



11333 N. Cedarburg Road  
Mequon, WI 53092  
Phone: 262-236-2913  
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[www.ci.mequon.wi.us](http://www.ci.mequon.wi.us)

Water Utility  
Taped and Televised

## MEQUON MUNICIPAL WATER UTILITY COMMISSION

Tuesday, April 14, 2020

7:30 PM

### Virtual Meeting

**ELECTRONIC MEETING NOTICE:** Pursuant to the current recommendation of the CDC limiting the size of public gatherings and the various federal and state orders implementing that recommendation, and to help protect our community from the Coronavirus (COVID-19) pandemic, this meeting will be held virtually through the GoToMeeting platform with each member accessing the meeting remotely. Citizens wishing to attend the meeting are encouraged to watch the live broadcast of the meeting on the City's YouTube Account (<https://www.youtube.com/channel/UCZDJETJJa2M-KQgIcEDiyMQ>), or on the City's Agenda Management Website (<http://mequoncitywi.iqm2.com/Citizens/default.aspx>). Citizens may also join the meeting online or by phone. Please go to <https://www.gotomeet.me/Mequon/cc> and enter access code 298-967-317 to join the meeting online or call into the meeting by dialing 1-866-899-4679 and enter access code 298-967-317.

**PUBLIC COMMENTS** will be accepted in writing only. Public comments should be directed at least 2 hours prior to the meeting to the Department of Public Works in advance by email at [klundeen@ci.mequon.wi.us](mailto:klundeen@ci.mequon.wi.us) or by leaving a written public comment addressed to the intended committee in the drop box at City Hall on 11333 N. Cedarburg Road, Mequon, by 5:30 PM on Tuesday, April 14. Comments received timely will be forwarded to all members of the body for their consideration.

Reasonable accommodations will be made for those citizens who are unable to attend the meeting in the methods identified above upon at least two hours' notice. Notice can be given to the City Clerk's Office at 262-236-2914.

### Agenda

- 1) Call to Order, Roll Call
- 2) Approval of Meeting Minutes  
**Action requested: review and approve**
  - a. March 10, 2020 Minutes
- 3) Resolutions  
**Action requested: review and recommend approval**
  - a. Orchard Street Water Services Agreement
- 4) Adjourn

*Dated: April 14, 2020*

*/s/ John Wirth, Chair*

Notice is hereby given that a quorum of other governmental bodies may be present at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take formal action thereto at this meeting.

Persons with disabilities requiring accommodations for attendance at this meeting should contact the City Clerk's Office at 262-236-2914, twenty-four (24) hours in advance of the meeting.

Any questions regarding this agenda may be directed to the Public Works Office at 262-236-2913, Monday through Friday, 7:00 AM - 3:30 PM.



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**MEQUON MUNICIPAL WATER UTILITY COMMISSION**

**Tuesday, March 10, 2020**

**7:30 PM**

**Christine Nuernberg Hall**

**Minutes**

- 1) Call to Order, Roll Call  
Commissioner Wirth called the meeting to order at 7:30 PM.

**Present:**

- Commissioner John Wirth
- Commissioner Robert Strzelczyk
- Commissioner Glenn Bushee
- Commissioner Dale Mayr
- Commissioner Jeffrey Hansher
- Commissioner Mark Gierl
- Commissioner Brian Parrish
- Commissioner Kathleen Schneider
- Commissioner Andrew Nerbun

Also present were City Administrator Jones, City Attorney Sajdak, Director of Public Works/City Engineer Lundeen, Deputy Director of Utilities Driscoll, Finance Director Krueger, and Administrative Assistant Deuster.

- 2) Approval of Meeting Minutes

a. February 11, 2020 Minutes

**RESULT:**                    **Approved [Unanimous]**  
**MOVED BY:**                Commissioner Strzelczyk  
**SECONDED BY:**            Commissioner Nerbun

**AYES:**                    Wirth, Strzelczyk, Bushee, Mayr, Hansher, Gierl, Parrish, Schneider, Nerbun

- 3) Action Item

**Action requested: review and approve**

- a. Approval of the Transfer of Water Capital Fund Balances to the Water Operating Fund

Attachment: 03-10-2020 Mins\_Water Utility Commission (5049 : March 10, 2020 Minutes)

b. Approval of the Transfer of Water Capital Fund Balances to the Water Operating Fund

**RESULT:** **Approved by Voice Acclamation [Unanimous]**

**MOVED BY:** Commissioner Mayr

**SECONDED BY:** Commissioner Schneider

**AYES:** Wirth, Strzelczyk, Bushee, Mayr, Hansher, Gierl, Parrish, Schneider, Nerbun

c. A Resolution Denying the Claim of David Simenz Related to Vehicle Damage

Commissioner Wirth recommended the commission move this to public works for further evaluation and then come back to the commission for action.

City Attorney Sajdak stated based on the memo provided it is recommended to deny the claim or bring the memo to the public works department for further review as apart of the process. The recommendation is based on a legal perspective.

Commissioner Strzelczyk made a motion to bring the topic to public works for further evaluation and possible action.

**RESULT:** **Approved with Amendments [Unanimous]**

**MOVED BY:** Commissioner Strzelczyk

**SECONDED BY:** Commissioner Parrish

**AYES:** Wirth, Strzelczyk, Bushee, Mayr, Hansher, Gierl, Parrish, Schneider, Nerbun

4) Motion to Adjourn at 7:35 PM.

**RESULT:** **Approved by Voice Acclamation [Unanimous]**

**MOVED BY:** Commissioner Strzelczyk

**SECONDED BY:** Commissioner Nerbun

**AYES:** Wirth, Strzelczyk, Bushee, Mayr, Hansher, Gierl, Parrish, Schneider, Nerbun

Respectfully Submitted,

*Casey Deuster*

Attachment: 03-10-2020 Mins\_ Water Utility Commission (5049 : March 10, 2020 Minutes)



**TO: Mequon Municipal Water Utility Commission**  
**FROM: Kristen Lundeen, Director of Public Works/City Engineer**  
**DATE: April 14, 2020**  
**SUBJECT: Orchard Street Water Services Agreement**

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### **Background**

Previously, the Water Utility Commission approved a Water Services Agreement with the Village of Thiensville to address the construction of the Buntrock Avenue Water Main Loop betterment of service project. Thiensville initiated the project to allow for a subsequent residential development, Orchard Street subdivision. The new residential development will connect to the public water utility utilizing the standard build and contribute model. The Water Services Agreement for the proposed project is before the Water Utility Commission for consideration and approval.

### **Analysis**

When subdivisions in the City of Mequon develop, a Water Services Agreement is required as a condition of approval and executed in combination with a Development Agreement. While Mequon will not oversee the development itself, the Water Utility has previously provided service outside of the municipal boundary through a Water Services Agreement.

The City Attorney and the developer have both reviewed and approved the language in the Water Services Agreement. The majority of the language follows the standard template, with deviations to address the coordination between the city and the village for building permits and water service applications.

### **Fiscal Impact**

As noted, the infrastructure will be constructed by the developer and contributed to the Water Utility. The design is initiated and paid for by the developer and reviewed and approved by the Water Utility. Once construction is complete and the infrastructure tested and approved, the developer will deed it to the Water Utility.

### **Recommendation**

Staff recommends that the Water Utility Commission approve the Water Services Agreement for execution by the appropriate staff.

Attachments:

Orchard Street Water Services Agreement (PDF)

Orchard Street Preliminary Plat (PDF)

AGREEMENT

This Agreement (the “Agreement”) is made by and between Mequon Water Utility (“Water Utility”) and Bonnilake Real Estate, LLC (“Developer”) (collectively, the “Parties,” individually, a “Party”).

WHEREAS, the Developer wishes to obtain Mequon water utility service for its North Orchard subdivision in the Village of Thiensville, Wisconsin (the “Development”); and

WHEREAS, the Developer wishes to design, construct mains, valves, fittings and any and all other facilities necessary to deliver water (the “Water Service Facilities”) to the curb stop box of the new lots; and

WHEREAS, the Developer wishes to convey to the Water Utility and the Water Utility wishes to receive from the Developer, title to the Water Service Facilities at the time of the connection of the Water Service Facilities to the Water Utility system.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Water Utility Obligations. The Water Utility shall have the following obligations under this Agreement with relation to the Water Service Facilities.
  - 1.1 To provide and maintain meter(s) for installation in the Development.
  - 1.2 To provide water service to the Development under rates, rules, regulations and conditions of service on file with the Public Service Commission of Wisconsin (“PSCW”) or any successor regulatory agency.
  - 1.3 To maintain the Water Service Facilities in a manner consistent with any and all applicable federal, state and local statutes, regulations and ordinances.
  - 1.4 To take title to the Water Service Facilities after a final inspection by Water Utility reveals that, at the reasonable discretion of the Water Utility, the Water Service Facilities meet the Standards as defined in Section 2.1 of this Agreement.
    - 1.4.1 Water Utility shall provide the Developer with at least five (5) business days prior written notice of Water Utility’s intent to take title to the Water Service Facilities. Said notice shall be provided pursuant to Section 11 of this Agreement.
    - 1.4.2 Water Utility shall be responsible for the refund obligations to Developer described in Section 7 of this Agreement.

2. Obligations of Developer. The obligations of Developer under this Agreement are as follows:
  - 2.1 To construct the Water Service Facilities in a manner consistent with any and all applicable federal, state and local statutes, regulations and ordinances and complying with the Mequon Water Standards which have been provided to Developer. The Developer shall supply copies of lien waivers from all contractors and/or material suppliers performing work or supplying materials on this project before final acceptance of the Water Service Facilities.
  - 2.2 To transfer by bill of sale or instrument of dedication title to the Water Services Facilities to the Water Utility upon written request by the Water Utility and to maintain the Water Service Facilities in a manner consistent with any and all applicable federal, state and local statutes, regulations or ordinances prior to the transfer contemplated by this Agreement.
  - 2.3 The Developer will pay for all reasonable costs incurred by the Water Utility, or its consultant in the review of the engineering plans, inspection of the construction and/or installation of the Improvements, review of record drawings for City files, and any other costs that may be incurred by the City for this Project. The Developer will pay the costs above enumerated within thirty (30) days after being billed by the Water Utility. Past due amounts on invoices generated by the City may be subject to a one and one-half (1.5) percent per month charge, computed from the date of the original invoice.
  - 2.4 The Developer shall submit the Village of Thiensville plumbing permit and the Mequon Water service application simultaneously for each unit. Applicant should provide a copy of both documents to each municipality.
3. Rates. Developer expressly acknowledges that it will pay Mequon Water Utility tariff rates currently in effect from time to time. A copy of the current PSC tariff is attached. These rates are subject to change from time to time, pursuant to approval from the PSCW. A copy of the current tariff is available upon request.
4. Design of Water Service Facilities. Developer shall be responsible for any and all design work associated with the Water Service Facilities and shall obtain design plan approvals from the Water Utility and any and all necessary federal, state or local regulatory agencies or governmental authorities.
  - 4.1 Upon the Water Utility approval of the design of the Water Service Facilities, the Water Utility will provide a so-called "Owner Letter" as required by the Wisconsin Department of Natural Resources

5. Construction of Water Service Facilities. Upon completion of construction, the Water Utility shall have the right to take title to the Water Service Facilities, subject to the requirements of sections 1, 2, 4 and 5 herein, including provisions for inspection and testing to verify that the Water Service Facilities meet applicable Standards as expressed herein.
- 5.1 Inspection during construction and upon the completion of the construction of the Water Service Facilities will be conducted by the Water Utility. The Water Utility inspectors shall notify Developer's contractor of materials or workmanship which are not in compliance with the Standards and require correction prior to connection to Mequon water utility system or any transfer of title of the Water Service Facilities to the Water Utility. All other aspects of construction are the sole and complete responsibility of Developer, including but not limited to, safety, coordination, construction staking, restoration, erosion control, and processing contractor payment requests.
- 5.1.1 The Parties expressly agree that the Water Utility's review of the design plans for the Water Service Facilities and inspection of the construction of the Water Service Facilities shall be done solely for the purpose of determining whether or not the Water Service Facilities meet, or will meet, the applicable Standards as expressed herein. The Parties expressly agree the Water Utility shall not be liable for any costs whatsoever associated with or relating to errors in the design or construction of the Water Service Facilities.
- 5.2 Any deviation from the design plans during construction of the Water Service Facilities shall be approved by the Water Utility before the facilities are constructed.
- 5.3 Before the Water Utility accepts transfer of the title for the Water Services Facilities, Developer shall pressure test and bacteriologically sample the Water Service Facilities under the direction of the Water Utility. The Water Service Facilities must pass all testing required by the PSCW, the WDNR, or any other applicable federal, state or local governmental agency testing before the Water Utility accepts transfer of the title for the Water Services Facilities.
6. Right of Further Extension. The Water Utility reserves the right to further extend its water mains from and beyond the water main extension contemplated by this Agreement. Such extension shall be done without cost to Developer, unless such extension is constructed at the request of Developer.
7. Refund Provision. The Developer shall be entitled to a refund of a portion of its Contribution in Aid of Construction should additional customers connect to the main constructed in this project within a 10 year period commencing with the Title Transfer Date. For each customer connecting to the water main, the Water Utility agrees to pay the refund to the Developer no later than January 31<sup>st</sup> of the year following such

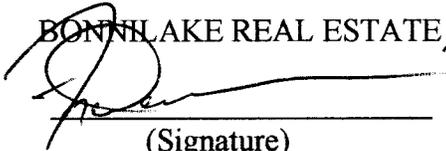
connection even if such payment date is beyond the 10 year period from the Title Transfer Date. The refund will be calculated annually by the Water Utility on a Residential Equivalent Unit (REU) basis in accordance with the Water Utility Connection Rules. A sample calculation of the refund provisions in place at the time of this agreement is attached as Exhibit B.

The Water Utility's obligation to pay the refund to the Developer shall survive the conveyance of the Water Service Facilities to the Water Utility and be enforceable by the Developer against the Water Utility for any additional customers connecting to the water main of the Water Service Facilities. The Developer shall provide an actual final receipt of its construction costs for the project to the Water Utility. The Utility will not refund more than the original contribution by the Developer in accordance with PSCW rules. The Developer's rights under the terms of this Agreement to receive a refund shall not be eliminated, nor shall the refund calculation be modified to the detriment of the Developer.

8. Contingencies. This Agreement shall be contingent upon the Parties obtaining any and all approvals from appropriate federal, state and local governments and agencies relating to this project.
9. Successors and Assigns. This Agreement shall be binding upon the respective heirs, successors and assigns of the Parties.
10. Force Majeure. Neither Party shall be liable to the other for failure, default or delay in performing any of the obligations set forth in this Agreement reasonably attributable to any cause not within the control of the Party affected in which, by the exercise of due diligence, such Party is unable to prevent or overcome. Should any of the foregoing occur, the Parties agree to proceed with diligence to enable each Party to perform its obligations under this Agreement.
11. Notice. Notice to either party under this Agreement shall not be effective unless sent via certified United States mail to the following addresses:
  - 11.1 To the Water Utility:  
Kristen Lundeen, P. E.  
Director of Public Works  
City of Mequon  
11333 N. Cedarburg Road 60 W  
Mequon, WI 53092-1930
  - 11.2 To Developer:  
  
Fred Bersch  
Bonnilake Real Estate, LLC

Either party may change the address of notice by providing notice to the other party pursuant to this section of the Agreement.

- 12. Indemnification. Both Parties shall indemnify, defend and hold the other Party harmless from any damages, claims or judgments reasonably related to any acts or omissions resulting from the gross negligence or willful misconduct of the Party against whom this indemnification provision is being enforced. This indemnification obligation shall survive the conveyance of the Water Service Facility on the Title Transfer Date.
- 13. Failure to Enforce. Failure to enforce any provision of this Agreement by either Party shall not be deemed to be a waiver of any other provision of the Agreement.
- 14. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties. This Agreement may not be modified or altered in any way except by mutual written agreement of the Parties.
- 15. Governing Law. This Agreement shall be governed and construed under the laws of the State of Wisconsin. The exclusive venue for any cause of action brought in relation to this Agreement shall be Ozaukee County Circuit Court, Port Washington, Wisconsin.
- 16. Warranty of Authority. By signing this Agreement, each party warrants and represents that it has obtained all approvals necessary to enter into this Agreement and that each party is authorized to execute the Agreement and to make it binding and enforceable against the Parties.

|                                                                                                                 |                                |
|-----------------------------------------------------------------------------------------------------------------|--------------------------------|
| BONNI LAKE REAL ESTATE, LLC      MEQUON WATER UTILITY                                                           |                                |
| By: <br>_____<br>(Signature) | By: _____<br>(Signature)       |
| Name: <u>Frederic P. Bersch</u><br>(Type or Print)                                                              | Name: _____<br>(Type or Print) |
| Date: <u>April 7, 2020</u>                                                                                      | Date: _____                    |

Attachment: Orchard Street Water Services Agreement (5044 : Orchard Street Water Services Agreement)

## Exhibit B

**Example new customer connection charge**

**And**

**Example Developer Refund calculation**

The Developer shall provide the complete construction costs of the water service facilities to the utility (in lieu of this, the utility will use standard local delivery main costs)

### **Example Future Connection Cost: (Residential Home)**

System Costs + (Local Delivery Main Costs/20 potential REU's) + Street Lateral Costs – Revenue Credit

*Here is an example for reference only – utilizing numbers from our tariff*

$\$1,080.48 + (\$105,000/20) + \$1,700.00 - \$1,080.48 = \$6,950.00$  Connection Fee

**Refund to the developer = Local Delivery Main Costs/Potential Connecting REU's**

*using the example above – for reference only*

$\$105,000/20 = \$5,250.00$  per residential connection

*If construction costs are not shared with the Utility – Standard Local Delivery Main Costs will be utilized (\$2,398.95)*

# ORCHARD STREET PRELIMINARY PLAT

Lot 1 of Certified Survey Map No. 3941, being a part of the Southeast 1/4 of the Northeast 1/4 of Section 22, Township 9 North, Range 21 East, Village of Thiensville, Ozaukee County, Wisconsin.  
ALSO:  
The South Sixty-Eight (68) feet of Lot 15 and all of Lots 16 and 17 in Block 2 in Village Heights, being a part of the Southeast 1/4 of the Northeast 1/4 of Section 22, Township 9 North, Range 21 East, Village of Thiensville, Ozaukee County, Wisconsin.

Survey No. 167075-RMK

**APPLICANT & OWNER**  
Gregory Devorkin  
11518 North Port Washington Road  
Suite 103  
Mequon, WI., 53092

**SURVEYOR**  
John P. Casucci  
16745 West Bluemound Road  
Brookfield, WI., 53005

Bearings are based on the East line of the Northeast 1/4 of Section 22, Township 9 North, Range 21 East, which is assumed to bear North 01°08'27" West.

Subdivision to contain 12 Lots

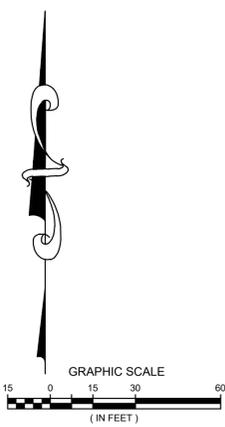
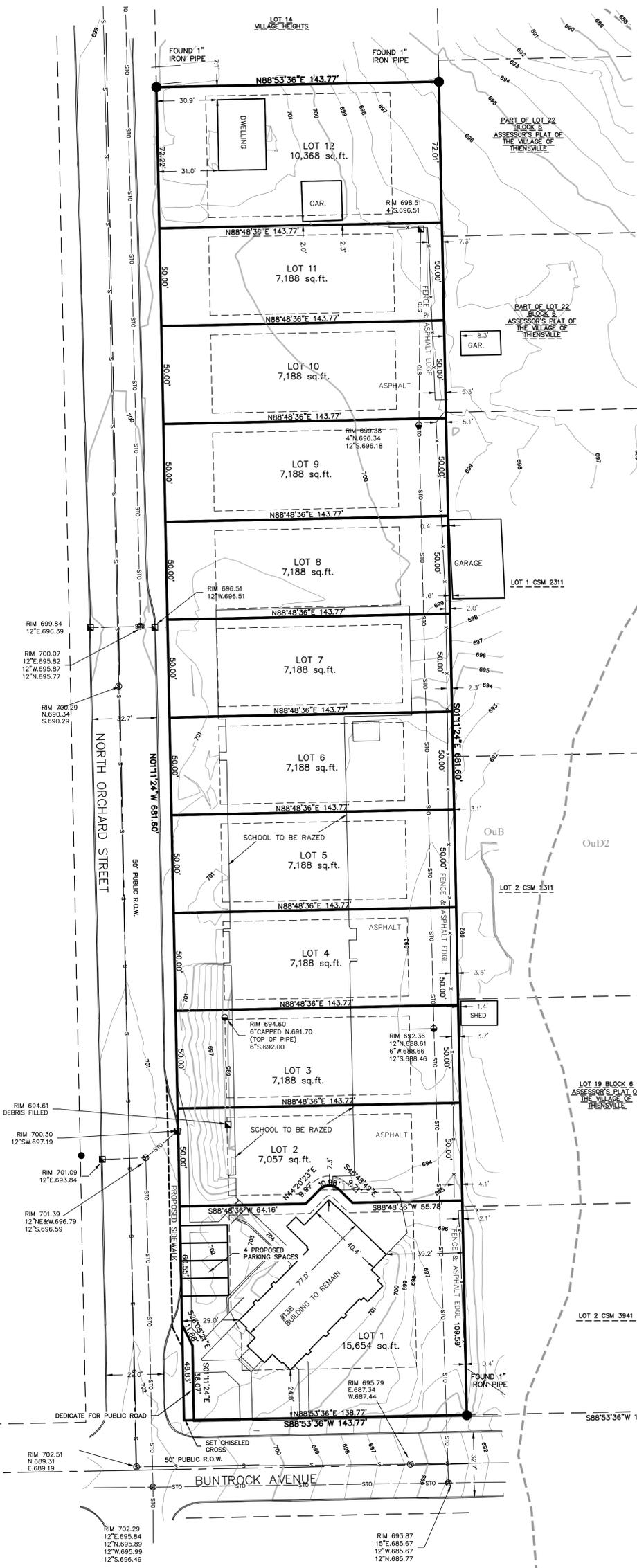
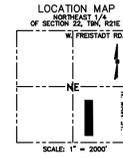
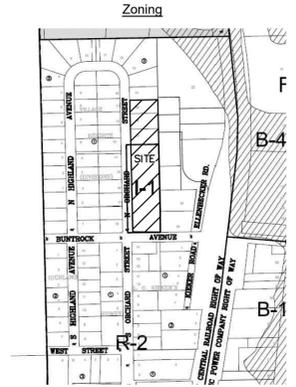
97,989 total square feet.

All Lot will be served with sanitary sewer and watermain.

Starting benchmark: SE Corner of NE 1/4 Sec. 22-9-21, found conc. monument w/brass cap, elev.=657.93' (witness monument)

**Soils**  
OuB - Ozaukee silt loam, high carbonate substratum, 2 to 6 percent slopes.  
OuD2 - Ozaukee silt loam, high carbonate substratum, 12 to 20 percent slopes, eroded.

**LOT REQUIREMENTS**  
Minimum Lot width 50'  
Minimum square footage 6,800 s.f.  
Side yard setback 5'  
Front setback 25'  
Rear yard setback 25'



### LEGEND

|          |                                      |
|----------|--------------------------------------|
| ○        | BOLLARD                              |
| +        | SOIL BORING/MONITORING WELL          |
| ⊕        | LAG POLE                             |
| □        | MAILBOX                              |
| ⊞        | AIR CONDITIONER                      |
| ⊞        | CONTROL BOX                          |
| ⊞        | TRAFFIC SIGNAL                       |
| ⊞        | RAILROAD CROSSING SIGNAL             |
| ⊞        | CABLE PEDESTAL                       |
| ⊞        | POWER POLE                           |
| ⊞        | GUY POLE                             |
| ⊞        | GUY WIRE                             |
| ⊞        | LIGHT POLE                           |
| ⊞        | SPOT/YARD/PEDESTAL LIGHT             |
| ⊞        | HANDICAPPED PARKING                  |
| ⊞        | ELECTRIC MANHOLE                     |
| ⊞        | ELECTRIC PEDESTAL                    |
| ⊞        | ELECTRIC METER                       |
| ⊞        | ELECTRIC TRANSFORMER                 |
| ⊞        | TELEPHONE MANHOLE                    |
| ⊞        | TELEPHONE PEDESTAL                   |
| ⊞        | UTILITY VAULT                        |
| ⊞        | GAS VALVE                            |
| ⊞        | GAS METER                            |
| ⊞        | GAS WARNING SIGN                     |
| ⊞        | STORM MANHOLE                        |
| ⊞        | ROUND INLET                          |
| ⊞        | SQUARE INLET                         |
| ⊞        | STORM SEWER END SECTION              |
| ⊞        | SANITARY MANHOLE                     |
| ⊞        | SANITARY CLEANOUT OR SEPTIC VENT     |
| ⊞        | SANITARY INTERCEPTOR MANHOLE         |
| ⊞        | MISCELLANEOUS MANHOLE                |
| ⊞        | WATER VALVE                          |
| ⊞        | HYDRANT                              |
| ⊞        | WATER SERVICE CURB STOP              |
| ⊞        | WATER MANHOLE                        |
| ⊞        | WELL                                 |
| ⊞        | WATER SURFACE                        |
| ⊞        | WETLANDS FLAG                        |
| ⊞        | MARSH                                |
| ⊞        | CONIFEROUS TREE                      |
| ⊞        | DECIDUOUS TREE                       |
| ⊞        | SHRUB                                |
| ---      | EDGE OF TREES                        |
| s---     | SANITARY SEWER                       |
| sto---   | STORM SEWER                          |
| w---     | WATERMAIN                            |
| g---     | MARKED GAS MAIN                      |
| e---     | MARKED ELECTRIC                      |
| owm---   | OVERHEAD WIRES                       |
| b---     | BUREAU ELEC. SERV.                   |
| t---     | MARKED TELEPHONE                     |
| tv---    | MARKED CABLE TV LINE                 |
| fo---    | MARKED FIBER OPTIC                   |
| 780      | INDICATES EXISTING CONTOUR ELEVATION |
| x 780.55 | INDICATES EXISTING SPOT ELEVATION    |

THE UNDERGROUND UTILITY INFORMATION AS SHOWN HEREON IS BASED, IN PART, UPON INFORMATION FURNISHED BY UTILITY COMPANIES AND THE LOCAL MUNICIPALITY. WHILE THIS INFORMATION IS BELIEVED TO BE RELIABLE, ITS ACCURACY AND COMPLETENESS CANNOT BE GUARANTEED NOR CERTIFIED TO.

**raSmith**  
CREATIVITY BEYOND ENGINEERING  
16745 W. Bluemound Road  
Brookfield, WI 53005-5938  
(262) 781-1000  
rasmith.com

**SURVEYOR'S CERTIFICATE:**  
I, John P. Casucci, Professional Land Surveyor, do hereby certify that the preliminary plat is a correct representation of the existing land divisions features, and that I, to the best of my knowledge and belief, have compiled with the applicable ordinances in preparing the same.  
Dated this 3rd day of January 2020.

*John P. Casucci*  
John P. Casucci, PLS S-2055

