



**CITY OF WHITEWATER  
COMMON COUNCIL AGENDA**  
Common Council Meeting

**Thursday, April 4, 2019 - 6:30 p.m.**  
**City of Whitewater Municipal Building**  
**312 W. Whitewater St., Whitewater, WI 53190**

**CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE.**

**CONSENT AGENDA:**

CA-A	Approval of Council Minutes of 3/5/2019.	P. 1
CA-A	Approval of Payment of Invoices processed through 3/27/19.	P. 4
CA-B	Acknowledgment of Receipt and Filing of the Following: - Irvin L. Young Memorial Library Board Minutes of 2/18/19.	P. 6
CA-C	Expedited approval of the following items, per City Staff Approval: C-2; C-3, C-4, C-5, C-6, C-7, C-8	n/a

**CITY MANAGER UPDATE**

**STAFF REPORTS:**

DTWW	Quarterly Report.	n/a
CDA Director	Grocery Store Recruitment Update.	P. 9

**HEARING OF CITIZEN COMMENTS.** No formal Common Council Action will be taken during this meeting although issues raised may become a part of a future agenda. Participants are allotted a three minute speaking period. Specific items listed on the agenda may not be discussed at this time; however citizens are invited to speak to those specific issues at the time the Council discusses that particular item.

**RESOLUTIONS: None.**

**ORDINANCES: First Reading: None.**

**ORDINANCES: Second Reading:**

O-1	Adoption of amendments to Chapter 16 relating to Water and Sewer regulations, rates, and use charges. (DPW Director Request).	P. 10
O-2	Adoption of amendments to Chapter 19 of the Municipal Zoning Ordinance as it relates to nonconforming uses, structures and lots. (Neighborhood Services Director Request).	P. 11
O-3	Adoption of ordinance amending Chapter 7.36, Penalties for Causing Damage to Landmark Property or Theft of Landmark Property. (Neighborhood Services Director Request)	P. 23
O-4	Adoption of ordinance increasing fine / citation amounts for damage to locally-designated Landmark property. (Neighborhood Services Director).	P. 30

**CONSIDERATIONS:**

C-1	Approval of Memorandum of Understanding with D.P. Electronics. (CDA Request).	P. 32
*C-2	Approval of Nominal Payment Parcel Report for Clay Street. (DPW Director Request).	P. 78
*C-3	Approval of Memorandum of Understanding (“MOU”) between City of Whitewater and Whitewater Professional Police Association (“WPPA”) relating to “lateral transfers.”	P. 81
*C-4	Approval of Memorandum of Understanding (“MOU”) between City of Whitewater and Whitewater Professional Police Association (“WPPA”) relating to Shift Change.	P. 83
*C-5	Approval of Memorandum of Understanding (“MOU”) between City of Whitewater and Whitewater Professional Police Association (“WPPA”) relating to Unlimited Comp Time Usage.	P. 84
*C-6	Approval of Memorandum of Understanding (“MOU”) between City of Whitewater and Whitewater Professional Police Association (“WPPSA”) relating to Lateral Transfers.	P. 85
*C-7	Approval of Memorandum of Understanding (“MOU”) between City of Whitewater and Whitewater Professional Police Association (“WPPSA”) relating to Shift Change.	P. 86
*C-8	Approval of Memorandum of Understanding (“MOU”) between City of Whitewater and Whitewater Professional Police Association (“WPPSA”) relating to Unlimited Comp Time Usage.	P. 87
C-9	Councilmember Request for Future Agenda Items and future POLCO questions.	n/a
C-10	<b><u>EXECUTIVE SESSION.</u></b> Adjourn to closed session, <b>NOT TO RECONVENE</b> , pursuant to Chapter 19.85(1)(c) of the Wisconsin Statutes, “Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility” and 19.85(1)(e) “Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.”  Item to be Discussed: (1) <b>Discussion concerning changes to the structure and work assignments of Police Department officers with administrative/oversight responsibilities; and (2) City Manager Performance Evaluation.</b>	n/a

Anyone requiring special arrangements is asked to call the Office of the City Manager / City Clerk at least 72 hours prior to the meeting.

\*Items denoted with asterisks will be approved on a single motion and vote due to their routine nature or previous discussion. Any council member may request that a consent agenda item be removed for individual discussion.

**ABSTRACT/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL  
ACTIONS OF THE COMMON COUNCIL OF THE CITY OF WHITEWATER,  
WALWORTH AND JEFFERSON COUNTIES, WISCONSIN.**

March 5, 2019

The regular meeting of the Common Council was called to order at 6:30 p.m. by Council President Singer. MEMBERS PRESENT: McCormick, Schulgit, Grady, Binnie, Palmer, Singer, Allen. MEMBERS ABSENT: None. LEGAL COUNSEL PRESENT: Wallace McDonell.

It was moved by Binnie and seconded by Allen to approve the Council minutes of 2/5/19 and 2/19/19 and to acknowledge receipt and filing of the following: CDA Minutes of 6/28/18; 7/26/18; 8/23/18; 9/20/18; 10/16/18; 11/15/18; 12/12/18; 12/20/18; Finance Committee Minutes of 1/8/19; Community Involvement Committee Minutes of 11/13/18; Irvin L. Young Memorial Library Board Minutes of 1/21/19; Police and Fire Commission Minutes of 11/7/18. AYES: McCormick, Schulgit, Grady, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: None.

**PAYMENT OF INVOICES.** It was moved by Binnie and seconded by Allen to approve payment of city invoices in the sum of \$34,445.01. AYES: McCormick, Schulgit, Grady, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: None.

**STAFF REPORTS:** Library Director Lunsford presented the annual Library Report and City Manager Clapper reported on the locally-formed group, "In This Together," which was created to work on smooth implementation of the Milwaukee Street reconstruction project.

**HEARING OF CITIZEN COMMENTS.** None.

**RESOLUTION APPROVING CLAY STREET PROJECT TTP (TRANSPORTATION PLAT) AND ACCOMPANYING RECORDING FEES.**

**RESOLUTION**

A Relocation Order for Improving, Laying Out, and Extending Public Sidewalks and Rights-of-Way for Clay Street.

**WHEREAS**, the City of Whitewater has determined that it is necessary to undertake a public improvement project consisting of laying out, improving, and extending public sidewalks and rights-of-way along Clay Street, and

**WHEREAS**, the City of Whitewater Common Council now wants to proceed with this project by adopting a relocation order in accordance with Wisconsin Statutes, Section 32.05(1)(a) and approving a project transportation plat for this project in accordance with Wisconsin Statutes, Section 84.095(4)(a).

**NOW, THEREFORE BE IT RESOLVED** by the Common Council of the City of Whitewater that approval is hereby granted for the undertaking of the public improvement project consisting of laying out, improving, and extending public sidewalks and rights-of-way along Clay Street and this project is deemed to be necessary, and

**BE IT FURTHER RESOLVED** that this Resolution is:

A Relocation Order in accordance with Wisconsin Statutes, Section 32.05(1)(a); and Authorization for the project in accordance with Wisconsin Statutes, Section 84.095(4)(a)1. **BE IT FURTHER RESOLVED** that approval is hereby granted for the design of this project as set forth in Transportation Project Plat (TPP) 3835-00-03, a copy of which is annexed to this Resolution, and

**BE IT FURTHER RESOLVED** that the City Manager and City Clerk are hereby authorized to sign the Plat on behalf of the City of Whitewater and this Plat shall be recorded with the Register of Deeds of Walworth County within 20 days after it is signed, and

**BE IT FURTHER RESOLVED** that it will be necessary for the City to acquire interests in privately-owned real estate in order to carry out this project and the City staff and the City Attorney are hereby authorized and directed to undertake title acquisition procedures for the acquisition of the real estate interests needed for this project including condemnation, if necessary, in accordance with the procedures set forth in Wisconsin Statutes, Section 32.05 and such real estate shall be acquired in the name of the City of Whitewater, and

**BE IT FURTHER RESOLVED** that this Resolution shall be effective immediately upon its passage and publication.

Resolution introduced by Councilmember Allen, who moved its adoption. Seconded by Councilmember Schulgit. AYES: McCormick, Schulgit, Grady, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: None. ADOPTED: March 5, 2019.

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**JOHN'S DISPOSAL CONTRACT.** DPW Director Marquardt stated that the City entered into their original five-year agreement with John's in 2011. The Council approved an amendment for a five-year extension effective January, 2015. In 2018, Council approved a rate increase effective 2019. John's is requesting another five-year extension. The extension would retroactively begin January, 2019, and end December 31, 2023. The proposed amendment (second amendment) is based on rates approved by Council for 2019. Rates are subject to change each year, but are limited to the Consumer Price index. (This rate reference is the same as it was in the original 2011 contract). Discussion regarding obtaining bids occurred. Councilmember Binnie felt it would be prudent to request that John's host an open house, as education regarding recycling would be beneficial. It was also requested that a correction be made to the contract language as it relates to city facilities. It was moved by Allen and seconded by McCormick to approve the contract, with the understanding that a correction to the city facilities section be made. AYES: McCormick, Schulgit, Grady, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: None.

**APPOINTMENT OF CITIZEN MEMBERS TO ETHICS COMMITTEE.** It was moved by Binnie and seconded by Allen to appoint Sherry Stanek and Mariann Scott to open positions on the Ethics Committee. AYES: McCormick, Schulgit, Grady, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: None.

**LAKE DRAWDOWN AND LAKE DREDGING PROJECT.** Parks and Recreation Director Eric Boettcher stated that the City has been planning for a complete draw down of Trippe and

Cravath Lakes to improve lake depth and remove invasive weeds. Plans are to begin the drawdown on July 8, 2019, with lowering of approximately one inch per day. The final determination will be made by the Department of Natural Resources (“DNR”) through the permit process. Drawdown would continue until spring of 2021. A controlled burn would also occur. The City has been discussing inclusion of dredging as part of the project to help improve depth even more. Public information meeting feedback has indicated that if dredging is not included as a part of the project, the City should not waste the time to do the stand-alone drawdown. Drawdown creates no financial impact, but costs associated with the controlled burn, fish habitation improvements and restocking and dredging (81,000 cubic yards) are estimated at \$1,276,000. It was noted that the approval request includes approval of the concept, but final plans on dredging amounts, costs, etc., would have to be approved by the Council when that information is available. It was moved by Binnie and seconded by Schulgit to approve the drawdown and dredging concept as a whole, with the understanding that final details on the dredging project will come back to council for approval. AYES: McCormick, Schulgit, Grady, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: None.

### **REQUEST FOR FUTURE AGENDA ITEMS AND POLCO QUESTIONS.**

Councilmember Singer requested that the City use POLCO to solicit input on resident interest with regard to a splash pad and to gather input on a suggested location. Singer also asked for a Spring Splash update.

**EXECUTIVE SESSION.** It was moved by Singer and seconded by Allen to adjourn to closed session, not to reconvene, pursuant to Chapter 19.85(1)e of the Wisconsin Statutes, “Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session” Item to be Discussed: Negotiation of sale of real estate near roundabout on E. Milwaukee Street / Bluff Rd. AYES: McCormick, Schulgit, Grady, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: None. The meeting adjourned at 7:55 p.m.

Respectfully submitted,

Michele R. Smith, Clerk

## Report Criteria:

Detail report.  
Invoices with totals above \$0.00 included.  
Only unpaid invoices included.

Vendor	Vendor Name	Description	Invoice Date	Net Invoice Amount	GL Account Number
<b>CARRICO AQUATIC RESOURCES INC</b>					
7972	CARRICO AQUATIC RESOURCE	APR 2019 EQUIP & CHEMICAL MGMT	03/26/2019	1,500.00	247-55600-350
7972	CARRICO AQUATIC RESOURCE	MAR 2019 DAILY OPER CONSULT	03/26/2019	910.00	247-55600-346
Total CARRICO AQUATIC RESOURCES INC:				2,410.00	
<b>OFFICE DEPOT</b>					
1144	OFFICE DEPOT	OPTIMA ELECTRIC STAPLER	03/15/2019	74.71	100-51200-310
Total OFFICE DEPOT:				74.71	
<b>PEPSI-COLA</b>					
7941	PEPSI-COLA	11 CASES OF SODA/GATORADE	03/26/2019	227.23	247-55800-342
Total PEPSI-COLA:				227.23	
<b>ROCK RIVER STORMWATER GROUP</b>					
5387	ROCK RIVER STORMWATER G	2019 ROCK RIVER STORMWATER MEMBERSHIP DUES	03/21/2019	5,000.00	630-63440-320
Total ROCK RIVER STORMWATER GROUP:				5,000.00	
<b>VIERBICHER ASSOCIATES INC</b>					
3028	VIERBICHER ASSOCIATES INC	FEB 2019 CBDG GRANT SVCS	03/14/2019	41.12	450-54000-832
3028	VIERBICHER ASSOCIATES INC	FEB 2019 CBDG GRANT SVCS	03/14/2019	430.38	630-63440-830
Total VIERBICHER ASSOCIATES INC:				471.50	
<b>WALMART</b>					
6	WALMART	SOAP/PAPER TOWEL/CUPS	03/16/2019	7.84	220-55110-310
6	WALMART	4 DZN COOKIES	03/16/2019	11.92	220-55110-341
6	WALMART	POSTER FRAME/PENS	03/16/2019	17.07	220-55110-310
6	WALMART	PAPER TOWELS	03/16/2019	15.94	610-61921-310
6	WALMART	DISTILLED WATER	03/16/2019	5.64	610-61630-310
6	WALMART	ICE	03/16/2019	3.12	610-61630-310
6	WALMART	MOP/MOP HEAD/BUCKET	03/16/2019	16.93	610-61935-350
6	WALMART	PAPER TOWELS/TISSUE/LYSOL SPRAY	03/16/2019	98.47	100-52100-310
6	WALMART	CLOROX WIPES/SANITIZER/DISH SOAP	03/16/2019	55.02	100-52100-310
6	WALMART	SNACK BAGS	03/16/2019	3.38	100-52110-310
6	WALMART	WIRE HOOK, CLN RELEASE	03/16/2019	8.89	220-55110-342
6	WALMART	CHOCOLATES	03/16/2019	5.28	220-55110-341
Total WALMART:				249.50	
<b>WI DEPT OF NATURAL RESOURCES</b>					
293	WI DEPT OF NATURAL RESOUR	3 YR WATERWORKS OPR CERTIFICATION	03/19/2019	45.00	610-61920-154
293	WI DEPT OF NATURAL RESOUR	3 YR WATERWORKS OPR CERTIFICATION	03/19/2019	45.00	100-53100-320
Total WI DEPT OF NATURAL RESOURCES:				90.00	
<b>WI DEPT OF SAFETY &amp; PROFESSIONAL SVC</b>					
6394	WI DEPT OF SAFETY & PROFE	PERMIT TO OPERATE - BOILERS 3YRS	03/19/2019	50.00	100-51600-310

Vendor	Vendor Name	Description	Invoice Date	Net Invoice Amount	GL Account Number
Total WI DEPT OF SAFETY & PROFESSIONAL SVC:				50.00	
<b>WI DEPT OF TRANSPORTATION</b>					
195	WI DEPT OF TRANSPORTATION	ELKHORN RD - PARKING	03/14/2019	1,237.02	450-54000-874
Total WI DEPT OF TRANSPORTATION:				1,237.02	
<b>WINCHESTER TRUE VALUE HARDWARE INC</b>					
24	WINCHESTER TRUE VALUE HA	2 CUT KEYS	03/19/2019	3.18	100-51600-355
24	WINCHESTER TRUE VALUE HA	HOSE BIB/COP TEE	03/19/2019	16.28	610-61630-350
24	WINCHESTER TRUE VALUE HA	10 LED BULBS/3 FLOOD BULBS	03/19/2019	54.87	100-51600-310
24	WINCHESTER TRUE VALUE HA	POWERRATED V BELT/KEVLAR V BELT	03/19/2019	28.98	920-56500-250
24	WINCHESTER TRUE VALUE HA	COUPLINGS/ELBOWS/NIPPLES	03/19/2019	43.44	610-61630-310
24	WINCHESTER TRUE VALUE HA	40 MISC SCREWS/BOLTS/NUTS	03/19/2019	6.80	100-51600-355
24	WINCHESTER TRUE VALUE HA	GALV NIPPLE	03/19/2019	17.98	610-61935-350
24	WINCHESTER TRUE VALUE HA	SEAL TAPE/GALV NIPPLE/GALV UNION RETURNS	03/19/2019	15.15	610-61935-350
24	WINCHESTER TRUE VALUE HA	GALV UNION/1.75FT DOM STL PIPE	03/19/2019	48.74	610-61652-350
24	WINCHESTER TRUE VALUE HA	50' EXT CORD/3 MPT PLUGS	03/19/2019	74.36	620-62850-357
24	WINCHESTER TRUE VALUE HA	9V BATTERY/36' REFRIG TUBE/CMP NUT & SLEEVE	03/19/2019	42.48	920-56500-250
24	WINCHESTER TRUE VALUE HA	2 MISC NUTS/SCREW/BOLTS	03/19/2019	1.98	610-61630-350
24	WINCHESTER TRUE VALUE HA	4 FLOOD HEAD LAMPS	03/19/2019	119.96	620-62840-310
24	WINCHESTER TRUE VALUE HA	20" SQUEEGEE	03/19/2019	6.49	100-53230-310
24	WINCHESTER TRUE VALUE HA	2 COUPLERS/3PK GREASE/DRILL PUMP	03/19/2019	23.56	920-56500-250
24	WINCHESTER TRUE VALUE HA	20" SQUEEGEE	03/19/2019	6.49	100-53230-310
24	WINCHESTER TRUE VALUE HA	SHIPPING/3 WIRE ROPE CLIPS	03/19/2019	18.17	100-53230-352
24	WINCHESTER TRUE VALUE HA	SHIPPING	03/19/2019	13.15	620-62850-357
24	WINCHESTER TRUE VALUE HA	2 NIPPLES	03/19/2019	4.28	100-53230-310
24	WINCHESTER TRUE VALUE HA	C02 ALARM/2 HALOGEN LAMPS	03/19/2019	61.97	100-51600-310
24	WINCHESTER TRUE VALUE HA	30' TAPE MEASURE	03/19/2019	6.99	100-53420-310
24	WINCHESTER TRUE VALUE HA	2 PAINT TRAY LINERS	03/19/2019	2.58	100-53230-355
24	WINCHESTER TRUE VALUE HA	ICE CONNECTOR/EXTENDER TEE/SEALANT	03/19/2019	36.97	920-56500-250
24	WINCHESTER TRUE VALUE HA	GAS LEAK DETECTOR/BALL VALVE/ADAPTER	03/19/2019	5.25	920-56500-250
24	WINCHESTER TRUE VALUE HA	ELBOW/GALV NIPPLE	03/19/2019	5.78	920-56500-250
24	WINCHESTER TRUE VALUE HA	2 NUTS/BOLTS/SCREWS	03/19/2019	1.28	100-53300-354
24	WINCHESTER TRUE VALUE HA	3 BOX COVER/ DRILL BIT/CMP SLEEVE	03/19/2019	40.39	100-51600-355
24	WINCHESTER TRUE VALUE HA	HOLE PLATE COVER	03/19/2019	9.49	100-53230-355
24	WINCHESTER TRUE VALUE HA	1 GAL TANK SPRAYER/2 BOTTLES BLEACH	03/19/2019	23.57	620-62840-310
24	WINCHESTER TRUE VALUE HA	2 CUT KEYS	03/19/2019	3.18	620-62860-357
Total WINCHESTER TRUE VALUE HARDWARE INC:				713.49	
Grand Totals:				10,523.45	

Dated: \_\_\_\_\_

Finance Director: \_\_\_\_\_

Report Criteria:

- Detail report.
- Invoices with totals above \$0.00 included.
- Only unpaid invoices included.



Irvin L. Young Memorial Library  
431 W Center St  
Whitewater WI 53190  
Board of Trustees Regular Meeting  
Community Room  
Monday, February 18, 2019, 6:30 pm

## MINUTES

*Mission Statement: The Irvin L. Young Memorial Library will foster a sense of community and be a center for resources, information, and creativity for all people in the Whitewater area.*

1. Call to Order at 6:30 p.m.

Present: Julie Caldwell, Brienne Diebolt-Brown, Anne Hartwick, Richard Helmick, Cory Pepler, Patrick Singer, Jaime Weigel (Alternate), Jim Winship

Absent:

Staff: Stacey Lunsford, Diane Jaroch, Claire Kinder-Tidwell

2. Consent Agenda

- a) Approval of minutes of the January 21, 2019 regular meeting\*
- b) Acknowledgment of receipt of financial reports for FY 2018 and January 2019\*
- c) Approval of payment of invoices for January 2019\*
- d) Acknowledgment of receipt of statistical reports for January 2019\*
- e) Acknowledgment of receipt of treasurer's reports for January 2019\*

MSC Helmick/Winship to approve the consent agenda

Ayes: Julie Caldwell, Brienne Diebolt-Brown, Anne Hartwick, Richard Helmick, Cory Pepler, Patrick Singer, Jaime Weigel (Alternate), Jim Winship

Nays: None

3. Hearing of Citizen Comments

- a) No formal Library Board action will be taken during this meeting although issues raised may become a part of a future agenda. Participants are allotted a three minute speaking period. Specific items listed on the agenda may not be discussed at this time; however citizens are invited to speak to those specific issues at the time the Library Board discusses that particular item.

4. Old Business

- a) Library Building Expansion Project ~ Update, no new information yet, no decisions have been made, but will be trying to visit two of Bear's sites in one day some time in March, Cudahy & Cedarburg – we will have to update our timeline
- b) Council and Community Communications ~ Discussion, annual report will be put on first meeting agenda in March 5
- c) Strategic Planning ~ Update, rough draft is coming along, final version to look at for

\*Items denoted with an asterisk will be approved on the Consent Agenda unless any board member requests that it be removed for individual discussion.

***It is possible that members of, and possibly a quorum of members of, other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information over which they may have decision-making responsibility; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.***

Anyone requiring special arrangements is asked to call the office of the Library Director (473-0530) 72 hours prior to the meeting.



Irvin L. Young Memorial Library  
431 W Center St  
Whitewater WI 53190  
Board of Trustees Regular Meeting  
Community Room  
Monday, February 18, 2019, 6:30 pm

## MINUTES

approval at March meeting

### 5. New Business

- a) Approval of the 2018 Annual Report ~ Action

MSC Singer/Winship to approve the 2018 Annual Report

Ayes: Julie Caldwell, Brienne Diebolt-Brown, Anne Hartwick, Richard Helmick, Cory Pepler, Patrick Singer, Jaime Weigel (Alternate), Jim Winship

Nays: None

- b) Review and re-approval of the Meeting Room policy ~ Action

MSC Helmick/Caldwell to re-approve the Meeting Room Policy with minor grammatical changes

Ayes: Julie Caldwell, Brienne Diebolt-Brown, Anne Hartwick, Richard Helmick, Cory Pepler, Patrick Singer, Jaime Weigel (Alternate), Jim Winship

Nays: None

- c) Review and approval of new Book Club policy ~ Action

MSC Singer/Pepler to approve the new Book Club policy

Ayes: Julie Caldwell, Brienne Diebolt-Brown, Anne Hartwick, Richard Helmick, Cory Pepler, Patrick Singer, Jaime Weigel (Alternate), Jim Winship

Nays: None

### 6. Staff & Board Reports

- a) Director's Report – see attached
- b) Adult Services Report – see attached
- c) Youth Educational Services Report – see attached
- d) Programming & Makerspace Librarian Report – see attached, and staff will probably work on more passive programming for January 2020, since there much programming this year was disrupted by bad weather
- e) Board reports – Winship mentioned that Dolly Parton Imagination program is looking to partner with the library to take more books (such as a Free Little Library) out to neighborhoods where kids can't get transportation to the library

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Board of Trustees Regular Meeting  
Community Room  
Monday, February 18, 2019, 6:30 pm

## MINUTES

7. Board member requests for future agenda items - none
8. Confirmation of next meeting on March 18, 2019, 6:30 pm
9. Adjournment into Closed Session **NOT TO RECONVENE** per Wisconsin State Statute 19.85(1) (c) "Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility."

MSC Helmick/Singer to move into closed session

Ayes: Julie Caldwell, Brienne Diebolt-Brown, Anne Hartwick, Richard Helmick, Cory Pepler, Patrick Singer, Jaime Weigel (Alternate), Jim Winship

Nays: None

Item to be discussed:

- a) Review of performance evaluation for the Library Director

Closed session ended at 7:16

Minutes respectfully submitted by Brienne Diebolt-Brown on 2/18/2019

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Anyone requiring special arrangements is asked to call the office of the Library Director (473-0530) 72 hours prior to the meeting.

To: City Manager and Members of the Whitewater Common Council

From: Dave Carlson, CDA Executive Director

Re: Grocery Store Recruitment Update

Date: March 29, 2019

Active discussions are continuing on three separate and distinct proposals which would include a grocery store, either as a standalone project or as part of a multi-use project. Two of these leads are looking at city owned property at the east side roundabout location. The third is looking at privately owned land on the west side. Additionally, two CDA members contacted me recently requesting information on the city roundabout land for a developer they have been in contact with. I provided some general information along with a request that they have this developer/interested party contact me directly. To date this has not occurred.

It's my hope to have our city-owned properties near the roundabout listed with a realtor by mid-April. In the meantime, the properties are available and we are open to discussing sale with anyone who has a specific project in mind.

In conclusion, substantial progress certainly has been made over the past several months in moving us towards consummation of a deal.



*City of Whitewater Council Agenda Item Information Sheet*

MEETING DATE: 4/4/2019

ITEM: Title 16 water and sewer updates.

PRESENTER: Public Works Director

PREVIOUS ACTION, IF ANY: The 1<sup>st</sup> Reading was passed March 19, 2019

SUMMARY OF ITEM BEING PRESENTED: During the 1<sup>st</sup> Reading, two questions were asked.

1. Reference to Public Works Director instead of Water Superintendent: This change was made throughout the Chapter both in the Water related sections and in the Sewer related sections. As both Superintendents report to the Public Works Director, the Director ultimately has the final authority over the Superintendents.
2. Discrepancy in 16.04.130(c): The reference to a large meter, paid for by the owner, refers to a case where the owner wishes to know the total amount of the water being used at the property without having to refer to each individual meter reading. This meter is not used for the basis of payment. Individual meters are required for each unit for the metering of the water used and used for the basis of payment.

FINANCIAL IMPACT: There is no fiscal impact associated with the changes.

BOARD, COMMISSION, OR COMMITTEE RECOMMENDATION, IF ANY: Public Works Committee recommended approval of the changes to Title 16.

STAFF RECOMMENDATION: Staff recommends approval.

RECOMMENDED MOTION: Approve the changes to Title 16 pertaining to water and sewer as outlined.

ATTACHMENT(S) INCLUDED (If none, please state that): Title 16 Sections 16.04, 16.08, 16.12 and 16.18.

FOR MORE INFORMATION CONTACT:

Brad Marquardt, [bmarquardt@whitewater-wi.gov](mailto:bmarquardt@whitewater-wi.gov), 262-473-0139



*City of Whitewater Council Agenda Item Information Sheet*

MEETING DATE: **3/11/2019**

ITEM: **Amendment zoning ordinance chapter 19.09 and chapter 19.60 regarding nonconforming uses, structures and lots.**

PRESENTER: **City Planner**

PREVIOUS ACTION, IF ANY: **None.**

SUMMARY OF ITEM BEING PRESENTED: **This is an update to the City ordinance nonconforming uses, structures and lots. The current language does not comply with state laws. It is important to note that this amendment is not a significant change of the substantive law related to nonconforming uses/structures, rather an update with some minor substantive changes. The SEWRPA model zoning ordinance for nonconforming uses, structures and lots was used to draft the ordinance.**

BUDGET IMPACT, IF ANY: **N/A**

BOARD, COMMISSION, OR COMMITTEE RECOMMENDATION, IF ANY: **Recommend approval at the March 11, 2019 Planning and Architectural Review Committee.**

STAFF RECOMMENDATION: **Please see Planners Report.**

RECOMMENDED MOTION: **Recommend approval.**

ATTACHMENT(S) INCLUDED (If none, please state):

- **Notice of Public Hearing**
- **Ordinance Draft**
- **Memorandum for Nonconforming Lot, Use, and Structures Amendment zoning ordinance chapter 19.09 and 19.60.**

FOR MORE INFORMATION CONTACT:

**Chris Munz-Pritchard, [cmunz-pritchard@whitewater-wi.gov](mailto:cmunz-pritchard@whitewater-wi.gov), 262-473-0143.**

## MEMORANDUM

To: Cameron Clapper, City Manager

From: Wally McDonell, Whitewater City Attorney  
Chris Munz-Pritchard, Neighborhood Services Director

Date: March 22, 2019

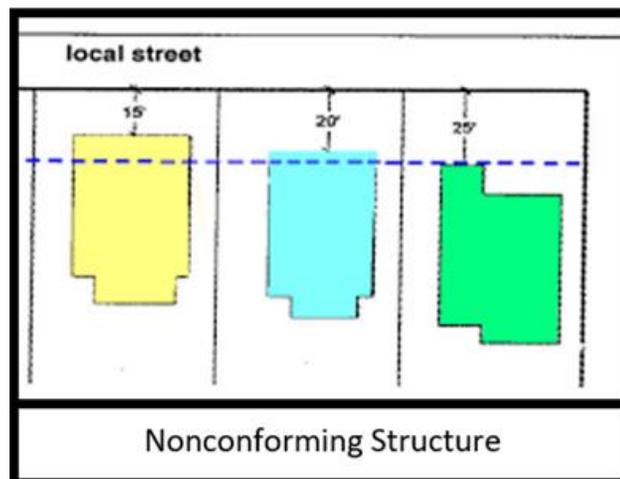
Re: Nonconforming Lot, Use, and Structures amendment to zoning ordinance chapter 19.09 and 19.60.

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The City is updating the Nonconforming Lot, Use, and Structures ordinance in chapter 19.09 and 19.60. The current language does not comply with state laws. It is important to note that this amendment is not a significant change of the substantive law related to nonconforming uses/structures, rather an update with some minor substantive changes. To help clarify the zoning ordinance I have provided definitions, diagrams and examples.

There are three types of nonconforming when discussing planning and zoning. There is the nonconforming lot, nonconforming structure, and the nonconforming use. There is a distinction between the nonconforming use of a structure and a nonconforming structure or nonconforming lot that is nonconforming for reasons of size or location.

A **nonconforming structure** is a structure that complied with zoning and development regulations at the time it was built but which, because of subsequent changes to the zoning and/or development regulations, no longer fully complies with those regulations. The example below shows two homes that are built over the setback line.

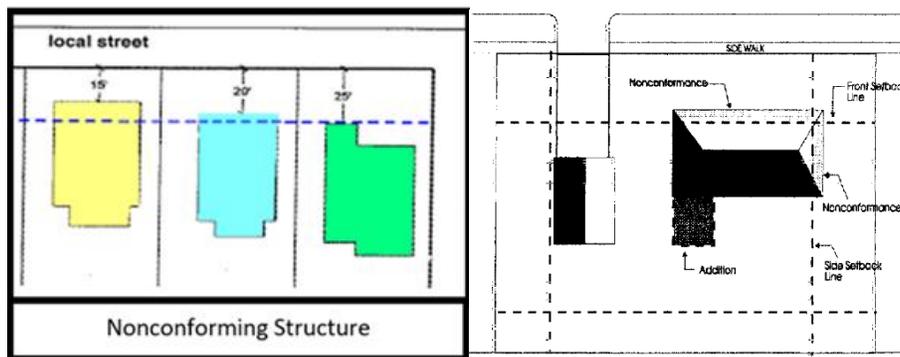


A **nonconforming use** is a use of property that was allowed under the zoning regulations at the time the use was established but which, because of subsequent changes in those regulations, is no longer a permitted use. The example below shows a yellow residential home, in a commercial area.



The legislature adopted an overall policy goal to eliminate nonconforming uses by restricting the repair of the structures that are part of the nonconforming use. The zoning statute limited the amount of money that could be spent on maintenance and repair of structures used for nonconforming uses to 50 percent of the assessed value of the structure housing the use. This would apply to the yellow residential home, in a commercial zoning district (above).

Nonconforming Structures with a conforming use may be repaired, maintained, renovated, rebuilt, or remodeled, subject to building code and other applicable requirements. No prohibition or limits based on cost may be imposed on the repair, maintenance, renovation, or remodeling of such structures (19.60.020 B).

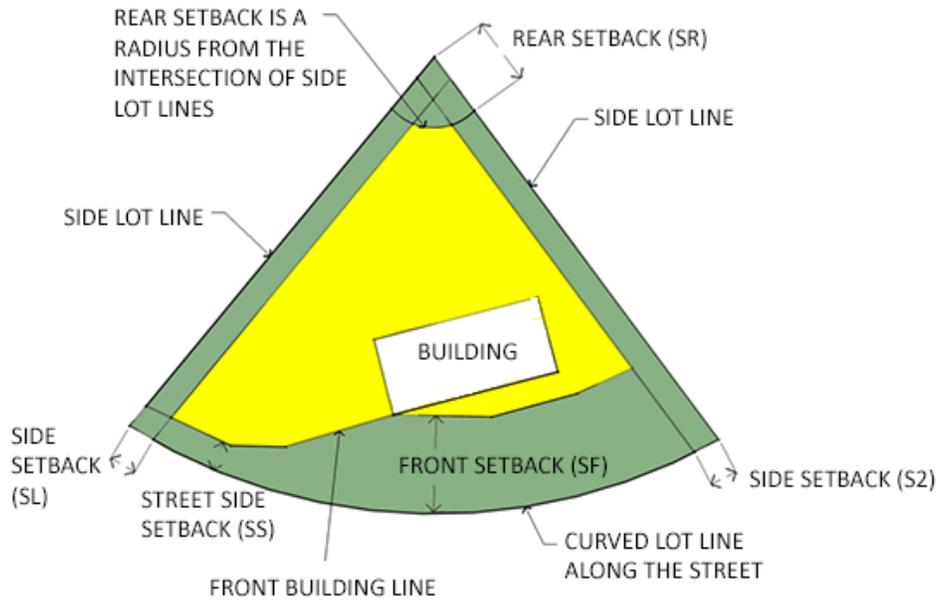


So for example, the yellow or blue home above, are nonconforming structures (built over the setback line), but a conforming use (the zoning district is residential). This is a nonconforming structure, with a conforming use and there for the 50 percent rule does not apply. Both the yellow and blue homes above, can update the kitchen, bathroom and so on as long as the home improvements meet all other codes, ordinances and regulations. Both homes could for example put an addition on the rear of the residence (example above) as long as the addition meets all other regulations.

A **nonconforming lot** is one that, at the time of its establishment, met the minimum lots size requirements for the zone in which it is located but which, because of subsequent changes to the minimum lot size applicable to that zone, is now smaller than that minimum lot size.

Additions, Enlargements and improvements to such structures are permitted provided they conform to the established yard/setback, height, parking, loading, access provisions, and other Development Regulations of this Ordinance, other than minimum lot dimensional requirements.

In other words with the addition or enlargement of the structure on a nonconforming lot, all additions would need to fit in the building envelope or buildable area and meet all other requirements. A building envelope (building area, in yellow below) is an area of land within a lot outside of which building development is not permitted.



## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Plan and Architectural Review Commission of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, will consider a change of the City of Whitewater Zoning Ordinance regulations, by enacting the proposed amendments to City of Whitewater Municipal Code: Title 19, specifically Sections 19.09.510, 19.09.511, 19.09.512, 19.09.513 and Chapter 19.60 regarding Nonconforming uses, structures, and lots.

The proposed ordinance changes are on file in the office of the City Clerk and the document is open to public inspection during office hours Monday through Friday, 8:00 a.m. to 5:00 p.m.

NOTICE IS FURTHER GIVEN that the Plan and Architectural Review Commission of the City of Whitewater will hold a public hearing at the Municipal Building Community Room, 312 W. Whitewater Street, Whitewater, WI, on Monday, March 11, 2019, at 6:00 p.m. to hear any person for or against said change.

Dated: February 12, 2019

Publish: February 14, 2019 and February 21, 2019 (two times)  
in the Whitewater Register

Michele Smith, City Clerk  
By Jane Wegner, Plan Commission Clerk

ORDINANCE No. \_\_\_\_\_  
AMENDING ZONING ORDINANCE CHAPTER 19.09 AND CHAPTER 19.60  
REGARDING NONCONFORMING USES, STRUCTURES, AND LOTS

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do ordain as follows:

SECTION 1. Whitewater Municipal Code Chapter 19.09 Section 19.09.510 is amended to read as follows:

**19.09.510 - Nonconforming Structure.** A dwelling, building, or other structure that existed lawfully at the time of the effective date of this Ordinance or an amendment thereto that does not conform to one or more of the Development Regulations of this Ordinance. Any such structure conforming with respect to use (containing a conforming use) but not in respect to Development Regulations shall be considered a nonconforming structure and not a nonconforming use.

SECTION 2. Whitewater Municipal Code Chapter 19.09 Section 19.09.511 is amended to read as follows:

**19.09.511 - Nonconforming Use.** A use of structure (including buildings), fixture, or premises (land or water) that existed at the time of the effective date of this Ordinance or an amendment thereto that does not conform to the current use restrictions of this Ordinance.

SECTION 3. Whitewater Municipal Code Chapter 19.09, Sections 19.09.512 and 19.09.513 are hereby created to read as follows:

**19.09.512 - Nonconforming Lot.** A lot, the area, dimensions, or location that existed at the time of the effective date of this Ordinance or an amendment thereto that does not conform to current regulations of this Ordinance. Such nonconforming lots are also referred to as substandard lots.

**19.09.513 - Development Regulations.** Those portions of this Ordinance pertaining to lot area, lot width, structure size, yard/setback, frontage, height, parking, loading, or separation distance requirements.

SECTION 4. Whitewater Municipal Code Chapter 19.60, is amended to read as follows:  
Chapter 19.60 - NONCONFORMING USES, STRUCTURES AND LOTS

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**19.60.010 NONCONFORMING USES, STRUCTURES, AND LOTS**

Existing lawful nonconforming uses, structures, and lots shall meet the provisions of this Chapter, and those located within floodplains, shorelands, and shoreland-wetlands shall also comply with the City floodplain, shoreland, and shoreland-wetland regulations, whichever are more restrictive.

#### **19.60.020 EXISTING NONCONFORMING USES**

The lawful nonconforming use of land or water; or a lawful nonconforming use in a conforming or nonconforming structure; or a lawful nonconforming use on a conforming or nonconforming lot that existed at the time of the adoption or amendment of this Ordinance may be continued although the use does not conform with the provisions of this Ordinance; however:

- A. **Only That Portion** of the structure, fixture, land, or water in actual use may be so continued and the nonconforming use may not be extended, enlarged, reconstructed, substituted, or moved except when required to do so by law or order or so as to comply with the provisions of this Ordinance.
- B. **Discontinuance.** If such nonconforming use is discontinued or terminated for a period of 12 months, any future use of the structure, fixture, or premises shall conform to the provisions of this Ordinance.
- C. **Abolishment or Destruction.** When a nonconforming use or a structure with a nonconforming use is damaged by violent wind, vandalism, fire, flood, ice, snow, mold, infestation, or other calamity to the extent of more than 50 percent of its equalized assessed value, it shall not be restored except so as to comply with the use provisions of this Ordinance.
- D. **Total Lifetime Structural Repair** or alterations to a structure, fixture, or premise containing a nonconforming use shall not exceed 50 percent of the equalized assessed value of the structure, fixture, or premise at the time its use became nonconforming unless it is permanently changed to a conforming use in accordance with the use provisions of this Ordinance. Ordinary maintenance and repairs are not considered structural repairs, modifications, or additions. Some examples of such repairs include painting, caulking, decorating, paneling, and other nonstructural components; and the repair or replacement of doors, windows, utilities, and sewage treatment and water supply systems. Figure No. 1 reflects the method by which the Director of Neighborhood Services shall determine when modifications to nonconforming uses and their structures are equal to 50 percent.
- E. **Substitution of New Equipment** may be permitted by the Board of Zoning Appeals if such equipment will reduce the incompatibility of the nonconforming use with neighboring uses.

#### **19.60.030 CONFORMING STRUCTURES ON NONCONFORMING LOTS**

The conforming use of a conforming structure existing at the time of the adoption or amendment of this Ordinance may be continued although the lot area and/or width does not conform to the requirements of this Ordinance.

- A. **Additions and Enlargements** to such structures are permitted provided they conform to the established yard/setback, height, parking, loading, access provisions, and other Development Regulations of this Ordinance, other than minimum lot dimensional requirements.

- B. **Existing Structures on Nonconforming Lots** that are damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, infestation, or other calamity may be reconstructed provided they conform to the established yard/setback , height, parking, loading, access provisions, and other Development Regulations of this Ordinance, other than minimum lot dimensional requirements.

**19.60.040 NONCONFORMING STRUCTURES ON CONFORMING OR NONCONFORMING LOTS**

- A. **A Nonconforming Structure** with a conforming use lawfully existing at the time of the adoption or amendment of this Ordinance may be continued although the structure's size or location does not conform to the Development Regulations of this Ordinance.
- B. **Nonconforming Structures** with a conforming use may be repaired, maintained, renovated, rebuilt, or remodeled, subject to building code and other applicable requirements. No prohibition or limits based on cost may be imposed on the repair, maintenance, renovation, or remodeling of such structures.
- C. **Additions and Enlargements** to existing nonconforming structures with a conforming use are permitted and shall conform to the established yard/setback, height, parking, loading, and access provisions of this Ordinance. Existing buildings and their additions shall not be permitted to encroach further, upon established yard/setback and height requirements, than the existing encroachment. The provisions of this Subsection with respect to additions or enlargements are applicable only if the lot is served by public sanitary sewer or, if relevant, conforms with existing sanitary code requirements for private onsite sewage treatment systems (POWTS).
- D. **Existing Nonconforming Structures** may be moved and shall conform to the established yard/setback, height, parking, loading, and access provisions of this Ordinance.
- E. **A Nonconforming Structure with a Conforming Use** that is damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, infestation, or other calamity may be restored or replaced to the size, location, and use that it had immediately before the damage or destruction occurred, subject to building code and other applicable requirements. No limits may be imposed on the costs of the repair, reconstruction, or improvement of said structure. The size of the structure may be larger than the size immediately before the damage or destruction occurred if necessary for the structure to comply with applicable State or Federal requirements. Any reconstruction shall conform to the Development Regulations of this Ordinance, to the extent practicable, and existing sanitary code requirements, and shall commence within 24 months of the date of damage or destruction, unless an extension is granted by the government agency having authority.

**19.60.050 VACANT NONCONFORMING LOTS**

- A. **Development.** The Zoning Administrator may issue a building permit for development of a vacant lot which does not contain sufficient area to conform to the lot dimensional requirements of this Ordinance to be used as a building site provided that the use is allowed in the zoning district in which it is located; the lot is of record in the County Register of Deeds Office prior to the effective date of this Ordinance or amendment thereof; and development is compatible

with the character of the surrounding area. Nonconforming (substandard) lots to be served by public sanitary sewer shall be at least 50 feet wide and 7,200 square feet in area. Nonconforming lots to be served by POWTS shall be at least 100 feet wide and 40,000 square feet in area. Lots with smaller dimensions than mentioned above shall not be developed unless a variance is granted by the Board of Zoning Appeals.

Development of vacant nonconforming lots granted permits under this Section shall be required to meet the yard/setback, height, parking, loading, access provisions, and other Development Regulations, except lot size requirements unless otherwise specified, of this Ordinance. A building permit for the improvement of a lot with lesser dimensions and requisites than those stated above may be issued only after a variance is granted by the Board of Zoning Appeals.

- B. Statutory Provisions.** In accordance with Section 66.10015(2)(e) of the Wisconsin Statutes, a property owner of a legal nonconforming (substandard) lot may:
1. Convey an ownership interest in a substandard lot.
  2. Use the substandard lot as a building site if all of the following apply:
    - a. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
    - b. The substandard lot or parcel is developed to comply with all other requirements of this Ordinance, except the minimum lot dimensional requirement unless otherwise specified.
- C. Merging.** In accordance with Section 66.10015(4) of the Statutes, the City may not require one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

## **19.60.060 CHANGES AND SUBSTITUTIONS**

Once a nonconforming use or structure has been changed to conform to the requirements of this Ordinance, it shall not revert back to a nonconforming use or structure. The Board of Zoning Appeals may permit the substitution of a more restrictive nonconforming use for an existing nonconforming use. Once the Board of Zoning Appeals has permitted the substitution of a more restrictive nonconforming use, the prior existing use shall lose its status as a legal nonconforming use and the substituted more restrictive nonconforming use shall be subject to all the conditions required by the Board of Zoning Appeals.

## **19.60.070 DEFINITIONS**

Definitions of terms used in this ordinance include:

- A. Development Regulations.** Those portions of this Ordinance pertaining to lot area, lot width, structure size, yard/setback, frontage, height, parking, loading, or separation distance requirements.
- B. Nonconforming Lot.** A lot, the area, dimensions, or location that existed at the time of the effective date of this Ordinance or an amendment thereto that does not conform to current regulations of this Ordinance. Such nonconforming lots are also referred to as substandard lots.

- C. Nonconforming Use.** A use of structure (including buildings), fixture, or premises (land or water) that existed at the time of the effective date of this Ordinance or an amendment thereto that does not conform to the current use restrictions of this Ordinance.
- D. Nonconforming Structure.** A dwelling, building, or other structure that existed lawfully at the time of the effective date of this Ordinance or an amendment thereto that does not conform to one or more of the Development Regulations of this Ordinance. Any such structure conforming with respect to use (containing a conforming use) but not in respect to Development Regulations shall be considered a nonconforming structure and not a nonconforming use.

## IS IT 50 PERCENT YET?

**Sample Problem:** Let's assume that the owner of a house with a nonconforming use (i.e., nonconforming institutional use in a residential zoned home) wishes to add a room to the house. If the house had an equalized assessed value of \$100,000 in 1997, the property owner would be able to make improvements valued at up to 50 percent of the present (1997) equalized assessed value of the house, or \$50,000 at that time. The improvement would have to be built to zoning standards. Any further additions or structural alterations could not be allowed unless the use of the structure is permanently changed to a conforming use.

Additions and modifications are based upon a given time over the life of a structure. If, in the example above, the property owner constructed a \$50,000 addition in 1997, no further additions could be allowed because the 50 percent improvement limit had been reached. However, let's assume that the addition was valued at \$20,000 or 20 percent of the 1997 equalized assessed value of the structure (\$100,000). Ten years later, the property owner again comes in, wishing to add an attached storage room. In the meantime, the equalized assessed value of the house has increased from \$100,000 in 1997 to \$150,000 in 2007. The value of the storage room is \$15,000 in 2007. The property owner has now accumulated modifications totaling 30 percent of the equalized assessed values from 1997 and 2007.

Finally, ten years later, when the equalized assessed value of the house is \$200,000, the property owner again comes in wishing to modify his house to the extent of \$40,000. The cumulative percentage of the modifications totals 50 percent, based on the cumulative percentage of each modification in relation to the equalized assessed value of the house in the year the modification was made.

This example is further clarified in the following table:

(NOTE – the base for calculation is **not** the **original** value of the house at the time the Zoning Ordinance was enacted, but is the equalized assessed value of the house at each time the house is modified.)

Year	Equalized Assessed Value of Home	Value of Modification	Modification as a Percentage of Assessed Value	Cumulative Percentage
1997	\$ 100,000	\$20,000	20	20
2007	\$ 150,000	\$ 15,000	10	30
2017	\$200,000	\$40,000	20	50

**Definition: Equalized Assessed Value** is the value of a structure and/or lot of property as determined by the local assessor with any adjustments made to account for an assessment that does not reflect “full” (100%) value. Full assessed value of the structure and/or lot is usually equivalent to “full” (100%) fair market value at the time assessment is made.

Ordinance introduced by Council Member \_\_\_\_\_, who moved its adoption.

Seconded by Council Member \_\_\_\_\_.

AYES:

NOES:

ABSENT:

ADOPTED:

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Cameron Clapper, City Manager

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Michele R. Smith, City Clerk

ORDINANCE NO. \_\_\_\_\_  
AN ORDINANCE ESTABLISHING PENALTIES FOR CAUSING DAMAGE  
TO LANDMARK PROPERTY OR THEFT OF LANDMARK PROPERTY

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do hereby ordain as follows:

**SECTION 1:** Whitewater Municipal Code Chapter 7.36, Section 7.36.030 (b) (1) and (2) are hereby amended to read:

- (b) (1) Penalties for Violation. Any person who violates the provisions of this section shall upon conviction thereof be subjected to a fine of not less than four hundred fifty (\$450.00) nor more than seven hundred (\$700.00), together with the costs of prosecution, and in default of payment of such fine and costs of prosecution, shall be imprisoned in the county jail for a period not to exceed six months. Damage to a Landmark or Landmark Site as defined in 17.04.020 shall, upon conviction thereof, be subjected to a fine of seven hundred (\$700) dollars to one thousand (\$1,000) dollars.
- (b) (2) Any person who violates the provisions of this section for a second time within a one-year period shall be subject to a fine of not less than six hundred fifty (650) dollars nor more than nine hundred (900) dollars, together with the costs of prosecution, and in default of payment of such fine and costs of prosecution, shall be imprisoned in the county jail for a period not to exceed six months. Any person causing damage to a Landmark or Landmark Site as defined in 17.04.020 for a second time within a one-year period shall, upon conviction thereof, be subjected to a fine of nine hundred (\$900) dollars to eleven hundred (\$1,100) dollars.

**SECTION 2:** Whitewater Municipal Code Chapter 7.46, Section 7.46.030 is hereby amended to read:

Any person who violates any of the provisions of this chapter shall, upon conviction thereof, be subjected to a fine of not less than \$150.00 not more than \$300.00 for a first offense, not less than \$200.00 nor more than \$350.00 for a second offense, and not less than \$300.00 nor more than \$400.00 for a third offense, together with costs of prosecution, and, in default of payment of such fine and cost of prosecution, shall be imprisoned in the county jail for a period not to exceed six months. Theft or petty theft of property that is part of a Landmark or Landmark Site as defined in 17.04.020 shall, upon conviction thereof, be subjected to a fine of not less than \$300.00 not more than \$600.00 for a first offense, not less than \$350.00 nor more than \$700.00 for a second offense, and not less than \$400.00 nor more than \$800.00 for a third offense, together with costs of prosecution, and, in default of payment of such fine and cost of prosecution, shall be imprisoned in the county jail for a period not to exceed six months.

**SECTION 3:** This ordinance shall take effect upon passage and publication as provided by law.

Ordinance introduced by Councilmember \_\_\_\_\_, who moved its adoption. Seconded by Councilmember \_\_\_\_\_.

AYES:

NOES:

\_\_\_\_\_  
Cameron Clapper, City Manager

ABSENT:

\_\_\_\_\_  
Michele R. Smith, City Clerk

ADOPTED:



## *City of Whitewater Council Agenda Item Information Sheet*

MEETING DATE: 4/2/2019

ITEM: Ordinance amending section 1.21.010 and Ordinance establishing penalties for causing damage to landmark property or theft of landmark property.

PRESENTER: Neighborhood Service Director

PREVIOUS ACTION, IF ANY: These amendments were originally proposed and approved at the Common Council meeting held on September 18, 2018. At the second reading of the ordinance on October 2, a lengthy discussion ensued about the second reading of the ordinance amending penalties for damage to a Landmarks Property. Councilmember Vander Pas expressed concern that the proposed ordinance created a situation where all property owners were not being treated equally. It was noted that signage documenting Landmark Status is located at each locally designated landmark. Discussion relating to publicly owned landmarks vs privately owned landmarks also occurred. It was moved by Binnie and seconded by Vander Pas to amend the ordinance to apply only to publicly-owned and signed properties. No vote was taken. A motion was made by Grady and seconded by Vander Pas to postpone action on the ordinance, pending further research. Additionally, the City Manager was directed to obtain information from other communities relating to the handling of fines for damage to landmark properties. The subject was to be brought back to the Common Council following staff research along with fine adjustments proposed by other departments.

With research completed and no other departments proposing fine adjustments for approval, staff brought the ordinance amendments back for review and approval by the Common Council on March 19, 2019.

SUMMARY OF ITEM BEING PRESENTED: The item(s) as presented here include

1. An ordinance establishing penalties for causing damage to land mark properties or theft of land mark property per Whitewater Municipal Code Chapter 7.36, Section 7.36.030 (b) (1) and (2) and Chapter 7.46, Section 7.46.030.
2. An ordinance amending section 1.21.010, schedule of deposits as related to penalties for causing damage to landmark properties.

FINANCIAL IMPACT: N/A

BOARD, COMMISSION, OR COMMITTEE RECOMMENDATION, IF ANY: The ordinance was discussed at multiple Landmarks Commission meetings (most recently March 7, 2019) prior to being introduced for consideration on March 19, 2019. The Landmarks Commission recommended approval of the proposed changes for a second time on March 7<sup>th</sup>, 2019.

STAFF RECOMMENDATION: Staff recommends approval.

RECOMMENDED MOTION: Recommend approval.

ATTACHMENT(S) INCLUDED (If none, please state that):

1. An ordinance establishing penalties for causing damage to land mark properties or theft of land mark property per Whitewater Municipal Code Chapter 7.36, Section 7.36.030 (b) (1) and (2) and Chapter 7.46, Section 7.46.030.
2. An ordinance amending section 1.21.010, schedule of deposit.
3. Staff memo on the proposed changes.

FOR MORE INFORMATION CONTACT:

Chris Munz-Pritchard, [cmunz-pritchard@whitewater-wi.gov](mailto:cmunz-pritchard@whitewater-wi.gov) 262-473-0143

## MEMORANDUM

To: Cameron Clapper, City Manager  
From: Chris Munz-Pritchard, Neighborhood Services Director  
Date: April 2, 2019  
Re: Ordinance establishing penalties for causing damage to landmark property or theft of landmarks property.

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### Meetings:

Landmarks Commission June 7<sup>th</sup> 2018: Theft and Vandalism to local landmarks Kori Oberle, Bassett House. Oberle, as a member of the board of directors at Bassett House, displayed photos of the damage. Damage with done to the sign and the porch area where it was secured. Oberle reported how the violator was discovered. A fine of \$250 and restitution of \$250 was levied against him. Munz-Pritchard reminded Oberle to pull a sign permit from the City before the sign is remounted.

Landmarks Commission June 5, 2018: Discussion and possible action on increase in fines to National/State Register and Local Landmark structures. Munz-Pritchard distributed proposed language to change the city's ordinance effecting landmark properties. She explained the information for the commissioner. Additionally, she had discussion with the City police to help them recognize which properties in the city area landmarks. Blackmer suggested that the commission wait until Schulgit can attend the landmarks Commission meeting before further action be taken. Discussion ensued. Oberle pointed out that the proposed language does not include any reimbursement to the property owners at the municipal court. Munz-Pritchard has begun researching this and has planned to talk with the City Manager. At this time, she believes reimbursement to individual property owner will be a policy decision. Richardson pointed out some inconsistencies in the fines/punishments through the draft. Munz-Pritchard will correct these for next meeting.

Landmarks Commission August 2, 2018: Discussion and possible action on increase in fines to National/State Register and Local Landmarks structures (Munz-Pritchard/Schulgit). A proposed ordinance was passed out. Thanks were extended to Schulgit for proposing this change in the ordinance. Richardson questioned why the fines were the same for the first and second offenses. Helmick raised the issue of restitution to the property owners. These two issues will be brought to CMP for discussion by Blackmer before the proposed ordinance is brought to the city council.

Common Council September 18, 2018: Approved at first reading. At the second reading of the ordinance on October 2, 2018 a lengthy discussion ensued about the second reading of the ordinance amending penalties for damage to a Landmarks Property. Councilmember Vander Pas expressed concern that the proposed ordinance created a situation where all property owners were not being treated equally. It was noted that signage documenting Landmark Status is located at each locally designated landmark. Discussion relating to publicly owned landmarks vs privately owned landmarks also occurred. It was moved by Binnie and seconded by Vander Pas to amend the ordinance to apply only to publicly-owned and signed

properties. No vote was taken. A motion was made by Grady and seconded by Vander Pas to postpone action on the ordinance, pending further research. Additionally, the City Manager is to obtain information from other communities relating to how they handle fines related to landmark properties, and the subject will be brought back to council at the same time other fine amounts are brought forth.

Landmarks Commission October 4, 2018: Ordinance to increase fines to National/State Register and Local Landmark structures (Munz-Pritchard/Schulgit). At the second reading of the proposed ordinance action on the ordinance was postponed by the council so that more information can be obtained. There was no indication of a date for future consideration.

Landmarks Commission November 1, 2018: Ordinance to increase fines to National/State Register and Local Landmark structures. Munz-Pritchard asked for direction on how to proceed after the proposed ordinance was tabled by the City Council. It was suggested that Commissioners individually contact council members to request that the ordinance be passed. Schulgit will ask the City Council at the next meeting what is happening with this item. Blackmer will contact the City Manager and request that it be put on the Council's agenda.

Landmarks Commission December 6, 2018: Ordinance to increase fines to National/State Register and Local Landmark structures. Schulgit believe that the ordinance language is being delayed until all the fines leveled in other areas can be adjusted. Helmick suggested that a letter be sent to council president and the city manager asking for movement on this issue as it pertains to Landmarked properties as well. Munz-Pritchard will find who, on city staff, has been charged with doing research on the issue and request action to be taken.

Research:

I could not find any examples of ordinances that addressed vandalism to Landmarks (in the state of Wisconsin) the way that our ordinances does. Most, address issues such as neglecting, damage by weather or vandalism and the approval processes for permits. The other had to do with archeological sites. Below is an example from other Cities:

Damage to property.

(1) Whoever intentionally causes damage to any physical property of another without the person's consent is guilty of a Class A misdemeanor.

(2) Any person violating sub. (1) Under any of the following circumstances is guilty of a class D felony:

(f) 1. In this paragraph, "rock art" means an archeological site that contains paintings, carvings, or other deliberate modifications of an immobile rock surface, such as a cave, overhang, boulder, or bluff face, to produce symbols, stories, messages, designs, or pictures. "Rock art site" includes artifacts and other cultural items, modified soils, bone, and other objects or archeological interest that are located adjacent to the paintings, carvings, or other deliberate rock surface modifications.

2. The property damaged is a rock art site, any portion of a rock art site, or any object that is part of a rock art site, if the rock art site is listed on the national register of historic places in Wisconsin, as defined in s. 44.31 (5), or the state register of historic places under s. 44.36. History: 1995 Assembly Bill 707 1995 a. 208 (April 10, 1996)

Demolition of historic building without authorization.

(1) In this section, “historic building” means any building or structure within and contributing to a historic district that is listed on, or any building or structure within and contributing to a historic district that is listed on, the national register of historic places in Wisconsin or the state register of historic places or any building that is included on a list of historic places designated by a city, village, town, or county.

(2) Whoever intentionally demolishes a historic building without a permit issued by a city, village, town, or county or without an order issued under s. 66.0413 is guilty of a Class A misdemeanor.

(3) Subsection (2) does not apply to any person if he or she acts as part of a state agency action and the state agency has complied with ss. 44.39 to 44.42 regarding the action. History: 1995 Senate Bill 145 1995 a. 466 (June 27, 1996), 2001 a. 109 (penalty amended to Class A misdemeanor, effective 2/1/03)

**ORDINANCE NO. \_\_\_\_\_**  
**AN ORDINANCE AMENDING SECTION 1.21.010**  
**SCHEDULE OF DEPOSITS**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do hereby ordain as follows:

**SECTION 1:** Whitewater Municipal Code Section 1.21.010 is hereby amended to add the following:

<b><u>CHAPTER OR SECTION NUMBER</u></b>	<b><u>OFFENSE</u></b>	<b><u>DEPOSIT AND COSTS</u></b>
<b>7.36.030</b>	Damage to Property	Damage to a Landmark or Landmark Site - \$900, plus statutory penalty assessment, jail assessment, and court costs  Damage to Landmark or Landmark Site – second offense, \$900, plus statutory penalty assessment, jail assessment, and court costs

**SECTION 2:** Whitewater Municipal Code Section 1.21.010 is hereby amended to add the following:

<b><u>CHAPTER OR SECTION NUMBER</u></b>	<b><u>OFFENSE</u></b>	<b><u>DEPOSIT AND COSTS</u></b>
<b>7.46.030</b>	Theft violations	Theft or petty theft of property that is part of a Landmark or Landmark Site - \$900, plus statutory penalty assessment, jail assessment, and court costs

**SECTION 3:** This ordinance shall take effect upon passage and publication as provided by law.

Ordinance introduced by Councilmember \_\_\_\_\_, who moved its adoption.

Seconded by Councilmember \_\_\_\_\_.

AYES:

NOES:

\_\_\_\_\_  
Cameron Clapper, City Manager

ABSENT:

\_\_\_\_\_  
Michele R. Smith, City Clerk

ADOPTED:



*City of Whitewater Council Agenda Item Information Sheet*

MEETING DATE: April 4, 2019

ITEM: Memorandum of Understanding with  
DP Electronic Recycling

PRESENTER: Dave Carlson, CDA Executive Director

PREVIOUS ACTION, IF ANY: Approved by the CDA Board, March 28, 2019

**SUMMARY OF ITEM BEING PRESENTED:**

Council is being asked to consider and approve an updated MOU with DP Electronic Recycling. The updated MOU restates key provisions of a previously approved (February 18, 2016) Development Agreement, whereby the CDA, City and DP Electronic Recycling agreed that it would sell a 10.96 acres Parcel in the Whitewater Technology Park to DP for \$1.00 contingent on DP repaying two outstanding loans with the CDA prior to closing on the property, and constructing an approximately 100,000 square foot facility employing approximately 90 full time employees. Due to unexpected delays, this project did not proceed and the deadlines for performance in the Development Agreement have all since passed. The revised MOU before Council restates the core of the deal outline above while reflecting that expected job creation for the project is now approximately 80 full time employees. The MOU also states that the all parties will work together to amend the 2016 Development Agreement as needed and states that unless otherwise amended or replaced, the terms of the 2016 Development Agreement remain in full force and effect.

**FINANCIAL IMPACT:** Increased tax base as a result of the proposed development and repayment of approximately \$86,100 in principal, plus interest for two outstanding loans DP has with the CDA

**BOARD, COMMISSION, OR COMMITTEE RECOMMENDATION, IF ANY:** CDA

**STAFF RECOMMENDATION:** Approval of the MOU.

**RECOMMENDED MOTION:** Motion to approve the MOU with DP Electronic Recycling and authorize the City Manager and City Clerk to sign the document on behalf of the City of Whitewater.

**ATTACHMENT(S) INCLUDED:**

March 2019 MOU

February 18, 2016 Development Agreement

**FOR MORE INFORMATION CONTACT:**

Dave Carlson, CDA Executive Director, 262-473-0148 or 262-443-4458 (cell)

**DEVELOPMENT AGREEMENT**  
**BETWEEN THE CITY OF WHITEWATER, THE COMMUNITY**  
**DEVELOPMENT AUTHORITY OF THE CITY OF WHITEWATER,**  
**WISCONSIN) AND DP ELECTRONIC RECYCLING, INC.**

THIS DEVELOPMENT AGREEMENT ("Agreement") entered into this 18<sup>th</sup> day of February 2016, by and between the City of Whitewater, a Wisconsin municipal corporation (hereinafter referred to as the "City"), the Community Development Authority of the City of Whitewater, Wisconsin (hereinafter at times referred to as the "CDA"), and DP Electronic Recycling, Inc. (hereinafter at times referred to as the "Developer").

WITNESSETH THAT:

WHEREAS, Article XI of the Wisconsin Constitution grants cities the right to determine their local affairs in government, subject to the Constitution and certain enactments of the legislature of the State of Wisconsin; and

WHEREAS, the State of Wisconsin legislature adopted Section 62.11 of the Wisconsin Statutes, which grants to common councils of cities the power to act for the government and good order of the city, for its commercial benefit and for the health, safety and welfare of the general public; and

WHEREAS, the CDA is a separate polity from the City and was set up by the City in accordance with Section 66.1335 of the Wisconsin Statutes, which grants to common councils of cities the power to create certain development authorities to assist with the development of blighted and urban renewal projects, among other rights; and

WHEREAS, the CDA is owner of fee title of that real property being approximately 10.96 acres located within the City of Whitewater, as further described in Exhibit A to the Agreement (hereinafter referred to as the "Property"); and

WHEREAS, the Developer is interested in purchasing the Property from the CDA in order to construct an approximately 100,000 square foot recycling facility worth approximately \$8,000,000, which would employ approximately 90 full time employees; and

WHEREAS, the CDA is willing to sell the Property to the Developer for \$1.00 in order for the Developer to develop and construct the Project (as defined below) if the terms and conditions set forth below are met.

NOW, THEREFORE, in consideration of the mutual promises herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants herein contained, the parties agree:

## **ARTICLE I DEFINITIONS**

**Section 1.1** The following terms as used herein shall have the following meanings:

- (a) "Assessed value" has the meaning set forth in Chapter 70, Wis. Stats.
- (b) "Project" means the proposed development and building project as set forth in Article II and Exhibit B attached hereto.
- (c) "Project Area" refers to the real estate depicted on Exhibit A.

(d) "Substantial Completion" shall mean that the Developer has sufficiently completed the Project so that a final Certificate of Occupancy has been issued by the City's Building Inspector.

(e) "Site Plan" shall include design and specification of the building design plan, stormwater management plan, utility plans, landscaping plan, lighting specifications and design, and transportation plans.

## **ARTICLE II OVERVIEW OF THE PROJECT**

**Section 2.1 Project Description.** The Developer proposes to construct on the Property an approximately 100,000 square foot recycling facility with a total value of \$8,000,000.00 based upon the April 27, 2012 conceptual site plans submitted to the City in May 2012 ("Conceptual Site Plans"), said Conceptual Site Plans are incorporated herein and made a part of Exhibit B. The parties agree and acknowledge that (a) the Conceptual Site Plans do not depict the final design, (b) the Developer is required to submit final Site Plans for the Project for final review and approval by the appropriate reviewing governmental and nongovernmental bodies, and (c) the Conceptual Site Plans do not guarantee approval by any appropriate reviewing governmental and nongovernmental bodies. As further addressed below, as part of the Project, the Developer agrees to install a bike path along the exterior of the Property to connect with other City-owned bike paths. Access to and use of the bike path shall not be restricted by the Developer.

**Section 2.2 Project Completion.** Except as otherwise stated herein, the Developer shall substantially complete the construction of the Project no later than

eighteen (18) months from the date of this Agreement. Substantial completion shall be determined by the date on which final Certificate of Occupancy is granted by the City.

**ARTICLE III  
CONVEYANCE OF THE PROPERTY**

**Section 3.1** Property. The CDA is the fee owner of the Property and, along with the City, is willing to encourage the development of the Project on the Property by selling the Property to the Developer for \$1.00, in return for the Developer's obligations as described herein.

**Section 3.2** Property Transfer. Upon satisfactory completion of the items set forth below in Section 4.1, the CDA shall cause title to the Property to be conveyed by special warranty deed to the Developer or the Developer's assignee for \$1.00, subject to the terms of this Agreement. Except as otherwise stated herein, all costs associated with the transfer shall be paid by the City.

**Section 3.3** Title Insurance. The City/CDA shall obtain and pay for a title insurance commitment, including gap coverage, in the amount of the Property's estimated Assessed Value. The Developer may obtain additional title insurance, including any additional endorsements, as its sole costs and expense. The City/CDA shall provide a copy of the title insurance commitment to the Developer no less than fifteen (15) days prior to closing. The City/CDA shall cooperate with the Developer to clear up any defect in title that may be pertaining to the Property; provided, however, that the Property shall be conveyed subject to (a) municipal, zoning and land division ordinances; (b) rights of the public in roadways; (c) rights of the State of Wisconsin, the City or any private railroad company for rail spurs; (d) unpaid future installments of special

*ordered  
2/23/16 to  
DP Elect.*

assessments for public improvements; (e) reasonable and customary easements and restrictions of record; (f) public and private utility easements; and (g) all terms and conditions of this Agreement.

**Section 3.4 Closing.** In accordance with the terms of this Agreement, the transfer of the Property from the CDA to the Developer will take place at a mutually convenient time.

**Section 3.5 No Representations or Warranties.** Neither the City nor the CDA make any representations or warranties with respect to the physical condition or zoning of the Property. The Developer acknowledges that it is the Developer's responsibility to inspect the physical condition of the Property and agrees that the Developer has had an adequate opportunity to conduct such investigations as the Developer deems necessary. In accepting title to the Property, the Developer shall accept the Property in "AS IS, WHERE IS" condition and shall release and hold the City and the CDA harmless from any and all claims or liability related to the physical condition of the Property.

**Section 3.6 Street Vacation.** In addition to the conveyance contemplated above, if the Developer complies with all obligations set forth in this Agreement, the City, as owner of that certain portion of East Main Street that dead ends into a cul-du-sac, as depicted on Exhibit C ("East Main Street Parcel"), shall vacate the East Main Street Parcel and transfer same to the Developer. Notwithstanding the foregoing, the Developer shall have the responsibility and obligation, at its own cost and expense, to legally combine the Property and the East Main Street Parcel. Once combined, the Developer agrees and acknowledges that the reference to the term the "Property" herein shall be

interpreted to include the East Main Street Parcel. The City makes no representations or warranties as to the physical condition or zoning of the East Main Street Parcel. The Developer acknowledges that it is the Developer's responsibility to inspect the physical condition of the East Main Street Parcel, and agrees that the Developer has had an adequate opportunity to conduct such investigations as the Developer deems necessary. In accepting title to the Property, the Developer shall accept the Property in "AS IS, WHERE IS" condition and shall release and hold the City and the CDA harmless from any and all claims or liability related to the physical condition or zoning of the East Main Street Parcel. The Developer further agrees and acknowledges that approval of any land combination requested of the Developer is not guaranteed by this Agreement.

#### **ARTICLE IV DEVELOPER OBLIGATIONS**

**Section 4.1** Closing Contingencies. Although this Agreement will be effective upon execution, CDA's obligation to transfer of the Property to the Developer shall be subject to satisfaction of the following contingencies:

- (a) The Developer, at its own cost and expense, obtaining any and all required approvals and/or exemptions from the Wisconsin Department of Natural Resources to construct and operate the Project;
- (b) The Developer, at its own cost and expense, obtaining construction and long term financing for the development and construction of the Project;
- (c) The Developer obtaining, at its own cost and expenses, all appropriate permits, licenses, approvals and authorizations to construct and operate the Project from

all appropriate reviewing governmental and nongovernmental bodies, including but not limited to the CDA, the State of Wisconsin and the City;

(d) The Developer submitting and getting approval of the final Site Plans for the Project in accordance with Section 4.2 below;

(e) The Developer entering into a contract(s) with a licensed contractor(s) to construct the Project within the authorized time frame; and

(f) The Developer fully satisfying on or before closing, the following financial obligations and loans the Developer has with the CDA:

(1) UDAG Loan

- (i) Principal: \$34,600
- (ii) Interest Rate: 5.25%
- (iii) Date: April 1, 2013
- (iv) Interest start date: April 1, 2014

(2) Capital catalyst royalty investment

- (i) Principal: \$51,500
- (ii) Interest Rate: 12%
- (iii) Date: December 18, 2014
- (iv) Interest start date: December 18, 2014

**Section 4.2 Plan Approval.**

(a) In accordance with Section 4.1(d) above, the Developer shall prepare (or cause to be prepared) and submit final Site Plans for the Project to the City, which shall

be subject to the approval of the City, the CDA, the State of Wisconsin, as applicable, and, if any of the proposed uses of the Project will be a conditional use, to the CDA. The final Site Plans shall be in compliance with all codes and requirements of the City, shall be consistent with the Conceptual Site Plans submitted to the City in May 2012, and shall include plans to install a bike path along the exterior of the Property to connect with other City owned bike paths. The Developer agrees and acknowledges that conditional use approval, if required, is subject to approval by the CDA and that, furthermore, approval is not guaranteed by this Agreement.

(b) If the Developer desires to make any change in the final Site Plans after their approval, the Developer shall submit the proposed change to the City, and any other governmental and/or nongovernmental entity that reviewed and approved the final Site Plans, for their approval. If the final Site Plans, as modified by the proposed change, conform to the requirements of this Agreement, the City shall approve the proposed change and notify the Developer in writing of its approval.

**Section 4.3** Costs and Expenses. The Developer shall reimburse the City for all processing and professional review costs and fees for the review and approval of the final Site Plan, plus any other land use approvals, building permits, or other similar permits and entitlements in force and effect on a City-wide basis at the time an application is submitted for one of those permits for all aspects of the project. Developer shall also reimburse the City for all engineering, inspection, and planning costs attributed to review and inspection of the Project. The City typically will contract with a qualified third party to complete inspections; inspection costs shall be billed at a rate equal to actual City contract costs. In the event City staff instead completes inspections, inspection costs

associated with this Project shall be billed at a rate commensurate with the City's actual personnel costs as outlined in the applicable schedule included in the City of Whitewater Zoning Ordinance.

**Section 4.4 Job Creation.** As consideration for the CDA transferring the Property to the Developer in accordance with this Agreement, the Developer shall create at least ninety (90) new full time positions within the initial three (3) years of operations of the Project, and shall maintain these full time positions for at least three (3) years from the date of their individual creation. Operations shall be deemed to have commenced upon the Developer Substantial Completion of the Project. If the Developer fails to create or maintain at least ninety (90) new full time positions within the time stated above, the CDA shall have the right to enforce this obligation, recoup damages and/or repurchase the Property as stated below in Article VII, in addition to any other rights the CDA may have under this Agreement, in law or in equity.

**Section 4.5 Construction Guarantee.** As consideration for the CDA transferring the Property to the Developer in accordance with this Agreement, the Developer guarantees that the Developer shall commence construction of the Project within twelve (12) months after the date of this Agreement, substantially complete the construction of the Project no later than eighteen (18) months from the date of this Agreement and that the Project will meet the minimum construction values for each year after the date of this Agreement as set forth on Exhibit D, with the fair market value of the Property to be no less than \$8,000,000.00 upon substantial completion. Substantial completion shall be determined by the date on which final Certificate of Occupancy is

granted by the City. If the Developer fails to complete the Project in accordance with the above restrictions, the CDA shall have the right to enforce this obligation, recoup damages and/or repurchase the Property as stated below in Article VII, in addition to any other rights the CDA may have under this Agreement, in law or in equity.

**Section 4.6 Bike Path.** As part of the Project, the Developer shall construct at its sole cost and expense, a bike path along the exterior of the Property to connect with other City owned bike paths. The location, design and specifications of the bike path shall be approved by the City as part of the final Site Plan review and approval and the bike path shall be constructed in such a way as to be substantially consistent, in the City's sole discretion, with the other bike paths located within the City's limits. Access to and use of the bike path shall not be restricted by the Developer and, before development of the Property commences and a building permit is issued, the Developer agrees to grant a nonexclusive easement over and across the bike path to allow members of the public access to, over and across said bike path. The rights and obligations of the Developer to construct the bike path, as further identified in such easement, shall run with the land. In addition to the above, should the Developer cause any damage to or relocation to the portions of the bike path located on parcels adjacent to the Property during its development of the Project, the Developer shall be solely responsible for the costs associated with the restoration of such portions of the bike path to their original or comparable condition in accordance with standards approved by the City.

**Section 4.7 Miscellaneous Obligations.**

(a) The Developer shall engage qualified contractors for the construction of the Project. The Developer shall be solely responsible for all work performed under contract, and shall pay prevailing wages, if required by state laws.

(b) Upon approval of the final Site Plans, the Developer shall be solely responsible for the construction of all improvements set forth in the approved Site Plans.

(c) Developer shall be responsible for all public and private utility extensions, if any, required to service the Property; all planned sanitary sewer, water main, storm sewer lines, gas lines, electric lines, and telecommunications facilities within the Property; and shall provide all required easements for such utilities. All utilities must be underground. If not completed already, the Developer shall extend all planned public sewer, water, and storm sewer mains within the Property up to the edges of the Property, in accordance with the approved Site Plans.

(d) Grading of the Property shall adhere to the City-approved Grading, Utility, and Erosion Control Plan, including grading of stormwater basins and stormwater conveyance routes. No window or door opening on any lot which includes a stormwater conveyance route or basin, or which is adjacent to a lot or outlot including a stormwater conveyance route or basin, shall be less than two feet above the projected high water elevation in the basin or conveyance route. The cost of all site grading, including grading that is required for the bike path to be constructed by the Developer, shall be the responsibility of the Developer.

(e) Developer shall pay all water, stormwater and sewer connection fees, park fees and impact fees, if any, as required by City ordinances.

## **ARTICLE V DEVELOPER COVENANTS**

**Section 5.1** Maintenance of Property. The Developer will maintain, preserve and keep the Property and Project, upon completion, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals and additions.

**Section 5.2** Maintenance of Records. The Developer will keep at all times proper books of record and account in which full, true and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of the Developer relating to the Property and Project, in accordance with generally accepted accounting principles consistently applied throughout the period involved, and the Developer will provide reasonable protection against loss or damage to such books of record and account.

**Section 5.3** Financing. The Developer warrants that, unless otherwise provided herein, the City and/or the CDA will not, in any way, be obligated in any manner to arrange, guarantee, or otherwise participate in obtaining financing for the Project. The Developer plans to utilize bank financing and other sources of funds for the construction loan and permanent financing.

**Section 5.4** Taxable Entity; Restrictions on Use. The Developer warrants that it is not exempt from real estate taxes but understands and acknowledges that no real estate

taxes for the Property will be due or owing for the year of closing of the Property if the CDA is the fee owner of the Property as of January 1 in the year of closing. The Developer agrees that it shall not cause or permit the Development or any portion thereto to be or become tax exempt for at least three (3) years after commencement of operations of the Project, unless condemned by the United States or some other governmental entity. This obligation, as well as the other obligations of this Agreement, shall be binding upon all of the Developer's successors and assigns and shall survive termination or expiration of this Agreement. The Developer further agrees it will place a restriction on any deed conveying the property prohibiting any use of the property which would cause the Project Area or any portion thereof to become tax exempt before the year 2018.

**Section 5.5 Compliance with Laws.** The Developer will comply with all laws, rules and regulations relating to the Property and/or the Project.

**Section 5.6 Non-Discrimination.** In operating the Project, the Developer shall not discriminate against any applicant, employee or tenant because of race, creed, color, sex, national origin, age or disability. The Developer shall ensure that applicants, employees and tenants are considered and are treated without regard to their race, creed, color, sex, national origin, age or disability.

**Section 5.7 Use Restrictions.** In addition to all laws, rules and regulations relating to the Property and/or the Project, the Developer agrees and acknowledges that its use and improvement of the Property is subject to the following restrictions and requirements:

(a) The Property shall be used only for those uses permitted under the City's zoning classification M-1, and shall further be limited to trades or industries of a restrictive character which are not detrimental to the Whitewater University Technology Park or to the adjoining residential areas by reason of appearance, noise, dust, smoke, or odor, or similar condition as hereafter provided. The following uses, not intending hereby to limit by enumeration, shall be prohibited:

- (1) Quarrying.
- (2) Junkyards or salvage yards.
- (3) Drop forges, foundries, refineries, concrete and plaster manufacturing and assemblage or any similar use, the normal operation of which causes objectionable noise, odor, dust or smoke or any similar use.
- (4) Any other use, the normal operation which causes objectionable appearance, noise, odor, dust or smoke.

(b) Outdoor storage of vehicles, products, equipment, supplies and other materials shall be permitted in the side and rear yards of the Property but must be screened with screening approved by the City or its designee. Screening requirements shall not apply to the parking of vehicles regularly used and operated in the normal course of the Developer's business.

(c) All loading areas shall be off street and located on the Property or adjoining property owned by the Developer. Appropriate screening is required where practical provided that the efficiency of traffic movement is not compromised. The Developer agrees and acknowledges that loading areas will be approved as part of the approval of the final Site Plans for the Project by the City. The Developer further agrees

and acknowledges that approval of any loading areas requested of the Developer is not guaranteed by this Agreement.

(d) The Developer must comply with all fencing ordinances and requirements passed by the City and existing as of the date of this Agreement.

(e) The Property must maintain a minimum frontage at the street line of thirty (30) feet.

## **ARTICLE VI EASEMENTS**

**Section 6.1 Bike Path Easement.** Pursuant to Section 4.5 above, the Developer shall grant a nonexclusive easement over and across the bike path to be constructed on the Property as part of the Project.

**Section 6.2 Rail Spur Easement.** The parties acknowledge and agree that a portion of the Property abuts a rail line and that, as a result, there may be additional restrictions or requirements on the Property due to the location and presence of the rail line. In addition, before development of the Property commences and a building permit is issued, if requested by the Developer, the City/CDA shall grant both a construction and permanent easement to the Developer for the sole purpose of constructing and maintaining a rail spur located between the current rail line and the Property. The location, size and specifications of the easement shall be mutually agreed upon between the parties; however, the Developer shall bear sole responsibility for the construction of and maintenance of the rail spur line. The Developer shall also be fully responsible for obtaining authorization from the rail owner and the State of Wisconsin, if applicable.

**Section 6.3 Temporary Construction Easement.** Before development of the Property commences and a building permit is issued, the City/CDA agree to grant to the Developer an exclusive temporary construction easement, if necessary, to implement construction of the Project over and across portions of Outlot 1 on Certified Survey Map No. 4442, recorded in the Walworth County Register of Deeds as Document No. 828429 ("Outlot 1"). The location, size and specifications of the easement shall be mutually agreed upon between the parties; however, said easement shall be limited to the construction of the Project only and shall terminate upon completion of the Project. In addition, the Developer acknowledges and agrees that, under such easement, it shall have the obligation, at its sole cost and expense, to correct and repair any damage to Outlot 1 due to the Developer's activities thereon.

**Section 6.4 Stormwater and Maintenance Easement.** Before development of the Property commences and a building permit is issued, the City and CDA agree to grant to the Developer an exclusive stormwater management and maintenance easement over and across Outlot 1 for site stormwater management purposes, subject to review and approval by the City and its stormwater management requirements, and for purposes of maintenance and repair of the Property's stormwater systems, including but not limited to the current existing detention pond located on Outlot 1. Said easement shall run with the land. The location, size and specifications of the easement shall be mutually agreed upon between the parties; however, the Developer acknowledges and agrees that, under such easement, it shall have the obligation, at its sole cost and expense, to: (a) maintain the easement area (including maintaining the detention pond in a good, usable, safe and secure state of condition and repair, consistent with the function thereof, and consistent

with any local, state or federal laws and regulations as may govern such installation); (b) obtain and hold any permits required for the maintenance of the easement area and detention pond, including but not limited to the Wisconsin Department of Natural Resources storm water permits; and (c) correct and repair any damage to Outlot 1 due to the Developer's activities thereon. Said easement shall also contain an indemnification by the Developer indemnifying, defending and holding of the City and CDA harmless from from any and all claims, liability, loss, damage, charges or expenses, including reasonable attorney fees, arising out of (i) the operation, use, maintenance, repair, removal and/or reconstruction of the detention pond by the Developer, its employees, agents and contractors; (b) any injury or damage to person or property or other occurrence on the easement area (except to the extent the same results from the negligence or willful misconduct of the City and/or CDA); and (iii) the discharge, disposal or release of any hazardous substance in the detention pond and on Outlot 1 in general.

**ARTICLE VII**  
**LIQUIDATED DAMAGES AND OPTION TO REACQUIRE THE PROPERTY**

**Section 7.1** Failure to Meet Project Guarantees. The Developer agrees and acknowledges that the CDA agreed to transfer the Property to the Developer in accordance with this Agreement in reliance on the Developer's promises and guarantees set forth herein. The Developer understands and acknowledges that the CDA will suffer damages if the guarantees set forth in Section 4.5 are not met but that it will be extremely difficult and impracticable to ascertain the detriment to the CDA caused by such failure of the Developer or the amount of compensation the CDA should receive as a result of such failure. In the event the Developer fails to meet the Project guarantees as set forth in

Section 4.5, the Developer agrees to pay to the CDA as liquidated damages the sums identified on Exhibit E, attached hereto and incorporated herein. Furthermore, the Developer agrees that the CDA shall have the right to encumber the Property after Closing with mortgage or other security documents for the agreed current full value of the Property of \$45,000 per acre, securing the CDA's rights under this Section 7.1 and this Agreement generally.

**Section 7.2 Failure to Commence Construction.** If the Developer fails to commence construction of the Project within one (1) year after the CDA transfers the Property to the Developer, the CDA shall have the right, at the CDA's sole election, to (a) allow the Developer to retain the Property in exchange for the Developer's payment to the CDA in good funds of the agreed current full value of the Property of \$45,000 per acre as liquidated damages ("Failure to Commence Liquidated Damages"), or (b) reacquire the Property from the Developer on the terms and conditions set forth in this Section 7.2 and Article VII generally (the "Failure to Commence Repurchase Right"). "Commenced construction" or "commencement of construction" shall be defined as commencement of excavation for the foundation of a commercial building. Exercise of either the Failure to Commence Liquidated Damages or the Failure to Commence Repurchase Right shall be affected by a resolution adopted by the CDA and upon delivery in writing of a notice to the Developer at any time after the expiration of said one (1) year period, or such longer period as may be agreed to in writing between the Developer and the CDA. In the event the CDA exercises its Failure to Commence Repurchase Right contained in this Section, the purchase price to be paid by the CDA shall be One Dollar (\$1.00).

**Section 7.3 Failure to Complete Project.** If the Developer fails to: (a) complete construction of the Project within eighteen (18) months from the date of this Agreement; (b) create at least 90 new full time positions within the initial three (3) years of operations of the Project; or (c) maintain these 90 new full time positions for at least three (3) years from the date of their individual creation; then the CDA shall have the right at the CDA's sole election, to: (i) allow the Developer to retain the Property in exchange for the Developer's payment to the CDA in good funds of the agreed current full value of the Property of \$45,000 per acre as liquidated damages ("Failure to Complete Liquidated Damages"), or (ii) to reacquire the property from the Developer on the terms and conditions set forth in this Section 7.3 and Article VII generally (the "Failure to Complete Repurchase Right"). "Construction completion" or "completion of construction" shall be defined as the date on which final Certificate of Occupancy is granted by the City. Operations shall be deemed to have commenced upon the Developer Substantial Completion of the Project. Exercise of either the Failure to Complete Liquidated Damages or the Failure to Complete Repurchase Right shall be affected by a resolution adopted by the CDA and upon delivery in writing of a notice to the Developer at any time after the expiration of said eighteen (18) month period, or said three (3) year periods, as applicable, or such longer period as may be agreed to in writing between the Developer and the CDA. In the event the CDA exercises its Failure to Complete Repurchase Right contained in this Section, the purchase price to be paid by the CDA shall be \$1.00 plus the fair market value of the improvements made upon Property by the Developer as of the date the Failure to Complete Repurchase Right is exercised, based on

its highest and best use for any purpose ("Fair Market Value"), established in accordance with the following procedure:

(a) The Developer and the CDA shall endeavor to agree upon the Fair Market Value of the Property during the thirty (30) day period commencing on the date of the CDA's notice to Developer exercising the Failure to Complete Repurchase Right. If the Developer and the CDA reach agreement on Fair Market Value during such period, such amount shall be the purchase price.

(b) If the parties fail to agree on the Fair Market Value within said thirty-day period, each party shall, within fifteen (15) days thereafter, select an appraiser and notify the other party in writing of the name, address and qualifications of such appraiser. Within fifteen (15) days thereafter, each appraiser shall perform an appraisal of the Property, a copy of which shall be delivered to the other party. If the two appraisers agree upon the value of the Property, such amount shall be the Fair Market Value, which shall be conclusive and binding on the Developer and the CDA. If the difference between the two appraisals is fifteen percent (15%) or less, the Fair Market Value shall be the average of the two appraisals.

(c) If the two appraisals are more than fifteen percent (15%) apart, then within fifteen (15) days after the delivery of the final appraisal above, the two appraisers shall select a third appraiser to evaluate the appraisals. The selection of such third appraiser by the initially selected appraisers shall be binding and conclusive upon the Developer and the CDA. Within fifteen (15) days after such selection, the third appraiser shall make a determination as to which of the two appraisals is closest to the Fair Market Value of the

Property. The third appraiser may not substitute any other estimate of Fair Market Value, may not average the appraisals and may not alter the appraisals in any manner. It is the parties' intent that appraisal under this paragraph shall be a so called "baseball" appraisal under which the third appraiser must select either the Developer's estimate of Fair Market Value or the CDA's estimate of Fair Market Value. The amount indicated by the appraisal so selected by the third appraiser shall be the Fair Market Value and shall be conclusive and binding on the Developer and CDA.

(d) All appraisers selected or appointed pursuant to this Section 7.3 shall: (i) be independent qualified MAI appraisers; (ii) have a minimum of ten (10) years appraising commercial real estate such as the City Parcel; and (iii) be licensed in the State of Wisconsin. Each party shall bear the costs of the appraiser it selects, with the cost of the third appraiser, if necessary, shared equally by Developer and the CDA.

**Section 7.4 Payment and Closing.** In the event the CDA exercises any of its liquidated damages rights, the Developer shall pay to the CDA the full amount of liquidated damages due and owing within fifteen (15) days. In the event the Developer fails to pay the CDA such amounts, the CDA shall have the right to foreclose on its mortgage or other security documents securing the CDA's rights and interest or to exercise, as applicable, either of its repurchase rights set forth above. In the event the CDA exercises either of its rights to repurchase as set forth above, closing shall take place within sixty (60) days following the exercise of said repurchase right or on such later date as may be agreed to in writing between the Developer and the CDA. Conveyance shall be by Warranty Deed from the Developer to the CDA free and clear of all liens and encumbrances, except (a) municipal, zoning and land division ordinances,

(b) recorded easements for public utilities approved by the CDA, (c) rights of the public in roadways, (d) unpaid future installments of special assessments for public improvements, if any. In addition, at least fifteen (15) days prior to the closing, the Developer shall obtain and pay for a title insurance commitment for the Property, including gap coverage, in the amount of the Assessed Value if the CDA exercised its Failure to Commence Repurchase Right or the purchase price if the CDA exercised its Failure to Complete Repurchase Right, naming the CDA or the CDA's designee as the insured, written by a responsible title insurance company licensed in the State of Wisconsin. Said title commitment shall show good and marketable fee simple title to the Property in the Developer, subject only to utility easements and other matters of record. The CDA shall notify Developer of any objection to title and Developer shall have a reasonable time, not exceeding thirty (30) days, to resolve the objections and closing shall be extended as necessary for this purpose. If such objections are not cured within said time, CDA may elect either: (i) to terminate and cancel its election to repurchase the Property; or (ii) to consummate the transaction notwithstanding such objections. Except as otherwise stated herein, the Developer and the CDA shall each pay one-half of all costs associated with the purchase and sale of the Property, including any escrow fees, settlement charges, closing fees, real estate transfer taxes or similar charge(s) imposed on the conveyance.

## ARTICLE VIII CITY/CDA OBLIGATIONS

**Section 8.1** Transfer of Property. If the Developer complies with all obligations set forth in this Agreement, the CDA shall sell to The Developer the Property for \$1.00.

**Section 8.2** Rail Line Grants. The City will apply on behalf of the Developer for a Wisconsin Department of Transportation Freight Rail Preservation program (“FRPP”) funding grant and/or other applicable state financial assistance grant to finance the required rail siding construction by the Developer. The Developer will be required to provide the local match for any state financial assistance received. The City and/or the CDA shall not be responsible for any of the costs of construction or other costs of rail siding.

**Section 8.3** Other Governmental Permits. The Developer may apply from time to time for other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the Project in connection with the development of, or provision of services to the Project. The City shall cooperate with Developer in its efforts to obtain such permits and approvals, and provide any documents or certificates reasonably required.

**Section 8.4** Street Vacation. The City agrees to vacate the East Main Street Parcel and, if the Developer complies with all obligations set forth in this Agreement, transfer same to the Developer in accordance with Section 3.6 above.

## **ARTICLE IX MISCELLANEOUS RIGHTS AND OBLIGATIONS**

**Section 9.1** Whitewater University Technology Park. The Developer agrees and acknowledges that the Property shall be located within the Whitewater University Technology Park. As a property and building owner in the Whitewater University Technology Park, the Developer will have access to UW-Whitewater business

development services and programs that are available to Whitewater Innovation Center and University Technology Park tenants.

**Section 9.2** Assignment. The Developer shall not have the right to assign or transfer all or any portion of its interests, rights, or obligations under this agreement or in the property or any portion thereof without written approval by the City and the CDA, such approval not being unreasonably withheld. The transferee shall assume all of the Developer's rights and obligations hereunder which relate to the Property. The express assumption of the Developer's obligations under this Agreement by its transferee or assignee, however, shall not thereby relieve the Developer of any responsibility for the expressly assumed obligation.

**Section 9.3** Future Improvements. Any responsibilities related to any future public improvements serving the Property may be required as set forth in the City's Special Assessment Ordinance applicable at the time of the improvements. The parties to this Agreement are not committing to any financial or other responsibilities relating to roadways and/or public improvements currently serving the Property; however, the Developer agrees and acknowledges that the City/CDA may have the right to assess the owner of the Property for such roadways and/or public improvements.

## **ARTICLE X INDEMNITY**

The Developer shall indemnify and hold harmless the City and the CDA, their officers, employees and authorized representatives (the "Indemnified Parties") from and against any and all liabilities, including, without limitation, remediation required by any federal or state agency having jurisdiction, losses, damages, cost and expenses, including

reasonable attorney fees and costs, arising out of any third-party claims, causes of action, or demands made against or suffered by the Indemnified Parties on account of this Agreement, unless such claims, causes of action or demands (a) relate to the City or the CDA failing to perform their obligations under this Agreement, or (b) arise out of any negligence or willful misconduct of the Indemnified Parties. At the request of the City and/or the CDA, the Developer shall appear for and defend the Indemnified parties at the Developer's expense, in any action or proceeding to which any Indemnified Party may be made a party by reason of any of the foregoing.

## **ARTICLE XI INSURANCE**

**Section 11.1 During Construction.** The Developer or its contractors shall provide and maintain, or cause to be maintained, at all times during the process of constructing the Project: (a) Builder's Risk insurance in an amount equal to the estimated insurable value of the particular stage of the Project during construction and until final completion; (b) Commercial General Liability insurance with limits against bodily injury and property damage of at least \$2,000,000.00; and (c) Worker's Compensation insurance in amounts required by state law.

**Section 11.2 After Construction.** Upon completion of construction of the Project, the Developer shall maintain, or cause to be maintained: (a) Property insurance against loss or damage under a policy or policies covering such casualty and other risks as are ordinarily insured against by owners or similar properties, in an amount not less than the full insurable replacement value of the Project; (b) Commercial general liability insurance for injuries to persons and/or property, the minimum amount for each

occurrence and for each year of \$1,000,000; and Worker's Compensation insurance in amounts required by state law.

## **ARTICLE XII DEFAULT AND REMEDIES**

**Section 12.1 Notice and Right to Cure.** A party shall be in default under this Agreement if such party shall fail to carry out or fulfill one or more of its obligations hereunder and such failure shall continue for a period of thirty (30) days following receipt of written notice from the other party specifying such failure; provided, however, if the nature of the default is such that it cannot be cured within thirty (30) days, a party shall not be in default if it immediately undertakes steps to cure the default after receipt of notice and then diligently and in good faith prosecutes the curing of such default to its conclusion.

**Section 12.2 General Remedies.** If a party does not cure or undertake to cure a default within the time period set forth in Section 12.1 above, the non-defaulting party may pursue the remedies provided for in this Agreement or otherwise available at law or in equity.

**Section 12.3 Enforced Delay in Performance for Causes Beyond the Control of Parties.** For the purposes of any provisions of this Agreement, neither the City, the CDA, the Developer nor any successor in interest shall be considered in breach or default of its obligations with respect to the beginning and completion of any phase of construction or progress in respect thereto in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault, or negligence including, but not restricted to, acts of God, forces majeure, acts of the public

enemy, acts of adjoining property owners, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, unavailable materials, breach of contracts by contractors or subcontractors, and unusually severe weather or delays of subcontractors due to such causes, it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times of performance of any of the obligations of the City, the CDA or the Developer with respect to construction of the improvements shall be extended for the period of the enforced delay as determined in good faith; provided that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other party thereof of the cause or causes thereof and requested an extension for the period of the enforced delay. In the event a delay is caused by unavailable materials or breach of contracts by contractors or subcontractors, the party shall make a reasonable effort to procure performance and the other party agrees to grant a sufficient extension to permit such procurement.

**Section 12.4 Rights and Remedies Cumulative.** The rights and remedies of the parties, whether provided by law or provided by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise at the same time or different times of any such other remedies for the same event of default or breach or of any remedies for any other event of default or breach by Developer. No waiver made by the City/CDA with respect to the performance or manner or time of any obligation of Developer under this Agreement shall be considered a waiver of any rights of the City/CDA to enforce any other obligations of Developer.

**ARTICLE XIII  
ADDITIONAL PROVISIONS**

**Section 13.1 Changes.** The parties to this Agreement may, from time to time, require changes in the scope of the Agreement. Such changes, which are mutually agreed upon by and between the Developer, the CDA and the City shall be incorporated in written amendments to this Agreement.

**Section 13.2 Approvals in Writing.** Whenever under this Agreement approvals, authorizations, determinations, satisfactions, or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the duly authorized representative of the party, and delivered to the party to whom it is directed at the address specified in Section 13.3 hereunder. Whenever under this Agreement the consent, approval or waiver of the City is required or the discretion of the City may be exercised, the City Manager shall have the authority to act, as the case may be. Whenever any approval is required by the terms of this Agreement and request or application for such approval is duly made, such approval shall not be unreasonably withheld.

**Section 13.3 Notices and Demands.** A notice, demand, or other communication under this Agreement by any party to any other party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

(a) In the case of The Developer:

Dale Helgeson, President  
540 E. Centralia Street  
Elkhorn, WI 53121

With copy to:  
Attorney Rebecca Mitich  
Whyte Hirschboeck Dudek S.C.  
555 East Wells Street, Suite 1900  
Milwaukee, WI 53202-3819

(b) In the case of the City:

City of Whitewater  
Attn: Cameron Clapper, City Manager  
P. O. Box 178  
Whitewater, WI 53190

With copy to:  
Attorney Wallace K. McDonell  
454 W. Main Street  
Whitewater, WI 53190

(c) In the case of the CDA

Jeffery P. Knight, Chairperson  
Whitewater Community Development Authority  
312 W. Whitewater St.  
Whitewater, WI 53190

Whitewater Community Development Authority  
Attn: Patrick Cannon, Executive Director  
312 W. Whitewater St.  
Whitewater, WI 53190

**Section 13.4 No Liability of City and/or CDA.** Neither the City nor the CDA shall have any obligation or liability, jointly or separately, to the lending institution, architect, contractor, or subcontractor, or any other party retained by the Developer in the performance of its obligations and responsibilities under the terms and conditions of this Agreement. The Developer specifically agrees that no representations, statements, assurances, or guarantees will be made by the Developer to any third party or by any third party which are contrary to this provision.

**Section 13.5 Completeness of Agreement.** This Agreement and any addition or supplementary documents or documentation incorporated herein by specific reference contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part hereof shall have any validity or bind any of the parties hereto.

**Section 13.6 Matters to be Disregarded.** The titles of the several sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

**Section 13.7 Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby.

**Section 13.8 Recording of Agreement.** The Agreement and any and all subsequent modifications thereof or additions thereto may, upon being duly executed, be recorded by either party with the Register of Deeds for Walworth County, Wisconsin.

**Section 13.9 Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto as well as their respective successors, transferees, and assigns. Any transfer of any party's interest under this Agreement shall not release the transferor from its obligations hereunder unless specifically agreed to herein.

**Section 13.10 Covenant Running with the Land.** This Agreement, which may be recorded, shall be deemed to be, and interpreted as, a covenant running with the land.

**Section 13.11 Ambiguities Not Construed.** The Developer has had substantial input concerning the terms of this Agreement, and therefore, any ambiguities will not be construed against the City or the CDA on the basis that its attorney drafted this Agreement.

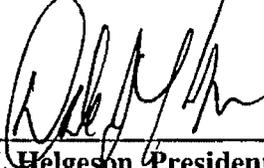
**Section 13.12 Exhibits.** The following documents are included as part of this Agreement and incorporated by this reference:

Exhibit A	Legal Description of the Property
Exhibit B	Conceptual Site Plans
Exhibit C	East Main Street Parcel
Exhibit D	Minimum Construction Values
Exhibit E	Liquidated Damages

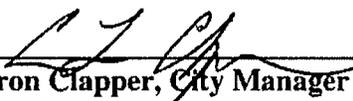
[SIGNATURES ON FOLLOWING PAGE]

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

**DP ELECTRONIC RECYCLING, INC.**

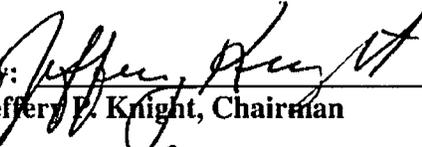
By:  2/10/16  
Dale J. Helgeson, President Date

**CITY OF WHITEWATER**

By:  2/9/2016  
Cameron Clapper, City Manager Date

By: Michele R. Smith 2/16/16  
Michele R. Smith, City Clerk Date

**COMMUNITY DEVELOPMENT  
AUTHORITY OF THE CITY OF  
WHITEWATER, WISCONSIN (CDA)**

By:  2/18/16  
Jeffery P. Knight, Chairman Date

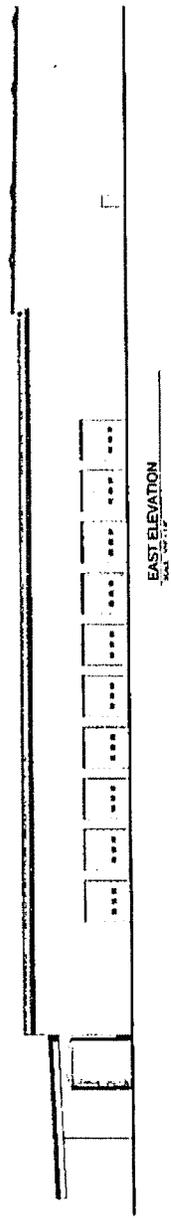
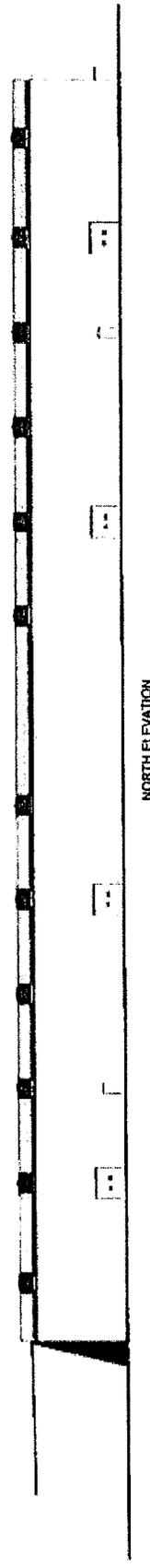
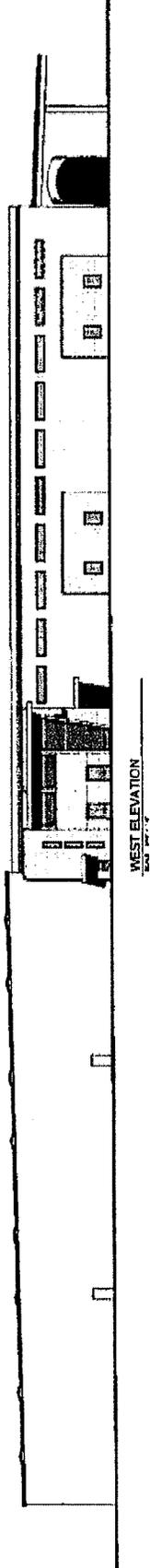
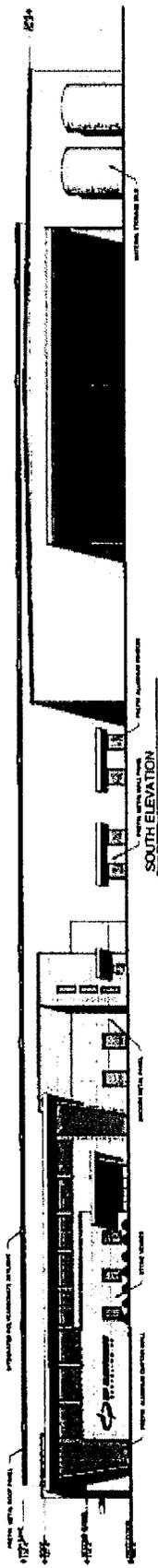
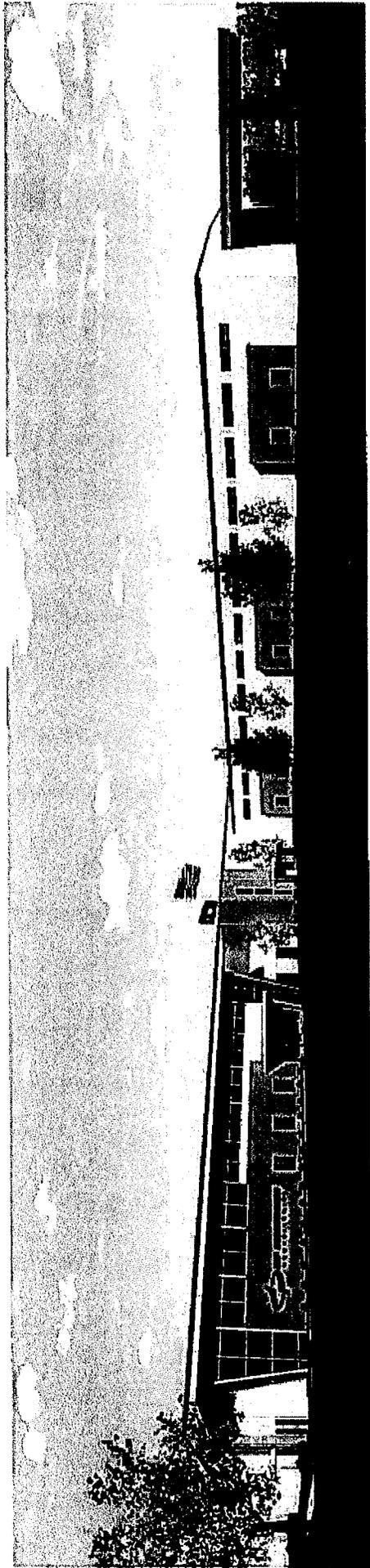
By:  2/18/16  
Patrick A. Cannon, Executive Director Date

EXHIBIT A

Map Showing Property  
(Attached)

**EXHIBIT B**  
**Conceptual Site Plans**  
**(Attached)**

EXHIBIT B



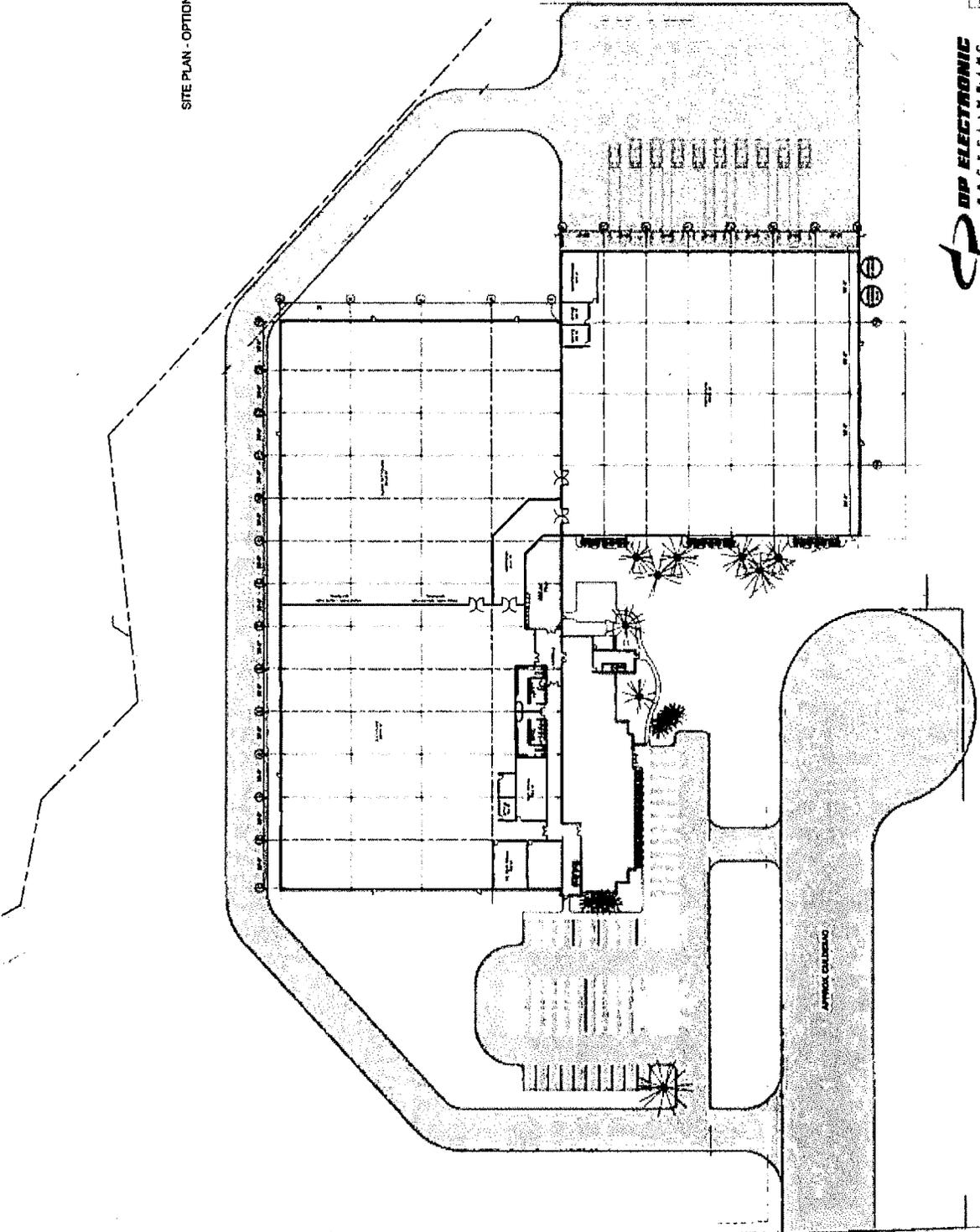
**DP ELECTRONIC**  
A. C. CYCLIMBLING

**MAGILL**  
EXCELLENCE

ELKHORA, WISCONSIN  
PROJECT NO. 1111430  
DATE: APRIL 27, 2012

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SITE PLAN - OPTION A



**DP ELECTRONIC**  
ENGINEERING

ELKHORN, WISCONSIN  
PROJECT NO. 1111430  
© 2012 DP Electronic Engineering, Inc.

DATE: APRIL 27 2012

**EXCEL**

CONSTRUCTION SERVICES  
1000 UNIVERSITY BLVD  
SUITE 200  
ELKHORN, WI 53120  
TEL: 262.661.1111  
WWW.DPEE.COM

**MAGILL**

CONSULTING ENGINEERS  
1000 UNIVERSITY BLVD  
SUITE 200  
ELKHORN, WI 53120  
TEL: 262.661.1111  
WWW.MAGILL.COM

**EXHIBIT C**  
**East Main Street Parcel**  
**(Attached)**

**RESOLUTION DISCONTINUING EAST MAIN COURT**

**WHEREAS**, East Main Court is a roadway in the City of Whitewater, and

**WHEREAS**, East Main Court is adjacent to Lot 1 of Certified Survey Map 4442, and

**WHEREAS**, the City intends to sell Lot 1 of Certified Survey Map 4442 to a developer who has requested that the City discontinue East Main Court to facilitate a substantial commercial development in the City of Whitewater, and

**WHEREAS**, discontinuance of East Main Court will facilitate economic development in the City of Whitewater, and

**WHEREAS**, discontinuing East Main Court is in the City of Whitewater's best interest, and the public's best interest requires the discontinuance of East Main Court.

Now therefore, **BE IT RESOLVED** as follows:

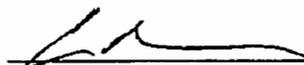
East Main Court in the City of Whitewater, as more particularly described in the attached legal description and shown on the attached map, is hereby discontinued.

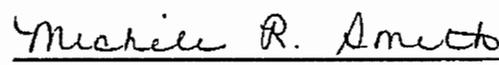
The official map of the City of Whitewater is hereby amended to show the discontinuance of East Main Court.

The discontinued East Main Court property shall be attached to and become a part of Lot 1 of City of Whitewater, Walworth County, Certified Survey Map Number 4442 recorded October 5, 2012 in Volume 29 of C.S.M.'s pages 30-33 as Document Number 848249.

All utility easements and any easement for existing utilities are being retained by the City of Whitewater.

Resolution introduced by Councilmember Binnie, who moved its adoption. Seconded by Councilmember Abbott. AYES: Wellnitz, Langnes, Grady, Binnie, Abbott, Singer, Kidd. NOES: None. ABSENT: None. ADOPTED: December 1, 2015.

  
Cameron L. Clapper, City Manager

  
Michele R. Smith, City Clerk

City of Whitewater )  
Walworth & Jefferson Counties ) SS  
State of Wisconsin )

I hereby certify this to be a true and correct copy of the record on file in my office. Dated at Whitewater, WI this 3rd day of February 2016.

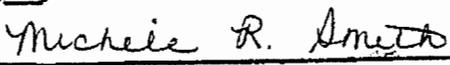
  
City Clerk



EXHIBIT D  
Minimum Construction Values

January 1, 2017	\$6,000,000
September 1, 2017 (Estimated date of Substantial Completion)	\$8,000,000
January 1, 2018	\$8,080,000
January 1, 2019	\$8,160,800

**EXHIBIT E**  
**Liquidated Damages**

**Liquidated damages will be assessed at \$460.00 per day till all obligations have been satisfied.**



## **MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM** (this “MOU”) is made as of \_\_\_\_\_, 2019 (the “Effective Date”) by and between City of Whitewater, a Wisconsin municipal corporation (hereinafter referred to as the “City”), the Community Development Authority of the City of Whitewater, Wisconsin (hereinafter referred to as the “CDA”), and DP Electronic Recycling, Inc. (hereinafter referred to as the “Developer”). The City, CDA, and Developer are referenced in this MOU collectively as the "Parties" and individually as a “Party.”

**WHEREAS**, Developer executed and delivered that certain Promissory Note in favor of the CDA, dated April 1, 2013 in the principal sum of \$34,600 (the “Note 1”);

**WHEREAS**, Developer executed and delivered that certain Secured Promissory Note in favor of the CDA, dated December 18, 2013 in the principal sum of \$51,500.00 (the “Note 2”);

**WHEREAS**, the Note 1 and Note 2 are secured by a General Business Security Agreement dated April 1, 2013 by Developer in favor of the CDA (the “Security Agreement”);

**WHEREAS**, the CDA is owner of fee title of that real property being approximately 10.96 acres located within the City of Whitewater, as further described in Exhibit A to the 2016 Development Agreement (defined below) (hereinafter referred to as the “Property”);

**WHEREAS**, the Developer continues to be interested in purchasing the Property from the CDA in order to construct an approximately 100,000 square foot recycling facility, which would employ approximately 80 full time employees;

**WHEREAS**, the Parties have previously entered into a Development Agreement dated February 18, 2016 (the “2016 Development Agreement”);

**WHEREAS**, Developer has failed to perform many of its obligations and responsibilities under the terms and conditions of the 2016 Development Agreement; and

**WHEREAS**, the Parties desire to provide each other with assurances of their respective future intentions with regard to the 2016 Development Agreement, the Property, Note 1 and Note 2, and confirm their understanding in this MOU.

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **General Acknowledgement.**

- a. Neither this MOU nor any other agreement entered in connection herewith or pursuant to the terms hereof shall be deemed or construed to be a compromise, satisfaction, reinstatement, accord and satisfaction, novation or release of Note 1, Note 2 or the Security Agreement, or any rights or obligations thereunder, or a

waiver by the CDA of any of its rights under Note 1, Note 2 or Security Agreement or at law or in equity; and

- b. Neither this MOU nor any other agreement executed in connection herewith pursuant to the terms hereof, nor any actions taken pursuant to this MOU or such other agreement shall be deemed to cure any Event of Default which may exist under Note 1, Note 2 or the Security Agreement, or to be a waiver by the CDA of any Event of Default under Note 1, Note 2 or the Security Agreement, or of any rights or remedies in connection therewith or with respect hereto, evidencing the parties' intention that Developer's obligations under Note 1, Note 2 or the Security Agreement shall remain in full force and effect.

- 2. **Amendment to 2016 Development Agreement.** The CDA is willing to agree to amend the 2016 Development Agreement and sell the Property to the Developer for \$1.00 in order for the Developer to develop and construct the Project, subject to satisfaction of the following contingencies:

- a. Developer fully satisfying all of its obligations under the Note 1 and Note 2 on or before closing on the Property, which shall be at mutually convenient time, but in no event later than \_\_\_\_\_;
- b. Developer shall commit to building an approximately 100,000 square foot recycling facility on the Property, which shall be substantially completed within eighteen (18) months from the date of the amended 2016 Development Agreement. Substantial completion shall be determined by the date on which final Certificate of Occupancy is granted by the City;
- c. Developer shall create at least eighty (80) new full time positions within the initial three (3) years of operations of the Project, and shall maintain these full time positions for at least three (3) years from the date of their individual creation; and
- d. The Parties shall agree to amend the 2016 Development Agreement consistent with the terms and conditions set forth in this MOU. Unless otherwise amended or replaced, all terms of the 2016 Development Agreement shall remain in full force and effect.

- 3. **Miscellaneous.**

- a. The Parties agree to take such additional actions and execute and deliver such additional documents as may be necessary to carry out the intent and purpose of this MOU.
- b. This MOU shall not be amended or modified except in writing signed by the Parties hereto.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties have executed this MOU to be executed as of the Effective Day first written above.

**CITY OF WHITEWATER**

**DP ELECTRONIC RECYCLING, INC.**

By: \_\_\_\_\_  
Cameron Clapper, City Manager

By: \_\_\_\_\_  
Dale J. Helgeson, President

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Attest: \_\_\_\_\_  
Michele R. Smith, City Clerk

Date Signed: \_\_\_\_\_

**COMMUNITY DEVELOPMENT  
AUTHORITY OF THE CITY OF  
WHITEWATER, WISCONSIN (CDA)**

By: \_\_\_\_\_  
Laurence Kachel, Chairman

Date Signed: \_\_\_\_\_

Attest: \_\_\_\_\_  
Dave Carlson, Executive Director

Date Signed: \_\_\_\_\_

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*City of Whitewater Council Agenda Item Information Sheet*

MEETING DATE: 4/4/2019

ITEM: Clay Street Nominal Payment.

PRESENTER: Public Works Director

PREVIOUS ACTION, IF ANY: Council approved the Nominal Payment Amounts in closed session at the March 19, 2019 meeting.

SUMMARY OF ITEM BEING PRESENTED: Temporary Limited Easements (TLE) are needed for the Clay Street reconstruction project in 2020. The DOT requires the acquisition process to follow Federal and State Real Estate Acquisition Guidelines. As part of the process, the City can set Nominal Payment Amounts for the required TLE's.

FINANCIAL IMPACT: The total Nominal Payment Amount is \$18,400. Actual acquisition costs may be higher if property owners do not accept the Nominal Payment Amount.

BOARD, COMMISSION, OR COMMITTEE RECOMMENDATION, IF ANY: Public Works Committee and Council recommended approval in closed session.

STAFF RECOMMENDATION: Staff recommends approval.

RECOMMENDED MOTION: Approve the Nominal Payment Amounts as listed on the accompanying Nominal Payment Parcel Report.

ATTACHMENT(S) INCLUDED (If none, please state that): Nominal Payment Parcel Report.

FOR MORE INFORMATION CONTACT:

Brad Marquardt, [bmarquardt@whitewater-wi.gov](mailto:bmarquardt@whitewater-wi.gov), 262-473-0139

# NOMINAL PAYMENT PARCEL REPORT

RE1889 10/2018

Project ID 3835-00-03	Highway Name Clay Street (Dann to Rice Street)
Project Name Clay Street	County Walworth

Prepared By James McCarthy 3/18/2019

Approved by \_\_\_\_\_

Agency Reviewer: City of Whitewater by Cameron Clapper (City Mgr)

\_\_\_\_\_

Date

Agency Reviewer: City of Whitewater by Michele Smith (City Clerk)

\_\_\_\_\_

Date

PRCL	LAND TYPE	LAND ACQ	UNIT PRICE	ITEMS ACQUIRED	LAND	ITEMS ACQUIRED	TOTAL	ROUNDED
1	Residential	0.00 SF	\$2.41* PER SF	86 SF Temporary Limited Easement (TLE)**	\$0.00	\$17	\$100	\$500
2	Residential	0.00 SF	\$2.41* PER SF	2169 TLE**	\$0.00	\$276	\$300	\$500
3	Residential	0.00 SF	\$2.41* PER SF	413 TLE**	\$0.00	\$52	\$100	\$500
4	Residential	0.00 SF	\$2.41* PER SF	513 TLE**	\$0.00	\$65	\$100	\$500
6	Com- City of Whitewater Ownership	0.00 SF	\$2.41* PER SF	202 TLE**	\$0.00	\$35	\$0	\$0
7	Com- City of Whitewater Ownership	0.00 SF	\$2.41* PER SF	682 TLE**	\$0.00	\$87	\$0	\$0
8	Residential	0.00 SF	\$2.41* PER SF	1241 TLE**	\$0.00	\$158	\$200	\$500
12	Residential/Commercial	0.00 SF	\$5.90* PER SF	330 TLE**	\$0.00	\$156	\$200	\$500
13	Residential	0.00 SF	\$2.41* PER SF	1991 TLE**	\$0.00	\$346	\$400	\$500
14	Residential	0.00 SF	\$2.41* PER SF	178 TLE**	\$0.00	\$8	\$100	\$500
15	Residential	0.00 SF	\$2.41* PER SF	525 TLE**	\$0.00	\$67	\$100	\$500
16	Residential - Multi-Family	0.00 SF	\$2.41* PER SF	3481 TLE**	\$0.00	\$670	\$700	\$700
17	Residential	0.00 SF	\$2.41* PER SF	277 TLE**	\$0.00	\$53	\$100	\$500
18	Residential	0.00 SF	\$2.41* PER SF	333 TLE**	\$0.00	\$64	\$100	\$500
19	Residential	0.00 SF	\$2.41* PER SF	342 TLE**	\$0.00	\$66	\$100	\$500

PRCL	LAND TYPE	LAND ACQ	UNIT PRICE	ITEMS ACQUIRED	LAND	ITEMS ACQUIRED	TOTAL	ROUNDED
21	Residential	0.00 SF	\$2.41* PER SF	1169 TLE**	\$0.00	\$52	\$100	\$500
22	Residential	0.00 SF	\$2.41* PER SF	963 TLE**	\$0.00	\$167	\$200	\$500
23	Residential	0.00 SF	\$2.41* PER SF	730 TLE**	\$0.00	\$127	\$200	\$500
24	Residential	0.00 SF	\$2.41* PER SF	774 TLE**	\$0.00	\$135	\$200	\$500
26	Residential	0.00 SF	\$2.41* PER SF	925 TLE**	\$0.00	\$161	\$200	\$500
28	Commercial	0.00 SF	\$5.90* PER SF	2971 TLE**	\$0.00	\$1,486	\$1,500	\$1,500
29	Residential	0.00 SF	\$2.41* PER SF	875 TLE**	\$0.00	\$39	\$100	\$500
31	Residential	0.00 SF	\$2.41* PER SF	4938 TLE**	\$0.00	\$988	\$1,000	\$1,000
36	Residential	0.00 SF	\$2.41* PER SF	1651 TLE**	\$0.00	\$210	\$300	\$500
37	Residential	0.00 SF	\$2.41* PER SF	553 TLE**	\$0.00	\$107	\$200	\$500
38	Residential	0.00 SF	\$2.41* PER SF	545 TLE**	\$0.00	\$105	\$200	\$500
39	Residential	0.00 SF	\$2.41* PER SF	2000 TLE**	\$0.00	\$348	\$400	\$500
41	Mixed Residential	0.00 SF	\$0.00	1350 TLE**	\$0.00	\$260	\$300	\$500
42	Residential	0.00 SF	\$2.41* PER SF	991 TLE**	\$0.00	\$191	\$200	\$500
43	Residential	0.00 SF	\$2.41* PER SF	370 TLE**	\$0.00	\$71	\$100	\$500
44	Commercial	0.00 SF	\$5.90* PER SF	2517 TLE**	\$0.00	\$1,284	\$1,300	\$1,300
46	Residential – Multi Family	0.00 SF	\$2.41* PER SF	814 TLE**	\$0.00	\$157	\$200	\$500
47	Commercial	0.00 SF	\$5.90* PER SF	1732 Temporary Limited Easement (TLE)**	\$0.00	\$817	\$900	\$900

Notes:

\* Unit Values were determined from the March 2019 - Clay Street Project Data Book (PDB).

The PDB project appraisal summary was completed by Quality Valuation Services (Pat Wagner).

Residential values ranged from \$0.56-\$2.41 per SF dependent on size. Commercial land values were est. at \$5.90/SF.

\*\* Noted Temporary Limited Easement (TLE) - Minimum parcel payment of \$500 regardless of size as based on city coordination. Those compensation values over \$500 are shown as individually determined parcel value.



*City of Whitewater Council Agenda Item Information Sheet*

MEETING DATE: April 4<sup>th</sup>, 2019

ITEM: Contractual Memorandums of Understanding (MOU) between the City of Whitewater and the WPPA & WPPSA

PRESENTER: Chief Aaron M. Raap

PREVIOUS ACTION, IF ANY: N/A

SUMMARY OF ITEM BEING PRESENTED: Presented for review and approval are three separate MOUs for each of the two bargaining units in the police department. A total of six MOUs are included with this memo. These MOUs address changes to contract language and employee benefits to include

1. Use of Compensatory Time Off
2. Shift Differential Reimbursement
3. Lateral Transfer/Hire – Pay Incentive.

FINANCIAL IMPACT: Minimal (if any). Would only have a financial impact if a seasoned officer were to be hired by the City. However, this would come with offsetting benefits to the City and the PD.

BOARD, COMMISSION, OR COMMITTEE RECOMMENDATION, IF ANY:

STAFF RECOMMENDATION: The PD command staff and the City recommend review and approval.

RECOMMENDED MOTION: Recommend adoption.

ATTACHMENT(S) INCLUDED (If none, please state that): Six attachments.

FOR MORE INFORMATION CONTACT: Chief Aaron M. Raap, [araap@whitewater-wi.gov](mailto:araap@whitewater-wi.gov), 262-473-0555.

MEMORRANDUM OF UNDERSTANDING  
between the  
WHITEWATER PROFESSIONAL POLICE ASSOCIATION ('WPPA')  
and the  
CITY OF WHITEWATER

Whereas the 2018-2019 collective bargaining agreement (CBA) between the parties under **Article XVI – Seniority, Section 5, (line 23-25)** states “Any sworn officer hired to the rank of police officer under the lateral hire protocol will receive a vacation allowance commensurate with their years of experience as a full-time sworn law enforcement officer”. Whereas the parties are agreeable to modifying the above stated language to reflect the following: “Any sworn officer hired to the rank of police officer under the lateral hire protocol will receive a vacation allowance and be placed in any of the four Hourly Rate Steps (under Article XXXI-Wages and Classifications) commensurate with their years of experience as a full-time sworn law enforcement officer”. Years of service under the lateral transfer protocol will be rounded to nearest year”.

\_\_\_\_\_  
City Manager  
City of Whitewater

\_\_\_\_\_  
City Clerk  
City of Whitewater

\_\_\_\_\_  
WPPA President

\_\_\_\_\_  
WPPA Business Agent

MEMORRANDUM OF UNDERSTANDING  
between the  
WHITEWATER PROFESSIONAL POLICE ASSOCIATION ('WPPA')  
and the  
CITY OF WHITEWATER

Whereas the 2018-2019 collective bargaining agreement (CBA) between the parties under **Article XXIII – Hours, Section 5 (A) Shift Differential (line 31)**, states “Employees scheduled to a shift other than their regular shift at the direction of management shall receive forty cents (\$.40) per hour”. Whereas the parties are agreeable to modifying the above stated language to reflect the following: (line 31), “Employees scheduled to a shift other then their regular shift at the direction of management shall receive one (1) hour of paid time-off for each shift change. The accumulated shift change hours shall be placed in the shift change bank and may only be taken as paid time-off. These hours are not subject to pay outs. **The employee whose shift changes to attend training does not qualify for the above benefit.** The employee shall have the option at the end of the year of carrying over the accrued shift change hours to the new year.”

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City Manager  
City of Whitewater

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City Clerk  
City of Whitewater

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WPPA President

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WPPA Business Agent

MEMORRANDUM OF UNDERSTANDING  
between the  
WHITEWATER PROFESSIONAL POLICE ASSOCIATION ('WPPA')  
and the  
CITY OF WHITEWATER

Whereas the 2018-2019 collective bargaining agreement (CBA) between the parties under **Article XXIV – Overtime, Section 7 (F)**, states “An employee may take no more than 115.5 hours of comp time in any calendar year. This restriction does not apply to an employee during the employee’s first year of employment. Comp days required under Section 8 (B) do not apply to this comp-time limit. Quarter-hour increments of comp time taken due to trades under Article XXIII, Section 3 (E) also do not apply to this comp-time limit”.

Whereas the parties are agreeable to modifying the above stated language to reflect the following: Remove entire Section 7 (F) from Article XXIV – Overtime. Any other reference to Section 7 (F) throughout the current CBA shall not be enforced.

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City Manager  
City of Whitewater

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City Clerk  
City of Whitewater

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WPPA President

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WPPA Business Agent

MEMORRANDUM OF UNDERSTANDING  
between the  
WHITEWATER PROFESSIONAL POLICE SUPERVISORS ASSOCIATION  
(‘WPPSA’)  
and the  
CITY OF WHITEWATER

Whereas the 2017-2019 collective bargaining agreement (CBA) between the parties does not address Lateral Hire Protocol regarding vacation benefits. The parties agree to the addition of the following language: **Article XXV – Seniority, Section 2**, “Any sworn officer hired to the rank of police officer under the lateral hire protocol and is subsequently promoted to a supervisory position, may receive a vacation allowance commensurate with their years of experience as a full-time sworn law enforcement officer”. Years of service under the lateral transfer protocol will be rounded to nearest year”.

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City Manager  
City of Whitewater

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City Clerk  
City of Whitewater

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WPPSA President

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WPPA Business Agent

MEMORRANDUM OF UNDERSTANDING  
between the  
WHITEWATER PROFESSIONAL POLICE SUPERVISORS ASSOCIATION  
(‘WPPSA’)  
and the  
CITY OF WHITEWATER

Whereas the 2017-2019 collective bargaining agreement (CBA) between the parties under **Article XIII – Hours, Section 3, Shift Differential (line 4)**, states “Employees scheduled to a shift other than their regular shift at the direction of management shall receive forty cents (\$.40) per hour”. Whereas the parties are agreeable to modifying the above stated language to reflect the following: (line 4), “Employees scheduled to a shift other than their regular shift at the direction of management shall receive one (1) hour of paid time-off for each shift change. The accumulated shift change hours shall be placed in the shift change bank and may only be taken as paid time-off. These hours are not subject to pay outs. The employee whose shift changes to attend training does not qualify for the above benefit. The employee shall have the option at the end of the year of carrying over the accrued shift change hours to the new year.”

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City Manager  
City of Whitewater

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City Clerk  
City of Whitewater

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WPPSA President

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WPPA Business Agent

MEMORRANDUM OF UNDERSTANDING  
between the  
WHITEWATER PROFESSIONAL POLICE SUPERVISORS ASSOCIATION  
(‘WPPSA’)  
and the  
CITY OF WHITEWATER

Whereas the 2017-2019 collective bargaining agreement (CBA) between the parties under **Article XIV – Overtime, Section 7 (F)**, states “An employee may take no more than 115.5 hours of comp time in any calendar year. This restriction does not apply to an employee during the employee’s first year of employment. Comp days required under Section 8 (B) do not apply to this comp-time limit”.

Whereas the parties are agreeable to modifying the above stated language to reflect the following: Remove entire Section 7 (F) from Article XIV – Overtime. Any other reference to Section 7 (F) throughout the current CBA shall not be enforced.

\_\_\_\_\_  
City Manager  
City of Whitewater

\_\_\_\_\_  
City Clerk  
City of Whitewater

\_\_\_\_\_  
WPPSA President

\_\_\_\_\_  
WPPA Business Agent