

**VILLAGE OF GERMANTOWN  
N112 W17001 MEQUON ROAD  
GERMANTOWN, WI 53022  
\*\*AMENDED 9-16-2016\*\***

**MEETING: REGULAR MEETING OF THE VILLAGE BOARD**

**DATE AND TIME: MONDAY, September 19, 2016 7:00 p.m.**

**LOCATION: Germantown Village Hall Board Room**

- I. **CALL TO ORDER:** *This meeting has been given public notice in accordance with Section 19.83 and 19.84, Wis. Stats, in such form that will apprise the general public and news media of subject matter that is intended for consideration and action.*
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **PRESIDENT'S REPORT**
- V. **ANNOUNCEMENTS OF FORTHCOMING EVENTS OF PUBLIC INTEREST**  
**/COMMITTEE REPORTS:**  
The following individuals will be given the opportunity to make announcements of future municipal activities: Village President, Village Board Members, Village Administrator, Village Attorney and Village Clerk.
- VI. **CITIZEN INPUT/PUBLIC APPEARANCE on items not subject to a public hearing:**  
*Please be advised per §19.84(2), information will be received from the public. It is the policy of this municipality that there be a three (3) minute time period, per person, with time extension per the Chief Presiding Officer's discretion; be further advised that there may be limited discussion on the information received, however, no action will be taken under public comments. (15 minutes)*
- VII. **CONSENT AGENDA:**
  - A. Approval of Village Board Minutes: August 15, 2016 Regular Village Board Meeting and August 29, 2016 Special Village Board Meeting
  - B. Accounts payable/payroll

|    |                    |                  |              |
|----|--------------------|------------------|--------------|
| 1. | August 25, 2016    | Accounts Payable | \$231,738.21 |
| 2. | August 31, 2016    | Payroll (salary) | \$ 96,364.45 |
| 3. | August 2016        | Accounts Payable | \$ 74,790.76 |
| 4. | September 6, 2016  | Payroll (hourly) | \$220,044.15 |
| 5. | September 10, 2016 | Accounts Payable | \$537,032.56 |
| 6. | September 15, 2016 | Payroll (salary) | \$ 82,896.84 |
  - c. Operator Licenses: September 20, 2016 to June 30, 2017: [Recommended Approval]  
Tamika R. Flinn, Jamie L. McDonah; Kristal R. Schlegel; Patricia J. Vogel
- VIII. **UNFINISHED BUSINESS:** None

**IX. PUBLIC HEARINGS – 7:00 P.M. OR LATER: *The purpose of said hearing(s) is to hear any and all parties, their attorneys or agents, for or against the application(s) filed by the petitioner(s).***

- A. Skyline Development Corp., Agent and Petitioner for DBH 1031 LLC, (Sports Specialists of Milwaukee Inc.), to Amend Conditional Use Permit No. 04-16, to Revise the Amount of Land mitigation for Development Activities Within a 25' Wetland and 75' Navigable Waterway Setback on the Property located at N104 W13885 Donges Bay Road (Tax Key No. GTNV 362-981, pursuant to Section 24.04(3) of the Municipal Code;
- B. Village of Germantown Community Development Department for Petition for Proposed Text Amendments to the following sections of the Zoning Code (Chapter 17) of the Village of Germantown Municipal Code: 17.07 (General Provisions); 17.08 (Definitions); 17.42 (Conditional Uses); 17.43 (Site Plan Approval Requirements); 17.48 (Non-Conforming Uses, Structures and Lots); 17.51 (Changes and Amendments; and 17.56 (Wireless Communication Facilities)

**X. NEW BUSINESS:**

**A. CONDITIONAL USE PERMIT:**

Skyline Development Corp., Agent for Sports Specialists of Milwaukee Inc., Property Owner of N104W13885 Donges Bay Road (Tax Key No. GTNV 362-981); Request to Amend Conditional Use Permit No. 04-16 to Adopt Changes to the Wetland & Navigable Waterway Setback Mitigation Plan

**B. ORDINANCE AMENDMENTS:**

- 1. **ZONING ORDINANCE:** Village of Germantown Community Development Department, Text Amendments to Various Sections of the Zoning Code (Chapter 17) of the Village of Germantown Municipal Code
- 2. **\*\*PUBLIC PEACE AND GOOD ORDER ORDINANCE:** Village of Germantown Amendment to Provide for Extended Hours for Certain Late-Night Outdoor Entertainment Uses by Conditional Use Permit Within the Village (Section 9.07(2)(b) of the Village of Germantown Municipal Code\*\*

- XI. Amendment to Saxony Village Development Agreement to allow for Phasing of Construction

**XII. ADJOURNMENT**

The next Village Board meeting will be on October 3, 2016 at 7:00 p.m.

IX A

**BUSINESS OF THE VILLAGE BOARD  
GERMANTOWN, WI**

**MEETING DATE:** September 19, 2016

**AGENDA ITEM:** Public Hearing & New Business **(Conditional Use Permit)**

**ITEM TITLE:** Skyline Development Corp., Agent for Sports Specialists of Milwaukee Inc., Property Owner of N104 W13885 Donges Bay Road (Tax Key No. GTNV 362-983); Request to Amend Conditional Use Permit No. 04-16 to Adopt Changes to the Wetland & Navigable Waterway Setback Mitigation Plan

**SUBMITTED BY:** Jeffrey W. Retzlaff, Director, Community Development Department

**SUMMARY EXPLANATION:**

Skyline Development Corp, agent for Sports Specialists of Milwaukee Inc., property owner, is seeking approval of an amendment to CUP No. 04-16 due to changes in the amount and location of development impact mitigation activities associated with the development of a 32,000 sqft warehouse distribution and office building on the 4.7-acre parcel located on Donges Bay Road @ STH145/Fond du Lac Avenue.

As shown in the revised Mitigation Plan (dated August 15, 2016), development activity occurring within the 25' and 75' setback areas is associated with the access driveway and parking areas on the north and east side of the parcel. In the original site plan and mitigation plan, the "future" parking area north of the building expansion area was not included as an encroachment into the wetland & stream setbacks and, as a result, were not accounted for in the original mitigation plan. Now, the Owner wants to include this the future parking area in the mitigation plan so there are no issues in the future if/when the building is expanded and the "future" parking area installed.

The original amount of development "encroachment" into the setback areas requiring mitigation totaled 19,500 sqft. Now, as a result of the additional "future" parking area north of the building and minor shift of the main driveway, the total amount of area requiring mitigation totals 43,020 sqft. In addition to the amount of encroachment that needs to be mitigated, the location of where the mitigation is proposed is also changing. In the original Mitigation Plan, compensation was provided in an area totaling 19,500 sqft lying along the east property line. However, because there is no more available area within the Sports Specialist property to provide the additional mitigation required, the additional amount of mitigation is proposed to be located "off-site" on portions of the two adjacent parcels to the south (both currently owned by Skyline Development Corp).

As part of a revised Mitigation Plan that now includes "off-site" mitigation, i.e. on land owned by some entity other than Sports Specialists and not the same land upon which the setback encroachments occur, the Applicant is proposing to create a "mitigation easement" on the adjacent parcels consistent with the legal description and hatched area shown on the "Wetland Conservancy Exhibit". Compensation is to be provided in the form of: (1) invasive species removal and eradication; and (2) planting native prairie vegetation comprised of a native prairie seed mix and species-appropriate ornamental trees. This part of the Mitigation Plan has not changed.

**ATTACHMENTS:**

- ◆ 8/8/16 Staff Report
- ◆ 8/8/16 Plan Commission Meeting Minutes
- ◆ Draft CUP (REVISED)
- ◆ Mitigation Plan

**PLAN COMMISSION RECOMMENDATION:**

**APPROVE** a REVISED Conditional Use Permit to allow development within the 25' wetland and 75' navigable water setback areas and proposed compensation as presented in the Wetland Mitigation Plan pursuant to Section 24.04 of the Shoreland-Wetland Zoning Code and subject to the following (3) conditions:

1. The owner shall prepare and submit an annual monitoring report to the Village and local DNR staff concerning the various management activities proposed in the plan, including the planting/restoration of native vegetation. Said report shall, at a minimum, detail the type and amount of plantings, all activities carried out in the previous year and the observed success of all previous activities, recommendations for new or different activities needed to ensure success of the mitigation measures and management activities to be carried out, and a list of planned activities for the upcoming year. Said report shall be submitted annually at the end of each year beginning in 2017 for a period of three (3) years.
2. The owner/applicant shall prepare an appropriate easement and easement agreement document to be revised and approved by the Village Attorney prior to review and final action by the Village Board. At a minimum, said easement agreement shall address the issue of access to and maintenance of the mitigation areas created on the affected parcels; and the future use and prohibition of development within the mitigation areas.
3. The Mitigation Plan shall be further revised to include the following compensatory mitigation activities within the 27,100 sqft "off-site" mitigation area: (1) invasive species removal and eradication; and (2) the planting of native prairie vegetation comprised of a native prairie seed mix and matting in those portions of the off-site mitigation area where invasive vegetation has been removed. Said revised Mitigation Plan shall be submitted to the Village Planner for approval prior to review and final action by the Village Board.

# REVISED CONDITIONAL USE PERMIT (CUP) & SITE PLAN APPLICATION

8/8/16 Plan Commission Meeting

**Skyline Development Corp. / Sports Specialists of Milwaukee Inc.**

Village Planner Report

Germantown, Wisconsin

## Summary

Skyline Development Corp, agent for Sports Specialists of Milwaukee Inc., property owner, is seeking approval of revisions to Conditional Use Permit (CUP) No. 04-16 and the approved Site Plan for a 32,000 sqft warehouse distribution and office building on the 4.7-acre parcel located at N104 W13885 Donges Bay Road in the Germantown Business Park.

**Property Location:** N104 W13885 Donges Bay Road

**Applicant/**

**Property Owner:**

Mike Krenz  
Skyline Development Corp.  
9400 N. 107th St  
Milwaukee, WI 53224

**Current Zoning:** M-1: Limited Industrial District

| Adjacent Land Uses |                             | Zoning     |
|--------------------|-----------------------------|------------|
| North              | Residential & Institutional | Rs-4 & I   |
| South              | Industrial                  | M-1        |
| East               | Industrial                  | M-1        |
| West               | Commercial & Residential    | B-3 & Rs-4 |

## Location Map



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**Background/Proposal**

Skyline Development Corp, agent for Sports Specialists of Milwaukee Inc., property owner, is seeking approval of revisions to the previously approved Conditional Use Permit (CUP) and Site Plan for a 32,000 sqft warehouse distribution and office building on a 4.7-acre parcel located on Donges Bay Road @ STH145/Fond du Lac Avenue in the Germantown Business Park (approved by the Plan Commission and Village Board in April 2016).

Sports Specialists is distributor of approximately 30,000 different fishing tackle and related items in the upper Midwest. Sports Specialists relocated to Germantown in 1993 to their existing facility in the Germantown Industrial Park. Sports Specialists has outgrown their existing location and have acquired the Donges Bay Road parcel in order to develop a facility. Sports Specialists estimates the new facility will eventually employ up to 24 employees.

**Proposal: REVISED Conditional Use Permit (CUP)**

The applicant has submitted proposed revisions to Conditional Use Permit (CUP) No. 04-16 that was approved in April given additional development that wasn't included in the original proposal nor reflected in the approved Mitigation Plan. *NOTE: a CUP is needed because a portion of the development is proposed within the Village's 25' wetland and 75' navigable water setback areas that are associated with the unnamed navigable stream that meanders across the north and east sides of the property.*

As shown in the revised Mitigation Plan (dated August 5, 2016), all of the proposed development activity occurring within the 25' and 75' setback areas is associated with the access driveway and parking areas on the north and east side of the parcel. In the original site plan, the "future" parking area north of the building expansion area was not included as an encroachment into the setbacks nor accounted for in the mitigation area. Now, the Applicant wants to include this area and reflect it in the mitigation plan so there are no issues in the future if/when the building is expended and/or "future" parking area installed.

The original amount of development "encroachment" into the setback areas totaled 17,960 sqft. Now, as a result of the additional "future" parking area north of the building and a minor shift of the main driveway (see explanation below), there is additional encroachment into the wetland and navigable stream setbacks for a revised total of encroachment area of 33,860 sqft. However, due to some of the encroachment being "vertical" development (> 3' grade change) with a higher compensation ratio of 2:1, the total amount of area requiring compensation totals 43,020 sqft.

In addition to the amount of encroachment that needs to be compensated, the location of where the actual mitigation is proposed is also changing. In the original Mitigation Plan, compensation was provided in an area totaling 19,500 sqft lying along the east property line within and around portions of the navigable water setback area. Compensation was to be provided in the form of: (1) invasive species removal and eradication; and (2) planting native prairie vegetation comprised of a native prairie seed mix and species-appropriate ornamental trees. This part of the Mitigation Plan has not changed.

However, because there is no other area within the Sports Specialist property to adequately provide the additional mitigation required, the 23,900 sqft additional amount of compensation is proposed to be located "off-site" on portions of the two adjacent parcels to the south (both currently owned by Skyline Development).

As shown in Exhibit 1b and explained in the revised Mitigation Plan, compensation for the additional 23,900 sqft of encroachment will be provided in a 27,100 sqft mitigation area that wraps around the wetlands and navigable stream located on portions of the two parcels that lie south of and adjacent to the Sport Specialists property (as shown on Exhibit 1b and in the "Wetland Conservancy Exhibit"). The Applicant is not proposing to do any actual mitigation to compensate for the additional setback encroachment (only identifying an off-site area where compensatory mitigation could be provided).

As part of a revised Mitigation Plan that now includes "off-site" mitigation, i.e. on land owned by some entity other than Sports Specialists and not the same land upon which the setback encroachments occur, the Applicant is proposing to create a "mitigation easement" on the adjacent parcels consistent with the legal description and hatched area shown on the "Wetland Conservancy Exhibit".

#### **Proposal: REVISED Site Development Plan**

As shown in the revised site plan (Sheet C1.00), the proposed changes to the original and approved site plan are:

1. A minor shift of the main driveway further east into the site from Donges Bay Road; and, as a result;
2. A widened median area between the east parking area and shifted driveway (8' to 25 wide); and
3. An additional dumpster enclosure (located adjacent to the east side of the building near the dock doors).

As explained by the Applicant in a July 6 letter, the owner wants to increase the width of the median area in order to increase the buffer between the parking area and driveway in order to accommodate additional landscaping to help screen the parking area (although no additional landscaping is proposed at this time). The additional dumpster enclosure is intended for pallets. All other aspects of the approved site and building plans, including the amount of landscaping within the widened median area, remain unchanged.

#### **Staff Comments**

##### 25' Wetland & 75' Navigable Water Setback CUP

Staff's has concerns with the proposal to compensate for encroachments into the setback areas on one parcel by creating "off-site" mitigation areas on two other parcels.

First, because the “off-site” mitigation proposal is born out of necessity (apparently there isn’t any more land area available on the Sports Specialists parcel for on-site mitigation), doing so suggests that maybe too much development is proposed for the Sports Specialists parcel. Second, this proposal for off-site mitigation is somewhat of a “kick-the-can-down-the-road” situation with respect to knowing what, if any, impact the mitigation areas will have on future development of the two adjacent (and currently vacant) parcels. As shown in the Wetland Conservancy Exhibit, the proposed mitigation area wraps around the wetland and stream areas that exist on the adjacent parcels. In addition to the 25’ wetland and 75’ navigable setbacks that would have to be met on those parcels, the mitigation area may further restrict the amount and/or location of development on those parcels; something that won’t be known until those parcels are also proposed for some specific development. Unlike the CUP provisions built into the Shoreland-Wetland Zoning Code that allow development in a setback area, the Code does not make provisions for subsequent development within a mitigation area. Since the off-site mitigation area for the Sports Specialists parcel is located on the adjacent parcels, AND, encompasses almost all of the 25’ wetland and 75’ navigable water setback areas on the adjacent parcels, the ability for the future owners of those parcels to possibly develop inside the setback areas is effectively foreclosed. *(NOTE: mitigation in the form of invasive species eradication and seeding with wetland-supportive prairie grass within a setback area does not meet the definition of “development” and, therefore, would not require that separate CUP’s be issued to the two mitigation area parcels to the south).*

The second concern is access and maintenance of the mitigation area. While it is/would be a lot easier to maintain something on one’s own property, the ability to do so on someone else’s property if/when required may be an issue. Obviously, this concern can be addressed with sufficient forethought with an easement agreement that assigns such responsibility up front. However, as discussed above, the Applicant is not proposing to do any actual mitigation in this area; only identifying it as an off-site area where compensatory mitigation could be provided. This too, is a concern. What’s the point of identifying a mitigation area if no actual compensatory mitigation activity is implemented? Staff is of the opinion that not performing some significant type and amount of mitigation activity does not meet neither the requirement nor intent of the code that allows encroachment into a setback area in exchange for some form of mitigation to further enhance or protect the adjacent wetlands and/or navigable water. For this reason, staff is recommending that the CUP be revised to include an additional requirement that compensation within the off-site mitigation area must be provided in the form of: (1) invasive species removal and eradication; and (2) the planting of native prairie vegetation comprised of a native prairie seed mix and matting in those portions of the off-site mitigation area where invasive vegetation has been removed. This is the same type of mitigation being provided on the Sports Specialists property.

The third concern is the easement agreement itself. Despite having been advised accordingly, the Applicant has not yet provided an easement agreement for the Village to review. As a result, we do not know if or how the Applicant proposes to address issues such as access to and maintenance of the mitigation areas.

Finally, as was the case with the original mitigation plan, staff supports proposed mitigation that includes the removal of invasive species and the planting/restoration of native prairie vegetation in the disturbed setback areas. However, success of the native grass plantings and invasive plant removal depends on monitoring of the actions taken.

Consequently, the owner should be required to prepare and submit an annual monitoring report to the Village documenting all management activities, the success of those management activities, and any corrective actions needed to ensure success of the mitigation plan for a minimum of three (3) years after initial implementation.

### **VILLAGE PLANNER RECOMMENDATION**

**APPROVE** a REVISED Conditional Use Permit to allow development within the 25' wetland and 75' navigable water setback areas and proposed compensation as presented in the Wetland Mitigation Plan (dated August 5, 2016) pursuant to Section 24.04 of the Shoreland-Wetland Zoning Code and subject to the following conditions:

1. The owner shall prepare and submit an annual monitoring report to the Village and local DNR staff concerning the various management activities proposed in the plan, including the planting/restoration of native vegetation. Said report shall, at a minimum, detail the type and amount of plantings, all activities carried out in the previous year and the observed success of all previous activities, recommendations for new or different activities needed to ensure success of the mitigation measures and management activities to be carried out, and a list of planned activities for the upcoming year. Said report shall be submitted annually at the end of each year beginning in 2017 for a period of three (3) years.
2. The owner/applicant shall prepare an appropriate easement and easement agreement document to be revised and approved by the Village Attorney prior to review and final action by the Village Board. At a minimum, said easement agreement shall address the issue of access to and maintenance of the mitigation areas created on the affected parcels; and the future use and prohibition of development within the mitigation areas.
3. The Mitigation Plan shall be further revised to include the following compensatory mitigation activities within the 27,100 sqft "off-site" mitigation area: (1) invasive species removal and eradication; and (2) the planting of native prairie vegetation comprised of a native prairie seed mix and matting in those portions of the off-site mitigation area where invasive vegetation has been removed. Said revised Mitigation Plan shall be submitted to the Village Planner for approval prior to review and final action by the Village Board.

### **Village Planner Recommendation**

**APPROVE** the REVISED site development plan for the proposed 32,000 sqft warehouse distribution and office building for Sports Specialists of Milwaukee Inc. located at N104 W13885 Donges Bay Road in the Germantown Business Park subject to the following conditions:

1. This approval is subject to all of the conditions and requirements set forth herein and adopted by the Plan Commission. Approval is granted for the site development plan (Sheet C1.00) dated stamped "received" August 3, 2016 unless superseded by subsequent plan sheets approved by the Village Planner pursuant to revisions required herein and/or by the Plan Commission.

**PLAN COMMISSION MINUTES**  
**August 8, 2016**

**CALL TO ORDER:** 6:37 pm

**ROLL CALL:** Chairman Dean Wolter, Trustee Representative David Baum, Commissioners Mary Ellen Gray, Bill Shadid, Peter Nilles and Tony Laszewski were present. Commissioner Ben Goetter was absent and excused. Also present were Community Development Director/Village Planner Jeff Retzlaff and Planning Assistant Lori Johnson.

**PUBLIC INPUT:** None

**APPROVAL OF MINUTES:** ***MOTION Baum second Shadid to Approve the minutes from 7-11-16.***

***MOTION carried unanimously.***

**Charles Rusch** – Property owner of a 34.8 acre parcel on Pioneer Road is seeking approval of a 2-lot Certified Survey Map. Planner Retzlaff summarized the proposal.

***MOTION Baum second Shadid to Approve the 2-lot Certified Survey Map land division for the 34.8 acre Rusch property located on Pioneer Road subject to the following conditions:***

- 1. All technical corrections identified by the Village Surveyor as summarized in the July 27, 2016 memo shall be made prior to recording the CSM by the Village Board.***
- 2. A note shall be added to the CSM indicating that no further land division of or construction of any habitable structure on Lot 2 shall occur until such time as the appropriate soil evaluation indicating Lot 2 can support an on-site septic system is prepared and approved by Washington County and/or the Village.***

***MOTION carried unanimously.***

**Sports Specialists of Milwaukee – N104 W13885 Donges Bay Road & Skyline Development Corp. – Lot 2 of CSM 6684 Spaten Court.**

Conditional Use Permit Application for revisions to CUP #04-16 for Wetland Setback Encroachment and Revised Site Plan for changes to the driveway and dumpster enclosure. Planner Retzlaff summarized the proposal and staff's recommendations for conditions of approval. Mike Krenz, Skyline Development, said they accept the conditions of approval. He explained it was the owner's personal preference to move the driveway and explained a revised landscape plan showing additional plantings will be submitted in the future. Trustee Baum agreed with Planner Retzlaff that additional mitigation should be required in the off-site mitigation area and asked if there was any mitigation that could be done on the off-site area for a future business locating on the off-site parcels to use. Planner Retzlaff explained the mitigation area and wetland and navigable stream setbacks on the off-site parcel adjacent to Fond du Lac Avenue already create a narrow lot for future development along with an access restriction against access to Fond du Lac Avenue. Discussion followed. Mr. Krenz said that the owner agrees to the condition requiring the same mitigation activities in the off-site mitigation area as proposed for the on-site mitigation area as on the site plan. Planner Retzlaff said the more critical issue is granting an access easement. Discussion continued regarding wetland mitigation and the need to compensate for encroachment into the wetland setback area.

**MOTION Baum second Gray to Approve a Revised Conditional Use Permit to allow development within the 25' wetland and 75' navigable water setback areas and proposed compensation as presented in the Wetland Mitigation Plan (dated August 5, 2016) pursuant to Section 24.04 of the Shoreland-Wetland Zoning Code and subject to the following conditions:**

- 1. The owner shall prepare and submit an annual monitoring report to the Village and local DNR staff concerning the various management activities proposed in the plan, including the planting/restoration of native vegetation. Said report shall, at a minimum, detail the type and amount of plantings, all activities carried out in the previous year and the observed success of all previous activities, recommendations for new or different activities needed to ensure success of the mitigation measures and management activities to be carried out, and a list of planned activities for the upcoming year. Said report shall be submitted annually at the end of each year beginning in 2017 for a period of three (3) years.**
- 2. The owner/applicant shall prepare an appropriate easement and easement agreement document to be revised and approved by the Village Attorney prior to review and final action by the Village Board. At a minimum, said easement agreement shall address the issue of access to and maintenance of the mitigation areas created on the affected parcels; and the future use and prohibition of development within the mitigation areas.**
- 3. The Mitigation Plan shall be further revised to include the following compensatory mitigation activities within the 27,100 sqft "off-site" mitigation area: (1) invasive species removal and eradication; and (2) the planting of native prairie vegetation comprised of a native prairie seed mix and matting in those portions of the off-site mitigation area where invasive vegetation has been removed. Said revised Mitigation Plan shall be submitted to the Village Planner for approval prior to review and final action by the Village Board.**

**MOTION carried unanimously.**

**MOTION Baum second Gray to Approve the Revised site development plan for the proposed 32,000 sqft warehouse distribution and office building for Sports Specialists of Milwaukee Inc. located at N104 W13885 Donges Bay Road in the Germantown Business Park subject to the following conditions:**

- 1. This approval is subject to all of the conditions and requirements set forth herein and adopted by the Plan Commission. Approval is granted for the site development plan (Sheet C1.00) date stamped "received" August 3, 2016 unless superseded by subsequent plan sheets approved by the Village Planner pursuant to revisions required herein and/or by the Plan Commission.**

**MOTION to Amend Baum second Shadid to add Condition #2 that the revised landscape plan be approved by Director Retzlaff.**

**MOTION to Amend carried unanimously.**

**MOTION to Approve as Amended carried unanimously.**

**NOTICE OF PUBLIC HEARING  
VILLAGE OF GERMANTOWN**

**NOTICE is hereby given that a Public Hearing will be held before the Village of Germantown Village Board at the Germantown Village Hall located at N112 W17001 Mequon Road, Germantown, Wisconsin on the following date and at the time noted below (or soon thereafter):**

**DATE:** Monday, September 19, 2016

**TIME:** 7:00 p.m. or later

**The purpose of said hearing is to hear any and all parties, their attorneys or agents, for or against the applications filed by the following Petitioner for an amendment to CONDITIONAL USE PERMIT No. 04-16 to revise the amount of and mitigation for development activities within a 25' wetland and 75' navigable waterway setback on the property described below pursuant to Section 24.04(3) of the Municipal Code:**

**Petitioner:** Skyline Development Corp, Agent for DBH 1031 LLC, Property Owner

**Property:** N104 W13885 Donges Bay Road; Tax Key No. 362-981

**Lot 1 of Certified Survey Map No. 6684, in the Northwest ¼ of Section 36, Township 9 North, Range 20 East, in the Village of Germantown, Washington County, Wisconsin.**

**Copies of CUP No. 04-16 and the amendment application are on file in the Village of Germantown Community Development Department-Planning & Zoning Services office and available for public inspection during the hours of 8:00 a.m. to 4:00 p.m. Monday through Friday.**

**Dated this 25<sup>th</sup> day of August, 2016.**

**Barbara K. D. Goeckner, Village Clerk**

**To Be Published On: September 1<sup>st</sup> and September 8<sup>th</sup>, 2016**



August 15, 2016

Jeffrey W. Retzlaff, AICP  
Village Planner & Zoning Administrator  
N112 W17001 Mequon Road  
Germantown, Wisconsin 53022

RE: Sports Specialists of Milwaukee, Inc.  
N104 W13885 Donges Bay Rd.  
Germantown, WI 53022

Dear Mr. Retzlaff:

As you may know, Sports Specialists would like to construct a new 32,000 +/- SF Office/Warehouse/Distribution facility within the Village boundaries. Specifically, the proposed site is at the southeast corner of the intersection of West Donges Bay Rd. and Fond Du Lac Avenue.

Skyline Development Corporation- the developer of record for this proposed facility- has avoided wetland impacts and has substantially minimized encroaching into the required 25' wetland setback with impervious surfaces and structures resulting from the proposed development. However, due to the constraints of the site, and the desire to conceal the loading and refuse areas of this project from the public view (Donges Bay and Fond du Lac frontages), Skyline is seeking a Conditional Use Permit (CUP) for encroachments into the identified wetland setback. Skyline Development Corporation has minimized vertical development encroachments to the fullest extent practicable while still serving the needs of the proposed development. The remaining proposed encroachments will serve to improve the wetland setbacks by removing exotic and invasive plants, and establishing native plant communities.

#### **Mitigation Plan Narrative**

This Mitigation Plan Narrative (the "Narrative") will summarize the mitigation practices provided for the wetland setback areas located on the proposed 5.02 acre site. The setback requirements follow the recent guidelines as defined by the Village of Germantown Shoreland & Wetland Zoning Ordinance. The setback areas for proposed mitigation for this project include:

- 25' Wetland setback with 1:1 mitigation for horizontal development
- 25' Wetland setback with 2:1 mitigation for vertical development 3' (or more)
- 75' Ordinary High Water Mark (OHWM) Setback
- Disturbance for future parking at north lot line (13,500 SF; assumed to be 8,000 SF vertical)

4715 James Avenue  
Racine, Wisconsin 53402

ph 262 639 9733  
fx 262 639 9737

david@wdavidheller.com  
www.wdavidheller.com



These areas are graphically depicted on the attached Exhibit A (dated 2016-08-04) attached hereto. Exhibit A is entitled "Sports Specialists: On-Site Mitigation Area".

**Exhibit 1: Ordinary High Water Setback Disturbance**

The total area of disturbance within the 75' OHWM / 25' wetland setback area is identified on Exhibit A.

- The total wetland/OHWM setback area being disturbed = 20,360 SF
- The total future parking at north lot line being disturbed = 13,500 SF

The proposed encroachments located in the 75' OHWM and 25' wetland setback area are the result of the location of the main access drive (off of Donges Bay Rd.) along the eastern portion of the site. This drive will serve as the only entry/egress to the site for both truck and automobile traffic. Approximately 19,200 SF of the total encroachment is the result of grading activity (less than 3' of grade change) for the proposed access drive, curbing, and grading activities.

Additionally, approximately 1,160 SF of the total encroachment is the result of grading, curbing and paving activities (greater than 3' of grade change).

The following table summarizes the proposed encroachments and compensation ratios required by the Village of Germantown:

| ENCROACHMENT TYPE                                                        | EAST<br>ENCROACHMENT<br>AREA (SF) | NORTH<br>ENCROACHMENT<br>AREA (SF) | COMPENSATION<br>RATIO | COMPENSATION<br>AREA (SF) |
|--------------------------------------------------------------------------|-----------------------------------|------------------------------------|-----------------------|---------------------------|
| Structures and impervious<br>surfaces- <i>horizontal<br/>development</i> | 19,200 SF                         | 5,500 SF                           | 1:1                   | 24,700 SF                 |
| Structures and impervious<br>surfaces- <i>vertical development</i>       | 1,160 SF                          | 8,000 SF                           | 1:2                   | 18,320 SF                 |
| <b>TOTAL</b>                                                             | <b>20,360 SF</b>                  | <b>13,500 SF</b>                   |                       | <b>43,020 SF</b>          |
| Total Compensation Area<br>Identified on Exhibit A                       |                                   |                                    |                       | 17,100 SF                 |
| Total Compensation Area<br>Identified on Exhibit B                       |                                   |                                    |                       | 27,100 SF                 |
| Total Mitigated Area Provided                                            |                                   |                                    |                       | 44,200 SF                 |

**Compensatory Mitigation Plan**

Skyline Development Corporation plans to address the identified mitigation compensation areas (areas identified in red "dots" on the attached Exhibit A, and yellow shading with red "stripes" on Exhibit B) as follows:

The identified compensation areas of the on-site mitigation area lies undisturbed at the far eastern portion of the proposed site. The off-site mitigation area lies on an adjacent parcel, south of the proposed Sports Specialists site. Within both the on-site and off-site mitigated areas, the mitigation activities shall be as follows:

4715 James Avenue  
Racine, Wisconsin 53402

ph 262 639 9733  
fx 262 639 9737

david@wdavidheller.com  
www.wdavidheller.com



*"Remove any noxious and / or invasive species (i.e. Buckthorn, Honeysuckle, Canary grass, Boxelder, and Thistle), and dead shrubs BY HAND METHODS. No mechanical machinery in the setback areas. In both the On-Site and Off-Site Mitigation areas, invasive species eradication/control will serve to enhance the quality of vegetative areas adjacent to the existing wetland areas, but allowing the native species to thrive in their natural environment.*

*On-Site Mitigation Restoration (depicted in Exhibit A and C):*

*Restore all hatched areas with Native Prairie Seed Mix and set with erosion matting. Areas are to be seeded with a native prairie seed mix, and matted (seed protection and erosion control) with a lightweight accelerated photodegradable polypropylene netting encasing a straw fill. The proposed On-Site Mitigation area (Exhibit A) will be further enhanced with the planting of new, species-appropriate ornamental trees as outlined on Exhibit C. Five (5) ornamental trees, including (2) Amelanchier spp. (Serviceberry) and (3) Crataegus spp. (Hawthorn) will be installed as indicated in the mitigated area. Trees are to be installed at a height of 8.0' at the time of installation. Additional landscape materials are to be installed along the north side disturbance area. See Exhibit C (dated 8/04/2016) for landscape planting locations.*

*Off-Site Mitigation Restoration (depicted in Exhibit B):*

*Restoration shall be limited to only bare areas created in the area delineated in Exhibit B. Restoration shall be limited to the establishment of Native Prairie Seed Mix and erosion matting, and shall occur only in disturbed areas. Restored mitigated areas to be seeded with the native prairie seed mix specified in the approved landscape plan set, and matted (seed protection and erosion control) with a lightweight accelerated photodegradable polypropylene netting encasing a straw fill.*

*Mitigation occurs in Germantown ordinary high water setback area(s), as well as off-site mitigated area(s) identified in this report."*

The areas of horizontal and vertical disturbances- as identified on the attached Exhibit A (Sports Specialists site)- are to be restored in the following manner:

- Area of horizontal disturbance (dark green shading on Exhibit A): all areas to be seeded with a native prairie seed mix, and matted (seed protection and erosion control) with a lightweight accelerated photodegradable polypropylene netting encasing a straw fill.
- The total proposed seeded and matted area in the horizontal and vertical disturbance is approximately 4,950 SF.
- An area approximately 1,070 SF in size near the proposed edge of pavement and adjacent to the proposed retaining wall, will be restored in a bluegrass turf mix (Lawn). Per the proposed landscape

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drawing set, this area shall be matted (seed protection and erosion control) similarly to the native seed mix area.

- Additionally, the future north parking area is to receive landscaping and seeding (lawn) as noted on Exhibit C, dated 8/04/2016.

For your review and consideration, we offer this Narrative, including Exhibits A, B, and C.

Should you have any questions on any of these materials, I would be happy to speak with you personally.

Thank you in advance for your consideration.

Very Truly Yours,

W. David Heller, ASLA

Wisconsin Registered Landscape Architect WI- 438-014



View into site from Donges Bay Road (pre-WIDOT road project)

4715 James Avenue  
Racine, Wisconsin 53402

ph 262 639 9733  
fx 262 639 9737

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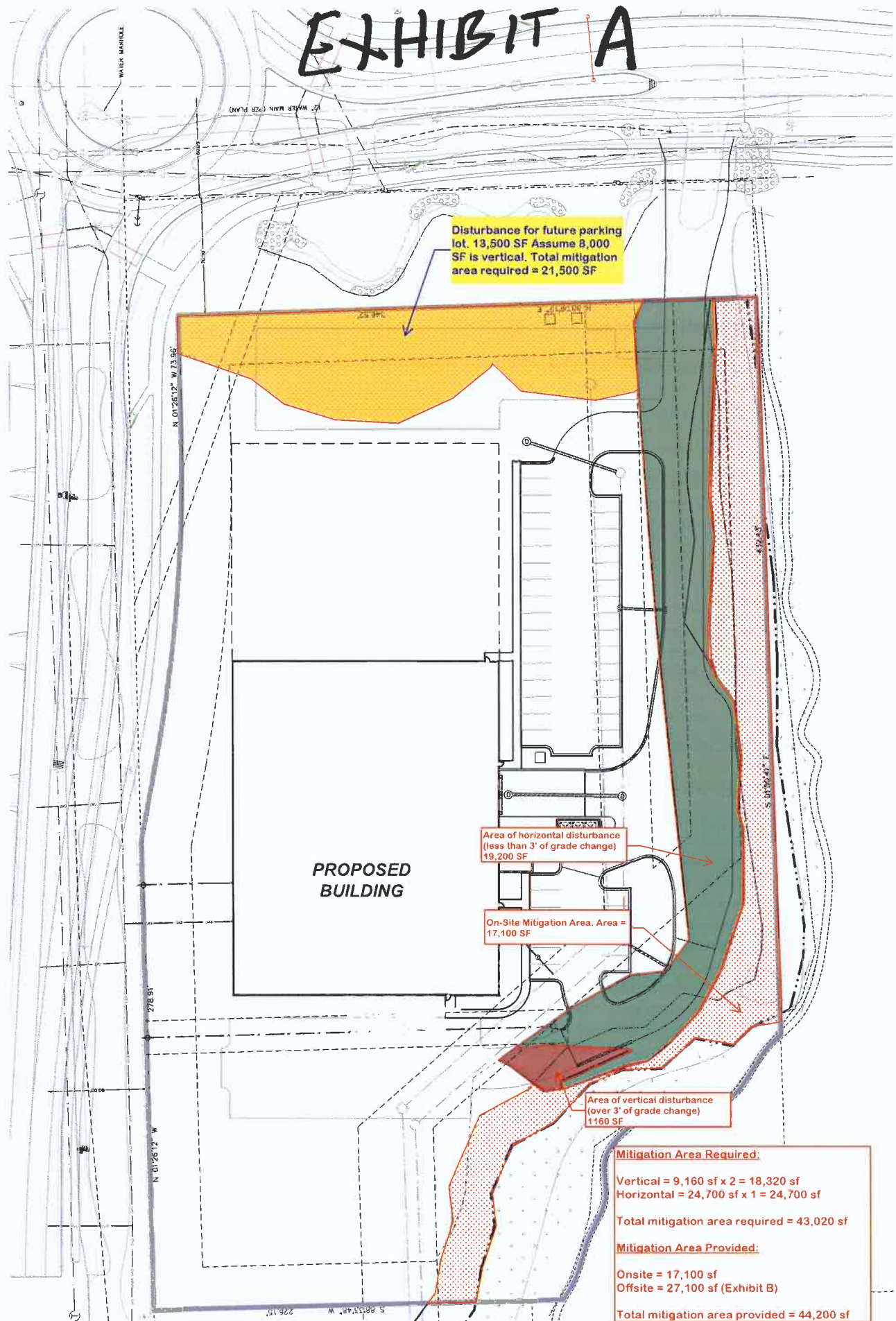
Looking east to wetland area (post WIDOT project)

4715 James Avenue  
Racine, Wisconsin 53402

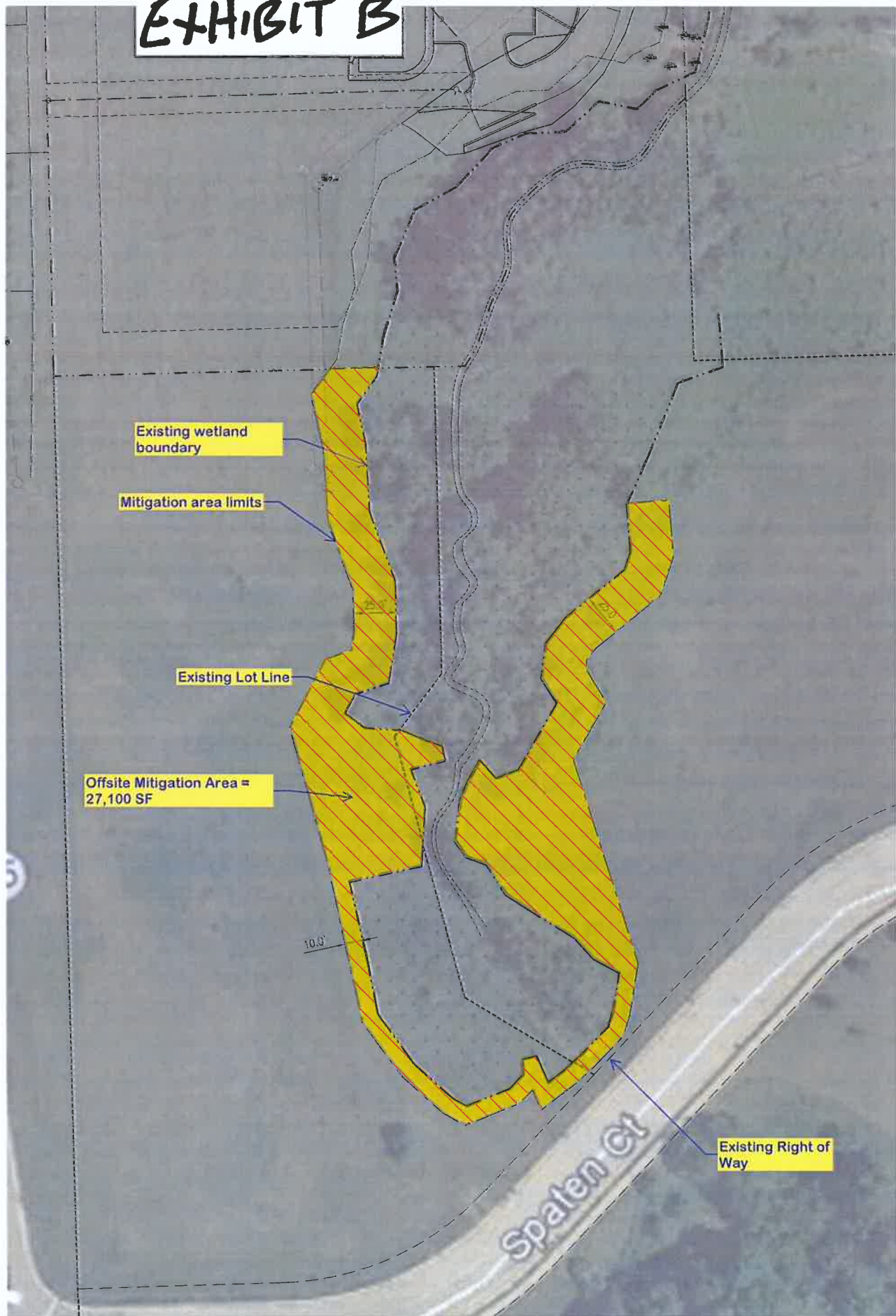
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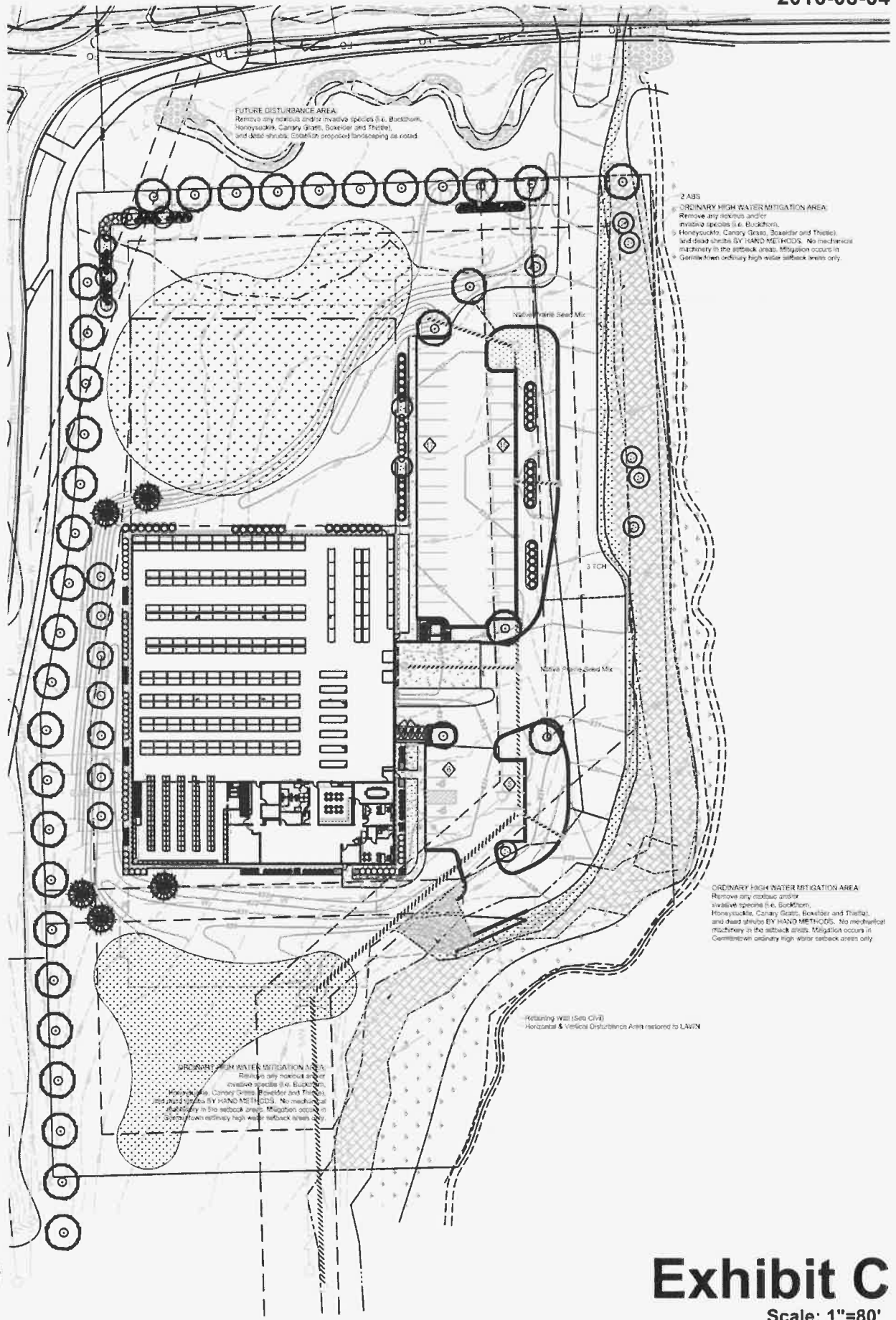
david@wdavidheller.com  
www.wdavidheller.com

# EXHIBIT A



# EXHIBIT B





**CUP # 04 – 16**

Document No.

**CONDITIONAL USE PERMIT**

Document Title

**1403770****VILLAGE OF GERMANTOWN, WASHINGTON COUNTY, WISCONSIN  
CONDITIONAL USE ZONING PERMIT**

Whereas the Applicant:

**Skyline Development Corp., Property Owner**

agrees to comply with applicable Codes and Ordinances of the Village of Germantown, Wisconsin, and further agrees that all work done pursuant to the permission granted herewith will conform with the applications and drawings filed with and approvals granted by officials of the Village for the purpose of obtaining this permit.

Now, therefore, this permit is issued to the Applicant to permit the to allow development within the 25' wetland and 75' navigable water setback areas as presented in the Wetland Mitigation Plan dated April 1, 2016, and exhibits contained in the application pursuant to Section 24.04 of the Shoreland-Wetland Zoning Code.

RECORDED  
April 28, 2016 10:30 AM  
SHARON A MARTIN  
REGISTER OF DEEDS  
WASHINGTON COUNTY, WI  
Recording Fee Paid: \$30.00

Name &amp; Return Address:

**Village of Germantown  
P.O. Box 337  
Germantown, WI 53022**

Parcel Identification No:

**GTNV 362-983****On the following described property located in the Village of Germantown, Washington County, Wisconsin:**

Part of Lot 1 of Certified Survey Map No. 5464, in the Northwest ¼ of Section 36, Township 9 North, Range 20 East, in the Village of Germantown, Washington County, Wisconsin, bounded and described as follows:

Commencing at the Northwest corner of said Northwest ¼ of said Section; thence S 01°26'11" E, 721.87 feet along the West line of said Section; thence N 88°33'48 E, a distance of 60.00 feet to the East Right-of-Way line of Fond du Lac Avenue (also known as S.T.H. 145) and the POINT OF BEGINNING of the lands to be described; thence N 01°26'11" W, 278.91 feet; thence N 10°15'45" E, 53.15 feet; thence 188.92 feet along the arc of a curve, whose center lies to the Northwest, whose radius is 925.00 feet, and whose chord bears N 04°24'52" E, 188.59 feet; thence N 01°26'11" W, 73.96 feet to the South Right-of-Way line of Donges Bay Road; thence N 88°09'19" E, 346.52 feet along said South line; thence S 01°50'41" E, 750.16 feet; thence S 88°33'48" W, 406.54 feet to the POINT OF BEGINNING.

Tax Key No. GTNV 362-983

**Pursuant to the following condition(s):**

1. The owner shall prepare and submit an annual monitoring report to the Village and Local DNR staff concerning the various management activities proposed in the plan including the planting/restoration of native vegetation. Said report shall at a minimum detail the type and amount of plantings, all activities carried out in the previous year and the observed success of all previous activities, recommendations for new or different activities needed to ensure success of the mitigation measures and management activities to be carried out, and a list of planned activities for the upcoming year. Said report shall be submitted annually at the end of each year beginning in 2017 for a period of three (3) years.

Granted by the Village Board of the Village of Germantown, Washington County, Wisconsin  
on the 18th day of April, 2016.

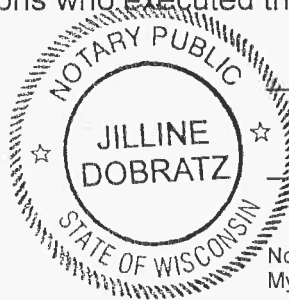
ATTEST:

Barbara K. D. Goeckner  
Barbara K. D. Goeckner, Village Clerk

Dean Wolter  
Dean Wolter, Village President

STATE OF WISCONSIN ) SS  
WASHINGTON COUNTY)

Personally came before me this 25th day of April, 2016, the above  
named Dean Wolter, Village President, and Barbara K. D. Goeckner, Village Clerk, to me  
known to be the persons who executed the foregoing instrument and acknowledged the same.



Jilline Dobratz  
{type or print name of Notary on this line}

Jilline Dobratz  
{signature of Notary on this line}

Notary Public, State of Wisconsin  
My Commission Expires: May 21, 2019

**ACCEPTANCE OF TERMS AND CONDITIONS BY PROPERTY OWNER**

The following named person, who is authorized to represent Skyline Development Corp., hereby accepts the terms and conditions set forth in this Permit, and realize that non-adherence to the terms and conditions as stated hereon may result in the revocation of this Permit by the Village of Germantown.

Dated this 26 day of April, 2016

William S. Burkhardt  
(type or print name on this line)  
W.S. Burkhardt President  
(signature on this line)  
Agent for Skyline Development Corp.

STATE OF WISCONSIN) SS  
Milwaukee COUNTY)

Personally came before me this 26th day of April, 2016, being the above named William S. Burkhardt, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Patricia L. Sievers  
(type or print name of Notary on this line)  
Patricia L. Sievers  
(signature of Notary on this line)

This instrument was drafted by:  
Jeffrey W. Retzlaff, AICP  
Village Planner/Zoning Administrator  
Village of Germantown, Wisconsin

Notary Public, State of Wisconsin  
My Commission Expires: 11/06/2016

**CUP # xx – 16**  
Document No.

**CONDITIONAL USE PERMIT**  
Document Title

VILLAGE OF GERMANTOWN, WASHINGTON COUNTY, WISCONSIN  
**CONDITIONAL USE ZONING PERMIT**

Whereas the Applicant:

**Skyline Development Corp., Property Owner**

agrees to comply with applicable Codes and Ordinances of the Village of Germantown, Wisconsin, and further agrees that all work done pursuant to the permission granted herewith will conform with the applications and drawings filed with and approvals granted by officials of the Village for the purpose of obtaining this permit.

Now, therefore, this permit is issued to the Applicant to permit the to allow development within the 25' wetland and 75' navigable water setback areas as presented in the Wetland Mitigation Plan dated April 1, 2016, and exhibits contained in the application pursuant to Section 24.04 of the Shoreland-Wetland Zoning Code.

Name & Return Address:

**Village of Germantown  
P.O. Box 337  
Germantown, WI 53022**

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Commencing at the Northwest corner of said Northwest ¼ of said Section; thence S 01°26'11" E, 721.87 feet along the West line of said Section; thence N 88°33'48" E, a distance of 60.00 feet to the East Right-of-Way line of Fond du Lac Avenue (also known as S.T.H. 145) and the POINT OF BEGINNING of the lands to be described; thence N 01°26'11" W, 278.91 feet; thence N 10°15'45" E, 53.15 feet; thence 188.92 feet along the arc of a curve, whose center lies to the Northwest, whose radius is 925.00 feet, and whose chord bears N 04°24'52" E, 188.59 feet; thence N 01°26'11" W, 73.96 feet to the South Right-of-Way line of Donges Bay Road; thence N 88°09'19" E, 346.52 feet along said South line; thence S 01°50'41" E, 750.16 feet; thence S 88°33'48" W, 406.54 feet to the POINT OF BEGINNING.

Tax Key No. GTNV 362-983

**Pursuant to the following condition(s):**

1. The owner shall prepare and submit an annual monitoring report to the Village and local DNR staff concerning the various management activities proposed in the plan, including the planting/restoration of native vegetation. Said report shall, at a minimum, detail the type and amount of plantings, all activities carried out in the previous year and the observed success of all previous activities, recommendations for new or different activities needed to ensure success of the mitigation measures and management activities to be carried out, and a list of planned activities for the upcoming year. Said report shall be submitted annually at the end of each year beginning in 2017 for a period of three (3) years.

2. The owner/applicant shall prepare an appropriate easement and easement agreement document to be revised and approved by the Village Attorney prior to review and final action by the Village Board. At a minimum, said easement agreement shall address the issue of access to and maintenance of the mitigation areas created on the affected parcels; and the future use and prohibition of development within the mitigation areas.
3. The Mitigation Plan shall be further revised to include the following compensatory mitigation activities within the 27,100 sqft "off-site" mitigation area: (1) invasive species removal and eradication; and (2) the planting of native prairie vegetation comprised of a native prairie seed mix and matting in those portions of the off-site mitigation area where invasive vegetation has been removed. Said revised Mitigation Plan shall be submitted to the Village Planner for approval prior to review and final action by the Village Board.
4. ~~The owner shall prepare and submit an annual monitoring report to the Village and Local DNR staff concerning the various management activities proposed in the plan including the planting/restoration of native vegetation. Said report shall at a minimum detail the type and amount of plantings, all activities carried out in the previous year and the observed success of all previous activities, recommendations for new or different activities needed to ensure success of the mitigation measures and management activities to be carried out, and a list of planned activities for the upcoming year. Said report shall be submitted annually at the end of each year beginning in 2017 for a period of three (3) years.~~

Granted by the Village Board of the Village of Germantown, Washington County, Wisconsin on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST:

\_\_\_\_\_  
Dean Wolter, Village President

\_\_\_\_\_  
Barbara K. D. Goeckner, Village Clerk

STATE OF WISCONSIN ) SS  
WASHINGTON COUNTY)

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, the above named Dean Wolter, Village President, and Barbara K. D. Goeckner, Village Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
{type or print name of Notary on this line}

\_\_\_\_\_  
{signature of Notary on this line}

Notary Public, State of Wisconsin  
My Commission Expires: \_\_\_\_\_

**ACCEPTANCE OF TERMS AND CONDITIONS BY PROPERTY OWNER**

The following named person, who is authorized to represent Skyline Development Corp., hereby accepts the terms and conditions set forth in this Permit, and realize that non-adherence to the terms and conditions as stated hereon may result in the revocation of this Permit by the Village of Germantown.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
{type or print name on this line}

\_\_\_\_\_  
{signature on this line}

Agent for Skyline Development Corp.

STATE OF WISCONSIN) SS  
\_\_\_\_\_ COUNTY)

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2016, being the above named \_\_\_\_\_, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
{type or print name of Notary on this line}

\_\_\_\_\_  
{signature of Notary on this line}

This instrument was drafted by:  
Jeffrey W. Retzlaff, AICP  
Village Planner/Zoning Administrator  
Village of Germantown, Wisconsin

Notary Public, State of Wisconsin  
My Commission Expires: \_\_\_\_\_

**BUSINESS OF THE VILLAGE BOARD  
GERMANTOWN, WI**

IX.B  
X.B

**MEETING DATE:** September 19, 2016

**AGENDA ITEM:** Public Hearing & New Business [ZONING ORDINANCE]

**ITEM TITLE:** Village of Germantown Community Development Department, Text amendments to various sections of the Zoning Code (Chapter 17) of the Village of Germantown Municipal Code

**SUBMITTED BY:** Jeffrey W. Retzlaff, Director, Community Development Department

**SUMMARY EXPLANATION:**

The Community Development Department is proposing amendments to the following sections to Chapter 17 (Zoning Code). The amendments are proposed in order to reflect recent actions and/or policy decisions by the Village and improve staff's ability to administer and enforce these particular regulations.

*[NOTE: the public hearing notice lists a number of code sections with proposed amendments that have not been finalized and are not presented for review and action at this time...but will be at a subsequent public hearing and VB meeting]*

A detailed explanation of the proposed amendments is contained in the Staff Report dated 8/8/2016 (copy attached).

**ATTACHMENTS:**

- ◆ 8/8/16 Staff Report
- ◆ 8/8/16 Plan Commission Meeting Minutes
- ◆ Draft Ordinance

**PLAN COMMISSION RECOMMENDATION:**

**APPROVE** the proposed Zoning Code amendments with revisions (that have already been incorporated into the draft ordinance as presented to the VB for consideration).

# ZONING CODE AMENDMENTS

8/8/16 Plan Commission Meeting

## Germantown Community Development Department

Village Planner Report

Germantown, Wisconsin

### Summary

The Community Development Department is proposing amendments to various provisions to Section 17 (Zoning Code). The amendments are proposed in order to: bring these provisions up-to-date in light of changes to Wisconsin statutes; reflect recent actions and/or policy decisions by the Village; or clarify and otherwise improve staff's ability to administer and enforce these particular regulations.

### Amendment #1

The Village Board recently discussed the issue of allowing commercial businesses with outdoor entertainment the opportunity to have extended hours (beyond the existing 10:00pm to 6:00am limitation enforced by the Village). As a result, the Board directed staff to create a process by which those business owners can apply for a conditional use permit that would enable businesses with a CUP to conduct outdoor entertainment activities from 10:00pm to 12:00 midnight subject to a series of conditions.

As detailed below and in the attached draft ordinance, Section 17.42(10) is proposed to be created to implement the Village Board's direction:

#### 17.42(10) LATE-NIGHT OUTDOOR ENTERTAINMENT.

Any restaurant within a B-1, B-2, B-3, B-4, B-5 or HIA Highway Interchange Area Overlay zoning district may apply for a late-night outdoor entertainment conditional use permit under the provisions of this section. A late-night outdoor entertainment conditional use permit shall authorize the restaurant to conduct outdoor activities between 10:00 pm and midnight notwithstanding any other provision of the Municipal Code subject to the following:

- a. The property shall be located a minimum of 200 feet from any residential zoning district;
- b. The restaurant shall have been in business continuously for not less than 3 months at the time of application; and
- c. The restaurant shall, at the time of application and annually thereafter submit to the Village documentation showing that more than 50% of the restaurant's gross sales are from the sale of food together with a signed statement from a certified public account who has reviewed the data and certifies that it is correct.
- d. No music shall be allowed after 10:00 pm.
- e. Any other condition that may be placed upon the permit by the Village Board to ensure compatibility and harmony with surrounding uses.
- f. Nothing herein shall prohibit the Village from enforcing its code provisions related to those noises which are excessively or unnecessary loud, disorderly, or which otherwise create a nuisance.

**Amendment #2**

During a recent discussion with the Village Board regarding the proposal to further divide the land within the Germantown Marketplace II PDD area, the issue of landscape installation and perpetual maintenance of said landscaping was discussed. In summary, like many other communities, the Village does not have a specific code requirement that commercial and industrial property/business owners maintain and replace landscaping items after the initial installation. While the Plan Commission oftentimes directs significant attention to the type, amount and relative location of the landscaping proposed for a new development, and while staff goes to the effort of ensuring all landscaping items are installed as they appear on an approved landscaping plan prior to releasing occupancy permits and financial guarantees, there's really no specific code provision that requires the owners/occupants of those commercial properties to perpetually maintain such landscaping after installation so that it eventually grows into the landscaping plans that the Village reviewed and approved years earlier. If and when this becomes a problem, it's typically not evident for many years after the site and landscaping plans have been approved and the landscaping installed. Whether it results from inadequate care and maintenance, years of seasonal weathering, or simply new ownership with different tastes and tolerances for landscaping and required maintenance, the landscaping that exists today for many commercial and industrial properties isn't what was approved years ago. For example, trees and shrubs die off and are either replaced with something different, something less in terms of quantity or quality, or simply not replaced at all.

While certainly not a common occurrence, I once had a discussion with a landscape architect working on a commercial project in Germantown who told me that his client had directed him to propose a landscape plan with the least expensive type and amount of trees and shrubs because it was his (the owners) intention to not spend a lot of money or effort maintaining the landscaping once installed and to not replace any of it if and when it died off. In effect, only putting the minimal effort required in order to obtain site plan approval from the Village.

Toward that end, staff is recommending that the Village's Site Plan approval requirements in the Zoning Code be amended to include Section 17.43(6a) to specifically require property owners who go through the site plan approval process to also enter into a "Landscape Maintenance Agreement" with the Village.

17.43(6a)    Landscape Maintenance Agreement.

Any property owner obtaining approval of a site plan that includes the design and installation of landscaping associated with the development of a property shall enter into a Landscape Maintenance Agreement with the Village. The purpose for the agreement shall be to: ensure the installation of landscaping in accordance with the landscaping plan approved by the Village; require a permanent and perpetual warranty to maintain said landscaping that will run with the property and be binding upon the property owner, successors and assigns. A model agreement shall be prepared by the Village and entered into between the property owner(s) and the Village concurrent with the granting of site and landscaping plan approval by the Village.

While not contained within the Zoning Code, Staff will prepare and maintain a model agreement that will be used for all eligible developments after adoption. A sample agreement used by another municipality is attached for information (see City of Annapolis, Maryland, Landscape Maintenance Agreement).

### **Amendment #3**

Section 17.43 of the Zoning Code contains the Village's regulations for requiring and obtaining site plan approval for new development in the Village. Generally speaking, except for agricultural and one or two-family residential development, no new development in the Village can be issued a building permit without first obtaining site plan approval from the Plan Commission.

Section 17.43(7) provides the review procedure and the standards for denial of a site plan:

*(7) REVIEW PROCEDURE. Upon receipt of the site plan, the Plan Commission shall review it to determine whether it is in proper form, contains all of the required information, shows compliance with this and other ordinances and plans of the Village, and demonstrates the adequacy of utility services. Upon demand by the applicant of the site plan, the Plan Commission shall, within 30 days of its initial submittal, approve it, conditionally approve it or deny approval. Denial of approval shall be limited to any defect in form or required information, or any violation of any provision of this chapter or any ordinance, or the inadequacy of any utility. The Plan Commission's action shall be issued in writing by the Plan Commission Secretary stating, in detail, the reasons for the Plan Commission's actions.*

In staff's opinion, the recent decision by the Board of Zoning Appeals (BOZA) in the matter of the appeal filed by the developer of the Saxony Village development, where the BOZA concluded that the Plan Commission exceeded its authority with regard to reducing density and the elimination or relocation of a particular building, reveals a basic deficiency in Section 17.43(7) with respect to clearly stating the basis for and extent to which the Plan Commission can require when approving a particular development. As currently written, 17.43(7) limits the ability of the Plan Commission to deny (or conditionally approve in a manner that results in less and/or different development than what has been applied for) *"to any defect in form or required information, or any violation of any provision of this chapter or any ordinance, or the inadequacy of any utility"*.

As stated in Section 17.04, the intent of the Zoning Code and the regulations contained therein is to do more than simply ensure that forms are properly filled out and utilities are adequate:

**17.04 INTENT.**

*It is the general intent of this chapter to regulate and restrict the use of all structures, lands and waters; regulate and restrict lot coverage, population distribution and density, and the size and location of all structures so as to lessen congestion in and promote the safety and efficiency of the streets and highways; secure safety from fire, flooding, panic and other dangers; provide adequate light, air, sanitation and drainage; prevent overcrowding; avoid undue population concentration; facilitate the adequate provision of public facilities and utilities; stabilize and protect property values; further the appropriate use of land and conservation of natural resources; preserve and promote the beauty of the Village; and implement the Village comprehensive plan or plan components. It is further intended to provide for the administration and enforcement of this chapter and to provide penalties for its violation.*

Consequently, staff is proposing to amend Section 17.43(7) to specifically provide that, in the course of reviewing and ultimately deciding to approve, approved with some conditions, or deny a particular site plan proposal, the Plan Commission is charged with the responsibility of determining whether or not said development proposal will meet all of the specific items listed in the intent section of the Zoning Code.. and not just the adequacy of the application forms and utilities.

*(7) REVIEW PROCEDURE. Upon receipt of the site plan, the Community Development Department and Plan Commission shall review it to determine whether it is in proper form, contains all of the required information, shows that the proposed development, including all buildings, site improvements, land uses and activities subject of said site plan are in compliance with this and other ordinances and plans of the Village, including but not limited to the Village's Comprehensive Plan, and whether or not the proposed development meets the intent of the Village Zoning Code as set forth in 17.04 herein. and demonstrates the adequacy of utility services. Upon demand by the applicant of the site plan,*  
*The Plan Commission shall, within sixty (60) 30 days of its initial submittal, approve it, conditionally approve it or deny approval.*

*Subject to the provisions of 17.49 herein (Architectural Review Board), the Plan Commission shall have the authority to: (a) determine if a proposed development meets the intent of this Code as set forth in 17.04 and the requirements of all other applicable codes; (b) deny a proposed development if the Plan Commission determines the proposed development does not or cannot meet the intent of this Code and/or the requirements of other applicable codes; (c) assign specific conditions or stipulations that may place limitations and/or additional requirements on certain aspects of the proposed development to ensure said development meets the intent of this and other applicable codes initially and on an ongoing basis; and (d) require relevant and adequate studies, analysis or other information deemed necessary in addition to that required under 17.43(3)*

---

herein in order to adequately assess and evaluate a proposed development with respect to meeting the intent of this Code and the requirements herein. Denial of approval shall be limited to any defect in form or required information, or any violation of any provision of this chapter or any ordinance, or the inadequacy of any utility. The Plan Commission's action shall be issued in writing by the Plan Commission Secretary stating, in detail, the reasons for the Plan Commission's actions (providing a copy of the meeting minutes shall be deemed sufficient to satisfy this requirement).

**Community Development Department- Proposed Code Amendments to various provisions to Section 17 (Zoning Code).**

The amendments are proposed in order to bring provisions up-to-date in light of changes to Wisconsin Statutes; reflect recent actions and/or policy decisions by the Village; or clarify and improve staff's ability to administer and enforce these particular regulations. Planner Retzlaff summarized the code amendments.

**Amendment #1:** The proposed amendment was created to implement the Village Board's direction to create a process by which business owners can apply for a conditional use permit that would enable businesses with a CUP to conduct outdoor entertainment activities from 10:00pm to 12:00 midnight subject to a series of conditions. Discussion followed. Trustee Baum explained the noise ordinance starts at 10pm, so specifically no music could be allowed after 10 pm. He said the Public Safety Committee discussed that you could have dinner outside but you couldn't have music or bands outside. This proposed another problem if someone's bedroom is 10 feet from where people are sitting having dinner. Planner Retzlaff explained the conditional use permit would be a pass to make additional noise. Trustee Baum explained that any business who wants to propose an outdoor use after 10pm would need to apply for a conditional use permit and define and describe what they are proposing to do. The Plan Commission and Public Safety Committee would then decide whether it would be acceptable at their location.

***MOTION Gray second Baum to Approve the amendment to Section 17.42(10) as proposed:***

**17.42(10) LATE-NIGHT OUTDOOR ENTERTAINMENT.**

**Any restaurant within a B-1, B-2, B-3, B-4, B-5 or HIA Highway Interchange Area Overlay zoning district may apply for a late-night outdoor entertainment conditional use permit under the provisions of this section. A late-night outdoor entertainment conditional use permit shall authorize the restaurant to conduct outdoor activities between 10:00 pm and midnight notwithstanding any other provision of the Municipal Code subject to the following:**

- a. The property shall be located a minimum of 200 feet from any residential zoning district;**
- b. The restaurant shall have been in business continuously for not less than 3 months at the time of application; and**
- c. The restaurant shall, at the time of application and annually thereafter submit to the Village documentation showing that more than 50% of the restaurant's gross sales are from the sale of food together with a signed statement from a certified public account who has reviewed the data and certifies that it is correct.**
- d. No music shall be allowed after 10:00 pm.**
- e. Any other condition that may be placed upon the permit by the Village Board to ensure compatibility and harmony with surrounding uses.**
- f. Nothing herein shall prohibit the Village from enforcing its code provisions related to those noises which are excessively or unnecessary loud, disorderly, or which otherwise create a nuisance.**

***MOTION to Amend Gray second Baum to remove Item d.***

***MOTION to Amend carried unanimously.***

***MOTION to Amend Laszewski second Baum to correct Item c. to: ... a signed statement from a Certified Public Accountant and; add ...more than 50% of the restaurant's prior year gross sales. . .***

Planner Retzlaff read the definitions in the zoning code for restaurant and tavern. Discussion followed.

***MOTION to Amend carried unanimously.***

***MOTION to Amend Baum second Shadid to eliminate Item c.***

***MOTION to Amend carried unanimously.***

Chairman Wolter questioned why the amendment says any restaurant when late night outdoor entertainment encompasses both a restaurant and tavern. Planner Retzlaff said each application should be considered on its own merits.

***MOTION to Amend Baum second Shadid to add: . . . any restaurant or tavern . . . to the ordinance.***

***MOTION to Amend carried unanimously.***

***MOTION to Amend Baum second Shadid to change Item b: . . . the Business shall have been in business . . .***

***MOTION to Amend carried unanimously.***

***MOTION to Approve as Amended carried unanimously.***

**Amendment #2:** The proposed amendment to the Site Plan approval requirements in the Zoning Code specifically requires a property owner who goes through the site plan approval process to also enter into a "Landscape Maintenance Agreement" with the Village. Staff will also prepare and maintain a model agreement that will be used for all eligible developments after adoption.

***MOTION Gray second Baum to Approve the Amendment to the Zoning Code to include Section 17.43(6a):***

**17.43(6a) Landscape Maintenance Agreement.**

**Any property owner obtaining approval of a site plan that includes the design and installation of landscaping associated with the development of a property shall enter into a Landscape Maintenance Agreement with the Village. The purpose for the agreement shall be to: ensure the installation of landscaping in accordance with the landscaping plan approved by the Village; require a permanent and perpetual warranty to maintain said landscaping that will run with the property and be binding upon the property owner, successors and assigns. A model agreement shall be prepared by the Village and entered into between the property owner(s) and the Village concurrent with the granting of site and landscaping plan approval by the Village.**

***MOTION carried unanimously.***

Planner Retzlaff said he will bring a draft agreement back to the Plan Commission for their review. The amendment is for all new development moving forward.

**Amendment #3:** Staff is proposing to amend Section 17.43(7) to specifically provide that, in the course of reviewing and ultimately deciding to approve, approved with some conditions, or deny a particular site plan proposal, the Plan Commission is charged with the responsibility of determining whether or not the development proposal will meet all of the specific items listed in the intent section of the Zoning Code and not just the adequacy of the application forms and utilities. Planner Retzlaff summarized the amendment. He explained the intent of the language is to make it clear that the Plan Commission does have the authority to deny a project or assign specific conditions and limit certain aspects of a development or add additional requirements to ensure the proposal satisfies the provisions of the intent section of the code. Discussion followed.

Commissioner Gray questioned if the Plan Commission needs to point out why a decision is made on a development. Planner Retzlaff said a reason should be given because it could be arbitrary or capricious. Chairman Wolter agreed. Planner Retzlaff said the proposed language also gives the Plan Commission the authority to ask for additional information to further help review a project. Trustee Baum questioned who determines aesthetics. Planner Retzlaff said it falls under Section 17.49 of the Code, Architectural Review Board, which is the Plan Commission. Chairman Wolter said you can't just say you don't like something or don't care for it. You need to say I don't think it will work or I don't approve of it for these reasons and tie it in the zoning or surrounding area and is not be opinion. Commissioner Gray said citing the undue population concentration could be a reason to decide approval of a proposal with no other reason given. Planner Retzlaff said language could also be added to further clarify density qualifiers. Discussion continued. Chairman Wolter said there are always a percentage of people who don't want to see any change and Plan Commission should decide if it's a good development for Germantown and if it fits all the criteria of zoning and aesthetics and is a positive, good development long term. Planner Retzlaff said the Plan Commission plays a big role in what is approved and looking at the big picture.

***MOTION Baum second Shadid to Approve the Amendment to Section 17.43(7):***

**(7) REVIEW PROCEDURE. Upon receipt of the site plan, the Community Development Department and Plan Commission shall review it to determine whether it is in proper form, contains all of the required information, shows that the proposed development, including all buildings, site improvements, land uses and activities subject of said site plan are in compliance with this and other ordinances and plans of the Village, including but not limited to the Village's Comprehensive Plan, and whether or not the proposed development meets the intent of the Village Zoning Code as set forth in 17.04 herein, and demonstrates the adequacy of utility services. Upon demand by the applicant of the site plan, the Plan Commission shall, within sixty (60) 30 days of its initial submittal, approve it, conditionally approve it or deny approval. Subject to the provisions of 17.49 herein (Architectural Review Board), the Plan Commission shall have the authority to: (a) determine if a proposed development meets the intent of this Code as set forth in 17.04 and the requirements of all other applicable codes; (b) deny a proposed development if**

*the Plan Commission determines the proposed development does not or cannot meet the intent of this Code and/or the requirements of other applicable codes; (c) assign specific conditions or stipulations that may place limitations and/or additional requirements on certain aspects of the proposed development to ensure said development meets the intent of this and other applicable codes initially and on an ongoing basis; and (d) require relevant and adequate studies, analysis or other information deemed necessary in addition to that required under 17.43(3) herein in order to adequately assess and evaluate a proposed development with respect to meeting the intent of this Code and the requirements herein. Denial of approval shall be limited to any defect in form or required information, or any violation of any provision of this chapter or any ordinance, or the inadequacy of any utility. The Plan Commission's action shall be issued in writing by the Plan Commission Secretary stating, in detail, the reasons for the Plan Commission's actions (providing a copy of the meeting minutes shall be deemed sufficient to satisfy this requirement).*

**MOTION** carried unanimously.

**ANNOUNCEMENTS:** Commissioner Shadid said tomorrow is Election Day. Chairman Wolter said the Vietnam Wall will be in Germantown September 1<sup>st</sup> through the 5<sup>th</sup> and will be located across the street from the American Legion Post on the school property. He said several events are planned including a parade on Saturday.

**ADJOURNMENT:** There being no further business, the meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Lori Johnson  
Planning Assistant

**NOTICE OF PUBLIC HEARING  
VILLAGE OF GERMANTOWN**

*NOTICE is hereby given that a Public Hearing will be held before the Village of Germantown Village Board at the Germantown Village Hall located at N112 W17001 Mequon Road, Germantown, Wisconsin on the following date and at the time noted below (or soon thereafter):*

**DATE:** Monday, September 19, 2016  
**TIME:** 7:00 p.m. or later

*The purpose of said hearing will be to hear any and all parties, their attorneys or agents, for or against the petition filed by the Village of Germantown Community Development Department for proposed text amendments to the following sections of the Zoning Code (Chapter 17) of the Village of Germantown Municipal Code: 17.07 (General Provisions); 17.08 (Definitions); 17.42 (Conditional Uses); 17.43 (Site Plan Approval Requirements); 17.48 (Non-Conforming Uses, Structures and Lots); 17.51 (Changes and Amendments); and 17.56 (Wireless Communication Facilities).*

*A copy of the application is on file in the Village of Germantown Community Development Department (Planning & Zoning office) and is available for public inspection during the hours of 8:00 a.m. to 4:00 p.m. Monday through Friday.*

*Dated this 25<sup>th</sup> day of August 2016  
Barbara K. D. Goeckner, Village Clerk*

*To Be Published On: September 1<sup>st</sup> and September 8<sup>th</sup>, 2016*

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 17 (ZONING CODE)  
OF THE VILLAGE OF GERMANTOWN MUNICIPAL CODE

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THE VILLAGE BOARD OF THE VILLAGE OF GERMANTOWN, WASHINGTON COUNTY,  
WISCONSIN, ORDAINS AS FOLLOWS:

**SECTION 1.** That Section 17.42(10) is to be created as follows where words that are ~~stricken~~ are deleted and words that are underlined are to be added:

- 17.42(10) LATE-NIGHT OUTDOOR ENTERTAINMENT.  
Any restaurant or tavern within a B-1, B-2, B-3, B-4, B-5 or HIA Highway Interchange Area Overlay zoning district may apply for a late-night outdoor entertainment conditional use permit under the provisions of this section. A late-night outdoor entertainment conditional use permit shall authorize the restaurant to conduct outdoor activities between 10:00 pm and midnight notwithstanding any other provision of the Municipal Code subject to the following:
- a. The property shall be located a minimum of 200 feet from any residential zoning district;
  - b. The business shall have been in business continuously for not less than 3 months at the time of application; and
  - c. Any other condition that may be placed upon the permit by the Village Board to ensure compatibility and harmony with surrounding uses.
  - d. Nothing herein shall prohibit the Village from enforcing its code provisions related to those noises which are excessively or unnecessary loud, disorderly, or which otherwise create a nuisance.

**SECTION 2.** That Section 17.43(6a) is to be created as follows where words that are ~~stricken~~ are deleted and words that are underlined are to be added:

- 17.43(6a) Landscape Maintenance Agreement.  
Any property owner obtaining approval of a site plan that includes the design and installation of landscaping associated with the development of a property shall enter into a Landscape Maintenance Agreement with the Village. The purpose for the agreement shall be to: ensure the installation of landscaping in accordance with the landscaping plan approved by the Village; require a permanent and perpetual warranty to maintain said landscaping that will run with the property and be binding upon the property owner, successors and assigns. A model agreement shall be prepared by the Village and entered into between the property owner(s) and the Village concurrent with the granting of site and landscaping plan approval by the Village.

**SECTION 3.** That Section 17.42(7) IS revised to read as follows where words that are stricken are deleted and words that are underlined are added:

17.43(7) REVIEW PROCEDURE. Upon receipt of the site plan, the Community Development Department and Plan Commission shall review it to determine whether it is in proper form, contains all of the required information, shows that the proposed development, including all buildings, site improvements, land uses and activities subject of said site plan are in compliance with this and other ordinances and plans of the Village, including but not limited to the Village's Comprehensive Plan, and whether or not the proposed development meets the intent of the Village Zoning Code as set forth in 17.04 herein, and demonstrates the adequacy of utility services. Upon demand by the applicant of the site plan, the Plan Commission shall, within sixty (60) 30 days of its initial submittal, approve it, conditionally approve it or deny approval.

Subject to the provisions of 17.49 herein (Architectural Review Board), the Plan Commission shall have the authority to: (a) determine if a proposed development meets the intent of this Code as set forth in 17.04 and the requirements of all other applicable codes; (b) deny a proposed development if the Plan Commission determines the proposed development does not or cannot meet the intent of this Code and/or the requirements of other applicable codes; (c) assign specific conditions or stipulations that may place limitations and/or additional requirements on certain aspects of the proposed development to ensure said development meets the intent of this and other applicable codes initially and on an ongoing basis; and (d) require relevant and adequate studies, analysis or other information deemed necessary in addition to that required under 17.43(3) herein in order to adequately assess and evaluate a proposed development with respect to meeting the intent of this Code and the requirements herein. Denial of approval shall be limited to any defect in form or required information, or any violation of any provision of this chapter or any ordinance, or the inadequacy of any utility. The Plan Commission's action shall be issued in writing by the Plan Commission Secretary stating, in detail, the reasons for the Plan Commission's actions (providing a copy of the meeting minutes shall be deemed sufficient to satisfy this requirement).

**SECTION 4.** This ordinance shall take effect and be in full force the day after its passage and publication, as provided by law.

Introduced by Trustee:

Adopted:

Vote:            Ayes:            Nays:

\_\_\_\_\_  
Dean Wolter, Village President

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Brian C. Sajdak, Village Attorney

\_\_\_\_\_  
Barbara K. D. Goeckner, Village Clerk

ORIGINAL DRAFT BY: ATH SAJDAK  
XB-2

STATE OF WISCONSIN VILLAGE OF GERMANTOWN WASHINGTON COUNTY

ORDINANCE NO. \_\_\_\_-16

AN ORDINANCE AMENDING THE GERMANTOWN MUNICIPAL CODE TO  
PROVIDE FOR EXTENDED HOURS FOR CERTAIN LATE-NIGHT OUTDOOR  
ENTERTAINMENT USES BY CONDITIONAL USE PERMIT WITHIN THE VILLAGE

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WHEREAS, the Village Board, having previously adopted § 9.07 of the Municipal Code of Germantown, regulates the various aspects of noise within the Village including outdoor entertainment; and

WHEREAS, the Village Board wishes to authorize certain outdoor entertainment uses to have extended hours of operation; and

WHEREAS, the regulation of noise associated with outdoor entertainment within the Village promotes the health, safety and welfare of the Community;

NOW, THEREFORE, the Village Board of the Village of Germantown, Wisconsin, do ordain as follows:

SECTION I:

Section 9.07(2)(b) of the Municipal Code of the Village of Germantown is hereby amended to read as follows (Note: Added text is underlined, deleted text is ~~struck through~~):

9.07(2)(b) Radios, Phonographs, Similar Devices. Except for Village celebrations authorized and regulated by the Village Board, and except for those uses which have obtained a late-night outdoor entertainment conditional use permit pursuant under the Zoning Code, the using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in a loud and unnecessary manner. The operation of any set, instrument, phonograph, machine or device between the hours of 10:00 p.m. and 6:00 a.m. in a manner as to be plainly audible at the property line of the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

SECTION II:

Section 17.42(10) of the Municipal Code of the Village of Germantown is hereby created to read as follows:

(10) **LATE-NIGHT OUTDOOR ENTERTAINMENT.** Any restaurant or tavern within a B-1, B-2, B-3, B-4, B-5 or HIA Highway Interchange Area Overlay zoning district may apply for a late-night outdoor entertainment conditional use permit under the provisions of this section. A late-night outdoor entertainment conditional use permit shall authorize the restaurant to conduct outdoor activities between 10:00 pm and midnight notwithstanding any other provision of the Municipal Code subject to the following:

- (a) The property shall be located a minimum of 200 feet from any residential zoning district;
- (b) The business restaurant shall have been in business continuously for not less than 3 months at the time of application; and
- ~~(c) The restaurant shall, at the time of application and annually thereafter submit to the Village documentation showing that more than 50% of the restaurant's gross sales are from the sale of food together with a signed statement from a certified public account who has reviewed the data and certifies that it is correct.~~
- ~~(d) No music shall be allowed after 10:00 pm.~~
- (e) Any other condition that may be placed upon the permit by the Village Board to ensure compatibility and harmony with surrounding uses.
- (f) Nothing herein shall prohibit the Village from enforcing its code provisions related to those noises which are excessively or unnecessary loud, disorderly, or which otherwise create a nuisance.

### SECTION III:

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

### SECTION IV:

## SECTION V:

Absent:

Published:

REVISED DRAFT BY: PLAN COMMISSION

STATE OF WISCONSIN VILLAGE OF GERMANTOWN WASHINGTON COUNTY

ORDINANCE NO. \_\_\_\_-16

AN ORDINANCE AMENDING THE GERMANTOWN MUNICIPAL CODE TO  
PROVIDE FOR EXTENDED HOURS FOR CERTAIN LATE-NIGHT OUTDOOR  
ENTERTAINMENT USES BY CONDITIONAL USE PERMIT WITHIN THE VILLAGE

---

WHEREAS, the Village Board, having previously adopted § 9.07 of the Municipal Code of Germantown, regulates the various aspects of noise within the Village including outdoor entertainment; and

WHEREAS, the Village Board wishes to authorize certain outdoor entertainment uses to have extended hours of operation; and

WHEREAS, the regulation of noise associated with outdoor entertainment within the Village promotes the health, safety and welfare of the Community;

NOW, THEREFORE, the Village Board of the Village of Germantown, Wisconsin, do ordain as follows:

SECTION I:

Section 9.07(2)(b) of the Municipal Code of the Village of Germantown is hereby amended to read as follows (Note: Added text is underlined, deleted text is ~~struck through~~):

9.07(2)(b) Radios, Phonographs, Similar Devices. Except for Village celebrations authorized and regulated by the Village Board, and except for those uses which have obtained a late-night outdoor entertainment conditional use permit pursuant under the Zoning Code, the using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in a loud and unnecessary manner. The operation of any set, instrument, phonograph, machine or device between the hours of 10:00 p.m. and 6:00 a.m. in a manner as to be plainly audible at the property line of the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

SECTION II:

Section 17.42(10) of the Municipal Code of the Village of Germantown is hereby created to read as follows:

(10) LATE-NIGHT OUTDOOR ENTERTAINMENT. Any restaurant within a B-1, B-2, B-3, B-4, B-5 or HIA Highway Interchange Area Overlay zoning district may apply for a late-night outdoor entertainment conditional use permit under the provisions of this section. A late-night outdoor entertainment conditional use permit shall authorize the restaurant to conduct outdoor activities between 10:00 pm and midnight notwithstanding any other provision of the Municipal Code subject to the following:

- (a) The property shall be located a minimum of 200 feet from any residential zoning district;
- (b) The restaurant shall have been in business continuously for not less than 3 months at the time of application; and
- (c) The restaurant shall, at the time of application and annually thereafter submit to the Village documentation showing that more than 50% of the restaurant's gross sales are from the sale of food together with a signed statement from a certified public account who has reviewed the data and certifies that it is correct.
- (d) No music shall be allowed after 10:00 pm.
- (e) Any other condition that may be placed upon the permit by the Village Board to ensure compatibility and harmony with surrounding uses.
- (f) Nothing herein shall prohibit the Village from enforcing its code provisions related to those noises which are excessively or unnecessary loud, disorderly, or which otherwise create a nuisance.

### SECTION III:

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

### SECTION IV:

All ordinances or parts of ordinances contravening the terms of this ordinance are hereby to that extent repealed.

SECTION V:

This ordinance shall take effect and be in full force upon its passage and the day after publication.

Introduced by Trustee:

Adopted:

Vote: Ayes:

Nays:

Absent:

\_\_\_\_\_  
Dean Wolter, Village President

ATTEST:

\_\_\_\_\_  
Barbara K.D. Goeckner, Village Clerk

Approved as to form:

\_\_\_\_\_  
Brian C. Sajdak, Village Attorney

Published: \_\_\_\_\_

X.C

**BUSINESS OF THE VILLAGE BOARD  
GERMANTOWN, WI**

MEETING DATE: September 19, 2016

AGENDA ITEM: New Business

ITEM TITLE: Create Phasing of Approved Development Agreement  
Saxony Village

SUBMITTED BY: Lawrence W Ratayczak, P.E., Public Works Director

SUMMARY EXPLANATION:

The Development Agreement for Saxony Village Residential Facility has been approved at the August 15, 2016 Village Board Meeting. The Developer has requested that the Development's public utilities work be divided into two phases; Phase One would be for the water main from Hilbert Lane to about 200 lineal feet westerly into the Saxony Village Development. Phase two would be for the remaining public utilities in the development.

The request is being made to allow work to begin with grading and drainage aspects of the work. The water main in phase one would get the proposed water main under and past the project road culvert located just west of Hilbert Lane. The only change to the Developers Agreement is to modify Section 5.04 (Phases) to state "Developer has represented that it will construct the public improvements for this project in *two* phases"

ATTACHMENT: ORDINANCE\_\_\_\_\_ RESOLUTION\_\_\_\_\_ OTHER X

- 1) Revised Development Agreement for Phasing Construction within Saxony Village.

RECOMMENDATION:

Staff is recommending the Village Board approve the Development Agreement for Saxony Village, as revised for Phasing Construction.

COMMITTEE ACTION:

Proper parliamentary procedure to deny a request is to have a motion made in the affirmative and by voting NAY would deny the request if a majority vote.

**SAXONY VILLAGE  
DEVELOPMENT AGREEMENT**

THIS AGREEMENT is entered into by and between the Village of Germantown, a municipal corporation of the State of Wisconsin located in Washington County, hereinafter called the "Village", and Heritage Place Joint Venture., hereinafter referred to as "Developer".

WHEREAS, the Developer owns that part of Outlot Four (4) and Outlot Five (5) in Assessor's Plat of the Village of Germantown, Northwest ¼ of the southeast ¼ of Section 22, Town 9 North of Range 20 East, Washington County, Wisconsin and together with the associated exceptions as described in the attached Exhibit "C" in the Village of Germantown, Washington County, Wisconsin (the "Property"); and

WHEREAS, Developer has submitted for approval by the Village a development plan for a proposed 172-Unit multi-family residential facility (included in the plan are 1-38 unit building, 2-35-unit buildings, 2-26 unit buildings, a clubhouse, maintenance building and a 12-unit building with additional detached garages) to be located in the Village of Germantown on the Property which Developer proposes to complete as described in the plans submitted to the Village, and approved by the Plan Commission on December 18, 2016; and

WHEREAS, the Village may require that Developer make and install any public improvements reasonably necessary and/or that Developer execute a certified check or irrevocable letter of credit to ensure that those improvements will be made within a reasonable time; and further that the acceptance of dedication of these improvements may be conditioned upon the construction of such improvements according to Village specifications and without cost to the Village; and

WHEREAS, it will be necessary that Developer construct and install water distribution facility partly in public right of way and partly in a dedicated easement on the Property, and the Village will require that such plans and designs be approved and permitted, and that the Developer furnish an appropriate financial guarantee; and

WHEREAS, The Village seeks to protect the health, safety and general welfare of the Village as a whole and, in particular, property owners who abut the site or are potentially affected by the project through application of the Municipal Code and rules and regulations of governmental agencies with jurisdiction.

NOW, THEREFORE, in consideration of these recitals, the mutual agreements, benefits and responsibilities outlined herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I - REQUIRED IMPROVEMENTS**

1.01 GENERALLY. Developer, entirely at its own expense, shall, except as herein provided, design and install the public improvements required by Sec.18.08 of the Municipal Code in

accordance with the provisions of that section and as directed by the Village Engineer or Village Board. It is the intent of this Agreement that all public improvements shall be installed by Developer. Notwithstanding the foregoing, the public improvements described in this Agreement are deemed to be undertaken for a public (not a private) purpose. Accordingly, Developer shall undertake the required public bidding process under Wis. Stat. §§ 62.15 and 66.0901 as well as any prevailing wage requirements under Wis. Stat. § 66.0903 for those improvements for which the Developer is being reimbursed by the Village under this agreement.

1.02 WATER SUPPLY FACILITIES. Developer shall design and submit to the Village Engineer for approval all proposed plans, specifications and contract documents for all water supply facilities before authorization for construction will be given, in accordance with Sec. 18.08(8) of the Municipal Code. All such documents shall be prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. Implicit in this provision is the right of the Village Engineer and Building Inspector to require document revisions and modifications in the best interests of the Village. All water utility improvements that are to be transferred to the Village Water Utility Department shall be contained in Village right-of-way or a utility easement dedicated to the Village. The easement shall be dedicated to the Village through an easement document prepared and submitted by Developer, subject to review and approval by the Village Engineer and the Village Attorney. Water main and lateral trenches in an existing roadway shall be aggregate slurry backfilled.

~~Developer shall extend the 12" water main from the west property line approximately 80 lineal feet to the existing water main located in Castle Drive (the "Water Main"). The estimated cost of the Water Main is \$45,072.30 (as reflected on Exhibit D), but could be more depending on the unknown cost to perform any contaminated soil or contaminated dewatering water disposal that may arise during construction of the Water Main. The Village shall reimburse the Developer for the actual cost of extending the Water Main pursuant to the terms of this paragraph.~~

1.03 SANITARY SEWERAGE SYSTEMS. Developer shall design and submit to the Village Engineer for approval all proposed plans, specifications and contract documents for all sanitary sewerage systems facilities before authorization for construction will be given, in accordance with Sec. 18.08(8) of the Municipal Code. All such documents shall be prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. Implicit in this provision is the right of the Village Engineer and Building Inspector to require document revisions and modifications in the best interests of the Village. All sanitary sewerage system improvements that are to be transferred to the Village Waste Water Utility shall be contained in Village right-of-way or a utility easement dedicated to the Village. The easement shall be dedicated to the Village through an easement document prepared and submitted by Developer, subject to review and approval by the Village Engineer and the Village Attorney. Sanitary Sewer main and lateral trenches in an existing roadway shall be aggregate slurry backfilled.

Unless otherwise provided hereunder, Developer shall install an 18-inch sanitary sewer main along the western edge of the Property commencing at \_\_\_\_\_ and continuing south crossing below the railroad tracks to a point of connection with an existing 30-inch main near the south property line of the Property. Developer's responsibility to install the 18-inch sanitary sewer main described above is contingent upon Developer entering into an agreement with Gehl Foods, LLC, for a monetary contribution to the installation of the same. In the event that Developer is unable to reach an agreement with Gehl Foods by November 30, 2016, Developer shall be under no further obligation to install the 18-inch sewer line and may serve the Property with other sewer service, the design and location of which shall be submitted to the Village Engineer for approval. ~~18" sanitary sewer shall be installed south from the proposed manhole in Main Street crossing beneath the existing railroad tracks to the point of connection with the existing 30" sanitary sewer near the south property line.~~

~~The Village will reimburse Developer for the entire actual cost of constructing the portion of the 18-inch sanitary sewer system that is not located on the Property. The Village will also reimburse the Developer for the actual cost of constructing the 18-inch sanitary sewer system that is located on the Property, less the amount of \$195,824.00 (which amount is reflected on Exhibit D).~~

1.04 OTHER UTILITIES. Developer shall be responsible for and cause electrical power, telephone facilities, and natural gas facilities to be installed in such manner as to make proper and adequate service available to each occupied building in the Development. All such services shall be located underground in accordance with applicable codes.

1.05 EROSION CONTROL. In order to minimize and control erosion, siltation, sedimentation and washing of soils during the period of construction, Developer shall evaluate, initiate and undertake such measures as may be necessary from time to time and as the Village Engineer may require or direct pursuant to Sec.17.44 of the Municipal Code, and, in addition, shall undertake the following measures to insure sediment control:

- (1) Submit an Erosion Control Plan for approval by the Village Engineer.
- (2) Developer is required to obtain an erosion control permit from the Building Inspection Department. Developer is required to maintain all erosion control until the final top-soiling, grading, seeding, mulching, sodding, has been completed for the entire project and until the vegetation has sufficient growth to control the run-off as shall be determined by the Village engineering staff. Silt fencing shall be removed by Developer promptly, following establishment of vegetation on all disturbed areas sufficient to control run-off from the site, as shall be determined by the Village's engineering staff.
- (3) Developer shall promptly undertake topsoiling, fine grading, seeding and fertilizing of all drainage easements and areas within the public right-of-way and all approved drainage swales in accordance with the approved Master Grading and Erosion Control Plans after installation of all electric, gas, telephone, cable TV and drainage utilities and appurtenances. All surface restoration shall be

completed prior to acceptance of dedication of improvements by the Public Works Committee.

- (4) Off-site sediment tracking is closely monitored by Village and County Inspectors. To assist in reduction of sediment infiltration of ponds and streams, sediment tracking must adhere to the sediment and erosion control plan. Violations of tracking practices shall result in the Village cleaning the streets traveled by construction equipment with a street sweeper as deemed necessary by the Village Building Inspector or Engineer. Such cleaning shall not exceed a frequency of twice weekly. Developer shall be charged and invoiced at standard rates set by the Village for any such street sweeping services rendered, and Developer shall remit payment within 30 days of receipt of such invoice(s). If not so promptly paid, the Village may charge Developer's escrow account or draw on Developer's letter of credit established pursuant to Section 6.01 of this Agreement, to recover such costs. Notwithstanding the foregoing, the right of the Village to respond to off-site sediment tracking hereunder shall not excuse Developer from strict compliance with required erosion control measures or be considered a substitute or replacement for such measures.
- (5) Topsoil to be stockpiled on site. No topsoil to be transported off site, except as provided by Section 17.441 of the Municipal Code.

1.06 STORM WATER DRAINAGE FACILITIES. Developer shall design and submit to the Village Engineer for approval storm water drainage and retention and detention facilities adequate to accommodate expected surface water flow within and through the Development, in accordance with Section 18.08 (10) of the Municipal Code and Chapter 13 of the MMSD Rules.

1.07 LANDSCAPING. Developer shall complete and continually maintain all landscaping as accepted by the Village in the site plan approval granted December 18, 2015.

1.08 STREET SIGNS AND MARKINGS. Developer shall install all required street signs and markings at Developer expense, including a Stop sign at the intersection of Main Street and Saxony Village Boulevard, and Street Signs for Saxony Village Boulevard and Saxony Square.

1.09 SIDEWALKS AND PATHWAYS. The Developer shall install a 12 foot wide asphalt path from Saxony Village Boulevard south, to be located on top of the proposed sewer main to sanitary manhole no. 4. Developer shall be reimbursed for the actual additional cost to construct a 12 foot wide path to provide access for the Village sanitary sewer jetting vehicle.

## ARTICLE II - CONSTRUCTION

2.01 GENERALLY. Developer, entirely at its own expense, shall construct and install all public improvements and provide all plans, specifications and other documents in accordance with Sec.18.09 of the Municipal Code or as required by the Village Engineer pursuant to Sec.18.09. Developer understands and acknowledges that the Municipal Code may be and is

subject to revision from time to time, and that such revisions may impose altered or additional obligations on individual and entities creating subdivisions and other developments in the Village, including Developer. Developer hereby agrees that with respect to any such revision which shall be approved by the Village prior to issuance of permits for all public improvements provided for herein, or as mutually agreed upon between Developer and the Village after the commencement of work, Developer shall incorporate any such revision into Developer's plans, specifications and work.

Developer shall provide a schedule of construction setting forth approximate dates of commencement and completion of each phase of the construction. Developer agrees that no work shall be scheduled for the improvements without the Village Engineers written approval of the starting date and schedule.

A pre-construction meeting shall be scheduled between Developer, the Contractors and the Village prior to commencement of any construction on the improvements. Developer shall, prior to such meeting, notify all utilities of the planned construction and the date and location of the pre-construction meeting.

2.02 BUILDING AND OCCUPANCY PERMITS. No occupancy permits shall be issued until the water main, sanitary sewer and storm sewer improvements servicing said building are installed, inspected by the Village Utility and approved by the Village Engineer, all record-drawings are filed with the Village and approved by the Village Engineer in accordance with 2.05 below.

2.03 REQUIRED PLANS. Developer shall submit to the Village Engineer for approval all of the plans, profiles and specifications required by Sec.18.09 (3) of the Municipal Code. Required plans for improvements shall include the following:

- (1) Master site grading and asphalt path plan
- (2) Water main record-drawings
- (3) Erosion and sedimentation controls
- (4) Water main extensions
- (5) Sanitary Sewer Record Drawings
- (6) Sanitary Sewer extensions

In addition, Developer shall submit to the Village Engineer for approval all specifications before authorization for construction will be given. Implicit in this provision is the right of the Village Engineer to require document revisions and modifications in the best interests of the Village.

2.04 EXISTING FLORA. Developer shall, in accordance with Sec.18.09(5) of the Municipal Code, make reasonable efforts to protect and retain all existing trees, shrubbery, vines and grasses not actually lying within public roadways, drainageways, building foundation sites, private driveways and parking areas, soil absorption waste and disposal areas, paths and trails, except as necessary for implementation of the Development Plan. Such trees are to be protected and preserved during construction in accordance with sound conservation practices, including the

preservation of trees by use of wells or islands or retaining walls whenever abutting grades are altered.

2.05 RECORD-DRAWING DOCUMENTS. Developer shall, not later than sixty (60) days following Final Acceptance of the improvements, provide the Village with record-drawing documents in digital format using the latest version of AutoCAD and on non-fading, double matte mylar (4 mil minimum thickness) of the water main, sanitary sewer, pond outlet structure and emergency overflow area. Reproducible copies of all final plans supplied by Developer to the Village pursuant to Sec. 18.09(3) of the Municipal Code shall include record-drawing information for all improvements. All record-drawing measurements shall include horizontal and vertical location referenced to the Village coordinate system (Wisconsin State Plane Coordinate System, South Zone, based on North American Datum of 1927 (NAD 27)). If Developer is unable to furnish the location and digital files as required, the Village Engineer shall complete the record-drawing plans with costs charged back to Developer. Each original or copy shall be certified by Developer's engineer and/or architect, in accordance with requirements of the Village Engineering Department.

### ARTICLE III - DEDICATION AND ACCEPTANCE

Developer agrees that the improvements will not be accepted by the Village until (i) all outstanding charges to be paid by Developer under the Ordinances have been paid in full, (ii) affidavits and lien waivers are received by the Village indicating that all contractors providing work, services or materials in connection with the improvements have been paid in full for all such work, services and materials, and (iii) the Village has received evidence satisfactory to it that no liens or other encumbrances (except those approved in writing by the Village) encumber the improvements. Any water main installation shall not be accepted until a bacteriologically safe sample and satisfactory pressure test results are obtained. Developer or his Contractor will flush the main and obtain the samples required for this testing under the supervision of the Village Inspector. Upon completion of the water mains and service laterals and acceptance of the system by the Village Public Works Committee, ownership and control shall be turned over without reservation to the Village.

Developer shall request in writing to the Village Engineer, acceptance of the public improvements. The Village Engineer will order an inspection of the improvements by the Village Inspector and a punch-list of corrections (if required) shall be forwarded to Developer for completion prior to acceptance. Upon completion of corrective action, Developer shall inform the Village Engineer in writing and request acceptance by the Public Works Committee. Upon satisfaction of the conditions set forth in this Agreement, and upon written request by Developer, the Village shall accept the improvements (the "Final Acceptance"). The acceptance of the public improvements by the Public Works Committee shall commence running of the one-year warranty period provided for and in accordance with Section 7.01 of this Agreement.

### ARTICLE IV - PAYMENT OF FEES

4.01 GENERALLY. Developer shall pay all fees, expenses, costs and disbursements which Developer is required to pay, pursuant to Sec. 18.10 of the Municipal Code. Unless

required to be pre-paid as a condition of the approval of this Agreement, such amount shall be paid by Developer within thirty (30) days after being billed by the Village. Nothing in this provision, or in the remaining provisions of this article, shall be construed as exempting Developer, its successors and assigns, from such future fees, expenses, costs, or assessments which might be imposed by way of general operation of law or ordinance, and as otherwise assessable against properties within the Village of Germantown.

4.02 IMPACT FEES. As a condition of the approval of this Agreement by the Village, Developer shall pay to the Village Treasurer tax impact fees/Residential Unit that have been determined in accordance with Sec. 3.14 of the Municipal Code. These fees include:

- |                                   |                |
|-----------------------------------|----------------|
| (1) Water:                        | \$ 832.00/REC  |
| (2) Fire Protection:              | \$ 171.00/REC  |
| (3) Police Protection Facilities: | \$ 148.00/REC  |
| (4) Park & Recreation:            | \$ 736.00/REC  |
| (4) Library Facilities:           | \$ 281.00/REC  |
| (5) Sanitary Sewer Connection:    | \$3,808.00/REC |

REC is a residential unit equivalent for pumping and storing municipal water or as per Section 15.07(2) of the Municipal Code and per Resolution No. 27-07, establishing the sewer connection charge. The REC Fees change annually with the current year REC Fee to be used at time of Building Permit issuance. These fees are payable at the time of Building Permit issuance.

4.03 IMPROVEMENT REVIEW FEE. Developer shall pay a fee based on the cost of required development improvements for all phases of the project to cover the cost of the Village for checking and reviewing plan and specification documents. Such improvement review fee shall be as provided by Sec.18.10 (3) of the Municipal Code. The fee shall be calculated as follows:

- 2.25% of the first \$250,000 of construction costs
- 1.75% of the next \$250,000 of construction costs, and
- 1.25% of construction costs which exceed \$500,000

If a Developer's Agreement is required for this project, the Engineering Department shall charge a minimum fee of \$5,000 for a fee as per Section 18.10(3) of the Municipal Code.

4.04 PROFESSIONAL FEES AND INSPECTION FEES. In accordance with Sec. 18.10(7) and (8) of the Municipal Code, Developer shall be responsible for all professional (technical and legal) fees incurred by the Village in connection with this Development. The Village shall be reimbursed for engineering services, whether provided by a staff engineer or technician or designated employee or by a consultant, and shall also be reimbursed for services rendered by the Village Attorney. Additionally, Developer shall reimburse the Village costs for inspection and related services provided by the Village or by a consultant, on the basis of all such services rendered as deemed necessary by the Village Engineer.

4.05 DATA CONVERSION FEE. In accordance with Section 18.10(13) of the Municipal Code, Developer shall be responsible for all fees associated with the upload of Geographic Information System data incurred by the Village in connection with this project.

4.06 PREPAYMENT OF CERTAIN FEES. Developer shall pay the fees specified in Paragraphs 4.02 through 4.05, as itemized in Exhibit A, for each phase of the building prior to the issuance of a building permit for said phase of the building Property.

## ARTICLE V - SPECIAL PROVISIONS

5.01 SEWER CONNECTIONS. In accordance with the rules and regulations of the Village, Developer has been authorized seven (7) sewer connections for this Development, subject to the provisions of Sec. 5.02 of this Agreement.

5.02 SEWER CAPACITY. It is understood by and between the parties that the Village, by entering into this Agreement, makes no representations or guarantees with respect to sewer capacity for the Development contemplated by this Agreement. It is understood by Developer that other governmental authorities having jurisdiction may impose limitations or restrictions upon the Village's decision to authorize the sewer connections referred to in Sec. 5.01 of this Agreement.

5.03 WETLAND AND FLOODPLAIN CONDITIONS. It shall be an explicit condition that Developer shall comply with all required regulations and shall obtain all necessary approvals in writing from the appropriate agencies relative to the wetlands and floodplain areas which may be on the Property. Except as otherwise expressly approved by the Village, approval of the subject Development Plan by the Village Plan Commission shall not be construed to be Village approval of intrusions into wetland or floodplain areas, or Village approval of filling or modifications to wetlands or floodplain areas. Developer, except as required on approved plans, will not be allowed to grade, fill, or conduct any other type of development within 75 feet of the high water mark of a navigable waterway or 25 feet from a wetland. A note regarding this restriction shall be placed on the Final Plat. If the Zoning Administrator suspects the presence of wetlands or navigable stream upon site inspection, an updated delineation will be required. Final delineation of wetlands and navigable streams shall be confirmed by the Southeastern Wisconsin Regional Planning Commission.

5.04 PHASES. Developer shall develop the project in two phases. The first phase shall include Building No. 6 together with required improvements to serve that building including the road, water main and sanitary sewer lateral. The second phase shall include all of the remaining structures, utilities and public improvements required under this Agreement. ~~has represented that it will construct the public improvements for this project in one phase.~~ All public improvement work associated with the Development shall be completed within one year following the date of issuance of permits for such work by the Village.

5.05 ROADWAY MAINTENANCE. The Developer, its successors and assigns shall be responsible to provide or contract for all maintenance and repair services, including snow and ice removal, for all roadways within the Development.

5.06 WETLAND AND FLOODPLAIN CONDITIONS. It shall be an explicit condition that the Developer shall comply with all required regulations and shall obtain all necessary approvals in writing from the appropriate agencies relative to the wetlands and floodplain areas which may be on the subject site.

## ARTICLE VI - FINANCIAL GUARANTY

6.01 AMOUNT. Developer shall deposit with the Village a certified check or provide an irrevocable letter of credit which shall assure the faithful performance of Developer's obligations under this Agreement as itemized in Exhibit "A" attached hereto and incorporated herein by reference. The Village may in its sole discretion following Developer's request and acceptance by the Village Public Works Committee of some but not all of the improvements constructed as part of this Agreement, reduce the deposit or letter of credit to the amount estimated by the Village Engineer (in a manner consistent with the Ordinances) to be necessary to secure performance by Developer hereunder. In no event shall the amount of the guaranty be reduced below the aggregate total estimated cost of the improvements not yet installed or accepted, plus fifteen percent (15%). The Village is hereby authorized to contact directly Developer's financial agent from time to time regarding the sufficiency of the financial guaranty. The termination date of the Letter of Credit, following acceptance by the Village shall be no earlier than one year following the date of issuance of permits for public improvement work by the Village. If the public improvements to be undertaken by Developer under this Agreement are not complete within one year following the issuance of permits for such work, for any reason including force majeure under Section 8.03 below and without regard to the fault of Developer, then Developer's obligation to provide a letter of credit shall be extended through the completion of the work and its inspection and acceptance of dedication by the Village. After construction and total completion of the project and acceptance of the project by the Village Public Works Committee, the surety will be reduced to 10% of the actual cost of construction for a period of one (1) year (the guaranty period). In the event the original surety would, by its terms, expire prior to the end of the one year guaranty period, or if the guaranty period is extended due to repairs of defects as provided in Sec 7.01, a new surety shall be issued to cover the remaining guaranty period for the 10% of actual original construction costs.

6.02 FORM. The form of the letter of credit shall be approved by the Village Attorney prior to acceptance of the letter of credit by the Village as satisfying Developer's obligation as provided in Section 6.01 above. The letter of credit shall provide that it may be drawn upon only by the Village to guaranty to the Village the performance by Developer of all obligations under this Agreement. The letter of credit shall be from a local lending institution, in the form of an irrevocable standby letter of credit and auto renewable.

6.03 LIABILITY NOT RELEASED. All deposits or Letters of Credit given hereunder are security devices only which in no manner limit the liability of Developer to the Village, however arising and regardless of the amount.

6.04 RESERVATION OF ASSESSMENT RIGHTS. In addition to the remedies for

default provided to the Village by this financial guaranty, the Village reserves the right without notice or hearing to impose special assessments or charges for any amounts to which it is specifically entitled by virtue of this Agreement for improvements specifically provided for herein upon the property described in Exhibit "C" attached hereto. Such special assessments or charges shall be collected on the next succeeding tax roll as are other special assessments or charges. This provision constitutes Developer's Waiver of Notice and Consent to all special assessment or special charges proceedings which may be required by law.

6.05 REMEDIES. In the event of a material breach of this Agreement by the Developer, the Village shall, within a reasonable amount of time, give notice of such breach to the Developer. If Developer fails to remedy the breach within thirty (30) days of the notice (or such other amount of time to which the parties might agree) (the "Cure Period"), the Village shall have the option of ordering the Developer to not proceed any further with the construction and installation of the utilities described in this Agreement until such time as the breach is remedied. All remedies as stated herein shall be deemed alternative remedies, and cumulative as and to such other remedies in law or equity as the Village may assert and herein reserves.

## ARTICLE VII - GUARANTEE AND INDEMNIFICATION

7.01 GUARANTEE OF IMPROVEMENTS. Developer shall guarantee all dedicated improvements against defects due to faulty materials or workmanship which appear within one (1) year from the date of Final Acceptance by the Village, as provided in Article III of this Agreement. Developer shall repair or replace any such improvements as required by the Village Engineer to eliminate such defects and shall pay for all damages to Village property resulting from such defects. Each repair or replacement performed pursuant to this paragraph shall be guaranteed for one (1) year from the completion thereof.

7.02 GENERAL INDEMNIFICATION. Developer shall indemnify and hold the Village harmless against and from any and all liability, judgments, costs and expenses incurred by the Village as the result of any action by whomsoever or whenever brought or obtained against the Village or Developer, or both, which may in any manner result from or arise in the course of, out of, or as a result of the carelessness, negligence or neglect of Developer, its agents, contractors or employees. In every case where judgment is recovered against the Village and where notice of the pendency of the suit and an opportunity to defend the same has been given to Developer within ten (10) days after its commencement, the judgment shall be conclusive upon Developer, not only as to the amount of damages, but also as to its liability to the Village.

7.03 CONTRACTOR INSURANCE. Contractors engaged by Developer to perform the work required by this Agreement within public rights-of-way shall, prior to commencing such work, submit to the Village proof of the following:

- (1) Unemployment and Workers' Compensation insurance which is in strict compliance with state laws.
- (2) Personal and public liability insurance having limits of not less than \$1,000,000.00.

- (3) Property damage insurance having limits of not less than \$500,000.00.
- (4) Fire and extended coverage which shall insure against losses and damage to completed work, materials or equipment until the same has been accepted by the Village.

#### 7.04 INDEMNIFICATION FOR ENVIRONMENTAL CONTAMINATION.

Developer shall indemnify, and hold the Village and its officers, agents and employees harmless from and against any and all losses, damages, costs, expenses, liabilities, obligations, claims or suits (including, without limitation, reasonable attorneys' fees, punitive damages, fines, penalties and consequential damages) resulting from or relating in any way to (a) Developer's introduction of toxic or hazardous material or substances in or on the real property dedicated or conveyed to the Village; or (b) toxic or hazardous material or substances not introduced by Developer, but which cause damage because of work performed pursuant to, or in connection with the platting/subdivision of Developer's Property or this Agreement. For purposes of this Agreement, "toxic or hazardous material or substances" is defined as any pollutant, contaminant, waste or toxic or hazardous chemicals, wastes or substances, including, without limitation, asbestos, urea formaldehyde insulation, petroleum, PCBs, lead, air pollutants, water pollutants, soil pollutants and other substances defined as hazardous or toxic or words of similar import under federal, state or local statute, rule, regulation or order of any government entity having jurisdiction over the control of such wastes or substances.

Upon the Village becoming aware of the occurrences of any event or the existence of any state of facts in respect of which the Village has or will have a claim for indemnification under this Agreement ("Claim"), as soon as reasonably practicable thereafter:

- (1) the Village shall provide Developer notice of the losses, damages, costs, expenses, liabilities, obligations, claims or suits (including, without limitation, reasonable attorney's fees, punitive damages, fines, penalties, and consequential damages) as and when reasonably apprehended. Notwithstanding anything to the contrary contained herein, the Village's failure to timely notify Developer shall not prevent or in any way impair recovery by the Village unless Developer is materially prejudiced as a result of such failure;
- (2) subject to paragraphs (3) through (5) below, Developer diligently, at its own expense, shall control and shall be responsible for the defense, negotiation and/or settlement of the Claim, including the diligent performance of any remediation associated therewith;
- (3) the Village may at its own expense hire counsel or consultants to monitor the Claim;
- (4) Developer shall not, without the prior written consent of the Village, which consent shall not be unreasonably delayed, withheld or conditioned, settle any Claim;

- (5) Developer shall lose its right to defend, negotiate and settle any Claim if, as determined by an arbitrator jointly selected by the parties, it fails to diligently defend, negotiate or settle such Claim. In the event that Developer has lost its right to defend, negotiate or settle any Claim:
- (i) the Village shall have the right, without prejudice to its right of indemnification hereunder, at Developer's cost and expense, to defend, negotiate and settle any Claim, and
  - (ii) Developer shall pay such reasonable costs and expenses incurred by the Village within twenty (20) days of receipt of written notice from the Village;
- (6) If Developer does not timely assume responsibility for any Claim, the Village shall have the right, without prejudice to its right of indemnification hereunder, at the sole cost and expense of Developer, to assume control of the defense, negotiation and/or settlement of the Claim, and may engage counsel or other agents, consultants, and contractors to contest, defend, settle or otherwise dispose of such Claim, including, without limitation, hiring any environmental consultant or contractor to perform any remediation necessary to address the Property or the toxic or hazardous materials or substances at the Property.

#### ARTICLE VIII - TIME OF COMPLETION

8.01 COMPLETION DATE. The work required by this Agreement shall be completed by Developer not later than one (1) year after acceptance of this Agreement by the Village Board.

8.02 DEFAULT. In the event Developer does not complete installation of the public improvements required by this Agreement within thirty (30) days after the Village has served notice of default upon Developer, the Village may complete the same and take title thereto. The costs of doing such work shall be collected as provided in Article VI of this Agreement.

8.03 FORCE MAJEURE. Notwithstanding anything herein to the contrary, in the event that Developer is delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental regulations, orders or decrees, riots, insurrection, war, acts of God, inclement weather, bureaucratic delays or other reasons beyond Developer's reasonable control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for the period of such delay.

8.04 SUNSET CLAUSE. The conditions of this Agreement shall terminate two (2) years after Village Board approval unless construction has begun or amended in writing by both parties.

## ARTICLE IX - GENERAL PROVISIONS

9.01 APPROVAL TERMS. No tax-exempt use is authorized by the approvals granted by the Village.

9.02 AGREEMENT FOR BENEFIT OF PURCHASER. Developer agrees that in addition to the Village's rights herein, the provisions of this Agreement shall be for the benefit of the purchaser of any dwelling unit, building, lot or parcel of land within the Development.

9.03 ENTIRE AGREEMENT. This written Agreement and written amendments and any referenced attachments thereto shall constitute the entire agreement between the Developer and the Village with respect to the construction and installation of utilities of the Property. Nothing in this Agreement shall be construed to withdraw or terminate the negotiation between the Village and Developer with respect to cost-sharing for the construction and installation of utilities on the Property, or otherwise invalidate the action taken by the Village of Germanton Public Works & Highway Committee on December 1, 2015, with respect to this subject.

9.04 AMENDMENTS. This Agreement may be amended or modified only by an instrument in writing executed by all of the parties to this Agreement.

9.05 OWNERSHIP. Developer certifies and warrants to the Village that all of the owners of the real estate within said Development and all of the land contract vendors and/or mortgagees having interest in said real estate are as follows: Heritage Place Joint Venture.

9.06 AUTHORITY. Developer, by the undersigned, represents, certifies and warrants that the undersigned has the authority to bind Heritage Place Joint Venture as a general partner of the same.

9.07 NO VESTED RIGHTS GRANTED. Except as expressly provided by law or as expressly provided by this Agreement, no vested rights in connection with this project shall inure to the Developer, its heirs, successors or assigns.

9.08 NO WAIVER. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a duly signed and executed, written amendment by all parties to this Agreement. The Village's failure to act or exercise any right under this Agreement shall not constitute the approval or a waiver of its right to act or exercise any right under this Agreement or a ratification of any wrongful or negligent act by the Developer or the acceptance of any improvement or performance on the part of the Developer.

9.09 APPROVAL. No approval by the Village Engineer or the Village attorney or any other person acting on behalf of the Village shall be construed as a waiver of any of the requirements of the Ordinances, or any statute or regulation governing the improvements.

9.10 SEVERABILITY. If any part, term or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect

the validity of any other part, term or provision; and the right of the parties will be construed as if the part, term or provision was never part of the Agreement.

#### ARTICLE X - NON-ASSIGNMENT

This Agreement which is binding upon Developer, Developer's agents, officers, employees, personal representatives, guardians and trustees shall not be assigned by Developer to any individual, firm, partnership or corporation without the express approval of the Village.

IN WITNESS WHEREOF, Developer and the Village have caused this Agreement to be signed in duplicate originals this \_\_\_\_\_ day of July \_\_\_\_\_, 2016 which shall be the effective date of this Agreement.

HERITAGE PLACE JOINT VENTURE

By: \_\_\_\_\_,  
General Partner

STATE OF WISCONSIN     )  
                                      ) SS  
                                      COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2016, the above-named, \_\_\_\_\_, General Partner of Heritage Place Joint Venture, to me known to be the person who executed the foregoing instrument and to me known to be such General Partner of said Corporation and acknowledged that he executed the foregoing instrument in such capacity.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission Expires:

[THIS SPACE INTENTIONALLY BLANK]

VILLAGE OF GERMANTOWN

By: \_\_\_\_\_  
Dean Wolter, Village President

Attest By: \_\_\_\_\_  
Barbara K.D. Goeckner, Village Clerk

Per Village Board Approval: Dated \_\_\_\_\_

STATE OF WISCONSIN     )  
                                                      ) SS  
WASHINGTON COUNTY    )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2016, the above-named, Dean Wolter, Village President, and Barbara K.D. Goeckner, Village Clerk, to me known to be the persons who executed the foregoing instrument and to me known to be such President and Clerk of the above-named municipal corporation, Village of Germantown, and acknowledged that they executed the foregoing instrument as such officers, as the deed of said municipal corporation, by its authority.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission Expires:

Approved as to form:

\_\_\_\_\_  
Brian C. Sajdak, Village Attorney

This instrument was drafted by: Lawrence W. Ratayczak, P.E., Director of Public Works

## EXHIBIT "A"

**EXHIBIT "B"**

**EXHIBIT "C"**

**EXHIBIT "D"**