WDMR TECHNICAL STANDARDS 1061 AND MANUFACTURERS REQUIREMENTS FOR INSTALLATION AND MAINTENANCE REQUIREMENTS.
- CONTRACTOR MAY USE THRACE-LINQ, INC 275EX GEOTEXTILE BAG, OR FUNCTIONAL EQUIVALENT TO MEET TECHNICAL STANDARD REQUIREMENTS.
- CONTRACTOR MAY INSTALL HAY BALES AROUND DEWATERING BAG FOR STABILIZATION AS DICTATED BY SITE CONDITIONS.
- MAX FLOW RATE SHALL NOT EXCEED 70GPM
- GEOTEXTILE BAG SHALL BE LOCATED ON UNDISTURBED GROUND WITH ESTABLISHED VEGETATIVE COVER. DISCHARGES OF TREATED WATER FROM THE GEOTEXTILE FILTER BAG SHALL NOT FLOW OVER UNSTABILIZED GROUND.

Property	Test Method	Type I Value
Maximum Apparent Opening Sizes	ASTM D-4751	0.212 mm
Grab Tensile Strength	ASTM D-4632	200 lbs.
Mullen Burst	ASTM D-3786	350 psi
Permeability	ASTM D-4491	0.28 cm/sec
Fabric	Nominal Representative Weight	8 oz

STREET WEEPING NOTE:
PUBLIC STREET SWEEPING SHALL OCCUR DAILY AND/OR AT VILLAGE ENGINEERS REQUEST.

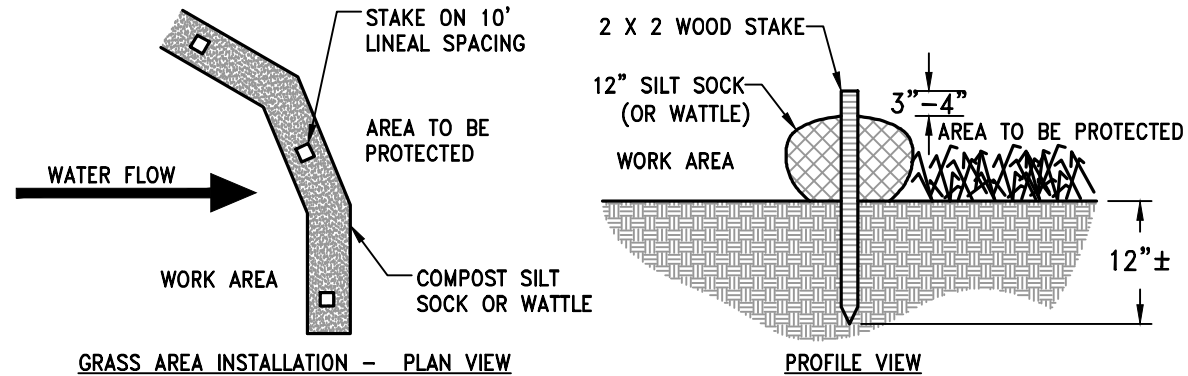
WINTER STABILIZATION PROVISIONS:
IF FINAL SITE STABILIZATION OCCURS AFTER OCTOBER 15, CONTRACTOR SHALL UTILIZE ANIONIC POLYACRYLAMIDE AND TEMPORARY SEEDING, AS WELL AS, COORDINATE WITH VILLAGE ENGINEER FOR LATE SEASON STABILIZATION REQUIREMENTS.

WISCONSIN DEPARTMENT OF NATURAL RESOURCES. CONSERVATION PRACTICE STANDARD:
1052 - NON-CHANNEL EROSION MAT
1056 - SILT FENCE
1057 - STONE TRACKING PAD AND TIRE WASHING
1058 - MULCHING FOR CONSTRUCTION SITES
1059 - TEMPORARY SEEDING
1060 - STORM DRAIN INLET PROTECTION FOR CONST. SITES
1061 - DEWATERING
1063 - SEDIMENT TRAP



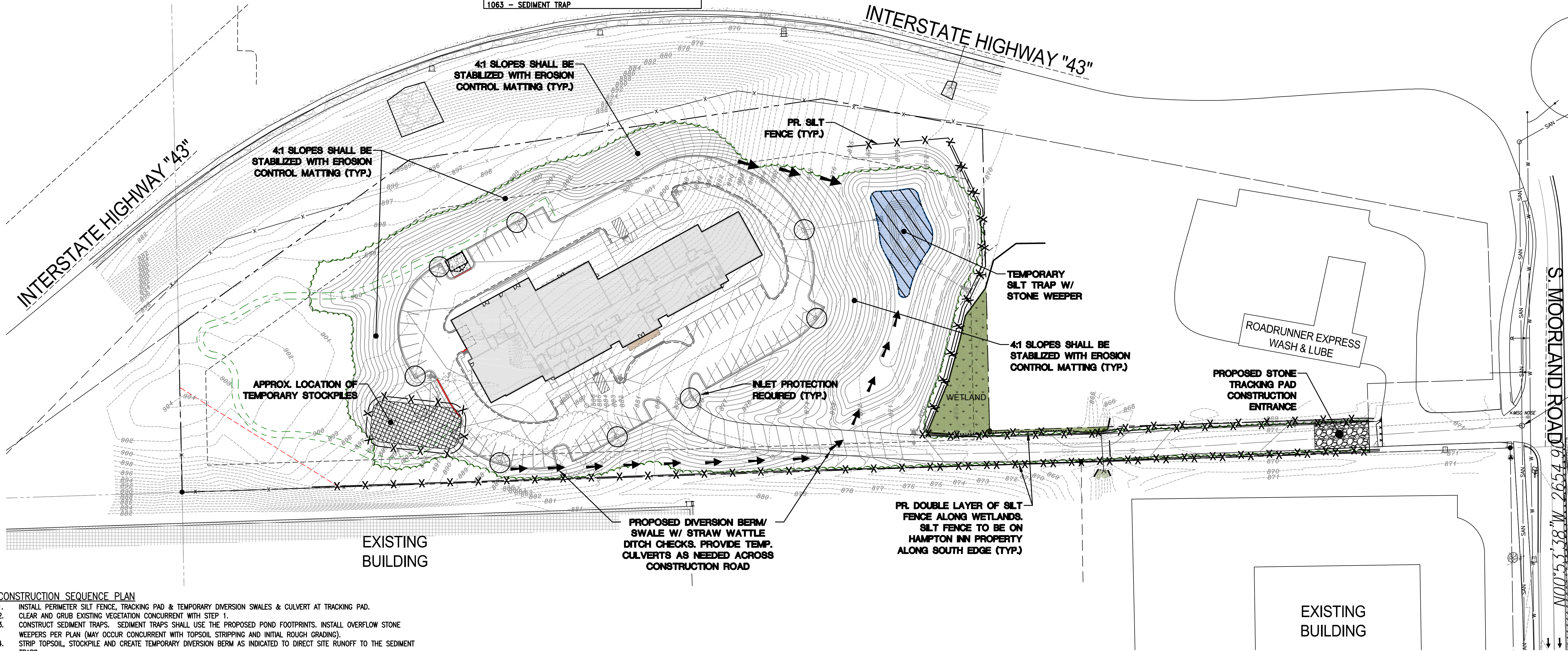
- NOTES:**
- TEMPORARY SEED/STABILIZE BERMS AND DITCHES IMMEDIATELY AS ANY SECTION IS COMPLETED PER WISDOT STD. SPEC.
 - REFER TO WISCONSIN DNR TECHNICAL STANDARD 1066 FOR ADDITIONAL INFORMATION.

DIVERSION BERM/SWALE DETAIL



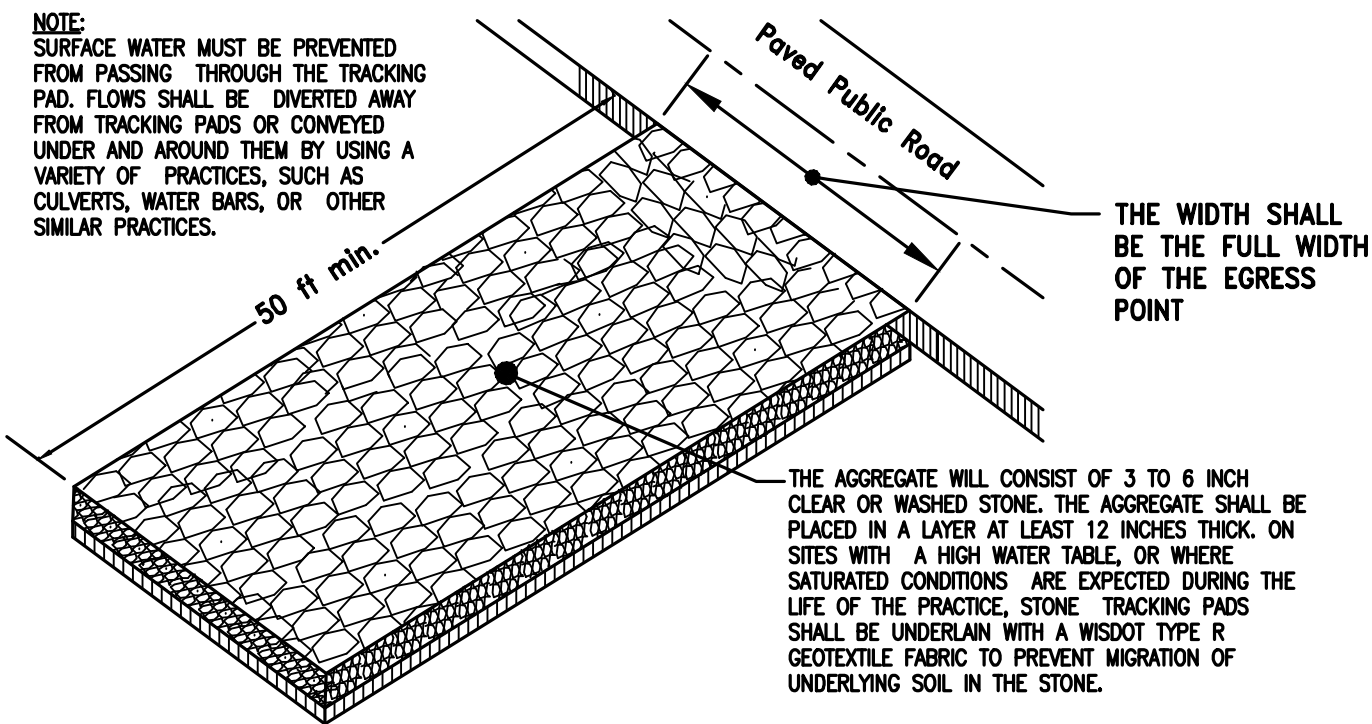
- NOTES:**
- ALL MATERIAL TO MEET MANUFACTURER'S SPECIFICATIONS
 - REFER TO MANUFACTURERS AND/OR SUPPLIERS. SPECIFICATIONS FOR INSTALLATION RECOMMENDATIONS.
 - ACTUAL LOCATION MAY BE FIELD ADJUSTED TO MINIMIZE DISTURBANCE TO EXISTING VEGETATION.

SILT SOCK/STRAW WATTLE INSTALLATION DETAIL
NO SCALE



CONSTRUCTION SEQUENCE PLAN

- INSTALL PERIMETER SILT FENCE, TRACKING PAD & TEMPORARY DIVERSION SWALES & CULVERT AT TRACKING PAD.
- CLEAR AND GRUB EXISTING VEGETATION CONCURRENT WITH STEP 1.
- CONSTRUCT SEDIMENT TRAPS. SEDIMENT TRAPS SHALL USE THE PROPOSED POND FOOTPRINTS. INSTALL OVERFLOW STONE WEEPERS PER PLAN (MAY OCCUR CONCURRENT WITH TOPSOIL STRIPPING AND INITIAL ROUGH GRADING).
- STRIP TOPSOIL, STOCKPILE AND CREATE TEMPORARY DIVERSION BERM AS INDICATED TO DIRECT SITE RUNOFF TO THE SEDIMENT TRAPS.
- TEMP SEED DIVERSION BERM AND TOPSOIL STOCKPILES AND INSTALL SILT FENCE AROUND PILES AS NOTED ON THIS PLAN.
- ROUGH GRADE SITE. PROVIDE TEMPORARY SEED AND BLANKET FOR ALL EXPOSED SLOPES 4:1 OF GREATER. IF SITE STABILIZATION OCCURS AFTER OCTOBER 15, CONTRACTOR SHALL UTILIZE ANIONIC POLYACRYLAMIDE AND TEMPORARY SEEDING, AS WELL AS, COORDINATE WITH CITY ENGINEER FOR LATE SEASON STABILIZATION REQUIREMENTS.
- INSTALL SANITARY SEWER, WATERMAIN AND STORM SEWER. NOTE THAT UTILITY INSTALLATION MAY COMMENCE CONCURRENT WITH SITE GRADING. ONCE STORM SEWER AND POND OUTFALL STRUCTURES HAVE BEEN INSTALLED, PROVIDE INLET PROTECTION AND REMOVE STONE WEEPER OUTLETS.
- BUILDING CONSTRUCTION MAY COMMENCE AS ALLOWED BY CITY BUILDING PERMIT (NON-SEQUENTIAL). AS AREAS OF CONSTRUCTION ARE COMPLETED, THE DISTURBED AREAS SHALL BE BROUGHT TO FINAL GRADES AND FINAL STABILIZATION PRACTICES SHALL BE EMPLOYED.
- FINISH GRADE SITE. REMOVE TEMPORARY DIVERSION SWALES AS THE SITE IS SHAPED TO DRAIN TO THE PROPOSED DRAINAGE SYSTEMS. RESPREAD TOPSOIL AND SEED, MULCH AND FERTILIZE OUTSIDE OF PAVEMENT AREAS UPON COMPLETION OF FINISH GRADING. INSTALL EROSION MATTING AS INDICATED ON PLAN AND AS NECESSARY TO STABILIZE SITE.
- INSTALL NEW GAS/ELECTRIC/TELEPHONE UTILITIES PER PLANS BY OTHERS. (SCHEDULE TO BE DETERMINED BY OWNER)
- INSTALL STONE BASE, SIDEWALK, CURB AND PAVEMENT FOR ENTRY DRIVE AND LOOP ROAD (WITH PARKING)
- COMPLETE LANDSCAPING AND FINAL STABILIZATION AROUND BUILDINGS CONCURRENT WITH EACH INDIVIDUAL BUILDING CONSTRUCTION.
- REMOVE ALL SEDIMENT FROM TEMPORARY SEDIMENT TRAPS. IF UNDERGROUND CHAMBER IS USED, REMOVE ALL SEDIMENT.
- REMOVE PERIMETER SILT FENCE AND CLOSE OUT CONSTRUCTION SITE PERMITS ONCE THE SITE IS SUBSTANTIALLY VEGETATED (>70% GROUND COVER).



CONSTRUCTION ENTRANCE DETAIL

NO SCALE



CONTRACTOR IS REQUIRED TO CONTACT DIGGERS HOTLINE TOLL FREE TO OBTAIN LOCATION OF UNDERGROUND UTILITIES PRIOR TO COMMENCING THE WORK. WISCONSIN STATUTE 182.0715 REQUIRES MIN. OF 3 WORK DAYS NOTICE BEFORE YOU EXCAVATE.
CALL DIGGERS HOTLINE 1-800-242-8511

NOTE:
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LEGEND:	
817	EXISTING CONTOUR
817	PROPOSED CONTOUR
X X X	PROPOSED SILT FENCE
○	PROPOSED INLET PROTECTION
○	PROPOSED SILT SOCK
■	PROPOSED TRACKING PAD

Scale: 1" = 50' (22"x34")
Scale: 1" = 100' (11"x17")



19035 W CAPITOL DR., SUITE 200
BROOKFIELD, WI 53045
PHONE: (262) 790-1480
FAX: (262) 795-1481
EMAIL: jpodulko@trioeng.com

PROJECT:
NEW JOURNEY
5295 S MOORLAND ROAD (CTH O)
CITY OF NEW BERLIN, WI
PREPARED FOR:
MILWAUKEE RESCUE MISSION
830 N. 19th ST.
MILWAUKEE, WI 53233

REVISION HISTORY	
DATE	DESCRIPTION
10/24/2025	PRELIMINARY PLANS

DATE:
OCTOBER 24, 2025

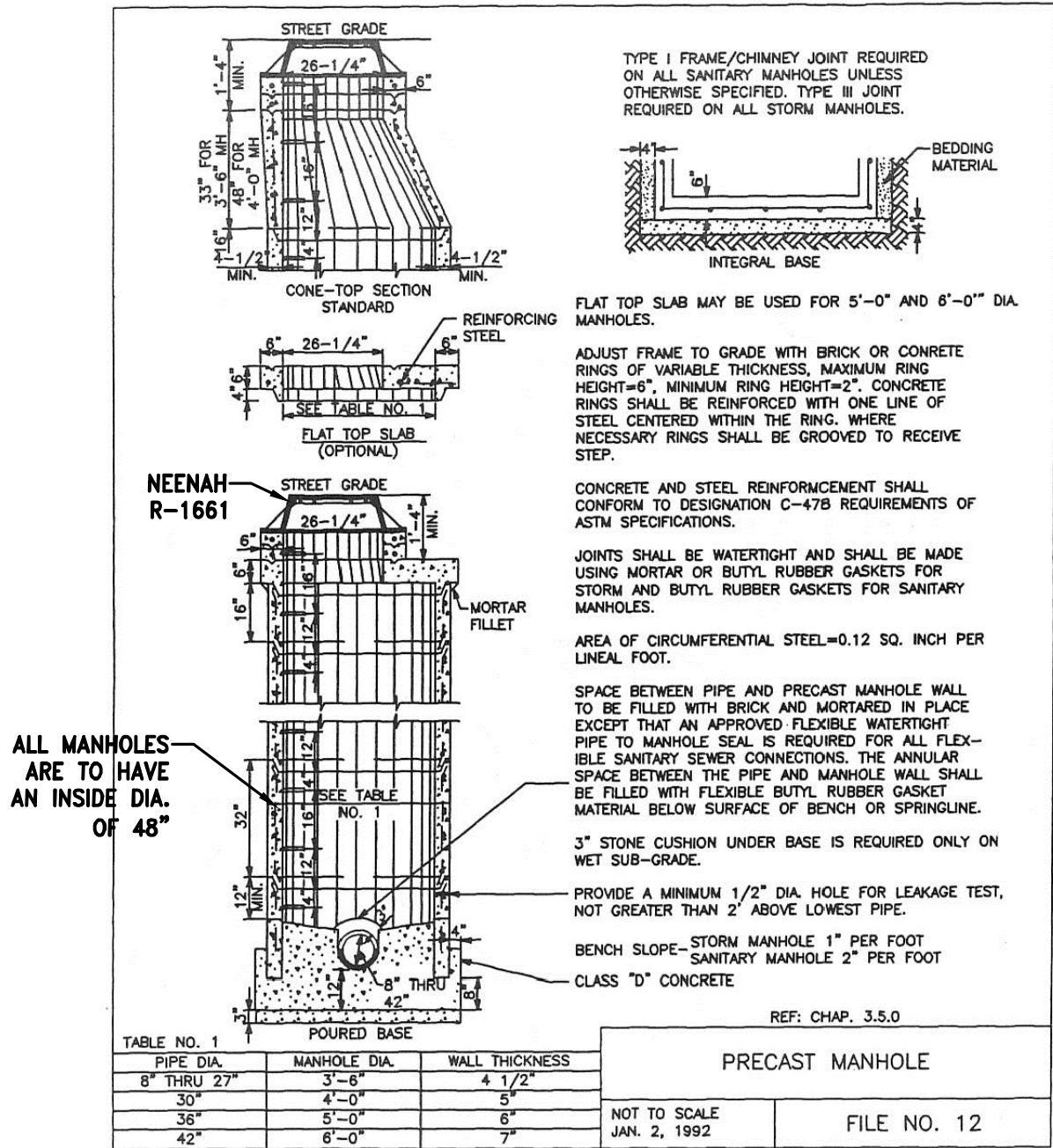
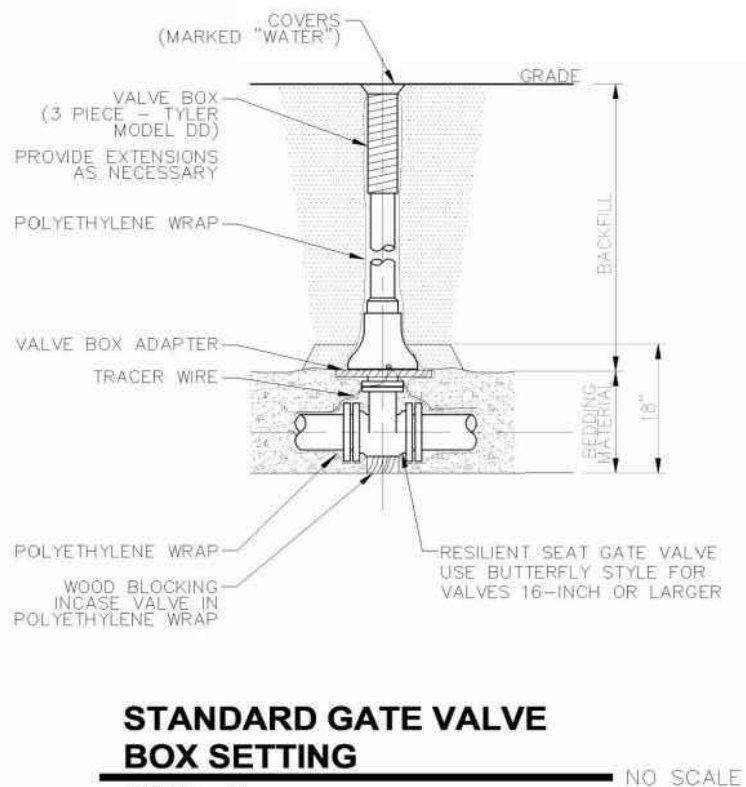
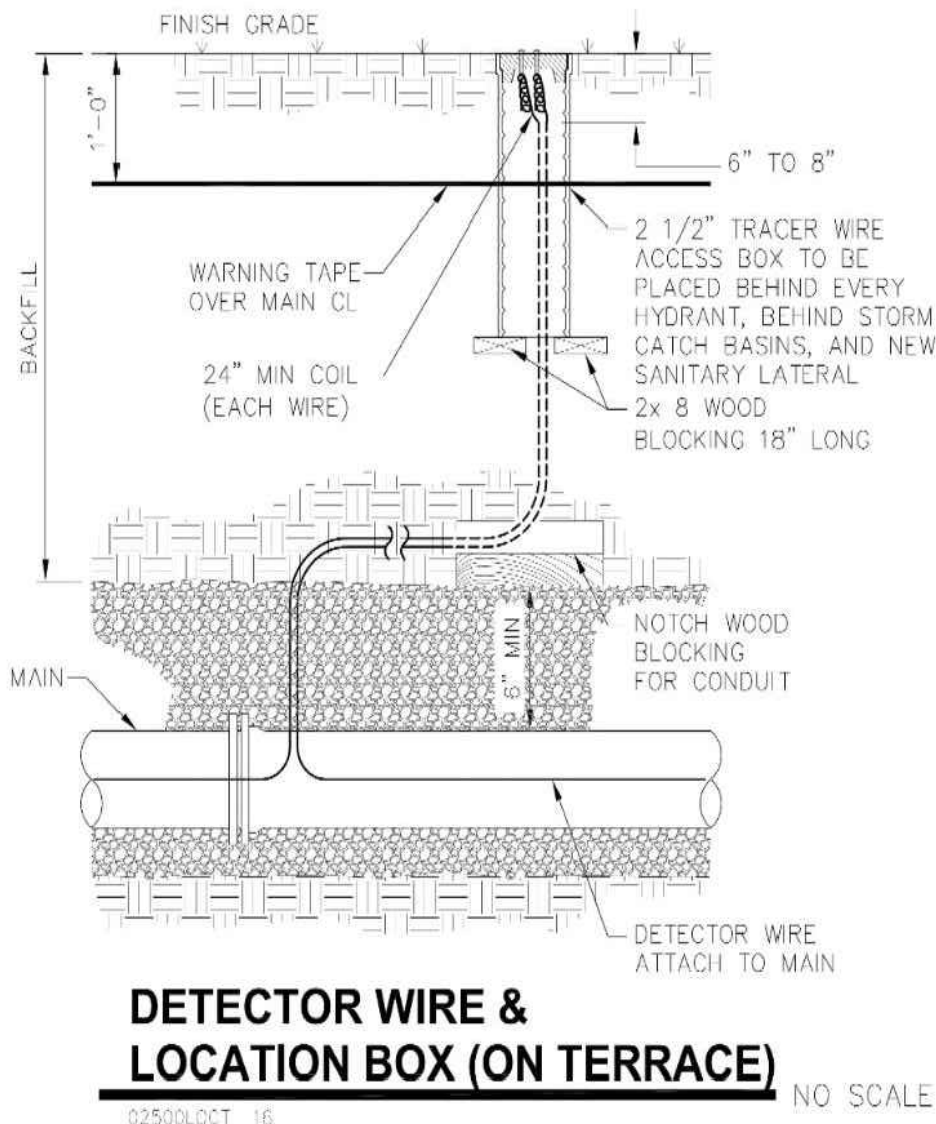
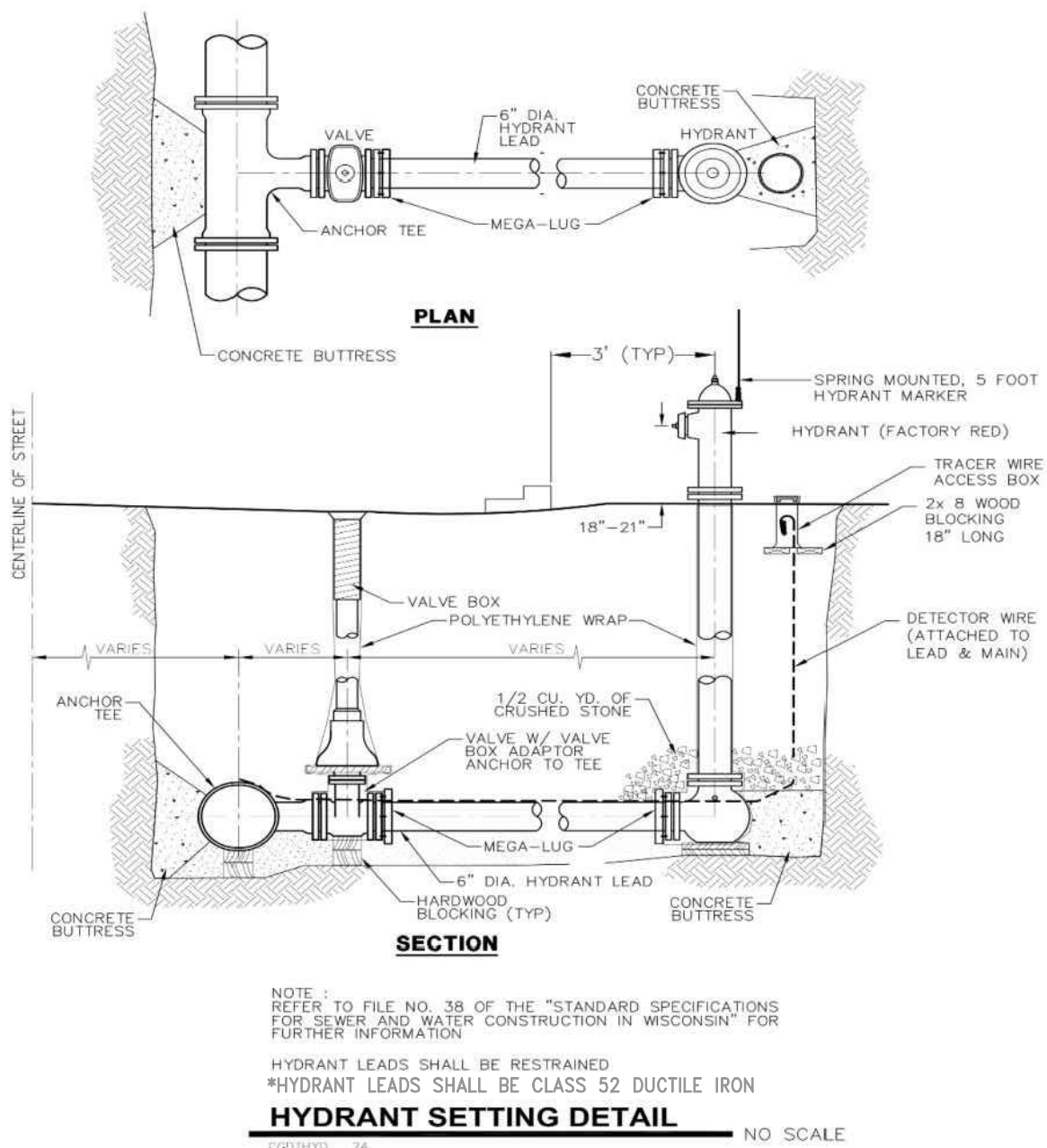
JOB NUMBER:
19018

DESCRIPTION:

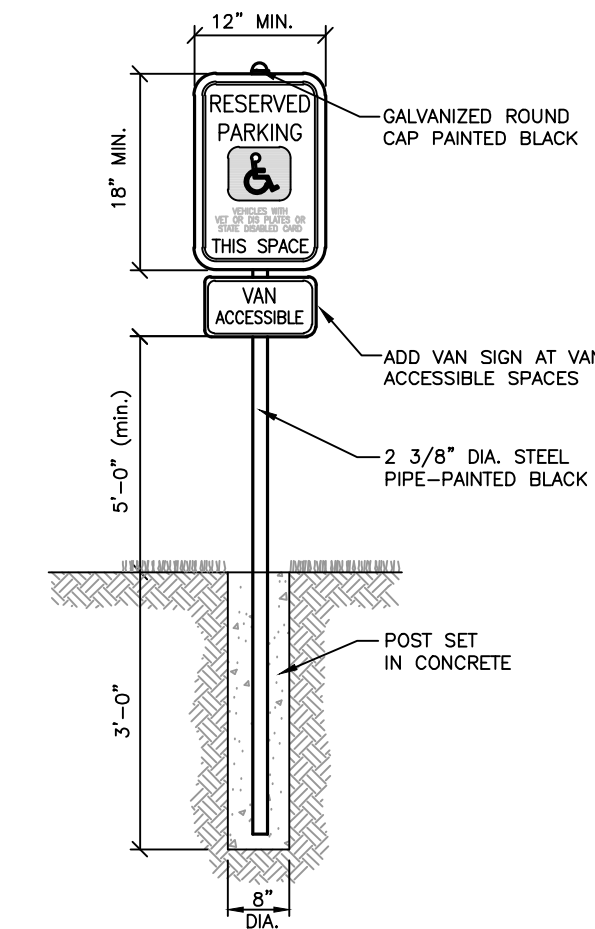
EROSION CONTROL PLAN

SHEET

C3.0

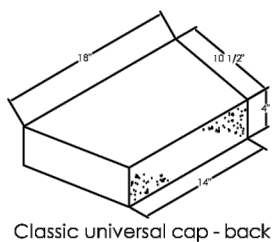


NOTE: ALL SANITARY MANHOLES SHALL BE WATERPROOFED AND PROVIDED WITH INTERNAL/EXTERNAL SEALS AND MACWRAP JOINTS.

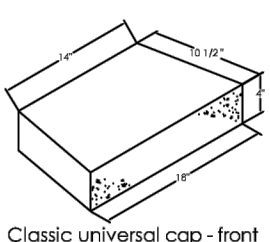


Typical Details Classic 8

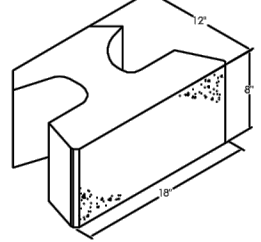
(Dimensions may vary by region)



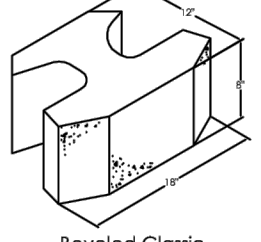
Classic universal cap - back



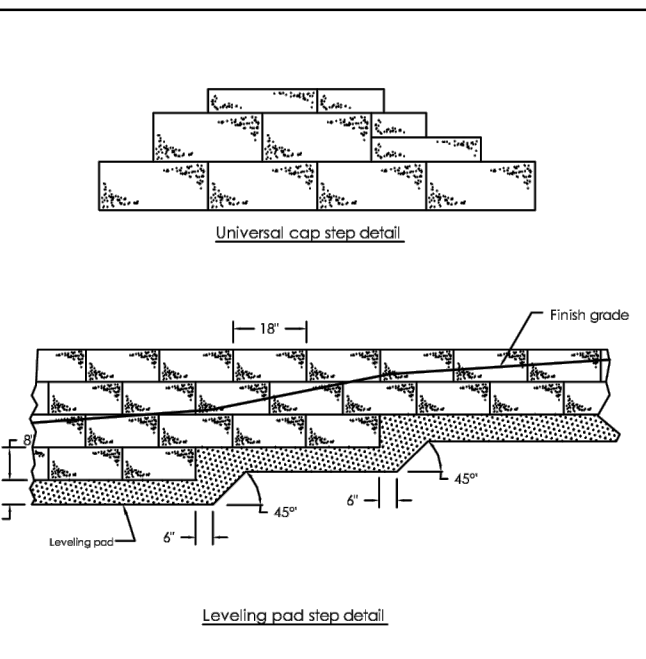
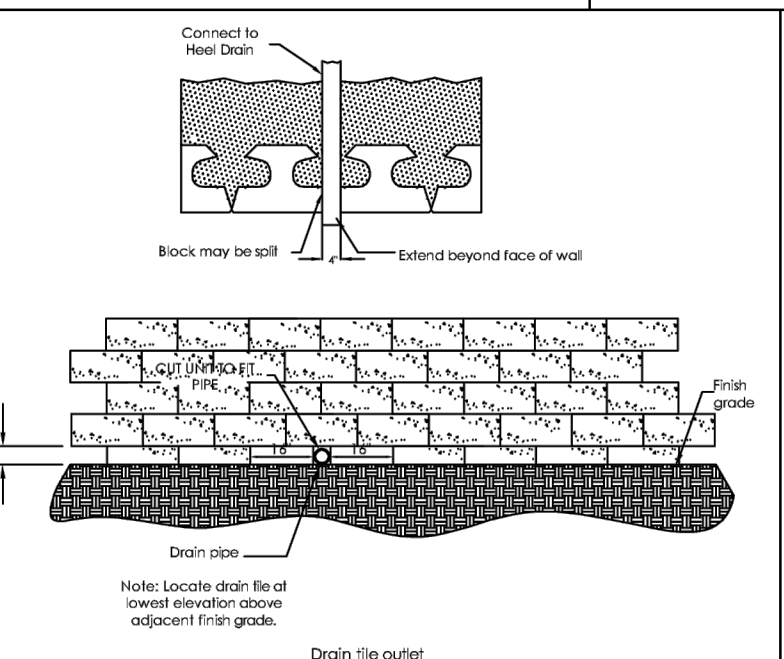
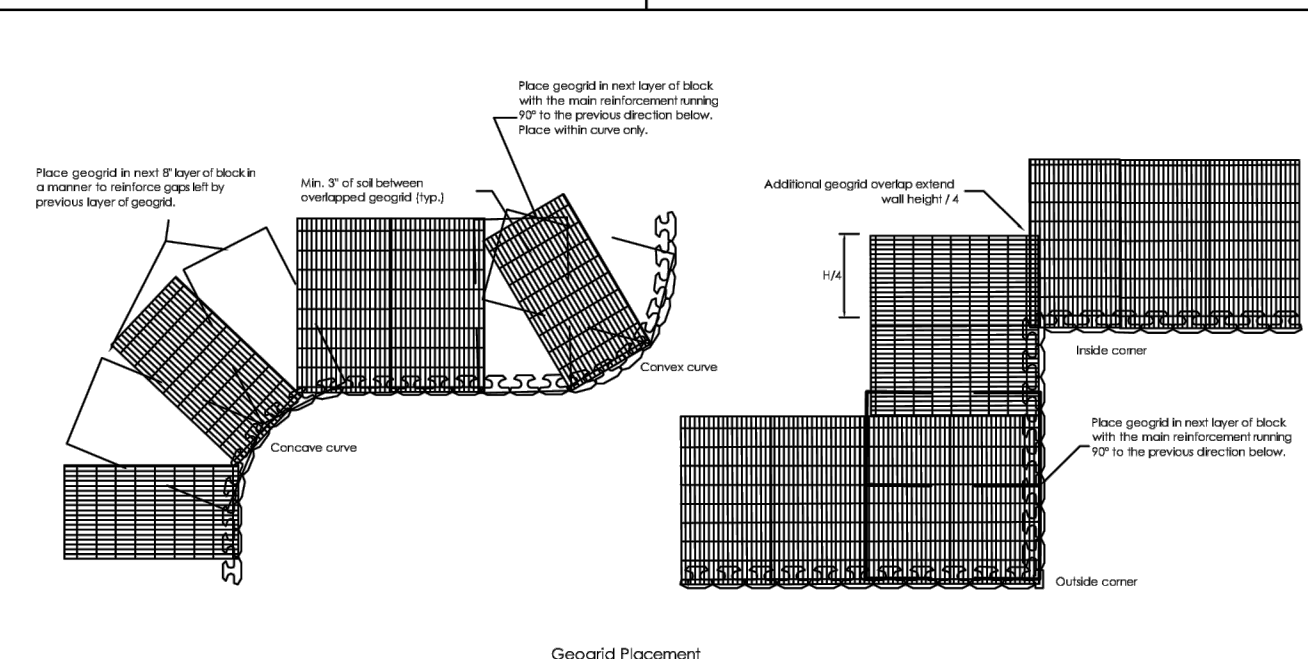
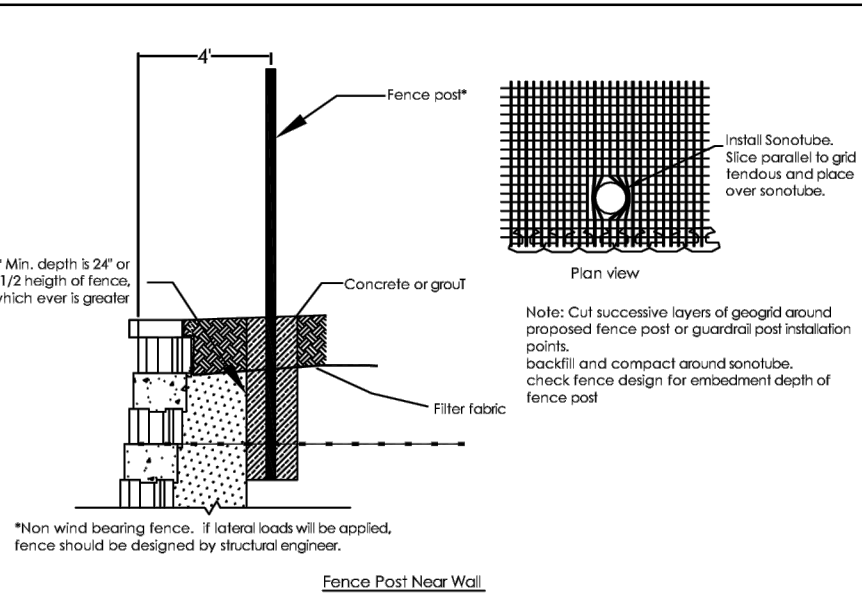
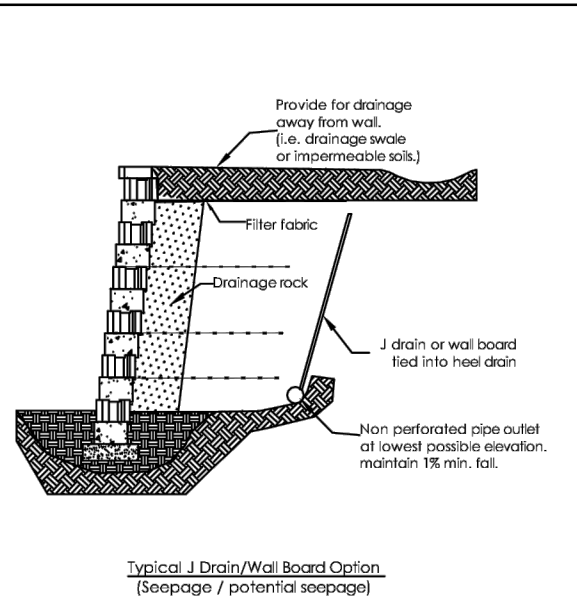
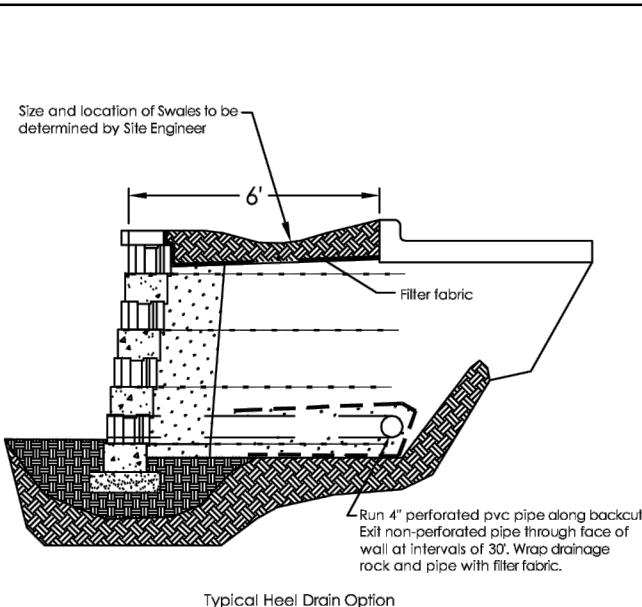
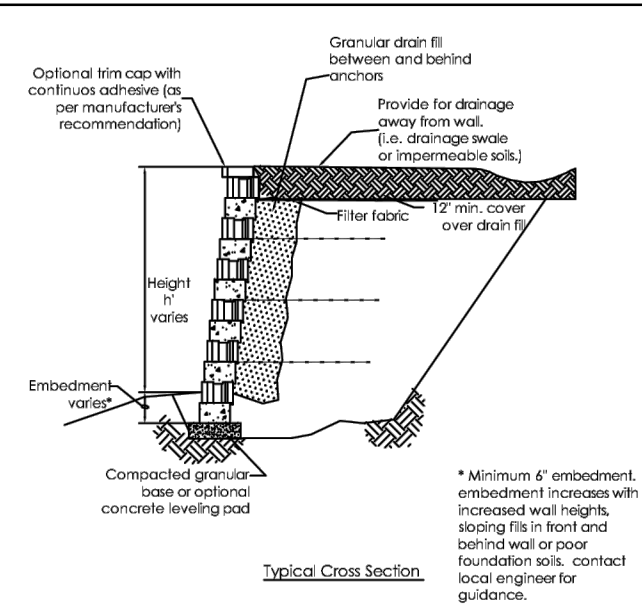
Classic universal cap - front



Straight Classic 8" unit



Beveled Classic 8" unit



This drawing is furnished for preliminary design purposes only, and should not be used for final design drawings or construction drawings without the certification of a professional engineer registered in the state in which the wall will be constructed.				No. Date Revision By			

- RETAINING WALL NOTES:**
- CONTRACTOR MAY USE ANOTHER RETAINING WALL MANUFACTURER IF DESIRED BASED ON AVAILABILITY AND COST OF MATERIAL. IN THIS EVENT, THE CONTRACTOR SHALL NOTIFY THE CITY OF NEW BERLIN ENGINEER AND PROVIDE ALL REQUIRED AND APPLICABLE DOCUMENTATION REQUESTED.
 - RETAINING WALL DETAILS ARE PROVIDED FOR REFERENCE ONLY, CONTRACTOR SHALL FOLLOW ALL MANUFACTURE DETAILS AND SPECIFICATIONS.



19035 W CAPITOL DR., SUITE 200
BROOKFIELD, WI 53045
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10/24/2025	PRELIMINARY PLANS

DATE:
OCTOBER 24, 2025

JOB NUMBER:
19018

DESCRIPTION:
CONSTRUCTION
NOTES & DETAILS

SHEET

C5.1



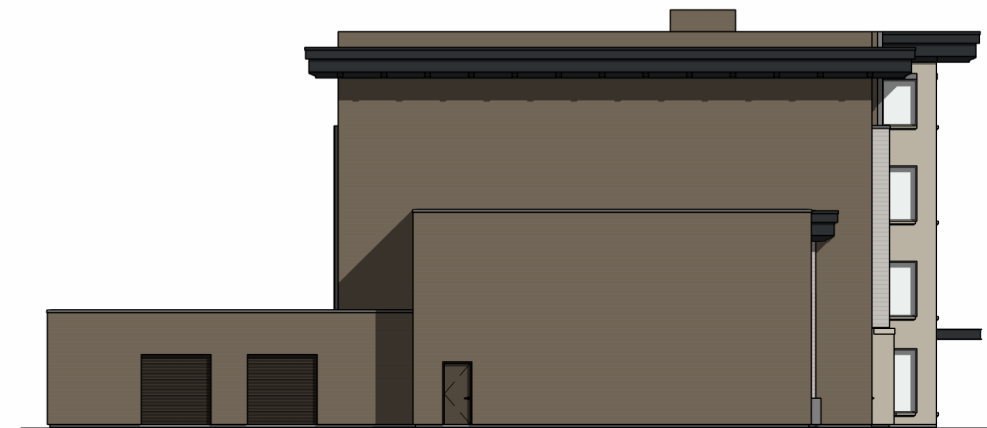
SOUTH ELEVATION
1" = 20'-0"



NORTH ELEVATION
1" = 20'-0"



EAST ELEVATION
1" = 20'-0"



WEST ELEVATION
1" = 20'-0"



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MILWAUKEE RESCUE MISSION
3RD CAMPUS

EXTERIOR ELEVATIONS - COLORED

25-073
10/24/2025







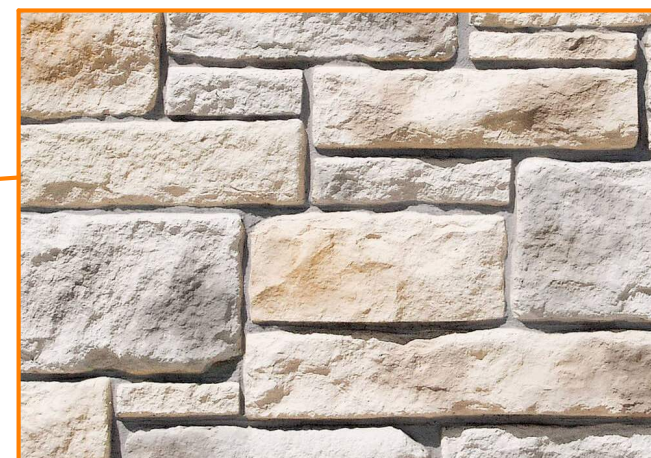




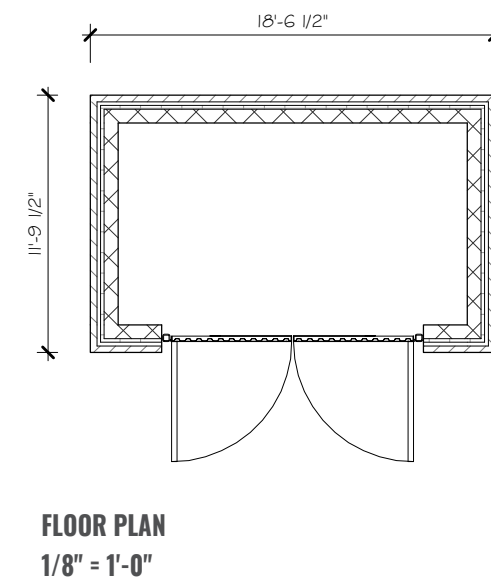
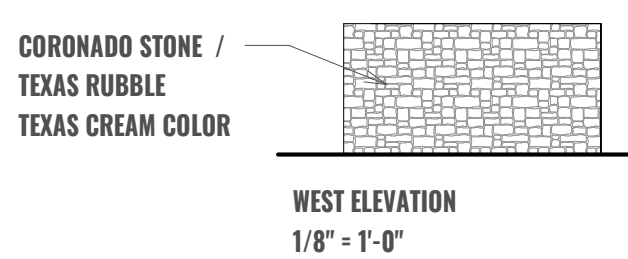
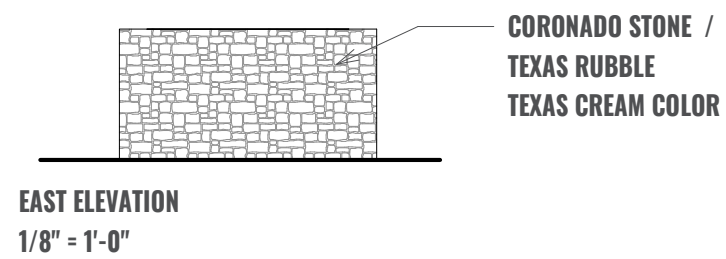
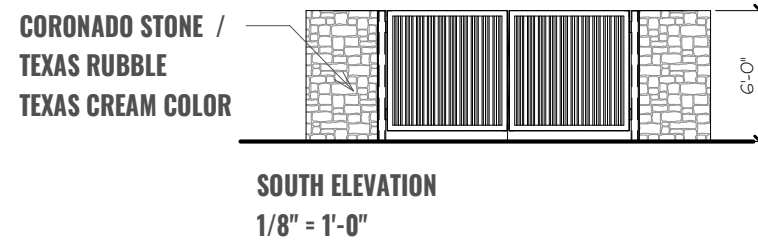
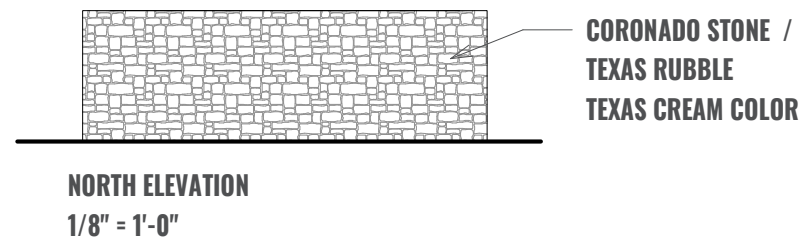
HARDIE PLANK LAP SIDING
SELECT CEDARMILL / TIMBER BARK COLOR



CERACLAD FIBER CEMENT PANEL
WOOD SERIES / URBAN CEDAR / ASH COLOR



CORONADO STONE / TEXAS RUBBLE
TEXAS CREAM COLOR





FIRST FLOOR PLAN

SCALE: 1/8" = 1'-0"



FOURTH FLOOR PLAN

SCALE: 1/8" = 1'-0"



Plan Commission MEETING MINUTES

December 8, 2025 - 6:00 PM
Council Chambers
3805 S. Casper Drive

MINUTES

1. PUBLIC HEARING(S)

- A. (3) KH CU-2502137 Welcome East Side LLC – 17200 W. Cleveland Avenue – Conditional Use Permit to reoccupy the existing building for a gas station and convenience store, and the construction of an 891 square foot addition. (PUBLIC HEARING 6:00 PM)

Kristen Hogan introduced the Public Hearing item to the Plan Commission.

Mayor Ament asked if there were any questions for clarification.

- Harjeet Walia, 9519 N. River Bend Court, River Hills

Mayor Ament asked if there was anyone wishing to speak in favor of the public hearing item.

- William Morris, Project Architect, 5313 87th Place, Pleasant Prairie

Mayor Ament asked if there was anyone wishing to speak in opposition of the public hearing item.

- There were none

Mayor Ament asked if there were questions and/or comments from Plan Commissioners.

- There were none

2. PRIVILEGE OF THE FLOOR

Each speaker is limited to 3 minutes. The session will conclude at 6:30 PM.

None

3. CALL TO ORDER, PLEDGE OF ALLEGIANCE

Mayor Ament called the meeting to order at 06:14 PM and led the Pledge of Allegiance.

4. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

Deputy City Clerk Megan Godshall took the roll call as follows:

Present: Commissioner Schulpus, Commissioner Felda, Commissioner Anderson, Commissioner Rafel, Mayor Ament, Commissioner Gardner

Absent: Alderman Stribl

Staff Present: City Attorney Thomas Schmitzer, DCD Director Greg Kessler, DCD Deputy Director Nikki Jones, Principal Planner Kristen Hogan, Deputy City Clerk Megan Godshall

The Deputy City Clerk confirmed that a quorum was present and that the meeting was properly posted in compliance with open meetings law.

5. APPROVAL OF MINUTES

A. November 3, 2025 Meeting Minutes

MOTION: Motion to approve

VOTE: Motion by: Commissioner Schulpius
Second by: Commissioner Rafel
Motion Passed 5-0 with Commissioner Anderson abstaining

6. PLAN COMMISSION SECRETARY'S REPORT

No report

7. CONTINUED BUSINESS

None

8. NEW BUSINESS

- A.** Discussion and possible recommendation to the Common Council to approve (4) GK/NJ LD-2502142 Patrick Vanderburgh with Milwaukee Rescue Mission - New Journey House - 5295 S. Moorland Road (Tax Key #'s: 1260.998.001 & 1260.998.002) - 1-Lot Certified Survey Map.

MOTION: Motion to approve

VOTE: Motion by: Commissioner Schulpius
Second by: Commissioner Anderson
Motion Passed 6-0

- B.** (4) GK/NJ UA-2502143 Patrick Vanderburgh with Milwaukee Rescue Mission - New Journey House - 5295 S. Moorland Road (Tax Key #'s: 1260.998.001 & 1260.998.002) - Use, Site and Architecture for a new 4-story 57,010 sq. ft. rehabilitative development.

MOTION: Motion to approve

VOTE: Motion by: Commissioner Anderson
Second by: Commissioner Schulpius
Motion Passed 6-0

9. PENDING

None

10. COMMUNICATIONS

None

11. ADJOURN

MOTION: Motion to adjourn at 6:21 PM

VOTE: Motion by: Commissioner Felda
Second by: Commissioner Gardner
Motion Passed 6-0

**Respectfully Submitted,
Megan Godshall, Deputy City Clerk**

NEW BERLIN CITIZENS UNITED, UA,

Appellant,

~vs~

CITY OF NEW BERLIN
PLAN COMMISSION,

Respondent.

**RESPONDENT, CITY OF NEW BERLIN PLAN COMMISSION'S
EXHIBIT LIST**

The following represents the City of New Berlin Plan Commission's list of documents and Exhibits that it may rely on at the time of the hearing to be held on April 16, 2026, dealing with the question of the standing of the Appellants to bring their objections. Each of the Plan Commission's Exhibits are to be found in the link to the Dropbox folder, which appears below; however, all parties have been sent an "Invite" to access the shared folder on Dropbox. The List of Exhibits is as follows:

- | | |
|-----------|---|
| Exhibit 1 | The City of New Berlin Future Land Use Map for Westridge Business Park. |
| Exhibit 2 | Aerial map showing industrial and commercial properties in the vicinity of the project and objecting neighbors. |
| Exhibit 3 | Map showing the industrial and commercial properties within one-half mile of the project. |
| Exhibit 4 | Map showing objecting property owners. |
| Exhibit 5 | Wisconsin Department of Transportation (DOT) Traffic Count Map. |
| Exhibit 6 | Aerial map with embedded photographs from locations on Small Road adjacent to the objecting properties. |
| Exhibit 7 | Picture looking towards the project site from 15090 West Small Road. |
| Exhibit 8 | Screen shot from Google Earth looking towards project site from 15101 West Small Road. |
| Exhibit 9 | Screen shot from Google Earth looking towards project site from 15392 West Small Road. |

- Exhibit 10 Screen shot zoomed from Google Earth looking towards project site from 15101 West Small Road.
- Exhibit 11 Screen shot from an email from the Kastners to their neighbors dated June 21, 2008.
- Exhibit 12 Sam Monroe CV.
- Exhibit 13 “Not in My Backyard”, the impact of recovery residences on property values published January 14, 2026 in Pub Med.

Drop Box Link:

<https://www.dropbox.com/scl/fo/v6uy2zgcsd0xj6kaor0jh/APWEQPclk7rT5wgg8XZdZrU?rlkey=01fjrx78bejv7scn3qtkbo4ez&st=owhxvxsi&dl=0>

The Plan Commission reserves the right to utilize any Exhibits or documents that are presented by any other party to these proceedings.

The Plan Commission reserves the right to supplement this List of Exhibits as this matter proceeds and as more information and facts are discovered.

The Plan Commission will rely upon Wisconsin State Statutes, City of New Berlin Ordinances, City of New Berlin Board of Appeals Rules and Procedures, case law authority and secondary source authority that are relevant to any of the issues raised in this matter.

The Plan Commission reserves the right to determine which of the aforementioned Exhibits will actually be presented and offered into evidence.

Dated this 30th day of March, 2026.

CITY OF NEW BERLIN

/s/ Mark G. Blum

By: Mark G. Blum,
 New Berlin City Attorney



City Attorney Mark G. Blum

E-MAIL: MGBLUM@HRMBLAWFIRM.COM

March 27, 2026

Via Email (elarson@ammr.net) ONLY

Attorney Eric J. Larson
Municipal Law & Litigation Group, SC
730 North Grand Avenue
Waukesha, WI 53186

Re: Petition to City of New Berlin Board of Appeals to Review the Determination of
the City Plan Commission Granting a Use Approval for the Proposed New Journey Development

Dear Eric:

The City is in receipt of a letter submitted to you by Attorney Cincotta, which seeks to expand the Record beyond that which was submitted by the City to the Board of Appeals. That letter has been followed by a list of some 60 documents that the Appellants wish to present at the hearing before the Board. The direction the BOA gave was that the parties were to supply a Brief providing argument and authorities as to the issue of the standing of the Appellants; however, counsel for the Appellants have expanded that to focus instead on its desire to expand the Record being considered by the Board of Appeals. We do not object to the Appellants providing documents related to the issue of standing; but as to the issue of the merits of the ultimate issue regarding the Zoning Permit, we do. As the Board of Appeals is aware, the ultimate purpose of this hearing is to consider the action taken by the Plan Commission based on the Record that was provided to it at the time of its Decision. Wisconsin Statute Sec. 62.23(7)(e)(4) provides, in part, that the officer from whom the appeal is taken shall forthwith transmit to the board all of the papers constituting the record upon which the action appealed from was taken. The City has done that. Notwithstanding this fact, Attorney Cincotta seeks to add additional information to the Record to be considered by the Board of Appeals beyond that which was considered by the Plan Commission in reaching its Decision. The Plan Commission believes that it is incumbent on the Appellants to show cause why the Record should be expanded. In Wisconsin, when a Decision of a Plan Commission or other administrative body is appealed to a Zoning Board of Appeals, the Record consists of all papers and documents upon which the original action was based. Wis Stat Sec 62.23(7)(e)(4). This would logically include such items as the original Zoning Permit Application; Site Plans; other materials supplied with the Permit Application; supporting evidence for the Application which was presented to the Plan Commission and introduced into the Record during the Plan Commission's proceedings; official Minutes of the Plan Commission proceedings, including all Motions, votes and stated reasons for the determination; transcripts; recordings; and the Notice of Appeal itself. The issue is the application of City Ordinances to the facts established by those documents.

The Appellants argue that, in those cases where the judicial branch has the jurisdiction to review the action of the legislative function, the facts which lie within the knowledge of the agency must be disclosed in the Record so the Record is complete and adequate. The problem is that this case before the Board of Appeals does not represent a judicial review or even the review of a quasi-judicial decision. In support of his

proposition, counsel for the Appellants cites Ruffalo v. Common Council of the City of Kenosha. The Ruffalo case involved two issues, the failure to follow a statutory process unique to liquor licensing and an allegation of arbitrary, capricious and discriminatory conduct by the decision maker. This decision has nothing to do with the propriety of expanding the Record in a Zoning Board of Appeals proceeding. It is a liquor license case which has its own body of law regarding the denial process. The Ruffalo decision is not a legislative type hearing involving the interpretation of a Zoning Ordinance in the context of a Zoning Permit Application. Therefore, it has no bearing on the question at hand.

The second case cited by the Appellants is All Energy Corporation v. Trempealeau County Land Use Committee, which involved the authority of a County to deny a Conditional Use Permit and a quantum of evidence necessary for that to occur. As a Conditional Use case, this matter involved a quasi-judicial type hearing and discussed what evidence was necessary in order to deny the objection by All Energy Corporation. The case also involved a determination of whether the Record established at the hearing constituted substantial evidence. Again, this involved the question of the sufficiency of the evidence, not the consideration of the Record itself. This case was not about the consideration of the extent of the Record on a matter before a local Board of Zoning Appeals. As a result, this citation also has no bearing on the question at hand.

Finally, the appellant cites Oneida Seven Generations Corp. v. City of Green Bay which addresses the issue of what evidence should be considered by a reviewing court as to the revocation of a Conditional Use Permit and whether the evidence presented at the hearing supports the municipality's action. First of all, the Oneida Seven case involves a certiorari review of the rescission of a Conditional Use Permit. It does not involve a zoning Permit review by the Board of Appeals rather the sufficiency of the evidence, to justify the rescission of the Permit which was a quasi-judicial determination. The Oneida Seven case has nothing to do with the standard for the expansion of the Record in a Board of Zoning Appeals proceeding.

In the absence of a showing of cause supporting the justification for expanding the Record and also in light of the Appellants' failure to cite relevant authority for its position, the Plan Commission would request the Board of Appeals limit the Record under consideration to that information that was supplied by the City as required by Statute Wis Stat Sec 62.23(7)(e)(4) which states as follows: "The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken." There is nothing in that Statute that allows for the expansion of the Record beyond such information.

As to Attorney Larson's question as to whether a phone conference to discuss this issue would be desirable, I have no objection. However, I want to make it clear that the Plan Commission's view is that no supplementation of the Record is appropriate. Should the Board of Appeals consent to allowing the supplementation of the Record as requested by the Appellants, the Plan Commission would reserve the right to object to individual documents based on whether an adequate foundation has been established and whether the document is relevant to the issue at hand to allow for its inclusion into evidence. We would further request that the Plan Commission be permitted to submit additional documents or materials of its own.

March 27, 2026

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Thank you for your consideration of these matters.

Sincerely,

/s/ Mark G. Blum

Mark G. Blum
New Berlin City Attorney

MGB/jb

Cc: Attorney Joseph R. Cincotta
(Via Email: jrc4@chorus.net)
Attorney Deborah Tomczyk
(Via Email: dtomczyk@reinartlaw.com)
Mr. Greg Kessler
(Via Email: gkessler@newberlinwi.gov)
Mayor David Ament
(Via Email: dament@newberlinwi.gov)



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
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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
pm

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

Owners' Arguments on Standing and Record

March 18, 2026

SENT BY EMAIL

Thomas G. Schmitzer, Sr., Esq.
Hippenmeyer, Reilly, Blum, Schmitzer & Fabian, SC
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Lady and Gentlemen:

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jrc4@chorus.net

Rubina Medina, City Clerk
City of New Berlin
3805 South Casper Drive
New Berlin, WI 53151
rmedina@newberlinwi.gov

Re: New Journey Use

Notwithstanding the objections of Moorland Hospitality Group, LLC, DeMoCat, LLC and the Milwaukee Rescue Mission (collectively, the “Owners”), the Board of Appeals (“BOA”) has scheduled a hearing on April 16 to consider whether New Berlin Neighbors United, U.A. (the “Opponents”) qualifies as an aggrieved party to pursue an appeal of the December 8, 2025 use approval granted to the New Journey use at 5295 South Moorland Road (the “Property”). As explained in previous correspondence and at the February 19, 2026 BOA preliminary meeting, the Owners continue to contend that the BOA lacks jurisdiction to consider any appeal by the Opponents. As Messrs. Larson and Cincotta have agreed to further BOA processes as outlined in Mr. Cincotta’s March 10, 2026 letter, we are submitting this “letter brief” out of an abundance of caution to preserve the Owners’ rights.

1. The Opponents Fail to Qualify as Aggrieved Parties under the City Code.

City Code § 275-31A.(1) specifies that standing to appeal to the BOA 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, BOA Rule 4.B authorizes appeals by “The owner, mortgagee or purchaser under a land contract...[or]...a person aggrieved by the decision...”

City Code and BOA 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 Opponents fall far short of qualifying as aggrieved parties under City Code. First, no potential injury has been demonstrated as arising from the New Journey use at the Property. Second, the relevant City Code, BOA Rule and Wisconsin Statutes cited above confirm that the Opponents lack any interest that such laws protect:

- The Opponents are not owners, lessees, mortgagees or land contract purchasers of the Property. Indeed, all parties with an interest in the Property have joined to oppose the Opponents’ asserted appeal.
- The Opponents identify themselves as a community organization, registered with the Wisconsin Department of Financial Institutions on January 6, 2026 and individuals residing at least one-half of a mile away from the Property on the other side of Moorland Road and behind significant commercial development.

The Opponents fail to qualify as aggrieved parties under City Code, BOA Rule and Wisconsin Statute.

2. The Opponents Also Fail to Demonstrate Standing under Caselaw.

The Wisconsin Supreme Court has refined into a two-part test what is required for standing to bring the type of appeal that the Opponents assert: (1) the challenged action must cause the plaintiff an injury in fact; and (2) the interest allegedly injured must be one that an identified law protects, recognizes, or regulates. *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶ 31, 402 Wis. 2d 587, 977 N.W.2d 342. The Opponents fail both prongs of this standing test.

First, the Opponents do not allege an injury in fact sufficient to show standing because their alleged injury is entirely speculative and vague as to any individual person. Untimely materials submitted by the Opponents assert “an obvious and inevitable risk of becoming an ‘undesirable location’” and “devaluation of existing properties.” But those assertions are not based on facts--just innuendo and fear. The Opponents provide no factual basis for their assertions other than records from the Milwaukee Fire Department in a different City, at an entirely different location (west of Marquette University), for an entirely different use (an emergency shelter). There is no explanation *why* developing the New Journey use at the Property would render properties more than half a mile away “undesirable” or “devalued”.

Indeed, it is just as plausible that turning an isolated, long-undeveloped site into a productive use will *enhance* property values and provide desirable impacts—such as needed services for an underserved population and a new source of employees for businesses in the Westridge Business Park. The Opponents’ allegations fall far short of demonstrating that the Opponents actually have or actually will sustain any pecuniary loss. *See Friends of Black River Forest*, 2022 WI 52, ¶ 21; *see also Milwaukee Brewers Baseball Club v. DHSS*, 130 Wis. 2d 56, 65 387 N.W.2d 245 (1986) (“[T]he injuries must be neither hypothetical nor conjectural.”); *Fox v. DHSS*, 112 Wis. 2d 514, 334 N.W.2d 532 (1983) (“[A]n abstract injury is not enough to confer standing on a party.”).

Second, the Opponents’ alleged injury is not the type that an identified law protects, recognizes, or regulates. *See Friends of Black River Forest*, 2022 WI 52, ¶ 31. The Opponents ignore that the Owners *own* the Property and that the Plan Commission was administering a *nondiscretionary* approval under the City Code sec. 275-24. That Code section does not require a public hearing; indeed, not even public comment is solicited for a “use, site plan and architectural review.” The nondiscretionary use, site and architectural review at issue here should be contrasted with a conditional use approval under City Code sec. 275-27 which requires a public hearing. Even though the City clearly has greater discretion in administering a conditional use approval than administering use, site plan and architectural review, Wis. Stat. sec. 62.23(7)(de) prohibits a municipality from basing conditional use approval or denial on anything other than “substantial evidence” which “means facts and information, other than merely personal preferences or speculation...that reasonable persons would accept in support of a conclusion.” Wis. Stat. sec. 63.23(7)(de)1.b. Having clearly failed to provide substantial evidence of their injury, the Opponents would fail to meet the conditional use standards which authorize more discretion than the far lower standards applicable to use, site plan and architectural review. Here, the rights of Owners clearly outweigh the unsupported allegations of the Opponents.

Again, the Opponents fail to qualify as aggrieved parties not only under applicable City Code and Wisconsin Statute but also the prevailing caselaw.

3. 4 Votes of BOA Members Would Be Required.

In addition to entertaining the issue of the Opponents’ status as aggrieved parties, Mr. Cincotta calls into question the number of votes of the BOA members required to act for the body. Again, City Code and BOA Rules are clear. City Code sec. 275-31C. states that “The concurring vote of a majority of the Board, or four votes, shall be necessary to reverse any order, requirements, decision or determination of the Department of Community Development or the Plan Commission, or to decide in favor of the appellant on any matter....” Similarly, BOA Rule 6.C. requires “the affirmative vote of four members” to reverse any action. Rule 6.C. continues that “Whenever only four members of the board are present and they vote 3-1 in favor of the appellant, the matter shall be laid over for consideration and final determination at the next meeting...” This language reinforces that 4 BOA votes are required to overturn any Plan

March 18, 2026

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Commission decision, as 3 of 4 votes do not trigger BOA approval, but further process. Both City Code and BOA Rules require 4 BOA votes to overturn Plan Commission's unanimous approval.

Our review of the status of aggrieved parties, the procedural posture of this matter and the Opponents' lobbying of the City to ignore the plain language of its City Code, reinforces our concerns about further BOA proceedings. However, the Owners reserve their rights to continue to participate in BOA proceedings. In particular, we reserve the rights to call Rev. Patrick Vanderburgh, John Ford and others responsive to Mr. Cincotta's filings as witnesses and to cross-examine witnesses called by the other addressee attorneys.

Yours very truly,



Deborah C. Tomczyk

61311283v1

Encs.

cc Matt Burow (by email)
Daniel Dalton (by email)
John Ford (by email)
Daniel Murphy (by email)
Benjamin Streckert (by email)
Patrick Vanderburgh (by email)

March 31, 2026

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

SENT BY 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

Dear Mr. Goetter:

Re: Hearing on Appeal by
New Berlin Neighbors United, U.A.

As an initial matter, it bears noting that MRM's entire mission is to serve its community and the greater good—and its reputation in doing so is impeccable. With its 135-year history of dedicated service, MRM has demonstrated a deep and unwavering commitment to the conviction that God can restore human brokenness by integrating Christian faith with practical support. Developing the New Journey use at 5295 South Moorland Road (the "Property") enables MRM to serve area neighbors in a unique way which, given MRM's proven track record, is certain to have significant positive impacts on the New Berlin community, including Property neighbors and the City as a whole.

In contrast, New Berlin Neighbors United, U.A. ("Appellant") and its members are disparaging and now even threatening MRM, the Property owners, their staff and their family members. The Appellant's misleading efforts include wide distribution of the attached mailing. In a gut-wrenching display of hubris, the following are more examples of communications being mailed and emailed to the named individuals, their school-age children and their elderly parents:

"We're starting production of thousands of these fliers so we can start a decades long partnership to help clients who leave the Milwaukee Rescue Mission in New Berlin and are still needing help, whether they're passed out in the park, panhandling on the road, or otherwise demonstrating they may still need help. We know you are eager to help these folks and we can't do it alone. We have significant funds raised in our MRM Uber Gift Card Fund to provide free transportation to your home so you can help with next steps. We look forward to working with you as long as it takes to solve this problem together.



"Where can Milwaukee Rescue Mission clients turn to for help once they leave the New Berlin the facility? New Berlin doesn't have case workers. Fortunately we know these men are eager to help. New Berlin residents will be providing these informational fliers to Rescue Mission clients they come across panhandling in front of stores, passed out high and sleeping in parks, or overdosing on our streets. Free Uber gift cards included to their destination of choice at no charge. I will personally be contributing \$5000 to the pool of funds being collected to purchase these gift cards. We will be printing thousands of these fliers for years to come, as long as it takes, so we can work together to solve addiction and homelessness.

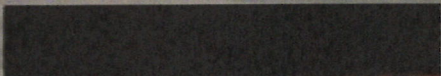
Still Need **Help?**

These men have a **lot** of money and are eager to help with your recovery.

We will provide an Uber to your destination of choice.
They will help with next steps!

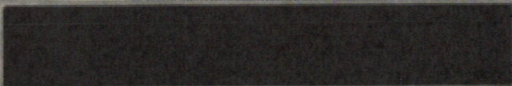


Patrick Vanderburgh





John Ford





Matthew Burow



We're here **for you!**

Not only does this behavior evidence recklessness and callousness,¹ it also underscores the Appellant's utter disdain for City officials, the legal process and the law itself. The Appellant's tactics can no longer be condoned. Together with this letter, we will be submitting these threatening communications to law enforcement, including the local police, the sheriff and the U.S. Department of Justice. We implore the Board and the City to stand up for what is right.

1. The Board is being co-opted by the Appellant.

In our view, it remains clear that no valid appeal was filed or is pending before the Board. The Board should have ended further proceedings on any "appeal" at its February 19 meeting. However, at its February 19 meeting, the Board voted to ignore *binding* City Code provisions and "schedule a hearing to address the issue of standing or aggrieved person status on April 16." Since February 19, the Appellant has tried to push Board proceedings farther afield, not only from the Board's charge under City Code but even from the direction that the Board took on February 19.

Over our repeated objections, the Appellant has crafted, without grounding in any Wisconsin Statute, City Code section or other applicable law, and the Board has assented to, a process unlike any I have observed in my three decades as a practicing attorney. In short, the Appellant has supplanted the lawfully protected property and due process rights of MRM and the Property owners with a contrived amalgamation of deadlines, briefs, witness lists, and an as-yet limitless expansions of "the record" and the Board's authority, now accentuated with threats and intimidation.

The Appellant has refused, repeatedly, to adhere to the terms of the very process it orchestrated. See Mr. Cincotta's February 26 and March 10 letters and the March 17 email exchange enclosed.

- Every Appellant filing has been late;
- Every Appellant filing has disregarded the City Code; and
- Every Appellant filing has ignored the discussion among the parties and prevailing decorum.

Most disturbing from a process standpoint, while Mr. Cincotta repeatedly agreed (three times in writing) that the sole issue before the Board on April 16 is "the standing/aggrieved person issue", on March 24 at 10:07p.m., Mr. Cincotta submitted to the Board 60 exhibits

¹ Home addresses in the above mailings have been blacked out for privacy reasons, but these communications all include the named individuals' home addresses.

relating almost entirely to the New Journey use at the Property and purportedly reserved the right to submit additional exhibits.²

Contrary to Mr. Cincotta's repeated assertions that the parties have agreed to the Appellant's unlawful approach, the record is clear that the Property owners and MRM have never agreed to Board proceedings post-February 19. We have repeatedly objected to further process by the Board and reiterate our objections here.³ The Appellant's unlawful acts and the Board's deafness to our pleas left us no choice but to bring suit against the City. See 2026 CV 000454.

2. The Appellant has yet to Demonstrate Aggrieved Party Status.

Ironically, the Appellant's efforts to ignore and contort *binding* City Code provisions and Wisconsin caselaw have done nothing more than re-confirm that the Appellant and its members *cannot* achieve aggrieved party status. Assuming purely for the sake of argument that the Board were to proceed to a hearing on the Appellant's standing/aggrieved party status issue, such a hearing should summarily produce a determination that the Appellant and its members lack standing and fail to qualify as aggrieved parties.

The Appellant and its members have yet to demonstrate that the New Journey use at the Property will cause an injury affecting a legally protected interest. *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶ 31, 402 Wis. 2d 587, 977 N.W.2d 342. Rather than grappling with the applicable standards, the Appellant tries to convince the Board to apply the wrong standards and to succumb to allegations rather than facts.

The Appellant summarily asserts that its members will suffer these injuries:

- A negative impact on the use and enjoyment and value of their properties;
- Denial of a public hearing;
- A "small but meaningful amount more in taxes;" and
- "Without doubt increase [in] the costs to the City's Emergency Services."

² At least three courts have refused to condone similar challenges brought by Mr. Cincotta. *No Bayside TIF v. Village of Bayside and Village of Bayside Joint Rev. Bd.*, No. 2022CV000293 (Wis. Cir. Ct. Milwaukee Cnty. Sept. 12, 2025) (order for judgment); *Greenwald Fam. Ltd. P'ship v. Vill. of Mukwonago Joint Rev. Bd.*, No. 2022CV001696 (Wis. Cir. Ct. Waukesha Cnty.), appeal dismissed, No. 2024AP000464 (Wis. Ct. App. June 12, 2024); *Oak Creek Neighbors United, U.A. v. City of Oak Creek*, No. 2025CV003162 (Wis. Cir. Ct. Milwaukee Cnty. Oct. 29, 2025) (judgment).

³ If the April 16 Board hearing proceeds, MRM and the Property owners reserve the right to use any exhibits pending before the City Plan Commission or the Board or introduced by any party.

But, there is no evidence of these alleged harms, nor any causal link between the asserted injuries and the proposed New Journey use at the Property.

There is no evidence that the New Journey use would adversely affect property values. The undisputed evidence before the Plan Commission was that MRM would infuse a multi-million-dollar capital investment and 24/7 proven, professional management at the Property. In other words, the undisputed evidence suggests that property values will be preserved or enhanced.

Introducing a public hearing into the process of reviewing a zoning permit would be both illegal and unworkable. There are no legal standards to weigh for issuance or denial of a zoning permit, and the City cannot be empowered to *arbitrarily* administer the City Code. Paradoxically, the Appellant has obtained significant process and consideration by the Board to which the Appellant is *not* entitled—to the detriment of MRM and the Property owners.

The Appellant fails to cite to any authority for the proposition that potential tax increases confer standing in land use matters. That's because zoning has absolutely no impact on eligibility for property tax exemption. See. Wis. Stat. sec. 70.11.

Moreover, there is no evidence that the New Journey use at the Property would increase costs of City emergency services. The undisputed evidence before the Plan Commission was that MRM actively manages its properties and operations with on-site professional staffing to mitigate the need for City emergency services.

The only thing more specious than the Appellant's factual assertions are its legal arguments.

First, the Appellant cites to *Brown v. Wisconsin Elections Commission*, 2025 WI 5, ¶ 14-15, 414 Wis. 2d 601, 16 N.W.3d 601, for the proposition that “a trifling injury” confers standing and “the bar is low.” The *Brown* case adjudicated Wisconsin Election Commission's denial of Brown's complaint that a city clerk's use of a mobile election unit in the 2022 primary election impacted his right to vote. Brown's complaint was expressly authorized by Wis. Stat. sec. 5.06, and voters have far greater rights to be protected in elections than objectors (more than one-half mile away) have to be protected from issuance of a zoning permit. But, the Appellant ignores that even the plaintiff in the *Brown* case failed to qualify as aggrieved because the challenged election “did not make it more difficult for Brown to vote or affect him personally in any manner.” Voter Brown's inability to crest the low bar for standing reaffirms that the Appellant cannot achieve aggrieved status here.

Second, the Appellant cites to *Wisconsin Realtors Association, Inc. v. City of Neenah*, 2025 WI App 49, ¶ 9, 418 Wis. 2d 78, 25 N.W.3d 663, for the proposition that standing of any of its members confers “associational standing” on the Appellant. But, again, the Appellant ignores

that associational standing is conferred only “when at least one of the members of the association would have had standing and interests at stake in litigation and germane to the organization’s purpose.” None of the Appellant’s members have demonstrated an interest at stake that confers standing, so neither can the Appellant demonstrate standing.

Lastly, the Appellant reaches for taxpayer standing under *Fabick v. Evers*, 2021 WI 28, ¶ 9, 396 Wis. 2d 231, 956 N.W.2d 856 (a case involving Gov. Evers’ exercise of emergency authority to control COVID-19). But taxpayers achieve standing in cases involving challenges to the misuse of public funds—which is not at issue here. Moreover, when a party asserts standing by virtue of its status as a taxpayer, it still must show that it sustained or will sustain some pecuniary loss. *Vill. of Slinger v. City of Hartford*, 2002 WI App 187, ¶ 9, 256 Wis. 2d 859, 650 N.W.2d 81. Without a direct stake and an actual adverse effect on one’s interests, such claims are “simply registering [one’s] disagreement . . . [but] such disagreement is insufficient to confer standing.” *Lake Country Racquet & Athletic Club, Inc. v. Vill. of Hartland*, 2002 WI App 301, ¶ 23, 402 Wis. 2d 587, 977 N.W.2d 342. A plaintiff alleging standing based on taxpayer status must allege facts demonstrating that they *actually have or actually will* sustain a pecuniary loss. See *Vill. of Slinger*, 2002 WI App 187, ¶ 9. The Appellant’s allegations are pure speculation—untethered from any causal link.

3. Following the Appellant’s Lead Puts the City and Its Taxpayers In Jeopardy.

The penchant of the City and the Board to be deferential to the Appellant’s members and to give them every opportunity to voice concerns is understandable—but misguided. The deference being shown to Appellant puts the City and its taxpayers at substantial risk. Deference to the Appellant has incited our lawsuit against the City—which is heading down the path of two prior ill-advised New Berlin actions:

- City opposition to the MSP Real Estate Inc.’s affordable housing development ended, not only with the affordable housing development being built, but also with the United States Department of Justice pursuing long-lasting enforcement action against the City. That action culminated in a Consent Decree which required the City to fund and administer a Housing Trust Fund as well as payment of a civil penalty. See Consent Decree in Civil Action Nos. 11-cv-281 & 11-cv-608.
- Similarly, the City’s refusal to rezone land for a Greek Orthodox Church resulted in years of litigation and the Seventh Circuit Court of Appeals ordering the City to accommodate the Church. See *Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (2005).

By copy of this letter to the City’s Housing Compliance Officer, MRM and the Property owners also are registering a complaint under City Code ch. 116. The essential facts constituting

John Goetter, Chairman
City of New Berlin Board of Appeals
March 31, 2026
Page 8

discrimination against the handicap and religion of New Journey clients are set forth in the first three pages of this letter. MRM and the Property owners reserve the right to pursue all remedies available under City Code ch. 116.

The Appellant's strong-arming can no longer be tolerated. We implore the Board and other City officials to cease being led astray by the Appellant and its members.

Yours very truly,



Deborah C. Tomczyk

Encs.

cc Matt Burow (by email)
Dan Dalton (by email)
John Ford (by email)
Gregory Kessler (by email)
Daniel Murphy (by email)
Benjamin Streckert (by email)
Patrick Vanderburgh (by email)

61343836



Dear New Berlin Neighbor,

I am reaching out regarding the proposed **120-bed Milwaukee Rescue Mission facility planned for New Berlin at 5295 S. Moorland Road**. The facility would house **primarily homeless men with addiction from Milwaukee** who are not required to stay on site during their time in the program. Likewise, many will leave the program and enter our community to stay, without housing. We're seeking financial support to stop this project!

We can all agree how important **safety, stability, and quality of life** are to our families, neighborhoods and businesses. A facility of this size raises serious concerns - including increased loitering/panhandling, higher demand on Police and EMS resources, increased crime and increased property taxes.

Public records from the Milwaukee Rescue Mission show nearly **700 calls to Police and EMS** to the facility over a two-year period. Because the New Berlin facility is being illegally categorized as a church, **they will pay zero property taxes** - leaving New Berlin residents and businesses to foot the bill.

While every community should care for those in need, placing a **large-scale residential treatment and homeless facility in an area not zoned for it** raises serious concerns for nearby neighborhoods, including:

- Increased loitering and panhandling in the community
- Higher demand on police, fire, and EMS resources
- Increased criminal activity
- Increased financial burden on New Berlin taxpayers

New Berlin has long been a community where families choose to live and work because of its **safety, strong neighborhoods, and high quality of life**. A project of this size and scope could fundamentally change that dynamic.

A group of residents has hired an attorney to stop this project. However, **legal representation requires significant funding. We have a strong legal case as this type of residential facility does not comply with the industrial zoning of the property.**

We are asking that you please **contribute to the legal effort** to stop this project. We are currently in the final stages of obtaining 501(c)(3) status, which makes donations tax-deductible.

Without additional funding, we are reaching a point where we can no longer continue the legal fight. **Your financial support is urgently needed.**

T.brenner.nbcu@gmail.com | Tyler 414-870-0066

Connect with us on Facebook for Updates: New Berlin Citizens United | Website: newberlincu.com



On February 18, 2026, a Marquette student was **raped and robbed by gunpoint on campus**. Investigators later found the suspect staying at a nearby homeless shelter. **This type of crime will be a result of the facility if we don't stop it. DONATE NOW!**

Ways to Donate

1. Checks can be made out to: **New Berlin Citizens United**
2. Mailing address: PO Box 84, Big Bend, WI 53103
3. GoFundMe: <https://gofund.me/3385b467b>
4. Venmo:

New Berlin Citizens United



venmo

Thank you for your time and your commitment to New Berlin. Please reach out to T.brenner.nbcu@gmail.com with any questions.

Sincerely,
New Berlin Citizens United

T.brenner.nbcu@gmail.com | Tyler 414-870-0066

Connect with us on Facebook for Updates: New Berlin Citizens United | Website: newberlinu.com

March 9, 2026

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

SENT BY EMAIL

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Eric J. Larson, Esq.
Municipal Law & Litigation Group
730 North Grand Avenue
Waukesha, WI 53186
elarson@ammr.net

Rubina Medina, City Clerk
City of New Berlin
3805 South Casper Drive
New Berlin, WI 53151
rmedina@newberlinwi.gov

Lady and Gentlemen:

Re: New Journey Use

Current landowners DeMoCat, LLC and Moorland Hospitality Group, LLC (collectively, "Owners") and operator Milwaukee Rescue Mission ("MRM") have petitioned Waukesha Circuit Court for a Writ of Mandamus to issue a zoning permit for the New Journey use at 5295 Sout Moorland Road. A courtesy copy of the Summons and Petition are enclosed for your reference.

Counsel were advised at the February 19, 2026 Board of Appeals ("BOA") preliminary meeting, at the call on February 26, 2026 and again by email sent March 2, 2026 that Owners and MRM object to further BOA proceedings relating to the New Journey use at 5295 South Moorland Road. As no valid appeal is pending before BOA, all BOA proceedings must cease immediately. An additional copy of our letter dated February 16, 2026 explaining why no appeal is pending also is included for your reference. As outlined in our petition, the City must issue the zoning permit for the new Journey use without further proceedings or delay.

Yours very truly,



Deborah C. Tomczyk

Encs.

Rubina Medina, City Clerk
Eric J. Larson, Esq.
March 9, 2026
Page 2

cc Matt Burow (by email)
Daniel Dalton (by email)
John Ford (by email)
Daniel Murphy (by email)
Benjamin Streckert (by email)
Patrick Vanderburgh (by email)

61258497

FILED
03-06-2026
Clerk of Circuit Court
Waukesha County
2026CV000454

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

DEMOCAT, LLC
2639 North Downer Avenue, Suite 4
Milwaukee, WI 53211,

MOORLAND HOSPITALITY GROUP, LLC
504 West Juneau Avenue
Milwaukee, WI 53203,

MILWAUKEE RESCUE MISSION
830 North 19th Street
Milwaukee, WI 53233,

Petitioners,

vs.

Case No. _____
Petition for Writ of Mandamus – 30952

CITY OF NEW BERLIN
3805 South Casper Drive
New Berlin, WI 53151,

Respondent.

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a respondent:

You are hereby notified that the petitioners named above have filed a lawsuit or other legal action against you. The Petition for Writ of Mandamus, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Petition for Writ of Mandamus. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to/or electronically filed with the Court, whose address is Waukesha County Circuit Court, 515 West Moreland Boulevard, Waukesha, Wisconsin 53188, and to Daniel G. Murphy, petitioners' attorney, Reinhart Boerner Van Deuren s.c., whose address is 1000 North Water Street, Suite 1700, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the Petition for Writ of Mandamus, and you may lose your right to object to anything that is or may be incorrect in the Petition for Writ of Mandamus. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 6th day of March, 2026.

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

Mailing Address:

P.O. Box 2965
Milwaukee, WI 53201-2965
Telephone: 414-298-1000
Facsimile: 414-298-8097

Dalton & Tomich, PLC
The Chrysler House
719 Griswold Street, Suite 270
Detroit, MI 48226
Telephone: 313-859-6000

Electronically signed by Daniel G. Murphy

Daniel G. Murphy
WI Bar ID No. 1097740
dmurphy@reinhartlaw.com

Attorney for Petitioners

Daniel P. Dalton
Application for Pro Hac Vice forthcoming
Attorney for Milwaukee Rescue Mission

FILED
03-06-2026
Clerk of Circuit Court
Waukesha County
2026CV000454

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

DEMOCAT, LLC
2639 North Downer Avenue, Suite 4
Milwaukee, WI 53211,

MOORLAND HOSPITALITY GROUP, LLC
504 West Juneau Avenue
Milwaukee, WI 53203,

MILWAUKEE RESCUE MISSION
830 North 19th Street
Milwaukee, WI 53233,

Petitioners,

vs.

Case No. _____

Petition for Writ of Mandamus – 30952

CITY OF NEW BERLIN
3805 South Casper Drive
New Berlin, WI 53151,

Respondent.

PETITION FOR WRIT OF MANDAMUS

Petitioners DeMoCat, LLC (“DeMoCat”), Moorland Hospitality Group, LLC (“Moorland” and together with DeMoCat, the “Property Owners”) and the Milwaukee Rescue Mission (“MRM”), by their respective undersigned counsel, hereby petition this Court for a writ of mandamus, directing Respondent City of New Berlin (the “City”) to issue a zoning permit to the Property Owners consistent with the use approval previously

authorized by the New Berlin Plan Commission (the “Commission”). In support of this Petition, Petitioners allege as follows:

Parties

1. DeMoCat is a Wisconsin limited liability company with its principal place of business at 2639 North Downer Avenue, Suite 4, Milwaukee, WI 53211.

2. Moorland is a Wisconsin limited liability company with its principal place of business at 504 West Juneau Avenue, Milwaukee, Wisconsin.

3. MRM is a Wisconsin nonprofit religious organization with its principal place of business at 830 North 19th Street, Milwaukee, Wisconsin.

4. The City is a municipal corporation pursuant to Wisconsin statutes and is authorized to sue and be sued. The City’s principal address is 3805 South Casper Drive, New Berlin, Wisconsin.

Venue and Jurisdiction

5. This Court has jurisdiction to hear this matter under the Wisconsin Constitution Article VII Section 7 and Wisconsin Statutes Section 783.01.

6. Venue is proper in Waukesha County under Wisconsin Statutes Section 801.50(2) in that the claim arose in Waukesha County and the real property that is the subject of the claim is located in Waukesha County.

Legal Standard

7. “A party seeking a writ of mandamus must show that: (1) the writ is based on a clear, specific legal right which is free from substantial doubt; (2) the duty sought to be enforced is positive and plain; (3) substantial damage will result if the duty is not performed; and (4) there is no other adequate remedy at law.” *State ex rel. Iushewitz v.*

Milwaukee Cnty. Pers. Rev. Bd., 176 Wis. 2d 706, 711, 500 N.W.2d 634 (1993) (citations omitted).

8. “It is an abuse of discretion to refuse to issue the writ when the noted prerequisites are present.” *L. Enft Standards Bd. v. Vill. of Lyndon Station*, 101 Wis. 2d 472, 494, 305 N.W.2d 89 (1981)

9. “Mandamus is the proper remedy to compel public officers to perform duties arising out of their office and presently due to be performed.” *Walter Laev, Inc. v. Karns*, 40 Wis. 2d 114, 118, 161 N.W.2d 227 (1968) (quoting *State ex rel. City of West Allis v. Zawerschnik*, 275 Wis. 204, 206, 81 N.W.2d 542 (1957).)

Factual Background

The New Journey New Berlin Campus

10. The Property Owners own the two parcels that make up the property located at 5295 South Moorland Road, New Berlin, Wisconsin (the “Property”).

11. The Property Owners and MRM have entered into an agreement pursuant to which the Property Owners shall convey the Property to MRM.

12. The Property Owners and MRM intend for the Property to be developed as the New Journey New Berlin Campus (the “New Journey Campus”).

13. MRM’s mission of “sharing God’s love by caring for the poor in body, mind, and spirit” will manifest itself at the New Journey Campus not only at daily chapel

and prayer but also by ministering to persons committed to recovering from drug and alcohol addiction.¹ See <https://milmission.org/programs/>.

***The Commission Unanimously Approves
the New Journey Campus as a Permitted Use***

14. Petitioners applied for a zoning permit approving of the New Journey Campus as a permitted use under the City's municipal ordinances (the "Application").
15. The Commission's professional staff prepared a report regarding the Application which attached the Application (the "Staff Report").
16. The Staff Report recommended approval of the Application, deeming the proposed use a permitted use in a M-1 district, the applicable zoning for the Property.²
17. A true and accurate copy of the Staff Report is attached as Exhibit 1.
18. Under New Berlin Municipal Code of Ordinances (the "Code") Section 275-24, the Commission is responsible to review and approve permitted use applications such as the Application.
19. The Commission unanimously approved the Application during its regularly scheduled meeting on December 8, 2025.

¹ Programs serving needy populations, like the drug and alcohol counseling initiatives of religious organizations constitute an exercise of religion when the work is carried out as an expression of faith and religious mission. Religious exercise is protected from substantial government burdens, including the application of zoning ordinances and land use regulations which treat religious organizations less favorably than others without a compelling governmental interest. .

The institutional characteristics relevant to religious organization status include being organized primarily for religious purposes, carrying out those purposes, and holding themselves out publicly as religious entities. Courts have recognized entities like MRM's centers as religious organizations despite the presence of secular social services so long as those services are delivered within a religious atmosphere and based on religious principles. See, <https://www.justice.gov/crt/place-worship-initiative-what-rluipa>.

² The Property is zoned M-1 Light Manufacturing and is located in the middle of the Westridge Business Park abutting I-43 and Moorland Road. Compare Ex. ___ (Staff report) at 11 (map of the Property submitted with the Application) with https://experience.arcgis.com/experience/96455f2b215b4d5c8bb4b2052375626a#widget_6=layer_visibility:%7B%22widget_6-dataSource_1%22%3A%7B%22widget_6-dataSource_1-198e848cf57-layer-7%22%3Atrue%7D%7D,active_datasource_id:dataSource_1,center:-9807792.482159983%2C5304803.644587272%2C102100,scale:16085.891197010093,level:15.218217606812964 (City zoning map showing the Property and surrounding area all zoned M-1).

20. A true and accurate copy of the minutes from the Commission's December 8, 2025 meeting are attached as Exhibit 2.

Objectors File Grievances (Not Appeals)

21. On January 7, 2026, certain individuals and one purported entity, New Berlin Citizens United, LLC ("Citizens, LLC"), filed with the City their "grievances" regarding the New Journey Campus (the "Grievances").

22. A true and accurate copy of the Grievances is attached as Exhibit 3.

23. Despite submitting one of the Grievances, the legal entity New Berlin Citizens United, LLC does not exist.

24. Under Code Section 275-31.B. any appeal of a Commission approval must be submitted on the New Berlin Board of Appeals appeal form (the "Appeal Form").

25. The Grievances were not filed on the Appeal Form.

26. The Appeal Form is publicly available.³

27. Under Code Section 275-31.B. any appeal of a Commission approval must be accompanied by the appropriate filing fee.

28. The applicable filing fee for an appeal of a Commission approval is \$550.

29. When the Grievances were filed, none were accompanied by a \$550 filing fee.

30. Under Code Section 275-31.A., only persons aggrieved by a Commission decision may appeal.

31. The Grievances failed to explain how the filing parties had been injured by the Commission's approval of the Application.

³ <https://www.newberlinwi.gov/DocumentCenter/View/2810/Application-Form?bidId=>

32. Under Code Section 275-31.B., appeals must state “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.”

33. The Grievances failed to identify any municipal code provisions violated by the Commission’s approval.

34. On January 21, 2026, an attorney representing the entity New Berlin Citizens United, U.A. (“Citizens, U.A.”) filed a notice of appearance with the New Berlin Board of Appeals (the “Notice of Appearance”).

35. The Notice of Appearance assumed there was an appeal filed by Citizens, U.A. on January 7, 2026.

36. Citizens, U.A. did not file anything on January 7, 2026, much less an appeal satisfying the requirements under Code Section 275-31.

37. The City’s Clerk immediately responded to the attorney who filed the Notice of Appearance explaining that there was no pending appeal.

38. The Clerk further explained that “[a]n appeal is not considered pending unless and until a complete appeal application and the required filing fee are submitted.”

39. A true and correct copy of the Clerk’s response is attached as Exhibit 4.

The Untimely and Insufficient Appeal

40. On January 23, 2026, a different entity, New Berlin Neighbors United, U.A. (“Neighbors, U.A.”), attempted to file an appeal of the Commission’s approval of the Application (the “January 23rd Filing”).

41. A true and correct copy of the January 23rd Filing is attached as Exhibit 5.

42. Despite attempting to appeal the Commission's decision, the legal entity New Berlin Neighbors United, U.A. does not exist. A true and correct copy of the January 23rd Filing is attached as Exhibit 5.

43. Under Code Section 275-31.A.(1), any party wishing to appeal a Commission decision must do so within 30 days.

44. More than 30 days elapsed between the Commission's approval of the Application on December 8, 2025 and the January 23rd Filing.

45. The January 23rd Filing attached a partial copy⁴ of the Grievance submitted by Citizens, LLC.

46. The January 23rd Filing failed to explain how the Neighbors, U.A. had been injured by the Commission's approval of the Application.

47. The January 23rd Filing failed to identify any municipal code provisions violated by the Commission's approval.

***The New Berlin Board of Appeals Improperly
Obstructs Issuance of the Zoning Permit***

48. In response to the January 23rd Filing and at the direction of its attorney, the New Berlin Board of Appeals scheduled a special meeting for February 19, 2026 (the "Special Meeting").

49. A true and accurate copy of January 28, 2026 letter from the Board of Appeals' attorney is attached Exhibit 6.

50. The purpose of the Special Meeting was to conduct a "preliminary review" of the January 23rd Filing.

⁴ The copy attached to the January 23rd Filing omits the portion of the Grievance which identifies it as submitted on behalf of Citizens, LLC (not Neighbors, U.A.).

51. A true and accurate copy of the agenda for the Special Meeting is attached as Exhibit 7.

52. On February 17, 2026, the Commission wrote the Board of Appeals and explained that the January 23rd Filing is an untimely and insufficient submission to trigger review of the Commission's approval of the Application.

53. The February 17, 2026 letter from the Commission's attorney is attached as Exhibit 8.

54. At the Special Meeting, the Board of Appeals heard argument as to whether the Citizens, LLC Grievance and/or the January 23rd Filing by Neighbors, U.A. were timely and sufficient so as to trigger the Board of Appeals' review process.

55. Following argument, the Board of Appeals moved into closed session.

56. Following the closed session, the Board of Appeals made certain findings.

57. The Board of Appeals reserved judgment on the issue of whether the parties attempting to appeal the Commission's approval of the Application are sufficiently aggrieved to have standing to appeal.

58. The Board of Appeals found that the Citizens, LLC Grievance and/or the January 23rd Filing by Neighbors, U.A. sufficiently complied with the Code and the Board of Appeals Rules of Procedure.

59. The Board of Appeals provided no explanation for its finding.

60. The Board of Appeals also found that to the extent the Citizens, LLC Grievance and/or the January 23rd Filing by Neighbors, U.A. did not comply with the Board of Appeals Rules of Procedure, the Board of Appeals was suspending those Rules under Section 8 of those Rules.

61. The Board of Appeals did not suspend appeal requirements under the Code.

62. The Board of Appeals has no authority to suspend Code requirements.

63. The Board of Appeals directed the City Clerk to schedule the matter for a public hearing.

64. The Special Meeting minutes have yet to issue but a recording of the meeting is publicly available.⁵

COUNT 1:
PETITION FOR WRIT OF MANDAMUS

65. Petitioners incorporate by reference all preceding allegations.

66. Petitioners have satisfied the four prerequisites to the issuance of a writ of mandamus: (1) Petitioners possess a clear legal right; (2) Respondent owes a positive and plain duty; (3) without a writ, Petitioners will sustain substantial damages; and (4) there is no other adequate remedy at law. *See Iushewitz*, 176 Wis. 2d at 711.

***Petitioners Possess a Clear Legal Right and
the City Owes a Duty to Issue the Zoning Permit***

67. The Commission holds the authority to approve uses for purposes of obtaining a zoning permit.

68. Under Code Section 275-24.A., “[n]o principal or accessory use, development, structure, or sign shall . . . be located, erected, moved, reconstructed, extended, enlarged, structurally altered, occupied, or reoccupied; no site or premises shall be altered, used, changed, modified, or occupied; and no grading undertaken, until after

⁵ <https://newberlinwi.portal.civicclerk.com/event/1959/media>

the owner has applied for and the . . . the Plan Commission has reviewed and approved an application for a zoning permit . . .”

69. Under Code Section 275-24.C.(2), “[n]o use shall be approved until the Plan Commission and staff have reviewed the plan of operation.”

70. The Commission has reviewed and approved the Application, including the plan of operation, as a permitted use.

71. Following the Commission’s approval of the Application, the City owes a duty to issue the zoning permit to Petitioners unless an aggrieved party filed a timely and legally sufficient appeal.

72. No party filed a timely or legally sufficient appeal of the Commission’s approval.

73. The Board of Appeals’ jurisdiction is limited by statute and the Code.

74. Under Wisconsin Statute Section 62.23(7)(e), the City is authorized to form a Board of Appeals to hear timely appeals by aggrieved parties.

75. The City did so under Code Section 275-16 which established the Board of Appeals and authorized it, as relevant here, to hear appeals.

76. Neither Section 275-16 nor any other Section of the Code authorizes the Board of Appeals to interfere with Commission decisions in the absence of a valid appeal.

77. Code Section 275-31 provides the requirements for an appeal.

78. Under Code Section 275-31.A.(1), a party filing an appeal must have standing—they must be aggrieved.

79. Also under Code Section 275-31.A.(1), appeals must be filed within 30 days of the Commission’s decision.

80. Under Code Section 275-31.B., appeals must be in writing, submitted on the Appeal Form, accompanied by the appropriate filing fee and must state “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.”

81. The Commission approved the Application on December 8, 2025.

82. In the 30 days following the Commission’s approval of the Application, no party filed an appeal using the Appeal Form.

83. In the 30 days following the Commission’s approval of the Application, no party filed an appeal accompanied by the appropriate filing fee.

84. In the 30 days following the Commission’s approval of the Application, no party filed an appeal identifying which Code provisions the approval violated.

85. In the 30 days following the Commission’s approval of the Application, no party filed an appeal identifying any injury to the would-be appellant as would give them standing to appeal.

86. Accordingly, there exists no appeal of the Commission’s approval which conforms to the requirements of the Code.

87. In the absence of any timely and sufficient appeal, the City must issue a zoning permit consistent with the Commission’s approval of the Application.

Petitioners Will Suffer Damages and Have No Other Remedy

88. If the City does not issue the zoning permit, the Petitioners will suffer substantial damages.

89. The zoning authorization that the Petitioners currently hold is put in jeopardy and the Petitioners will be forced to defend that authorization in unlawful proceedings in front of a body, the Board of Appeals, that has failed to follow the plain

language of Code provisions limiting the Board of Appeals' jurisdiction to review of timely and sufficient appeals.⁶

90. The Petitioners development of the Property will also be delayed, leading to increased costs to develop the Property.

91. The Petitioners have no other adequate remedy at law.

92. The Petitioners cannot develop the Property as the New Journey Campus without the zoning permit.

PRAYER FOR RELIEF

WHEREFORE, Petitioners request the following relief:

1. That this Court issue a Writ of Mandamus directing the City to issue a zoning permit consistent with the Commission's approval of the Application.
2. That this Court award Petitioners all costs and fees they have incurred as a result of the Board of Appeals' decision to entertain an untimely and insufficient appeal.

⁶ The City has a pattern and practice of infringing upon the rights of applicants such as the Petitioners. See Consent Decree in Civil Action Nos. 11-cv-281 & 11-cv-608 attached as Exhibit 9 and *Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (2005) as well as the Memo dated December 29, 2025 from the City's professional staff and City Attorney attached as Exhibit 10 which City Council wrongly ignored in rejecting the proposed certified survey map for the Property at its January 13, 2026 meeting.

3. That this Court enter all other appropriate relief to ensure the effectiveness and durability of its judgment.

Dated this 6th day of March, 2026.

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Attorney for Petitioners

Daniel P. Dalton
Application for Pro Hac Vice forthcoming
Attorney for Milwaukee Rescue Mission

February 16, 2026

Deborah C. Tomczyk
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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.

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Eric J. Larson, Esq.
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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.

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.

- 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.

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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)

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