

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

DATE & TIME: **Monday, March 17, 2025 at 7:00 PM**

LOCATION: **Germantown Village Hall Board Room
N112 W17001 Mequon Road**

Any member of the body and/or citizen may attend the meeting virtually through the WebEx platform, Meeting #:2551 746 8900 Password: RGfHMePh684 which can be accessed by phone at 408-418-9388 or by clicking the link

below: <https://villageofgermantown.my.webex.com/villageofgermantown.my/j.php?MTID=mbac09c1bf900c82b3d4fd86d044402dc>

Citizens not wishing to attend the meeting personally or virtually may submit any public comments by sending an email to comments@germantownwi.gov by 4 p.m. on the day of the meeting so that it can be provided to the members of the body for their consideration. Previously recorded VillageBoard Meeting Videos can be viewed at:

https://www.youtube.com/channel/UCOYp0EgELzTCa9X_iCohyhQ

AGENDA

- 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. **SWEARING IN OF NEW FIRE DEPARTMENT LIEUTENANTS:** *John Wolf, Derek Beeler, and Alexander Diamantopoulos*
- V. **PRESIDENT'S REPORT:**
- VI. **APPOINTMENTS OF BOARD, COMMITTEE, OR COMMISSION MEMBERS:**
 - A. *Ethics Board: Aaron J. Foley*
- VII. **ANNOUNCEMENTS OF FORTHCOMING EVENTS OF PUBLIC INTEREST
COMMITTEE AND DEPARTMENT REPORTS:**
- VIII. **CITIZEN INPUT:** *(Please be advised per 19.84(2) that information and comment will be received from the public. It is the policy of this municipality that public input be limited to a three (3) minute period per person with a time extension granted at the discretion of the Chairperson. Be advised that there may be limited discussion of the information received but no action will be taken under public comments.)*
- IX. **CONSENT AGENDA:**
 - A. Minutes: March 3, 2025
 - B. Award of a contract for High Point Pass construction to Vinton Construction in the amount of \$2,396,440.
 - C. Award of a professional services agreement to raSmith for construction inspection services on High Point Pass for an amount not to exceed \$173,970.
 - D. Award of a professional services agreement for storm water modeling to Graef in the amount of \$26,600.
 - E. Award of the Kinderberg Park Splash Pad painting and restoration contract to MACORP LLC for an amount not to exceed \$31,692.00.

- F. Resolution No. 02-2025, A Resolution Accepting Funds From the Washington County Emergency Medical Service (EMS) & Fire Grant Program
- G. An Ordinance Amending Section 12.03 of the Germantown Municipal Code Related to Suspension or Revocation of Outdoor Entertainment Permits

X. UNFINISHED BUSINESS:

XI. PUBLIC HEARINGS:

XII. NEW BUSINESS:

- A. Award of a contract for the 2025 Road Program construction to Wolf Paving in the amount of \$1,176,115.
- B. Award of a contract to reconstruct Rockfield Road to Payne and Dolan in the amount of \$931,369.
- C. Memorandum of Understanding between the Village of Germantown and the Local 4854 of the International Association of Fire Firefighters regarding Lateral Transfer Pay Placement & Promotional Pay Adjustments
- D. Village of Germantown Community Development Department & Village Attorney- Proposed Text Amendments to Section 17 (Zoning) of the Village of Germantown Municipal Code.
- E. A Resolution Opposing the Erosion of Local Home Rule Authority and Requesting the Return of Local Control Over Protests of Zoning Changes
- F. Presentation on Tax Increment Districts in Germantown
- G. Germantown School District Resolution Concerning the Village Center Project
- H. A Resolution Ratifying an Amendment to the Scope of Services with Ehlers And Associates, Inc. For Work Related to the Creation of a Tax Increment District in the Village Center District
- I. Claim for Damages of Angie Berndt. The Village Board may convene into closed session pursuant to Wis. Stat. § 19.85(1)(g) for the purpose of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved and then may reconvene into open session to take such action as it deems appropriate.
- J. Administrator Setting 2025 Performance Goals. The Village Board may convene into closed session pursuant to Wis. Stat. § 19.85(1)(c) for the purpose of considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility and then may reconvene into open session to take such action as it deems appropriate.

XIII. ADJOURNMENT:

UPON REASONABLE NOTICE, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, please contact the Village Clerk at (262)250-4745 at least 2 days prior to the meeting.

Notice is given that a majority of the Economic Development Committee, Utility Advisory Committee, Tourism

VILLAGE BOARD AGENDA

March 17, 2025

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Commission, and/or Senior Advisory Committee may attend this meeting to gather information about an item over which they have decision-making responsibility. This may constitute a meeting of these bodies per State ex rel. Badke v Greendale Village Board, even though these bodies will not take formal action at this meeting.

MEETING:	REGULAR MEETING OF THE VILLAGE BOARD
DATE AND TIME:	Monday, March 3, 2025 7:00 PM
LOCATION:	Germantown Village Hall Board Room N112 W17001 Mequon Road

MINUTES

- 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.*

Village President Dean Wolter called the Village Board meeting to order at 7:00 PM.

- II. **ROLL CALL:**

Present: Trustee David Baum, Trustee Terri Kaminski, Trustee Rick Miller, Trustee Jolene Pieper, Trustee Jan Miller, President Dean Wolter, Trustee Meg Cutts

Excused: Trustee Robert Warren

Also Present: Village Administrator Steve Kreklow, Village Clerk Donna Ott, Village Attorney Brian Sajdak, Police Chief Pat Merten, Library Director Trisha Smith

- III. **PLEDGE OF ALLEGIANCE:**

- IV. **SWEARING IN OF SERGEANT JEREMY PETERSON**

Village Clerk Ott swore in Officer Jeremy Peterson, having been promoted to Sergeant with the Germantown Police Department.

- V. **PRESIDENT'S REPORT:**

Village President Wolter spoke regarding the Chamber of Commerce Candidate Forum on March 4 and the fundraiser for the Germantown Veterans Memorial on March 5.

- VI. **ANNOUNCEMENTS OF FORTHCOMING EVENTS OF PUBLIC INTEREST
COMMITTEE AND DEPARTMENT REPORTS:**

Trustees announced the dates and times of upcoming meetings.

- VII. **CITIZEN INPUT:** *(Please be advised per 19.84(2) that information and comment will be received from the public. It is the policy of this municipality that public input be limited to a three (3) minute period per person with a time extension granted at the*

discretion of the Chairperson. Be advised that there may be limited discussion of the information received but no action will be taken under public comments.)

Lynne Schauer Bednarz (W156N10121 Pawnee Ct) spoke regarding the budget and spending.

Sarah Larson (W159N9737 Butternut Rd) spoke regarding the Village Center and New Business Item E (An Ordinance to Amend Section 9.02 of the Germantown Municipal Code to Allow Hunting Within Wilderness Park).

Tom Barney (N105W16775 Old Farm Rd) spoke regarding the Village Center development.

Melanie Smythe (N140W17938 Cedar Ln) spoke regarding proper representation.

Scott Hefle (W159N10514 Old Farm Rd) spoke regarding TIDs, demolition, and vote recusals.

Todd Wetterau (W204N12541 Goldendale Rd) spoke regarding New Business Item E (An Ordinance to Amend Section 9.02 of the Germantown Municipal Code to Allow Hunting Within Wilderness Park).

VIII. CONSENT AGENDA:

Motion 1: Approve Items A-E as presented

Motioned By: Trustee Baum

Seconded By: Trustee Rick Miller

Request: Pull Consent Agenda Item D

Requested by: Trustee Pieper

Motion 2: Approve Items A-C and Item E as presented

Yes: Trustee Baum, Trustee Kaminski, Trustee Rick Miller, Trustee Pieper, Trustee Jan Miller, President Wolter, Trustee Cutts

No: None

Abstain: None

Motion 2 Carried by Roll Call Vote (Yes 7, No 0, Abstained 0)

Motion 3: Approve Item D as presented

Motioned By: Trustee Baum

Seconded By: Trustee Rick Miller

Amended Motion 3: Table Item D until the next Village Board meeting

Motioned By: Trustee Rick Miller

Seconded By: Trustee Pieper

Yes: Trustee Baum, Trustee Kaminski, Trustee Rick Miller, Trustee Pieper, Trustee Jan Miller, President Wolter, Trustee Cutts

No: None

Abstain: None

Amended Motion 3 Carried by Voice Vote (Yes 7, No 0, Abstained 0)

- A. Minutes: February 17, 2025
- B. Application for Temporary Class "B" / "Class B" Retailer's License - Kiwanis of Germantown, Taste of Germantown, 07/24/2025
- C. Application for Temporary Class "B" / "Class B" Retailer's License - Mid-Moraine Municipal Association Dinner at Germantown Senior Center, 03/26/2025
- D. Approval for a blanket PO not to exceed \$150,000 with Capital Data for the purchase & installation of computers for the Windows 11 upgrade
- E. ToughBook Computer Purchase

IX. UNFINISHED BUSINESS:

X. PUBLIC HEARINGS:

XI. NEW BUSINESS:

- A. Briohn Design Group, Agent for TDC Willow Creek LLC, Property Owner, N102 W19200 Willow Creek Way; Certified Survey Map (CSM) Application to Divide and Convey 2.67 acres containing a Storm Water Management Basin from the Village of Germantown to TDC Willow Creek LLC.

Motion: Approve as presented

Motioned By: Trustee Baum

Seconded By: Trustee Rick Miller

Yes: Trustee Baum, Trustee Kaminski, Trustee Rick Miller, Trustee Pieper, Trustee Jan Miller, President Wolter, Trustee Cutts

No: None

Abstain: None

Motion Carried by Voice Vote (Yes 7, No 0, Abstained 0)

- B. Setting of Pay for Police Chief Pat Merten

Motion: Accept staff recommendation to update the salary for Chief Merten to \$135,917 annually

Motioned By: Trustee Jan Miller

Seconded By: Trustee Baum

Yes: Trustee Baum, Trustee Kaminski, Trustee Rick Miller, Trustee Pieper, Trustee Jan Miller, President Wolter, Trustee Cutts

No: None

Abstain: None

Motion Carried by Roll Call Vote (Yes 7, No 0, Abstained 0)

C. Contract for Demolition of Buildings on the "Flower Source" Site W156 N11116 Pilgrim Road

Motion 1: Approve as presented

Motioned By: Trustee Kaminski

Seconded By: Trustee Pieper

Amended Motion 1: Have the current owner pay for the demolition

Motioned By: Trustee Jan Miller

Seconded by: Trustee Cutts

Amended Motion 1:

Yes: Trustee Jan Miller, Trustee Cutts

No: Trustee Baum, Trustee Kaminski, Trustee Rick Miller, President Wolter

Abstain: Trustee Pieper

Amended Motion 1 Failed by Voice Vote (Yes 2, No 4, Abstained 1)

Motion 1:

Yes: Trustee Baum, Trustee Kaminski, Trustee Rick Miller, President Wolter

No: Trustee Pieper, Trustee Jan Miller, Trustee Cutts

Abstain: None

Motion 1 Carried by Roll Call Vote (Yes 4, No 3, Abstained 0)

D. A Resolution Establishing the Fee for Outdoor Entertainment Permits

Motion: Approve as presented

Motioned By: Trustee Baum

Seconded By: Trustee Rick Miller

Yes: Trustee Baum, Trustee Kaminski, Trustee Rick Miller, Trustee Pieper, Trustee Jan Miller, President Wolter, Trustee Cutts

No: None

Abstain: None

Motion Carried by Voice Vote (Yes 7, No 0, Abstained 0)

- E. An Ordinance to Amend Section 9.02 of the Germantown Municipal Code to Allow Hunting Within Wilderness Park

Motion: Approve as presented

Motioned By: Trustee Baum

Seconded By: Trustee Kaminski

Yes: Trustee Baum, Trustee Kaminski, Trustee Rick Miller, Trustee Pieper, President Wolter, Trustee Cutts

No: Trustee Jan Miller

Abstain: None

Motion Carried by Voice Vote (Yes 6, No 1, Abstained 0)

- F. An Ordinance to Amend Section 12.26 of the Germantown Municipal Code Related to the Weights and Measures License

Motion: Approve as presented

Motioned By: Trustee Kaminski

Seconded By: Trustee Baum

Yes: Trustee Baum, Trustee Kaminski, Trustee Rick Miller, Trustee Pieper, Trustee Jan Miller, President Wolter, Trustee Cutts

No: None

Abstain: None

Motion Carried by Voice Vote (Yes 7, No 0, Abstained 0)

- G. An Ordinance to Amend Section 1.30(2)(b) of the Germantown Municipal Code Related to Secretary of the Board of Zoning Appeals

Motion: Approve as presented

Motioned By: Trustee Baum

Seconded By: Trustee Rick Miller

Yes: Trustee Baum, Trustee Kaminski, Trustee Rick Miller, Trustee Pieper, Trustee Jan Miller, President Wolter, Trustee Cutts

No: None

Abstain: None

Motion Carried by Voice Vote (Yes 7, No 0, Abstained 0)

- H. 2024 Germantown Community Library Annual Report

Library Director Smith provided a 2024 report and was available to answer questions.

- I. Administrator Setting 2025 Performance Goals. The Village Board May Enter into Closed Session per Wis Stat § 19.85(1)(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility and then may reconvene into open session to take such action as it deems appropriate.

Motion: Enter into Closed Session with Village Administrator Kreklow in attendance

Motioned By: Trustee Baum

Seconded By: Trustee Rick Miller

Yes: Trustee Baum, Trustee Kaminski, Trustee Rick Miller, Trustee Pieper, President Wolter

No: Trustee Jan Miller, Trustee Cutts

Abstain: None

Motion Carried by Roll Call Vote (Yes 5, No 2, Abstained 0)

The Village Board entered into Closed Session at 8:55 PM.

The Village Board did not reconvene into Open Session. No action was taken.

XII. ADJOURNMENT:

Village President Wolter adjourned the Village Board meeting at 9:35 PM.

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Action Item

ITEM TITLE: Award of a contract for High Point Pass construction to Vinton Construction in the amount of \$2,396,440.

SUBMITTED BY: Matthew Mortwedt, Public Works Director

SUMMARY EXPLANATION:

High Point Pass will extend south from the intersection of Holy Hill Road and 48th Street to a point 1400 feet south of Holy Hill Road and terminate near the Wisconsin Southern Railroad. This project will be funded by TID 8 and was approved through the TID amendment process and by resolution of the Village Board on April 15th, 2024. In addition, the construction of High Point Pass satisfies the conditions of development agreements with Truck Country and MLG. A summary of the two bids is listed below:

Contractor	Amount
Vinton	\$2,178,582.60
Musson Bros. Inc	\$2,365,430.62

These bids are below the \$2.9M construction estimate. Staff also requests a ten percent contingency bringing the authorized amount to \$2,396,440. The schedule is to begin work this spring, with completion in early fall to adhere to the Truck Country Development Agreement. During this project, access will be maintained to the development site and Holy Hill Storage. In addition, a temporary detour will be required for the sanitary connection in Holy Hill Road. Staff will be sending notification letters to adjacent property owners.

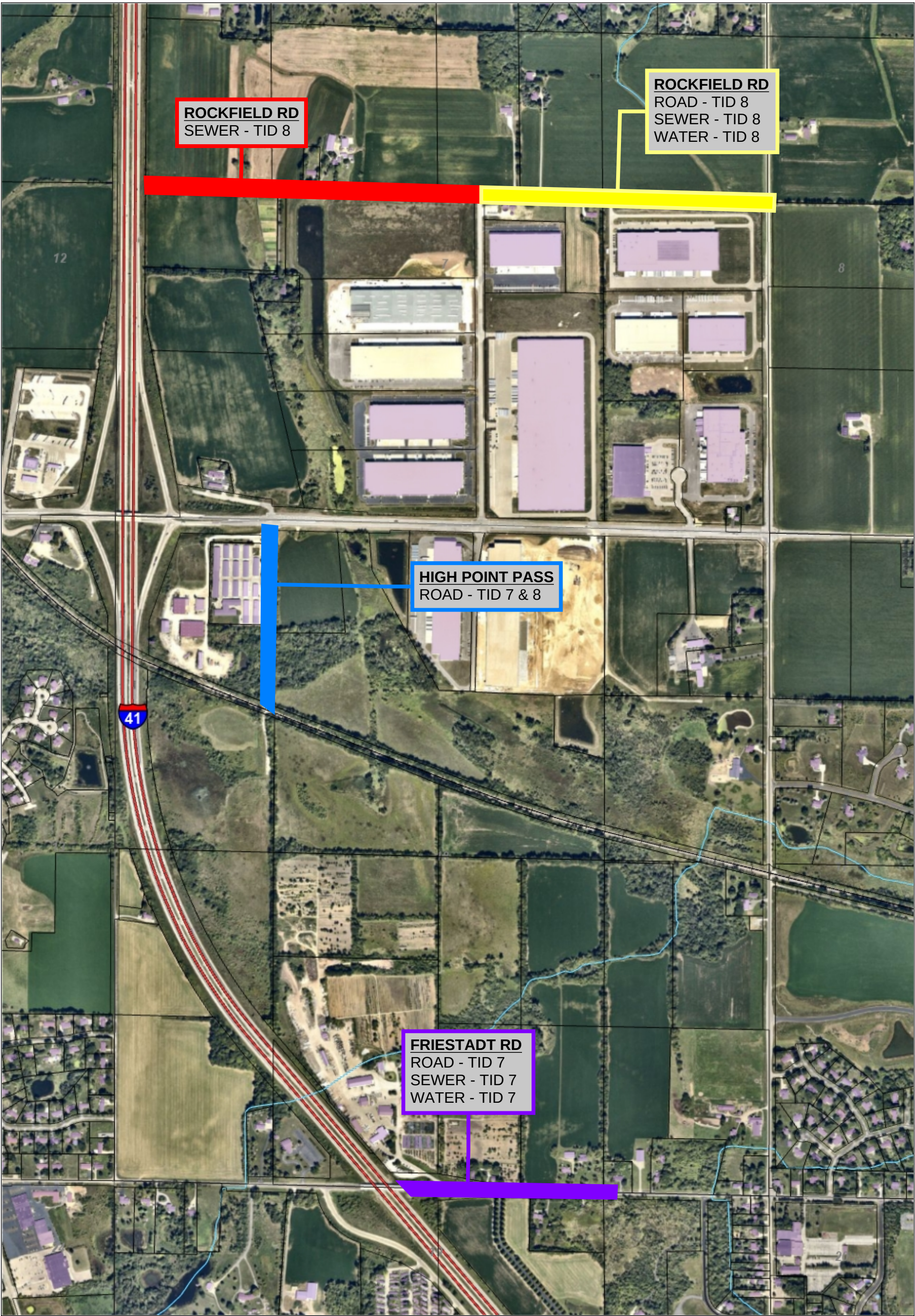
ATTACHMENT:

1. TID Project Map
2. raSmith letter of recommendation (High Point Pass 2-27-25)
3. HPP Overview Sheet

STAFF RECOMMENDATION:

Award of a contract for High Point Pass construction to Vinton Construction in the amount of \$2,396,440 contingent upon the Village Attorney being satisfied that the Village will have timely control of the lands necessary to complete the project.

ACTION BY Committee:



ROCKFIELD RD
SEWER - TID 8

ROCKFIELD RD
ROAD - TID 8
SEWER - TID 8
WATER - TID 8

HIGH POINT PASS
ROAD - TID 7 & 8

FRIESTADT RD
ROAD - TID 7
SEWER - TID 7
WATER - TID 7

Village of Germantown GIS

DISCLAIMER:

This map is not a survey of the actual boundary of any property this map depicts.

The Village of Germantown Does not guarantee the accuracy of the material contained here in and is not responsible for any misuse or misrepresentation of this information or its derivatives.



Village Of Germantown
N112 W17001 Mequon Road
Germantown, WI 53022
262-250-4700



SCALE: 1 = 1000'

Print Date: 1/31/2024

February 27, 2025

Mr. Kevin Driscoll, P.E. Village Engineer
Village of Germantown
N112 W117001 Mequon Road
Germantown, WI 53022

Re: Letter of Recommendation
High Point Pass Roadway-Holy Hill Road to WSOR Railroad

Dear Mr. Driscoll:

In accordance with your Advertisement, bids for the above referenced project were received until 10:00 a.m. on February 27, 2025.

A total of two (2) bids were received for this project. The project included a base bid, along with an alternative bid for directional drilling of sanitary sewer. The low bid, including the alternative, was submitted by Vinton Construction Company for \$2,415,112.60. The 2nd bid, including the alternative, was provided by Musson Bros. Inc. for \$2,867,826.88. The engineers estimate for the project was \$2,588,339.25 (base bid only). The bid tabs are attached for reference.

Vinton Construction Company provided a responsive low bid, are qualified to perform this work and are ready to work on the project. They have successfully completed previous work within the Village. We therefore recommend awarding the contract to Vinton Construction Company in the amount of \$2,415,112.60.

Please feel free to call me if you have any questions or comments regarding the above.

Sincerely,
raSmith



Troy T. Hartjes, P.E.
Senior Project Manager

Enclosure

J:\2245358\Doc\High Point Pass 2-27-25 letter of recommendation.docx



RA STEINMAN LEGACY LLC
PARCEL 182987

HOLY HILL SELF STORAGE LLC
PARCEL 182988

MLG/RMS LTD PTNRSP
PARCEL 182984

LEGEND

- INLET PROTECTION (TYPE A, B)
- TEMPORARY CULVERT PIPE CHECK
- SILT FENCE

- DISTURBED AREAS TO BE RESTORED WITH TOPSOIL, SEED, FERTILIZER, AND TEMPORARY EROSION MATTING.
- PLACE EROSION BALES UPSTREAM OF CULVERTS AND WHERE SHOWN ON THE PLANS.
- SEE DETAILS BEWLOW FOR EROSION MAT AND DITCH CHECK DETAILS.

MMSD
PARCEL 182985

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HIGH POINT PASS
VILLAGE OF GERMANTOWN
EROSION CONTROL PLANS

© COPYRIGHT 2025 R.A. Smith, Inc.
DATE: 2/13/2025
SCALE: 1 IN:60 FT
JOB NO. 2245358
PROJECT MANAGER: T. HARTJES
DESIGNED BY: MCG
CHECKED BY:
SHEET NUMBER 9

811
Know what's below.
Call before you dig.

DATE	DESCRIPTION

W62 N588 Washington Ave., Ste. 201
Cedarburg, WI 53012-2074
(262) 781-1000
rasmith.com

raSmith
CREATIVITY BEYOND ENGINEERING

Brookfield, WI | Milwaukee, WI | Appleton, WI | Madison, WI
Cedarburg, WI | Naperville, IL | Irvine, CA

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Action Item

ITEM TITLE: Award of a professional services agreement to raSmith for construction inspection services on High Point Pass for an amount not to exceed \$173,970.

SUBMITTED BY: Matthew Mortwedt, Public Works Director

SUMMARY EXPLANATION:

The consulting firm, raSmith, has been instrumental as the Design Engineer for Village on the High Point Pass Road Construction Project, Holy Hill Road design, Gateway Crossing and construction administration for TID#8. In addition, consultants with raSmith have provided various construction inspection services and staking for these projects, and continue to provide engineering services for ongoing project work.

Staff requested raSmith to provide a scope of services for Construction Management, Construction Inspection and Construction Staking, on a time and materials basis, to successfully complete the High Point Pass Road Construction project. This work is anticipated to begin in April, with final completion in August 2025.

ATTACHMENT:

1. Exhibit A - 2025-02-27 High Point Pass Estimate
2. Exhibit B - 2025 Inspection Rates

STAFF RECOMMENDATION:

Award of a professional services agreement to raSmith for construction inspection services on High Point Pass for an amount not to exceed \$173,970.

ACTION BY Committee:

High Point Pass

	Project Manager	Main Representative	Additional Representatives	CAD Tech	Survey		
Phase/Task by Hour/Personnel	\$170	\$110	\$110	\$125	\$240	Total Hours	Total Dollars
Precon Meeting	4	2				6	\$900
Project Measurements/Preconstruction Photos	2	8				10	\$1,220
Pay Requests and Change Orders	20					20	\$3,400
Site Visits / Admin.	25					25	\$4,250
Traffic Control Inspection		10				10	\$1,100
Clearing and Grubbing		40				40	\$4,400
Sanitary Sewer		150	20		20	190	\$23,500
Water Main		100	20		30	150	\$20,400
Storm Sewer		150	40		20	210	\$25,700
Common Excavation		140	40			180	\$19,800
Proof Roll / EBS / Stone		120				120	\$13,200
Concrete Curb and Gutter Inspection	4	60			32	96	\$14,960
Paving Inspection	12	60				72	\$8,640
Sidewalk		40			20	60	\$9,200
Striping		20	30			50	\$5,500
Restoration		20	40			60	\$6,600
Record Drawings				80		80	\$10,000
Mileage						0	\$1,200
Total	67	920	190	80	122	1379	\$173,970

November 14, 2024

Mr. Kevin R. Driscoll, P.E.
Village Engineer
Village of Germantown
N112 W17001 Mequon Rd.
Germantown, WI 53022-0337

Re: Proposal for 2025 Construction Services

Dear Mr. Driscoll:

Thank you for allowing raSmith to provide you with a proposal for 2025 construction services. We strive to develop a long-term, mutually beneficial relationship with our clients and are committed to understanding your challenges and developing solutions that meet your needs. We look forward to working with the Village of Germantown.

Scope of Services

raSmith will provide services associated with construction-related activities. A construction inspector and manager will be available as needed for project needs. We will compile punch lists, perform record drawings and/or as-builts as directed by the Village.

GPS data collection will be employed to locate sanitary sewer, water, and storm sewer systems at the direction of the Village.

Our activities will be documented on a daily basis in electronic reports.

Completion Schedule

Work is anticipated during the 2025 construction season.

Professional Fees

The above-described services will be provided on an hourly and expense basis. Fees will be invoiced monthly as the project proceeds. For the 2025 construction season, a Resident Inspector will be available at a rate of \$110 per hour. As required, a Construction Manager is available at a rate of \$170 per hour, and a CADD Technician at a rate of \$125 per hour.

A two-person survey crew will be available for construction staking at a rate of \$240 per hour (\$120 per person) and a Survey Project Manager at a rate of \$140 per hour.

Usual and customary expenses such as mileage, postage, delivery, and applicable taxes will be invoiced at cost.



Mr. Kevin R. Driscoll, P.E.
Village Engineer
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Client Responsibilities/Assumptions

- A. The terms and conditions set forth herein are valid for 365 days from the date of this proposal and are conditioned upon our completion of all services within 18 months from the date of authorization.
- B. The professional fee hourly rates are subject to change on an annual basis.
- C. No Geotechnical or Materials Testing work is included in this proposal.

If you would like to authorize raSmith to proceed with your project, please sign the attached Professional Services Agreement between Client and Professional, and forward a signed copy of the entire Agreement to our office. Once received, we will execute and return a copy for your records. We look forward to working with the Village of Germantown.

Sincerely,
raSmith

A handwritten signature in black ink that reads 'Jennifer Starr'.

Jennifer Starr, CISEC
Assistant Director of Construction Services

Enclosure: Professional Services Agreement (Contract)

I:\Proposals\2024\Germantown\EP 241114 Driscoll 25 rates.docx

PROFESSIONAL SERVICES AGREEMENT BETWEEN CLIENT AND PROFESSIONAL

THIS IS AN AGREEMENT effective as of November 14, 2024 ("Effective Date") between Village of Germantown ("Client") and R.A. Smith, Inc. ("Professional").

Client's Project, of which Professional's services under this Agreement are a part, is generally identified as follows:

2025 Construction Services ("Project").

Professional's services under this Agreement are generally identified as follows:

See enclosed proposal ("Services").

Client and Professional further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Professional shall provide or furnish the Services solely for the benefit of Client as set forth in this Agreement and in the attached proposal. If authorized by Client, or if required because of changes in the Project, Professional shall furnish services in addition to those set forth above ("Additional Services").

2.01 *Payment Procedures*

- A. *Invoices:* Professional shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Client on a monthly basis. Invoices are due and payable within 30 days of invoice date. If Client fails to make any payment due Professional for Services, Additional Services, and expenses within 30 days after receipt of Professional's invoice, then (1) the amounts due Professional will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Professional may, after giving seven days written notice to Client, suspend Services under this Agreement until Professional has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Client waives any and all claims against Professional for any such suspension.
- B. *Payment:* As compensation for Professional providing or furnishing Services and Additional Services, Client shall pay Professional as set forth in this agreement. If Client disputes an invoice, either as to amount or entitlement, then Client shall promptly advise Professional in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 *Basis of Payment*

- A. Client shall pay Professional for Services in the amount and manner provided in the attached proposal.
- B. *Additional Services:* Unless specified in the attached proposal, for Additional Services, Client shall pay Professional an amount equal to the cumulative hours charged in providing the Additional Services by each class of Professional's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Professional's consultants' charges, if any.

3.01 *Suspension and Termination*

- A. The obligation to continue performance under this Agreement may be suspended:
 - 1. *By Client:* Client may suspend the Project for up to 90 days upon seven days written notice to Professional.
 - 2. *By Professional:* Professional may, after giving seven days written notice to Client, suspend services under this Agreement if Client has failed to pay Professional for invoiced services and expenses, as set forth in this Agreement.
- B. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 14 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Professional for its services is a substantial failure to perform and a basis for termination.
 - b. By Professional:
 - 1) upon seven days written notice if Client demands that Professional furnish or perform services contrary to Professional's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Professional's Services are delayed for more than 90 days for reasons beyond Professional's control, or as the result of the presence at the Site of undisclosed Constituents of Concern.
 - c. By Client, for convenience, effective upon Professional's receipt of written notice from Client

- d. Professional shall have no liability to Client on account of a termination for cause by Professional.
 - e. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under this section if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 - C. In the event of any termination under this section, Professional will be entitled to invoice Client and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Professional's consultants' charges, if any.
- 4.01 *Successors, Assigns, and Beneficiaries*
- A. Client and Professional are hereby bound and the successors, executors, administrators, and legal representatives of Client and Professional are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
 - B. Neither Client nor Professional may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
 - C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Professional to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Professional and not for the benefit of any other party.
- 5.01 *General Considerations*
- A. *Standard of Care*

The standard of care for all professional engineering and related services performed or furnished by Professional under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Professional makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Professional. Subject to the foregoing standard of care, Professional and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
 - B. *Design Without Construction Phase Services*

Professional shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Professional have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Professional shall not be responsible for the acts or omissions of any Constructor. Professional neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
 - C. *Opinions of Cost*

Professional's opinions (if any) of probable construction cost are to be made on the basis of Professional's experience, qualifications, and general familiarity with the construction industry. However, because Professional has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Professional cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Professional. If Client requires greater assurance as to probable construction cost, then Client agrees to obtain an independent cost estimate. Professional shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Professional or its consultants.
 - D. *Use of Documents*

All documents prepared or furnished by Professional are instruments of service, and Professional retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Client shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Client, subject to receipt by Professional of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:

 - 1. Client acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Professional, or for use or reuse by Client or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Professional;

2. Any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Professional, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Professional or to its officers, directors, members, partners, agents, employees, and consultants;
3. Client shall indemnify and hold harmless Professional and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Professional; and
4. Such limited license to Client shall not create any rights in third parties.

~~E. Liability~~ **Intentionally Deleted**

~~To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Professional and Professional's officers, directors, employees, and Consultants, to Client and anyone claiming by, through, or under Client for any and all injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, Professional's or its Consultants services or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Professional or Professional's officers, directors, employees, or Consultants shall not exceed the total amount of \$100,000 or the total compensation received by Professional under this Agreement, whichever is less.~~

~~F. Indemnification~~ **Intentionally Deleted**

~~To the fullest extent permitted by Laws and Regulations, Client shall indemnify and hold harmless Professional and Professional's officers, directors, employees, and Consultants from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of Professionals, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of the Client or Client's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Client with respect to this Agreement or to the Project.~~

E. Indemnification and Liability

1. To the fullest extent permitted by law, Professional shall indemnify and hold harmless Client, Client's officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Professional or Professional's officers, directors, partners, employees, and consultants in the performance of Professional's services under this Agreement.
2. To the fullest extent permitted by law, Client shall indemnify and hold harmless Professional, Professional's officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Client or Client's officers, directors, partners, employees, and consultants with respect to this Agreement.
3. To the fullest extent permitted by law, Professional's total liability to Client and anyone claiming by, through, or under Client for any injuries, losses, damages and expenses caused in part by the negligence of Professional and in part by the negligence of Client or any other negligent entity or individual, shall not exceed the percentage share that Professional's negligence bears to the total negligence of Client and all other negligent entities and individuals.
4. Nothing contained within this Agreement is intended to be a waiver or estoppel of the contracting municipality Client or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained within Wisconsin Statutes §§ 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the municipality Client or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law.

F. Dispute Resolution

Client and Professional agree to negotiate each dispute between them in good faith during the 30 days after written notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law. The venue for all disputes shall be the state of Wisconsin. Attorney fees will be borne by the non-prevailing party.

G. Governing Law

This Agreement is to be governed by the law of the state of Wisconsin.

6.01 *Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Client and Professional and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. Nothing in this Agreement between Professional and Client shall create a contractual relationship between either Professional and Client and an outside third party.

7.01 *Lien Notice*

- A. As required by the Wisconsin construction lien law, Professional hereby notifies Client that persons or companies performing, furnishing, or procuring labor, services, materials, plans, or specifications for the construction on Client's land may have lien rights on Client's land and buildings if not paid. Those entitled to lien rights, in addition to the undersigned Professional, are those who contract directly with the Client or those who give the Client notice within 60 days after they first perform, furnish, or procure labor, services, materials, plans or specifications for the construction. Accordingly, Client probably will receive notices from those who perform, furnish, or procure labor, services, materials, plans, or specifications for the construction, and should give a copy of each notice received to the mortgage lender, if any. Professional agrees to cooperate with the Client and the Client's lender, if any, to see that all potential lien Professionals are duly paid.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Project Name: 2025 Construction Services

Client: Village of Germantown

Professional: R.A. Smith, Inc.

By: _____

By: _____

Print name: _____

Print name: Jennifer Starr, CISEC

Title: _____

Title: Assistant Director of Construction Services

Date Signed: _____

Date Signed: _____

Address for Client's receipt of notices:

Address for Professional's receipt of notices:

Village of Germantown

R.A. Smith, Inc.

N112 W17001 Mequon Road

16745 West Bluemound Road

Germantown, WI 53022-0337

Brookfield, WI 53005

Client's Phone:

Professional's Phone: 262-901-2209

Client's Email:

Professional's Email: jennifer.starr@rasmith.com

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Action Item

ITEM TITLE: Award of a professional services agreement for storm water modeling to Graef in the amount of \$26,600.

SUBMITTED BY: Kevin Driscoll, Village Engineer

SUMMARY EXPLANATION:

In June 2024, the Public Works Highways Committee recommended approval for Graef to complete the Permit Application for 2025-2029 Department of Natural Resources Wisconsin Pollution Discharge Elimination System (WPDES) to Graef. During the course of this work, and in coordination with Village staff and WDNR staff, the WDNR identified that previous storm water modeling efforts did not meet their requirements. To meet the WDNR permit requirements and update historic storm water modeling, staff requested Graef to provide an amendment to their scope of services. However, that exceeded staff's authorization limit, so staff requested additional proposals to adhere with the Village's procurement policy. Below is a summary of the proposals that were received:

Firm	Hours	Amount
GRAEF	216	\$26,600
raSmith	250	\$39,608
Ruekert-Mielke	308	\$45,450

This scope of work includes modeling for the WDPES permit total maximum daily limits (TMDL). That involves the WinSLAMM software to model the total phosphorus and total suspended solids contained in the 190 ponds within the Village limits, as a best management practice. This work is required to establish a baseline condition that meets the WDNR requirements for the Village's WPDES permit. Following the update the Village can identify projects for implementation in the 2025-2029 WDPES permit cycle and complete the permit application by the June 2025 deadline.

ATTACHMENT:

1. Village of Germantown TMDL Modeling_GRAEF Feb 25 Proposal

STAFF RECOMMENDATION:

Award of a professional services agreement for storm water modeling to Graef in the amount of \$26,600.

ACTION BY Committee:

February 24, 2025

Mr. Kevin Driscoll
Village Engineer
Village of Germantown
N112 W17001 Mequon Road
Germantown, WI 53022

SUBJECT: WDNr WPDES WLA Attainment Analysis Refinement
Request for Proposal

Dear Mr. Driscoll:

In response to the WPDES 5yr Permit Renewal coordination; the WDNr has indicated that revision to the WLA Attainment Analysis requires refinement. We are excited to continue our working relationship with the Village. Joy Corona will serve as Project Manager and lead engineer.

RESUME OF FIRM'S QUALIFICATIONS AND RECENTLY COMPLETED SIMILAR PROJECTS:

We continue to provide the Village engineering services under a General Municipal Engineering Services Agreement. Through our municipal services agreement, our team has been assisting the Village in achieving compliance with their MS4 permit. Most Examples of recent MS4 services include the original Waste Load Allocation Attainment Analysis, Fecal Bacteria Elimination Plan development and refinement of Best Management Practice commitments in effort to minimize the Village's economic exposure. GRAEF recently completed providing WPDES support for their 5-year Permit Renewal; the scope of services described in this RFP are a direct result of this coordination. In the spring of 2024, GRAEF completed the inspection of 25 ponds within the Village and provided DNR compliant inspection reports both in geo-referend and PDF formats and recommended maintenance and remedial actions. In 2021, in concert with Ruekert-Mielke, GRAEF completed updates to the Village's Stormwater Management Plan including the Wisconsin Urban Nonpoint Source Water Pollution Management Grant Program from TMDL Storm Water Planning Report. Please also see attached FIRM and resume information.

SCOPE OF SERVICES:

We offer the following scope discussion related to the tasks described in your February 18, 2025 Request for Proposal.

Task 1 Collect Information: We were able to collect and evaluate WLA and pond data under a previous contract with the Village. We do not anticipate requiring any additional collection or evaluation effort to complete the remaining scope items .

Task 2 Update Map: We will obtain the Village's AutoCAD file. Mapped pond locations will be compared to the approved SWMPs and updated as appropriate.

Task 3 Model Ponds: Update/Create WinSLAMM for 133 ponds based on data included in the existing SWMP reports. 182 "generic" WinSLAMM models were previously submitted to the DNR (not based on data from the design SWMP). Per recent direction from DNR all TSS reduction credit must be based on actual pond information (e.g. design data that can be obtained from approved SWMP). Task 3 includes enhancing or creating WinSLAMM models based on the approved SWMP. Note modeling of ponds without SWMP is not included in the current scope of services; additional TSS reduction credit from 60 ponds with out a currently available SWMP could assist the Village in achieving compliance with the DNR's stipulated WLA Attainment goals.

Task 4 Draft Report: Provide draft report with recommendations for WDPES permit. The report will document findings, identify and prioritize retrofit / project recommendations. Revise and provide final report per coordination efforts. Present findings to Village (allowance for 2 public meetings).

February 24, 2025

Task 5 If Authorized Tasks:

- Update GIS Map. Existing geodatabase data will be enhanced to include SWMP, Maintenance Plan and WLA modeling status.
- Coordination: Credit, from the DNR, for TSS modeling is contingent upon having either an approved maintenance plan or municipal code that allows for maintenance. We will coordinate with the Village to maximize the number of ponds that can be analyzed; this determination will impact findings and recommendations. We will coordinate with both the Village and DNR on findings and proposed recommendations.
- Presentation at Village Board Meeting

FEE PROPOSAL:

We propose to provide the above services on a lump sum basis as described below. in addition to any direct expenses. Direct expenses include mileage, printing, soil borings, and advertisement costs; note, we do not anticipate any direct costs.

TASK	TASK DESCRIPTION	HOURS	COSTS
1	Collect Information	0	0
2	Update Map (AutoCAD)	8	\$1000
3	Model Ponds	160	\$17,400
4	Draft Report with recommendations for WPDES permit	16	\$2,000
	SubTotal (Tasks 1-4)	184	\$20,400
5	If Authorized Tasks	36	\$6,200
	Total (Tasks 1-5)	216	\$26,600

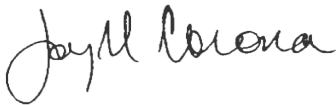
Schedule:

We can complete the scope of services in the accordance with the RFP schedule.

Contract Award by VB	March 17, 2025
Report due to Village Staff	May 1, 2025
Presentation to the PWHC	May 7, 2025
If Authorized, Presentation to the Village Board	May 12, 2025

We look forward to working with you on this important project. Please call us at 414 / 266 9086 if you have any questions regarding this proposal.

Sincerely,



Joy Corona, PE, CFM
Project Manager
joy.corona@graef-usa.com | 414 / 266 9021

Accepted by:
Village of Germantown

(Signature)



Michael N. Paulos, PE
Principal
mike.paulos@graef-usa.com | 414 / 266 9086

Administrator

(Date)

February 24, 2025



Since its inception in 1961, GRAEF has grown from a small individual partnership to a prominent, multi-disciplinary international firm. GRAEF has a team of nearly 300 employees spread across ten offices in the Midwest, Florida, and Turks and Caicos.

For over 63 years, GRAEF's unwavering dedication to excellence has been fueled by core values such as integrity, quality, and a steadfast commitment to exceptional customer service. These principles form the bedrock of GRAEF's operations, ensuring that clients receive the highest level of satisfaction and a seamless experience.

GRAEF has remained at the forefront of the industry, consistently adapting to emerging trends and embracing advancements, and is proud to be a reliable partner for clients seeking top-tier design services and unmatched expertise. GRAEF is licensed to operate in the state of Wisconsin.

OUR CORE PURPOSE

To improve the physical environment for the benefit of society in a sustainable manner

WE ARE

- ▶ Water Resource Engineers
- ▶ Environmental Scientists
- ▶ Planners & Urban Designers
- ▶ Site/Civil Engineers
- ▶ Transportation Engineers
- ▶ GIS Specialists
- ▶ Surveyors
- ▶ Architects
- ▶ Mechanical, Electrical, Plumbing Engineers
- ▶ Structural Engineers



REGULATORY EXPERTISE AND COMPLIANCE

Our team has a proven track record of ensuring compliance with WDNR WPDES permits. Our deep understanding of regulatory requirements and experience in coordinating with regulatory bodies ensure that all projects meet or exceed standards

DIVERSE TEAM

Our team leverages the strengths of each team member, creating a dynamic and resilient environment that can thrive in both traditional and contemporary spaces.

Comprehensive Data Management and Analysis

Our team excels in managing and analyzing complex datasets, including GIS data and stormwater management plans, ensuring precise and reliable modeling results.

WATER RESOURCES

GRAEF HAS A FULL ARRAY OF CAPABILITIES TO ADDRESS ALL ASPECTS OF WATER RESOURCES ENGINEERING FROM SITE INVESTIGATION AND COMPUTER MODELING TO DESIGN AND LONG-TERM MANAGEMENT.

The staff at GRAEF is fully qualified to assist you in understanding and managing complex site conditions with the client's needs in mind. We have extensive experience with projects for a wide range of public and private clients supporting ordinance development language, best management practice design, flood control projects, site design, and construction administration.

Among the more specialized services that we offer are alternative analyses to minimize cost and maximize benefit. This provides you with a solution that meets state and local regulations in a budget friendly approach. Our team brings in decades of experience working on highly complex floodplain modeling and navigating the local, state and federal review and approval process. GRAEF's water resources team also has expertise dealing with floodplain management issues arising from aging infrastructure, climate and land use changes. This knowledge is crucial in furthering flood protection and resilient designs for buildings, streets and open

space areas. These services can be provided as part of watershed plans, watershed studies, municipal flood control projects, and private retrofits.

From site evaluation to design, implementation, and monitoring, we provide solutions for both protected and degraded systems. Our project managers are supported by specialists in various fields such as planning and urban design, landscape architecture, wetland and environmental services, surveying, construction inspection, traffic analysis, GIS mapping, parking planning, and natural resource assessment. GRAEF understands the complex world of wetland permitting, protection, and restoration. All of this means that your project will be completed with sound design solutions that help achieve your goals.

AREAS OF EXPERTISE

Bioretention Basin (Rain Garden)

BMP Design, Management and Inspection

Detention and Retention Basins

Drainage and Flood Control

FEMA Letters of Map Change

Floodplain Management

GIS Mapping and Modeling

Grant Applications

Hydrologic and Hydraulic Modeling

Infiltration Basin

MS4 Permitting Support and Modeling

Permeable Pavement

Permitting

Runoff Management Grants

Soil Erosion and Sediment Control

Storm Sewer Design

Stormwater Conveyance Systems

Stormwater Management Plans

Stormwater Master Plans

Technical Guidance and Ordinance Language Development

Watershed Plans

Watershed Studies

Wetland and Natural Resource Restoration

Wetland Delineation and Permitting



Joy Corona PE, CFM

PROJECT MANAGER | WATER RESOURCE ENGINEER

Joy Corona is the Water Resources & Environmental Practice Team Leader with over 25 years of experience in both public and private sectors. She spent more than 20 years as the Water Resources Project Manager at Bleck Engineering Company, balancing municipal engineering and private sector representation. Before Bleck, she was the Permit Engineer at the Lake County Stormwater Management Commission for five years, providing consulting services in regulatory, design, and planning capacities.

EDUCATION

B.S., Civil Engineering, Marquette University,
Milwaukee, WI

REGISTRATION

Professional Engineer – IL, WI

CERTIFICATIONS

Certified Floodplain Manager

AFFILIATIONS

Lake County Stormwater Management
Commission, Technical Advisory Committee

PROJECT EXPERIENCE

Mill Creek Floodplain Study Technical Review, Lake County Stormwater Management Commission, Illinois*: Completed a Technical Review of the Mill Creek Floodplain Study, originally performed by Tetra Tech. Upon completion of the review, additional services include revision of the hydrologic and hydraulic analysis, completion an updated Floodplain Study Report, including all necessary supporting documentation, and enhancements in coordination with the U.S. Army Corps of Engineers related to their work on Des Plaines Phase II study. The original Tetra Tech HEC-HMS and HEC-RAS models were converted to HEC-1 and HEC-RAS (unsteady state). This study was used as the basis for a LOMR obtained by the Village of Grayslake, Illinois.

Park City Flood Mitigation Storm Sewer and Dady Slough Storage and Restoration, Lake County Stormwater Management Commission, Illinois*: The Skokie River headwaters experience frequent overbank flooding, causing significant damage and road closures. The Park City Flood Mitigation Storm Sewer project aims to improve outlet capacity between Dady Slough and Belvidere Road, working with the Dady Slough project to increase storage capacity. These projects provide substantial flood reduction benefits and other social and environmental advantages. Key efforts included updating hydrologic and hydraulic models, validating existing conditions, and creating proposed conditions models. Services also covered permitting and grant support for DCEO and FEMA funding. The \$4.2 million project, benefiting over 800 properties and two main roads, was completed in 2024. Phase II (Dady Slough) is on hold due to funding issues.

Wildwood Area Stormwater Infrastructure Improvements, Warren Township Road District, Illinois*: Local Area drainage improvement project. The project area receives almost one square mile of tributary drainage area without a regulatory flood insurance study. The system lacks an overland flow route resulting in extreme flooding along roadways and intersections; impacting at least 7 roadways, 109 residences and 106 accessory structures. Flood mitigation improvements (including a secondary storm sewer system) were designed, using XPSWMM, to maximize flood benefits up through the 50-year event. Additional water quality enhancement components including modification to the existing plunge pool in Valley Lake and the installation of porous parkways (visually similar to traditional grass swale but environmental benefits similar to a bio-swale). Services also included grant support services associated with the Illinois Department of Commerce and Economic Opportunity (DCEO) funding. Construction of \$4 million Wildwood Area Stormwater Infrastructure Improvements project was completed in 2024.

*Work accomplished prior to position at GRAEF



Village of Germantown Department of Public Works Facility

GERMANTOWN, WI

PARTNERED WITH GERMANTOWN TO CREATE A MODERN PUBLIC WORKS FACILITY, OVERCOMING THE LIMITATIONS OF THEIR OLD GARAGE AND STREAMLINING OPERATIONS FOR IMPROVED EFFICIENCY AND FUTURE GROWTH

GRAEF partnered with Germantown to develop a solution for their currently outdated and undersized Public Works Garage.

After inventorying the Village's vehicles and equipment as part of the programming phase, it became apparent that the current DPW site was not large enough to accommodate the new building and outside spaces required for now and into the future as Germantown grows. GRAEF assisted the Village to evaluate other potential properties within the Village to find a home for their new DPW building. In addition to the typical DPW yard functions, the Village was also interested in including the recycling center functions within the same site.

Having the ability to have all the disciplines under one roof, at local office, greatly benefits the Village from a cost, communication, and efficiency standpoint. The Germantown DPW site will also include a new salt shed, fueling station, and resident drop-off recycling center.

The project broke ground in December 2022 and is expected to be complete July 2024. Once completed, the new facility will be the largest project in the Village's history.

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Action Item

ITEM TITLE: Award of the Kinderberg Park Splash Pad painting and restoration contract to MACORP LLC for an amount not to exceed \$31,692.00.

SUBMITTED BY: Scott Anderson, Superintendent

SUMMARY EXPLANATION:

Funds were allocated as part of the 2025 Parks Department non-borrowed capital budget in the amount of \$31,000.00 to complete the splash-pad surface treatment project.

The existing surface has been recoated 3-times over the life of the splash-pad, and the most recent surface has been chipping away over the last several years. The chipping paint not only looks unsightly, but finds its way into the filtration system. In order to obtain the best possible project, the existing surface will be media blasted to remove it completely. This will allow an adequate bond between the surface and the aquatic paint being applied. This will also help support the longevity of the filtration system.

Since the budgetary figure was put together, it has been identified that we have some potential concrete surface deficiencies and joint sealing that will likely require work beyond the original project scope. If approved, the additional \$692.00 cost will be covered out of the parks department general ledger maintenance account.

Staff has solicited pricing from area vendors and the results are listed below.

MACORP LLC: \$31,692.00

Service Painting Corporation: \$38,000.00

ATTACHMENT:

1. 2025 MACORP Splash-pad

STAFF RECOMMENDATION:

Award of the Kinderberg Park Splash Pad painting and restoration contract to MACORP LLC for an amount not to exceed \$31,692.00.

ACTION BY Committee:



MACORP LLC
PREMIER PAINTING & FINISHING

February 12th, 2025

Scott Anderson – sanderson@village.germantown.wi.us

Village of Germantown

N122 W17177 Fond du Lac Ave Germantown, WI 53022

**RE: Painting of Splash Pad at Kinderberg Park
 N106W15060 Buckthorn Dr, Germantown, WI 53022**

Dear Scott,

MACORP, LLC. wishes to quote you a price on the above referenced project. Our price includes all labor, materials, equipment and rigging necessary to complete the project. Our price is also furnished, installed and tax included. Work to be done is as follows:

Scope of Work

- Main Bid: Shot-Blast & Insl-X Coating
 - Shot-blast existing coatings to bare concrete on splash pad.
 - Apply Vulkem 45SSL to concrete joints where it currently exists.
 - Apply H&C Concreteready to minor surface defects.
 - Prep for layout of splash pad.
 - Clean any remaining debris from shot-blasting prior to finish coatings.
 - Apply two (2) coats of Insl-x Chlorinated Rubber Swimming Pool Paint. Semi-gloss finish. Color scheme to be chosen by Village Of Germantown

TOTAL PRICE: \$31,692.00

Exclusions

- Customer to provide color information.

Notes

- 1 year warranty provided.
- Customer to provide access to water.
- Min temp for this coating system is 50 degrees.

Payment Terms

- Final payment due 30 days upon completion.

Thank you for the opportunity to submit this proposal. Please consider **MACORP, LLC.** for the above referenced project. Please sign below and send back to our office if accepted.

Sincerely,

MACORP LLC

Devan Garcia

Estimator

Accepted By:

Date:

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Action Item

ITEM TITLE: Resolution No. 02-2025, A Resolution Accepting Funds From the Washington County Emergency Medical Service (EMS) & Fire Grant Program

SUBMITTED BY: John Delain, Fire Chief

SUMMARY EXPLANATION:

GFD has received a grant from Washington County for \$177,000. The attached resolution needs to be approved for us to receive the grant funds.

ATTACHMENT:

1. Village of Germantown
2. RES 02-2025 EMS and Fire Grant

STAFF RECOMMENDATION:

Approval

ACTION BY Committee:



To: Village of Germantown
From: Washington County
Date: February 11, 2025
Subject: Washington County Emergency Medical Services (EMS) & Fire Grant Program

This purpose of this communication is to inform you that the County has approved an EMS & Fire Grant of: \$177,000 for your municipality. This program and process has previously been communicated to your chief elected official.

The next steps in the process are for you to:

- Have your elected body approve the grant award (using the included resolution language included in the attachment).
- Send a signed/approved copy of the resolution.

Once we receive the information, the County will send a check for the approved amount. Included in this communication is a copy of the program information and a template for you to use for getting approval by the elected body of your municipality (typically done via resolution).

The resolution attachment is in Word, so it can be pasted into the format used by your municipality. Please do not significantly modify or add to the language.

Please contact Aaron Daul (aaron.daul@washcowisco.gov or 262-335-4330) if you have questions.

Thank you for your partnership.

RESOLUTION NO. 02-2025

A RESOLUTION ACCEPTING FUNDS FROM THE WASHINGTON COUNTY
EMERGENCY MEDICAL SERVICE (EMS) & FIRE GRANT PROGRAM

WHEREAS, Washington County has allocated a pool of dollars to create a grant program to provide direct assistance to partner fire and Emergency Medical Services (EMS) agencies in the County; and

WHEREAS, the County has created a distribution formula and has calculated the award amounts for each eligible municipality; and

WHEREAS, Washington County has awarded \$ 177,000 to Village of Germantown for this purpose; and

WHEREAS, Village of Germantown has reviewed the terms and conditions of the grant program, as described in the program description.

NOW THEREFORE, BE IT RESOLVED by the Village Board of the Village of Germantown does hereby accept the grant award in accordance with the Washington County Emergency Medical Service (EMS) & Fire Grant Program.

Adopted: March 3, 2025

Dean M. Wolter, Village President

ATTEST:

Donna Ott, Village Clerk

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Ordinance

ITEM TITLE: An Ordinance Amending Section 12.03 of the Germantown Municipal Code Related to Suspension or Revocation of Outdoor Entertainment Permits

SUBMITTED BY: Brian Sajdak, Attorney

SUMMARY EXPLANATION:

Update—February Committee Meeting

During the January Committee discussion on this matter, there were concerns that the revocation process could be started directly by a citizen, which might lead to harassment. Based on these concerns, the proposed ordinance has been amended to address this concern. Under the revised proposal, if a complaint is made, the Police Chief, Fire Chief, or Community Development Director (depending on the specific nature of the complaint made) shall investigate the complaint and then issue a written report and recommendation if they believe that a violation has occurred and warrants enforcement action. The Public Safety Committee would then consider that report and decide whether to proceed with a hearing. In addition, the Committee or the full Village Board can also direct that a hearing take place, which provides assurances that any one step in the process cannot result in automatic denial of every complaint made.

Background

At the January 6, 2025 meeting, the Village Board adopted an ordinance which created section 12.03 of the Germantown Municipal Code to establish an Outdoor Entertainment Permit within the Village. At that time, it was requested that an amendment be brought forward to provide additional detail with respect to the suspension and revocation process for these permits. The proposed ordinance accomplishes that task.

During the January discussion, there were also questions posed about the amount of a citation if there was a violation. Under the current bond schedule adopted by the Municipal Court, the first violation would be \$250, the second would be \$357.10, and each subsequent violation would be \$495.70. These amounts are the same as the amounts for noise violations. The Board could ask the Court to consider an amendment to the bond schedule for violations related to these permits.

ATTACHMENT:

1. Ordinance Amending Outdoor Entertainment Permit re enforcement

STAFF RECOMMENDATION:

A motion to approve an Ordinance Amending Section 12.03 of the Germantown Municipal Code Related to Suspension or Revocation of Outdoor Entertainment Permit

to the Village Board as presented.

Or such other action as the Board may deem appropriate.

ACTION BY Committee:

The Public Safety Committee unanimously recommended approval at its meeting on March 3, 2025.

AN ORDINANCE AMENDING SECTION 12.03 OF THE GERMANTOWN MUNICIPAL
CODE RELATED TO SUSPENSION OR REVOCATION OF OUTDOOR
ENTERTAINMENT PERMITS

WHEREAS, the Village Board previously created section 12.03 of the Germantown Municipal Code which established an Outdoor Entertainment Permit within the Village; and

WHEREAS, the Village Board recognizes that noise is threat to the public health and welfare, public safety, quality of life and property values; and

WHEREAS, the Village Board similarly recognizes that amenities within the Village, including outdoor entertainment during the warmer months, also improves the quality of life for residents; and

WHEREAS, the Village Board desires to amend the Municipal Code to provide for detailed enforcement procedures for violations of an Outdoor Entertainment Permit; and

WHEREAS, the Village Board has determined that proper regulation of noise within the Village furthers the public 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 12.03(7) of the Germantown Municipal Code is created to read as follows:

12.03 OUTDOOR ENTERTAINMENT PERMIT.

(7) SUSPENSION AND REVOCATION.

(a) In addition to the penalty provided in sub. (6), any outdoor entertainment permit issued may be revoked or suspended for cause by the Village Board. Whenever complaint is made by a citizen alleging repeated violations of this section, the Police Chief, Fire Chief, or Community Development Director shall investigate, or cause the investigation of, the complaint. After the investigation, if the inspecting officer believes violations exist that warrant revocation or suspension of the outdoor entertainment permit, such officer shall make a written

report of their findings and recommendation that enforcement proceedings be commenced to the Public Safety Committee. Based upon this recommendation, the Public Safety Committee may choose to commence a hearing as provided below. Upon motion of the Public Safety Committee, on its own or upon the recommendation of the inspecting officer, or Village Board, a hearing shall be held before the Public Safety Committee after written notice of not less than seven (7) days to the permit holder. Upon the conclusion of the hearing, the Public Safety Committee shall forward a recommendation with respect to revocation or suspension to the Village Board who shall consider the recommendation and determine whether to suspend, revoke, or place additional conditions upon a permit. The recommendation of the Public Safety Committee regarding the permit shall be based on the substantial evidence presented at the hearing. Village Board shall consider the recommendation of the Public Safety Committee and determine whether to suspend, revoke, or place additional conditions upon a permit.

(b) If a retail alcohol beverage license or permit for a premises is suspended or revoked, and the licensee/permittee also holds an outdoor entertainment permit for the same property, the outdoor entertainment permit shall be revoked or suspended for the same time period as the alcohol beverage license or permit.

SECTION II

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 III

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

SECTION IV

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

Adopted: _____, 2025

Vote: Ayes:

Nays:

Absent:

Dean Wolter, Village President

ATTEST:

Donna Ott, Village Clerk

Approved as to form:

Brian C. Sajdak, Village Attorney

Published:

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Action Item

ITEM TITLE: Award of a contract for the 2025 Road Program construction to Wolf Paving in the amount of \$1,176,115.

SUBMITTED BY: Matthew Mortwedt, Public Works Director

SUMMARY EXPLANATION:

The annual road program was approved by the Village Board in January 2025. The Village of Germantown staff advertised and opened bids for the 2025 Annual Road Program and the bids are summarized below and bid item details are attached.

Contractor	Amount
Payne and Dolan	\$1,391,079
Wolf	\$1,273,660
Stark	\$1,353,196
Vinton	No Bid

These bids are below the \$1.5M construction estimate. This contract includes Maple Road from Lannon Road to the I-41 bridge, Wagon Trail from Donges Bay Road to the Jefferson Ditch, and Catie Vista subdivision including Sylvan, Montgomery and Francese. The base bid also includes sidewalk work on Main St. An additive bid item includes repair of Library sidewalk section. The schedule is to begin work later this spring and be completed this fall. Staff will be sending notification letters to adjacent property owners following the award.

Funding for the work includes the road program budget, the sidewalk repair/replacement budget and a portion of the Buildings sidewalk repair budget.

ATTACHMENT:

1. 10 YR Road Program MAP
2. 10 YR Road Program LIST

STAFF RECOMMENDATION:

Award of a contract for the 2025 Road Program construction to Wolf Paving in the amount of \$1,176,115 with a 10% contingency for a total authorized amount of \$1,293,726.50.

ACTION BY Committee:

VILLAGE OF GERMANTOWN 10 YEAR PAVING PROGRAM

2025

2026

2027

2028

2029

2030

2031

2032

2033

2034

HOLY HILL RD

FRIESTADT RD

PILGRIM RD

MEQUON RD

STH 175

141/45

DIVISION RD

STH 145

2025 - PAVING PROGRAM					Reconstruction Modifier*: \$107/LF Mill & Overlay Modifier*: \$87/LF	
Road	Begin Termini	End Termini	Road Length (LF)	2023 PASER	Estimated Cost	Comments
Sylvan	Pilgrim Rd	Montgomery Dr	850	3	\$440,000.00	Montgomery Square/Catie Vista
Francesce	Sylvan Cir	Pilgrim Rd	520	3		Significant Curb/Drainage Work
Wagon Tr	Jefferson Ditch	Donges Bay Rd	2000	3	\$500,000.00	Significant Curb Work
Squire Drive	Mequon Rd	Main St	2600	4	\$270,741.50	Mill & Overlay
					-\$63,000.00	LRIP Reimbursement
Pleasant View Drive	Friestadt Rd	Bonniwell Rd	10560	3	\$300,000.00	ONLY IF RECEIVED ARIP 90/10 FUNDING. INCLUDES CULVERT WORK.
Rockfield Road	Division Rd	Pleasant View Dr	7920	3		
Catchbasin on Park					\$15,000.00	Install Catchbasin on Park Ave. in response to drainage concern.
Fire Station Parking Lot						Included in Bid for possible better bid price
Division Rd	Mequon Rd	Jefferson Ditch				Phase 1. Reconstruction funded by other sources
				Total Base Est:	\$1,462,742	Additional roads from the next 2 years and any roads not completed from the previous year may be included as Alternates

* The modifiers are estimates based on average roadway costs across previous years per linear foot of roadway completed, with inflation increases year-to-year. This approximation includes allowances for curb and gutter, some storm utility work, base patching within the roadway, and restoration. Reconstruction indicates full pulverization or removal of existing pavement, base patching, and repaving. A Mill & Overlay is a 2" typical removal of pavement, with a 2" replacement of pavement in-kind.

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Action Item

ITEM TITLE: Award of a contract to reconstruct Rockfield Road to Payne and Dolan in the amount of \$931,369.

SUBMITTED BY: Matthew Mortwedt, Public Works Director

SUMMARY EXPLANATION:

The Public Works and Highway Committee and Village Board approved the application for and receipt of WISDOT Agricultural Road Improvement Program (ARIP) grant funds. Additionally, the reconstruction of Rockfield Road was approved by the Village Board as part of the 2025 Road Program. Following those approvals, the Village of Germantown advertised and opened bids for the reconstruction of Rockfield Road from STH 145 to Pleasant View Drive. The bids are summarized below and bid item details are attached.

Contractor	Amount
Payne and Dolan	\$931,369
Wolf	\$943,379
Stark	\$1,052,662

This work is funded in part by the WisDOT Agricultural Road Improvement Program (ARIP). The Village of Germantown and Town of Germantown collaboratively submitted an ARIP application and were selected for a 90/10 cost share agreement of up to ~\$2.5M. This grant funding is for Rockfield Road as well as Pleasant View Road. The first phase is the reconstruction of Rockfield Road. The second phase is to reconstruct Pleasant View Drive from Freistadt Road to Bonniwell Road, and replace the culvert at Menomonee River. The first phase is scheduled to be completed by the fall of 2025. We anticipate Pleasant View Drive will be reconstructed in the summer of 2026.

These bids are below the \$1.0M construction estimate. The schedule is to begin work this summer. We anticipate completion of the segment between STH 145 and Division Road (CTH G) prior to Labor Day. The segment from Division Road to Pleasant View Drive will be completed by fall. Four cross culverts are scheduled for replacement, so a temporary detour will be required to complete that work. Staff will be sending notification letters to adjacent property owners following approval.

Under the 90/10 cost share of the ARIP program, WISDOT will be responsible for \$838,232, the Town of Germantown will be responsible for \$43,182, and the Village will be responsible for \$49,955.

ATTACHMENT:

1. 10 YR Road Program MAP
2. 10 YR Road Program LIST

STAFF RECOMMENDATION:

Award of a contract to reconstruct Rockfield Road to Payne and Dolan in the amount of \$931,369 with a 10% contingency bringing the total authorized amount to \$1,024,505.90.

ACTION BY Committee:

VILLAGE OF GERMANTOWN 10 YEAR PAVING PROGRAM

2025

2026

2027

2028

2029

2030

2031

2032

2033

2034

HOLY HILL RD

FRIESTADT RD

PILGRIM RD

MEQUON RD

DIVISION RD

STH 175

141/45

STH 145

2025 - PAVING PROGRAM					Reconstruction Modifier*: \$107/LF Mill & Overlay Modifier*: \$87/LF	
Road	Begin Termini	End Termini	Road Length (LF)	2023 PASER	Estimated Cost	Comments
Sylvan	Pilgrim Rd	Montgomery Dr	850	3	\$440,000.00	Montgomery Square/Catie Vista
Francesce	Sylvan Cir	Pilgrim Rd	520	3		Significant Curb/Drainage Work
Wagon Tr	Jefferson Ditch	Donges Bay Rd	2000	3	\$500,000.00	Significant Curb Work
Squire Drive	Mequon Rd	Main St	2600	4	\$270,741.50	Mill & Overlay
					-\$63,000.00	LRIP Reimbursement
Pleasant View Drive	Friestadt Rd	Bonniwell Rd	10560	3	\$300,000.00	ONLY IF RECEIVED ARIP 90/10 FUNDING. INCLUDES CULVERT WORK.
Rockfield Road	Division Rd	Pleasant View Dr	7920	3		
Catchbasin on Park					\$15,000.00	Install Catchbasin on Park Ave. in response to drainage concern.
Fire Station Parking Lot						Included in Bid for possible better bid price
Division Rd	Mequon Rd	Jefferson Ditch				Phase 1. Reconstruction funded by other sources
				Total Base Est:	\$1,462,742	Additional roads from the next 2 years and any roads not completed from the previous year may be included as Alternates

* The modifiers are estimates based on average roadway costs across previous years per linear foot of roadway completed, with inflation increases year-to-year. This approximation includes allowances for curb and gutter, some storm utility work, base patching within the roadway, and restoration. Reconstruction indicates full pulverization or removal of existing pavement, base patching, and repaving. A Mill & Overlay is a 2" typical removal of pavement, with a 2" replacement of pavement in-kind.

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Action Item

ITEM TITLE: Memorandum of Understanding between the Village of Germantown and the Local 4854 of the International Association of Fire Firefighters regarding Lateral Transfer Pay Placement & Promotional Pay Adjustments

SUBMITTED BY: John Delain, Fire Chief

SUMMARY EXPLANATION:

A few years back the Fire Department requested and received approval for the ability to hire and promote employees on a lateral transfer basis. However, the union contract never incorporated official verbiage regarding this topic. The attached document is the MOU that addresses this topic until such time as it could be incorporated into the union contract.

ATTACHMENT:

1. MOU Between IAFF Local 4854 and the Village of Germantown

STAFF RECOMMENDATION:

A motion to approve the MOU between the Village and the Firefighters Union regarding lateral hiring

ACTION BY Committee:

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE VILLAGE OF GERMANTOWN AND LOCAL 4854, IAFF**

03/13/2025

SUBJECT: Lateral Transfer Pay Placement & Promotional Pay Adjustments

This Memorandum of Understanding (MOU) is entered into between the Fire Chief of the Germantown Fire Department ("Fire Chief") and Local 4854, International Association of Fire Fighters ("Union") to establish guidelines for lateral transfers and promotional pay adjustments for members of the Germantown Fire Department.

1. Lateral Transfer Pay Placement

A. A firefighter/paramedic hired as a lateral transfer from another full-time fire department may be placed at an advanced step on the wage scale based on their verified years of full-time service.

B. The placement of a lateral transfer on the wage scale shall be determined as follows:

- 1-2 years of full-time service: Step 2
 - 3-4 years of full-time service: Step 3
 - 5-6 years of full-time service: Step 4
 - 7+ years of full-time service: Step 5 (or highest step if the wage scale has fewer steps)
- C. Lateral transfers shall retain their probationary status as outlined in the current collective bargaining agreement.
- D. The Fire Chief retains discretion to evaluate relevant experience and may adjust placement in the wage scale beyond the above guidelines with mutual agreement from the Union.

2. Promotional Pay Adjustments

A. Any bargaining unit member who is promoted to a higher rank shall be placed at the top step of the new rank's wage scale, regardless of their previous step placement.

B. This provision applies to all promotional ranks covered under the collective bargaining agreement.

C. If a member is promoted while serving in their probationary period, they must still complete their original probationary period as required in the collective bargaining agreement.

3. General Provisions

A. This MOU shall take effect immediately upon signature by both parties and shall remain in effect unless modified by mutual agreement.

B. This MOU shall be incorporated into the next collective bargaining agreement between the Fire Chief and the Union, unless otherwise renegotiated.

C. Any disputes regarding the interpretation or application of this MOU shall be subject to the grievance procedure outlined in the collective bargaining agreement.

Signed this ____ day of _____, 2025.

For the Germantown Fire Department:

[Name]

Fire Chief

For Local 4854, IAFF:

[Name]

Union President

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

ITEM SECTION XII. NEW BUSINESS:

ITEM TITLE: D. Village of Germantown Community Development Department & Village Attorney- Proposed Text Amendments to Section 17 (Zoning) of the Village of Germantown Municipal Code.

ITEM TYPE: Action Item

SUBMITTED BY: Jeff Retzlaff, Community Dev. Director

SUMMARY EXPLANATION:

The Village Attorney and Community Development Director are proposing a series of municipal code text amendments necessary to maintain consistency between the Village's Zoning Code and Wis. Stats. In 2023, the Wisconsin Legislature passed Wisconsin Act 16 that adopted specific pre-emptions or limits on local municipalities and how they can/cannot exercise their zoning authority granted to them under Wis. Stats.

ATTACHMENT:

1. 1-STAFF REPORT-Zoning Code Amendments-3-10-25
2. Memo re Protest Petitions after Act 16
3. Memo re PC Questions on Protest Petitions
4. ORDINANCE-Zoning Code Amendment-Wis Act 16 Revisions-Atty Sajdak Draft
5. 2023 Act 16-Wis Stats Text
6. PH Notice-Zoning Code Text Amendments-Hearing Date 3-10-2025
7. Draft PC Minutes for Text Amendments- 3-10-25

STAFF RECOMMENDATION:

STAFF RECOMMENDATION:

Recommend to the Village Board to **APPROVE** the proposed text amendments as presented in the draft ordinance (copy attached) and summarized in the Staff Report & Recommendation dated 3-10-2025

ACTION TAKEN BY COMMITTEE:

PLAN COMMISSION ACTION:

MOTION to Recommend to the Village Board to APPROVE the proposed text amendments for consideration & action as presented (Motion FAILED with a vote of 3-3)

MOTION to create a resolution to send to the State of Wisconsin legislature regarding overstepping local zoning authority [Motion PASSED with a vote of 6-0]

ZONING CODE TEXT AMENDMENTS

3/10/25 Plan Commission Meeting

Germantown Community Development Department

Village Staff Report & Recommendation

Germantown, Wisconsin

Summary

The Community Development Department and Village Attorney are proposing a series of text amendments to Section 17 (Zoning) in the Germantown Municipal Zoning Code.

As indicated in the various “whereas” statements in the attached draft ordinance, the proposed amendments are necessary to maintain consistency between the Village’s Zoning Code and Wis. Stats. 2023 Wisconsin Act 16 adopted specific preemptions or limits on how municipalities exercise their zoning authority authorized under various sections of the Wis. Stats. that apply to the Village of Germantown, including Section 62 (Cities) and Section 66 (General Municipality Law).

Many of the provisions adopted under 2023 Act 16 had a delayed effective date of January 1, 2025. The following Zoning Code amendments are recommended by the Village Attorney to maintain consistency with Wis. Stats.

Amendment #1 (see Section I; page 1)

The proposed amendment to Section 17.27(2)(d) removes the provision that previously required a favorable vote of $\frac{3}{4}$ of the full Village Board (7 of 9 members) to increase the maximum allowable density of proposed development in a Planned Development District (PDD). Under 2023 Act 16, Wis. Stats. Section 66.10015(3)(a) was created to limit municipal zoning authority to only require a favorable vote of a simple majority to enact a proposed zoning amendment including the creation or amendment to a Planned Development District (PDD).

Amendment #2 (see Section II; page 2)

The amendment to Section 17.51(7) repeals/removes the provision that previously provided for protest petitions to be filed against zoning code or district map amendments. Under this provision, if a petition in protest of a proposed zoning amendment was submitted and specific criteria were met by said petition/petitioners, a valid protest petition would require a favorable vote of $\frac{3}{4}$ of the full Village Board (7 of 9 members) to approve the zoning amendment. As discussed above, under 2023 Act 16, Wis. Stats. Section 66.10015(3)(a) was created to limit municipal zoning authority to only require a favorable vote of a simple majority to enact a proposed zoning amendment.

Amendment #3 (see Section III; page 2)

The amendment creates Section 17.42(10) to provide an appeal process in Circuit Court through specific certiorari procedures adopted under 17.52(8) with respect to the denial of a conditional use permit by the Village Board consistent with Wis. Stats. Section 781.10.

Amendment #4 (see Section IV; page 2)

Like Amendment #1 & Amendment #2 above, the amendment to Section 17.51(6) adds language that clarifies action by the Village Board to approve a zoning amendment, e.g. zoning district map amendment, zoning code text amendment. Under 2023 Act 16, Wis. Stats. Section 66.10015(3)(a) was created to limit municipal zoning authority to only require a favorable vote of a simple majority to enact a zoning code amendment, unless the proposed amendment constitutes a “down zoning ordinance” as defined under Wis. Stats. 66.10015(1)(as):

NOTE: A “down zoning ordinance” is a zoning amendment that affects a property or area of land in one of the following ways:

- 1. By decreasing the development density of the property or land to be less dense than was allowed under its previous zoning*
- 2. By reducing the permitted uses of the property or land that are specified in the zoning ordinance or other land use regulation to fewer uses than were allowed under its previous usage*

If the amendment constitutes a “down zoning ordinance”, then a favorable vote of 2/3 of the full Village Board is required to approve the amendment unless the owner of the property affected by the amendment is the one proposing the amendment or is agreeable to the amendment, then a favorable vote of only a simple majority is required.

Amendment #5 (see Section V; beginning on page 2)

This amendment repeals and recreates Section 17.52(8) to provide a specific appeal process in the case of any person or party “aggrieved by any decision of the Board of Zoning Appeals” where said party can seek a remedy through the Circuit Court certiorari process.

NOTE: In Wisconsin, an “action by certiorari” is a legal process where the court reviews the decision of the municipality agency to determine if:

- 1. The agency’s decision was within its jurisdiction*
- 2. The agency acted according to law*
- 3. The decision was arbitrary or oppressive*
- 4. The evidence of record substantiates the decision*

VILLAGE STAFF RECOMMENDATION

A recommendation from the Plan Commission is necessary to move the proposed Zoning Code amendments to the Village Board for consideration and action. The recommendation is to **APPROVE** the proposed text amendments as presented in the draft ordinance (copy attached) and summarized herein.



VILLAGE ATTORNEY
Wesolowski, Reidenbach & Sajdak, S.C.
11402 W. Church Street
Franklin, WI 53132
Phone: 414-529-8900

MEMORANDUM

TO: Plan Commission
CC: Village Board
FROM: Brian C. Sajdak, Village Attorney
DATE: March 10, 2025
RE: Elimination of Protest Petition

A few questions have been raised with respect to the elimination of the protest petition language from the municipal code as part of a proposed ordinance that is scheduled for a public hearing before the Plan Commission this evening. This memo provides some history on this issue, which I hope will answer some of the questions that have been raised.

For a large part of Wisconsin history, the provisions within the statutes related to zoning provided for what has commonly come to be known as protest petitions for changes to the zoning of property. In short, the statute provided that where a verified petition meeting certain qualifications was filed with the municipality, any change in zoning to a property would require a supermajority vote of three-fourths of the members of the governing body to pass instead of the typical simple majority vote. The most recent version of this language was found in Wis. Stat. § 62.23(7)(2m)(a). Many communities, including Germantown, adopted this language in their local codes. Germantown's provisions were adopted in Section 17.51(7) of the Code.

In 2018, the legislature enacted changes to this long-standing provision in 2017 Wisconsin Act 243. Act 243 was often called the "Developers Bill" because it made numerous changes sought by the Wisconsin REALTORS and Wisconsin builders' associations to limit and regulate municipal powers related to development. In the case of protest petitions, Act 243 was fairly simple—it repealed section 62.23(7)(2m)(a). In the aftermath of this change, there was much debate about whether this repeal eliminated protest petitions completely including removing statutory authority for local municipalities to retain their local code provisions, or if it only removed the requirement in the statute while leaving local communities with the power to require it locally. In fact, many of you may recall this issue being the subject of a memo from this office in 2019 as the Veridian Homes proposal for Kinderberg Estates was being considered (attached for your reference).

Anecdotally, my understanding is that most municipalities, when presented with the choice to remove their local protest petitions following Act 243, elected to retain this local requirement. I suspect that this choice led the lobbyists for the developers' groups to seek additional changes. These changes were ultimately enacted by the legislature in 2023 as 2023 Wisconsin Act 16. Act 16 included numerous changes designed to make house development easier. It also includes a provision that creates Wis. Stat. § 66.10015(3)(a), which reads in relevant part that "the enactment of a zoning amendment shall be approved by a simple majority of a quorum of the

members-elect.” In short, this change requires that all zoning amendments be approved by a simply majority vote of the governing body and, therefore, eliminates any authority for local municipalities to require a supermajority vote for zoning changes. Under Wisconsin law, where the legislature provides general authority, a municipality can be more stringent than general terms provided by statute. However, where the legislature has expressly provided a requirement, the Village cannot be more stringent than what the statutes require.

There are concerns that this impacts the First Amendment right “to petition the Government for a redress of grievances.” In short, the concern is that by eliminating protest petitions, the code eliminates the ability to petition altogether. Nothing can be further from the truth. First, recall that the term “protest petition” is not actually found in the statute or code. The term is merely nomenclature that has been adopted as shorthand for the process of protest. Second, this change does not eliminate anyone’s right to file a petition with the Village. The sole impact to the amendment is that there will be no supermajority votes required for zoning changes. Finally, the change does not in any way eliminate any of the rights to appear at and speak at the public hearing required for a zoning change, or eliminate the right to otherwise send comments to Village Board members on a proposal or speak at the Village Board meeting.

Given that Act 16 was passed in June of 2023, the question of “why now” has arisen. The simple answer is that the language in Act 16 requiring simple majority votes did not become effective until January 1, 2025. Until that time, the Village could have continued to require a supermajority vote where a protest petition was filed. Given that the Board on multiple occasions expressed support for protest petitions, including when a potential repeal was raised following Act 243, there was little need to remove the language from the code. Now that the provision is effective and controlling, it makes sense to remove the language. Some might suggest that there is little harm to leaving it in the code. However, this ignores both that protest petitions usually required significant work and effort by residents to meet the standards. Leaving the language in could result in a resident reviewing the code and expending significant effort to file a protest petition only to be told that their work was for naught because “our hands are tied” by the statute. It sets unrealistic expectations that will result in distrust and a lack of faith in the process.

Over the last 10+ years, the unfortunate reality is that the legislature has continuously stepped in to limit or eliminate local control over many significant issues. This is one of the most recent examples. If there are concerns about this, the correct forum is with the legislature because until they start returning local control to the municipal level, your hands really are tied.

BCS



M E M O R A N D U M

To: Village President and Village Board of Trustees
From: Brian C. Sajdak, Village Attorney
Date: September 16, 2019
Re: Veridian Homes Rezoning – Objection to Protest Petition

As you will recall, I had previously provided you with a memo dated August 18, 2019 related to a protest petition filed by neighboring landowners to the Veridian Homes site along Donges Bay Road (south of Kinderberg Park). In that memo, I highlighted for you the fact that the statute statutes had been amended to remove the protest petition language. However, the Village code retains similar language, and it was that language which formed the basis for my opinion that the protest petition filed contesting the rezoning was valid, thereby triggering the $\frac{3}{4}$ supermajority voting requirement.

Attached you will find a letter from an attorney representing Veridian Homes. As you can see, Veridian believes that 2017 Wis. Act 243 not only repealed the protest petition provisions from the Wisconsin Statutes, but also preempted local governments from having their own provisions in this regard. After discussing this position with the attorney by phone and further consideration, I do not find Veridian's position persuasive, and continue to believe the Village's protest petition provisions are valid.

It is clear that the legislature understands the general rules regarding preemption of local authority. For example, Act 243 includes two sections that expressly provide that any existing local ordinances that are inconsistent with the statute "does not apply and may not be enforced." See 2017 Wis. Act 243 § 33 and § 49. Had the legislature intended to preempt local protest petition ordinances, it could have used the same language. Indeed, the Wisconsin Legislative Council's Act Memo on Act 243 identifies areas where the Act preempts local ordinances. The protest petition repeal is not listed as one of those sections.

When considering whether a local ordinance is otherwise logically conflicts with, or goes against the spirit of legislation, one has to consider the legislation as a whole. "The power to enact zoning ordinances is broadly construed in favor of the municipality." State ex rel. B'nai B'rith Found. v. Walworth Cnty. Bd. of Adjustment, 59 Wis.2d 296, 304, 208 N.W.2d 113 (1973). Under Wis. Stat. § 62.23(7)(am), the legislatures broad grant of zoning power to municipalities means that "any ordinance, resolution or regulation enacted or adopted under this section, shall be liberally construed in favor of the city and as minimum requirements adopted for the purposes stated."

In this case, the repeal only removed the requirement from the statutes such that there is no option to file a protest petition unless there is a local option. Veridian suggests that the Board's broad authority extends only to technical aspects of development (size, setback, etc.) and not to procedure. However, this is inconsistent with practice throughout the state. For example, one local procedural rule that is widely used throughout the state is prohibiting resubmission of the same application without a substantial change after denial of the original application. See League of Wisconsin Municipalities Legal Op, Zoning #351 (1976).

Notwithstanding this opinion, I also note that another municipal law firm has opined for their clients the opposite. Attorney Eric Larson, of the Municipal Law & Litigation Group, S.C. (F/K/A Arenz, Molter, Macy, Riffle, Larson & Bitar) provided the following to the Dane County Towns Association on the protest petition section of Act 243:

For decades, property owners located within a certain proximity of a zoning change had an ability to file a protest petition, which would trigger a super-majority requirement for the zoning amendment to pass. Many zoning codes include language very similar to the former State law, describing this ability to protest and to create a super-majority requirement. The statutory protest petition language is now repealed. If you continue to describe a protest petition in your zoning code, be advised, there is no statutory basis for that provision. A significant legal dispute could arise about how many votes are required for a zoning ordinance to pass, if your code maintains that super-majority requirement that has been repealed from the statute.

Recommendation: I recommend that DCTA members review their zoning code to determine whether it includes a protest petition or super-majority requirement, based upon the former statute. If so, I recommend that they repeal that provision of their zoning code, to maintain consistency with the statutory framework.

I note that there is no analysis to this statement. Accordingly, I think Attorney Larson may have been simply advocating for the removal of local provisions because it eliminates a large potential headache to rezoning approvals. While I typically do not rely on the opinions of other attorneys, and do not do so here, I highlight this for you to suggest that the Board may wish to address this at the meeting tonight. At the end of the day, I have provided my opinion that a valid protest petition exists. However, the Board is the ultimate decision maker on this point. Given the fact that a repeal of the local protest petition language was brought before you last year, I suspect that nothing has changed. However, if there was a desire to revisit the issue, it could be done by raising a Point of Order either before the vote (preferable because it allows everyone to know the voting rules before the vote) or at the time that the vote result is announced. Upon announcement of my determination as parliamentarian, a motion could be made to overrule that determination.

BCS

Robert C. Procter
608.283.6762
rprocter@axley.com

September 12, 2019

VIA EMAIL - brian@wrslegal.net

Attorney Brian C. Sajdak
Wesoloski, Reidenbach & Sajdak SC
11402 W. Church Street
Franklin, WI 53132-2114

Re: Village of Germantown / Germantown School District / Veridian Homes, LLC
Our file: 21269.76103

Dear Mr. Sajdak:

We represent Veridian Homes, LLC, (Veridian) the developer of the Meadows at Kinderberg, and the agent of the landowner Germantown School District. We are contacting you as to the Zoning Protest that was filed by neighbors in opposition to the School District's and Veridian's application to rezone the property.

As the result of changes in state law, the Village's Zoning Protest Ordinance is no longer enforceable. The Village's Zoning Protest Ordinance is set forth under Section 17.51 of the Code of Ordinances, and provides:

In the event of a protest against such district change or amendment to the regulations of this chapter, duly signed and acknowledged either by the owners of 20% or more of the areas of the land included in such proposed change, or by the owners of 20% or more of the land immediately adjacent to the land included in the proposed change, or by the owners of 20% or more of land extending 100 feet from the street frontage of such opposite land, such a change or amendment shall not become effective except by the favorable vote of $\frac{3}{4}$ of the full Village Board.

Section 17.51 references Wis. Stat. §§ 61.35 and 62.23(7)(d) as the basis for the ordinance.

The Village appears to have simply copied the language formerly found at Wis. Stat. § 62.23(7)(2m)(a) into its Ordinance. Section 62.23(7)(2m)(a) formerly stated:

In case of a protest against an amendment proposed under subd. 2., duly signed and acknowledged by the owners of 20 percent or more either of the areas of the land included in such proposed amendment, or by the owners of 20 percent or more of the area of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20 percent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of three-fourths of the members of the council voting on the proposed change.

See Wis. Stat. § 62.23(7)(2m)(a) (2015-16). In 2018, the state adopted 2017 Wisconsin Act 243, which repealed Wis. Stat. § 62.23(7)(2m)(a). The repeal of the protest statute effectively repealed the Village's protest ordinance.

Wisconsin Supreme Court case *Anchor Savings & Loan Ass'n v. Madison EOC*, 120 Wis. 2d 391, 397 (1984) lays out four circumstances whereby a state statute withdraws the power of a municipality to act, and nullifies local ordinances:

- (1) whether the legislature has expressly withdrawn the power of municipalities to act;
- (2) whether the ordinance logically conflicts with the state legislation;
- (3) whether the ordinance defeats the purpose of the state legislation; or
- (4) whether the ordinance goes against the spirit of the state legislation.

The Village's rezoning process is based on the comprehensive state zoning statute. The Village's protest ordinance, which requires a super majority vote to approve an amendment, has been preempted by 2017 Wisconsin Act 243 because it: (i) logically conflicts with 2017 Wisconsin Act 243, which has withdrawn the zoning protest procedures so that all zoning requests only require a majority vote; and (ii) defeats the purpose and goes against the spirit of 2017 Wisconsin Act 243 by enforcing a procedure that was specifically repealed.

Based on 2017 Wisconsin Act 243, the Village's zoning protest ordinance is a nullity. The appropriate requirement for passing the rezoning application is a majority of the Board.

Attorney Brian C. Sajdak
September 12, 2019
Page 3

The applicant looks forward to presenting at the Board meeting on September 16, 2019 to present the plan, which incorporates the compromises requested by the Board. We believe that any other concerns of the Board may be resolved through reasonable conditions of approval.

Sincerely,

AXLEY BRYNELSON, LLP

A handwritten signature in black ink, appearing to read "Robert C. Procter". The signature is fluid and cursive, with a prominent "R" and "P".

Robert C. Procter

RCP:mma



VILLAGE ATTORNEY
Wesolowski, Reidenbach & Sajdak, S.C.
11402 W. Church Street
Franklin, WI 53132
Phone: 414-529-8900

MEMORANDUM

TO: Village Board
FROM: Brian C. Sajdak, Village Attorney
DATE: March 12, 2025
RE: Ordinance re Elimination of Protest Petition

During the Plan Commission's consideration of the ordinance that includes the elimination of the protest petition, there were a number of interrelated questions and comments that warrant additional examination.

1. Is there a need to act now?

Certainly not. But by not acting there are impacts. As noted in this office's prior memo on the subject, Act 16 was adopted in 2023. After its adoption, the Village could have immediately adopted an ordinance to bring the code into compliance with the statute. Doing so, however, would have been met with the same criticisms that have been raised now—with the only difference being that these criticisms would have been more valid at that time because until the effective date of the Act (January 1, 2025) there was no need to eliminate the protest process. After the effective date, however, there is legally no impact to not acting. Whether the Village adopts the ordinance or not, the statute requires that zoning amendments be adopted by a simple majority. Any attempt to deny a zoning change because it did not receive a three-fourths vote after the filing of a protest under a local ordinance would be summarily dismissed in short order by any reviewing court because that ordinance conflicts with state law. In other words, even if the code is not changed, legally it cannot be applied. Furthermore, as noted in the prior memo, even if the Board legitimately has no intent to follow the language of the current code by imposing the higher vote requirement after receiving a protest petition, leaving an unenforceable provision in sets unrealistic expectations for the public that may result in criticism, distrust and a lack of faith in the process.

2. Can the local code be more restrictive than the statute?

The Wisconsin Constitution grants cities and villages in Wisconsin broad "Home Rule" authority to regulate their local affairs and government. Wis. Const. art. XI, § 3. This authority is "subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village." *Id.* In addition to the Constitutional Home Rule authority, the legislature has delegated and granted villages broad management and police power¹ authority, "limited only by express language." Wis. Stat. § 61.34(1). However, a legislative grant of authority under the statutes is limited such that "ordinances may not 'infringe the spirit of a state law or . . . general policy of the state.'" *Wisconsin's Env't Decade, Inc. v. Dep't of Nat. Res.*, 85

¹ "Police power" references the Village's authority to regulate conduct in the furtherance of the "health, safety, welfare and convenience of the public." Wis. Stat. § 61.34(1)

Wis. 2d 518, 534–35, 271 N.W.2d 69, 76 (1978) (quoting Fox v. Racine, 225 Wis. 542, 545, 275 N.W. 513, 514 (1937)). The Supreme Court has held:

If a municipality acts within the legislative grant of power but not within the constitutional initiative, the state may withdraw the power to act; so if there is logically conflicting legislation, or an express withdrawal of power, the local ordinance falls. Furthermore, if the state legislation does not logically conflict, or does not expressly withdraw power, it is possible that the local ordinance nevertheless must fall if an intent that such an ordinance not be made can be inferred from the fact that it defeats the purpose or goes against the spirit of the state legislation.

Id. (quoting Solheim, Conflicts Between State Statute and Local Ordinance in Wisconsin, 1975 Wis. L. Rev. 840, 848).

Within this framework, the initial question is under what authority the ordinance is adopted. Here, there is no question that the authority is granted expressly by statute in Wis. Stat. § 62.23(7)(am):

Grant of power. For the purpose of promoting health, safety, morals or the general welfare of the community, the council may regulate and restrict by ordinance, subject to par. (hm), the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, subject to s. 66.10015 (3) the density of population, and the location and use of buildings, structures and land for trade, industry, mining, residence or other purposes if there is no discrimination against temporary structures. This subsection and any ordinance, resolution or regulation enacted or adopted under this section, shall be liberally construed in favor of the city and as minimum requirements adopted for the purposes stated. This subsection may not be deemed a limitation of any power granted elsewhere.

Further, the courts have held that zoning is a matter of statewide concern. See State ex rel. Ziervogel v. Washington Cnty. Bd. of Adjustment, 2004 WI 23, ¶¶ 37-40, 269 Wis. 2d 549, 571–73, 676 N.W.2d 401, 411–12. “A municipality may regulate matters of statewide concern so long as ‘such ordinances do not conflict with ... the state legislation.’ ” Scenic Pit LLC v. Vill. of Richfield, 2017 WI App 49, ¶ 8, 377 Wis. 2d 280, 287, 900 N.W.2d 84, 87 (quoting DeRosso Landfill Co., Inc. v. Oak Creek, 200 Wis. 2d 642, 651, 547 N.W.2d 770). “An ordinance is preempted when any of the following four tests are satisfied: (1) the legislature has expressly withdrawn the power of the municipality to act, (2) the ordinance logically conflicts with state legislation, (3) the ordinance defeats the purpose of state legislation, or (4) the ordinance violates the spirit of state legislation.” Id. In short, a “municipality may enact ordinances in the same field on the same subject covered by state legislation where such ordinances do not conflict with, but rather complement the state legislation.” Johnston v. Sheboygan, 30 Wis. 2d 179 (1966). A key question in this regard is whether the local ordinance moves “in the same direction . . . farther but not counter to” the statute. Wisconsin's Env't Decade, 85 Wis. 2d at 535.

Applying this standard here, it is clear that the intent of the legislation was to make it easier to adopt zoning changes. The [drafting files on Act 16 include an email](#) to the legislative drafting bureau from Representative Brooks' office requesting that the bill include a provision "to prohibit supermajority votes for zoning changes." Accordingly, retaining an ordinance that maintains a supermajority vote for zoning changes is preempted because it conflicts with the legislative directive. If the Board desired to go beyond what the statute requires, the only option would be to further reduce the vote requirement—although I am aware of no law (local or otherwise) which would allow for the passage of something by a clearly undemocratic non-majority vote.

Further, the Supreme Court has already provided guidance on this exact issue in Vaigelunas v. Fechner, 7 Wis. 2d 14, 95 N.W.2d 786 (1959). In that case, the Supreme Court was faced with an apparent conflict between the statute which provided for passage of an ordinance by a majority vote of the council and a City of Kenosha zoning ordinance that required a three-fourths majority vote by the council to adopt a zoning change where the plan commission had disapproved of the change. "The trial court stated that the word 'majority' means the greater number or more than half but that word as used in sec. 64.07(3), Stats., did not define the limitations of the majority. Therefore the zoning ordinance did not conflict with the statute." Id. at 16. The Court continued to note "the use of the word 'majority' in the statute is not contradicted by the use of the words 'three-fourths majority' in the ordinance, and that the two may stand side by side without any inconsistency." Id.

Unlike the statute in the Vaigelunas case, the statute here uses the words "simple majority" instead of "majority." The courts have routinely recognized that there is a difference between a simple majority and a three-fourths majority. See, e.g., Merkel v. Germantown, 218 Wis. 2d 572, 576, 581 N.W.2d 552, 554 (Ct. App. 1998)(analysis of a simple majority vote in the context of a protest petition). Therefore, the holding in Vaigelunas that "three-fourths majority" is not in conflict with "majority" does not apply here as there is a clear conflict between "simple majority" and "three-fourths majority."

3. The Village can/should just enforce the higher vote as a form of protest to the statute and the legislature's overreach.

While this is clearly an example of the legislature interfering with local control over local matters such as appropriate land use and the operations of local governing bodies, this office cannot recommend this form of protest. The most obvious reason why is that the legislature will never know that the protest is occurring. More importantly, as noted in section 1 above, there could be impacts to not acting such that this approach is not recommended because it represents a poor use of taxpayer dollars and also represents an increasing risk of liability for damages in a civil rights lawsuit.

Under the law, a denial by the Village Board would be subject to judicial review under the certiorari standard. Under this standard, the reviewing court will determine:

- (1) Whether the Board "kept within its jurisdiction"; (2) whether the Board "acted according to law"; (3) whether the Board's action "was arbitrary, oppressive, or unreasonable and represented its will and not its judgement"; and (4) whether the

evidence was such that the Board “might reasonably make the order or determination in question.”

Marris v. City of Cedarburg, 176 Wis. 2d 14, 24, 498 N.W.2d 842, 846–47 (1993). “The phrase ‘acted according to law’ has been interpreted as including ‘the common-law concepts of due process and fair play.’ ” Id. As discussed above, if the Board were to apply the higher vote requirement to an application, that action is not in accordance with the law. Thus, the reviewing court would quickly resolve any challenged filed, overrule the Board and order the Board to adopt of the zoning change (or simply order the change on its own). If there was a good-faith basis to argue that the statute should not apply, there may be a benefit to paying legal fees to make the case. Paying legal fees simply because the Board does not like the statute and wants to protest it is not, in this office’s opinion, a good use of taxpayer dollars.

Another risk is that by denying a zoning application that the applicant could make a constitutional takings claim. Article I, § 13 of the Wisconsin Constitution provides, “The property of no person shall be taken for public use without just compensation therefor.” There does not need to be a physical invasion or acquisition of land in order for there to be a taking. Such takings are called “regulatory takings,” see Hoepker v. City of Madison Plan Comm’n, 209 Wis. 2d 633, 651, 563 N.W.2d 145 (1997), and occur when government regulation or action denies a land “all or substantially all practical uses of a property” such that just compensation is required. Eberle v. Dane Cnty. Bd. of Adjustment, 227 Wis. 2d 609, 622, 595 N.W.2d 730, 737 (1999). The government may owe compensation even where the taking is temporary in duration and the owner has “regained full use of the property due to the government’s rescission of the restriction.” Zinn v. State, 112 Wis. 2d 417, 429, 334 N.W.2d 67, 73 (1983). In the right circumstances, a property owner may be able to argue that an improper denial of a zoning application using a three-fourths majority standard resulted in a regulatory taking requiring the payment of just compensation.

A related, but more realistic and larger risk is a particularly disgruntled applicant filing a claim for civil rights violations under 42 U.S.C. § 1983.

Section 1983 provides a federal cause of action for violations of federal rights. However, a violation of federal rights does not occur automatically whenever a municipality violates a federal statute. Rather, three factors must be present. First, the federal statute at issue must have been intended by Congress to benefit the plaintiff; second, the right created must not be so amorphous that its enforcement would “strain judicial competence”; and third, the obligation must be imposed in a binding and unambiguous manner so that compliance is mandatory.

Primeco Pers. Commc’ns v. City of Mequon, 242 F. Supp. 2d 567, 580 (E.D. Wis.), *aff’d sub nom. PrimeCo Pers. Commc’ns, Ltd. P’ship v. City of Mequon*, 352 F.3d 1147 (7th Cir. 2003)(internal citation omitted)(holding that the Telecommunications Act of 1996 foreclosed recovery under § 1983 for improper zoning denial); but see Harding v. County of Door, 870 F.2d 430, 431 (7th Cir.1989) (zoning decision revoking a building permit denies substantive due process if it is invidious or irrational; held, the decision was not irrational). Depending on the circumstances and the nature of the claim, a successful claim under § 1983 can result in the recovery of actual (compensatory) damages, punitive damages where the conduct was “motivated by evil motive or

intent” or involved “reckless or callous indifference to the federally protected rights of others,” Smith v. Wade, 461 U.S. 30, 56 (1983), and of the party’s actual attorney’s fees. These damages can add up quickly. If the applicant is able to establish that a denial of an application illegally infringed on a protected right (including property rights), ignoring a statute to apply a three-fourths majority requirement could be significant evidence that the infringement was made with reckless or callous indifference.

BCS

ORDINANCE NO. ____-2025

AN ORDINANCE TO AMEND CHAPTER 17 OF THE GERMANTOWN MUNICIPAL
CODE TO IMPLEMENT THE PROVISIONS OF 2023 WIS. ACT 16 RELATED TO THE
PROCESS AND PROCEDURES OF CERTAIN ZONING-RELATED APPLICATIONS

WHEREAS, the Village Board previously adopted Chapter 17 of the Germantown Municipal Code pursuant to the authority granted in Wis. Stat. § 62.23 to broadly regulate the zoning of property within the Village; and

WHEREAS, the Wisconsin legislature enacted 2023 Wis. Act 16 which largely became effective on January 1, 2205; and

WHEREAS, 2023 Wis. Act 16 places certain restrictions on the Village's zoning authority; and

WHEREAS, the Village Board desires to adopt these restrictions so as to avoid inconsistencies between the statutes and the municipal code; and

WHEREAS, the regulation of properties in the Village through zoning 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 17.27(2)(d) of the Germantown Municipal Code is amended to read as follows (NOTE: Deleted text is ~~struck through~~; Added text is double underlined):

(d) Density. The Planned Development District may permit the transfer of density (dwelling units) from one portion of the subject site to another and will permit the clustering of dwelling units in one or more locations within the total site. However, the density of use shall not exceed the density permitted in the underlying existing zoning district except that the Village Board may, ~~upon a favorable vote of 3/4 of the full Village Board~~, increase the maximum allowable density after considering the community benefits to be derived from the development based upon the size, location, type of development, quality of building materials, and type and amount of aesthetic, architectural, and recreational features and amenities proposed for the development.

SECTION II

Section 17.51(7) of the Germantown Municipal Code relating to protest petitions is repealed in its entirety.

SECTION III

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

(10) DENIALS OF CONDITIONAL USE PERMITS. If the Village Board denies a conditional use permit application, the denial may be appealed to the circuit court through the certiorari procedures contained in Section 17.52(8).

SECTION IV

Section 17.51(6) of the Germantown Municipal Code is amended to read as follows (NOTE: Deleted text is ~~struck through~~; Added text is double underlined):

(6) VILLAGE BOARD ACTION. Following such hearing and after careful consideration of the Plan Commission's recommendations, the Village Board shall vote on the passage of the proposed change or amendment. Except as provided below, and except as provided in Wis. Stat. § 62.23(7)(d)2m, the enactment of the proposed change or amendment shall be approved by a simple majority of the members present and voting. In the event that the proposed change or amendment constitutes a down zoning ordinance as defined in Wis. Stat. § 66.10015(1)(as), enactment shall require approval by at least two-thirds of the members-elect, except that if the change or amendment is requested, or agreed to, by the owner of the land affected by the proposed change or amendment, such change or amendment may be enacted by approval of a simple majority of the members present and voting.

SECTION V

Section 17.52(8) of the Germantown Municipal Code is repealed and recreated to read as follows:

(8) REVIEW BY COURT OF RECORD.

(a) Any person or persons, jointly or severally aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board or bureau of the Village, may, within 30 days after the filing of the decision in the office of the Board of Appeals, commence an action seeking the remedy available by certiorari as provided by Wis. Stat. § 62.23(7)(e)10.a.

(b) Notwithstanding sub. (a), a decision of the Board of Appeals on an application for an approval, as defined in Wis. Stat. § 781.10(1)(a), is subject to review under the procedures contained in Wis. Stat. § 781.10.

SECTION VI

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 VII

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

SECTION VIII

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

Adopted: Vote: Ayes: Nays: Absent:

Dean Wolter, Village President

ATTEST:

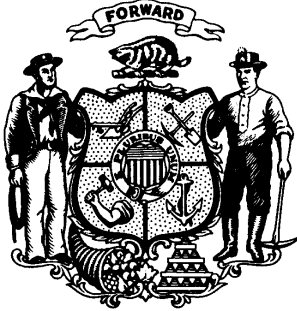
Donna Ott, Village Clerk

Approved as to form:

Brian C. Sajdak, Village Attorney

Published:

State of Wisconsin



2023 Assembly Bill 266

Date of enactment: **June 22, 2023**
Date of publication*: **June 23, 2023**

2023 WISCONSIN ACT 16

AN ACT *to repeal* 59.69 (5) (e) 5g. and 60.61 (4) (c) 2.; *to renumber* 59.694 (10), 62.23 (7) (e) 10. and 66.10015 (3); *to renumber and amend* 236.13 (5); *to amend* 59.69 (5e) (e), 60.61 (4e) (e), 62.23 (6) (g), 62.23 (6) (h), 62.23 (7) (b), 62.23 (7) (de) 5., 66.10015 (title) and 781.10 (2) (a); *to repeal and recreate* 66.10015 (3) (title); and *to create* 59.694 (10) (b), 60.65 (6), 62.23 (7) (e) 10. b., 66.10015 (1m), 66.10015 (3) (a), 66.10016, 236.13 (5) (b), 781.10, 808.04 (1s) and 809.108 of the statutes; **relating to:** judicial review of local governmental decisions related to certain land development, local approval of residential housing development, and amendment of zoning ordinances.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 59.69 (5) (e) 5g. of the statutes is repealed.

SECTION 2. 59.69 (5e) (e) of the statutes is amended to read:

59.69 (5e) (e) If a county denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in s. 59.694 (10) (a), or if the decision is on an application for an approval, as defined in s. 781.10 (1) (a), under the procedures described in s. 59.694 (10) (b). Notwithstanding s. 59.694 (4), a county may provide by ordinance that the county's decision on a conditional use permit application is not reviewable by the board of adjustment and may be appealed directly to the circuit court under the procedures contained in s. 59.694 (10).

SECTION 3e. 59.694 (10) of the statutes is renumbered 59.694 (10) (a).

SECTION 3g. 59.694 (10) (b) of the statutes is created to read:

59.694 (10) (b) Notwithstanding par. (a), a decision of the board of adjustment on an application for an

approval, as defined in s. 781.10 (1) (a), is subject to review under the procedures contained in s. 781.10.

SECTION 4. 60.61 (4) (c) 2. of the statutes is repealed.

SECTION 5. 60.61 (4e) (e) of the statutes is amended to read:

60.61 (4e) (e) If a town denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures described in s. 59.694 (10) (a), or if the decision is on an application for an approval, as defined in s. 781.10 (1) (a), under the procedures described in s. 59.694 (10) (b).

SECTION 6. 60.65 (6) of the statutes is created to read:

60.65 (6) JUDICIAL REVIEW. A decision of a board of adjustment under this section is subject to review under the procedures described in s. 59.694 (10) (a), or if the decision is on an application for an approval, as defined in s. 781.10 (1) (a), under the procedures described in s. 59.694 (10) (b).

SECTION 7. 62.23 (6) (g) of the statutes is amended to read:

62.23 (6) (g) Before taking any action authorized in this subsection, the board of appeals or city council shall hold a hearing at which parties in interest and others shall

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

have an opportunity to be heard. At least 15 days before the hearing notice of the time and place of the hearing shall be published as a class 1 notice, under ch. 985. Any ~~such decision under this paragraph~~ shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of a board of appeals upon zoning regulations pursuant to sub. (7) (e) 10. a., ~~except that if the decision is on an application for an approval, as defined in s. 781.10 (1) (a), the decision shall be subject to review under the procedures contained in s. 781.10.~~

SECTION 8. 62.23 (6) (h) of the statutes is amended to read:

62.23 (6) (h) In any city ~~which that~~ has established an official map as herein authorized, no public sewer or other municipal street utility or improvement shall ~~may~~ be constructed in any street, highway, or parkway until ~~such the~~ street, highway, or parkway is ~~duly~~ placed on the official map. No permit for the erection of any building shall ~~may~~ be issued unless a street, highway, or parkway giving access to ~~such the~~ proposed structure has been ~~duly~~ placed on the official map. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets, highways, or parkways, the applicant for ~~such a~~ permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals in any city ~~which that~~ has established a board having power to make variances or exceptions in zoning regulations, and the same provisions are applied to ~~such appeals under this paragraph~~ and to ~~such boards as are provided in cases of appeals on zoning regulations. The board may in passing on such an appeal under this paragraph make any reasonable exception, and issue the permit subject to conditions that will protect any future street, highway, or parkway layout. Any such decision under this paragraph shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decision of such board upon zoning regulations sub. (7) (e) 10. a., except that if the decision is on an application for an approval, as defined in s. 781.10 (1) (a), the decision shall be subject to review under the procedures contained in s. 781.10.~~ In any city in which there is no ~~such~~ board of appeals the city council shall have the same powers and be subject to the same restrictions, and the same method of court review shall be available. For ~~such purpose such of appeal under this paragraph, the~~ council is authorized to act as a discretionary administrative or quasi-judicial body. When so acting it shall not sit as a legislative body, but in a separate meeting and with separate minutes kept.

SECTION 9. 62.23 (7) (b) of the statutes is amended to read:

62.23 (7) (b) *Districts.* For any and all of said purposes the council may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts. No ordinance enacted or regulation adopted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d). The council may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form. The council may with the consent of the owners establish special districts, to be called planned development districts, with regulations in each, which in addition to those provided in par. (c), will over a period of time tend to promote the maximum benefit from coordinated area site planning, ~~and~~ diversified location of structures and ~~which may have~~ mixed compatible uses. Such regulations shall provide for a safe and efficient system for pedestrian and vehicular traffic, attractive recreation and landscaped open spaces, economic design and location of public and private utilities and community facilities and ~~insure ensure~~ adequate standards of construction and planning. Such regulations may also provide for the development of the land in such districts with one or more principal structures and related accessory uses, and in planned development districts and mixed-use districts the regulations need not be uniform.

SECTION 10. 62.23 (7) (de) 5. of the statutes is amended to read:

62.23 (7) (de) 5. If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10. a., ~~or if the decision is on an application for an approval, as defined in s. 781.10 (1) (a), under the procedures described in par. (e) 10. b.~~

SECTION 11e. 62.23 (7) (e) 10. of the statutes is renumbered 62.23 (7) (e) 10. a.

SECTION 11g. 62.23 (7) (e) 10. b. of the statutes is created to read:

62.23 (7) (e) 10. b. Notwithstanding subd. 10. a., a decision of the board of appeals on an application for an approval, as defined in s. 781.10 (1) (a), is subject to review under the procedures contained in s. 781.10.

SECTION 13. 66.10015 (title) of the statutes is amended to read:

66.10015 (title) Limitation on development regulation authority and down-zoning.

SECTION 14. 66.10015 (1m) of the statutes is created to read:

66.10015 (1m) APPLICABILITY OF DEFINITIONS. The definitions under sub. (1) do not apply to s. 66.10016.

SECTION 15. 66.10015 (3) (title) of the statutes is repealed and recreated to read:

66.10015 (3) (title) ZONING ORDINANCE AMENDMENTS.

SECTION 16. 66.10015 (3) of the statutes is renumbered 66.10015 (3) (b).

SECTION 17. 66.10015 (3) (a) of the statutes is created to read:

66.10015 (3) (a) Except as provided in par. (b) and ss. 59.69 (5) (e) 5m., 60.61 (4) (c) 3., and 62.23 (7) (d) 2m., the enactment of a zoning amendment shall be approved by a simple majority of a quorum of the members-elect.

SECTION 18. 66.10016 of the statutes is created to read:

66.10016 Permits for residential housing developments. (1) In this section:

(a) "Permit" means any permit or administrative approval required to proceed with a residential housing development. "Permit" does not include a change to an existing ordinance or zoning classification of land or an approval of a conditional use as defined under s. 59.69 (5e) (a) 1., 60.61 (4e) (a) 1., or 62.23 (7) (de) 1. a.

(b) "Political subdivision" means a city, village, town, or county.

(c) "Residential housing development" means a development for single-family or multi-family housing for sale or rent.

(2) The definitions under s. 66.10015 (1) do not apply to this section.

(3) If a person submits a complete application for a permit related to a residential housing development meeting all existing requirements that must be satisfied to obtain the permit at the time the application is filed, the political subdivision shall grant the application. An application is deemed complete under this subsection if it complies with form and content requirements. An application is filed under this subsection on the date that the political subdivision receives the application.

(4) A person aggrieved by a political subdivision's failure to approve an application under sub. (3) may seek relief through an action for mandamus as provided in ch. 783. If the court finds that the political subdivision improperly failed to approve the application under sub. (3), the court shall issue a writ of mandamus ordering the political subdivision to approve the application. For purposes of any mandamus claim filed under this subsection, substantial damages or injury shall be assumed.

SECTION 19e. 236.13 (5) of the statutes is renumbered 236.13 (5) (a) and amended to read:

236.13 (5) (a) Any person aggrieved by an objection to a plat or a failure to approve a plat may appeal therefrom as provided in s. 62.23 (7) (e) 10. a, 14. and 15., within 30 days of notification of the rejection of the plat.

For the purpose of such an appeal under this paragraph, the term "board of appeals" means an "approving authority". Where the failure to approve is based on an unsatisfied objection, the agency making the objection shall be made a party to the action. The court shall direct that the plat be approved if it finds that the action of the approving authority or objecting agency is arbitrary, unreasonable, or discriminatory.

SECTION 19g. 236.13 (5) (b) of the statutes is created to read:

236.13 (5) (b) Notwithstanding par. (a), a decision of an approving authority on an application for an approval, as defined in s. 781.10 (1) (a), is subject to review under the procedures contained in s. 781.10.

SECTION 20. 781.10 of the statutes is created to read:

781.10 Certiorari review of certain local decisions. (1) DEFINITIONS. In this section:

(a) "Approval" means a permit or authorization for building, zoning, driveway, stormwater, or other activity related to residential development.

(b) "Political subdivision" means a city, village, town, or county or a board of appeals or board of adjustment.

(c) "Residential development" means the development or redevelopment of land or buildings for the primary purpose of providing housing.

(2) JUDICIAL REVIEW. (a) A final decision of a political subdivision or an agency of a political subdivision on an application for an approval may be reviewed only by an action for certiorari as provided under this section.

(b) No action under this section may be filed more than 30 days after the final decision by a political subdivision or agency of a political subdivision on an application for an approval.

(c) An action under this section may be filed only by any of the following:

1. The person who submitted the application for an approval.

2. A person that has an ownership interest in the real property that is the subject of the application for an approval.

3. A person that, as a result of the final decision on the application for an approval, sustains actual damages or will imminently sustain actual damages that are personal to the person and distinct from damages that impact the public generally. A person under this subdivision may not seek review under this section unless, prior to the final decision on the approval, the person provided a statement in writing on the approval to the political subdivision or agency of the political subdivision or appeared and provided an oral statement at a public proceeding held by the political subdivision or agency of the political subdivision at which the approval was considered.

4. A person, other than an individual, that satisfies all of the following conditions:

a. The person has as a member, partner, or stockholder at least one person described under subd. 1., 2., or 3.

b. The person was not organized or incorporated in response to the application.

5. A local governmental unit, as defined in s. 66.0131 (1) (a).

6. To the extent authorized by law, a state agency, as defined in s. 20.931 (1) (c), that is aggrieved by the final decision on the application for approval.

(d) 1. The person seeking review under this section shall file pleadings, which shall be served in the manner provided in ch. 801 for service in civil actions. The pleadings shall specify facts demonstrating that the person has standing under par. (c) and shall identify the specific errors the person claims justify the requested relief. The political subdivision shall have 45 days to file an answer or other responsive pleading to the complaint. The political subdivision shall transmit the record under s. 781.03 (1) no later than 30 days after an answer or other responsive pleading is filed.

2. The court shall require that any additional pleadings and any motions and supporting papers be filed no later than 90 days after the expiration of the latest deadline under subd. 1. for filing answers or other responsive pleadings. The court may supplement the record on review only upon motion of a party for good cause.

3. The court shall give the action under this paragraph preference over all other civil actions and proceedings.

4. The court shall decide the action under this paragraph upon the return made by the political subdivision. The court may reverse or affirm the determination brought up for review or remand to the political subdivision for further proceedings consistent with the court's decision or take any other action that the court deems appropriate in the interests of justice that is consistent with judicial review of an action in certiorari. The court shall issue a decision in writing no later than 60 days after the deadline under subd. 2.

5. Any appeal of a decision issued under subd. 4. shall be taken within the time period specified in s. 808.04 (1s).

SECTION 21. 781.10 (2) (a) of the statutes, as created by 2023 Wisconsin Act (this act), is amended to read:

781.10 (2) (a) ~~-A- Except as provided in s. 66.10016 (4), a final decision of a political subdivision or an agency of a political subdivision on an application for an~~

approval may be reviewed only by an action for certiorari as provided under this section.

SECTION 22. 808.04 (1s) of the statutes is created to read:

808.04 (1s) An appeal under s. 781.10 (2) (d) 5. shall be initiated within 30 days after the date of entry of the judgment or order appealed from.

SECTION 23. 809.108 of the statutes is created to read:

809.108 Appeals in proceedings related to political subdivision approvals. (1) **APPLICABILITY.** This section applies to the appeal of a judgment or order under s. 781.10 (2) (d) 5. and supersedes all inconsistent provisions of this chapter.

(2) **INITIATING AN APPEAL.** A party may initiate an appeal under this section by filing a notice of appeal with the clerk of the circuit court in which the judgment or order appealed from was entered and shall specify in the notice of appeal the judgment or order appealed from.

(3) **APPEAL PROCEDURE.** Subsequent proceedings in an appeal under this section are governed by the procedures for civil appeals under this subchapter and the procedures under subch. VI, except as follows:

(a) The appellant shall file a brief within 30 days after the filing of the record on appeal.

(b) The respondent shall file a brief within 30 days after the service of the appellant's brief.

(c) The appellant shall file within 15 days after the service of the respondent's brief a reply brief or statement that a reply brief will not be filed.

(4) **DECISION.** The court of appeals shall give preference to an appeal under this section and shall take the appeal in an order that ensures that the court of appeals issues a decision no later than 90 days after the deadline under sub. (3) (c).

SECTION 24. Initial applicability.

(1) This act first applies to a final decision, including a final decision on an approval, as defined in s. 781.10 (1) (a), made by a political subdivision, as defined in s. 781.10 (1) (b), on the effective date of this subsection.

SECTION 25. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The renumbering of s. 66.10015 (3), the amendment of s. 781.10 (2) (a), the repeal and recreation of s. 66.10015 (3) (title), and the creation of ss. 66.10015 (1m) and (3) (a) and 66.10016 take effect on January 1, 2025.

NOTICE OF PUBLIC HEARING VILLAGE OF GERMANTOWN

NOTICE is hereby given that a Public Hearing will be held before the Village of Germantown Plan Commission at the Germantown Village Hall located at N112W17001 Mequon Road, Germantown, Wisconsin and virtually through the WebEx platform on the following date and at the time noted below (or soon thereafter):

DATE: Monday, March 10, 2025

TIME: 6:30 pm or later

The purpose of said hearing will be to hear 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 Section (17 (Zoning) of the Village of Germantown Municipal Code.

A copy of the proposed text amendments is on file at the Community Development Department-Planning & Zoning Services office in the Germantown Village Hall.

Citizens wishing to submit any public comments should do so by sending them by email to: comments@germantownwi.gov no later than 4:00 pm on the meeting date listed above.

Donna Ott, Village Clerk

Dated this 12th day of February 2024

To Be Published On: February 19 and February 26, 2025

Excerpt from Plan Commission Meeting Minutes from 3/10/25:

Community Development Director Retzlaff presented five (5) proposed text amendments that he explained are necessary to maintain consistency between the Village's Zoning Code and Wis. Stats. Retzlaff explained that 2023 Wisconsin Act 16 adopted specific preemptions or limits on how municipalities, including Germantown, exercise their zoning authority authorized under various sections of the Wis. Stats. Retzlaff explained that many of the provisions adopted under 2023 Act 16 did not become effective until January 1, 2025. Retzlaff referred to the Village Attorney's opinion regarding the proposed changes given questions that had been raised prior to the meeting. Baum asked whether these changes eliminated petitions completely. Retzlaff replied no that petitions can still be submitted, but they would not trigger the super majority vote requirement as currently stated in the Zoning Code. Shadid and Williams both questioned if the ruling from the state [2023 Act 16] already makes our code null and void. Then, why do we need to vote on the proposed amendment? Retzlaff explained that we need to eliminate the inconsistent provisions from our Zoning Code so as not to mislead residents and because Wis. Stats. and the Zoning Code require the Plan Commission to make a recommendation on any Zoning Code amendment.

Chairman Wolter opened the Public Hearing at 6:29pm and read two (2) comments submitted via email, one from Tammy Schneider, who lives on Lannon Road, and one from Scott Schroeder, who lives on County Line Road.

Residents that spoke in person included:

Lynn Bednarz, who lives on Pawnee Court, asked for a simple explanation of these changes as they are confusing.

Director Retzlaff stated that unlike the current provision in the zoning code that allows for a protest petition to be filed concerning a zoning amendment, which could be a text amendment or a district/zoning change to a particular property, this new provision would eliminate the impact of that protest petition on the number of members necessary to vote in favor of it. That does not mean that one can't file a protest petition; it simply means that a protest petition won't have the same effect of requiring a favorable vote of a super majority vote of the Village Board to pass a zoning change. Chairman Wolter stated that just so everyone understands the Plan Commission does not vote on this, the PC only makes a recommendation to the Village Board that will vote on this. Wolter stated that he feels the state is doing another overreach by limiting local government's ability to require a super majority and only allow a simple majority. That is a State Statute not ours. We are only changing our code to match the states.

Sarah Larson, who lives on Butternut Road, feels this topic should be tabled as it was

published so late and feels that there are underlying things going on and thinks the timing is bad and this should wait until she's fully represented in District 4 after the April election. Melanie Smythe, who lives on Cedar Lane, stated that she read the State Statute and said it does not state that a protest petition is not an option. She feels Act 16 is a bad decision at the state level and feels it benefits developers. She feels this is forcing high density and next-generation housing on communities. She also feels this decision should be delayed until after April 1st.

Scott Hefle, who lives on Old Farm Road, stated that he has a call into the legislative bureau with the State and said there is no date that municipalities have to comply with this by and feels we are trying to ram this through before the election, and it favors developers. Scott Lopez, who lives on Lannon Road, is against this change and feels this should require citizen approval and thinks this stinks of corruption. Clearly, there is some dissent and this is being rushed through in the night and asked all residents to contact their representatives and let them know their feelings about this.

Tammy Schneider, who lives on Lannon Road, has already submitted her comments via email and wants to speak further on this issue. She feels that it can't be voted on with a protest petition in it as it is not online in the State Statute. She states that multifamily is not desirable in the Lannon Road corridor and feels that the Village Board is not listening to residents. She wants the Plan Commission to vote no on this issue.

Chairman Wolter closed the Public Hearing at 6:50pm.

Staff recommendation is to APPROVE the proposed text amendments as presented and to move the proposed Zoning Code amendments to the Village Board for consideration and action.

Motion 1: Recommendation to approve the proposed text amendments to the Village Board for consideration and action as presented.

Motioned By: David Baum

Seconded By: Josh Tarantino

Discussion Followed. Shadid stated that he needs clarification and feels that people don't understand that this is not about a change in voting by the Plan Commission. Wolter stated that was correct. Shadid thinks there is a misunderstanding, and he suggests that the Plan Commission take a page out of something that was said about the dealings with the solar farm, that just because the state mandates something doesn't mean that we have to capitulate and do it. He is not in favor of this change and especially not before the April 1st election, and feels this should be put on hold. Henk stated that if we were to vote on this today, could this be put on hold until the full board is present? Wolter stated that yes if the Village Board chose to do that at their next meeting. Tarantino asked if a proposed developer comes to the Village with a proposal now, would they be using the statute that

we are trying to adopt? Retzlaff stated that, as of now, certain provisions in our zoning code are outdated, and don't apply. For example, the provision that is currently in the code that allows for a protest petition is no longer allowed under State Statutes. Retzlaff reiterated that in 2017 there was Act 243 that repealed the same protest petition provision from the Wisconsin Statutes and now 2023 Act 16 reinforces the intent to not allow super majority requirements in municipal zoning ordinance by creating new section 66.10015(3)(a) in the Statute that stipulates that only a simple majority of a quorum of the body [Village Board] is required to pass a zoning amendment. That effectively renders a super majority requirement illegal for lack of a better word. So we are cleaning up the code to eliminate that inconsistency. Retzlaff stated that if the Village Board continued to allow a super majority vote requirement with a valid protest petition, and then they denied a zoning change, then the applicant could argue that the State Statute says you can't require a super majority vote and "I'm going to sue". And if they do, and we go to court, we will lose. I guess some residents are advocating that we go down that path, that we spend the money and time to do that because of whatever reasons they feel are important to do so. But Staff and the Village Attorney have an obligation to recommend that we clean up our code to eliminate this provision and maintain consistency with State Statutes. Retzlaff further stated that, like all zoning code amendments, including text amendments like the ones proposed tonight, the Plan Commission is charged under State Statutes to make a recommendation to the approving authority, which is the Village Board, to either approve the amendments or not. Ewert stated that, going back to the presentation earlier, it sounds like this battle was lost to the development lobbyists. Retzlaff said yes, all the way back to 2017, when the first act was passed that eliminated the protest petition allowance in Wisconsin Statutes. That's when it was taken out of the Statutes, and it is made clear now with Act 16 that any zoning amendment only requires a simple majority of a quorum of the Board. Wolter stated that this is not the first time that the state has overreached in his opinion and a very recent example of that is with the solar farm. We had many residents come out to speak out against it and at that time there wasn't even a protest petition, but the Plan Commission and Village Board both denied the CSM and the Site Plan, knowing that we were going directly against State Statute. Wolter stated that it was his hope that the solar farm project was too small for the developer and owner to worry about and that they would go away because they usually liked the bigger farms and this was not that. He stated that we were wrong, and the developer pushed their precedence and appealed their case to the Board of Zoning Appeals. After filing a claim, the Board of Zoning Appeals turned it over. Wolter stated that our hands were tied, and it's not the first time the Board of Appeals has done that. Shadid asked if the Village Board could still pass this measure even if we gave them a negative recommendation? Wolter stated that is correct. Village Administrator Kreklow came forward and suggested that another way to respond to the State would be for

the Village Board and Staff to prepare a resolution to be sent to our State Representatives indicating our opposition to the State Law that was changed. He thinks that might be a better approach than leaving in place an ordinance that contradicts the State Statute. Kreklow stated that although the issue with the solar farm did not incur additional expense for the Village to go through the Board of Zoning Appeals process, if a protest petition came up today, the Village cannot legally honor that protest petition with a 3/4 majority vote requirement by the Village Board. He stated that leaving the Zoning Code as it is [with the protest petition vote requirement] could cause confusion with residents and potential developers and could result in the Village incurring additional expense. Wolter said that the proposed Zoning code amendment doesn't completely eliminate the ability for residents to bring forward a petition of any kind against any zoning changes. That can always be done, and a protest petition turned into the Village Clerk to be used as part of the consideration of the Village Board for whatever that issue is. So it doesn't remove the ability to make petitions.

Motion 2: Amend Motion 1 to add creating a resolution to the State of Wisconsin regarding overstepping local zoning authority

Motioned By: Bridget Henk

Seconded By: David Baum

Discussion on the motion followed.

NOTE: The discussion led to confusion over the appropriateness of amending Motion 1 to include direction to staff to send a resolution to the State and how to vote on such a motion if the members DID NOT want to approve the text amendments but DID want to approve sending a resolution to the State. Therefore, Motion 3 was made as summarized below. According to Robert's Rules of Order, an alternative process could have been to "divide the question" and split Motion 1 into two different motions to be voted on separately.

Motion 3: Motion to have a separate vote on the resolution [to be sent to the State regarding overstepping local zoning authority]

Motioned By: Bridget Henk

Seconded By: David Baum

Yes: Dean Wolter, David Baum, Robert Williams, William Shadid, Bridget Henk

No: Josh Tarantino

Abstain: None

Motion Passed

Following the vote on Motion 3 and after further discussion, a vote was taken on Motion 1 [Recommendation to approve the proposed text amendments to the Village Board for

consideration & action as presented].

Results of Motion 1: (Recommendation to approve the proposed text amendments to the Village Board for consideration & action as presented)

Yes: Dean Wolter, Robert Williams, Bridget Henk

No: David Baum, Josh Tarantino, William Shadid

Abstain: None

Motion Failed (Yes 3, No 3, Abstained 0) - Amendments move to Village Board with no recommendation.

Following the vote on Motion 1 and after further discussion, a vote was taken on Motion 2

Results of Motion 2:

Yes: Dean Wolter, David Baum, Josh Tarantino, Robert Williams, William Shadid, Bridget Henk

No: None

Abstain: None

Motion Passed

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Action Item

ITEM TITLE: A Resolution Opposing the Erosion of Local Home Rule Authority and Requesting the Return of Local Control Over Protests of Zoning Changes

SUBMITTED BY:

SUMMARY EXPLANATION:

As part of the Plan Commission's consideration of the proposed ordinance to incorporate certain statutory changes into the zoning code, including the elimination of protest petitions for zoning amendments, the Plan Commission recommended that the Village Board pass a Resolution opposing those changes to be sent to the legislature. The Resolution begins by highlighting the long history of local control through home rule before moving on to recognize the consistent whittling of this local control and authority before concluding with a rejection of further erosion of these powers, the request that local control be returned for protest petitions, and with the direction to the Clerk to transmit a copy to the legislature.

ATTACHMENT:

1. Resolution Opposing Home Rule Erosion and Return of Protest Petitions

STAFF RECOMMENDATION:

A motion to approve the Resolution as presented.

ACTION BY Committee:

The Plan Commission passed a motion recommending that the Village Board adopt a resolution to send to the State of Wisconsin legislature regarding overstepping local zoning authority [Motion PASSED with a vote of 6-0].

RESOLUTION NO. ____-25

A RESOLUTION OPPOSING THE EROSION OF LOCAL HOME RULE AUTHORITY AND
REQUESTING THE RETURN OF LOCAL CONTROL OVER PROTESTS OF ZONING
CHANGES

WHEREAS, Wis. Const. art. XI, § 3 constitutes “direct and expansive delegation of power to municipalities”ⁱ; and

WHEREAS, this expansive delegation of power gives cities and villages significant control over and the ability to “determine their local affairs and government”ⁱⁱ; and

WHEREAS, Wis. Stat. § 61.34(1) is “a broad grant of home rule authority and vests [a village] with the authority to enact legislation to promote and protect the health, safety, and welfare of the public.”ⁱⁱⁱ; and

WHEREAS, unlike the constitutional home rule authority, which is limited to local affairs, the legislative home rule authority may extend to matters which are of statewide concern^{iv}; and

WHEREAS, the Supreme Court has long recognized “That many matters while of state-wide concern, affecting the people and state at large somewhat remotely and indirectly, yet at the same time affect the individual municipalities directly and intimately, can consistently be and are local affairs”^v; and

WHEREAS, the legislature has further provided municipalities vast authority under Wis. Stat. § 62.23(7) to regulate local land use through zoning;

WHEREAS, these broad grants of constitutional and legislative authority notwithstanding, the legislature has pursued a persistent campaign removing local control over land use decisions;^{vi} and

WHEREAS, the most egregious of these efforts were Act 243 and Act 16, each of which perpetrated, among numerous limitations on local authority, the removal of the power of local land owners to protest zoning changes that affected their property, including the provisions of Act 16 which expressly ties the hands of local legislative bodies by prohibiting their ability to given effect to such protests—a purely local affair; and

WHEREAS, the right to protest zoning changes dates to 1917, and such right remained largely unchanged for 100 years until its removal from Chapter 62 under 2017 Wisconsin Act 243; and

WHEREAS, these protest provisions were intended to provide landowners who were directly affected by zoning changes that would decrease “their land value and enjoyment of their property” a meaningful voice with respect to legislation that impacted their property rights^{vii}; and

WHEREAS, under the guise of statewide interest, by enacting these pieces of legislation the legislature chose to empower outside developers to exert their will to achieve their preferred profit margin over ensuring the protection of property rights for owners who are negatively impacted by zoning changes, many of whom are long-time residents on the community; and

WHEREAS, “All politics is local;”

NOW, THEREFORE, BE IT RESOLVED that the Village Board of the Village of Germantown, Wisconsin, does hereby oppose any and all attempts by the State Legislature to further erode local home rule authority, and especially that home rule authority which functions to provide local control and authority over land use decisions.

BE IT FURTHER RESOLVED that the Village Board does hereby request the reversal of the provisions of 2023 Wisconsin Act 16 which eliminated the ability for local communities to elect to give effect to zoning protests to protect local property rights through the creation of Wis. Stat. § 66.10015(3)(a).

BE IT FURTHER RESOLVED that the Village Clerk shall transmit a certified copy of this Resolution to the Governor, the President of the Senate, the Speaker of the Assembly, the Majority and Minority Leaders of both Houses, and the elected Assembly and Senate members whose district includes the Village.

Adopted: March 17, 2025

Vote: Ayes:

Nays:

Absent:

Dean Wolter, Village President

ATTEST:

Donna Ott, Village Clerk

ⁱ State ex rel. Teunas v. County of Kenosha, 142 Wis.2d 498, 504, 418 N.W.2d 833 (1988)

ⁱⁱ Wis. Const. art. XI, § 3

ⁱⁱⁱ Johnston v. City of Sheboygan, 30 Wis. 2d 179, 185–86, 140 N.W.2d 247, 251 (1966)

^{iv} See Wis. Environmental Decade, Inc. v. DNR, 85 Wis.2d 518, 533, 271 N.W.2d 69 (1978)

^v State v. City of Milwaukee, 190 Wis. 633, 209 N.W. 860, 862 (1926)(holding that “the maximum height of buildings in a city is a local affair of such city”)

^{vi} See, e.g., 2013 Wisconsin Acts 20 and 74, 2015 Wisconsin Act 391, 2017 Wisconsin Acts 67, 68, and 243, 2021 Wisconsin Act 239, and 2023 Wisconsin Act 16; See also Wis. Stat. §§ 66.0403 (limiting local control over wind and solar energy projects), 66.0404 (limiting local control over cellular tower citing)

^{vii} Prescher v. City of Wauwatosa, 34 Wis. 2d 421, 431, 149 N.W.2d 541, 546 (1967)

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Presentation

ITEM TITLE: Presentation on Tax Increment Districts in Germantown

SUBMITTED BY: Steve Kreklow, Administrator

SUMMARY EXPLANATION:

As a result of continued misinformation on social media as well as incorrect comments made at public meetings, I have received requests to go provide an overview of tax increment districts in general and their application in Germantown. This item is for presentation and discussion only.

ATTACHMENT:

1. 250317 Tax Increment District Overview

STAFF RECOMMENDATION:

For discussion only.

ACTION BY Committee:



Tax Increment District Overview

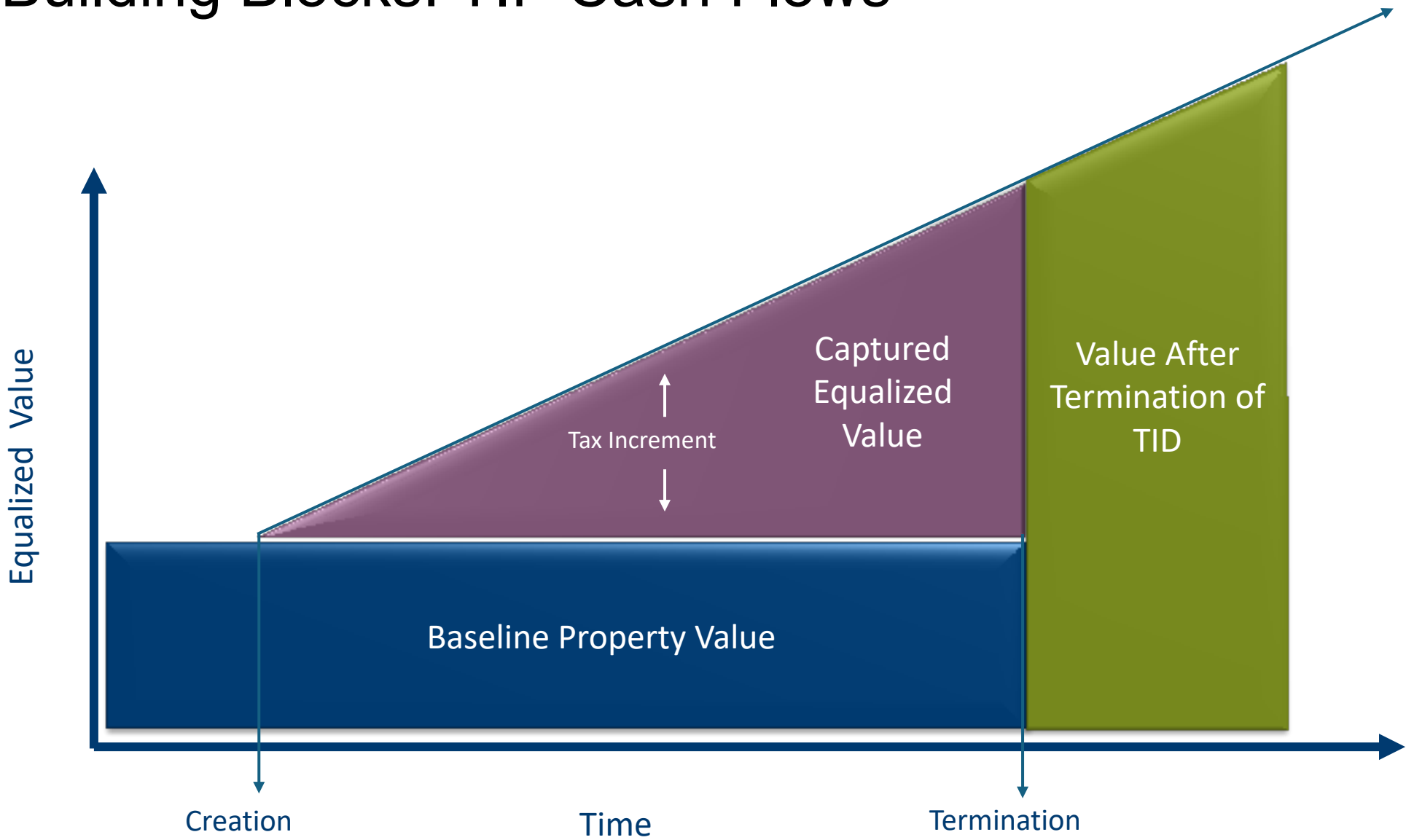
Presented to the Village Board
March 17, 2025



What is Tax Increment Financing?

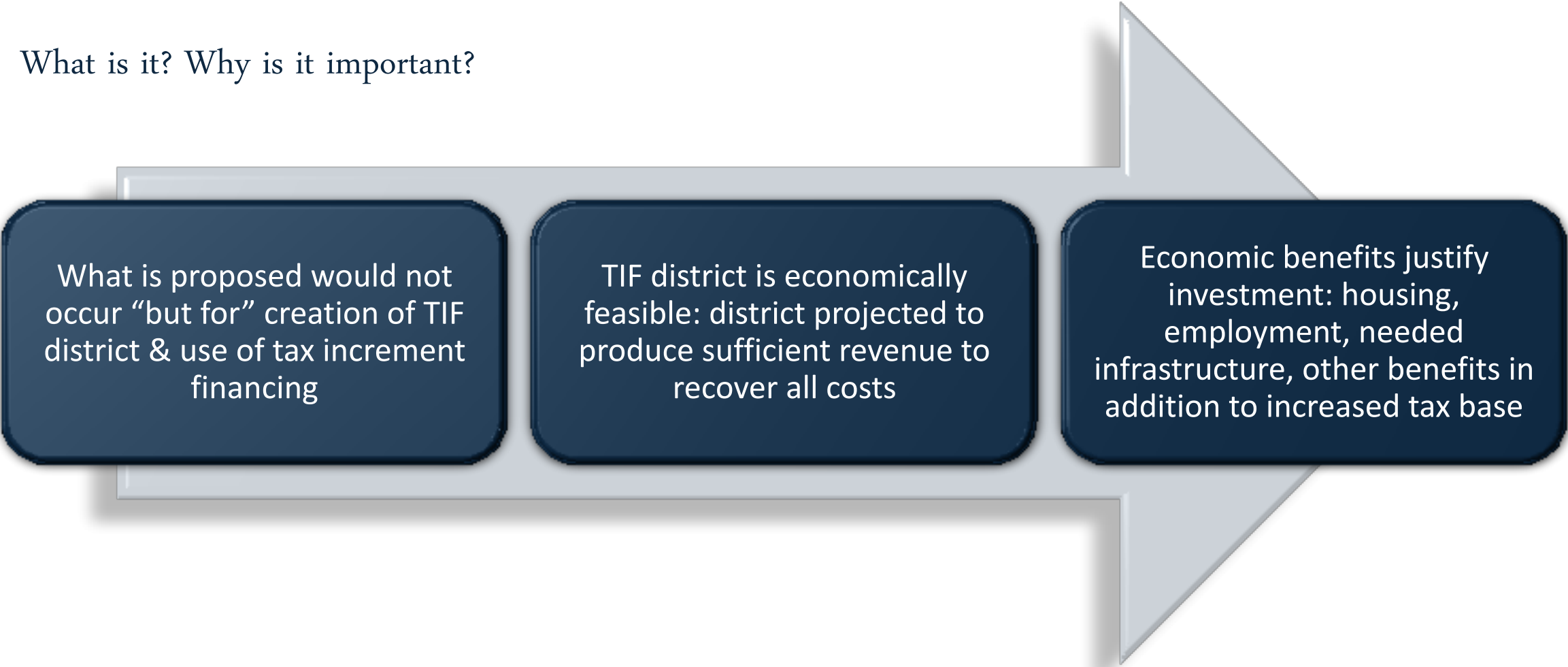
- Key acronyms:
 - TIF = Tax Increment Financing (*the tool*)
 - TID = Tax Increment District (*where the tool is used - boundary*)
- Powerful economic development tool
- Allows municipalities to capture incremental property tax revenue from tax base **growth** in defined area & use it to **benefit** that area

Building Blocks: TIF Cash Flows



The “But-For” Test

What is it? Why is it important?



What is proposed would not occur “but for” creation of TIF district & use of tax increment financing

TIF district is economically feasible: district projected to produce sufficient revenue to recover all costs

Economic benefits justify investment: housing, employment, needed infrastructure, other benefits in addition to increased tax base



Myth...

- The but-for test requires municipalities to prove nothing would ever develop in the proposed TIF area.

Reality...

- Wis. Stat. 66.1105(4m)(c)1.a.: Whether *the development expected* in the tax incremental district would occur without the use of tax incremental financing
- The local jurisdiction & the JRB do not need to find that no development will occur absent TIF, only that *the development expected* will not occur (*i.e., what is specifically being proposed at the time of TID creation & amendment*)
- TIF can be used to incentivize development the community desires to see, even if a lesser quality development might occur on a site without TIF





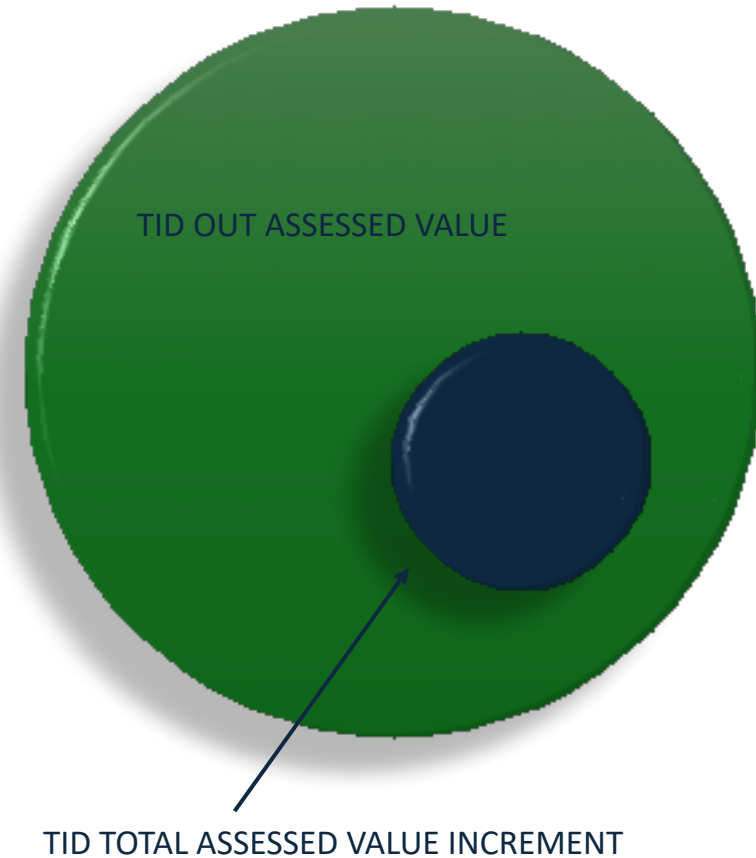
Myth....

TIF increases property taxes.



Reality

- Municipality & all other taxing jurisdictions levy generally applicable property tax
- Total levy amount divided by total TID out assessed value generations a real property tax rate expressed in \$/\$1,000 of value (mill rate)
- Tax rate is applied to value captured in TIDs & total amount of tax increment is collected by the municipality
- Total tax increment apportioned to individual TIDs pro-rated by respective value increment



Reality

- All taxpayers pay the same rate regardless whether the property is in or out of a TID
- It's where the tax revenue goes & what it can be used for...



Supports GF Expenditures
Municipal Levy Only



TIF-Eligible Expenditures
All Jurisdiction's Levies



2025 Legislative Changes



- State closed the TID “loophole” for net new construction.
- Municipalities were allowed to include 100% of TID new construction in net new construction and include 50% of the value of a TID in net new construction when the TID closes.
- Under new legislation, 90% of TID construction can be included in net new construction and include 10% of the value of a TID in net new construction when the TID closes.
 - Exception: 25% of the value of a TID can be included in net new construction when a TID closes if it closes before 75% of the legal term.

Use of TIF to Fundamentally Change a Community

- Village of Pewaukee Downtown
- City of Oak Creek
- City of West Bend Downtown and River Front
- City of Cedarburg Downtown
- City of Mequon
- Village of Sussex
- Village of Grafton
- The Corner Town of Brookfield

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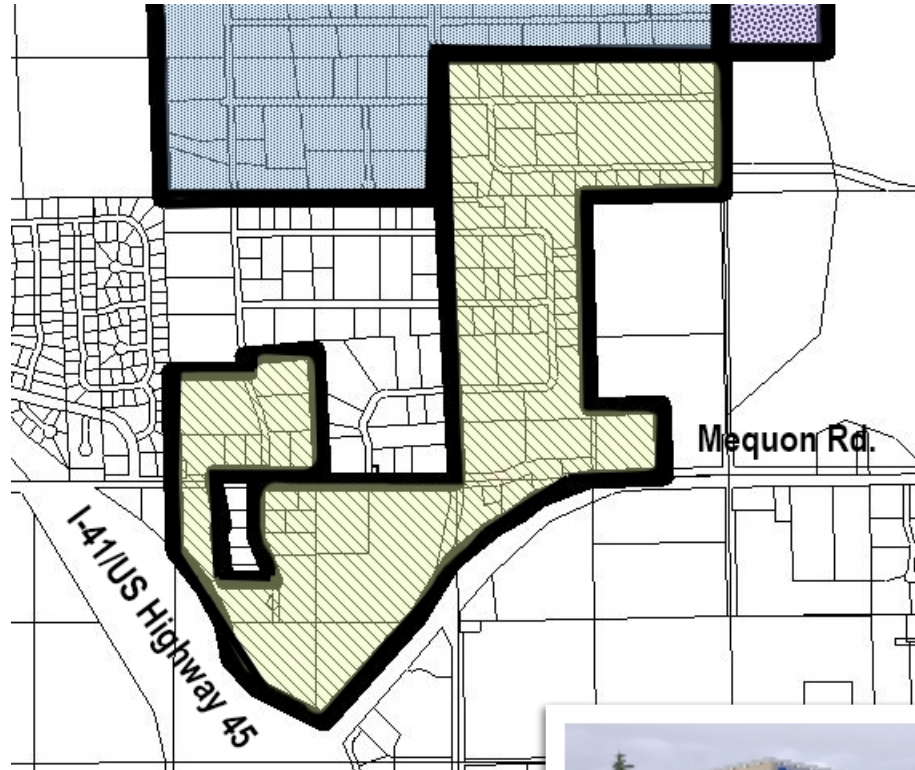
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Examples from Germantown

- TIDs 1 through 5 were created in the 1980's and 90's. The last of these TIDs closed in 2019.
- Development in these TIDs has added about \$288 million to Germantown's property tax base.
- Without the development in these TIDs, a \$425,000 home would be paying over \$700 more in property taxes than they are today.

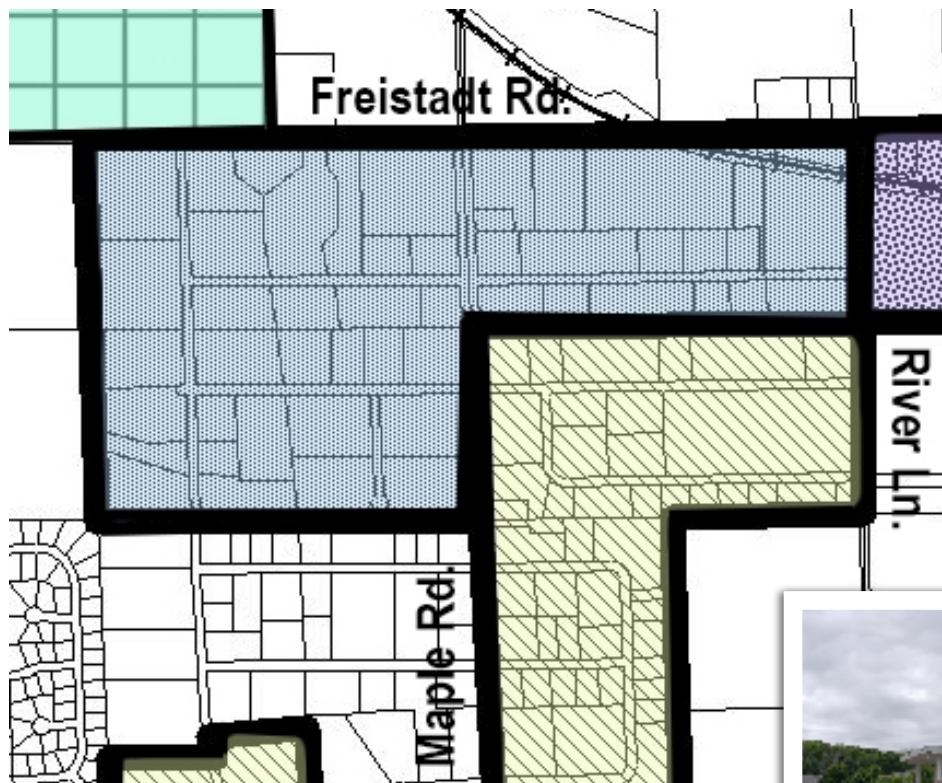
TID 1: 1986-1994



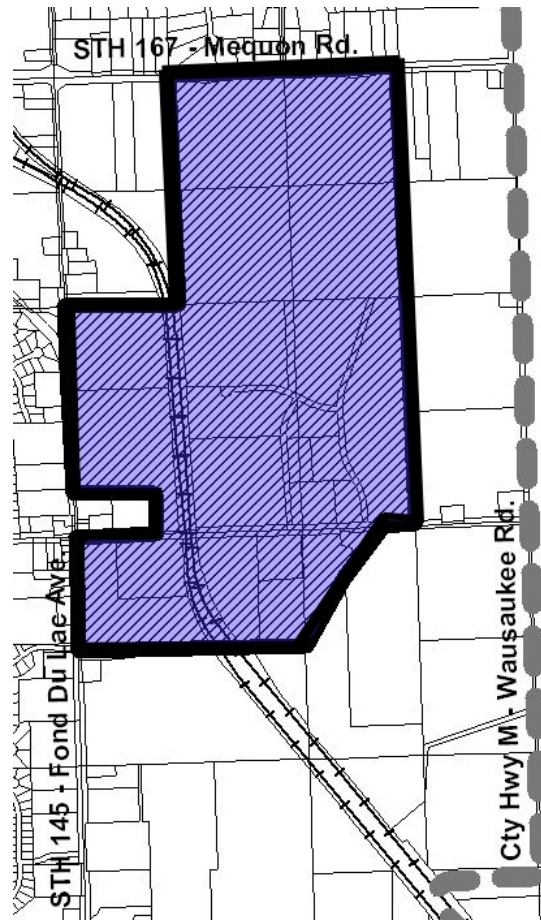
TID 2: 1988-1994



TID 3: 1989-2013



TID 4: 1994-2019



TID 5: 1998-2013





Active TIDs: TID 6

- Willow Creek Industrial Park – off Appleton Avenue
- Created in 2014
- Base Value = \$2,796,400
- Value on 1/1/2024 = \$52,123,800
- Expected Closure = 2032



Active TIDs: TID 7

- JW Speaker northwest to Holy Hill Road
- Create in 2017
- Base Value: \$9,892,300
- Incremental Value: \$23,673,900
- Expected Closure: 2036



Active TIDs: TID 8

- Germantown Gateway Business Park
- Created: 2018
- Base Value: \$640,700
- Incremental Value: \$200,559,000
- Expected Closure: 2032



Active TIDs: TID 9

- Donges Bay and Wausaukee
- Created: 2022
- Base Value: \$188,959
- Incremental Value: \$23,552,000
- Expected Closure: 2036



Proposed TID: TID 10

- Created: 2025? (Redevelopment TID)
- Intersection of Mequon/Pilgrim Road
- Base Value: \$22.2 million
- Estimated Incremental Value: \$84.6 million
- Expected Closure: 2049

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Questions/Discussion



BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Discussion

ITEM TITLE: Germantown School District Resolution Concerning the Village Center Project

SUBMITTED BY: Steve Kreklow, Administrator

SUMMARY EXPLANATION:

The attached Resolution of the Germantown School Board was revived by the Village this week.

ATTACHMENT:

1. 3.11.25 Resolution of the Germantown School District

STAFF RECOMMENDATION:

Discussion or such action as the Board desires to take

ACTION BY Committee:

Resolution of the Germantown School Wisconsin School District

Whereas, the Germantown School Board is committed to a strong working relationship with the Village of Germantown to assist both in strategic planning to achieve the best positive outcomes for village residents and the students of the Germantown School District and

Whereas, the Germantown School Board has commissioned an enrollment study scheduled for completion in April 2025; and

Whereas, the Germantown School District is nearing the completion of a facility use study to better understand the capacity and condition of current facilities, and

Whereas, these studies will be used to guide the district's strategic planning process and to provide factual data to our community partners, such as the Village of Germantown, for use in their planning processes and

Whereas, single-family homes contribute to the stability of a school district's enrollment, and

Whereas, the village has seen an increase in residential development proposals anchored in high density rental based units, and

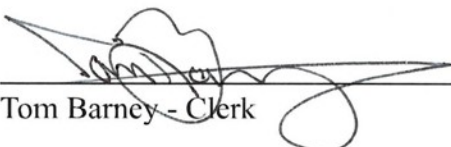
Whereas, the current level and location of the village's current inventory of high density rental units cause a high level of financial strain on the school district, and

Whereas, the proposed Village Center project will impact the same areas currently impacted by the majority of the village's rental units, and

Whereas, presentations about several high density rental based units to the Village Board, Planning Commission, and community related to the Village Center project have consistently misrepresented the Germantown School District's position on this development;

Now, therefore, be it resolved that the Germantown School District respectfully requests that the Village of Germantown not take any action to approve or permit any advancement of the Village Center project, or otherwise allow the project to move forward, until such time as the Germantown School District's enrollment and facility use studies have been completed and the District has had sufficient time to thoroughly analyze the studies and to understand the potential impact continued high density residential developments may have on the District and its educational community, including but not limited to the District's infrastructure and finances.

Adopted March 11, 2025 by a vote of 6-0


Tom Barney - Clerk


Russell Ewert - President

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Action Item

ITEM TITLE: A Resolution Ratifying an Amendment to the Scope of Services with Ehlers And Associates, Inc. For Work Related to the Creation of a Tax Increment District in the Village Center District

SUBMITTED BY: Brian Sajdak, Attorney

SUMMARY EXPLANATION:

As part of the Village Center project, at the February 17, 2025 meeting, the Village Board authorized staff to proceed with the acquisition of three properties consistent with the overall timeline and process that was shared at the meeting. The likely need for a TID has been regularly discussed with the Board during its consideration of this matter and was an implicit part of the Board's authorization to proceed with the closings.

There has been some public concern that the Village Board did not formally approve the work related to the formation of a TID for the area. Ehlers, as the Village's financial consultant, is not unlike legal services, which is to say that there is generally an engagement to provide all financial consulting services work that the Village asks its to complete without engagements for specific matters or projects unless different fee terms apply. Looking back at prior work completed by Ehlers, this process has been utilized. However, that same review revealed that for work related to TIDs, that the Village Board did formally approve and direct Ehlers to complete certain work, including TID formation. This aspect was overlooked as part of the February 17th meeting. In the interests of transparency and consistency with past practice, the proposed resolution ratifies the work Ehlers has completed to date on the Village Center TID and authorizes them to continue the work.

ATTACHMENT:

1. Resolution ratifying Ehlers TID work

STAFF RECOMMENDATION:

A motion to approve the resolution as presented.

ACTION BY Committee:

RESOLUTION NO. ____-25

A RESOLUTION RATIFYING AN AMENDMENT TO THE SCOPE OF SERVICES
WITH EHLERS AND ASSOCIATES, INC. FOR WORK RELATED TO THE CREATION
OF A TAX INCREMENT DISTRICT IN THE VILLAGE CENTER DISTRICT

WHEREAS, the Village has an existing contract with Ehlers and Associates, Inc. (“Ehlers”) for general financial advising services; and

WHEREAS, the Village has been considering purchasing properties within the Village’s Village Center district for the purposes developing a plan for development within the area; and

WHEREAS, during the course of this consideration, the likely need for a tax increment district to fund aspects of any development related to the plan; and

WHEREAS, at the Village Board meeting on February 17, 2025, a presentation was made related to the timing and process related to the development plan, including the potential creation of a tax increment district; and

WHEREAS, at the conclusion of the presentation the Village Board approved moving forward with the property acquisitions consistent with the presented timeline; and

WHEREAS, following that approval, Ehlers commenced work on the creation of a tax increment district in the Village Center District; and

WHEREAS, upon review, the existing scope of services does not provide for this work and the Village Board desires to amend and ratify the same so as to allow work to continue;

NOW, THEREFORE, BE IT RESOLVED that the Village Board of the Village of Germantown, Wisconsin, does hereby approve and ratify an amendment to the Ehlers scope of services to provide for work related to the creation of a tax increment district in the Village Center.

Adopted: March 17, 2025

Vote: Ayes:

Nays:

Absent:

Dean Wolter, Village President

RESOLUTION NO. _____-25
Page 2

ATTEST:

Donna Ott, Village Clerk

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Action Item

ITEM TITLE: Claim for Damages of Angie Berndt. The Village Board may convene into closed session pursuant to Wis. Stat. § 19.85(1)(g) for the purpose of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved and then may reconvene into open session to take such action as it deems appropriate.

SUBMITTED BY: Brian Sajdak, Attorney

SUMMARY EXPLANATION:

An attorney representing Angie Berndt has filed a claim with the Village to recover damages related to a dog bite allegedly caused by a Village canine officer. Wis. Stat. § 19.85(1)(g) authorizes a governmental body to go into closed session for the purpose of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. In this case, it is intended that the closed session would be utilized to discuss strategy with respect to likely litigation, including potential settlement positions.

ATTACHMENT:

1. Berndt Dog Bite
2. Arek Dog Bite
3. A. Berndt Demand 11-27-24
4. Aurora Health Care CERT Records and Bills 6.8.24
5. Meijer Pharmacy CERT Bills 6.8.24-8.22.24
6. Ascension Family Practice Associates of Cedarburg CERT Records 6.11.24
7. A. Berndt Medical Itemization 11-20-24
8. Ascension Family Practice Associates of Cedarburg Cert bills 6.11.24
9. Photo

STAFF RECOMMENDATION:

A motion to enter into closed session pursuant to Wis. Stat. § 19.85(1)(g) for the purpose of conferring with the Village Attorney concerning the Village's strategy with respect to in which it is likely to become involved.

ACTION BY Committee:

BUSINESS OF THE VILLAGE BOARD

MEETING DATE: March 17, 2025

PLACEMENT: Action Item

ITEM TITLE: Administrator Setting 2025 Performance Goals. The Village Board may convene into closed session pursuant to Wis. Stat. § 19.85(1)(c) for the purpose of considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility and then may reconvene into open session to take such action as it deems appropriate.

SUBMITTED BY:

SUMMARY EXPLANATION:

The Village Board may enter closed session pursuant to Wis. Stat. § 19.85(1)(c) for the purpose of considering employment, promotion, compensation or performance evaluation data of any public employee over which the Board has jurisdiction or exercises responsibility. Establishing goals for a public employee is a critical component of performance reviews, and this section authorizes the Board to enter into closed session for that purpose.

ATTACHMENT:

STAFF RECOMMENDATION:

A motion to enter closed session pursuant to Wis. Stat. §19.85(1)(c) for the purpose of considering employment, promotion, compensation or performance evaluation data of the Village Administrator.

ACTION BY Committee: