



## PLAN COMMISSION AGENDA

May 9, 2024 – 6:00 pm  
Village Hall  
235 Hickory Street, Pewaukee, WI 53072

To view the meeting: <https://www.youtube.com/live/gNM7ARPsNAI?si=YuPsExcbLueSdvUZ>

1. Call to Order, Roll Call, Pledge of Allegiance, & Moment of Silence.
2. Public Hearings – None.
3. Citizen Comments: *This is an opportunity for citizens to share their opinions with Commission Members on any topic they choose. However, due to Wisconsin Open Meeting laws, the Commission is not able to answer questions or respond to your comments. All comments should be directed to the Commission. Comments are limited to 3 minutes per speaker. Speakers are asked to use the podium and state their name and address.*
4. Approval of the Minutes:
  - a. Regular Plan Commission Meeting – April 11, 2024
5. Old Business.
  - a. Review, discussion, and possible action/recommendation to Village Board to impose certain new design specifications/regulations pertaining to freestanding ground signs in the B-2 Downtown Business District. This matter is Village initiated.
6. New Business.
  - a. Review, discussion, and consultative feedback to applicant/property owner Glen at Pewaukee Lake LLC in c/o John Wahlen and Joe Orendorf, to build a home on Outlot 2 of the Glen at Pewaukee Lake subdivision. This 5,651 sq. ft. (~.13-acres) Outlot is zoned R-5 Single-Family Residential District with Residential Infill-Redevelopment (RIR) Overlay District.
  - b. Review, discussion, and possible action on proposed building and site plan modifications at 115 W. Wisconsin Avenue. This .17-acre, B-2 Downtown Business zoned property is owned by Joseph Grasch Development LLC.
  - c. Review, discussion, and possible action on the proposed ‘development-wide swimming pool permissions and restrictions plan’ for the new 36-lot Riverside Preserve subdivision, an R-5 Single-Family Residential with Residential Infill-Redevelopment Overlay zoned neighborhood located at the southwest corner of Ridgeway Drive and Riverside Drive. The applicant/property owner is MK/SS LLC in c/o Mike and Jordan Kaerek.
7. Citizen Comments. – *This is an opportunity for citizens to share their opinions with Commission Members on any topic they choose. However, due to Wisconsin Open Meeting laws, the Commission is not able to answer questions or respond to your comments. All comments should be directed to the Commission. Comments are*

*limited to 3 minutes per speaker. Speakers are asked to use the podium and state their name and address.*

8. Adjournment

Note: It is possible that members and/or possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; action will not be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in the notice. Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. To request such assistance, contact the Village Clerk at 262-691-5660.

Dated: May 3, 2024

**Plan Commission Meeting  
April 11, 2024 – 6:00 pm  
Village Hall  
235 Hickory Street, Pewaukee, WI 53072**

<https://www.youtube.com/live/gNM7ARPsNAI?si=YuPsExcbLueSdvUZ>

**1. Call to Order and Roll Call, Pledge of Allegiance, & Moment of Silence**

President Knutson called the meeting to order at approximately 6:00 p.m.

Plan Commission members present: Comm. Mark Grabowski; Comm. Theresa Hoff; Comm. Sam Liebert; Comm. Brian Belt; Comm. Katie Jelacic; Trustee Craig Roberts, and President Jeff Knutson.

Also present: Village Attorney, Matt Gralinski; Village Planner, Mary Censky, and Village Deputy Clerk, Jenna Peter.

President Knutson thanked Trustee Roberts for his time and effort on the Plan Commission and stated that he will be sadly missed.

**2. Public Hearings – None.**

**3. Citizen comments – None.**

**4. Approval of the Minutes**

**a. Regular Plan Commission Meeting – March 14, 2024.**

Comm. Hoff motioned/seconded by Comm. Belt to approve the March 14, 2024, Regular Plan Commission Meeting minutes.

**Motion carried 7-0.**

**5. Old Business – None.**

**6. New Business**

**a. Review, Discussion and Possible Recommendation to Village Board on a Draft Ordinance to Repeal Section 40.122 of the Village Code regarding petitions in protest of proposed amendments to the Zoning Code. This matter is Village initiated.**

Attorney Gralinski explained the state legislature recently enacted 2023 Wisconsin Act 16 which made a number of changes to local zoning law. One of these changes was the creation of the Wisconsin Statute Section 66.10015(3)(a), which effectively prohibits supermajority requirements for the approval of zoning enactments upon receipt of a protest petition. The previous 2017 Wisconsin Act 243 repealed a previous state statutory provision which required a  $\frac{3}{4}$  vote by a governing body to approve a proposed zoning amendment when a protest petition was filed. Although that Act eliminated the state statutory protest petition, the League of Wisconsin Municipalities, as well as, Hippenmeyer, Reilly and Blum's office, opined that municipalities could still enact or maintain local ordinances establishing a protest petition process similar or identical to the one provided in previous state statute. With the enactment of 2023 Wisconsin Act 16 there is now a clear prohibition on supermajority voting requirements for zoning changes, as the section requires approval of any zoning amendments by a simple majority of the Board's members elect. Only in limited circumstances may a 2/3 vote be required. Those circumstances are a downzoning ordinance a zoning change related to an airport.

**Comm. Liebert motioned/seconded by Trustee Roberts to recommend to the Village Board approval to repeal Section 40.122 of the Village Code pertaining to petitions in protest of proposed amendments to the Zoning Code; the effective date of this change being January 1, 2025 in accordance with state law.**

**Motion carried 7-0.**

- b. Review, Discussion and Possible Recommendation to the Village Board on a Draft Ordinance to Amend Section 40.314 of the Code (i.e. Permitted Uses in the B-5 District), adding the uses “Bicycle repair shop, excluding outside storage or display of materials, equipment, supplies, bikes, or bike parts.” and “Bicycle repair shop, including outside storage of materials, equipment, supplies, bikes, or bike parts provided the Planning Commission has first approved, through Site Plan approval, the plans for location and screening of such storage.”, as permitted uses in the B-5 Light Industrial Zoning District. The applicant in this matter is Eleazar Kelling.**

Planner Censky explained the applicant is looking to do bicycle repair in the Village. When she researched this for the applicant, she could not find a zoning district that allows this specific use. The applicant would like to conduct this use in the B-5 Light Industrial District. As drafted, any outside storage or display of materials, equipment, supplies, bikes, or bike parts would require a Site Plan Approval or a Conditional Use Grant through the Plan Commission. The indoor repair of bicycles with no outside storage or display would not need Plan Commission approval.

**Comm. Roberts motioned/seconded by Comm. Hoff to recommend to the Village Board to Amend Section 40.314 of Village Code as presented by the Planner.**

**Motion carried 7-0.**

- c. Review, Discussion, and Feedback to Village Staff regarding the regulations, guidelines, and approval process pertaining to freestanding ground signs in the B-2 Downtown Business District. This matter is Village initiated.**

Censky stated there was a request to review the Village’s current regulations for freestanding (i.e. ground mounted monument or pole mounted) signs. She reviewed the applicable Code provisions and Downtown Design Guidelines with the Commission. Trustee Roberts explained the reason this is being brought to the Commission’s attention is because of a sign that was erected on Oakton Ave that has been getting negative comments. The sign was approved with the current sign code; however, it is a big, lighted sign that looks out of place in the area that it is in. The Commission members agreed that there was a common interest in changing certain parts of the Code. Censky will come back to the Plan Commission with a draft of options at the May meeting.

- 7. Citizen Comments – Eleazar Kelling @ 571 E Wisconsin Ave Apt #6 – Mr. Kelling thanked the Plan Commission and stated with Velocity Bike shop officially closed, he is simply trying to find a place for a repair shop and is not contemplating any retail sales or outside storage at this time.**

**8. Adjournment -**

**Trustee Roberts motioned/seconded by Comm. Belt to adjourn the April 11, 2024, Regular Plan Commission meeting at approximately 6:54 pm.**

**Motion carried 7-0.**

## STAFF REPORT

To: Village of Pewaukee Plan Commission

By: Mary Censky

Date Prepared: May 9, 2024

### General Information:

Agenda Item: **5.a.**

Applicant:

N/A

Status of Applicant:

Village initiated item

Requested Action:

Review, discussion, and possible action/recommendation to the Village Board regarding Code modifications related to freestanding/monument signs in the B-2 Downtown Business District.

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### Background:

The Planning Commission had requested that the regulations currently applicable to freestanding (i.e., ground mounted monument or pole mounted) signs be presented for review and discussion. This was done at the April, 2024 Planning Commission meeting.

Feedback from the Commission was for the Staff to propose changes that will ensure the freestanding/monument signs in the B-2 Downtown Business District will be more consistent with the types depicted in the Downtown Design Guidelines (i.e.,





and less similar, generally, to the sign types more commonly seen in the B-1 and B-3 Commercial areas of the Village.

To this end, the Planner proposes the following changes for review and consideration:

### **Current Regulations:**

Section [70.100](#) of the Village Code provides the following statement of Purpose as to signs in the Village, generally:

The purpose of this chapter shall be to:

- (1) Regulate the size, type, quantity, construction standards, maintenance and placement of signs situated within the boundaries of the Village of Pewaukee, Wisconsin.
- (2) Promote the public health, safety, welfare and comfort of the general public by:
  - a. To enable the public to locate goods, services, activities, places and facilities without difficulty or confusion;
  - b. To protect property values, public investment and overall neighborhood character by promoting an attractive, harmonious and aesthetically-pleasing environment free from excessive visual clutter of signs and preventing conditions which have undesirable impacts on surrounding properties;
  - c. Reducing distractions and obstructions from signs which could adversely impact pedestrian and/or traffic safety; and
  - d. Alleviating potential hazards caused by signs projecting over or encroaching upon the public right-of-way; and
  - e. Preserving or enhancing the natural beauty and unique physical characteristics of the village as a community in which to live and work by requiring new and replacement signage which is:
    1. Aesthetically harmonious with the nearby buildings, surrounding neighborhood aesthetics and other signs in the area as to, for instance but not necessarily limited to, materials, colors, scale, placement/location, landscaping, manner/hours of illumination;
    2. Complementary to the village's architectural character and unobtrusive style of development.

Section [70.115\(d\)\(2\) of the Village Code](#) lists the specific permissions for freestanding signs in the B-2 Downtown Business Zoning District as follows:

(2) *Freestanding ground* signs. On properties zoned B-1 — B-5, IPS, P-1 and containing permitted and approved use(s) and building(s):

**(1) In General.**

- a. *Number.* There shall not be more than one freestanding ground/monument sign for each principal building except where a building is situated on a lot that abuts two or more streets, then one freestanding sign may be allowed for each abutting street frontage.
- b. *Area.* The gross surface area of a ground sign shall not exceed 50 square feet of area ~~(not to exceed 40 square feet for properties zoned B-2).~~
- c. *Location.* A ground sign may not be located closer than ten feet to any property line, or driveway. No freestanding ground signs shall be placed closer than 50 feet to another freestanding sign on any single property measured as the crow fly's between the nearest points on the sign or sign structure of the two freestanding permanent signs.
- d. *Height.* A ground sign shall not project higher than ten feet, as

measured from preconstruction grade at the base of the sign.

**(II) In the B-2 Downtown Business District. In the B-2 Downtown Business District, the following additional provisions as to freestanding ground signs shall also apply.**

- a. **Freestanding ground signs in the B-2 Downtown Business District shall not exceed 40 square feet in area.**
- b. **Materials, colors, and architectural design/style of freestanding ground signs in the B-2 Downtown Business District shall match or compliment the materials, colors, and architectural design/style of the principal building on the site. If there is any question as to whether a sign matches or compliments a principal building, the proposed sign plan and permit application shall be advanced to the Planning Commission for their review, consideration and final action/dispensation on the Sign Permit Application. The Planning Commission may attach any conditions it deems necessary to any approval it may grant, to the extent it has determined such conditions directly relate to improving the extent to which the proposed sign matches or compliments the principal building.**
- c. **Any freestanding ground sign in the B-2 Downtown Business District that is proposed to be internally illuminated shall be subject to review and approval by the Village Planning Commission. The Planning Commission shall consider and set the intensity, temperature, intermittence, and permitted hours of illumination for any internally illuminated sign in the B-2 Downtown Business District.**
  - (i) **Except in the case of existing, permitted gas stations in service on or before June 1, 2024 and continuously operating since then, freestanding ground signs in the B-2 Downtown Business District shall not be permitted to use internal illumination that is passed through a plastic or lexan-type sign face. In the case of modifications to or replacement of an existing freestanding ground sign serving an existing, permitted gas station in service on or before June 1, 2024 and continuously operating since then in the B-2 Downtown Business District, the Planning Commission may permit, at their sole discretion, modifications to or replacement of such signs using internally lit signs in which the illumination is passed through a plastic or lexan-type sign face.**

**Recommendation:**

If the Planning Commission favors the above changes as proposed or modified, the Village staff and Attorney will coordinate to place these changes into Ordinance format and advance your recommendation to the Village Board for their consideration and possible adoption.

## STAFF REPORT

To: Village of Pewaukee Plan Commission

By: Mary Censky

Date Prepared: May 9, 2024

### **General Information:**

**Agenda Item: 6.a.**

**Applicant/Property Owner**

The Glen at Pewaukee Lake LLC in  
c/o John Wahlen and Joe Orendorf

**Requested Action:**

Review, discussion and consultative  
feedback as to building a small home  
on Outlot 2 of the Glen at Pewaukee  
Lake subdivision.

**Current Zoning:**

R-5 Single-Family Residential  
District with Residential Infill-  
Redevelopment (RIR) Overlay  
District.

**Current Master Plan Classification:**

Single-Family Residential

**Requested Master Plan Classification:**

Single Family Residential

**Surrounding Zoning/Land Use:**

North: R-5 Single Family Residential  
South: R-5 Single Family Residential  
East:  
West: R-5 Single Family Residential

**Lot Size:**

5,651 sq. ft. (~.13-acres)  
Approximately 55' wide x 102' deep

**Location:**

Between 320 Quinlan Drive and 487  
W. Wisconsin Avenue

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### **Discussion:**

The applicant is inquiring about building a small home (see concept drawing attached) on this Glen at Pewaukee Lake (GPL) Outlot #2. At the time of the GPL plat approvals, the Village was aware that the subdivision developer would be retaining ownership of this Outlot vs transferring it to the GPL homeowner's association.

The lot was made an outlot because it does not meet the minimum lot size standards of the R-5 Single Family Residential with Residential Infill-Redevelopment (RIR) Overlay District (i.e.,

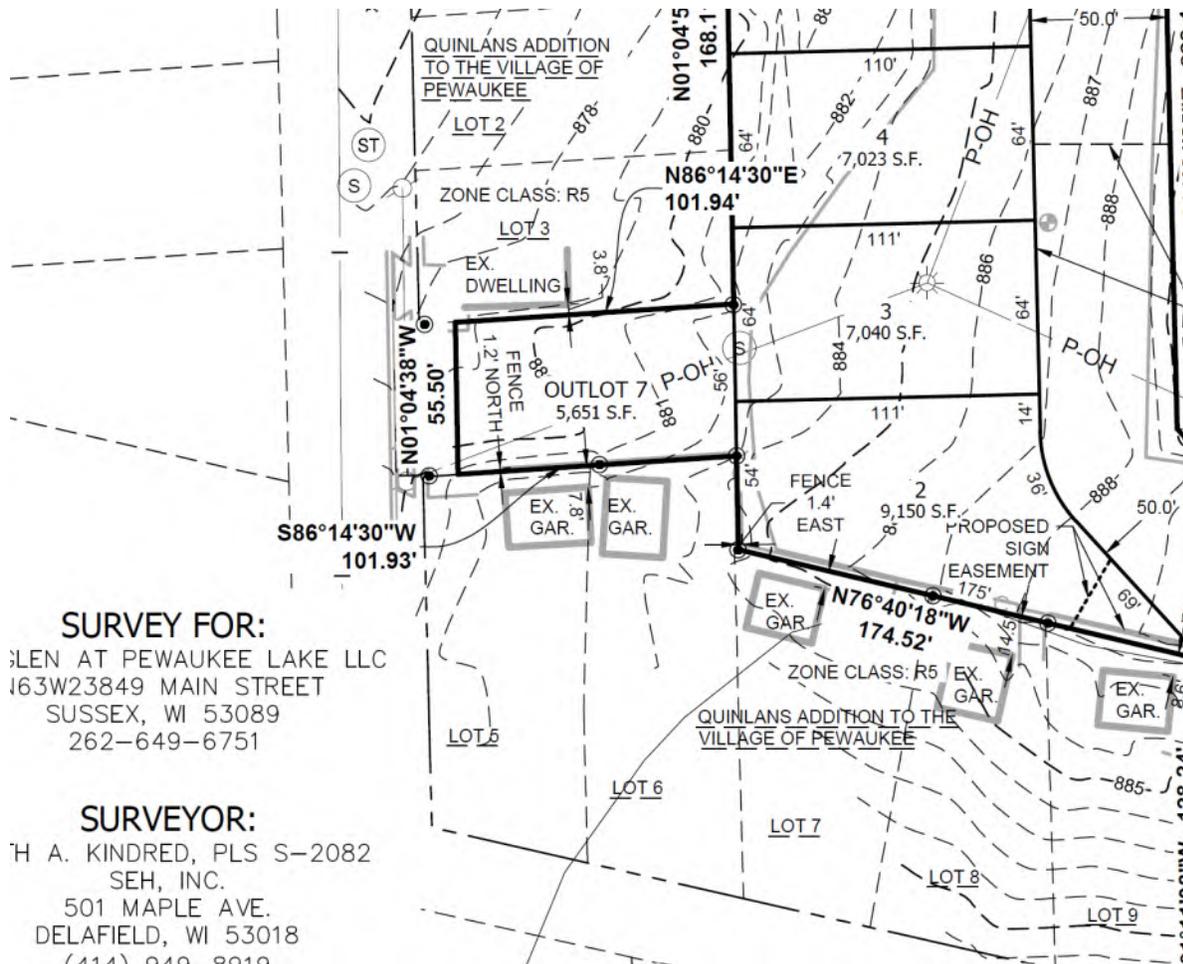
[Section 40.367.5](#)

The minimum required average lot area<sup>1</sup> per single-family residence shall be 8,500 square feet.

The village may permit an average lot area <sup>1</sup> as low as 7,500 square feet per single-family residence for redevelopment projects. In this instance, redevelopment projects are defined as development projects where all or at least a substantial percentage (as determined by the village) of the existing improvements value of a property is razed and removed and replaced with new construction. Village approval of the 7,500 square foot average lot size as described above shall not be viewed as a vested right and shall be determined based on a case-by-case assessment of each development proposal and the public interest served by the proposal.

In no case shall any lot be permitted that is less than 7,000 square feet in area.

<sup>1</sup> (i.e. Average lot area means the total square footage of the underlying buildable project area, net of all public or private roads/ the total number of lots proposed).



[Section 236.13\(6\) Wisconsin Statutes](#) generally provides that “An outlot may not be used as a building site unless it is in compliance with restrictions imposed by or under this section with respect to building sites. An outlot may be conveyed regardless of whether it may be used as a building site”.

The Planner defers to the guidance of the Village Attorney, under what circumstances may a municipality permit building on an Outlot that does not meet the specified minimum lot size of the zoning district it’s located in and whether it may be necessary to factor the size of this Outlot back into the required minimum average lot size that the developer had to meet at the time of local plat approval.

This site does have public road access and access to public utilities including municipal sanitary sewer and water.

The house plan does meet/exceed the 1,100 sq. ft. minimum required home size for this zoning district. It does not appear that the required side setbacks (i.e., not less than ten feet on one side and not less than zero feet on the other side) will be met if the concept home plan provided were to be situated on this lot with an attached garage. Section 40.203(1)a. of the Village Code does state that “All new residential home constructions shall include at least one enclosed garage structure not less than 576 square feet in area and not greater than 1,200 square feet.” in the R-5 Single-Family Residential District.

The applicant states that they hope to provide a somewhat more affordable housing opportunity in the Village by placing a home of this size/style on this Outlot, an objective that has been publicly placed as a priority by Waukesha County at this time.

**Recommendation:**

As this is a matter for concept review and consultative feedback only, the Planner has no recommendation at this time.

# Outlot 2 of Glen at Pewaukee Lake



0 44.03 Feet

The information and depictions herein are for informational purposes and Waukesha County specifically disclaims accuracy in this reproduction and specifically admonishes and advises that if specific and precise accuracy is required, the same should be determined by procurement of certified maps, surveys, plats, Flood Insurance Studies, or other official means. Waukesha County will not be responsible for any damages which result from third party use of the information and depictions herein, or for use which ignores this warning.

Notes:

Printed: 5/3/2024

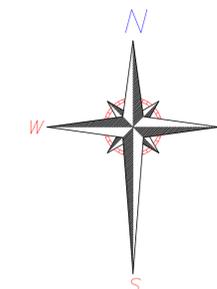
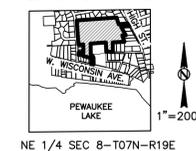


# THE GLEN AT PEWAUKEE LAKE

BEING ALL OF LOT 1 OF CERTIFIED SURVEY MAP NO. 12148, BEING PART OF THE NE 1/4 AND NW 1/4 OF THE NE 1/4 OF SECTION 08, T.07N., R.19E., VILLAGE OF PEWAUKEE, WAUKESHA COUNTY, WISCONSIN.

OVERALL DETAIL

LOCATION MAP



SCALE: 1" = 60'

BEARINGS ARE REFERENCED TO THE WISCONSIN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE (NAD 27) GRID NORTH ON THE NORTH LINE OF THE NE 1/4 OF SECTION 8-07-19 AS N89°13'42"E, VERTICAL DATUM BASED ON NAVD88.

DISTANCES ARE COMPUTED TO THE NEAREST 0.01' AND MEASURED TO THE NEAREST 0.01'

ANGLES ARE COMPUTED TO THE NEAREST 00°00'00.5" AND MEASURED TO THE NEAREST 00°00'05"

CONDITIONAL CERTIFICATION OF NO OBJECTION  
CERTIFIED THIS 23rd DAY OF March 2022  
**Dale Shaver**  
DIRECTOR  
WAUKESHA COUNTY DEPT OF PARKS & LAND USE

LEGEND

- - 2.375" O.D. IRON PIPE SET, 16" LONG, WT. = 3.65 LBS./LIN. FT.
- 11/16" REBAR, 18" LONG, WT. = 1.13 LBS./LIN. FT. SET AT ALL OTHER LOT & OUTLOT CORNERS
- ⊕ - CONCRETE MONUMENT W/ BRASS CAP FOUND
- - 1" IRON PIPE FOUND (UNLESS OTHERWISE STATED)

SURVEY FOR:  
THE GLEN AT PEWAUKEE LAKE LLC  
N63W23849 MAIN STREET  
SUSSEX, WI 53089  
262-649-6751

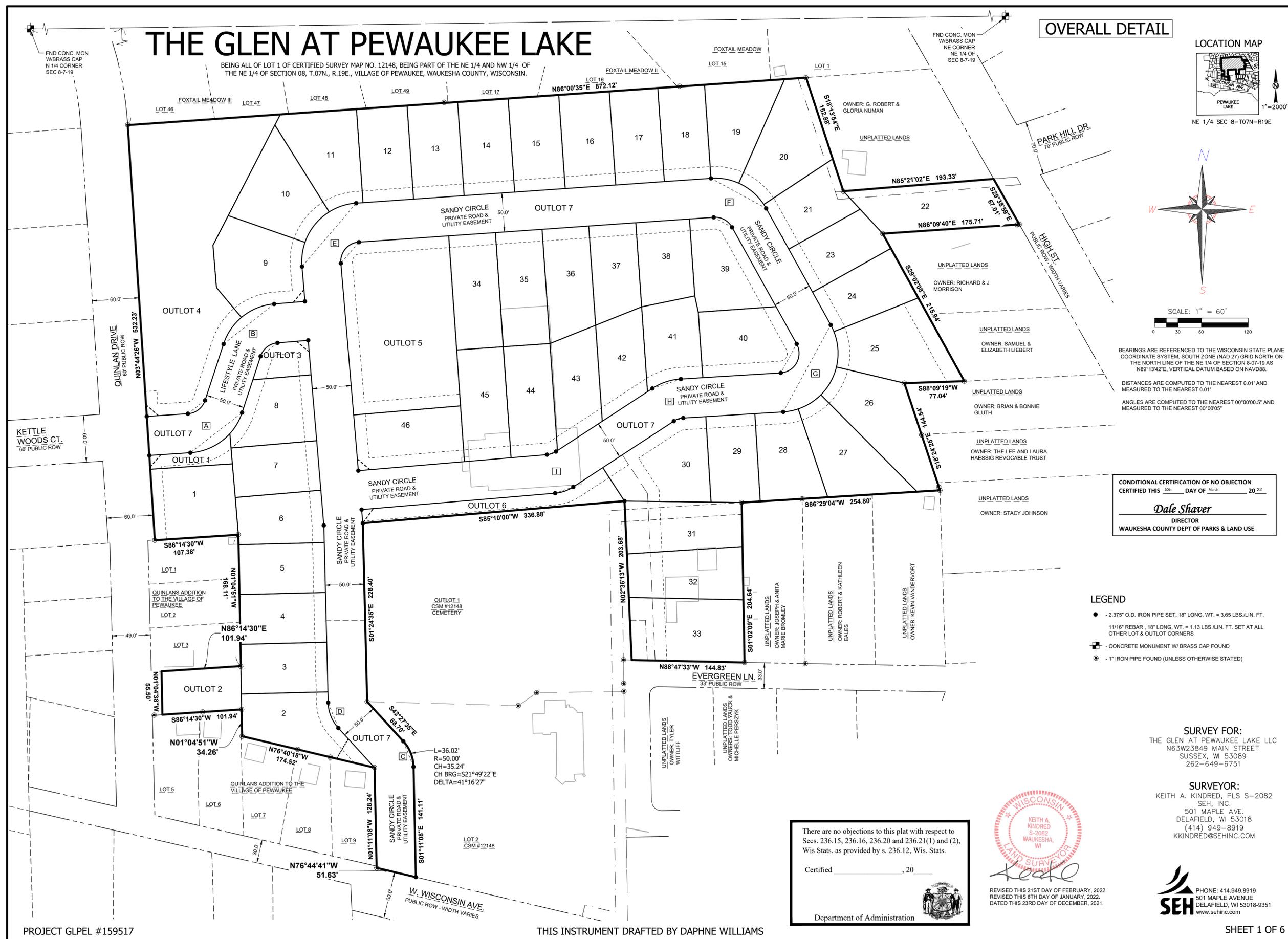
SURVEYOR:  
KEITH A. KINDRED, PLS S-2082  
SEH, INC.  
501 MAPLE AVE.  
DELAFIELD, WI 53018  
(414) 949-8919  
KKINDRED@SEHINC.COM



REVISED THIS 21ST DAY OF FEBRUARY, 2022.  
REVISED THIS 6TH DAY OF JANUARY, 2022.  
DATED THIS 23RD DAY OF DECEMBER, 2021.



There are no objections to this plat with respect to Secs. 236.15, 236.16, 236.20 and 236.21(1) and (2), Wis Stats. as provided by s. 236.12, Wis. Stats.  
Certified \_\_\_\_\_, 20\_\_  
Department of Administration



# NICOLET

MODEL 2863H32G01



EXTERIOR 1

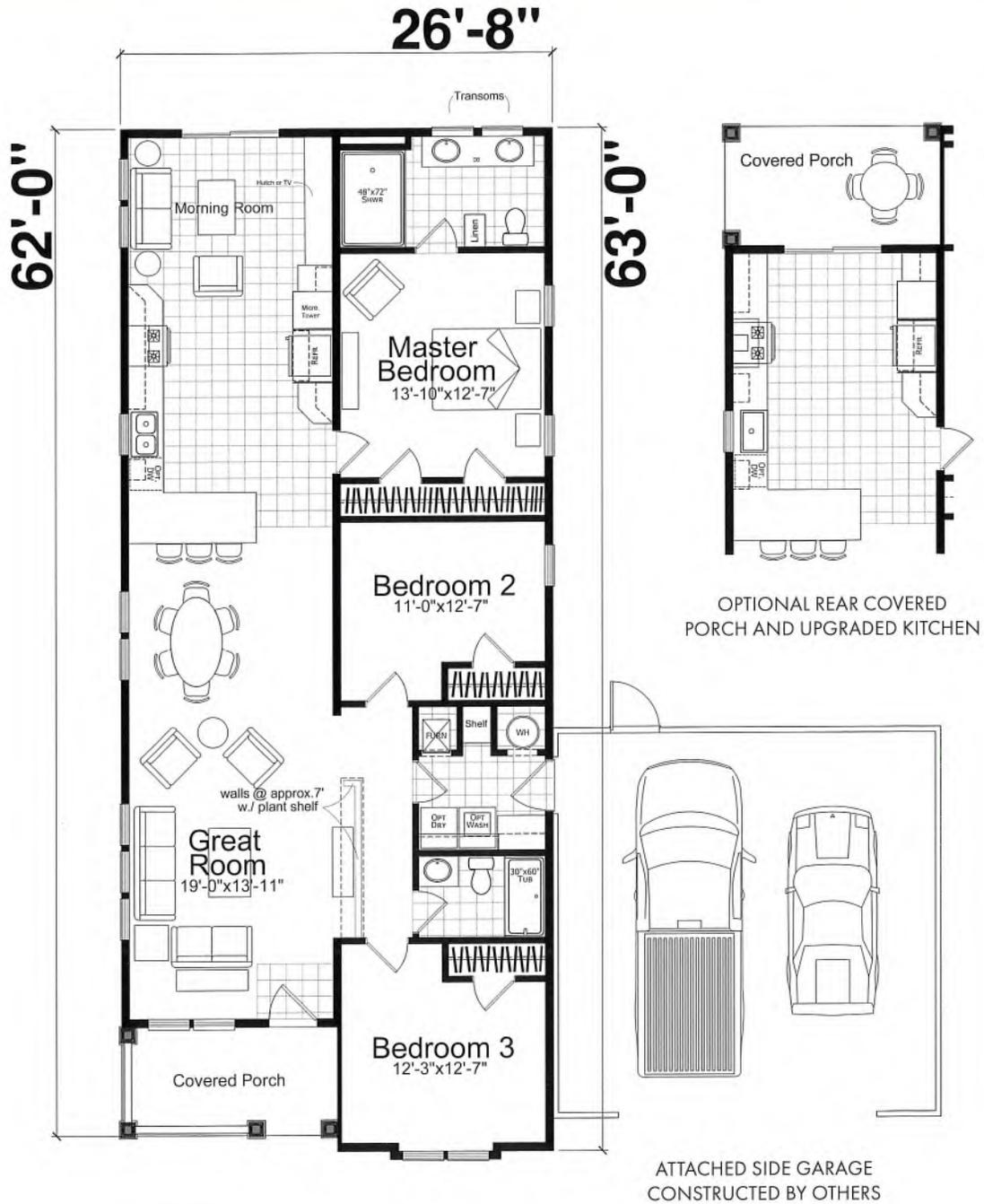


EXTERIOR 2

# NICOLET

MODEL 2863H32G01

3 BED-2 BATH  
1,580 SQ. FT.



Due to continuous product development and improvement, prices, specifications, and materials are subject to change without notice or obligation. Square footage and other dimensions are approximate. Exterior images may be artist renderings and are not intended to be an accurate representation of the home. Renderings, photos and floor plans may be shown with optional features or third-party additions. Some floorplan dimensions vary by manufacturing center. Ask your local manufacturing center for details.

A:\c700\796\proj\p\pewaukee\_2024\site plan-pewaukee\_2024-04-17.dwg



DEVELOPMENT SUMMARY TABLE	
- TOTAL AREA	6,270 sf
- PWV 0893122 =	5,656 sf
- PWV12148 Remnant =	614 sf
- BUILDING COVERAGE =	2,147 sf (34.24%)
- OPEN SPACE =	3,450 sf (55%)
- ZONING	R-5 INFILL-REDEVELOPMENT OVERLAY
- Sec. 40.367.5	- In no case shall any lot be permitted that is less than 7,000 sf in area
- Sec. 40.367.7 Setbacks and Yards	- Public right-of-way =- 25'
	- Sideyard = 10' & 0';
	- Detached principal structure = 5' minimum offset
	- Rearyard = 20'
	- Open space = 25% minimum
	- Building coverage ratio = 35% maximum

**SITE PLAN**  
**319 QUINLAN DRIVE**  
 PWV 0893122, Village of Pewaukee, WI

Prepared for:



Scale: 1" = 10' (22"x34")

Scale: 1" = 20' (11"x17")

DATE: 04-17-2024

## STAFF REPORT

To: Village of Pewaukee Plan Commission

By: Mary Censky

Date Prepared: May 9, 2024

### **General Information:**

**Agenda Item: 6.b.**

**Applicant/Property Owner:**

Joseph Grasc Development LLC in  
c/o Joe Grasc

**Requested Action:**

Approval of proposed building and  
site plan modifications

**Current Zoning:**

B-2 Downtown Business District

**Current Master Plan Classification:**

Community Commercial

**Surrounding Zoning/Land Use:**

North: B-2 Downtown Business  
District

South: B-2 Downtown Business  
District

East: Savoy Court/B-2 Downtown  
Business District

West: W. Wisconsin Ave/B-2  
Downtown Business District

**Lot Size:**

.17-acres (7,405 sq. ft.)

**Location:**

115 W. Wisconsin Avenue

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### **Background:**

As a condition of the recently approved health café Conditional Use occupancy in this building (i.e., The Daily Dose) it was required that “Applicant to work with Village Staff in resolving the final location and structure details as to a dumpster/enclosure to serve this site as well as any other exterior structures or improvements as may be required by building code due to this new occupancy type in the building (such as handicapped ramp for instance). Occupancy as to this café use shall not be permitted until the dumpster/enclosure are in place at this site and any other exterior structures or improvements as may be required by building code due to this new occupancy type in the building (such as but not necessarily limited to handicapped ramp for instance) are completed and ready for use.”

The building owners plan solutions for the required dumpster/enclosure and a handicapped accessible access via ramp are attached here. The building owner is also proposing some exterior modifications to the materials and colors of this existing building.

*Excerpt Waukesha County GIS Aerial Map View – 115 W. Wisconsin Avenue*



*Google Map Street View – 115 W. Wisconsin Avenue*



[Section 40.274 of the Village Code](#) provides as follows for buildings in the B-2 Downtown Business District:

Building design shall be generally subject to the standards articulated in the Village of Pewaukee downtown design guidelines, and the following specific requirements:

- (1) *Acceptable primary materials.* Primary materials shall be used for at least 70 percent of the solid (non-window) portion of any elevation. Acceptable primary materials are as

follows:

- a. Common size brick is acceptable for the construction of all building types. Special sizes and shapes are acceptable only as accents and decorations.
- b. Native Stone including limestone, fieldstone or lannon stone is acceptable on any building type.
- c. Cedar Siding or cement resin siding may be used in combination with brick or other accepted masonry.

(2) *Acceptable accent and secondary materials.* Accents and secondary materials shall comprise less than 30 percent of the solid portion of any building elevation. Acceptable secondary materials are as follows:

- a. Pre-cast concrete and cast stone are acceptable when used as accents, lintels, sills or decorations. Other uses shall be considered on a case-by-case basis.
- b. Terra cotta is an acceptable material as cladding or accent.
- c. Stucco is acceptable as a wall finish material on upper floors and gables.
- d. Wood shingle siding is acceptable on upper floors and gable ends or as roofing materials.
- e. Ornamental metals are acceptable as accent materials such as grills, railing, panels, gutters, etc.
- f. Decorative concrete block is acceptable only when used as a secondary building material or accent. It is considered most appropriate as a material found in the base portion of building. The use of standard, plain gray block or glazed block is not acceptable. Other uses will be reviewed on a case-by-case basis.

(3) *Building facade composition.* Design detail of front, side, and rear building elevations shall be subject to the standards identified in the [Village of Pewaukee Downtown Design Guidelines](#).

### **Recommendation:**

The Planner recommends the following conditions be considered for attachment to any approval the Planning Commission may be inclined to grant in this matter:

- 1) The proposed new raised concrete and related railings at the front/street side of the project shall be pulled back into the private property unless that Village Board shall first approve a permissive use and hold harmless agreement with the property owner to allow such permanent improvements to be located in the Village right-of-way.
- 2) The dumpster enclosure structure may not be constructed until such time as the applicant has secured final approval and recorded a certified survey map (*see attached draft CSM submitted by the applicant for consideration at the June 13<sup>th</sup> Planning Commission meeting*) combining this parcel with his adjacent parcel at 119 W. Wisconsin Avenue such that the violation as to offset/placing a structure upon the lot line violation is resolved. Note that the proposed/draft CSM, will trigger review and approval through Conditional Use Grant (CUG) because combining these two lots results in “a mixing of multiple principal uses (from among those uses identified in sections 40.263 and 40.265) and/or multiple principal buildings upon a single lot” which requires CUG approval by the Planning Commission upon their finding that the site can adequately accommodate the multiple uses and/or buildings with respect to such matters as the dimensional standards of the B-2 zoning district, site access and parking, and further provided such mixing of uses and/or buildings are mutually compatible and synergistic and will not be detrimental to the surrounding area and/or generate adverse impacts individually or

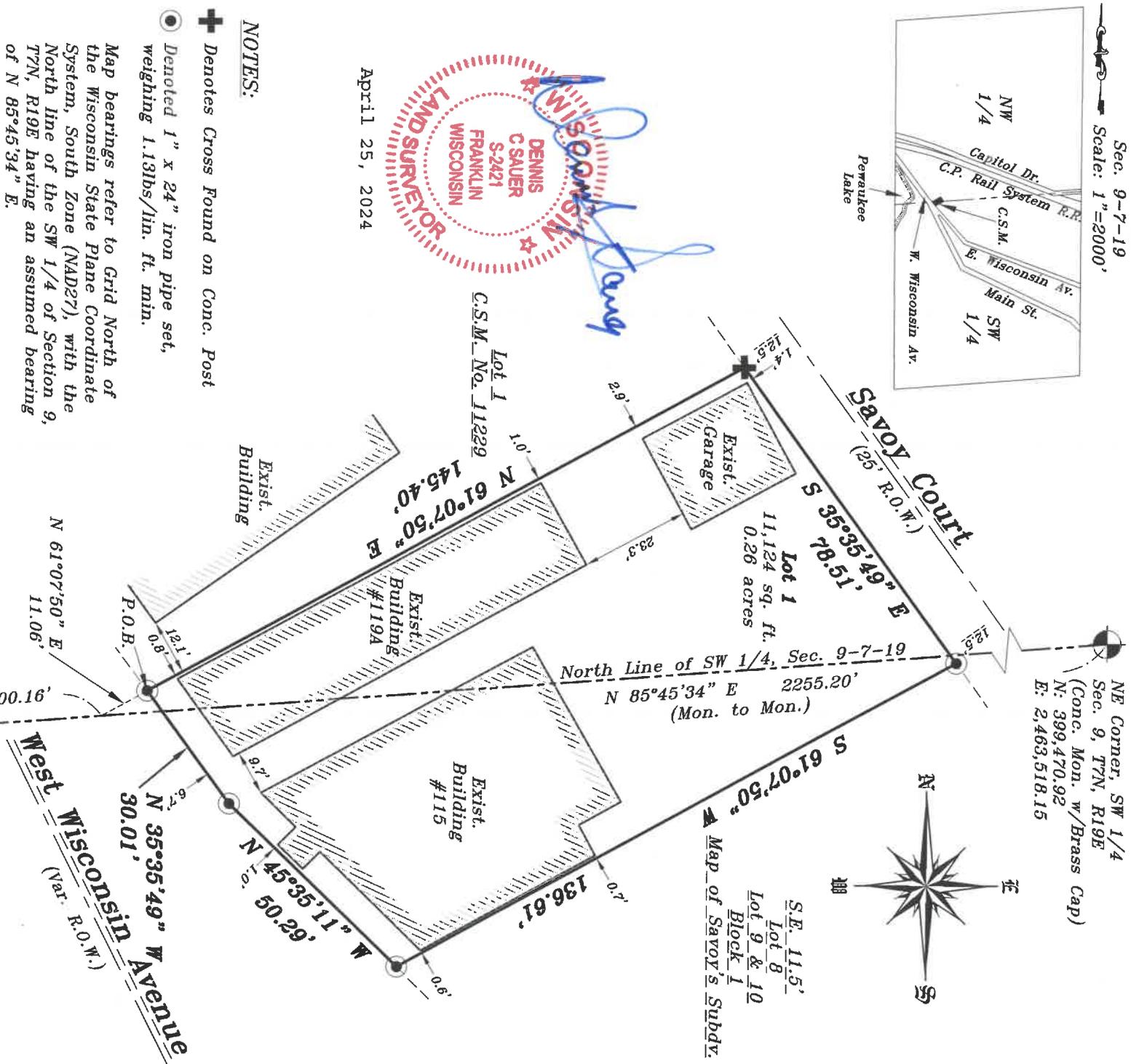
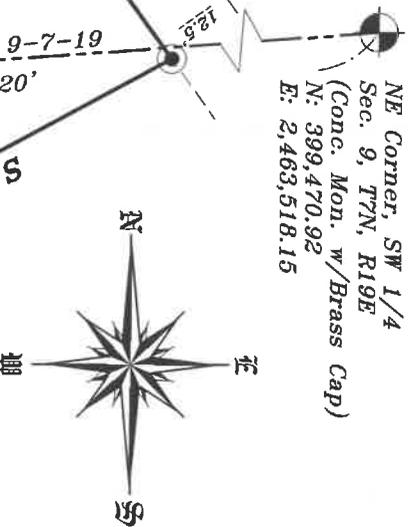
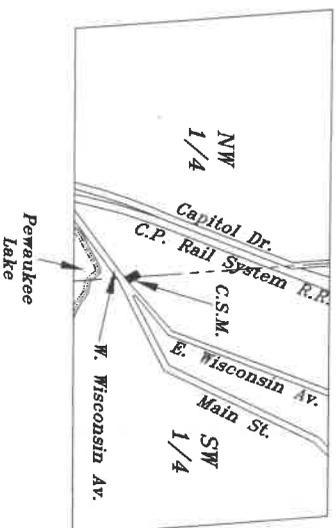
collectively upon the public health, safety and welfare. NOTE – that the dumpster and enclosure being finished and available at this site was attached as a condition of occupancy in the CUG approval given to the Daily Dose Café.

- 3) Colors of the proposed new building materials at the front/street side of the building shall be consistent with the color image presented by the applicant in his support materials with this request.
- 4) Placement of any signs at this site shall be subject to full compliance with the terms of Chapter 70 of the Village Code – “Signs”, despite any notes to the contrary as may be depicted on the site or building plans.
- 5) The proposed new deck with railing depicted on the second floor of the north building elevation is not permitted. As proposed, this deck would extend closer to the north lot line than the existing, legal-nonconforming, building offset to that north lot line. Ten feet is the standard offset requirement in the B-2 Downtown Business District. No closer to the lot line than the existing structure, is an option offset in the case of existing, legal nonconforming structures. This proposed deck must also meet any building/fire codes with respect to building separation distances.
- 6) The plans appear to depict a southside building addition that would not just extend closer to the south lot line than the existing building sits back from that lot line, but it would extend over the lot line. This proposed addition is not permitted.
- 7) Detailed plans, including a drawing of the proposed materials, colors, height and door system for the dumpster enclosure shall be subject to review and approval by the Village staff prior to issuance of a building permit for same.
- 8) To the extent the existing doorway overhang/eave is to be reconstructed at the southeast corner of the building, it must be brought back to extending no further out/south than the limits of this property. Express written approval and offsetting easement from the neighboring land owner may be an optional solution in order to compensate for any such overhang.
- 9) Applicant to provide building materials samples, in the proposed selection of colors, for review and approval by the Planning Commission, prior to issuance of any building permits.
- 10) Applicant to provide a greenspace calculation for the site pre and post site modifications. The Code required minimum in the B-2 District is 5%. Per existing conditions may be also be allowed but a reduction would require a variance or approval within the context of a CUG.
- 11) The calculation, to be provided by the applicant, as to compliance with Section 40.274 of the Code shall be reviewed and approved by the Village Planning Commission prior to the issuance of any building permits for exterior modifications to this building.
- 12) Planning Commission determination, pursuant to [Section 40.275\(7\)](#) of the Code, whether existing overhead utility, communications and similar transmission/communication lines, wires, facilities and any related support appurtenances, and any new utility, communications and similar transmission/communication lines, wires and facilities shall be buried underground at this site as a condition of the proposed building and site modifications. Current assessed value of improvements on this site is \$181,700.00.

# CERTIFIED SURVEY MAP NO. \_\_\_\_\_

Being a combination of Lot 6 & Lot 7 and the Northwesterly 18.50 feet of Lot 8, Block 1 of Map of Savoy's Subdivision, being a part the Southwest 1/4 of the Northwest 1/4 and the Northwest 1/4 of the Southwest 1/4 of Section 9, Township 7 North, Range 19 East in the Village of Pewaukee, Waukesha County, Wisconsin.

VICINITY MAP  
 Sec. 9-7-19  
 Scale: 1"=2000'



**NOTES:**

- ⊕ Denotes Cross Found on Conc. Post
- ⊙ Denoted 1" x 24" iron pipe set, weighing 1.13lbs/lin. ft. min.

Map bearings refer to Grid North of the Wisconsin State Plane Coordinate System, South Zone (NAD27), with the North line of the SW 1/4 of Section 9, T7N, R19E having an assumed bearing of N 85°45'34" E.

Prepared for:  
 Joseph Grasch Development, LLC.  
 Joseph Grasch, Managing Partner  
 W284 N3334 Lakeside Road  
 Pewaukee, WI 53072-3318

Prepared by:  
 Dennis C. Sauer P.L.S.-2421  
 Metropolitan Survey Service, Inc.  
 8482 S. 76th St.  
 Franklin, WI 53132  
 (414) 529-5380

**GRAPHIC SCALE**



CERTIFIED SURVEY MAP \_\_\_\_\_

Being a combination of Lot 6 & Lot 7 and the Northwesterly 18.50 feet of Lot 8, Block 1 of Map of Savoy's Subdivision, being a part the Southwest 1/4 of the Northwest 1/4 and the Northwest 1/4 of the Southwest 1/4 of Section 9, Township 7 North, Range 19 East in the Village of Pewaukee, Waukesha County, Wisconsin.

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN)  
WAUKESHA COUNTY) SS

I, Dennis C. Sauer, Professional Land Surveyor, do hereby certify:

That I have surveyed, divided, combined and mapped a combination of Lot 6 & Lot 7 and the Northwesterly 18.50 feet of Lot 8, Block 1 of Map of Savoy's Subdivision, being a part the Southwest 1/4 of the Northwest 1/4 and the Northwest 1/4 of the Southwest 1/4 of Section 9, Township 7 North, Range 19 East in the Village of Pewaukee, Waukesha County, Wisconsin, bounded and described as follows:

Commencing at the east witness corner to the Northwest corner of said Southwest 1/4; thence N 85°45'34" E along the north line of said Southwest 1/4, 100.16 feet; thence N 61°07'50" E, 11.06 feet to the northeasterly right-of-way line of West Wisconsin Avenue and the point of beginning of the lands to be described; thence continuing N 61°07'50" E, 145.40 feet to the southwesterly right-of-way line of Savoy Court; thence S 35°35'49" E along said southwesterly right-of-way line, 78.51 feet; thence S 61°07'50" W, 136.61 feet to the northeasterly right-of-way line of West Wisconsin Avenue; thence N 45°35'11" W along said northeasterly right-of-way line, 50.29 feet; thence N 35°35'49" W along said northeasterly right-of-way line, 30.01 feet to the point of beginning.

Said lands containing 11,124 square feet or 0.26 acres.

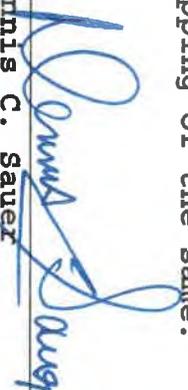
That I have made such survey, division, combination and map by the direction of Joseph Grasch Development, LLC., owner of said lands.

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

That I have fully complied with the provisions of Chapter 236.34 of the Wisconsin State Statutes and the Regulations of the Village of Pewaukee, in surveying, dividing, combining and mapping of the same.

April 25, 2024  
Date



  
Dennis C. Sauer  
Professional Land Surveyor S-2421

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

CERTIFIED SURVEY MAP \_\_\_\_\_

Being a combination of Lot 6 & Lot 7 and the Northwesterly 18.50 feet of Lot 8, Block 1 of Map of Savoy's Subdivision, being a part the Southwest 1/4 of the Northwest 1/4 and the Northwest 1/4 of the Southwest 1/4 of Section 9, Township 7 North, Range 19 East in the Village of Pewaukee, Waukesha County, Wisconsin.

CORPORATE OWNER'S CERTIFICATE

Joseph Grasch Development, LLC., as owner, does hereby certify that it caused the land described on this map to be surveyed, divided, combined, mapped and dedicated as represented on this map in accordance with Chapter 236.34 of the Wisconsin State Statutes and the Regulations of the Village of Pewaukee.

IN WITNESS WHEREOF, the said Joseph Grasch Development, LLC., has caused these presents to be signed at \_\_\_\_\_, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Joseph Grasch, Managing Partner

STATE OF WISCONSIN)  
WAUKESHA COUNTY ) SS

PERSONALLY came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Joseph Grasch, Managing Partner of Joseph Grasch Development, LLC., to me known to be the person who executed the foregoing instrument and acknowledged the same.

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

CONSENT OF CORPORATE MORTGAGEE - JOSEPH GRASCH DEVELOPMENT, LLC.

SUMMIT CREDIT UNION, a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, mortgagee of the above described land, does hereby consent to the surveying, dividing, combining and mapping of the land described on this map and does hereby consent to the above certification of owner.

IN WITNESS WHEREOF, the said Summit Credit Union, has caused these presents to be signed by Craig Plazak, VP, Market Manager, at \_\_\_\_\_, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

SUMMIT CREDIT UNION:

\_\_\_\_\_  
Craig Plazak  
VP, Market Manager



April 25, 2024

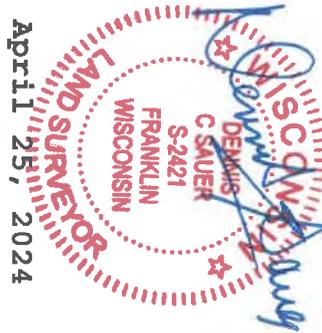
CERTIFIED SURVEY MAP \_\_\_\_\_

Being a combination of Lot 6 & Lot 7 and the Northwesterly 18.50 feet of Lot 8, Block 1 of Map of Savoy's Subdivision, being a part the Southwest 1/4 of the Northwest 1/4 and the Northwest 1/4 of the Southwest 1/4 of Section 9, Township 7 North, Range 19 East in the Village of Pewaukee, Waukesha County, Wisconsin.

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

PERSONALLY came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024, Craig Plazak, VP, Market Manager, to me known to be the person who executed the foregoing instrument and to me known to be such officer of said corporation and acknowledged the same.

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



PLAN COMMISSION APPROVAL

APPROVED by the Plan Commission of the Village of Pewaukee, on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Jeff Knutson, Chairperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cassie Smith, Village Clerk

\_\_\_\_\_  
Date

VILLAGE BOARD CERTIFICATE OF APPROVAL

RESOLVED that the Certified Survey Map which has been filed for approval, and is hereby approved as required by the Village Subdivision Regulations and Chapter 236 of the Wisconsin State Statutes relating to the Certified Survey Map.

I HEREBY certify that the foregoing is a true and correct copy of a Resolution accepted by the Village Board of the Village of Pewaukee on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Jeff Knutson, Village President

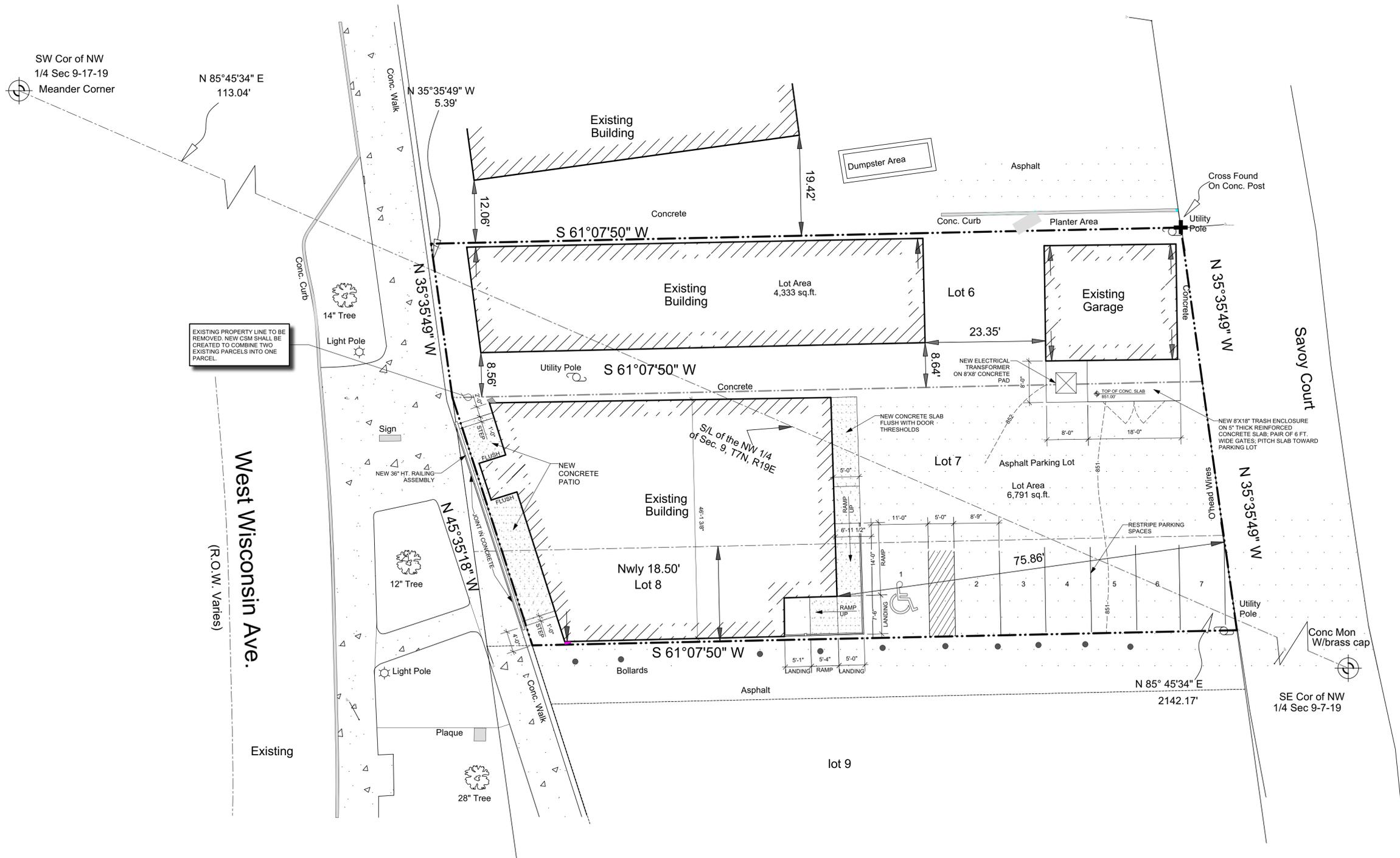
\_\_\_\_\_  
Date

\_\_\_\_\_  
Cassie Smith, Village Clerk

\_\_\_\_\_  
Date



the DAILY DOSE JUICE BAR



EXISTING PROPERTY LINE TO BE REMOVED. NEW CSM SHALL BE CREATED TO COMBINE TWO EXISTING PARCELS INTO ONE PARCEL.

**1** PROPOSED SITE PLAN  
SCALE: 1" = 10'

West Wisconsin Ave.  
(R.O.W. Varies)

**Koz-i-itecture™**  
It's not simply Architecture, it's Kozitecture

David J. Koscielniak, AIA  
12310 West Waterford Avenue  
Greenfield, Wisconsin 53228

Cell: (414) 303-8489  
koz@kozitecture.com  
www.kozitecture.com

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**FIRST FLOOR INTERIOR ALTERATIONS (PHASE 1)**

115 W. WISCONSIN AVENUE  
PEWAUKEE, WI 53072

PLAN COMMISSION REVIEW SET 4/18/2024

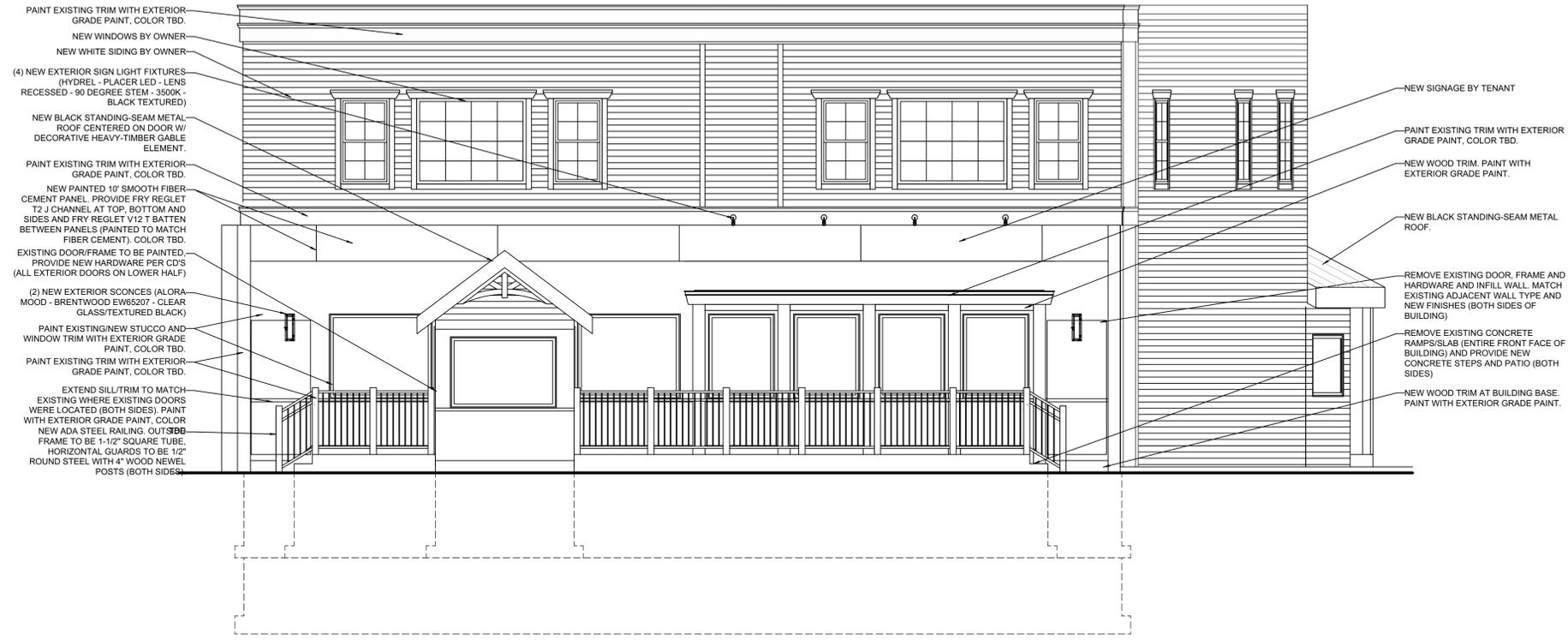
Project  
Sheet Title  
PROPOSED SITE PLAN

Revisions

Date: 4/18/2024  
Job No.: 23-120  
Sheet No.

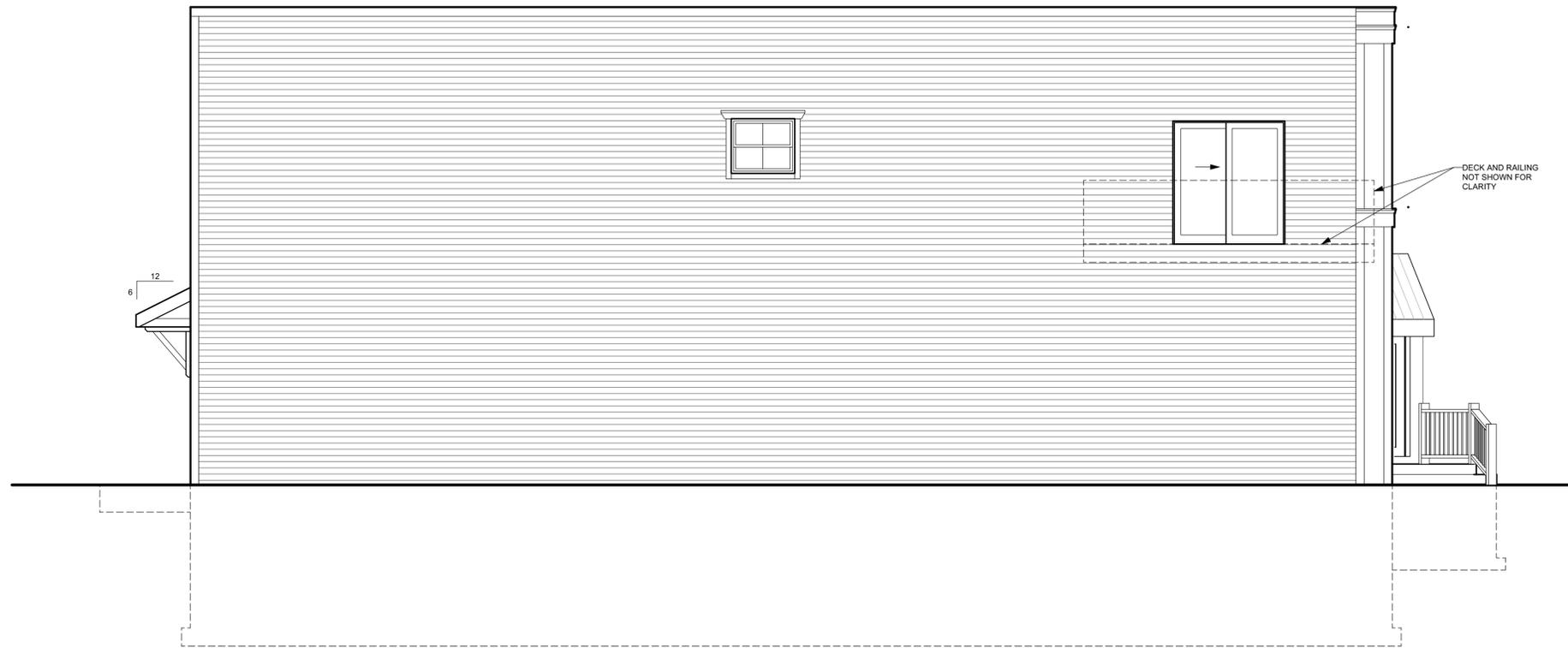
**C1.2**

ROOF BEARING PT.  
 ELEV. = 125'-0"  
 1'-0"  
 T.O. ROOF (VARIES)  
 ELEV. = 124'-0" TO 122'-0"  
 4'-0"  
 B.O. CEILING JOISTS  
 ELEV. = 120'-0"  
 8'-0"  
 SECOND FLOOR  
 ELEV. = 112'-0"  
 2'-0"  
 FIRST FLOOR CEILING  
 ELEV. = 110'-0"  
 10'-0"  
 FIRST FLOOR  
 ELEV. = 100'-0"  
 8'-0"  
 BASEMENT  
 ELEV. = 90'-0 7/8"



**7** PROPOSED FRONT (WEST) ELEVATION  
 SCALE: 1/4" = 1'-0"

ROOF BEARING PT.  
 ELEV. = 125'-0"  
 1'-0"  
 T.O. ROOF (VARIES)  
 ELEV. = 124'-0" TO 122'-0"  
 4'-0"  
 B.O. CEILING JOISTS  
 ELEV. = 120'-0"  
 8'-0"  
 SECOND FLOOR  
 ELEV. = 112'-0"  
 2'-0"  
 FIRST FLOOR CEILING  
 ELEV. = 110'-0"  
 10'-0"  
 FIRST FLOOR  
 ELEV. = 100'-0"  
 8'-0"  
 BASEMENT  
 ELEV. = 90'-0 7/8"



**2** PROPOSED SIDE (NORTH) ELEVATION  
 SCALE: 1/4" = 1'-0"

PLAN COMMISSION REVIEW SET 4/18/2024

Project  
**INTERIOR AND EXTERIOR ALTERATIONS, SECOND FLOOR ADDITION AND SITE IMPROVEMENTS**

Sheet Title  
 PROPOSED ELEVATIONS

Revisions  
 -/-/---

Date: 4/18/2024  
 Job No.:  
 Sheet No.

**A2.2**

  
*It's not simply Architecture, it's Kozitecture*

David J. Koscielniak AIA ALA  
 12310 West Watertown Avenue  
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 koz@kozitecture.com  
 www.kozitecture.com

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115 W. WISCONSIN AVENUE  
 PEWAUKEE, WI 53072

ROOF BEARING PT.  
 ELEV. = 125'-0"  
 T.O. ROOF (VARIES)  
 ELEV. = 124'-0" TO 122'-0"  
 B.O. CEILING JOISTS  
 ELEV. = 120'-0"  
 4'-0"  
 8'-0"  
 SECOND FLOOR  
 ELEV. = 112'-0"  
 2'-0"  
 FIRST FLOOR CEILING  
 ELEV. = 110'-0"  
 10'-0"  
 FIRST FLOOR  
 ELEV. = 100'-0"  
 8'-0"  
 BASEMENT  
 ELEV. = 90'-0 7/8"



**1** PROPOSED REAR (EAST) ELEVATION  
 SCALE: 1/4" = 1'-0"

ROOF BEARING PT.  
 ELEV. = 125'-0"  
 T.O. ROOF (VARIES)  
 ELEV. = 124'-0" TO 122'-0"  
 B.O. CEILING JOISTS  
 ELEV. = 120'-0"  
 4'-0"  
 8'-0"  
 SECOND FLOOR  
 ELEV. = 112'-0"  
 2'-0"  
 FIRST FLOOR CEILING  
 ELEV. = 110'-0"  
 10'-0"  
 FIRST FLOOR  
 ELEV. = 100'-0"  
 8'-0"  
 BASEMENT  
 ELEV. = 90'-0 7/8"



**2** PROPOSED SIDE (SOUTH) ELEVATION  
 SCALE: 1/4" = 1'-0"

PLAN COMMISSION REVIEW SET 4/18/2024

**INTERIOR AND EXTERIOR ALTERATIONS, SECOND FLOOR ADDITION AND SITE IMPROVEMENTS**

115 W. WISCONSIN AVENUE  
 PEWAUKEE, WI 53072

Project

Sheet Title  
 PROPOSED ELEVATIONS

Revisions  
 -/-/-

Date: 4/18/2024

Job No.:

Sheet No.

**A2.3**

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 12310 West Watertord Avenue  
 Greenfield, Wisconsin 53228

## STAFF REPORT

To: Village of Pewaukee Plan Commission

By: Mary Censky  
Date Prepared: May 9, 2024

### General Information:

Agenda Item: **6.C.**

**Applicant/Property Owner:**

MK/SS LLC in c/o Mike and Jordan Kaerek

**Requested Action:**

Development-wide swimming pool permissions and restrictions plan approval.

**Existing Zoning:**

R-5 Single-Family Residential w/  
Residential Infill-Redevelopment District  
Overlay

**Proposed Zoning:**

Same

**Surrounding Zoning/Land Use:**

North: R-5 Single-Family Residential  
South: Waukesha County owned passive  
use park land  
East: Village of Pewaukee owned passive  
use park land  
West: R-5 Single-Family Residential

**Existing Master Plan Classification:**

Single-Family Residential

**Proposed Master Plan Classification:**

Same

**Location:**

SW corner of Ridgeway Drive and Riverside  
Drive

**Lot Size:**

36-lot subdivision neighborhood

---

### Discussion:

[Section 40.367.4\(3\)](#) of the Village Code provides that:

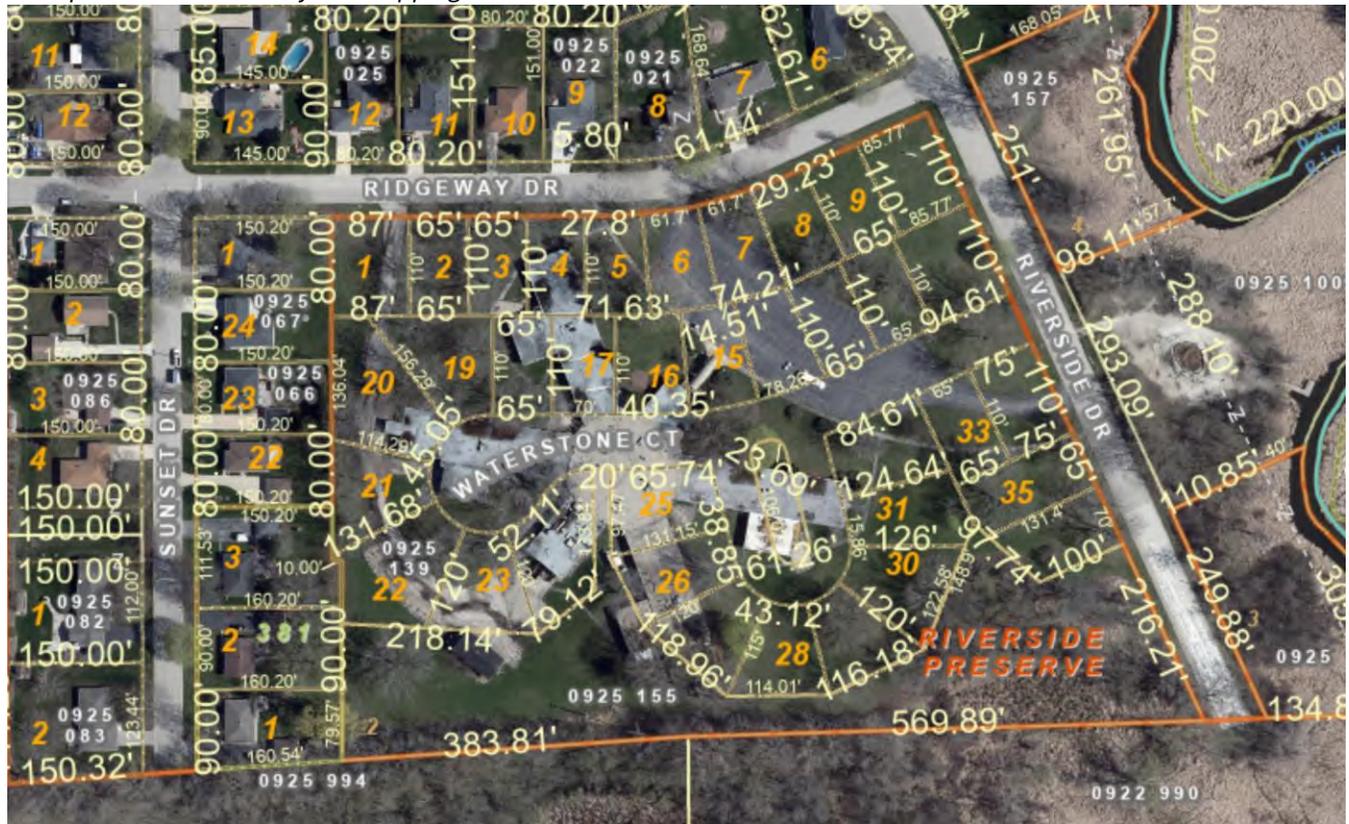
“Swimming pools are not permitted in this [*Residential Infill-Redevelopment*] overlay district without prior planning commission approval of a development-wide swimming pool permissions and restrictions plan. [Section 40.422\(e\)](#) of the land development code shall not apply in this overlay district.”

The applicant proposes to place the following restrictions into their covenants and bylaws for the Riverside Preserve subdivision:

Section 4.21 “Swimming Pools: In-ground swimming pools are allowed, but must comply with all Village of Pewaukee code requirements including electrical/wiring and be approved by the ACC prior to installation. Above ground swimming pools are not permitted unless they are portable/inflatable wading pools not to exceed 30" in depth and placed no more than 10' from the home on a concrete slab in the backyard in such a way as to not disturb the quality of life or quiet enjoyment of the adjacent homes. In addition, any such

Portable/Inflatable pools should be up for not more than 2 consecutive weeks at a time between Memorial Day and Labor Day; and may only be in place or in use in between said dates.”

Excerpt-Waukesha County GIS Mapping



Section 40.422(e) of the Code states as follows regarding swimming pools:

- All private swimming pools shall be constructed and all equipment and utilities must be located not less than the minimum setback and offset requirement for buildings located within the zoning district where such swimming pool is located".

In the Infill Redevelopment District, the required minimum sideyard setback is:

- Not less than ten feet on one side and not less than zero feet on the other side".

The Planner feels that a ‘zero-foot or a 10-foot sideyard offset’ for a swimming pool and all equipment and utilities may be too permissive in the context of any residential neighborhood, but even more-so as to this this smaller lot neighborhood.

In the Infill Redevelopment District, the required minimum rear yard setback is 20 feet. Section 40.422(e) of the Code gives an exception for in-ground pools to "extend into the rear yard, but no closer than 15 feet from a property boundary or five feet from an easement". Fifteen feet (and five feet from any easement) may be considered reasonable rear yard and easement setbacks for swimming pools in this neighborhood.

While the applicants proposed swimming pool restriction does not address swimming pool fencing, the Planner feels that any fencing as may be required by Code to be installed around any swimming pool should be consistent with the neighborhood specific fencing restriction as set forth in their restrictive covenants (i.e.,

“Section 4.6 Fencing and Landscape Walls: Any fence to be installed in the Riverside Preserve Subdivision shall comply fully with the Village of Pewaukee fencing regulations except that they shall also comply with the following requirements, which may be more restrictive than the Village's fencing regulations:

1. All fencing, whether temporary or permanent, shall meet the following requirements:

- a. The fencing must be of metal construction.
  - b. The fencing shall be not less than 75% open (vs. privacy-style fence).
  - c. Finished in black powder coat.
  - d. May not exceed 6 feet in height.
  - e. May be located only in the side or rear yards.
  - f. No two or more separate fences on adjoining lots may be located less than five (5) feet apart from one-another.
2. All fencing must be similar in style, shape and size to the examples provided by the Architectural Control Committee that are incorporated by reference (reference the attached image) and made a part of the By Laws of the Riverside Preserve Homeowners Association.



3. No fence located in the rear yard on a corner lot shall be built within the street setback zone.
4. Before constructing any fence or landscaping wall, the Lot Owner shall submit plans and specifications, including materials, and location, to the ACC, and such plans and specifications must be approved in writing by the ACC before work is commenced. The fence must also comply with the applicable Village requirements. The ACC requirements may be stricter than the Village requirements. Chain link and privacy fences, and fences of any material other than aluminum or wrought iron, are strictly prohibited. Approval may be given for retaining or landscape walls if such walls are constructed of stone, brick or other similar natural material. The ACC has the right to approve or deny any and all fence and landscape wall requests in its sole discretion.”

**Recommendation:**

The Planner recommends the applicants proposed ‘development-wide swimming pool permissions and restrictions plan’ be approved subject to the following modifications:

Section 4.21 “Swimming Pools: In-ground swimming pools are allowed, but must comply with all Village of Pewaukee code requirements including electrical/wiring and be approved by the ACC prior to installation. Above ground swimming pools are not permitted unless they are portable/inflatable wading pools not to exceed 30" in depth and placed no more than 10' from the home on a concrete slab in the backyard in such

a way as to not disturb the quality of life or quiet enjoyment of the adjacent homes. In addition, any such Portable/Inflatable pools should be up for not more than 2 consecutive weeks at a time between Memorial Day and Labor Day; and may only be in place or in use in between said dates.” **No swimming pool or related equipment or utilities, may be placed in the front/street yard of any lot. No swimming pool or related equipment or utilities, may be placed closer than 15 feet to any side or rear lot line nor closer than 5 feet to any easement. Any fencing required to be installed in association with a swimming pool shall comply with the fencing regulations as setforth in Section 4.6 of these Restrictions and Covenants.**

**DOCUMENT NO.**

**Declaration of Restrictions and Covenants  
Riverside Preserve Subdivision**

**LEGAL DESCRIPTION:  
RIVERSIDE PRESERVE SUBDIVISION**

A replat of Lots 9 through 14 in Block 3 and Lots 2 through 21 in Block 4 and Lots 3 through 14 in Block 5 and all that part of vacated Longacre Road lying between the described Lots in Blocks 4 and 5, and a part of Outlot 15, in Block 5, all being in River Hills Park, a Subdivision recorded as Document No. 518113, being a part of the Northwest 1/4 of the Northwest 1/4 of Section 15 and the Northeast 1/4 of the Northeast 1/4 of Section 16, Township 7 North, Range 19 East, in the Village of Pewaukee, Waukesha County, Wisconsin.

RECORDING AREA

RETURN TO:  
**MK/SS, LLC**  
11600 W. Lincoln Avenue  
West Allis, WI 53227

PARCEL IDENTIFICATION NUMBER

**RIVERSIDE PRESERVE  
Village of Pewaukee, Waukesha County, Wisconsin  
January \_\_\_\_, 2024**

**DECLARATION OF RESTRICTIONS AND COVENANTS**

**WHEREAS, MK/SS, LLC**, a Wisconsin Limited Liability Company, with offices located at 11600 W. Lincoln Avenue, West Allis, Wisconsin 53227, owns all of the Lots in Riverside Preserve Subdivision located in the Village of Pewaukee, Waukesha County, Wisconsin.

**WHEREAS, MK/SS, LLC**, intending to establish a general plan for the use, occupancy, and enjoyment of the said Subdivision, consisting of Thirty-six (36) single family lots and four (4) Outlots, desires to subject Lots 1 through 36 and Outlots 1 through 4 within the Subdivision, each enumerated Lot of the same hereinafter referred to as a "Lot", to certain restrictions and covenants;

**NOW, THEREFORE, LET IT BE KNOWN** that each and every person, party or entity hereafter purchasing or owning or in any way taking possession of any Lot in the Riverside Preserve Subdivision, shall do so subject to the following restrictions and covenants, to wit:

## ARTICLE I

### 1. **Definition of Terms:**

1.1 “**Family**” shall mean one or more than one person living, sleeping, cooking, or eating on Premises as a single housekeeping group, and shall exclude a group or groups of persons where three or more persons thereof are not household employees or related by blood, adoption, or marriage.

1.2 “**Architectural Control Committee**” (ACC) shall mean the committee referred to in Article VI.

1.3 “**Lot**” shall mean a lot in the Subdivision as platted for residential development and shall not include any platted or CSM Outlot. The Subdivision Plat is attached hereto and hereby incorporated by reference.

1.4 “**Outlot**” shall mean a parcel designated as an Outlot on the Subdivision plat or CSM, which, by reason of such designation, is not platted as a building site.

1.5 “**Dwelling**” shall mean that primary building on a Lot to be occupied by a single Family.

1.6 “**Riverside Preserve Homeowners Association, Inc.**” shall mean that Wisconsin non-stock, non-profit corporation responsible for certain duties relating to the maintenance, administration and operation of the Subdivision as may be referred to herein or in its bylaws (the “HOA”).

1.7 “**Common Areas**” are those areas identified or located on the Plat or CSM, including the Outlots, and set aside either as communal areas, open space, or drainage areas for storm water management purposes (“Storm Water Management Areas”).

1.8 “**Common Improvements**” consist of the following, which may be located in Common Areas or may be located in public streets, individual Lots, or Outlots: all monuments/signs on the property generally identifying the Subdivision, and any fencing, lighting, landscape features, walking trails, drainage ways and easements, Storm Water Management Areas or other improvements made by or for the HOA in the Common Areas or elsewhere.

## ARTICLE II

2. **Property Subject to this Declaration:** The following property shall be subject to this Declaration:

A replat of Lots 9 through 14 in Block 3 and Lots 2 through 21 in Block 4 and Lots 3 through 14 in Block 5 and all that part of vacated Longacre Road lying between the described Lots in Blocks 4 and 5, and a part of Outlot 15, in Block 5, all being in River Hills Park, a Subdivision recorded as Document No. 518113, being a part of the Northwest 1/4 of the Northwest 1/4 of Section 15 and the Northeast 1/4 of the Northeast 1/4 of Section 16, Township 7 North, Range 19 East, in the Village of Pewaukee, Waukesha County, Wisconsin.

Each Lot Owner shall own an undivided 1/36<sup>th</sup> interest in the title to the Outlots. Furthermore, each Owner of a Lot in the Subdivision shall be responsible for paying for a one-thirty sixth (1/36) share of any and all costs associated to maintenance, repair and administer of all Outlots and Common Improvements of the Subdivision. Deeds for the conveyance of Lots shall include a statement that such Lot includes a fractional ownership interest and fractional liability of the maintenance and other obligations for the Outlots and Common Improvements as provided in this Declaration and any applicable By-Laws or Rules and Regulations.

### ARTICLE III

#### 3. General Purpose

3.1 The general purpose of this Declaration is to assure that the Subdivision will become and remain an attractive community and, toward that end, to preserve and maintain the natural beauty and the natural plant life and wildlife habitat of certain open spaces and recreational areas within and in the vicinity of the Subdivision; to insure the best use and the most appropriate development and improvement of each Lot; to protect the owners of Lots against such use of surrounding Lots as will detract from the value of their Lot; to guard against the erection thereon of poorly designed or proportioned structures; to obtain harmonious use of material and color schemes; to ensure the highest and best residential development of the Subdivision consistent with the purposes for which it is platted; to encourage and secure the erection of attractive Dwellings thereon, with appropriate locations thereof on Lots; and to secure and maintain proper spatial relationship of structures and Lot lines.

### ARTICLE IV

#### 4. Lot Use and Building Types

4.1 **Lot Use:** Each Lot shall only be used for the construction of a single-family residence to be constructed with the prior approval of the **MK/SS, LLC (the "Developer" for purposes of this Declaration)** or the HOA Architectural Control Committee (ACC), as provided in Article VI, below. Accessory buildings/structures, such as attached garages, swimming pools and similar improvements must also meet Village of Pewaukee code requirements. Swimming pools must be approved by the ACC prior to installation and pool heaters, filters, and related pool equipment must comply with the Village of Pewaukee electrical/ wiring codes.

4.2 **Structures:** No structure of any kind shall be constructed, altered, placed, maintained or permitted upon any Lot except one (1) newly constructed, private, permanent, single-family dwelling designed for (and limited to) occupancy of only a single-family group, not exceeding two (2) stories in height from the determined final Lot grade at highest point of the building's foundation. Nor may the dwelling be more than three (3) stories in height, where one

(1) floor elevation is set below the determined final Lot grade at the building foundation. Detached structures are permitted as provided in Section 4.5, below.

**4.3 Alterations/Remodeling.** Any dwelling previously approved for construction on any Lot may be altered and/or the exterior remodeled, only upon prior approval of such changes by the ACC. In the event of catastrophic loss, permission is hereby granted to rebuild in accordance with the original approved design, without the need for obtaining approval of the ACC.

**4.4 Attached Garage Required:** Each residence shall have attached to it, by common foundation, a vehicle garage having a minimum floor area of four hundred fifty (450) square feet. The exterior surfaces and roof of the garage shall be consistent and harmonious with the exterior materials placed upon the dwelling.

**4.5 Detached Structures Permitted:** Detached buildings are permitted with the prior approval of the ACC and the Village of Pewaukee. Sheds must substantially conform in appearance to the style of the home with regard to siding, colors, roof pitch, windows and doors. Sheds shall be no larger than one hundred fifty (150) square feet.

**4.6 Fencing:** No fences or walls shall be permitted except for fences surrounding in-ground pools, and fences in the rear yard behind the Home, provided that no fence located in the rear yard on a corner lot shall be built within the street setback zone. In order to construct any fence or wall, the Lot Owner shall submit plans and specifications, including materials, colors and location, to the ACC, and such plans and specifications must be approved in writing by the ACC. Approval may be given only for fences of an open type of construction with a black wrought iron appearance (see sample) and which are no more than five (5) feet in height. On a case-by-case basis, the ACC, in its sole discretion, may consider and approve a fence of a color other than black. Chain link and privacy fences, and fences of any material other than aluminum or wrought iron, are strictly prohibited. Approval may be given for retaining or landscape walls if such walls are constructed of stone, brick or other similar natural material. The ACC has the right to deny any and all fence requests at their sole discretion.

**4.7 Signs:** Signs of any size or type are not permitted, except signs placed upon the Lot promoting the sale of the Lot or contractor's signs posted during the term of construction and then such permitted signs shall not exceed eight (8) square feet in size. **MK/SS, LLC** may, however, erect one or more temporary development signs that do not exceed thirty-two (32) square feet in area and meets all other Village of Pewaukee requirements until **MK/SS, LLC** no longer owns any Lots in the Subdivision.

**4.8 Dwelling Design:** Each dwelling shall be designed by a professional home designer or architect experienced in home design. Approved exterior elevation designs shall consist of Traditional, Early American, Provincial, Williamsburg, Victorian or Colonial styles. Roof pitches are to be a minimum of 6/12 pitch or greater unless architecturally not feasible. All homes shall have attached garage with minimum of four hundred fifty (450) square feet. Garages and accessory buildings must conform in design to that of the dwelling.

**4.9 Minimum Building Living Area:** The Minimum floor area of each dwelling shall be no less than the following schedule, with all measurements taken from exterior walls:

One Story Dwelling	1,400 square feet
One and One-Half Story Dwelling	1,700 square feet total
Two Story Dwelling	1,700 square feet total

**Note: Other Village of Pewaukee zoning restrictions may apply.**

**4.10 Bathrooms:** Each dwelling shall contain a minimum of two (2) baths.

**4.11 Grading:** Grading on Lots in the subdivision must be completed substantially in compliance with the master grading plan on file with the Village of Pewaukee. Deviations from the grading plan must be approved by the ACC and Village of Pewaukee Engineer. The Village of Pewaukee Engineer will only approve deviations based on grading plans encompassing the general area, not just one Lot.

**4.12 Exterior Building Materials:** The exterior building materials of each home must consist of good quality materials such as brick, stone, wood, cement board siding, vinyl siding, steel siding or aluminum siding. Aluminum soffit and fascia are allowed. Roof shingles shall be dimensional design asphalt or wood cedar shake. Use of other materials is subject to approval of the ACC. Portions of the driveway in the right of way must be constructed to the Village of Pewaukee standards.

**4.13 Minimum Building Setback:** The minimum front setback of any dwelling or structure shall be twenty-five (25) feet. The minimum side yard setback shall be five (5) feet on one side and ten (10) feet on the other side. Each dwelling shall have a minimum rear yard setback of twenty (20) feet. Lots with frontage on two (2) public streets shall comply with the twenty-five (25) foot setback from each street. All setbacks must be verified with the Village for compliance with Village ordinances prior to submitting plans to the ACC for review. Variations from setback requirements may be allowed as provided below if an appropriate governmental variance or similar approval, if required, has been previously approved. Governmental approval does not require that the ACC must also approve of the variance, and the ACC may decline to approve a variance irrespective of the granting of a governmental approval.

**4.14 Utilities:** Electric, telephone and cable television services shall be provided to each home by the installation of underground lines.

**4.15 Outside Storage/Antennae/Window Air Conditioners:**

- No outside storage of boards, recreational vehicles, non-working vehicles or miscellaneous equipment permitted. Temporary (short term) storage may be permitted with prior approval of the ACC.
- No exterior antennae are permitted except satellite dishes no greater than twenty-two inches (22”) by thirty two inches (32”). Satellite dishes must be located on the house in an area approved by the ACC, but not on the front facade of the house.
- No window air conditioning units of any type are permitted.

**4.16 Nuisances:** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done on or to a Lot which is or may become a nuisance or annoyance to the neighborhood. Trash, garbage, and other waste shall be kept in sanitary containers that shall be stored in the attached garage.

**4.17 Occupancy:** No dwelling may be occupied until it has been completed in accordance with the approved plans and specifications and until an occupancy permit has been granted by the Village of Pewaukee.

**4.18 Zoning Laws, etc.:** In addition to the provisions set forth in this document, the Developer, its successors and assigns, and all parties hereafter having an interest in the property or any Lot shall be subject to all ordinances, zoning laws, building codes and other regulations of the Village of Pewaukee, Waukesha County and the State of Wisconsin, as applicable, and the same may be more (or less) restrictive than these Restrictions. The provisions of the Subdivision Developer's Agreement may also apply. In the event there is a conflict between the requirements of these Restrictions and any applicable provision of a Village, County or State regulation, the more restrictive provisions shall apply.

**4.19 Animals, Livestock, Poultry:** No animals such as livestock or poultry shall be raised, bred, or kept outside on any Lot. No more than two (2) dogs and three (3) cats shall be kept inside or outside any dwelling unit per municipal code and not kept for any commercial purpose. Any outdoor animal kennels must be approved by the ACC as to location, size and design, and must meet Village of Pewaukee ordinance requirements.

**4.20 Vision Corner Restrictions:** No planting, structure or other improvement shall be installed within the intersection vision corner areas ("Vision Corner Restriction") shown on the Subdivision Plat, unless approved, in advance, by the Village.

**4.21 Swimming Pools:** In-ground swimming pools are allowed, but must comply with all Village of Pewaukee code requirements including electrical/wiring and be approved by the ACC prior to installation. Above ground swimming pools are not permitted unless they are portable/inflatable wading pools not to exceed 30" in depth and placed no more than 10' from the home on a concrete slab in the backyard in such a way as to not disturb the quality of life or quiet enjoyment of the adjacent homes. In addition, any such Portable/Inflatable pools should be up for not more than 2 consecutive weeks at a time between Memorial Day and Labor Day; and may only be in place or in use in between said dates.

## ARTICLE V

### 5. OWNERS ASSOCIATION

**5.1** Developer shall create a non-stock, non-profit corporation to be known as the **RIVERSIDE PRESERVE HOMEOWNERS ASSOCIATION, INC.**, the ("HOA"). Until the formation of the HOA, and at all times prior to the first election of the Board of Directors of the HOA following the annual meeting of the HOA, the Developer shall have the sole authority to

manage the affairs of the Subdivision, to act as the ACC, to exercise all rights and powers assigned to the HOA hereunder, and to otherwise enforce the Riverside Preserve Covenants.

**5.2 Membership:** Each Lot Owner, whether numbering (1) or more shall be a member of the HOA, but each Lot shall be permitted only one (1) vote during HOA meetings or in the conduct of the business of the HOA, regardless of the number of Owners of a Lot, Person(s) owning more than one (1) Lot shall have one (1) vote for each Lot owned.

**5.3 Directors and Officers of the HOA:** An initial Board of Directors of three (3) members shall be appointed by Developer in Developer's sole discretion. The initial Board of Directors need not be comprised of Lot owners. The Board of Directors shall appoint the officers of the HOA. The initial Board of Directors appointed by Developer shall serve in such capacity until the sale and conveyance by Developer of all Lots in the Subdivision, or such earlier time as determined by Developer in Developer's sole discretion. After the sale and conveyance by Developer of the final Lot in the Subdivision, or at such earlier time as determined by Developer in Developer's sole discretion, the initial directors appointed by Developer shall resign, and the HOA shall hold a meeting for the purpose of electing three (3) Lot owners to serve on the Board of Directors.

**5.4 Annual and Special Meetings:** An annual meeting at a date, time and location to be determined by the Board of Directors must be held each year. The content and manner of giving notice shall be determined by the Board of Directors; and shall comply with the Association's By-Laws. Notice may be given in person, by US Mail or by electronic delivery. The purpose of the meeting will cover various issues including, but not limited to, the annual budget, Subdivision improvements, future election of Directors and other business deemed necessary by the Board. The initial meeting shall be held within One Hundred Twenty (120) days of **MK/SS, LLC** establishing the Board. Special meetings may be called by the Board of Directors, acting on their own, shall be called upon petition of twenty percent (20%) of the Lot Owners following provision of a notice thereof at least forty-eight (48) hours prior to convention.

**5.5. Operating Budget and General Annual Assessment:**

- Commencing with calendar year 2024 and for each subsequent year after, the HOA shall prepare an operating budget covering the period January 1st through December 31st of each year. The adopted budget is to be posted in a conspicuous area within the development (or, at the option of the HOA, delivered to each Lot Owner).
- In accordance with the financial needs of the HOA, all of the Lots shall be subject to a general annual assessment, determined solely by the HOA, for the purpose of deferring the costs and expenses of the HOA and carrying out its stated purposes and functions. Such costs shall include, but not be limited to, payment of Outlot real estate taxes, maintenance, repair, replacement and additions to the common improvements and areas, and the cost of labor, equipment, materials, management and supervision thereof.
- The amount of the general annual assessment for each calendar year shall be determined during the month of December of the previous calendar year, and shall be sufficient to raise an amount which, in the judgement of the HOA's members

represented at the HOA's annual membership meeting, may be required for the ensuing calendar year. Such assessments shall be paid by each Lot Owner to the HOA in a lump sum, on or before the first day of March of each year.

**5.6 Special Assessments:** A special assessment may be levied on each Lot by the HOA for the purpose of any unexpected repair or replacement of improvements if consented to by a majority of the members of the HOA present at a membership meeting called for that purpose.

**5.7 Delinquent Assessments:** If any assessment, general or special, is not paid on the date when due, then the assessment shall become delinquent, and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, become a continuing lien on the assessed property which shall bind such property in the hands of the then Owner, his or her heirs, representatives, successors and assigns. Such assessment shall also be a personal obligation for the statutory period. If the assessment is not paid within thirty (30) days after the delinquent date, the assessment shall bear interest at the rate of eighteen percent (18%) per annum, and the HOA may bring an action at law, filing of a mechanic's lien or lien in equity against the Owner personally obligated to pay the same or foreclose the lien against the property, and there shall be added to the amount of such assessment the entire cost of collection, including reasonable attorney's fees.

**5.8 Certificates:** The HOA shall, upon request, furnish to any Lot Owner a certificate in writing signed by an officer of the HOA setting forth whether the assessments have been paid. Such certificate shall be conclusive evidence of the payment of any and all such assessments therein stated to have been paid. The HOA may impose a reasonable charge for each such certificate requested and issued.

**5.9 Duties and Authority:** The administration of these restrictions, subject to the provisions of Article V, as well as the authority to run the day-to-day operations of the HOA, is vested in the Board of Directors.

**5.10 Maintenance:** In the event the HOA does not properly landscape or maintain any Outlot, common area, or properly maintain any signage, the Village of Pewaukee may send written notice to the HOA indicating that the Village of Pewaukee will perform such landscaping and/or maintenance if not properly done by the HOA. The above-referenced notice shall give the HOA a minimum of seven (7) days to correct the problem. If the common area and/or sign is not properly landscaped and/or maintained within the time granted by the above-referenced notice, the Village of Pewaukee shall then have the authority to landscape and/or maintain any such common area and/or sign referred to in said notice and shall have the right to charge the Lot owners on a pro-rata basis for any costs incurred by the Village as a result of said landscaping and/or maintenance. Said costs may be assessed as special charges pursuant to Section 66.0627, Wis. Stats. If such charges are not paid by any lot owner within the period fixed by the Village of Pewaukee, the charges shall become a lien upon the Lot owner's Lot as provided in Section 66.0627, Wis. Stats., and shall be extended upon the tax rolls as a delinquent tax against the lot owner's lot as provided in Section 66.0627, Wis. Stats.

## ARTICLE VI

### 6. ARCHITECTURAL CONTROL COMMITTEE (ACC)

**6.1 MK/SS, LLC (“Developer”)** will initially form an Architectural Control Committee (“ACC”) consisting of three (3) persons appointed by Developer. The initial ACC shall be comprised of the initial Board of Directors appointed by Developer. The Developer-appointed members of the ACC shall serve until the first election of the Board of Directors of the HOA following the annual meeting of the HOA wherein control of the Association is passed from the Developer to the Lot Owners, in accordance with the Bylaws of the HOA and Article V of the Riverside Preserve Declaration of Restrictions and Covenants. Following the first election of the Board of Directors at the annual meeting of the HOA, the Board of Directors of the HOA shall act as the ACC on all matters properly before the ACC, provided, however, that the Developer shall retain the sole control of the ACC approvals and the right to review and approve of all Dwelling designs and proposals as set forth in Section 6.5 of Article VI of the Riverside Preserve Declaration of Restrictions and Covenants, as amended.

**6.2 Procedures:** The ACC’s consent, approval, or disapproval as provided herein shall be in writing. In the event the ACC fails to act on any matter presented to it within sixty (60) days after application (application meaning the delivery of a written request together with copies of building plans, specifications, surveys, etc.), approval will be deemed to have been obtained insofar as required in Section 4.1 only. No other provisions of these restrictions requiring the consent, decision or action of the ACC shall be affected by the non-action of the ACC.

**6.3 Responsibility and Purpose:** In order to obtain and maintain harmony in appearance, and for the protection of the Owners of the Lots, certain site improvements are subject to written approval by the ACC. These include, but are not limited to, buildings or structures of any type, fencing, unusual or unsightly landscaping and modification or other change to approved drainage patterns (NOTE: changes which will alter drainage patterns will be in violation of the site grading plan and/or recorded drainage easements and will require the approval of the Village of Pewaukee Engineering Department). The ACC shall have the right to reject any such addition or alternation to any Lot, which in its conclusive judgement, is not in conformity with these or future restrictions or is not desirable for aesthetic or other detrimental reasons. In exercising its judgement regarding such plans and specifications, the ACC may take into consideration, among other things, the suitability of the proposed modifications, the exterior color schemes to be used for any building or structure, the general design and materials to be used and the compatibility of the modification with surrounding Lots.

**6.4 Right to Waive Non-Compliance:** The ACC shall have the right to waive minor infractions or deviations from these restrictions in cases of hardship or for good cause, in its sole discretion, provided that the Village of Pewaukee building codes and/or the applicable provisions of the Developer’s Agreement are not violated. The ACC shall have the sole discretion to determine which of the minimum dwelling size requirements apply to a particular proposed dwelling and whether the same have been met.

**6.5 MK/SS, LLC (“Developer”) Control of ACC:** So long as Developer, or Developer’s successors or assigns, shall own any Lot in the Subdivision, the authority and functions of the ACC relative to the review and approval of all applications for a proposed Dwelling on any Lot in the Subdivision, including but not limited to, the review of plans, specifications, and surveys shall be vested solely in Developer, and such approvals shall be in Developer’s sole discretion in accordance with the requirements of the Riverside Preserve Covenants. Upon the Developer’s conveyance of the last Developer-owned Lot in the Subdivision and the Developer’s formal approval of the construction plans for the proposed Dwelling on such Lot, the Board of Directors of the HOA shall have full authority and control of the ACC. With the exception of the Developer’s rights as set forth herein, the ACC shall retain and exercise all other authority as set forth in Article VI of the Riverside Preserve Covenants.

**6.6 Landscaping and Grading Requirements:**

- **Landscaping and Erosion Control:** Final grading to the requirements of the subdivision’s master grading plan and establishment of a finished lawn must be completed within ninety (90) days of completion of the residence occurring between April 1<sup>st</sup> and August 1<sup>st</sup> OR by June 1<sup>st</sup> for completion between August 2<sup>nd</sup> and March 30<sup>th</sup>. During the time between gaining occupancy (completion) and establishment of the finish lawn, the Homeowner is responsible for installing and/or maintaining erosion controls for their Lot. All other landscaping must be completed by the Homeowner within one (1) year of completion of the residence. Landscaping by definition includes (a) a hard surfaced drive (asphalt, concrete, paver brick) and pedestrian access; (b) planting three (3) trees of at least two and one-half inches (2.5”) caliper upon each Lot within the road right-of-way at a point ten (10) feet from the right of way line; and in a manner consistent with the Village’s requirements for Street Trees in the subdivision (unless said trees were previously planted); (c) grass cover established over the balance of the Lot; thereafter, each Lot Owner is responsible for the upkeep and continuous maintenance of all landscaping under the Owner’s control. Note: It is the responsibility of each Lot Owner to install grass on Village right-of-way areas within the same timetable as the on-Lot lawn.
- **No filling of stormwater facilities allowed:** As part of the grading and landscaping of each Lot in the subdivision, no part of the Lot including rear and side yard swales, Outlot or Stormwater detention areas that are delineated on the recorded plat or grading plan with or without accompanying easements (some side and rear yard swales are not covered by private drainage easements, but are critical to the overall drainage plan for the subdivision) shall be filled or altered in any way without approval of all necessary governing parties including the Village of Pewaukee. No trees, shrubs or planting beds of any kind shall be planted or permitted within swales or stormwater detention areas. No accessory structures will be allowed within the said areas.
- **Improvements may require permits:** Other site improvements of any type that are placed upon or maintained within the public street right-of-way (walks, drives, etc.) or drainage easements require a permit from the Village of Pewaukee and/or the State of Wisconsin as may be applicable, which shall be obtained before work is commenced.

## ARTICLE VII

### 7. STREET MAINTENANCE AND EROSION CONTROL BOND

**7.1 Deposit:** Upon approval of dwelling construction plans by the ACC, each Lot Owner will be required to place in escrow with **MK/SS, LLC** the sum of five hundred dollars (\$500.00) to guarantee sidewalks (if broken or cracked) and Lot Owner completion of finish landscape, driveway, and three (3) tree plantings within one (1) year of occupancy. It is the responsibility of the Lot Owner to ensure that his agents or contractors maintain, at all times, streets within the subdivision clear of any type of material or debris, especially during landscape operations. Also, it is the responsibility of the Lot Owner to ensure that his agents or contractors maintain, at all times, the erosion controls in place on the Lot and/or install new erosion controls to meet the intent of the erosion control plan. Failure of the Lot Owner to regulate his agents or contractors in this regard will cause **MK/SS, LLC** to proceed to clear and clean the street and/or install appropriate erosion control measures as reasonably required and to charge the Street Maintenance and Erosion Control Bond account deposited by each Lot Owner in accordance with this paragraph. Once Lot Owner meets finish landscape and driveway requirements, the Street Maintenance and Erosion Control Bond will be refunded in full unless a portion of the bond was retained to replace sidewalks, tree plantings, erosion control fencing or landscape operation clean-up by **MK/SS, LLC**.

**7.2 Excess Costs:** In the event **MK/SS, LLC** is required to perform street cleaning operations in which the costs exceed the Lot Owner's deposited amount under this Article VII, **MK/SS, LLC** will assess the respective Lot Owner for the additional amount due to failure of the Lot Owner to pay **MK/SS, LLC** for any such additional charge within ten (10) days of being billed, will give to **MK/SS, LLC** the right to file and foreclose a construction or mechanic's lien upon the Owner's Lot. **MK/SS, LLC** charges for performing under this section will include the actual amount of costs incurred plus a management fee equal to twenty-five percent (25%) of the actual cost. Upon issuance of an occupancy permit, all Street Maintenance escrow funds placed with **MK/SS, LLC**, less any funds disbursed, shall be returned to the Lot Owner without any interest.

**7.3 Use of Deposited Funds:** Each Lot Owner's deposit under this paragraph is for the sole and exclusive use of each respective Lot Owner and deposited funds are not to be used to offset the costs created by acts of other Lot Owners, except in the instance where the violator of these requirements cannot be readily determined; then all Lot Owners having funds on deposit shall be charged equally.

## ARTICLE VIII

### 8. EASEMENTS

**8.1 SUBDIVISION UTILITY, DRAINAGE EASEMENTS:** **MK/SS, LLC** reserves to itself the right to record utility and drainage easements and to implement improvements in these easements as necessary to properly provide service to all Lots in Riverside Preserve. These

improvements may include but are not limited to: drainage improvements to alleviate drainage problems, addition of pipes for drainage, addition of cable utilities to extend to future phases of development.

**8.2 POSSIBLE FUTURE EASEMENTS:** Seller reserves the right for a period of three (3) years after closing hereof to grant easements to WE Energies, Village of Pewaukee Utilities, AT&T, Time Warner Cable, and other cable or internet providers for utility purposes over, upon, under or across all Lots in this Subdivision whether owned by the Developer or third parties. Such easements shall, so far as reasonably possible, be confined to areas within twenty (20) feet of all Lot lines and be granted standard utility forms. Seller reserves the right for a period of three (3) years after closing to create side Lot line or rear Lot line swales for drainage purposes. Such swales shall, so far as reasonably possible, be confined to an area within twenty (20) feet of all Lot lines and may involve tree removal and grading within such areas.

## ARTICLE IX

**9. STORMWATER MANAGEMENT** The Lot Owners in Riverside Preserve, and the HOA, shall collectively be responsible for maintenance of the stormwater management measures (the "Responsible Parties").

**9.1** The Responsible Parties shall maintain the stormwater management measures installed on all Outlots in accordance with the approved stormwater design and Storm Water Management Practices Maintenance Agreement prepared by Developer's Engineering representatives and on file in the offices of the Village.

**9.2** The Village of Pewaukee is authorized to access the property to conduct inspections of stormwater practices as necessary to ascertain that practices are being maintained and operated in accordance with the approved stormwater plan.

**9.3** The Responsible Parties, on an annual basis, shall provide maintenance of each stormwater management measure, including but not limited to, removal of debris, maintenance of vegetative areas, maintenance of structural stormwater management measures, aeration equipment and sediment removal.

**9.4** Upon notification of the Responsible Parties by the Village of maintenance problems which require correction, the specified corrective actions shall be taken within a reasonable timeframe as directed by the Village.

**9.5** The Village is authorized to perform the corrective actions identified in the said inspection report if the Reasonable Parties do not make the required corrections within the specified time period. The costs and expenses may be levied against the properties and serve as special charges for current services, pursuant to 66.0627, Wisconsin Statutes, or as special assessments, pursuant to 66.0701, Wisconsin Statutes. Special charges and special assessments, including delinquent amounts, may be collected by the Village as provided for in the statutory sections indicated above.

**9.6 Storm Water Facilities:** The stormwater retention basins that have been constructed in Riverside Preserve are required by the Village to assist in the removal of sediment from and detention of storm water. The stormwater retention basins are not intended to be used for swimming or recreational facilities. Any such use of the stormwater retention basins is strictly prohibited. **Anyone entering or using the stormwater retention basins for prohibited use does so at their own risk.** By acceptance of a deed or other conveyance of a Lot in Riverside Preserve, each Owner and its respective successors, assigns, heirs and personal representatives hereby waives, to the fullest extent permitted by law, any and all claims for liability against the Village, Developer and the HOA and their respective agents, contractors, employees, officers and directors, for injury or damage to person or property sustained in or about or resulting from the use or existence of the stormwater retention basins. In addition, each Owner (and its successors, assigns, heirs and personal representatives) agrees to indemnify, defend and hold harmless the Village, Developer, the HOA and their respective agents, contractors, employees, officers and directors from and against any and all liabilities, claims, demands costs and expenses of every kind and nature (including attorney fees) including those arising from any injury or damage to any person (including death) or property sustained in or about or resulting from the use or existence of the storm water retention basins.

**9.7** Pursuant to applicable law, including the applicable provisions of the Village Storm Water Management and Erosion Control rules and ordinances, the Developer has entered into a Storm Water Management Practice Maintenance Agreement for the benefit of the HOA. The HOA is responsible for compliance with the Storm Water Management Practice Maintenance Agreement, including but not limited to the maintenance of the landscaped areas surrounding the detention, retention, and infiltration ponds. Should the HOA fail to comply with the Storm Water Management Practice Maintenance Agreement, the Village pursuant to such agreement, shall complete all repairs, maintenance, modifications and work necessary to ensure proper Storm Water Management. One Thirty-sixth (1/36) of such costs plus any applicable interest, may be assessed to each Owner of a Lot in the Subdivision by the Village, in its discretion, and payable on the Owner's real estate tax bill.

## ARTICLE X

### 10. AMENDMENT

**10.1 MK/SS, LLC Amendment Rights:** This Declaration shall run with the land and shall be binding upon all persons purchasing any Lot in the Subdivision after recording of this Declaration. Any of the herein restrictions, covenants or other provisions of this Declaration may be annulled, waived, changed, modified or amended at any time by a written instrument, executed in such a manner as to be recordable, setting forth such annulment, waiver, change, modification or amendment, executed solely by **MK/SS, LLC**, or its successors or assigns, until such time as **MK/SS, LLC**, or its successors or assigns, shall no longer own any Lot in the subdivision or any additions thereto. These rights are subordinate to the review by the Village, prior to being effective, for compliance with Village ordinances and provisions of the Developer's agreement with the Village. This section does not terminate, and shall not be interpreted to authorize termination of, any drainage easements, pond maintenance requirements, or other restriction herein that affects an interest in the real estate remains in the State of Wisconsin or a political subdivision or municipal

corporation of the State of Wisconsin, including the Village, and the duration of any such restriction shall be unlimited and perpetual, unless terminated by the benefitted political subdivision by recorded document.

**10.2 Homeowner Amendment Rights:** When MK/SS, LLC or its successors or assigns no longer retain or own an interest in the property or any Lots, the Owners of at least seventy-five percent (75%) of the Lots may amend the herein restrictions and covenants as authorized in Section 10.1 above.

**10.3 Effective Date:** The effective date of any such annulment, waiver, change or modification of amendment shall be as of the date of recording of such Declaration at the offices of the Waukesha County Register of Deeds.

## ARTICLE XI

### 11. GENERAL PROVISIONS

**11.1 Initial Term and Extensions:** The restrictions and covenants herein contained shall be deemed to be running with the land and shall be binding upon all persons, parties and entities having an interest in the land affected thereby, or claiming such rights for a period of twenty-five (25) years from the date hereof, at which time this Declaration shall be automatically extended for successive periods of ten (10) years each, unless, prior to the end of the initial (or any successive) period, an instrument signed by the Owners of at least seventy-five percent (75%) of the Lots has been duly recorded terminating or amending this Declaration in whole or in part.

**11.2 Period For Contesting Violations:** Any violation of these restrictions which shall exist for a period of one (1) year or more without protest thereof being received by the Owner of the Lot containing such violation, shall not be considered a violation thereafter and any Lot Owner or other party shall be forever barred from proceeding under the provisions of this Declaration.

#### **11.3 Enforcement of Declaration: No Reversion of Title**

- The HOA or, until formation of the HOA, the Developer shall have the exclusive right to enforce, by proceedings at law or in equity, all the terms, conditions and provisions of this Declaration and any Rules or Regulations adopted by the HOA, except that any Lot Owner may proceed, at such Lot Owner's expense, to enforce any such terms, conditions or provisions (other than for collections of assessments against Lot Owners of other Lots) if the HOA fails to take such action within sixty (60) days following a written request by such Lot Owner for the HOA to do so. Any Lot Owner violating any of the terms, conditions, or provisions of this Declaration or any Rules and Regulations shall pay the costs, expenses, and actual attorney's fees incurred by the HOA or by a prosecuting Lot Owner in the successful enforcement thereof. Neither the HOA nor the ACC, nor any member, director, or officer thereof, shall be subject to any suit or claim by any Lot Owner for failure of the HOA or the ACC to take any action requested by a Lot Owner.

- Each remedy set forth in this Declaration and/or in Rules and Regulations shall be in addition to all other rights and remedies available at law or in equity. All such remedies shall be cumulative and the election of one shall not constitute a waiver of any other. Any forbearance or failure of the HOA or ACC to exercise any such right or remedy for any violation shall not be a waiver of such right or remedy under any circumstances (except as specifically provided in this Declaration) unless a written waiver is obtained from the HOA or ACC.
- Under no circumstances shall any violation of this Declaration or of any Rules and Regulation result in or cause title to any Lot to revert to the previous Owner or the Developer.

**11.5 Claim Restriction/Limitation:** No Lot owner shall be entitled to file a grievance or seek compensation from the Village, railroad operators or nearby businesses associated with damage to the exterior or interior of Dwellings, damage to landscaping, walkways, driveways or personal property from alleged release of dust or creation of noise by or as a result of railroad and/or nearby business operations.

**11.6 Invalidity:** Invalidation of any of the restrictions or covenants herein contained, or any part thereof, by any judgement or court order shall not affect any of the other provisions herein contained, which shall remain in full force and effect.

**11.7 Assignment of Developer's Rights:** The Developer, **MK/SS, LLC**, may assign its rights hereunder, including its rights to manage and control the ACC and the HOA as provided herein, to any third party, including, but not limited to, the HOA, so long as the Developer, **MK/SS, LLC** owns any Lots in the Subdivision.

**11.8 Governing Law:** The Laws of the State of Wisconsin shall govern and control the interpretation and application of this document and its terms and conditions.

**11.9 ACC Approval:** Prior to any permit submittal to the Village of Pewaukee, said applicant shall first obtain approval of the ACC as set forth in this Declaration.

This Declaration shall be binding upon and inure to the benefit of **MK/SS, LLC**, its successors and assigns, and all persons, parties, or entities who may hereafter become Owners of any Lot, or any legal interest therein, and their legal representatives, heirs, successors and assigns.

**IN WITNESS WHEREOF, MK/SS, LLC** has caused this instrument to be signed by a duly authorized representative of **MK/SS, LLC** this \_\_\_\_ day of January, 2024.

**MK/SS, LLC**

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Michael J. Kaerek,  
Member

