

<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE</p> <p style="text-align: center;">04/04/16</p>
<p style="text-align: center;">REPORTS & RECOMMENDATIONS</p>	<p style="text-align: center;">RESOLUTION CONDITIONALLY APPROVING A CONDOMINIUM PLAT FOR 6803 CONDOMINIUMS AT 6803, 6805 AND 6807 SOUTH 27TH STREET (GENEVA ASHX I LLC, GENEVA EXCHANGE FUND XI LLC, WS FRANKLIN LLC, OWNERS/ WS FRANKLIN LLC, APPLICANT)</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>G.6.</i></p>

At their meeting on March 17, 2016, the Plan Commission recommended approval of a resolution conditionally approving a Condominium Plat for 6803 Condominiums at 6803, 6805 and 6807 South 27th Street (GENEVA ASHX I LLC, GENEVA EXCHANGE FUND XI LLC, WS FRANKLIN LLC, OWNERS/ WS FRANKLIN LLC, Applicant).

COUNCIL ACTION REQUESTED

A motion to approve Ordinance No. 2016-_____, a resolution conditionally approving a Condominium Plat for 6803 Condominiums at 6803, 6805 and 6807 South 27th Street (GENEVA ASHX I LLC, GENEVA EXCHANGE FUND XI LLC, WS FRANKLIN LLC, OWNERS/ WS FRANKLIN LLC, Applicant).

RESOLUTION NO. 2016-_____

A RESOLUTION CONDITIONALLY APPROVING A
CONDOMINIUM PLAT FOR 6803 CONDOMINIUMS AT 6803, 6805
AND 6807 SOUTH 27TH STREET
(GENEVA ASHX I LLC, GENEVA EXCHANGE FUND XI LLC, WS FRANKLIN LLC,
OWNERS/ WS FRANKLIN LLC, APPLICANT)

WHEREAS, the City of Franklin, Wisconsin, having received an application for approval of a condominium plat for 6803 Condominiums, such plat being upon property more particularly described as 6803, 6805 and 6807 South 27th Street, being a part of Certified Survey Map No. 6543, recorded on August 7, 1998, Reel 43667, Images 1756 to 1758 inclusive, as Document No. 7578744, as corrected by Affidavit of Correction recorded as Document No. 7724864, part of the Northeast 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 1, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin, of the properties located at 6803, 6805 and 6807 South 27th Street, bearing tax key no. 738-9974-006, Geneva Ashx I LLC, Geneva Exchange Fund XI LLC, WS Franklin LLC, owners/ WS Franklin LLC, applicant; said Condominium Plat having been reviewed by the City Plan Commission following the reviews and recommendations or reports of the Department of City Development and the City Engineering Department, and the Plan Commission having recommended approval thereof at its meeting on March 17, 2016, pursuant to certain conditions; and

WHEREAS, the Common Council having reviewed such application and Plan Commission recommendation and the Common Council having determined that such proposed condominium plat is appropriate for approval pursuant to law upon certain conditions, and will serve to further orderly growth and development and promote the health, safety and welfare of the Community.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Condominium Plat for 6803 Condominiums, as submitted by WS Franklin LLC, owner/applicant, as described above, be and the same is hereby approved, subject to the following conditions:

1. That any and all objections made and corrections required by the City of Franklin, by Milwaukee County, and by any and all reviewing agencies, shall be satisfied and made by the applicant, and that all minor technical deficiencies within the Condominium Plat be rectified, all prior to the recording of the Condominium Plat.
2. That all land development and building construction permitted or resulting under this Resolution shall be subject to impact fees imposed pursuant to §92-9. of the Municipal Code or development fees imposed pursuant to §15-5.0110 of the Unified

A RESOLUTION CONDITIONALLY APPROVING A CONDOMINIUM PLAT FOR WS FRANKLIN LLC, OWNER (6803 CONDOMINIUMS) RESOLUTION NO. 2016-_____

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Development Ordinance, both such provisions being applicable to the development and building permitted or resulting hereunder as it occurs from time to time, as such Code and Ordinance provisions may be amended from time to time.

3. WS Franklin LLC, owner/applicant, successors and assigns, shall pay to the City of Franklin the amount of all development compliance, inspection and review fees incurred by the City of Franklin, including fees of consults to the City of Franklin, for the 6803 Condominiums development, within 30 days of invoice for same. Any violation of this provision shall be a violation of the Unified Development Ordinance, and subject to §15-9.0502 thereof and §1-19. of the Municipal Code, the general penalties and remedies provisions, as amended from time to time.
4. The approval granted hereunder is conditional upon WS Franklin LLC, owner/applicant, and the 6803 Condominiums development for the properties located at 6803, 6805 and 6807 South 27th Street: (i) being in compliance with all applicable governmental laws, statutes, rules, codes, orders and ordinances; and (ii) obtaining all other governmental approvals, permits, licenses and the like, required for and applicable to the project to be developed and as presented for this approval.
5. The 6803 Condominiums development project shall be developed in substantial compliance with the terms and provisions of this Resolution.
6. The applicant shall resolve all staff comments related to the Condominium Plat following a detailed staff review, prior to recording with the Milwaukee County Register of Deeds.

BE IT FURTHER RESOLVED, that the Condominium Plat for 6803 Condominiums be and the same is hereby rejected without final approval and without any further action of the Common Council, if any one, or more than one of the above conditions is or are not met and satisfied within 180 days from the date of adoption of this Resolution.

BE IT FINALLY RESOLVED, that upon the satisfaction of the above conditions within 180 days of the date of adoption of this Resolution, same constituting final approval, and pursuant to all applicable statutes and ordinances and lawful requirements and procedures for the recording of a condominium plat, the City Clerk is hereby directed to obtain the recording of the Condominium Plat for 6803 Condominiums with the Office of the Register of Deeds for Milwaukee County.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2016.

A RESOLUTION CONDITIONALLY APPROVING A CONDOMINIUM PLAT FOR WS
FRANKLIN LLC, OWNER (6803 CONDOMINIUMS) RESOLUTION NO. 2016-_____
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Passed and adopted at a regular meeting of the Common Council of the City of
Franklin this _____ day of _____, 2016.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

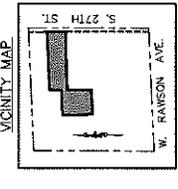
Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

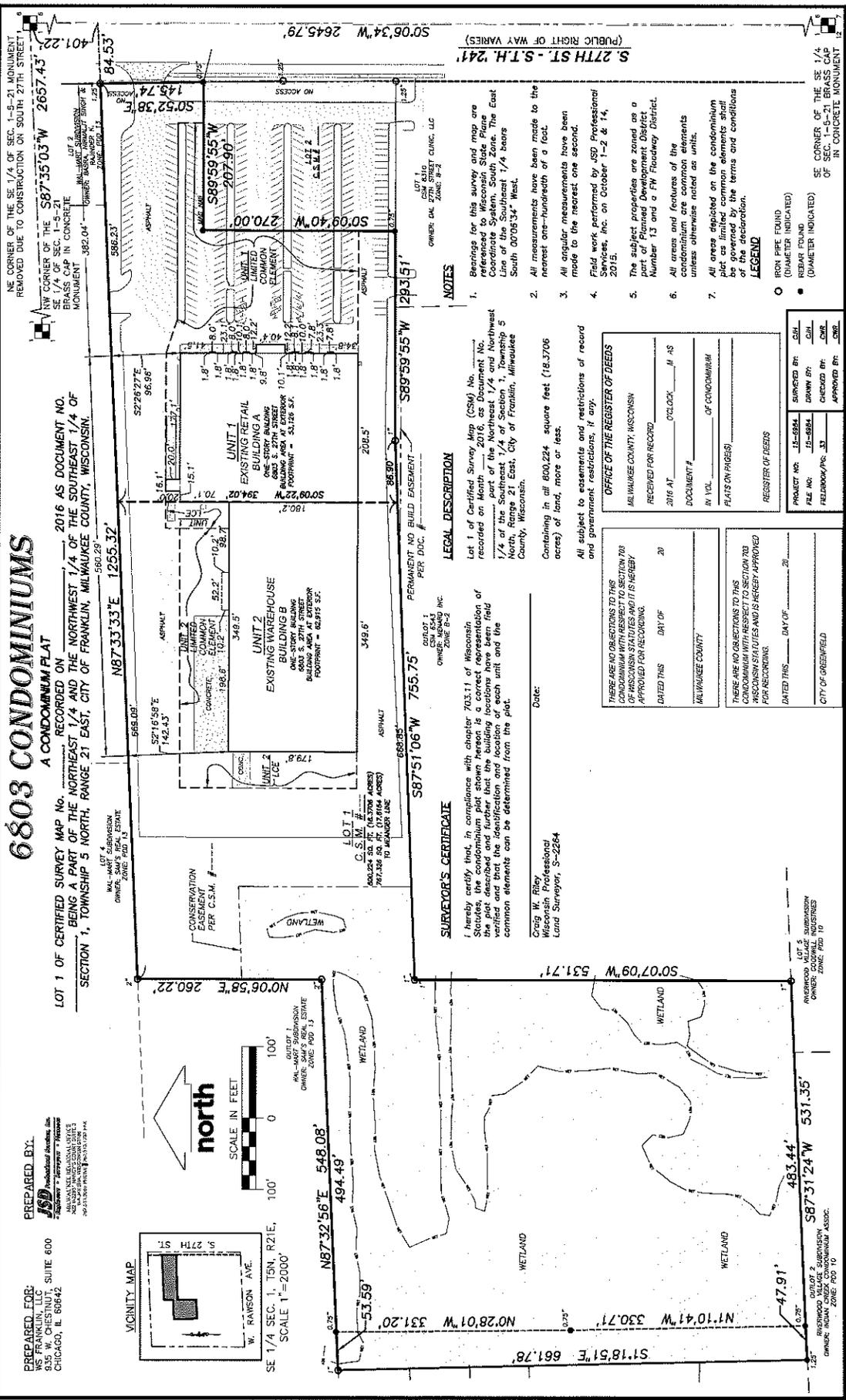
6803 CONDOMINIUMS

LOT 1 OF CERTIFIED SURVEY MAP No. _____, 2016 AS DOCUMENT NO. _____, RECORDED ON _____, BEING A PART OF THE NORTHWEST 1/4 AND THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 1, TOWNSHIP 5 NORTH, RANGE 21 EAST, CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

PREPARED BY:
USD UNIVERSITY SURVEYING DESIGN
 935 W. CHESTNUT, SUITE 600
 CHICAGO, IL 60642



SCALE IN FEET
 0 100'
 SCALE 1" = 2000'



SURVEYOR'S CERTIFICATE

I, the undersigned, being a duly licensed and qualified Surveyor of the State of Wisconsin, do hereby certify that, in compliance with chapter 703.11 of Wisconsin Statutes, the condominium plat shown hereon is a correct representation of the actual conditions of the premises shown hereon, and that the identification and location of each unit and the common elements can be determined from the plat.

Given W. Raby
 Wisconsin Professional
 Land Surveyor, S-2284

Date: _____

LEGAL DESCRIPTION

Lot 1 of Certified Survey Map (CSM) No. _____, recorded on Month _____, 2016, as Document No. _____, part of the Northwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 1, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin.

Containing in all 800,284 square feet (18.3706 acres) of land, more or less.

All subject to easements and restrictions of record and government restrictions, if any.

OFFICE OF THE REGISTER OF DEEDS

MILWAUKEE COUNTY, WISCONSIN
 RECEIVED FOR RECORD _____
 2016 AT _____ O'CLOCK _____ A.M.
 DOCUMENT # _____
 BY VCL _____ OF CONDOMINIUM # _____
 FLATS (ON PAGES) _____

REGISTER OF DEEDS

PROJECT NO. JE-8884
 FILE NO. JE-8884
 RECORDED/PAGE 33

LEGEND

- IRON PIPE FOUND (DIAMETER INDICATED)
- REBAR FOUND
- (DIAMETER INDICATED)

NOTES

- Bearings for this survey and map are referenced to Wisconsin State Plane Coordinate System, South Zone, The East Line of the Southeast 1/4 bears South 00°06'34" West.
- All measurements have been made to the nearest one-hundredth of a foot.
- All angular measurements have been made to the nearest one second.
- Field work performed by USD Professional Services, Inc. on October 1-2 & 14, 2015.
- The subject properties are zoned as a part of Planned Development District Number 13 and a FW Freeway District.
- All areas and features of the condominium elements are shown unless otherwise noted as units.
- All areas depicted on the condominium plat as limited common elements shall be subject to the terms and conditions of the declaration.

**DECLARATION OF 6803
CONDOMINIUMS**
Document Title

Document Number

Recording Area

Name and Return Address:

Joseph E. Tierney IV

Davis & Kuelthau, s.c.

111 East Kilbourn Avenue

Suite 1400

Milwaukee, Wisconsin 53202

PIN: See Exhibit A

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6803 CONDOMINIUMS**

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**DECLARATION OF
6803 CONDOMINIUMS**

This Declaration of 6803 Condominiums (the "Declaration") is made and entered into by WS Franklin LLC, an Illinois limited liability company, (the "Declarant") pursuant to the small condominiums provisions of the Wisconsin Condominium Ownership Act (the "Act").

Recitals

Declarant owns the real property located in the City of Franklin (the "City"), County of Milwaukee, State of Wisconsin, as more particularly described and depicted on the attached **Exhibit A** (the "Real Property"). By this Declaration, Declarant intends to submit the Real Property, together with all improvements located thereon and appurtenances thereto (collectively, the "Property") to the small residential condominium form of ownership and to establish certain easements, rights, restrictions and obligations with respect to the ownership, use and maintenance of the Property.

Declaration

Now, therefore, Declarant by this Declaration (1) submits the Property and such improvements to the small residential condominium form of use and ownership as provided in the Act; (2) establishes and imposes the provisions, restrictions, conditions, easements and uses herein upon the Property; and (3) specifies that the provisions of this Declaration shall constitute covenants running with the land which shall be binding upon Declarant and all subsequent owners and occupants of all or any part of the Property.

SECTION 1 - DEFINITIONS

1. **Act**. The "Act" shall mean the Wisconsin Condominium Ownership Act, as currently set forth at Chapter 703 of the Wisconsin Statutes and as it is amended or renumbered from time to time.

2. **Association**. The "Association" shall mean the 6803 Condominiums Association, Inc., established under Section 3 hereof.

3. **Association Insurance**. "Association Insurance" shall mean all policies of insurance to be maintained by the Association under this Declaration.

4. **Board**. The "Board" or "Board of Directors" shall be the governing body of the Association, elected in accordance with the Bylaws.

5. **Building**. A "Building" shall be any free standing structure located on the Property.

6. **Bylaws**. The "Bylaws" shall mean the Bylaws of the Association as adopted by the Board.

7. Common Elements. The "Common Elements" for Unit 1 and Unit 2 shall consist of all of the Condominium except for the Buildings and Building Envelopes shown on the Plat, and are composed of two categories. Certain Common Elements are available for the nonexclusive use and enjoyment of all Owners and Occupants and are referred to as the "General Common Elements." The General Common Elements for Unit 1 shall include (i) all land not shown as a proposed Building envelope; (ii) the proposed common drives and entrances; (iii) the Party Wall; and (iv) any shared utility services that service the Buildings. The General Common Elements for Unit 2 shall include (i) all land not shown as a Building; (ii) the proposed common drives and entrances; (iii) the Party Wall (as hereinafter defined); and (iv) any shared utility services that service the Buildings. Other Common Elements are limited to the use by the Owner and Occupants of a particular Unit to which such Common Elements are appurtenant and are referred to as "Limited Common Elements." The Limited Common Elements for Unit 1 are the parking lot located directly east of Building "A" as shown on the Plat. The Limited Common Elements for Unit 2 are the asphalt parking areas located directly north of Building "B" as shown on the Plat.

8. Common Expenses. The "Common Expenses" are any and all expenses incurred by the Association in connection with the management of the Condominium, maintenance of the Common Elements and administration of the Association, including expenses storm water compliance and runoff, improvements to the Common Elements, Association Insurance premiums, any shared utility services for the Common Elements, fire alarm systems, maintenance and management wages, and fees of outside consultants.

9. Condominium. The "Condominium" shall be known as 6803 Condominiums and shall mean the Property together with the Units and Common Elements as they are currently constructed or as they may hereafter be constructed on the Property.

10. Condominium Documents. The "Condominium Documents" are this Declaration, the Articles of Incorporation and Bylaws of the Association, and such Rules and Regulations as may be adopted by the Board pursuant to this Declaration or the Bylaws.

11. Declarant. The "Declarant" shall mean WS Franklin LLC, an Illinois limited liability company, and the successors and assigns of Declarant pursuant to assignment in accordance with Section 16(g) of this Declaration.

12. Declaration. "Declaration" shall mean this Declaration of 6803 Condominiums as the same may be amended from time to time.

13. Director. A "Director" shall mean a member of the Board.

14. Improvement. An "Improvement" shall mean any construction, installation, or erection of a new permanent structure or work (such as planting trees) or modification or alteration greater than \$10,000.00 to an existing permanent structure or work on the Real Property, which increases its value or extends its useful life.

15. Interest. "Interest" shall have the meaning set forth in Section 2(a).
16. Mortgage. "Mortgage" shall mean a recorded first lien mortgage against a Unit or the vendor's interest under a recorded first lien land contract of the Unit.
17. Mortgagee. "Mortgagee" shall mean the holder of a Mortgage.
18. Occupant. "Occupant" shall mean the Owner or any other person or entity occupying a Unit including, without limitation, any lessee, guest, or invitee of a Unit.
19. Owner. "Owner" shall mean each fee simple owner of a Unit and each vendee of a Unit under a recorded land contract. The Declarant is an Owner with respect to each Unit to which it holds title.
20. Party Wall. The "Party Wall" shall mean that certain party wall that is shared between the Buildings located on Unit 1 and Unit 2, as shown on the Plat.
21. Pet. A "Pet" is a domestic dog, cat or bird (other than large birds of prey) which is not maintained for breeding or commercial purposes.
22. Plat. "Plat" shall mean the plat of the Condominium, comprised of an as-built survey of the Property, building floor plans and unit addresses as recorded or to be recorded in the Register's Office and as the same may be amended from time to time.
23. Property. The "Property" shall mean the Real Property, together with all improvements located thereon and appurtenances thereto.
24. REA. The "REA" shall mean that certain Agreement of Restrictive Covenants and Reciprocal Easements that shall be executed by the Declarant and the owner of the outparcel adjacent to and directly east of the Property and legally described on Exhibit C attached hereto (the "**Outparcel**"), and recorded in the Register's Office contemporaneous with the recording of this Declaration.
25. Register's Office. The "Register's Office" is the Office of the Register of Deeds for Milwaukee County, Wisconsin.
26. Rules. The "Rules" shall mean rules and regulations established by the Association from time to time.
27. Unit. "Unit" shall mean a separate freehold estate, consisting of the space bounded and described in Section 2(a).

SECTION 2 - UNITS

(a) General. The Condominium consists of two (2) Units. Unit 1 shall consist of the existing Building A. Unit 2 shall consist of the existing Building B. Building A and Building B share the Party Wall. The boundaries of Unit 1 consist of the exterior surface perimeter walls, exterior surface roof, foundation, and the Party Wall up to and including the surface of such wall, as shown on the Plat. The boundaries of Unit 2 consist of the exterior surface perimeter walls, exterior surface roof, foundation, and the Party Wall up to and including the surface of such wall, as shown on the Plat. Each Unit also includes all windows and doors, and all mechanical and utility installations which exclusively service the Unit. Unit 1 has a fifty percent (50%) interest in the General Common Elements (the "Unit 1 Interest"). Unit 2 has a fifty percent (50%) interest in the General Common Elements (the "Unit 2 Interest"; together or separately, the Unit 1 Interest and Unit 2 Interest may be referred to as the "Interest"). Each Unit and its associated share of the Common Elements comprise the Interest.

(b) Common Elements. Each Unit also has appurtenant Common Elements, which consist of both General Common Elements and Limited Common Elements as described above. The Limited Common Elements are reserved for the exclusive use of the Unit to which they are appurtenant and are generally identified on the Plat attached as Exhibit B. The General Common Elements shall consist of all of the Condominium except the Units and the Limited Common Elements. Any supply lines, waste lines, pipes, wires, conduits or public utility lines (a) running through a Unit and (b) servicing only that Unit shall be part of the Unit; and any supply lines, waste lines, pipes, wires or conduits or portions thereof, if any, which do not service one particular Unit (regardless of whether or not such lines, pipes, wires or conduits run through any part of a Unit) shall be General Common Elements to the extent not owned and/or maintained by any public utility, governmental unit or cable television company.

(c) No Separation of Units. Units may not be separated.

(d) Merger of Units. Units may not be merged.

(e) Roofs. Building A and Building B each have separate roofs, which shall not be considered part of the Common Elements or the subject of any Common Expenses. For purposes of clarity, the Owner and Occupants of a particular Unit shall be responsible for the maintenance, repair, and replacement obligations with respect to the roof for each respective Building.

SECTION 3 – ASSOCIATION OF UNIT OWNERS

(a) Administration. The Declarant shall create the Association, which shall be incorporated and shall adopt Bylaws for the governance and administration of the Condominium. The Association shall administer the Condominium and the provisions of the Declaration and the Bylaws, acting through its Board. From time to time, the Board may, but need not, adopt and amend Rules regarding the use of the Common Elements and other matters concerning the Condominium and Association, provided such Rules are not inconsistent with this Declaration or the Bylaws. After adoption, the Rules shall be binding upon Owners and Occupants.

(b) Membership and Voting. Each Owner shall be a member of the Association and membership shall commence and terminate with ownership. Each Unit shall be vested with a vote equal to the numerical equivalent of its percentage Interest, so that the total number of votes is one hundred (100), to be cast as set forth in the Bylaws.

(c) Notice. Notice of Board meetings shall be given to each Unit Owner as provided in the Bylaws.

(d) Board Action and Grievance Procedure. The Board has the authority to make expenditures required by this Declaration and for the improvement of the Condominium. Actions by the Board, including all expenditures that exceed Five Thousand Dollars (\$5,000.00), must be approved by an affirmative vote or written consent of at least fifty-one percent (51%) of the Board. If a proposed action for the repair, maintenance or upkeep of the Condominium is either (1) not approved by the Board and an Owner believes the action is necessary for the safety and proper use of its Unit, or (2) approved by the Board and an Owner believes the action is contrary to the safety and proper use of its Unit, then such Owner may initiate the following grievance procedure:

(1) The Owner challenging a decision of the Board shall give written notice of the objection to all Owners within twenty (20) days after the decision but before any action is taken or expenditure is made. Upon receipt of this notice, the Board shall reconsider its decision and either affirm, reverse or modify the decision.

(2) The Unit Owner may challenge the decision after reconsideration, or if no reconsideration takes place within fourteen (14) days after the notice is given, only in an arbitration proceeding under Wisconsin Statutes Ch. 788.

(3) Upon submission of the matter to arbitration, the Board shall name a proposed arbitrator. The Owner may accept the proposed arbitrator or propose a different arbitrator. If there is no agreement on a single arbitrator, the two (2) arbitrators shall select a third (3rd) person and the three (3) shall serve as an arbitration panel chaired by the third (3rd) person. The expense of the arbitration shall be shared equally by all of the Owners.

(4) The arbitration award by the arbitration panel shall permit or prohibit the decision and the decision shall not be implemented, if it is an affirmative action, until the award is final unless there is a bona fide emergency requiring it.

(e) Management. The Board shall be responsible for all aspects of the management, operations and duties of the Association, but may retain a manager for the Condominium.

SECTION 4 – ASSESSMENTS

(a) Budget. The Association shall annually adopt and distribute to all Owners a budget of Common Expenses. Common Expenses shall include any cost attributable to the Condominium or Units under the REA, any costs under Section 5(a) or 5(c), and/or any other costs associated with the General Common Elements hereunder. The budget shall include the funding of an adequate replacement reserve out of general assessments and shall set forth the

following: (1) all anticipated Common Expenses and any amounts to be allocated to a statutory reserve account, if any, and to any other funds for future expenditures, (2) the amount and any purpose of any other anticipated Association expenditure, (3) the amount in any statutory reserve account (if one is created and maintained) or any other funds held for future expenditures, (4) any common surpluses, (5) the amount and source of any income, other than assessments from Owners, and (6) the aggregate amount of any assessment to be levied against Owners and the purpose of the assessment. In no event shall any reserve account established hereunder be deemed to be a statutory reserve account pursuant to Section 703.163 of the Act. The Declarant hereby acknowledges that it is not establishing an initial statutory reserve account for the Condominium and anticipates that future expenditures for the repair and replacement of Common Elements will be funded through a non-statutory reserve account established and funded solely pursuant to the terms of this Declaration. Notwithstanding anything contained herein to the contrary, the statutory reserve account rules found in Section 703.163 of the Act do not apply herein unless the Declarant or the Association, along with a written consent of a majority of Unit votes, elects to be governed by Section 703.163 of the Act.

(b) General Assessments. The Association shall levy assessments based on each budget. The budget shall be allocated pro rata based on the Interest of each Unit, except as otherwise set forth in this Declaration.

(c) Special Assessments and Charges. The Association may also levy (1) special assessments on all Units for any purpose for which a general assessment may be levied, (2) special assessments or fines on a particular Owner for the purpose of collecting any amounts due the Association or enforcing compliance by such Owner with any provision of the Condominium, and (3) special assessments for other charges and amounts owing to the Association.

(d) Installments; Late Payments. General assessments shall be made on an annual basis but shall be due and payable in monthly installments on the first day of each month. Special assessments shall be due and payable at such time and in such manner as the Board may determine. Any assessment or installment of an assessment not received by the Association within ten (10) days of its due date may be subject to a One Hundred Fifty Dollar (\$150) late charge.

(e) Enforcement; Liens. If an Owner defaults in any payment, the Association may take appropriate measures as provided by law. The defaulting Owner shall be responsible for all costs incurred by the Association in seeking to enforce payment including reasonable attorneys' fees. Each Owner shall be personally liable for assessments and a lien shall be imposed against such Owner's Unit for any unpaid assessments. Liens for unpaid assessments shall also extend to and secure interest, fines and reasonable costs of collection, including reasonable attorneys' fees incurred by the Association incident to the collection of assessments or enforcement of liens. The Association may purchase a Unit upon the foreclosure of its lien.

(f) Payment of Assessments by Declarant. During the period of Declarant control, Declarant may, but shall not be obligated to, directly pay bills or provide services which would otherwise represent Association obligations to which regular assessments would

be applied. Declarant shall be entitled to offset expenses incurred by Declarant in performing or paying for such Association obligations against assessments due on Declarant owned Units.

(g) Common Expenses and Surpluses. Except as otherwise provided in this Declaration, Common Expenses and surpluses shall be allocated among all Owners according to their respective Interests. All common surpluses of the Condominium for each of its fiscal years shall be retained for Common Expenses of the Condominium for the next succeeding fiscal year.

SECTION 5 – MAINTENANCE

(a) Association's Responsibility. The Association shall maintain in good condition and repair, replace and operate all of the General Common Elements, except as expressly stated in Section 5(b). Neither the Declarant nor the Association is under any duty or obligation to investigate and ensure compliance with proper maintenance of the interior of the Unit.

(b) Owner's Responsibility. Each Owner, at the Owner's sole cost, shall: (1) maintain the interior of its Unit in a healthful and safe condition so as to comply with all applicable Wisconsin statutory and common law requirements, administrative code regulations, and local ordinances; (2) perform routine maintenance, repair and replacement of all components or installations inside the Unit and such Unit's Limited Common Elements so as to comply with all applicable Wisconsin statutory and common law requirements, administrative code regulations, and local ordinances; (3) to the extent not covered by insurance, pay for the repair and replacement of the General Common Elements and all other Units and property damaged through the fault or negligence of such Owner or such Owner's employees, guests, invitees or any other Occupants of the Owner's Unit; and (4) be responsible for the reasonable security and safety of the Owner's Unit and shall be liable for damages caused to any other Unit(s), or the Common Elements, to the extent not covered by insurance, as a result of a breach of such security. Each Owner shall also reimburse the Association for the cost of defending against or settling a claim for damages for a personal injury which was caused by an act or omission of such Owner or such Owner's employees, guests, invitees or lessees, to the extent that such costs are not covered by Association Insurance. The Board may use the remedies listed in Section 13 to enforce this subsection.

(c) Utilities. The Units are separately metered for water, gas, and electric utility service. Each Owner shall be responsible for the payment of the bills for these utility services. Sanitary, storm water compliance and runoff, fire alarm systems, and any other shared utility services for the Common Elements are Common Expenses.

SECTION 6 – ARCHITECTURAL CONTROL OF CERTAIN CONSTRUCTION AND LANDSCAPING

(a) Improvements/Alterations that Require Board Approval. An Owner or the Association, prior to undertaking any improvement or alteration, must receive approval of at least fifty-one percent (51%) of the Board for (1) any construction to the exterior of any Building, or (2) the installation of or any change to the landscaping; and must receive

unanimous approval of the Board for (3) the reconstruction of any Unit or Building following a casualty loss thereto; or (4) the demolition of any Unit or Building ((1) through (4) collectively, "Improvements"). The vote of the Owner undertaking such Improvement or alteration shall be counted towards the fifty-one percent (51%) vote required by this subsection. Notwithstanding the foregoing, if improvements to the Party Wall are required, as determined by the Association, the Owners of Unit 1 and Unit 2 shall split the costs of such improvements pro rata based on their Interests.

(b) Process of Approval. Prior to the application for a municipal building permit, the Owner proposing an Improvement that is subject to subparagraph (a) shall submit to the Board: (1) three sets of the preliminary plans for the Improvement, including dimensions and exterior elevations on all sides; and (2) three sets of site plans, showing the location of the Improvement. When considering approval of any Improvements, the Board is permitted, but not required, to consider the reputation and creditworthiness of any contractor or agent hired by an Owner to perform work, and whether the Improvement as depicted on the preliminary plans conform with the character of the Condominium and will not interfere with the rights of Owners, the Association, or the Declarant. Approval of alterations by the Board shall not be deemed approval by the municipality and approval by the municipality shall not be deemed approval by the Board.

(c) Applicability of Section. This Section 6 shall not apply to Declarant.

SECTION 7 – RESTRICTIONS ON USE AND OCCUPANCY

(a) Lease of Units. An Owner may lease its Unit; provided, however, that any lessee shall be provided with a true, accurate, and complete copy of the Condominium Documents by such Owner and further provided that such lessee shall agree in writing to be bound by the Condominium Documents.

(b) Pets. Owners and/or their Occupants may not keep any Pets or any other animals in a Unit or in any of the General Common Elements or areas outside of a Building.

(c) No Obstructions. No person shall cause or permit the General Common Elements to be used as to deny any Owner or Occupant the full use of the General Common Elements or its Unit.

(d) Parking and Exterior Storage. No outdoor parking of vehicles shall be permitted anywhere in the Condominium except in (i) Limited Common Elements, or (ii) storage structures. No person shall occupy, park or otherwise use a vehicle so as to block access. Exterior storage of trailers, campers, camping trucks, boats or other marine craft, house trailers, motorcycles, mopeds, motorized bicycles, snowmobiles, land vehicles, inoperative or unlicensed vehicles or the like shall not be permitted on the General Common Elements. No vehicle maintenance or lubrication shall be permitted anywhere in the Condominium, except washing of cars in an Association dedicated area. No playground equipment, bicycle racks or other obstructions may be placed on the Common Elements except as the Board permits by Rule. The Board may adopt Rules that further limit or prohibit parking on the Common

Elements, including without limitation Rules concerning the indoor parking of boats, and limits on the period of time during which vehicles may be parked outside even in marked spaces.

(e) Waste. Accumulations of waste, litter, excess or unused building materials or trash other than in appropriate receptacles is prohibited, and garbage containers shall be situated only in locations designated by the Association.

(f) Antennas. No antenna, aerial, satellite dish or cable for television or radio reception shall be erected or installed on or in any roof or any other portion of the Condominium, except as erected or installed by Declarant, or by the Association, or by any individual Owner with written approval of the Board pursuant to Section 6(a).

(g) Temporary Structures. No structure, trailer, tent, shack or barn, temporary or otherwise, shall be placed or maintained on any portion of the Condominium without written approval of the Board.

(h) Quiet Enjoyment. Each Owner shall have the right to use its Unit in accordance with this Declaration and applicable law, free from unreasonable interference from other Owners and Occupants.

(i) Noxious Activity. No use or practice shall be allowed on the Condominium which is immoral, improper or offensive in the sole opinion of fifty-one percent (51%) the Board or which is in violation of the Declaration. By way of example and not limitation, offensive activity shall include excessive amplification of musical instruments and/or audio or audio visual equipment.

(j) Environmental Matters. Each Owner and Occupant shall comply with all applicable governmental or Association statutes, ordinances, regulations or Rules relating to the storage, transport and release to, from, on or in such Unit of any substance or compound governed by any one or more of Wis. Stats. Chap. 292; CERCLA; TOCSA; RCRA; amendments to any of the foregoing; and similar laws now or hereafter in effect relating to the storage, transport or release of substances and compounds.

(k) Signs. No Owner may erect, post or display posters, signs or advertising material on the Common Elements or areas of Units outside of Buildings without the prior written consent of the Association and approval from the City. If consent is sought and obtained, the permitted signs will be erected and maintained in accordance with all ordinances, Rules, regulations and conditions applicable thereto. "Signs" as used herein shall be construed and interpreted in the broadest possible sense and shall include any placard, posters or other such devices as may be affixed to the interior of any exterior windows so as to be visible from the exterior of the Building. This subsection will not apply to Declarant.

(l) Alteration to Common Elements. No Owner shall physically alter the General Common Elements without the prior written consent of the Board.

SECTION 8 – RECONSTRUCTION AND CONDEMNATION

In the event of fire, casualty or any other damage affecting one or more of the Units or Common Elements (the “Damaged Premises”), the Damaged Premises shall be reconstructed and repaired, unless otherwise determined as provided below.

(a) *Reconstruction.* In the event of fire, casualty or any other disaster affecting one or more of the Units or Common Elements (the “Damaged Premises”), the Damaged Premises shall be reconstructed and repaired, unless otherwise determined as provided below. Reconstruction and repair shall mean restoring the Damaged Premises to substantially the same condition as existed prior to the fire, casualty or disaster, and in accordance with the maps, plans and specifications used in the original construction insofar as practicable. The Board may authorize changes to the same with the consent of the Mortgagees of the Units so affected and with the recordation of an amendment to this Declaration noting the effects thereof.

(b) *Insufficient Proceeds.* If insurance proceeds are insufficient to reconstruct or repair General Common Elements, then, subject to Section 8(c), the Owners of all Units shall be assessed according to their Interests for the deficiency relating to the reconstruction or repair of General Common Elements comprising Damaged Premises. The provisions of Section 4 shall apply to all sums assessed for any deficiency.

(c) *Partition.* If the insurance proceeds are insufficient to reconstruct or repair the General Common Elements (excluding any deductibles under the Association Insurance), then the Condominium shall be subject to an action for partition upon obtaining the written consent of all Owners and Mortgagees. If such approval is not obtained within thirty (30) days from the date of adjustment of insurance proceeds following the fire, casualty or other disaster, then no such action for partition shall be maintained or initiated.

(d) *Control of Adjustment and Restoration.* The Association shall have the sole power to settle adjustments with the insurance carrier for Association Insurance. The Association shall have the sole power to engage contractors to restore the Common Elements and insured portions of the Units. The Association shall have no responsibility to repair, reconstruct or replace any improvements in a Unit which are not insured by Association Insurance or any improvements installed subsequent to the date of the Declaration.

(e) *Construction Fund.* Insurance proceeds and special assessments under Section 8(b) shall constitute a construction fund, with insurance proceeds disbursed first. Any surplus funds shall be held or distributed to the Owners and their Mortgagees as their interests may appear, in accordance with their Interests.

(f) *Condemnation.* If all or any portion of the Condominium is taken under the power of eminent domain or sold in settlement or anticipation of any pending or threatened proceeding, Section 703.195 of the Act shall control.

(g) *Status of Damaged Units.* A damaged Unit shall not cease to be a Unit for purposes of this Declaration.

SECTION 9 – ASSOCIATION INSURANCE

(a) Association Insurance. The Association shall obtain and maintain commercial general public liability insurance for occurrences on the Common Elements, special forms of loss casualty insurance coverage on the General Common Elements, and such other policies or coverage as the Board deems necessary or advisable.

(b) Coverage of Association Insurance. The casualty insurance coverage shall be in an amount equal to the maximum insurable replacement value, with an “agreed amount” and a “replacement cost” endorsement, without deduction or allowance for depreciation. This coverage amount shall be annually reviewed and shall insure against loss or damage by fire and other hazards as commonly covered by a standard extended coverage endorsement and such other hazards as customarily covered with respect to improvements similar in construction, location and use. Comprehensive general liability coverage shall be in such amounts as the Board determines annually, but not less than Two Million and no/100 Dollars (\$2,000,000) per occurrence.

(c) Proceeds. Association Insurance proceeds for casualty loss shall be for the benefit of the Association, Owners of damaged Units and their Mortgagees as their interests appear in order to finance reconstruction of damaged Common Elements. Liability coverage and other insurance proceeds shall be applied as the Association directs.

(d) Cost. All premiums for Association Insurance and other insurance obtained by the Association shall be a Common Expense of the Condominium, except that any increase in the rating or premium charged for any such insurance caused by the character or use of a Unit shall be allocated solely to its Owner.

(e) Waiver of Subrogation. The Association and each Owner acting both for themselves and for their respective insurers, waive any claim it or they may have against the other for any loss insured under any policy obtained by either to the extent of insurance proceeds actually received, however loss is caused, including such losses as may be due to the negligence of the other party, its agents or employees. All policies of insurance shall contain a provision that they are not invalidated by the foregoing waiver, but such waiver shall cease to be effective if the existence thereof precludes the Association from obtaining any policy of insurance at a reasonable and customary rate.

(f) Acts Affecting Insurance. No Owner or Occupant shall commit or permit any violation of covenants or agreements contained in the Association Insurance, or do or permit anything to be done, or keep or permit anything to be kept, or permit any condition to exist, which might (1) result in termination of any such policies, (2) adversely affect the right of recovery thereunder, (3) result in reputable insurance companies refusing to provide such insurance, or (4) result in an increase in the insurance rate or premium over the premium which would have been charged in the absence of such violation or condition, provided that, in the case of such increase, the Owner responsible for such increase shall pay the same. If the rate of premium payable with respect to the Association Insurance or with respect to any policy of insurance carried by any Owner shall be increased over the rate charged for the lowest-rated Unit, (w) by the size, design or composition of the Unit, (x) by reason of anything done or kept

in a Unit, or (y) the failure of any Owner or Occupant to comply with Association Insurance requirements or (z) the failure of any Owner or Occupant to comply with this Declaration or the Bylaws, then the particular Owner shall reimburse the Association for the resulting additional premiums. The Association reimbursement right is without prejudice to any other Association remedy, and may be enforced by special assessment against the particular Unit.

(g) Exclusions From Coverage. Association Insurance coverage may exclude (1) coverage on the Unit itself and any personal property located within or pertaining to the exclusive use of a Unit; and (2) liability coverage on an Owner, its guests, invitees, employees or any other Occupants of such Unit, arising out of any occurrences within a Unit or relating to an Owner's personal property. It is the sole responsibility of each Owner to obtain such insurance coverages as are excluded from Association Insurance.

SECTION 10 – AMENDMENT TO DECLARATION

(a) General Amendment. Except as otherwise provided herein, this Declaration may be amended only by the written consent of Owners of Units which represent at least fifty-one percent (51%) of the Interests, or such greater percentage as may be required by the Act. Consent by the Owner of a Unit which is subject to a Mortgage is not effective unless approved by the Unit's Mortgagee, if any. Amendments shall be prepared and executed by the Board after approval by the Owners as described above, and shall become effective when recorded in the Register's Office. No action to challenge the validity of an amendment shall be commenced more than one (1) year after the amendment is recorded. Notwithstanding the foregoing, for as long as the Declarant owns a Unit it may amend this Declaration without the written consent of the other Owners.

(b) Requirement for Special Approvals of Certain Amendments. No amendment shall adversely affect a special right conferred on or reserved to Declarant under this Declaration without Declarant's written consent, including a right of Declarant to amend.

(c) Material Amendments. If an amendment is proposed which would affect any of the following provisions of this Declaration, it shall also require approval by fifty-one percent (51%) of Mortgagees: (1) voting rights; (2) assessments, assessment liens, or the priority of assessment liens; (3) reserves for maintenance, repair, and replacement of Common Elements; (4) responsibility for maintenance and repairs; (5) reallocation of Interests in the General or Limited Common Elements, or rights to their use; (6) redefinition of any Unit boundaries; (7) convertibility of Units into Common Elements or vice versa; (8) expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the Condominium; (9) insurance or fidelity bond; (10) leasing of Units; (11) imposition of any restrictions on a Unit Owner's right to sell or transfer the Owner's Unit; (12) restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than as specified herein; (13) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or (14) any provisions that expressly benefit mortgage holders, insurers, or guarantors.

(d) Alternative Procedure for Amending the Declaration. As an alternative to Section 10(a) above, this Declaration may be amended in accordance with Section 703.093 of the Act.

SECTION 11 – RIGHTS OF MORTGAGE HOLDERS

(a) Notice. Any holder, insurer or guarantor of a Mortgage encumbering a Unit (“Mortgagee”) that makes written request on the Association for the following, which request shall identify the name and address of such holder, insurer or guarantor and the Unit number or address, any such holder, insurer or guarantor, will be entitled to timely written notice of:

(1) Any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its Mortgage;

(2) Any thirty (30) day delinquency in the payment of assessments owed by the Owner of the Unit on which it holds a Mortgage or any breach of the provisions of any instrument or rule governing the Condominium which is not cured by such Owner within thirty (30) days of such Owner’s receipt of notice of such breach;

(3) A lapse, cancellation or material modification of any Association Insurance policy or any fidelity bond maintained by the Association; and

(4) Any proposed action that requires the consent of Mortgagees.

(b) Mortgagee Acquisition of Unit. A Mortgagee acquiring title to a Unit pursuant to remedies provided in its Mortgage or by a deed in lieu of foreclosure following an Owner’s default under the Mortgage shall not be liable for such Unit’s unpaid assessments accruing prior to the Mortgagee’s acquisition of title to the Unit (except to the extent that any uncollected assessments may be included in any subsequent budget).

(c) Restoration. Any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications, unless other action is approved by at least fifty-one percent (51%) of the Mortgagees.

(d) Termination. Any election to terminate the Condominium must require Mortgagee approval as follows: fifty-one percent (51%).

SECTION 12 – RIGHTS OF DECLARANT; CLAIMS AGAINST DECLARANT

(a) Rights Reserved by Declarant. Notwithstanding anything in this Declaration to the contrary, until the earlier of (i) the sale by Declarant of one (1) Unit, or (ii) three years after the Declarant has sold at least one Unit, Declarant may, but shall not be obligated to:

(1) Manage and operate the Condominium in accordance with this Declaration, including the right to contract for professional management of the Condominium.

(2) Use the General Common Elements and any unsold Units on the Condominium in any manner as may facilitate sale or leasing of all Units.

(3) Grant easements upon, over, through and across the General Common Elements as may be required for furnishing any kind of utility services, including, but not limited to, cable television or master antenna service, which easements may be granted to itself or its nominee and/or as may be necessary for excavation and construction of any of the Units.

(4) Grant easements upon, over, through or across the General Common Elements for permanent or temporary ingress and egress to and from the Condominium and other real property adjacent to it.

(5) Lease Units owned by Declarant on such terms as Declarant desires.

(b) Claims Against Declarant.

(1) Submission to Arbitration. All claims of Owners and the Association against the Declarant shall only be brought in an arbitration proceeding under Chapter 788 of the Wisconsin Statutes. Acceptance of a conveyance of a Unit is deemed to constitute an agreement by the Unit Owner and the Association to submit claims against Declarant to arbitration.

(2) Procedure. The Unit Owner(s) or the Association making a claim (the "Claimant") shall send a written notice of the claim to the Declarant ("Notice of Claim"). Within thirty (30) days of receipt of the Notice of Claim, the Declarant shall name a proposed arbitrator. The Claimant may accept the proposed arbitrator or propose a different arbitrator. If there is no agreement on a single arbitrator, the 2 proposed arbitrators shall select a 3rd arbitrator and the 3 shall serve as an arbitration panel chaired by the 3rd arbitrator. The expense of the arbitration shall be shared equally by the Association and the Claimant. A Claimant may not submit a claim to arbitration if the claim would otherwise be barred by an applicable statute of limitations.

SECTION 13 – REMEDIES FOR VIOLATION BY OWNER

(a) General Remedies. If any Owner or Occupant fails to comply with the Act, this Declaration, the Bylaws or the Rules, such Owner shall be liable for damages or any other remedy provided by the Declaration, Bylaws and Rules adopted by the Association, or the Act or subject to injunctive relief, or all of the above, as a result of such noncompliance. The Association, or in a proper case, an aggrieved Owner, may bring an action because of such noncompliance.

(b) Owner Violation; Association Right to Cure. In addition to any other remedies provided herein, if any Owner fails to properly maintain its Unit or any part or

portion thereof or the Limited Common Elements appurtenant thereto or to otherwise comply with this Declaration, the Bylaws or the Rules, which failure continues for a period of fifteen (15) days following written notice from the Association, or such longer reasonable period as may be necessary to cure matters which require greater than fifteen (15) days to rectify, so long as the work to cure the violation is commenced within such fifteen day period and diligently pursued to completion, the Association shall have the right but not the obligation, to perform or cause to be performed such maintenance, replacement, restoration or other action as the Association deems necessary or appropriate. Expenses incurred by the Association shall be specifically assessed against the Unit and its Owner and shall be subject to all rights and remedies reserved under this Declaration with respect to collection, expenses, late payment penalties or interest, filing of a lien and/or foreclosure as reserved at Section 4 of this Declaration. Once the Association has taken such an action, it may, but shall not be obligated to, take any other or further action with respect to the same for a similar or subsequent failure by the same or a different Owner or Occupant of a particular Unit.

SECTION 14- SERVICE OF PROCESS

(a) Service of process on the Association shall be made on Victor F. Michel at 935 West Chestnut, Suite 600, Chicago, Illinois 60642. Any change in the person or location for the service of process designated by the Association may be accomplished by resolution adopted by a majority of the Board and by the filing of such change with the Department of Financial Institutions of the State of Wisconsin or such other office as shall then be designated for the filing of a change of registered agent for non-profit corporations and shall become effective upon the recording of notice thereof in the Register's Office.

SECTION 15 – EASEMENTS

(a) *Right of Entry.* A right of entry to each Unit is reserved to the Association and its agents to service utility installations provided request for entry is made in advance and at a convenient time for the Owner. In case of emergency, entry of a Unit may be made immediately, whether the Owner or Occupant of the Unit is or is not present and without liability to the Association or its agents. Any damage or loss caused as a result of such emergency entry shall be at the sole expense of the Owner if, in the reasonable judgment of those authorizing the entry, such entry was for emergency purposes.

(b) *Encroachments.* If any portion of the Common Elements encroaches upon a Unit or any Unit encroaches upon the Common Elements or upon any other Unit or if any utility lines encroach upon either the Common Elements or a Unit, a valid easement for the encroachment and maintenance of same shall exist for the duration of the encroachment, without payment of any consideration to any Owner. Minor encroachments of parts of the Common Elements and utility lines due to reconstruction of part or all of a Unit shall be permitted and an easement for such encroachments and the maintenance thereof is prospectively reserved.

(c) *Electrical Service Easement.* Unit 1 hereby grants to Unit 2 an electric service distribution easement upon, over, across, through, in, and under that portion of the Condominium from the transformer located directly west of Building A to Building B (the

“Electrical Service Easement”). The Electrical Service Easement shall apply to and be binding on any Owners of Unit 1 and Unit 2 and their successors and assigns, and shall be of perpetual duration and run with the land.

(d) Gas Service Easement. Unit 1 hereby grants to Unit 2 a gas service distribution easement upon, over, across, through, in, and under that portion of the Condominium from the gas meter hookup located on the western perimeter wall of Building A and going to Building B (the “Gas Service Easement”). The Gas Service Easement shall apply to and be binding on any Owners of Unit 1 and Unit 2 and their successors and assigns, and shall be of perpetual duration and run with the land.

(e) Water Service Easement. Unit 1 hereby grants to Unit 2 a water service distribution easement upon, over, across, through, in, and under that portion of the Condominium to the extent there is not a lateral connection that services Building B (the “Water Service Easement”). The Water Service Easement shall apply to and be binding on any Owners of Unit 1 and Unit 2 and their successors and assigns, and shall be of perpetual duration and run with the land.

(f) Sanitary Service Easement. Unit 1 and Unit 2 share a sanitary lateral line for sanitary services as identified on the Plat. Unit 1 hereby grants to Unit 2, and Unit 2 hereby grants to Unit 1, a reciprocal sanitary service easement upon, over, across, through, in, and under that portion of the Condominium to the extent Unit 1 and Unit 2 share a sanitary line for sanitary services (the “Sanitary Service Easement”). The Sanitary Sewer Service Easement shall apply to and be binding on any Owners of Unit 1 and Unit 2 and their successors and assigns, and shall be of perpetual duration and run with the land.

(g) Storm Water Easement. There is no connection to Building A or Building B for storm sewer or storm water services. Unit 1 hereby grants to Unit 2, and Unit 2 hereby grants to Unit 1, a reciprocal storm water easement upon, over, across, through, in, and under each Unit for any storm water runoff from either Unit, including the Buildings, as necessary for drainage of storm water (the “Storm Water Easement”). The Storm Water Easement shall apply to and be binding on any Owners of Unit 1 and Unit 2 and their successors and assigns, and shall be of perpetual duration and run with the land.

(h) Telephone Service Easement. Unit 1 hereby grants to Unit 2 a telephone service distribution easement upon, over, across, through, in, and under that portion of the Condominium to the extent there is not a telephone service connection that services Building B (the “Telephone Service Easement”). The Telephone Service Easement shall apply to and be binding on any Owners of Unit 1 and Unit 2 and their successors and assigns, and shall be of perpetual duration and run with the land.

(i) Conservation Easement. The Owners hereby acknowledge that the Declarant or an affiliate thereof may enter into a conservation easement with the City for certain wetland areas directly southwest of the Property, as generally identified on the Plat.

(j) Further Easements. The Association may grant easements over and through the General Common Elements for such purposes as the Board deems reasonable for the benefit of the Owners.

SECTION 16 – MISCELLANEOUS

(a) Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The term “person” includes all legal entities.

(b) Including. Whenever used herein, the term “including” preceding a list of one or more items shall indicate that the list contains examples of a general principle and is not intended as an exhaustive listing.

(c) Captions. The captions and article and section headings in this Declaration are intended for convenience and reference only and in no way define or limit the scope or intent of the various provisions hereof.

(d) Severability. If any portion of this Declaration or its application to any person or circumstance is held to be invalid or unenforceable, the remainder of this Declaration, or the application of such provision, or any part thereof, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby. The remainder of this Declaration shall be valid, and enforced, to the fullest extent permitted by law.

(e) Remedies. All remedies herein are cumulative.

(f) Waivers. Whenever a waiver, consent or approval is required or permitted herein, it must be express and in writing; no waiver, consent or approval shall be implied. A waiver, consent or approval to any one matter shall not be deemed a waiver, consent or approval to any subsequent matter whether similar or not.

(g) Assignment of Declarant's Rights. All of the rights and benefits conferred on or reserved herein for Declarant in its status as such (as opposed to those rights or benefits conferred on or reserved for all Unit Owners or groups thereof) may be assigned as follows: (1) to any person by an instrument in writing specifically identifying the rights and benefits so assigned which is recorded in the Register's Office, or (2) to any purchaser of the Declarant's rights in a foreclosure sale or deed in lieu of foreclosure, without any specific written assignment of Declarant's rights, or (3) to any person or entity to which Declarant's rights have been collaterally assigned upon the exercise of such person's or entity's rights under such collateral assignment, without any specific written assignment of Declarant's rights. An assignment of Declarant's rights is effective from the date of recordation of the assignment under (1), the deed under (2), or notice by such collateral assignee of such exercise under (3). A mortgage or other security interest granted in Declarant's rights does not confer on the mortgagee or holder of the security interest the right to act as Declarant without some further act under (1) or (2) or (3). From and after each assignment, only the assignee may act as

Declarant under this Declaration with respect to the rights assigned and all prior persons holding Declarant's rights shall no longer be entitled to exercise such rights. No successor Declarant shall be responsible or liable for the obligations of a Declarant arising before the date on which such successor Declarant may act as above.

(h) *List of Exhibits.* The following exhibits, which are referenced in this Declaration, are incorporated herein by reference: **Exhibit A**, "Legal Description of the Property," **Exhibit B**, "Plat," and **Exhibit C**, the "Legal Description of the Outparcel."

[Rest of page intentionally left blank. Signatures to follow on the next page.]

Exhibit A

Legal Description of the Property

Being a part of Certified Survey Map No. 6543, recorded on August 7, 1998, Reel 43667, Images 1756 to 1758 inclusive, as Document No. 7578744, as corrected by Affidavit of Correction recorded as Document No. 7724864, part of the Northeast 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 1, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the northeast corner of the Southeast 1/4 of said Section 1; thence South 00°06'34" West along the east line of said Southeast 1/4, 401.22 feet; thence South 87°33'33" West, 84.53 feet to the west right of way line of South 27th Street - State Trunk Highway "241" and the northeast corner of Lot 1 of CSM 6543 and the point of beginning;

Thence South 00°52'38" East along the west right of way line of South 27th Street and the east line of said Lot 1 of CSM No. 6543, 145.74 feet; thence South 89°59'55" West, 207.90 feet; thence South 00°09'40" West, 270.00 feet to the south boundary line of said Lot 1; the following 8 courses follow the boundary of said Lot 1; thence South 89°59'55" West, 293.51 feet; thence South 87°51'06" West, 755.75 feet; thence South 00°07'09" West, 531.71 feet; thence South 87°31'24" West, 531.35 feet; thence North 01°18'51" West, 661.78 feet; thence North 87°32'56" East, 548.08 feet; thence North 00°06'58" East, 260.22 feet; thence North 87°33'33" East, 1255.32 feet to the aforesaid west right of way line of South 27th Street - State Trunk Highway "241" and the point of beginning.

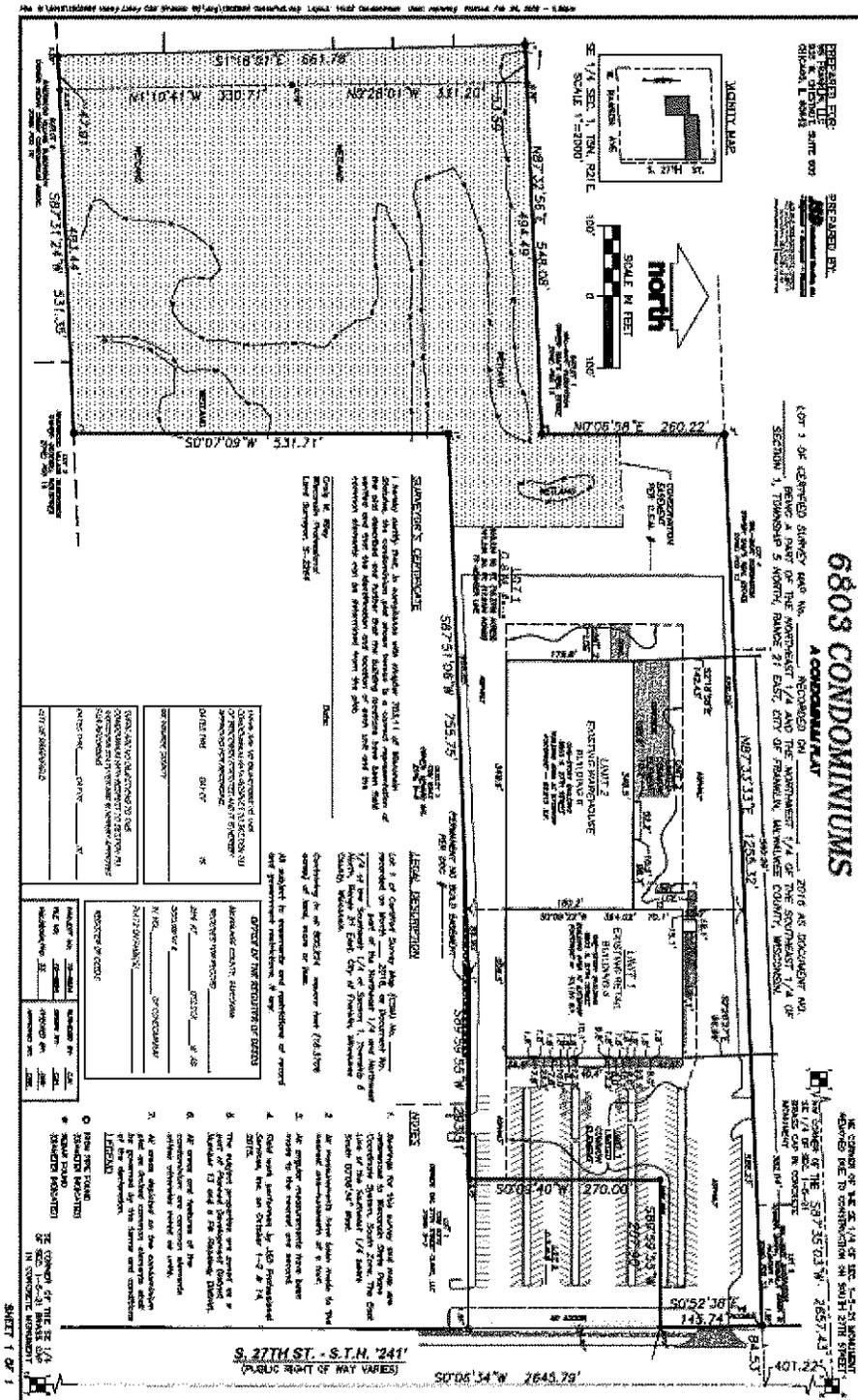
Containing in all 800,224 square feet (18.3706 acres) of land, more or less.

All subject to easements and restrictions of record and government restrictions, if any.

[Exhibit A to Declaration of 6803 Condominiums]

Exhibit B

Plat



[Exhibit B to Declaration of 6803 Condominiums]

Exhibit C

Legal Description of the Outparcel

Being a part of Certified Survey Map No. 6543, recorded on August 7, 1998, Reel 43667, Images 1756 to 1758 inclusive, as Document No. 7578744, as corrected by Affidavit of Correction recorded as Document No. 7724864, part of the Northeast 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 1, Township 5 North, Range 21 East, City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the northeast corner of the Southeast 1/4 of said Section 1; thence South 00°06'34" West along the east line of said Southeast 1/4, 401.22 feet; thence South 87°33'33" West, 84.53 feet to the west right of way line of South 27th Street - State Trunk Highway "241" and the northeast corner of Lot 1 of CSM 6543; thence South 00°52'38" East along the west right of way line of South 27th Street and the east line of said Lot 1 of CSM No. 6543, 145.74 feet to the point of beginning;

Thence continuing South 00°52'38" East along the west right of way line of South 27th Street and the east line of said Lot 1 of CSM No. 6543, 112.60 feet; thence South 00°06'34" West along the west right of way line of South 27th Street and the east line of said Lot 1 of CSM No. 6543, 157.41 feet to the south boundary line of said Lot 1; thence South 89°59'55" West along said south line, 210.09 feet; thence North 00°09'40" East, 270.00 feet; thence North 89°59'55" East, 207.90 feet to the point of beginning.

Containing in all 56,582 square feet (1.2989 acres) of land, more or less.

All subject to easements and restrictions of record and government restrictions, if any.

[Exhibit C to Declaration of 6803 Condominiums]

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<p>APPROVAL</p> <p><i>Slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>04/04/16</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT A CONSERVATION EASEMENT FOR AND AS PART OF THE REVIEW AND APPROVAL OF A SPECIAL USE AND NATURAL RESOURCE SPECIAL EXCEPTION FOR PROPERTY LOCATED AT 9201 WEST DREXEL AVENUE (THE LASALLE GROUP, INC., APPLICANT)</p>	<p>ITEM NUMBER</p> <p><i>G.7.</i></p>

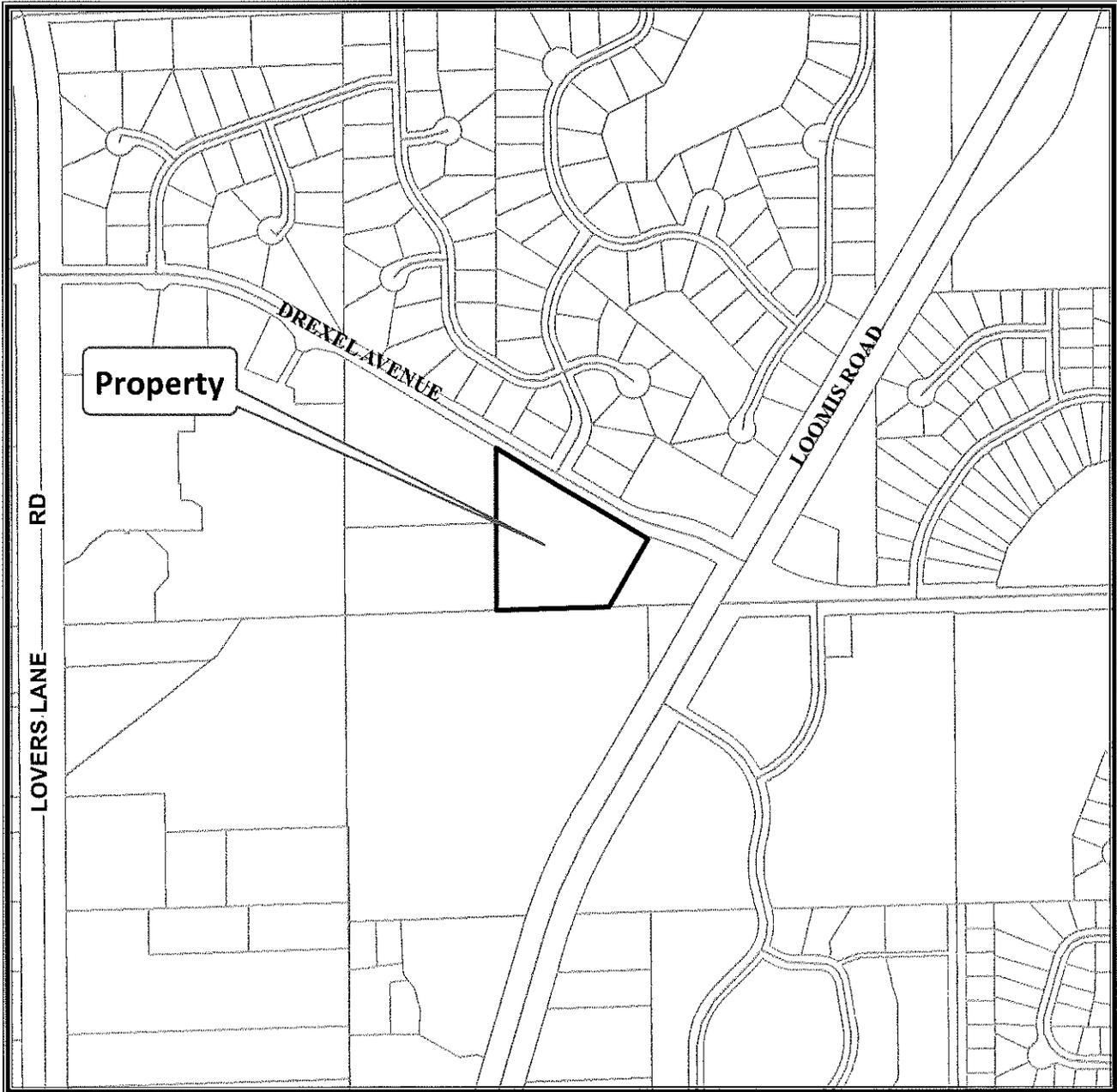
City Development staff recommends approval of a resolution authorizing certain officials to accept a conservation easement for and as part of the review and approval of a Special Use and Natural Resource Special Exception for property located at 9201 West Drexel Avenue (The LaSalle Group, Inc., Applicant), subject to review and approval by the Department of City Development and technical corrections by the City Attorney.

COUNCIL ACTION REQUESTED

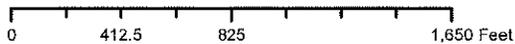
A motion to adopt Resolution No. 2016-_____, authorizing certain officials to accept a conservation easement for and as part of the review and approval of a Special Use and Natural Resource Special Exception for property located at 9201 West Drexel Avenue (The LaSalle Group, Inc., Applicant), subject to review and approval by the Department of City Development and technical corrections by the City Attorney.



9201 West Drexel Avenue
TKN 794-9994-003



Planning Department
(414) 425-4024



2013 Aerial Photo

This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. This map is provided for informational purposes only and may not be sufficient or appropriate for legal, engineering, or surveying purposes.

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2016-_____

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO
ACCEPT A CONSERVATION EASEMENT FOR AND AS PART
OF THE REVIEW AND APPROVAL OF A SPECIAL USE AND NATURAL RESOURCE
SPECIAL EXCEPTION FOR PROPERTY LOCATED AT 9201 WEST DREXEL
AVENUE (THE LASALLE GROUP, INC., APPLICANT)

WHEREAS, the Plan Commission having approved a Special Use and Natural Resource Special Exception upon the application of The LaSalle Group, Inc., on February 5, 2015, and the Plan Commission having conditioned approval thereof in part upon Common Council approval of a Conservation Easement to protect the wetland, wetland buffer and steep slopes on the site; and

WHEREAS, §15-7.0102G. and §15-7.0103Q. of the Unified Development Ordinance requires the submission of a Natural Resource Protection Plan in the Special Use (Site Plan) and Natural Resource Special Exception review process and the Unified Development Ordinance requires conservation easements to be imposed for natural resource features identified within such Plan to protect such features, all as part of the approval process for a Special Use (Site Plan) and Natural Resource Special Exception; and

WHEREAS, the City Engineering Department, Department of City Development and the Office of the City Attorney having reviewed the proposed Conservation Easement and having recommended approval thereof to the Common Council.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Conservation Easement submitted by The LaSalle Group, Inc., in the form and content as annexed hereto, be and the same is hereby approved; and the Mayor and City Clerk are hereby authorized to execute such Easement as evidence of the consent to and acceptance of such easement by the City of Franklin.

BE IT FURTHER RESOLVED, that the City Clerk be and the same is hereby directed to obtain the recording of the Conservation Easement in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2016.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2016.

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS
TO ACCEPT A CONSERVATION EASEMENT
THE LASALLE GROUP, INC.
RESOLUTION NO. 2016-_____

Page 2

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

CONSERVATION EASEMENT

Autumn Leaves of Franklin

This "Conservation Easement" is made by and between the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "Grantee," and PROPERO II FRANKLIN, LLC, an Ohio limited liability company, hereinafter referred to as "Grantor," and shall become effective upon the recording of this Grant of Conservation Easement, together with the Acceptance following, with the Office of the Register of Deeds for Milwaukee County, pursuant to §700.40(2)(b) of the Wisconsin Statutes.

WITNESSETH

WHEREAS, Grantor is the owner in fee simple of certain real property described in Exhibit A attached hereto and hereby made a part hereof ("Protected Property"); and

WHEREAS, the Grantor desires and intends that the natural elements and the ecological and aesthetic values of the Protected Property, including, without limitation, steep slopes, mature woodlands, young woodlands, lakes, ponds, streams, floodplains, floodways, floodlands, shore buffers, wetland buffers, wetlands and shoreland wetlands, and refer to Natural Resource Investigation by NRPP Consultant Name, dated December 19, 2014, with all applicable revision dates (dated December 19, 2014), which is located in the office of the Department of City Development, be preserved and maintained by the continuation of land use that will not materially interfere with or substantially disrupt the natural elements or the workings of natural systems; and

WHEREAS, Grantee is a "holder", as contemplated by §700.41(1)(b)1. of the Wisconsin Statutes, whose purposes include, while exercising regulatory authority granted to it, *inter alia*, under §62.23 and §236.45 of the Wisconsin Statutes, the conservation of land, natural areas, open space, and water areas; and

WHEREAS, the Grantor and Grantee, by the conveyance to the Grantee of the perpetual, non-exclusive Conservation Easement on, over, and across the Protected Property, desire to conserve the natural values thereof and prevent the use or development of the Protected Property for any purpose or in any manner inconsistent with the terms of this Conservation Easement; and

WHEREAS, the Grantee is willing to accept this Conservation Easement subject to the reservations and to the covenants, terms, conditions, and restrictions set out herein and imposed hereby; and

WHEREAS, TCF Bank, mortgagee of the Protected Property ("Mortgagee"), consents to the grant of this Easement by Grantor to Grantee and Mortgagee's consent is attached hereto and identified as "Mortgage Holder Consent."

NOW, THEREFORE, the Grantor, for and in consideration of the foregoing recitations and of the mutual covenants, terms, conditions, and restrictions subsequently contained, and as an absolute and unconditional dedication, does hereby grant and convey unto the Grantee a Conservation Easement in perpetuity on, over, and across the Protected Property.

Grantee's rights hereunder shall consist solely of the following:

1. To view the Protected Property in its natural, scenic and open condition as provided herein.
2. To enforce by proceeding at law or in equity the covenants subsequently set forth, including, and in addition to all other enforcement proceedings, proceedings to obtain all penalties and remedies set forth under Division 15-9.0500 of the Unified Development Ordinance of the City of Franklin, as amended from time to time, any violation of the covenants subsequently set forth being and constituting a violation of such Unified Development Ordinance, as amended from time to time, or such local applicable ordinance as may be later adopted or in effect to enforce such covenants or the purposes for which they are made, it being agreed that there shall be no waiver or forfeiture of the Grantee's right to insure compliance with the covenants and conditions of this grant by reason of any prior failure to act; and
3. To enter the Protected Property upon prior notice to Grantor for the purpose of inspecting the Protected Property to determine if the Grantor is complying with the covenants and conditions of this grant.

And in furtherance of the foregoing affirmative rights of the Grantee, the Grantor makes the following covenants which shall run with and bind the Protected Property in perpetuity, namely, that, on, over, or across the Protected Property, and the Grantor shall not, without the prior consent of the Grantee:

1. Construct or place buildings or any structure on the Protected Property;
2. Construct or make any improvements, unless, notwithstanding Covenant 1 above, the improvement is specifically and previously approved by the Common Council of the City of Franklin, upon the advice of such other persons, entities, and agencies as it may elect (such improvements as may be so approved being intended to enhance the resource value of the Protected Property to the environment or the public and including, but not limited to animal and bird feeding stations, park benches, the removal of animal blockage of natural drainage or other occurring blockage of natural drainage, and the like;
3. Except as otherwise provided herein, excavate, dredge, grade, mine, drill, or change the topography of the Protected Property or its natural condition in any manner, including any cutting or removal of vegetation, except for the removal of dead or diseased trees;
4. Conduct any filling, dumping, or depositing of any material whatsoever, including, but not limited to soil, yard waste, or other landscape materials, ashes, garbage, or debris;
5. Plant any vegetation not native to the Protected Property or not typical wetland vegetation; and
6. Operate snowmobiles, dune buggies, motorcycles, all-terrain vehicles or any other types of motorized vehicles.

To have and to hold this Conservation Easement unto the Grantee forever. Grantor shall be responsible for the payment of all general property taxes levied, assessed, or accruing against the Protected Property pursuant to law. Except as expressly limited herein, Grantor reserves to itself, to its members, guests, invitees, employees, agents, and to its successors and assigns, as owner of the Protected Property, all rights and obligations accruing from its ownership of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement, and such reserved rights specifically include, but are not limited to, all or any of the following:

1. The right but not the obligation to construct, install, maintain and operate on the Protected Property any and all "Essential Services," as defined in Section 15-11.0103 of the Unified Development Ordinance of the City of Franklin, Wisconsin, adopted August 1, 1998, updated with adopted revisions December 19, 2014 ("UDO"), which includes services provided by the public and private utilities, necessary for the exercise of the principal use or service of the principal structure. These services, whether installed underground, at the surface, above ground, or overhead, include installations for gas, electrical, steam, water, sanitary sewerage, storm water drainage, and communications; and accessories thereto, such as poles, towers, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, inlets, manholes, water storage tanks, conduits, cables, fire alarm boxes, police call boxes, traffic signals, pumps, lift stations, and hydrants, but not including buildings. Essential Services include governmental emergency notification systems, including, but not limited to, outdoor warning siren systems, whether installed upon or within buildings, or upon outdoor poles or other support structures. Essential services also includes the removal of any obstruction, vegetative or otherwise, within or adjacent to a stream, watercourse, drainageway, channel, ditch, swale or the like, artificial or natural, or within or adjacent to a natural resource feature supporting surface water drainage, which obstruction impedes the natural or intended drainage of such feature or facility, so as to cause or precipitate flooding, provided that such removal is performed by or under the direction of a governmental agency, or upon private property by the owner of the property, after obtaining all necessary governmental permits. In the case of an emergency which endangers persons or property, including but not limited to storm damage, essential services shall also include the removal of dead or damaged vegetation presenting such danger which is located within a natural resource, provided that such removal is performed by or under the direction of a governmental agency, or upon private property by the owner of the property, after obtaining all necessary governmental permits.
2. The right but not the obligation to maintain the Protected Property and any improvements in good condition, employing sound conservation practices, including but not limited to, prescribed burning and brush control, pruning of trees, removal of dead or dying trees and flora, discing of soil, and restoration and management of the natural resources on the Protected Property, provided such right shall be subject to the requirements under the UDO; and
3. The right of ingress and egress upon, under, over, across and through the Protected Property for purposes of exercising any of the foregoing reserved rights, including the right of the Grantor at all reasonable times to inspect the Protected Property to determine whether there is compliance with the covenants and conditions of this Easement.

The covenants, terms, conditions, and restrictions set forth in this grant shall be binding upon the Grantor and the Grantee and their respective agents, personal representatives, heirs, successors, and assigns, and shall constitute servitudes running with

the Protected Property in perpetuity. This Conservation Easement embodies the entire agreement between the parties and supersedes all prior agreements and understandings with respect to the matters contemplated herein. This Conservation Easement may not be amended, except by a writing executed and delivered by Grantor and Grantee or their respective personal representatives, heirs, successors, and assigns. The interpretation and performance of this Conservation Easement shall, in all respects, be governed by the laws of the State of Wisconsin. If any provision of this Conservation Easement, or the application thereof to any person or circumstances, is found to be invalid the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby. The recitals located at the beginning of this instrument are hereby incorporated herein and made a part of this Conservation Easement. The rights and easements created or reserved hereunder shall not constitute a dedication to the public of any portion of the Protected Property, and the record owner of the Protected Property may take such steps as may from time to time be required to prevent a dedication of any portion thereof. Notices to the parties shall be personally delivered or mailed by U.S. Mail registered mail, return receipt requested, as follows:

To Grantor:
Propero II Franklin, LLC
c/o Lancaster Pollard
E. State St., 16th Floor
Columbus, OH 43215
Attention: General Counsel

To Grantee:
City of Franklin
Office of the City Clerk
9229 W. Loomis Road
Franklin, Wisconsin 53132

In witness whereof, the grantor has set its hand and seals this on this date of _____, 20__.

PROPERO II FRANKLIN, LLC,
an Ohio limited liability company

By: _____
Name: _____
Title: Authorized Signer

STATE OF OHIO

ss

COUNTY OF FRANKLIN

Before me personally appeared on the _____ day of _____, A.D. 20__, an Authorized Signer for Propero II Franklin, LLC, an Ohio limited liability company.

To be known to be the person(s) who executed the foregoing CONSERVATION EASEMENT and acknowledged the same as the voluntary act and deed of said limited liability company.

NOTARY PUBLIC

My commission expires _____

Acceptance

The undersigned does hereby consent to and accepts the Conservation Easement granted and conveyed to it under and pursuant to the foregoing Grant of Conservation Easement. In consideration of the making of such Grant Of Conservation Easement, the undersigned agrees that this acceptance shall be binding upon the undersigned and it's successors and assigns and that the restrictions imposed upon the Protected Property may only be released or waived in writing by the Common Council of the City of Franklin, as contemplated by §236.293 of the Wisconsin Statutes.

In witness whereof, the undersigned has executed and delivered this acceptance on the _____ day of _____, A.D.20__.

CITY OF FRANKLIN

By: _____
Stephen R. Olson, Mayor

By: _____
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN)
) ss
COUNTY OF MILWAUKEE)

On this _____ day of _____, A.D. 20__, before me personally appeared Stephen R. Olson and Sandra L. Wesolowski, who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by it's authority, and pursuant to resolution file No. _____, adopted by it's Common Council of _____, 20__.

Notary Public, Milwaukee County Wisconsin

My commission expires _____

This instrument was drafted by the City of Franklin.

Approved as to contents:

Nicholas Fuchs, Senior Planner
Department of City Development

Date

Approved as to form only:

Jesse A. Wesolowski
City Attorney

Date

Exhibit A

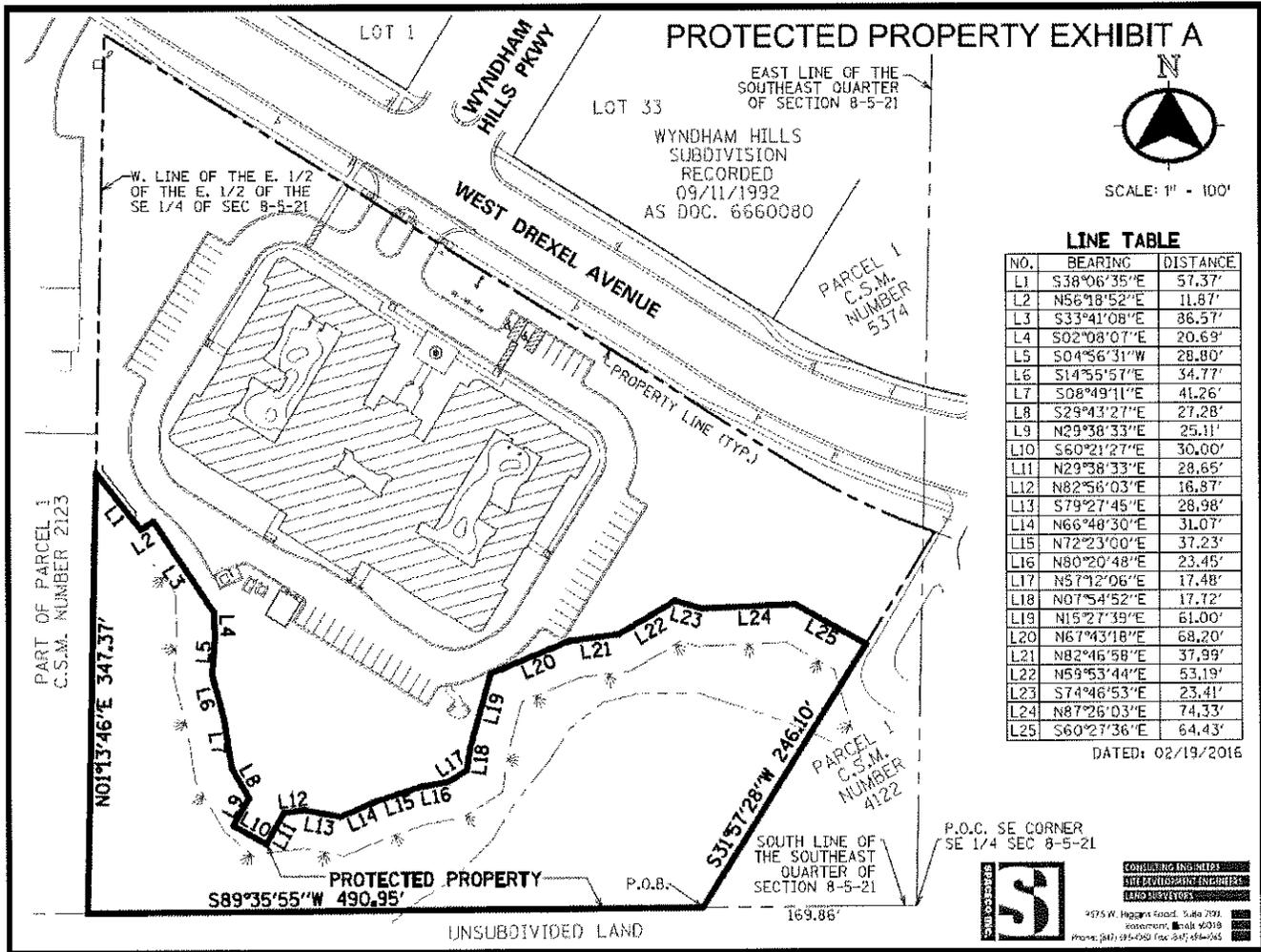
Protected Property

THAT PART OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, WHICH IS BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST 1/4 SECTION, BEING A CONCRETE MONUMENT WITH ALUMINUM CAP; THENCE SOUTH 89° 35' 55" WEST (BEING AN ASSUMED BEARING) ALONG THE SOUTH LINE OF SAID 1/4 SECTION, THE SOUTH QUARTER CORNER THEREOF ALSO BEING A CONCRETE MONUMENT WITH ALUMINUM CAP, 169.86 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89° 35' 55" WEST ALONG SAID SOUTH LINE: 490.95 FEET TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF THE EAST 1/2 OF SAID SOUTHEAST 1/4 SECTION; THENCE NORTH 00° 13' 46" WEST ALONG SAID WEST LINE 349.37 FEET; THENCE SOUTH 38° 06' 35" EAST 57.37 FEET; THENCE NORTH 56° 18' 52" EAST 11.87 FEET; THENCE SOUTH 33° 41' 08" EAST 86.57 FEET; THENCE SOUTH 02° 08' 07" EAST 20.69 FEET; THENCE SOUTH 04° 56' 31" WEST 28.80 FEET; THENCE SOUTH 14° 55' 57" EAST 34.77 FEET; THENCE SOUTH 08° 49' 11" EAST 41.26 FEET; THENCE SOUTH 29° 43' 27" EAST 27.28 FEET; THENCE SOUTH 29° 38' 33" WEST 25.11 FEET; THENCE SOUTH 60° 21' 27" EAST 30.00 FEET; THENCE NORTH 29° 38' 33" EAST 28.65 FEET; THENCE NORTH 82° 56' 03" EAST 16.87 FEET; THENCE SOUTH 79° 27' 45" EAST 28.98 FEET; THENCE NORTH 66° 48' 30" EAST 31.07 FEET; THENCE NORTH 72° 23' 00" EAST 37.23 FEET; THENCE NORTH 80° 20' 48" EAST 23.45 FEET; THENCE NORTH 57° 12' 06" EAST 17.48 FEET; THENCE NORTH 07° 54' 52" EAST 17.72 FEET; THENCE NORTH 15° 27' 39" EAST 61.00 FEET; THENCE NORTH 67° 43' 18" EAST 68.20 FEET; THENCE NORTH 82° 46' 58" EAST 37.99 FEET; THENCE NORTH 59° 53' 44" EAST 53.19 FEET; THENCE SOUTH 74° 46' 53" EAST 23.41 FEET; THENCE NORTH 87° 26' 03" EAST 74.33 FEET; THENCE SOUTH 60° 27' 36" EAST 64.43 FEET TO A POINT ON THE WEST LINE OF PARCEL 1 OF CERTIFIED SURVEY MAP NO. 4122; THENCE SOUTH 31° 57' 28" WEST 246.10 FEET, TO THE POINT OF BEGINNING.

CONTAINING 2.374 ACRES OR 103,402 SQUARE FEET MORE OR LESS.

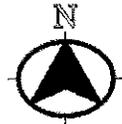


PROTECTED PROPERTY EXHIBIT A

EAST LINE OF THE
SOUTHEAST QUARTER
OF SECTION 8-5-21

LOT 33

WYNDHAM HILLS
SUBDIVISION
RECORDED
09/11/1992
AS DOC. 6660080



SCALE: 1" = 100'

LINE TABLE

NO.	BEARING	DISTANCE
L1	S38°06'35"E	57.37'
L2	N56°18'52"E	11.87'
L3	S33°41'08"E	86.57'
L4	S02°08'07"E	20.69'
L5	S04°56'31"W	28.80'
L6	S14°55'57"E	34.77'
L7	S08°49'11"E	41.26'
L8	S29°43'27"E	27.28'
L9	N29°38'33"E	25.11'
L10	S60°21'27"E	30.00'
L11	N29°38'33"E	28.65'
L12	N82°58'03"E	16.87'
L13	S79°27'45"E	28.98'
L14	N66°48'30"E	31.07'
L15	N72°23'00"E	37.23'
L16	N80°20'48"E	23.45'
L17	N57°12'06"E	17.48'
L18	N07°54'52"E	17.72'
L19	N15°27'39"E	61.00'
L20	N67°43'18"E	68.20'
L21	N82°46'58"E	37.99'
L22	N59°53'44"E	53.19'
L23	S74°46'53"E	23.41'
L24	N87°26'03"E	74.33'
L25	S60°27'36"E	64.43'

DATED: 02/19/2016

P.O.C. SE CORNER
SE 1/4 SEC 8-5-21



CONSULTING ENGINEERS
LAND SURVEYORS
4375 W. Higgins Road, Suite 209
Beverly Hills, CA 90210
Phone: (310) 975-0500 Fax: (310) 975-0545

Blank Page

<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE</p> <p style="text-align: center;">04/04/16</p>
<p style="text-align: center;">REPORTS & RECOMMENDATIONS</p>	<p style="text-align: center;">STANDARDS, FINDINGS AND DECISION OF THE CITY OF FRANKLIN COMMON COUNCIL UPON THE APPLICATION OF DAVID AND RHONDA DRAGER, FOR A SPECIAL EXCEPTION TO CERTAIN NATURAL RESOURCE PROVISIONS OF THE CITY OF FRANKLIN UNIFIED DEVELOPMENT ORDINANCE</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>G.8.</i></p>

At their meeting on February 24, 2016, the Environmental Commission recommended approval of a Special Exception to certain natural resource provisions of the Unified Development Ordinance. The Environmental Commission's Special Exception Application Review and Recommendation form, dated March 23, 2016, is attached.

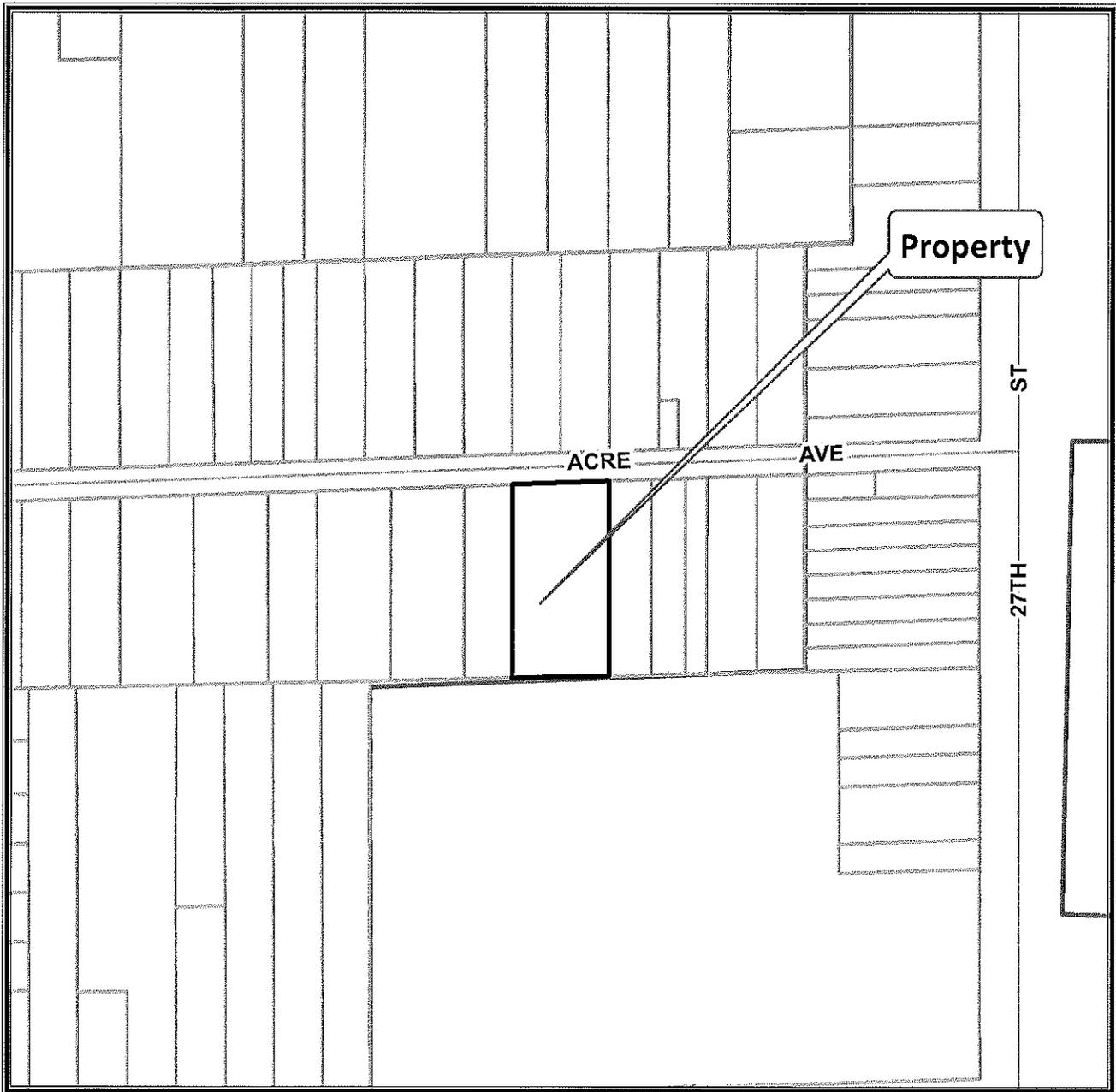
At the regular meeting of the Plan Commission on March 17, 2016, following a properly noticed public hearing, the following action was approved: move to recommend approval to the Common Council of the David and Rhonda Drager Natural Resource Features Special Exception pursuant to the Standards, Findings and Decision recommended by the Plan Commission and Common Council consideration of the Environmental Commission recommendations.

COUNCIL ACTION REQUESTED

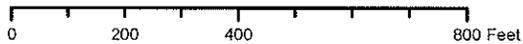
Adopt the standards, findings and decision of the City of Franklin Common Council upon the application of David and Rhonda Drager, for a special exception to certain natural resource provisions of the City of Franklin Unified Development Ordinance, to approve the application.



2925 W. Acre Avenue



Planning Department
(414) 425-4024



2016 Aerial Photo

This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. This map is provided for informational purposes only and may not be sufficient or appropriate for legal, engineering, or surveying purposes.

Standards, Findings and Decision
of the City of Franklin Common Council upon the Application of David Drager and
Rhonda Drager for a Special Exception to Certain Natural Resource Provisions of the
City of Franklin Unified Development Ordinance

Whereas, David Drager and Rhonda Drager having filed an application dated February 15, 2016, for a Special Exception pursuant to Section 15-9.0110 of the City of Franklin Unified Development Ordinance pertaining to the granting of Special Exceptions to Stream, Shore Buffer, Navigable Water-related, Wetland, Wetland Buffer and Wetland Setback Provisions, and Improvements or Enhancements to a Natural Resource Feature; a copy of said application being annexed hereto and incorporated herein as Exhibit A; and

Whereas, the application having been reviewed by the City of Franklin Environmental Commission and the Commission having made its recommendation upon the application, a copy of said recommendation dated February 24, 2016 being annexed hereto and incorporated herein as Exhibit B; and

Whereas, following a public hearing before the City of Franklin Plan Commission, the Plan Commission having reviewed the application and having made its recommendation thereon as set forth upon the report of the City of Franklin Planning Department, a copy of said report dated March 17, 2016 being annexed hereto and incorporated herein as Exhibit C; and

Whereas, the property which is the subject of the application for a Special Exception is located at approximately 2925 West Acre Avenue, zoned R-3 Suburban/Estate Single-Family Residence District, and such property is more particularly described upon Exhibit D annexed hereto and incorporated herein; and

Whereas, Section 15-10.0208B. of the City of Franklin Unified Development Ordinance, as amended by Ordinance No. 2003-1747, pertaining to the granting of Special Exceptions to Stream, Shore Buffer, Navigable Water-related, Wetland, Wetland Buffer and Wetland Setback Provisions, and Improvements or Enhancements to a Natural Resource Feature, provides in part: "The decision of the Common Council upon any decision under this Section shall be in writing, state the grounds of such determination, be filed in the office of the City Planning Manager and be mailed to the applicant."

Now, Therefore, the Common Council makes the following findings pursuant to Section 15-10.0208B.2.a., b. and c. of the Unified Development Ordinance upon the application for a Special Exception dated February 15, 2016, by David Drager and Rhonda Drager, pursuant to the City of Franklin Unified Development Ordinance, the proceedings heretofore had and the recitals and matters incorporated as set forth above, recognizing the applicant as having the burden of proof to present evidence

sufficient to support the following findings and that such findings be made by not less than four members of the Common Council in order to grant such Special Exception.

1. That the condition(s) giving rise to the request for a Special Exception were not self-imposed by the applicant (this subsection a. does not apply to an application to improve or enhance a natural resource feature): *but rather, the proposed location of the single-family residence within the mature woodland grove is the result of complying with the City's development standards for the R-3 Suburban/Estate Single-Family Residence District and an attempt to keep in line with neighboring homes.*

2. That compliance with the stream, shore buffer, navigable water-related, wetland, wetland buffer, and wetland setback requirement will:

a. be unreasonably burdensome to the applicant and that there are no reasonable practicable alternatives: _____ ; or

b. unreasonably and negatively impact upon the applicant's use of the property and that there are no reasonable practicable alternatives: *Due to the position of the mature woodland grove on the property, impacts are unavoidable. Especially when factoring the City's minimum setback requirements and minimum dwelling size requirements for the proposed residence. The applicants do not own any other property in the City to serve as an alternate site.*

3. The Special Exception, including any conditions imposed under this Section will:

a. be consistent with the existing character of the neighborhood: *the proposed development with the grant of a Special Exception as requested will be consistent with the existing character of the neighborhood; and*

b. not effectively undermine the ability to apply or enforce the requirement with respect to other properties: *The circumstances surrounding this project are unique to the Drager's and thus will not undermine the City's ability to apply or enforce the natural resource protection requirements with respect to other properties* ; and

c. be in harmony with the general purpose and intent of the provisions of this Ordinance proscribing the requirement: *As the requested exception is nominal and will be mitigated on site; and whereas the mitigation and remaining trees will be protected in perpetuity by a conservation easement, the proposed project is in harmony with the general purpose and intent of the provisions of this Ordinance; and;*

d. preserve or enhance the functional values of the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback in co-existence with the development: *(this finding only applying to an application to improve or enhance a natural resource feature).*

The Common Council considered the following factors in making its determinations pursuant to Section 15-10.0208B.2.d. of the Unified Development Ordinance.

1. Characteristics of the real property, including, but not limited to, relative placement of improvements thereon with respect to property boundaries or otherwise applicable setbacks: *The project will meet all other zoning requirements.*

2. Any exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district: *The Drager's property is larger than any of the adjacent lots and probably the only divisible lot on the block. Furthermore, the other lots on the block we're all developed prior to the City's natural resource protection standards.*

3. Existing and future uses of property; useful life of improvements at issue; disability of an occupant: *The existing use is residential and the future use will remain residential.*

4. Aesthetics: *The proposed special exception will have minimal impacts on the aesthetics of the property. When completed, the new home will be aesthetically compatible with neighboring properties.*

5. Degree of noncompliance with the requirement allowed by the Special Exception: *The Special Exception requested is to impact approximately 0.03 acres (1,307 square feet) of mature woodland grove (or 1 extra tree), beyond the allowable 30% impact. In other words, the request is to remove six (6) trees from the sixteen (16) tree mature woodland grove on Lot 2 for the construction of the Drager's new single-family residence, instead of the allowable five (5) trees.*

6. Proximity to and character of surrounding property: *The Drager's property is bordered by single-family residences to the north, east and west and vacant commercial land to the south.*

7. Zoning of the area in which property is located and neighboring area: *The Drager's property and the properties to the north, east and west are zoned R-3 Suburban/Estate Single-Family Residence District. The vacant property to the south is zoned B-4 South 27th Street Mixed-Use Commercial District.*

8. Any negative effect upon adjoining property: *No negative effect upon adjoining property is perceived.*

9. Natural features of the property: *Mature woodland grove and wetland setbacks.*

10. Environmental impacts: *The Special Exception requested is to impact approximately 0.03 acres (1,307 square feet) of mature woodland grove (or 1 extra tree), beyond the allowable 30% impact. In other words, the request is to remove six (6) trees from the sixteen (16) tree mature woodland grove on Lot 2 for the construction of the Drager's new single-family residence, instead of the allowable five (5) trees.*

11. A recommendation from the Environmental Commission as well as a review and recommendation prepared by an Environmental Commission-selected person knowledgeable in natural systems: *The Environmental Commission recommendation and its reference to the report of March 23, 2016 is incorporated herein.*

12. The practicable alternatives analysis required by Section 15-9.0110C.4. of the Unified Development Ordinance and the overall impact of the entire proposed use or structure, performance standards and analysis with regard to the impacts of the proposal, proposed design solutions for any concerns under the Ordinance, executory actions which would maintain the general intent of the Ordinance in question, and other factors relating to the purpose and intent of the Ordinance section imposing the requirement: *The Plan Commission recommendation and the Environmental Commission recommendation address these factors and are incorporated herein.*

Decision

Upon the above findings and all of the files and proceedings heretofore had upon the subject application, the Common Council hereby grants a Special Exception for such relief as is described within Exhibit C, upon the conditions: 1) that the applicant shall mitigate the mature woodland grove impact with 0.38 acres of woodland mitigation, which equates to one 2.5" caliper native deciduous tree; 2) that the natural resource features and required mitigation upon the property to be developed be protected by a perpetual conservation easement to be approved by the Common Council prior to any development within the areas for which the Special Exception is granted; 3) that the applicant obtain all other necessary approval(s) from all other applicable governmental agencies prior to any development within the areas for which the Special Exception is granted; 4) that all development within the areas for which the Special Exception is granted shall proceed pursuant to and be governed by the approved Natural Resource Protection Plan and all other applicable plans for David Drager and Rhonda Drager and all other applicable provisions of the Unified Development Ordinance. The duration of this grant of Special Exception is permanent.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2016.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2016.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

Exhibit A

Natural Resource Special Exception Question and Answer Form.

Questions to be answered by the Applicant

Items on this application to be provided in writing by the Applicant shall include the following, as set forth by Section 15-9.0110C. of the UDO:

- A. Indication of the section(s) of the UDO for which a Special Exception is requested. _____
Section 15-4.0102B Table 15-4.0100

- B. Statement regarding the Special Exception requested, giving distances and dimensions where appropriate.
We are asking for the elimination of 6 trees out of 16 within the Mature Grove. Per code the protect standard for a mature grove is 70% with an allowed impact of 30%. With the elimination of 6 trees we are asking to impact 38% putting our Protection standard at 62%. New trees will be planted in order to replace what has been eliminated.

- C. Statement of the reason(s) for the request.
This is a special exception request to allow for the elimination of (6) trees within a mature grove to allow for a proposed single family dwelling.

- D. Statement of the reasons why the particular request is an appropriate case for a Special Exception, together with any proposed conditions or safeguards, and the reasons why the proposed Special Exception is in harmony with the general purpose and intent of the Ordinance. In addition, the statement shall address any exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or unintended use that do not apply generally to other properties or uses in the same district, including a practicable alternative analysis as follows:
- 1) **Background and Purpose of the Project.**

- (a) Describe the project and its purpose in detail. Include any pertinent construction plans.

The proposed project is to sub-divide the existing lot at 2925 W. acre Ave. into (2) separate lots.

Lot 1 will keep th existing residential dwelling with limited change and Lot 2 to allow for a new dwelling.

Lot 2 is where a new proposed single family dwelling will be constructed. In order to do so the dwelling will be built in the mature grove eliminating (6) trees.

- (b) State whether the project is an expansion of an existing work or new construction.

The proposed project is for new construction of a single family residential dwelling.

- (c) State why the project must be located in or adjacent to the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback to achieve its purpose.

The project will be located in a mature grove designated area eliminating (6) trees out of 16.

The proposed dwelling location allows for minimal disruption of the natural drainage of the lot. In addition the proposed dwelling location attempts to keep in line with neighboring setbacks

2) Possible Alternatives.

- (a) State all of the possible ways the project may proceed without affecting the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback as proposed.

The project would not be able to proceed without the elimination of some existing trees. Alternative placement further south on the lot would still require the elimination of trees because a drive would need to be provided that would run through the mature grove area.

- (b) State how the project may be redesigned for the site without affecting the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback.

Alternative placement or redesign of the dwelling would pose difficult because of the existing conditions of the lot. If the dwelling was to be proposed further back the elimination of trees would still exist and since the lot drainage flows to the rear of the property this may cause disruption of the natural site drainage.

- (c) State how the project may be made smaller while still meeting the project's needs.

The project can be redesigned to attempt to create a smaller foot print, however the issue of eliminating trees would still pose a problem. In order to provide proper site circulation and the appropriate code required square footage for living space, trees would still need to be eliminated to accomodate any residential development.

- (d) State what geographic areas were searched for alternative sites.

This is the only property we own in Franklin. We looked at alternatives, but this is the best location for our family.

- (e) State whether there are other, non-stream, or other non-navigable water, non-shore buffer, non-wetland, non-wetland buffer, and/or non-wetland setback sites available for development in the area.

N/A

(f) State what will occur if the project does not proceed.

We will not be able to build our new home.

3) Comparison of Alternatives.

(a) State the specific costs of each of the possible alternatives set forth under sub.2., above as compared to the original proposal and consider and document the cost of the resource loss to the community.

The cost would mostly be the purchase of additional property to construct a residential dwelling.

The existing lot is already owned and would posed minimal cost to only divide the existing owned lot. The new lot would create an increase tax base for the community by creating an additional single family lot.

(b) State any logistical reasons limiting any of the possible alternatives set forth under sub. 2., above.

Logistically any residential development would need a special exemption do to the location of the mature grove.

Trees would need to be eliminated at any proposed location on the site boundaries.

(c) State any technological reasons limiting any of the possible alternatives set forth under sub. 2., above.

The project can be redesigned to attempt to create a smaller foot print, however the issue of eliminating trees would still pose a problem. In order to provide proper site circulation and the appropriate code required square footage for living space, trees would still need to be eliminated to accomodate any residential development.

(d) State any other reasons limiting any of the possible alternatives set forth under sub. 2., above.

N/A

4) Choice of Project Plan.

State why the project should proceed instead of any of the possible alternatives listed under sub.2., above, which would avoid stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback impacts.

The proposed development should be implemented because it would create a new single family lot adding to the city's tax base and improving the surrounding neighborhood. The development is very mindful of the existing natural amenities and is permitted within the zoning district. Additional trees would be planted to compensate the loss of the trees the development will pose.

5) **Stream or Other Navigable Water, Shore Buffer, Wetland, Wetland Buffer, and Wetland Setback Description.**

Describe in detail the stream or other navigable water shore buffer, wetland, wetland buffer, and/or wetland setback at the site which will be affected, including the topography, plants, wildlife, hydrology, soils and any other salient information pertaining to the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback.

Most of the natural vegetation and natural habitats will be preserved with the exception of the proposed trees to be eliminated.

6) **Stream or Other Navigable Water, Shore Buffer, Wetland, Wetland Buffer, and Wetland Setback Impacts.**

- a) Diversity of flora including State and/or Federal designated threatened and/or endangered species. Not Applicable Applicable
- b) Storm and flood water storage. Not Applicable Applicable
- c) Hydrologic functions. Not Applicable Applicable
- d) Water quality protection including filtration and storage of sediments, nutrients or toxic substances. Not Applicable Applicable
- e) Shoreline protection against erosion. Not Applicable Applicable
- f) Habitat for aquatic organisms. Not Applicable Applicable
- g) Habitat for wildlife. Not Applicable Applicable
- h) Human use functional value. Not Applicable Applicable
- i) Groundwater recharge/discharge protection. Not Applicable Applicable
- j) Aesthetic appeal, recreation, education, and science value. Not Applicable Applicable
- k) Specify any State or Federal designated threatened or endangered species or species of special concern. Not Applicable Applicable
- l) Existence within a Shoreland. Not Applicable Applicable
- m) Existence within a Primary or Secondary Environmental Corridor or within an Isolated Natural Area, as those areas are defined and currently mapped by the Southeastern Wisconsin Regional Planning Commission from time to time. Not Applicable Applicable

Describe in detail any impacts to the above functional values of the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback:

Most of the natural vegetation and natural habitats will be preserved with the exception of the proposed trees to be eliminated.

7) Water Quality Protection.

Describe how the project protects the public interest in the waters of the State of Wisconsin.

The proposed development is very sensitive to preserving the natural water flow on the site. The dwelling takes into consideration the natural drainage of the site to make sure there are no adverse affects to the drainage and water quality of the site and its neighboring properties.

Natural Resources Investigation



2-Acre Parcel at 2925 W. Acre Ave. City of Franklin, Milwaukee County, Wisconsin

RASN Project No. 1150379

June 9th, 2015

Prepared by:

Tina Myers, PWS
Ecologist/Project Manager
R.A. Smith National, Inc.

Prepared for:

Mr. David Drager
2925 W. Acre Ave.
Franklin, WI 53132

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Appendix 1: Figures

Figure 1: USGS Topographic/Site Location Map

Figure 2: Natural Resources Map

Appendix 2: Site Photographs

June 10th, 2015

Introduction

R.A. Smith National, Inc (RASN) is pleased to provide this Natural Resource Report for a 2-acre parcel (Study Area) located at 2925 West Acre Avenue in the City of Franklin, Milwaukee County, Wisconsin. (Appendix 1, Figure 1). The natural resources investigation was completed at the request of the landowner, Mr. David Drager, who intends to subdivide the parcel. The tax key is 8329962000.

Ms. Tina Myers of RASN conducted a desktop review followed by a field reconnaissance on June 5th, 2015 to determine the extent of natural resources as defined by the City of Franklin's Unified Development Ordinance (UDO) within the parcel (Appendix 1, Figure 2). The natural resource features are defined and protected by the UDO. As defined by the UDO, natural resource features include steep slopes, mature woodlands, young woodlands, lakes, ponds, streams, shore buffers, floodplains, wetlands, and wetland buffers and setbacks. Each feature is defined in the UDO, along with their respective protection standards.

Based on the desktop review and field reconnaissance, it was determined that there is one mature woodland grove within the parcel, totaling 0.38 acres, and there are two 50-foot wetland setbacks, totaling 0.0135 acre, that were derived from two adjacent off-site wetlands (Figure 2, Appendix 1). Only the mature woodland holds a protection standard of 70 percent. Site photographs are included in Appendix 2 for additional reference.

Existing Natural Resources within the Project Area

Prior to the field reconnaissance, RASN performed a desktop review of potential natural resource features within or adjacent to the parcel to determine by analyzing the GIS data layers from the Wisconsin Department of Natural Resources (WDNR) Surface Water Data Viewer and the Milwaukee County GIS website. These websites include map layers such as lake and stream locations, the Wisconsin Wetland Inventory, NRCS Soils maps, recent and historical aerial photography, FEMA floodplain maps, and 2-foot contour maps. Based on the desktop review and field reconnaissance, the following describes the natural resource features defined in the UDO and whether or not they were identified within the parcel limits.

Steep Slopes

As defined in the UDO, there are three categories of steep slopes based upon the relative degree of steepness: "Ten (10) to twenty (20) percent, twenty (20) to thirty (30) percent, and greater than thirty (30) percent. No land area shall be considered a steep slope unless the steep slope area has at least a ten (10) foot vertical drop and has a minimum area of five thousand (5,000) square feet. Steep slopes exclude man-made steep slopes." There are no steep slopes, as defined by the UDO, located within the parcel. In general, the site is relatively flat as shown on the two-foot contour map that has been overlaid onto Figure 2.

Lakes and Ponds

Lakes and Ponds, as defined by the UDO, are bodies of water two (2) acres or larger in size (Lakes) or less than two (2) acres in size (Ponds), as measured by the shoreline at its maximum condition rather than the permanent pool condition, if there is any difference. There are no lakes or ponds located within the parcel.

Streams/Shore Buffers

A stream is defined by the UDO as "a course of running water, either perennial or intermittent, flowing in a channel". A shore buffer is defined in the UDO as "all that land area located within 75 feet landward of the

Ordinary High Water Mark (OHWM) of all ponds, streams, lakes, and navigable waters (as determined by the WDNR) and parallel to that OHWM which is to remain undisturbed as a Natural Resource Feature (including undisturbed natural vegetation)". There are no streams or shore buffers located within the parcel.

Floodplains/Floodways/Floodlands

According to the UDO, floodlands are all lands contained within the "regional flood" or 100-year recurrence interval flood. Floodlands are divided into the Floodway District, the Floodplain Conservancy District, and the Floodplain Fringe Overlay District. There are no floodplains/floodways/floodlands located within the parcel.

Woodlands

As defined in the UDO, a mature woodland is "an area of stand of trees whose total combined canopy covers an area of one (1) acre or more and at least fifty percent of which is composed of canopies of trees having a dbh of at least ten inches; or any grove consisting of eight (8) or more individual trees having a dbh of at least twelve inches whose combined canopies cover at least fifty percent of the area encompassed by the grove." According to the UDO, mature woodlands carry a seventy (70) percent Protection Standard.

As defined in the UDO, a young woodland is "an area or stand of trees whose total combined canopy covers an area of one-half (0.50) acre or more and at least fifty (50) percent of which is comprised of canopies of trees having a diameter at breast height (DBH) of at least three inches. However, no trees planted or grown for commercial purposes shall be considered young woodland". According to the UDO, young woodlands carry a fifty (50) percent Protection Standard.

Prior to the fieldwork, RASN used recent aerial photography from 2010 to determine whether the wooded areas within the site would potentially meet the woodland size requirements of 0.5 acre (Young) and 1.0 acre (Mature). However, based on a conversation with the landowner, RASN took into consideration that many of the ash trees present within the parcel had recently been removed due to Emerald Ash Borer (EAB) disease. Following the desktop review, a field reconnaissance was performed to determine if the current existing wooded areas might meet the definition of a Mature or Young Woodland. A DBH measuring tape was used to measure trees and a GPS unit was used to locate all trees that were 10 inches or greater. The overall health of the existing trees was also taken into account as well.

Based on the site field reconnaissance, one mature woodland grove, that is 0.38 acre in size, was determined to be present within the parcel (Figure 2, Appendix 1). The grove consisted of more than eight healthy trees that were 12" or greater including tree species such as box elder (*Acer negundo*), silver maple (*Acer saccharinum*), white willow (*Salix alba*), American elm (*Ulmus pumila*), and apple tree (*Malus pumila*). The location of each tree is shown on Figure 2 along with the diameter at breast height (dbh) in inches. The approximate canopy dripline of the mature grove was GPS-located and is also shown on Figure 2. Three box elder trees met the trunk size requirement, but were dying showing significant signs of crown dieback and trunk rotting, so these were not included in the grove area. Please refer to the site photos in Appendix 2 for a view of the mature grove and the dying box elder trees.

The remaining areas that appear to be wooded on the 2010 aerial to the south and east of the mature grove were also evaluated, but these areas no longer met the definition of Young or Mature Woodland as they are dominated by green ash (*Fraxinus pennsylvanica*) that was either already removed, dead and expected to be removed, or severely declining due to EAB. Signs of EAB varied amongst the ash trees, but included complete or partial defoliation, bark splitting, and epicormic sprouting. Based on RASN's evaluation, none of the green ash trees appeared to be healthy within the parcel and all are expected to eventually be removed due to the EAB infestation; therefore, these were not measured or located. Other tree species present within these areas included honey locust

Natural Resource Investigation
2925 W. Acre Ave.
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(*Gleditsia tricanthos*), downy hawthorne (*Crataegus mollis*), black walnut (*Juglans nigra*), American elm, and box elder; however, there were not enough of these remaining healthy trees to meet the definition of Young or Mature Woodland as size and canopy cover requirements could not be met. Please refer to the site photos in Appendix 2 for a depiction of this area.

Wetlands and Shoreland Wetlands

A wetland is defined by the UDO as an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions. There are no wetlands located within the parcel; however there are two off-site wetlands on adjoining properties that are shown on Figure 2 as a solid orange line. Since RASN had no access permission to these adjoining parcels, the wetland to the west was derived from the Wisconsin Wetland Inventory Map and the other was approximated using aerial photography.

Wetland Buffers (30 feet)

Wetland buffers as defined in the UDO, are the width of 30 feet outward from the wetland boundary. There are two off-site wetlands located on neighboring parcels and the buffers are shown with an orange-dashed line on Figure 2. However, there are no wetland buffers that extend into the parcel limits.

Wetland Setbacks (50 feet)

The width of the wetland setback per the UDO is 50 feet from the wetland boundary or an additional 20' from the 30' wetland buffer. The parcel contains two wetland setback areas that are 0.045 and 0.009 acre in size, respectively, totaling 0.0135 acre. These are shown with a solid white line on Figure 2 in Appendix 1. Per the UDO, if construction or disturbance occurs within the area of land that lies between the landward edge of the required wetland buffer and the required wetland setbacks, then permanent vegetative cover should be established or reestablished and maintained throughout the remaining area in which the construction of disturbance is located.

Summary

The natural resources investigation was carried out at the request of the landowner who intends to subdivide the parcel. Based on the desktop review and field reconnaissance, it was determined that there is one mature woodland grove within the 2-acre parcel, totaling 0.38 acres, and there are two 50-foot wetland setbacks, totaling 0.0135 acre, that were derived from two adjacent off-site wetlands (Figure 2, Appendix 1). According to the UDO, the mature woodland grove carries a 70% protection standard and therefore 0.27 acre should be protected. If this is not feasible, woodland mitigation may be an option. The wetland setbacks do not carry a protection standard; however if construction or disturbance occurs within the area of land that lies between the landward edge of the required wetland buffer and the required wetland setbacks, then permanent vegetative cover should be established or reestablished and maintained throughout the remaining area in which the construction of disturbance is located.

Appendices

Appendix 1: Figures

Appendix 2: Site Photographs

Appendix 1: Figures

Figure 1: USGS Map/Site Location Map

Figure 2: Natural Resources Map

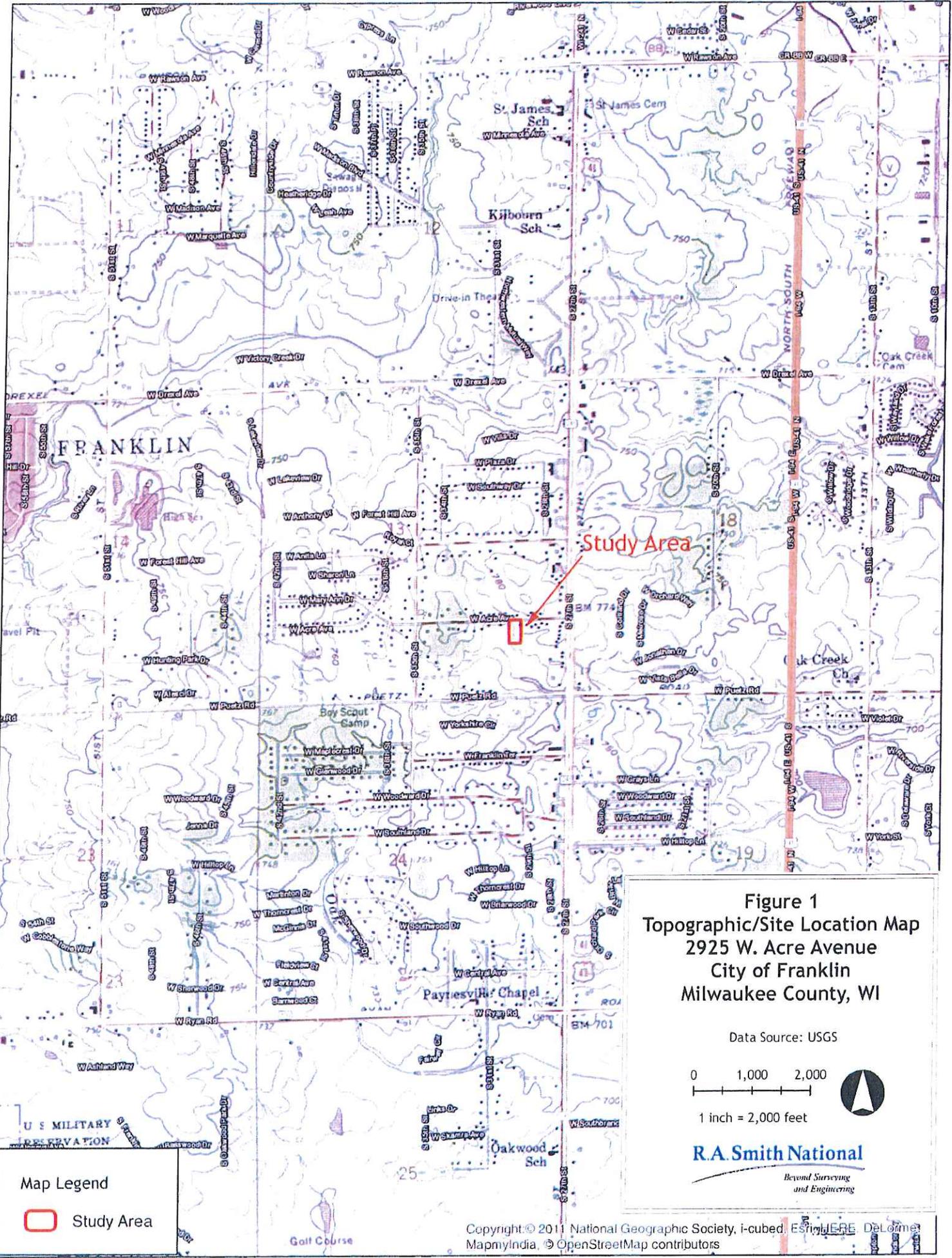
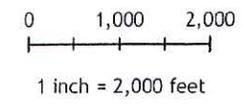


Figure 1
 Topographic/Site Location Map
 2925 W. Acre Avenue
 City of Franklin
 Milwaukee County, WI

Data Source: USGS



R.A. Smith National
*Beyond Surveying
 and Engineering*

Map Legend

Study Area



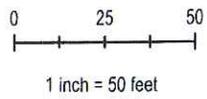
W Acre Ave

MATURE WOODLAND GROVE
0.381 Ac.

0.045
Ac.

0.009
Ac.

FIGURE 2
NATURAL RESOURCES MAP
2925 W ACRE AVE
CITY OF FRANKLIN, WI



R.A. Smith National

Beyond Surveying
and Engineering

16745 W. Bluemound Road, Brookfield WI 53005-5938
262-781-1000 Fax 262-797-7373
Appleton, WI Madison, WI Naperville, IL
Orange County, CA Pittsburgh, PA

June 9, 2015

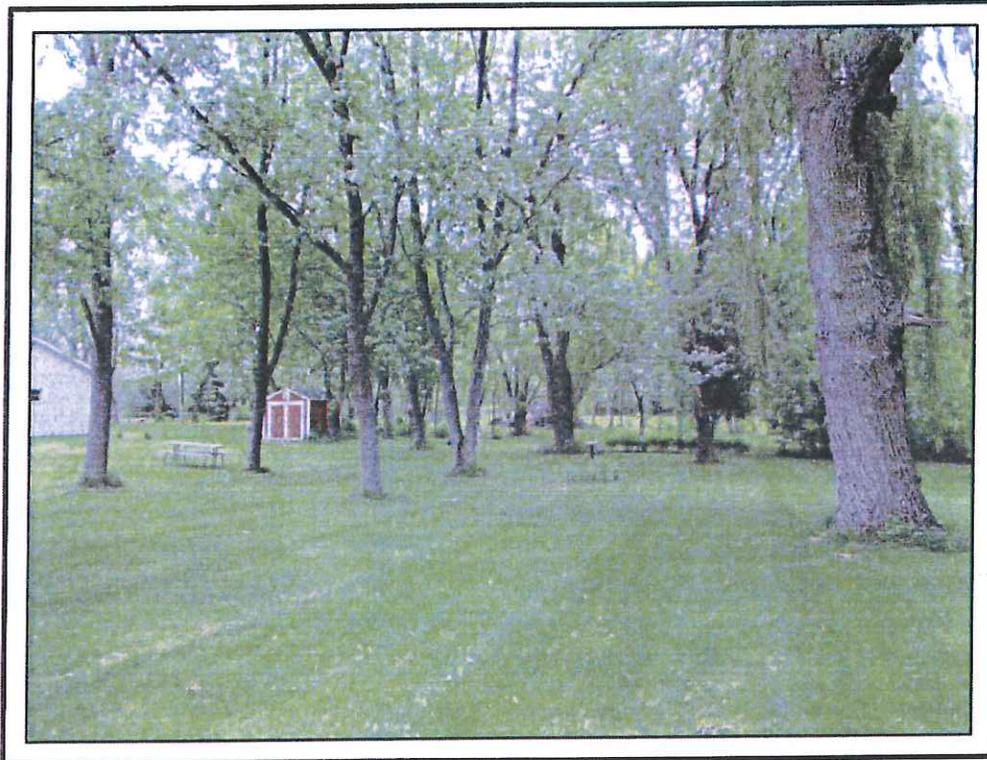
- TREE TYPE
- AN - *Acer negundo*
 - AS - *Acer saccharinum*
 - 3T - *Gleditsia tricanthos*
 - MP - *Malus pumila*
 - SA - *Salix alba*
 - JA - *Ulmus americana*

Tree sizes are represented as
Diameter at Breast Height,
in inches

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User

Appendix 2:

Site Photographs



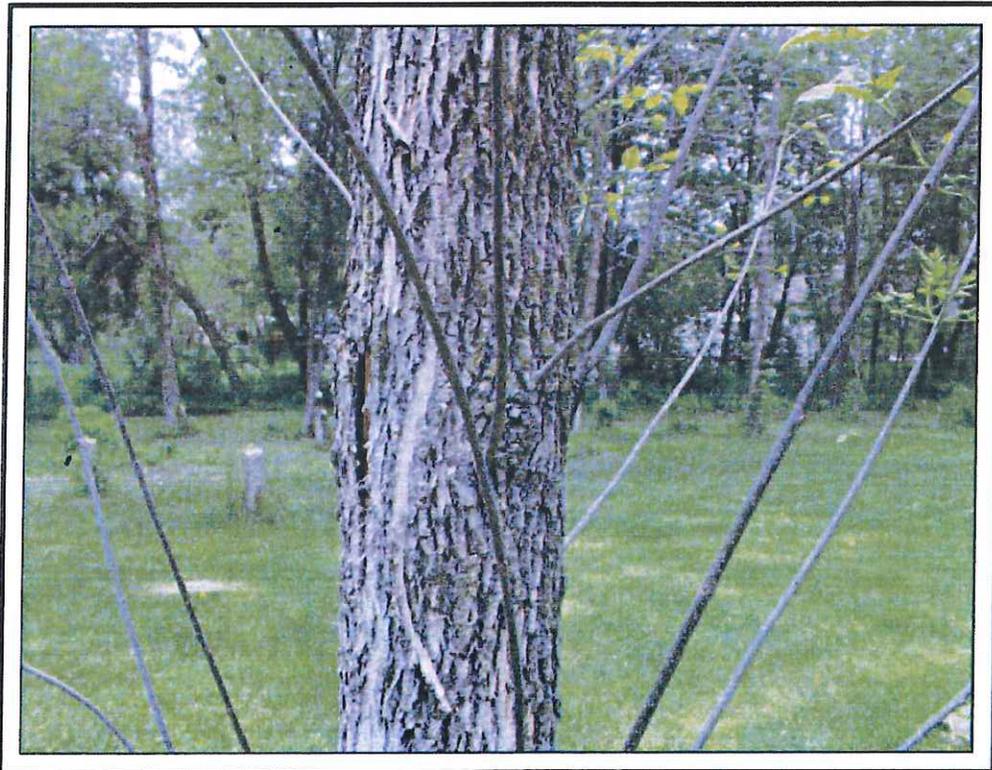
Photograph 1 (6/5/15): Mature woodland grove identified within the parcel (see also Figure 2).



Photograph 2 (6/5/15): Southern portion of the parcel that is dominated by dying green ash (*Fraxinus pennsylvanica*) trees. This area probably met the definition of Young Woodland before the presence of EAB, but no longer does based on site observations.



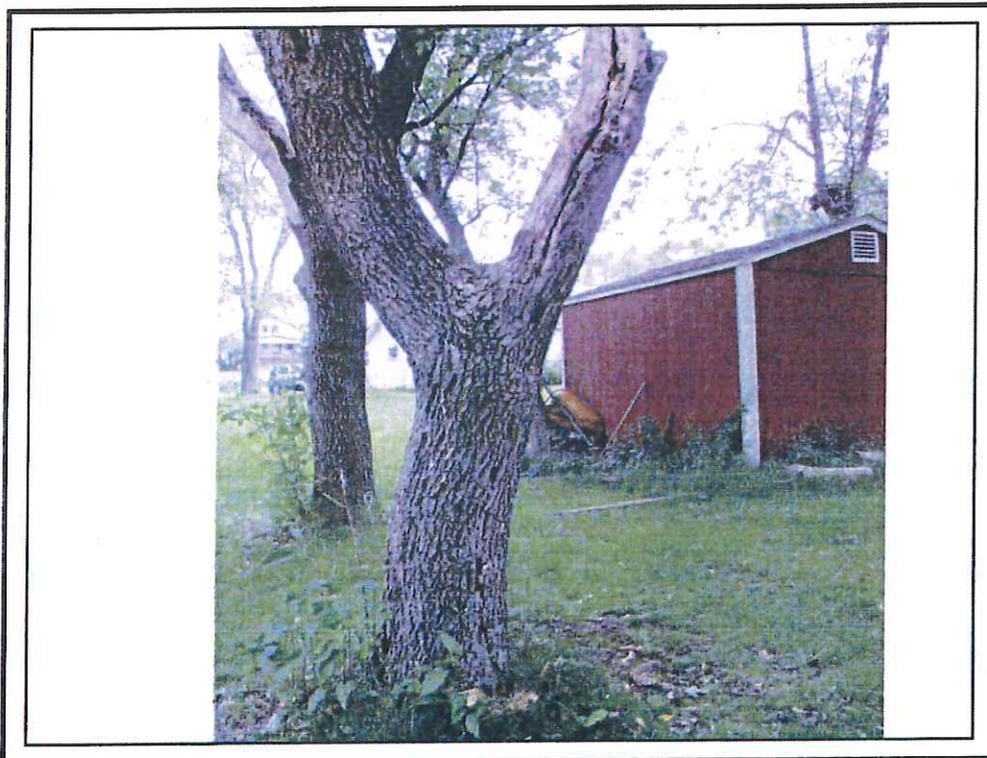
Photograph 3 (6/5/15): A view of some of the ash trees that have been defoliated as a result of EAB.



Photograph 4 (6/5/15): An ash trees with epicormic sprouting and bark splits as a result of EAB.



Photograph 5 (6/5/15): A view of some of the ash trees stumps from the trees that had to be removed due to EAB.



Photograph 6 (6/5/15): One of the box elder (*Acer negundo*) trees that was severely declining. Notice the bark splitting, the main dead branch, and the fungus at the very bottom of the tree.



Photograph 7 (6/5/15): General northwest facing view of the parcel from the southeast corner. The canopy is very open except in the location of the mature woodland observable in the background.



Photograph 8 (6/5/15): View of the wetland on the adjoining parcel to the west.

Exhibit B

City of Franklin Environmental Commission

TO: Common Council
DATE: March 23, 2016
RE: Special Exception application review and recommendation
APPLICATION: David Drager and Rhonda Drager, Applicants, dated: February 16, 2016 (2925 West Acre Avenue)

I. §15-9.0110 of the Unified Development Ordinance Special Exception to Natural Resource Feature Provisions Application information:

1. Unified Development Ordinance Section(s) from which Special Exception is requested: *Table 15-4.0100 of the Unified Development Ordinance.*
2. Nature of the Special Exception requested (description of resources, encroachment, distances and dimensions):
3. Applicant's reason for request: *The Special Exception requested is to impact approximately 0.03 acres (1,307 square feet) of mature woodland grove (or 1 extra tree), beyond the allowable 30% impact. In other words, the request is to remove six (6) trees from the sixteen (16) tree mature woodland grove on Lot 2 for the construction of the Drager's new single-family residence, instead of the allowable five (5) trees.*
4. Applicant's reason why request appropriate for Special Exception: *Without the requested special exception, the Drager's could not build a new single-family residence in compliance with the R-3 District Standards on Lot 2 of the proposed Certified Survey Map.*

II. Environmental Commission review of the §15-9.0110C.4.f. Natural Resource Feature impacts to functional values:

1. Diversity of flora including State and/or Federal designated threatened and/or endangered species: *No significant impact is anticipated. The undisturbed trees on the property include various species. The proposed improvements will not impact any State or Federal designated threatened or endangered species or species of special concern.*

2. Storm and flood water storage: *No significant impact is anticipated. The property does not include floodplains or wetlands and the wetland setbacks on the property will remain undisturbed.*
3. Hydrologic functions: *No significant impact is anticipated.*
4. Water quality protection including filtration and storage of sediments, nutrients or toxic substances: *No significant impact is anticipated.*
5. Shoreline protection against erosion: *No impact is anticipated. The property does not contain any shoreline and proper erosion control measures will be employed.*
6. Habitat for aquatic organisms: *No impact is anticipated.*
7. Habitat for wildlife: *No significant impact is anticipated.*
8. Human use functional value: *No impact is anticipated.*
9. Groundwater recharge/discharge protection: *No significant impact is anticipated. After the construction of the proposed home, the property will still have a significant amount of undisturbed green space for groundwater recharge/discharge protection.*
10. Aesthetic appeal, recreation, education, and science value: *The removal of trees and addition of a new single-family residence will change the aesthetic appearance of the property from the street, but there will still be undisturbed trees in the rear portion of the property and the new home will be aesthetically compatible with surrounding homes in the neighborhood.*
11. State or Federal designated threatened or endangered species or species of special concern: *Not applicable – The proposed improvements will not impact any State or Federal designated threatened or endangered species or species of special concern.*
12. Existence within a Shoreland: *Not applicable – The area is not located within a shoreland.*
13. Existence within a Primary or Secondary Environmental Corridor or within an Isolated Natural Area, as those areas are defined and currently mapped by the Southeastern Wisconsin Regional Planning Commission from time to time: *Not applicable – The area is not located within a Primary or Secondary Environmental Corridor or within an Isolated Natural Area as mapped by the Southeastern Wisconsin Regional Planning Commission.*

III. Environmental Commission review of the §15-10.0208B.2.d. factors and recommendations as to findings thereon:

1. That the condition(s) giving rise to the request for a Special Exception were not self-imposed by the applicant (this subsection a. does not apply to an application to improve or enhance a natural resource feature): *The proposed location of the single-family residence within the mature woodland grove is the result of complying with the City's development standards for the R-3 Suburban/Estate Single-Family Residence District and an attempt to keep in line with neighboring homes.*

2. That compliance with the stream, shore buffer, navigable water-related, wetland, wetland buffer, and wetland setback requirement will:
 - a. be unreasonably burdensome to the applicants and that there are no reasonable practicable alternatives: _____ ; or

 - b. unreasonably and negatively impact upon the applicants' use of the property and that there are no reasonable practicable alternatives: *Due to the position of the mature woodland grove on the property, impacts are unavoidable. Especially when factoring the City's minimum setback requirements and minimum dwelling size requirements for the proposed residence. The applicants do not own any other property in the City to serve as an alternate site.*

3. The Special Exception, including any conditions imposed under this Section will:
 - a. be consistent with the existing character of the neighborhood: *The proposed impacts to the mature woodland grove are minimal and will not adversely impact the character of the neighborhood. Furthermore, the proposed single-family residence will be consistent with the existing character of the neighborhood; and*

 - b. not effectively undermine the ability to apply or enforce the requirement with respect to other properties: *The circumstances surrounding this project are unique to the Drager's and thus will not undermine the City's ability to apply or enforce the natural resource protection requirements with respect to other properties ; and*

 - c. be in harmony with the general purpose and intent of the provisions of this Ordinance proscribing the requirement: *As the requested exception is nominal and will be mitigated on site; and whereas the mitigation and remaining trees will be protected in perpetuity by a conservation easement,*

the proposed project is in harmony with the general purpose and intent of the provisions of this Ordinance; and

- d. preserve or enhance the functional values of the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback in co-existence with the development (*this finding only applying to an application to improve or enhance a natural resource feature*):

IV. Environmental Commission review of the §15-10.0208B.2.a., b. and c. factors and recommendations as to findings thereon:

1. Characteristics of the real property, including, but not limited to, relative placement of improvements thereon with respect to property boundaries or otherwise applicable setbacks: *The project will meet all other zoning requirements.*
2. Any exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district: *The Drager's property is larger than any of the adjacent lots and probably the only divisible lot on the block. Furthermore, the other lots on the block we're all developed prior to the City's natural resource protection standards.*
3. Existing and future uses of property; useful life of improvements at issue; disability of an occupant: *The existing use is residential and the future use will remain residential.*
4. Aesthetics: *The proposed special exception will have minimal impacts on the aesthetics of the property. When completed, the new home will be consistent with the aesthetics of neighboring properties.*
5. Degree of noncompliance with the requirement allowed by the Special Exception: *The Special Exception requested is to impact approximately 0.03 acres (1,307 square feet) of mature woodland grove (or 1 extra tree), beyond the allowable 30% impact. In other words, the request is to remove six (6) trees from the sixteen (16) tree mature woodland grove on Lot 2 for the construction of the Drager's new single-family residence, instead of the allowable five (5) trees.*
6. Proximity to and character of surrounding property: *The Drager's property is bordered by single-family residences to the north, east and west and vacant commercial land to the south.*
7. Zoning of the area in which property is located and neighboring area: *The Drager's property and the properties to the north, east and west are zoned R-3*

Suburban/Estate Single-Family Residence District. The vacant property to the south is zoned B-4 South 27th Street Mixed-Use Commercial District.

8. Any negative affect upon adjoining property: *No negative effects are anticipated.*
9. Natural features of the property: *Mature woodland grove and wetland setbacks.*
10. Environmental impacts: *The Special Exception requested is to impact approximately 0.03 acres (1,307 square feet) of mature woodland grove (or 1 extra tree), beyond the allowable 30% impact. In other words, the request is to remove six (6) trees from the sixteen (16) tree mature woodland grove on Lot 2 for the construction of the Drager's new single-family residence, instead of the allowable five (5) trees.*

V. Environmental Commission Recommendation:

The Environmental Commission has reviewed the subject Application pursuant to §15-10.0208B. of the Unified Development Ordinance and makes the following recommendation:

1. The recommendations set forth in Sections III. and IV. Above are incorporated herein.
2. The Environmental Commission recommends [**approval**] of the Application upon the aforesaid recommendations for the reasons set forth therein.
3. The Environmental Commission recommends that should the Common Council approve the Application, that such approval be subject to the following conditions:
 - a. *A note shall be added to the Conservation Easement exhibit indicating there is a 50-foot wetland setback on the property.*
 - b. *Mitigation using only native tree species shall be provided for impacts to the mature woodland grove.*
 - c. *The location of the wetland setbacks shall be verified.*

The above review and recommendation was passed and adopted at a regular meeting of the Environmental Commission of the City of Franklin on the 24th day of FEBRUARY, 2016.

Dated this 23rd day of MARCH, 2016.

Wesley Cannon
Wesley Cannon, Chairman

Attest:

Curtis Bolton
Curtis Bolton, Vice-Chairman

Exhibit C

Item C.1.



CITY OF FRANKLIN



REPORT TO THE PLAN COMMISSION

Meeting of March 17, 2016

Certified Survey Map and Natural Resource Special Exception

RECOMMENDATION: City Development Staff recommends approval of the Certified Survey Map and Natural Resource Special Exception Applications, subject to the conditions of approval in attached draft resolution and Standards Findings and Decision.

Project Name:	Drager Certified Survey Map and NRSE
Project Address:	2925 West Acre Avenue
Applicant:	David & Rhonda L. Drager
Property Owner:	David & Rhonda L. Drager
Current Zoning:	R-3 Suburban/Estate Single-Family Residence District
2025 Comprehensive Plan:	Residential and Areas of Natural Resource Features
Use of Surrounding Properties:	Single-family residential to the north, east and west and vacant land zoned mixed-use commercial to the south.
Applicant Action Requested:	Recommendation to the Common Council for approval of the proposed Certified Survey Map (CSM) and Natural Resource Special Exception (NRSE)

Please note:

- Staff recommendations are *underlined, in italics* and are included in the draft ordinance.

INTRODUCTION:

On September 22, 2015, the applicants filed a Certified Survey Map (CSM) Application with the Department of City Development, requesting approval to split an approximately 1.83-acre property into two parcels. Mr. and Mrs. Drager intend to build a new single-family home for themselves on the newly created parcel. The initial CSM application submittal lacked a complete Natural Resource Protection Plan (NRPP) as required by Section 15-7.0201 of the City of Franklin Unified Development Ordinance. At that time, the applicants were not sure whether protected resources would be impacted by their proposed development, because they did not have a design for their new home yet. As a result, a complete NRPP could not be completed until building plans were prepared by an architect.

According to Section 15-9.0309-C of the UDO, the Common Council shall approve, approve conditionally and thereby require resubmission of corrected Certified Survey Map, or reject such Certified Survey Map within ninety (90) days from the date of filing of the map unless time is extended by agreement with the Subdivider. December 21st, 2015 was the 90-day deadline for the application. Therefore, Staff recommended the applicants provide the City with a letter granting

an extension for reviewing their application beyond the 90 day deadline. On October 26, 2015, Staff received a letter from David and Rhonda Drager granting the City a 120-day extension for reviewing their CSM application. With the extension, the new deadline for the Common Council to approve, approve conditionally and thereby require resubmission of corrected Certified Survey Map, or reject such Certified Survey Map is April 19, 2016.

On February 16, 2016, after completion of architectural plans for their new home, the Drager's submitted a Natural Resource Special Exception Application to the Department of City Development. The applicants are requesting approval of a Special Exception to Natural Resource Feature Provisions to impact approximately 0.03 acres (1,307 square feet) of mature woodland grove.

PROJECT DESCRIPTION:

The property at 2925 West Acre Avenue is approximately 1.83-acres and encompasses the Drager's existing single-family residence. As previously stated, the Drager's are proposing to divide their property into two lots. The proposed lots are shown on the Certified Survey Map (CSM) as Lot 1 and Lot 2 respectively. Lot 1 will retain the Drager's existing home and accessory structures and have an area of approximately 0.91 acres. Staff recommends the applicant demonstrate the existing driveway on Lot 1 of the proposed CSM meets the minimum required 6' setback from the west lotline. Lot 2 will be a vacant developable lot and have an area of approximately 0.92 acres. The Drager's are planning to build a new single-family home for themselves on Lot 2. Both lots will be served by sanitary sewer, but public water is not available in this area of the City. The applicants must request the Common Council extend public water to serve the proposed new lots and if rejected, then a well-water system may be utilized for each lot. Therefore, Staff recommends the note on Sheet 1 of 4 stating, "Land is served by public Sanitary Sewer and Water" be changed to, "This land is served by public sanitary sewer only; public water is not available in this area."

The proposed lots meet the R-3 Suburban/Estate Single-Family Residence District minimum lot area of 20,000 square feet as well as the minimum lot width of 100 feet. While the existing lot is being divided in half, the two proposed lots are still comparable in size to adjacent lots on West Acre Avenue. The proposed CSM is bordered to the north, east and west by single-family lots that range from 0.78 acres to 0.94 acres.

In addition to the Certified Survey Map Application, the applicant is requesting approval of a Special Exception to Natural Resource Feature Provisions to impact approximately 0.03 acres (1,307 square feet) of mature woodland grove, beyond the allowable 30% impact (0.11 acres), for the construction of a new single-family home on the proposed Lot 2.

According to Division 15-11.0100 of the City of Franklin Unified Development Ordinance a Mature Woodland is defined as, "An area or stand of trees whose total combined canopy covers an area of one (1) acre or more and at least fifty (50) percent of which is composed of canopies of trees having a diameter at breast height (DBH) of at least ten (10) inches; or any grove consisting of eight (8) or more individual trees having a DBH of at least twelve (12) inches whose combined canopies cover at least fifty (50) percent of the area encompassed by the grove."

Based on a site field reconnaissance conducted by Tina Myers, PWS, Ecologist/Project Manager for R.A. Smith National on June 9, 2015, the property contains one mature woodland grove totaling 0.38 acres. The grove consists of more than eight (sixteen total) healthy trees that were 12" or greater including tree species such as box elder (*Acer negundo*), silver maple (*Acer saccharinum*), white willow (*salix alba*), American elm (*Ulmus pumila*) and apple tree (*Malus, pumila*). The property also contains two 50-foot wetland setbacks, totaling 0.054 acres, which are associated with two adjacent off-site wetlands. The applicant is not proposing any impacts to the wetland setbacks on the property.

The applicant is proposing to remove 0.14 acres (38%) of the mature woodland grove, which represents six total trees. The specific trees to be removed include an 18.0" diameter at breast height (DBH) silver maple, two 14.5" DBH silver maples, 22.0" DBH silver maple, 43" DBH white willow and 10.5" DBH apple tree. This would result in ten (10) trees with an area of 0.24 acres remaining on the property. The Wisconsin Department of Natural Resources (WDNR) and U.S. Army Corps of Engineers (USACOE) do not claim jurisdiction over mature woodlands, which is a protection standard required solely by the city of Franklin Unified Development Ordinance. Therefore, no permits are required from either the WDNR or the USACOE.

The applicant is proposing .038 acres of woodland mitigation, which equates to one 2.5" native deciduous tree. The proposed deciduous tree will be planted in the middle of the remaining portion of the mature woodland grove, along the east property line of the proposed Lot 2. The applicant will be selecting one of the following species for the mitigation planting American Basswood (*Tilia americana*), Common Hackberry (*Celtis occidentalis*), Sugar Maple (*Acer saccharum*), Red Oak (*Quercus rubra*) and Bur Oak (*Quercus macrocarpa*). The proposed mitigation complies with mitigation standards for woodlands found in Section 15-4.0103B.1 of the City of Franklin Unified Development Ordinance. Staff recommends the mitigation planting and remaining trees on site, with the exception of Tree No. 3, be placed in a Conservation Easement. Staff also recommends the Conservation Easement be added to the face of the Certified Survey Map. Finally, Staff recommends submittal of a written Conservation Easement for review and approval by the Common Council and recorded with the Milwaukee County Register of Deeds Office.

The Environmental Commission considered the merits of the requested Natural Resource Special Exception at their meeting held on February 24, 2016 and made a recommendation dated March 11, 2016. The Environmental Commission recommended approval under the following specified conditions:

1. A note shall be added to the Conservation Easement exhibit indicating there is a 50-foot wetland setback on the property.
2. Mitigation shall be provided for the proposed impacts to the mature woodland grove.
3. The location of the wetland setbacks shall be verified.

CONCLUSION:

City Development Staff recommends approval of the Certified Survey Map and Natural Resource Special Exception Applications, subject to the conditions of approval in the attached draft resolution and Standards Finding and Decision.

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<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE</p> <p style="text-align: center;">04/04/16</p>
<p style="text-align: center;">REPORTS & RECOMMENDATIONS</p>	<p style="text-align: center;">RESOLUTION CONDITIONALLY APPROVING A 2 LOT CERTIFIED SURVEY MAP, BEING THAT PART OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, STATE OF WISCONSIN (DAVID DRAGER AND RHONDA L. DRAGER, APPLICANTS) (2925 WEST ACRE AVENUE)</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>G.9.</i></p>

At its March 17, 2016, meeting the Plan Commission recommended approval of a resolution conditionally approving a 2 lot certified survey map, being that part of the Southeast 1/4 of Section 13, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, State of Wisconsin (David Drager and Rhonda L. Drager, Applicants) (2925 West Acre Avenue).

Following the March 17, 2016, Plan Commission meeting, the applicant submitted a revised Certified Survey Map addressing most of Staff's conditions of approval. Therefore, the resolution has been revised to remove the following conditions:

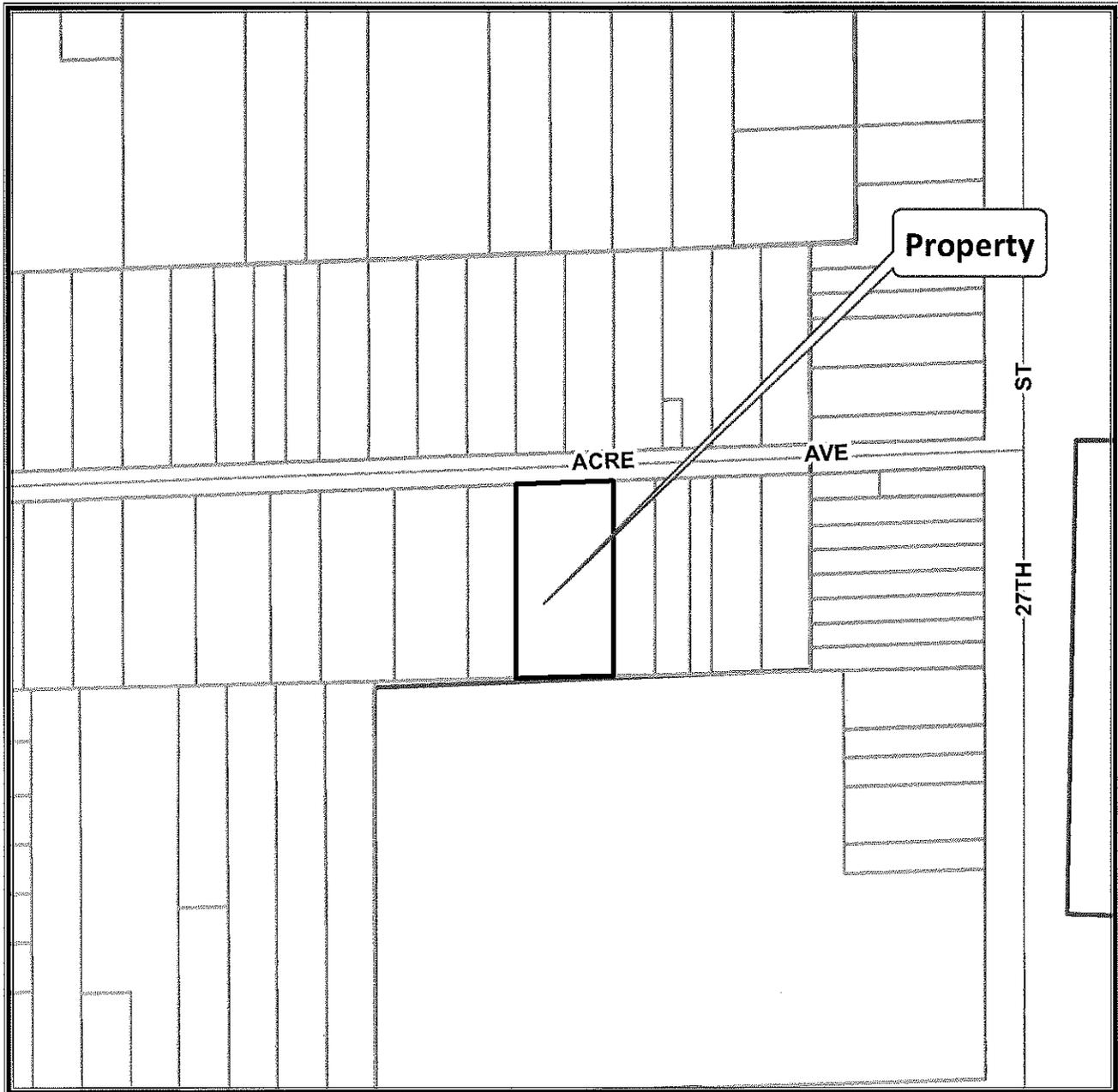
6. The existing driveway on Lot 1 of the proposed Certified Survey Map shall meet the minimum required 6-foot driveway setback, in accordance with Section 15-5.0202C.8 of the City of Franklin Unified Development Ordinance.
7. The note on Sheet 1 of 4 stating, "Land is served by public Sanitary Sewer and Water" shall be changed to, "This land is served by public sanitary sewer only; public water is not available in this area."
8. The mitigation planting and the remaining trees of the mature woodland grove, with the exception of Tree No. 3, shall be placed in a Conservation Easement.
9. The Conservation Easement shall be graphically indicated and clearly delineated and dimensioned on the face of the Certified Survey Map in accordance with Section 15-7.0702P of the Unified Development Ordinance.

COUNCIL ACTION REQUESTED

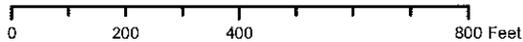
A motion to adopt Resolution No. 2016-_____, a resolution conditionally approving a 2 lot certified survey map, being that part of the Southeast 1/4 of Section 13, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, State of Wisconsin (David Drager and Rhonda L. Drager, Applicants) (2925 West Acre Avenue).



2925 W. Acre Avenue



Planning Department
(414) 425-4024



2016 Aerial Photo

This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. This map is provided for informational purposes only and may not be sufficient or appropriate for legal, engineering, or surveying purposes.

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2016-_____

A RESOLUTION CONDITIONALLY APPROVING A 2 LOT CERTIFIED
SURVEY MAP, BEING THAT PART OF THE SOUTHEAST 1/4 OF SECTION 13,
TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, COUNTY
OF MILWAUKEE, STATE OF WISCONSIN
(DAVID DRAGER AND RHONDA L. DRAGER, APPLICANTS)
(2925 WEST ACRE AVENUE)

WHEREAS, the City of Franklin, Wisconsin, having received an application for approval of a certified survey map, such map being that part of the Southeast 1/4 of Section 13, Town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, more specifically, of the property located at 2925 West Acre Avenue, bearing Tax Key No. 832-9962-000, David Drager and Rhonda L. Drager, applicants; said certified survey map having been reviewed by the City Plan Commission and the Plan Commission having recommended approval thereof pursuant to certain conditions; and

WHEREAS, the Common Council having reviewed such application and Plan Commission recommendation and the Common Council having determined that such proposed certified survey map is appropriate for approval pursuant to law upon certain conditions.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Certified Survey Map submitted by David Drager and Rhonda L. Drager, as described above, be and the same is hereby approved, subject to the following conditions:

1. That any and all objections made and corrections required by the City of Franklin, by Milwaukee County, and by any and all reviewing agencies, shall be satisfied and made by the applicant, prior to recording.
2. That all land development and building construction permitted or resulting under this Resolution shall be subject to impact fees imposed pursuant to §92-9. of the Municipal Code or development fees imposed pursuant to §15-5.0110 of the Unified Development Ordinance, both such provisions being applicable to the development and building permitted or resulting hereunder as it occurs from time to time, as such Code and Ordinance provisions may be amended from time to time.
3. Each and any easement shown on the Certified Survey Map shall be the subject of separate written grant of easement instrument, in such form as provided within the *City of Franklin Design Standards and Construction Specifications* and such form and content as may otherwise be reasonably required by the City Engineer or

DAVID DRAGER AND RHONDA L. DRAGER – CERTIFIED SURVEY MAP
RESOLUTION NO. 2016-_____

Page 2

designee to further and secure the purpose of the easement, and all being subject to the approval of the Common Council, prior to the recording of the Certified Survey Map.

4. David Drager and Rhonda L. Drager, successors and assigns, and any developer of the David Drager and Rhonda L. Drager 2 lot certified survey map project, shall pay to the City of Franklin the amount of all development compliance, inspection and review fees incurred by the City of Franklin, including fees of consults to the City of Franklin, within 30 days of invoice for same. Any violation of this provision shall be a violation of the Unified Development Ordinance, and subject to §15-9.0502 thereof and §1-19. of the Municipal Code, the general penalties and remedies provisions, as amended from time to time.
5. The approval granted hereunder is conditional upon David Drager and Rhonda L. Drager and the 2 lot certified survey map project for the property located at 2925 West Acre Avenue: (i) being in compliance with all applicable governmental laws, statutes, rules, codes, orders and ordinances; and (ii) obtaining all other governmental approvals, permits, licenses and the like, required for and applicable to the project to be developed and as presented for this approval.
6. A written Conservation Easement shall be submitted for review and approval by the Common Council and recorded with the Milwaukee County Register of Deeds Office.

BE IT FURTHER RESOLVED, that the Certified Survey Map, certified by owners, David Drager and Rhonda L. Drager, be and the same is hereby rejected without final approval and without any further action of the Common Council, if any one, or more than one of the above conditions is or are not met and satisfied within 180 days from the date of adoption of this Resolution.

BE IT FINALLY RESOLVED, that upon the satisfaction of the above conditions within 180 days of the date of adoption of this Resolution, same constituting final approval, and pursuant to all applicable statutes and ordinances and lawful requirements and procedures for the recording of a certified survey map, the City Clerk is hereby directed to obtain the recording of the Certified Survey Map, certified by owners, David Drager and Rhonda L. Drager, with the Office of the Register of Deeds for Milwaukee County.

DAVID DRAGER AND RHONDA L. DRAGER – CERTIFIED SURVEY MAP
RESOLUTION NO. 2016-_____

Page 3

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2016.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2016.

APPROVED:

Stephen R. Olson, Mayor

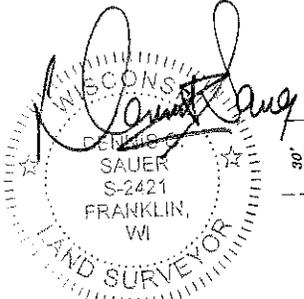
ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

CERTIFIED SURVEY MAP NO.

Being a part of the Southeast 1/4 of the Southeast 1/4 of Section 13, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.



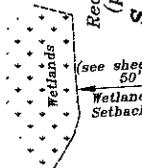
September 8, 2015
 Revised March 9, 2016
 Revised March 21, 2016
 Revised March 24, 2016

Prepared by:
 Metropolitan Survey Service
 9415 W. Forest Home Ave.
 Hales Corners, WI 53130

Prepared for:
 David & Rhonda Drager
 2925 W. Acre Ave.
 Franklin, WI 53132

Parcel 2
 C.S.M. No. 6958
 Owners:
 Jack & Mary Wojes
 Zoned: R-3

Scale:
 1"=60'



R-3 Zoning Setback Requirements:
 Front = 45ft.
 Rear = 30ft.
 Side = 10ft.

This land is served by public sanitary sewer only; public water is not available in this area at the time this map was prepared.

- - Denotes 1" x 24" iron pipe set.
- ⊙ - Denotes iron pipe found and accepted.

Map bearings refer to Grid North of the Wisconsin State Plane Co-ordinate System, South Zone (NAD-27), with the East line of the SE 1/4 of Sec. 13, T5N, R21E having an assumed bearing of N 0°03'50" W.

C/L W. Acre Ave.

(60' R.O.W.)

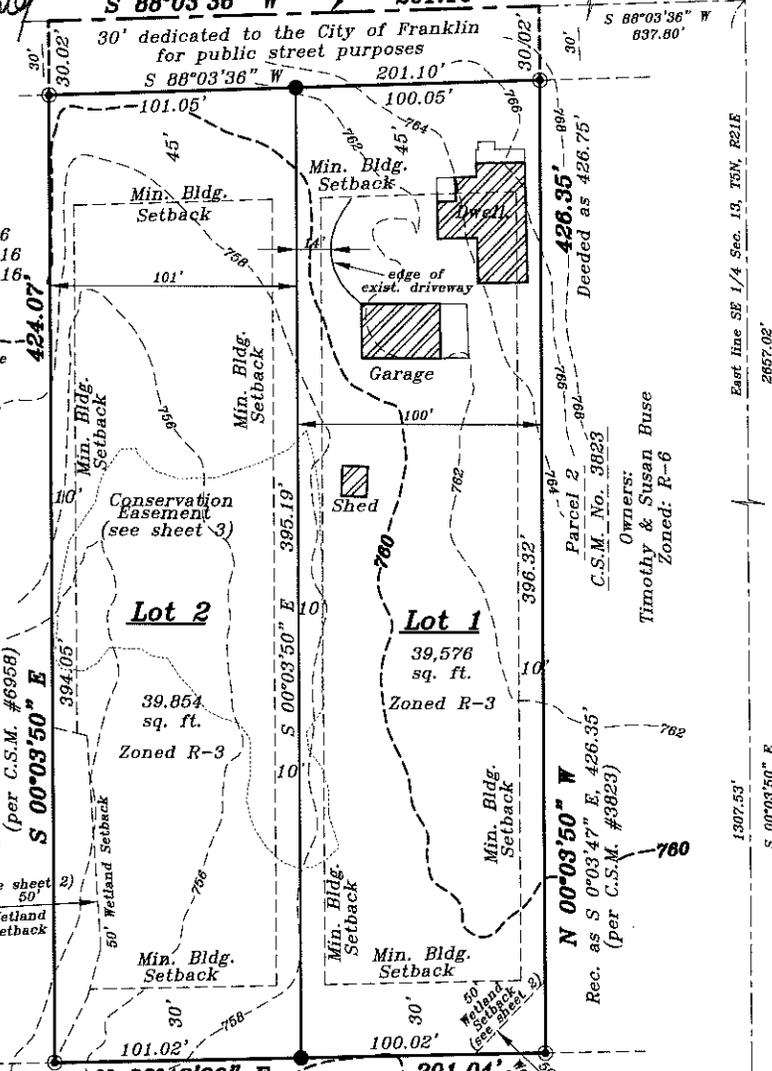
S 88°03'36" W 201.10'

30' dedicated to the City of Franklin for public street purposes

S 88°03'36" W 201.10'

NE Cor., SE 1/4 Sec. 13-5-21 (conc mon. w/brass cap)
 N = 332,768.13
 E = 2,549,168.52

East line SE 1/4 Sec. 13, T5N, R21E
 2667.02'



Owners:
 Timothy & Susan Fuse
 Zoned: R-6

C.S.M. No. 3823

Rec. as S 0°03'47" E 426.35' (per C.S.M. #3823)

Rec. as N 0°03'47" W (per C.S.M. #6958)

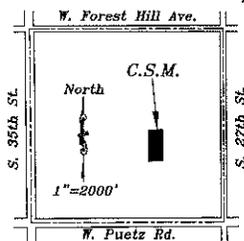
S 00°03'50" E

Rec. as S 0°03'47" E 426.35' (per C.S.M. #3823)

N 88°42'30" E

Unplatted Lands

Owner:
 Lenchek Family Trust
 Zoned: B-4



SE Cor., SE 1/4 Sec. 13-5-21 (conc mon. w/brass cap)
 N = 330,111.28
 E = 2,549,159.48

SE 1/4 Sec. 13, T5N, R21E

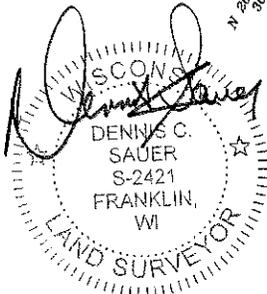
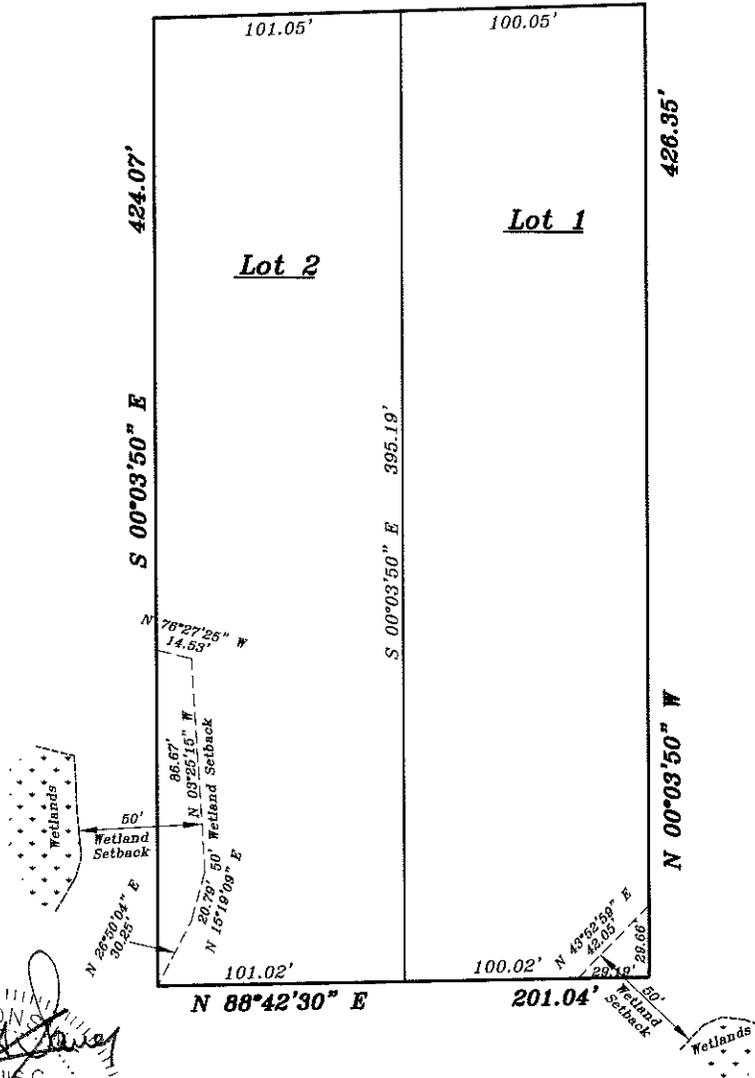


Graphic Scale
 Scale: 1"=60'

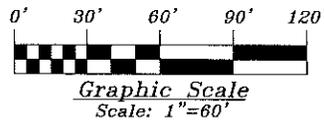
CERTIFIED SURVEY MAP NO. _____

Being a part of the Southeast 1/4 of the Southeast 1/4 of Section 13, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

Wetland Setback



March 21, 2016



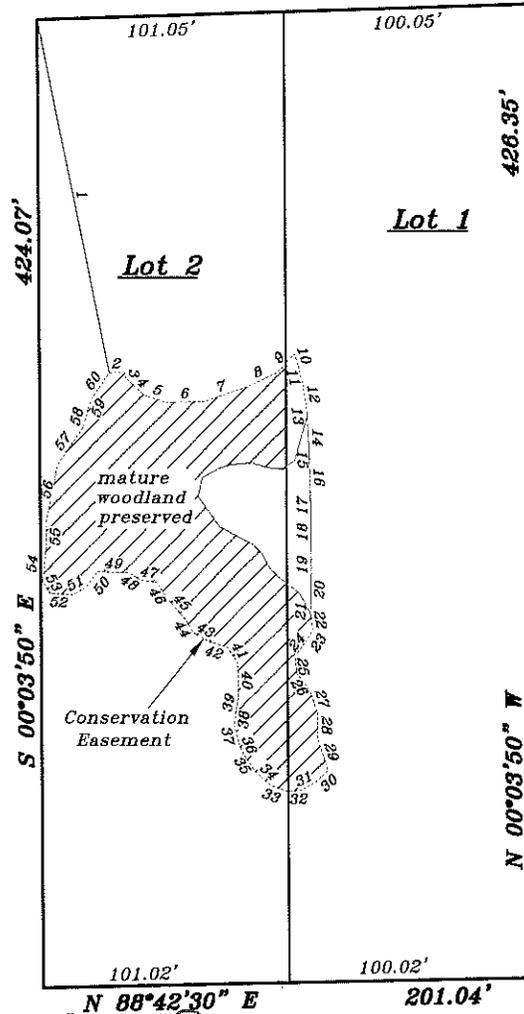
Scale: 1"=60'



CERTIFIED SURVEY MAP NO. _____

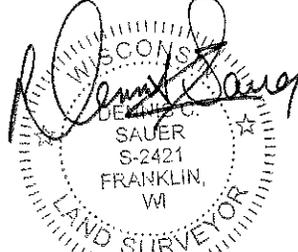
Being a part of the Southeast 1/4 of the Southeast 1/4 of Section 13, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

Conservation Easement

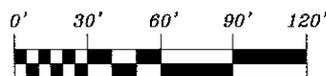


Conservation Easement

LINE	LENGTH	BEARING
1	146.40	S11°18'51"E
2	6.21	N88°18'31"E
3	2.15	S09°47'26"E
4	10.21	S46°29'55"E
5	9.77	S72°46'39"E
6	15.23	N89°16'48"E
7	19.02	N71°24'46"E
8	13.47	N64°52'25"E
9	10.52	N43°14'46"E
10	3.54	S17°39'48"E
11	9.12	S14°07'33"E
12	9.23	S08°42'05"E
13	7.83	S05°43'37"E
14	9.62	S01°07'17"E
15	5.95	S00°55'20"E
16	11.33	S03°10'12"E
17	10.75	S00°04'45"E
18	10.75	S00°23'14"W
19	15.91	S00°14'10"W
20	5.16	S01°51'50"W
21	7.35	S00°16'32"W
22	4.91	S09°07'17"E
23	5.95	S30°40'34"W
24	6.89	S37°24'13"W
25	7.31	S06°52'24"E
26	8.72	S36°37'45"E
27	9.10	S18°21'19"E
28	10.58	S00°21'37"E
29	13.87	S17°19'33"E
30	7.31	S47°02'32"W
31	6.63	S60°39'31"W
32	5.90	S87°49'15"W
33	6.33	N68°50'54"W
34	9.09	N48°10'43"W
35	8.08	N33°14'47"W
36	5.07	N22°28'30"W
37	7.23	N13°19'46"W
38	5.96	N05°14'23"E
39	5.49	N11°31'19"E
40	14.26	N00°39'18"W
41	7.74	N34°55'28"W
42	7.78	N73°35'12"W
43	7.04	N62°01'30"W
44	8.35	N34°18'56"W
45	9.34	N41°37'24"W
46	8.43	N32°58'32"W
47	6.52	N83°14'29"W
48	5.56	N57°09'01"W
49	12.62	N88°07'09"W
50	8.17	S38°30'29"W
51	6.26	S60°11'43"W
52	9.18	N85°45'59"W
53	5.65	N31°21'45"W
54	13.88	N05°59'26"E
55	11.74	N01°51'46"E
56	22.30	N11°46'19"E
57	18.75	N34°13'43"E
58	7.26	N13°58'04"E
59	4.90	N20°58'24"E
60	12.62	N34°31'37"E



March 21, 2016



Graphic Scale
Scale: 1"=60'

Scale:
1"=60'



CERTIFIED SURVEY MAP NO. _____

Being a part of the Southeast 1/4 of the Southeast 1/4 of Section 13,
Township 5 North, Range 21 East, in the City of Franklin, Milwaukee
County, Wisconsin.

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN)
MILWAUKEE COUNTY) SS

I, Dennis C. Sauer, Professional Land Surveyor, do hereby certify:
That I have surveyed a part of the Southeast 1/4 of the Southeast 1/4
of Section 13, Township 5 North, Range 21 East, in the City Franklin,
Milwaukee County, Wisconsin; bounded and described as follows:
Commencing at the Northeast corner of said Southeast 1/4; thence S
00° 03' 50" E, along the East line of said Southeast 1/4, 1349.49
feet to a point on the Centerline of West Acre Avenue; thence S 88°
03' 36" W along said Centerline, 837.80 feet to the point of
beginning of the lands to be described; thence continuing S 88° 03'
36" W along said Centerline, 201.10 feet to a point; thence S 00° 03'
50" E, 424.07 feet to a point; thence N 88° 42' 30" E, 201.04 feet to
a point; thence N 00° 03' 50" W, 426.35 feet to the point of
beginning. Dedicating therefrom the North 30.00 feet for Public
Street Purposes. Said lands contain 85,464 square feet (1.96 acres).

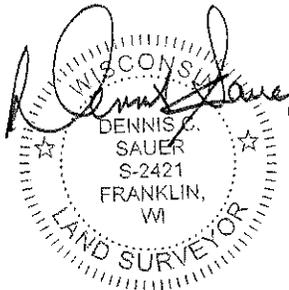
That I have made such survey, land division and map by the direction
of David Drager and Rhonda L Drager, husband and wife, owners of said
land.

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 236.34 of
the Wisconsin State Statutes and the Unified Development Ordinance -
Division 15, of the City of Franklin Municipal Code in surveying,
dividing and mapping the same.

SEPTEMBER 8, 2015
Date
MARCH 21, 2016

Dennis C. Sauer
Dennis C. Sauer
Professional Land Surveyor S-2421



PREPARED FOR:
David & Rhonda Drager
2925 W Acre Avenue
Franklin, WI 53132

PREPARED BY:
Metropolitan Survey Service
9415 West Forest Home Avenue
Hales Corners, WI 53130

CERTIFIED SURVEY MAP NO. _____

Being a part of the Southeast 1/4 of the Southeast 1/4 of Section 13,
Township 5 North, Range 21 East, in the City of Franklin, Milwaukee
County, Wisconsin.

OWNER'S CERTIFICATE

As owners, David Drager and Rhonda L Drager, husband and wife, do hereby certify that we have caused the land described on this map to be surveyed, divided, mapped and dedicated as represented on this map in accordance with the requirements of Chapter 236.34 of the Wisconsin State Statutes and Unified Development Ordinance - Division 15, of the City of Franklin Municipal Code.

WITNESS the hand and seal of said owners this 25 day of March, 2016.

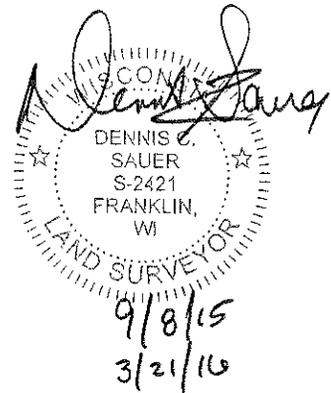
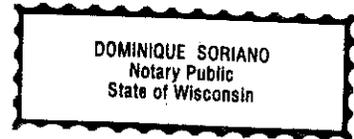
[Signature]
David Drager

[Signature]
Rhonda L Drager

STATE OF WISCONSIN)
Milwaukee COUNTY) SS

PERSONALLY came before me this 25 day of March, 2016, David Drager and Rhonda L Drager, husband and wife, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Dominique Soriano
Notary Public
State of Wisconsin
My Commission Expires: Dec. 4, 2018



CERTIFIED SURVEY MAP NO. _____

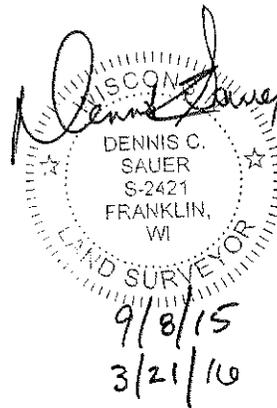
Being a part of the Southeast 1/4 of the Southeast 1/4 of Section 13,
Township 5 North, Range 21 East, in the City of Franklin, Milwaukee
County, Wisconsin.

COMMON COUNCIL APPROVAL

APPROVED and Dedication accepted by the Common Council of the City of
Franklin, Resolution No. _____, on this _____ day of
_____, 20_____.

Stephen Olson, Mayor
City of Franklin

Sandra L. Wesolowski, Clerk
City of Franklin



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

**CITY OF FRANKLIN****REPORT TO THE PLAN COMMISSION**

Meeting of March 17, 2016

Certified Survey Map and Natural Resource Special Exception

RECOMMENDATION: City Development Staff recommends approval of the Certified Survey Map and Natural Resource Special Exception Applications, subject to the conditions of approval in attached draft resolution and Standards Findings and Decision.

Project Name:	Drager Certified Survey Map and NRSE
Project Address:	2925 West Acre Avenue
Applicant:	David & Rhonda L. Drager
Property Owner:	David & Rhonda L. Drager
Current Zoning:	R-3 Suburban/Estate Single-Family Residence District
2025 Comprehensive Plan:	Residential and Areas of Natural Resource Features
Use of Surrounding Properties:	Single-family residential to the north, east and west and vacant land zoned mixed-use commercial to the south.
Applicant Action Requested:	Recommendation to the Common Council for approval of the proposed Certified Survey Map (CSM) and Natural Resource Special Exception (NRSE)

Please note:

- Staff recommendations are *underlined, in italics* and are included in the draft ordinance.

INTRODUCTION:

On September 22, 2015, the applicants filed a Certified Survey Map (CSM) Application with the Department of City Development, requesting approval to split an approximately 1.83-acre property into two parcels. Mr. and Mrs. Drager intend to build a new single-family home for themselves on the newly created parcel. The initial CSM application submittal lacked a complete Natural Resource Protection Plan (NRPP) as required by Section 15-7.0201 of the City of Franklin Unified Development Ordinance. At that time, the applicants were not sure whether protected resources would be impacted by their proposed development, because they did not have a design for their new home yet. As a result, a complete NRPP could not be completed until building plans were prepared by an architect.

According to Section 15-9.0309-C of the UDO, the Common Council shall approve, approve conditionally and thereby require resubmission of corrected Certified Survey Map, or reject such Certified Survey Map within ninety (90) days from the date of filing of the map unless time is extended by agreement with the Subdivider. December 21st, 2015 was the 90-day deadline for the application. Therefore, Staff recommended the applicants provide the City with a letter granting

an extension for reviewing their application beyond the 90 day deadline. On October 26, 2015, Staff received a letter from David and Rhonda Drager granting the City a 120-day extension for reviewing their CSM application. With the extension, the new deadline for the Common Council to approve, approve conditionally and thereby require resubmission of corrected Certified Survey Map, or reject such Certified Survey Map is April 19, 2016.

On February 16, 2016, after completion of architectural plans for their new home, the Drager's submitted a Natural Resource Special Exception Application to the Department of City Development. The applicants are requesting approval of a Special Exception to Natural Resource Feature Provisions to impact approximately 0.03 acres (1,307 square feet) of mature woodland grove.

PROJECT DESCRIPTION:

The property at 2925 West Acre Avenue is approximately 1.83-acres and encompasses the Drager's existing single-family residence. As previously stated, the Drager's are proposing to divide their property into two lots. The proposed lots are shown on the Certified Survey Map (CSM) as Lot 1 and Lot 2 respectively. Lot 1 will retain the Drager's existing home and accessory structures and have an area of approximately 0.91 acres. Staff recommends the applicant demonstrate the existing driveway on Lot 1 of the proposed CSM meets the minimum required 6' setback from the west lotline. Lot 2 will be a vacant developable lot and have an area of approximately 0.92 acres. The Drager's are planning to build a new single-family home for themselves on Lot 2. Both lots will be served by sanitary sewer, but public water is not available in this area of the City. The applicants must request the Common Council extend public water to serve the proposed new lots and if rejected, then a well-water system may be utilized for each lot. Therefore, Staff recommends the note on Sheet 1 of 4 stating, "Land is served by public Sanitary Sewer and Water" be changed to, "This land is served by public sanitary sewer only; public water is not available in this area."

The proposed lots meet the R-3 Suburban/Estate Single-Family Residence District minimum lot area of 20,000 square feet as well as the minimum lot width of 100 feet. While the existing lot is being divided in half, the two proposed lots are still comparable in size to adjacent lots on West Acre Avenue. The proposed CSM is bordered to the north, east and west by single-family lots that range from 0.78 acres to 0.94 acres.

In addition to the Certified Survey Map Application, the applicant is requesting approval of a Special Exception to Natural Resource Feature Provisions to impact approximately 0.03 acres (1,307 square feet) of mature woodland grove, beyond the allowable 30% impact (0.11 acres), for the construction of a new single-family home on the proposed Lot 2.

According to Division 15-11.0100 of the City of Franklin Unified Development Ordinance a Mature Woodland is defined as, "An area or stand of trees whose total combined canopy covers an area of one (1) acre or more and at least fifty (50) percent of which is composed of canopies of trees having a diameter at breast height (DBH) of at least ten (10) inches; or any grove consisting of eight (8) or more individual trees having a DBH of at least twelve (12) inches whose combined canopies cover at least fifty (50) percent of the area encompassed by the grove."

Based on a site field reconnaissance conducted by Tina Myers, PWS, Ecologist/Project Manager for R.A. Smith National on June 9, 2015, the property contains one mature woodland grove totaling 0.38 acres. The grove consists of more than eight (sixteen total) healthy trees that were 12" or greater including tree species such as box elder (*Acer negundo*), silver maple (*Acer saccharinum*), white willow (*salix alba*), American elm (*Ulmus pumila*) and apple tree (*Malus, pumila*). The property also contains two 50-foot wetland setbacks, totaling 0.054 acres, which are associated with two adjacent off-site wetlands. The applicant is not proposing any impacts to the wetland setbacks on the property.

The applicant is proposing to remove 0.14 acres (38%) of the mature woodland grove, which represents six total trees. The specific trees to be removed include an 18.0" diameter at breast height (DBH) silver maple, two 14.5" DBH silver maples, 22.0" DBH silver maple, 43" DBH white willow and 10.5" DBH apple tree. This would result in ten (10) trees with an area of 0.24 acres remaining on the property. The Wisconsin Department of Natural Resources (WDNR) and U.S. Army Corps of Engineers (USACOE) do not claim jurisdiction over mature woodlands, which is a protection standard required solely by the city of Franklin Unified Development Ordinance. Therefore, no permits are required from either the WDNR or the USACOE.

The applicant is proposing .038 acres of woodland mitigation, which equates to one 2.5" native deciduous tree. The proposed deciduous tree will be planted in the middle of the remaining portion of the mature woodland grove, along the east property line of the proposed Lot 2. The applicant will be selecting one of the following species for the mitigation planting American Basswood (*Tilia americana*), Common Hackberry (*Celtis occidentalis*), Sugar Maple (*Acer saccharum*), Red Oak (*Quercus rubra*) and Bur Oak (*Quercus macrocarpa*). The proposed mitigation complies with mitigation standards for woodlands found in Section 15-4.0103B.1 of the City of Franklin Unified Development Ordinance. Staff recommends the mitigation planting and remaining trees on site, with the exception of Tree No. 3, be placed in a Conservation Easement. Staff also recommends the Conservation Easement be added to the face of the Certified Survey Map. Finally, Staff recommends submittal of a written Conservation Easement for review and approval by the Common Council and recorded with the Milwaukee County Register of Deeds Office.

The Environmental Commission considered the merits of the requested Natural Resource Special Exception at their meeting held on February 24, 2016 and made a recommendation dated March 11, 2016. The Environmental Commission recommended approval under the following specified conditions:

1. A note shall be added to the Conservation Easement exhibit indicating there is a 50-foot wetland setback on the property.
2. Mitigation shall be provided for the proposed impacts to the mature woodland grove.
3. The location of the wetland setbacks shall be verified.

CONCLUSION:

City Development Staff recommends approval of the Certified Survey Map and Natural Resource Special Exception Applications, subject to the conditions of approval in the attached draft resolution and Standards Finding and Decision.