

NOTICE

A meeting of the City of Evansville Plan Commission will be held on the date and time stated below at City Hall, 31 South Madison Street, Evansville, Wisconsin 53536. Notice is further given that members of the City Council might be in attendance. Requests for persons with disabilities who need assistance to participate in this meeting should be made by calling City Hall: (608)-882-2266 with as much advanced notice as possible. Please silence cell phones and electronic devices during the meeting.

City of Evansville Plan Commission
Regular Meeting
Monday, August 5, 2019, 6:00 p.m.
City Hall (Third Floor), 31 South Madison Street

AGENDA

1. Call to Order
2. Roll Call
3. Motion to Approve Agenda
4. Motion to waive the reading of the minutes from the July 1, 2019 Meeting and approve them as printed.
5. Civility Reminder
6. Citizen appearances other than agenda items listed
7. New Business
 - A. Public Hearing and Review of Land Division Application LD-2019-05 to create a two family twin lot for an existing twin dwelling on Parcel 6-27-533.512 (Tax ID 22204701512) located at 538 and 540 Stonewood Court
 - i. Review Staff Report and Applicant Comments
 - ii. Public Hearing
 - iii. Plan Commissioner Questions and Comments
 - iv. Motion with Conditions
 - B. Public Hearing and Review of Land Division Application LD-2019-06 to create a two family twin lot for an existing twin dwelling on Parcel 6-27-533.511 (Tax ID 22204701511) located at 530 and 532 Stonewood Court
 - i. Review Staff Report and Applicant Comments
 - ii. Public Hearing
 - iii. Plan Commissioner Questions and Comments
 - iv. Motion with Conditions
 - C. Public Hearing and Review of Conditional Use Permit Application CUP-2019-05 to construct a Two Family Twin Dwelling per section 130-983 on Parcel 6-27-316.165 (Tax ID 222009235) located at 42 Gunther Drive and 630 Windsor Lane
 - i. Review Staff Report and Applicant Comments
 - ii. Public Hearing
 - iii. Plan Commissioner Questions and Comments
 - iv. Motion with Conditions

-Mayor Bill Hurtley, Plan Commission Chair

- D. Public Hearing and Review of Conditional Use Permit Application CUP-2019-06 to construct a new garage in the Historic Conservation Overlay District on Parcel 6-27-775 (Tax ID 222063020) located at 26 N First Street
 - i. Review Staff Report and Applicant Comments
 - ii. Public Hearing
 - iii. Plan Commissioner Questions and Comments
 - iv. Motion with Conditions

- E. Public Hearing and Review of Conditional Use Application CUP-2019-07 and Site Plan Application SP-2019-05 to expand a Group Development for Agricultural Services on Parcels 6-27-1200, 6-27-1200.1, 6-27-1160, and 6-27-1160.1 (Landmark Services Coop) located at 6401 N Weary Road
 - v. Review Staff Report and Applicant Comments
 - vi. Public Hearing
 - vii. Plan Commissioner Questions and Comments
 - viii. Motion with Conditions

- F. Public Hearing and Review of Rezone Application RZ-2019-01 to rezone to Light Industrial on Parcel 6-27-1150 (Tax ID 222080100) located at 551 S Cty Rd M
 - i. Review Staff Report and Applicant Comments
 - ii. Public Hearing
 - iii. Plan Commissioner Questions and Comments
 - iv. Motion with Conditions

8. Cemetery Road

9. Education and News: Open Meetings Law Education Materials from City Attorney

10. Next Meeting Dates: Tuesday, September 3, 2019 at 6:00pm

11. Motion to Adjourn

-Mayor Bill Hurtley, Plan Commission Chair

These minutes are not official until approved by the City of Evansville Plan Commission.

**City of Evansville Plan Commission
Regular Meeting
July 1, 2019, 6:00 p.m.
City Hall (Third Floor), 31 South Madison Street**

MINUTES

1. **Call to Order** at 6:01 pm.

2. **Roll Call:**

Members	Present/Absent	Others Present
Mayor Bill Hurtley	P	Noah & Becky Hurley
Aldersperson Rick Cole	P	Fred Johnson, Landmark
Aldersperson Erika Stuart	A	Other Landmark Representatives
Bill Hammann	A	
John Gishnock	P	
Mike Scarmon	P	
Susan Becker	P	

3. **Motion to approve the agenda, striking item 7D, by Cole, seconded by Becker. Approved unanimously.**

4. **Motion to waive the reading of the minutes from the June 3, 2019 Meeting and approve them as printed by Cole, seconded by Becker. Approved unanimously.**

5. **Civility Reminder.** Hurtley noted the City's commitment to civil discourse.

6. **Citizen appearances other than agenda items listed.** Noah and Becky Hurley spoke regarding a proposed land division they will be submitting. Commission discussed the importance of the land division and agreed they saw no challenges to prevent it from moving forward at the next meeting.

7. **New Business**

A. Concept Discussion regarding 630 Windsor Lane Duplex Proposal. Sergeant summarized the proposal informing commission staff requested a corner duplex with stone added to the front.

B. Concept Discussion regarding rezoning 12 Acres of City Owned Property. Sergeant gave a brief history of property and EDC's goal to market as a site for possible rail user through gold shovel certification. Commission discussed and expressed challenges with the industrial users being adjacent to the residential mobile home park.

C. Concept Discussion regarding expansion at Landmark Services Cooperative. Landmark wants to construct a 40,000 SF dry fertilizer facility and open grain storage bunkers. A variance will be required. Commission discussed the proposal and agreed it was an acceptable use for the property and location was appropriate.

These minutes are not official until approved by the City of Evansville Plan Commission.

8. Education and News: “Zoning Practice: Housing Affordability”
9. Next Meeting Dates: Monday, August 5, 2019 at 6:00pm
7. **Motion to Adjourn by Becker, seconded by Cole. Approved unanimously.**



APPLICATION FOR PRELIMINARY AND FINAL LAND DIVISION – STAFF REPORT

Application No.: LD-2019-05 **Applicant:** Hurley Homes

Parcel 6-27-533.512, 538/540 Stonewood Ct

August 5, 2019

Prepared by: Jason Sergeant, Community Development Director

Direct questions and comments to: Jason.sergeant@ci.evansville.wi.gov or 608-882-2285

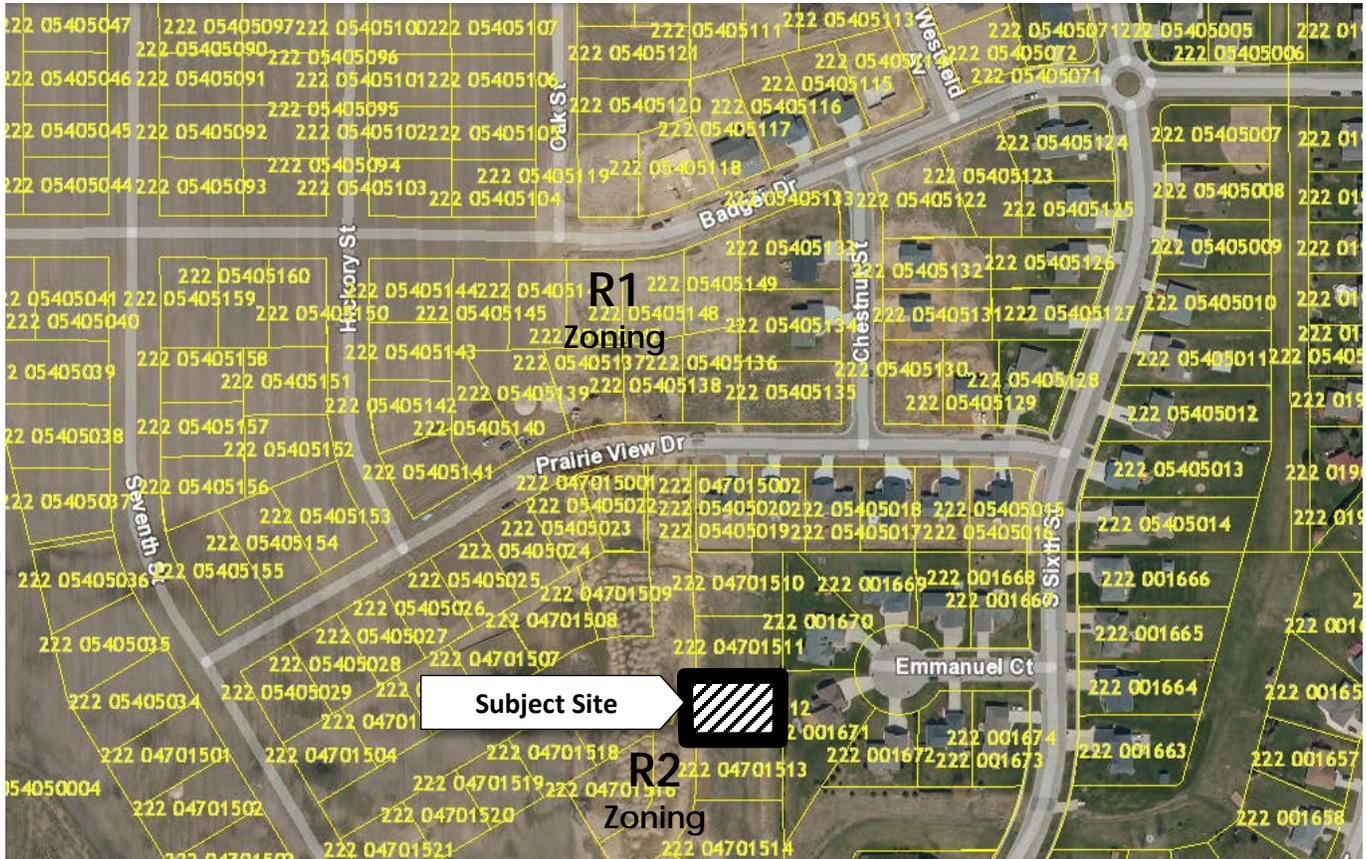


Figure 1 Location Map

Description of request: An application for a preliminary and final land division to create a Two Family Twin Lot on parcel 6-27-533.512 (Tax ID 22204701512) at 538/540 Stonewood Court has been submitted for consideration by the Plan Commission. Municipal Services has reviewed the application and recommended approval.

Existing and Proposed Uses: The existing has a duplex home constructed and is zoned for residential use (R-2). The newly created Two Family Twin parcels would allow each side of the duplex to be independently owner-occupied.

Consistency with the City of Evansville Comprehensive Plan and Municipal Code: The proposed land division and land uses are thoroughly consistent with the Future Land Use Map of the Comprehensive Plan. This would promote infill housing, walkability, and density.

The proposal complies with the design standards and environmental considerations as set forth in the Land Division Ordinance.

Staff Recommended Motion: *Motion to recommend to Common Council approval of certified survey map to divide parcel 6-27-533.512 (Tax ID 22204701512) into a Two-family twin lot located at 538/540 Stonewood Court, finding that the application is in the public interest and meets the objectives contained within Section 110-102(g) of city ordinances, with the condition the final CSM and joint cross access easement agreement is recorded with Rock County Register of Deeds.*

LD-2019-05

**JOINT CROSS-ACCESS AND
MAINTENANCE AGREEMENT**

Document Number

Document Title

In re: Lot 12, Stonewood Grove Subdivision, City of Evansville, Rock County,
Wisconsin.

Recording Area

Name and Return Address

**Attorney Walter E. Shannon
104 West Main St.
Evansville, WI 53536**

6-27-533.512

Parcel Identification Number (PIN)

THIS PAGE IS PART OF THIS LEGAL DOCUMENT – DO NOT REMOVE.

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clause, legal description, etc., may be placed on this first page of the document or may be placed on additional pages of the document.

WRDA Rev. 12/22/2010

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JOINT CROSS ACCESS AND MAINTENANCE AGREEMENT

THIS AGREEMENT, is made this 3rd day of July, 2019 by HURLEY HOMES, LLC, ("Owner").

WHEREAS, Hurley Homes, LLC is the owner of the real estate located at 538 and 540 Stonewood Court, Evansville, Wisconsin, and legally described as follows: Lot 12, Stonewood Grove Subdivision, City of Evansville, Rock County, Wisconsin, (the "Property"), on which a side-by-side zero lot line duplex is located, and

WHEREAS, Owner wishes to establish parameters with regard to the side-by-side zero lot line duplex, and

NOW, THEREFORE, in consideration of the mutual benefits to be obtained, it is agreed as follows:

1. There is a joint wall separating the zero lot line duplexes located on the property described above.
2. The owners of each unit ("Unit Owners"), are equally responsible for the maintenance of the common wall and roof area where the common wall attaches. The cost of maintaining the common wall and roof area where the common wall attaches shall be borne equally by the Unit Owners on either side of said shared wall.
3. The Unit Owners are equally responsible to maintain the joint driveway from Stonewood Court to the garage for their respective unit and agree that they will not block or park in front of the adjoining owner's unit. The cost of maintaining the joint driveway shall be borne equally between the Unit Owners. Neither Unit Owner shall alter or change the joint driveway in any manner, and it shall remain in the same location as when originally erected.
4. In the event of damage or destruction to the common wall, roof where the common wall attaches, and/ or joint driveway from any cause, other than the negligence or intentional act of either party hereto, the Unit Owners shall repair or rebuild said items. The cost of such repair or rebuilding shall be borne equally by the Unit Owners.
5. If either Unit Owner's negligence or intentional act shall cause damage to or destruction of the common wall or joint driveway, such negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay his/her share, or all of such costs in case of negligence or intentional act, the other party may have such item repaired or restored and shall be entitled to have a contractor lien on the lot and dwelling unit of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement costs together with interest at the maximum rate allowable.
6. The Unit Owners agree that there shall be a perpetual eight-foot maintenance easement, four-feet on each side of the zero-lot line side property line dividing the property which

easement shall allow access for normal maintenance and repair of the Unit Owner's respective unit, the common wall, roof where the common wall attaches, and joint driveway.

7. The Unit Owners shall keep all exterior walls of their respective units in good condition and repair at their sole cost and expense. No Unit Owner shall do or permit to be done any act or thing that would tend to depreciate the value of the building (i.e. variance in design, colors, roofing, etc.).

8. The Unit Owners may install a fence. Any fence between the two units may be placed on the zero-lot line with both Units being equally responsible for the construction and maintenance of the fence.

9. The construction of a detached single-family home is restricted in the event either or both sides of the twin dwelling are destroyed.

10. This Joint Cross Access and Maintenance Agreement shall run with the land and shall not be terminated, amended or otherwise altered without the approval of the Evansville City Council.

11. Any dispute arising with respect to this Agreement, its making or validity, its interpretation, or its breach shall be settled by arbitration in Rock County, Wisconsin, by a single arbitrator mutually agreed to by the disputing parties pursuant to the then obtaining rules of the American Arbitration Association. Such arbitration shall be the sole and exclusive remedy for such disputes except as otherwise provided in this Agreement. Any award rendered shall be final and conclusive upon the parties, and a judgment may be entered in any court having jurisdiction. In any proceeding with respect to any dispute arising under or to collect any benefits due under this Agreement, the prevailing party in the proceeding shall be entitled to recover the costs of the proceeding and reasonable attorney fees from the other party.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

13. No modification, termination or attempted waiver of this Agreement, or any provision thereof, shall be valid unless in writing signed by the party against whom the same is sought to be enforced.

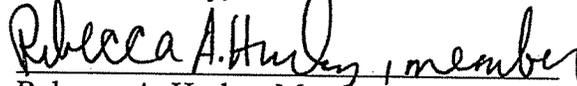
15. This Agreement shall be binding on the parties hereto, their heirs, successors, personal representatives, and assigns.

EXECUTED as set forth below.

Hurley Homes, LLC, by:



Noah A. Hurley, Member



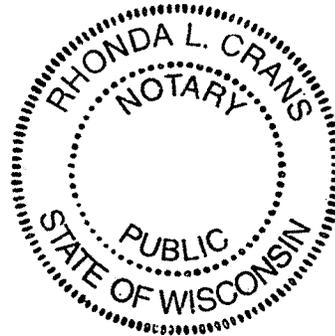
Rebecca A. Hurley, Member

STATE OF WISCONSIN)
COUNTY OF ROCK)ss

Personally came before me this 10th day of July, 2019, the above named Noah A. Hurley and Rebecca A. Hurley, to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of Hurley Homes, LLC.

Rhonda L. Crans

Notary Public, Rock County, Wis.
My Commission exp 11/22/23



This Instrument was drafted by
Attorney Walter Shannon
State Bar No. 1055751
Shannon Law Office, LLC
104 West Main St.
Evansville, WI 53536



APPLICATION FOR PRELIMINARY AND FINAL LAND DIVISION – STAFF REPORT

Application No.: LD-2019-06 **Applicant:** Hurley Homes

Parcel 6-27-533.511, 530/532 Stonewood Ct

August 5, 2019

Prepared by: Jason Sergeant, Community Development Director

Direct questions and comments to: Jason.sergeant@ci.evansville.wi.gov or 608-882-2285

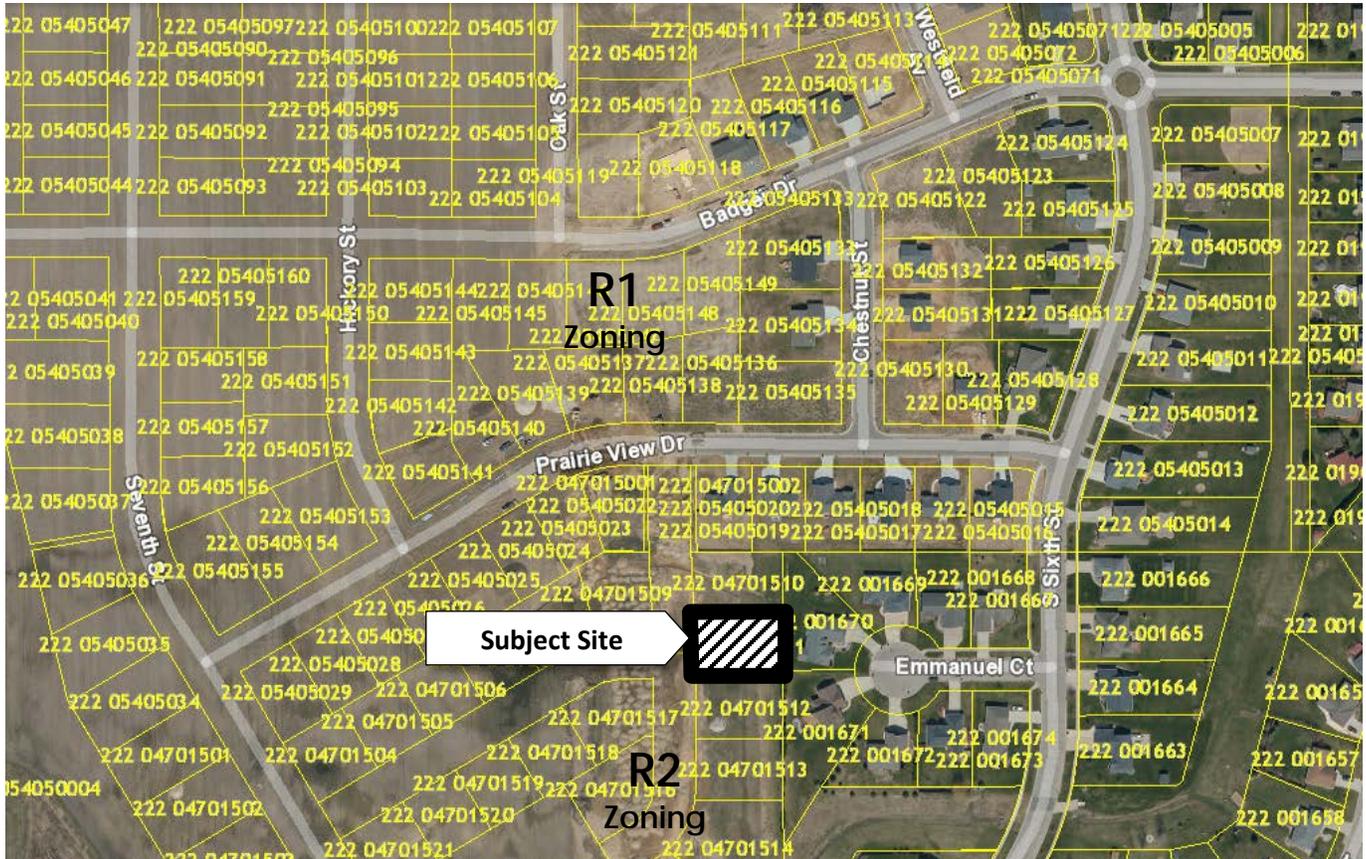


Figure 1 Location Map

Description of request: An application for a preliminary and final land division to create a Two Family Twin Lot on parcel 6-27-533.511 (Tax ID 22204701511) at 530/532 Stonewood Court has been submitted for consideration by the Plan Commission. Municipal Services has reviewed the application and recommended approval.

Existing and Proposed Uses: The existing has a duplex home constructed and is zoned for residential use (R-2). The newly created Two Family Twin parcels would allow each side of the duplex to be independently owner-occupied.

Consistency with the City of Evansville Comprehensive Plan and Municipal Code: The proposed land division and land uses are thoroughly consistent with the Future Land Use Map of the Comprehensive Plan. This would promote infill housing, walkability, and density.

The proposal complies with the design standards and environmental considerations as set forth in the Land Division Ordinance.

Staff Recommended Motion: *Motion to recommend to Common Council approval of certified survey map to divide parcel 6-27-533.511 (Tax ID 22204701511) into a Two-family twin lot located at 530/532 Stonewood Court, finding that the application is in the public interest and meets the objectives contained within Section 110-102(g) of city ordinances, with the condition the final CSM and joint cross access easement agreement is recorded with Rock County Register of Deeds.*

JOINT CROSS ACCESS AND MAINTENANCE AGREEMENT

THIS AGREEMENT, is made this 3rd day of July, 2019 by HURLEY HOMES, LLC, ("Owner").

WHEREAS, Hurley Homes, LLC is the owner of the real estate located at 530 and 532 Stonewood Court, Evansville, Wisconsin, and legally described as follows: Lot 11, Stonewood Grove Subdivision, City of Evansville, Rock County, Wisconsin, (the "Property"), on which a side-by-side zero lot line duplex is located, and

WHEREAS, Owner wishes to establish parameters with regard to the side-by-side zero lot line duplex, and

NOW, THEREFORE, in consideration of the mutual benefits to be obtained, it is agreed as follows:

1. There is a joint wall separating the zero lot line duplexes located on the property described above.
2. The owners of each unit ("Unit Owners"), are equally responsible for the maintenance of the common wall and roof area where the common wall attaches. The cost of maintaining the common wall and roof area where the common wall attaches shall be borne equally by the Unit Owners on either side of said shared wall.
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4. In the event of damage or destruction to the common wall, roof where the common wall attaches, and/ or joint driveway from any cause, other than the negligence or intentional act of either party hereto, the Unit Owners shall repair or rebuild said items. The cost of such repair or rebuilding shall be borne equally by the Unit Owners.
5. If either Unit Owner's negligence or intentional act shall cause damage to or destruction of the common wall or joint driveway, such negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay his/her share, or all of such costs in case of negligence or intentional act, the other party may have such item repaired or restored and shall be entitled to have a contractor lien on the lot and dwelling unit of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement costs together with interest at the maximum rate allowable.
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easement shall allow access for normal maintenance and repair of the Unit Owner's respective unit, the common wall, roof where the common wall attaches, and joint driveway.

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9. The construction of a detached single-family home is restricted in the event either or both sides of the twin dwelling are destroyed.

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12. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

13. No modification, termination or attempted waiver of this Agreement, or any provision thereof, shall be valid unless in writing signed by the party against whom the same is sought to be enforced.

15. This Agreement shall be binding on the parties hereto, their heirs, successors, personal representatives, and assigns.

EXECUTED as set forth below.

Hurley Homes, LLC, by:

[Handwritten signature of Noah A. Hurley]

Noah A. Hurley, Member

[Handwritten signature of Rebecca A. Hurley]

Rebecca A. Hurley, Member

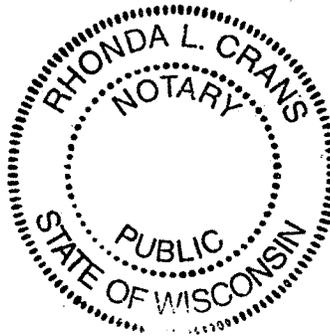
STATE OF WISCONSIN)
COUNTY OF ROCK)ss

Personally came before me this 10th day of July, 2019, the above named Noah A. Hurley and Rebecca A. Hurley, to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of Hurley Homes, LLC.

Rhonda L. Crans

Notary Public, Rock County, Wis.
My Commission exp 1-22-23

This Instrument was drafted by
Attorney Walter Shannon
State Bar No. 1055751
Shannon Law Office, LLC
104 West Main St.
Evansville, WI 53536





STAFF REPORT – CONDITIONAL USE PERMIT APPLICATION

App. No.: CUP-2019-05

Applicant/Property Owner: Forrest Ellsworth

Address: 42 Gunther & 630 Windsor Parcel No.: 6-27-316.165 Tax ID: 222009235

August 5, 2019

Prepared by: Jason Sergeant, Community Development Director
 Prepared for: City of Evansville Plan Commission

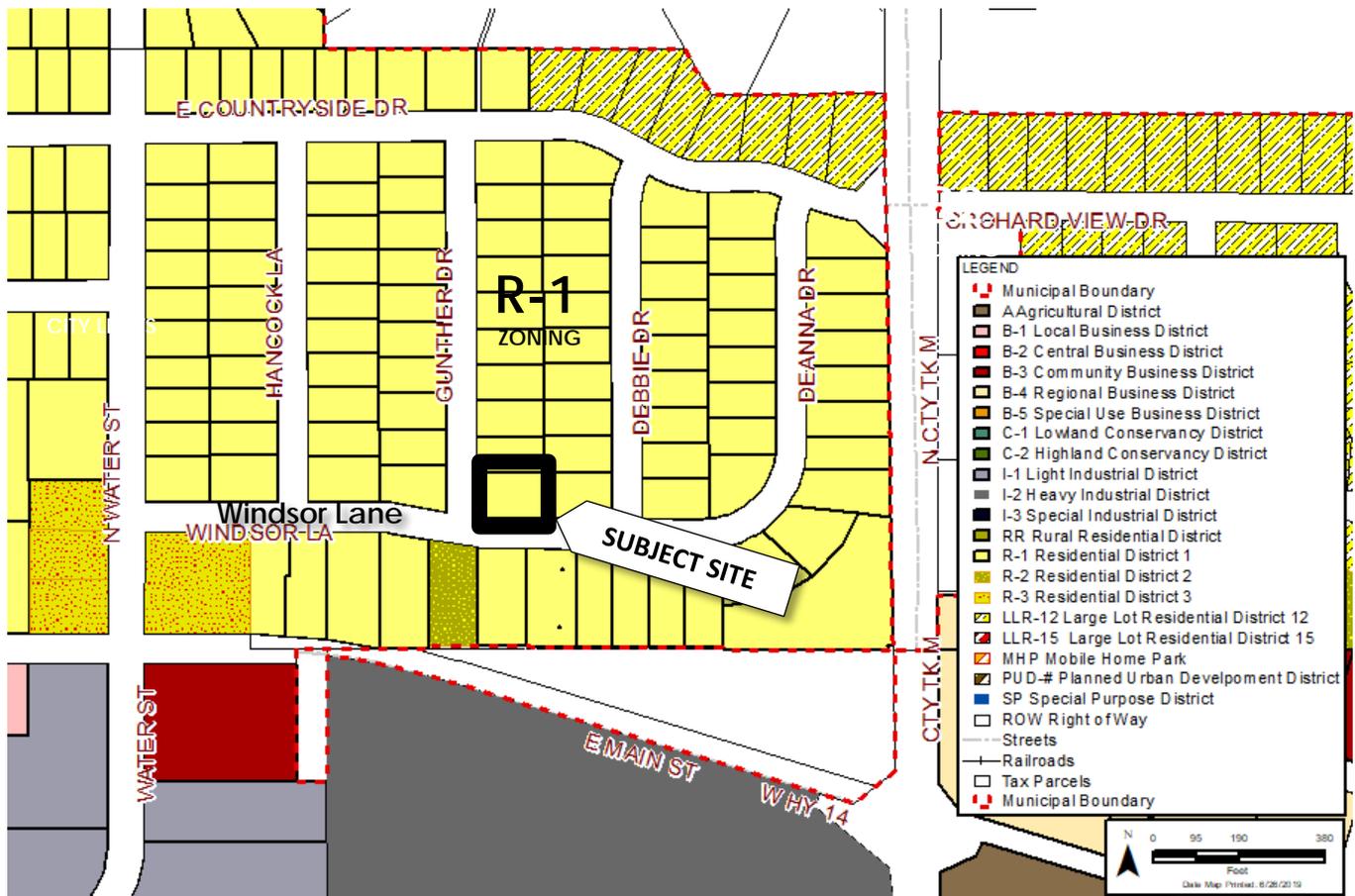


Figure 1 Location Map

Description of request: The request is for a conditional use permit on parcel 6-27-316.165 (Tax ID 222009235) located at 42 Gunther and 630 Windsor has been submitted for consideration by the Plan Commission. **The request is to construct a two unit dwelling (duplex) on the subject parcel.** The Parcel is zoned R-1 Residential One, as per section 130-983 (a) of the Evansville Zoning Ordinance a CUP is required for a two family dwelling in this zoning district.

Staff Analysis of Request: The proposal is believed to meet the minimum standards of the R-1 district. Staff requested the duplex be placed on a corner with an entrance on each street and upgraded stone be added to exterior to better mitigate the impact on the neighborhood. This site previously contained a single family home that was destroyed by fire and subsequently demolished in spring of 2019.

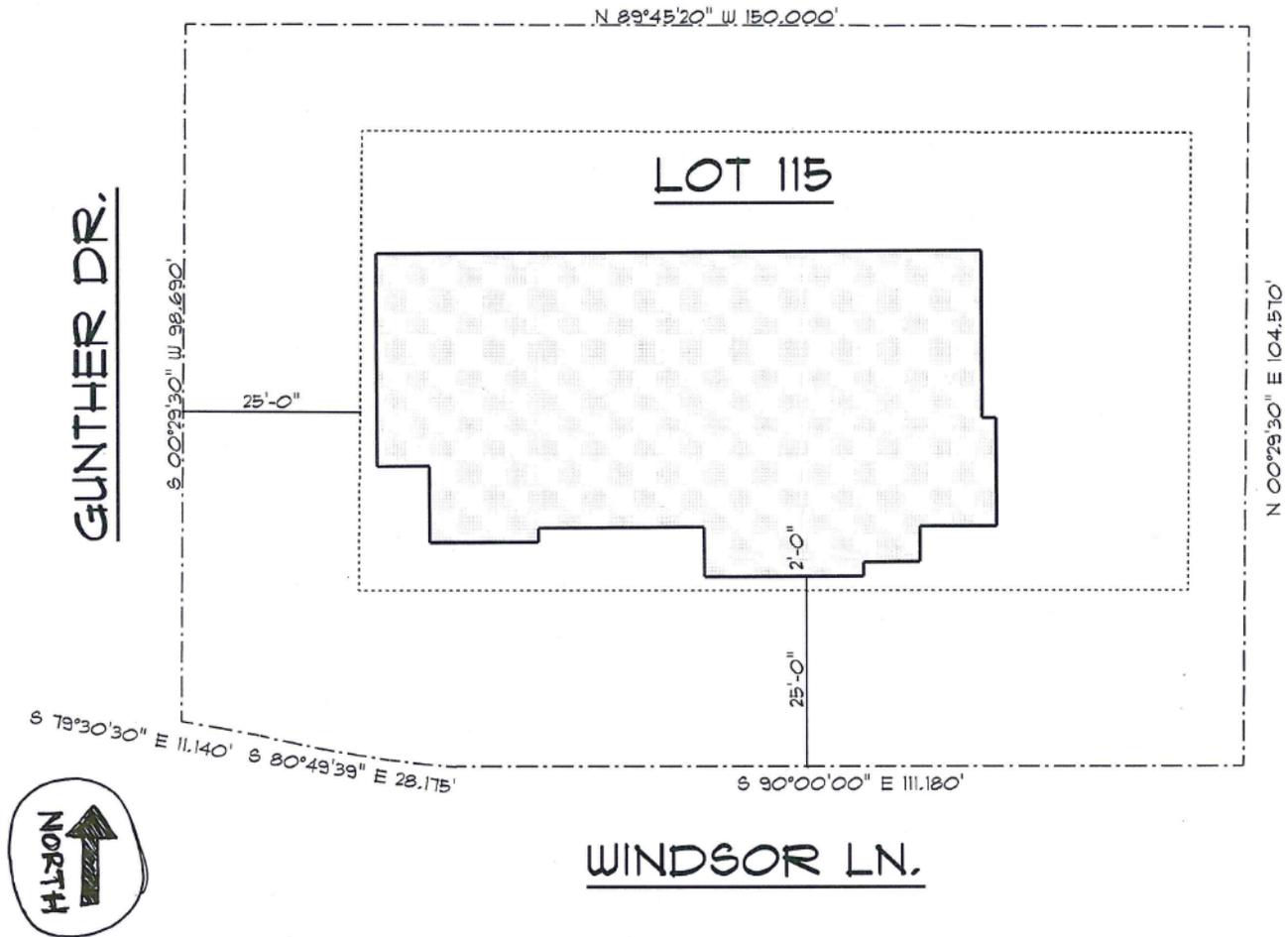


Figure 2 Applicant Submitted Site Plan

Required Plan Commission findings for Conditional Use Permit request: Section 130-104 (3) of the Municipal Code, includes criteria that should be considered in making this decision:

1. **Consistency of the use with the comprehensive plan.** The proposed use in general and in this specific location is consistent with the city's comprehensive plan of November 2015.

Staff Comment: The Comprehensive plan indicates a desire to increase density in existing neighborhoods, especially near commercial land uses. This proposal achieves that goal.

2. **Consistency with the City's zoning code, or any other plan, program, or ordinance.** The proposed use in general and in this specific location is consistent with City's zoning code, or any other plan, program, or ordinance, whether adopted or under consideration pursuant to official notice of the city.

Staff comment: The proposed two unit dwelling is consistent with the City's zoning code and other plans, programs, and ordinances.

3. **Effect on nearby property.** The use will not result in a substantial or undue adverse impact on nearby property, the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the City's zoning code, the comprehensive plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the city.

Staff Comment: No adverse effect is anticipated on nearby property. Duplexes exist on neighboring parcels.

4. **Appropriateness of use.** The use maintains the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property.

Staff Comment: A residential two family home is an appropriate use in the R1 district.

5. **Utilities and public services.** The use will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by the City or any other public agency serving the subject property.

Staff Comment: the property is connected to public utilities. Two total utility hookups will be required at the cost of the developer.

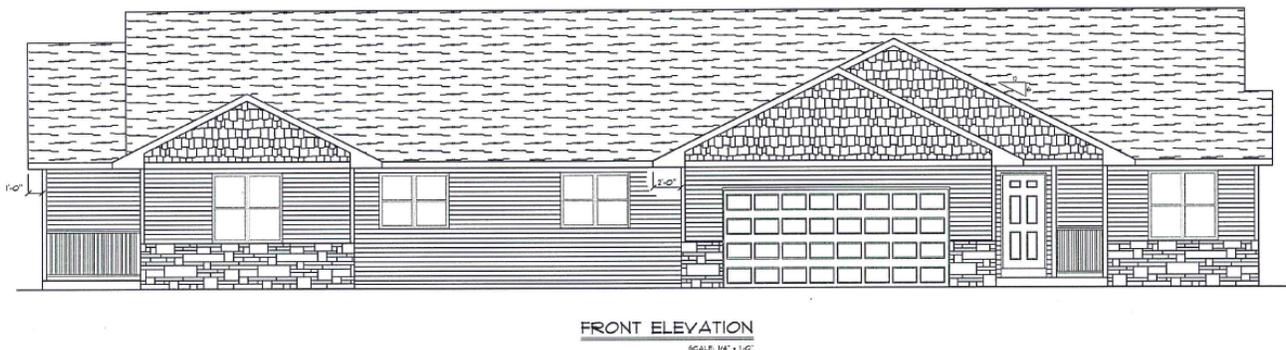


Figure 3 Applicant Submitted Front Elevation

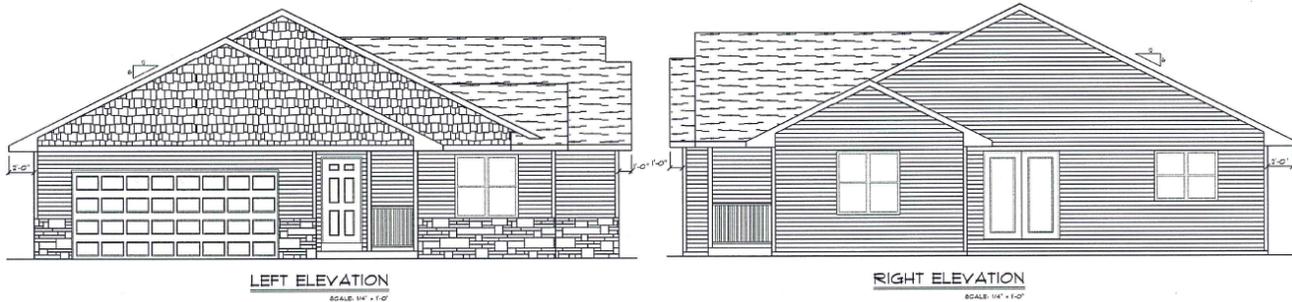


Figure 4 Applicant Submitted Side Elevations

Required Plan Commission conclusion: Section 130-104(3)(f) of the Municipal Code requires the Plan Commission to determine whether the potential public benefits of the conditional use do or do not outweigh any and all potential adverse impacts. The proposed motion below states that benefits do in fact outweigh any and all potential adverse impacts. The recommended motion includes conditions for commission consideration.

Staff recommended motion for CUP: *The Plan Commission approves issuance of a Conditional Use Permit for construction of a two family dwelling on parcel 6-27-316.165, finding that the benefits of the use outweigh any potential adverse impacts, and that the proposed use is consistent with the required standards and criteria for issuance of a CUP set forth in Section 130-104(3)(a) through (e) of the Zoning Ordinance, subject to the following conditions:*

1. CUP is recorded with the Tock County Register of Deeds.

	STAFF REPORT – CONDITIONAL USE PERMIT APPLICATION	
	App. No.: CUP-2019-06	Applicant/Property Owner: Gregg Peckham
	Address: 26 N First Street	Parcel No.: 6-27-775 Tax ID: 222063020
	July 18, 2019	

Prepared by: Jason Sergeant, Community Development Director
 Prepared for: City of Evansville Plan Commission

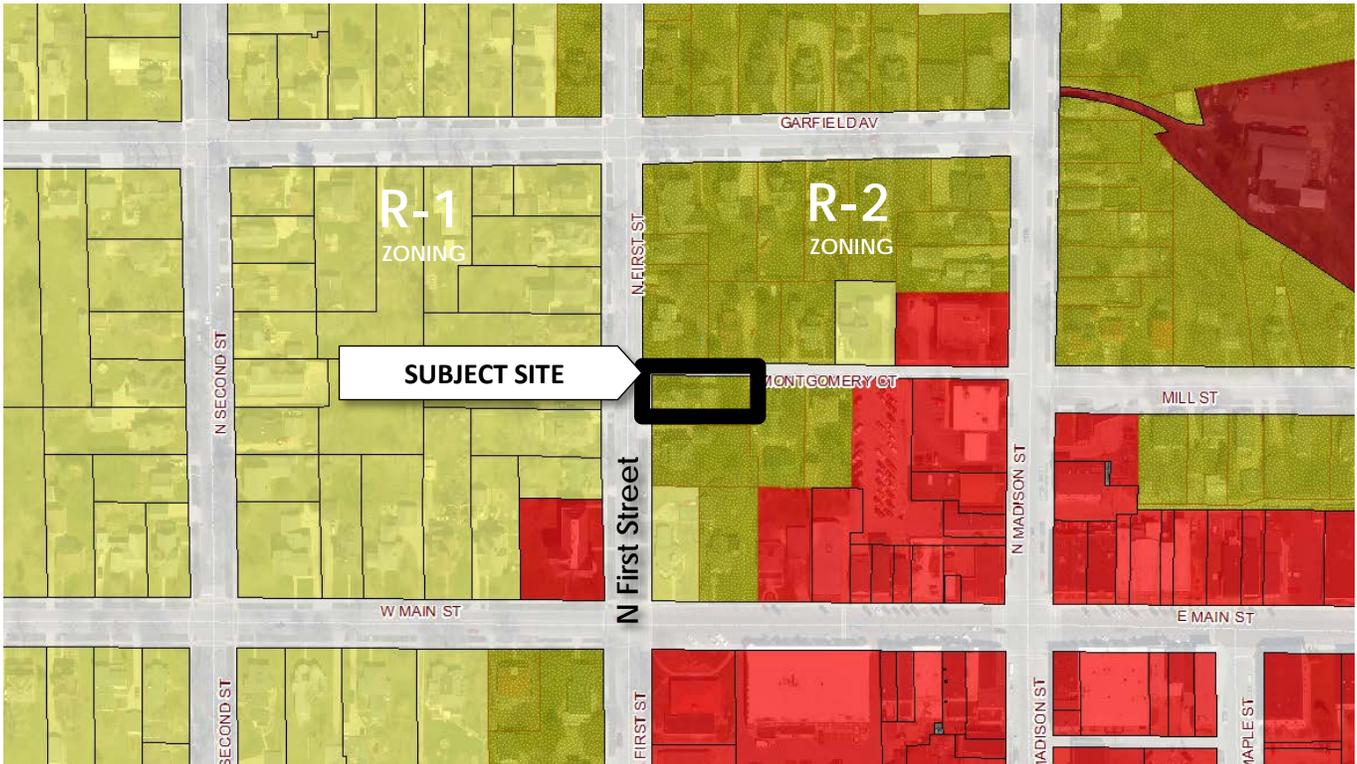


Figure 1 Location Map

Description of request: An application for a conditional use permit on parcel 6-27-775 (Tax ID 222063020) located at 26 N First Street has been submitted for consideration by the Plan Commission. The request is to demolish an existing garage and construct a new garage in the Historic Conservation Overlay District. The request is for a conditional use permit on parcel 6-27-933.03 (Tax ID 22206703303) located at 288 N Fourth Street has been submitted for consideration by the Plan Commission. **The request is to construct an addition to a historic structure.** The Parcel is zoned R-1 Residential One, as per section 130-1123 (a) of the Evansville Zoning Ordinance a CUP is required for all new construction or expansions of existing uses.

Staff Analysis of Request: The proposal is believed to meet the minimum standards of the Historic Conservation (HC) overlay district. HPC has reviewed the proposal and recommended approval with conditions.

Required Plan Commission findings for Conditional Use Permit request: Section 130-104 (3) of the Municipal Code, includes criteria that should be considered in making this decision:

1. **Consistency of the use with the comprehensive plan.** The proposed use in general and in this specific location is consistent with the city's comprehensive plan of November 2015.
Staff Comment: The Comprehensive plan indicates a desire to promote good stewardship of the Historic Districts.
2. **Consistency with the City's zoning code, or any other plan, program, or ordinance.** The proposed use in general and in this specific location is consistent with City's zoning code, or any other plan, program, or ordinance, whether adopted or under consideration pursuant to official notice of the city.
Staff comment: The proposed construction is consistent with the City's zoning code and other plans, programs, and ordinances.
3. **Effect on nearby property.** The use will not result in a substantial or undue adverse impact on nearby property, the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the City's zoning code, the comprehensive plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the city.
Staff Comment: No adverse effect is anticipated on nearby property.
4. **Appropriateness of use.** The use maintains the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property.
Staff Comment: An attached garage to a residential one family home is an appropriate use in the R1 district.
5. **Utilities and public services.** The use will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by the City or any other public agency serving the subject property.
Staff Comment: the property is connected to public utilities.

Additional Findings: Section 130-1123(b) of the Municipal Code requires the Plan Commission to determine whether the proposal meets general design criteria. Specifically, *the section reads, "In general, the following items shall be considered in making decisions about conditional use requests within this district."* Staff comments are found below regarding the design criteria to be reviewed:

- (1) Height. All new structures should be constructed to a height visually compatible with the buildings and environment with which they are visually related. **Staff Comment: The height of the addition is visually compatible to adjacent buildings.**
- (2) Scale. The gross volume of any new structure should be visually compatible with the buildings and environment with which it is visually related. **Staff Comment: Overall addition volume matches that of buildings in the vicinity. Slightly larger total volume would also be acceptable.**
- (3) Proportion of front facades. In the street elevation of a building, the proportion between the width and height in the facade should be visually compatible with the buildings and environment with which it is visually related. **Staff Comment: the front façade is proportional to itself and neighboring buildings**
- (4) Proportion of openings. The proportions and relationships between doors and windows in the street facades should be visually compatible with the buildings and environment with which they are visually related. **Staff Comment: Window and door openings on front façade are compatible with neighboring buildings.**
- (5) Rhythm of solids to voids. The rhythm of solids to voids created by openings in the facade should be visually compatible with the buildings and environment with which it is visually related. **Staff Comment: solids and voids of the proposed addition is well balanced.**
- (6) Rhythm of spacing. The existing rhythm created by existing building masses and spaces between them should be preserved. **Staff Comment: Addition is properly spaced from neighboring structures.**
- (7) Relationship of materials. The materials used in the final facades should be visually compatible with the buildings and environment with which they are visually related. **Staff Comment: Neighboring buildings use a variety of materials including wood and aluminum. The proposed building will use cement based or other similar hard plank siding. While not similar in type, it will be similar in visual qualities.**
- (8) Relationship of textures. The texture inherent in the facade should be visually compatible with the buildings and environment with which it is visually related. **Staff Comment: Neighboring buildings consist of horizontal siding elements and asphalt roofing. The proposed addition will have these same elements.**
- (9) Relationship of roofs. The design of the roof should be visually compatible with the buildings and environment with which it is visually related. **Staff Comment:**

Neighboring buildings consist of gabled style shingled roofs. The proposed addition will have these same elements.

- (10) Landscaping. The landscape plan should be sensitive to the individual building, its occupants and their needs. Further, the landscape treatment should be visually compatible with the buildings and environment with which it is visually related. **Staff Comment: No landscaping is shown on site plans. Small bushes or perennials should be added to front and screening added to sides, especially to assist in diffusing the exposure of the building side elevations to the street.**
- (11) Directional expression of front elevation. All street facades should blend with other buildings via directional expression. When adjacent buildings have a dominant horizontal or vertical expression, this expression should be carried over and reflected. **Staff Comment: Proposed addition maintains a horizontal direct expression, similar to the primary residence.**
- (12) Relationship of architectural details. Architectural details should be incorporated as necessary to relate the new with the old and to preserve and enhance the inherent characteristics of the area. **Staff comment: Architectural details on the proposed building are minimal. Historic preservation discussed and the applicant will try and use reclaimed wood windows.**

Required Plan Commission conclusion: Section 130-104(3)(f) of the Municipal Code requires the Plan Commission to determine whether the potential public benefits of the conditional use do or do not outweigh any and all potential adverse impacts. The proposed motion below states that benefits do in fact outweigh any and all potential adverse impacts. The recommended motion includes 4 conditions. 2 additional conditions are listed for commission consideration.

Staff recommended motion for CUP: The Plan Commission approves issuance of a Conditional Use Permit for construction of an addition to a historic structure on parcel 6-27-933.03, finding that the benefits of the use outweigh any potential adverse impacts, and that the proposed use is consistent with the required standards and criteria for issuance of a CUP set forth in Section 130-104(3)(a) through (e) of the Zoning Ordinance, subject to the following condition:

1. Any variation from Historic Preservation Commission approved plans including exterior materials. Building openings or general building form will require a new CUP approval.



STAFF REPORT – CONDITIONAL USE PERMIT APPLICATION

App. No.: CUP-2019-07 Applicant/Property Owner: Landmark Services Coop
 Address: 6401 N Weary Rd Parcel No.: 6-27-1200, 6-27-1200.1, 6-27-1160, and 6-27-1160.1

August 5, 2019

Prepared by: Jason Sergeant, Community Development Director
 Prepared for: City of Evansville Plan Commission

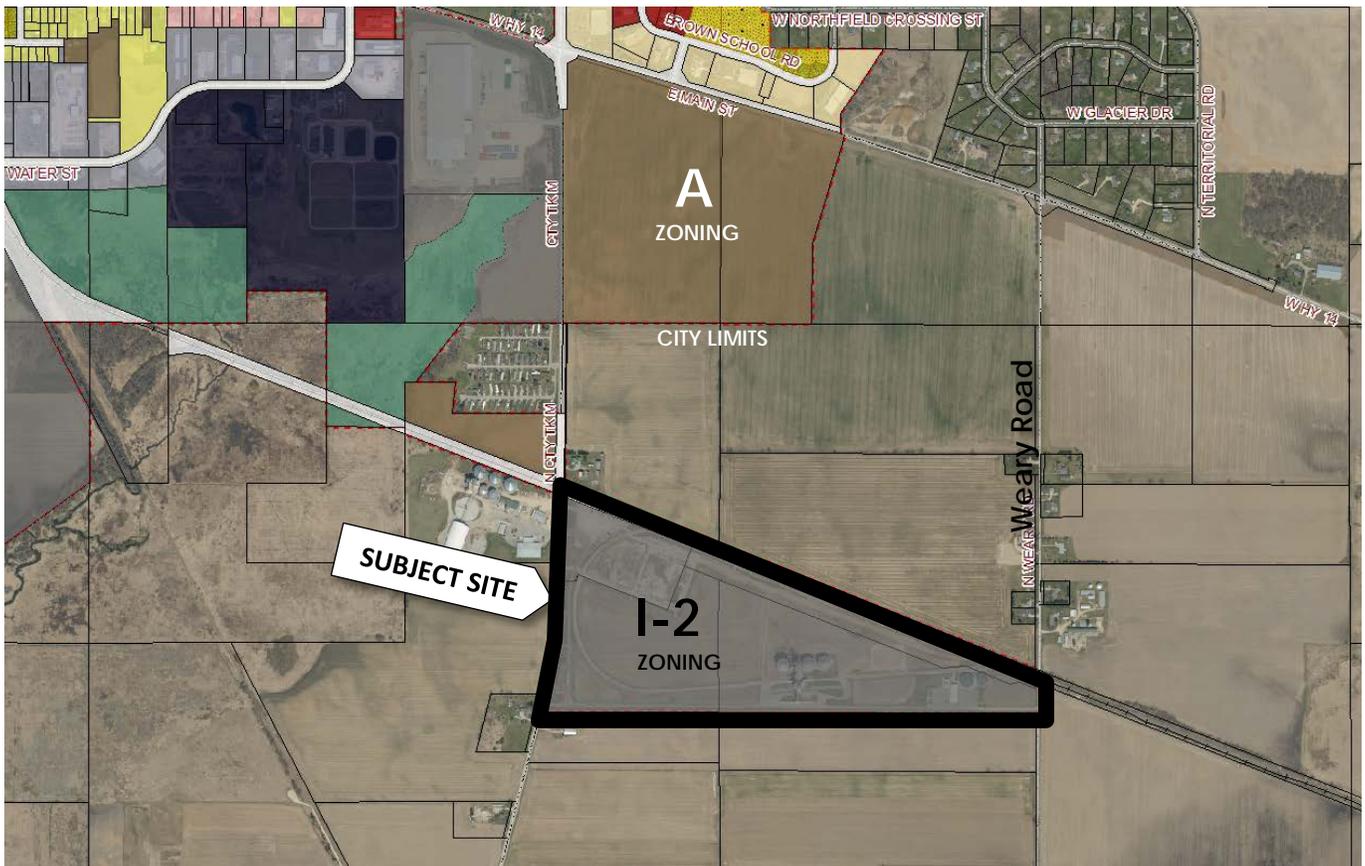


Figure 1 Location Map

Description of request: The request is for a conditional use permit on parcel 6-27-1200, 6-27-1200.1, 6-27-1160, and 6-27-1160.1 at 6401 N Weary Road has been submitted for consideration by the Plan Commission. **The request is to construct an approximately 64,000 SF dry fertilizer storage building and grain storage structures as part of an agricultural services group development.** The Parcel is zoned I-2 Heavy Industrial, as per section 130 of the Evansville Zoning Ordinance a CUP is required for a group development and agricultural services in this zoning district.

Staff Analysis of Request: The proposal is believed to meet the minimum standards of the I-2 district with the exception of setbacks. A scheduled hearing for a variance request to reduce setbacks is scheduled for August 15.

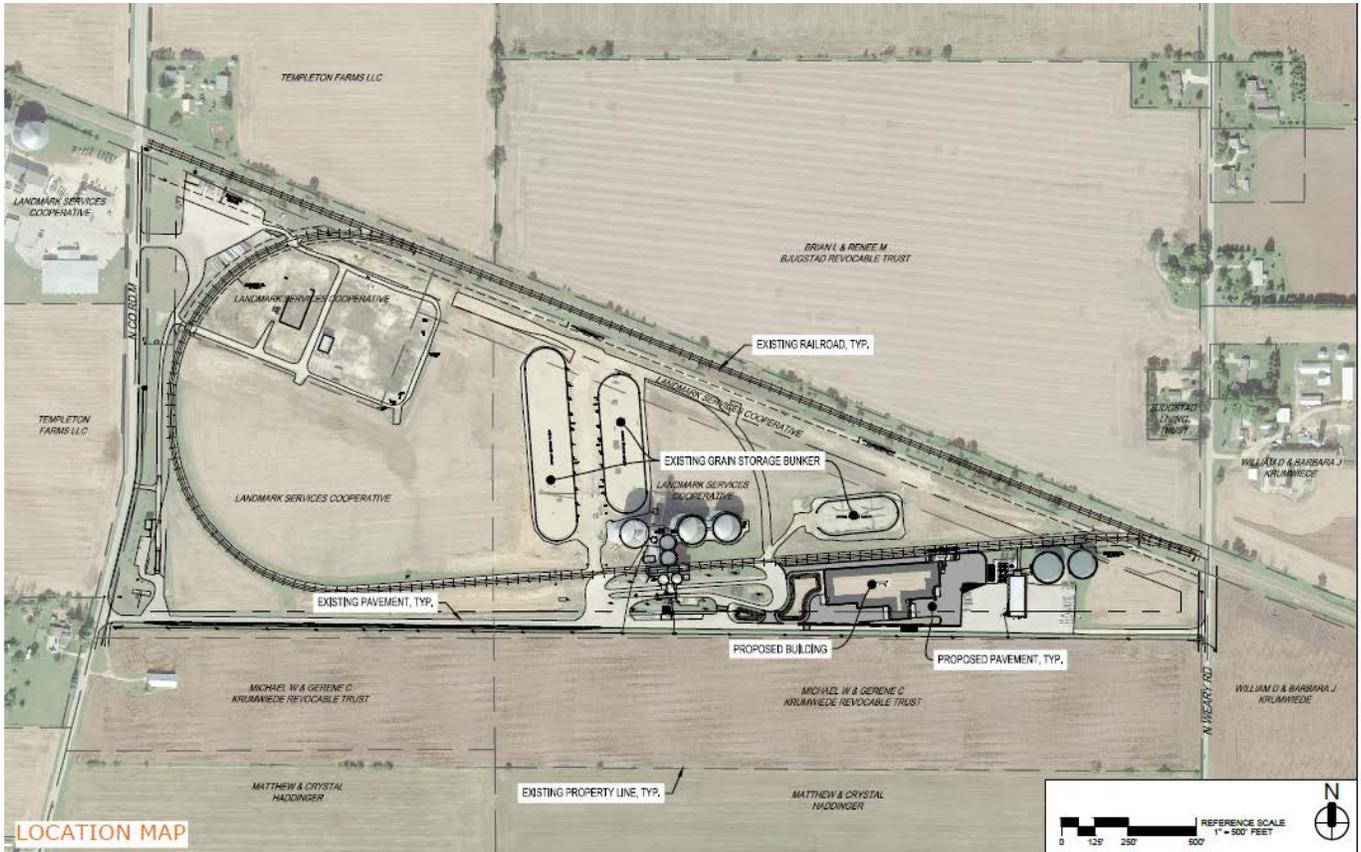
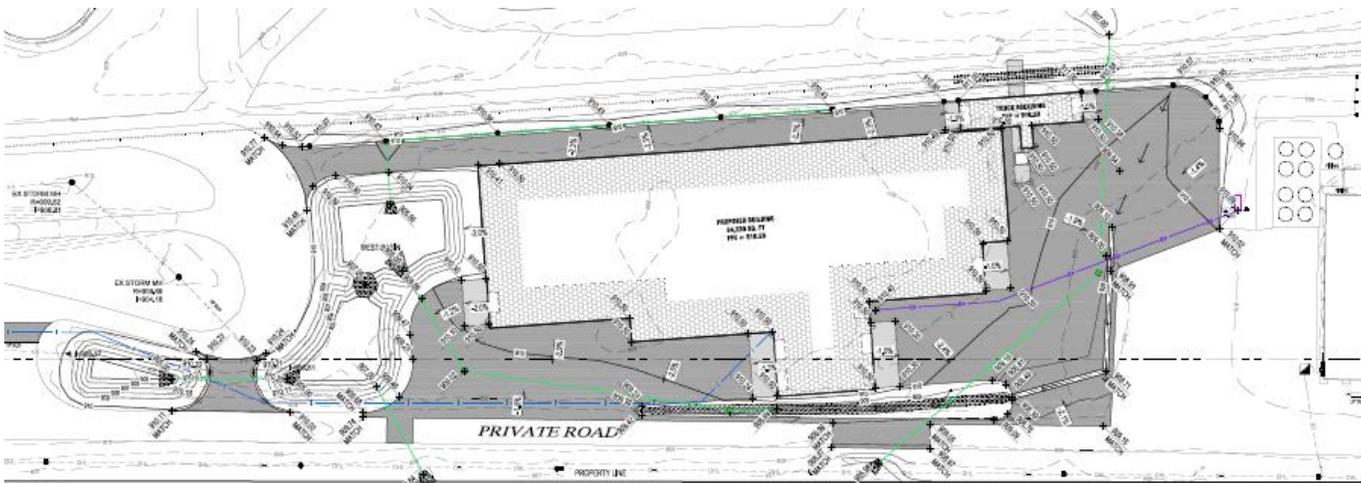


Figure 2 Applicant Submitted Overall Site Plan



Required Plan Commission findings for Conditional Use Permit request: Section 130-104 (3) of the Municipal Code, includes criteria that should be considered in making this decision:

1. **Consistency of the use with the comprehensive plan.** The proposed use in general and in this specific location is consistent with the city's comprehensive plan of November 2015.

Staff Comment: The Comprehensive plan indicates a desire to increase economic activity in industrial areas and retain existing businesses. This proposal achieves that goal.

2. **Consistency with the City's zoning code, or any other plan, program, or ordinance.** The proposed use in general and in this specific location is consistent with City's zoning code, or any other plan, program, or ordinance, whether adopted or under consideration pursuant to official notice of the city.

Staff comment: The proposed agricultural use is consistent with the City's zoning code and other plans, programs, and ordinances.

3. **Effect on nearby property.** The use will not result in a substantial or undue adverse impact on nearby property, the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the City's zoning code, the comprehensive plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the city.

Staff Comment: No adverse effect is anticipated on nearby property.

4. **Appropriateness of use.** The use maintains the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property.

Staff Comment: A agricultural use I2 district.

5. **Utilities and public services.** The use will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by the City or any other public agency serving the subject property.

Staff Comment: the property is connected to public utilities. Any additional hookups required will be at the cost of the developer.

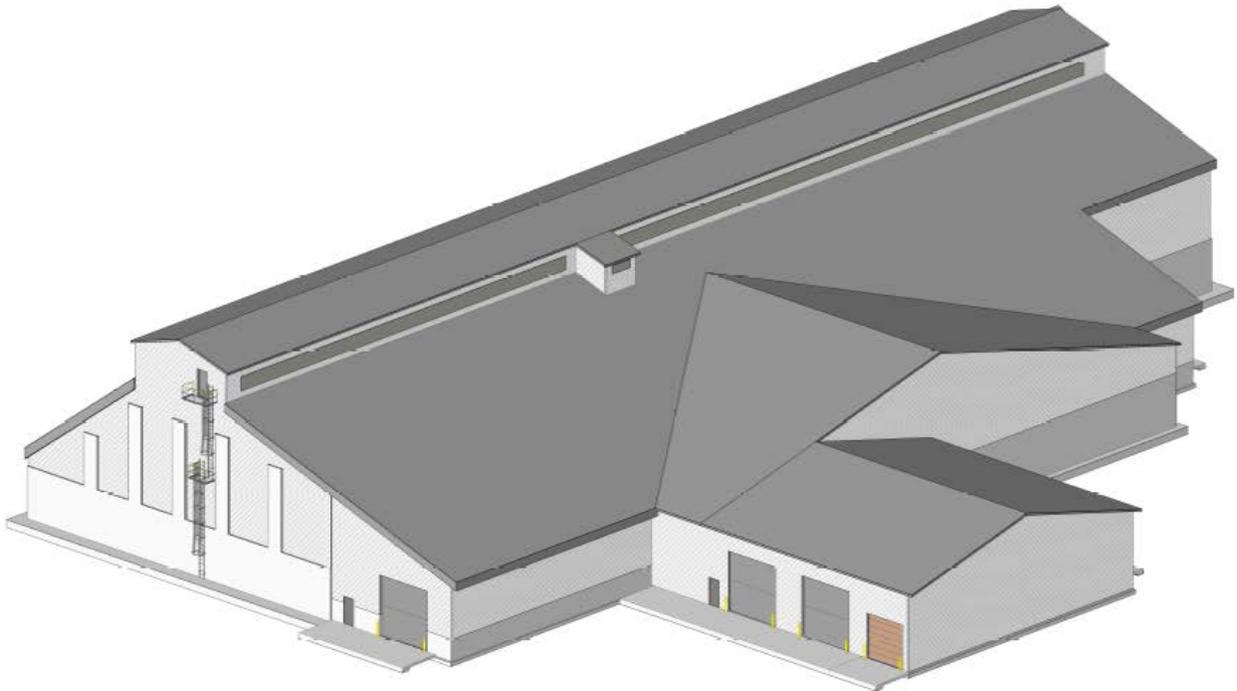


Figure 3 Applicant Submitted 3D Model

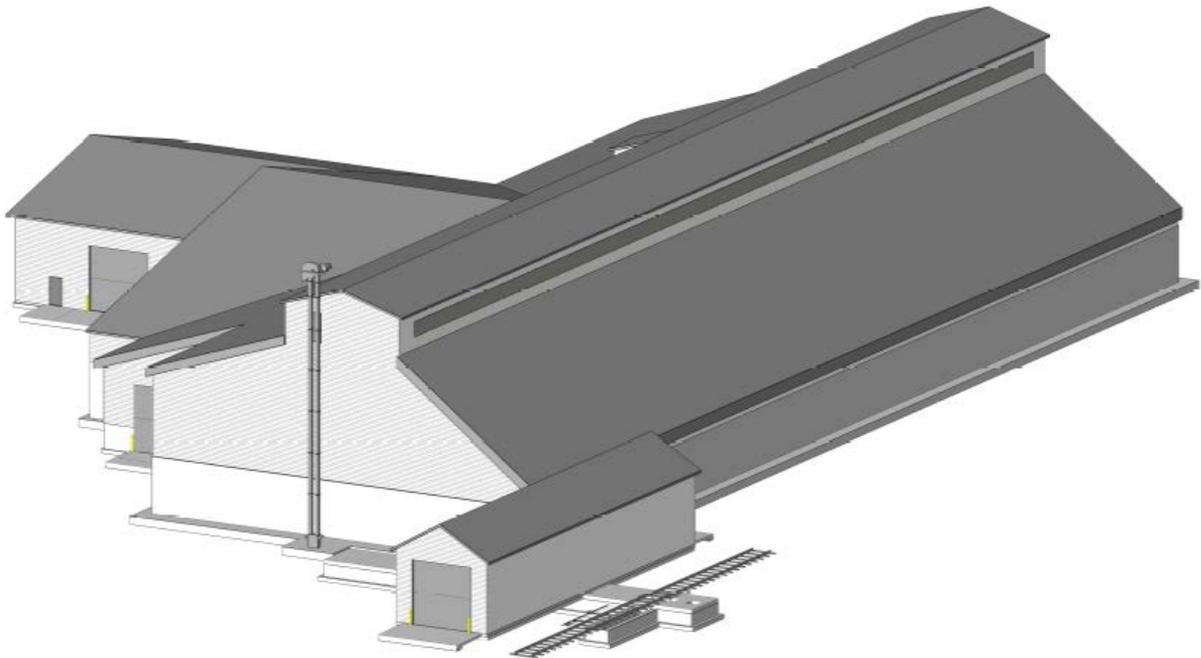


Figure 4 Applicant Submitted 3D Model

Required Plan Commission conclusion: Section 130-104(3)(f) of the Municipal Code requires the Plan Commission to determine whether the potential public benefits of the conditional use do or do not outweigh any and all potential adverse impacts. The proposed motion below states that benefits do in fact outweigh any and all potential adverse impacts. The recommended motion includes conditions for commission consideration.

Staff recommended motion for CUP: *The Plan Commission approves the Site Plan and issuance of a Conditional Use Permit for expansion of Agricultural Services Group Development to add a 60,000 SF Dry fertilizer facility with rail access, expands driveway and parking areas and construct up to 4 outdoor grain storage bins on parcels 6-27-1200, 6-27-1200.1, 6-27-1160, and 6-27-1160.1, finding that the benefits of the use outweigh any potential adverse impacts, and that the proposed use is consistent with the required standards and criteria for issuance of a CUP set forth in Section 130-104(3)(a) through (e) of the Zoning Ordinance, subject to the following conditions:*

- 1. CUP is recorded with the Rock County Register of Deeds.*
- 2. Applicable State of WI certifications, approvals and licensing for all facilities are maintained*
- 3. A Variance to reduce setbacks is approved*
- 4. A Variance to permit construction of grain storage bins across parcel boundaries is approved or affected parcels are merged*
- 5. Staff approves storm water, final site and landscape plans of two future outdoor grain storage bins.*
- 6. Municipal Services Director and City Engineer approves site plan, grading plan, utility connection plans, and storm water control plan*
- 7. Fire Department approves Site Plan*
- 8. Sidewalk constructed along CTY M within 5 years of city notice*



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PROJECT

**LANDMARK CO-OP
NEW DRY
FERTILIZER
FACILITY**
EVANSVILLE WISCONSIN

REVISION SCHEDULE		
DATE	DESCRIPTION	BY

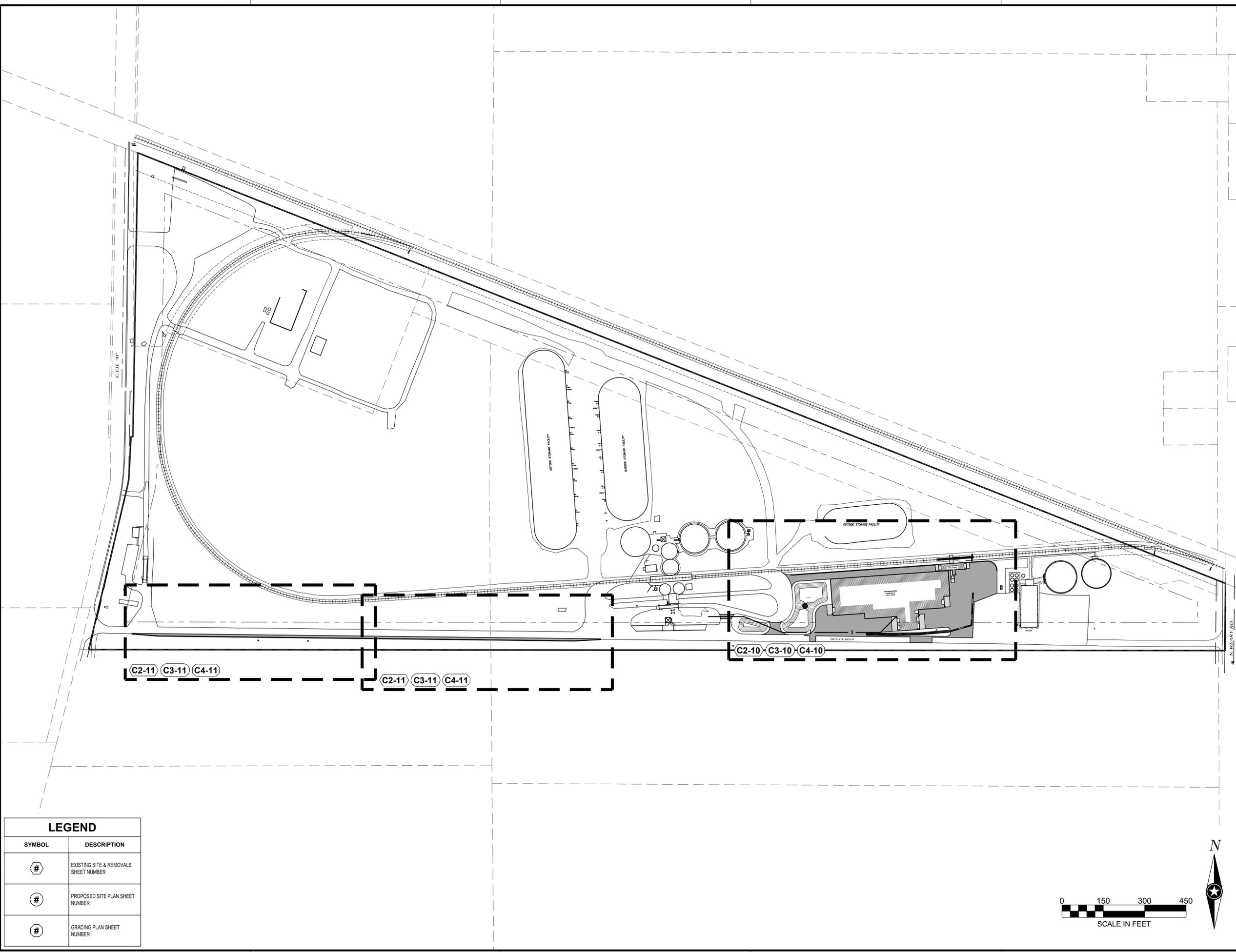
PROJECT NO.	19-22816
FILE NAME	22816 CO-DATA
DRAWN BY	TTK
DESIGNED BY	TTK
REVIEWED BY	RAS
ORIGINAL ISSUE DATE	07/10/2019
CLIENT PROJECT NO.	-

TITLE

SITE INDEX MAP

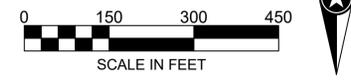
SHEET

C0-11

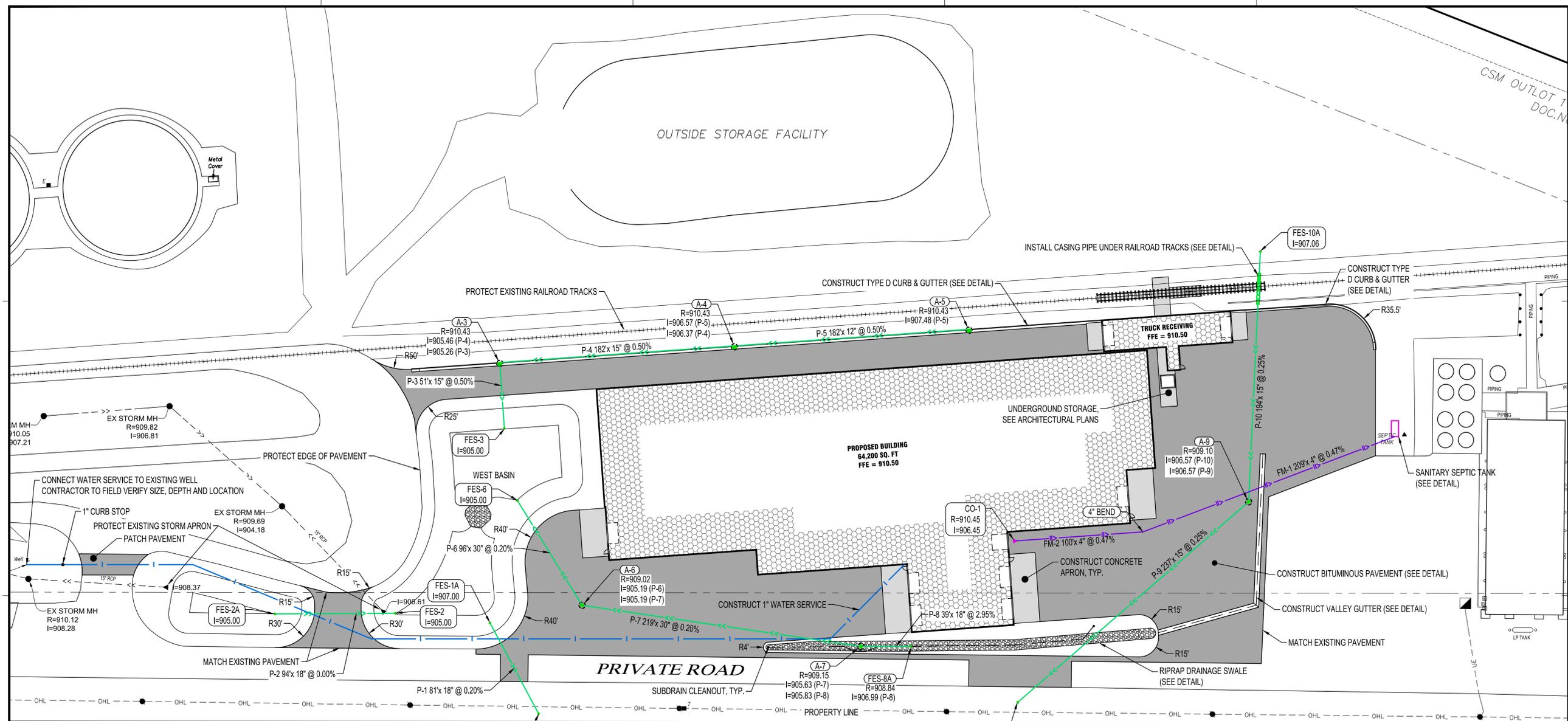


LEGEND

SYMBOL	DESCRIPTION
#	EXISTING SITE & REMOVALS SHEET NUMBER
#	PROPOSED SITE PLAN SHEET NUMBER
#	GRADING PLAN SHEET NUMBER



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**LANDMARK CO-OP
NEW DRY
FERTILIZER
FACILITY**

EVANSVILLE WISCONSIN

REVISION SCHEDULE		
DATE	DESCRIPTION	BY

PROJECT NO.	19-22816
FILE NAME	22816 C3-PROPOSED
DRAWN BY	TTK
DESIGNED BY	TTK
REVIEWED BY	RAS
ORIGINAL ISSUE DATE	07/10/2019
CLIENT PROJECT NO.	-

**PROPOSED SITE &
UTILITY PLAN**

SHEET

C3-10

PIPE NO.	DRAIN FROM	INLET ELEVATION	DRAIN TO	OUTLET ELEVATION	PIPE SIZE (IN)	MATERIAL	PIPE CLASS	PIPE GRADE	PIPE LENGTH (FT)
P-1	FES-1A	907.00	FES-1	906.84	18	RCP	CLASS III	0.20%	81
P-2	FES-2A	905.00	FES-2	905.00	18	RCP	CLASS III	0.00%	94
P-3	A-3	905.26	FES-3	905.00	15	RCP	CLASS III	0.50%	51
P-4	A-4	906.37	A-3	905.46	15	RCP	CLASS III	0.50%	182
P-5	A-5	907.48	A-4	906.57	12	RCP	CLASS III	0.50%	182
P-6	A-6	905.19	FES-6	905.00	30	RCP	RCP	0.20%	96
P-7	A-7	905.63	A-6	905.19	30	RCP	RCP	0.20%	219
P-8	FES-8A	906.99	A-7	905.83	18	RCP	CLASS III	2.95%	39
P-9	A-9	906.57	FES-9	905.98	15	RCP	CLASS III	0.25%	237
P-10	FES-10A	907.06	A-9	906.57	15	RCP	CLASS III	0.25%	194

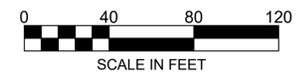
APRON NO.	APRON SIZE (in)	APRON MATERIAL	INVERT ELEVATION	PIPE NO.
FES-1	18	RC	906.84	P-1
FES-1A	18	RC	907.00	P-1
FES-2	18	RC	905.00	P-2
FES-2A	18	RC	905.00	P-2
FES-3	15	RC	905.00	P-3
FES-6	30	RC	905.00	P-6
FES-8A	18	RC	906.99	P-8
FES-9	15	RC	905.98	P-9
FES-10A	15	RC	907.06	P-10

STRUCTURE NO.	STRUCTURE TYPE	STRUCTURE SIZE (in)	STRUCTURE MATERIAL	CASTING	PAY HEIGHT LN FT	* TOP OF CASTING ELEVATION	INVERT ELEVATION	OUTLET PIPE
A-3	WisDOT MANHOLE	48 Ø	RC	NEENAH R-3067	6.17	910.43	904.26	P-3
A-4	WisDOT MANHOLE	48 Ø	RC	NEENAH R-3067	5.05	910.43	905.37	P-4
A-5	WisDOT MANHOLE	48 Ø	RC	NEENAH R-3067	3.94	910.43	906.48	P-5
A-6	WisDOT MANHOLE	48 Ø	RC	NEENAH R-2501	4.83	909.02	904.19	P-6
A-7	WisDOT MANHOLE	48 Ø	RC	NEENAH R-3067	4.52	909.15	904.63	P-7
A-9	WisDOT MANHOLE	48 Ø	RC	NEENAH R-1733 "STORM SEWER" STAMP	3.53	909.10	905.57	P-9

PIPE NO.	DRAIN FROM	INLET ELEVATION	DRAIN TO	OUTLET ELEVATION	PIPE SIZE	MATERIAL	PIPE CLASS	PIPE GRADE	PIPE LENGTH (FT)
FM-1	4" BEND	905.98	HOLDING TANK	905.00	4"	PVC	SCH-40	0.47%	209
FM-2	CO-1	906.45	4" BEND	905.98	4"	PVC	SCH-40	0.47%	100

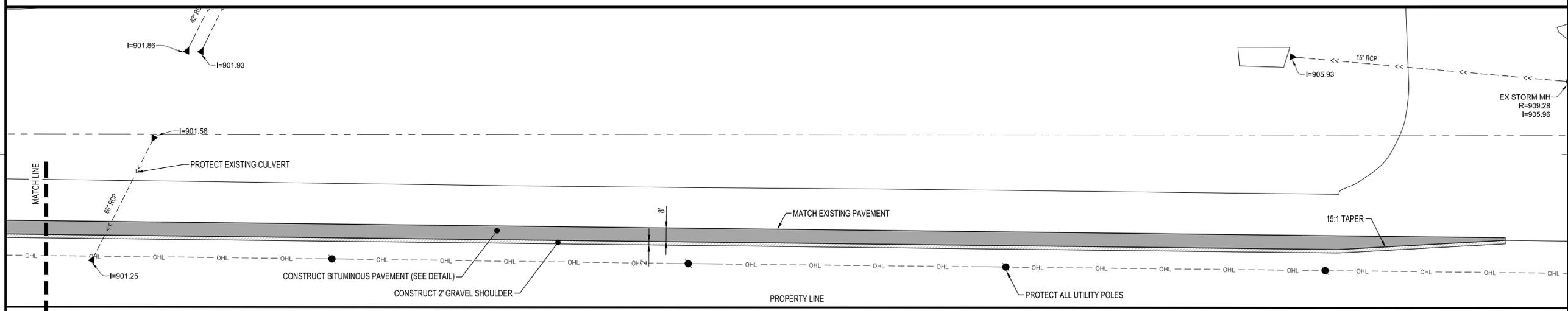
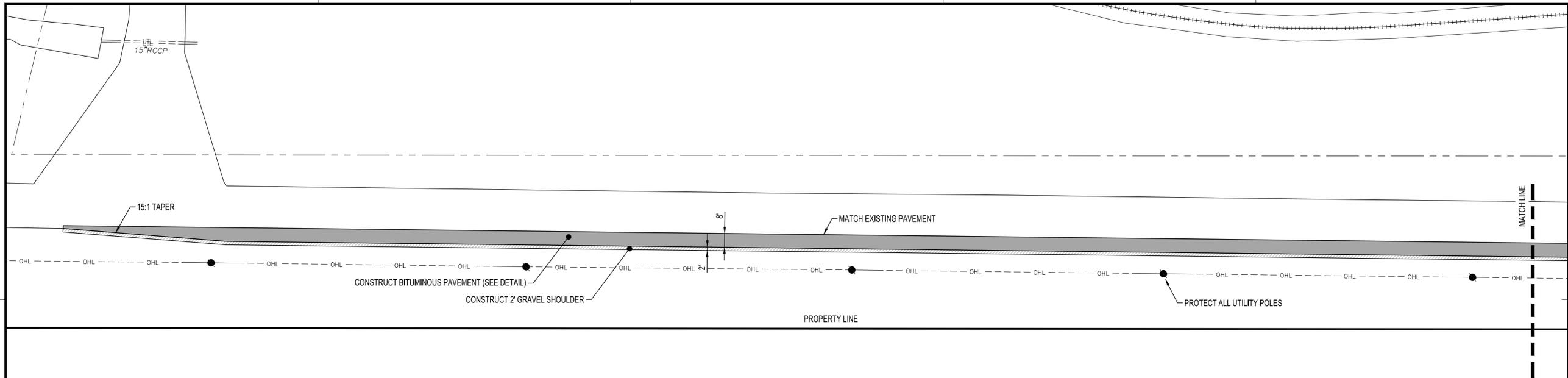
STRUCTURE NO.	STRUCTURE TYPE	STRUCTURE SIZE (in)	STRUCTURE MATERIAL	HOUSING	PAY HEIGHT LN FT	TOP OF CASTING ELEVATION	INVERT ELEVATION	PIPE NO.
CO-1	CLEANOUT	4 Ø	PVC SDR-35	SEE DETAIL	4.00	910.45	906.45	FM-2

SYMBOL	DESCRIPTION
	BITUMINOUS PAVEMENT
	HEAVY DUTY CONCRETE PAVEMENT



* TOP OF CASTING ELEVATIONS ON CURB STYLE CATCH BASINS = TOP BACK OF CURB BOX, NOT GUTTER ELEVATION

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PROJECT

**LANDMARK CO-OP
NEW DRY
FERTILIZER
FACILITY**
EVANSVILLE WISCONSIN

REVISION SCHEDULE		
DATE	DESCRIPTION	BY

PROJECT NO.	19-22816
FILE NAME	22816 C3-PROPOSED
DRAWN BY	TTK
DESIGNED BY	TTK
REVIEWED BY	RAS
ORIGINAL ISSUE DATE	07/10/2019
CLIENT PROJECT NO.	-

TITLE
**PROPOSED SITE &
UTILITY PLAN**

SHEET
C3-11

PAVEMENT LEGEND	
SYMBOL	DESCRIPTION
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	HEAVY DUTY CONCRETE PAVEMENT



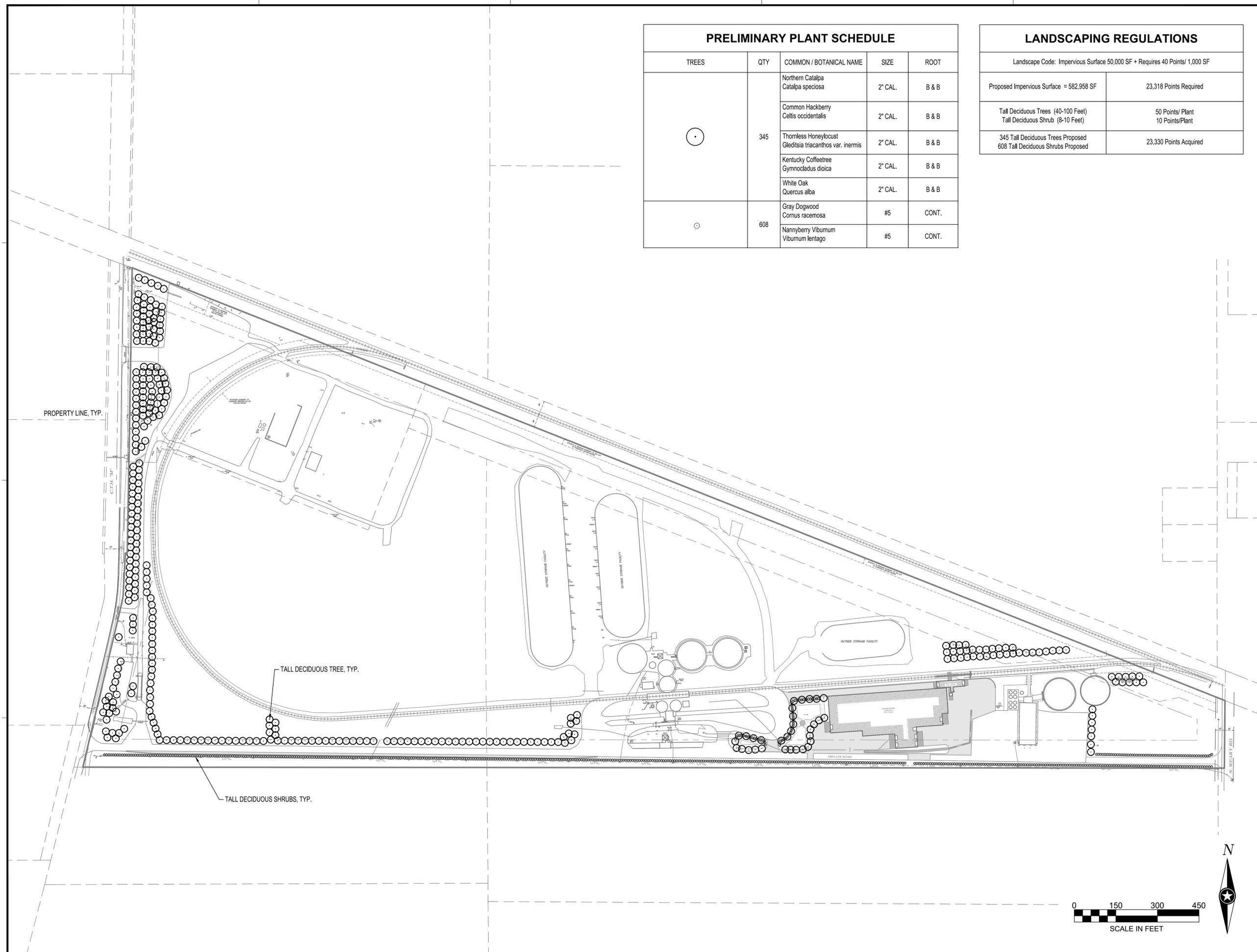
PRELIMINARY NOT FOR CONSTRUCTION

PRELIMINARY NOT FOR CONSTRUCTION



PRELIMINARY PLANT SCHEDULE				
TREES	QTY	COMMON / BOTANICAL NAME	SIZE	ROOT
●	345	Northern Catalpa <i>Catalpa speciosa</i>	2" CAL.	B & B
		Common Hackberry <i>Celtis occidentalis</i>	2" CAL.	B & B
		Thornless Honeylocust <i>Gleditsia triacanthos var. inermis</i>	2" CAL.	B & B
		Kentucky Coffeetree <i>Gymnocladus dioica</i>	2" CAL.	B & B
		White Oak <i>Quercus alba</i>	2" CAL.	B & B
○	608	Gray Dogwood <i>Cornus racemosa</i>	#5	CONT.
		Nannyberry <i>Viburnum lentago</i>	#5	CONT.

LANDSCAPING REGULATIONS	
Landscape Code: Impervious Surface 50,000 SF + Requires 40 Points/ 1,000 SF	
Proposed Impervious Surface = 582,958 SF	23,318 Points Required
Tall Deciduous Trees (40-100 Feet) Tall Deciduous Shrub (8-10 Feet)	50 Points/ Plant 10 Points/Plant
345 Tall Deciduous Trees Proposed 608 Tall Deciduous Shrubs Proposed	23,330 Points Acquired



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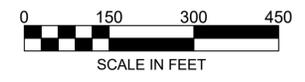
PROJECT
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EVANSVILLE WISCONSIN

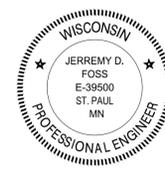
REVISION SCHEDULE		
DATE	DESCRIPTION	BY

PROJECT NO. 19-22816
FILE NAME 22816 C5-LAND
DRAWN BY TTK
DESIGNED BY TTK
REVIEWED BY RAS
ORIGINAL ISSUE DATE 07/10/2019
CLIENT PROJECT NO. -

TITLE
**OVERALL
LANDSCAPE PLAN**

SHEET
C5-20





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**LANDMARK CO-OP
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FACILITY**

EVANSVILLE WISCONSIN

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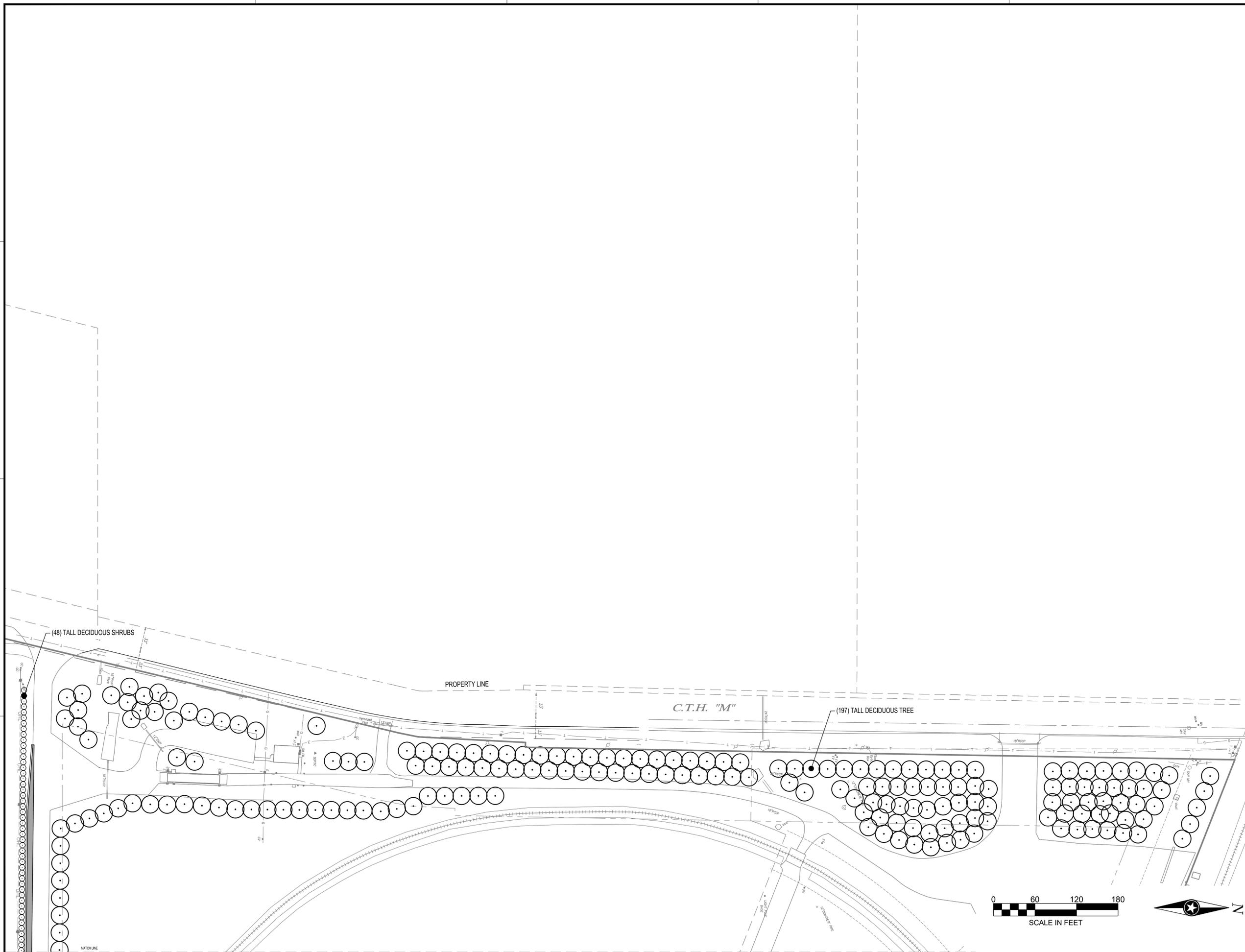
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FILE NAME	22816 C5-LAND
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REVIEWED BY	PO
ORIGINAL ISSUE DATE	07/10/2019
CLIENT PROJECT NO.	-

TITLE

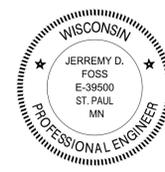
LANDSCAPE PLAN

SHEET

C5-21



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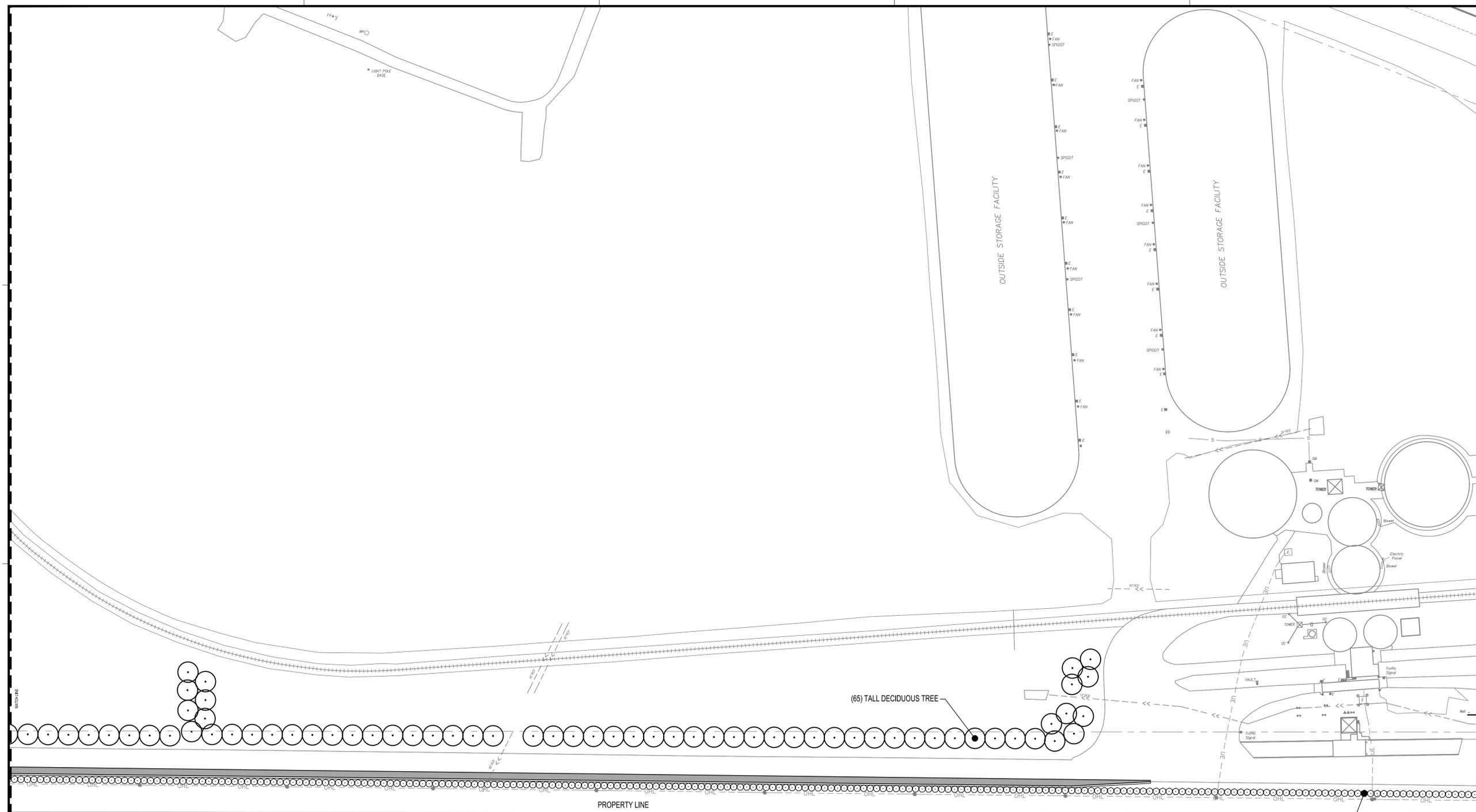
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DATE	DESCRIPTION	BY

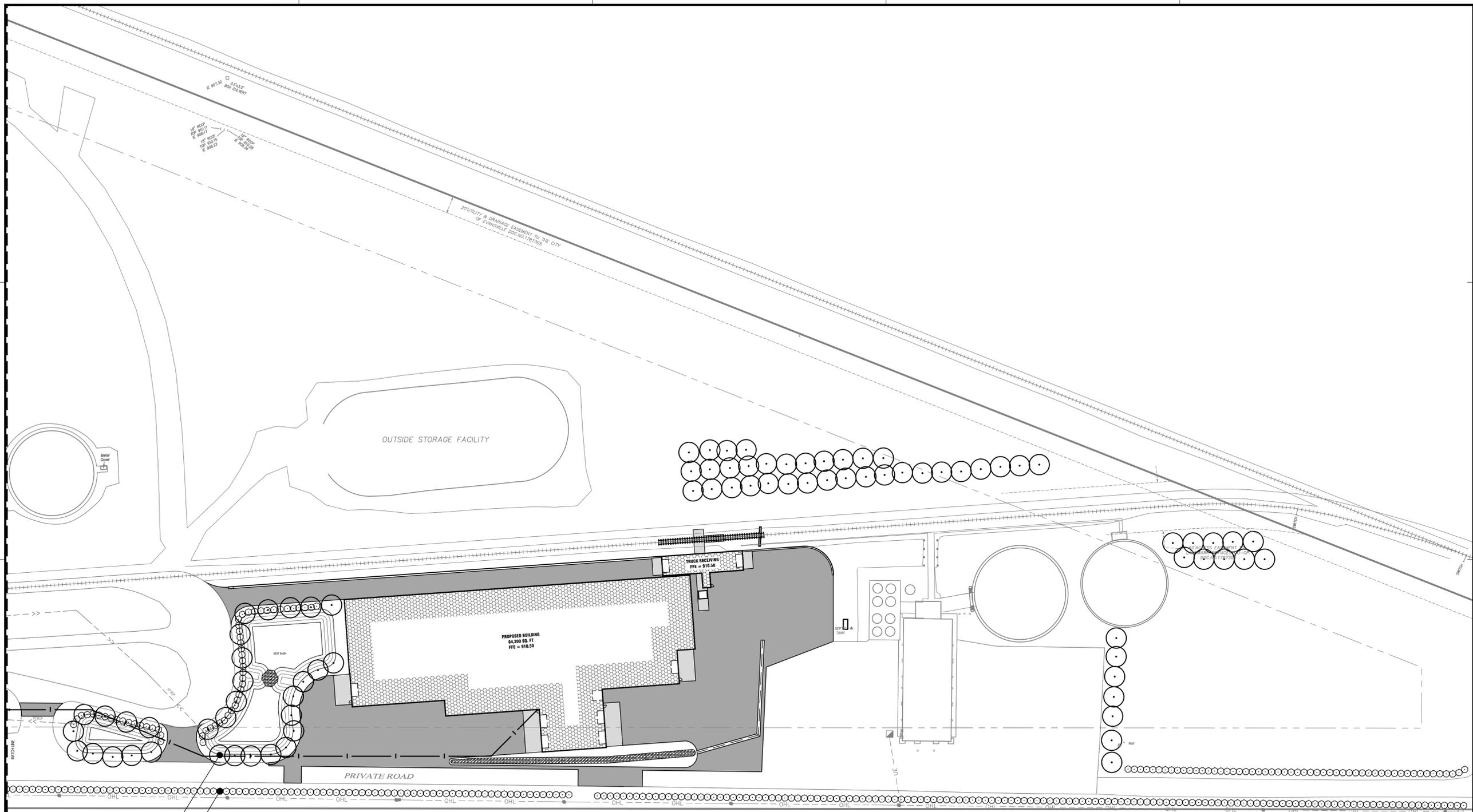
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FILE NAME	22816 C5-LAND
DRAWN BY	TTK
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REVIEWED BY	RAS
ORIGINAL ISSUE DATE	07/10/2019
CLIENT PROJECT NO.	-

TITLE
LANDSCAPE PLAN

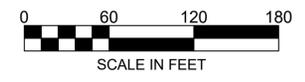
SHEET
C5-22



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(83) TALL DECIDUOUS TREE
 (506) TALL DECIDUOUS SHRUBS



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ORIGINAL ISSUE DATE	07/10/2019
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TITLE
LANDSCAPE PLAN

SHEET
C5-23

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APPLICATION FOR REZONING – STAFF REPORT

Application No.: RZ-2019-01 City Initiated Ordinance

Parcel 6-27-1150 at 551 S Cty Rd M

Presented August 5, 2018 with ORDINANCE 2019-03

Prepared by: Jason Sergeant, Community Development Director

Direct questions and comments to: Jason.sergeant@ci.evansville.wi.gov or 608-882-2285

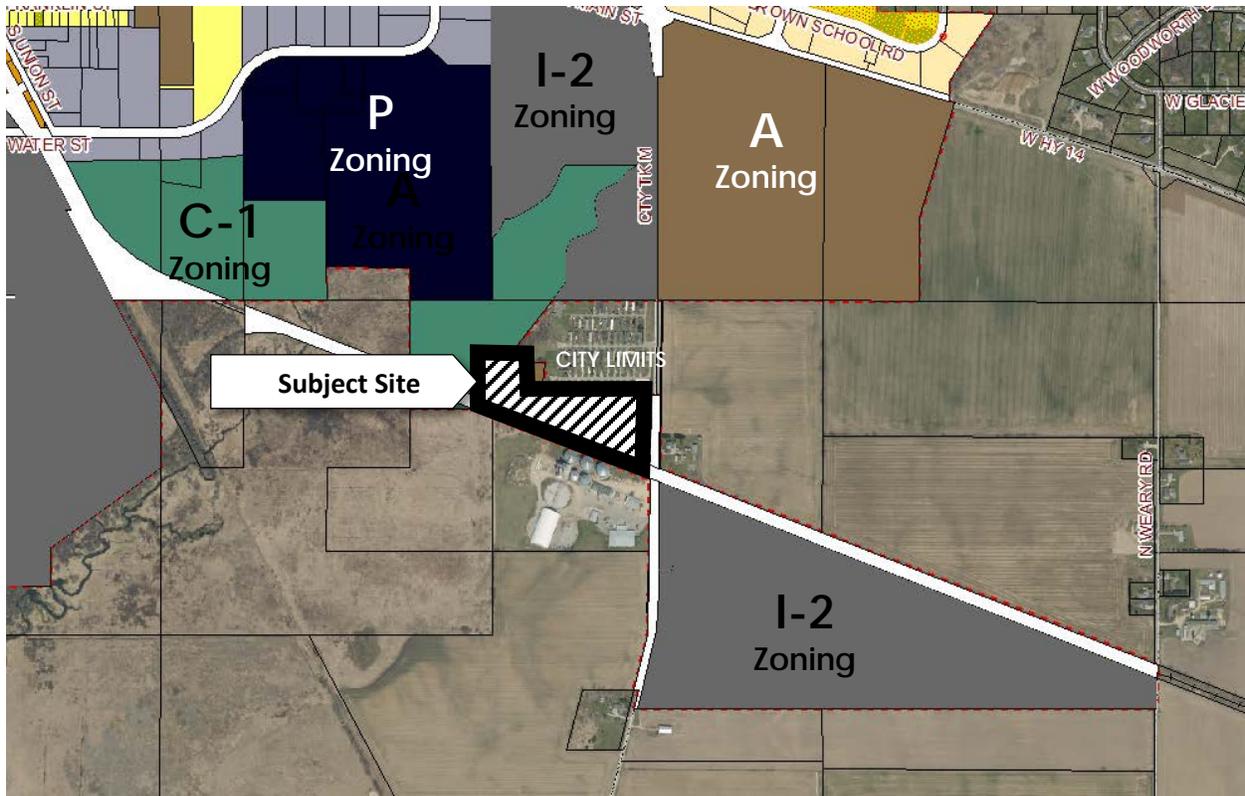


Figure 1 Location Map

Description of request: The City has initiated an ordinance to change the zoning classification of parcel 6-27-1150 to I-1 Light Industrial. The location of the parcels under discussion is depicted in the location map above. The Economic Development Committee is working towards getting the site Gold Shovel Certified with the Madison Region Economic Development Partnership. The priority will be to market the site to an industrial user that will use the adjacent rail line. This is one of the only developable site in the city that has access to rail.

Staff Analysis of Request: This rezoning will allow the future development of the parcel in accordance with the 2015 Comprehensive Plan. It should be noted that any future user will have to go through a site plan review with Plan Commission.

Consistency with the City of Evansville Comprehensive Plan and Municipal Code: The proposed land division and land uses are thoroughly consistent with the Future Land Use Map of the Comprehensive Plan.

Required Plan Commission findings: The following factors, consistent with Section 130-131 (1) through (6) of the Evansville Zoning Ordinance shall be considered in the review of a rezoning application:

Section 130-131 (1) Site design and physical characteristics

- a. Existing topography, drainage patterns and vegetative cover and the suitability of the proposed use in this regard.
- b. Availability of water, sewer, rail and other services and the utility requirements of the proposed site.
- c. Where public sewers are not available, the percolation characteristics of the soil.
- d. Adequacy of the proposed internal circulation system, including safety considerations.
- e. Access to sites from the internal circulation system.
- f. The costs of providing various public services.
- g. Appearance (how the area will look).

Staff Comments: This parcel is not currently connected to City sewer or water.

Section 130-131 (2) Site location relative to public road network

- a. Convenient access to a public road network (safety of access points).
- b. Visibility from the proposed road and the need for visibility.
- c. Access; the location is to provide access primarily by right-hand turning movements.

Staff comments: The future use will not have an adverse impact on the road network. Driveways will likely be added to accommodate any future construction.

Section 130-131 (3) Land use

- a. Compatibility with existing or proposed uses in the area.
- b. Relation to any existing land use plan.
- c. Relation to existing or proposed development at nearby interchanges.
- d. In reviewing an application for a zoning district change to a business district, the plan commission and city council shall consider whether the proposed zoning district change likely will result in increased vehicular traffic on nearby local streets in areas of existing residential development and whether such increased traffic will have an adverse impact on the existing residential development.

Staff comments: The proposed industrial use is consistent with the existing conditions. The use is consistent with the zoning code and the City's Comprehensive Plan.

Section 130-131 (4) Traffic generation

- a. Amount of daily and peak hour traffic to be generated, related to site size. Traffic shall be sub-classified as to arterial, collector and local streets.
- b. Amount of traffic generated relative to existing and anticipated ultimate generated traffic in the area.

- c. *Expected composition of site-generated traffic by vehicle types.*
- d. *Effect of site-generated traffic on the operation of the area.*
- e. *Safety and convenience of future users.*

Staff comments: The amount of traffic generation increase is unknown at this time.

Section 130-131 (5) Community effects

- a. *Immediate and long-range tax base.*
- b. *Access to market or service area.*
- c. *Relation to scenic or recreation values.*
- d. *Relation to the public interest, the purpose and intent of this chapter and substantial justice to all parties concerned.*
- e. *Compliance with the master plan's goals and objectives.*

Staff comments: The project will contribute positively to the City's immediate and long-range tax base by adding to the City's equalized value and providing space for new industrial construction in the community. The proposal is in compliance with the City's zoning code and Comprehensive Plan with conditions.

Section 130-131 (6) Other relevant factors

- a. *Compliance with the Performance Standards in Article III of the zoning code.*
- b. *Additional impacts.*

Staff comments: The site must comply with the performance standards contained within Article III of the zoning code. This will include additional site plan review for landscape and use consistency with the zoning code and adjacent lots.

Additional Factors and Findings of the Zoning Administrator: This rezoning application shall also be evaluated to determine whether the request is harmonious with the City's Comprehensive Plan, particularly as evidenced by the following standards as outlined in Section 130-174 (3) a to c of the City's zoning ordinance. The following findings should be referenced in the Plan Commission's recommendation for Common Council to approve the rezoning, if it so chooses.

Section 130-174 (3) a. How does the proposed rezoning further the purposes of the zoning code? How does the proposed rezoning further applicable rules and regulations of the Wisconsin Department of Natural Resources and Federal Emergency Management Agency?

Staff comments: The proposed zoning classifications are consistent with and further the intent of the zoning code as provided for in Section 130-2 of the Municipal Code. The proposed zoning classifications would not be contrary to any rule or regulation of the Wisconsin Department of Natural Resources. All future development of the site will comply with all rules and regulations relating to land use and development. The subject developable portions of properties are not located within a floodplain.

Section 130-174 (3) b. Which factor has arisen which was not properly addressed on the current zoning map and/or zoning classification?

1. *The designations of the official zoning map and/or zoning classification should be brought into conformity with the Comprehensive Plan.*
2. *A mistake was made in mapping on the official zoning map and/or zoning classification.*
3. *Factors have changed (such as the availability of new data, the presence of new roads or other infrastructure, additional development, annexation, or other zoning*

changes), making the subject property more appropriate for a different zoning district.

4. Growth patterns or rates have changed, thereby creating the needs for an amendment to the official zoning map and/or zoning classification.

Staff Comment: Factor 4 is applicable in this case.

Section 130-174 (3) c. How does the proposed amendment to the official zoning map and/or zoning classification maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property?

Staff Comment: The City's Comprehensive Plan Future Land Use Map identifies the area under discussion for future industrial use.

Rezoning Summary: After holding the public hearing and discussing the rezoning, the Plan Commission will need to decide whether the positive aspects of the proposal outweigh any potential negatives. If, after weighing the pros and cons of the proposal, the Plan Commission finds that it would be an overall benefit to the community, the rezoning should be recommended to the City Council. In doing so, the Commission should outline its reasons for forwarding a recommendation for approval. Such reasons could include:

- 1) Factors have changed, namely the acquiring of the property by the City, which makes the subject properties a priority for development.
- 2) Growth patterns have changed, requiring the guidance of the Comprehensive plan to be followed and correspondingly rezone the subject parcel accordingly.
- 3) In general, the potential public benefits of the proposed rezoning outweigh any and all potential adverse impacts of the proposed rezoning.

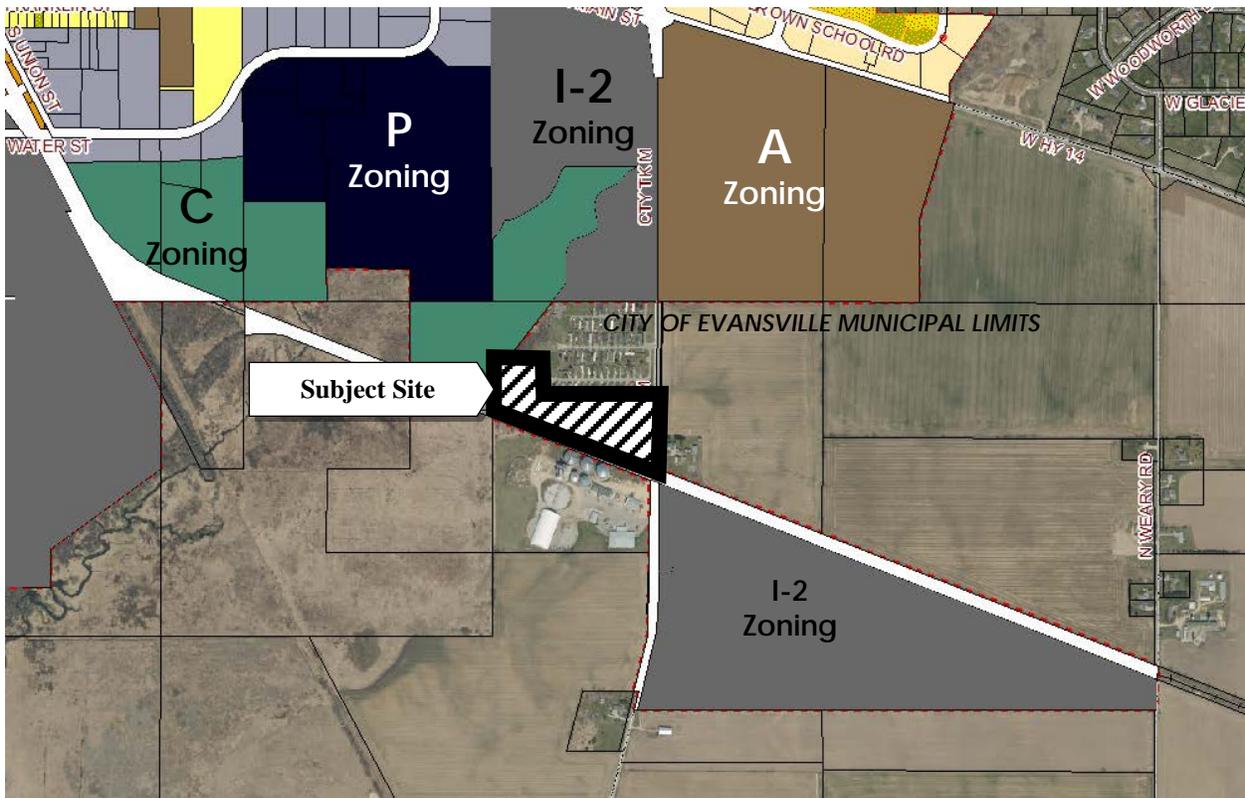
Staff recommended motion: *The Plan Commission recommends the City Council approve Ordinance 2019-03, Rezoning Territory from Agricultural (A) to Light Industrial (I-1) Zoning, finding that the public benefits of the proposed rezoning outweigh any and all potential adverse impacts of the proposed rezoning, as identified in Section 130-174(3)a-c of City ordinance.*

CITY OF EVANSVILLE
ORDINANCE # 2019-03

**An Ordinance Rezoning Territory from Agricultural District (A-1)
to Light Industrial District (I-1)**
(On Parcel 6-27-1150 with Tax ID 222080100, on Cty M)

The Common Council of the City of Evansville, Rock County, Wisconsin, do ordain as follows:

SECTION 1. Zoning Classification. In accordance with Section 130-171 to 130-176, Evansville Municipal Code, Section 62.23(7)(d)2 of the Wisconsin State Statutes and upon recommendation of the Plan Commission and the findings of the Common Council that such zoning district change is in the best interest of the City, and all necessary notices having been given, and the required public hearing having been held, and the Plan Commission having made its recommendation of approval in writing to the Common Council, the zoning classification of parcel 6-27-6-27-1150 with Tax ID 222080100, on Cty M is changed from Agricultural District (A-1) to Light Industrial District (I-1). The area to be rezoned is indicated on the maps below:



SECTION 2. Zoning Map Amendment. The official zoning map, City of Evansville, Wisconsin, is hereby amended to show the territory described in Section 1 as Light Industrial District (I-1).

SECTION 3. Severability. If any provision of this Ordinance is invalid or unconstitutional, or

if the application of the Ordinance to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provision or application.

SECTION 4. Effective Date. This Ordinance shall take effect upon its passage and publication as provided by law.

Passed and adopted this 8th day of September, 2019

William Hurtley, Mayor

ATTEST:

Judy L. Walton, Clerk

Introduced: 07/09/2019
Notices published: 07/10/2019 and 07/17/2019
Public hearing held: 08/05/2019
Adopted: 08/13/2019
Published: ___/___/2019 (within 10 days of adoption)

Sponsors: This is a city-initiated ordinance.

Drafted on June 17, 2019 by Jason Sergeant, Community Development Director



City of Evansville

Community Development Department

www.ci.evansville.wi.gov
31 S Madison St
PO Box 529
Evansville, WI 53536
(608) 882-2266

July 25, 2019

Site Manager
6909 N County Road M
Evansville, WI 53536

RE: Public Notice to Rezone land adjacent to your property (Application RZ-2019-01)

Dear Site Manager,

This letter is to inform you of a City initiated request to rezone a parcel of land adjacent your parcel has been scheduled for a public hearing and review at the next Plan Commission Meeting:

Monday, August 5, 2019 at 6pm
City Hall, 3rd Floor
31 S Madison St., Evansville, WI 53536

Per State Law, public notices are sent to the owner of record for a parcel. However, the city has been made aware of the number of individual dwellings on your property. 60 Copies of the public hearing notice are included with this letter, please post or pass this notification along to other residents on your property.

Sincerely,

Jason Sergeant
Community Development Director



NOTICE OF PUBLIC HEARING - CITY OF EVANSVILLE PLAN COMMISSION

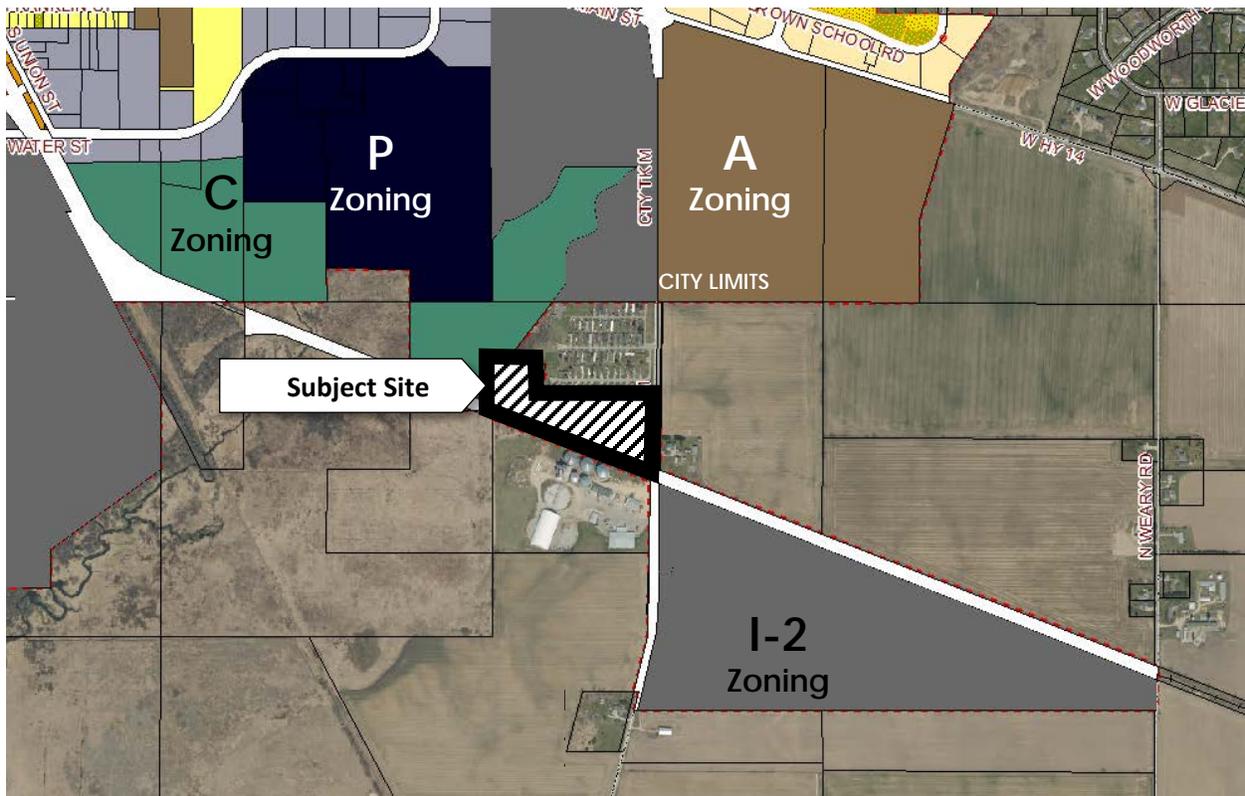
Parcel 6-27-1150, on CTY Road M

Public Hearing Date: August 5, 2019 at 6:00PM

Public Hearing Location: City Hall, 31 South Madison St, Evansville, WI

Prepared by: Jason Sergeant, Community Development Director

Direct questions and comments to: Jason.sergeant@ci.evansville.wi.gov or 608-882-2285



PLEASE TAKE NOTICE that an application to rezone a parcel from A Agriculture to Heavy Industrial I-2 T. The Plan Commission will conduct a public hearing on the land division request and rezoning request at the time and place listed above. The Applications are available at City Hall, 31 South Madison Street, for public viewing during regular business hours. All interested parties are invited to attend the hearing and provide comment.

Direct questions and comments to Community Development Director:
Jason.sergeant@ci.evansville.wi.gov or 608-882-2285
For more information: ci.evansville.wi.gov/current

II. [§ 12.2] Triggering Application of the Law

A. [§ 12.3] In General

In *State ex rel. Newspapers, Inc. v. Showers*, the Wisconsin Supreme Court held that the Open Meetings Law applies whenever a gathering of members of a governmental body satisfies two requirements: (1) there is a purpose to engage in governmental business, and (2) the number of members present is sufficient to determine the governmental body's course of action.¹

B. [§ 12.4] The Purpose Test

Under the first prong of the *Showers* test, the gathering of members of a governmental body must be for the purpose of engaging in governmental business—be it discussion, decision-making, or information gathering. For example, in *State ex rel. Badke v. Village Board*,² the Wisconsin Supreme Court held that the village board conducted a meeting, as defined in the Open Meetings Law, when a quorum of the board attended a plan commission meeting to observe the commission's proceedings on a development plan that was subject to the board's approval. The court stressed that a governmental body is engaged in governmental business when its members gather simply to learn information on a matter within the body's realm of authority. The members need not actually discuss the matter, or otherwise interact with one another, to be engaged in governmental business.

If, however, members of a governmental body gather but do not conduct business within the jurisdiction of the body, their gathering does not constitute a meeting. For example, in *Paulton v. Volkmann*, the court held that a quorum of a school board attending a gathering of town residents was not a meeting of the board. The court determined that the members had not engaged in school-board business because they did not receive information or otherwise exercise board duties.³

The court of appeals has also ruled that members of a governmental body did not conduct governmental business when they discussed their attorney's advice relating to a meeting agenda item. In *State ex rel. Gates v. Dorshorst*,⁴ Gates charged that the chair and four members of the Town Board of Dekorra met and conducted government business without public notice, in violation of the Open Meetings Law. The board members met to discuss a

¹ 135 Wis. 2d 77, 102, 398 N.W.2d 154 (1987).

² 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

³ 141 Wis. 2d 370, 415 N.W.2d 528 (Ct. App. 1987).

⁴ No. 02-3152, 2004 WL 524948 (Wis. Ct. App. Mar. 18, 2004) (unpublished opinion not to be cited as precedent or authority per section 809.23(3) of the Wisconsin Statutes).

planned agenda item, a performance evaluation of an employee, but after one member informed the others that their attorney had advised them not to conduct the performance evaluation until they received a written complaint about the subject employee, the chairperson informed the other members that he would remove the item from the agenda. The court ruled that the members were merely discussing agenda items and not conducting governmental business. Because the board did not hear information on a matter for a board decision, and did not engage in decision making, there was no Open Meetings Law violation.

C. [§ 12.5] The Numbers Test

1. [§ 12.6] In General

The second part of the *Showers* test requires that the number of members present be sufficient to determine the governmental body's course of action on the business under consideration. The potential for a gathering to determine the outcome of a proposal can be either the affirmative power to pass or the negative power to defeat. Under section 19.82(2) of the Wisconsin Statutes,⁵ a meeting is presumed to take place if at least one-half of the body is present.

2. [§ 12.7] Negative Quorum

In *Showers*, the Wisconsin Supreme Court held that a gathering of fewer than one-half the members of a body may be a meeting if the number of members present constitutes a *negative quorum*, i.e., a sufficient number to block action by the body on a particular matter. For example, in *Showers*, four members out of an eleven-member body met to work out a compromise on a budget change. The budget change required a two-thirds vote of the parent body (a vote of eight members) to pass. The court held that the meeting was illegal, because four members could determine the outcome by voting as a block against the budget change and therefore constituted a negative quorum.

If a governmental body acts under a supermajority rule (a two-thirds majority, for example) the Open Meetings Law applies whenever more than a one-third of its members gather to discuss or act on matters within the body's authority.⁶

⁵ Unless otherwise indicated, all references in this chapter to the Wisconsin Statutes are to the 2003-04 Wisconsin Statutes, as affected by acts through 2005 Wisconsin Act 226. Textual references to the Wisconsin Statutes are hereinafter indicated as "chapter xxx" or "section xxx.xx," without the designation "of the Wisconsin Statutes."

⁶ Wisconsin Dep't of Justice. *Wisconsin Open Meetings Law: A Compliance Guide* 6 (2005).

III. [§ 12.8] Application of The Open Meetings Law

A. [§ 12.9] Burden of Proof

The presence of members of a governmental body does not, by itself, establish the existence of a meeting subject to the Open Meetings Law. The law provides, however, that if one-half or more of the members of a body are present, the gathering is presumed to be a meeting.⁷ Members of a governmental body may overcome the presumption of a meeting by establishing that they did not gather information, discuss, or act on business within the governmental body's authority.

If a person alleges that a gathering of less than one-half of the members of a governmental body was held in violation of the Open Meetings Law, that person has the burden of proving that the gathering constituted a meeting subject to the law.⁸ That burden may be satisfied by proving that: (1) the members gathered to conduct governmental business, and (2) a sufficient number of members were present to determine the body's course of action.

B. [§ 12.10] Statute of Limitation

In *State ex rel. Leung v. City of Lake Geneva*, the court of appeals held that because an action alleging an Open Meetings Law violation was brought by a private citizen acting as a "private attorney general" under section 19.97, and therefore was brought on behalf of the public, the applicable statute of limitation is governed by section 893.93(2). Under this section, a complaint alleging a violation of a statute must be filed within two years.⁹ The court also held that the "discovery rule," which under certain circumstances may toll the running of the statute of limitation until an injury is discovered, is not applicable to a claim of an Open Meetings Law violation.¹⁰

C. [§ 12.11] Complaints

Complaints brought by citizens under the Open Meetings Law are not brought on behalf of an individual, but on behalf of the state. A complaint brought on behalf of an individual plaintiff will be dismissed.¹¹ For a copy of a verified Open Meetings Law complaint, see

⁷ Wis. Stat. § 19.82(2).

⁸ *Showers*, 135 Wis. 2d at 102.

⁹ *State ex rel. Leung v. City of Lake Geneva*, 2003 WI App 129, 265 Wis. 2d 674, 666 N.W.2d 104.

¹⁰ *Id.* ¶ 7.

¹¹ *Fabyan v. Achtenhagen*, 2002 WI App 214, 257 Wis. 2d 310, 652 N.W.2d 649.

Appendix B of Wisconsin Dep't of Justice, *Wisconsin Open Meetings Law: A Compliance Guide* (2005), available at <http://www.doj.state.wi.us>.

IV. [§ 12.12] Special Situations

A. [§ 12.13] Walking Quorums

The requirements of the Open Meetings Law also extend to walking quorums. A *walking quorum* is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, whose participants agree, tacitly or explicitly, to act in sufficient number to reach a quorum.¹² In *State ex rel. Lynch v. Conta*, the Wisconsin Supreme Court recognized the danger that a walking quorum may produce a predetermined outcome and thus render a publicly held meeting a mere formality.¹³ The court commented that any attempt to avoid the appearance of a meeting through use of a walking quorum is subject to prosecution under the Open Meetings Law.¹⁴

A walking quorum can be created by one-on-one conversations in person, by telephone, or by successive e-mail messages between sufficient numbers of a governmental body to create a quorum (or a negative walking quorum.)

In *State ex rel. Lawton v. Town of Barton*, the court of appeals ruled that a plaintiff's allegation of violation of the Open Meetings Law, alleging a walking quorum violation, was not mooted by the trial court's declaration that the board's action to remove plaintiff as a plan commissioner was void. The walking quorum allegation is an action against town supervisors as individuals, not the board in general. The court of appeals ruled that the board members' action of meeting privately to arrange a special meeting to consider removal of Lawton from the plan commission constituted a walking quorum in violation of the Open Meetings Law.¹⁵ The court of appeals remanded the case to the circuit court for determination whether the facts would support the allegation of a walking quorum, in violation of the Open Meetings Law.¹⁶

¹² *Showers*, 135 Wis. 2d at 92 (quoting *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 687, 239 N.W.2d 313 (1976)).

¹³ *Conta*, 71 Wis. 2d at 687, *superseded on other grounds by statute as stated in Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987).

¹⁴ *Conta*, 71 Wis. 2d at 687.

¹⁵ 2005 WI App. 16, ¶¶ 11–15, 278 Wis. 2d 388, 396–97, 296 N.W.2d 304.

¹⁶ *Id.* ¶ 20.

Additionally, as discussed at section 12.16, *infra*, a walking quorum may occur when an e-mail from one board member to one or two others is then forwarded to sufficient numbers of a governmental board or body to constitute a quorum.¹⁷

B. [§ 12.14] Telephone Conference Calls

Telephone conference calls among members of a governmental body may fit within the definition of *meeting* and thus be subject to the Open Meetings Law.¹⁸ Under the *Showers* test, the Open Meetings Law applies to any conference call that: (1) is for the purpose of conducting governmental business, and (2) involves a sufficient number of members of the body to determine the body's course of action on the business under consideration. Therefore, such conference call meetings must also be properly noticed. Additionally, a series of telephone calls between a limited number of members, i.e., a walking quorum, may constitute a meeting.

To comply with the Open Meetings Law, a governmental body conducting a meeting by telephone conference call must provide the public with an effective means to monitor the conference. This may be accomplished by broadcasting the conference through speakers located at one or more sites open to the public. The conference call meeting must also be properly noticed.¹⁹

C. [§ 12.15] Multiple Meetings

When a quorum of one governmental body having jurisdiction over an agenda item knowingly attends the meeting of another governmental body to gather information, two meetings are actually taking place, and both must comply with the Open Meetings Law's notice requirements.²⁰ Separate meeting notices must be given if: (1) a quorum of a body is present at a properly-noticed meeting of a subunit of the body, (2) such a gathering is not social or chance, and (3) one or more of the members of the quorum of the body is not also a member of the subunit of the governmental body. Separate notices must be given to provide the public with the broadest possible knowledge of the purpose of the meeting.

¹⁷ Informal Correspondence, Wis. Op. Att'y Gen. (October 7, 2005).

¹⁸ 69 Wis. Op. Att'y Gen. 143 (1980) (OAG 39-80).

¹⁹ *Id.* at 146.

²⁰ *State ex rel. Badke v. Village Bd.*, 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

D. [§ 12.16] Electronic Mail

In a letter from the Wisconsin Attorney General discussing the use of e-mail by members of a governmental body, the attorney general strongly urged governmental bodies to avoid using electronic mail to communicate on matters within the realm of their authority, because such use creates a “serious risk” of violating the Open Meetings Law.²¹ In this informal opinion, the Attorney General compared the use of e-mail by members of a governmental body to both written correspondence and telephone conference calls between members. He found that, while correspondence to and from members within the body are not deemed to be meetings, telephone conference calls have been determined to be meetings subject to the Open Meetings Law, requiring proper notice and accessibility to the public. He further stated that, because the exchange of e-mails can result in a “near-simultaneous exchange of information between members of a governmental body on a subject matter within the body’s realm of authority,” such exchanges may be subject to the Open Meetings Law.

While acknowledging that there are no current Wisconsin cases interpreting such use, he stated that factors courts might consider include “(1) the number of participants involved in the communication; (2) the number of communications regarding the subject; (3) a time frame within which the electronic communications occurred; and (4) the extent of the conversation-like interactions reflected in the communications.”²²

In a later informal opinion, the Attorney General once again addressed the use of e-mail by members of governmental boards and bodies.²³ The opinion further stated that the determination of whether e-mail implicates the Open Meetings Law “depends heavily on the specific facts of each situation.” The answer to the question can best be described as depending on whether the e-mail exchange more closely resembles “correspondence” or a “conversation.” The Attorney General stated that an Open Meetings Law violation may occur “if elected officials are instant messaging or contacting each other via e-mail within a close timeframe if (1) enough of them are involved in the messaging to determine the body’s course of action, and (2) there is a purpose to engage in official business. An open meetings violation could also occur if a single official were to e-mail other officials in succession, asking for their support on a particular matter or position.” The opinion concluded that “e-mail is a valuable, time-saving device for quick and incidental communication, but it should not be used to carry on private debate and discussion which belongs at a public meeting subject to public scrutiny.”

²¹ Informal Correspondence from Wis. Att’y Gen. to Tom Krischan (Oct. 3, 2000) *available at* <http://www.doj.state.wi.us/dls/docs/100301ltr.doc>.

²² *Id.*

²³ Informal Wis. Op. Att’y Gen. (March 12, 2004).

The Virginia Supreme Court has ruled, in a 2004 case involving e-mail, that members of a governmental body did not violate the Virginia Freedom of Information Act. In analyzing whether the exchange of e-mails between members of a public body constituted a “meeting,” the court found that the key factor in the analysis was whether the communications were “virtually simultaneous” interactions. The court found no violation of the open meetings law, because the e-mail communications did not involve simultaneous communications. Holding that the communications were more like traditional letters sent by ordinary mail than a meeting, the court noted that the responses to the e-mail messages were more than four hours later at the shortest, and well over two days at the longest interval. The court held that when e-mail messages are sent simultaneously, there may be an open meetings violation, but when they are used more as the equivalent of a letter, there is no violation.²⁴

A Washington State Court of Appeals ruled in 2001 that e-mail exchanges may constitute a meeting triggering that state’s open-meetings law if a quorum of the governmental body participates and if the e-mail exchange is used to conduct official business of the governmental body. Mere use or passive receipt of e-mail did not, however, automatically constitute a meeting.²⁵

► *Practice Tip.* Attorneys representing governmental bodies should caution their clients that the use of e-mail communications between members of the governmental body can potentially trigger the provisions of the Open Meetings Law.

V. [§ 12.17] Exceptions

By statutory definition, the term *meeting* excludes “any social or chance gathering or conference which is not intended to avoid” the Open Meetings Law.²⁶ In *Badke*, the Wisconsin Supreme Court interpreted the chance-gatherings exception in the context of members of one governmental body attending the meetings of another governmental body, specifically a quorum of the village board that regularly attended meetings of the plan commission. The board members alleged, in affidavits, that they attended as interested citizens, and that their attendance was spontaneous and independent. The court stated that if this evidence had been uncontradicted, the court might have concluded that these were chance gatherings and, therefore, exempt from the Open Meetings Law. The court concluded, however, that the board members’ attendance at the plan commission meetings did not fall within the chance-gathering exception because board members regularly attended the plan

²⁴ *Beck v. Shelton*, 593 S.E.2d 195, 198–99 (Va. 2004).

²⁵ *Wood v. Battle Ground Sch. Dist.*, 27 P.3d 1208 (Wash. Ct. App. 2001).

²⁶ Wis. Stat. § 19.82(2).

commission meetings and their regular attendance had led to the expectation that at least half the board would attend. Thus, their attendance was not sporadic or spontaneous.²⁷

²⁷ *Badke*, 173 Wis. 2d at 577.

VIII. [§ 17.28] Interpreting the Open Meetings Law 13
 A. [§ 17.29] Construction 13
 B. [§ 17.30] Interpretations of Law 13

I. [§ 17.1] Scope

How is an enforcement action commenced against a member of a governmental body? Who brings the action? Does the fact that a meeting was held illegally have any consequences for the matters decided at that meeting? What is the penalty for knowingly violating the Open Meetings Law? Who receives the forfeiture money? This chapter will answer those questions, and others, concerning enforcement of the Open Meetings Law.

II. [§ 17.2] Acts Violating the Statute

A. [§ 17.3] In General

A member of a governmental body implicates section 19.96 of the Wisconsin Statutes¹ by knowingly attending a meeting held in violation of this subchapter or by, in his or her official capacity, violating this subchapter by some act or omission.

Proof of *scienter*, or intent, is necessary to prevail on an allegation that a member in his or her official capacity knowingly attended a meeting of a governmental body held in violation of the Open Meetings Law.² *Scienter* is not an element of an offense when a defendant is charged with a violation of the Open Meetings Law by some act or omission other than the attendance at an illegally convened or conducted meetings. Such other violations include failure to give notice of a meeting as required by section 19.84(1), failure to give sufficiently specific notice of the subject matter of a meeting, failure to give notice of a contemplated closed session, failure to follow precisely the procedures prescribed in section 19.85(1), and failure to record the motions and roll-call votes of each member as required by section 19.88(3). For instance, in *State v. Swanson*, defendant Swanson, the chairperson of a committee, was found to have

¹ Unless otherwise indicated, all references in this chapter to the Wisconsin Statutes are to the 2003–04 Wisconsin Statutes, as affected by acts through 2005 Wisconsin Act 226. Textual references to the Wisconsin Statutes are hereinafter indicated as “chapter xxx” or “section xxx.xx,” without the designation “of the Wisconsin Statutes.”

² *State v. Swanson*, 92 Wis. 2d 310, 284 N.W.2d 655 (1979); 65 Op. Att’y Gen. Preface iv (6).

violated the statute when he personally informed each member of a meeting but failed to provide any notice of the meeting to the news media or general public.³

B. [§ 17.4] Definition of *Knowingly*

The Wisconsin Supreme Court has defined *knowingly* as not only positive knowledge of the illegality of a meeting, but also an awareness of the high probability of the meeting's illegality or a conscious avoidance of the awareness of the illegality.⁴ For purposes of section 19.96, the term *knowingly*, as previously recognized by federal courts, is not limited to positive knowledge, but also includes the state of mind of one who acts "with an awareness of the high probability of the existence of the fact in question," or who "does not possess positive knowledge only because he consciously avoided it."⁵

III. [§ 17.5] Enforcement

A. [§ 17.6] Discretion in Enforcement

District attorneys and the Wisconsin Attorney General are empowered to exercise reasonable discretion in enforcing the law, including discretion as to the type of legal action to be brought, if any. Court proceedings should not be instituted on mere suspicion of a violation. Consequently, an appropriate action should be commenced only if there is an apparent material and wanton violation, and if there are credible witnesses and sufficient evidence available to prove the necessary elements of the violation.⁶

The district attorney has broad prosecutorial discretion.⁷ The court has repeatedly concluded that "[t]he discretion to charge or not to charge, and the discretion of how to charge, rests solely with the district attorney. Only where there has been an aura of

³ *State v. Swanson*, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

⁴ *Id.* at 319 (quoting *United States v. Jewell*, 532 F.2d 697, 700, 702 nn.12, 13 (9th Cir. 1976)).

⁵ *Jewell*, 532 F.2d at 700, 702 nn.12, 13.

⁶ Opinion of Wis. Att'y Gen. to Darwin L. Zwieg, Dist. Att'y, Clark County, OAG 34-81, 1981 WL 157245 (Aug. 4, 1981).

⁷ *State v. Karpinski*, 92 Wis. 2d 599, 285 N.W.2d 729 (1979).

discrimination has this court indicated that checks were to be placed upon a prosecutor's charging decision."⁸

B. [§ 17.7] Parties

1. [§ 17.8] Prosecutors

Both the Attorney General and the district attorneys have authority to enforce the Open Meetings Law.⁹ In most cases, enforcement at the local level has the greatest chance of success due to the need for intensive factual investigation, the district attorneys' familiarity with local rules of procedure, and the need to assemble witnesses and material evidence.¹⁰ In Milwaukee, the Milwaukee County Corporation Counsel, not the district attorney, enforces the Open Meetings Law.¹¹

A district attorney may enforce the Open Meetings Law only after an individual files a verified Open Meetings Law complaint with the district attorney's office.¹² If the district attorney refuses to commence an enforcement action or otherwise fails to act within 20 days of receiving a complaint, the individual who filed the complaint has a right to bring an action in the name of the state to enforce the Open Meetings Law.¹³ Even though a private enforcement action cannot take place prior to the expiration of the Attorney General's 20-day review period, however, "the district attorney may still commence an action even though more than 20 days have passed. It is not uncommon for the review and investigation of open meetings complaints to take longer than twenty days."¹⁴

⁸ *State ex rel. Unnamed Petitioners v. Connors*, 136 Wis. 2d 118, 127–28, 401 N.W.2d 782 (1987), *overruled in part on other grounds by State v. Unnamed Defendant*, 150 Wis. 2d 352, 441 N.W.2d 696 (1989); *see also State v. Kenyon*, 85 Wis. 2d 36, 45, 270 N.W.2d 160 (1978) ("[t]he discretion resting with the district attorney in determining whether to commence a prosecution is almost limitless. . ."). The discretionary powers of the district attorney are more specifically set forth in *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110 and *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 434, 477 N.W.2d 608 (1991).

⁹ Wis. Stat. § 19.97(1).

¹⁰ 65 Wis. Op. Att'y Gen. Preface ii (1976).

¹¹ Wis. Stat. § 59.42(2)(b)4.

¹² Wis. Stat. § 19.97(1).

¹³ Wis. Stat. § 19.97(4).

¹⁴ Wisconsin Dep't of Justice, *Wisconsin Open Meetings Law: A Compliance Guide* 17 (2005) (hereinafter *Compliance Guide*).

A so-called “private attorney general” is entitled to prosecute an Open Meetings Law violation to the fullest extent allowed by the law, including seeking a declaration concerning the legal status of any action taken at the allegedly illegal meeting, and requesting civil forfeitures.¹⁵ In *State ex rel. Lawton v. Town of Barton*, the court found that enforcement of the Open Meetings Law is appropriate even though other underlying counts of the complaint were dismissed, because “judgment would declare, for the citizens of the state, the legal status of the acts of the town supervisors . . . and potentially impose forfeitures on the town supervisors for their knowing failure to comply with the open meetings law.”¹⁶

Bringing the complaint on behalf of the individual, rather than on behalf of the state, is a fatal error and will cause the complaint to be dismissed. “[F]ailure to comply with a statutory directive may result in a loss of competency to proceed.”¹⁷ If the individual follows the proper procedure and prevails, the court is authorized to award the person the actual and necessary costs of prosecution, including reasonable attorney fees.¹⁸

The Attorney General has opined that a county board does have the authority to designate its corporation counsel as the official responsible for enforcing the county’s own open meetings ordinance. The Attorney General wrote that the power to “enforce such a county ordinance, in my view, does not implicate Wis. Stat. §§ 19.97(1), 978.05(2) or 59.42(1).” The Attorney General further wrote that the assignment of ordinance enforcement duties to a corporation counsel has no effect on the district attorney’s concurrent statutory enforcement duties under section 19.97(1). It would also have no effect on the district attorney’s concurrent power to bring state forfeiture action under section 978.05(2). Further, actions to enforce the Open Meetings Law can only be brought after a complainant has sworn out a verified complaint pursuant to the provisions in section 19.97(1). Therefore, the citation procedure under section 66.0113 cannot be applied to a county’s open meetings ordinance, because it does not require or provide for verified complaints.¹⁹

¹⁵ *State ex rel. Lawton v. Town of Barton*, 2005 WI App 16, ¶ 15, 278 Wis. 2d 388, 692 N.W.2d 304.

¹⁶ *Id.*

¹⁷ *Fabyan v. Achtenhagen*, 2002 WI App 214, ¶ 7, 257 Wis. 2d 310, 652 N.W.2d 649.

¹⁸ *Id.*; see *infra* § 17.24.

¹⁹ Informal Correspondence from Wis. Att’y Gen. to Darwin Zweig, Dist. Att’y, Clark County (Mar. 10, 2005), available at http://www.doj.state.wi.us/ag/opinions/ltr_zwieg031005.pdf.

Actions under section 19.97 are specifically exempted from the notice provisions of section 893.80(1), governing claims against governmental bodies.²⁰ The provisions of chapter 19 establish a comprehensive scheme that detail the public's right to obtain information about the affairs of the government and provides for enforcement of that right.²¹ The specific enforcement provisions of the Public Records and Open Meetings Laws take precedence over the general notice requirements of section 893.80.²²

2. [§ 17.9] Defendants

The Open Meetings Law applies to quasi-governmental corporations as well as to governmental bodies. The term *quasi-governmental corporation*, as used in section 19.82(1), has been interpreted to include "private corporations, which closely resemble governmental corporations in function, effect or status."²³

In certain circumstances, the public may act to enforce the Open Meetings Law against a private corporation. For instance, the court allowed a private party, on behalf of the state, to bring an action to enforce a provision in a lease between a city and a private corporation that required the corporation to comply with the Open Meetings Law.²⁴

C. [§ 17.10] Definitions

1. [§ 17.11] Meaning of *Person*

Section 19.97(1) does not expressly define the word *person*. This nontechnical term should therefore be accorded its ordinary and accepted meaning and usage.²⁵ Besides natural persons, the word *person* should be read to include partnerships, associations, and bodies politic or corporate.²⁶

²⁰ Wis. Stat. §§ 19.97(5), 893.80(8); *Auchinleck v. Town of La Grange*, 200 Wis. 2d 585, 547 N.W.2d 587 (1996).

²¹ *Town of Burke v. City of Madison*, 225 Wis. 2d 615, 622, 593 N.W.2d 822 (1999).

²² *Id.* at 623; *see also Auchinleck*, 200 Wis. 2d at 596.

²³ 80 Wis. Op. Att'y Gen. 129 (1991) (OAG 20-91); *see supra* § 11.6.

²⁴ *State ex rel. Journal/Sentinel, Inc. v. Pleva*, 155 Wis. 2d 704, 456 N.W.2d 359 (1990).

²⁵ *See, e.g., Ervin v. City of Kenosha*, 159 Wis. 2d 464, 484, 464 N.W.2d 654 (1991).

²⁶ Wis. Stat. § 990.01(26); *see also* Wis. Stat. § 801.03(2).

It is important to note that section 19.97(1) does not require that a person, as a condition to the filing of a complaint, demonstrate any special interest in, or any specific harm sustained by, an alleged violation.

2. [§ 17.12] Meaning of *Verified Complaint*

Like *person*, the phrase *verified complaint* is not defined in section 19.97(1). The term *verified* necessarily refers to a notarized statement, signed and sworn to by the complainant, that the allegations in the complaint are true to the best of his or her knowledge.²⁷ A verified complaint should set forth, with sufficient specificity, all facts needed to identify the purported wrongdoers and their particular conduct that allegedly violates the law.²⁸

D. [§ 17.13] Burden of Proof

The statutory penalty for a violation of the Open Meetings Law is a forfeiture.²⁹ Forfeiture actions in Wisconsin are not criminal in nature.³⁰ The burden of proof in enforcement actions is, therefore, the standard burden in civil proceedings, which is proof by a preponderance of the evidence.³¹

If one-half or more members of the body are present there is a presumption that it is for the purpose of conducting governmental business. The body may overcome the presumption by establishing that the members did not gather information, or “discuss or act on business within the governmental body’s authority.”³² Any social or “chance gathering” not intended to circumvent the requirement of the Open Meetings Law does not violate the law.³³

²⁷ See, e.g., Wis. Stat. § 19.49(1).

²⁸ See Wis. Stat. § 802.02(1). An analysis of the statutes, with a sample complaint form, can be found in 65 Wis. Op. Att’y Gen. Preface (1976). See also *Compliance Guide*, *supra* note 14, at App. B.

²⁹ See *infra* § 17.16.

³⁰ Wis. Stat. § 939.12.

³¹ Wis. J.I.—Civil 200 (2002).

³² *Compliance Guide*, *supra* note 14, at 7.

³³ Wis. Stat. § 19.82(2).

When a person alleges that a gathering of fewer than one-half of the members of the body was held in violation of the Open Meetings Law, that person has the burden of proving that the gathering constituted a “meeting” subject to the law.³⁴

IV. [§ 17.14] Penalties and Other Relief

A. [§ 17.15] Statutory Penalty

1. [§ 17.16] In General

Section 19.96 provides for a forfeiture of between \$25 and \$300 per member in violation, for each violation.

In addition to the forfeiture penalty, section 19.97(3) provides that a court may void any action taken at a meeting held in violation of the Open Meetings Law, if the court finds that the public’s interest in enforcing the law outweighs any interest in maintaining the validity of the action.³⁵ A court may also award any other appropriate legal or equitable relief, including declaratory and injunctive relief.³⁶

2. [§ 17.17] Nature of Penalty

A forfeiture under section 19.96 is a personal liability that may not be reimbursed by the municipality. A forfeiture under section 19.96 is in the nature of a penalty, and a suit to compel payment of a forfeiture is a civil action.³⁷ Because a forfeiture action is not a criminal proceeding,³⁸ the burden of proof in enforcement actions is the standard burden in civil proceedings, i.e., proof by a preponderance of the evidence.³⁹

³⁴ *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 102, 398 N.W.2d 154 (1987).

³⁵ *See infra* § 17.20.

³⁶ Wis. Stat. § 19.97(2). Declaratory judgment is reserved for parties who do not have a ready and adequate forum for their proposed construction of a law in the normal enforcement action. Declaratory judgment actions to enforce the Open Meetings Law are not encouraged and, in most situations, should be refused by the court unless commenced by a party subject to the penal law. *See State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 671, 239 N.W.2d 313 (1976) (declaratory judgment action by district attorney was reluctantly permitted by the court).

³⁷ 66 Wis. Op. Att’y Gen. 226 (1977) (OAG 63-77).

³⁸ Wis. Stat. § 939.12.

³⁹ Wis. J.I.—Civil 200 (2002).

Any forfeiture obtained in an action brought by a district attorney is awarded to the county.⁴⁰ Any forfeiture obtained in an action brought by the Attorney General or a private citizen is awarded to the state.⁴¹

B. [§ 17.18] Supplementary Relief

1. [§ 17.19] In General

Together, sections 19.96 and 19.97 establish the relief available to the Attorney General, district attorneys, and members of the public to remedy violations of the Open Meetings Law. In addition to the forfeitures of section 19.96, subsection 2 of section 19.97 allows such prosecuting parties to seek supplementary legal or equitable relief—e.g., mandamus, injunction, or declaratory judgment—to enforce the provisions of the law. In enforcement actions seeking forfeitures, the provisions of the Open Meetings Law must be strictly construed because of the penal nature of forfeitures. In all other enforcement actions, however, the provisions of the law must be construed liberally to achieve the purposes set forth in the law.

2. [§ 17.20] Voidability of Actions

Under section 19.97(3), an action of a governmental body can be voided only if a court action is initiated to challenge the validity of the meeting itself (the action is “voidable,” not “void”), the meeting is declared to have been held in violation of the law, and the court finds that the public interest in enforcing the provisions of the law outweighs the public interest in upholding the action.

For example, in *State ex rel. Hodge v. Town of Turtle Lake*,⁴² the court voided the town board’s decision on public interest grounds, stating:

The public has little discernable interest in allowing the Board in this case to deliberate in closed session An Open Meetings Law is not necessary to ensure openness in easy, noncontroversial matters where no one cares whether the meeting is open or not. Like the First Amendment which exists to protect unfavored speech, the Open Meetings Law exists to ensure open government in controversial matters. The Open Meetings Law functions to ensure that these difficult matters are decided without bias or regard to issues such as race, gender, or economic status, and with regard for the interests of the

⁴⁰ Wis. Stat. § 19.97(1).

⁴¹ Wis. Stat. § 19.97(1), (4).

⁴² 180 Wis. 2d 62, 75–76, 508 N.W.2d 603 (1993).

community. This requires, with few exceptions, that governmental meetings be held in full view of the community.

V. [§ 17.21] Defenses

A. [§ 17.22] Statutory Defenses

Under section 19.96, a member of a governmental body who is charged with knowingly attending a meeting held in violation of the law may argue that he or she:

1. Made or voted in favor of a motion to prevent the violation from occurring (for example, voting against going into an unauthorized closed session); or
2. Before the violation occurred, voted on relevant motions that were inconsistent with all those circumstances causing the violation.

A governmental-body member who is charged with other violations of the Open Meetings Law may claim that he or she did not act in his or her official capacity.⁴³

B. [§ 17.23] Common Law Defenses

A governmental-body member's reliance on advice of counsel, if factually provable, may provide an additional defense to prosecution under section 19.96. In *State v. Davis*,⁴⁴ the Wisconsin Supreme Court ruled that the good faith advice of governmental counsel authorized or required to give legal advice, and a defendant's subsequent open, unconcealed, and good faith reliance on that advice, is a defense to criminal prosecution. The possibility of an abuse of such a defense, as the court noted, is effectively eliminated

by limiting its application to the good faith reliance upon the legal opinion of a governmental officer whose statutorily created duties include the rendering of legal opinions as to actions of specific individuals or groups. In addition, the action of any individual or group relying on such opinion would have to be taken in good faith, open and unconcealed.⁴⁵

⁴³ *Compliance Guide*, *supra* note 14, at 18 (2005).

⁴⁴ 63 Wis. 2d 75, 216 N.W.2d 31 (1974) (interpreting Wis. Stat. § 946.13(1)).

⁴⁵ *Id.* at 82.

Later, in *Swanson*,⁴⁶ the court intimated that the *Davis* defense may apply within the context of a forfeiture prosecution under the Open Meetings Law.⁴⁷

The court accepted this defense in *Hodge*, stating that the imposition of forfeitures would be inappropriate based on the body's closed deliberations on a permit application. The members of the body did not knowingly attend a meeting in violation of the law because they truly believed that they were authorized to deliberate in closed session on that matter. Accordingly, their actions did not warrant a penalty under section 19.96.⁴⁸

In addition to the advice-of-counsel defense, the existence of an emergency situation may provide a defense, as suggested in *State ex rel. Lynch v. Conta*.⁴⁹

VI. [§ 17.24] Award of Attorney Fees

Section 19.97(4) allows the court to award the *relator* (a private party who brings an action on behalf of the state) the actual and necessary cost of prosecution, including reasonable attorney fees, if the relator prevails.

In *Hodge*,⁵⁰ the court concluded that the prevailing relator under the Open Meetings Law should be

awarded attorney's fees if an award would advance the purpose of the Open Meetings law: to ensure that the public has the fullest and most complete information possible regarding the affairs of government. If this condition is met, fees are awarded unless there is a showing of special circumstances which would render an award unjust.

As the *Hodge* court noted, an award will likely advance the purpose of the law if, for example, the award would make the prevailing relator economically able to enforce his or her rights and the rights of the public under the law, or to deter future Open Meetings Law violations and encourage governmental bodies to provide more openness in government.

⁴⁶ 92 Wis. 2d 310, 284 N.W.2d 655 (1979) (city's attorney advised city council that a particular closed session was authorized).

⁴⁷ *Id.* at 319.

⁴⁸ 180 Wis. 2d 62, 508 N.W.2d 603 (1993).

⁴⁹ 71 Wis. 2d 662, 685, 239 N.W.2d 313 (1976) (a case with a very complicated fact situation involving partisan caucuses and the Joint Finance Committee of the State Legislature), *superseded in part by statute as stated in State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987).

⁵⁰ 180 Wis. 2d at 78-79 (citation omitted).